

NEPAL: ELECTING CHAOS

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NEPAL: ELECTING CHAOS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Nepal's royal government is inviting confrontation by forcing through, amidst a new crackdown on civil liberties, municipal elections on 8 February 2006 which will not be free, fair or credible. Filling local posts with palace placemen will neither restart the national democratic process, nor bring a peace process closer. The conflict remains soluble: although the palace has refused to reciprocate a four-month Maoist ceasefire and the rebels have resumed their armed campaign, mainstream parties and the Maoists have agreed a roadmap which permits compromise with the monarchy. But after one year of royal rule and ten years of insurgency, the priority should be that peace process, not polls for offices with little power that all mainstream parties are boycotting.

Holding elections in any conflict situation is a risky undertaking. In Nepal's case, the polls are only the latest in a series of moves which have inflamed political tensions and increased the polarisation between the palace and other political forces. The mainstream parties retain considerable support and, with the Maoists agreeing not to impede their activities, are bringing increasing numbers onto the streets. But Maoist support for the boycott has given the king an excuse for a security clampdown and hundreds of non-violent political protestors are still under arrest. The use of the army to suppress dissent has brought back memories of royal opposition to the 1990 democracy movement.

With the first anniversary of the 1 February 2005 royal coup approaching, the elections are a matter of pride for the king. He is unwilling to compromise, even though far fewer candidates have put themselves forward than there are seats available. The local elections are meant to pave the way for general elections, which the royal government insists will reinvigorate democracy. But they have been planned by a coterie of hardline royalist advisers who were active in trying to suppress the 1990 democracy movement and who are set on excluding the parties from power.

The confrontation between an increasingly isolated palace and increasingly militant mainstream activists has benefited the Maoists. Since they ended their unilateral ceasefire on 2 January, they have sustained an intense and effective military campaign. Their new concentration on small urban attacks has been carefully calibrated and well

planned. They have demonstrated that they remain a force to be reckoned with, and their attacks on major cities undermine the government's claim that it has broken their back and rendered them incapable of serious trouble. Most importantly, they are still the only political player with a coherent strategy.

Despite the promise held out by the November 2005 seven parties-Maoist agreement, there is a fundamental dispute over how to progress towards peace. The traditional view that the palace and parties must first unite and then deal with the Maoists is still supported in certain quarters, most vocally the U.S. Others, not least the mainstream parties themselves, have given up hope of a stable alliance with the palace and are looking to move more directly to a new constitutional settlement that can bring the Maoists into non-violent competitive politics.

The combination of peaceful party protests and armed Maoist action has shaken the royal government and may yet derail its proposed elections. But only a serious change of course by the palace can dissipate the mood of confrontation. The role of the outside world in forcing a rethink is crucial. If King Gyanendra is to take it seriously, international concern, with targeted sanctions against his family and officials and a review of aid, must be both more explicit and more coordinated. From February 2005 onwards, his calculation that he can essentially ignore external pressure has yet to be proved wrong.

RECOMMENDATIONS

To the Royal Government:

1. Call off the municipal elections and initiate a broad-based peace process.
2. Take up the UN Secretary-General's offer to help broker and monitor a durable bilateral ceasefire to create an environment for serious talks in which to test Maoist willingness to compromise, and seriously consider international offers to assist in a process of reconciliation, including working towards viable post-conflict elections.

To the Political Parties:

3. Go beyond the legitimate election boycott to develop a clear peace agenda that contains a positive message for steps to resolve the conflict.
4. Resolve internal differences over a peace process before conducting further negotiations with the Maoists, agreeing most critically whether to continue calls for restoration of parliament or move directly to an interim government empowered to hold elections for a constituent assembly.
5. Embrace internal reforms in order to boost organisational capacity and regain public confidence.

To the Maoists:

6. Respect fully stated commitments to observe international humanitarian law and to abide by international development agencies' Basic Operating Guidelines.
7. Offer a concrete plan for disarmament as part of a peace process and a renewed ceasefire to create the environment for talks.

To the International Community:

8. Develop a united message that sets benchmarks for elections as part of a peace process. The EU, which

has limited interests in Nepal and is viewed as more objective than India or the U.S., can play an important role in setting benchmarks, which the UN is best placed to monitor.

9. Form a loose contact group of key states and the UN to coordinate policy, leave no room for doubt it is united in seeking a peace settlement and return to democracy, and make clear to the king that support for continuation of the constitutional monarchy is neither unconditional nor guaranteed: he does not have a blank cheque to veto peace initiatives and pursue his project of dismantling democracy.
10. Impose targeted sanctions, including travel bans and asset freezes, on the royal family, senior officials and military officers, and review the army's lucrative involvement in UN peacekeeping missions.
11. Review all development assistance channelled through the government.
12. Give appropriate help to the parties and Maoists if they are prepared to negotiate further towards a peace process on the basis of their twelve-point agreement; do not stand in the way of third-party facilitation of their dialogue if they want it; and be prepared to help in a tripartite process should the king decide to enter talks.

Kathmandu/Brussels, 31 January 2006

NEPAL: ELECTING CHAOS

I. INTRODUCTION

Nepal's royal government is preparing for a showdown. It insists that its proposed municipal elections are a democratic exercise and that the king only stepped in because earlier democratic governments failed. However, the palace's real aim is to sideline democratic parties and consolidate monarchical rule in the form that existed before the 1990 democratic movement. Arguing that the Maoists will infiltrate party demonstrations, the government has imposed curfews and banned peaceful protests. In a move reminiscent of the 1 February 2005 royal coup, on 19 January 2006 it arrested dozens of political leaders and activists before dawn, cut phone services and imposed a curfew. The crackdown was widely condemned at home and abroad, with the UN calling the measures disproportionate and in breach of the government's legal commitments. Many activists remain in detention, including senior democratic party leaders such as Madhav Kumar Nepal, who is under house arrest.

The crackdown also appeared to contradict the government's earlier insistence that it had restored peace and security. The previous month Senior Vice Chairman of the Council of Ministers Tulsi Giri had explained that "February 1 had three objectives – tackling corruption, settling terrorism and holding polls – to strengthen democracy....Since the government has controlled corruption and broken the back of terrorism, it is preparing to accomplish the third objective".¹

The government may yet call a ceasefire or reach out to the Maoists for talks. Either option would undercut the peace agenda of the mainstream parties. But the anti-ceasefire constituency within the military and palace is strong, and the government has less room to offer substantive dialogue than during the failed negotiations of 2003. The Maoist leadership seems to have realised that no side in this conflict can win a simple military victory but the royal government has not: it acknowledges the need for a political solution but insists this can come only after the Maoists have been forcibly disarmed. The Royal

Nepalese Army has said that it will provide the necessary security for the polls.² It insists that it is a democratically controlled institution which does not take sides and is committed to protecting human rights.³ However, a leading role in forcing through the elections may draw it further into political controversy and invite claims that it is serving the palace rather than the people.

Holding elections in the midst of revived conflict and in the absence of effective rule of law would be a mistake. The prospects for free and fair elections are limited not only by Maoist violence but by a compromised, palace-leaning judiciary and Election Commission. The U.S. ambassador has warned the royal government that polls held without the participation of mainstream political parties would be a "hollow exercise...unlikely to have national and international legitimacy"⁴ and that "Nepalis and the international community alike worry that the King is less interested in conducting free and fair elections than in elections intentionally designed to validate his continued rule".⁵ In any case, election of local representatives would do little to revive democratic institutions as long as all meaningful political decisions are made by the king and his small coterie of advisers.⁶

Pressing ahead with the election plans is exacerbating a situation where, in the words of the European Union, "political forces seem to be moving towards an ever more severe confrontation and polarisation thus increasing the risk of deepening the political crisis".⁷ The EU also condemned the elections as "another step backwards for democracy". Most of Nepal's political spectrum, including monarchists, shares a similar analysis. Even Pashupati Rana, the leader of the major royalist party, has urged the king to call off

¹ "No ceasefire, no reconciliation with seven parties: Dr Giri", *The Kathmandu Post*, 21 December 2005.

² "RNA providing security for municipal polls", *nepalnews.com*, 30 January 2006.

³ Crisis Group interview, senior army officers, Kathmandu, January 2006.

⁴ "Polls sans parties a hollow exercise: Moriarty", *Kantipur* online, 27 October 2005.

⁵ "U.S. troubled by circumstances surrounding polls", U.S. embassy press release, Kathmandu, 26 October 2005.

⁶ Why February 2006 local elections would be a mistake is discussed more extensively in Section IV below.

⁷ "EU Declaration on Recent Events in Nepal", Vienna and Kathmandu, 27 January 2006.

the polls, cautioning that there is no possibility of party/palace reconciliation in the near future and that, given the choice, Nepal's people would probably now opt for a republic.⁸

II. THE ROYAL OFFENSIVE

A. THE ROYAL CEO DOES WHAT HE HAS TO DO

The prospect of a vigorous leadership by a businesslike monarch was appealing to many in a country that has suffered from more than its fair share of ineffective governments. Since his first dismissal of a democratic government in October 2002, Gyanendra had repeatedly promised a no-nonsense approach developed from his years of private sector experience. He robustly faced down international disapproval by insisting that "they will have to say what they have to say, and I will have to do what I have to do".⁹ This appealed to those who felt that politicians had been too willing to bow to outside – especially Indian – pressure instead of standing up for Nepal's national interest.

As the first year of direct rule nears its end, Gyanendra's ministers and supporters are boasting of his achievements. "The first thing each of the king's advisers told us was that they had broken the Maoists' back", commented a senior diplomat who visited Nepal in late 2005.¹⁰ From the government's perspective, the deal between the Maoists and the seven parties was a sign of both sides' inherent weakness. Ministers also claim to have rooted out corruption and restored good governance while protecting the national identity and sovereignty. They insist that calls to restore democracy are misguided, that democracy is in place, reinvigorated by the king's leadership.

But has the year of exclusive control earned the king a performance bonus? The assertion that the Maoists have been crippled by a better managed counter-insurgency campaign cannot be dismissed out of hand. The Kathmandu valley has been more secure, and the army has improved its intelligence capacity, repeatedly frustrating Maoist efforts to organise in the capital. It recognises it cannot deliver security across the countryside but points to fewer blockades and better security in major urban areas as evidence of progress.

