NEPAL: PEACE AND JUSTICE

Asia Report N°184 – 14 January 2010

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

TABLE OF CONTENTS

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

Asia Report N°184 **14 January 2010**

NEPAL: PEACE AND JUSTICE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Failure to address the systematic crimes committed during Nepal's ten-year civil war is threatening the peace process. There has been not a single prosecution in civilian courts for any abuses. The cultures of impunity that enabled the crimes in the first place have remained intact, further increasing public distrust and incentives to resort to violence. The immediate priorities should be prosecutions of the most serious crimes, investigation of disappearances and action to vet state and Maoist security force members.

There are tensions between the pursuit of justice and the pursuit of peace. An absolutist approach to accountability for past abuses is impossible in practice and could obstruct the compromises needed to bring formerly warring parties together to forge a stable political settlement. But tackling impunity and improving accountability has a direct and acute relevance to managing Nepal's fractious transition. Unaccountable and heavy-handed security measures by a state with weak legitimacy have escalated conflict before and threaten to do so again.

Multiple grievances are not being effectively channelled through the constitutional process, and dealing with them is fraught with risk as long as political violence remains a viable tool. Yet moving from a state of impunity to one of accountability will be a painful transition for many individuals in the security forces and political parties. Avoiding, or deferring, this discomfort may appear tempting but is counterproductive. Longstanding cycles of abuse have undermined prospects for improved public security and peaceful political debate.

Both sides carried out repeated and systematic violations of the laws of war during the conflict, which ended with the November 2006 Comprehensive Peace Agreement (CPA). State security forces accountable primarily to the interests of party leaders or the palace felt unconstrained by legal requirements. They were responsible for hundreds of disappearances and unlawful killings, rampant torture and other abuses of the civilian population. Of the more than 13,000 people killed during the war, the vast majority died at the hands of the state. The Maoists, in challenging a state they portrayed as unjust and illegitimate, sought to characterise violence – including brutal killings of civilians and political opponents – as an essential, and justified, plank of political strategy.

At the heart of the peace deal lay a commitment to recognise that both sides had broken fundamental rules. But neither believes its actions were wrong. Both insist on judging their own, meting out no real punishment, and have refused to cooperate with civilian authorities. Lack of action on justice is not for lack of promises. Commitments to human rights norms and specific steps such as investigating disappearances have been central to successive agreements, including the CPA. Lip service, however, has only become entrenched as a substitute for action.

Concern for victims has been inconsistent. The most tangible response has been interim relief payments to families of those who died or were disappeared. Yet this has been weakened by political manipulation and the lack of effective oversight of fund distribution. For relatives of the more than 1,000 still missing, distress, frustration and a sense of betrayal have grown.

Political parties have shown no interest in dealing with past crimes. Indeed, they have exploited the lack of accountability to avoid reining in the unlawful activities of their own activists and to justify regular interference in the criminal justice system. This has left a demoralised, ineffective and increasingly desperate police force to confront growing insecurity and small yet still dangerous local, regional and ethnic struggles.

But political leaders alone are not to blame. The domestic constituency for justice is minimal. Despite the pioneering work of some activists, rights and justice are not rallying calls for the politically influential middle classes. Citizens are not keen to re-examine what the state did in the name of their security, and see no need for national dialogue and catharsis. Many victims were from disadvantaged communities long marginalised by the state and more influential social strata. Media and parliamentary attention to questions of justice is sporadic.

International efforts are no substitute for national will. Nevertheless, international commitment is to support a peace process based on fundamental rights. Allowing words to replace substance undermines such principles. The UN has lost credibility as its core values have been marginalised during the process. With no systematic vetting of peacekeeping troops by either the government or the UN, even high-profile alleged abusers have been deployed in lucrative posts in UN missions – including, in September 2009, one army major sought by Nepal's police and courts for questioning over the torture and murder of a teenage girl in 2004 inside a Nepali peacekeeping training centre. Countries providing military assistance, including the U.S., UK, India and China, have rarely or never restricted training and opportunities for individuals or units accused of serious violations.

Clear priorities are required. The first should be prosecution of the most serious conflict-era cases. Without a credible threat of prosecution, any commissions of inquiry will not get beyond the inadequate explanations the army and Maoists have already provided. The second is to ensure the commissions on disappearances and on truth and reconciliation specified in the CPA meet basic standards and, more importantly, are domestically owned and have clear, achievable goals. Finally, vetting is needed – both domestically and internationally – to help ensure the stability of any future security forces.

RECOMMENDATIONS

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

1. Act to fulfil the commitments to justice made in the Comprehensive Peace Agreement, focusing on the manageable and urgent priorities of establishing a commission on disappearances and investigating and prosecuting the most serious conflict-era crimes for which there already is substantial evidence.
2. Forge an all-party consensus and publicly commit to work towards ending impunity, initially by ending political interference in criminal proceedings, including the withdrawal of cases by the council of ministers, and halting illegal activities of party youth wings or other affiliated groups.
3. Within negotiations over the future of Maoist combatants and state security forces, most immediately in the work of the special committee and its technical sub-committee, establish procedures to vet all potential members of future security forces to exclude human rights violators.

To the Government of Nepal:

4. Direct and equip the police and attorney general's office to pursue investigations and prosecutions of all serious conflict-period crimes by:
   a) giving direct instructions to police to execute outstanding arrest warrants;
   b) setting up special police and prosecutors' units to investigate and prosecute war crimes, with senior and experienced staff backed by sufficient resources and insulated from politically motivated transfers;
   c) shielding courts and judges from pressure and taking firm action against any individual or institution that obstructs the course of justice;
   d) establishing simple, effective channels for victims and others to communicate with police and prosecutors; and
   e) identifying resource gaps, such as forensic capacity and witness protection, and drawing up plans to address them, including by requesting international assistance if appropriate.
5. Refuse, and if already granted revoke, promotions and UN peacekeeping positions to members of the security forces accused of grave violations unless and until they have been exonerated in credible independent investigations; suspend individuals who are the subject of police investigations or for whom arrest warrants have been issued.
6. Instruct the Nepalese Army to cooperate fully with investigations, including by making records of internal investigations and court-martials and other relevant internal documents available to police and prosecutors and making individuals available for police interview or court appearance when formally summoned.
7. Implement existing Supreme Court decisions relating to war crimes, disappearances and the obligation of police to register complaints and investigate alleged crimes.
8. Offer official responses to reports and recommendations of the National Human Rights Commission and the UN Office of the High Commissioner for Human Rights (OHCHR).

To the Unified Communist Party of Nepal (Maoist):

9. Respect the authority of the police and civilian courts and cooperate fully with investigations and prosecutions of crimes committed during the conflict and ceasefire periods by:

a) making suspects available for questioning or, where warrants have been issued, arrest;

b) handing over internal investigation reports;

c) sharing any other relevant evidence or records; and

d) cooperating in the establishment and functioning of the disappearances commission, in particular by full disclosure of all information relating to disappearances in which Maoist forces are implicated.

To the International Community, in particular the UN and Donors Represented in Kathmandu:

10. Build on the emerging common strategy on impunity to focus attention on practical measures to encourage progress on justice issues by:

a) introducing visa bans on individuals facing credible, documented allegations of war crimes;

b) reviewing donor assistance to areas such as interim relief payments for victims and their families and setting clear benchmarks for continuing direct financial support;

c) establishing principles for possible future support to Maoist combatants' integration and rehabilitation, such as an effective vetting mechanism and prosecutions of the most serious crimes; and

d) pressing for a government response on OHCHR's reports and recommendations, raising the issue at the UN Human Rights Council if there is no progress.

