

NEPAL'S NEW POLITICAL LANDSCAPE

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NEPAL'S NEW POLITICAL LANDSCAPE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Nepal's Maoists crowned their transition from underground insurgency to open politics with a convincing victory in 10 April 2008 constituent assembly (CA) elections. Their surprise win has thrown other parties into confusion, with the major mainstream ones unwilling to recognise their defeat and participate in a Maoist-led government, despite clear pre-election and constitutional commitments to maintaining cross-party unity. The CA nearly unanimously ended the monarchy at its first sitting and gave birth to the Federal Democratic Republic of Nepal. However, extended, unedifying haggling over government-formation suggests the consensus-based approach to the constitutional process will be hard to implement. Building a lasting peace and delivering the change voters called for requires all parties to accept the new situation and cooperate under a Maoist-led government, in particular to deal with issues scarcely yet addressed including the security sector, reestablishment of law and order in some districts, land and local government.

For once, a rarity in Nepali politics, the political landscape has changed irrevocably. The country has managed a peaceful republican transition, and the Maoists – the Communist Party of Nepal (CPN(M)) – and regional parties are here to stay. While old-style politicking will continue, the shape of politics has been seriously revised. The new CA is the most inclusive body Nepal has ever elected, with much greater representation of the many castes, ethnic groups and regional communities than past parliaments. Women make up a third of the assembly, placing Nepal well ahead of other countries in the region. However, the elections produced not only a mandate for change but also a recipe for deadlock.

The old parties have not woken up to the new realities. The popular mandate was not for a one-party minority administration but for cooperation on a path for peace and change. The Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist, UML) went into the election with a clear commitment to working on the basis of consensus and cooperation after the polls, regardless of the outcome. Their reluctance to keep that promise may be partly a bargaining

position but risks harming the process and further reducing their already low public esteem. They are in danger of being seen as sulking spoilers instead of constructive participants in a constitutional process that would benefit from healthy debate and different policy positions. The longer they delay internal reforms to make themselves more representative, the longer it will take to reconnect with disillusioned former supporters.

The Maoist leadership has also not made full use of the opportunity to lever its position of strength internally and decisively reject the politics of violence and coercion. The “peaceful revolution” strategy, much questioned within the movement, appears to have delivered a greater success than even its architects expected. Still, they face internal debates and external pressures. They are capable of working in coalition – indeed, Maoist leader Prachanda has a much better track record of managing his own party's internal disputes through consensus than Girija Prasad Koirala of the NC, who announced on 26 June that he would resign as prime minister. But winning trust will require action as well as words, starting with a demonstrated commitment to the rule of law and an end to the parallel policing functions of the Young Communist League (YCL).

The security sector remains the critical problem. The continuing existence of two standing armies is inherently destabilising. There are widespread and sensible concerns over a Maoist government commanding both the Nepal Army (NA) and its own forces. But it is the NA and the mainstream parties who created this situation by spending two years determinedly resisting every overture to discuss the future of the security sector. The national army remains outside any meaningful democratic control – and hence without checks and balances to safeguard a smooth handover of power. This is a legacy of ex-Prime Minister Koirala and army chief Rookmangad Katwal's preference to use the army as a tool for personal political interest. Maoist willingness to discuss compromise options has met with an unyielding brick wall.

Beyond the security sector, other pressing challenges need to be addressed. Law and order is in tatters, particularly in some Tarai districts, and the culture of impunity remains intact. There has been no progress on the twin questions of returning land seized during the conflict and establishing a committee to plan promised land reforms. Securing the peace will require serious attention to measures at the district and village level, but so far there has not even been consensus on reestablishing the rudiments of local government.

In a final irony of the republican transition, ex-King Gyanendra's dignified exit suggested that he understood the popular mood better than the old parties. Every indication is that party leaders, however, have little respect for the supposed sovereignty of the CA and wish to keep all decision-making powers in a few hands. This bodes ill for the legitimacy of the constitution-writing process.

A companion report, published simultaneously, describes the CA campaign and vote, assesses the credibility of the election and analyses the results.

RECOMMENDATIONS

To the Seven Governing Parties and the Other Major Parties Represented in the Constituent Assembly:

1. Form a consensus-based government under Maoist (CPN(M)) leadership, with as broad participation as possible.
2. Resolve any remaining election disputes through established, and functional, formal mechanisms, such as the Constituent Assembly Elections Court, rather than by trading unsubstantiated allegations in public.
3. Start discussions on the future of the People's Liberation Army (PLA) and the Nepal Army (NA), including by:
 - (a) setting up a multi-party committee, along the lines of the interim legislature's defunct "146 Committee", to discuss the future of the security sector;
 - (b) starting a genuine national debate on Nepal's security requirements and how state security forces should be organised to meet them – rather than the other way around;
 - (c) beginning work on building a capable ministry of defence and setting up the National Security Council; and
- (d) developing plans for making the army and police more representative of Nepal's caste, ethnic and regional diversity, including measures promised in past agreements.
4. Set up a mechanism, such as a commission, to handle the twin issues of returning land seized during the conflict and preparing for land reform.
5. Move forward with other remaining elements of the peace process, including by:
 - (a) implementing the December 2007 23-point agreement and other accords;
 - (b) abiding by the November 2006 Comprehensive Peace Agreement (CPA) and ceasefire code of conduct; and
 - (c) paying attention to the need for local peace-building, for example by reestablishing local government bodies and facilitating discussions between all parties and local communities at the district level.
6. Decide on the need for further UN assistance and request it as soon as possible to enable a smooth transition from the current mission (UNMIN), whose mandate expires on 22 July.
7. Prepare for the constitution-writing process by:
 - (a) establishing, with as broad a consensus as possible, permanent rules of procedure to replace the current temporary provisions;
 - (b) forming appropriate CA subcommittees and agreeing on how to manage the division of business between the CA as a constitution-drafting body and as a legislature;
 - (c) making clear commitments for public participation, as most major parties promised in election manifestos without spelling out details.
8. Take immediate steps towards ending the culture of impunity, for example by:
 - (a) completing investigations already underway into wartime atrocities and demanding compliance from all witnesses and suspects;
 - (b) investigating and prosecuting other well-documented cases of rights violations, such as the torture and disappearances allegedly carried out by the army at Maharajgunj and the Maoists' bombing of a civilian bus at Madi; and
 - (c) investigating and informing families of the fate of people disappeared during the conflict, as promised in the CPA, and ordering the cooperation of state security agencies and the CPN(M) in probing the whereabouts of the hundreds who are still unaccounted for.

9. Respect and promote the role of women, not only the one third of CA members, in the peace process and strive to implement all of UN Security Council Resolution 1325's recommendations, building on Nepal's new reputation as the regional leader in women's political representation.
10. Respect the pre-election deals with protesting groups by implementing fully the agreements with the United Democratic Madhesi Front (UDMF) and the Federal Republican National Front and continue to pursue negotiations with armed militant groups.
11. Move beyond solely seven-party cooperation to involve all parties represented in the CA in the constitution-writing process, and consider revising the interim constitution to remove the special status accorded to the governing seven parties.

To the Communist Party of Nepal (Maoist), CPN(M):

12. End the use of violence, intimidation and extortion by:
 - (a) bringing the YCL under control and ensuring its activities are limited to those of a legitimate, non-violent political party youth wing; and
 - (b) cooperating with investigations into alleged crimes carried out by Maoist cadres (including the April 2008 murder of Ram Hari Shrestha) and surrendering suspects to the state authorities.
13. Dismantle parallel governance structures such as "people's courts", the United Revolutionary People's Council and other "people's government" bodies.

To the Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist, UML):

14. Accept the election results and use the sizeable number of CA seats voters did deliver constructively.

15. Recognise the need for serious structural and policy reform to reconnect with voters, for example by:
 - (a) improving internal democracy (which is particularly weak in the NC);
 - (b) making party structures at all levels more representative of Nepal's diversity; and
 - (c) increasing progressively the level of women's representation in party offices.

To the Nepal Army:

16. Fulfil repeated commitments to democracy by:
 - (a) staying out of politics;
 - (b) assisting in steps towards meaningful democratic control of the security sector; and
 - (c) providing professional input to discussions on the shape of future national security strategy.

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

17. Assist in the post-election period by:
 - (a) reminding all parties they must accept the outcome and only use formal procedures to resolve any outstanding complaints; and
 - (b) urging and supporting the formation of a power-sharing unity government.
18. Offer technical and financial assistance for establishing mechanisms to ensure public participation in the constitutional process and work to coordinate proposed training and orientation programs for CA members, if the CA desires such efforts.

Kathmandu/Brussels, 3 July 2008

NEPAL'S NEW POLITICAL LANDSCAPE

I. INTRODUCTION

Nepal's constituent assembly (CA) elections delivered a surprise result and opened a difficult new transitional phase in the peace process.¹ The lie of the land for the main parties has changed. The Communist Party of Nepal (Maoist, CPN(M)), has in the space of two years moved from being an underground insurgent group to the largest national party, commanding over a third of the seats in the assembly. The Nepali Congress (NC), which won the last general elections in 1999 and had dominated the interim government, trailed a distant second, with half the seats of the CPN(M). It, and the third party (the moderate Communist Party of Nepal (Unified Marxist-Leninist, UML), face the challenge of coping with the Maoists' victory, revitalising their own party structures and reconnecting with the electorate. The strong showing by new regional parties from the plains, in particular the Madhesi Janadhikar Forum (MJF), is a sign of irreversible structural changes in political support.

This report, the second of a set of two, surveys the new political landscape following the 10 April 2008 elections.² It first examines the situation of the parties: how they have reacted to the results, the state of internal debates and organisational pressures and the factors likely to shape their behaviour in the short to medium term. The latter sections examine the domestic and international reactions and the challenges of

the transition to a new government, interim state structures and the start of the constitution-writing business.

Most of the policy recommendations offered by this report are not new. The immediate priority is clear: for all parties to accept the election results and move forward in sensible collaboration on the twin tasks of completing the peace process and writing a new constitution. In these areas, many earlier recommendations remain relevant simply because so little has been done to address the difficult tasks essential to securing the peace.

¹On the pre-election period and the constitutional and legal provisions governing the elections and the transition, see Crisis Group Asia Report N°149, *Nepal's Election and Beyond*, 2 April 2008. Other recent reporting includes Crisis Group Asia Briefing N°72, *Nepal: Peace Postponed*, 18 December 2007; Asia Briefing N°68, *Nepal's Fragile Peace Process*, 28 September 2007; and Asia Reports N°136, *Nepal's Troubled Tarai Region*, 9 July 2007; N°132, *Nepal's Maoists: Purists or Pragmatists?*, 18 May 2007; and N°128, *Nepal's Constitutional Process*, 26 February 2007. Full Nepali translations of these reports and briefings are available at www.crisisgroup.org/nepali.

²The companion background report, *Nepal's Election: A Peaceful Revolution?*, which is being published simultaneously, describes the campaign and vote, assesses the credibility of the election and analyses the results.

II. THE MAOISTS: PREPARING FOR POWER

The Maoist victory was at first glance a resounding vindication of their “peaceful revolution” strategy. CPN(M) Chairman Prachanda had pushed this much-disputed leadership line while persuading his movement it was worth staying in the peace process.³ However, as the Maoists themselves are most keenly aware, the picture is not so simple. Although the initial first-past-the-post (FPTP) results suggested a landslide and outright majority, the final results left the Maoists with just over one third of the CA seats: enough to block any other parties taking control but not sufficient to implement a revolutionary agenda single-handedly – as their opponents daily remind them.

The CPN(M) leadership faces numerous internal and external pressures.⁴ Debates within the party have not subsided, and in some respects have sharpened; its international backers have been happy at the results but reserve judgement on their strategy. The success was facilitated by a massive organisation, which now expects concrete rewards. The party has yet to secure leadership of the transitional government, and, even when it does, will have to manage a coalition or minority administration while facing high expectations and problems so serious (not least rising food and fuel prices) that they would trouble the strongest majority regime. Finally, the election result and conciliatory public statements are far from enough to convince sceptics, domestic and international, that the Maoists have solid democratic credentials. They know they have to deal with donors and outside powers, in particular the immediate neighbours – India and China –

³On the revised Maoist strategy and debates over their participation in the peace process, see Crisis Group Report, *Nepal's Maoists*, op. cit.

⁴For a recent assessment of the CPN(M)'s transition by a respected observer, see Kiyoko Ogura, “Seeking State Power: The Communist Party of Nepal (Maoist)”, Berghof Research Center, Berlin, 2008, at www.berghof-center.org/uploads/download/transitions_cpnm.pdf. In this section, “internal” means within the Maoist movement itself. When Maoist strategists speak of “internal” challenges, they often refer to national/domestic issues as opposed to international, as in this analysis: “There are two types of challenges- internal and external. Internally, despite the fall of [the] main representative of feudalism, its political, economic, cultural forms, among others, are still prevalent. Moreover, we have yet to truly institutionalise a republic. At this period, the conservatives can come up with different faces. Externally, with the establishment of a republic, foreign reactionary forces will also try to intervene”. Mohan Baidya, “Kiran” interview, *The Rising Nepal*, 2 June 2008.

towards whom they propose to adopt a policy of “equi-proximity”.

A. INTERNAL CHALLENGES

The CPN(M) is Nepal's most disciplined and united party, despite perhaps also being the party most able to cope with lively internal debate. It has never suffered major splits or defections,⁵ nor has Prachanda ever faced a serious challenge to his leadership since he assumed control of the CPN(M)'s forerunner, the CPN (Masal) in 1985.⁶ Throughout the tortuous peace process it has maintained a unified front, although its internal discussions have taken place more and more publicly.

This report does not offer a detailed analysis of policy debate within the CPN(M). There are, however, three salient features which are sometimes lost on outside observers:

- The mainstream media likes to present many disputes as personality clashes. But two-dimensional portraits of “sulky” Matrika Yadav or “haughty” Mohan Baidya obscure the fact that most differences are grounded in serious policy debates, even if some are also tinged by individual tensions. Senior Maoists take their politics seriously; most of them, including top People's Liberation Army (PLA) commanders, are prolific writers of weighty ideological polemics – and occasional sharp jabs at those who espouse different lines.⁷ A simplistic division into “hardliners” and “softliners” is also unhelpful: the architects of the peace process line are not ideologically “soft”.
- For all the attention Maoist leaders have given to transformation and moving away from armed struggle, the fulcrum of debate is not whether the

⁵The only high-profile Maoist to quit the movement, Rabin-dra Shrestha, made perhaps the worst individual miscalculation of the election campaign, joining the UML with a fanfare of publicity just before it was crushed by the CPN(M) at the polls. On Shrestha's revolt against Prachanda, see Crisis Group Report, *Nepal's Maoists*, op. cit., pp. 5-6.

