

## NEPAL'S FALTERING PEACE PROCESS

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## NEPAL'S FALTERING PEACE PROCESS

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Despite successful elections and a lasting military ceasefire, Nepal's peace process is facing its most severe tests yet. Major issues remain unresolved: there is no agreement on the future of the two armies, very little of the land seized during the conflict has been returned, and little progress has been made writing a new constitution. Challenges to the basic architecture of the 2006 peace deal are growing from all sides. Key political players, particularly the governing Maoists and the opposition Nepali Congress (NC), need to rebuild consensus on the way forward or face a public backlash. International supporters of Nepal must target assistance and political pressure to encourage the parties to face the threats to peace.

The April 2008 Constituent Assembly (CA) elections delivered a convincing victory for the Maoists but left them short of an outright majority. The major parties promised to continue working together but the NC, which came second, refused to join the government that was eventually installed in August 2008. For all its weaknesses, this government is Nepal's best hope but it is not living up to its promise and there are no viable alternatives. There can be no functional government without the Maoists on board, let alone any hope of proceeding with a constitution-writing process in which they can wield a blocking vote.

Yet the Maoists have not fully adjusted to democratic politics, nor has mainstream politics adjusted to their arrival. There is little unity of effort or intent among the governing coalition partners. Opponents of the Maoists talk up the prospects of a government collapse. Conservative wings of both the NC and the moderate Communist Party of Nepal (Unified Marxist-Leninist), the largest coalition partner, have been reinvigorated. In the face of continued instability, armed protest and burgeoning identity-based movements, the immediate threat to Nepal is not Maoist totalitarianism but a dangerous weakening of the state's authority and capacity to govern.

Maoist commitment to political pluralism is still highly questionable. Debate within the party – re-named the Unified Communist Party of Nepal (Mao-

ist), UCPN(M), following its merger with a smaller group – shows the goal of a communist “people's republic” is still in place. Although leading the government, Maoist leaders continue to threaten renewed revolutionary struggle and the “capture of state power”. Such threats have been underlined by cadres' continued violent behaviour and an apparent drive to consolidate alternative power bases through affiliated organisations like trade unions.

However, the essence of the peace process, from the November 2005 agreement between the CPN(M) and the mainstream seven-party alliance onwards, was a double transformation. The Maoists were to renounce violence and accept multiparty democracy and international human rights norms. The mainstream parties were to develop more inclusive and democratic internal structures and renounce the bad behaviour that had weakened the post-1990 exercise of democracy. The old politics was discredited and still faces the challenge of renewing itself – with the established parties needing to earn legitimacy.

The Maoists have made a greater effort to change than other parties but their democratic transformation is far from complete. They should take the lead to rebuild confidence by unambiguously renouncing violence and reaffirming their commitment to political pluralism. The Nepali Congress is in a state of organisational and political disarray. The Maoists' coalition partners also face internal power struggles and tough policy decisions. In short, the democratic alternatives to the Maoists are alarmingly weak: the other parties suffer from exclusiveness and weakened support and offer no fresh options to complete the peace process.

The state of public security and law and order is worrying. Although the incidents that draw most attention – killings, explosions and shutdowns – have all decreased since peaks in the first half of 2008, there is little sense of stability. Districts across the Tarai, from the eastern and central heartland of the Madhesi movement to the far west, continue to be plagued by insecurity and, in many areas, a near collapse of governance and policing. While the police are demoral-

ised, the Nepalese Army (NA) remains a law unto itself, resisting both democratic control and investigation of alleged war crimes during the conflict.

International actors, India, the UN and Nepal's long-standing donors, have played important roles in promoting peace and now need to maintain consistent pressure on all parties to live up to their commitments. Allowing parts of the peace agreements to drift into abeyance will put the entire process at risk. The common struggle against the monarchy was not the sole foundation for the original negotiations, nor were the initial talks based solely on parties' self-interest. The search for peace was a powerful, and popularly backed, rationale. All sides knew that the deal deferred some important, difficult topics but they were right in opting to tackle them within a peace process, however contentious, rather than allowing the pursuit of a perfect deal to threaten a return to war. Despite significant political differences, this spirit of consensus underpinned a remarkable peaceful transition. Nepal's political leaders must urgently rebuild this collaborative spirit and recommit themselves to seeing through the process.

## RECOMMENDATIONS

### To All Political Actors Party to the Peace and Constitutional Processes:

1. Reestablish a basic consensus on completing the peace process and set up the necessary mechanisms, for example by:
  - a) forming an appropriate political coordination mechanism, such as an inter-party committee or high-level commission, to set priorities, resolve disputes and keep the process on track;
  - b) establishing an independent monitoring body, with nationwide presence, convening capacity and neutral but respected leadership, to observe and report on all parties' adherence to their peace commitments and provide impartial, factual updates on shortcomings;
  - c) seriously considering the possible benefits of international technical and/or secretarial support to such a body; and
  - d) ensuring the newly constituted Army Integration Special Committee (AISC) promptly starts substantive discussions on integration and rehabilitation of Maoist army combatants.
2. Ensure the constitutional process moves forward by:
  - a) adhering to the promises of consensus and cooperation set out in all agreements from No-

vember 2005 until the June 2008 multiparty commitment;

- b) recognising the primacy of fulfilling promises made to the Nepali people as a whole by making a fresh public commitment to this effect;
- c) promptly activating the CA committees and ensuring they seek public input in their areas of competence and maintain transparency in their discussions; and
- d) making every effort to adhere to the foreshortened timetable but avoiding the temptation to meet deadlines by short-circuiting meaningful debate.

### To the Government of Nepal:

3. Focus on peace process implementation by:
  - a) setting up the commissions and committees specified in the Comprehensive Peace Agreement (CPA) with as broad participation as feasible;
  - b) ensuring decision-making bodies have capable, senior representation and are adequately empowered, and administratively supported, to fulfil their mandates; and
  - c) even if independent monitoring mechanisms are established, using government systems to report regularly to the cabinet on progress or problems.
4. Set clear peace process and development priorities by:
  - a) clarifying and restating, with the support of all coalition members, the key goals of the government's September 2008 statement of policies and programs;
  - b) shaping the agenda for donor support by developing clear requests for bilateral and multi-lateral assistance, and making the most of technical assistance; and
  - c) improving public communications, framing realistic timetables to manage expectations and building public confidence in the peace process by highlighting success stories.
5. Deliver tangible improvements in the weak law and order situation, by:
  - a) supporting the work of the home ministry's public security task force and seriously considering its recommendations, if appropriate requesting international support to implement them;

- b) cracking down through non-lethal methods on illegal disruptive protests, while guaranteeing the basic right to strike and peaceful protest;
  - c) keeping major roads and other infrastructure secure and well patrolled, as well as providing more intensive, community-oriented policing in unstable areas; and
  - d) strictly controlling the illegal activities of party youth wings, in particular their unlawful efforts to fulfil parallel policing functions.
6. Do not use the stability of the peace process as an excuse for ignoring pressing calls for justice, by:
- a) ending the culture of impunity by pursuing investigations and prosecutions of all serious alleged crimes;
  - b) empowering police to resist pressure to refuse to file cases or drop investigations and take action against individuals and institutions seeking to pervert the course of justice;
  - c) bringing draft bills on disappearances and the truth and reconciliation commission into law only after consulting victims, experts and the general public, meeting international standards and subjecting legislation to parliamentary approval rather than using ordinances to bypass debate;
  - d) requesting appropriate international technical assistance for investigations; and
  - e) responding substantively to the UN Office of the High Commissioner for Human Rights reports on serious and systematic human rights abuses during the conflict, by pursuing criminal investigations and prosecutions of those named as allegedly responsible for repeated, grave breaches of international humanitarian law.
7. Improve the management of state security forces, by:
- a) bringing the NA under meaningful democratic control, including establishing parliamentary oversight, fully auditing expenditure and developing the constitutionally mandated work plan for democratisation of the army;
  - b) making the recently constituted National Defence Council functional, providing it with secretariat support and using it as a forum to feed professional expertise into the political decision-making process;
  - c) building the functions and capacity of the defence ministry and embarking, if appropriate, with international support, on the joint administrative training of military and civilian officers;

- d) ending the obstruction by both state and non-state security forces, in particular the NA, People's Liberation Army (PLA) and Nepal Police, of investigations into crimes committed during the conflict; and
- e) avoiding politicisation of promotions, transfers and operational matters, perhaps by empowering a multi-party body such as the AISC, in the case of the army, to scrutinise important decisions.

#### **To the Unified Communist Party of Nepal (Maoist):**

8. Start the process of restoring confidence by unequivocally reaffirming the ceasefire and CPA conditions on ceasing all political violence and the commitment to political pluralism, in word and deed.
9. Fulfil the prime minister's promise to put the People's Liberation Army (PLA) under the control of the AISC and end the practice of PLA commanders speaking publicly on sensitive political issues.
10. Fulfil outstanding peace process commitments, in particular:
  - a) demilitarising the Young Communist League (YCL) and vacating seized premises it currently occupies;
  - b) promptly discharging under-age and otherwise disqualified combatants from the cantonments, cooperating with the government and international agencies on rehabilitation programs;
  - c) respecting press freedom, human rights and political pluralism;
  - d) returning property seized during the conflict; and
  - e) cooperating with investigations and prosecutions of alleged crimes committed during the conflict and ceasefire periods.

#### **To the Major Established Parliamentary Parties:**

11. Make efforts to win back popular legitimacy by:
  - a) reforming party structures with serious steps towards internal democracy and increased responsiveness to popular demands;
  - b) taking urgent steps to improve the representation of women and marginalised ethnic, caste and regional groups at all levels of party structures; and
  - c) considering, at the individual party level or collectively, a renewed public commitment to the promises for changed behaviour embodied

in the 2005 twelve-point agreement accompanied by a clear program of action.

**To the International Community, in particular India, China, the U.S., EU, UN and Donors:**

12. Recognise that the peace process is fragile and incomplete and maintain a commitment to high-level political engagement, including:

- a) strongly warning the government and political parties that relations will be damaged by any breakdown in the peace process or failure to control political violence and underlining strong international expectations of consensus and cooperation;
- b) calling for a public and definitive Maoist renunciation of violence;
- c) pressuring all parties to adhere to the CPA and other agreements and to have debates within that framework; and
- d) urging investigations into the worst alleged conflict abuses and offering technical support as appropriate.

13. Recognise that completing the peace and constitutional processes is an essential basis for all development programs and target assistance appropriately, by:

- a) developing programs to buttress public confidence in the peace process, for example by encouraging the government to focus on creating jobs and opportunities for youth;
  - b) maintaining a strong emphasis on human rights, political pluralism and conflict resolution at the heart of all policies, including development aid and military cooperation; and
  - c) supporting the government's Nepal Peace Trust Fund, with appropriate emphasis on transparent accounting and fiduciary risk but without earmarking, as well as the UN Peace Fund.
14. Recognise that delay in reforming the security sector compromises all development by draining resources and undermining political progress, by:
- a) pushing for concrete, step-by-step progress on building democratic control of the security sector;
  - b) providing technical assistance, as requested, to parliamentary oversight mechanisms as well as the ministry of defence; and
  - c) pressing the Nepalese Army to accept civilian oversight and assist in training and capacity building of civilian and military officers.

**Kathmandu/Brussels, 19 February 2009**

## NEPAL'S FALTERING PEACE PROCESS

### I. INTRODUCTION

Nepal's peace process has made remarkable progress but now faces its most severe obstacles.<sup>1</sup> Although the roadmap set out in the November 2006 Comprehensive Peace Agreement (CPA) was disrupted by disagreements between the major parties and external challenges such as the Madhesi movement, the Constituent Assembly (CA) elections were held successfully in April 2008. The transition to a republic was peaceful and the unprecedented diversity of the new CA raised hopes of more inclusive politics. The election of a president and, in August 2008, the formation of a Maoist-led government were both delayed by wrangling but nevertheless took place.<sup>2</sup> These steps were helped by a June agreement between the major parties, although few of its provisions have been implemented.<sup>3</sup>

The new government passed an ambitious budget, made positive steps in international relations and restored some order in the administration – not least by holding regular cabinet meetings and improving decision-making. The CA carried out some of its legislative duties and also agreed its constitution-writing procedures, including setting a detailed timetable for completion of the new constitution and establishing thematic drafting committees. The presidency has been a quiet success story. With no direct precedents to guide his behaviour, President Ram Baran Yadav has deftly avoided controversy and remained above the political fray, while also issuing public reminders of the need for all to work together in the national interest. The Public Service Commission has been reconstituted and there are signs that parties are close to consensus on creating local peace committees and local government bodies.<sup>4</sup>

The new government, however, has faced problems with its dual responsibilities as an executive and as guardian of the constitution-writing exercise. The difficult global economic context does not help: it is likely to squeeze overseas employment, reduce the remittances on which Nepal has come to depend and slow economic growth.

This report focuses on political developments that are mostly taking place in Kathmandu. There is a tendency for reporting on Nepal to focus on elite developments in the capital while ignoring key issues happening elsewhere, particularly in the Tarai flatlands in the south. However the peace process has become an elite, Kathmandu-centred issue; indeed that is one of its major flaws. Past Crisis Group reports have examined issues in the Tarai and elsewhere and will return to those subjects.

<sup>1</sup> On the process so far see past Crisis Group reporting: on the CA election, Crisis Group Asia Report N°149, *Nepal's Election and Beyond*, 2 April 2008 and the companion post-election Asia Reports N°155, *Nepal's Election: A Peaceful Revolution?* and N°156, *Nepal's New Political Landscape*, 3 July 2008; on the various peace agreements: Crisis Group Asia Report N°106, *Nepal's New Alliance: The Mainstream Parties and the Maoists*, 28 November 2005; Asia Report N°126, *Nepal's Peace Agreement: Making it Work*, 15 December 2006; Asia Briefing N°68, *Nepal's Fragile Peace Process*, 28 September 2007; and Asia Briefing N°72, *Nepal: Peace Postponed*, 18 December 2007; and on the constitutional process: Asia Reports N°99, *Towards a Lasting Peace in Nepal: The Constitutional Issues*, 15 June 2005; and N°128, *Nepal's Constitutional Process*, 26 February 2007. Full Nepali translations of all reports and briefings from 2007 onwards are available at [www.crisisgroup.org/nepali](http://www.crisisgroup.org/nepali).

<sup>2</sup> Following its 13 January 2009 merger with the Unity Centre (Masal), the CPN(M) was renamed the Unified Communist Party of Nepal (Maoist), UCPN(M). This report uses "CPN(M)" for the pre-unification and "UCPN(M)" for the post-unification parties.

<sup>3</sup> The constitutional revisions proposed in the agreement were implemented with the 15 July 2008 fifth amendment to the interim constitution but most other promises remain unfulfilled. "Agreement between the political parties to amend the Constitution and take forward the peace process", 25 June 2008, unofficial English translation at [www.un.org.np](http://www.un.org.np).

<sup>4</sup> Minister Ram Chandra Jha vowed that local bodies would take shape by mid-February. The parties have agreed to allocate leadership on the basis of the CA proportional representation vote, which would put the UCPN(M) in charge of 23 districts, the Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist) (UML) sixteen each, the Madhesi Janadhikar Forum (MJF) five and the Tarai Madhes Democratic Party (TMDP), Rashtriya Prajatantra Party (RPP) and CPN (Marxist-Leninist) two each.

## II. CONSENSUS OR CONFLICT?

### A. WHAT'S LEFT OF THE PEACE PROCESS?

The fundamental weaknesses of the political settlement have now been exposed. The consensus underlying the twelve-point agreement and CPA was based more on a temporary convergence of interests than on a deeply shared vision for reshaping Nepal. In the post-people's movement period almost no attention was paid to confidence-building between the parties. The ever more insistent voices from outside the seven-party/Maoist fold were only listened to when protests or violence got them attention.

Deferring decisions on critical areas such as the army and police enabled the elections to go ahead but has allowed the most serious disagreements to fester and positions to drift further apart. The election results made the rebuilding of a common minimum understanding all the more difficult. For supporters of the status quo, the Maoist victory was initially indigestible and latterly unacceptable. As the losing parties have encouraged each other to view the outcome as illegitimate, the public mandate for change has been devalued and the political equations underlying the writing of the constitution have been called into question.<sup>5</sup>

Decision-making remains narrowly based, exclusive and non-transparent. The verdict of voters has had only a slight significance in a political culture where established leaders feel unchastened by electoral defeat. So far, there have only been nods towards public consultation and participation in the constitutional process, although the establishment of CA subcommittees to

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<sup>5</sup> The major observer organisations, national and international, have published their full reports on the elections. Some of them add considerable detail on pre-election clashes and campaign irregularities and all refer to the background intimidation that coloured the election atmosphere. However, none suggests that these factors undermine the election's credibility. One of the principal national organisations concluded that "the Nepali people exercised their franchise in a joyous, festive and peaceful manner and in overwhelming numbers. As a result, except for some minor incidences, no one seriously challenged either the total outcome of the election or the manner in which it was conducted...[we] concluded, on the basis of observations and reports received from its regional and district chapters, that those incidents [of reported violence, intimidation, unequal access to the media and code of conduct infractions] did not severely affect the outcome of elections". "Nepal Constituent Assembly Election 2008: Comprehensive Report", National Election Observation Committee (NEOC), Kathmandu, August 2008, executive summary.

work in this area indicates some prospect for progress. The difference between reaching deals and managing their implementation – a serious problem for the peace process – bears lessons for the constitution.<sup>6</sup>

Control over the security sector remains at the heart of the power struggle; the impasse over the question of People's Liberation Army (PLA) integration and the broader issues are discussed in detail below. Many other aspects of the peace deal remain unresolved or unimplemented. Apart from a few exceptions, the Maoists have not fulfilled their repeated promises to return property seized during the conflict, nor have they fully dismantled parallel structures.<sup>7</sup> Local government is yet to be re-established, although cross-party consensus on creating interim bodies appears close. Basic governance and service delivery is patchy at best, with only six of the 75 districts having secretaries posted in all village development committees. Most of the commissions and committees called for in the CPA and subsequent agreements have not been created.<sup>8</sup> The state of law and order and public security is dangerously weak, especially in the Tarai.

