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# A History in Limbo: A Human Rights Perspective on Conflict-Ridden Nepal

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*SIT Study Abroad*

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A History in Limbo  
A Human Rights Perspective  
on Conflict-Ridden Nepal

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Nepal: Culture and Development  
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Spring 2006

*Seek justice. Love peace.*

I would like to acknowledge *sadhai Nepali maanche* for their vitality, their courage and their tea. To Mina, Sudhir and Chandra, as well as all of the SIT staff, I owe gratitude for their friendliness and hospitality, their guidance and teachings, and their interest and their friendships. I want to thank Prakash Rana for existing, and for acting. And I must acknowledge the organization, egalitarianism and genuine concern for our welfare with which Chris Monson kindly and generously led our group.

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## **Scope**

Nepal is at a historical junction, the recent victory of the second People's Movement garnering a plethora of democratic reforms. Since the end of April, King Gyanendra has reinstated the House of Representatives, which then declared its supremacy and dramatically curtailed the king's powers. Nepal has been declared a secular state; the Royal Nepal Army has been transformed the Nepali Army; a ceasefire has been created between the army and the Maoists - who are also participating in peace talks; and the seven-party alliance and the Maoists held a summit at which they agreed to frame an interim statute, form an interim government and declare a date for elections to a constituent assembly.

The situation in Nepal is improving, but this paper (which serves as a survey of the widespread human rights violations in Nepal) chooses to largely focus on the pre-April situation: before the People's Movement succeeded, before there was so much room for optimism. So for the next thirty pages there is no ceasefire, the RNA is still the RNA, and the soldiers are still Gyanendra's. While learning from this recent history, one should hope for the day when discussions of such violence are history themselves.

## **Introduction**

When Nepal is mentioned for something besides yetis or Mt. Everest, one hopes that it is for something more cheerful than becoming good at violating human rights. But many people in Nepal are violating human rights, their recent history providing ample opportunities for such violations to occur. Nepal is becoming known for its autocratic king, who is fighting a fierce and abusive Maoist insurgency and simultaneously repressing the people. Nearly 12,000 people have died in the crossfire of the conflict;

Maoists rule the countryside through extortion and looting and supply their army with the abducted and children; thousands have been disappeared, killed, arrested, and tortured either on suspicion of involvement with the Maoists or as punishment for liberal political activity. Protestors, as well as political leaders, journalists and human rights workers are arrested and harassed. The heavy hand of the autocratic state met these progressive activists, and the more violent Maobaadi (a term I use interchangeably with Maoist) with brutality and rampant violations of human rights. To understand how the interactions between one state and two movements for social change (one armed, one unarmed) create a breeding ground for human rights violations it is necessary to investigate the multiple factors that contribute, including the political and social history that brought the Maoists to this point, the effect of globalization, the nature of the king and the impact of military tactics. Understanding the current human rights status of Nepal requires recognizing four rounds of human rights violations, and debating whether other forces will be strong enough, whether other paths of action will be effective enough to halt the cycle of abuses.

### **Human Rights and Nepal**

Nepal was admitted to the United Nation on December 14, 1955 and has since become party to human rights treaties about economic, social and cultural rights, women's rights, civil and political rights, discrimination, children, and torture. Additionally, its constitution provides a framework for the protection of human rights. The Declaration of Human Rights, considered the foundation of human rights theory and legislation, maintains that every person has the right to life, liberty, and security of person; that no person shall be subjected to torture or to cruel, inhuman or degrading

treatment or punishment nor to arbitrary arrest, detention or exile; and that each person, among other rights, is guaranteed the right to a fair trial. And yet Nepal categorically ignores these obligations, these guides to decency.

## **The People's War**

### **Political History**

The many communist political parties of Nepal have a long and interwoven history, one that is rife with personal animosities and power struggles. Man Mohan Adhikari, who led the workers at the 1947 strike at the Biratnagar jute and cloth mill in Eastern Nepal, and former Nepali Congress member Pushpa Lal originally founded the Communist Party of Nepal (CPN) in 1949. But by 1951 Adhikari had replaced Lal as general secretary of the party, a shift that started “‘the beginning of the never-ending leadership struggle within the party’ and a bane that was to affect all factions that branched out of the main party.”<sup>1</sup> Affect them it did, and after much complicated factional forming and reforming, in 1990, Nepal saw the establishment of CPN (Unity Center)/United People's Front Nepal (UPFN) - a party Prachanda, then general secretary of CPN Masal, had helped create when he combined forces with CPN Masal and other radical factions. Baburam Bhattarai, who now serves (behind Prachanda) as the second most important figurehead of the Maoists, was chosen to lead this grouping.<sup>2</sup>

The Unity Center/(UPFN) made itself known as a radical party, leading protests against the government that were mildly supported by the dominant communist party CPN (United Marxist-Leninist) and violently suppressed by the Congress government. In

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<sup>1</sup> Thapa, Deepak. *A Kingdom Under Siege* Kathmandu: the printhouse. 2003. 22.

<sup>2</sup> Thapa, 35.



1994 the Unity Center split into two groups, one led by Nirmal Lama and one led by Prachanda - whose party advocated ““a clear cut political line of protracted people’s war for carrying out the New Democratic revolution in the country with a Marxist-Leninist-Maoist ideological perspective.””<sup>3</sup> A resolution calling for this New Democratic revolution had been passed by the Unity Center in 1991, and was the cause of the subsequent break up of the party. Despite this professed policy, arms were not taken up immediately. Instead, after the first People’s Movement in 1990, Bhattarai’s wing of the UPFN, allied with Prachanda, approached the Election Commission in an attempt to remain within the realm of normal politics. However, the Election Commission denied recognition to the party, an exclusion that “deprived the Maoists of the opportunity to engage in the democratic governance of the country”<sup>4</sup> and thus pushed them out of the mainstream by providing motivation for them to abandon the multiparty system in favor of armed revolt from the underground. They began their first attacks on February 13, 1996, four days before the deadline for the government’s reaction to the set of 40 demands that had been delivered by Bhattarai to Prime Minister Sher Bahadur Deuba.