⁶On the history of the CPN(M)'s antecedents, see Deepak Thapa with Bandita Sijapati, *A Kingdom under Siege: Nepal's Maoist Insurgency, 1996 to 2003* (Kathmandu, 2003). The falling out between Prachanda and Baburam Bhattarai in early 2005 was serious but at no point likely to have prompted a major split in the movement.

⁷The most egregious spilling over of personal politics into the mainstream media was an article by Baburam Bhattarai's assistant portraying him as a “new Pushpalal”, the most respected of Nepal's first communist leaders. Bishwadeep Pandey “Baburam 'naya pushpalal'”, *Kantipur*, 19 May 2008.

CPN(M) should embrace “normal” democratic politics. The Maoists believe themselves already to be democratic and, in their view, far more so than other parties, but their definition of “democracy” is not the same as post-1990 parliamentary practice, which they (and many others) see as compromised and discredited. The real debate is about how best to achieve their revolutionary goals: it is an argument about means, not ends. The ideological gulf between the Maoists and the old parties remains wide.⁸

- Debate is generally contained within the party, and once a line is agreed it is adhered to. Much has been made of the emergence of an anti-leadership (or at least anti-Baburam Bhattarai) “dissident” group, led by Mohan Baidya “Kiran” and Ram Bahadur Thapa “Badal”. But, as with the barely concealed debates at post-people’s movement central committee meetings, opponents of the Maoists would be rash to assume such disagreements are signs of a serious split. Those who have frequently predicted a debilitating factional falling-out are still waiting, and may have to wait much longer.

The more serious internal challenges are more down-to-earth and less tractable – the type of difficulties that cannot be finessed by well crafted choice of language.

The first is organisational. The size of the Maoist movement has been its strength but is also a burden. The party core – including long-term activists and combatants – is not a problem. As has been demonstrated in the past two years, the military, the PLA, is firmly under party control and has, in general, quietly put up with the frustrations of cantonment life with no exit in sight. The Young Communist League (YCL) is a different question. It has well-trained (mainly ex-PLA) commanders but has grown exponentially.⁹ As

⁸CPN(M) Central Committee member Dharmendra Bastola warned that their opponents are deliberately obstructing the “New Democratic Revolution”: “The parliamentary parties want to keep semi-feudal, semi-colonial mode of production at any cost. Our Party has been struggling to smash them”. Interview, *The Red Star*, 1 June 2008, at <http://southasiarev.wordpress.com/2008/06/08/bastola-interview-achievements-gained-thru-peoples-war>.

⁹There are no accurate figures on the strength of the YCL, although informed estimates suggest it could be as high as 300,000-400,000 (not all of these being full-time activists). Maoist leaders have said they want to boost its membership to one million, but even the YCL’s chief is unwilling to talk exact figures, as this interview illustrates: “Q: You say you have one million active cadres working in your organisation. How do you manage such a large number of people? Pun: All one million of them are not the full-timers. Q: How many of them work full-time? Pun: They are very few in number,

the Maoists know from their rapid expansion into the east during the insurgency, mass recruitment brings many problems. The core of the YCL was former “people’s militia” youths; more recent recruits have not even their basic level of selection, training and testing. The Maoists want and need the YCL but cannot sustain it by legitimate means; they can improve its disciplinary record but only if they want to and devote significant energy to the task. So far, efforts have been unconvincing.¹⁰

The second is about practical politics. Assuming the CPN(M) does end up leading the next government – despite other parties’ qualms and internal doubts – it will have to fight on several fronts as it tries to deliver. Apart from pushing its constitutional vision, it will need to cope with all the woes that face incumbent administrations in difficult times, exacerbated by its ambitious manifesto pledges.¹¹ Succeeding in this challenge requires not only working with other parties but also through a bureaucracy that is innately conservative, unrepresentative and, as Maoist ministers belatedly realised in the course of 2007, unlikely to over-exert itself to implement Maoist policy.

If Maoist leaders are not successful on both these fronts, the possibility of a return to street agitation cannot be ruled out. Speaking in Gorkha on 1 June 2008, Prachanda warned that obstruction in government formation could lead the Maoists to launch new agitation. Others have again raised the prospect of an “October Revolution”.¹² Asked if another movement or struggle is likely, a Maoist leader explained that the question is about handing power to the people, not the CPN(M):

maybe 5 or 10 per cent. Q: That means around 20,000 persons? Pun: Even less than that. We don’t have the exact data. That one million is also not the precise figure. There were around six to seven lakh [600-700,000] YCL cadres some seven months ago. We expanded the organization’s membership during the election, so now the number may be around nine to 10 lakhs [900,000-1 million]”. “The polls succeeded because we became Gandhis”, interview with YCL leader Ganesh Man Pun, *The Kathmandu Post*, 16 June 2008.

¹⁰“YCL to stop taking action against others”, *The Kathmandu Post*, 31 May 2008. The YCL’s chief commented: “We are not a paramilitary institution; we may appear paramilitary in our action and manner because we work and move in a mass or group. We will correct that, and we have been saying it”. Ibid.

¹¹The CPN(M)’s election “Commitment Paper” made many specific promises – for example, universal drinking water, health care and education – as did a separate economic vision paper. See Crisis Group Report, *Nepal’s Election and Beyond*, op. cit., p. 3.

¹²See also Somat Ghimire, “Badhyakari bandaichha aktobar kranti”, *Naya Patrika*, 5 June 2008.

The role of our party is to lead these people to seize the political power, if [it is] not handed over through the level of struggle so far performed. And, if the NC and the UML fail to comply to the people's verdict, the people will certainly come to the struggle of another level and force them to hand over the political power to the people. No force in the world can stop the people from taking power, once they get ideologically, politically equipped. This will be the case in Nepal too.¹³

B. EXTERNAL RELATIONS

The Maoists are also well aware that they need to deal with the international community – both as political power centres and/or donors – and sceptical potential allies such as the business community and media. Maoist leaders' immediate reactions to their victory were overwhelmingly conciliatory and accommodating. With some notable exceptions – such as Prachanda's intemperate, albeit ironic, attack on one private media house¹⁴ – party representatives at most levels have been carefully on-message. The tone was set by Prachanda himself at his first public speech as the election results came in:

We will work together with not only the seven parties but also the new parties that will be established through this election and the old parties in existence in the forthcoming constitution making process....All eyes are upon us. This is a positive challenge for us. I want to clarify that the path of cooperation that we adopted since the twelve-point agreement will continue....For the international community and especially our neighbours India and China, I want to say that our party wants good relations with all of them and is willing to work together on development cooperation and the peace process.¹⁵

Maoist leaders kept up their efforts to court the international community, most notably appearing at a UN-hosted press conference following a meeting with donors on 24 April. They have made some concrete progress, for example engaging U.S. diplomats face-to-face.¹⁶ Maoist representatives at an Indo-Nepal seminar in Patna were well received. A sceptical journalist at the meeting was won over by Minister Hisila Yami's performance: "For the first time I wasn't embarrassed by our minister. She said all the right things, in form and content. It was truly impressive".¹⁷ The Maoists know they need international cooperation and have a simple message to communicate to the world: "All we want is for outsiders to give us a fair chance. Let them criticise us if we make mistakes but the time for prejudice is over. We want to deliver real change and hope international friends will work with us".¹⁸

Before and after the elections, the CPN(M) maintained a controversial push to encourage former royalist "nationalists" to join hands with them. Some, such as Panchayat-era zonal commissioner Surya Bahadur Sen Oli, were even accommodated on the party's PR list. Plausible rumours abound that other high-profile monarchists, such as royal foreign minister Ramesh Nath Pandey, have been wooed.¹⁹ Reports even suggested the CPN(M) wanted the king himself to join a new Maoist-led nationalist front.²⁰ Many who formerly looked to the palace and despised the Maoists are in confusion. They are naturally attracted to the CPN(M)'s promise of nationalist governance with an authoritarian firm hand, and delighted at the defeat of mainstream party leaders they had long derided but been unable to unseat. At the same time, they are deeply suspicious of communism. The Maoists are unlikely to find more than conditional support among former royalists.

But the most visible diplomatic target has been the business community. As a useful analysis points out, apart from political negotiations, top Maoist leaders have lavished most time and attention on the private sector.²¹ Prachanda's and Bhattarai's well-publicised talk with the newly elected Federation of Nepalese

¹³ Interview, *The Red Star*, op. cit.

¹⁴ "Prachanda warns Kantipur Publications", *The Kathmandu Post*, 31 May 2008. Kantipur had taken a stridently anti-Maoist stance, in particular since the Maoist-affiliated trade union organised its paper delivery men and vandalised its printing presses in a protest over workers' rights. Prachanda's "threat" prompted outraged condemnations from Kantipur, the Federation of Nepalese Journalists and international press freedom watchdogs. However, journalists who attended the meeting which Prachanda addressed said it was clear he was speaking ironically – prefacing his warning with thanks for Kantipur's "help" to the Maoist campaign. Crisis Group interviews, journalists, Kathmandu, 9 and 18 June 2008.

¹⁵ "We want to continue working with parties and the int'l community", says Prachanda", *nepalnews.com*, 12 April 2008.

¹⁶ See below, Section IV.C(2).

¹⁷ Crisis Group interview, Kathmandu, 28 April 2008.

¹⁸ Crisis Group interview, Krishna Bahadur Mahara, Kathmandu, 17 April 2008.

¹⁹ A weekly quoted reports that the Maoists were preparing to propose Pandey for the CA. "Nepal: Staunch royalist Pandey in Maoist quota for CA member", *Telegraph Weekly*, 19 May 2008, at www.telegraphnepal.com/news_det.php?news_id=3447.

²⁰ "Prachanda wants ex-king to join nationalist front with Maoists", Press Trust of India, 9 June 2008.

²¹ Mukul Humagain and Rishikesh Dahal, "Najukindai neta", *Nepal*, 15 June 2008.

Chambers of Commerce and Industry (FNCCI) president was their first high-profile, post-election meeting.²² Many more have followed.

C. POLICY, IDEOLOGY AND PRAGMATISM

“Nepal’s Maoists have changed their strategy and tactics but not yet their goals”, was how Crisis Group assessed the CPN(M)’s position in early 2007.²³ This remains a valid, if simplistic, summary. Although several CPN(M) leaders complained of anti-Maoist “bias” in that report, they are keen to reinforce the central message that their revolution continues. Hints that the party may abandon its “Prachandapath” strategy and even drop “Maoist” in a rebranding exercise seem premature.²⁴ As Prachanda explained on the eve of the elections, “we have not completed the democratic revolution, you know. We are in the process of the completion of the democratic revolution”.²⁵ The Maoists emphasise that their current situation is the result of bullet *and* ballot, not a rejection of the former. “We have not left the armed struggle”, insisted Baburam Bhattarai. “We wouldn’t be here without the armed struggle – if we did not have an army. It’s a fusion of bullet and ballot”.²⁶ Leaders consistently point

out that the end of the monarchy alone does not mean the struggle against feudalism is over.²⁷

Leveraging their partial victory and justifying the revolutionary credentials of the ballot/bullet fusion will, however, present significant political and ideological challenges. As their Indian counterparts put it: “The real test, however, begins now after the CPN(M) takes over the reins of power. It is a fundamental tenet of Marxism that no radical restructuring of the system is possible without the smashing of the existing state”.²⁸ The CPI(Maoist) warned that mass mobilisation will continue to be the only way to force the former ruling classes to give up power and that the CPN(M)’s lack of a CA majority means they will not be able to win the “arduous and bitter struggle” to write a pro-poor constitution. They will have to choose between making unprincipled compromises or opting to “intensify the struggle through all means, including armed insurrection, in order to implement genuine democracy and establish people’s power. There is no other alternative”. Or rather, the alternative is “to become dizzy with success” and invite a “reactionary backlash”.²⁹

The CPI(Maoist) concluded that the CPN(M) would be better off not joining government and continuing to lead a mass struggle from outside. The result of working with “reactionary parties and imperialists” would be “degeneration of the party leadership and cadres and emergence of a strong bureaucratic class. In such a scenario, all the gains made would go down the drain, and the reactionary parties would once again come to power by cashing in on the frustration of the masses”.³⁰ This is a far from private debate: the mainstream Nepali press has relayed the message to stay out of government.³¹

Such a critique is far from an extreme position on the left. It was the inflexible rule of India’s moderate CPI(Marxist), which refused to allow its leader, Jyoti Basu, to head a coalition administration in 1997 and is only supporting India’s governing UPA coalition from outside government. The fears of the CPN(M) being weakened by being in office but not in power echo the long-standing critique of the UML’s decision to lead a minority administration in 1994, a choice

²²The FNCCI subsequently came up with its own twenty-year economic vision paper, echoing themes stressed by the Maoists but also emphasising the leading role of a fully independent private sector.

²³Crisis Group Report *Nepal’s Maoists*, op. cit., p. i.

²⁴Narayankaji Shrestha “Prakash”, general secretary of CPN (Unity Center-Masal), announced that his party would soon merge with the CPN(M), which would drop Prachandapath and even the “Maoist” name. “Maoists will abandon Prachandapath, says Prakash”, nepalnews.com, 9 June 2008. For an in-depth interview see “Videshi Kutnitigyaharu aphnai maryadama basun”, *Ghatana ra Bichar*, 18 June 2008.

²⁵Mary Des Chene and Stephen Mikesell, “An Exclusive Interview for MRZine with CPN(Maoist) Leader Prachanda”, *Monthly Review*, 27 May 2008, at <http://mrzine.monthlyreview.org/prachanda270508p.html>.

²⁶Amit Sengupta, “It’s a fusion of bullet and ballot”, *Hard News*, June 2008, at www.hardnewsmedia.com/2008/06/2210. When a transcript of an Indian television interview with Prachanda appeared to airbrush out the “bullet” element, Indian supporters of the CPN(M) reacted angrily to this “doctoring, nay censoring” of Prachanda’s original reference to the “fusion” of bullet and ballot. Anand Swaroop Verma and Gautam Navlakha (on behalf of Indo-Nepal People’s Solidarity Forum), letter to Karan Thapar, New Delhi, 19 May 2008. For a good exposition of Bhattarai’s thinking, see Stephen Mikesell and Mary Des Chene, “Baburam Bhattarai: For a ‘New Nepal’”, *Economic and Political Weekly*, 10 May 2008.

