

## Nepal: Peace Postponed

### I. OVERVIEW

Nepal's progress toward lasting peace is seriously but not yet irreparably faltering. A further postponement of constituent assembly (CA) elections reflected the weak implementation of the November 2006 Comprehensive Peace Agreement (CPA) and lack of will to follow the agreed process. Leaders have now vowed to forge a new consensus and agreed to hold the elections by mid-April 2008 but have yet to address the problems that led to past postponements. Suspicions among the parties – especially between Nepali Congress (NC), which dominates the government, and the Maoists, who remain outside – are echoed in ebbing public confidence: whatever promises they hear, most voters believe the politicians prefer to stay in power rather than face the electorate. All parties urgently need to inject new momentum into the peace process and take steps to win back trust and earn legitimacy. The international community can support them in this but must also maintain pressure to keep the polls and peace process on track.

The peace process from the outset was based more on a convergence of interests than a common vision. The threat of a resurgent monarchy prodded mainstream parties and Maoists into alliance, but their major remaining shared interest is continuation in power. Even when elections seemed to be on track, no party paid more than lip service to calls for broader public participation in the constitutional process. Popular pressure to move the process ahead is not likely to worry political leaders. Civil society is divided, and the public has few openings to channel its pressure; the ultimate option of a mass movement is, for now, improbable. Constructive proposals have little outlet; parliamentary opposition is weak and without constitutional standing.

The peace plan was not inherently flawed, but it depended on all parties reforming their political behaviour, a process that should have been founded on implementing commitments starting from the November 2005 agreement between the mainstream parties and the Maoists. It also left many crucial issues to be negotiated at an unspecified date. The erosion of a common platform is not surprising. The consensus on power sharing that existed is foundering on partisanship and disputes over patronage. The prospect of impending polls has added to manoeuvring and further

weakened unity. Although all parties are still talking, mutual recrimination has grown.

Other options are now likely to come into focus, although none yet appears attractive enough to win critical support. Talk of a new “nationalist alliance” – with Maoists and renegade NC leaders courting the royalist constituency – may for now be a bargaining tactic but underlines the seven-party grouping's fragility. This has constitutional ramifications: the interim constitution cannot function without seven-party unity. Those in power, as well as the palace and the army, might not be disappointed with another deferral of elections but prolongation of the current limbo has little to offer the nation. It could provide stability in Kathmandu and a new lease on life for a modified power-sharing formula but the capital's political games increasingly fail to reflect the realities of a turbulent country.

Holding an increasingly fractious nation together requires more than reapportioning the Kathmandu spoils. It needs action rather than the usual quick-fix backroom deals which command less and less credibility. The two armed forces have started to exert greater influence on the positions of the sides; neither has been defeated, and each would like to establish its own red lines. Maoist fighters have already left the cantonments in large numbers; on completion of the UN verification process, thousands of disqualified personnel will be discharged with no realistic plan for how to deal with them. Maoist parallel structures, notably the Young Communist League (YCL), which is already led by People's Liberation Army (PLA) commanders, still hold sway over much of the country. Elsewhere identity-based movements have left political calculations in flux and law and order in tatters. The resignation of Madhesi parliamentarians, including an NC minister, to form a new party suggests the Tarai unrest may finally be impinging on national power games.

In this inherently unstable situation, Nepal risks slipping back toward renewed conflict even if no party actively seeks it. Two intact armies remain ready to fight. This fundamentally adversarial structure blocks other confidence-building efforts. A disillusioned public will have little appetite to defend parties which have betrayed their promises to reform and seek a new mandate. Many fear the opportunity for securing peace and institutional change is already lost. More militant groups stand to gain.

The one hopeful sign is growing recognition in all parties that implementation of existing agreements is a priority. If this is coupled with the will to create conditions for holding elections by mid-April 2008 as promised, it could produce a genuine popular endorsement and stabilise the country.

The seven parties (government and Maoists) should:

- ❑ preserve unity through a combination of immediate confidence-building measures, jointly reaffirming the CPA's shared vision, developing consensual decision-making procedures and transparently negotiating a durable power-sharing deal to bring the Maoists back into government, including if necessary a cabinet reshuffle and discussions on the shape of a post-electoral consensus government;
- ❑ demonstrate commitment through behaviour – with the Maoists halting parallel activities and other abuses of the CPA, and other parties setting an example by fulfilling their own commitments in a non-partisan fashion;
- ❑ engage with other parties represented in the legislature or registered for the elections and with civil society to build broader support for the electoral and peace process and avoid charges of narrow self-interest, including considering specific mechanisms for consensus building;
- ❑ review progress on implementing the CPA and subsequent agreements, establish mandated committees (and report to the public regularly on their progress) and tackle the gaps in earlier negotiations by initiating discussions on such issues as security sector reform (SSR);
- ❑ review the role of the NC-led Ministry of Peace and Reconstruction and consider forming an all-party mechanism to oversee the peace deal, backed by an independent monitoring body;
- ❑ refocus on the constitutional process, developing mechanisms to bring in the public in order to ensure it is meaningful and convince Nepalis elections are serious;
- ❑ develop a viable public security plan to rebuild confidence in the police, uphold the rule of law and end impunity whether of state or non-state actors and reestablish local government based at a minimum on seven-party and community consensus; and
- ❑ increase the focus on political inclusiveness, starting by implementing agreements on representation of women, *janajatis*, Madhesis, Dalits and other groups.

International actors should:

- ❑ agree on a common message pressing for a realistic roadmap to elections, offering support and reminding all that international recognition is conditional upon demonstrated commitment to peace and democracy;
- ❑ UN Mission in Nepal (UNMIN) should continue to clarify its role, improving communication with the public to counter criticism about lack of transparency; and
- ❑ donors should only support projects with all-party approval and demonstrably in line with peace process goals, including strengthening local governance to contribute to confidence-building and service-delivery to local communities to convey the sense of a peace dividend.

## II. AN UNSUSTAINABLE STASIS

### A. WHAT HAPPENED TO THE PEACE PROCESS?

Constituent assembly elections have twice been postponed.<sup>1</sup> Following the failure to meet a June 2007 target, the 22 November date was abandoned on 5 October. The Maoist demands, which were the most immediate cause of the November postponement, have led to signs of a political reconfiguration within the seven-party grouping.<sup>2</sup> In temporary alliance with the UML, the Maoists used the interim legislature to pass non-binding, but symbolically significant, resolutions calling for immediate declaration of a republic (with gradual implementation) and a fully proportional electoral system (not yet clearly defined). As

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<sup>1</sup> On the political tensions that led to the October 2007 postponement, see Crisis Group Asia Briefing N°68, *Nepal's Fragile Peace Process*, 28 September 2007. Other recent Crisis Group reporting on Nepal includes Asia Reports N°128, *Nepal's Constitutional Process*, 26 February 2007; N°132, *Nepal's Maoists: Purists or Pragmatists?*, 18 May 2007; and N°136, *Nepal's Troubled Tarai Region*, 9 July 2007. Nepali translations of all these reports are now available at [www.crisisgroup.org](http://www.crisisgroup.org).