### **Root Causes**

The exclusion from democratic politics in 1990 did not alone create the People’s War, for in the newly opened political forum of democracy, Nepal’s aggrieved populations saw the space in which they should have been able to articulate their grievances. Instead, their lack of political capital and their comparatively scarce presence in the government transformed them into a fertile soil in which the Maoist revolt could take root.

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<sup>3</sup> Thapa, 43.

<sup>4</sup> Lawoti, Mahendra. *Towards a Democratic Nepal: Inclusive Political Institutions for a Multicultural Society*. New Delhi: Sage Publications, 2005. 41

The Maoists' ideological platform integrates demands for a new constitution, drinking water, electricity, employment and education for all, a secular state, the freedom to enjoy fundamental rights of expression and press, land reform and the cessation of discrimination and exploitation against women, ethnic minorities, and 'untouchables'. Indeed, those who began to (and still do) support the Maoists in their revolution are the ones who would be helped by the realization of those demands, the ones who lack enough power under normal governmental conditions to effect that change themselves. They are people in the 82.5% of the population that live on less than two dollars a day, or in the rural areas that receive even less than their urban counterparts of the measly 1.4% of GDP that Nepal spends on health.<sup>5</sup> According to the UNDP's 2003 Human Development Report, Nepal's annual GDP (in US billions) was 5.9, its GDP per capita was 237 US dollars, and its growth rates for each were 2.1 and 2.2, respectively.<sup>6</sup> An elite exists in Nepal, but the country is very poor, and relatively unrepresentative in its governance, meaning that the poor of Nepal are in most dire situations. Little debate remains about the ability of discrimination and disparity to engender political violence and in a country practically characterized by its inequality, the Maoists' ideas are just radical enough to entice those who have no hope other than radicalism.

British scholar Andrew Nickson wrote in 1992 that "the future prospects of Maoism in Nepal will . . . depend largely on the extent to which the newly elected Nepali Congress government addresses the historic neglect and discrimination of the small rural

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<sup>5</sup> UNDP, Human Development Report 2005:  
[http://www.undp.org.np/publication/html/hdr2005/HDR05\\_HDI.pdf](http://www.undp.org.np/publication/html/hdr2005/HDR05_HDI.pdf)

<sup>6</sup> UNDP, Human Development Report 2003: <http://hdr.undp.org/statistics/data/countries.cfm?c=NPL>

communities which still make up the overwhelming bulk of the population.”<sup>7</sup> But the Nepali Congress failed to deal with these issues in the 1990s, just as King Gyanendra has failed since taking power. Despite masses of development funds that NGOs and INGOs pour into Nepal, “most development efforts continue to be far short of expectations and much of the development funding went into the pockets of the corrupt, rather than to those for whom it was intended. Failure to bring economic benefits and social change to disadvantaged or ‘excluded’ groups and to remote or disenfranchised areas brought great disillusionment.”<sup>8</sup> Nepal not only saw great disparities between the five development regions (which stretch over the country north to south) and the three main ecological regions (the Himal, the Hills and the Tarai), but also saw identities, which are closely tied to those regions, become politicized. That was just what the Maoists needed because the newly politicized are just *who* the Maoists needed. “The insurgency afflicting Nepal does not constitute an overnight crisis, but is the consequence of years of multiple deprivation of whole regions, communities, ethnic groups, and social classes.”<sup>9</sup>

### **The First Round: Human Rights Violations as Causes of Maoist Insurgency**

Frustrated by the inabilities of the current political system to support the reforms the Maoists advocated, and encouraged by the failures of the state to protect and prioritize the people’s human rights, the Maoists launched their People’s War in 1996, with their army People’s Liberation Army (PLA), marking that “the movement was no longer a temporary phenomenon without social base but had (and has) roots deep in the country’s social and economic order, and is a by-product of Nepal’s unsuccessful

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<sup>7</sup> Thapa, Deepak. “The Maobadi of Nepal” *State of Nepal* Kanak Mani Dixit and Shastri Ramachandaran, Eds. Lalitpur: Himal Books, 2002, 86

<sup>8</sup> Friedman, Lindsay. *Conflict in Nepal*. Kathmandu: Shtrii Shakti. 2005. 17

<sup>9</sup> Aditya, Anand. “Human Rights in the Nineties: Lessons from a Decade of Democratization and Development” in *Conflict, Human Rights & Peace: Challenges Before Nepal* Bipin Adhikari, Ed. Kathmandu: National Human Rights Commission, 2003. 65

development endeavors.”<sup>10</sup> Indeed, the ‘unsuccessful development endeavors’ were not merely singular failures, but a historical stream of (continuing) neglect and oversight that directly inhibits the majority of Nepalis from realizing and enjoying the full scope and extent of their human rights.

As evidenced by the conflict, it is difficult to argue that Nepal is successfully implementing (or ever tried to) development programs that elevate human rights as the main targets of strengthening or as guiding principles and tools for measurement, as is advanced by a human-rights based approach to development. People are excluded and discriminated against and benefits reach a select few and there is not enough being done in the name of common welfare or mass benefit. Too many people are still living without full realization of their human rights and too many people are dying for that very reason.

But many do realize that they are being barred from such human rights realizations. They recognize that their state is not allowing them to enjoy their basic human rights, including the right to development, as well as their economic, social and cultural rights. The state is also failing to live up to their obligation of providing protection from other aggressive actors (like strong economic interests, or insurgents).<sup>11</sup>

And so, for the past decade, thousands have been fighting a system that seems not to care about them, that never seems to have cared. As Douglas writes, “The Maoist insurgency was born in the poverty of rural Nepal.”<sup>12</sup> In the end, Nepal has no one but herself, and the wider global disparity of globalization, to blame for a rebellion that found

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<sup>10</sup> Thapa, *Kingdom Under Siege*, 55.