11. UN member states, the Security Council and the UN system should urgently work to ensure that peacekeeping contributions conform to universal human rights principles and are consistent with the UN's responsibilities to the peace process in Nepal, by:

a) establishing a comprehensive human rights vetting policy for peacekeeping missions and ensuring systematic pre-deployment screening of Nepali peacekeepers;

b) linking levels of peacekeeping contributions and senior appointments to demonstrable progress on accountability for war crimes and steps to ensure non-repetition; and

c) preparing enhanced training and support for possible additional deployments once the CPA provisions on security sector reform, including integration and rehabilitation of Maoist combatants, are implemented.

To Providers of Military Assistance and Training, in particular India, China, the U.S. and UK:

12. Condition all military assistance and training on cooperation with civilian investigations and prosecutions of war crimes, at a minimum excluding all security force personnel and units facing credible allegations of human rights violations from training.

Kathmandu/Brussels, 14 January 2010

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

Asia Report N°184 **14 January 2010**

NEPAL: PEACE AND JUSTICE

I. INTRODUCTION

From the start of the Maoist insurgency in 1996 through the signing of the Comprehensive Peace Agreement (CPA) in 2006, the state security forces and the rebels killed over 13,000 people.[1] November 2001 marked a significant escalation. A state of emergency brought broad powers of warrantless arrest and detention without trial; the mobilisation of the then Royal Nepalese Army (RNA) intensified the military confrontation. Over 11,000 were killed – nearly two thirds by the state – in the remainder of the conflict.

The gross abuses by both sides during the war continue to threaten the peace process.[2] Local and international human rights organisations have documented extensively the crimes of the state security forces and Maoist insurgents.[3] Those that left the most enduring mark on society are the killings and disappearances of thousands of civilians. The Maoists inflicted much of this suffering. But the security forces, supported by the palace and at times the mainstream political parties, were much more lethal.

The cumulative effect was to cement a fundamental distrust of state institutions and political leaders within large segments of the population. Such distrust is not new to Nepal. Unresponsive, self-interested and often predatory leaders and security forces have been among the drivers of unrest in the country for decades, including in the democratic uprising of 1990, the Maoist insurgency itself and the April 2006 people's movement. Each of these brought demands that officials be held accountable for killing and injuring civilians. Yet no government has taken action. Commissions have been formed and reports written, but in the end all actors have refused to let others judge their misdeeds.

The November 2006 CPA included commitments to address the crimes of the conflict. But its provisions favour reconciliation over justice and provide no practical means for implementation. With the parties to the conflict believing their actions were justified, there is little will to turn words into reality. This mutually convenient stalemate has encouraged the cultures of impunity that already

[1] Statistics collected by the Informal Sector Service Centre (INSEC), a well-respected but Communist Party of Nepal (Unified Marxist-Leninist, UML)-linked organisation, show that 13,347 people were killed in the conflict through the end of 2006 with 37 per cent of those deaths attributed to the Maoists and 63 per cent to state security forces. "No. of Victims Killed by State and Maoist in Connection with the 'People's War' (13 Feb 1996 – 31 Dec 2006)", INSEC, at www.insec.org.np/pics/1247467500.pdf. These numbers and proportions are generally accepted as accurate, although the allocation of responsibility in certain cases is disputed. Data released by a task force of the ministry of peace and reconstruction in September 2009 places the number of deaths significantly higher, at 16,274. The secretary of the task force explained that the toll had increased "because more people in the villages lodged complaints about losing relatives during the conflict". Its final findings have yet to be published. "Nepal government raises war death toll", AFP, 22 September 2009.

[2] Crisis Group has published many reports detailing abuses during the war. See in particular Crisis Group Asia Reports N°50, *Nepal Backgrounder: Ceasefire – Soft Landing or Strategic Pause?*, 10 April 2003; N°94, *Nepal: Dealing with a Human Rights Crisis*, 24 March 2005; and N°115, *Nepal: From People Power to Peace?*, 10 May 2006. On the peace process so far: Crisis Group Asia Report N°149, *Nepal's Election and Beyond*, 2 April 2008 on the constituent assembly election, and the companion post-election Asia Reports N°155, *Nepal's Election: A Peaceful Revolution?* and N°156, *Nepal's New Political Landscape*, 3 July 2008; on the strains following the Maoists' first six months in government, Asia Report N°163, *Nepal's Faltering Peace Process*, 19 February 2009; and on the collapse of consensus with the fall of the Maoist-led government in May 2009 and the inherently unstable current government led by the centrist UML, Asia Report N°173, *Nepal's Future: In Whose Hands?*, 13 August 2009. Full Nepali translations of all reports and briefings from 2007 onwards are available at www.crisisgroup.org/nepali.

[3] These include, domestically, Advocacy Forum, INSEC, and the National Human Rights Commission (NHRC), and, internationally, Amnesty International, Human Rights Watch, the International Center for Transitional Justice (ICTJ), International Commission of Jurists (ICJ), UN Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) and UN Working Group on Enforced and Involuntary Disappearances (WGEID). Collectively they have produced dozens of reports on violations of international law during the conflict, which are available on their respective websites. Many are referenced herein.

run deep in the security forces and the Maoists, as well as the rest of the political elite. It has also allowed various ethnic, regional and criminal groups to exploit such cultures and avoid sanction when they use violence for political or other ends. With no one willing to accept responsibility for his or her own conduct, no one can demand it from others, paralysing policy and contributing to a severe crisis of confidence and insecurity.

This report examines the impact of the abuses and impunity on the peace process, the institutional cultures that allowed the crimes to be committed in the first place, and the prospects for progress on justice.[4]

[4] While this report underlines the detrimental effect these cultures and the lack of accountability have had on public security, a separate forthcoming policy report will examine public security issues in detail.

II. CAN THERE BE PEACE AND JUSTICE?

A. BETTER TO FORGIVE AND FORGET?

Peace and justice can sometimes appear to be opposing goals.[5] Transitional settlements are fragile and pushing for full accountability for conflict-era crimes could threaten political leaders to the extent that the entire process is destabilised or abandoned. In Nepal as well, there is a temptation to ignore justice issues and focus on establishing a stable political environment. Faced with the immediate pressures of security, development and governance, constitution-writing and elections, questions of justice easily appear less urgent. Putting the unexamined past behind them is a more attractive option for many.

Tough measures for justice may bring short-term costs, but inaction also means direct risks. The longstanding institutional cultures which enabled past abuses in Nepal continue to drive current political violence. They are also among the factors that brought about the war in the first place and could encourage violent uprisings in the future. Moreover, the risks of justice are often overplayed by those who stand to lose from it. Whether immediate threats to stability warrant compromises on justice has been subject to little scrutiny, largely because political leaders and security forces have been so effective in ensuring prosecutions are not an option.