<sup>2</sup> In this briefing the term “seven parties” refers to the six mainstream parties and the CPN(M). The “six parties” are the continuation of the Seven-Party Alliance, whose membership was reduced when the Nepali Congress and Nepali Congress (Democratic) reunited. Past Crisis Group reporting referred to this alliance as the SPA; “SPA” is now confusingly used in the Nepali press to refer to either the six-party grouping, or the six plus the CPN(M) – although there is no “alliance” binding them. The six parties are the Nepali Congress (NC); Communist Party of Nepal (Unified Marxist-Leninist, UML); Nepal Sadbhavana Party (Anandidevi, NSP (A)); Janamorchha Nepal; Nepal Workers and Peasants Party (NWPP); and United Left Front (ULF).

the deadline to amend the interim constitution (which had specified elections should not be later than 15 December 2007) expired, party leaders agreed on a new, mid-April 2008 date but have continued negotiation on other issues.

The current limbo is not hurting the major political parties, or indeed, other powerful institutions. The readiness of the six parties in government to accept the postponement suggested quiet relief rather than anger at Maoist obstruction, although the UML appeared ready to go to the polls, and frustrations on other issues (such as Maoist foot-dragging on land returns) increased. Deferring the verdict of a sceptical electorate will not cause major tensions within parties and will particularly please sitting members of parliament (MPs) concerned about their personal prospects.

Further delay also suits the palace, since the king is likely to regain some respect just by his continued silent presence. The army has benefited from staying out of political machinations, at least in public, and from projecting a solid image as a functional institution. Both palace and army stand to gain from resurgent nationalist sentiment by playing on their reputations for protecting state sovereignty against external influence. Although sidelined by the interim constitution and formally disowned by major parties, the palace is a factor in all calculations. Parties, including the Maoists, have maintained discreet contacts: in the delicate web of alliances that shape the political scene, the king is a power-centre none can ignore and many would like to woo. The army, Nepal's most powerful single institution, has tilted slightly away from the king and toward the Nepali Congress; a more decisive shift in its stance could alter the balance of power.

For all their threats of mass public action or having their PLA fight on for decades, the Maoists' options are limited. They can remain within the political process, while simultaneously mobilising extra-parliamentary pressure; this could cause great disruption but what it would achieve, other than further alienating moderate opinion, is unclear. Building critical pressure would require making alliances with marginalised groups and others dissatisfied with the six-party government; while possible, a significant shift in Maoist attitude would be needed to win the trust of potential allies.

Resuming all-out conflict remains a possibility but the leadership's clear antipathy against returning to the jungle – with the hope, at best, of eventually regaining the pre-2005 stalemate and less chance than ever of forging alliances – weakens the credibility of this ultimate threat. Plans for an urban-based campaign are more credible, since the ceasefire enabled the Maoists to build their presence in the capital and other major centres, but do not offer the hope of a decisive political advantage, much less a sustainable victory. The YCL can assert local influence,

even in Kathmandu, but the strategic leverage it offers is not straightforward: its size and extent of deployment act as a practical constraint on Maoist options if other parties are not willing to cooperate in demobilising it and finding alternative employment for its cadres.

The impasse highlights the structural weaknesses of the peace deal. Simply implementing the CPA is not sufficient: the agreement is sketchy in many areas, its architecture vague and some provisions (for example, on land returns and reform and the security sector) cannot be put into practice without further negotiations. The low-trust atmosphere following postponement of the November polls is not encouraging for implementation of existing agreements let alone a start on the new talks needed to address neglected topics.

## B. A NEW CONSENSUS?

The governing parties and the CPN(M) agree they should continue to work together; most have described the current challenge as one of forging a “new consensus”. The consensus that underlay the peace deal had survived until the Maoist ultimatum of September 2007 but was weak in three respects. First, it rested on immediate common interests rather than a shared long-term vision.<sup>3</sup> Secondly, it depended on a roughly equitable power-sharing deal, which has been thrown out of balance by NC dominance of the government and the Maoist walk-out. Thirdly, it was predicated on the idea that the then-SPA and Maoists more or less were the political spectrum. From April 2006 until the end of the year, this was a plausible working assumption (royalists of any stripe were tainted, and other groups had yet to flex their muscles), but since early 2007, the mainstream parties/Maoist combine has looked as if it is increasingly less representative of the nation's political character.

Still, the basic structure is intact, and no one can afford to break it. The Maoists cannot go it alone; nor can the other parties hope to govern without Maoist consent. Although constituent parties are tempted to explore alliances beyond the current configuration, none yet looks capable of supplanting it. A renewed consensus remains the logical first choice and is achievable.

**Principles and policies.** The policy basis for a revived consensus depends on resolving differing perspectives over the long-term goal of the peace process. There is significant

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<sup>3</sup> For an analysis of the contingent nature of the twelve-point agreement that first brought the mainstream parties and Maoists together, see Crisis Group Report, *Nepal's New Alliance*, op. cit.; on the convergent interests underlying the CPA, see Crisis Group Report, *Nepal's Peace Agreement*, op. cit.

common ground. For example, the Maoists still point out that their understanding of a “democratic republic” is distinct from that of other parties but belated discussions on the shape of a federal republic suggest the gaps can be bridged. The CPA and interim constitution have already chalked out the basis for agreement on the fundamental principles of a new constitutional settlement; further work on state restructuring could give these principles a more concrete form.

**Power.** The common interest in preserving a grip on state power is the best motivation for revisiting its distribution. The NC hold on the top positions, already a source of annoyance to the other parties, has been buttressed by the party’s increased parliamentary weight since its September 2007 reunification. The NC can block any constitutional amendment requiring a two-thirds majority (something that was not a given when the Deuba-led NC(D) was able to take an independent stance), although it lacks an interim legislature (IL) majority and thus runs the risk of further defeats on parliamentary resolutions – as well, ultimately, of being left as a minority administration should the UML withdraw support.

Apart from the prime ministership, the NC occupies four of the five key ministries: home, finance, defence and peace and reconstruction (which must sign off on key decisions to implement the peace process). The UML-led foreign ministry has in effect been bypassed, with the prime minister taking major decisions and meeting ambassadors and visiting officials separately for all critical consultations. The NC’s twin control of the finance and peace and reconstruction ministries has ensured a stranglehold on the release of post-conflict relief funding and encouraged the tendency to view it as one more partisan bargaining tool. The shape of government does not help: the concentration of powers in the prime minister’s office, especially given the lack of a separate head of state and weak checks and balances,<sup>4</sup> makes it the only meaningful position in government and encourages an incumbent to do almost anything to retain it. In short, the structure and functioning of government are in practice inimical to the stress on consensus and cooperation.

All parties need to use their stake in government to take care of their own constituencies: this is part of the political game and applies to the CPN(M) as much as to other parties. The interim power-sharing deal left both the UML and CPN(M) with little influence and patronage in comparison to the NC – “just the crumbs off their table”, in the words of one analyst. The Maoists are probably not looking for a veto so much as a reasonable share in power and the chance to tend to their core support base. Aside from headline political

demands, their key concerns relate directly to delivering what their supporters need: cantonment payments and facilities, compensation for martyrs’ families, resolution of disappearances and support for their injured.<sup>5</sup> The Maoists’ 20 August 22-point demand and 18 September walk-out from government were widely interpreted as desperate attempts to block an election they feared. However, they were also a successful gambit that resulted in the release of three more months of delayed cantonment payments – a significant sum which may have approached \$4.4 million (Rs.279,000,000), although the government pushed to reduce payments in line with the lower numbers of personnel passing verification.<sup>6</sup>

**Parties.** Of the six mainstream parties, only the NC and UML have significant weight. Although the breakaway NC (Democratic) rejoined in September, the NC remains disunited and ill-disciplined. Senior leaders have spoken out repeatedly against its adoption of a republican platform; the prime minister’s daughter, Sujata Koirala, has led attacks on the home minister and calls to scrap the interim constitution and return to the 1990 set-up. The UML, more than ever the fulcrum of the alliance, remains a delicate balance of internal interest groups. More confident than others in its electoral prospects, it has sometimes sided with the NC against the Maoists and sometimes the other way around. Many of its senior members expressed discontent at voting with the Maoists in favour of the immediate declaration of a republic.