<sup>11</sup> Eide, Asbjorn. "The Right to Development and the Duty of States to Enforce Economic, Social and Cultural Rights" in *Conflict, Human Rights & Peace: Challenges Before Nepal* Bipin Adhikari, Ed. Kathmandu: National Human Rights Commission, 2003.169.

<sup>12</sup> Douglas, Ed. “Inside Nepal’s Revolution.” *National Geographic*, Nov. 2005: 46-65. 51

its inspiration and resources in the ruin of the 'undeveloped,' in the consciousness of the downtrodden.

## **A Global Phenomenon: Globalization's New Wars**

As the most deadly and prolonged civil conflict in Nepal, the People's War is a new phenomenon for the small country. Such is not true for many regions of the world, where insurgencies taking hold in the absence of equality and economic advancement have a longer history. Despite the fact that intrastate war is neither uncommon nor ahistorical, there *is* a new type of warfare - exemplified by the Maoist revolution - that is becoming the norm, even as these "new wars"<sup>13</sup> (as Mary Kaldor calls them) generally occur in countries and regions where lack of economic and political power on the world stage shields them from global concern. War is happening in ways which conflict with our collective conception of it as something like the state-interest motivated wars of the 19<sup>th</sup> and 20<sup>th</sup> centuries. "As the centralized, territorialized modern state gives way to new types of polity emerging out of new global processes, so war, as we presently conceive it, is becoming an anachronism."<sup>14</sup> "Today the armed forces of states are being challenged, in many cases successfully, by the fighters of non-state forces, who are bound by none of the norms of conventional war and who operate in a way that neutralizes a large percentage of the expensive and sophisticated equipment and armaments of state forces."<sup>15</sup> The conditions that facilitate these types of war and the ways of fighting (and paying for) them are new patterns of warfare and new manifestations of globalization.

### The Path to New Wars

As modern states grew during the 19<sup>th</sup> century, they garnered a "monopolization of legitimate violence"<sup>16</sup> and created a system in which war was only waged when in the

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<sup>13</sup> Kaldor, Mary. *New and Old Wars: Organised Violence in the Global Era*. Palo Alto: Stanford University Press, 2000. 69

<sup>14</sup> Kaldor, 15.

<sup>15</sup> Cowan, Sam. "Nepal's Two Wars" *Himal South Asian*, ed. Kanak Mani Dixit, March-April 2006, 32

<sup>16</sup> Kaldor, 17

interest of the state. War became a political act and a socially accepted endeavor that formed clear distinctions between the military and the civilian, the economic and the political. The 20<sup>th</sup> century, however, saw the evolution of total wars, which began to breakdown those delineations. And in the face of new levels of destruction and less patriotic duty or heroic status in imagined wars like the Cold War or unsuccessful wars like Vietnam, the legitimacy of state-interest wars was called into question. In theory then, the only justifiable wars today are those fought for self-defense or with sanction of the international community.<sup>17</sup> In reality, issues of legitimacy and justice struggle to make any real impact on the terror of war, with any success usually only affecting interstate wars. Instead, globalization is creating what Friedman calls “the great age of civil wars . . . between those who benefit from this new system and those who feel left behind by it.”<sup>18</sup> So war continues, with globalization’s ability to exasperate disparities and instability creating all the conditions and justifications the new warriors need.

### **The People’s War as a New War**

#### Footholds and Foot Soldiers

Economic and political disparities, both between different types of workers and between different regions, are perhaps one of the most apparent impacts of globalization, one of the most important conditions for new wars and one of the most rousing causes of the People’s War, as discussed above. Those able to market financial or technological skills are better equipped than the traditional skilled laborers of the working class. Industrialized areas, like Kathmandu, are quickly surpassing rural areas, like the rest of Nepal, in terms of wealth, resources and importance. “Everywhere, boundaries are being drawn between protected and prosperous global enclaves and the anarchic chaotic poverty-stricken area beyond.”<sup>19</sup> It is within this realm of the globally excluded that new

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<sup>17</sup> Kaldor, 27

<sup>18</sup> Friedman, Thomas. *The Lexus and the Olive Tree*. New York: First Anchor Books, 2000. 212.

<sup>19</sup> Kaldor, 75

wars find their footholds and it is within the realm of the nationally excluded that intrastate new wars find their soldiers and their (often coerced) supporters.

### Finding a Common Identity

The Maoist reliance on identity politics in these excluded areas is another example of how the rebellion meets new war criteria. As regions become more segmented and inequalities exaggerated, new identities are formed or embraced, and the politics that surround those identities compose the foundation of the new wars.

Kaldor maintains that these identities tend to be of the more traditional sort – national, tribal, religious. In the early stages of the Maoist struggle, support grew in the mid-western hills and among the Kham Magars, the region’s inhabitants, whose preservation of their specific language and religion led to feelings of increasing alienation and who were supportive when the communists “played the ethnic card from early on, with a special stress on minority rights.”<sup>20</sup>

The Maoists and their supporters are now composed of various identities that share that sense of alienation – women, many ethnic and linguistic minorities, the uneducated. These identities do not remain singular however; the Maoist rebels now seem to rely on a broader sort of identity. Neither religion nor ethnic heritage comprise their common bond, and as many rebels are indoctrinated in the movement’s communist ideology only after they decide (or are forced) to join the ranks, even political philosophy alone cannot count as the base of the Maoists’ shared identity. Instead, they seem to draw on the more applicable and broad identity of the excluded, the frustrated, and the poor. Marie Lecomte-Tilouine wrote in the February 2004 *Anthropology Today*

The movement offers its members a new ideology which provides a new understanding of reality for those who have not succeeded educationally or economically as much as they may have wished: in particular it offers them the possibility of fighting against their situation, and a new understanding of their oppression and exploitation. The Maoists have been able to develop a genuine