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<sup>6</sup> Major elements of agreements with the United Democratic Madhesi Front (UDMF) and Federal Republican National Front (FRNF) have not been implemented. The eight-point agreement with the UDMF is at [www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.NEP.pdf](http://www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.NEP.pdf); an unofficial English translation is at [www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.ENG.pdf](http://www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.ENG.pdf). The five-point government-FRNF agreement is at [www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement.SPA.Govt.FRNF.NEP.pdf](http://www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement.SPA.Govt.FRNF.NEP.pdf); an unofficial English translation is at [www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement.SPA.Govt.FRNF.ENG.pdf](http://www.unmin.org.np/downloads/keydocs/2008-03-02-Agreement.SPA.Govt.FRNF.ENG.pdf).

<sup>7</sup> In June 2008 the Maoists explicitly reconfirmed their long-standing promise to return all seized property and added a tight deadline: "Within 15 days, the Maoists will implement the first point of the agreement between the eight political parties of 30 March 2007, which states, 'All property, including all private and public houses, land, offices, factories and vehicles, that has been controlled by the Maoists during the conflict [will be] returned to the concerned individuals and agencies. The administration will take legal action if anyone obstructs and hinders the use of [such] property, including houses, lands, factories and offices'". "Agreement between the political parties to amend the Constitution and take forward the peace process", 25 June 2008, Art. 4. In early 2009 the Maoists returned property in some three dozen districts, including that belonging to other party leaders including former royalist prime ministers Surya Bahadur Thapa and Lokendra Bahadur Chand. "Sampatti phirta suru", *Kantipur*, 3 February 2009.

<sup>8</sup> The June 2008 Agreement (Art. 5) promised: "During the course of implementing those provisions that have been made in [past] accords and understandings, including those yet to be implemented in the Comprehensive Peace Accord,

An increase in general unrest, mostly strikes and shutdowns, has severely disrupted economic activity and deterred new investment.<sup>9</sup> This has been compounded by a growth in militant youth wings affiliated to political parties.<sup>10</sup> Most of these were set up in response to the Maoist Young Communist League (YCL), which remains a militarised organisation.<sup>11</sup> The release and rehabilitation of under-age and otherwise disqualified combatants from PLA cantonments may soon get under way but is very belated.

Impunity is rife and extends from the heart of the state to the activities of militant groups. There have been many unpunished offences in the ceasefire period. The most prominent violations include the Maoists' abduction and murder of businessman Ram Hari Shrestha and the killings of at least four journalists.<sup>12</sup>

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a number of commissions will be formed within one month, on the basis of political understanding. These will include a National Peace and Rehabilitation Commission, a Truth and Reconciliation Commission, a High-Level Commission for Restructuring the State, a Commission to Investigate the Disappeared, a Commission to Study and Give Recommendations on Scientific Land Reform, and the other commissions as stipulated under Article 154 of the Constitution". The latter include possible commissions "to safeguard and promote the rights and interests of different sectors of the country including women, Dalits, indigenous ethnic groups, Madhesi, disabled, labourers or farmers" although the constitution states that the government "may" rather than "will" form them. Interim Constitution, Art. 154.

<sup>9</sup> The number of districts affected by shutdowns and the number of groups calling both strikes and shutdowns peaked at the start of 2008 (36 districts affected in February and seventeen groups involved in January), declined dramatically by October (four districts affected by two groups) but surged again in November (eighteen districts affected by ten groups). "Locals", rather than any organised grouping, were responsible for most incidents (locals often blockade highways following incidents such as pedestrian deaths in vehicular accidents); the next most prolific shutdown-caller was the pre-election UDMF alliance. "Nepal: Total Reports of Bandhs/Blockades in 2008", UN Office for the Coordination of Humanitarian Affairs, Kathmandu, at [www.un.org.np](http://www.un.org.np).

<sup>10</sup> Apart from the Maoists, the UML's Youth Force has been the most active. In mid November 2008, three further parties formed new youth groups: the TMDP, RPP(N) and Chure Bhawar Rastriya Ekata Party.

<sup>11</sup> On 24 January 2009 the YCL was renamed the Young Communist Democratic League. This report retains the widely recognised "YCL" as most references to the organisation include the period before the name change.

<sup>12</sup> Since 2006, four journalists, Uma Singh, J.P. Joshi, Birendra Sah and Pushkar Bahadur Shrestha, have been killed; Prakash Singh Thakuri has been missing since July 2007. The Federation of Nepali Journalists recorded 342 press freedom violations in 2008, including a significant escalation in the number of physical attacks on journalists and media

At the same time, hundreds of other killings have taken place across the country, especially in the central and eastern Tarai, although levels have declined since early 2008.<sup>13</sup> The lack of any ceasefire or peace process monitoring mechanism has become all the more critical, making it easy for claims of infringements to be made without investigation or redress.

Criminal cases against Maoist and other political leaders have been dropped by executive fiat, regardless of the seriousness of alleged offences.<sup>14</sup> Slow steps towards the establishment of an investigation commission on enforced disappearances and the drafting of more satisfactory legislation for a truth and reconciliation commission suggest that some progress on transitional justice may be possible. There has been little effort, however, to cultivate a national debate on appropriate measures or listen to victims' voices and address their pressing needs. Most significantly in terms of impunity, the national army's apparent culpability for systematic war crimes including abduction, torture, rape and murder has not led to any action.

## **B. THE MAOIST-LED GOVERNMENT: IN OFFICE BUT NOT IN POWER?**

The Maoists have had a mixed record in government. The coalition has held together and has managed the basics of day-to-day governance. On some fronts there have been unexpected, and largely uncelebrated, successes. Ministers' foreign trips – especially those of Prime Minister Pushpa Kamal Dahal "Prachanda" – calmed some fears about the possible implications of Maoist rule. Against expectations, the government has dramatically boosted revenue collection, putting it on track to meet one of its ambitious budgetary targets.<sup>15</sup> A voluntary declaration of income scheme to encourage large earners to come into the tax net has discomfited some businesspeople but raised signifi-

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houses, prompting a February 2009 international media mission to warn that press freedom still faced a "serious threat". "Nepalese media in great danger, International Press Freedom Mission finds", Reporters Without Borders, 8 February 2009.

<sup>13</sup> See detailed statistics in Section V.B.2, "Public Security" below.

<sup>14</sup> On 23 October 2008 the government withdrew 349 criminal cases against political party cadres accused of crimes including rape, robbery and drug smuggling. 53 of these cases had been registered after the signing of the CPA.

<sup>15</sup> The first four months of the 2008-2009 fiscal year saw revenue mobilisation grow by 35.4 per cent to reach Rs.33 billion (approx. \$425 million). "Revenue collection soars to Rs 33 billion", [nepalnews.com](http://nepalnews.com), 1 January 2009.

cant sums.<sup>16</sup> Even as revenue has risen, however, development expenditure has declined.<sup>17</sup> The professionalism and good working relationship of Maoist Finance Minister Baburam Bhattarai and Finance Secretary Rameshwor Khanal has impressed donors. “Minister for minister this government is far more serious than the interim government”, says one diplomat. “At least the cabinet actually meets and tries to shape an agenda – it’s far too soon to write off the government”.<sup>18</sup> The launch of a national literacy campaign, provision of free maternal health services and record tourist arrivals suggest there is good news to report.<sup>19</sup>

But the Maoist-led administration is already widely dismissed as a failure. Partly this is due to an almost universally hostile press and the government’s poor grasp of communications. But its own weaknesses are more to blame. The party has been strong on compromise and conciliatory statements but weak on delivery. The UCPN(M)’s commanding plurality in the CA has not translated into a decisive grip on power or a clear lead on policy. An electricity crisis, the result of a cumulative underinvestment for which the Maoists are partially responsible (in attacking and disrupting hydropower projects during the conflict), has reduced supply to eight hours per day.<sup>20</sup> This hits the politically influential urban middle classes hardest

and adds to the pressures on the government, which has no options for immediate relief.

The obstacles that a radical party working through traditional institutions might face were always clear – and well known to the Maoists from their two stints in the pre-election interim government. Prachanda’s excuse that governing has proved more difficult than expected sounds naive at best. In fact, institutions such as the staid bureaucracy and traditionalist judiciary are manageable. As successive transitions have illustrated, they will orient themselves to a new power centre if given a clear lead. Bureaucrats are as likely to be inspired by dedicated, professional ministers with vision as put off by ideological labels. Failing to build on this possibility reflects the Maoists’ weakness in planning, and slowness to adapt to the business of running a government, rather than bureaucrats’ insurmountable intransigence.

In government, the Maoists have been more clumsy than totalitarian. They have spent most of their time on the back foot, reacting to events rather than shaping the agenda. In the maelstrom of day-to-day fire-fighting, much of it in response to problems they have created for themselves, ministers’ efforts to get back in control have been ineffective. Initiatives such as introducing weekly “meet the press” sessions to explain government policy, developing an ethical code of conduct for Maoist CA members and the prime minister vowing to avoid wasting time on unnecessary ceremonial duties have yet to have much impact.

In November 2008, the CPN(M) and its largest coalition partner, the Communist Party of Nepal (Unified Marxist-Leninist), UML, established a coordination committee and in December they agreed to set up four high-level commissions.<sup>21</sup> But the partnership remains shaky. As long as they are at odds, it is no surprise that they fail to inspire confidence. The prime minister’s most deft manoeuvring has been tactical rather than strategic. For example, Prachanda surprised the Nepali Congress (NC) on 11 November by signing a nine-point agreement conceding their demands, thereby averting its threat to block the passage of the budget, but made no plans to implement his commitments. Meanwhile, his and other Maoist leaders’ re-

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<sup>16</sup> By the eve of the scheme’s deadline, property worth some Rs 3.45 billion (\$45 million) had been declared, with a 10 per cent tax paid. Milan Mani Sharma, “Self disclosures touch Rs 3.45b”, myrepublica.com, 10 February 2009.

<sup>17</sup> “Development expenditure tumbles by 23 pc”, nepalnews.com, 20 January 2009.

<sup>18</sup> Crisis Group interview, Kathmandu, December 2008.

<sup>19</sup> Gopal Sharma, “Record tourist numbers as Nepal emerges from civil war”, Reuters, 10 January 2009.

<sup>20</sup> The conflict is certainly not the only factor that has impeded power schemes. One former managing director of the Nepal Electricity Authority (NEA), explained: “The pathetic security situation prevailing during the ten-year-old conflict period did indeed prevent potential private investors from setting up hydro plants. However, this should not have prevented the government and NEA from adding new generation capacity. With each change in government, heads begin to roll in public enterprises, and in this manner, a new managing director is appointed in NEA, not primarily on merit but on considerations which are at best questionable”. Ajit N.S. Thapa, “Extended load-shedding: symptom of deeper malaise”, *The Himalayan Times*, 19 January 2009. The finance secretary has blamed local agents, “the invisible power that works between foreign contractors, goods importers and the government for commission”, for the delays in the Kali Gandaki A project (initiated in 1997 but with construction only starting in 2004) and the Mid-Marsyangdi project (which came online more than three years late at the end of 2008). “Parties accused of lacking political will”, ekantipur.com, 22 January 2009.

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<sup>21</sup> These are the state restructuring commission, scientific land reform commission (to be headed by Maoist central committee member Haribol Gajurel), commission on the investigation of disappeared persons and truth and reconciliation commission.

peated warnings of a “new revolution” only increase suspicions over the UCPN(M)’s intent.<sup>22</sup>

The Maoists are still outsiders in Kathmandu’s opinion-forming circles. Even though they have twice as many seats as their nearest rival in the CA, they have almost no voice in the mainstream media. Apart from UCPN(M) party members, next to no columnist, commentator, civil society figure, human rights activist, lawyer, journalist or academic writes in support of them. The NC, by contrast, enjoys a daily barrage of public praise from the very people – former Panchayat luminaries, royal advisers and army emissaries – who orchestrated and applauded the two royal coups that toppled Congress governments and jailed their leaders.

To a large extent, the Maoists’ predicament is of their own making. Resolutely unclubbable, they have mostly kept their distance from the cocktail and seminar circuit that generates the capital’s received wisdom. Instead, they have consciously and repeatedly antagonised the press, business community and other established forces whom they had initially courted with talk of cooperation. The incontrovertible evidence of their failure to fulfil commitments is brushed off with implausible excuses. They have brought problems on themselves by starting to resemble the old parties. Their government has already been tarnished by nepotism,<sup>23</sup> patronage, indecision, junketeering and factional fighting.

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<sup>22</sup> See, for example, “PM reiterates revolt warning”, nepalnews.com, 15 January 2009.

<sup>23</sup> UCPN(M) alleged nepotism includes the following positions held by members of Prachanda’s family: Samir Dahal (under-secretary of PM’s office), son of Prachanda’s younger brother Narayan Dahal; Ganga Dahal (officer of PM’s office), Prachanda’s younger daughter (Indian citizen); Gangaram Dahal (un-appointed foreign relations officer), Prachanda’s own brother; Renu Pathak (CA member), Prachanda’s daughter; Arjun Pathak (officer of CA), Prachanda’s son-in-law; Prakash Dahal (prime minister’s PA/accountant), Prachanda’s son, salary equal to the under-secretary; Narayan Dahal (CA member), Prachanda’s nephew. Baburam Bhattarai’s relatives: Hisila Yami (tourism minister), Baburam’s wife; Taranaj Pandey (PM’s adviser), Baburam’s nephew; Praya Yami (National Planning Commission), Hisila’s older sister; Timila Yami (chairperson of Drinking Water Project), Hisila’s older sister; Chirik Shova (member of Kathmandu Drinking Water), Hisila’s older sister; Baburam’s younger brother (tariff-fixing committee), head of Kathmandu Drinking Water. Arjun Gyawali, “Karyakartako kathgharama prachanda-baburam”, *Drishti*, 18 November 2008. Minister Hisila Yami also recommended her relative Kayo Devi Yami as a member of the Public Service Commission. “CC recommends PSC members”, nepalnews.com, 23 January 2009.

Where they have reached out to former rivals, it has often been to bring on board surprisingly dubious advisers, including former royalists who neither burnish their radical credentials nor temper them with palpable democratic commitment. Non-Maoists keen to see the government succeed at development were heartened by the appointment of Pitamber Sharma, a widely respected academic expert, to head the National Planning Commission.<sup>24</sup> But the government so undermined and alienated him that he felt forced to resign.

Many within the governing coalition and beyond imply that the Maoists are still an illegitimate force – either because of their incomplete democratic transformation, because they “stole” the election or because, in the words of Congress leader G.P. Koirala, theirs is only a “caretaker government” with no brief to shape longer-term policies. Of course, the NC was less quick to question the unelected post-April 2006 interim government, which it led. In contrast to that transitional administration, this government is both mandated by a popular vote and constitutionally empowered and required to act as a normal government at the same time as providing leadership to the constitutional process, just as the CA is entrusted with the dual functions of drafting body and legislature. Criticism of the Maoists tends to fail to distinguish between their role leading a coalition government and the bigger questions of their party’s position in the peace process. But in both cases, answering such criticism is up to the Maoists themselves. They are no longer the opposition.

### C. OLD NEPAL: ALIVE AND WELL

Despite the transition to a federal democratic republic and continuing rhetorical commitments to a progressive, socially inclusive “new Nepal”, rumours of the old Nepal’s death have been greatly exaggerated. The end of the monarchy has in many respects benefited the interests it used to serve: the scapegoating of former king Gyanendra, much as he was responsible for his own woes, has freed the Kathmandu elite to regroup and rebrand themselves. With the UCPN(M) now cast as the authoritarian ruler, and providing examples of continued illiberal behaviour, it is easier to categorise anti-Maoist resistance as democratic.

The noisiest conservative revival has been spearheaded by the urban upper classes. That the Maoists are not the new Khmer Rouge they predicted has not

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<sup>24</sup> The de facto head of the National Planning Commission is the vice-chairperson; the prime minister is the ex officio chairperson.

deterred constant cries of “totalitarian dictatorship”. For all their cadres’ sporadic brutality, the Maoists have not muzzled the press, locked up political prisoners or indeed implemented any notably dictatorial measures. Ironically, it is only when they propose genuinely illiberal measures such as completely banning strikes that the “liberal democrats” have rushed to embrace them. In contrast, a budget so un-Maoist that it satisfied the World Bank and the International Monetary Fund (IMF) was greeted with derision for its excessive ambition as well as claims that programs such as a national literacy scheme were camouflaged steps towards a takeover of the state.<sup>25</sup>

Underlying the ritual denunciations is a more serious fissure: many people do not want a “new Nepal”. The goal of radical transformation, which inevitably implies some uncomfortable upheavals, is not universally shared. Such fears are not confined to those at the top of the pile. Social inclusion is not a zero-sum game but in the short term affirmative action of any sort does create losers and a sense of reverse discrimination. Many of those who feel threatened belong to upper caste groups but are not “elite” in other terms. As India’s experience since its introduction of quotas and job reservations for marginalised groups illustrates, organised resistance from those who had come to depend upon privileges is only to be expected. Given Nepal’s endemic poverty and the severe shortage of career opportunities for young people of any background, managing a likely bitter struggle will be a great challenge.

The enduring appeal for some of a unitary state is visible in the influential coalition that has emerged to guard against the “threat” of ethnic federalism. The problem for those alarmed by the prospect of significant restructuring is that few have realistic alternative plans, least of all the parties that agreed to federalism without considering its implications. By January 2009, three years after formally agreeing to a constituent assembly and with a full nine-month gestation period after the CA election, the NC’s internal committees were still yet to prepare policy options on

state restructuring.<sup>26</sup> A presentation by one NC leader on the topic was cobbled together with quotes from Wikipedia;<sup>27</sup> a more thoughtful proposal based on serious research and wider consultation is, however, also under discussion.<sup>28</sup> In short, a lack of consensus among political leaders over fundamental issues reflects wider public divisions, while fears of change that are yet to be channelled into practicable policies only aggravate the tendency for unconstructive opposition.