²⁷See, for example, Hisila Yami, “Dhalyo rajtantra, dhaleko chhaina samantavad”, *Gorkhapatra*, 18 June 2008.

²⁸Azad, spokesperson, Central Committee, CPI (Maoist), Press release, 24 April 2008, at <http://southasiarev.wordpress.com/2008/06/08/full-april-statement-indian-maoists-on-nepal/#more-226>.

²⁹Ibid.

³⁰Ibid.

³¹“Bharatiya maovadidvara pushpakamallai sattama nabasna agrah”, *Kantipur*, 11 June.

many of its leaders later came to regret – though perhaps not as many as now regret its joining the 2004-2005 Deuba coalition as a junior partner. But the Maoists have already experienced being in power but not in office and realise the need to get their hands on the levers of the state. As the Leninist streak in their thinking has long suggested, there is little to be gained by dominating the countryside while being locked out of central power.

The CPN(M)'s successes have for years discomfited international Maoists as much as they have cheered them. Few fraternal organisations, least of all senior Indian Maoists, gave the CPN(M) good odds on progress when they launched their "people's war"; many were happy to criticise them as inexperienced and unrealistic.³² At the same time, some thinkers within the Maoist Revolutionary Internationalist Movement (RIM) who have been urging fresh thinking have seized on the CPN(M)'s changed approach as evidence in support of their challenge to old orthodoxies. As an American activist who has strongly criticised the American Revolutionary Communist Party leader Bob Avakian's line put it:

The [CPN(M)'s] mix of communist goals and non-dogmatic methods disturb a lot of leftist assumptions too. When the CPN(Maoist) launched an armed uprising in 1996, some people thought these were outdated tactics. When the CPN(Maoist) suspended armed combat in 2006 and entered an anti-monarchist coalition government, some people assumed they would lose their identity to a corrupt cabal. When the Maoists press their current anti-feudal program, some people think they are forgetting about socialism.³³

This is a debate that will run and run, within the CPN(M) and the global radical left alike.³⁴ The important point is that the CPN(M) leadership's line has been bold and controversial and will remain so. Its "transformation" is not insincere but it is not set in stone, nor will supporters accept it unconditionally. If it delivers results – progress towards the Maoists' clearly stated goals – it will be hailed as a success. If it appears to falter, the voices urging a revised approach will be strengthened.

³²For background on the CPN(M)'s close but disputatious relations with other Maoist organisations, see Crisis Group Report *Nepal's Maoists*, op. cit., pp. 8-12.

³³Mike Ely, "Eyes on the Maobadi: 4 Reasons Nepal's Revolution Matters", 8 June 2008, at <http://southasiarev.wordpress.com/2008/06/08/eyes-on-the-maobadi-4-reasons-nepal%e2%80%99s-revolution-matters/>.

³⁴Crisis Group will return to the topic of post-election Maoist politics in more detail in future reporting.

D. STRENGTHS AND STRAINS

The Maoists have emphatically demonstrated their political and organisational strengths. Given their resilience and adaptability and the parlous state of their main opponents, sensible money should now be on a repeat performance in the next election, whenever it comes. The main threat to a further victory is either a dramatic (but unlikely) revival of the NC and UML's fortunes or (unlikely, but not impossible) serious failure in government or eruption of internal divisions.

However, their strengths bring with them weaknesses. All their courting of critics will go in vain if they cannot transform their actions as well as their words. Continuing bad behaviour is not limited to isolated aberrations but still reflects a systemic unwillingness to respect fully the democratic norms they have supposedly signed up to.

The post-election abduction, torture and killing of Kathmandu businessman Ram Hari Shrestha is only the most egregious example. It appears to have been carried out under the direct supervision of senior PLA commanders. While Maoist leaders eventually accepted responsibility and offered compensation, they have not allowed justice to take its course, nor have they handed over the prime accused.³⁵ There have been credible reports of reprisals against individuals and communities who did not vote for them.³⁶ On 18 May the National Human Rights Commission published ten specific allegations of serious rights violations.³⁷

³⁵PLA Deputy Commander Prabhakar announced the suspension of the prime accused, Kali Bahadur Kham Magar "Vividh" and promised that the party's own investigation committee would uncover the "true facts" about Shrestha's death. He made no mention of cooperating with the police, handing over the accused or taking action against anyone found responsible. Press release, PLA Deputy Headquarters, 23 May 2008.

³⁶For example, various media reported that Maoists had cut off water supplies to Bagarkot, Dadeldhura, because locals had not voted for them. "Bhot nadiako bhandai pani muhanma avarodh", *Kantipur*, 11 June 2008.

³⁷On 18 May 2008, the NHRC listed ten recent allegations it had received about Maoist behaviour: the murder of Ram Hari Shrestha after abduction; the serious beating and injuring at Kulung, Bhojpur of UML cadres Ram Singh Rai, Khagendra Kumar Rai, Dedraj Basnet and Kul Bahadur Rai at Kulung Bhojpur, who are being treated at TU Teaching Hospital in Kathmandu; destruction of the house of Chandra Bahadur Shrestha of Okharpauwa, Nuwakot, after he was accused of not voting for the Maoists and being active against them; the beating up and injuring of Rameshwor Pokharel, a teacher of Nepane Secondary School in Gorkha for not voting for the Maoists; disruption of the drinking wa-

Days later, the NC accused the YCL of murdering party worker Jaya Lal Bom in Kalikot district on 16 May.³⁸ Maoist leaders have, quite reasonably, asked to be judged by their actions. By this measure, they still have much to answer for.

III. THE NEW OPPOSITION

A. THE GRAND OLD PARTIES: IN A HOLE AND DIGGING DEEPER

The two major mainstream parties, the NC and UML, are at a more critical juncture than their leaders' public pronouncements suggest. Unwilling to listen to voters and their own grass-roots workers, they risk years in the political wilderness if they do not face up to their defeat and take urgent steps to reform themselves and reconnect with the electorate. Most signs suggest the NC will prefer to turn inwards, rejecting the election's message and becoming embroiled in internal strife. The UML is more disciplined and realistic but has to decide whether to fight the Maoists for dominance of the left or rebrand itself as a centrist social democratic alternative. The established parties' sense of entitlement is not wholly illusory: they were not wiped out at the polls and will not disappear entirely. But their behaviour suggests they may lose themselves in self-defeating recriminations.

For the NC and UML the election results were both better and worse than they appeared at first glance. Better, in that the initial Maoist landslide in the FPTP vote was balanced by a less commanding victory in the PR contest. Worse, in that the results from winnable seats suggest a crippling disconnect with ordinary voters and their own core supporters and activists. Both parties continued to pay more attention to pleasing powerful outside forces than to ordinary citizens. They were stuck in the mode of assuming that power comes from above – delivered by the palace, by Delhi or by closed-door leadership haggling – rather than from the ballot box. Neither party made any visible effort to make itself more inclusive and representative, nor to confront the heavy ranks of established senior leaders with the need to give way to fresh faces.

It is not very clear what the parties believe in. The NC's much-trumpeted commitment to political pluralism is not an exclusive claim and looks increasingly tired in the face of its egregious refusal to develop any democratic practice within the party. Like the NC, the UML reluctantly signed up to the Maoist-led republican agenda but neither wholeheartedly enough to suggest a genuine progressive zeal nor with enough concrete caveats to suggest a viable alternative stance on key issues. The parties may not quite deserve the CPI(Maoist)'s accusation that they are "narrow self-seeking robber gangsters who are out to fatten themselves at the expense of the vast masses of poor and the destitute", but they should seriously consider its conclusion, that "the results are a telling indictment

ter supply by cutting pipes in Nawalpur-8, Sindhupalchowk, after accusing villagers of not voting for the Maoists and not donating money for a road construction project; YCL death threats, which forced the five-member family of Nara Bahadur Gurung to flee their home in Changthapu VDC, Panchthar district; the merciless beating of five brothers of a family at Kaskikot, Kaski district; the manhandling of Ram Banjare, the owner of Gulmeli Hotel in Arghakhanchi; the threatening of Pratap Singh Tamang of Hokse VDC, Kavre district, for voting for the NC; the beating up of teachers Krishna Prasad Pathak and Ram Nath Tiwari of Rameshwor Higher Secondary School in Chitwan.

³⁸ "NC alleges Maoists of killing its cadre in Kalikot", nepalnews.com, 21 May 2008.

against forces which had proved themselves to be a party to the oppression, suppression and exploitation of women, Dalits, national minorities and *adivasis* [indigenous peoples].³⁹

1. The Nepali Congress

The NC is well positioned to continue its dramatic decline, especially if it neglects its remaining strengths. The party was, and remains, reunited in name only. There is still a well defined split between the erstwhile mother party and Sher Bahadur Deuba's Nepali Congress (Democratic, NC(D)). Ex-Prime Minister Koirala is even reported to have blamed the NC's election defeat on the "blunder" of reunifying the party.⁴⁰ It suffered further debilitating rifts in the run-up to the polls, most notably between those who respected the decision to adopt a republican line and those who noisily rejected it. Among the latter was the then-prime minister's daughter. Parachuted in to the interim legislature as a nominated member, she devoted much of her electoral campaign (against the MJF) to pursuing a personal vendetta with Home Minister Sitaula and publicly distancing herself from party policy.⁴¹

The party's reluctant and largely insincere conversion to the Maoist agenda left it unable to give a convincing impression that it stood for anything other than its age-old commitment to multi-party politics, which it resolutely refused to reflect in its own practice. As supporters of the king never tired to point out, with some justification, far more Nepalis were killed under Deuba's premierships than under the king's direct rule. Many voters remembered that brutal police actions directed by the NC (such as 1995's Operation Romeo) helped fan the flames of resentment in the mid-west and hasten the launch of the Maoist "people's war". Hardline former home ministers Khum Bahadur Khadka and Govinda Raj Joshi may owe their defeats in part to this record. Depending on the performance of the MJF and others, the party could be permanently weakened in its Tarai base.

The NC needs to come to terms with its defeat and work out how to reshape itself, but reformist voices are notable for their absence throughout the leadership. The liberal republican Narahari Acharya is a party of one; more radical student leaders such as Gagan

Thapa have been sidelined by the leadership. There are no hints of the kind of internal debate that could prompt renewal. Most influential activists seem more likely, so far, to blame their defeat on their weakness in cooperating with the Maoists and to push for return to the old, conservative stance. The party youth are almost equally intransigent. Both the student wing (the NSU) and youth wing (the Tarun Dal) urged the prime minister to stay in place and not concede defeat.⁴² Their tough talk of forming a "Tarun Sena" to fight the YCL would not work (they lack the mobilisation capacity and are in no position to fight the Maoists on their terms) and would only sacrifice their supposed principles of non-violence and democracy – a self-defeating move.

The NC has one great natural advantage: its position as the clear opposition to the leftist majority. In its own way, it also – like the Maoists – has a solid support base of class and economic interest groups. Whatever its policy flip-flops and ideological weakness, it is very unlikely to disappear, as it is the natural home for those who feel threatened by left-wing policies. With the poor performance of other rightist parties, all of which were tainted by their perceived royalism, the NC can cement a more solid grip on this sector of the electorate. Still, this will not broaden its appeal beyond a core base which will never in itself be sufficient to bring it back into government except in coalition (especially if future elections retain a PR element). The viability of working in coalition will depend on two factors: where the UML decides to position itself (ideologically and tactically) and whether the NC can reconcile itself with the new Madhesi forces that have eaten into its former base in the Tarai.

In the immediate future, the NC is unlikely to devote much attention to longer-term strategy. Its more pressing problem is that it desperately needs to be in government, however distasteful it may find playing second fiddle in a Maoist-led administration. It is a natural party of government and has little *raison d'être* in opposition. Occupying positions of power has become its primary goal and its principal sustenance: without the patronage power it has become accustomed to, it will find it even harder to motivate its activists and protect its grip on state institutions such as the bureaucracy and police.

³⁹ Azad, spokesperson, *op. cit.*

⁴⁰ "Parti ekikaran 'blandar' thiyo", *Naya Patrika*, 18 June 2008.

⁴¹ Sujata Koirala reportedly announced she had not handed out a single copy of the NC manifesto in her constituency, as it had not been formally endorsed by the party. "NC meet put off yet again", *The Himalayan Times*, 29 April 2008.

⁴² "Base political consensus on NC's preconditions, says student group", *ekantipur.com*, 26 May 2008; "Tarun Dal suggests PM to stay put unless conditions met", *nepalnews.com*, 2 June 2008.

2. The UML

The UML is trapped between the legacy of its past bad choices and a future that demands a boldness it currently lacks. Many traditional, educated urban UML voters told Crisis Group that they had switched to the Maoists because it was no longer a “real” communist party. This is partly a hangover from the party having petitioned the king for the prime ministership and then joined the Deuba coalition government. It also reflects a broader sense that the UML has seriously neglected its natural constituencies, such as urban workers and unemployed and the rural poor, and driven them into the Maoists’ arms.

The UML is in many ways better placed to address its failings, however, than the NC. It is more internally democratic, better at encouraging serious internal debate and has more dedicated local organisers. Although its attempt to withdraw its ministers from government as soon as the election results went bad looked like petulance, General Secretary Madhav Nepal’s resignation as party chief to take responsibility for the defeat appeared graceful and principled.⁴³ The UML then managed a prompt, smooth and democratic transfer of power to a new leadership under Jhalanath Khanal – a sign of party maturity the NC could never dream of. (Not only is NC President Koirala incapable of contemplating resignation, he also refused to accept the resignation of acting President Sushil Koirala – his nephew.)

The UML does have to work out how to win back cadres who have defected to the Maoists, but its major problems are not internal. Rather, it faces invidious choices related to its ideological positioning vis-à-vis the CPN(M). Both parties are fighting for at least some of the same political space and voters. Under its new leadership, the UML has taken a more aggressively anti-Maoist stance,⁴⁴ with General Secretary Khanal instructing its members to stand up to the Maoists in the CA and its youth wing announcing the formation of a new nationwide force “to provide security to the youth, ordinary citizen and other communities who need protection from violent activities”.⁴⁵

The collapse of the UML’s attempt to assert its dominance on the left has left it with few immediate options.⁴⁶ Bamdev Gautam does not always speak for the party mainstream, but his argument that it should oppose Maoist extremism without allowing itself to be forced to the right reflects an instinctive UML view.⁴⁷ However, his assessment that the UML should not view the challenge as one of polarisation – greater policy differentiation from the CPN(M) – but of standing ground and sticking to principles may not translate into electoral recovery. The UML has long been a social democratic party in all but name (and some of the rituals of communist-style organisation). It may yet be that a more viable future would await it if it rebranded itself. But the psychological leap this would require is unlikely in the near term.