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<sup>20</sup> Whelpton, John. *A History of Nepal*. Cambridge: Cambridge University Press, 2005. 203



mystique . . . which combines violence and the bonds of brotherhood; this produces very high degree of cohesion inside the movement and terror outside.<sup>21</sup>

### Financing a Revolution

New wars are not only created in new ways, they are financed through new avenues too. Asset transfer – “the redistribution of existing assets so as to favor the fighting units”<sup>22</sup> – is most applicable to Nepal’s situation. The Maobaadi loot, rob, extort and pillage in order to gain resources. Globalization-facilitated transnational transfer of arms is less direct in Nepal than in other new wars, but the rebels arm themselves by stealing weapons from abandoned or defeated government posts – which, in turn, are supplied by India.<sup>23</sup> Assistance from diaspora communities living abroad or transnational networks of similar identities, including the Revolutionary Internationalist Movement - a worldwide grouping of revolutionary parties committed to the ‘scientific principles of Marxism-Leninism-Mao Tsetung Thought’<sup>24</sup> – and Indian Maoist groups also aid the new wars.

### New War Tactics

The PLA, like most new warriors, utilizes a mix between traditional revolutionary war tactics and traditional counterinsurgency ones.<sup>25</sup> Subscribing to Mao’s principle of encircling the cities from the countryside, the Maoists have gained much ground in rural Nepal. The rurally focused type of warfare is wholly characteristic of new wars, and with the government’s abandonment of the countryside, the Maobaadi have only been unable to capture the 75 district headquarters and the Kathmandu Valley. However, whereas

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<sup>21</sup> Cowan, 34

<sup>22</sup> Kaldor, 102.

<sup>23</sup> Douglas, 64.

<sup>24</sup> Thapa, *Kingdom Under Siege*, 28.

<sup>25</sup> Kaldor, 97

traditional revolutionaries would strive to control land by gaining support of the local population, new war rebels (in Nepal and elsewhere) often choose to win such control by means of population displacement – ridding the area of all possible opponents. In Nepal the estimates of internally displaced peoples ranges from 35,000 - 100,000.<sup>26</sup> It is an ugly tactic and one that borrows from the counterinsurgency idea of “poisoning the sea.”<sup>27</sup>

Additionally, like seemingly all new warriors, Maobaadi (whose focus on the individual leader Prachanda, use of symbols like the Maoist star, and employment of child soldiers match the characteristics of new war’s paramilitary groups) depend on intimidation, extortion, violence, threat of force and brutality to exercise control.<sup>28</sup> The Maoists “do not, of course, need to secure mass backing to become a powerful force in a district . . . the threat of violence is enough to ensure the majority’s acquiescence.”<sup>29</sup> And in a situation where globalization rarely makes its benefits apparent, it is logical that this war, like daily life, would highlight the costs to be avoided as opposed to the benefits to be gained.

### **The Second Round: Maoist Tactics and Their Human Rights Implications**

According to Puskar Gautam, a former Maoist commander, the Maoist rebellion evolved as a carbon copy of Mao Tse-Tung’s own war. “The rebels managed to achieve extensive success by following Mao’s dictates and turning the Nepali terrain to their advantage.”<sup>30</sup> The PLA was able to claim success because they concentrated their resources and energy in the rural areas from which they first found their base of support,

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<sup>26</sup> Adhikari, Bipin Ed. *Conflict, Human Rights and Peace: Challenges Before Nepal*. Kathmandu: National Human Rights Commission, 2003. 75.

<sup>27</sup> *ibid.* 98.

<sup>28</sup> Douglas, 54

<sup>29</sup> Whelpton, 206

<sup>30</sup> Gautam, Puskar. “The Rise and Fall of the Maobaadi” *Himal South Asian*, ed. Kanak Mani Dixit, March-April 2006, 29

and because they utilized Mao's strategy of "divide our forces to arouse the masses, concentrate our forces to deal with the enemy. The enemy advances, we retreat, the enemy camps, we harass, the enemy tires, we attack, the enemy retreats, we pursue."<sup>31</sup>

Thapa confirms these claims of success, writing,

Before the emergency was imposed and the army called out in November 2001, the countryside over most of Nepal had been abandoned by the government in order to concentrate its forces in pockets of defensive formations. Even after the army mobilisation, apart from 'search operations' and regular patrols in a show of strength that took the security forces to the hinterland, the rural areas remained more or less in the control of the Maobaadi, whether they were physically present or not.<sup>32</sup>

Gaining control of rural areas by means of brutal tactics became commonplace for the Maoists.

In addition to their strategic strengths, fighting, battles and attacks in and of themselves provided some of the drive to continue the fighting, the battles and the attacks. As Kanak Mani Dixit writes

In the early years, the rebels were able to motivate fighters with their run of assaults on police and army posts, and the promise of the prize of Kathmandu. Successful mass attacks on barracks and the looting of weapons also served to keep up morale.<sup>33</sup>

The high level of morale present in the Maoist ranks should not go unmentioned.

Eventually the Royal Nepal Army (RNA) learned to defend in barracks better, helped by mines and the globalization-facilitated acquisition of Belgian Minimi belt-driven guns and American M-16s,<sup>34</sup> and "the insurgents had to turn to the 'lowly' task of destroying

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<sup>31</sup> Cowan, 34

<sup>32</sup> Thapa, *Kingdom Under Siege*, 98

<sup>33</sup> Dixit, Kanak Mani, "Two Chairmen and a People" *Himal South Asian*, ed. Kanak Mani Dixit, March-April 2006, 22

<sup>34</sup> *ibid.*

administrative offices, government infrastructure and poorly-armed police chowkis.”<sup>35</sup>

Nonetheless, the Maoists continue to show an impressive display of power, and fight as seriously as they did when they could still hope for Kathmandu.