Some fear that taking robust justice measures could mean locking up most political leaders, leaving no one to implement the peace process. As one district official said: "Don't forget but forgive. It's better for Nepal. What are we to do? Even if we were to have the prosecutions according to the FIRs [First Information Reports – an initial police complaint of a crime], you have to remember that the allegations are against the very top political

[5] Crisis Group has published a number of reports and articles that discuss the complex relationship between peace and justice, including Crisis Group Africa Reports N°152, *Sudan: Justice, Peace and the ICC*, 17 July 2009; N°146, *Northern Uganda: The Road to Peace, with or without Kony*, 10 December 2008; and N°150, *Congo: Five Priorities for a Peacebuilding Strategy*, 11 May 2009; and Latin America Briefing N°21, *The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia*, 25 May 2009 and Report N°16, *Colombia: Towards Peace and Justice?*, 14 March 2006, as well as Nick Grono and Caroline Flintoft, "The Politics of Ending Impunity" in "The Enforcement of International Criminal Law", Aegis Trust, 2009, and Nick Grono, "Looking to the Future: What Role Can International Justice Play in Preventing Future Conflicts?", speech at Wilton Park Conference "Pursuing Justice in Ongoing Conflict: Examining the Challenges", 9 December 2008.

leaders as well. Then who will move the peace process forward?"[6]

This scenario, however, is not the most plausible. Prosecutions are unlikely to start at the top. While cases could eventually be built against certain top leaders, the political and evidentiary barriers to doing so are high. Most of the cases registered to date for conflict-related offences target those who directly ordered or carried out specific acts. That could implicate some local political leaders.[7] The problem then is not the peace process grinding to a halt but requiring the parties to impose basic discipline and not interfere with the criminal justice system.

As for prosecuting individuals from the state security forces and the Maoist People's Liberation Army (PLA), there are concerns that handing over alleged perpetrators to civilian courts could weaken internal authority and morale. Investigations could open up opportunities for denunciations and blackmailing and generate an atmosphere of distrust.

If the Nepalese Army has fairly evaluated its own conduct, as it claims it has, then it has little to fear from a judiciary that is likely to give it more than a fair trial. If it has not, then investigations may be painful in the short term. Great care must be taken to safeguard due process. But cooperating with investigations would serve the army's core concerns if they are to preserve the institution itself and its lucrative peacekeeping opportunities.

The question of undermining authority and morale within the PLA is perhaps more acute. A sudden reversal of the Maoist position that institutions and not individuals should bear responsibility (see below) would be difficult for the party leadership to manage, particularly in the absence of other concrete deliverables for the thousands of combatants still in cantonments.[8] Yet the party leadership has managed to maintain discipline despite the other pressures of the peace process. Fulfilling explicit commitments to address past wrongs should also reinforce the strategic decision, still poorly demonstrated, to pursue social justice by non-violent means.

Another, not completely unreasonable, fear is that generals under pressure may take matters into their own hands and defy political actors. But this scenario overlooks serious constraints. First is the strong international presence in Nepal, parts of which have become increasingly concerned (even if no more vocal) about the army's overt political role. The UN and Western donors, particularly the U.S., would have little reason to mute their reaction to open military resistance to a legitimate government and could cut significantly into the army's international opportunities and prestige. Second is India which, despite its embrace of the army and renewed scepticism of the Maoists, still does not want a destabilised neighbour between itself and China, a situation which military adventures could quickly precipitate. Given these factors, there is potential for plenty of sabre-rattling but little follow-through.

B. PUSHING THE PEACE PROCESS

Accountability is central not only to justice but to the implementation and completion of the peace process as a whole. The Maoists have repeatedly breached signed commitments, undermining the process and their own credibility. The same applies, to a different extent and in different areas, to the state as a whole and to other political parties. The overall failure to monitor and push forward the peace deal has eroded the authority of many individuals and institutions. This weakened legitimacy has been a major destabilising factor throughout the ceasefire period.

In these terms, even a symbolic demonstration of accountability for serious crimes would have a positive impact on the peace process as a whole. As long as no political actors feel bound by law or the commitments they have accepted in the agreements, there is little hope for lasting peace.

The lack of progress on security sector reform (SSR) is the greatest single threat to the peace process. Some might argue that focusing on the crimes committed during the conflict will set reform back further by making both sides even more defensive and upsetting the delicate relations between them. However, in more than three years since the CPA, there has been no progress on SSR in any case. Rather, the two sides' positions appear as entrenched as ever. This does not mean there is no risk of making the situation worse: heavy-handed or partisan intervention on justice issues by domestic or international actors could be counterproductive. But incorporating steps to address past violations in benchmarks for progress on SSR could move the process forward without derailing it. For example, the special committee handling

[6] Crisis Group interview, Besishahar, May 2009.

[7] At least one Maoist constituent assembly (CA) member, Agni Sapkota, has been implicated in a conflict-era crime. He is listed as one of six alleged perpetrators in the FIR filed for the murder of secondary school management committee president Arjun Bahadur Lama in Kabhrepalanchowk in April 2005. "Still Waiting for Justice: No End to Impunity in Nepal", Advocacy Forum and Human Rights Watch, October 2009, p. 30.

[8] For details on the PLA cantonments and the impasse over integrating the two armies, see Crisis Group Reports, *Nepal's Future: In Whose Hands?*, op. cit., and *Nepal's Faltering Peace Process*, op. cit., pp. 13-16.

Maoist combatant integration, rehabilitation and supervision[9] and its technical sub-committee have the mandate to consider establishing a vetting mechanism for human rights violators.

While pursuing justice will not resolve disputes at the heart of the peace deal, the public investigation, trial and prosecution of some of the worst abuses could create an atmosphere more conducive to confidence-building and negotiations. Such steps would send a clear message that all major parties and institutions are committed to the rule of law, enhancing the prospects for peace and reducing the scope for other groups to resort to violence. Justice being seen to be done, even if only in a few high-profile cases, would boost public confidence in the state's commitment to law and order and would restore the moral authority to take action against crime. Restoring trust in state security agencies would directly benefit the peace process.

C. DANGEROUS CYCLES

Impunity for past crimes encourages political violence now. While overall violence is down significantly from the conflict period, party youth wings and armed groups, particularly in the Tarai, still resort to extortion and intimidation and have been responsible for scores of killings. The state's response risks falling into the same patterns that accelerated the growth of the Maoist insurgency.

Political parties shelter their own activists and armed groups. Both the former Maoist-led government and the current administration have used a CPA provision on "political cases" to withdraw hundreds of criminal cases by cabinet decision.[10] Originally intended to prevent politically motivated prosecution, it in effect allows perpetrators of grave political violence to avoid legal consequences. For instance, the majority of the 238 cases the Maoist-led government decided to withdraw in April 2009 concerned individuals accused of involvement in deadly 2007 riots in Kapilvastu district.[11] The UML-led government also invoked similar authority to drop charges against a prominent journalist so that he could accompany the prime minister and foreign minister to New York for the UN General Assembly session in September 2009.[12] The withdrawal of charges against cadres has become a routine bargaining chip in negotiations between political parties, and between the state and armed groups.[13]

Well-connected individuals often do not have charges against them registered in the first instance. As one police official said: "If you arrest a criminal, he belongs to some group, some political party. There is no criminal, there is a person who is connected to some ethnic or political group".[14] Susceptible to politically motivated transfers, police regularly give in to pressure by political leaders not to investigate.

[9] The original term in the Interim Constitution is: "a special committee to supervise, integrate and rehabilitate the combatants of the Maoist Army". Interim Constitution, Art. 146. This report uses the term "special committee" in line with official government documents, eg, "Agreement between the political parties to amend the Constitution and take forward the peace process", 25 June 2008. Past Crisis Group reports used the short form Army Integration Special Committee (AISC), and most media publications including state media continue to follow this format.