Whatever the failings of the proactive counter-insurgency efforts, the security forces' ability to hold defensive positions has contributed to the Maoists' more realistic assessment of their chances for military victory. But the

⁸ "No possibility of reconciliation between king and parties: Rana", nepalnews.com, 30 January 2006.

⁹ Rabindra Mishra, "Nepal's shrewd, smooth operator", BBC News, 30 April 2005. King Gyanendra made the comment in an interview with the national press on 24 February 2005. See Narayan Wagle, "Shantiko karyasuchima Nepal praveshe", *Kantipur*, 25 February 2005; the exact phrasing has been variously rendered.

¹⁰ Crisis Group interview, January 2006.

Maoists were more hampered by internal divisions than army offensives; now that they have resolved their policy arguments, they are demonstrating as effective a military and political strategy as at any point in the recent past. Coordinated attacks in and around Kathmandu on 14 January 2006 exposed the weakness of state security measures; the Maoist commander in the Kathmandu valley boasted that this was a sharp answer to the government's claim that it had weakened the insurgency.¹¹ The mid-western garrison town Nepalgunj is effectively under siege, with bombings or shootings on most days since the end of the ceasefire. Meanwhile, the agreement with the mainstream parties – and India's tacit backing for it – holds out the prospect of their becoming a potentially powerful, legitimate force should they disarm.

In general, the decisiveness with which royal edicts are proclaimed contrasts starkly with their impotent implementation. The king – and, perhaps even more, his ministers – must be hoping that Nepalis have forgotten the ambitious plan announced after the first post-coup cabinet meeting. Like the commitments made in the king's 1 February 2005 proclamation, its 21 points have not been met. For an authoritarian administration, the royal government has shown a surprising weakness in pushing through practical change.

The king's supporters will have been heartened by his determined refusal to bow to domestic and international pressure. For diehard royalists, the effort to revoke the transfer of power to elected politicians in 1990 has been satisfying in itself. However, the record of inaction or incompetence on most other fronts has disappointed those who were willing to let the royal CEO prove himself. The business community is restive, and tourism entrepreneurs publicly criticised the failure to reciprocate the ceasefire.¹² International proponents of economic reform who were initially sympathetic wait in vain for delivery on promised action.

When he seized power in February 2005, Gyanendra emphasised that Nepalis' only wish was to end the violence and warned that "those who cannot stand in favour of peace will stand condemned by the motherland".¹³ However, his government has concentrated on cementing his political supremacy and has become the most

significant obstacle to peace. When presented by the Maoist ceasefire with an opportunity to end fighting and move to talks, the king and his advisers chose not to "stand in favour of peace". It is perhaps on the issue of elections that Gyanendra has been truest to his word. On 1 February 2005 he promised elections and return to democratic rule within three years, and he has charted a roadmap that promises just that. The questions are: what kind of democracy – and will it bring peace?

B. A BELLIGERENT PALACE

The Maoist ceasefire, even if partly tactical, offered an opening for dialogue. However, the royal government resolutely spurned domestic and international appeals to respond positively and appeared determined to ensure the Maoists would not extend it. It also dismissed the November 2005 agreement between the mainstream parties and Maoists as an "unnatural alliance".¹⁴ The Maoists ended the ceasefire on 2 January 2006. Throughout four months of relative Maoist restraint (although the rebels were responsible for around a dozen killings as well as continued extortion and forced political indoctrination), state security forces remained active, their operations resulting in dozens of deaths.¹⁵ The Royal Nepalese Army says it has killed 275 Maoists from the start of the ceasefire to 30 January 2006, and a total of 5,086 since the breakdown of the previous ceasefire in August 2003.¹⁶

The military argued that the truce was a tactical cover the Maoists were using to regroup before launching a renewed offensive.¹⁷ This is partly true: the Maoists did indeed use the ceasefire to hold a two-week-long expanded central committee meeting, restructure their command and increase – at least on paper – their military capacity. Their attacks in January 2006 indicate a continued appetite for

¹¹ Prabhakaran, press statement, 20 January 2006.

¹² For example, the chairman of the Hotel Association of Nepal (HAN), Narendra Bajracharya, said, "we had urged the government to reciprocate the truce but it did not oblige, which is very unfortunate for the country". Pratibedan Baidya, "Calling off of ceasefire draws mixed reactions", nepalnews.com, 2 January 2006.

¹³ King Gyanendra Bir Bikram Shah Dev, "Proclamation to the Nation", 1 February 2005, available at http://www.nepalnews.com/archive/2005/feb/feb08/king_address.php.

¹⁴ For an analysis of the twelve-point parties-Maoist agreement, see Crisis Group Asia Report N°106, *Nepal's New Alliance: The Mainstream Parties and the Maoists*, 28 November 2005. Crisis Group's extensive reporting on the February 2005 royal coup and its aftermath is available at www.crisisgroup.org.

¹⁵ According to reliable estimates, state security forces were responsible for 62 deaths during the first three months of the ceasefire; in the same period the Maoists killed thirteen people. "Three Months of Ceasefire", Informal Sector Service Centre, Kathmandu, December 2005. Announcing the end of its ceasefire, Prachanda, the Maoist chairman, accused the army of killing dozens of unarmed cadres in Palpa, Morang and other districts during the ceasefire. Press statement, 2 January 2006.

¹⁶ "RNA providing security for municipal polls", nepalnews.com, 30 January 2006.

¹⁷ "Yuddhabiram natak matra: sena", *Gorkhapatra*, 17 September 2005.

fighting and a belligerent strategy.¹⁸ However, a major army sweep into the Maoist heartland in late December 2005 boosted suspicions that the government wanted to draw the rebels back into combat. Hundreds of the army's best-trained troops were quietly withdrawn from the area as soon as the ceasefire ended.¹⁹ The Maoists' return to war may have been a self-fulfilling prophecy.

On the political front, the battle-lines have been clearly drawn. The royal government's refusal to consider reciprocating the truce was matched by a steadfast rejection of the parties-Maoist agreement, which held out the possibility of accommodating the monarchy in a revised political set-up.²⁰ As the parties and Maoists launched their active boycott of the polls, the king set off on his second post-coup tour of eastern districts. The whistle-stop schedule of photo-opportunities and generous state media coverage suggested electioneering but his preference for combat dress underlined the administration's militarisation.

The Rajparishad (Royal Council), an advisory body appointed by the king with no statutory powers other than to oversee royal succession, has geared up for confrontation with the parties. Standing committee member Sachchit Shumsher Rana, a long-retired general who has taken to speaking on behalf of the government, threatened the parties with "dire consequences" if they did not participate in the polls and warned that "all the members of the Rajparishad are ready to fight".²¹

Vice Chairman of the Council of Ministers Tulsi Giri has ruled out a ceasefire with the rebels and reconciliation with the parties.²² Home Minister Kamal Thapa has warned the parties of "stern action" if they boycott the polls but accepts that there is no constitutional provision to ban them.²³ Nevertheless, the steady stream of threatening statements appeared to herald a further crackdown, just as similar warnings of "autocracy" by ministers and prominent royalists in late 2004 presaged the February 2005 takeover.²⁴

Thapa again warned the parties on 18 January that if they "knowingly or unknowingly" supported the Maoists, the government would "be compelled to take strong action under law, which may lead to an unpleasant situation".²⁵ The crackdown came the next day, and while justifying the measures to diplomats, Foreign Minister Ramesh Nath Pandey threatened "unpleasant action" against anyone trying to disrupt the polls.²⁶

The palace calculation is simple but may prove effective: once the municipal elections are held, however troubled the process may be, the king will have a clear run to his proposed general election. The government may quickly announce dates, probably involving several phases between late autumn 2006 and early spring 2007.²⁷ Snap elections are theoretically a possibility and could throw the parties into disarray over their response. However, they would only be viable if the local polls were to pass off without too much disturbance, a condition which can no longer be met.

If the international community does not offer a principled critique of the municipal polls, it will be in an even weaker position to reject a royal roadmap for national elections, whether or not they are designed to further peace and reconciliation. The king may have some surprises up his sleeve – he could undercut the parties by announcing a ceasefire or inviting the Maoists for talks – but the problem of a substantive agenda remains. The palace is ever more firmly committed to asserting its political dominance and has consistently rejected the baseline Maoist demand, now accepted by the parties, of a constituent assembly to rewrite the constitution.

The question remains open whether the palace has a plan, or even desire, to resolve the conflict. Victory, in the words of a Western envoy, "would allow the king to portray himself as a messiah"²⁸ but the palace may see advantage in continued low-level conflict since eliminating the insurgency would undermine the case for authoritarian rule. The palace plans for war, and the king calculates that he can continue to fight on two fronts, containing the Maoists militarily and suppressing the democratic mainstream.

¹⁸ Baburam Bhattarai, "Phauji ra gair-phauji sangharshako samyojanko prashna", *Samaya*, 12 January 2006.

¹⁹ "RNA halts Rolpa operation", *The Kathmandu Post*, 4 January 2006.

²⁰ See Crisis Group Report, *Nepal's New Alliance*, op. cit.

²¹ "Rajparishad ready for confrontation: Report", *nepalnews.com*, 5 January 2006.

²² "No ceasefire, no reconciliation with seven parties: Dr Giri", op. cit.

²³ "Govt. will take strong measures against attempts to foil polls: Minister Thapa", *nepalnews.com*, December 2005.

²⁴ See Crisis Group Asia Report N°91, *Nepal's Royal Coup: Making a Bad Situation Worse*, 9 February 2005.

²⁵ "Dal mathi kada kadam chalina sakcha: Griha Mantri", *Nepal Samacharpatra*, 19 January 2006.

²⁶ Statement at a briefing session for heads of diplomatic missions in Kathmandu, 19 January 2006.

²⁷ King Gyanendra has said that parliamentary elections will be held in the Nepali year 2063, which starts in mid-April 2006. "Pratinidhi sabha chunav nirdeshan", *Kantipur*, 15 October 2005. Election timing is traditionally heavily influenced by seasonal factors: spring and late autumn/early winter are the most viable periods.

²⁸ Crisis Group interview, Kathmandu, January 2005.