3. Can they reform and recover?

There is plenty of potential for the major parties to rejuvenate themselves, reconnect with voters and return strongly at the next election, but only if they are willing to heed the message for change. If not, they could rule themselves out of contention for power for many years to come, following in the well trodden steps of other grand old parties that have spent a decade or more in the wilderness before pulling themselves together – from India’s Congress to both of the UK’s main parties and the French Socialists. Nepal’s voters have long demonstrated a desire for change, but the two-party dominance made this look deceptively like short-term, anti-incumbent sentiment rather than a wish for more radical transformation.

But meaningful reform does not depend solely on grand policy decisions. Much of it is nuts and bolts. Internal party democracy and better discipline could reduce the trend, most sharply evident in the NC, towards internecine strife. More attention to involving local activists in party decisions could start to rebuild local structures. Making parties more representative should not mean doing the bare minimum mandated by new quotas forced on them by more progressive opponents. Both main parties could take many small steps towards these goals at their own initiative, even if bigger ideological decisions will take time. The re-

⁴³ Madhav Nepal has distinguished himself among the big losers by limiting his public comments to modest and constructive suggestions. See, for example, “No one can turn back rapid change, says Madhav Nepal”, *ekantipur.com*, 12 June 2008.

⁴⁴ General Secretary Khanal ordered his party to retaliate immediately to any attacks. “Ailagnemathi tatkai jailagnus”, *Budhabar*, 18 June 2006.

⁴⁵ “CPN-UML to stand up to Maoists in CA”, *The Kathmandu Post*, 5 June 2008.

⁴⁶ Maoist leader Baburam Bhattarai’s harsh assessment of the UML’s prospects may be subjective but deserves consideration: “There will be only two major political parties in Nepal – Nepali Congress, leading the bourgeois and wealthy people on the one hand, and the Maoists, leading the progressive and poor people. UML holds neither the characteristics of poor nor the rich”. “We will lead next govt: Dr Bhattarai”, *ekantipur.com*, 13 April 2008.

⁴⁷ “Itihasko kasima emale”, *Kantipur*, 6 June 2008.

sults were embarrassing to both parties but could yet serve as a last wake-up call – if leaders accept the need to reform to win back voters' trust.

The international community could also help, but only if major players recognise their partial culpability for the state of the parties. Outside powers spent years pushing the NC and UML to bow to the king and cautioning them off the “radical” Maoist agenda, thus encouraging them to isolate themselves from the electorate. This shielded them from the imperative to develop responsive policies and enhanced their natural tendency to pay more attention to higher powers (the king and powerful internationals, as well as the army, to which they were in hock from the moment it was mobilised) than to the citizens they had once been elected to represent. As past elections and the prospect of future ones grew more distant, it is not surprising that ordinary people's aspirations took second place to the immediate concerns of power politics.

Rejuvenated mainstream parties would benefit the country immensely – both to play a critical but constructive role in the constitutional process and to offer real competition and choice at the next election. Even the Maoists have said repeatedly that truly competitive politics is essential to avoid stagnation and corruption. A substantial majority of people did not vote Maoist and would presumably be keen to vote for other parties reflecting their concerns. If the mainstream parties fail to live up to popular expectations, it will be a disservice to such voters and may well tempt more of them into the arms of the CPN(M), especially if it proves its democratic credentials, or other parties such as the MJF.

B. THE ARRIVAL OF THE MADHESI PARTIES

The Madhesi parties have arrived and are here to stay, although it is too early to make confident predictions of their future configuration. The MJF certainly made the most of its head-start, but the TMDP and Sadbhavana Party cannot be ruled out of stronger contention over time. In any case, the current formation looks like only the first round of the battle for representation. Dalits, Muslims and Tarai minorities have yet to form or find parties to promote their interests (although the CPN(M) has started the process). The experience of neighbouring Indian states suggests that further flux is almost inevitable.

The MJF's refusal to support a broad alliance may have harmed the overall Madhesi tally but did not hurt the cause as badly as many analysts had expected. It may also have given a boost to productive competition. The relatively poor performance of the TMDP,

widely perceived as Delhi's pet project, may also have sent a healthy signal that India cannot have its own way even in the areas it feels are most pliable. In any case, the message to the old parties is unambiguous: the days when they could expect passive support without payback are over. The Madhesi wave has also helped open the territory for other ethnic and regional groups to pursue their agendas. Identity politics are unlikely to go away.

Following a 1 June central committee meeting, the MJF reiterated its principal demand of an autonomous single Madhes province. It also proposed a strong executive president elected on the basis of multi-party competition and directly elected provincial chief ministers, and stressed its long-standing demand for collective entry of Madhes into the army, police, and all government bodies on the basis of their proportion of the total population.⁴⁸ Other Madhesi parties are likely to support all these policies.⁴⁹

Shorter term developments may hinge on how much the MJF can make of its potential kingmaker role. It could be sidelined, but where larger parties are divided, its votes could make a crucial difference – no wonder it was quick to float the idea of a simple majority vote for government formation, which would greatly add to its leverage. Even without that, it has enough CA delegates to wield some clout and has an irresistible moral claim to representation in government. It also offers the strongest argument for ending in practice, and perhaps also in the text of the interim constitution, the governing seven-party coalition's exclusive ownership of constitutionally defined “consensus”.⁵⁰

⁴⁸“MPRF for autonomous province”, *The Rising Nepal*, 4 June 2008.

⁴⁹On the TMDP and MJF's post-election outlook, see “Keep out of Tarai affairs”, Interview with Hridayesh Tripathi, TMDP”, *The Kathmandu Post*, 9 June 2008; and “Nothing except one Madhes”, Interview with Jaya Prakash Gupta, MJF”, *The Kathmandu Post*, 9 June 2008.

⁵⁰In this report, the term “seven parties” refers to the governing coalition of six parliamentary parties and the Communist Party of Nepal (Maoist, 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, a term that is now widely used to refer to 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)); Janamorcha Nepal; Nepal Workers and Peasants Party (NWPP); and United Left Front (ULF).

C. CHANGES AT THE FRINGES

The crushing defeat of the royalist parties, which failed to win a single FPTP seat between them, was underlined by the easy overthrow of top leaders such as Pashupati Shamsheer Rana (RPP), Surya Bahadur Thapa (RJP) and Kamal Thapa (RPP(Nepal)).⁵¹ In fact, the “royalists” were almost all quick to abandon the king to his fate. Despite manifesto calls for the people to have a “direct” say in the future of the monarchy,⁵² the RPP and RJP both voted for the republic proposal at the CA’s first sitting. Only the RPP (Nepal) maintained the courage of its convictions and voted against, registering a note of dissent. But even it has started having second thoughts, with strong criticism of Kamal Thapa and calls for a rethink of the main platform at its post-republic central committee meeting.⁵³ “RPP-N is a democratic party”, explained Chandra Bahadur Gurung, who has voiced its dissent in the CA. “It will respect the people’s verdict...It is necessary for us to move forward by accepting the republic”.⁵⁴

With 25 parties represented in the CA, there is more political diversity than ever, but it remains to be seen how that will affect the well-worn patterns of national politics. The thirteen larger parties quickly organised themselves into a grouping,⁵⁵ leaving the twelve smaller parties to form a similar caucus to challenge their dominance.⁵⁶ Among the smaller parties, two features stand out. First, the multiple small communist splinter parties continue to show a surprising resilience, with several represented despite a series of recent splits. Secondly, the arrival of some ethnic/regional parties, in particular the Rashtriya Janamukti Party, indicates that identity politics exists beyond the Tarai. It may yet make itself felt more sharply, both at the national level and perhaps especially at the regional level as and when federalism is implemented. These parties

may also help focus attention on issues such as quotas and reservations – and keep up pressure on the old parties to reform themselves.

⁵¹ RJP leader Surya Bahadur Thapa appeared to foresee this, cautioning before the election that “people aren’t happy with us [RJP, RPP, RPP-N] going separately – we can’t meet expectations” and preparing for a tough contest: “Elections are about winning and losing. I’ve lost before – it doesn’t scare me”. Crisis Group interview, Kathmandu, 16 March 2008.

⁵² See Crisis Group Report, *Nepal’s Election and Beyond*, op. cit., p. 4.

⁵³ “Raprana nepaldvara ganatantra svikar”, *Naya Patrika*, 4 June 2008.

⁵⁴ “Seven parties reluctant to accept the shift: Chandra Bahadur Gurung”, *People’s Review*, 19 June 2008.

⁵⁵ The grouping of thirteen larger parties includes the NC, UML, CPN(M), Janamorcha Nepal, MJF, TMDP, Sadbhavana Party, CPN(ML), RPP, National People’s Front, CPN (United), NWPP and NSP(A).

⁵⁶ See “Stop playing power games, 12 fringe parties tell bigger parties”, *ekantipur.com*, 6 June 2008.

IV. DIGESTING THE RESULTS

A. KATHMANDU: THE BUBBLE THAT DIDN'T BURST

By the morning of 12 April 2008, the potential for a Maoist victory was becoming clear. The Maoists had won five seats, with the UML and NC bagging only two and one respectively. The Maoists were leading in a further five Kathmandu seats and in over 40 constituencies from which partial results were emerging – compared to around a dozen leads each for the NC and UML. By the time the Election Commission (EC) held a press conference later in the morning, the Maoists were ahead in 56 of the 102 constituencies where counting was underway. Before nightfall, Prachanda had won from Kathmandu-10, and the CPN(M) had 26 seats in the bag, including clean sweeps of Bardiya, Dang and Makwanpur districts.

Endorsements from international observers continued (including from the Socialist International, of which the NC is a member), and parties and commentators were adjusting to the unexpected turn of events. Madhav Kumar Nepal resigned as UML general secretary and Sushil Koirala as NC acting president (although his resignation was rejected by party leader G.P. Koirala). Formerly hostile newspapers hailed the “Maoist wave”,⁵⁷ commentators on the staunchly royalist and anti-Maoist *People's Review* fell over themselves to offer glowing encomiums. The press and airwaves were awash with *mea culpas* from analysts who had confidently predicted a crushing Maoist defeat. The Maoists themselves were quick to be magnanimous in victory, assuring the business community and international powers that they were keen to work in partnership.

However, as the CPN(M) tally climbed higher, the graceful losers turned sour. On the sixth morning after the vote, former UML leader Nepal conceded defeat in the second constituency he had stood for. His party pulled out from the government and, despite Prachanda's entreaty to Prime Minister Koirala to collaborate, NC leaders started publicly urging their party not to

join a Maoist-led administration.⁵⁸ Formerly hostile commentators, prompted in part by evidence of continued Maoist violence, moved to resume their former stance that the CPN(M) still had to pass further tests before it could prove itself worthy of power.

The changed attitudes to the election results were the most notable feature of the return to a “normal” Kathmandu perspective. Losing party leaders who had initially accepted their defeat realised that the statistics could be reinterpreted to tell a different story. The Maoists had only won just over 30 per cent of the vote – and that too on a 60 per cent turnout. This meant that the “non-Maoists” could claim they represented almost 80 per cent of the population. In any case, NC and UML leaders started complaining more vocally that the Maoists had cheated and that any apparent victory was stolen.⁵⁹ As parties and their supporters in the media tried to turn the clock back, they set new criteria for the Maoists to claim a place in government.⁶⁰ The critical difference of a popular mandate was put to one side, as the Maoists' opponents resurrected the traditional tactics of appealing to higher powers instead of the electorate, focusing their efforts on New Delhi and other potential powerbrokers.

B. INDIA: BIG BROTHER'S BITTER-SWEET TRIUMPH

For India, the elections were a bitter-sweet triumph. They marked a resounding success for the peace process it had helped craft and an endorsement for the very public urging that they should take place. But the results looked to many like an embarrassing snub for the parties New Delhi had apparently backed and expected to emerge on top.⁶¹ Senior Indian officials welcomed developments and put a brave face on the unexpected outcome. In the words of prime ministe-

⁵⁷ “Groundswell for Maoists” was the *Kathmandu Post's* banner cover headline, 13 April 2008; its sister paper, *Kantipur*, Nepal's largest selling daily, had already hailed the “people's wave” for the Maoists. “Maovadi pakshama janlahar”, 12 April 2008. A rival newspaper described how the Maoists “continued with their winning streak ... and scored several stunning upsets”. “Maoists poised for landslide win”, *Himalayan Times*, 13 April 2008.

⁵⁸ “Party shouldn't join new govt: NC leaders”, *ekantipur.com*, 16 April 2008.

⁵⁹ See, for example, “Maoists' threats affected free and fair polls, says Deuba”, *ekantipur.com*, 16 April 2008.

⁶⁰ The hostile media has not been entirely negative towards the Maoists. On the morning after the republic declaration, the *Kathmandu Post's* front-page editorial was magnanimous: “The first and foremost credit for the republic goes to none other than the Maoists. Though the *Post* never agreed with the violent methods the Maoists adopted, it would be unjust not to recognise their role in bringing this day about”. “Republic at last!”, *The Kathmandu Post*, 29 May 2008.