[10] Under Article 5.2.7 of the CPA, "[b]oth sides guarantee to withdraw political accusations, claims, complaints and cases under-consideration against various individuals". The implementation of the Maoist government's October 2008 decision to withdraw 349 criminal cases, 91 of them murder cases, was stopped by a stay order of the Supreme Court in January 2009. "SC stops gov from withdrawing cases", nepalnews.com, 2 January 2009. This did not deter them from recommending a further 238 cases for withdrawal in April 2009. "NHRC takes government to task over case withdrawals", ekantipur.com, 1 May 2009. The current UML-led government recently withdrew cases against 282 individuals, 200 of them charged with murder and 82 with arson. "Gov retracts some 300 murder, arson cases", *Republica*, 17 November 2009.

[11] "NHRC takes government to task over case withdrawals", op. cit. Fourteen people were killed and at least nine injured in riots between members of plains and hill communities after unknown attackers killed an influential Madhesi Muslim leader in September 2007. "Investigation by the Office of the High Commissioner for Human Rights in Nepal into the violent incidents in Kapilvastu, Rupandehi and Dang districts of 16-21 September 2007", OHCHR-Nepal, 18 June 2008.

[12] Journalist Rishi Dhamala had been arrested alongside three other persons on charges of being linked with an armed group and conspiring to extort a Kathmandu-based businessman. "Police allege Dhamala link with armed outfit", *Republica*, 4 February 2009. The cabinet withdrew the charges against Dhamala and two other defendants in September. A court later ruled the withdrawal violated an earlier Supreme Court ruling. "Govt can't withdraw Dhamala case: District Court", *Republica*, 23 October 2009.

[13] For the 349 cases ordered withdrawn in October 2008, senior government officials acknowledged that the lists were drawn up by the political parties. Crisis Group interview, Kathmandu, May 2009. Madhesi parties had pressed for charges against their cadres to be retracted as part of the April 2009 decision. "NHRC takes government to task over case withdrawals", op. cit. Blanket withdrawals of cases against cadres have long been a mainstay of negotiations between opposition groups and the government. See, for example, "MJF chairman rules out talks on May 18", nepalnews.com, 16 May 2007. For further history of politically motivated case withdrawals, see fn 29 below.

[14] Crisis Group interview, Biratnagar, June 2009.

Police authority is also sapped by the force's own lack of accountability. While allegations of police torture have declined,[15] the disturbing frequency of state killings indicates a return to war-time tactics.[16] The fact that many involved Tarai-based armed groups has fuelled accusations of discrimination against Madhesis.[17] The killings of some infamous criminals may be welcomed by local populations tired of extortion and fear of abductions.[18] But resorting to illegal summary justice is in itself a serious threat to the rule of law. Indiscriminate and heavy-handed measures threaten to undermine widespread public support for more assertive policing.[19] The resulting loss of trust is further exacerbated by frequent allegations that police personnel are protecting local criminals for a share of their profits.[20]

Facing up to past violations should improve professionalism in the security forces. Lessons from counter-insurgency duties remain relevant. Quite apart from the moral and legal rights and wrongs, the security forces' overall approach was counterproductive. Instead of winning hearts and minds, systematic and indiscriminate abuse of the civilian population served as one of the Maoists' best recruiting agents. Given the contentious political transformations to come, increased unrest is a possibility. The security forces need to be able to deal with political violence without escalating it, which they still rarely prove capable of doing.[21]

III. CULTURES OF IMPUNITY

The human toll of the conflict illustrates the degree to which both sides fought well outside the laws of war. Arrests and abductions were rampant, as was torture and other inhumane treatment.[22] While many people were eventually released, the fate or whereabouts of up to 1,000 or even more are still unknown, with the state accused of some four fifths of those cases.[23] It is impossible to determine precisely how many conflict-related killings were unlawful. However, reliable early estimates suggested at least half of state victims were killed unlawfully, and reports of such killings increased.[24] There were of course legitimate (if often flawed) military attacks[25] and significant deaths among the security forces and Maoist fighters.[26] But in the end, thousands of civilians

[15] "Prevention of Torture in Nepal", quarterly briefing, Advocacy Forum, April-June 2009. However, the period from July to September 2009 saw the first increase in the prevalence of torture by the police in years. "Prevention of Torture in Nepal", quarterly briefing, Advocacy Forum, July-September 2009.

[16] INSEC reported 37 killings by the state in 2007, 50 in 2008 and 20 from 1 January to 6 July 2009. This compares to fourteen, four and three for the Maoists (including Young Communist League (YCL) activity) in the same periods. See "Human Rights Yearbook 2008" and "Human Rights Yearbook 2009", as well as "No. of Victims Killed 1 Jan 2009 – 06 Jul 2009", all by INSEC, at www.insec.org.np/index.php?type=hrvdata&id=2&lang=en.

[17] Prashant Jha, "Angry aftermath: 'Encounter' killings escalate in the Tarai", *Nepali Times*, 24-30 July 2009.

[18] Crisis Group interviews, Janakpur, October 2009.

[19] For example a medical student was killed when police opened fire during a clash with suspected fertiliser smugglers in Saptari. "Student prey to police firing", *The Himalayan Times*, 18 August 2009.

[20] Crisis Group interviews, Lahan and Biratnagar, September-October 2009.

[21] For example, police were accused of using excessive force after they killed three people during a clash with landless squatters in Kailali on 4 December 2009. The police had been deployed to dismantle their shelters. "Maoists announce banda to protest Kailali killings", ekantipur.com, 5 December 2009.

[22] In both 2003 and 2004, Nepal had the highest number of new cases of disappearances reported to WGEID of any country. Throughout the conflict, NHRC received reports of 1,619 alleged disappearances, with 1,234 attributed to the security forces, 331 to the Maoists and 54 unidentified. "Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict", Advocacy Forum and Human Rights Watch, September 2008, p. 11.

[23] Different organisations have reported different numbers of those still unaccounted for. This is due partly to variations in definition and purpose, but also reflects the need for a comprehensive review of cases. For example, INSEC reported 933 as of August 2008 – 828 "disappeared" by the state and 105 "abducted" by the Maoists, while noting that NHRC had recorded 998 as of May 2008 – 732 disappeared by the state and 266 abducted by the Maoists. "Impaired Accountability", August 2008, p. 6 and Annex I, at www.humansecuritygateway.info/documents/INSEC_Nepal_Disappearances.pdf. The International Committee of the Red Cross (ICRC), which employs a broader concept of "the missing" given its humanitarian mission, reported over 1,300 missing as of April 2009. "Families of Missing Persons in Nepal: A Study of Their Needs", ICRC, April 2009, p. 1, at www.icrc.org/Web/Eng/siteeng0.nsf/html/nepal-missing-persons-report-300609.

[24] See "Nepal: A Deepening Human Rights Crisis", Amnesty International, 19 December 2002, p. 1, noting that Amnesty believed half of the 4,366 deaths reported by the RNA and home affairs ministry from November 2001 through October 2002 may have been unlawful.

[25] See Sam Cowan, "The Lost Battles of Khara and Pili", *Himal Southasian*, September 2008.

[26] The Nepal Army reported that 1,014 personnel were killed during the conflict, with the vast majority "killed in action" but a notable 30 "murdered after abduction" by the Maoists. A further nine personnel were reported as "disappeared" following abduction by Maoists. "Human Rights Journal 2008", Nepalese Army Directorate of Human Rights, June 2008, pp. 90-150. The Nepal Police, which suffered the brunt of the fighting through 2001, have recorded 1,485 police personnel that "attained martyrdom fearlessly fighting the terrorists". See "Tribute to Martyrs", at www.nepalpolice.gov.np/index.

were unlawfully killed, tortured, made to disappear or subjected to other abuses, as were some combatants, because neither side would stick to repeated promises to abide by international humanitarian and human rights law.