If the Maoists are not offering the fresh leadership they promised, nor is anyone else. The mass popular ferment of the people’s movement left the existing parties unruffled; the movement to overthrow the monarchy did not throw up a single new leader. Ironically, it was the Madhesi uprising against the post-monarchical dispensation that brought some new faces onto the national political scene. The CA election provided an opportunity for voters to have their say on the old guard and they did so with gusto. But party-controlled proportional representation lists allowed some, such as G.P. Koirala, to sidestep the risk of allowing voters to deliver a direct verdict. The eighteen of his relatives who lost first-past-the-post contests initially seemed less fortunate until it transpired that electoral defeat had little meaning. UML leader Bam Dev Gautam was nominated as home minister by his party while former general secretary Madhav Nepal was parachuted into the CA as a nominee. Conservative NC heavyweights such as Govinda Raj Joshi and Khum Bahadur Khadka have become more, not less, vocal and influential since their defeats.

#### D. THE RISKS OF FAILURE

The peace process does not yet face an imminent risk of collapse. Although the original ideal of a broad unity government working to shared goals is now unlikely, the evidence suggests a prolonged process marred by disputes and messy compromises is more likely than a deliberate return to violent conflict. The international context is positive: no influential inter-

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<sup>25</sup> The budget was coloured by some partisan concerns. For example, it included a five-project “Program to Honour Political Sacrifice” bringing development to the mid-western Maoist heartland; the Maoists’ informal “capital”, the northern Rolpa village of Thawang will benefit from both construction of the “Shahid Marg” (“Martyrs’ Road”, running from Tila to Rukumkot via Ghartigaon and Thawang) and a model integrated settlement development program. Budget (2008-2009), Annex, “Building New Nepal Campaign”, Item J. A generous Rs. 50 million (\$650,000) has been allocated to building an enigmatic-sounding “Statue of Republic” at the former royal palace. *Ibid*, Item K.

<sup>26</sup> Bishnu Budhathoki, “Koirala still reigns supreme”, *The Kathmandu Post*, 5 January 2008.

<sup>27</sup> Govinda Raj Joshi, *Nepalma sanghiya shasan pranali* (Kathmandu, 2008). See also Aditya Adhikari, “Stalled debate”, *The Kathmandu Post*, 23 December 2008. Joshi has made a serious effort to contribute to public debate, putting his proposals forward in the media. See, for example, “6 vata vyavaharik pradesh”, *Himal Khabarpatrika*, 12 February 2009; “Bahulvadi samsadiya vyavasthaka pakshama”, *Naya Patrika*, 12 February 2009.

<sup>28</sup> Narahari Acharya, *Nepali kangreka nimti prastavit ganaraja nepalko samrachana ra samvidhansabhako adhar-patra* (Kathmandu, 2009).

national players want to see the government fall, encourage a military takeover or provoke a return to conflict in other forms. Outside Nepal the desire for a period of stability, rebuilding and consolidating functional democratic rule is genuine. For its neighbours, particularly India, this desire is rooted in solid self-interest, such as seeing Nepal develop as a partner in regional security, a market and an exporter of hydro-power. New Delhi and other capitals are well aware that such aims can only be achieved with political stability and a functioning government.

Nevertheless, the destabilising scenario of inter-party dissent and the unresolved future of two powerful former warring armies means a return to war by mistake is always possible. Should that happen, or the peace agreement fall apart irretrievably, the chances for a new deal will never be as good as they were in 2005. Then, a unique combination of circumstances forced the Maoists to accept pluralism and the old parties to accept the need for reform. The king was discredited, international players were willing to support a fresh approach, the UN was in a good position to assist and, most crucially, people at large were inspired by the prospect of a new consensus for peace and change. None of these factors is likely to recur as strongly and a renewed confluence of such forces is impossible.

No one may want war but it is a real possibility should the Maoists be forced out of government, or choose to quit. The Maoists are not planning to go back to war, as Prachanda has clarified, despite his misleadingly bellicose statements about resuming a popular struggle should the UCPN(M) leave the government. But the temptation for other parties to become more militaristic if the Maoists are agitating from the streets will be hard to resist. The dividing line between "street pressure" and conflict is dangerously thin.

Resumed conflict, as in 2001 and 2003, tends to be more brutal and intense than before. Another return to war would most likely reinforce that pattern. The Maoists' people's war strategy remains in place and their People's Liberation Army (PLA) is, thanks to the extended cantonment impasse, larger and better trained and organised than ever. But a new round of confrontation would be different: in place of rural base-building, the Maoists are now positioned for an urban guerrilla struggle. There are no signs that the NA would show any more concern for respecting the laws of armed combat, nor that the old parties have developed any interest in democratic control or enforcing international humanitarian law. Needless to say, renewed conflict would close the window of opportunity to address the pressing social and economic problems that underlay the insurgency in the first place.

### III. PEACE PARTNERS AT ODDS

All of the political parties are in disarray, fighting with each other and internally. Few articulate a consistent position on major issues or present a united face to the public. The UCPN(M) has done better than others at managing a heated internal debate but major disagreements over strategy remain; at the same time its transition to non-violence appears stalled. The increasing volume of NC leaders' public pronouncements is in inverse proportion to their organisational solidity. UML leaders busy themselves launching regular assaults on the government of which they are a part, while preparing themselves for the leadership battle that is set to play out at their February 2009 general convention. The Madhesi Janadhikar Forum (MJF) has averted a crippling split but appears unsure of how to balance representing Madhesi interests with contributing to governance and the peace process.

The major non-Maoist parties suffer from the same weaknesses: lack of internal democracy, no progress on making themselves more inclusive, incoherent and shifting policy positions, lack of effort to rebuild links with voters, and indiscipline, in particular among the top-heavy leadership. There is no sign they are heeding their November 2005 commitment "not to repeat the mistakes of the past which were committed while in parliament and in government".<sup>29</sup> If the constitution-writing process is completed on schedule, only the Maoists appear ready to go back to the electorate with a reasonably clear agenda and a functional campaign machine. But even the UCPN(M) is not demonstrating any visible enthusiasm for a prompt poll.

#### A. THE MAOISTS: BRINGING ON THE REVOLUTION?

Strong criticism of the government's performance has come from within the Maoist movement itself, where there has been intense debate over tactics and strategy. For outsiders, the state and direction of Maoist strategy is of great importance: Are they truly committed to democracy and non-violence? Will more radical elements settle for nothing less than a one-party state and force a return to conflict? For Maoist footsoldiers, the big question is simpler: Is this it? Is this what we spent ten years fighting for?

<sup>29</sup> Twelve-point Agreement, 22 November 2005, Art. 7.

Prachanda has swung between urging consensus<sup>30</sup> and threatening a capture of power.<sup>31</sup> His party is embroiled in complex debates, where ideological and strategic considerations do battle with more pressing practical imperatives. The Maoist central committee remains divided on many issues but the fissures cannot be reduced to a simplistic “hardline vs. softline” battle.<sup>32</sup> Indeed, there is no disagreement on the central analysis – that the revolution is yet to be completed – and the central long-term goal – a people’s republic. The chief ideological architect of the Maoist approach to the peace process, Baburam Bhattarai, has argued that it is precisely in order to bring the revolution closer that the UCPN(M) must stick with the constitutional process and use all forums – street, assembly and government – to hasten the next stage. In this context, he has even underlined the need for the Maoists to create the turmoil out of which revolution will emerge, although he used the same address to party cadres to reiterate the party’s longstanding line that political competition, rather than a Soviet or Chinese-style one-party system, will be an essential feature of a Maoist republic.<sup>33</sup>

A November 2008 national gathering brought together some 1,100 leaders from different levels and regions; it endorsed the new compromise party line of a “people’s democratic national republic” and the formation of an internal advisory committee on integration, including PLA commanders. In January 2009, the CPN(M) merged with the much smaller Unity Centre (Masal) to create the Unified Communist Party of Nepal (Maoist).

Transforming from an armed movement into a peaceful political force was never likely to be an easy process. Even the Maoists’ harshest opponents accepted that it would take them time to get over the “hang-over” of their violent past. But as the third anniversary of the ceasefire approaches with the Maoists now leading the government, excuses for thuggery and brutal lawlessness ring hollow.

The continued violent conduct of some Maoist cadres, which has extended to abduction, torture and murder, cannot be dismissed as minor indiscipline. The media response to an attack by Maoist cadres on the Hi-

malmedia publishing house was disproportionate.<sup>34</sup> But this incident, one of a number of assaults on journalists and media corporations, has seriously damaged the Maoists’ international reputation and will leave a cloud over their relations with outside players for some time to come, even if they take action against the offenders. For example, it has set back any chances of removing the CPN(M) from the U.S. terrorist exclusion list.

The YCL has been a powerful tool but also a major headache. There has been more talk of reorienting it to development activities and time-bound promises to relinquish the buildings it had occupied and turned into de facto garrisons.<sup>35</sup> The Maoist commitment in the June 2008 agreement was unambiguous:

The paramilitary functioning and activities of the CPN (Maoists)’s Young Communist League (YCL) will be completely terminated, and all public, government and private buildings and lands under its control will be vacated and returned to the respective owners within fifteen days. The CPN (Maoist) has pledged to all of the political parties that YCL activities will fully comply with the laws of the land, from this time forward.<sup>36</sup>

Although much has been made of its more egregious behaviour, its overall level of activity appears to have been significantly scaled back from the pre-election period. Nevertheless, its militarised structure and sheer size, with many members expecting to be taken care of and looking jealously towards their relatively comfortable and regularly remunerated colleagues in the PLA, make institutional change difficult. Party leaders want to keep it intact and motivated as an extra force in uncertain times and as foot soldiers for the next election campaign.

Amid these difficulties, Prachanda is still in charge and has cards in his hand. He has ridden out the internal criticism so far and can use the power and patronage of the prime ministership to his advantage. But the barrage of dissent has a cumulative impact, weak-

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<sup>30</sup> “PM urges politics of consensus”, nepalnews.com, 13 January 2009.

<sup>31</sup> “PM warns against bid to topple govt”, *The Himalayan Times*, 13 January 2009; “PM Dahal for capturing power if govt toppled”, ekantipur.com, 13 January 2009.

<sup>32</sup> Dharmendra Bastola, “Kendriya samitiko baithakka nirnayko mahattva”, *Janadesh*, 23 December 2008.

<sup>33</sup> “Yantrik dhangale sampanna hundaina kranti”, *Naya Patrika*, 30 January 2009.

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<sup>34</sup> More serious incidents, such as the 18 November discovery of the bodies of two people allegedly killed by the YCL in Dhading district and the earlier killings of working journalists outside the capital, generated less press coverage. There were, however, public protests. See, for example, “Protest against YCL over killing of two abductees”, ekantipur.com, 19 November 2008.

<sup>35</sup> Ganeshman Pun, “YCL ka agragami karyabhar”, *Janadesh*, 23 December 2008.

<sup>36</sup> “Agreement between the political parties to amend the Constitution and take forward the peace process”, 25 June 2008, Art. 3.

ening his authority and limiting room for manoeuvre. He is constrained by a greater range of pressures than ever, needing to balance his own party's interests with those of coalition partners while taking into account positions of the NC and the army and continuing to reassure international powers that the Maoists' democratic transformation will move forward.

## B. UNCERTAIN COALITION PARTNERS

The UCPN(M)'s two major coalition partners, the UML and the MJF, have faced internal debates and uncertainty over their role in government. There are signs, however, that policy and organisational difficulties are manageable.

In the run-up to its February 2009 general convention, the UML has to cope with a leadership struggle and broader questions about its policy platform. Senior cadres regularly speak out against the government of which it is a coalition member. The most constant barrage has been by K.P. Oli, who has announced his intention to challenge general secretary Jhalanath Khanal for his post. Later in 2008 he was joined by former general secretary Madhav Kumar Nepal, who had maintained a dignified silence following his election defeat and resignation before launching a campaign to return to high office.<sup>37</sup> Madhav Nepal's January 2009 parachuting into the CA to head the constitutional committee will likely reduce his public outbursts. K.P. Oli's offensive, however, will probably be sustained as he seeks publicity and momentum for his bid to win the party's leadership and push for a UML-led government. Bam Dev Gautam, as home minister and deputy prime minister the party's most senior representative in the administration, has complained that UML leaders and activists have been undermining the government.<sup>38</sup> He has, in turn, been subjected to searing public criticism from the UML press.<sup>39</sup>

The UML is still unsure where it stands ideologically, tactically and strategically. The extensive political re-

port presented by its central committee at the general convention does, however, offer a serious analysis of its past weaknesses and a detailed blueprint for its future positioning.<sup>40</sup> It cannot reconcile itself to being a junior partner to the UCPN(M) on the left, but its efforts to stand up have been patchy and often, as in the case of its YCL-modelled Youth Force, counterproductive. It is unlikely to be tempted into an NC-led "broader democratic alliance" (see below) unless there is an immediate incentive, such as the offer of the prime ministership. In the face of the Maoists' scepticism towards parliamentary democracy, the relevance of the UML's alternative, "people's multi-party democracy", is unclear.<sup>41</sup> It identified the monarchy as the main threat to democracy and, forged in a period when the UML had signed up to parliamentary democracy, sits uneasily with the party's call for a parallel system of a popularly elected president alongside a popularly elected prime minister.

Against this backdrop, the UML has made little of its capacity to act as a mediating force. Following the pattern established from the earliest negotiations of 2005, neither the UCPN(M) nor the NC have looked to it as a bridge, even when their relations have been at their most strained; the UML's own lack of a coherent approach has meant no initiative to establish itself as a credible honest broker able to boost its own importance by bringing the two sides closer together.

The 16-21 February 2009 general convention should help clear the air: it is slated to create new senior positions, including a party president and vice president, largely to accommodate senior leaders irked at their current marginalisation. A decisive mandate for the new leadership may quell public dissent. The convention may not take dramatic steps to reposition the party but will acknowledge organisational shortcomings and initiate moves to reinvigorate the party. Proposed changes to the party constitution are likely to invite serious debate;<sup>42</sup> there are, however, almost cer-

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<sup>37</sup> In December 2008 Nepal said his party should not have joined the government and accused its leadership of seeking power at the expense of cultivating its relationship with the wider public: "Nobody will follow the party if we fail to address the concerns of the masses". "Joining govt a folly: Nepal", *ekantipur.com*, 16 December 2008.

<sup>38</sup> "UML not helping govt: Home Minister", *The Kathmandu Post*, 20 December 2008.

<sup>39</sup> One cover story pointedly observed that "In return for the party making him deputy prime minister even though he lost the election, Gautam has started publicly badmouthing party workers". "Yi bamdev kaska hun kamred?", *Budhabar*, 24 December 2008.

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<sup>40</sup> "Political Report", CPN(UML) Central Committee, January 2009.

<sup>41</sup> A week-long January 2009 central committee meeting re-affirmed this policy, introduced by revered former leader Madan Bhandari in the wake of the 1990 transition to multi-party democracy, as the party's basic line. "UML adopts PMPD as guiding principle", *The Himalayan Times*, 15 January 2009.

<sup>42</sup> The UML's proposed new party structure has a chairperson above the general secretary. "Vidhan Samshodhan Prastav", UML Central Committee, Kathmandu, January 2009. The key elements are set out in "Emaleko samshodhit vidhan tayar", *Budhabar*, 28 January 2009. Some influential central committee members, including Pradip Gyawali and Shankar Pokharel, have registered an alternative proposal for revisions to the party statute, as have a group of youth lead-

tain to be some moves towards more inclusive structures and efforts to address the widely acknowledged gap between leadership and grassroots workers. If nothing else, the convention should mark a serious effort to face up to the party's difficulties and embark on an overdue internal debate.

The MJF had to cope with policy confusion over its "one Madhes" line as an internal rebellion was gathering steam.<sup>43</sup> It is ill prepared to cope with any new Madhes uprising, having neither abandoned its claim to leadership of the "one Madhes" campaign nor done much to deliver on it. Its stance towards armed groups has long been unclear and is more problematic now that it is in government. Its relatively upper-caste and better-off supporters and members will be threatened by further identity politics movements. At the same time, it could be outflanked by a more organised challenge from the Tarai Madhes Democratic Party (TMDP), Nepal Sadbhavana Party (NSP) or other Madhesi parties if it cannot consolidate its base. Dissatisfaction with party leader and foreign minister Upendra Yadav developed into an open challenge, with senior figures calling for their ministers to resign from the government and force a change in policy and leadership.

Nevertheless, its January 2009 general convention appears to have brought some stability. Although marked by disputes and unrest, it ultimately saw party president Upendra Yadav unanimously re-elected. On 7 February, a meeting of its new central committee agreed to its strategy and endorsed its role in the coalition, while directing its ministers to report regularly to the party on their progress. Party leaders have become less ambivalent towards their position in the coalition, insisting the Maoist-led government is the only viable option and working hard to communicate successes. For example, the MJF's joint chairman, J. P. Gupta, presented the government's February 2009 ordinances as a joint achievement for which his party deserved credit, arguing that the ordinance on job quotas in public services fulfilled several of the MJF's pre-election demands.<sup>44</sup>

Other coalition partners are also not fully in the fold. When the UCPN(M) expressed the view that Madhesi parties are working for foreign powers, the reaction of

the commerce minister and president of the Nepal Sadbhavana Party, Rajendra Mahato, was to accuse the Maoists themselves of being foreign agents.<sup>45</sup> Such public trading of insults may be partly theatrical but suggests inter-party relations are disturbingly dysfunctional.