The Maoists have lost ground domestically and are close to squandering the international legitimacy they fought hard to gain. They do face concerted opposition and a hostile media but this is partly a result of their own actions, partly a reversion to old loyalties. The onus is on them to change course before they lose trust irreparably. There are some signs they have realised this and started to take action. But only a serious demonstration of changed behaviour (such as immediately halting intimidation and extortion and starting to dismantle parallel structures) will make sceptical observers sympathetic to their legitimate grievances with the shape of the peace process.

<sup>4</sup> See Crisis Group Report, *Nepal’s Constitutional Process*, op. cit.

<sup>5</sup> “Rastrapatiko chunav samvishansabhapachhi”, interview with Baburam Bhattarai, *Himal Khabarpatrika*, 2 December 2007.

<sup>6</sup> The government is responsible for cantonment infrastructure. It has funded the construction of around three quarters of the required accommodation blocks, but overall facilities remain poor. It agreed to pay a Rs.3,000 (approx. \$50) monthly allowance to each registered combatant, regardless of whether they passed or failed later verification, and backdated to November 2006. The first monthly payment was only released in June 2007, as a lump sum transferred to the CPN(M) rather than as individual stipends. A second tranche of three-month payments was released to Maoist divisional commanders in mid-October.

**The shape of compromise.** Compromise on the two headline demands is possible, as illustrated by the parliament vote. Top Maoist leaders would prefer to push hard for the republican declaration and make concessions on proportional representation; more nationalist leaders view them the other way around. There is also time to cement the deal and make sure it works: the Maoists are now talking of a May 2008 deadline for the republic. A reasonable split between proportional and first-past-the-post electoral systems is likely to be viable.<sup>7</sup> The Maoists are not asking for dominance, however much they trumpet the superiority of their ideology. They are willing to be second or third players but they wish to be recognised as a force and, in their view, the main initiators of the people's movement and the demand for change. They can compromise but not at the cost of self-respect. Those in other parties who want to see them "exposed" or humiliated are an obstacle to progress.

A reshuffle could also be a convenient excuse for the prime minister to drop unpopular ministers; many in the party and beyond are unhappy with the performance of senior figures such as Home Minister Krishna Prasad Sitaula and Peace and Reconstruction Minister Ramchandra Poudel. A new consensus will require clear moves toward a revised political mainstream. The Maoists are not the only ones disillusioned with the old politics; public opinion supports the idea of changing the style, as well as substance, of governance.

## C. RISKY ALTERNATIVES

Elections are still viable; if the seven parties will it, they are technically and politically possible within the new deadline of mid-April 2008. Technical viability rests primarily on managing changes in the electoral system: the chief election commissioner has warned his staff will need 110 days to prepare *after* new legislation is in place reflecting any alterations in the mixed system, quotas and regulations for parties to implement. Continued wrangling over all these aspects suggests meeting this timetable will be tough, even if a deal is agreed. In the meantime, alternative scenarios are being discussed. Each bears its own risks, as does the fragile general situation.

### 1. "Conversion"

Many members of the parties represented in the interim legislature are tempted by the idea of extending their

transitional mandate and deferring polls in the medium term. Parties beyond the six in the government and the Maoists might support this if they were brought into a broader coalition government. Politicians have for many months been quietly floating an option to convert the interim legislature (IL), possibly with the addition of some members to better reflect diversity, into a constituent assembly. Others have suggested that a roundtable or broader national conference could be called as a new, more representative (but still unelected) body. Either such an assembly or the IL, or a combination of the two, could delegate drafting to a separate commission. Ratification could be achieved via a referendum, through a vote during the first sitting of a newly elected legislature or simply, as in 1990, implicitly through mass participations in parliamentary elections under the new constitutional dispensation.

Supporters of such alternatives argue that they would ensure stability and are not inherently undemocratic: there is no universal norm that constitutions must be drafted by a specially elected body, and ratification can take various forms. The danger is that neither the constitution drafters nor the government would retain sufficient legitimacy to function, let alone produce a constitution that could stand the test of time, any better than Nepal's past five efforts. More specifically, it would be difficult, and perhaps dangerous, to settle the sensitive question of the monarchy's future without a clear public mandate. The army has let it be known that any attempt to establish a republic without a public vote (whether for the constituent assembly or a separate referendum) would invite a revolt. The king and his supporters would not accept an unfavourable decision from an unelected body; confrontation would be almost inevitable. In any case, avoiding elections would be considered duplicitous by outside observers. A frustrated ambassador commented:

Nobody's interested in elections – they all want a fix... The parties, and individual MPs, are all scared of losing seats. 60 per cent of the current crop of NC MPs may go. They're the ones who started the "conversion" idea – it's a fraud and a betrayal, a cynical finesse.<sup>8</sup>

### 2. Elections without the Maoists

Even though the Maoists need to understand they have no veto over elections, trying to force them without Maoist participation would likely invite disaster. The idea has been floated by Prime Minister Koirala but most other leaders, including those of the UML and the NC's Sher Bahadur Deuba, have rejected it. Indian diplomats, however, believe the threat must be made seriously:

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<sup>7</sup> The 70:30 split publicly proposed by former U.S. President Jimmy Carter, who visited Kathmandu in late November, may be an acceptable division. It builds on earlier proposals, including the 60:40 split originally suggested by the UML and endorsed by Indian prime ministerial envoy Shyam Saran.

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<sup>8</sup> Crisis Group interview, Kathmandu, November 2007.

If we get to a situation where the political parties do want to go ahead with elections, and the Maoists are implacably opposed, then the international community should have no hesitation in taking a stand with the parties. We have no doubt that if the political parties tomorrow wanted to regain legitimacy with elections we must support them. The Maoists cannot have a veto on the process, and saying they must be on board is to grant them a de facto veto.<sup>9</sup>

There is wide sympathy for the principle that no side should have a veto on progress (whether the Maoists or another force, such as the NC or the army, whose condition-setting is treated with considerably more indulgence). However, the reality is that any side with the capacity to block peaceful progress does have a de facto veto: the process will always require assuaging the suspicions that would tempt anyone to wield that veto irrevocably. To call for elections in the face of Maoist opposition is in effect to threaten war; regardless of moral questions, there is no evidence to suggest a return to all-out conflict would be any more successful than in the past. Frustration with the royal army's failure to dent Maoist strength was a major cause for New Delhi's preference of a political solution to the conflict in the first place. Without a viable plan for victory, talk of military pressure will strengthen Maoist militants, reduce the options of those willing to argue for compromise and invite confrontation without necessarily making elections any more feasible.