The vast majority of crimes during the conflict were not random acts of violence or insubordination. They were the product of strong sets of beliefs, values and experiences at the core of the security forces and the Maoist movement. These institutional cultures not only enabled the crimes to be committed, but gave both sides reason to reject accusations that they had acted unlawfully and to insist that they alone could legitimately judge their conduct. Neither side has changed its approach. In fact both have worked hard to cloud the record and protect their interests.

The blanket rejection of accountability for crimes committed during the conflict reflects broader patterns in society. The Nepalese state has a long history of both breaking its own rules and allowing impunity as privilege for the powerful or well connected. During the Shah and Rana eras, local leaders were largely left to do as they pleased;[27] aspects of this local autonomy remained in place during the Panchayat years.[28] With the democratic transition in 1990, protection from the law became a currency of patronage in the emerging party networks. This could take the form of impunity for violence or other crimes[29] but also of direct police support in local conflicts. This deeply violated many people's sense of justice. It also provided fertile ground for Maoist mobilisation, as less well connected factions started looking to them for support. When this happened in Rolpa and Rukum in the early 1990s, intra-village conflicts spiralled out of control.[30]

Although the term "impunity" has gained particular currency in the post-ceasefire period, it long predates the conflict. Especially after the 1990 people's movement, human rights activists and analysts identified impunity – the absence of punishment where it is due – as a systemic problem requiring urgent attention.[31] There has been little discussion of the ways in which pre-existing patterns were modified during the conflict. A closer examination of the cultures within the state and Maoist forces helps outline the challenges of institutional transformation.

A. A DECADE OF DIRTY WAR

1. The state

The patterns of violence carried out by the state security forces throughout the conflict reflected failed counter-insurgency strategies and the increasingly politicised role

php?option=com_content&task=view&id=70&Itemid=74. The Armed Police Force has not published specific statistics, but has also paid public tribute to "the valiant warriors who paid with their lives thwarting the act of terrorism and violence". See "Revered Brave Martyrs", at www.apf.gov.np/tribute/tribute.php. INSEC statistics show a total of 689 "army personnel", 1,364 "police personnel" and 139 "security personnel" killed in the conflict. "No. of Victims Killed by State and Maoist in Connection with the 'People's War' (13 Feb 1996 – 31 Dec 2006)", at www.insec.org.np/pics/1247467500.pdf.

[27] John Whelpton, *A History of Nepal* (Cambridge, 2005). The Shah dynasty ruled from 1743 to 1846; the Rana regime lasted from 1846 to 1951. Both administrations took little interest in local governance other than the revenue collection, and local leaders historically resembled strongmen who met challenges to their authority with force.

[28] This was reflected in the continuing importance of powerful families in the village *panchayats*. See, for example, Philippe Ramirez, *De la disparition des chefs* (Paris, 2000).

[29] After the 1990 people's movement, the Mallik Commission was established to investigate the deadly suppression of protests by the Panchayat government. Despite findings of excessive force and recommendations that legal action be taken against specific individuals, the interim government did nothing. See Crisis Group Report, *Nepal: Electing Chaos*, op. cit., pp. 5-6. Only a single copy of the report was made accessible to parliament. It was later copied and published by a human rights organisation. That same interim government ordered the withdrawal of criminal cases against 1,150 people. A further 1,450 cases were withdrawn by successive governments between May 1991 and 1997. "Impunity in Nepal: An Exploratory Study", The Asia Foundation, September 1999, p. 7. See also "Politics of impunity", ekantipur.com, 28 May 2008.

[30] The violent escalation of village-level conflicts with the increasing participation of the Maoists in 1995 led to Operation Romeo, a "sweep and clean" operation involving more than 300 police under the newly formed Nepali Congress (NC)-led government. The widespread abuses committed during Operation Romeo in Rolpa, Rukum and Dang districts increased the Maoists' support base and created the conditions for the more systematic armed revolt the following year. This is illustrated by a recent article examining the history of Jelbang village in Rolpa before and during the civil war. Jelbang was particularly heavily targeted by the police. The biographies of local Maoists killed later during the conflict show that "87% of these people joined the Maoists around the time preparations were being made for the 'People's War' or after it had begun, indicating that the Maoists had not struck deep roots in Jelbang before 1996". Deepak Thapa, Kiyoko Ogura and Judith Pettigrew, "The social fabric of the Jelbang killings, Nepal", *Dialectical Anthropology*, published online 7 November 2009. See further: Anne De Sales, "The Kham Magar country: between ethnic claims and Maoism", in David Gellner (ed.), *Resistance and the State: Nepalese Experiences* (New Delhi, 2003); Kiyoko Ogura, "Maoists, people, and the state as seen from Rolpa and Rukum", in Hiroshi Ishii et al. (eds.), *Social Dynamics in Northern South Asia* (Delhi, 2007).

[31] "Impunity in Nepal: An Exploratory Study", The Asia Foundation, op. cit.

of the military. Even before the significant escalation of late 2001 and entry of the RNA, police actions against the Maoists were brutal and targeted anyone suspected of being a sympathiser.[32] They resulted in warrantless arrests, torture, rape and extrajudicial executions, as well as cases of excessive force – such as the burning of an entire village at Khara in Rukum district in 2000.[33] These actions only increased the rebels' popularity in the affected areas.

The Maoists eventually drew the RNA into the conflict in 2001 after attacking the army barracks in Dang district. With the RNA's mobilisation came sweeping powers for all three of the security forces – the RNA, Nepal Police (NP) and the then newly established paramilitary Armed Police Force (APF) – under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO).[34] A nationwide state of emergency was also declared. From the time it was deployed, the RNA had de facto control over the police and APF, even though a formal unified command structure was instituted only in November 2003. Still answering directly to the palace, the army was not under democratic control.

It was also angry, ill-prepared and on the defensive. It was neither battle-hardened nor practised in the complexities of domestic counter-insurgency operations. Around 50,000 strong, it vastly outnumbered the Maoist guerrillas (at the time probably numbering only a few thousand) but lacked the training and skills to use its forces effectively against them.[35]

Against this background the security forces began to commit the worst crimes of the conflict. Clear patterns of systematic and widespread abuses emerged: victims arrested from home in search operations, unacknowledged detention in police stations and army barracks, endemic torture, notable reports of rape[36] and extrajudicial execution – invariably reported by the army as "encounter killings". Detainees also were deliberately hidden from the ICRC.[37] In many cases, the victims had no Maoist connections. A significant number were women or children.

The most prominent cases, which have been well documented,[38] illustrate these trends.

Bardiya torture and disappearances: Widespread torture and at least 200 disappearances after arrest by security forces in Bardiya district mostly from late 2001 to the January 2003 ceasefire. The vast majority of victims were from the marginalised and disadvantaged Tharu community, who were particularly vulnerable – to both Maoist intimidation and state abuse – due to weak links to human rights organisations and existing tensions with

[32] The next major police operation after Operation Romeo in 1995, the year-long Operation Kilo Sierra II was launched in May 1998, equally by a NC-led government just a month after it assumed office. Targeting the population even more indiscriminately than previous operations against the Maoists, it further galvanised local support for the rebels. See Crisis Group Report, *Nepal Backgrounder: Ceasefire – Soft Landing or Strategic Pause?*, op. cit., pp. 4-5; "Nepal: Killing with Impunity", Amnesty International, 20 January 2005, p. 4.