### C. THE OPPOSITION: REINVIGORATED, BUT FOR WHAT?

A vigorous opposition has enlivened the political scene and played a useful role in challenging government policy. Some robust criticism and debate, especially when the CA has functioned as legislature, has added to the sense of a return to democratic politics. There are solid grounds for opposition: for example, the prime minister's failure to fulfil his commitment to the assembly to implement the NC-backed nine-point demands by 15 December became not just a breach of inter-party agreement but a betrayal of a promise made to the legislature as a whole.<sup>46</sup> But methods are not always helpful, as evidenced by the growing tendency to resort to boycotting or obstructing CA proceedings.<sup>47</sup> More worryingly, the major opposition parties are in a bad shape internally and often prefer the spoiler's role to constructive criticism.

#### 1. The Nepali Congress

The NC has not made up its mind as to whether it is in or out of the peace process. Adopting the easy route of spoiling for its own sake, party leaders have not decided whether to use their considerable leverage to win specific concessions in return for cooperation or whether to devote all their effort to wrecking the government and hoping to supplant it upon its collapse.

In the meantime, the party is less democratic than ever. It has made no moves towards more representative or accountable leadership, rather the reverse. Party president G.P. Koirala declared himself parliamentary party leader without any debate, let alone a vote. He then adjourned discussions on the appoint-

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ers who argue they have stronger proposals for internal democracy. The stage is set for a genuine debate.

<sup>43</sup> When MJF leader and government minister Bijay Kumar Gachhadar suggested the "one Madhes" policy had become irrelevant he was subjected to a barrage of criticism from within the party. See "Gachhadar's utterings stir hornet's nest", THT Online, 16 December 2008.

<sup>44</sup> "MPRF not to quit govt", myrepublica.com, 9 February 2009.

<sup>45</sup> "Maoists biggest foreign agents: Minister Mahato", ekanipur.com, 18 December 2008.

<sup>46</sup> See "NC set to disrupt next session of Parliament", *The Himalayan Times*, 16 December 2008.

<sup>47</sup> During the CA's budget session, the Tarai Madhes Democratic Party (TMDP) blocked proceedings for twelve days (demanding implementation of the February 2008 Madhesi-government agreement), the NC for five days (demanding implementation of their nine-point agreement with the government) and the smaller parties for four days (over scholarship quotas).

ment of a deputy leader in order to avoid the possibility of an election for that position. The mute acceptance of his high-handedness (with only Narahari Acharya voicing dissent within the Central Working Committee) is indicative of the weakness of the NC's second-rank leaders, whom Koirala has reduced, in the words of one journalist, to "subservient subjects".<sup>48</sup> Even usually supportive media outlets have become restive in the face of the party's wilful resistance to serve its own interests by reform.<sup>49</sup>

Koirala's insistence on remaining parliamentary leader does not extend to an immediate interest in parliamentary functioning. The NC has repeatedly boycotted the CA; following the opening sitting, Koirala himself has not attended a single CA session and his main internal rival, Sher Bahadur Deuba, has only shown up twice.<sup>50</sup> The delay in finalising the parliamentary party's statute, which was eventually agreed on 4 February 2009, affected the Constitutional Council, which makes appointments to important bodies such as the Public Service Commission and Election Commission, as it required the participation of the leader of the opposition.<sup>51</sup>

Party organisation is also in disarray. Despite his autocratic hold on the party, Koirala has only visited the NC headquarters eight times in the last four years.<sup>52</sup> In October 2008 he promised to reinvigorate the party within three months and launched an "awareness campaign" to rebuild its electoral base and, more importantly, to continue the still incomplete reunification of the party following its 2002 split.<sup>53</sup> Results have been mixed at best. The party remains riven, with the unseemly public tussles between its two main wings even extending overseas.<sup>54</sup> Since its refusal to join the government means that

senior figures cannot be pacified with ministerial office, the succession battle has become more intense and more complex, with smaller factions coalescing around leaders including Sushil Koirala, Ramchandra Poudel and K.B. Gurung.<sup>55</sup>

The NC has, however, taken to its opposition role with vigour, harrying the government with all weapons available to it. Its choice of targets has sometimes been ill-advised or disingenuous and its language never dispassionate, but it has kept the government on its toes. Koirala, still energised by his sense of betrayal at having been denied the presidency, confidently predicts the imminent collapse of the government. "The prime minister must have the guts to step down", threatens one CA member. "We are ready to run the government".<sup>56</sup> Others, such as Ramchandra Poudel, are only slightly more circumspect, saying that the Maoists working "under the guardianship of Koirala" is the only way forward: "We don't have any intention to pull down this government. This government will collapse because of their own contradictions".<sup>57</sup>

The Maoists should take these warning shots seriously. Verdicts on the NC's own stints in power have been mixed but none can deny that Koirala is an experienced wrecker of governments. Since throwing away his own absolute majority in 1994, he has had a hand in the fall of most administrations, including those of his own party under rival leaders Sher Bahadur Deuba and Krishna Prasad Bhattarai. But unless the NC can show that its criticism is constructive it risks tarnishing its name further. Nepali voters delivered a damning electoral verdict. Internationally, the NC's reputation has sunk to new depths. Formerly sympathetic observers despair at its undemocratic behaviour and shambolic apparatus.<sup>58</sup> If it does not pull itself together, an unreformed NC will continue doing a serious disservice to the sizeable section of the population that would like to be represented by a competent, committed liberal democratic party.

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<sup>48</sup> Bishnu Budhathoki, "Koirala still reigns supreme", *The Kathmandu Post*, 5 January 2009.

<sup>49</sup> See, for example, "Congress course correction", editorial, *Nepali Times*, 12 December 2008.

<sup>50</sup> "Samvidhansabha jandainan thula neta", *Naya Patrika*, 7 January 2009. Prachanda also has a bad record for CA attendance, with only four appearances, although he might claim the excuse of government business.

<sup>51</sup> "Koirala still reigns supreme", op. cit.

<sup>52</sup> Kiran Pokharel, "Sunsan kangres mukhyalay", *Annapurna Post*, 24 December 2008.

<sup>53</sup> "NC will be reorganised within three months, claims Koirala", *ekantipur.com*, 6 October 2008; and "Koirala in Biratnagar to begin NC 'revival campaign'", *nepal-news.com*, 23 October 2008.

<sup>54</sup> In New York, rival pro-Koirala and pro-Deuba international contact offices still struggle for supremacy. Crisis Group interview, Nepali Congress supporter, New York, 8 December 2008.

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<sup>55</sup> See Santosh Acharya, "Gut-upagutko birami", *Nepal*, 15 February 2009.

<sup>56</sup> "NC is ready to form the government", Navindra Raj Joshi, *People's Review*, 8 January 2009. Joshi insists, however, that he was only speaking theoretically rather than calling for an immediate change in administration. Crisis Group interview, Kathmandu, 12 January 2009.

<sup>57</sup> Interview, *Spotlight*, 9 January 2009.

<sup>58</sup> Crisis Group interviews, New Delhi, Washington DC and London, November 2008-January 2009.

## 2. The smaller parties

Many smaller parties are increasingly frustrated and fear that their presence in the CA is destined to be decorative. Although the CA committees were structured to ensure full inclusion of all parties represented in the CA, the lack of debate on the assembly floor and the continuing pattern of major decisions being taken by only a few large party leaders has left them feeling sidelined. The symbolic challenge of Dalit Janajati Party leader Bishwendra Paswan to Madhav Nepal's installation as chair of the constitutional committee reflects this frustration. Of the parties outside government, the TMDP is probably the most influential. Its decision not to join the administration and, in January 2009, to launch an agitation calling for the implementation of past agreements and the fulfilment of Madhesi demands may earn it some of the credibility and organisational presence that it lacked going into the election.

## 3. A "broader democratic alliance"?

The right wing of Nepali politics, marginalised by the electorate and thrown out of step by the abolition of the monarchy, is seeking to regroup. The strong conservative wing of the NC was happy to oppose the party line on federalism and republicanism even in the run-up to the CA election.<sup>59</sup> It failed to split the then seven-party alliance or to wean its party away from the peace process consensus but has now joined hands with former Panchayat luminaries to call for a "broader democratic alliance". A conservative column outlines the plan:

The [NC leaders] have been making the necessary noises, but till now have failed to form strong and appropriate alliances. First and foremost, the UML and the most important Tarai parties have to be dislodged from the deadly embrace of the Maoists.... Then the NC must assiduously work toward integrating the smaller democratic parties like the Rashtriya Prajatantra Party and the Nepal Janashakti Party [sic] in the new coalition. The CPN-Maoists can join as a junior partner, or not at all. Then only can the agenda of a new Nepal really begin.<sup>60</sup>

The idea has been publicly promoted primarily by the smaller right-wing parties, although it has been echoed sympathetically by influential NC insiders. "If it

becomes necessary, if the Maoists continue to act the way they are doing and invite instability, we must go ahead by forming a democratic alliance that includes many political parties", warned G.P. Koirala's daughter, Sujata Koirala. But she tempered her comments by adding: "We will form this alliance not to bring down the Maoist government or to bring instability, but to bring stability to the country and prevent it from becoming a failed state ... if the Maoists are concerned about the country and want to join the alliance, they are welcome".<sup>61</sup> Former Prime Minister Surya Bahadur Thapa has been a vocal proponent, as have other former Panchayat luminaries.<sup>62</sup> Some, however, are more cautious. For example, influential former royal minister Kamal Thapa, who heads a royalist splinter party, has doggedly stuck to his monarchist principles but has also insisted that the Maoist-led government should not be brought down.<sup>63</sup>

The former king has mostly kept his counsel. The one issue that prompted him to speak out was a controversy over the Maoists' attempt to replace Indian priests with Nepalis at the country's major Hindu temple, Pashupatinath. The sight of the coalition that sprung up to oppose the move – royalists, conservatives in the major parties and press, India's Bharatiya Janata Party (BJP) and Hindutva extremists such as the Bajrang Dal – may have made some nostalgic for the last days of the embattled monarchy. But it also stood as a reminder of Gyanendra's baggage. Even if the BJP return to power in New Delhi, a royalist revival built on support from the neighbour's Hindu right will not win mass support.

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<sup>59</sup> See Crisis Group Report, *Nepal's New Political Landscape*, op. cit., p. 8.

<sup>60</sup> Shashi P.B.B. Malla and Chandra Bahadur Parbate, "End of the road for Maoists", *People's Review*, 18 December 2008.

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<sup>61</sup> "The Maoists are trapped in a conspiracy", interview with Sujata Koirala, *The Kathmandu Post*, 19 January 2009.

<sup>62</sup> See, for example, "Thapa reinforces Koirala's idea of BDA", nepalnews.com, 6 December 2008; and "NC, now, has to lead democratic forces, says RPP chairman", ekantipur.com, 5 December 2008.

<sup>63</sup> "No alternative to Maoist-led govt: Kamal Thapa", ekantipur.com, 3 January 2009.

## IV. THE TWO ARMIES

### A. THE INTEGRATION IMPASSE

The challenge for the security sector is reaching agreement on the integration of Maoist combatants. There is a serious difference of opinion over what form this should take. The impasse over this issue, central to the peace process, is particularly debilitating: it hinders progress in other areas and indefinitely prolongs a UN arms monitoring role that was initially envisaged as only a short-term transitional measure. In the meantime, those in the PLA cantonments who did not meet the UN's verification standards – new and under-age recruits – have still not been discharged. This is a result of Maoist foot-dragging but also due to uncertainty over their rehabilitation. The Maoist-led government promised swift action to UN Special Representative of the Secretary-General for Children and Armed Conflict Radhika Coomaraswamy, who visited Nepal at the beginning of December 2008. But getting this first program of discharge and rehabilitation right has broader implications, affecting the credibility of the whole integration and rehabilitation process.

#### 1. What the agreements say

The numerous written commitments are ambiguous and deliberately vague. The November 2006 CPA called for a special committee “to carry out monitoring, adjustment and rehabilitation of the Maoist combatants”;<sup>64</sup> the December 2007 Agreement on Monitoring of the Management of Arms and Armies (AMMAA) referred to “integration into the security forces”;<sup>65</sup> the interim constitution specified that the special committee would “supervise, integrate and rehabilitate the combatants of the Maoist Army”.<sup>66</sup> This, in turn, was amended to stipulate “a special committee ... representing all the major political parties in the Constituent Assembly” – a change prompted by the need to include the NC despite its absence from

the government.<sup>67</sup> This reincarnation of the erstwhile “146 Committee”, named after the interim constitution article that mandated it but never a functional body, was christened the Army Integration Special Committee (AISC).

The June 2008 multiparty agreement that led to this amendment further specified that verified combatants would “be offered a choice between an economic package and various other alternatives for rehabilitation”.<sup>68</sup> For those “who choose integration”, only those duly registered in cantonments “will be deemed eligible for possible integration with the security bodies, after fulfilling the standard requirements”.<sup>69</sup>

The letter of the various agreements is thus confusing. There are two extreme interpretations: 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. Negotiators from both sides confirm that from 2005 onwards the implicit mutual understanding was that a significant number, but far from all, of the Maoist combatants would be integrated into the NA.<sup>70</sup> Both sides accept that there was no agreement on numbers (although the ballpark figures both speak of in private, in the low thousands, are not dramatically divergent) or on modalities, hence the conscious vagueness of language in the formal deals.

There was, however, little will to implement the agreement and build on the chances for compromise on numbers and methods. Nor did the signatories to the various deals necessarily speak for the bodies they purported to control. The NA was not answerable to the seven-party interim government and has made it clear it retains its own red lines. The PLA was under CPN(M) control but appears not to have been fully consulted on the terms of deals, in particular on the June 2008 agreement's implication that any integration will be on the NA's terms (with individual combatants having to meet its requirements) and delinked from the parallel question of NA restructuring.

Following much wrangling, the CPN(M) and UML agreed on 18 December 2008 to expand the AISC to include two members from each of the four major

<sup>64</sup> CPA, Art. 4.4.

<sup>65</sup> “Those who are eligible for integration into the security forces will be determined by a special committee as agreed in the Comprehensive Peace Accord. This integration process will be determined in subsequent agreement with the parties”. AMMAA, Art. 4.1.3.

<sup>66</sup> “The Council of Ministers shall form a special committee to supervise, integrate and rehabilitate the combatants of the Maoist Army, and the functions, duties and powers of the committee shall be as determined by the Council of Ministers”. Interim Constitution, Art. 146.

<sup>67</sup> Fifth Amendment to Interim Constitution of Nepal, 13 July 2008, Art. 20, “Amendment of Article 146 of the Constitution”.

<sup>68</sup> “Agreement between the political parties to amend the Constitution and take forward the peace process”, 25 June 2008, Art. 2.2.2. Unofficial translation at [www.un.org.np](http://www.un.org.np).

<sup>69</sup> *Ibid.*, Art. 2.2.3.

<sup>70</sup> Crisis Group interviews, NC and CPN(M) negotiators, Kathmandu, October 2008.

parties, thereby meeting the NC's demand for parity of representation.<sup>71</sup> It was decided that the prime minister, rather than his deputy as formerly proposed, would head the committee himself. The AISC was finally constituted and met for the first time on 16 January 2009, with the initial task of defining its terms of reference and procedures. A second meeting on 5 February decided to discharge disqualified Maoist combatants as soon as possible and promised to provide appropriate rehabilitation packages. These steps had already been agreed; substantive discussion on the central integration and rehabilitation questions will not be as straightforward.

More immediately, the AISC's responsibility for overseeing the PLA has not been clearly defined. Addressing the PLA at its anniversary program on 12 February, Prachanda told combatants that while their existing command structure would remain in place, the AISC would now be responsible for its direction and planning.<sup>72</sup> Turning this commitment into reality will depend on both the AISC's capacity to agree such directions and the PLA's willingness to follow its instruction.

## 2. The Nepalese Army position

The NA was never in favour of integration and remains extremely reluctant to allow the process to go ahead. It sees itself as a professional and apolitical force which should not be undermined by incorporating former guerrillas. More importantly, it feels it was undefeated and remains the only legitimate armed force in the country.

The NA's insistence on any candidates for integration meeting "standard requirements" has added an additional element of confusion. It is seen by PLA commanders as a none-too-subtle means of excluding large numbers of combatants who do not have the educational and physical qualifications specified in NA recruitment standards. Furthermore, NA officers privately maintain that they can only accept candidates for integration on an individual, entry-level basis, as ordinary soldiers or officer cadets. PLA commanders insist they should be included at various ranks, although they accept that this may require in-

tensive training. They also argue for putting formed units under joint command during a transitional period rather than assimilating individuals into the existing NA structure (see below).

An unhelpful side debate has emerged, with many pro-NA commentators citing "international norms" on integration as a reason for barring any PLA entry into the NA. Some have argued that including former guerrillas would make the NA ineligible for future UN peacekeeping operations. In fact, there are no applicable international norms, and the speciousness of the claimed impact on UN involvement was exposed by UN Secretary-General Ban Ki-moon during his visit to Nepal.<sup>73</sup>

NA officers are genuinely frustrated that PLA commanders get to speak out, giving frequent media interviews and taking part in UCPN(M) policy discussion, while "no one speaks for us". In contrast, the NA was neither involved directly in peace negotiations nor represented by parties it fully trusted or who were placed to enter meaningful commitments on its behalf. It remains suspicious even of the parties who have been most vocal in backing its stance on recruitment to fill vacancies (see below). For example, NA officers still feel the post-1990 democratic governments treated it with disdain – from the NC squeezing its budgets to the UML forcing out an army chief over corruption allegations. However, its strongest international ally, India, shares most of its concerns over integration and can be relied upon to resist any steps that appear to threaten its existing structure and culture.

## 3. The PLA position

The PLA remains disciplined and subject to UCPN(M) political control but frustration is mounting. More than two years after entering cantonments combatants still have no idea of their future. Questions are now being raised over the wisdom of entering the peace process in the first place. It is not clear what form the Maoists' proposed internal integration recommendation committee will take but the tensions on this issue are real and relate not just to process but to major differences on substantive outcome.

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<sup>71</sup> When the government had first announced the formation of the committee, on 28 October, it had two CPN(M) members to only one from each of the other parties.

<sup>72</sup> Prachanda, speech at program to commemorate the fourteenth anniversary of the "people's war" and the eighth PLA Day, Nawalparasi, 12 February 2009; edited extracts published as "Shantiko ladainma samarpit bhaera lagnuhos", *Janadesh*, 17 February 2009.