For example, in March of 2004 the Maoists carried out their largest military operation, against the western town of Beni - Myagdi District’s headquarters, destroying all government buildings and taking 40 prisoners (all of whom were later released to the International Committee of the Red Cross). There were 3800 fighters and 2000 unarmed Maoist volunteers who arrived near Beni, and even after a twenty day walk all were capable of advancing the fight by 48 hours when there was suspicion that news of their plan had been leaked to the army.<sup>36</sup> According to Cowan, a retired British general, the PLA had impressive security, achieved a impressive level of surprise, and their “medical support and evacuation arrangements were detailed, and indeed textbook, in both planning and execution.”<sup>37</sup> He also reports that locals commented on the young age of the fighters, their agility and commitment, the bravery of wounded, and that 1/3 of the fighters were women.<sup>38</sup>

The Maoists risk great casualties in such attacks, but they demonstrate noteworthy levels of morale - leadership, discipline, courage, tenacity, endurance and willingness to sacrifice one’s life. Despite their numerical weakness in the face of the RNA, the PLA has been able to endure for ten years, and it becomes undeniable that they have plenty of the qualities and motivations needed to fight.<sup>39</sup>

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<sup>35</sup> *ibid.*

<sup>36</sup> Cowan, 35

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.* 33

That the Maobaadi have such widespread control only means that their often violent, brutal, and forceful type of war-making is felt on a wider basis. In rebel controlled areas, schoolteachers and other government employees are forced to pay a percentage of their income to the insurgents; families are expected to contribute at least one member to the Maoist cause; resisters that don't flee are often abducted and killed – “sympathizers” of the establishment beheaded.<sup>40</sup> The PLA extorts and intimidates, tortures those who refuse to shelter and feed them, forces people to join ranks and prefers using sickles, axes and sticks over guns to kill their enemies.<sup>41</sup> According to the Secretary General of Amnesty International, Irene Khan, “The Maoists have been responsible for widespread human rights abuses, including civilian killings, abductions, and recruitment of child soldiers.”<sup>42</sup> And as the 2006 *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights and the Activities of Her Office, Including Technical Cooperation , in Nepal* states

OHCHR-Nepal received information about killings of civilians and members of security forces who were *hors de combat*, abductions, other violence and threats to civilians, including Government officials, teachers, journalists and human rights defenders.<sup>43</sup>

Indeed, the brutality of new war and PLA tactics practically ensure that human rights abuses will be committed. “Essentially, what were considered to be undesirable and illegitimate side-effects of old wars have become central to the mode of fighting new wars.”<sup>44</sup>

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<sup>40</sup> Douglas, 56

<sup>41</sup> Nepal, Kishore *Under the Shadow of Violence*. Kathmandu: Center for Professional Journalism Studies, 2005, 12

<sup>42</sup> Khan, Irene “An international pariah” *Himal South Asian*, ed. Kanak Mani Dixit, March-April 2006, 27

<sup>43</sup> *Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her office, including technical cooperation , in Nepal*. 16 February 2006, 1

<sup>44</sup> Kaldor, 100

## **The Counter-Insurgency**

### **Globalization: Affecting Everything**

Not only do globalization's repercussions create conditions for new wars to develop, it seems the United States has been able to globalize its new war, the war on terror. Slightly nervous about the Maoists on their own border (in this age of globalization and increasingly blurry borders), India was actually the first country to label the Maoists as terrorists. Reflecting global power dynamics, and the need for support, Nepal quickly jumped on the US and India bandwagon, now committed to fighting the war on terror.

Aiding the state of Nepal is the United States military, which set up an elite US supported fact-action Ranger Battalion. Additionally, Nepal takes advice from the US Pacific Command, which imposes strategies like unified command - where the anti-Maoist activities of the RNA, the civilian Nepal police and the new armed police are under the same RNA command.<sup>45</sup> More important, however, is that the United States is teaching the RNA their tactics from Vietnam, Afghanistan and Iraq, professing that the best way to measure success in these wars where anybody could be the enemy (or at least supporting the enemy) is to weaken them, inflict injuries upon them, kill them.

However, the United States has not taken the time to integrate into their instruction an understanding of the specificities of this war, which means that even if the utilization of the body count and bloody counter-insurgency tactics from Vietnam, Afghanistan and Iraq could be called successful in those countries, it may not be so in

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<sup>45</sup> Kumar, Dhruva. "The 'Royal' Nepal Army" *Himal South Asian*, ed. Kanak Mani Dixit, March-April 2006, 37

Nepal. Especially when you take into consideration that the RNA is “fighting in its own country, in highly populated territory, against a well-motivated rebel army in overwhelmingly guerilla-friendly terrain.”<sup>46</sup> Having provided monetary and strategic aide, this submission to American military instruction is just another manifestation of the global resources upon which poor Nepal has been forced to rely.

### **Tactics**

“The RNA is fighting a conventional war of attrition, in which the emphasis is on the control of key territory, and the engagement of the enemy to inflict casualties, thereby weakening his will to resist.”<sup>47</sup> In this way, the government seems committed to a solution by arms, although the state maintains its desire for peace talks. As Gen. R. G. Katawal, the army’s chief of staff stated, “Our aim is to weaken the Maoists so they come to the negotiating table. They will have to renounce violence, and they won’t do that until they feel weak enough.”<sup>48</sup> Two peace negotiations failed in 2001 and 2003.

The RNA’s main offensive method for weakening, for inflicting casualties, has been the use of helicopters, which indiscriminately fire machine guns or throw mortar bombs. The government has ignored ceasefires in the past in order to continue the killing of accused Maoists, a move that only incites the rebels. The state’s theory seems to be that the more terrible, the more brutal, the more continuous their attack, the more likely it is for the Maoists to surrender. “In a February interview, King Gyanendra explained his views on the possibilities of winning the current war. ‘It’s not a question of winning or not winning,’ the king said. ‘It’s a question of taming.’”<sup>49</sup>

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<sup>46</sup> *ibid.* 38

<sup>47</sup> Cowan 32

<sup>48</sup> Dealey, Sam “A War Atop the World” *National Review* /8/2006, Vol. 58 Issue 8, 28

<sup>49</sup> Cowan, 32

The state has been able to inflict many casualties, but tame and weaken the Maobaadi, the RNA has not. Nor has the state done anything to address the root causes of the conflict. The RNA has been forced to concentrate its forces in the district headquarters and Kathmandu Valley. With nearly 100,000 soldiers, “even an additional doubling of troops to 200,000 . . . would not enable the army to provide permanent presence across countryside that is ideal for guerrilla warfare.”<sup>50</sup> The Maoists are stronger than the state gives them credit for, and the RNA is obviously not tactically strong enough to ‘tame’ the smaller rebels. If they had such strength, ten years surely should have been long enough.