[33] "Nepal: A Spiralling Human Rights Crisis", Amnesty International, 4 April 2002, p. 17. Although rape and attempted rape by police was often reported during these years, few if any perpetrators were held criminally responsible. Ibid, pp. 29-30.

[34] Parliament voted TADO into law as the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA) in 2002 when the state of emergency lapsed. The king later extended it by decree until it finally expired in September 2006.

[35] The actual number of soldiers ready for deployment in combat was probably much lower. Deepak Thapa and Bandita Sijapati, *A Kingdom Under Siege* (Kathmandu, 2003), p. 137.

[36] Although many cases of rape likely went unreported during the conflict, there were significant allegations, particularly regarding the APF. For example, in October 2003 two young girls were reportedly gang-raped by seven APF personnel working in Banke District. "Nepal: Alleged rape of two teenage girls by Nepalese police", Asian Human Rights Commission, press release, 27 October 2003. Cases of rape have also been documented by OHCHR, Advocacy Forum and Human Rights Watch. See especially the OHCHR report on Bardiya discussed below, and "Still Waiting for Justice", Advocacy Forum and Human Rights Watch, op. cit. 44 cases of rape between 2001 and March 2009 were reported to Advocacy Forum, with the RNA accused in the majority of cases but Maoists and other groups accused in others. See "Sexual violence against women in Nepal", at www.advocacyforum.org/departments/human-rights-documentation-and-monitoring-department/sexual-violence.php.

[37] Jitman Basnet, "251 Days in the King's Custody", *Tehelka*, 12 November 2005.

[38] Relevant publications include the series of reports produced by OHCHR-Nepal: "Conflict-related Disappearances in Bardiya District", December 2008; "The torture and death in custody of Maina Sunuwar: Summary of concerns", December 2006; and "Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003-2004", May 2006, all available at http://nepal.ohchr.org/en/index.html. It also includes NHRC's report, "Doramba Incident: Ramechhap, On-the-spot Inspection and Report of the Investigation Committee", 2060 BS (2003), available at www.nhrcnepal.org///publication/doc/reports/Reprot_Doramba_R.pdf; "Clear Culpability: 'Disappearances' by Security Forces in Nepal", Human Rights Watch, 28 February 2005, as well as "Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict", Advocacy Forum and Human Rights Watch, September 2008 and the update of that report "Still Waiting for Justice", op. cit., which include the case of Maina Sunuwar; and Amnesty International's "Nepal: A Deepening Human Rights Crisis", 19 December 2002, and "Nepal: Killing with Impunity", op. cit.

high-caste landowners.[39] The army tried to cover up its offences and has refused to cooperate with investigations.

Doramba extrajudicial executions: Killing of nineteen unarmed Maoists in army custody on 17 August 2003 in Ramechhap district. The timing of the incident – as peace talks were supposed to be progressing – and lenient response by the government and army commanders suggested a deliberate effort to derail the negotiations and further demonstrated that abuses were condoned at high levels.[40] The Maoists pulled out of talks and ended the ceasefire on 27 August 2003.

Maharajgunj barracks torture and disappearances: Arrest and torture of hundreds and at least 45 disappearances in Kathmandu from late 2003 into 2004 attributed primarily to the Bhairabnath battalion of the RNA's 10th Brigade.[41] After the ceasefire ended, the army was under intense pressure to deliver results. It undertook a deliberate intelligence effort targeted at uncovering and breaking Maoist networks in the capital. Those selected for detention and torture were largely – but not all – active Maoists, many of them from the party's student wing. Despite extensive evidence, the army refuses to acknowledge the crimes.

Maina Sunuwar torture and death: Arrest and disappearance, then torture and death of fifteen-year-old Maina Sunuwar at the Birendra Peace Operations Training Centre in Panchkhal, Kabhrepalanchowk district in February 2004. After substantial domestic and international pressure, the army established a court of inquiry. Even though it confirmed her death resulted from torture, the subsequent court martial of three officers found them responsible only for a botched cover-up (improper interrogation and disposal of her body) and passed meaningless sentences.[42] Under further pressure, the police investigated and the body was exhumed. Arrest warrants for four army officers were issued in February 2008 but the army did not hand over any of them to the civilian authorities, even though it currently holds one of the officers in detention.[43]

Beyond illustrating clear patterns, these cases show the extent of potential criminal liability that hangs over army commanders, if they ever have to face civilian authorities. These were not isolated incidents or rogue soldiers. They were systematic abuses that were planned, carried out and endorsed by senior officials who certainly did not suffer from lack of understanding of human rights and humanitarian law.

2. The Maoists

The Maoist military strategy employed violence against civilians, intimidation and coercion.[44] From the start of their operations they not only targeted police posts and personnel but also unarmed democratic political activists and those they suspected of being spies. They used targeted killings – including many teachers, journalists and human rights defenders – and widespread threats against civilian populations to build their strength. Coercive recruitment of adults and children was prevalent, as was the use of underage soldiers in combat.[45]

During the post-2001 period the Maoists were consolidating, organising and expanding their armed forces. What were initially small squads of poorly trained irregulars had been, by 2001, converted into a "People's Liberation Army" (PLA) that – on paper – consisted of companies, brigades and divisions on the lines of a state army. While their forces never approached the size and organisational sophistication the nomenclature implied,

[39] The Tharu were severely marginalised as a plains ethnic group whose land had been usurped by more powerful migrant communities and many of whom were subjected to generations-old chains of indentured labour.

[40] See Crisis Group Report, *Nepal: Dealing with a Human Rights Crisis*, op. cit., pp. 4, 12. The army court-martialled the soldiers responsible, sentencing the major in charge of the troops to two years' imprisonment for failing to control his troops while a non-commissioned officer was demoted by one rank.

[41] In its detailed 2006 report, OHCHR-Nepal originally reported 49 people who were in custody of the Bhairabnath battalion in the Maharajgunj barracks between September and December 2003 and remained disappeared. The army eventually formed a task force which issued a report rejecting the allegations and asserting that twelve of the 49 were not disappeared. OHCHR-Nepal's subsequent investigation revealed that four of the twelve had been released but only after illegal detention and torture, one had died in custody and the remaining seven were still unaccounted for. "Remarks on pending accountability issues in Nepal", Richard Bennett, OHCHR-Nepal representative, 29 July 2009.

[42] The court martial found the colonel and two captains involved guilty of "not following the standard procedures and orders". Each was sentenced to six months' imprisonment. However, since they were judged to already have spent that time when confined to barracks during the period of investigation, they were released. The two captains were ordered to pay Rs.25,000 (approx. $335) and the colonel Rs.50,000 ($670) as compensation. They were also ruled ineligible for promotion or one and two years respectively. "The torture and death in custody of Maina Sunuwar: Summary of concerns", OHCHR-Nepal, December 2006, p. 5.

[43] For a detailed account up to September 2009 see "Still Waiting for Justice", Advocacy Forum and Human Rights Watch, op. cit. For the most recent developments, see Section V.D below.

[44] See Crisis Group Report, *Nepal's Maoists: Their Aims, Structure and Strategy*, op. cit., pp. 20-21.