C. SHADES OF 1990

The memory of the 1990 people's movement that ended the Panchayat system hangs over all players in the current confrontation. The palace has set the scene for a replay of the palace-people showdown by reviving Panchayat-style direct royal rule and bringing back into power some of the key actors of that period. The political parties are trying to prompt a revival of the 1990 mood, hoping that cumulative dissatisfaction with the king's administration can be turned into a successful mass movement. The Maoists – some of whom were part of the 1990 movement – have also used this history to explain their alliance with the parties.²⁹

In the aftermath of the people's movement, Krishna Prasad Bhattarai's interim government established a judicial commission to investigate abuses committed by the Panchayat government in suppressing protests. The chairman of the three-member body was Janardan Lal Mallik, then chief judge of the Eastern Regional Court; the other members, both judges, were Uday Raj Upadhyay and Indra Raj Pandey. The Mallik Commission was constituted on 23 May 1990 and submitted its report to the interim government on 31 December 1990. In the course of its investigations, it heard testimony from victims (or the relatives of those killed), eyewitnesses and those accused of violations. It concluded that over 100 officials and politicians were directly or indirectly responsible for abuses, many of which resulted in death.

The report caused problems for the interim government. Charged with overseeing the first democratic elections in decades, it was worried that pressing charges against police officers would demoralise them and perhaps turn them against the new dispensation. Arguing that ensuring law and order took priority, on 1 February 1991 the cabinet decided not to act against police officers and forwarded the report to the attorney general's office for consideration of the remaining cases. Attorney General Moti Kaji Sthapit cited the cabinet's decision to drop cases against the police as one reason for not proceeding with other prosecutions and cautioned that "court action cannot be taken against anyone solely on the basis of the commission's report".³⁰

The interim government's calculation that avoiding confrontation with the palace and security forces was the best way to move forward peacefully was not

unreasonable. The elections were a success, and the first democratic government did not have to pursue bitter legal struggles against leaders of the former regime. However, the decision to ignore the Mallik Commission's findings was criticised at the time by activists who insisted that justice demanded a proper accounting for crimes committed by the state. The king has now chosen to surround himself with many of those implicated by the Mallik Commission. Given the role these individuals played in suppressing the last democracy movement, it is not surprising that the parties doubt the current government's desire and capacity to conduct free and fair polls.

The dying days of the Panchayat were overseen by a confusing cluster of committees, some of which were constituted specifically to suppress the democracy movement. The Mallik Commission concluded that these bodies were primarily responsible for the excessive and unjustified force which resulted in the deaths and injuries of thousands of unarmed protestors.³¹ Among the persons it identified as playing the most serious roles and against whom it recommended legal action be taken were the following senior members of the current administration and royal advisers:

Rajparishad Chairman Parshu Narayan Chaudhary: in 1990, as education and culture minister and convener of the Central Coordination Committee (CCM), which was charged with suppressing the movement, he coordinated the actions of various government agencies. He accepted collective responsibility for loss of life and property but complained that under Prime Minister Marich Man Singh there was no discussion in cabinet and no attempt to defuse the protests politically.³²

Law Minister Nirajan Thapa: as state minister for home affairs, he was in charge of the Central Security Coordination Committee (CSCC), which was tasked with developing and implementing policies to suppress the movement. The commission heard that as its head he was "active" in suppressing the movement and ordered local administrators to "do whatever needs to be done to save the system".

Home Minister Kamal Thapa: as state minister for communications, he was a CCM member. The commission found that he pressed local administrators to use extreme force against demonstrators. Thapa accepted moral responsibility for his ministerial decisions but argued that it was not unnatural to be opposed to the democracy movement, and the charges against him were political.³³

²⁹ For example, Baburam Bhattarai, one of the senior Maoist leaders, has argued that an alliance of capitalist and socialist forces against feudal forces has always been productive, going so far as to blame Third World underdevelopment on the blocking of "capitalist people's revolutions". "Andolanko utkarsha ra trasta satta", *Nepal*, 29 January 2006.

³⁰ Letter to the cabinet, 7 July 1991, cited in "Mallik ayogko prativedan: karvahi kina ra kaslai", Kathmandu, 1991, p. 85.

³¹ "Mallik ayogko prativedan: karvahi kina ra kaslai", Kathmandu, 1991, p. 82.

³² *Ibid.*, p. 77.

³³ *Ibid.*

Royal Council standing committee member and informal royal spokesman Sachchit Shamsher Rana: as Chief of Army Staff, he chaired the Central Security Committee (CSC), which advised the government on overall security strategy.

Royal Commission for the Control of Corruption Chairman Bhakta Bahadur Koirala: as acting home secretary, he was a member of the CCM, CSC and CSCC. The commission heard that he repeatedly ordered local administrators to use inappropriate force and ensured implementation.³⁴

General Administration Minister Badri Mandal: as law minister, he was a member of the cabinet's political committee, which worked alongside the powerful Panchayat Policy Investigation Committee in countering the democracy movement.

Armed Police Force Inspector-General Sahabir Thapa: as police superintendent in Lalitpur, he was cited for his role in the deaths of Gyan Bahadur Shahi and Sagar Singh on 30 March 1990. The fatal shots were fired by the team under his command in contravention of the Local Administration Act.³⁵

Chief Election Commissioner Keshav Raj Rajbhandari: as chief district officer of Kathmandu, he was cited in connection with the killing of Kumar Udas Shrestha on 2 April 1990. He gave verbal orders to police to fire warning shots at "extremists"; Shrestha, who was cycling home from his office, was hit in the head and killed. Rajbhandari told the commission that he had supported opening fire.³⁶

D. THE MUNICIPAL ELECTIONS

The 8 February 2006 elections are for 4,146 positions in 58 municipal bodies across 43 of Nepal's 75 districts. However, just over half of the seats have no candidates at all, while many others have attracted only a single contender, who will, therefore, be elected unopposed.³⁷ The positions have very limited authority: few powers have been devolved to local bodies, and they are dependent on the central government for their budgets. Apart from chief district officers appointed by the home ministry, real

influence is now wielded by Panchayat-style regional and zonal administrators answerable only to the palace.

These will be the third local elections following the 1990 democracy movement.³⁸ The Communist Party of Nepal (Unified Marxist-Leninist, UML) dominated the last set in 1997, winning more than half the votes, well ahead of the Nepali Congress (NC).³⁹ The Election Commission has issued a code of conduct transferring polling-officer responsibility from district judges to chief district officers, who are central government-appointed bureaucrats. Chief Election Commissioner Keshav Raj Rajbhandari has tried to address the security fears of officials and candidates by offering them life insurance.⁴⁰ However, civil servants, who have been banned from taking leave until the polls are concluded, have themselves called for the elections to be postponed.⁴¹

The number of eligible voters is relatively low – around two million (12 per cent of the electorate). As one commentator pointed out, if the palace sets a 25 per cent turnout target, it need mobilise only 500,000 voters.⁴² However, candidates have been hard to find: nationwide, only 3,255 filed nominations on 26 January, the sole day to do so. Given the chance two days later, more than 600 candidates withdrew. Many of them were reportedly unwilling participants in the first place; some complained that their names had been put forward under duress or without their knowledge. This left 2,104 seats without any candidates whatsoever: Kathmandu, for example, has 177 posts at stake but only 98 nominations, many of them for the same jobs. In the Kathmandu valley not one candidate is from a recognised national party.⁴³ Overall, one third of seats will have only a single candidate and therefore no competition. No municipality has candidates for all

³⁴ Ibid., p. 76.

³⁵ Ibid., pp. 58-59.

³⁶ Ibid., pp. 46-47.

³⁷ For lack of contestants, there will now be no elections in Ilam, Damak, Bhimeshwar, Bhaktapur, Banepa, Panauti, Dhulikhel, Ratna Nagar, Prithvi Narayan, Vyas, Waling, Palpa, Ram Gram, Butwal, Kapilvastu, Baglung, Birendra Nagar, Dashrath Chand, Amargadi, Dipayal, Nepalgunj and Gulariya municipalities. "Municipal elections: No candidates for more than half seats", *The Kathmandu Post*, 30 January 2005.

³⁸ Previous local elections were held in 1992 and 1997.

³⁹ The UML won 51.06 per cent, the NC 30.01, the Rashtriya Prajatantra Party (RPP) 12.60, the Sadbhavana Party 1.23 and others 5.09 per cent. "Party's Position in the Local Bodies Election 1997", Nepal Election Commission, <http://www.election-commission.org.np/oldsite/11.html>.

⁴⁰ "Nirvachanma khatina karmachariko bima garine", *Gorkhapatra*, 2 January 2006; "Accident insurance for candidates", *The Rising Nepal*, 26 January 2006.

⁴¹ The Nepal Government Employees' Organisation (NGEO) and Confederation of Nepalese Professionals (CONEP), an umbrella organisation of 400,000 professionals, called on the government to put off the polls until there was political consensus. "Civil servants urge government to postpone polls", nepalnews.com, 24 January 2006.

⁴² Bharat Bhushan, "A poll to crown king of municipalities", *The Telegraph*, 16 January 2006.

⁴³ "3,255 candidates file nominations for municipal polls", nepalnews.com, 27 January 2006.

positions, from mayor through to ordinary council members.⁴⁴

The government created an escape clause on 24 January by issuing an ordinance enabling the tenure of current local officials to be extended.⁴⁵ Some ministers have hinted that the elections could yet be cancelled or postponed.⁴⁶ But despite the lack of candidates the government seems likely to press ahead; the chief election commissioner announced that extra dates for filing nominations could be given or that vacant posts could be filled after the election was completed. State-run media has hailed the nomination process as a success, and the continued propaganda drive implies that the palace's prestige remains tied to completion of the exercise under any conditions. *The Rising Nepal*, a government mouthpiece, claims "the eagerness of the voters in all municipalities is a reflection of their optimism" and hails the "surge in their zeal".⁴⁷ The fact that royalist politicians have not displayed such zeal has not undermined the government's determination.

Only one of the 72 political parties which have registered with the Election Commission to participate is a national entity – the faction of the Tarai plains-based Nepal Sadbhavana Party (NSP) headed by Badri Prasad Mandal, the minister for general administration.⁴⁸ The others are generally obscure, with minimal organisational bases, but many are headed by well-known individuals who are relying on their personal appeal. Most other parties are vehicles for Panchayat-era royalists.⁴⁹ None has an

established electoral record of any significance.⁵⁰ Following the Election Commission's decision not to recognise Kamal Thapa's pro-palace faction as the official Rashtriya Prajatantra Party (RPP), most of its candidates filed nominations as independents.