### 3. Risks in any case

Political players may feel comfortable but the sensation is deceptive. The current configuration can only be sustained for a limited period; even in the medium term the risks of drift are serious. These risks include:

**Resumed conflict.** Neither a return to full-scale conflict nor a coup (whether by the Maoists, who retain plans to seize power, or by "nationalist" forces, led by the army, who have talked up the option of a "democratic coup") is immediately likely but an unintentional slide back to war is possible. Apart from the continued co-existence of two standing armies, the completion of the UN's verification of Maoist combatants will present a challenge. More than 10,000 personnel are likely to fail the verification. Plans for the rehabilitation of the thousands who will be discharged from the cantonments are limited and assume they will be content with vocational training and later job opportunities. More likely, they will either add to the numbers of the militant discontented or be redeployed by the Maoists in new roles.

**Maoist splits.** There are already tensions within the movement. Some opponents would welcome a split which locked some leaders into the democratic process and left a small band of diehard renegades to defeat militarily. But this is a dangerous course; attempts to engineer a split would likely strengthen more militant leaders rather than bolster the chances of a stable peace deal. There is no solid evidence to suggest that only a few would choose to fight if forced to choose sides; it is perhaps more likely that the Maoist army's coherence and commitment would be maintained, leaving those calling for peace in a weak minority.

**Mainstream marginalisation.** The peace process gave the parties an opportunity to redeem themselves. The twelve-point agreement was explicit: "The seven political parties, undertaking self-evaluation, have expressed commitment not to repeat the mistakes of the past which were committed while in parliament and in government".<sup>10</sup> They have not used this opportunity well and might be marginalised if politics again becomes a confrontation between more extreme elements.

**Communal tensions.** There is still no coherent plan to deal with ethnic and regional demands. The government's preference for privately negotiating individual deals with troublesome groups has only added to the incentives to resort to unrest. The deal with the Madhesi Janadhikar Forum (MJF) did not sufficiently address grievances (even if it had been implemented, only one section of the MJF itself supported it – other groups saw it as a sell-out), and the tensions that have riven the Tarai show no signs of abating. The emergence of a new front makes a renewed protest movement all but inevitable: this kind of popular mobilisation is the best way for a new party to quickly build support. Without a strategy for inclusive negotiations, the government may try to impose its will by force, an approach that would likely inflame radical sentiment further. Already, the call for an autonomous Madhes has moved from being a fringe proposal to a central demand of formerly moderate leaders.

**Weakening state.** Nepal is not yet a failed state but it may be coming closer. Without steps to reverse the erosion of government capacity and the breakdown of law and order, especially across the Tarai, the ability of Kathmandu to govern a fractious country will be further reduced. Institutions such as the police and judiciary are already dangerously low on morale and public esteem. Local government officials have used mass resignations, strikes and other protests to demand security from the government, complaining that it is impossible for them to carry out their duties.

<sup>9</sup> Crisis Group interview, New Delhi, December 2007.

<sup>10</sup> See Crisis Group Report, *Nepal's New Alliance*, op. cit.

Continuing stalemate is in itself dangerous. The lack of action to address the conditions that allowed the Maoist insurgency to start and flourish remain in place, including economic inequality and the exclusion of many communities from meaningful participation in the state. The perception of injustice is more acute and widespread than ever. The insurgency's legacy has, so far, been to heighten demands without opening a route to their fulfilment and to suggest the utility of armed violence as an entry point to otherwise restricted political space. While the state remains reluctant to grant concessions on substantive issues, it is usually ready to offer impunity for criminal acts, a negotiating stance that enhances the attraction of violent protest. The situation is more complex and volatile than it was before the insurgency – and self-evidently that earlier status quo was itself unstable. High public political awareness has added to the demands made on the state, while its capacity to address them is at a low ebb. The conclusion must be that the current stasis is unsustainable.

### III. THE SCORECARD

#### A. WHAT HAS BEEN DONE

The seven parties deserve credit for shepherding the process this far without any permanent falling out or return to bloodshed, in itself an achievement that many had thought extremely unlikely. The ceasefire has held, with no major violations by either army. Despite continued intimidation, extortion and abductions, Maoist breaches of the CPA have not approached the resumption of full-scale military action, although they have sharply increased since the August 2007 plenum, which adopted a more aggressive stance in the face of the perceived failure of the peace process to deliver results. The basic framework of the peace process was put in place: the interim constitution was promulgated on 15 January 2007, followed by replacement of the revived parliament with an interim legislature incorporating Maoist representatives and formation of an interim government including five Maoist ministers on 1 April. Some steps towards reshaping the state were taken, for example the May 2006 declaration of Nepal as a secular state and gradual trimming of the king's ceremonial duties.

The immediate task of separating and managing the armies has been successful. Although the number of Maoist weapons registered with UNMIN (3,475) was barely a tenth of the number of personnel registered in the cantonments, there is no evidence they have hidden large stores.<sup>11</sup> The

Nepal Army (NA) fulfilled its side of the bargain, placing a similar number of weapons in storage and remaining confined to barracks, apart from fulfilling security duties permitted by the CPA. UNMIN registered 31,152 Maoist personnel in the cantonments and has now completed a round of verification. Although no figures have been officially released,<sup>12</sup> indications are that some 12,000 personnel have not met the criteria for verification, either because of being underage or because they were not part of the Maoists' regular forces before the May 2006 cut-off date. Although there were some incidents involving weapons designated for leadership and camp perimeter security, the Maoists have not removed weapons from storage; the NA has similarly refrained from unauthorised transport of weapons or other activities.

Other steps have also been taken. The distribution of citizenship certificates went rapidly: 2.6 million by the end of May 2007, a largely unsung logistical success. Some initial moves followed the commitment to make state bodies more inclusive, including the pledge to give 33 per cent of government jobs to women; in October 2007, 45 per cent of new positions in the Nepal Police and Armed Police Force were reserved for marginalised groups. The government ratified International Labour Organization (ILO) Convention No. 169, on minority rights,<sup>13</sup> and in late October released funds for district officials to compensate the families of 48 activists killed in various clashes and protests, most notably the eighteen protestors killed in the January-February Madhesi movement and the 27 Maoist victims of the March 2007 Gaur massacre.<sup>14</sup>

The situation of those displaced during the conflict is unclear, with no reliable statistics. Since the CPA, estimates suggest the number of internally displaced (IDPs) may have fallen from 200,000 to 50,000. An interim report prepared by a peace and reconstruction ministry task force has estimated a total of 25,000, based solely on compensation applications, but expects the number to rise significantly.<sup>15</sup> Chief district officers have been authorised to assess applications for benefits, including compensation for damaged property, daily allowances and interest-free

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such as socket bombs and pressure cooker bombs rather than guns.

<sup>12</sup> Numbers were given to the government and CPN(M) after each cantonment verification but they have not publicised them.

<sup>13</sup> For this convention, see [www.ilo.org/public/english/standards/norm/egalite/itpp/convention/index.htm](http://www.ilo.org/public/english/standards/norm/egalite/itpp/convention/index.htm).

<sup>14</sup> On the Madhesi movement and the Gaur massacre, see Crisis Group Report, *Nepal's Troubled Tarai*, op. cit. Most of the Madhesi victims were killed in police action to contain and break up demonstrations; the Maoist activists killed at Gaur were targeted by a crowd assembled under the banner of the Madhesi Janadhikar Forum (MJF).

<sup>15</sup> "Govt figure on IDPs questionable", *The Himalayan Times*, 7 December 2007.

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<sup>11</sup> The Maoists also placed over 6.7 tons of explosive materials under supervision. Many of their fighters used improvised devices



agricultural loans.<sup>16</sup> Following criticism of a proposed truth and reconciliation commission bill, the government has shelved the draft and shown a willingness to consult more widely before proceeding.