[45] "Children in the Ranks: The Maoists' Use of Child Soldiers in Nepal", Human Rights Watch, February 2007.

they were certainly a structured, often uniformed military force subject to a functional command and control system.[46] As early as 2003, the Maoist leadership had pledged to abide by international humanitarian law.[47]

There are many documented cases of Maoist killings of "enemies of the people", torture after abduction and killings of *hors de combat* security forces.[48] They are believed responsible for hundreds of civilian deaths and disappearances.[49] These include the bombings of public buses in Chitwan and Kabhrepalanchok districts in 2005 and at least fourteen cases of disappearances in Bardiya district mostly in 2003-2004.[50] With the RNA deployment leading to an increase in conventional military clashes, the proportion of civilians among those killed by the Maoists fell.[51] However, they continued to kill perceived enemies late into the conflict, with numerous reports of beheadings and other cruel tactics.[52]

Substantial evidence of these abuses has long been in the public domain. While not as pervasive as those by the state security forces, the patterns of Maoist violence show that they repeatedly breached both national and international law in actions that were for the most part sanctioned or directed from higher up the chain of command.[53] Despite recognising "mistakes", such as the Chitwan bombing (see below), and confirming their responsibility for many killings which they deem legitimate, the Maoists have refused to give up a single alleged perpetrator to civilian authorities.

B. WHY DID SYSTEMATIC STATE VIOLATIONS TAKE PLACE?

Licence to act outside the law had implicitly been granted to the security forces by each government since Operation Romeo in 1995. King Gyanendra made this clear in his takeover address of 1 February 2005. He warned that while human rights should be safeguarded, it would be "unfair to put the state and terrorists on equal footing".[54] "To fight a terrorist you have to fight like a terrorist", explained one frustrated general in 2006, "but our critics can't understand this".[55] The army's regular practice of covering up its violations indicates that senior officers knew their forces had overstepped the law. It staged killings to appear as "armed encounters", threatened witnesses to sign exonerating statements, took staged photographs and publicised false accounts of circumstances of death.[56]

Some violations were, as the army likes to assert, instances of random individual indiscipline.[57] But these were few and far between and in themselves highlighted the flexibility of the rules and the absence of serious threat of punishment if broken. Soldiers were led to believe that whatever they did, their colleagues and commanding officers would cover up for them. Despite the army's protestations, the vast majority of violations were instead

[46] See Crisis Group Asia Report N°104, *Nepal's Maoists: Their Aims, Structure and Strategy*, 27 October 2005, pp. 12-14.
[47] Their 2003 negotiating agenda demanded fundamental and human rights among the minimum content of a new constitution. Crisis Group Report, *Nepal's Maoists: Their Aims, Structure and Strategy*, op. cit. Prachanda in 2004 publicly stated that the Maoists would accept human rights monitoring by the UN. Crisis Group Report, *Nepal: Dealing with a Human Rights Crisis*, op. cit.
[48] "Nepal: Killing with Impunity", Amnesty International, op. cit., pp. 8-10.
[49] "Waiting for Justice", Advocacy Forum and Human Rights Watch, op. cit., p. 3.
[50] "Attacks against public transportation in Chitwan and Kabhrepalanchok districts: Investigation report", OHCHR-Nepal, 18 August 2005; "Conflict-related Disappearances in Bardiya District", OHCHR-Nepal, op. cit., pp. 51-56.
[51] Crisis Group Report, *Nepal's Maoists: Their Aims, Structure and Strategy*, op. cit., p. 21.
[52] "Nepal: Killing with Impunity", Amnesty International, op. cit., pp. 8-10.
[53] There were incidents of apparent individual indiscipline or misuse of authority leading to serious crimes, such as the killing of Dailekh journalist Dekendra Raj Thapa on 11 August 2004. Under intense national and international pressure, the Maoist western central commander eventually explained that Thapa had also been an informer in a number of deaths but that his killing was a "mistake" because central policy would require a journalist guilty of such crimes to be arrested but not sentenced to death. See Crisis Group Report, *Nepal's Maoists: Their Aims, Structure and Strategy*, op. cit., p. 13.
[54] "From now on, such crimes will be dealt with firmly [in] accordance with the law. Our security forces have been mobilized to carry out their responsibilities more effectively to end terrorism and restore peace and security in the interest of the nation and people. All the organs of the state must remain alert in honouring and upholding human rights. However, it will be unfair to put the state and terrorists on equal footing. We are confident that all peace-loving Nepalese who have faith in democracy will, as always, continue to cooperate with the security forces in maintaining peace and tranquillity". Proclamation to the Nation from His Majesty King Gyanendra Bir Bikram Shah Dev, 1 February 2005, at www.icj.org/IMG/pdf/King_s_speech.pdf.
[55] Crisis Group interview, Kathmandu, September 2006.
[56] "Waiting for Justice", Advocacy Forum and Human Rights Watch, op. cit., p. 27; and "Conflict-related Disappearances in Bardiya District", OHCHR-Nepal, op. cit., pp. 46-50.
[57] For example, the shooting of twelve civilians at a religious festival in Nagarkot by a drunken soldier angered by an argument. "Cold Blood", *Nepali Times*, 16 December 2005.

policy-driven, sanctioned through the chain of command in pursuit of military objectives.[58]

The army promised to give the Maoists a "bloody nose" and was under intense pressure by the high command and the palace to deliver results. Given its inexperience in counter-insurgency, the army was only able to deliver bodies rather than strategic gains. One source in close contact with the army during the latter stages of the conflict recalled that "there was tremendous pressure right down the chain of command *every day* for a high kill count".[59] There were also incentives: officers and other ranks were told that delivering results, even in these terms, would enhance their prospects of a coveted position on a UN peacekeeping mission.[60]

The torture and disappearances at the Maharajgunj barracks are particularly telling on where the orders came from. It is inconceivable that dozens of detainees could have been detained, tortured and interrogated over a period of months in central Kathmandu without the explicit permission of the army top brass. The battalion commanders who managed the process were on paper answerable to their brigade commander but, given their location and the sensitivity of their work, were almost certainly reporting directly to army headquarters.[61] Any major operation had to be approved by even higher authorities – including the palace. A decision to load a group of detainees onto trucks and take them to be executed, as many former Maharajgunj detainees believe happened on 20 December 2003, would not have been taken by a battalion commander on his own initiative, given the disciplined army hierarchy.

The systematic torture carried out in Maharajgunj required the participation of entire units, including numerous medical officers who were charged with keeping detainees alive so that they could continue to be tortured. It does not appear that soldiers were surprised at what they were asked to do; they had even developed their own slang for certain techniques, such as the use of electric shocks.[62] Evidence from other cases suggests soldiers were well aware of established torture techniques and accustomed to using them frequently. Some survivors of torture report that the lower ranks showed a "soft corner" but were under pressure from their superiors.[63]

The narrow base of army recruitment, particularly in the officer corps, may well have contributed to the crimes committed, especially those against marginalised groups such as the Tharu in Bardiya. The RNA officer corps and lower ranks had little or no connection with such communities. It would not be surprising if they viewed them with the same contempt that higher-caste Nepali-speaking groups, and the state itself, had always done. Moreover, given that the Maoists were mobilising support among them, the army and police likely saw more reason to view them with suspicion. This history of institutional discrimination and detachment helps explain why the NA may have been quick to see some civilian populations as potentially hostile, even if unassociated with the Maoists and unarmed.