Unless the mainstream parties and Maoists manage to derail the polls entirely or the king changes strategy, the royal government will certainly declare the municipal elections a success. As with the unimpressive nominations process, ministers will seek to turn obstacles to their advantage. The harder the parties push to block the polls, the more the government will boast of its commitment to granting the people their democratic rights. The absence of impartial monitoring – potential domestic and international observers do not want to legitimise the exercise – will make it easier to advance exaggerated claims on turn-out and conduct. State television will show queues of voters and run interviews with voters, candidates and officials.

Reliable sources report that the palace secretariat has met with local and zonal administrators to establish guidelines.⁵¹ Palace-appointed officials are to examine the candidate lists for each municipality and identify those who should be supported. Favoured candidates may be offered financial and organisational assistance. Those belonging to the pro-palace faction of the RPP are likely to have preference but administrators have been instructed to persuade individual mainstream politicians to reject their parties' boycott and stand. Government employees and their families are required to vote and expected to urge friends and neighbours to do the same. While these orders will be verbal, the effort to boost turn-out will be backed by a concerted state media campaign. However, without enough candidates to create even an impression of competitive politics, the government can hardly avoid charges that its elections have failed before the polling stations even open.

⁴⁴ "Municipal polls fiasco looms", *The Kathmandu Post*, 27 January 2006.

⁴⁵ "Government promulgates ordinance empowering cabinet to extend the tenure of local body", nepalnews.com, 25 January 2006.

⁴⁶ "Will the municipal polls be called off?", nepalnews.com, 23 January 2006.

⁴⁷ "Polls for peace, democracy", *The Rising Nepal*, 27 January 2005.

⁴⁸ The other NSP faction is led by Anandi Devi, the widow of party founder Gajendra Narayan Singh. It is a member of the seven-party alliance.

⁴⁹ These include former Rajparishad chief Keshar Jung Rayamajhi's Janata Dal (Samajbadi Prajatantrik); former Rashtriya Panchayat [parliament] Chairman Rajeshwar Devkota's RPP (Nationalist); and Panchayat-era Foreign Minister K.B. Shahi's Sanyukta Prajatantra Party. Ministers from the royal administrations since 2002, including some current ones, are also fielding parties: Salim Miya Ansari's Samajbadi Party Nepal; Narayan Singh Pun's Nepal Samata Party; Asharphi Shah's Rastriya Bikas Party; Gore Bahadur Khapangi's Prajatantrik Janamukti Party; Keshar Bahadur Bista's new Prajatantrik Nepal; Durga Pokharel's Nepali Congress (Nationalist); Kuber Sharma's Hariyali Party; and Prem Bahadur Singh's Samajbadi Prajatantrik Janata Party Nepal. Further parties are fronted by personalities from other walks of life, for example wrestler Bharat Bahadur Bisural (Conservative

Party) and boxer Prakash Gurung (Deshbhakta Prajatantrik Party). "Agami Mahanagarपालिका, उपमहानगरपालिका र नगरपालिकालाई निर्वाचन प्रयोजनका लागि दार्ता ब्याक्का राजनैतिक दलहरू", Nepal Election Commission.

⁵⁰ In the 1999 general election, even the venerable Praja Parishad collected only 817 votes nationwide. Others fared less well: the Rastrabadi Ekta Party secured 120 votes, Rastrabadi Janata Dal 105, Dalit Majadur Kisan Party 92, Samajbadi Garib Party 86, Mechi Mahakali Jana Samanvaya Dal 35 votes, Liberal Samajbadi Party ten and Nepali Rastriya Ekta Party eight. Election Commission data.

⁵¹ Crisis Group interviews, Kathmandu, January 2006.

III. THE OPPOSITION

A. THE MAOISTS MOBILISE

The king and the parties have battles on their hands but the line each intends to follow is relatively clear: the king means to press on with elections regardless of opposition, and the parties to marshal enough street opposition to derail them. The Maoists have benefited the most from the events of 2005 and remain in a strong situation. However, they face difficult choices. The end of the ceasefire and resumption of fighting may have been inevitable given the lack of government reciprocity but their next moves must balance conflicting imperatives.

Keeping the parties on board. Using force while maintaining a loose alliance with the non-violent mainstream is a tough challenge. Some in the parties may tacitly welcome armed support for their campaign against the polls; others may find it unacceptable and push to end cooperation with the Maoists.

Striking hard but not looking too dangerous. The Maoists are under pressure to prove that they offered a ceasefire from a position of strength and still have the capacity to threaten the state militarily but know that if they look capable of a full takeover, the world will back Gyanendra regardless of qualms about democracy.

Satisfying their cadres. On 13 February 2006 the insurgency enters its eleventh year. Battle-hardened cadres, schooled for total victory, were becoming restive during the ceasefire. The leadership will find it hard to offer concessions if it cannot deliver results to its foot soldiers.

Keeping doors to dialogue open. The Maoists have worked hard to build bridges with their domestic and international opponents, presenting a more moderate face and committing themselves to democracy and respect for fundamental human rights. Maintaining this approach will be hard while they are fighting.

The end of the ceasefire prompted widespread international disappointment. India termed it an “unfortunate decision....We have consistently called upon the Maoists to abandon the path of violence and terror, accept the discipline of multi-party democracy, and work for a political settlement that contributes to the political stability and economic prosperity of Nepal”.⁵² The U.S. warned that “there can be no excuse for the resumption of

violence”,⁵³ as did the European Union, which also noted that it was “deeply disappointed by the government’s failure to reciprocate the truce”.⁵⁴ In a last-ditch effort to persuade both armed parties to move to dialogue, UN Secretary-General Kofi Annan expressed concern at the likely escalation in fighting and deeply regretted that “despite the appeal of so many national and international voices, including his own, no progress appears to have been made towards a mutually agreed truce between the Government of Nepal and the CPN-M”.⁵⁵

Nevertheless, the return to fighting was predictable. As one diplomat put it, “The Maoists were hardly likely to continue extending [the ceasefire] indefinitely without a response from the government – to that extent their behaviour is understandable. But they have to realise that no one can condone an armed insurgency, and the political parties will come under pressure to distance themselves”.⁵⁶ So far, the Maoist calculation is that they can ride out this level of political pressure.

B. “STRIKING THE HEAD”

The four weeks of resumed fighting have been the most violent since 2001 in terms of numbers of attacks. The Maoists do not appear weaker, and they have refined their tactics. Attacks on Kathmandu and Nepalgunj indicate a bolder targeting of urban centres but careful avoidance of the head-on, mass assaults against well defended military targets that led to high casualties in early 2005. Fewer civilians have been killed or injured than in previous actions.

The slogan for the new military strategy the Maoists formulated during their October 2005 central committee plenum is “stand on the spine to strike the head”. The spine refers to highways, peripheral supply routes and military bases, while the head refers to urban areas in general and Kathmandu in particular.⁵⁷

The Maoists also restructured their military and its operational methods. Alongside the Eastern and Western Commands, they have established a Special Central Command.⁵⁸ Formation of the latter, which covers

⁵² “In response to a question on the withdrawal of ceasefire by the Maoists in Nepal”, Statement by the Ministry of External Affairs’ official spokesperson, New Delhi, 2 January 2006.

⁵³ Sean McCormack, spokesman of the U.S. State Department, press statement, Washington DC, 3 January 2006.

⁵⁴ “Declaration by the Presidency on behalf of the European Union in response to the statement by Maoists to end the unilateral ceasefire”, Brussels, 5 January 2006.

⁵⁵ Press statement, 30 December 2005.

⁵⁶ Crisis Group interview, Kathmandu, January 2006.

⁵⁷ Bharat Bhushan, “Target head in assault on spine”, *The Telegraph*, 15 January 2006.

⁵⁸ The “in-charges” of the Eastern, Western and Special Central Commands are Badal (Ram Bahadur Thapa), Diwakar (Post

Kathmandu and the surrounding area and consists of four regional bureaus, reflects the increased priority they are giving to the base of central state power. The Special Central Command has been tasked with organising local Newar and Tamang communities (which dominate the valley and its surrounding hills respectively) as a mass base. The first national gatherings of the Newa National Liberation Front and Tamang National Liberation Front, Maoist ethnic fronts, were held in December 2005.⁵⁹

The plenum also expanded the armed force – the People's Liberation Army (PLA) – from three to seven divisions.⁶⁰ Under party Chairman Prachanda, the supreme commander, four deputy commanders have been appointed: Ananta (Special Command), Prabhakar (Western Command), Baldev (Eastern Command) and Pasang (headquarters and responsible for the "People's Military Academy").⁶¹ According to Prachanda, half of all political cadres will be transferred to military duties to fill the ranks of the new divisions.⁶² The plenum also demoted all party committees and officials by one level. Following dissolution of the central committee, politburo and standing committee, it formed a 33-member Seventh Convention Organising Committee under Prachanda.⁶³ Regional and district commanders have been reassigned across the country.⁶⁴

The Maoists want to engage the security forces in small actions to prove they cannot keep urban areas safe. They have shifted to greater use of carefully targeted improvised explosive devices and of close quarter attacks that rely more on stealth and surprise than numbers. They have hit the same locations repeatedly, increasing the general sense of insecurity and underlining the weakness of the state even during a period of heightened alert. Nepalgunj, the mid-western headquarters and most fortified town after Kathmandu, has experienced bombings or shootings three or four times a week throughout January 2006. The Maoists claim these serial attacks have led to five security posts being removed from the town centre.⁶⁵

Attacks on the cities are also conceived by the rebels as preparation for their long-planned campaign of armed urban insurrection. While the immediate aim is to disrupt the polls, the mid-term goal is to pursue their strategic offensive plan, which depends on greater success in urban warfare and political mobilisation.⁶⁶ While they have pursued a negotiation strategy with the political parties that envisages compromises, they continue to frame their present actions as preparation for urban mass insurrection to establish a republic.⁶⁷

The Maoists have sustained a high-intensity campaign. Through 26 January, they have carried out 52 bombings across the country, over twenty targeting government offices, launched seven shooting attacks on security offices and check posts and been involved in some seven armed engagements. They have killed at least one mayoral candidate and abducted another.⁶⁸ Although civilian casualties seem to be low, both sides have taken heavier casualties, with 40 security personnel and 41 Maoists reported killed. A major assault on Phapar Bari, Makwanpur district, resulted in the deaths of at least seventeen Maoists, two civilians and six soldiers. Maoists attacked the major district headquarters of Dhangadhi twice, on 11 and 25 January, while Nepalgunj experienced significant attacks on 20, 24 and 25 January.