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<sup>73</sup> In a question and answer session, the Secretary-General clarified that "there were many such cases, even in peacekeeping operations, in which even former rebels, when they were integrated into the national armies of member states of the United Nations, were recruited as part of UN peacekeeping operations". Press conference, Kathmandu, 1 November 2008.

PLA commanders' concerns in some ways mirror those of their NA counterparts. Although they are more integrated in the Maoist movement's political structure, there is increasing evidence that they were never fully consulted on the integration question. Prachanda has clearly been well ahead of his party with his regular assurances that a deal has been done and the process will shortly be under way. He is now facing a backlash. The seven Maoist division commanders have started indicating publicly that they will insist on bulk integration, rather than individual entry, and that they will not accept the NA's existing recruitment standards.<sup>74</sup> "We may agree to somewhat different modalities after further discussion", said one senior commander, "but there is no question of sending our people outside our command".<sup>75</sup>

The PLA top brass are still committed to the concept of integration as they define it. They are united in wanting to move beyond being a party army and in refusing to join an unreformed NA but differ on the timetable and modalities. Influential senior UCPN(M) leader Mohan Baidya's position, supported by PLA Deputy Commander Baldev, is that integration should be carried out in parallel with constitution-writing and should be completed only once the new constitution is in place – thus retaining some independent armed influence and insurance against disbanding the PLA before the outcome of the constitutional process is set in stone. However, much of the PLA, like the party leadership, appears to favour getting integration underway sooner. There has also been talk of a possible referendum on the question as a means of short-circuiting the AISC deadlock.<sup>76</sup> The belated constitution of that committee may render such alternatives unnecessary, but only if it proves functional.

In the meantime the PLA is further consolidated as an organised force: discipline appears intact and military training has been stepped up – with the supposed rationale of bringing combatants up to standard for entry into the new NA. The PLA's formal organisation is certainly greater than during the war, although it

may well be less motivated. This is especially so given that its numbers were bulked up with recent recruits, while some commanders, in particular political commissars, were transferred to the YCL rather than being cantoned. (Payments to cantoned combatants are now being made by cheque in the name of individuals, so there is less chance for the party to divert a portion but all the more reason for YCL commanders and others to be envious of their PLA colleagues' relative financial comfort.)

The separation of commanders who want to move into politics and those staying with the PLA seems more or less complete, although some (especially Ananta, who is close to Prachanda and still speaks for the PLA informally despite having joined the CA) bridge the gap. The PLA's determination to ensure impunity for its conflict-era and subsequent offences remains as solid as that of the NA. It is still sheltering individuals like Bibidh, a division commander suspected of prime responsibility for overseeing the murder of Ram Hari Shrestha in Shaktikhor cantonment (see below). While more willing to admit to "mistakes" in its past actions, it drags its feet on transparent investigations and resists action against those found responsible for crimes.<sup>77</sup>

#### 4. Other parties

Apart from the UCPN(M), the major parties have not been enthusiastic supporters of PLA combatants' integration into the NA. The NC has adopted an increasingly strident campaign against any integration; in this it has been supported by the MJF and, increasingly if inconsistently, by some of the louder voices within the UML leadership, although not the party itself.

Much of this opposition has been presented as a matter of immutable non-violent principle. But such arguments are largely spurious. The NC's position on violence has never been clear-cut. B.P. Koirala, the first NC prime minister, was proud to have entered politics by being "drawn to the [Indian] terrorist movement of the 1930s" and arrested on murder charges.<sup>78</sup> In preparation for the armed movement to

<sup>74</sup> *Naya Patrika*, 8 December 2008, p. 1.

<sup>75</sup> "NA is no longer a national army", Baldev interview, *The Kathmandu Post*, 8 December 2008. "In line with Nepal's new situation, we should create a joint command. In the first phase of integration a coordination command of the top leadership of the two armies can be created. They can form plans together, but the orders given will be passed down through separate channels. The units of the NA and PLA will remain separate. Then according to the new policy, we will undertake downsizing. According to this decision, there may be a reduction in the numbers of both PLA and NA commanders".

<sup>76</sup> Basudev Ghimire, "Sena samayojan sahamatima va janamat sangraha?", *Janadisha*, 23 December 2008.

<sup>77</sup> The NA and CPN(M) responses to UN Office of the High Commissioner for Human Rights (OHCHR) Bardiya investigations are instructive. While the NA attempted to cover up its offences, the CPN(M) accepted responsibility for twelve of the fourteen killings attributed to its forces; in the remaining two cases there is credible doubt. However, neither side has supported criminal investigation and prosecution of its members. "Conflict-related Disappearances in Bardiya District", OHCHR-Nepal, December 2008, pp. 46-50, 53-56.

<sup>78</sup> Anirudha Gupta, *Nepalese Interviews* (Delhi, 1997), p. 9.

overthrow the hereditary Rana prime ministership in 1950 he found it easy to reject the Gandhian approach: "My own non-violence was always a matter of tactics rather than an article of faith".<sup>79</sup> The UML's most outspoken opponent of integration, K.P. Oli, knows well about political violence himself. Finding the people's war line of the UML's precursor, the CPN(ML), insufficiently radical, he became one of the leaders of the "Jhappali" movement that sought to bring forward the revolution by murdering landlords.<sup>80</sup>

Frequently aired insistences that the Maoists should follow the NC's example from the 1950s by disbanding their own armed units voluntarily and embracing the state army as the sole legitimate force rest on a similarly patchy reading of history. When NC ministers joined the first post-Rana government, they not only refused to fly the national flag of Nepal on their vehicles, preferring their party pennants, but retained their own "liberation army" bodyguards even when visiting the royal palace for cabinet meetings.<sup>81</sup> Current NC leaders' claims that they never sought, or achieved, integration of their guerrillas in the national army (instead allowing them to become the backbone of the new police force) are not supported by reliable historians.<sup>82</sup>

Motivations for opposing possible PLA-NA integration are, in fact, threefold: the genuine fear that the Maoists would use the process to weaken or co-opt the state security forces and establish a totalitarian regime; the political opportunity of compensating for poor election results by cultivating the NA as a powerful, anti-Maoist ally; and, conversely, the worry that, despite their apparent enmity, the Maoists and army top brass could cut a deal that would sideline unarmed parties.

The first fear has solid theoretical grounds. As NC leaders have cogently and correctly argued, Maoist strategy still calls for a complete capture of state power by all available means.<sup>83</sup> From the prime minister down, Maoist leaders have not only refused to revise this line but have repeatedly emphasised it. Nevertheless, a few thousand former PLA combatants diluted in a much larger national force would represent a far less potent force than their current independent army. If seizing power is their aim, integration would be more of an obstacle than an advantage.

The fear that the two militaries could cut a mutually acceptable deal is more pertinent. One commentator has observed that "the most significant change in Kathmandu has been the growing warmth in ties between the Maoists and the Nepalese Army (NA). For those who thought that their bitter past would not allow the two sides to engage with each other, this may have come as a shock. But this relationship, and rapprochement, is happening at several levels".<sup>84</sup> Informal talks between the PLA and NA (the latter represented by retired officers rather than current commanders) have been constructive – and have not included the political parties. For all the argument over NA recruitment (see below), the Maoist defence minister has sought not to ruffle feathers and has privately lobbied for additional resources for the NA.<sup>85</sup> "Of course we're scared of the army, just as we are of the Maoists", noted one senior NC leader. "They both have guns and we don't so why shouldn't we be scared?"<sup>86</sup> Such worries only add to the case for prompt action to move the process forward. The longer the deadlock continues, the more it serves the more militant camps on both ends of the political spectrum.

## B. NEW NEPAL, NEW ARMY?

With the pressing immediacy of the integration debate, it is easy to forget that the peace process was meant to deliver far more than just the assimilation of some former guerrillas into a national army. The essence of the consensus on the security sector was two-

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<sup>79</sup> Ibid., p. 10.

<sup>80</sup> Martin Hoftun, William Raeper and John Whelpton, *People, Politics & Ideology* (Kathmandu, 1999), p. 83.

<sup>81</sup> Rajesh Gautam, *Nepali Congress* (New Delhi, 2005), p. 471.

<sup>82</sup> "The bulk of the Kirati section of the Rakshya Dal, which had played a prominent role in the K.I. Singh revolt, was disbanded, and the remaining units were incorporated into either the state army or the civil police". Bhuwan Lal Joshi and Leo E. Rose, *Democratic Innovations in Nepal: A Case Study of Political Acculturation* (Berkeley, 1966), p. 101. Rajesh Gautam observes: "During that time [1950-1951] many Nepalese had the view that somebody among the commanders of Mukti Sena [the NC "liberation army"] should be the Commander-in-Chief of the national army and Mukti Sena should be as an independent army, and the government of the multiple party should be formed. But those views were ignored after the Delhi treaty due to the compulsion and weakness of the leaders". Gautam, *Nepali Congress*, op. cit., p. 470.

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<sup>83</sup> See, for example, Ram Sharan Mahat, "Betrayal of the peace process?", *The Kathmandu Post*, 14 December 2008; and RJP leader Prakash Chandra Lohani, "Revisiting strategic intent", *The Kathmandu Post*, 7 February 2009. On the unchanging fundamentals of Maoist strategy, see Crisis Group Report, *Nepal's Maoists*, op. cit.; also Crisis Group Report, *Nepal's New Political Landscape*, op. cit., p. 5.

<sup>84</sup> Prashant Jha, "Troubled Beginnings", *South Asia Intelligence Review*, 8 December 2008.

<sup>85</sup> Crisis Group interviews, diplomats, Kathmandu, October and December 2008.

<sup>86</sup> Crisis Group interview, Kathmandu, October 2008.

fold: the PLA would, through the integration of some combatants into state security forces and the rehabilitation of others, be in effect dissolved; the NA would be brought under democratic control and significantly reformed. The CPA contained detailed commitments:

The Interim Council of Ministers shall prepare and implement the detailed action plan for the democratisation of the Nepali Army on the basis of political consensus and the suggestions of the committee concerned of the Interim Legislature. This includes, among other things, right-sizing, democratic restructuring reflecting the national and inclusive character and imparting training to the Nepali Army on the values of democracy and human rights.<sup>87</sup>

The interim constitution specified that “the Council of Ministers shall, with the consent of the political parties and by seeking the advice of the concerned committee of the Legislature-Parliament, formulate an extensive work plan for the democratization of the Nepalese Army and implement it”.<sup>88</sup> The need for inclusiveness was reaffirmed in the fifth constitutional amendment, which added further legal stipulations for action.<sup>89</sup> Despite continuing debate within the party over the modalities of integration, Maoist political leaders and PLA commanders have always had a clear view on the parallel nature of the process. In the words of one senior commander:

As a party, we feel that integration is not simply a matter of the PLA being merged into the NA. PLA combatants will not join the NA just to get a job, under standards and norms created in the past. We have made this clear. What we’re saying is that both the PLA and the NA need to be raised to a new standard. This means that the army can’t simply keep its old structure under which they were used and deployed by the feudalists and the monarchy. And the PLA also can’t remain as the army of a single party. Both these armies need to be transformed, a new national army and a new national security policy created.<sup>90</sup>

The NA itself has indicated its awareness of the need for some change, although concrete action has been limited to raising a Madhes-based battalion and steps such as advertising recruiting drives in languages such as Bhojpuri and Maithili. Generals have also talked of formulating a new national security policy – a necessary step for Nepal’s political leadership but perhaps put forward as a delaying tactic in the absence of any clear and present regional threat. The other major parties have offered no policy proposals for broader reform. Despite some revision of the legislation governing the army, the legacy of the NC-led interim government was a further erosion of the minimal oversight that the palace had provided and a concerted, if unsuccessful, effort to use the NA for its own partisan purposes.<sup>91</sup> “Very few care to mention the elephant in the room: the Nepalese Army”, one commentator noted, and continued:

The challenge of reforming the Nepalese Army will probably be even more complex than rehabilitating Maoist combatants. Despite its aggressive denials, the army is composed of even more politically indoctrinated members than the Maoists.... The reform of an institution as ossified as the Nepalese Army will be long-drawn. More inclusive recruitment policies, better orientation of soldiers and socialisation of officers will take time. The smooth transition of the military from a Gorkhali Army to the modern force of a new federal Nepal must underpin Nepal’s democratic future.<sup>92</sup>

The NA has taken some steps to broaden its recruiting base but has not adopted the quotas that apply to all other state bodies. It argues that setting targets would mean violating rights: “Recruitment is voluntary and competitive. Hence forcing citizens to sign up in the proportion of the demographic breakup of the nation would violate the rights of the people who may not want to join the Army and at the same time be unfair to those qualified and wishing to join”.<sup>93</sup> Its own statistics indicate that Brahmans or Chhetris made up 74 per cent of officer cadet applicants and 85 per cent of successful candidates. Madhesis and Tharus, at only 0.5 per cent in total, are particularly poorly represented. The suggestion that this results solely from “the lack of interest on the part of Madhesi communities to join military services” seems inadequate.<sup>94</sup> In

<sup>87</sup> CPA, Art. 4.7.

<sup>88</sup> Interim Constitution, Art. 144(3).

<sup>89</sup> The fifth amendment introduced an additional sub-article (4A) to Art. 144: “In order to make the Nepalese Army national in character, the entry of citizens, including Madhesis, indigenous nationalities, Dalits, women and those from marginalized areas, shall be ensured through legal provisions on the principles of equality and inclusiveness”.

<sup>90</sup> Interview with Baldev, *The Kathmandu Post*, 8 December 2008.

<sup>91</sup> See Crisis Group Report, *Nepal’s New Political Landscape*, op. cit.

<sup>92</sup> C.K. Lal, “The proletariat and the Praetorian Guard”, *Nepali Times*, 28 March 2008.

<sup>93</sup> Nepalese Army, “State of Inclusiveness in Nepalese Army”, at [www.nepalarmy.mil.np/inclusiveness.php](http://www.nepalarmy.mil.np/inclusiveness.php).

<sup>94</sup> Ibid.

any case, the ceasefire-mandated freeze on recruitment should have pushed other reforms further up the agenda. Instead, as another analyst points out, the “real battle” occupying the attention and energies of the NA and others is over control:

The army has never been as autonomous in its functioning as it is now. It would like to retain this independence because of its deep distrust for the political parties, its antagonism towards the Maoists, and its contempt for the civilian bureaucracy. But political control does not mean the Maoists or a Maoist minister will control the army. It means the Ministry of Defence running the army affairs and not being a mere postbox. It means strong all-party parliamentary defence committees keeping an eye on army finances and its professionalism. It means regular oversight by the whole cabinet. For too long, the army has been in the hands of a tiny nexus of generals from the hill elite.<sup>95</sup>

There has been one important legal change. The NA, like the police and Armed Police Force (APF), will be covered by the February 2009 ordinance prescribing quotas for recruitment to government services. A total of 45 per cent of positions will be reserved for (in descending order of size of allocation) *janajatis*, Madhesis, women, Dalits and candidates from “backward regions”. The ordinance was approved despite UML concerns that it was not suitable for the army and that army officers should have been consulted.<sup>96</sup>

## 1. Affordability

Nepal's bloated security sector places an unsustainable burden on overstretched government finances. The defence ministry budget, which expert observers suggest does not include all expenditure on the NA, accounts for over 5 per cent of government spending. It is almost on par with that of the home ministry, whose functions include not only policing but also the nationwide structure of district-level administration, and more than four-fifths that of spending on the ministry of health and population, which serves some of Nepal's most critical needs.<sup>97</sup>

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<sup>95</sup> Prashant Jha, “Army amalgamation”, *Nepali Times*, 24 October 2008.

<sup>96</sup> Yuvraj Acharya, “Govt to issue 3 ordinances; All govt services including army to be inclusive”, *myrepublica.com*, 5 February 2009.

<sup>97</sup> Of a total budget of approx. \$3 billion, the defence ministry receives some \$159 million, the home ministry \$161 million and the ministry of health and population \$193 million. Government of Nepal, Budget (2008-2009), at [http://www.mof.gov.np/publication/speech/2008\\_1/index.php](http://www.mof.gov.np/publication/speech/2008_1/index.php).

Despite almost three years of ceasefire, Nepal remains one of the region's most heavily militarised countries. While less than one in every 1000 Indian citizens serve in the Indian army, Nepal's ratio is more than three times greater – double that of Bangladesh and close to that of Pakistan, South Asia's most army-dominated state.<sup>98</sup> This does not include the Armed Police Force or the PLA – either the 19,000 verified combatants or the 34,000 in total who continue to be paid for by the state.<sup>99</sup> One of the few journalists to take up the question of affordability has noted:

Our poor country has been feeding a 92,000-plus strong army and an additional 34,000 PLA personnel (including disqualified ones). The size should be reduced as soon as possible to at least a pre-insurgency level– that is about 45,000 ... whether or not the CPA allows new recruitment is less relevant here. What is important is, do we need any more people in army uniform? Do we need more PLA? Or should we use every available opportunity to downsize the army and the PLA? The army has argued that it needs new recruitment to keep its daily functions going. But anyone who has seen the army's vacancy announcement knows that a majority of the new recruits will be combatants.<sup>100</sup>

Nepal's donors are footing the bill. It is their aid to sectors such as health and education that leaves the government free to divert such a generous portion of its own resources to the military. Development partners have been remarkably patient in supplying this subsidy but the pursuit of more important objectives, such as the flagging effort to meet millennium development goals on health and education, will bring the question of downsizing into sharper focus. Even prompt action will do little to reduce the long-term strain of a vast army pension budget<sup>101</sup> but it can ensure valuable financial and human resources are channelled into more productive areas.

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<sup>98</sup> These figures are based on 2008 population estimates and army figures excluding reservists. Nepalese Army: 95,753; population: 29.5 million; 0.32 per cent. Indian army: 1.1 million (plus 1.2 million reservists); population 1.15 billion; 0.10 per cent. Bangladesh army: 250,000 (estimate); population: 150 million (2007 estimate); 0.17 per cent. Pakistan army: 650,000 (plus 528,000 reservists); population: 172 million (2008 estimate); 0.38 per cent.