⁶¹ Most controversially, India's National Security Adviser, M.K. Narayanan, used a pre-election television interview to underline New Delhi's particular preference for the Nepali Congress. See Dhruva Adhikary, “A Maoist in Nepal's Palace”, *Asia Times*, 19 April 2008.

rial special envoy and former ambassador to Nepal Shyam Saran:

Several people in India have asked whether the government was not caught by surprise by the election results and whether these do not constitute a setback for India's Nepal policy. I am surprised by these comments, not because we were not surprised at the results but because people seem to think that our surprise was an unpleasant one. There seems to be an assumption that the Indian Government had a preferred electoral outcome and put its bets, much like a punter, on different horses. Let me make it clear. Throughout the peace process in Nepal, India has not played favourites with this or that political party. Our stand has been that it is for the people of Nepal to deliver, through free and fair elections, their verdict on who should govern them and in what manner.⁶²

This frank assessment is not disingenuous: it is entirely in line with his and other diplomats' public and private comments since the start of the peace process.⁶³ "For the sake of Nepal we need an election. The result is immaterial", outgoing Indian ambassador Shiv Shankar Mukherjee had observed before the poll. "India would like to see a democratic government, even if it is of the extreme left".⁶⁴ Nevertheless, New Delhi had great difficulty digesting the results.⁶⁵

India's public responses to the new political reality have been measured and constructive, calling for respect for the results and consensus on a Maoist-led coalition government.⁶⁶ However, it appears to have lost none of its appetite for interventionist micro-management and remains happy to shield the Nepal Army (NA) from democratic reform. It reacted calmly

to the Maoists' call to renegotiate the 1950 Treaty of Peace and Friendship, which many Nepalis have long considered biased in India's favour.⁶⁷ Former ambassadors have weighed in with supportive comments to urge a cool-headed approach to improving bilateral relations. "Our role has to be people-centric rather than personalised and personality-centric, as has been the case in the past", observed a former ambassador, Deb Mukharji, at a New Delhi policy seminar. "The Indian government should now deal with Nepal on a state-to-state basis with greater transparency. This will improve the relations between the two countries".⁶⁸

India's stance on Nepal has many domestic ramifications, as different constituencies have clearly perceived interests and positions. New Delhi's willingness to engage the CPN(M) since mid-2005 and encourage it to enter open politics is particularly sensitive at a time when India's Maoists are on the offensive. In Chhattisgarh state, they have for the first time announced the establishment of a parallel "revolutionary government", a step similar to the CPN(M)'s establishment of its United Revolutionary People's Council.⁶⁹ They also appear to be following the CPN(M) lead in adding an urban focus to their formerly rural-based movement, with one senior leader reportedly saying that "if we fail to build our movement in the cities, the revolution will remain a dream".⁷⁰

The Maoist victory was welcomed by Indian leftists. The most important left party, the CPI(Marxist), which supports the governing United Progressive Alliance (UPA) coalition from outside government and has been closely involved in Nepal's peace process, hailed the results as "a clear and unambiguous verdict against the monarchy and for the transition towards a democratic republic". Noting the CPN(M)'s "impres-

⁶² Shyam Saran, "Nepal's Political Transformation and Future of India-Nepal Relations", keynote address to Seminar on Emerging Trends in India-Nepal Relations, Patna, 26 April 2008, at www.meaindia.nic.in/speech/2008/04/26ss01.htm.

⁶³ Crisis Group interviews, *passim*.

⁶⁴ Crisis Group interview, Kathmandu, 14 March 2008.

⁶⁵ Crisis Group interviews, Indian policymakers, retired officials and Nepal analysts, New Delhi, 18 April 2008.

⁶⁶ "Indian Prime Minister Dr Manmohan Singh has called on the political parties of Nepal to forge consensus to deal with the major political issues. During a meeting with Nepalese ambassador Dr Durgesh Man Singh in New Delhi, Monday, the Indian prime minister expressed satisfaction over the way political issues have been sorted out in the country. 'India is happy that Nepal's parties are moving ahead constructively', he is said to have told the Nepalese envoy. 'The parties should make every effort to build an inclusive Nepal', the envoy quoted the Indian PM as saying". "Indian PM backs consensus in Nepal", nepalnews.com, 10 June 2008.

⁶⁷ The treaty implicitly restricts Nepal's ability to import arms by stating that Nepal shall be free to do so but that "the procedure for giving effect to this arrangement shall be worked out by the two Governments acting in consultation" – a condition that reflects India's tacit assumption that Nepal falls within its security umbrella. The full text of the treaty is at www.nepaldemocracy.org/documents/treaties_agreements/in-do-nepal_treaty_peace.htm. For a well informed Nepali take on India's role see Manjushree Thapa, "India in its Nepali backyard", *openDemocracy*, 2 May 2008, at www.opendemocracy.net/article/india_in_its_nepali_backyard_0.

⁶⁸ "Nepal at a critical juncture", report of a seminar at the Observer Research Foundation, New Delhi, 17 May 2008, at www.observerindia.com/cms/sites/orfonline/modules/report/ReportDetail.html?cmaid=14579&mmacmaid=14580.

⁶⁹ Sanjay Basak, "Maoists proclaim own 'govt'", *The Asian Age*, 31 May 2008.

⁷⁰ Sanjay Basak, "Maoist rebels begin urban push", *The Asian Age*, 11 June 2008.

sive performance”, it urged the Indian government to “make it clear that it has nothing in common with the negative and hostile stand taken by USA, which declared the Maoists to be a terrorist organisation”.⁷¹ Indian leftists have joined together to pressure the government to encourage formation of a Maoist-led administration.⁷²

The Hindu right, however, has been seething. The opposition Bharatiya Janata Party (BJP) railed that the government “has been derelict of its duties; violative of its oath of office to safeguard the country’s interests; and has abdicated its responsibility by outsourcing its foreign and security polices to the Communists”. While expressing “satisfaction” at Nepal’s elections, it underscored “the need for great restraint in the utterances and conduct of the CPN(M) as they had only about a third of the popular vote and that, too, obtained through intimidation”.⁷³ The BJP’s concerns are stoked by its perception that Nepal’s politics can affect domestic and regional stability. As party leader L.K. Advani put it:

Terrorism and religious extremism are being stoked by anti-India forces in our neighbourhood. And they are helped by a weak response from the government. A section of the youth is being misled by political ideologies that believe in violence and have a deep aversion towards our nation’s cultural and spiritual heritage. This can be seen from the spread of Naxalite groups over a large geographical area. The victory of Maoists in Nepal is a worrisome development for India.⁷⁴

Behind much of this rhetoric is a fear of China’s quietly growing power. “In all development activities Delhi must be the first, last and ever-willing neighbour to help Nepal and to keep China out under any and every circumstance”, wrote a columnist for the *Rashtriya Swayamsevak Sangh* mouthpiece, voicing the Hindutva right’s alarm. “For India to have an overly Sino-

friendly Pakistan as a neighbour is bad enough. We cannot afford to have a Hindu but newly-secularised Nepal to use China to embarrass India”.⁷⁵

Nevertheless, even the Hindutva fringe has a realistic streak. King Gyanendra’s most loyal supporter, the World Hindu Federation, announced that it was no longer royalist, since the king had accepted the people’s verdict, and would now concentrate on fighting secularism instead.⁷⁶ Prominent BJP ally and Bihar chief minister Nitish Kumar hailed the CA elections as a “turning point in Nepal’s history”, when he welcomed delegates to an Indo-Nepal seminar in his state capital. The thrust of his remarks was pragmatic, mutual self-interest, making a determined push for Nepal to work with India on developing water resources: “Indo-Nepal cooperation is of paramount importance for the optimum utilisation of water and overall development of the region”.⁷⁷

India’s close involvement in every aspect of Nepal’s politics shows no signs of diminution; nor does the scope of its influence appear to have been particularly harmed or boosted by the election.⁷⁸ For all the outpourings of commentary and analysis, the future of Nepal-India relations looks mainly like more of the same.

C. THE OTHER INTERNATIONAL PLAYERS

1. China

Nepal’s other giant neighbour has always been less voluble and visible in its dealings with Nepal but is no less keen to secure its national interests. Long suspicious of the CPN(M) – and embarrassed by its use of the “Maoist” tag – China was quick to shift policy after the April 2006 people’s movement and step up engagement. Maoist spokesperson K.B. Mahara visited Beijing in the first week of June 2008 and reported that he was encouraged by his meetings with government and party officials. However, this does

⁷¹ Press statement, Communist Party of India (Marxist), 16 April 2008.

⁷² Gopal Khanal, “Dahallai pradhanmantri banauna dabab samiti”, *Kantipur*, 13 June 2008. Members of the group reportedly include CPI(M) leader Sitaram Yechury, Nationalist Congress general secretary D.P. Tripathi and CPI national secretary D. Raja, all of whom have long taken a personal interest in Nepal’s peace process.

⁷³ “Foreign Policy – National Security and UPA’s Disastrous Governance”, Bharatiya Janata Party National Executive, parliamentary deposition, 1-2 June 2008, at www.bjp.org/Press/june_2008/june_0208_p.htm.

⁷⁴ L.K. Advani, convocation address at the Gurukul Kangri Vishwavidyalaya, Hardwar, 7 June 2008, at www.bjp.org/Press/june_2008/june_0708_p.htm.

⁷⁵ M.V. Kamath, “Nepal’s tryst with destiny”, *Organiser*, 1 June 2008 at www.organiser.org/dynamic/modules.php?name=Content&pa=showpage&pid=239&page=12.

⁷⁶ “Hindu group deserts king, but rejects secular state”, *The Kathmandu Post*, 4 June 2008.

⁷⁷ Nitish Kumar, inaugural speech to seminar on “Emerging Trends in India-Nepal Relations”, Patna, 26 April 2008, at www.meaindia.nic.in/speech/2008/05/01ss01.pdf.

⁷⁸ On India’s post-election diplomatic activities, including a run-down of Ambassador Rakesh Sood’s talks with key players, see Tilk Pathak, “Maovaditira dhalkiyo dilli”, *Nepal*, 22 June 2008. The Indian embassy has rebutted media allegations that its envoy overstepped diplomatic norms. See letters, *The Kathmandu Post*, 20 June 2008.

not mean that China will rush to embrace the CPN(M) if this might upset its relations with other parties.⁷⁹ Ambassador Zheng Xianglin has been at pains to stress the continuity in China's policy:

China's good-neighbourly and friendly policy to Nepal is consistent. As a good neighbour and friend of Nepal, we sincerely hope that Nepal continues to move forward with the peace process and enjoy political stability and economic progress. The Chinese Government adheres to the principle of non-interference into the internal affairs of other countries, and respects the choice made by Nepalese people on its social system and development road in light of its own national conditions. We are ready to make joint efforts with Nepal to promote the bilateral friendly relations and cooperation.... China respects the choice of Nepalese people, and is willing to develop friendly relations with all political parties, including the CPN (Maoist).⁸⁰

The CPN(M) has taken a stridently pro-Beijing line in the face of Tibetan protests in Kathmandu. This is not exceptional: all major parties are scared to offend China, and pro-Beijing leftists like the UML have long made near identical statements. Prachanda is reportedly keen to visit China, including Mao's home village for "inspiration". He says that Mahara's visit was laying the ground for a trip of his own and stresses that in international relations, ideology will "not be a barrier".⁸¹ China continues to emphasise that it is for Nepal to choose its own political system and "development path", a message that was reportedly repeated by Wang Jiarui, head of the Chinese Communist Party's international department, to Mahara in Beijing.⁸²

2. The United States

The U.S. has maintained its strong support for political pluralism while gradually building contacts with the Maoists. It welcomed both the elections and the republic declaration.⁸³ Ex-President Carter criticised

the slow pace of Washington's shift in perspective: "It's been somewhat embarrassing to me and frustrating to see the United States refuse among all the other nations in the world, including the United Nations, to deal with the Maoists, when they did make major steps away from combat and away from subversion into an attempt at least to play an equal role in a political society".⁸⁴

However, the U.S. has taken quiet steps to reorient its policy. Following informal contacts, U.S. Ambassador Nancy Powell held a first meeting with the Maoist leadership on 1 May 2008. When Deputy Assistant Secretary of State for South and Central Asian Affairs Dr Evan A. Feigenbaum visited Nepal on 24-26 May, he met Prachanda and reportedly held a fruitful discussion. Prachanda requested the U.S. to continue economic assistance and to support Maoist efforts to introduce a "new model of development".⁸⁵ In terms of democracy promotion, the U.S.'s main policy priorities are clear: "consolidation of gains in the peace process, promotion of security sector reform and the rule of law, and strengthening democratic institutions".⁸⁶

3. The United Nations

Domestic commentary on the successful election has tended to refer to the UN Mission in Nepal (UNMIN) only in terms of its widely expected imminent demise. This is neither fair nor constructive. UNMIN has given cause for some of the bad publicity it has generated – there is truth to the feeling that it is over-staffed and resourced given the narrowness of its mandate. However, that mandate was the decision of Nepal's political leaders, and UNMIN's role in enabling the elections to happen was critical. Beyond technical assistance, which many election officials privately praised,⁸⁷ its work as a neutral referee has

⁷⁹One commentator, generally sceptical of the CPN(M), warned that Mahara's diplomacy had "backfired" and that Beijing was planning to invite a senior UML delegation rather than more Maoist leaders. Sushil Sharma, "Picture imperfect", *Spotlight*, 13 June 2008.

⁸⁰"Nepal, China trust and respect each other: Ambassador Zheng", *The Rising Nepal*, 16 June 2008.

⁸¹"Nepal leader eager to visit China", *China News*, 13 June 2008, at www.chinadaily.com.cn/china/2008-06/13/content_6758302.htm

⁸²"China says it respects Nepal's choice of political system", *nepalnews.com*, 3 June 2008.

⁸³"United States Congratulates People of Nepal", U.S. embassy, Kathmandu, 11 April 2008. The U.S. welcomed "the

Constituent Assembly's first step in defining a new, democratic Nepal with the declaration of a republic on May 28", press statement, U.S. embassy, Kathmandu, 29 May 2008.

⁸⁴"Nepal's Maoists gain first seats", BBC News, 12 April 2008.

⁸⁵"U.S. official meets Prachanda", *ekantipur.com*, 26 May 2008. A Voice of America (VOA) editorial reflecting the views of the U.S. government quoted Feigenbaum as saying the decision to abolish the monarchy and form a Constituent Assembly was a "very historic leap for Nepal". He added that the next government should reflect the will of the Nepalese people as expressed in the election. "Milestone for Nepal", VOA News, 9 June 2008.

⁸⁶"Advancing Freedom and Democracy Reports – 2008", U.S. State Department, Bureau of Democracy, Human Rights, and Labor, 23 May 2008, at www.state.gov/g/drl/rls/afdr/2008/104861.htm.