## B. WHAT NEEDS TO BE DONE

It is hard for political leaders to deliver on all fronts simultaneously, especially when they cannot escape from their inclination to resort to horse-trading over many issues. Nevertheless, the parties to the peace process are coming closer to identifying urgent priorities. Work in the following areas is essential not only to move the process forward, but also to regain public confidence and deliver some of the benefits of peace that people have been waiting for.

### 1. Delivering full peace

The peace process has brought a cessation of full-scale armed conflict but a growth in other forms of insecurity, including violent crime and intimidation. Law and order is precarious; the judicial system is overstrained and faces questions of legitimacy and efficacy. Widespread lack of public confidence in policing and justice provides the space for Maoist action, which for all its brutality gives many people a sense of the order and authority that the state no longer commands.

The Maoists' YCL has been at the fore of the new wave of extortion and pressure tactics, forcing donations, disrupting other parties' activities, assaulting and abducting politicians, business people and other perceived opponents, and refusing to relinquish the aim of becoming a parallel policing and justice authority.<sup>17</sup> The CPN(M) leadership's repeated promises to rein it in are unfulfilled; its cadres continue to threaten journalists (and, in two cases, appear to be responsible for abducting and killing local journalists) and use aggressive labour union tactics to pressure businesses. Business people willingly turn to the Maoists for dispute resolution, apparently preferring rough but speedy decisions to protracted court actions.<sup>18</sup> "We don't want to harass anyone", a Maoist law enforcer in the

capital said, "but if we receive a complaint we investigate it straight away; after all, who trusts the police?"<sup>19</sup>

Strikes and shutdowns have severely disrupted everyday life.<sup>20</sup> Lack of policing and government presence, especially in Tarai districts, has exacerbated a widespread sense of insecurity. While the state crackdown on demonstrations, particularly during the early 2007 Tarai unrest, was harsh, there has been little follow-up in terms of arresting those responsible for the worst violence, such as the March 2007 Gaur massacre. Normality has yet to be restored in rural areas. The Maoists have made only a limited return of seized land, and no mechanism has been put in place to oversee returns.<sup>21</sup> Local government has not been reestablished, although there are indications a cross-party agreement may be close.

#### Priorities

- ❑ The Maoists should cease all illegal activities and pressure tactics, stand down parallel structures and start the return of seized property, with a government-formed commission established to adjudicate on more complex cases of restitution and/or compensation.
- ❑ All parties should urgently agree a plan to revive local government and explore ways to involve local communities in conflict resolution and peacebuilding efforts.
- ❑ New security plans are required to address the dismal law and order situation, based on local needs and community consent rather than heavy-handed imposition from Kathmandu, which Madhesi leaders have specifically warned will only add to their determination to push for autonomy.

### 2. Security sector

The shape of the security sector lies at the heart of the peace process and remains one of the main blocks to progress. The current situation is unsustainable: the continued presence of two armies with no planning for their future status is inherently unstable. It is also a great financial burden on the state at a time when economic development is the most urgent requirement.

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<sup>16</sup> A first tranche of Rs.250 million (almost \$4 million) was released in early October 2007. Benefits are not lavish, ranging from a \$1 per day allowance for two months to Rs 10,000 (approx. \$160) as compensation for a destroyed house.

<sup>17</sup> For a detailed assessment of Maoist and state violations of the CPA see "Human Rights In Nepal One Year After The Comprehensive Peace Agreement", Office of the High Commissioner for Human Rights, Kathmandu, 12 December 2007.

<sup>18</sup> See C.K. Lal, "Throwing justice to the wind", *Nepali Times*, 7 December 2007.

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<sup>19</sup> Crisis Group interview, Kathmandu, December 2007.

<sup>20</sup> From January to August 2007, the CPN(M) and YCL called at least 30 *bandhs* (shutdowns). Other groups, particularly in the Tarai, called even more, causing disruption to business and communications.

<sup>21</sup> On the lack of progress on seized land returns see "Human Rights In Nepal", op. cit.



The UN verification of Maoist personnel is near its end; apart from those who have quietly left the cantonments, the disqualified are either recent recruits or minors. The latter should have been discharged immediately and offered rehabilitation packages, but the Maoists insisted on linking their discharge to the government's release of payments. The many disqualifications could embarrass the Maoist leadership but their claim of a more than 30,000-strong force was always exaggerated; privately they were willing to more than halve the number of claimed combatants in return for other benefits. A more serious problem is that many seasoned fighters never went into cantonments; many of them appear to have taken command positions in the YCL. There is no guarantee that those who are discharged will not remain under Maoist command and control in other capacities. The assumption that they are waiting to be "released" and only wish to return to civilian life is unrealistic; many are likely to be committed to the cause and willing to be redeployed within the YCL or other structures.

Fighters have also left the cantonments on several occasions and have sometimes participated in protest rallies wearing combat fatigues and carrying weapons such as knives; the Joint Monitoring Coordination Committee (JMCC), which consists of army, Maoist and UN representatives, formally noted two breaches of the arms-carrying provisions in the November 2006 Management of Arms and Armies agreement.

Two steps have been taken. The September 2006 Army Act improved the framework for democratic control of the army, although it failed to meet some basic norms such as making personnel subject to court action for criminal activities, including serious rights violations; and the Special Committee for the Integration and Rehabilitation of the Combatants of the Maoist Army (the "146 Committee") specified in the CPA was finally established on 21 May 2007, though it has only met once, in July, and its terms of reference have not been fixed. Neither of these steps, however, has translated into meaningful progress. In practice, the army remains autonomous. The new National Security Council was established on 22 August 2007 but exists only on paper. The government has taken no action on the CPA calls to prepare a "detailed action plan" for NA democratisation and resizing.<sup>22</sup> The "reintegration and rehabilitation" of Maoist combatants has yet to be addressed.

In 2007 the NA has twice embarked on large recruitment drives – a violation of agreements, although the recruits filled positions left vacant by retirements. The cabinet

decision to slash the 3,000 to 4,500 troops deployed in the royal palace has not been implemented. Some NA generals have reportedly met Maoist leaders and indicated willingness to consider integration of forces but the NA wants to impose its own conditions.<sup>23</sup> Although the Maoists and the NA appear to be implacable enemies, they share certain characteristics (such as a nationalistic outlook and preference for firm government) and have shown themselves able to work together. The JMCC is probably the best example of a functional body established by the peace process. It has met 58 times, developed clear agendas, mechanisms and secretariat support and built good cooperation between members. This is an encouraging example for other areas and suggests the start of preliminary discussion on future security sector arrangements need not be too painful and could generate collaborative goodwill to ease tougher, later rounds of deliberation.

Dealing with the future of the two armies is not optional. A peace process that fails to address the longer-term status of the warring sides cannot succeed. India, which remains determined to delay any reform of the NA, which it sees as a bulwark against instability, believes that the international attention to security sector reform has encouraged the Maoists to raise it, belatedly, as a "ploy" to delay elections. However, that the Maoist political leadership has been able to raise the issue at all is an encouraging sign of their victory over less accommodating colleagues, who were initially determined to keep the PLA intact as a separate force for as long as possible and more than happy to delay discussion until after the elections if it preserved their private military capacity.