<sup>99</sup> The expense of maintaining the cantonments and paying PLA combatants' salaries are also not included in the defence ministry budget, being instead covered by donor grants administered through the ministry of peace and reconstruction.

<sup>100</sup> Ameet Dhakal, “The cost of superficiality”, *myrepublica.com*, 10 January 2009.

<sup>101</sup> See Artha Beed, “Integrationomics”, *Nepali Times*, 7 November 2008.

## 2. Democratic control

The NA remains a law unto itself and its chief has indicated he will obey orders only insofar as they suit him. The army sees itself as answerable to the government but consistently, if subtly, qualifies its willingness to obey orders. Before the election, Chief of Army Staff (COAS) General Rookmangud Katwal was careful to state that he would obey the orders of a “constitutionally elected” government – thereby excluding the then interim government.<sup>102</sup> After the Maoist victory, army officers have stressed their primary responsibility is the protection of the state’s sovereignty and territorial integrity, for which they are answerable to the people of Nepal. COAS Katwal has publicly stated that the army will only follow “legitimate” orders and will continue to fight against “extremism”.<sup>103</sup>

The appointment of a Maoist defence minister has not led to any visible shift in the government-army relationship other than an eruption of tensions over the question of recruitment. In the two years since the interim constitution’s promulgation, there has been no sign of the “extensive work plan for democratisation”. The NA has continued to carry out promotions and transfers without cabinet approval. On one front there has been some formal progress. In January 2009 the National Defence Council was finally constituted.<sup>104</sup> It has yet to start work but its remit is to provide “recommendations to the Council of Ministers on mobilisation, operation and use of the Nepalese Army”.<sup>105</sup>

Senior opposition politicians have sought to muddy the waters over the question of who controls the army. In the words of NC leader Ramchandra Poudel, “Nepali Congress will take all necessary steps if Maoists make any attempt to drag Nepalese Army into

politics. According to the interim constitution, it requires the consent of the president on the question of any change in the army. The cabinet can only recommend to the president”.<sup>106</sup> In fact, the constitution is unambiguous. Although the fourth amendment specified that the president, as supreme commander, would manage the army on the recommendation of the council of ministers, there is no provision for the president to reject the cabinet’s advice unless it is clearly unconstitutional.<sup>107</sup> Army mobilisation for any purpose other than natural disaster relief in any case requires parliamentary special committee approval, which enables opposition scrutiny and dissent.<sup>108</sup>

A row over NA recruitment in late 2008 brought the issue into the daylight. The commitment “not to recruit new people in their respective armies” was included in the ceasefire code of conduct, while the CPA specified that “neither side shall recruit additional troops”.<sup>109</sup> The NA had carried out recruitment in 2007 without informing the tripartite Joint Monitoring Coordination Committee (JMCC),<sup>110</sup> the UN Mission in Nepal (UNMIN) or the PLA, prompting the latter to complain in the JMCC in August 2007. However, the defence secretary, then reporting to G.P. Koirala, who held the defence portfolio, backed the NA.<sup>111</sup> The NA argues that recruits to fill vacant positions up to its strength at the time of the ceasefire do not constitute “additional troops”, although they are certainly “new people”.

The argument is political rather than legal. Those present at the AMMAA negotiations report that the question of recruiting to fill vacancies was explicitly discussed and not agreed, in accordance with the let-

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<sup>102</sup> See Crisis Group Report, *Nepal’s New Political Landscape*, op. cit.

<sup>103</sup> “Army Chief says don’t drag NA into controversy”, ekan-tipur.com, 4 January 2009.

<sup>104</sup> The June 2008 multiparty agreement (Art. 1.3) referred to the CA the question of whether an opposition leader should be included, noting the disagreement between the CPN(M), UML and Janamorcha Nepal (who argued against) and NC, CPN(ML) and Nepal Sadbhavana Party (Anandidevi) (NSP(A)) (in favour). The interim constitution (Art. 145) had stated that the National Defence Council should be chaired by the prime minister and include the defence and home ministers and three other ministers designated by the prime minister. It was amended to specify that the latter three positions should represent three different parties from among those in the council of ministers. Interim Constitution Art. 145(1)(d), as amended by the fifth amendment, Art. 19.

<sup>105</sup> Interim Constitution, Art. 145.

<sup>106</sup> Interview, *Spotlight*, 9 January 2009.

<sup>107</sup> 144(2): “The Council of Ministers shall appoint the Commander-in-Chief of the Nepalese Army [amended: (2) The words ‘by the Council of Ministers’ in Clause (2) have been replaced by the words ‘by the President on the recommendation of the Council of Ministers’]”. 144(3): “The Council of Ministers shall control, mobilize and manage the Nepalese Army in accordance with the law [amended (3) The words ‘the Council of Ministers shall’ in Clause (3) have been replaced by the words ‘the President shall on the recommendation of the Council of Ministers’]”.

<sup>108</sup> 145(5): “Except in the case of mobilization of the Nepalese Army because of natural calamities, the decision made by the Council of Ministers of the Government of Nepal for the mobilization of the army shall be presented to a special committee prescribed by the Legislature-Parliament within a month of the decision, and be approved accordingly”.

<sup>109</sup> Ceasefire Code of Conduct Art. 3; CPA Art. 5.1.2

<sup>110</sup> The JMCC, established by the AMMAA, brings together NA and PLA representatives under UN convenorship.

<sup>111</sup> Briefing by Ian Martin, Special Representative of the Secretary-General in Nepal, UN Security Council, 16 January 2009.

ter and spirit of the ceasefire code of conduct. UNMIN's position on this has been consistent.<sup>112</sup> Supporters of the NA, however, are unlikely to be swayed by the requirements of the peace deals, however much they bemoan UNMIN's inability to enforce other parts of the agreements. As one columnist argues, the "changed circumstances" following the election (specifically, having a Maoist prime minister and defence minister) are more important than the letter and spirit of the peace agreement.<sup>113</sup>

In November 2008 the NA again embarked on recruitment without informing the JMCC, UNMIN or the PLA, prompting the UN SRSG to issue a statement in the face of PLA threats to undertake new recruitment themselves. As both witness to the AMMAA and convenor of the JMCC, UNMIN's public reiteration of the content of agreements might appear uncontroversial but was taken by some as a deliberate effort to undermine the NA:

UNMIN's Ian Martin has declared that any recruitment by parties to the Comprehensive Peace Accord (CPA) violates the letter and spirit of the Agreement on Monitoring and Management of Arms and Armies that his team is committed to ensure. This is as clear an espousal of the Maoist cause as is prudentially possible for the UN. Whether the position of UNMIN constitutes a breach of protocol or merely violates accepted norms of diplomatic decency is for Foreign Minister Upendra Yadav to decide.<sup>114</sup>

The Maoist handling of the controversy was confused and inept. Despite their longstanding refusal to accept any NA recruitment and their control of the defence ministry, they allowed the process to carry on for several weeks before crying foul. The recruiting was hardly carried out in secret: vacancies were promi-

nently advertised in the media, including state-owned newspapers, and selection camps had been established in several locations, attracting almost 50,000 applicants. The UCPN(M)'s belated complaints were further undermined by contradictory statements from its leaders suggesting there was no clear party, or government, line.<sup>115</sup>

The army's understanding of an acceptable level of democratic control is not one that most other militaries would recognise. "Of course we are happy with having a ministry of defence", explained one senior officer. "As long as it understands that its only duty is to endorse whatever our headquarters tells it to. It's too early to have our officers messing around with politicians – maybe in ten years' time".<sup>116</sup> Gentle nudges from sympathetic donors have been brushed off; the UK's efforts to support capacity building in the ministry of defence have been quietly but systematically thwarted. "There is currently no sign of any political will to grip the generals, or to build the capacity to make civilian control of the military a reality – both essential foundations for a democratic state", warned a retired British general. "The rarity of meaningful discussion on the subject is just one measure of the size of the task and of the moral courage required to champion its urgency and importance".<sup>117</sup>

### 3. Accountability

Meaningful democratic control would not only mean taking orders from civilians but would also entail budgetary accountability. As the author of the only recent book-length study of the (then) Royal Nepalese Army (RNA), retired Indian Maj.-Gen. Ashok Mehta, explained:

Since officers are poorly paid, corruption is rampant at various levels, especially at the very top. Indian military equipment is not popular because there are no kickbacks. A number of local factories producing clothing, boots, etc, were closed down so that these items could be 'profitably' imported. Over-invoicing is rampant and the quality of rations very poor...The ostentatious lifestyles of many retired generals seem well beyond their accountable income.<sup>118</sup>

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<sup>112</sup> "Ian Martin, Special Representative of the Secretary-General, has written to the Minister of Defence, reiterating UNMIN's view that any new recruitment by the Nepalese Army or the Maoist army would be a breach of the Ceasefire Code of Conduct, the Comprehensive Peace Agreement and the Agreement on Monitoring the Management of Arms and Armies. UNMIN had expressed this view to the previous Government in the context of earlier reports of new recruitment by the Nepalese Army in 2007, and had also drawn the attention of the Minister of Defence in the current Government to its position. The previous Government had maintained that the Nepalese Army could fill vacancies up to its standing strength at the time of the signing of the Comprehensive Peace Agreement". UNMIN, press statement, 23 December 2008.

<sup>113</sup> C.K. Lal, "It is Nepal's army", *Nepali Times*, 9 January 2009.

<sup>114</sup> *Ibid.*

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<sup>115</sup> For example, look at conflicting Mahara and Badal statements.

<sup>116</sup> Crisis Group interview, October 2008.

<sup>117</sup> Sam Cowan, "The Lost Battles of Khara and Pili", *Himal Southasian*, September 2008.

<sup>118</sup> Ashok Mehta, *The Royal Nepalese Army: Meeting the Maoist Challenge* (Delhi, 2005), pp. 43-44.

The only thing that has changed since April 2006 is that the palace no longer oversees this habitual corruption. The interim government was happy to turn a blind eye, the Maoist defence minister has shown no indication he wants to grasp this nettle and few independent observers dare speak out publicly. In one rare example, a Nepali daily's frontpage story enumerated a litany of scams, from the grandiose to the petty. At the upper end of the scale, the Army Welfare Fund issued a letter of credit to purchase eleven Chinese armoured personnel carriers for \$5.5 million; the vehicles, for which no tender was issued, were reportedly destined for a possible peacekeeping mission in Sudan that has not materialised.<sup>119</sup> Large contracts for trousers, shirts, woollen vests and bags were also awarded without tenders, an order for 30,000 boots that rejected the lowest offer for one more than a third more expensive was justified on the grounds that boots are "of strategic importance".<sup>120</sup> A seasoned economics columnist observed:

For decades, the Nepalese Army has managed to stay outside the normal accountability structure – not due to lack of procedures but the [manner] in which it operated, especially with the Supreme Commander (the king), the accountability institution of last resort. The prime minister generally took the ceremonial Defence Ministry and Palace Affairs which literally meant that there were no competencies or systems to regulate the army. The Auditor General's offices paid token visits to look through army accounts, and accountability was minimal. Even the Army Welfare Fund, that belonged not to the state but the army personnel and their families, could get away from disclosure obligations.<sup>121</sup>

Such arrangements surely boost the morale of the senior officers allowed to dip their hands in the till with impunity. They do little, however, to support an institution-wide *esprit de corps*. Maj.-Gen. Mehta suggested a link between corruption and an organisational culture which does little to foster good relations between ranks to the detriment of operational effectiveness: "Few Nepalese have the courage to admit that RNA lacks offensive spirit – that it does not have the stomach to fight. Senior leadership is considered professionally inept, JCOs infirm and officers at junior command levels bereft of guidance.... There is also no concrete concept of welfare,

motivation and camaraderie. Corruption is rampant especially at higher echelons and morale low among the rank and file".<sup>122</sup> This assessment by a sympathetic fellow professional suggests that greater accountability would enhance, rather than detract from, professionalism. The government appears to have made one move towards increased oversight, with a 15 January 2009 cabinet regulation on the Army Welfare Fund which reportedly includes a 22 per cent cap on the salary deductions of troops on UN peacekeeping operations that flow to it.<sup>123</sup>

#### 4. Impunity

Since the ceasefire, solid evidence of war crimes committed during the conflict has been collated. Both warring parties regularly violated international humanitarian law, most notably the Geneva Conventions. Furthermore, the thorough investigations of the UN Office of the High Commissioner for Human Rights (OHCHR) have strongly suggested RNA officers were responsible for crimes against humanity, a category of grave offences that are viewed as contravening customary international law, which binds all states.<sup>124</sup> No action has been taken by successive governments, the courts or NA, police or PLA commanders to investigate these crimes.<sup>125</sup> In contrast, the culture of condoning cover-ups continues unabated.

Violations were both systematic and systemic. The distinction in the terms is important. Abuses were systematic in their execution: planned, sustained, endorsed by commanders and following a fairly consistent pattern. They were systemic, on both sides, in that they stemmed from institutional cultures which refused to recognise crimes as crimes and resisted any form of investigation or prosecution. Even as their effects live on for victims, their families and wider communities, systematic war crimes are in the past.

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<sup>119</sup> Parshuram Kafle, "Armed Personnel Carriers worth NPR 400 million purchased without tender", *Naya Patrika*, 19 June 2008.

<sup>120</sup> Ibid.

<sup>121</sup> Artha Beed, "Integrationomics", *Nepali Times*, 7 November 2008.

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<sup>122</sup> Ashok Mehta, *The Royal Nepalese Army*, op. cit., p. 71.

<sup>123</sup> Ananta Raj Luitel, "NA welfare fund spending made transparent", *The Himalayan Times*, 26 January 2009.

<sup>124</sup> The Accountability Watch Committee, a domestic body bringing together many of the most respected human rights activists, found that the OHCHR Bardiya report "presents a wealth of evidence that the acts of disappearance during Nepal's armed conflict were crimes against humanity. It has recommended the Government of Nepal to conduct criminal investigations of these crimes and prosecutions". Press release, Kathmandu, 20 December 2008.

<sup>125</sup> The NA has, by its own account, sentenced 66 personnel for human rights violations with penalties ranging from imprisonment to discharge or demotion. It is not, however, able to release any information on individual cases. Nepalese Army Headquarters, email communication, February 2009.

The systemic failings which enabled them to happen remain, however, very much a matter of the present.

Immediate investigation and redress for every violation is impossible but the peace process offers a unique opportunity to introduce a change in culture. An unaccountable and predatory security sector that exploits citizens rather than protecting them is unlikely to contribute to lasting peace or stability. Whatever the shape of any deal on PLA integration and NA democratisation, these twin procedures offer the chance to signal a clear change in direction. Screening all personnel to identify those on both sides suspected of grave abuses, including at the command level, and filtering them out of a reconstituted national army would be a minimal first step towards rebuilding a respectable state force.

## V. THE IMMEDIATE PRIORITIES

### A. REBUILDING THE PEACE PROCESS

#### 1. Consensus and confidence

Conditions for cooperation are more strained than ever but there are no viable alternatives to working together. The UCPN(M) must reach out to the NC which, in turn, must stop spoiling for spoiling's sake. The UML can still play a crucial mediating role if it resists the calls from both sides to help a process of polarisation. These three parties must jointly recognise the need to respect the changed political configuration since the elections – not only the CPN(M) victory but the fact that other parties, led by the MJF, represent significant constituencies whose active collaboration in governance and constitution-writing is essential.

Calls for polarisation represent a fundamental challenge to day-to-day governance and the concept of consensus as the basis for constitutional process. The move away from consensus was initiated in response to the surprise Maoist electoral victory. The NC insisted on dismantling part of the constitutional requirement for consensus by pushing for the simple majoritarian government/opposition structure which was instituted by the fourth and fifth amendments to the interim constitution.<sup>126</sup> (Maoist leaders eventually agreed to this concession but insist they have not been slow to reach out to other parties, for example by offering the UML, specifically former leader Madhav Nepal, chairmanship of the constitution-drafting committee from the outset.<sup>127</sup>) Appointments to all positions – from the president and prime minister to the CA speaker and deputy and the chairs of drafting committees – are now decided by elections, even if some of the latter were in effect settled through negotiation. Maoist Finance Minister Baburam Bhattarai has resisted the call for polarisation: “We have a consensus on fundamental democratic principles like multiparty competition, human rights, rule of law and so on....A majority government and minority opposition invites

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<sup>126</sup> The fourth amendment, passed late on the night of the CA's first sitting, provided for the appointment and removal of the prime minister by a simple majority of CA members, rather than the existing consensus model with a two-thirds threshold for a no-confidence motion. The fifth amendment, passed on 15 July 2008, further amended Art. 36B (to enable the election of the president) and Art. 71 (to elect the CA speaker and deputy speaker).

<sup>127</sup> Crisis Group interviews, Kathmandu, December 2008 and January 2009.

instability, which is what is happening now when what we need is a political consensus".<sup>128</sup> Speaking at the CA as the committee chairs were to be appointed, Prachanda similarly reiterated the need for consensus. But the rhetoric from elsewhere in the Maoist movement has grown progressively more militant.<sup>129</sup>

Much of the more extreme language from political leaders may be posturing, playing to the balcony within their own parties and attention-seeking. It does not all have to be taken at face value, especially in the context of jostling for leadership positions and other intra-party battles which encourage heightened rhetoric. Many individual leaders may be persuaded to drop public criticism in return for personal preferment. It is too late to offer G.P. Koirala the presidency but the appointment of Madhav Nepal to head the constitutional committee indicates the potential for co-opting powerful individual leaders.