### **The Third Round: The State Strikes Again**

However, the RNA’s greatest weakness is not its lack of adequate number of soldiers or tactics, but its lack of concern for the people it is supposed to be protecting, and its policies of direct violence against those same people. In contradiction to Vietnam-influenced tactics - as Cowan writes

Military textbooks state that the key to success is gaining the support of the people, and the way to do this is to treat the people with respect, give them security, *and* integrate military efforts with development projects, social programs and reforms aimed at tackling the underlying sources of discomfort.<sup>51</sup>

Instead, the RNA acts with impunity, waging a war on the Maoists that routinely leaks into the innocent populace. Instead of providing security for the people, the RNA’s use of helicopters and their indiscriminate and unjustified killing of innocent civilians (under the guise of suspicion of Maoist involvement) are just as dangerous as the rebels from whom the RNA is supposed to be protecting the people. Not only is the RNA responsible

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<sup>50</sup> *ibid.* 33

<sup>51</sup> *ibid.*



for more civilian deaths than Maoist, the High Commissioner highlights some of the other ways its violent war violates human rights, stating

Arbitrary arrest, detention and re-arrests of suspected members or sympathizers of CPN (Maoist) continued to be a major source of concern. The Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment reported that torture is systematically practised in Nepal and expressed deep concern about the prevailing culture of impunity. Allegations received by OHCHR-Nepal also indicated that torture is routine.<sup>52</sup>

Additionally, the RNA is accused of mandating little accountability for those soldiers accused of committing human rights violations. Those who are punished usually see very light punishments. However, since opening in 2005, “the largest category of complaints received by OHCHR-Nepal has been nearly 300 reports of disappearances of people arrested on suspicion of being members or sympathizers of CPN (Maoist).” And that is only since 2005. It is difficult to number exactly how many people have disappeared, but some estimates are as high as nearly 18,000 since 1996.<sup>53</sup> And according to the National Human Rights Commission, “more than 1,200 persons remained disappeared since the beginning of the insurgency.”<sup>54</sup>

RNA military strategy is violent by nature, it is easy to see how human rights violations would flow freely from this mode of action. But it is a violent strategy that is backed up by Sun Tsu in his 2500 year old book, *The Art of War* – widely regarded as one of the best documents written about war. The RNA’s line of attack is “based on the third best of Sun Tsu’s options. All effort is focused on attacking the PLA - including

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<sup>52</sup> High Commissioner, 2

<sup>53</sup> *US State Department Human Rights Report 2004 – Nepal*, 5

<sup>54</sup> *ibid.*

those perceived as giving them succor and support - to inflict the maximum number of casualties and thus wear them down until their morale collapses.”<sup>55</sup>

In the end, Gyanendra’s armed forces are fighting a war in their own country, and have terrorized their own population to such an extent that the people fear them as much as the Maoists. The result of this brutal war is that nearly 12,000 people have been killed and hundreds of thousands have been displaced. “Women have been attacked and raped. Farmers walking home from their fields face bombs and ambushes. . . A population already living in dire poverty has been further impoverished by conflict.”<sup>56</sup>

The pervasive human rights violations are not only morally condemnable they are a tactical mistake. Because “ultimately, the Maoists do not need the support of the people to stop effective governance in rural areas. All they need is for the people not actively to support the state. It is the state that needs the people’s support.”<sup>57</sup> And with the Nepal becoming “a militarized state where military officers have sidelined the civilian administrators and police through the 75 districts”<sup>58</sup> and the RNA acts as defacto administrators, the people lose support for them, as their army and as their government, when they carry out their own assaults and fail to provide adequate protection.

## **Not the Only War**

### **Legacy of repression**

The state may not have lost a large base of support through its tactics fighting the Maoists and repressive attitude because such a base may have never truly existed. The

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<sup>55</sup> Cowan 33

<sup>56</sup> Khan, 26

<sup>57</sup> Cowan 33

<sup>58</sup> Dixit 19

Nepali people have only seen democracy once before, when its success was hampered by the corruption and power-grabbing of the political parties. The rest of Nepal's history of rule is more openly repressive. For example, the state made few efforts at providing an education for the people, and those few were late and limited. The first attempt at curriculum development and formalization of education only took place in the early 1950s by aid of USAID.<sup>59</sup> The country has a legacy of censoring journalists, harassing the intelligentsia and those activists working for democracy, a tradition it continues to this day.

The Nepali people's first real attempt to counter the oppressive forces at work in the palace came in 1990, when on April 6 the streets of Kathmandu filled with people, a disputable number of whom were shot and killed that afternoon when they attempted climb a statue.<sup>60</sup> On April 9 the political parties were again allowed to operate, after a ban of 30 years. Nepal's experiment with democracy was cut short in 2001 when the supposedly drunk and deranged crown prince Dipendra shot and killed 11 members of the royal family, then shot himself. Conspiracy theories abound about the involvement of the army or of the now king Gyanendra and his oldest son, Paras. Regardless, when Dipendra died after a few days in a coma, Gyanendra was crowned king. He has ruled with an authoritarian hand, using the Maoist insurgency as an excuse to declare a state of emergency in 2005 and allowing state-sponsored human rights violations to increase.