No one, including Maoist strategists, recommends rushing into restructuring but the start of serious dialogue offers the best chance of finding a compromise while the Maoist leadership is able to deliver on it. (A deal also presumes that the six mainstream parties can control the NA and guarantee it has no veto, which might test the NA's repeated assurances it is totally under government control.) The alternative is to continue with the PLA as an independent military force and the NA confined to barracks – and a further extension of UN supervision.

<sup>22</sup> "This shall include tasks such as determining the right number of the Nepali Army, preparing the democratic structure reflecting the national and inclusive character and training them as per the democratic principles and values of the human rights". CPA 4.7.

<sup>23</sup> Prachanda claimed to have held positive direct talks with NA generals on integration, but the NA has reportedly set five preconditions: (i) full Maoist observance of the CPA and embrace of multiparty democracy; (ii) U.S. delisting of the CPN(M) as a terrorist organisation; (iii) any integration process to be initiated only by a popularly mandated government formed after CA elections; (iv) Maoist acceptance of liberal economic policy well before integration; and (v) integration to be phased over five years. "Maobadisanga senaka panch sart", *Drishti*, 4 December 2007.

### Priorities

- ❑ The 146 committee should be activated, preparations begun on an action plan for the NA and broader discussions initiated on national security requirements.
- ❑ Decisions should be implemented such as activating the National Security Council, carrying out palace troop reductions and establishing the political and bureaucratic capacity to exercise effective and professional civilian control over the army.
- ❑ The government should settle cantonment allowances and improve cantonment conditions, while the Maoists should discharge those deemed ineligible through verification (with support from the government and UN on adequate rehabilitation programs) and rationalise the cantonment structures for the reduced force.

### 3. Justice, rehabilitation and reparation

The peace process has delivered little justice and practical assistance to those affected by the conflict. The fate of over 1,000 people forcibly disappeared during the conflict (most of them apparently from army custody) remains unknown.<sup>24</sup> Neither side has fulfilled its commitment to investigate and report. A June 2007 Supreme Court ruling ordered compensation for the families of 83 individuals who disappeared from the custody of security forces, formation of a disappearances investigation commission and drafting of an anti-disappearance law. The commission is yet to be set up, though its terms of reference have been discussed. The National Peace and Rehabilitation Commission, mandated by the CPA to “provide relief and rehabilitation works for victims and IDPs”, has not been established.

The proposed truth and reconciliation commission has not materialised, though partly for the positive reason that public criticism forced the ministry to consult more widely on a draft bill. More worryingly, almost no steps have been taken to tackle impunity or hold accountable those responsible for gross rights violations. For example, despite the CPN(M) admission of responsibility, Maoist cadres have not been held accountable for the 2005 bus bombing at Madi, Chitwan district, that killed three dozen people; nor has action been taken against army officers responsible for systematic abuses such as the well-documented torture and disappearances in Kathmandu’s Maharajgunj barracks

from 2003 to 2004.<sup>25</sup> The CPA commitment to tackle corruption has been quietly forgotten.<sup>26</sup>

### Priorities

- ❑ All conflict victims need to be compensated in non-partisan fashion, preferably through an all-party mechanism and not just at the discretion of home ministry-appointed chief district officers or central ministries.
- ❑ An effective commission should be set up with real powers to investigate disappearances, drawing on international assistance as appropriate.
- ❑ Impunity must be tackled by taking action against those accused of the worst violations during the conflict.

### 4. A restructured, inclusive state

The CPA made grand promises for reshaping the state. Its signatories vowed to form, “at the earliest”, a “common development concept for economic and social transformation and justice and to make the country developed and economically prosperous”.<sup>27</sup> They also promised:

To address the problems related to women, Dalits, indigenous people, *janajatis*, Madhesis,<sup>28</sup> oppressed, neglected, minorities and the backward by ending discrimination based on class, caste, language, sex, culture, religion, and region and to restructure the state on the basis of inclusiveness, democracy and progression by ending [the] present centralised and unitary structure of the state.<sup>29</sup>

The interim constitution reaffirmed a commitment to the “progressive restructuring of the state in order to resolve the existing problems of the country based on class, caste,

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<sup>24</sup> International Committee of the Red Cross (ICRC) figures say 1,042; national NGO estimates are higher.

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<sup>25</sup> Action has been taken in a few cases. For example, police arrested Maoist cadre Pomlal Sharma and two others in connection with the abduction of a journalist, Prakash Thakuri. “Govt panel submits report on missing reporter”, *ekantipur.com*, 7 December 2007. They also detained Maoists suspected of assaulting a trekker who had refused to pay a donation. “Police arrest Maoist cadres who thrashed Swiss tourist”, *The Kathmandu Post*, 7 December 2007.

<sup>26</sup> “To adopt policy to severely punish people amassing properties by means of corruption while remaining in government posts”. CPA 3.11.

<sup>27</sup> CPA 3.12.

<sup>28</sup> On Dalits (those at the bottom of the caste hierarchy), *janajatis* (ethnic minorities) and Madhesis (plainspeople) and their political mobilisation, see recent Crisis Group reporting, especially the briefing *Nepal’s Fragile Peace Process*, op. cit.

<sup>29</sup> CPA 3.5.

region and gender”.<sup>30</sup> Few practical steps have followed the rhetoric. A promised high-level state restructuring commission has yet to plan how restructuring will work, although here too there are signs of an emergent consensus on the broad framework. Efforts to make the civil service and other state institutions more inclusive have been sporadic. Of 28 government secretaries appointed to vacant posts in October 2007, only two were women and one Madhesi; twenty were Brahmans. Individual agreements reached with the MJF and the Nepal Federation of Indigenous Nationalities (NEFIN) may not offer a comprehensive solution (indeed, such bilateral deals undermine the idea of a coherent approach toward all groups), but the delays on implementing their provisions reflect badly on the government’s will to change.<sup>31</sup>

#### Priorities

- ❑ Improved inclusion of traditionally marginalised groups is needed in state structures, political parties, peace process bodies and local security plan development.
- ❑ The options should be considered for concrete affirmative action, such as opening routes into the civil service by offering fast-track training or preparation for the entry examination.
- ❑ The state restructuring commission needs to be formed and measures taken to ensure it includes representatives of the marginalized groups it aims to benefit and conducts its business transparently, taking into account popular aspirations and reporting on its discussions to the public.
- ❑ The MJF and NEFIN deals should be implemented, for example by political parties improving their own representativeness at all leadership levels, honouring the victims of protest movements and compensating their families and establishing a high-level task force to determine rules and draft laws to ensure inclusion of the traditionally marginalised in state structures.
- ❑ Options for canvassing broader opinion should be considered, such as a national convention, which could form part of a more participatory constitutional process without being used as an excuse for further postponement of the elections.

## C. HOW TO GET THERE

### 1. Rebuild confidence and cooperation

The seven parties’ leaders need to convince the public they remain committed to the whole process, including the elections. This will not be easy. Domestic and international opinion is unlikely to be content with a new date and renewed verbal reassurances. The seven parties will only win trust by showing their unity is more than skin deep, implementing the peace deal and demonstrating that they have identified and addressed the disagreements that led to earlier postponements.

The Maoists’ primary task is to demonstrate that they remain committed to the peace process, including prompt elections, and to their own rejection of violence. Recent actions and statements have cast serious doubt on these propositions; only good behaviour will allay the fears of naturally sceptical observers. Peaceful protest is a legitimate political tool but the repeated threat to resort to a mass uprising suggests little respect for the aim of building cross-party consensus. Other parties need to show leadership – both by illustrating inclusive, democratic conduct themselves and by making greater efforts to assist the Maoists in their transformation.