## 2. A fresh start?

There have been suggestions, including from the prime minister, that the breakdown in trust calls for a new deal. Renegotiating the CPA, or reopening debate on its fundamental elements, is fraught with danger: there is no scope to forge a new agreement and undermining the authority of the existing framework could destroy what consensus remains. Behind-the-scenes efforts between the major parties that initially framed the process are keeping channels for constructive dialogue open and maintaining some of the cooperative spirit of the early negotiations. But the June 2008 multiparty promise that "consensus and cooperation will be both fostered and adopted in order to make progress on building the constitution"<sup>130</sup> was either insincere or not robust and detailed enough to withstand the further erosion of confidence.

There are, however, grounds for a new statement of political intent. The major principles on which the peace process was built were set out in the November 2005 twelve-point agreement – a document designed to forge a joint anti-monarchical struggle rather than a far-sighted declaration of common cause. More significantly, the principal agreements were drawn up and signed by a limited number of parties. The CA election showed they did not represent as broad a spectrum of public opinion as they had assumed. A

new charter with the MJF and other significant parties on board might better represent the more inclusive shape the peace process, and government, has assumed.

Rebuilding a minimum common understanding on the fundamentals of the peace process remains possible and does not have to mean the reduction of all policies to the lowest common denominator. Consensus is necessary to complete the commitments of the CPA and the writing of the constitution but not for government business. The UCPN(M) has a popular and constitutional mandate to lead the government. Day-to-day governance and the formulation of policies not directly related to the peace process is the collective responsibility of the UCPN(M) and its coalition partners. They do not have to submit executive decisions to consultation beyond the oversight that the legislature already provides – although this should not be an excuse for using ordinances to bypass parliamentary scrutiny, however temporarily. What is important is a fresh impetus for the peace process and clear, realistic public commitments by all players on how they will behave and what goals they will jointly pursue.

## 3. Mechanisms and monitoring

Agreement in principle will not translate into implementation in practice without appropriate structures in place. The first must be an overarching political coordination mechanism, in which all major parties can assess progress, air disagreements, discuss priorities and the means to achieve them and maintain a basic shared agenda. It should have the mandate and capacity to keep the process moving forward, manage disputes and have sufficient secretariat support to make informed decisions, whose implementation can be monitored and evaluated. It must also be inclusive and authoritative – with sufficiently high-level representation that top party leaders cannot circumvent it and second-rank leaders cannot publicly undermine it.

For now, the CA's constitutional committee is the main mechanism for high-level political dialogue as it includes most major party leaders. However, it has a specific remit and is unable to tackle broader peace process-related issues. At the local level, the lack of mechanisms is even more stark. Before the election, the seven-party grouping had functioned, however imperfectly in some cases, as a confidence and consensus-building mechanism, as had regular meetings convened by district election officials. The absence of any such structures has contributed to a worsening of local inter-party relationships and adds to the urgency of establishing all-party local government bodies and broader-based peace committees.

<sup>128</sup> Interview, *Nepali Times*, 9 January 2009.

<sup>129</sup> See, for example, "Janajaganle tuphani abhiyanma pratigamiharu badharine", *Janadesh*, 23 December 2008.

<sup>130</sup> "Agreement between the political parties to amend the Constitution and take forward the peace process", 25 June 2008, Art. 7.4.

At a lower level, the thematic bodies called for by the CPA, and others as necessary, must be established and made functional. Such mechanisms should allow for a sensible measure of delegation. The concentration of all discussion and decision-making in the hands of a few senior leaders has serious practical, as well as political, implications. With all contentious issues forced into one narrow bottleneck, disagreement on one question can easily stall progress on many others. Top leaders do not have the time or secretariat support to examine complex topics in sufficient detail to reach workable solutions. To take only the question of the return of seized land, for example, there is not even a central register of the property in question, let alone a detailed breakdown of current occupants and options for resettlement or compensation. The multiple challenges demanding immediate consideration have to be dealt with in series, rather than in parallel. Finally, compromises depend too much on personal relations and individual interests: fine if trading favours can smooth the path to a principled agreement but too often reducing serious decisions to the soothing of inflated egos in shabby closed-door trade-offs.

A solid, impartial monitoring mechanism is essential. Many of the allegations publicly traded between parties appear to have little basis in fact. But in the absence of objective monitoring, political discussions are destined to remain divorced from reality. For example, there is no reliable way of gauging whether the YCL is becoming more or less active, intimidating or totalitarian in its behaviour. Some indicators, from their apparently lower public presence in urban areas to donor reports that the drive to seize development tenders has subsided, suggest the YCL has scaled back its activities. Political opponents, however, argue the reverse.

The peace deal was never backed by a coherent approach to monitoring. The Ceasefire Code of Conduct called for oversight “by national and international monitoring teams”<sup>131</sup> but the national body established was ineffective and rapidly dissolved. The 8 November 2006 government-Maoist summit that paved the way for the CPA promised a “high-level committee ... to monitor if the agreements have been implemented”<sup>132</sup> but the CPA itself contained no general monitoring provision.<sup>133</sup> The December 2007 23-point

agreement introduced more specific mechanisms but none was activated.<sup>134</sup> The government’s own policies and programs document only adds to the confusion, suggesting a possible conflation of the peace, truth and reconciliation and disappearance commissions: “Regarding a high-level Peace and Reconciliation Commission [that would] investigate into and make public the cases of those who have been disappeared, as per the provisions of the Comprehensive Peace Agreement, a separate Commission shall be created. The Commission’s reports [and recommendations] shall be actively implemented”.<sup>135</sup>

The June 2008 agreement specifically called for a mechanism to supervise the Maoist pledges on changing YCL behaviour: “A monitoring committee that includes representatives from the political parties, human-rights defenders and local administration will be established, in order to monitor whether this [promise] has been implemented”.<sup>136</sup> No such committee has yet been established. A similarly unfulfilled pledge was to set up a parallel monitoring committee on the return of seized property.<sup>137</sup> The UCPN(M)’s failure to fulfil its promises is clear.

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arrangements for the deal as a whole. CPA Part 9 “Implementation and Monitoring”. It did establish a National Peace and Rehabilitation Commission to assist in “normalisation of the difficult situation that arose as a result of the armed conflict” (Art. 5.2.4) and empowered it to “set up necessary mechanisms for the success of the peace campaign” (Art. 8.2) but left dispute resolution to an undefined “joint mechanism comprising both sides” (Art. 10.4).

<sup>134</sup> This included a High-Level Committee for Monitoring the Effective Implementation of the Comprehensive Peace Accord and other Agreements and a High-Level Peace Commission; formation of the latter apparently remains on the agenda. Until the formation of the High-Level Peace Commission, a Peace and Conflict Management Committee, composed of civil society and party representatives, was to serve as an alternative interim body. In October 2008 it met and decided to review the implementation of all peace process commitments from the twelve-point agreement onwards but does not appear to have completed this review.

<sup>135</sup> Policies and Programmes of the Government of the Republic of Nepal, 11 September 2008. The government also announced it would form the following commissions: High-Level Scientific Land Reform Commission, National Labour Commission, Administration Restructuring Commission, National Dalit Commission, National Women’s Commission, National Muslim Commission.

<sup>136</sup> “Agreement between the political parties to amend the Constitution and take forward the peace process”, 25 June 2008, Art. 3.

<sup>137</sup> “A central-level monitoring committee, which includes representatives from the political parties, will be formed to monitor the implementation [of this point]”. “Agreement between the political parties to amend the Constitution and take forward the peace process”, 25 June 2008, Art. 4.

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<sup>131</sup> Ceasefire Code of Conduct, Art. 21.

<sup>132</sup> SPA-Maoist agreement, 8 November 2006, Art. V.1.

<sup>133</sup> It requested OHCHR and the National Human Rights Commission (NHRC) to monitor human rights, UNMIN to monitor arms and armies’ management and the UN to monitor the CA elections but contained no mention of monitoring

Other parties' preference has been to pursue the issue solely through the media rather than through pressure to establish the promised committees. The CA's 19 January 2009 formation of an eleven-member cross-party committee to monitor the government's implementation of its promises to meet NC demands is an example of steps that can be taken within the legislature to involve parties in holding their peers to account.

Some state and non-governmental bodies do provide monitoring functions. For instance, the NHRC tracks human rights violations, the peace ministry coordinates claims for compensation and a variety of professional bodies and NGOs follow areas within their own mandates. But none of this adds up to a coordinated and neutral monitoring of peace process implementation. The major parties and opinion-formers have consistently opposed a substantive international role so the solution must be a national body with a broadly acceptable, respected membership and sufficient administrative and political support to carry out its role effectively.

Peacebuilding is not just a matter of forging high-level political consensus. In many respects, the more critical tasks of dealing with the conflict legacy and rebuilding communities' cohesion must take at the local level. Here too, the failure of planned mechanisms has taken its toll. Local elections are not likely until after the constitutional process is completed, and interim measures to establish alternative local government structures are stalled over questions of political representation. The July 2008 constitutional revision called for the government, until local elections can be held, to "formulate an interim body at the district, municipality and village levels, with the participation and consensus of those political parties active at the local level".<sup>138</sup> Local peace committees (LPCs), first discussed in July 2006, and formally endorsed by the CPA,<sup>139</sup> would at least bring together parties and civil society representatives to foster reconciliation, dialogue and peacebuilding at the local level. However, their establishment has been dogged by political wrangling, their functioning sporadic and their impact minimal.<sup>140</sup>

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<sup>138</sup> Interim Constitution, Art. 139(2) as amended by the Fifth Amendment, 15 July 2008. An explanatory note clarifies: "In this Sub-article, 'political parties active at the local level' shall refer to those parties represented in the Constituent Assembly, and to those parties that filed for candidacy in the relevant districts under the first-past-the-post system".

<sup>139</sup> CPA Art. 8.3.

<sup>140</sup> The peace ministry almost got the scheme off the ground in September 2007 but was stymied by political disagreement. The High-Level Peace Commission called for by the December 2007 23-point agreement could have overseen the

Emphasising the practicalities of process is nothing new. But just because the case has been made, and ignored, repeatedly does not mean it is false. It also bears repeating that the peace process has seen only one successful monitoring body so far, the JMCC. It remains functional and has contributed significantly to reducing the risk of direct NA-PLA tensions.<sup>141</sup> It meets regularly, has an agenda and is professionally supported. Its tripartite format – with the UN included as witness to the AMMAA that established it – is not replicable elsewhere in the process. Nevertheless, the successful aspects of its functioning should not be ignored.

In parallel, the other success story is the Election Commission, which all parties praised for its technical efficiency and political impartiality. It offers a model for a potential monitoring body. Its constitutionally mandated independence, coupled with the respect earned by its chief commissioner, kept it above the political fray. Its representatives in each district were a conduit for complaints by parties about rivals' behaviour and they brought conflicting parties together to discuss alleged violations and resolve low-level disputes. It collected and channelled information and served as a focal point for higher level discussions in Kathmandu without becoming detached from ground realities. Most high-profile commissions (including the ceasefire monitoring commission) adopt a top-down approach: the energy devoted to selecting and balancing civil society luminaries to head the body is rarely matched by attention to support structures. Successful monitoring might benefit from the reverse: careful consideration of nationwide day-to-day presence coming before the selection of capable, neutral figures to provide oversight.

## B. GETTING A GRIP ON GOVERNANCE

### 1. Policy priorities

Despite the large popular mandate for change and a clear majority for leftist parties who have long espoused people's empowerment and radical transformation, the government does not communicate policy priorities that meet such goals. People's expectations

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plan but it was never constituted; the interim Peace and Conflict Management Committee (formed one week before the CA election) never had clear terms of reference. Nevertheless, LPCs were formed in 33 districts but were largely ineffective, while an October 2008 rewriting of their terms of reference by the Maoist-led peace ministry was criticised for placing all power in the hands of the CPN(M).

<sup>141</sup> There was little it could do about the recruitment row as the NA did not meet the obligation to inform the JMCC.

may be tempered by experience but aspirations that this government will deliver concrete benefits are high. The budget, the most extensive and thoroughly developed statement of government intent, does set three major policy priorities: completion of the peace process and immediate relief; accelerated economic growth; and social security and inclusion.<sup>142</sup>

However, if a coherent strategy for economic and social development exists, it does not appear to be shared by the governing parties, let alone communicated to other development partners and the public at large. Ministerial in-trays have, like the newspaper headlines, been dominated by unforeseen difficulties such as the electricity generation crisis. The government has been reacting to events rather than shaping and selling a longer-term agenda. With so much focus on immediate concerns, continuing rapid population growth and its implications are not receiving enough attention. In particular, Nepal's youth is a critical constituency. Already limited higher education and vocational training options and dismal domestic job prospects will be exacerbated if the global slowdown reduces overseas employment. If prompt steps are not taken to mitigate such problems, disaffection will generate political pressure and add to instability.

## 2. Public security

The state of law and order is weak and threatens the completion of the peace process. Poor public security reduces trust in the state and the political leadership, as well as undermining development efforts and the delivery of basic services. Ongoing instability in the Tarai is a real and imminent concern.<sup>143</sup> Tarai districts have seen the worst effects of lawlessness, suffering from a combination of armed political protest, organised crime and weak policing. Negotiations with various armed groups have been taking place but do not appear to add up to a coherent strategy. Opposition complaints that the major national parties have no interest in improving Madhes' lives reflect a genuine discontent.<sup>144</sup>

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<sup>142</sup> Budget speech (English version), pp. 8-9. It also set sectoral priorities: transformation of the agriculture sector; development of water resources; wider expansion of tourism; qualitative development and expansion of physical infrastructure; human resources development; national industrialisation. Ibid, pp. 9-10.

<sup>143</sup> Daulat Jha, "The chilly winter ahead", *The Kathmandu Post*, 23 December 2008.

<sup>144</sup> "Maoists, NC, UML united against Madhes: Tripathi", interview with Hridayesh Tripathi, *The Himalayan Times*, 23 December 2008.

While still alarming, however, nationwide statistics show a clear reduction in the worst forms of crime since their peaks in early 2008.<sup>145</sup> In the Kathmandu valley, there was a more dramatic drop in serious offences during the second half of 2008, with murders and kidnappings halved compared to the same period in 2007.<sup>146</sup> In the eastern Tarai there was a spike in killings from December 2008, at least partially attributable to the heavy-handed actions of additional police units deployed in the area, who have killed at least seven people in "crossfire" since 19 December.

Extra police forces may be part of the solution but local populations need a qualitative, not just quantitative, change in policing. Building trust in the police will take time. With 45 per cent reserved quotas for different marginalised groups in new recruitment, the police have at least taken preliminary steps to building a more balanced profile. Longer-term measures should centre on community policing and local accountability. A home ministry task force on public security, headed by respected law professor Yubaraj Sangroula, has started broad-based consultations to develop proposals. For now, the government needs to temper strength with sensitivity, ensuring the goal of day-to-day law and order for ordinary residents is not eclipsed by the urge either to cut deals with shadowy armed groups or to resort to the counterproductive short cut of extrajudicial killings.

## 3. Guiding international assistance

For donors there is a natural temptation to revert to business as usual, if all appears to be normal, or to withdraw, if development seems frustratingly impossible. So far, Nepal's major development partners have managed to steer a middle course but they are in urgent need of clear guidance from the government on its priorities. The weaknesses of external supply-driven aid agendas have been thoroughly exposed: little local ownership, huge wastage and corruption and few lasting benefits. "We don't want to repeat that",

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<sup>145</sup> There were 259 killings in the first half of 2008 and 181 in the second half. The peak was in the aftermath of the election, with 45 killings in April, 48 in May and 50 in June. A spike in December (32 killings) was attributable solely to violence in the central and eastern Tarai; other parts of the country saw a continuing downward trend. Reported bomb blasts fell more or less consistently from 66 in January 2008 to thirteen in November, with another central and eastern Tarai spike pushing the total to 23 in December. "Nepal: Reports of Security Incidents - 1 January to 31 December, 2008", UN Office for the Coordination of Humanitarian Affairs, Kathmandu, at [www.un.org.np](http://www.un.org.np).

<sup>146</sup> "Crime slumps in Valley", *The Kathmandu Post*, 13 January 2009.

says one donor. "We'd like the government to tell us how to help and fall in line with its priorities – that's the only way our input will be meaningful".<sup>147</sup>

Large sums are at stake. The budget was attacked for expecting unrealistic increases in foreign grants and loans but growth is possible. The UN Peacebuilding Fund has offered a new \$10 million contribution to supporting the peace process.<sup>148</sup> The UN has launched a \$115 million humanitarian transition appeal for 2009 under the consolidated appeals process that brings together UN agencies, governmental and non-governmental development and relief agencies.<sup>149</sup> It notes that the peace process is incomplete and "the conflict's residual impact has weakened social safety nets, causing a lack of basic services". It also introduces an "exit strategy" for humanitarian actors, "targeting 'transition' not only from war to peace but from international to local actors".

Assistance to the peace process per se is a difficult area. The government would prefer donors to contribute to its peace fund, leaving it free to allocate resources and oversee their use. As the experience of the repeated six-month extensions of UNMIN's mandate has shown, politicians are extremely reluctant to call for help, however much they may privately wish to. This reluctance has in particular been conditioned by India's strongly expressed distaste for any UN role beyond arms monitoring. In his final briefing as UN SRSR, Ian Martin noted:

If I have one particular regret, it is that the parties did not take up our offer in late 2007 that the United Nations could assist by supporting the implementation of peace process commitments more generally than in the case of arms monitoring alone. It

could, for example, have assisted the impartial monitoring and implementation of the return of property, which has been a constant impediment to political cooperation. This would in no way have detracted from the fact that the peace process has always been a Nepalese process or infringed upon national sovereignty. The parties have not made full use of what the United Nations has to offer, notwithstanding their recognition that UNMIN's presence has had a value well beyond its specific electoral and arms monitoring functions.<sup>150</sup>

The World Bank, Asian Development Bank and UK Department for International Development, which are all preparing medium-term assistance strategies, have some \$1.5 billion available for the next three years. All appear willing to follow a government lead; like other donors, they have also gradually embraced the need for broader consultations with non-governmental stakeholders, from local communities to civil society organisations.