⁸⁷Crisis Group interviews, district election officers (DEOs) and other officials, various districts, March-April 2008.

kept a useful check on the political process, as well as enabling more coordinated international support. “UNMIN has on the whole been pretty helpful – and the establishment of OHCHR [the Nepal Office of the High Commissioner for Human Rights] was even more useful and influential back then than UNMIN is now”, was a typical observation from a senior NC politician. “If Nepal does hold free, fair and credible elections, international actors should be thanked. But they’re too big – for the money that’s been spent, what have they achieved?”⁸⁸

Nepal’s government ministers and civil servants understandably bristle at any suggestion of undue external pressure or interference but are not unappreciative of the UN contribution. As Foreign Secretary Gyan Chandra Acharya commented, “moral support from the international community has been helpful, but progress, modalities and speed must be set by the Nepalese people themselves, and outsiders should respect the state structure that we do have”.⁸⁹ This basic approach is likely to guide consideration of any continued UN role. While UNMIN prepares to wind down its operations in preparation for the 23 July 2008 expiry of its Security Council mandate, there are some areas where its role is still needed and could not readily be filled by other bodies. Most critical is the monitoring of arms and armies. The basic problem that there is no easy exit for UNMIN until the issue of PLA integration has been resolved remains as true as ever (see below). Maoist leaders have always been privately keen to see some continued UN presence and have occasionally said so in public.⁹⁰

V. TRANSITIONAL STEPS

The post-election transition was contentious and prolonged. For this there were three main reasons: the interim constitution was unclear or ambiguous in many of its transitional provisions, leaving room for deadlock; its entire approach was based on the assumption of seven-party consensus, a concept both exclusive and elusive; and the pre-election calculations of all parties other than the CPN(M) were predicated on a crushing Maoist defeat, and none were prepared to follow the rules they had written when assuming they would still be in charge.

A. THE LAST-MINUTE REPUBLIC DECLARATION

The interim constitution required the prime minister to summon the first sitting of the CA within 21 days of the declaration of final results.⁹¹ Although there was some uncertainty over how to define “final results”, there was eventual (unstated) consensus that it was not the 25 April EC final declaration but rather the point at which the parties’ selections for individuals to fill their PR seats were approved. This happened on 8 May and the prime minister duly summoned the first sitting for 28 May, just within the deadline.

In the end, the republic dawned well after dusk. As the scheduled time of 11am slipped past, party leaders were still locked in frantic negotiations over the form of the motion to be put to the CA and the shape of interim state structures. The assembly finally convened after 9pm, and the result of the vote came in after 11pm. The 26 nominated members were not yet in place, a minor point but symbolic of the continuing lack of consensus and respect for procedure.⁹² Only

⁹¹ Interim Constitution, Art. 69(1). See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., pp. 17, 20.

⁹² There have been complaints that the parties seem to have forgotten their promise to use the 26 nominees to bring in ethnic groups unrepresented in the CA through election. “NEFIN [Nepal Federation of Indigenous Nationalities] disgruntled over parties’ sharing 26 CA seats”, nepalnews.com, 27 May 2008. This had been written into the December 2007 23-point agreement, which stated that “Amendments [to the interim constitution] shall be made such that the nominated 26 people shall also include those indigenous Janajatis not represented through election”. Article 2, unofficial English translation, at www.unmin.org.np/downloads/keydocs/2007-12-24-23.Point.Agreement.SPA.ENG.pdf. After the parties had nominated their winning PR candidates, NEFIN calculated that twenty groups were still unrepresented. “Ethnic

⁸⁸ Crisis Group interview, NC leader, 12 March 2008.

⁸⁹ Crisis Group interview, 13 March 2008.

⁹⁰ “Bhattarai sees UNMIN’s role until NA-PLA integration”, nepalnews.com, 12 June 2008.

one congratulatory message from abroad was read out, that of India's parliament speaker, Somnath Chatterjee. The vote itself was overwhelming (460-4), but the procedure was bizarre, with an hour wasted in a Westminster-style division (with members trooping off into separate lobbies for "aye" and "nay") and those opposed to the motion only allowed to register their objections once the vote had taken place, but before the result was announced.⁹³

The motion on the republic was short and simple.⁹⁴ It ousted Gyanendra and confirmed that he and his family would only enjoy the status of ordinary citizens. It declared that Narayanhiti Palace would be converted into a national museum, and Nepal would henceforth be known as a federal democratic republic. On other details, it was silent. The CA adopted interim procedures and passed a further constitutional amendment paving the way for a ceremonial presidency but did not spell out additional details.⁹⁵

It was not clear how the king would react to his dismissal. As even one of his loyal adherents commented, "most observers following the story – tragic to some, joyous to others – remained unsure about which way the cat would jump when the fateful hour was struck".⁹⁶ A commentator from the other side of the political spectrum expressed similar feelings: "There had been suspicions and apprehensions regarding the implementation of the constitutional provision. The doubt was valid, as some parties were not very willing to put an end to the monarchy".⁹⁷ Well-sourced reports that have subsequently emerged suggest that frantic negotiations to save some role for the king continued between the palace, the army and the prime minister till the last minute.⁹⁸

In the end, the king had little choice. Hagging over his future privileges and dragging his feet over return-

ing the crown and sceptre, it looked as though Gyanendra might turn his exit into an embarrassingly petulant saga. His behaviour even prompted the West's most ardently monarchist daily newspaper to urge him to go with grace.⁹⁹ Press speculation, backed by comment from informed academics, suggested that the palace was home to important historical documents as well as other heritage items.¹⁰⁰ Ironically, the only palace secret to receive belated confirmation was the continued hidden existence of King Tribhuvan's former mistress, reputed to be Gyanendra's grandmother. She, along with Gyanendra's stepmother, will be allowed to continue residing in the palace grounds.

Gyanendra himself departed for his country retreat (granted temporarily by the government) on 11 June. He held a farewell press conference, in which he reiterated the pain he felt at wrongful accusations of having been involved in the June 2001 palace massacre, defended his efforts for the nation and pledged to abide by the people's verdict and remain in the country playing a constructive role.¹⁰¹ His statement, delivered amid the hubbub of an excited crowd of journalists in no mood to respect the occasion, offered a bathetic end to the Shah dynasty's rule.

groups not represented in the CA", <http://nefin.org.np/content/view/314/>.

⁹³ For a good analysis of the procedural contempt this sequence of events suggested, see Shiva Gaule, "Vidhiko upeksha", *Kantipur*, 1 June 2008.

⁹⁴ For the full text, see Appendix C below.

⁹⁵ "Samvidhansabha baithakko antarim karyavidhi, 2065" and "Nepalko anarim samvidhan, 2063 ko chautho samshodhan", Parliament Secretariat, 29 May 2008. An unofficial translation of this amendment is at www.unmin.org.np/downloads/keydocs/2008-05-28-Interim.Constitution.Fourth.Amendment.ENG.pdf.

⁹⁶ M.R. Josse, "The enigma of G. Shah's 'graceful' exit", *People's Review*, 12 June 2008.

⁹⁷ Yuba Nath Lamsal, "Republic of Nepal: People Are Masters of Their Destiny", *The Rising Nepal*, 4 June 2008.

⁹⁸ Sudheer Sharma, "Nabhaeko raktapat", *Nepal*, 15 June 2008.

⁹⁹ "Last month, Nepal was declared a republic, and as far as removing a royal family is concerned, it was all very civilised. The incoming government won power at the ballot box, rather than with violence, and (following a parliamentary vote) gave King Gyanendra two weeks to vacate his Kathmandu palace. What a shame the process is now turning sour. The government is asking for the King's crown (not his head). Gyanendra, however, appears to be in a huff, and there are concerns that he will replace the crown's diamonds with fake ones (if it is ever returned). The saga has the hallmarks of the worst divorces, and it is an undignified end to the House of Shah (established in 1769). We are believers in constitutional monarchy but, given that Nepal's people have spoken, perhaps what is now required is an etiquette book on how deposed royals should bow out gracefully". "King Gyanendra of Nepal should go with grace", *Daily Telegraph*, 10 June 2008, at www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2008/06/10/dl1003.xml.

¹⁰⁰ Some reports suggested palace staff had destroyed records ("Jalaie darbarka kagajpatra", *Naya Patrika*, 1 June 2008), but this was denied. However, respected historians believe many historical documents and artefacts are in the palace's keeping. See Balkrishna Basnet, "Narayanhitibhitra ke-ke chhan?", *Kantipur*, 1 June 2008.

¹⁰¹ An unofficial translation of the statement was published in the *Himalayan Times*, 12 June 2008.

B. THE NEW GOVERNMENT: CONSENSUS OR COMPETITION?

Despite the interim constitution's vagueness over transitional arrangements, the other post-election steps could have been straightforward.¹⁰² All major parties were publicly committed to continuing consensus – the UML most explicitly so, stating in its manifesto: the government “will be formed under the leadership of the largest party on the basis of proportional representation”, implying that any party with sufficient seats could expect cabinet posts and should accept them.¹⁰³ The NC similarly stressed the need for extended Seven Party Alliance collaboration in the run-up to the election. Until it lost, it was happy to emphasise to all other parties that the CA polls were “not a matter of winning and losing”. Prime Minister Koirala emphasised that there should be a coalition government even if the NC were to win a majority and appealed to other parties to join in.¹⁰⁴ He did not, of course, address the possibility of the NC trailing in a distant second.

The weeks after the elections provided some grounds for optimism. Despite the sometimes bitter fights over next steps, inter-party talks did not break down entirely. The existing government – which remains in place until it resigns or a new one is formed – even managed to take some sensible decisions, such as the controversial, but unavoidable, raising of fuel prices on 9 June. All parties showed a mixture of intransigence and flexibility, hallmarks of behaviour throughout the peace process which has hindered, but never entirely prevented, agreement.

The major problem was that, as predicted, powerful losers were not ready to accept the results. The only surprise was that the losers in question were neither the Maoists (who won) nor the king (who lost but conceded defeat) but the NC and UML.¹⁰⁵ Defeat paradoxically increased their sense of rightful ownership of their privileged place in government. The NC in particular – happy to occupy all key ministries throughout the post-people's movement period as

well as the prime ministership and acting head of state – decided the time was ripe to rewrite the laws it had written when expecting victory. It saw no need to lose the game if it could change the rules instead.

Debate then concentrated on two central issues. The first was the provision for government formation and removal. The interim constitution, following the consensus model used through the pre-election period, demanded a two-thirds majority. Given that the CPN(M) commands more than one third of the CA, other parties feared that once it was in government, no one could remove it. The Maoists argued that unexpected results alone did not add up to a principled case to amend the constitution. They also feared that a simple-majority rule would encourage votes of no confidence designed to destabilise any government they led. On both points they were probably right; nevertheless, they offered a degree of flexibility.

The second issue was that of the head of state. The non-Maoist parties felt that the Maoists' share of the total vote (under one third) did not entitle them to claim both prime ministership and presidency.¹⁰⁶ They also argued the Maoists could not take command of the army while still retaining their own PLA. Both were reasonable concerns, as was the Maoist's worry that any head of state with residual powers, however ceremonial, could also undermine them, in extremis by taking command of the army or exercising emergency powers. At an abstract level, this deadlock could have been easily resolved. However, it also involved the question of who would fill the post.

The CPN(M) had campaigned on a clear commitment to installing Prachanda as president, so could justly claim a popular mandate. The NC had no prior position, but rather than wrong-footing the Maoists by proposing a talented alternative candidate, such as the former deputy speaker, Chitralekha Yadav, it was clear that Koirala had his own eyes on the post – even when he said he would not stoop to wearing the president's “tattered clothes”.¹⁰⁷ In a short address to

¹⁰²The interim constitution's provisions on the formation of a post-election government were far from specific. See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., pp. 19-20.

¹⁰³UML manifesto, p. 38.

¹⁰⁴G.P. Koirala, address at NC manifesto launch, NC headquarters, Lalitpur, 13 March 2008.

¹⁰⁵“The two major parties of the democratic era make the most credible-sounding commitments to abide by the results. Nevertheless, surprisingly poor showings could prompt either to complain about an unfair environment or technical irregularities”. Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 18.

¹⁰⁶The NC did not comment on how much mileage it had made out of its 36 per cent share of the vote in the 1999 elections which, delivering it an absolute majority of seats under the FPTP system, has been the justification for it remaining at the head of almost all governments since, with the interruption of two periods of royal rule. For past results, see www.election.gov.np/EN/prevelection.html.

¹⁰⁷“Others talk of a position [the presidency]. For me any position is tattered clothes. They're not for me to wear”. “Sahakarya anivarya: pradhanmantri”, *Kantipur*, 9 June 2008. He went on to explain that “he would rather head a post that has power”. “Republic not any party's victory: PM”, *The Kathmandu Post*, 9 June 2008.

the CA's first sitting, he had told the assembly, "today my dream has come true" (magnanimously adding that others might also share his dream), before promising "I will take my leave from you now but not forever – I will be with you to the end".¹⁰⁸ Indeed, he kept up a determined campaign to retain power until promising on 26 June that he would step down as soon as a president was in place to accept his formal resignation.

The NC and UML supported their push to keep control over the process by setting conditions for cooperating with the Maoists. Some were reasonable (asking the CPN(M) to live up to its former commitments); others were not.¹⁰⁹ But the underlying case was clear: winning an election was not enough to make the Maoists "eligible" to lead a government.¹¹⁰ Maoist supporters understood this well enough: "The two parties that had dominated parliament under the monarchy are trying to corner the Communist Party of Nepal (Maoist) into accepting a situation in which they retain control over key levers of the existing state".¹¹¹

As the haggling went on, there was no progress on any front. The CA convened for the second time on 6 June but immediately re-adjourned to allow party leaders' negotiations to continue. On 11 June, it still had nothing to debate, and members of smaller parties complained it was being treated as a rubber stamp. At its next meeting, on 18 June, it adjourned indefinitely for lack of any agenda. Further promised meetings have been repeatedly postponed.

¹⁰⁸ G.P. Koirala, address to the CA's first sitting, Kathmandu, 28 May 2008.

¹⁰⁹ The NC set seven preconditions for its support to a Maoist-led government. These included: dissolution of the Maoist people's liberation army (PLA), people's courts, people's government, semi-military structure of the Young Communist League (YCL), return of the property looted or captured by the Maoists, rehabilitation of people displaced and an end to intimidation, threats and extortion. NC seven points: press release, 12 May 2008. The NC's central working committee had been meeting at the prime minister's residence since 24 April; this press release published its decisions. The UML made similar demands. The MJF also set conditions, primarily that past agreements must be implemented, any interim constitutional amendments must reflect the deals done with Madhes, and the Maoists must specify the form of federal units in the Madhes. "MPRF forwards preconditions for joining Maoist-led govt", *The Kathmandu Post*, 4 June 2008.

¹¹⁰ "NC, UML to give Maoists 7 days to prove eligibility", *The Kathmandu Post*, 4 June 2008.