### 2. Develop monitoring and implementation

National monitoring of the peace deal has failed but there is little appetite for greater international assistance. Viable monitoring can only be carried out by a genuinely independent body, but the seven parties would have to take the initiative to establish one. The other major aspect of improving the process is a realistic plan for implementation. There is a growing will to implement agreements but it depends on ministries and other bodies to function efficiently and in a non-partisan fashion. As long as the peace and reconstruction ministry is controlled by the dominant party, it will be seen, however unfairly, as less than impartial. Clear cross-party consensus might be better served by a neutral mechanism that could not only handle contentious issues in a balanced way but also help to prioritise tasks – a practical necessity given the multitude of demands on a government of limited capacity. All-party approval of priorities would reduce the chances of delays on certain actions turning into party political grievances.

### 3. Earn legitimacy and public trust

The government and constitution are in danger of losing legitimacy. The principle of consensus lies at the heart of the interim statute, as does the primary goal of making a prompt transition to an elected constituent assembly. The absence of both has led to serious questions over the government’s mandate and authority. The lack of

<sup>30</sup> Interim Constitution 2007, preamble.

<sup>31</sup> On these deals, see Crisis Group Briefing, *Nepal’s Fragile Peace Process*, op. cit.

communication and consultation with the public, as well as weakness in service delivery, has exacerbated public frustration (although this is probably more acute in the urban middle classes, which did not suffer so much in the war and have seen less benefit in the ceasefire).

An indefinite postponement of polls would raise more serious questions over the government's legitimacy and the status of the interim constitution. Political leaders across the spectrum have expressed dissatisfaction with the interim constitution. Among them is the prime minister, who has hinted at a preference to return to the 1990 constitution and complained, somewhat implausibly, that he was pressured into accepting the interim constitution against his better judgement on the insistence of drafting commission chair Laxman Prasad Aryal.<sup>32</sup> Senior constitutional lawyers are restive; the 1990 constitution drafter, Biswanath Upadhyaya, has accused the government of "betrayal".<sup>33</sup> Elections are the main step to ensuring legitimacy but they alone will only fulfil the original mandate of the people's movement if they deliver a meaningful constitutional process that is not directed solely by the political calculations of a small handful of parties. Agreement on mechanisms to secure public participation in future deliberations would enhance confidence in the government and its intentions.<sup>34</sup>

#### 4. Bring in other actors

Complaints that the seven parties had turned the government into a self-serving syndicate or even a new form of dictatorship were initially confined to the more extreme royalist part of the political spectrum. They can now be heard from mainstream commentators instinctively sympathetic to the major parties but increasingly disillusioned with their behaviour. The moderate *Nepali Times* warns that "the Nepali people will not tolerate an indefinite seven-party dictatorship....The people's verdict is that this coalition is unfit to govern".<sup>35</sup> Others, on the left and right and speaking for marginalised communities, caution that the government's unwillingness to listen will leave a new mass movement as the only alternative. Moderate royalists, including structures such as the Rashtriya Janashakti Party, have been floating the idea of a broader "national government"; other commentators have

suggested a neutral caretaker government to oversee elections.<sup>36</sup>

There may be no alternative to maintaining seven-party unity as the engine of the peace process but those parties alone cannot claim to speak for the whole of the country. If they wish to maintain their position at the heart of the political process, they will either have to prove they can deliver promptly or reach out to other forces and persuade them that they too can be part of the process. Most other parties have, however nominally, bought into the constituent assembly process. Some, such as the RPP and RJP,<sup>37</sup> have become more vocal advocates for pushing ahead with elections than the parties that devised the plan in the first place. The seven parties could build on these openings to prove that they are not merely a self-interested syndicate. If they do not, they face further loss of confidence and the likelihood that individual constituents will seek to build their own links outside the club. The Maoists have already floated the idea of a nationalist alliance; they and individual leaders of other parties have explored links with the palace and royalist parties.

#### IV. OUTSIDE ANGLES

The international community is disunited. There is one serious division in approach between the majority, who view the priority as establishing peace and democracy and opening the path to reform, and a minority (particularly in New Delhi and Washington) who have always seen the main goal of the peace process simply as defeating the Maoists, whether by electoral or other means. China has become increasingly active, with frequent high-level visitors engaging all political forces. India, frustrated with the failure to hold elections and worried at weakening leverage, appears to be using its influence in the Tarai to pressure the parties and underscore its capacity to shape events. International players all want to exert leverage on the Maoists and other parties to move forward but disagree on the question of whether threatening to hold elections without the Maoists is viable or useful. Nevertheless, the difference between those, mainly India, whose sole focus is elections, and others who stress that successful elections require overall progress in the peace process, is bridgeable.

Lack of public unity and perceptions of unwarranted intervention have reduced the international community's influence. Political leaders are resentful at being pushed, even though they insist they want international support

<sup>32</sup> "It Was a Political Mistake to Replace the Constitution of 1990 by Present Interim Constitution", interview with G.P. Koirala, *Spotlight*, 29 November 2007.

<sup>33</sup> "Upadhyaya charges seven parties of betrayal", *nepalnews.com*, 27 November 2007.

<sup>34</sup> See Crisis Group Report, *Nepal's Constitutional Process*, op. cit., for recommendations on widening public consultation.

<sup>35</sup> Editorial, *Nepali Times*, 7 December 2007.

<sup>36</sup> For example, Nilamber Acharya, "Five-point solution", *Nepali Times*, 7 December 2007.

<sup>37</sup> Rastriya Prajatantra Party and Rastriya Janmukti Party.

(and the CPA itself urged outside supporters to give it).<sup>38</sup> Direct leverage is limited but concerted international pressure to keep the process on track cannot easily be ignored. All parties are aware of Nepal's reliance on external aid; none, including the CPN(M), wishes to burn bridges with the outside world.

**India.** Indian diplomats consistently emphasise that they will support whatever the parties agree in terms of a compromise on republicanism and the electoral system (with the proviso that implementing a republic without a vote would invite a dangerous confrontation). They are comfortable with the Maoists being guaranteed a role in the post-election government regardless of results and believe the best solution remains for other parties to help and pressure them to sign up to democratic politics definitively. New Delhi wants to see the government address Madhesi demands "gracefully and without foot-dragging – the Madhes is looking for dignity, not spoils – and while trying to bring splinter groups into the fold". The sole focus should be the elections:

On elections our view has always been that they are critical. This government and the interim legislature are not democratically legitimate. Let the CA [constituent assembly] go ahead, come up with whatever it wants and we won't object. But there is no peace process unless you have an electoral process. If not, you'll open up political space for precisely what you fear.<sup>39</sup>

The concern for legitimacy is genuine; it is also bolstered by the assumption that election results would provide a healthy reality check on the parties' (in particular the Maoists') actual levels of support. In the words of one diplomat, they would be "both catharsis and clarification".<sup>40</sup> Indian officials remain resolutely upbeat in their assessment of their own role, despite voicing multiple frustrations with the parties and other international players. They do not believe a new approach is needed; nor do they see the election postponements as a setback worthy of intensive analysis. As one said, "there's no need for a post-mortem of the past election attempts".<sup>41</sup>