On 14 January, Kathmandu was targeted with multiple simultaneous attacks for the first time, the strategically most significant of which was on Thankot, the main road entry point of the valley; other bombings and an attack on a police station outside the city brought police deaths to twelve, including one inspector, while the Maoists seized 31 guns. They will not be able to sustain a campaign at this level indefinitely, and there has long been a question mark over their ability to incite urban insurrection. But for the time being they have demonstrated strength and tactical sophistication. Their planned nationwide shutdown over the election period will almost certainly be accompanied by further headline blows at the country's "head".

Bahadur Bogati) and Ananta (Varshaman Pun) respectively. Crisis Group interview, Nepal, December 2005.

⁵⁹ *Janadesh*, 20 December 2005.

⁶⁰ The first and second PLA divisions are under the Eastern Command, the third division under the Special Central Command, and the fourth, fifth, sixth and seventh divisions under the Western Command. The fifth division's popular commander, Sunil (Kim Bahadur Thapa of Rolpa), was killed during an army helicopter attack at Jinabang, Rolpa district, on 29 November 2005.

⁶¹ Crisis Group interviews, Maoist sources, Nepal, December 2005.

⁶² Quoted in *Naya Dishabodh*, November 2005.

⁶³ Prachanda, press statement, 28 November 2005.

⁶⁴ Crisis Group interviews, Kathmandu, January 2006.

⁶⁵ Krishna Sen Online, accessed on 25 January 2006.

⁶⁶ The Maoists declared in August 2004 that they had entered the third and final phase of their "people's war", that of strategic offensive. Its first stage was completed by October 2005, and current actions are conceived as part of a second stage. For detailed analysis of Maoist strategy, see Crisis Group Asia Report N°104, *Nepal's Maoists: Their Aims, Structure and Strategy*, 27 October 2005.

⁶⁷ Ananta, press statement, 15 January 2006.

⁶⁸ The Maoists killed Bijaya Lal Das, an NSP (Mandal faction) Janakpur mayoral candidate, on 22 January 2006 and abducted Ram Kumar Tharu, also a mayoral candidate of that party, from Gulariya, Banke district, on 25 January.

C. THE PARTIES PROTEST

The parties have a simple short-term goal: to oppose the municipal elections and, if they cannot persuade the king to call them off, to expose their lack of credibility. This second, more limited, goal may have been achieved already. Few outside palace circles view the elections as legitimate, and the latest crackdown will only make the lack of a level playing field more obvious. However, it will not be easy for the parties to derail the elections altogether and reassert their political primacy.

Lack of numbers. The parties' only real weapon is their support base but they have yet to bring sufficient protestors onto the streets. If demonstrations do not reach a critical mass, confident claims of ability to mobilise hundreds of thousands will ring hollow. The cadre-based UML has been more successful than the mass-based Nepali Congress, whose more radical grassroots members and student activists have not been inspired by the party's current leadership. Resources may also be a constraint when it comes to sustaining a lengthy protest campaign. Still, gatherings such as the Janakpur rally of 12 January, which drew well over 100,000, have buoyed party morale. The 19 January crackdown suggests that the government was afraid that the announced seven-party Kathmandu rally would be even more impressive.

Dealing with the Maoists. The parties hailed their November 2005 agreement with the Maoists as a breakthrough but it will not be easy to put it into practice. Concerns have come not only from some smaller members of the seven-party alliance but also from senior leaders within the Nepali Congress. The Maoists consider the parties have not matched their concessions and still doubt the commitment to face down the palace. But most mainstream politicians will find it hard to stand by the Maoists if they continue the armed campaign.

Unclear agenda. The agreement with the Maoists should have allowed the parties to go to the public with a simple message: that they could deliver peace. But policy pronouncements have lacked clarity. Bold anti-monarchical rhetoric has been balanced by calls for compromise with the palace. As with their continued demand for restoration of the last parliament, the seven-party alliance's focus on disrupting the polls risks looking self-serving unless tied to a peace agenda.⁶⁹

Fragile unity. The seven-party alliance is holding together; other parties have joined its boycott of the polls, and it has been widely praised for drawing the Maoists into a basic agreement to respect democracy. But there are fractures within and between its constituent elements, while top-level leaders still disagree on longer term strategies. The UML's success at getting out its supporters has heightened rivalries: there were more protestors at its unilateral 2 December 2005 Kathmandu demonstration than at the joint seven-party affair two weeks later.

Nevertheless, these difficulties will not necessarily comfort the king. The major royalist parties – the Rashtriya Prajatantra Party (RPP) and its offshoot, the Rashtriya Janashakti Party – have also refused to take part in the elections. This prompted the RPP split, with senior leaders who had been brought into the cabinet in a December 2005 reshuffle insisting on backing the royal coup and campaigning. The palace had been conspicuously isolated but now – by design, according to RPP officials who accuse it of plotting and funding the schism – the king may have his own party. Efforts to tempt mainstream party members to participate in the polls, however, do not appear to have succeeded.

The parties' real challenge is to transform the passive public preference for democracy and peace into an active movement with a forward-looking agenda. Leaders admit that they are under increasing pressure from their own activists to embrace a republican agenda and have adopted a firmer stance towards the palace. "There will be no compromise at the expense of democracy", insists NC president Girija Prasad Koirala. "Any deal with the king can only be on the basis of an end to autocracy and the restoration of peace and full democracy".⁷⁰ The UML has ruled out talks with the king, and former Prime Minister Sher Bahadur Deuba's Nepali Congress (Democratic) has, like its mother party, removed the commitment to constitutional monarchy from its statute. The parties see the candidate-registration fiasco as an interim victory and are convinced their movement will gather pace. They hope to bring enough protestors onto the streets not just to disrupt the polls but to force the palace to back down and restore democracy.

⁶⁹ The parliamentary parties which make up the seven-party alliance are the Nepali Congress (NC); Communist Party of Nepal (Unified Marxist-Leninist, UML); Nepal Sadbhavana Party (NSP, Anandi Devi); Nepali Congress (Democratic, NC(D)); Janamorcha Nepal; Nepal Workers and Peasants Party (NWPP); and the United Left Front.

⁷⁰ Crisis Group interview, Kathmandu, January 2006.

IV. LOCAL POLLS: MEANINGFUL DEMOCRACY?

A. WHAT'S WRONG WITH ELECTIONS?

Elections are overdue. A fresh mandate for political leaders could reinvigorate democratic governance and provide popular endorsement of an administration whose main task would be to negotiate peace. Unfortunately, however, the municipal elections will not be free, fair or credible. Filling local posts with palace placemen will neither restart the national democratic process nor bring a peace process closer. The intention is more likely the reverse. If the aim is to work towards full national polls, the palace should be trying to create conditions to bring in the mainstream parties. In the words of a Western diplomat, "elections should be part of a peace process, not a war process".⁷¹

The king's supporters argue that outsiders have no right to judge Nepal's internal affairs.⁷² Foreign Minister Ramesh Nath Pandey used his trip to New York for the September 2005 UN General Assembly to assert that there is no universal model of democracy.⁷³ The support that he curried with states such as China, North Korea, Cuba and Pakistan in the wake of the royal coup suggests the palace has a broad definition of democracy. However, King Gyanendra has set himself higher standards: "a meaningful exercise in democracy can take place only when elected representatives at all levels are given their share in the governance of the country in accordance with the principles of separation of powers".⁷⁴ This statement makes clear that the validity of the democratic exercise will be determined by further conditions. The current circumstances offer neither a separation of powers nor the basic mechanisms to ensure a free and fair vote.

Continued rule by decree. In the absence of a legislature, Nepal is governed at all levels by royal fiat. There are no systems of democratic checks and balances, formal or informal. Critical scrutiny of royal ordinances – which constitutionally have to be ratified by parliament – is impossible. The 19 January crackdown underlined the possibility that security measures may be used deliberately to target non-violent political opponents of the royal government.

Compromised judicial independence. Palace influence over the appointment of judges has led to a breakdown of trust between legal professionals and the judiciary.⁷⁵ Attorney General Pawan Kumar Ojha surprised observers by insisting that divine right places the actions of a Hindu king beyond legal question;⁷⁶ he was rewarded with appointment to the Supreme Court. Chief Justice Dilip Kumar Paudel's enthusiastic attendance of Rajparishad meetings has undermined hopes that some recent critical judgements indicated a more independent-minded judiciary.

Tainted electoral process. Chief Election Commissioner Rajbhandari has been acting more as government spokesman than impartial official. He has forcefully urged all parties to participate and threatened to revoke the recognition of those that boycott.⁷⁷ Apart from his record in suppressing the 1990 democracy movement, he faces fresh allegations of using influence to take possession of valuable government land in the name of a family trust.⁷⁸ Election officials have been given extensive discretionary powers such as allowing people to vote without proper registration or identification; similar largesse was granted to candidates who were allowed to file without the required nominator and seconder being present.

Censored media. On 9 October 2005, Gyanendra promulgated an ordinance amending six key media laws. Following a detailed legal analysis of the ordinance, the International Commission of Jurists concluded that "the amendments entrench restrictions imposed on the media by the Government during the three-month state of emergency that ended in April 2005, and impose new limitations that will further undermine freedom of expression, press freedom and the right to receive information in Nepal".⁷⁹ According to Reporters sans Frontières (RSF), Nepal was responsible for more than half the global cases of censorship in 2005; it also lists Nepal as one of fifteen "enemies of the internet" for blocking access to critical websites.⁸⁰

⁷¹ Crisis Group interview, Kathmandu, December 2005.

⁷² The king himself further alleged that "foreign money" was behind unspecified "undesirable things" happening in Kathmandu. "Bideshi paisama nachahindo kam bhairahachha", *Kantipur*, 23 September 2005.

⁷³ Statement by Ramesh Nath Pandey at the UN General Assembly, 21 September 2005, <http://www.un.org/webcast/ga/60/statements/nepal050921eng.pdf>.

⁷⁴ King Gyanendra, "Proclamation to the Nation", op. cit.

⁷⁵ See "SC regrets bar decisions", *The Kathmandu Post*, 4 January 2006; "Lawyers protest appointment of ad-hoc justices", *nepalnews.com*, 6 January 2006.