¹¹¹ "Federal Democratic Republic of Nepal declared, Assembly deadlocked", A World To Win News Service, 2 June 2008.

VI. MOVING FORWARD

A. THE HEART OF THE POWER STRUGGLE: CONTROLLING THE SECURITY SECTOR

1. The problem

The NC and UML were not just putting on an epic display of sour grapes. The Maoist victory had left them with no policy on the issue at the heart of the power struggle: the security sector. There has been no discussion on this critical topic, even as both the NA and the PLA remain at full strength – an unaffordable and inherently unstable situation. The May 2006 proclamation of the restored parliament had called for the establishment of a new National Security Council and supporting secretariat, but this has not materialised in practice.¹¹² There has been no effort to develop the defence ministry as anything more than an understaffed post-box for the army.¹¹³ There have been no meetings of the interim legislature's "146 committee" that was set up under the terms of the Comprehensive Peace Agreement (CPA) to discuss the future of the two armies.¹¹⁴

¹¹² The proclamation declared: "The existing provision regarding the National Security Council has been repealed. There shall be a National Security Council under the chairmanship of the Prime Minister in order to control, use and mobilise the Nepalese Army". House of Representatives proclamation, 19 May 2006, Section 3.2, at www.nepalnews.com/archive/2006/may/may19/hor_proclamation.php.

¹¹³ There is a one-page description of the defence ministry's putative duties available online. Its URL indicates clearly enough its subservience to the army it is supposed to control: [www.nepalarmy.mil.np/mod.php?hdng=ministry of defence MOD&pg=1](http://www.nepalarmy.mil.np/mod.php?hdng=ministry%20of%20defence%20MOD&pg=1).

¹¹⁴ 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 but only met once before in effect dissolving itself. 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, including "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. The foregoing sentences are reproduced with no substantive change from Crisis Group Briefing, *Nepal: Peace Postponed*, op. cit., p. 9. Its words similarly paraphrased the same substance from Crisis Group Briefing, *Nepal's Fragile Peace Process*, op. cit., p. 9. This is not out of laziness: there is simply nothing new to report.

The Maoists' PLA is indeed, as its critics rightly aver, a private, politicised force under the control of a revolutionary party. This is not a sustainable situation and can only be a bone of contention with other parties and a source of apprehension for those who have been on the receiving end of its military force. It is, however, subject to a chain of command and political discipline that is far more transparent and effective than that of the NA, which remains, in contrast, a largely autonomous force, and one keen to flex its political muscles.

The only contact between the army and the government has been irregular private meetings between Chief of Army Staff (COAS) Rookmanagad Katwal and the prime minister. These are not subject to any civil service or cabinet scrutiny and have sometimes taken place one on one, without minutes. Their pattern is, however, clear enough: the head of the government and head of the army have each sought to use, control, cajole and bully the other in the service of their own partisan interests. In general, COAS Katwal has had the upper hand – the NA is, as the prime minister knows all too well, by far the most powerful state institution – but he has also been outmanoeuvred, in particular over the ending of the monarchy.

The saddest irony of the peace process is that while the army was under palace control, there were at least checks and balances on its behaviour: for all his nominal superiority, the COAS could not do anything without clearance from the king's Principal Military Secretary. The transfer of supreme command to the NC president meant even this rudimentary level of control was dispensed with. The NA has never been subject to less political control in its entire history, whether under Ranas or Shahs.

The mainstream parties were not willing to discuss the future of the security sector for two reasons: they did not dare trespass on the army's territory (and received sufficient warning that trespassers would, probably metaphorically, be shot);¹¹⁵ and they felt they had a viable plan – let the Maoists lose the election, and the issue would somehow go away without the need for a policy. Either the Maoists would be so weakened by their humiliating defeat that they would concede to whatever the "legitimate" forces dictated, or the PLA would simply drift out of the cantonments in frustration and leave the Maoist emperor to rue his nakedness. In any case, the Maoist defeat would probably lead to the retention of the monarchy, so the king

would still look after the army and save his subjects from the trouble. This was never the most well considered of policies, and it left no party in any position to cope with the consequences of a Maoist election victory.

The powerful position of the Madhesi parties, which secured a commitment in the February 2008 eight-point agreement to the group induction of Madhesis into the NA, makes the issue all the more complicated. Most Madhesi leaders, including the MJF's Upendra Yadav, are firmly opposed to integrating former PLA fighters into the NA and are determined to see their earlier deals implemented before allowing progress on other fronts. The NA, which indicated its refusal to accept the idea of group recruitment in the wake of the eight-point agreement, will also be fighting on two fronts.

2. Pot and kettle?

On this most sensitive of topics, it is tempting to pretend that saying "on the one hand, the NA ... on the other hand, the PLA ..." constitutes balanced reporting. But the reality itself is not so balanced. The Maoist position on army integration has been consistent, compromising and repeatedly shared with the public.¹¹⁶ It is not entirely palatable to all, and there is no reason that other parties should accept it wholesale.¹¹⁷ It is an opening negotiating stance, which will need to

¹¹⁶Their stance has been frequently reported by the mainstream media, for example: "On integration of the PLA into the Nepal Army, [Prachanda] said it would be done as per the Comprehensive Peace Agreement and not all personnel would be taken into the army. 'Only those professionally fit and physically fit will join the army, while others can be mixed into police or a separate industrial security force can be created'". "Prachanda Rejects NC, UML Pre-conditions to Join Govt", *The Himalayan Times*, 19 May 2008. Maoist leaders have not always been entirely consistent. For example, PLA Deputy Commander Barshaman Pun "Ananta" has suggested the PLA could remain as a separate government-controlled security force rather than be integrated into the national army. "PLA to be separate security force: Pun", *The Kathmandu Post*, 14 June 2008.

¹¹⁷The aspect of the Maoists' security sector plans that should probably most alarm their opponents has been subject to no public discussion whatsoever. This is not the integration of some PLA fighters into a slimmed down national army (which at the size the Maoists propose would have little hope of taking over the state even if it wanted to) but the Maoist proposal for compulsory military training for all adults, with regular refresher training until retirement. That this has been subject to no public debate probably reflects the fact that no commentators have bothered reading the many Maoist writings on the topic or feel the need to engage with them.

¹¹⁵See, for example, the mysterious list of "suggestions" anonymously sent to the parties but appearing to reflect the NA's political priorities. "Yi 'sujhav' kaska holan?", *Budhabar*, 18 June 2006.

be revised during talks, as the CPN(M) is well aware. In the meantime, the CPN(M) has restated its complaint that the state is responsible for not embracing the PLA and bringing it under its control, despite Maoist offers to put it under government command from the outset of the peace process.¹¹⁸ Commanders emphasise that the PLA could be brought under state control before integration.¹¹⁹

But on the other side – what used to be the king's side, then was called the “state's” side (until the Maoists emerged to lead the state), then could have been the mainstream parties' side (if they had accepted their responsibility) and is now the NA's privately-owned side – there is no negotiating position. The NA cannot prepare for meaningful talks, because its leadership cannot accept the need for change, however incremental and democratic. In this it has been shielded by powerful allies, in particular India.¹²⁰

The NA, which speaks when and how it chooses, offered no comment on the elections. The only public welcoming of the peaceful step forward came from its representative on the UNMIN-supported Joint Monitoring Coordination Committee (JMCC), Major General Shivaram Pradhan.¹²¹ The COAS, not normally shy, devoted his attentions to issuing internal army circulars that attempted to rewrite the constitutional

process and undermine the sovereignty of the CA.¹²² He used the occasion of a celebration of 50 years' contribution to peacekeeping operations to reiterate the NA's red line: no integration of a single PLA member.¹²³ (This is always phrased as “entry for any qualified individual who meets the standard criteria”, but one of those basic criteria is that no one with affiliation to a political party may be recruited, thereby barring any Maoist combatant.) Even a highly sympathetic commentator described these remarks as “sheerchutzpah”.¹²⁴ More fanatical supporters see the protection of NA autonomy as the primary goal of the nation, rather than that “in Nepal's case, only the survival of a democracy can now guarantee the independence of the military”.¹²⁵ In the meantime, international backers are held hostage to the threat that any measure of reform would weaken NA morale and lead to a Maoist takeover – a ludicrous bluff, but one that Delhi and Washington have so far been too timid to call.

3. A way out?

There is hope for progress. Despite their apparent hostility, the CPN(M) and the NA have held talks at different levels. This raises the prospect of agreement. It should also alarm anyone who believes in democratic control of the peace process and of the nation's secu-

¹¹⁸ “Maovadi senako योग्यताबारे प्रश्न उठानु अन्यपुर्ना”, *Gorkhapatra*, 17 June 2008.

¹¹⁹ “Sabai sashastra shaktilai rajyako mathat rakhine”, *Gorkhapatra*, 18 June 2008.

¹²⁰ India's position is conditioned not by ill-will but by its own history. All Indian politicians, even those sympathetic to the Maoists, find it hard to stomach the idea of integrating PLA forces into the NA because India's own army never accepted “freedom fighters” into its ranks after independence. This has a particular resonance for Indian leftists. The “freedom fighters” rejected by the Indian Army were primarily members of Subhas Chandra Bose's Indian National Army, which had accepted German and Japanese backing during the Second World War – a move bitterly opposed by Indian communists, who preferred to suspend their nationalist movement and reject Gandhi's Quit India movement in order to support the UK in the greater struggle against fascism.

¹²¹ “Nepal Army Tuesday pledged to move ahead under the direction of the government elected through the people's mandate. The army's commitment comes at a time when the Maoists are certain to lead the future government. In a meeting held today of the Joint Monitoring Coordination Committee (JMCC) comprising the Maoists, Nepal Army and United Nations, Nepal Army Brigadier General Shiva Ram Pradhan said that the Nepal Army will completely obey the directions of the next government”. “Nepal Army to obey future govt”, *ekantipur.com*, 15 April 2008.

¹²² COAS's circular, as quoted in *Jana Aastha* (“Senadvara dindinai anautho sarkular”, 11 June 2008): “He who benefits personally from a move to remove someone today will just as likely be himself removed in the next move” – obviously referring to Gyanendra but perhaps a hint at fears for his own position?

¹²³ The ceremony was marred by the UN's principled decision not to attend, given that the venue (the NA's dedicated UN peacekeeping training centre in Panchkhal) was where NA officers tortured, killed and buried the fifteen-year-old Maina Sunuwar in February 2004. The Supreme Court ordered a police investigation in September 2007, and on 31 January 2008 a charge sheet naming four accused was submitted to the Kabhre district court, which summoned the accused to appear before it. On the fourth anniversary of the murder, UN High Commissioner for Human Rights Louise Arbour called on the NA to cooperate fully with the slow-moving investigation. Press release, Office of the High Commission for Human Rights (OHCHR) Nepal, Kathmandu, 17 February 2008. See also press statement, Advocacy Forum-Nepal, 17 February 2008.

¹²⁴ He was referring to Katwal's proclamation that “The Nepal Army will remain a key promoter and defender of democracy and could be the only centripetal force for Nepal. This is why we strongly believe that in the name of democratisation, the Army's purity, sanctity and integrity should never be compromised”. M.R. Josse, “PLA integration: tough nut to crack”, *People's Review*, 19 June 2008.

¹²⁵ Siddhartha Thapa, “To realise the peaceful middle way”, *Newsfront*, 16 June 2008.

rity forces. Backroom deals between two armed forces whose commitment to democracy remains in doubt would be the saddest indictment of the mainstream parties' abdication of responsibility during the peace process.

The first steps for a viable and accountable process are still eminently possible and painless. They involve starting structured discussions between the parties on the shape of future arrangements, ensuring the currently well observed ceasefire remains in place and taking small, practical steps to build the infrastructure for civilian control of any future security sector – starting with staffing and resourcing a defence ministry and establishing a National Security Council with representation of all major parties and secretariat support that builds NA confidence and draws on its experience in making plans. None of this is rocket science, and all of it is manageable.

Where the NA and PLA have been forced to work together (on the JMCC), they have cooperated amicably and effectively.¹²⁶ In private, senior NA officers are mostly sanguine about the prospect of incorporating Maoist fighters in the lowest ranks but do not believe their commanders deserve to be parachuted into senior positions.¹²⁷ (Even the NA's foreign supporters would probably see no difficulty in a few thousand PLA members being absorbed one by one into the NA.¹²⁸) Junior to mid-ranking officers interviewed by Crisis Group were universally happy that the army did not have to intervene in the elections and were almost all concerned that their chief was playing politics with their institution.¹²⁹ The fact that the CPN(M) received almost 200 votes from soldiers in the NA

headquarters itself suggests that former battlefield opponents are not necessarily enemies for life.¹³⁰

Both forces have been insulated from more public criticism partly out of fear and partly because soldiering has long been viewed as an honourable profession. Given the poor prospects for an effective Truth and Reconciliation Commission or individual war crimes prosecutions, a vetting mechanism built into any integration process could improve both the PLA's and the NA's public reputation.¹³¹ Most Nepalis would like to have an army that works for their security and that they can respect wholeheartedly. The joined forces – suitably downsized, more representative of all communities and subject to democratic control – could be a great national asset. For now, they are a heavy drain on short resources and a constant threat to peace.

B. PEACE, GOVERNANCE AND CONSTITUTION WRITING

The success of the elections should not distract from the many remaining challenges. There has been little progress on numerous critical elements of the peace process. Apart from the security sector, the majority of issues the December 2007 23-point agreement promised to address remain unresolved. There is no mechanism to deal with contentious land issues (both the return of land seized during the conflict and the wider question of equitable land reform); nor has there been any consensus on reviving local government, without which basic services cannot be delivered.¹³² While the Maoists have dragged their feet on dismantling parallel structures (such as courts and policing), little effort has gone into making sure the state

¹²⁶The JMCC has met 75 times and has functioned excellently. Crisis Group interviews, NA and PLA representatives on JMCC, 18 June 2008. It remains "the best example of a functional body established by the peace process", Crisis Group Briefing, *Nepal: Peace Postponed*, op. cit., p. 9.

¹²⁷Crisis Group interviews, various locations, January-April 2008. Two brigadier-generals separately and without prompting used almost the same words when pointing out that they had to serve, and complete higher qualifications, for three decades to reach their current rank. Both – one unabashedly royalist, one entirely comfortable with republicanism – saw this as the main problem if they were expected to let "an Ananta or a Pasang" [young but experienced PLA deputy commanders] be admitted to the national army at a similar level. In fact, the CPN(M) has held senior officers Baldev and Pasang in reserve, prompting widespread assumptions they are being lined up to enter the upper ranks of any restructured national army.