Some in New Delhi are less convinced that the Indian government has taken the right approach – either for Nepal's interests or its own. High-profile Kathmandu visits by the

foreign secretary and prime ministerial envoy Shyam Saran did not deliver results. "Shyam Saran's visit was a failure – he didn't get any takers [in his push for a December election]", commented an experienced Nepal-watcher. "India is losing friends. We're upset with Koirala, the Maoists and the UN, and losing the U.S. and UK – so where does that leave us?"<sup>42</sup> Prime Minister Koirala's relations with New Delhi have cooled; his comments that the Tarai unrest could be solved instantly if India cooperated touched a raw nerve; politicians of all stripes in Kathmandu believe India has deliberately encouraged Madhesi activists, or at least refrained from using its influence to rein them in.<sup>43</sup>

**UN.** UNMIN is close to completing the verification of Maoist combatants – a task that was delayed by political wrangling. The Secretary-General's Special Representative, Ian Martin, since his return from a 25 October briefing to the Security Council, has taken a stronger public stance in emphasising the need for all parties to do more to implement the peace deal, monitor progress, rebuild confidence and tackle remaining issues such as security sector reform (SSR).<sup>44</sup> However it faces challenges in making the most of its role. A wave of negative press commentary has sought to blame it for delays and to question why such a visible deployment has not contributed more to moving the peace process forward. As one commentator observed, "UNMIN's presence has so far only ensured that a 'long-term ceasefire' is not broken".<sup>45</sup>

Even those sympathetic to the call for the UN to do more in areas such as security sector reform have asked if the push for greater attention to neglected aspects of the process is not belated. In terms of securing any expansion of UNMIN's formal mandate, it certainly is: widespread discontent at the mission's high profile and expansive resources have made it politically impossible to sell the idea of a broader role. However, the weaknesses of the peace process to which UNMIN has been drawing public attention are now increasingly often, and openly, recognised by all parties. More transparency about its activities, better communication with the Kathmandu media and the general

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<sup>42</sup> Crisis Group interview, New Delhi, December 2007.

<sup>43</sup> One magazine report offered a detailed account of a meeting that reportedly took place in Patna, India, involving Madhesi activists and Indian government officials, to plan a renewed protest campaign. See Sarojraj Adhikari, "Simaparikko sanjal", *Nepal*, 2 December 2007. Regardless of the weight of evidence, the assumption that Indian manoeuvring underlies many of the recent developments in the Tarai is widespread across all parties and civil society groups in Kathmandu.

<sup>44</sup> See press statement, Special Representative of the Secretary-General Ian Martin, UNMIN, 6 November 2007, at [www.unmin.org.np/downloads/pressreleases/2007-11-06-UNMIN.SRSG.Press.Statement.ENG.pdf](http://www.unmin.org.np/downloads/pressreleases/2007-11-06-UNMIN.SRSG.Press.Statement.ENG.pdf).

<sup>45</sup> Bhaskar Gautam, "Nepalma UNMINko kshetradhikar", *Naya Patrika*, 28 November 2007.

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<sup>38</sup> "We heartily urge all the friendly countries and the United Nations, as well as the International Community to extend support to Nepal in this campaign of establishing full democracy and lasting peace", CPA 10.8.

<sup>39</sup> Crisis Group interview, senior Indian diplomat, New Delhi, December 2007.

<sup>40</sup> Crisis Group interview, Kathmandu, November 2007.

<sup>41</sup> Crisis Group interview, senior Indian diplomat, New Delhi, December 2007.

population and more sharing of information and analysis with diplomatic missions and donor agencies would help UNMIN counter some of the criticisms levelled at it.

**India vs. the rest?** Indian diplomats are frustrated with the UN and what they see as unhelpful public positions taken by Western diplomats. Although they want UNMIN to fulfil its core mandate and still believe a large international presence will help create an intimidation-free election environment, they believe it is trying to overstep its mandate and has diverted focus from the polls. Some suspect prolonged UN involvement will inevitably erode Indian influence and open a wider path for additional third parties; others have more specific concerns, particularly at the large UN presence in the Tarai districts bordering India and at direct contacts with political leaders.

Indian officials all consider a united international voice essential but worry that UN and Western public positions have distracted from the core task of elections and afforded further excuses for delay, especially to the Maoists. Pointing to examples of the Maoists echoing international concerns about issues such as security sector reform, an official complained that “what UNMIN says today, Prachanda says tomorrow”.<sup>46</sup> Another frustrated Indian diplomat cautioned: “The bottom line is: no one should make statements that can be used by one party as bargaining chips. It’s not good for the international community if they themselves become a factor in politics”.<sup>47</sup>

In fact, substantive differences in understanding or policy are few, and none are unbridgeable. UN and Western diplomats insist they see elections as an inalienable part of the peace process; their focus on making the process itself more functional is simply an essential step if elections are to take place and be meaningful. As one Western diplomat pointed out, “any roadmap [suggested by the parties] will only attract support if it comes with a firm election date”.<sup>48</sup> Neither UNMIN nor governments wish to hand the Maoists a veto over the process but only New Delhi believes that threatening to proceed without the Maoists is a viable option. China may have doubts over the imposition of a peace process that it sees as an Indo-U.S. package, but it has not used its extensive political contacts to block progress. Its public statements have been measured and supportive of the process.

The language agreed for an India-EU joint statement following their November Delhi summit suggests the outlines of a common platform:

The leaders expressed deep disappointment at the postponement of elections in Nepal. Repeated postponement of the elections erodes the credibility and affects the process of democratic transformation and legitimisation in Nepal. Early elections and a mandate from the people are essential for the peace process to stay on track. The leaders urged the Government and the political parties to honour the agreements and commitments already made to enable the people of Nepal to choose at the earliest their own future and the manner of their governance through a free and fair process, open to all without intimidation.<sup>49</sup>

As all diplomats recognise, there is no simple leverage that can be exerted to keep the process on track. All parties, and the Maoists in particular, need to be reminded that international recognition of their legitimacy is neither unconditional nor unlimited – and it can be withdrawn if they do not move quickly to secure a popular mandate. But other pressures, such as aid conditionality, are unlikely to be effective.

## V. CONCLUSION

Nepal’s peace process was not inherently misconceived and can still succeed. However, it has been held back by poor political leadership, limited will to implement its central provisions and growing mistrust between the parties and the public at large. Talk of delaying elections has understandable attractions for leaders scared of losing power, but there is no viable alternative plan. However flawed and incomplete, the CPA is the only stable framework on offer. Ripping it up, or circumventing its main goal, would invite serious risks. A sceptical public has offered the mainstream parties and the Maoists the chance to redeem themselves and seek a new mandate for change. If they do so, they will also serve their partisan interests. If they fail, the public will have little sympathy for a collective betrayal of its aspirations.

**Kathmandu/Brussels, 18 December 2007**

<sup>46</sup> Crisis Group interview, senior Indian diplomat, New Delhi, December 2007.

<sup>47</sup> Crisis Group interview, senior Indian diplomat, New Delhi, December 2007.

<sup>48</sup> Crisis Group interview, Western diplomat, New Delhi, December 2007.

<sup>49</sup> India-EU Joint Statement, New Delhi, 30 November 2007, at [www.delind.ec.europa.eu/en/political\\_dialogue/summits/eighth/8\\_joint\\_statement.pdf](http://www.delind.ec.europa.eu/en/political_dialogue/summits/eighth/8_joint_statement.pdf).

## APPENDIX

### MAP OF NEPAL







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