⁷⁶ "All orders from Hindu king constitutional", *The Kathmandu Post*, 22 November 2005.

⁷⁷ "Parties' recognition to be revoked if polls boycotted", *The Himalayan Times*, 21 December 2005.

⁷⁸ Kiran Bhandari, "Sarkari jagga hadapne dau", *Samay*, 27 January 2006.

⁷⁹ "Power to Silence: Nepal's New Media Ordinance", International Commission of Jurists, December 2005. The report argues that the ordinance violates Nepal's international legal commitments and its own constitutional guarantees of free expression.

⁸⁰ "Press freedom in 2005", Reporters sans Frontières, 4 January 2006, <http://www.rsf.org>. The large number of individual

Insecurity. Preparations for the polls are taking place against a background of intensifying conflict. While the mainstream parties' "active boycott" may cause practical disruption, the Maoists' resumption of armed violence undermines the prospects for a meaningful vote. The Maoists' commander in the Kathmandu valley has warned that candidates, their associates and other officials "should be prepared to suffer the most serious consequences" if they do not dissociate themselves from the polls.⁸¹ Although the Maoists promised the UN that they would not take physical action against individuals involved in the polls,⁸² the killing of Bijay Lal Das, an NSP faction candidate for mayor in Janakpur, suggests this vow has been broken.⁸³ The insurgents are also suspected of the shooting and serious wounding of another mayoral candidate, Dal Bahadur Rai, on 30 January in the heart of Kathmandu's twin city, Patan.⁸⁴ Even royalist parties have threatened to pull out if the government cannot guarantee their security.⁸⁵ Meanwhile, just as some people were forced to stand as candidates, the possibility of security forces exerting pressure on citizens to vote and to prevent opposition demonstrations remains.

B. BASIC BENCHMARKS

If the primary aim of the government and people is peace, the most important test of the municipal polls is whether they will contribute to a peace process. The heightened political tensions of the post-royal coup environment and the return to armed conflict make this a particularly challenging test. Even in the context of a negotiated peace

settlement, management of elections is fraught with difficulties. An expert explains:

To demilitarise politics entails building norms and institutions that bridge the structures of wartime based on insecurity and fear (such as militias and extreme nationalist groups) to structures based on security and trust that can sustain peace and democracy (such as political parties and civil society). The powerful actors that developed and were sustained during a protracted civil war cannot be wished away: Neither can the enabling environment for peaceful political competition be proclaimed into existence.⁸⁶

Despite several successful elections between 1991 and 1999, Nepal does not present the most promising base for using voting to force-feed either conflict resolution or democratic consolidation. Even before the first royal power grab of October 2002, a close observer had characterised the country as a clear example of "feckless pluralism", a state in which broad popular participation in elections does not otherwise translate into political participation and in which public belief in the ideal of democracy contrasts with disaffection with disconnected political elites.⁸⁷ While such an assessment appears to complement royalist criticisms of democratic politicians, the municipal polls do not appear part of a plan to address this fundamental difficulty. Indeed, they are more likely to reinforce the obstacles to meaningful democracy.

Indian and Western diplomats share the democratic parties' conviction that the ultimate objective of an election process must be the return to parliamentary rule and not Panchayat-style guided democracy under palace direction.⁸⁸ In preparation for the visit of the European Union Troika in October 2005, EU diplomats had identified five basic requirements for meaningful elections:

- restoration of political normality;

censorship incidents does not necessarily relate to the general level of threat to independent journalists. The other "enemies of the internet" cited by the organisation are Belarus, Burma, China, Cuba, Iran, Libya, the Maldives, North Korea, Saudi Arabia, Syria, Tunisia, Turkmenistan, Uzbekistan and Vietnam.

⁸¹ Prabhakaran, press statement, 20 January 2006.

⁸² When asked for a clarification of their threats of "people's action" against candidates and officials involved in the polls, the Maoists responded that they did not intend to use violence. See "OHCHR receives assurance from CPN(M) leadership", United Nations Office of the High Commissioner for Human Rights in Nepal press release, 28 December 2005, <http://www.un.org.np/headlines.php>; "No physical action, Maoists tell Martin", *The Kathmandu Post*, 28 December 2005.

⁸³ The Maoists have not claimed responsibility for the killing but the UN OHCHR has called on them to condemn it and hold its cadres to account if they were responsible. OHCHR Press Release, 23 January 2006.

⁸⁴ "Mayoral candidate shot in Patan", ekantipur.com, 30 January 2006.

⁸⁵ The general secretaries of the NSP faction that is a member of the government and of the Prajatantrik Nepal Party issued this warning after the Maoist attacks around Kathmandu on 14 January, *Annapurna Post*, 16 January 2006.

⁸⁶ Terrence Lyons, "Post-conflict Elections: War Termination, Democratisation, and Demilitarising Politics", Working Paper 20, Institute for Conflict Analysis & Resolution, February 2002, p. 13.

⁸⁷ Thomas Carothers, "The End of the Transition Paradigm", *Journal of Democracy*, vol. 13: 1, January 2002, pp. 10–11.

⁸⁸ For instance, Indian Ambassador Shiva Shankar Mukherjee told a television interviewer: "The political parties [are] boycotting the municipal polls...and the seven-party alliance represents about 95 per cent in the old parliament. That puts up in our mind a big question mark as to whether these elections will be free and fair, whether they will be credible". Kantipur Television, 8 January 2006. See also "Monarchy should not compete with political parties: Indian envoy", nepalnews.com, 8 January 2006.

- ❑ the security situation to allow them to be meaningful;
- ❑ the parties to be able to compete on a level playing field for posts carrying real responsibilities;
- ❑ that they be free, fair and transparent; and
- ❑ that they take place in the context of a wider agreement on an overall peace process.

In public comments, the Troika leader, Tom Phillips of the UK Foreign and Commonwealth Office, diplomatically observed that “in a country in a conflict situation, elections usually come at the end of a peace process”.⁸⁹ The EU also underlined that it supports the right to peaceful protest.⁹⁰ A month later, noting that elections were announced around the same time as the restrictive media ordinance, U.S. Ambassador James Moriarty agreed that “the parties have legitimate concerns whether elections under the current circumstances can be free and fair.... The impression given is that there is not going to be a level playing field....Again, it’s [incumbent] upon the government to reach out to the parties and ask them what they need to do for the parties to take part in the elections”.⁹¹

C. LESSONS FROM OTHER CONFLICTS

Holding local elections is a relatively uncommon strategy in conflict or immediate post-conflict situations. Countries emerging from conflict normally aim for national elections, parliamentary or presidential. Local elections are usually seen as less of a priority and are often held only after some years of transition.

There have, however, been instances of local elections in a conflict or near-conflict situation preceding national elections. Indeed, the “bottom-up” approach of starting with municipal elections has become a feature of UN practice in countries which lack democratic experience. According to one analyst, “this approach is particularly suited to ‘state-building’ elections, which can help develop party politics from the ground up”.⁹² Nevertheless, Nepal

does not have the same need “to encourage the development of party politics and to inculcate voters in the routines of electoral politics”⁹³ as the areas, such as Kosovo, to which such arguments have been applied.

The record of cases where local elections have preceded national elections in a post-conflict situation is mixed. Two African examples are fairly positive. Local elections in Rwanda in 1999 were deeply flawed – primarily due to the absence of secret balloting in many constituencies – but did not lead to chaos. District elections in 2001 and national elections in 2003 showed gradual progress. Burundi held local elections in June 2005 against an unsure backdrop but these led to sounder national elections later in the year.⁹⁴ It had the advantage of learning from less successful polls in June 1993, which had inflamed ethnic tensions domestically and in neighbouring Rwanda.

Other experiences illustrate potential dangers. The widespread view that 1987 local elections in Indian-administered Kashmir were rigged contributed to a boycott of the 1989 parliamentary elections and the flaring up of a violent secessionist movement. Algeria’s local elections in 1990 were seriously rigged and boycotted by the centrist parties. Despite the rigging – and probably because of the boycott – the fundamentalist FIS won decisively. When it also won national elections the following year, a military coup kept it from taking power, and democracy was suspended for years.

In Bosnia in June 1996, Crisis Group monitored Mostar’s city elections and recommended that the general elections scheduled for September be postponed and that the Organisation for Security and Cooperation in Europe (OSCE) “should not preside over an election which will only lend a sheen of democratic legitimacy to a process neither fair nor free”.⁹⁵ The polls took place and led, as the then OSCE Chairman in Office Flavio Cotti had warned, to a “pseudo-democratic legitimisation of extreme nationalist power structures”.⁹⁶

There is no universal argument against holding local elections before national ones, even if execution is likely to be flawed. Because local elections generally have lower stakes than national ones, they can build confidence among the parties, provided they are reasonably honest as by and

⁸⁹ “There is a strong risk of political collapse in Nepal: EU Troika”, nepalnews.com, 6 October 2005.

⁹⁰ European Union press statement, Kathmandu, 6 October 2005.

⁹¹ “Nepal will collapse without reconciliation: Moriarty”, *Kathmandu Post*, 8 November 2005.

⁹² Benjamin Reilly, “Postconflict elections: Constraints and Dangers”, *International Peacekeeping*, vol. 9:2, Summer 2002, p. 122. Crisis Group recommended a similar approach in Iraq, arguing that local elections could be a viable interim solution until the security situation permitted national elections. Crisis Group Middle East Report N°33, *Iraq: Can Local Governance Save Central Government?*, 27 October 2004; see also Robert

Malley and Joost Hiltermann, “Think small in Iraq”, *The New York Times*, 30 November 2004.

⁹³ Benjamin Reilly, op cit.

⁹⁴ Crisis Group Africa Briefing N°31, *Elections in Burundi: A Radical Shake-up of the Political Landscape*, 25 August 2005.

⁹⁵ Crisis Group Europe Report N°14, *Why the Bosnian Elections Must Be Postponed*, 14 August 1996.

⁹⁶ Crisis Group Europe Report N°42, *Doing Democracy a Diservice: 1998 Elections in Bosnia and Herzegovina*, 9 September 1998.

large was the case in Rwanda and Burundi. However, if they are dishonest or heavily boycotted, they are more likely to inflame a conflict and reduce the chances for viable national elections, as illustrated in Algeria and Kashmir. Sri Lanka, which has continued to hold elections of all kinds through great instability, offers less clear lessons.