¹²⁸Crisis Group interview, senior Indian diplomat, March 2008.

¹²⁹Crisis interviews, various locations, April-May 2008.

¹³⁰The breakdown of (PR) votes from an army polling station should not have been made public. The figures emerged because the NA's Bhadrakali HQ was included in the small electronic voting pilot project, and the results of its polling emerged separately, before any other PR ballots had been counted.

¹³¹Crisis Group interview, human rights lawyer, Kathmandu, 18 June 2008.

¹³²"Minister for Local Development Dev Gurung has stressed constituting a local body mechanism with the representation of every political party by taking the verdict of the people as per the results of the Constituent Assembly election as the basis... he said the local bodies should be empowered and [vested] with more authority. He underlined the need for giving the responsibility of selection, formulation and implementation of development projects ... to the local bodies and provisions should be made in which the government will provide a lump sum grant to the local bodies". "Gurung calls for local body mechanism", *The Rising Nepal*, 4 June 2008.

bodies meant to perform those functions can regain public trust.¹³³ There is considerable demand for YCL services even from the Kathmandu middle classes, which have long since lost faith in the police and find its law enforcement prompt and efficient, however rough and illegitimate.¹³⁴

While the ceasefire has held, the state of public security and rule of law is tenuous. Impunity reigns for all powerful actors.¹³⁵ There have been no prosecutions for perpetrators of the worst crimes carried out during the conflict, and investigations on some egregious violations have been stalled.¹³⁶ The whereabouts of hundreds of people disappeared during the conflict, most of them allegedly at the hands of the state security forces, remains undisclosed, despite a clear commitment in the November 2006 CPA.¹³⁷ While many of the thousands injured in the April 2006 people's movement still await treatment and compensation, the home ministry, without explanation, reinstated the two senior police officers who had been identified by

¹³³ Home Minister Krishna Prasad Sitaula has at least warned the Nepal Police that they will have to change in line with new developments, not least by preparing for the structural reforms that will come as and when federalism is implemented, "Home Minister directs Nepal Police to accept change", *ekantipur.com*, 7 June 2008.

¹³⁴ Crisis Group interviews, *passim*. To cite only one illustration, during the fuel shortages that have plagued Kathmandu for months, the YCL took charge of organising queues at petrol pumps and preventing the queue-jumping that had enraged those who waited patiently for hours while others pulled strings. Such activities have given the organisation a positive spin, even among people who reject much of its behaviour.

¹³⁵ "Both the government and the Communist Party of Nepal (Maoist) (CPN (M)) largely failed to implement human rights commitments in the Comprehensive Peace Accord (CPA), signed in November 2006. Elections were postponed twice. Measures to address impunity for past violations and abuses were grossly inadequate. Vulnerable groups, including women and minorities, remained at risk of human rights abuses". "Annual Report 2008", Nepal section, Amnesty International, at <http://thereport.amnesty.org/eng/regions/asia-pacific/nepal>.

¹³⁶ For example, there has been no progress in investigating either the illegal detention, torture and disappearances from the army's Maharajgunj barracks in 2003-2004, or the Maoist bombing of a civilian bus at Madi, Chitwan on 6 June 2005, killing 38. For an overview of many abuses still awaiting investigation see "Human Rights In Nepal One Year After The Comprehensive Peace Agreement", OHCHR-Nepal, Kathmandu, December 2007.

¹³⁷ "Both sides agree to make public within 60 days of the signing of the agreement the correct and full names and addresses of the people who 'disappeared' or were killed during the conflict and convey such details to the family members". CPA, Art. 5.2.3, 21 November 2006.

the Rayamajhi Commission as responsible for the use of excessive force against demonstrators.¹³⁸ Although armed militants carried out fewer attacks than they had threatened, many parts of the Tarai are experiencing lawlessness, with locals at the prey of organised criminals and shadowy terrorist splinter groups.¹³⁹

The inclusiveness promised by the diverse new CA will only be delivered in practice if there is greater attention to implementing rhetorical commitments to ending former exclusive practices. Nepal's hard-won status near the top of the league for women's representation in an elected national assembly will be enhanced if women members of the CA are able to exercise their duties fully – not only in the debating chamber but also as active members of all decision-making bodies, including the informal party negotiating teams that often take crucial decisions. No women have so far been involved in any of the main talks, not even on the CPN(M) side, which has the highest proportion of women CA members.

There is still a good opportunity for Nepal to set a global example by heeding the recommendations of UN Security Council Resolution 1325 on the role of women in peace processes.¹⁴⁰ At the same time, the main parties will lose credibility with ethnic and regional activists if they do not work hard to implement fully the agreements with the United Democratic Madhesi Front and the Federal Republican National Front that were reached in February and March 2008.¹⁴¹

As for the constitutional process that the election was meant to herald, the signs remain unpromising. While the Maoists' manifesto did at least include detailed constitutional proposals, no party has paid much at-

¹³⁸ The NHRC complained and asked the government to explain. The two officers are Assistant Inspector Generals Krishna Basnet and Rup Sagar Moktan. "NHRC questions AIGs' reinstatement", *ekantipur.com*, 26 May 2008. Many saw their singling out for criticism as unfair, especially as no one from the army, which was in overall control of the security forces under the then unified command system, was suspended or otherwise punished. See Crisis Group Asia Report N°126, *Nepal's Peace Agreement: Making it Work*, 15 December 2006, p. 28.

¹³⁹ For example, a 14 June 2008 Rautahat bombing, killing two and injuring many more, was claimed by the "Tarai Army", a group whose structure and political agenda, if any, is not clear.

¹⁴⁰ The Security Council's Resolution on Women, Peace and Security was unanimously adopted in October 2000. It demands that women be included in peace negotiations, post-conflict governance, humanitarian response and post-conflict reconstruction.

¹⁴¹ See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., pp. 2-3.

tention to making the CA a functional body. Former Prime Minister Koirala made it clear he saw the constitution-writing business as personal, announcing “I have one more responsibility: to draft a new constitution. I will need support and cooperation from all sectors ... while drafting the constitution”.¹⁴² He also launched his own search for favoured candidates to head a “constitution drafting committee” that featured nowhere in any agreements and implied no respect for the CA’s mandate.¹⁴³ Where the Maoists have well developed – and controversial – plans for the shape of a federal state, the NC and UML have signed up to the concept without any effort to develop alternative proposals.¹⁴⁴

Steps towards making the CA more inclusive have been bold and superficially successful, but using the constitutional process to institutionalise rights and opportunities for marginalised communities will be delicate and difficult.¹⁴⁵ In all these areas, a commitment to ongoing public consultation and participation would help to generate constructive debate and head off the sense of exclusion that has so often led to violent protest. But there are, as yet, no plans to trouble the public with political questions now that it has done its duty by voting on 10 April. These are areas in which donors could assist, although efforts will only be successful if they respect and draw on the large pool of talented Nepali constitutional experts, as well as individual CA members and party leaders.

The challenges Nepal faces in constitutional design may be analogous to those of other countries, but the peace process has demonstrated that transplanted solutions and international expertise, however well intentioned, are unlikely to be helpful. Technical assistance to drafting committees and specialised sub-committees (should the CA choose to establish such bodies, something it has not yet debated or decided) would probably offer the best entry point. Financial assistance could support broader exercises in public consultation – but again, only if the CA opts to engage in such efforts.

¹⁴²“New Constitution will be drafted under my leadership, says PM Koirala”, *ekantipur.com*, 17 May 2008.

¹⁴³“PM Koirala looking for individual to lead statute drafting committee”, *nepalnews.com*, 3 June 2008. The names he had proposed (former UML general secretary Madhav Kumar Nepal, former chief justice Biswanath Upadhyaya, former law minister Nilamber Acharya and former NC speaker Daman Nath Dhungana) were all intimately linked to the failed 1990 constitution, most of them as members of the drafting committee. Not entirely coincidentally, they are all of the same gender and caste as Koirala himself.

¹⁴⁴See Crisis Group Report, *Nepal's Election and Beyond*, op. cit., p. 3. At the party’s manifesto launch (Lalitpur, 13 March 2008), NC campaign coordinator Prakash Sharan Mahat spoke of “people’s hearings” to form “scientific” plans for federalism (an idea that features in the manifesto), but there are no signs these hold any interest for the NC’s top leadership.

¹⁴⁵On the many challenges in securing Dalit rights, see “Recasting Justice: Securing Dalit Rights in Nepal’s New Constitution”, Center for Human Rights and Global Justice, New York University School of Law, 2008, at www.chrgj.org/projects/docs/recastingjustice.pdf. On the politics and complex practicalities of implementing affirmative action reservations, see Townsend Middleton and Sara Shneiderman, “Reservations, Federalism and the Politics of Recognition in Nepal”, *Economic & Political Weekly*, 10 May 2008.

VII. CONCLUSION

The aftermath of the election has been marred by the behaviour of powerful losers. In a reversal of the normal grieving process, the NC and UML's initial acceptance has given way to stronger denial. Both they and the leaders of other parties have been happy to see power quickly returned to its usual locus – in the hands of a few men who will take all major decisions based on private horse-trading, without consulting their own parties, let alone the elected CA or the people at large.

For some, the rapid return to politics as usual may be reassuring. Back-room haggling is, after all, better than armed warfare. For a prime minister and party still in

office nearly three months after a crushing election defeat, life must seem surprisingly sweet. But parties who pride themselves on blocking the Maoists' ascendancy should be aware that they are also dishonouring a clear popular mandate. For the CPN(M), the jury is still out on whether its peaceful revolution strategy will mark an ideological triumph, and it has much to do to win trust through reformed behaviour. But a peaceful revolution is precisely what millions of Nepalis have been demanding for years, if not decades. As the CA elections showed, they are perfectly capable of using non-violent protest and the ballot box to punish those who betray their aspirations.

Kathmandu/Brussels, 3 July 2008

APPENDIX A

MAP OF NEPAL



Map No. 4304 UNITED NATIONS
 January 2007 (Colour)

Department of Peacekeeping Operations
 Cartographic Section

APPENDIX B

GLOSSARY OF ACRONYMS

BJP	Bharatiya Janata Party
CA	Constituent Assembly
COAS	Chief of Army Staff
CPA	Comprehensive Peace Agreement
CPI(Maoist)	Communist Party of India (Maoist)
CPI(Marxist)	Communist Party of India (Marxist)
CPN(M)	Communist Party of Nepal (Maoist)
CPN(ML)	Communist Party of Nepal (Marxist-Leninist)
CPN(United)	Communist Party of Nepal (United)
DEO	District Election Officer
EC	Election Commission
FPTP	First Past the Post
JMCC	Joint Monitoring Coordination Committee
MJF	Madhesi Janadhikar Forum (sometimes referred to in other sources as the Madhesi People's Rights Forum, MPRF)
NA	Nepal Army
NC	Nepali Congress
NC(D)	Nepali Congress (Democratic)
NEFIN	Nepal Federation of Indigenous Nationalities
NHRC	National Human Rights Commission
NSP(A)	Nepal Sadbhavana Party (Anandidevi)
NWPP	Nepal Workers and Peasants' Party
OHCHR	Office of the United Nations High Commissioner for Human Rights
PLA	People's Liberation Army (Maoist)
PR	Proportional Representation
RJP	Rashtriya Janashakti Party
RPP	Rashtriya Prajatantra Party
RPP(N)	Rashtriya Prajatantra Party (Nepal)
TMDP	Tarai Madhes Democratic Party
UDMF	United Democratic Madhesi Front
ULF	United Left Front

UML	Communist Party of Nepal (Unified Marxist-Leninist)
UNMIN	United Nations Mission in Nepal
UPA	United Progressive Alliance
YCL	Young Communist League

APPENDIX C

THE REPUBLIC DECLARATION

From the Government of Nepal

Cabinet of Ministers

Proposal on the implementation of a republic, tabled at the first meeting of the Constituent Assembly

Respecting the historic revolution and struggles of the Nepali people, and honouring the peoples' mandate as expressed by the *Jana Andolan* [of 2006], in order to institutionalise the achievements of the agreement reached between the political parties, and by embracing the responsibilities entrusted by history in accordance with Article 159 (2) of the interim constitution of Nepal 2063 [2007], the Cabinet of Ministers of the Government of Nepal hereby presents the following proposal for the implementation of a republic, during this first meeting of the Constituent Assembly:

- 1) This first meeting of the Constituent Assembly declares that an independent, indivisible, sovereign, secular and inclusive Nepal has been formally transformed into a federal democratic republic from this day onwards, by vesting sovereignty and inherent powers in the Nepali people.
- 2) Since a formal democratic republic has been implemented in the country, all constitutional provisions, and legal and administrative arrangements that stand in contradiction to a democratic republic shall be considered null and void, with effect from this day. Those rights, privileges, entitlements and titles based on the then-prevalent laws, customs, and social and cultural norms enjoyed by the then-king and his family prior to the ratification of this declaration shall automatically come to an end.
- 3) At a time when Nepal has been formally declared a federal democratic republic, this amendment bill is being presented in order to make necessary amendments in the Interim Constitution of Nepal, 2063 [2007], in order to constitutionally institutionalise urgent provisions, including those with regards to the [position of the] president. An additional amendment bill will be presented regarding the election of the president and other necessary issues.
- 4) On this historic occasion, a new era has begun with Nepal's formal [declaration of] becoming a federal democratic republic. This meeting expresses its deepest condolences to the martyrs, both known and unknown. We cordially congratulate the entire Nepali populace on this occasion. This meeting appeals to all Nepalis, living in and outside the country, to celebrate Republic Day every year from now onwards on 28 May (Jeth 15) in a grand manner and in a festive atmosphere.
- 5) Now that the democratic republic has been established, the Government of Nepal will make necessary provisions to convert the Narayanhiti Palace premises into a historical museum, and to utilise it for the welfare of the nation.

Signed: Krishna Prasad Sitaula, 28 May 2008 (2065 Jeth 15)

Unofficial translation provided by UNMIN.

APPENDIX D

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 135 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

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

Crisis Group's reports and briefing papers are distributed widely by email and 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.

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

Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates eleven regional offices (in Bishkek, Bogotá, Cairo, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina, Seoul and Tbilisi) and has local field representation in sixteen additional locations (Abuja, Baku, Bangkok, Beirut, Belgrade, Colombo, Damascus, Dili, Dushanbe, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria and Tehran). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi,

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