Harnessing available international funds effectively and lobbying for increases depends on the government. It can set priorities and should be the first stop for coordination. Success stories in areas such as revenue collection impress donors and boost the state's authority but have yet to add up to a strategy for shaping international engagement. Aid-givers also need more solid reassurances that mechanisms such as the Nepal Peace Trust Fund are properly managed and audited.<sup>151</sup> The proposed Nepal Development Forum in May 2009 will be a useful focal point only if priorities and options for further funding are agreed in advance.

Donors themselves face difficult choices. Poor coordination has led to a profusion of similar programs in certain areas – women CA members, for example, are overwhelmed by the demands of competing donor capacity-building projects in gender promotion – while preparations for technical assistance to constitution-writing and security sector reform are of limited use until the processes they are designed to support get under way. Decisions on sensitive topics such as social inclusion, federalism, PLA integration and public security are not only a matter of high politics: all will require significant resources to implement solutions. Planning such assistance without becoming involved in the political debate calls for sensitivity, and restraint in proposing external models.

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<sup>147</sup> Crisis Group interview, Kathmandu, December 2008.

<sup>148</sup> "Secretary-General Approves \$10 Million Contribution In Aid To Nepal", UN General Assembly press release SG/2141 PBC/41, 9 September 2008. This assistance will be channelled through an existing funding mechanism, the UN Peace Fund for Nepal, managed by representatives from the UN, the government and the donor community. "Areas that are strong candidates for support include: support to Nepal's Constituent Assembly and promotion of human rights and protection; recovery of communities and areas affected by conflict, for example, through 'food and cash for work programmes', school feeding projects, skills training for youth and other initiatives that accelerate the tangible benefits of peace and development; and conflict prevention and reconciliation issues, for example, assistance to cantonments and reintegration of former combatants and internally displaced persons or support to land and property mediation".

<sup>149</sup> "Nepal Humanitarian Transition Appeal 2009", United Nations, at [www.humanitarianappeal.net](http://www.humanitarianappeal.net).

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<sup>150</sup> Briefing by Ian Martin, Special Representative of the Secretary-General in Nepal, UN Security Council, 16 January 2009.

<sup>151</sup> The NPTF moved to ministry of peace and reconstruction control in December 2008; its functioning has been hard to evaluate so far.

## C. CONSTITUTION-WRITING

The constitutional process has in effect yet to start, although there have been some positive developments. The CA has agreed its rules of procedure and elected a speaker and deputy speaker and has fulfilled its legislative function, when it works as parliament. On the constitution-drafting front, progress has been slower but not entirely stalled. On 14 November 2008, the CA agreed and published a timetable for its activities, vowing to complete the new statute by 28 May 2010 – the limit of the constitutionally stipulated two-year timeframe.<sup>152</sup> It is already behind schedule: the CA's budget session, due to finish by mid-December 2008, wrapped up 34 days late.

The timetable is tight, leaving little room for slippage. For example, public opinion on "concept papers" is to be gathered only until 26 February 2009 but no concept papers have yet been published. The public will then be invited to comment on a full draft between September and December 2009 but the CA has allotted itself just four days, in January 2010, to consider public input.<sup>153</sup> CA committees were established on 15 December: a 61-member constitutional committee with overall drafting responsibility; ten thematic committees mandated to prepare drafts under their subject areas and finalise procedures;<sup>154</sup> and three procedural committees dealing with areas including public consultation.<sup>155</sup> In breach of the timetable's first deadline, chairpersons were not selected.<sup>156</sup> Still, most chairs were eventually allocated through cross-

party agreement, although Madhav Nepal faced a token challenge.<sup>157</sup>

Drafting a new constitution is necessarily an involved legal exercise and the thematic committees will have to grapple with complex issues. But the primary challenge is as much political as technical. If the major parties are so determined, they can produce a reasonable draft quickly. This would require agreement on how to manage the small proportion of articles that will be highly controversial (mainly around federalism and the shape of parliamentary/presidential government and electoral systems). If that threshold can be crossed, the experience of the interim constitution drafting committee demonstrates that a team of experienced drafters can translate the content of a high-level political deal into appropriate legalese with admirable promptness.<sup>158</sup>

There are, however, two significant challenges. First, any party, no matter how small, can delay the process. The procedural rules require unanimous approval of every article in the first instance; failing this, a potentially time-consuming period of party consultations and a fresh vote, with a two-thirds quorum and two-thirds majority requirement, is mandated. The larger parties can singly (in the case of the UCPN(M), which commands over one third of CA seats) or jointly (NC and UML<sup>159</sup>) veto any article or simply stall the process by boycotting the assembly and leaving it without a quorum.

Second, and more importantly, a constitution produced by a last-minute fudge by party leaders may meet the deadline and be technically sound but is unlikely to be publicly credible or durable. The historical precedent is not encouraging: Nepal's longest-lived constitution, the 1962 Panchayat statute, lasted 28 years but despite being protected by authoritarian monarchical rule still had to undergo significant revision following a 1980 referendum; the 1990 constitution, hailed by its drafters as the best in the world, had in effect collapsed after Gyanendra's dismissal of the elected government in October 2002, even before its formal replacement with the January 2007 interim

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<sup>152</sup> On the process see Crisis Group Report, *Nepal's Constitutional Process*, op. cit. The interim constitution gives the CA two years to complete its work, with a possible six-month extension in case of a "declaration of an emergency situation". Interim constitution, Art. 64.

<sup>153</sup> "Calendar for constitution writing determined, new constitution by May, 2010", nepalnews.com, 16 November 2008.

<sup>154</sup> These are the fundamental rights and directive principle committee, committee to protect the rights of minority and marginal communities, state restructuring and state power allocation committee, committee to finalise the structure of the organs of the legislature, committee to finalise the shape of the administrative structure of the state, committee on judicial system, committee to fix the structure of the constitutional bodies, committee on natural resources, economic rights and revenue allocation, committee on finalising the basis of cultural and social solidarity and committee on national interest protection.

<sup>155</sup> These are the civil relations committee, collection of people's opinion and coordination committee and capability increasing and resource management committee.

<sup>156</sup> Liladhar Upadhyaya, "Constitution writing process takes off", *The Rising Nepal*, 16 December 2008.

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<sup>157</sup> Apart from the fourteen constitutional committees, the CA has established ten committees to serve the assembly in its legislative function.

<sup>158</sup> On the work of the interim constitution drafting committee see Crisis Group report, *Nepal's Constitutional Process*, op. cit.

<sup>159</sup> Any other blocking combination would require the participation of at least four parties and probably more. (The tight arithmetic depends on five pending by-elections and the question of whether the 26 nominated members would vote along party lines).

constitution.<sup>160</sup> Madhav Nepal himself has cited the 1990 constitutional process as a positive demonstration of prompt drafting but it would be unwise to forget the short lifespan of the statute produced.<sup>161</sup>

Shaping a constitution that can win popular acceptance and stand the test of time will require public participation, consultation and transparency of debate. In particular, this calls for a solid framework within which to discuss ethnic and regional demands, which are the most obvious potential flashpoints for future challenges or rejection. No matter how near perfection the document approaches, any constitution will need to embody reasonable means for future adjustments and revision. The outcome of state restructuring cannot be subject to constant questioning but equally cannot be seen as being set in stone forever. Social, economic and political change means revisiting some decisions is inevitable. Building a broadly credible statute will also mean making concrete progress in areas such as inclusiveness, for example by ensuring the ground-breaking one-third representation of women in the CA is more than just a cosmetic achievement.<sup>162</sup>

Some work in these areas has started. For example, despite the delay in appointing chairpersons, the CA's constitutional and minority rights committees have taken out front-page newspaper advertisements calling for public input; the civil relations committee set up postboxes for the public to deposit suggestions. Teams of CA members are planning to travel across the country for direct consultations with local communities. Donors are keen to help. The UNDP has a body of expertise and other resources on hand; other agencies are pursuing individual efforts. Often these are overlapping: it is for the CA itself to ensure a degree of coordination and a setting of priorities for international support. The initial steps by separate committees have already prompted the chair of the public opinion and coordination committee to complain that it alone should be managing the consultation process, prompting the CA speaker to intervene

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<sup>160</sup> See Crisis Group Asia Report N°99, *Towards a Lasting Peace in Nepal: The Constitutional Issues*, 15 June 2005.

<sup>161</sup> "Maoists must handover arms to NA: MK Nepal", ekanipitip.com, 16 January 2009.

<sup>162</sup> Apart from longer term constitutional considerations, the provisions on women's participation in conflict resolution and peacebuilding set out by UN Security Council Resolution 1325 establish a framework for immediate action. There has been much civil society and donor mobilisation in support of UNSCR 1325 objectives in Nepal and the UN has established a database to map related projects, at [www.un.org.np/unsucr/](http://www.un.org.np/unsucr/). A forthcoming Crisis Group report will examine progress to date and policy priorities in this area.

and establish a task force to delineate jurisdictions. Until the CA sorts out its own approach, a well-planned process is unlikely.

#### D. JUSTICE

The pursuit of peace in post-conflict transitions sometimes calls for justice to be deferred. In the case of Nepal, however, the continuing failure to take serious steps to end impunity and investigate war crimes is more the result of the politics of convenience. There has been movement on the establishment of a commission on enforced disappearances; likewise, work to produce more widely acceptable legislation for a truth and reconciliation commission (TRC) is proceeding. However, there are serious questions over the government's intent.

The cabinet approved the draft disappearance bill on 19 November 2008 but it, and the TRC bill, were not put before the CA in time to be considered during the budget session. Plans to institute them as ordinances, bypassing parliamentary scrutiny, prompted serious concern in the human rights community.<sup>163</sup> Nevertheless, the government went ahead, and an ordinance on disappearances was among three signed into law by President Ram Baran Yadav on 10 February 2009. Internationally, there have been quiet measures to debar Nepalese Army officers accused of serious violations from senior UN posts, peacekeeping missions and military training offered by other states. At a 2 February 2009 hearing on writ petitions filed in August 2007, the Supreme Court ordered the Nepal Police to proceed with investigations into the disappearances of five students in Dhanusha District in October 2003.<sup>164</sup>

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<sup>163</sup> Noting that a similar resort to ordinances had been attempted before, an umbrella group of respected activists warned of "the ill-intention of the government to institutionalize the culture of impunity": "The deliberate attempt of the government to undermine the rights of the people's representatives while drafting such historically significant laws, which are related to overarching issues of victim's rights to justice and ending the pervasive impunity in the country, is downright undemocratic". "Introducing legislation via ordinances: an undemocratic step", Accountability Watch Committee press statement, Kathmandu, 22 January 2009.

<sup>164</sup> The police had refused to register first information reports on these cases naming senior civil, police and military officials and had not requested forensic assistance to conduct exhumations at a suspected burial site. In January 2008, the NHRC had recommended a full investigation and compensation to the families. OHCHR-Nepal called on the government to take immediate steps to implement this and other Supreme Court decisions "to ensure that the perpetrators of

However, there has been no action on the most shocking abuses committed during the conflict and after the start of the peace process. In the most high-profile individual case, the torture and killing of fifteen-year-old Maina Sunuwar by army officers in 2004, the state still appears unable or unwilling to pursue investigations, despite promises to support police enquiries.<sup>165</sup> Despite the acknowledgement of “mistakes” during the people’s war and beyond, the Maoists continue to shelter the individuals responsible for atrocities, most prominently PLA commander Kali Bahadur Kham Magar “Bibidh”. Accused of overseeing the abduction, torture and murder of businessman Ram Hari Shrestha, he has not only been sheltered by the party but reinstated to its central committee.<sup>166</sup> Needless to say, these acts of omission and commission directly contravene the explicit commitments made in the CPA.<sup>167</sup>

Party leaders and security chiefs have a shared interest in resisting pressure to investigate or prosecute. Victims’ voices are rarely heard, except when there is political advantage to be gained from highlighting their plight – such as when army chief Katwal publicly received a petition from victims of the Maoists. Given the chronic inadequacy of national justice mechanisms, serious investigations or prosecutions are a remote possibility. Deferring trials in the interests of reconciliation and peacebuilding is not inherently wrong, if there is a compelling case that proceeding immediately would threaten the peace process. But those accused of the gravest crimes can still feel untouchable.

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the Dhanusha disappearances, as well as other serious conflict-related human rights violations, are brought to justice.” “OHCHR-Nepal calls for swift implementation of Supreme Court ruling on Dhanusha disappearance”, OHCHR-Nepal, press release, 5 February 2009.

<sup>165</sup> On the fifth anniversary of Maina’s death, OHCHR-Nepal noted: “Despite a September 2007 Supreme Court ruling that police conduct an investigation and years of advocacy by the human rights community, the alleged perpetrators have yet to be brought to justice. The lack of progress in the case of Maina Sunuwar is emblematic of the overall lack of accountability for human rights violations which occurred both during and after the conflict in Nepal between 1996 and 2006”. “Impunity remains major obstacle to the peace process”, OHCHR-Nepal, press release, 16 February 2009.

<sup>166</sup> “Ram Hari murder accused gets Maoist CC berth”, myrepublica.com, 15 January 2009. The UN has expressed concern that six months after five persons were charged in relation to the disappearance and killing of Ram Hari Shrestha only one individual has been arrested, police’s letters to the PLA requesting an interview with 3rd Division Commander Kali Bahadur Kham (‘Bibidh’) have not been answered and local Maoist leaders had not cooperated with Chitwan Police to enable them to carry out their investigation and arrest those charged. The probe commission report submitted to the government on 16 July 2008 has not been published. “OHCHR-Nepal urges Home Minister to ensure accountability for killing of Ram Hari Shrestha”, OHCHR-Nepal, press release, 29 December 2008. The main accused, Govinda Bahadur Batala, is in police custody but Shrestha’s family continue to call for action against Bibidh, who was reportedly indicted by the July 2008 commission. “SC upholds Apex Court decision to detain Batala”, ekantipur.com, 15 February 2009.

<sup>167</sup> For example, “Both sides agree to make public within 60 days of the signing of the agreement the correct and full names and addresses of the people who ‘disappeared’ or were killed during the conflict and convey such details to the family members”. CPA, Art. 5.2.3. “Both sides express their commitment that impartial investigation shall be carried out

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and lawful action would be taken against individuals responsible for obstructions in the exercise of the rights contained in the agreement and guarantee not to encourage impunity. Apart from this, they shall also guarantee the right to relief of the families of victims of conflict, torture and disappearance”. CPA, Art. 7.1.3.

## **VI. CONCLUSION**

Nepal's peace process faces difficult days. Precedent suggests political leaders can rally round to avert crises at the last minute; there are some signs that they have recognised the risks of a breakdown and pulled back from more intense confrontation. But completing the peace and constitutional processes in a way which leaves lasting stability requires more than another round of short-term fixes, fictitious deadlines and half thought-out trade-offs between parties' short-term interests.

It is time to face up to some inconvenient truths. The peace process has rested uncomfortably, and at times precariously, on several mutually convenient fictions. The most obvious is the repeated pretence that rapid PLA integration would remove the need for a UN role: UNMIN has now had three six-month extensions following the expiry of its original one-year mandate in January 2008 and the latest term looks just as unlikely to be met. Most peace process deadlines, voluntarily set by the parties, have been unrealistic,

such as the Maoist promise to return all property within fifteen days. Taking part in one election and leading a government has not in itself democratised the Maoists, nor can the rhetoric of "new Nepal" disguise the unreconstructed weaknesses of their political opponents. More seriously, the consensus at the heart of the process has been at least overstated, and at times close to imaginary. In reality, very different interests and positions remain to be bridged – a task that is possible but that cannot be wished away with overoptimistic language.

Addressing these challenges is the job of Nepal's leaders. But the international community must recognise the fragility of the process and be prepared to stick with it. A successfully completed peace process could have broad positive effects for the Nepalese people and for the region. Successful elections do not in themselves mean a return to normal development engagement. Instead, the need is for carefully targeted assistance and political pressure.

**Kathmandu/Brussels, 19 February 2009**

## APPENDIX A

### MAP OF NEPAL



## APPENDIX B

### GLOSSARY OF ACRONYMS

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AISC	Army Integration Special Committee
AMMAA	Agreement on Monitoring of the Management of Arms and Armies, December 2006
APF	Armed Police Force
CA	Constituent Assembly
COAS	Chief of Army Staff
CPA	Comprehensive Peace Agreement, November 2006
CPI(Maoist)	Communist Party of India (Maoist)
CPN(M)	Communist Party of Nepal (Maoist), now UCPN(M)
HLPC	High-Level Peace Commission
JMCC	Joint Monitoring Coordination Committee
LPC	Local Peace Committee
MJF	Madhesi Janadhikar Forum (sometimes referred to in other sources as the Madhesi People's Rights Forum, MPRF)
MoPR	Ministry of Peace and Reconstruction
NA	Nepalese Army
NC	Nepali Congress
NHRC	National Human Rights Commission
NSC	National Security Council
NSP(A)	Nepal Sadbhavana Party (Anandidevi)
NWPP	Nepal Workers and Peasants' Party
OHCHR	Office of the United Nations High Commissioner for Human Rights
PLA	People's Liberation Army (referred to in UN documents and agreements such as the AMMAA and December 2007 23-point agreement as "Maoist army")
RJP	Rashtriya Janashakti Party
RPP	Rashtriya Prajatantra Party
RPP(N)	Rashtriya Prajatantra Party (Nepal)
SRSG	Special Representative of the [UN] Secretary-General
TMDP	Tarai Madhes Democratic Party
TRC	Truth and Reconciliation Commission
UCPN(M)	United Communist Party of Nepal (Maoist)
UDMF	United Democratic Madhesi Front
UML	Communist Party of Nepal (Unified Marxist-Leninist)
UNMIN	United Nations Mission in Nepal
YCL	Young Communist League

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates ten regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina, Seoul and Tbilisi) and has local field representation in seventeen additional locations (Abuja, Baku, Bangkok, Beirut, Cairo, Colombo, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Ouagadougou, Port-au-Prince, Pretoria, Sarajevo and Tehran). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Nigeria, Rwanda, Sierra Leone, Somalia, South Africa,

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