Given the confrontational circumstances of Nepal's proposed polls, it is reasonable to anticipate they will not advance conflict resolution or successful general elections. The relative rarity of local elections in conflict situations means there is no clear pattern of empirical evidence but the royal government is not approaching them as an exercise in consensus building or conflict resolution. The most direct parallel to Nepal may be Pakistan under President Musharraf, where the progression from tainted local polls to tainted general elections provided a democratic facade to authoritarian rule. Nepal's royal government has no doubt studied the Pakistani model for using local elections to pave the way for a tame parliament.⁹⁷

D. DON'T JUMP THE GUN

Elections are indeed an essential part of any democratic system, but only one part. Experts in democratisation have cautioned against the "very high expectations for what the establishment of regular, genuine elections will do for democratisation" and the assumption that "elections will be not just a foundation stone but a key generator over time of further democratic reforms".⁹⁸ The assumption that elections are a democratic panacea for post-war recovery is also misleading.

Premature elections are particularly dangerous, often inflaming conflicts rather than helping to resolve them, especially if participation is likely to be limited. For example, experts at the Carnegie Endowment for International Peace cautioned against hasty elections in Iraq, noting that "if elections are rushed and held without adequate political participation, they can provoke political conflict, distort emergent processes of political representation, and aggravate rather than heal societal divisions".⁹⁹

Nepal is far from the only country where early elections have threatened further violence. In the run-up to Liberian presidential elections in 2003, Crisis Group called for the postponement of an unfair vote designed to preserve the status quo under Charles Taylor until a campaign unhindered by violence and intimidation became possible.¹⁰⁰ In March 2005, Crisis Group argued that certain elements needed to be in place before Côte d'Ivoire's presidential (October) and parliamentary (December) elections were to take place. These included implementation of the disarmament, demobilisation and reintegration (DDR) program, voter registration and a prior referendum on a key constitutional article determining presidential eligibility.¹⁰¹ These conditions were not met, and the elections were not held. More recently, Haiti's elections were postponed because of factors including bad timing (Christmas holidays), poor preparations, insecurity, corruption and lack of reconciliation between the political parties within the transition process.¹⁰²

It could be argued that Nepal's polls should not be compared to those in other war-ravaged countries: elections were held earlier during the Maoist insurgency, and the government asserts that state structures remain largely intact. However, King Gyanendra himself has recognised that Nepal has been close to becoming a failed state and based his call for elections on an "improved security situation".¹⁰³ While his ministers have repeated the failed state warning,¹⁰⁴ claims that security has improved ring hollow after the violent disarray following the end of the Maoist ceasefire.

¹⁰⁰ Crisis Group Africa Report N°62, *Tackling Liberia: The Eye of the Regional Storm*, 30 April 2003.

¹⁰¹ Crisis Group Africa Report N°90, *Côte d'Ivoire: The Worst May Be Yet to Come*, 24 March 2005.

¹⁰² See Crisis Group Latin America/Caribbean Briefings N°8, *Can Haiti Hold Elections in 2005?*, 3 August 2005 and N°9, *Haiti's Elections: The Case for a Short Delay*, 25 November 2005. Crisis Group Senior Vice President Mark Schneider warned that "empty elections that produce a government with little legitimacy could drive Haiti into permanent failed state status, run by drug and criminal networks". "Q&A: Haiti's security dilemma", BBC News, 5 January 2006.

¹⁰³ His Majesty Gyanendra Bir Bikram Shah Dev, "Address to the Thirteenth Summit of the Heads of State or Government of the South Asian Association for Regional Cooperation (SAARC)", Dhaka, 12 November 2005.

¹⁰⁴ For example, "Polls to stop country from becoming a failed state: Lama", nepalnews.com, 15 January 2006.

⁹⁷ Crisis Group Asia Briefing N°43, *Pakistan's Local Polls: Shoring Up Military Rule*, 22 November 2005.

⁹⁸ Thomas Carothers, "The End of the Transition Paradigm", op. cit., p. 8.

⁹⁹ Marine Ottaway and Thomas Carothers, "Avoiding the Dangers of Early Elections in Iraq", Carnegie Endowment Policy Brief 27, October 2003, p. 7.

V. THE INTERNATIONAL ROLE

In the aftermath of the municipal polls – and assuming the parties and Maoists do not gain sufficient momentum to topple the current government and general elections are announced – the international community could be tempted to accept the new status quo. Whatever the degree of resignation or frustration in certain diplomatic quarters, there will be little appetite for unproductive opposition.

India, which strongly demanded a return to democracy following the royal coup, may choose to be satisfied that the king has at last produced the “roadmap” which Prime Minister Singh insisted on in Jakarta in April 2005. Following Foreign Secretary Shyam Saran’s December 2005 visit to Kathmandu, one analyst concluded India has decided to reengage with the royal government: “Shyam Saran’s visit is a clear indication of this change. Pakistan has already made a heavy-handed offer to replace any aid withdrawn by India. Now security factors have become more important for India than the restoration of democracy in Nepal”.¹⁰⁵

However, for the time being at least, there has been no dramatic softening of Delhi’s stance. The messages conveyed by Shyam Saran privately to the king appear to have been little different from those given in public. He reiterated that India is not opposed to the monarchy *per se* and is ready to help the king engage the political parties and Maoists in constructive dialogue. Discreet back-channel diplomacy has been used to convey similar messages rather than to pave the way for a change in course.¹⁰⁶ India is not willing to push too hard for a settlement if it means intervening directly in Nepal’s affairs. The greatest danger may be that its willingness to engage all three major players could slowly solidify into a new three-pillar policy for stability – a stalemated palace-parties-Maoists triangle that could be the basis for a durable form of disorder. Nepal’s domestic political dynamics do not, however, suggest a stable balance of power is likely.

Although the international community has not had a receptive audience, it has presented a slightly more united front. Days before the Maoist ceasefire was due to expire, UN Secretary-General Kofi Annan let it be known that he “deeply regrets that despite the appeal of so many national and international voices, including his own, no progress appears to have been made towards a mutually agreed truce between the Government of Nepal and the

CPN-M”.¹⁰⁷ This was immediately followed by an EU presidency statement supporting the UN’s offer to assist in brokering and monitoring a ceasefire.¹⁰⁸ Following a lengthy television interview with the Indian ambassador, British envoy Keith Bloomfield commented that “I was struck by the closeness of our analysis ... we are very close”.¹⁰⁹ The Nepal mission of the Office of the High Commissioner for Human Rights (OHCHR) seems to be encouraging both armed parties to improve their behaviour and take more seriously their obligations under international humanitarian law.

The 19 January crackdown also appears to have encouraged two important – but generally silent – countries to speak out. Japan, Nepal’s largest bilateral donor, has generally refrained from commenting on political developments and been seen as sympathetic to the monarchy. But it expressed grave concern at the arrests, urging that “political leaders be released and that the freedom guaranteed by the constitution [be] restored promptly”.¹¹⁰ China, to which the palace had looked for support as its relations with other states cooled, noted that it is following “changes in Nepal’s political situation” and called on “all parties” to narrow their differences through dialogue.¹¹¹ However laconic the statement, it implies a significant shift in approach, signalling that China may not oppose the coordinated action of countries which have been more vocally critical of royal rule and more insistent on seeking a democratic peace settlement.

A focus on sustained military action against the Maoists still sets the U.S. apart from Indian and European concentration on political engagement. Washington refused to view the Maoist ceasefire as an opening for peace, instead insisting that every indication of compromise was designed to send false signals.¹¹² Nevertheless, the U.S. indirectly urged the king to consider reciprocating the truce: “We may not have said so as directly as some others but in diplomatic language our message was perfectly clear”, explained a senior

¹⁰⁵ Sathish Kumar, “Rapprochement with Nepal: India’s Security Concerns”, Institute of Peace and Conflict Studies, New Delhi, article no. 1,917, 3 January 2006.

¹⁰⁶ Crisis Group interviews, New Delhi and Kathmandu, January 2006.

¹⁰⁷ “Statement Attributable to the Spokesman for the Secretary-General”, New York, 30 December 2005.

¹⁰⁸ “European Union Presidency Statement on a Mutual Ceasefire”, Kathmandu, 31 December 2005.

¹⁰⁹ “Bloomfield doubts fair polls: Report”, Nepalnews.com, 11 January 2006.

¹¹⁰ “Statement by the Press Secretary/Director-General for Press and Public Relations, Ministry of Foreign Affairs, on the Arrest of Persons concerned with Political Parties in the Kingdom of Nepal”, 19 January 2006, <http://www.mofa.go.jp/announce/announce/2006/1/0119.html>.

¹¹¹ Statement by Kong Quan, Chinese Foreign Ministry spokesman, 24 January 2006, <http://www.fmprc.gov.cn/ce/cenp/eng/fyrth/t232764.htm>

¹¹² Crisis Group interviews, U.S. diplomats, Kathmandu and New Delhi, September and December 2005, January 2006.

diplomat.¹¹³ American and Indian alignment on Nepal policy was emphasised during Under Secretary of State Nicholas Burns's visit to New Delhi. Speaking alongside Shyam Saran at a joint press conference, he observed that "the United States is very concerned by the actions of His Majesty the King....We have issued a statement frankly very critical of that. We are equally critical, of course, of the Maoists....So what India and the United States can do together is to try to assert a joint appeal for peace and for democratic reconciliation in Nepal, which is very important".¹¹⁴

For the king, the municipal polls are a test of strength against not only the parties and Maoists but also the international community. So far he has faced down calls for compromise. His advisers probably feel they have successfully called everyone's bluff, bar some ruffled diplomatic feathers and temporarily strained relations. If the international community is to play a meaningful role in encouraging conflict resolution, it will have to revise its approach. As a former royalist prime minister put it:

As well as the king and the political parties, Nepal's friends must recognise that their policies to date have failed. If they want to move forward, they must use fresh thinking and take advantage of new openings – even the twelve-point agreement [between the Maoists and the parties], which I would prefer not to have happened, could be a useful starting point".¹¹⁵

The international community needs to make clearer to the king that it will not accept his effort to turn Nepal's political clock back a generation. Donors are understandably concerned that aid to the poorest and most vulnerable population groups should not be used for political leverage.¹¹⁶ In any case, crude restrictions on aid might not have much impact: the economy is already in serious trouble, though the government seems prepared to tighten its belt and ignore the warning signs.¹¹⁷ However, given not only the political situation but also the state's lack of capacity to implement development projects, it is time to reconsider the benefits of channelling aid through the government, whether as general or sectoral budget support. There are also forms of leverage that would effectively

focus minds in the palace and among its supporters without hurting the people at large. Targeted sanctions against the royal family, ministers and senior security officials – such as visa bans and limitations on contacts – might cause enough short-term discomfort to prompt a rethink.¹¹⁸

¹¹³ Crisis Group interviews, U.S. diplomat, December 2005.