#### **The Fourth Round: Gyanendra's Second War**

The Maoist war ravaging the country is only made worse by the existence of King Gyanendra's second war, the one he wages on political activists, journalists and all

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<sup>59</sup> Dixit, Shanta, "Education, deception, state and society" *State of Nepal*, Kanak Mani Dixit and Shastri Ramachandaran, Eds. Lalitpur: Himal Books, 2002, 193

<sup>60</sup> Thapa, *Kingdom Under Siege*, 32

progressives. During the state of emergency, “many fundamental rights were suspended and hundreds of political leaders and activists, human rights defenders, journalists and others were imprisoned.”<sup>61</sup> Recently, according to the High Commissioner

Blanket bans on demonstrations were imposed in many municipalities as a means to prevent the exercise of the right to freedom of peaceful assembly . . . Media Ordinance entrenched Government efforts to ban the broadcasting of news on FM radio stations and other restrictions on freedom of expression. In rural districts there was a consistent pattern of threats and harassment of journalists by authorities.<sup>62</sup>

Increasingly violent reactions to these bans, and to the arbitrary arrest and detention of political activists and leaders, are often met with excessive force from the RNA and the police. Such was the case in April of 2006 during the protests of the second people’s movement.

But it only recently became less dangerous to have thoughts in Nepal, to have active political motivations. Nepalis have seen their freedom stolen “in the last three years by a newly crowned king-turned-despot, who shows contempt for the people at every turn and speaks in Orwellian doublespeak of democracy and constitutionalism while proceeding to demolish both.”<sup>63</sup>

Numerous challenges to the RNA about their questionable human rights observance have only been met with calls to judge the Maoists as well. “This willingness to be judged at the same level as the renegade insurgents speaks of the quality of leadership with which the RNA is saddled – the same leadership that accepted Chairman

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<sup>61</sup>High Commissioner, 6

<sup>62</sup>*ibid.* 3

<sup>63</sup> Dixit, Kanak, *Two Chairman and a Peopl*, 17

Gyanendra's call to arms, not to fight the Maoists in the jungles, but to battle politicians, lawyers, journalists and human rights activists."<sup>64</sup>

### **Democracy and the Maoists: Two Social Movements**

The universal misalignment of power and interests seems to inevitably structure societies in ways that create a significant number of people who are find their interests unmet but lack the immediate power necessary to change that situation. It is the formation of oppositional consciousness, the mental state required to incite an oppressed group to overthrow or reform a system of human domination, that is required in order to start and sustain a social movement aimed at eliminating that oppression. As Mansbridge defines it, the formation of oppositional consciousness requires that one recognize that a group is different from another group; that one is a member of this group and that it is not a shameful fact; that the differences create detrimental inequality; that this inequality is unjust; that there is a shared interest in ending those injustices; that collective action can play a part in halting that injustice; and that collective action can actually succeed in terminating (or at least reducing) the injustices.<sup>65</sup> Though their tactics differ, both the movement for democracy and the Maoist rebellion utilize this oppositional consciousness in their movements for social change, movements which the disadvantaged use in attempts to realign power relationships.

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<sup>64</sup>*ibid.* 19

<sup>65</sup> Mansbridge, Jane, "Complicating Oppositional Consciousness." *Oppositional Consciousness: the subjective roots of protest*, Jane Mansbridge and Aldon Morris, eds. Chicago: the University of Chicago. 2001 p. 238).

## **The People's Movement**

The people's movement of 1990, its second incarnation in 2006, and continuous activism of journalists and human rights workers in the interim are social movements of the traditional sort. If we accept Lukas' explanation of power as existing in three dimensions, where the oppressors not only have direct control of the powerless in the decision making realm (first dimension), but also exclude certain participants and issues (second dimension), and at the same time *also* exercise complete enough power to censor the demands and shape the desires of the powerless (third dimension);<sup>66</sup> then the democracy activists can be seen as having broken down that covert third dimension of power in the hopes of rectifying the first two. And they have continued in the face of more overt repression. The activists have been forced to operate as a social movement in the realm of extraordinary politics – outside the normal channels of politics - in order to even garner a chance to operate within those more normal domains.

## **The People's War**

The Maobaadi's armed revolt diverges from the more traditional types of social movements that utilize protests and demonstrations, but it possesses as much oppositional consciousness and awareness and as many political motivations as the democracy movement. Additionally, this conflict is most definitely an attempted solution to what were viewed as political and social problems. The arms used in rebellions of this sort are unfortunate, but conflict, in and of itself, is not entirely negative. In fact, conflict is often a reaction to perceived societal ills and a method for demanding change. It was arguably the political specificities of Nepal's government that frustrated the Maoists to the extent

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<sup>66</sup> Gaventa, John *Power and Powerlessness*, Chicago: University of Illinois Press, 1980. 9, 12

they felt compelled to turn their methods violent, to begin acting outside the normal channels of politics. Indeed radical politics often require radical tactics – the apparent necessity of arms is something to be mourned, but it is also understandable.

The People’s Liberation Army obviously believes the political and social reforms they demand are causes worthy of armed revolt. “Wars can be just and unjust – and one can term all Maoist ‘people’s wars’ as just wars, the same as national liberation movements.”<sup>67</sup> However, despite their progressive demands, the Maoists, just like the RNA, seem to discount the supreme importance of the people. “It becomes a matter of concern whether the rebellion puts the gun or the people at the forefront of its strategy. The Maobaadi forgot Mao’s dictum that while guns are important, it is the people that are decisive. Instead, the Maobaadi put the gun before the people, militarism before politics.”<sup>68</sup> The truth of this statement is evidenced by the fact that it was the ‘peaceful’ social movement for democracy this past April that had more liberal success in a matter of weeks than the Maobaadi have had in the past decade.

### **Human Rights in Conflict**

That Nepal is committing a wide range of human rights abuses is sad enough, but that two social movements provide the fodder for such abuses is even less encouraging. But it is intriguing. Why are these two conflicts providing so many opportunities for the violations of human rights? How is it that the realities of these social movements can stand in such contradiction to their stated goals, can cause so much bloodshed in the wake of their attempted progressiveness?