¹¹⁴ "US, India joint appeal on Nepal", *The Kathmandu Post*, 22 January 2006.

¹¹⁵ Crisis Group interview, Kathmandu, January 2006.

¹¹⁶ Crisis Group interviews, diplomats and aid agency staff, Kathmandu, January 2006.

¹¹⁷ Nepal is in its second year of negative per capita GDP growth, and inflation has risen to over 8 per cent. On the economic pressures facing the royal government, see Crisis Group Asia Briefing N°41, *Nepal: Beyond Royal Rule*, 15 September 2005.

¹¹⁸ See Crisis Group Asia Briefing N°36, *Nepal: Responding to the Royal Coup*, 24 February 2005.

VI. CONCLUSION

Postponement of the elections and government willingness to consider a ceasefire could yet form the basis for productive tripartite talks. But this is a crucial test for the international community. Gyanendra has had the upper hand, and if he manages to brush aside opposition to the polls, his calculation that the outside world has no appetite to push too hard for democracy and peace could prove correct.

The dangers of holding local elections in a context of armed conflict illustrate the benefits of seeking informed advice and reconsidering the current plan. The parties have made clear they are still willing to talk – as are the Maoists – on the basis of minimum conditions which do not include abolition of the monarchy. No one can be sure if the Maoists are sincere about dialogue and compromise but the only way to test them is by their actions. Closing the door to a possible peace process on the assumption that they will not deliver leaves continued conflict as the only option – one that has already been tried with no success. Pursuing it further would likely increase the risk of Nepal's political collapse and certainly increase the suffering of its people.

Kathmandu/Brussels, 31 January 2006

APPENDIX A

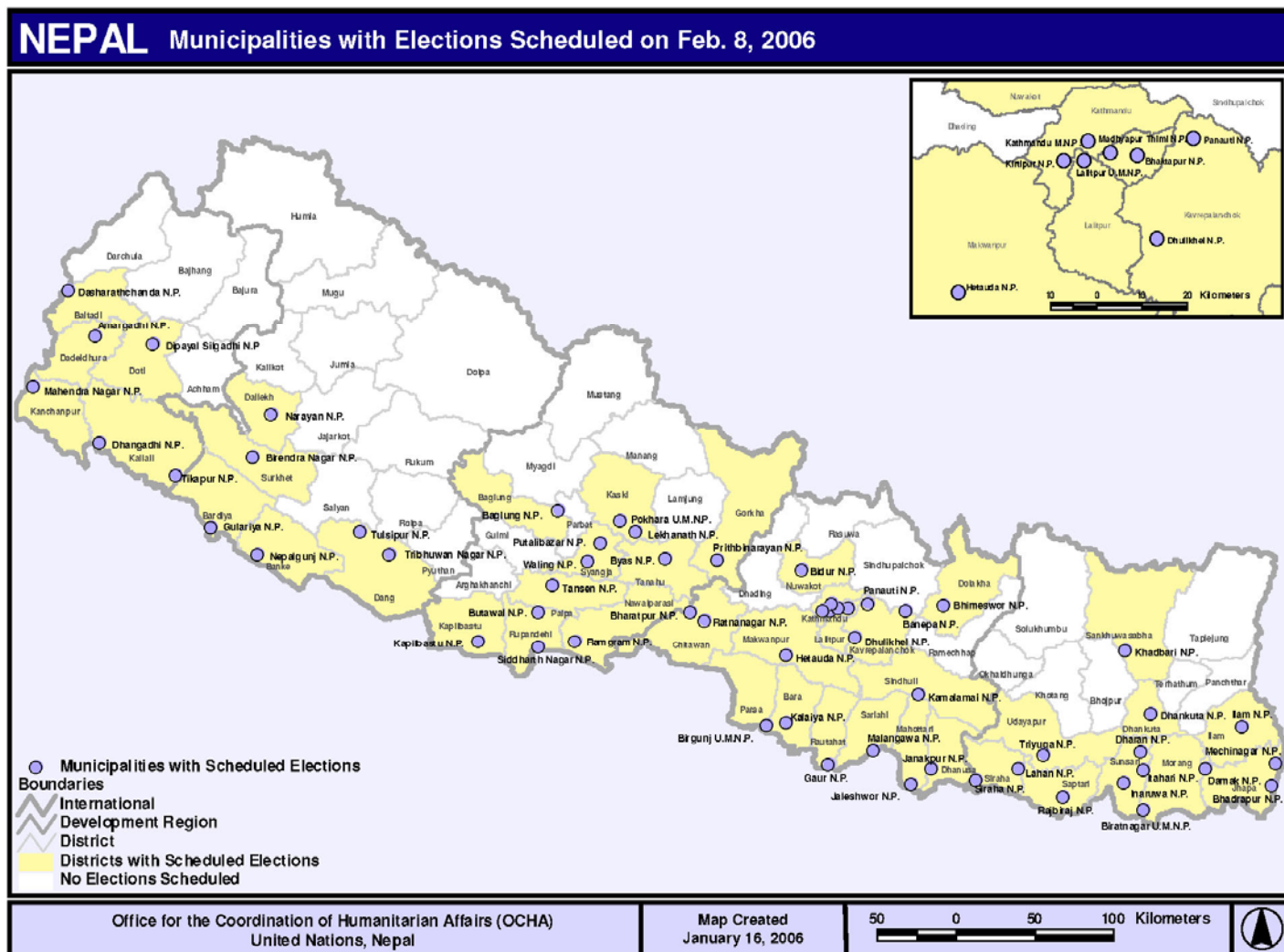
MAP OF NEPAL



Courtesy of The General Libraries, The University of Texas at Austin

APPENDIX B

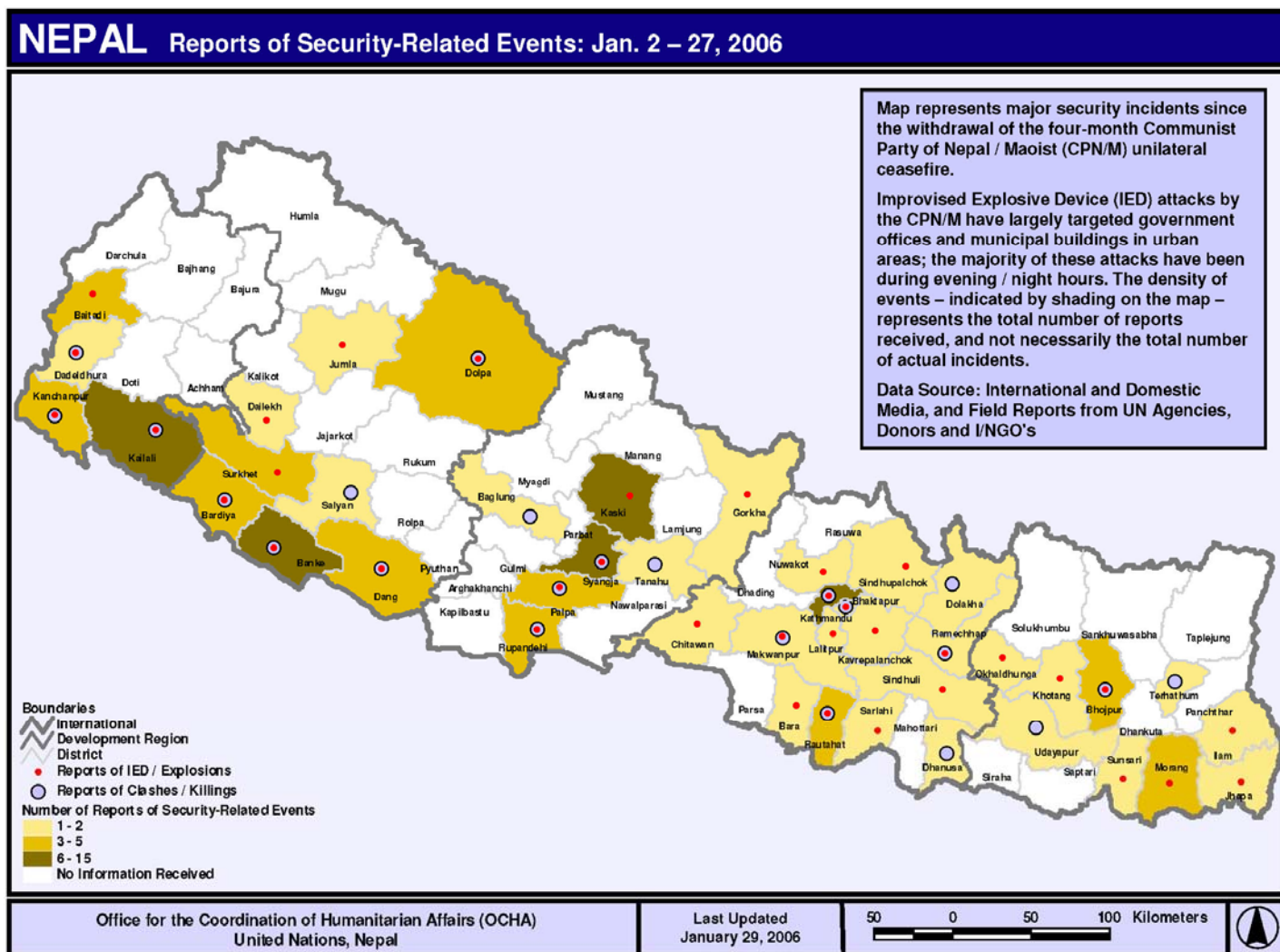
MAP OF MUNICIPAL POLL LOCATIONS



Map reproduced courtesy of the United Nations Office for Coordination of Humanitarian Affairs, Nepal

APPENDIX C

MAP OF JANUARY 2006 SECURITY INCIDENTS



Map reproduced courtesy of the United Nations Office for Coordination of Humanitarian Affairs, Nepal

APPENDIX D

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Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, 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.

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