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<sup>67</sup> Gautam, 30

<sup>68</sup> *ibid.*

## **An Especially Brutal King**

Autocratic states, by their nature, create a space for their ideological counterparts, who usually adopt as extreme a position as the conservative state. Conflict itself arises out of the ideological clash between these extremes. And the autocratic ruler, who, by his nature, resists change, staunchly resists the desires for change that the conflict manifests. King Gyanendra is unquestionably an autocratic ruler; in May 2002 he dissolved the House of Representatives, cancelled elections to local government bodies and dismissed the prime minister soon thereafter. But Gyanendra reached his peak in February 2005 when he claimed all executive power, declared a state of emergency, shut off the country's telephone, radio and internet services, imposed harsh press censorship and arrested political leaders.

The repressive nature of Gyanendra's rule explains how the destruction of the monarchy's image is not the Maoists' doing, but the chairman's own.<sup>69</sup> It is the despotic nature of the king's rule that incites progressive challenges (both democratic and armed) to his power; and it is his oppressive and vicious rule that makes the violent nature of his responses somewhat unsurprising, and practically guarantees human rights violations. But neither the bruised ego of a brutal king nor the seemingly inevitable violent suppression of liberal activities alone can explain why human rights violations have become so rampant in Nepal.

## **A Clash of Tactics**

The PLA and the RNA are fighting two different wars. Understanding the tactical misalignment between the two warring parties goes a long way to explain the status of human rights in Nepal. To begin with, that the army has practically abandoned the

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<sup>69</sup> Dixit, Kanak, *Two Chairman and a People*, 19



countryside only allows the Maobaadi's habitually terrorizing and abusive warfare to spread and sustain itself, and to injure the populace. Additionally, such desertion, as already discussed, rouses state resentment in a people surrounded by a rebellion that offers an outlet for anger and promises an escape from the realm of the ignored, therefore aiding the Maoists in their recruitment. The Maoists are notorious for their high level of extortion, garnering food and shelter from civilians - frequently under the threat of violence - which means that when the RNA does arrive, its soldiers inflict severe civilian casualties, adhering to their policy of eliminating Maoist supporters but refusing to see the nuances existent in this particular war. Globalization is creating international systems of support and a terrorist-fighting morale to the RNA, while contributing to the inherently brutal actions of warriors in new wars, who fight from the desperate position in which globalization has put them. The RNA and the PLA tactics meet in ways that reinforce their individual ways of fighting, reinforce the conflict by encouraging some popular sensitivity for the Maoists' agenda, and form pockets in which civilian deaths are guaranteed. In addition to the human rights violations carried out as military routine on both sides, it seems that the interaction between the RNA and the Maoists' differing modes of warfare prolongs the war itself and creates supplementary circumstances conducive to human rights violations.

### **A Cyclical Relationship**

On a certain level the human rights violations are propagating themselves. In terms of the democracy movement, the violations committed against activists serve as evidence to those protesters that their fight needs to continue, which means the state always has someone's human rights to abuse. The initial structural and institutional human rights violations are partly responsible for a Maoist conflict that, by virtue of a

brutal king and a disastrous jarring between the already violent tactics of the RNA and the Maobaadi, is rife with violations. And in the end, those very human rights violations provide motivation for the warring parties to continue fighting just as ferociously. Essentially, “new wars create a cycle in which war itself creates legitimization for the criminal activities that further propagate the war. The warring parties need more or less permanent conflict to reproduce their positions of power.”<sup>70</sup> So for ten years the Maoists have battled in the countryside, the extent of their control helping compose their legitimacy. And the state fought back, its terror and show of superior force its power against the Maoists in a war that is used to legitimize the authoritarian rule over the populace.

### **Hope for Change?**

For the first time in ten years, however, the Maoist seem to be implying that they are ready to abandon conflict as their base of legitimacy, and perhaps make a return to mainstream politics. In contrast to the 1991 plenum that first integrated Prachanda’s call for revolution, the Maoists held another plenum in August 2005, where they unanimously passed a resolution that maintained “the rebels would take a 180-degree turn (not announced as such), turn their ideology on its head, and enter ‘competitive multiparty politics.’”<sup>71</sup>

Although the Maoists have admitted the unlikelihood of ever militarily defeating the RNA, it is not only the RNA’s superiority that is encouraging the Maoists to consider a return to mainstream politics. Regional geopolitics and the US and Indian support of

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<sup>70</sup> Kaldor, 110

<sup>71</sup> Dixit, Kanak, *Two Chairmen and a People*, 20

RNA also contributed to the turnaround. Perhaps most important however, is the fact that few other governments would recognize Maoists, as Maoists, in a seat of government. Indeed, “it is a requirement of their very success that they abandon the ‘people’s war’ that has brought them thus far.”<sup>72</sup>

And so, the 12-point agreement the Maoists signed with the seven party alliance only encouraged the peaceful engagement with the government after the second *jana andolan* (people’s movement) in the spring of 2006. After more than a week of violent protests, peaceful protests, curfews and shoot to kill orders, Nepal had again seen a democratic victory when Gyanendra gave in to some significant demands. He reinstated Parliament on April 26 and Nepal now has a government that established a three-month ceasefire with the Maoists and is engaging them in peace negotiations. The United States is even considering removing the terrorist tag for the Maoists.<sup>73</sup> Whether this round of democracy is as impermanent as the first round remains to be seen, but there may be hope for something different happening this time. The people’s seizure of power seems to have come at a time when it could fix the exclusionary mistake of the 90’s democracy by providing a forum in which the Maoists could nonviolently address their concerns. This round of democracy is significant because it is one that holds the possibility of Nepal leaving limbo: a round that can either sentence Nepal to more turmoil with its possible ineffectuality, or one that can potentially halt the four rounds of human rights abuses that brought Nepal to this point.

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<sup>72</sup> *ibid.* 22

<sup>73</sup> “US hints on removal of terrorist tag on Maoists” nepalnews.com, June 7 2006

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