None of the abuse can be blamed on a lack of training or limited awareness of legal rights. Quite the reverse: the army has long insisted that its "rich exposure to International Peacekeeping ensured that it remains one of the few organizations in Nepal where the teaching and practice of Human Rights has been long institutionalized".[64] The torturers came from some of the army's best-trained and most prestigious units. The Bhairabnath battalion that was primarily responsible for the Maharajgunj abuses had had advanced U.S. training. Five of its members had participated in special forces qualification at Fort Bragg, North Carolina during the 2003 ceasefire, including training in counter-insurgency operations and unconventional

[58] In September 2005, Manfred Nowak, the special rapporteur of the UN Commission on Human Rights on torture reported systematic state use of torture, basing his conclusion partly on the "disturbingly frank admissions by senior police and military officials that torture was acceptable in some instances, and was indeed systematically practiced". "Practice of Torture Systematic in Nepal", United Nations, press release, 16 September 2005. The army launched a strong public counter-offensive. In an interview, spokesperson Deepak Gurung insisted "'Systematic' was absolutely false. Like I said, there might be some individual cases only". "Between Two Stones – Nepal's decade of conflict", IRIN Web Special, December 2005. The army continues to deny that systematic abuses occurred: "some violations on Human Rights and IHL, did occur from the Nepalese Army also, but they were unintentional and not policy driven". "Human Rights Journal 2008", Nepalese Army Directorate of Human Rights, June 2008, p. 1. "'As far as the Nepalese Army is concerned, there was no policy-driven human rights violation. In the case of individual involvement, the guilty parties have been punished'". "Nepal's post-war culture of impunity", BBC News, 1 March 2009, quoting Brigadier General Ramindra Chhetri, an army spokesperson.

[59] Crisis Group interview, Kathmandu, October 2006.

[60] Ibid.

[61] Most probably to the director of military intelligence and/or the director of military operations.

[62] "Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks", OHCHR-Nepal, op. cit., p. 10.

[63] Crisis Group interviews, former detainee in Maharajgunj barracks, Kathmandu, May 2009; former detainee in barracks near Besishahar, Sundarbazar VDC, Lamjung district, June 2009.

[64] "Effort made by the Royal Nepalese Army to protect and promote human rights", undated, p. 3, available at http://lawasia.asn.au/objectlibrary/153?filename=RNAHR.pdf%20-.

warfare.[65] Two of these individuals completed their course only days before the resumption of hostilities.[66] They rejoined their prestigious battalion just as it embarked on its campaign to cleanse Kathmandu of Maoist activists through illegal detention, torture and disappearance.

C. THE MAOISTS: PLAYING BY REVOLUTIONARY RULES

The Maoists pursued policies that violated not only domestic but international laws. But their behaviour cannot be understood simply in terms of abiding by or violating established laws and human rights norms. They did not just break the usual rules, they played a different game by different rules. They viewed and presented themselves not as rebels but as a parallel state, with its own authority and values. This revolutionary logic sought to justify the use of violence by establishing alternative forms of legitimacy, for example administering punishments (often characterised as *jan karvahi* or "people's action") and carrying out killings based on the decisions of their own "people's courts".[67]

This sense of ideological legitimacy informs most Maoists' approach to evaluating actions which all others categorised as crimes. As one – a former detainee in Maharajgunj barracks – said: "If through injustice to one person, ten people can be liberated, we cannot call that one person's injustice a true injustice".[68] Most shared a deep-seated belief that targeted violence was part of the "price the country has had to pay for political change".[69]

By the latter stages of the conflict the party leadership had diluted its claim to parallel authority by making repeated commitments to abide by universal norms, from the body of international humanitarian law (such as the Geneva Conventions) governing combat to a broader acceptance of human rights.[70] This shift weakened the internal justification for the use of violence but did not in itself lead to changes in behaviour or attitude. The Maoists remain reluctant to abandon illegal tactics and the party position that emerged on accountability: "The Maoists are prepared to provide information and justifications. We cannot expose the individual who did it. However, we are ready to take responsibility institutionally".[71]

Institutional responsibility for ideologically inspired violence sits uneasily with a culture of recognition for individual sacrifice. The concept of martyrdom is strong in Nepali society, and the Maoists have used it to attempt to de-legitimise state violence and sanctify their own position as victims.[72] Throughout the conflict and since, they have issued "certificates of martyrdom" to scores of families who lost loved ones to the security forces (often regardless of their association with the movement). The main Maoist victims' committee for the families of the disappeared has even changed its name recently from the "society of the families of the disappeared citizens by the state" to the "society for the missing fighters" to emphasise victims' political contribution.[73]

This reflected an effort to place the Maoist movement in a longer historical narrative linking it to previous uprisings against the "semi-feudal" state. Even before the start of the insurgency, the Maoists had called for those

[65] Foreign Military Training In Fiscal Years 2003 and 2004, Volume I, U.S. Department of Defense and U.S. Department of State Joint Report to Congress, released June 2004, available at: www.state.gov/t/pm/rls/rpt/fmtrpt/2004/index.htm.
[66] Ibid.
[67] As Prachanda explained it: "Our policy is that if he is an informer, we'd capture him, stand him in front of the people's court, and take action as per the verdict of the court. Considering the degree of the crime, he could be given a labour punishment for a certain time, or for a while kept under the custody of people, and if the crime is big, he could even be executed. The party policy is to follow this process". "Prachanda interview", BBC News, 13 February 2006. Although little is known about the operation of "people's courts" during the conflict, it is virtually impossible that they could have met the standards of impartiality or provided the guarantees required by international law. Specifically, Common Article Three of the Geneva Conventions, which applies to armed conflicts not of an international character, prohibits the "passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples". See also "Nepal: The Rule of Law Abandoned", ICJ, March 2005, and "Nepal: Justice in Transition", ICJ, February 2008, p. 11, note 21, stating "[l]ocal Maoist leaders denied that any state security personnel or political opponents were executed following a judgment of a 'people's court'. They said any such deaths were legitimate killings in the course of the armed conflict".

[68] Crisis Group interview, Kathmandu, June 2009.
[69] Crisis Group interview, Besishahar, June 2009.
[70] For example, in a 10 August 2005 press statement, Prachanda said: "We have publicly stated our principled adherence to the core and the spirit of the Geneva Conventions in regard to human rights in the course of armed conflicts, and we have emphasized our determination to adhere to these standards ever since the people's war in Nepal began under the leadership of our party".
[71] Crisis Group interview, Biratnagar, June 2009.
[72] While the Maoists have made some gestures to the families of the victims of their crimes since the peace process, during the conflict they had no sympathy – illustrated by their alleged responsibility for the 15 February 2004 shooting of the head of the Maoist Victims Association. "Amnesty International condemns killing of Ganesh Chiluwal", press release, 17 February 2004.
[73] Crisis Group interview, Kathmandu, May 2009.

who had been killed or disappeared in the 1990 democratic uprising to be declared martyrs and the perpetrators punished.[74] Despite their claims to revolutionary exceptionalism, they had from the outset claimed to inherit and represent a more eclectic range of reformist struggles. The attempt to square ideological purity with broader appeal always represented a philosophical challenge and threatened to undermine their self-justification.

D. REINFORCEMENT AT HOME AND ABROAD

The cultures of impunity within the security forces and Maoists are not entirely self-made. Both domestic and international actors contributed to or failed to check them.

Governments and political parties. While many of the abuses committed by state security forces took place under direct palace rule, some of the worst occurred while elected governments were in place and fully functional. This is true of the brutal police operations that preceded the army's deployment as well as the widespread abuses in Bardiya. Members of parliament freely voted the permissive Terrorist and Disruptive Activities (Control and Punishment) Ordinance into law in April 2002. What this says about the lack of human rights and democratic credentials of those governments and other parties, as well as the fiction of a democratically controlled military even before the first royal takeover of October 2002, is as relevant as ever today.

Civil society. Domestic human rights organisations strained under successive government restrictions from the 2001 state of emergency to the January 2005 royal coup.[75] Often facing threats from both sides, their operations were limited by the inaccessibility of certain regions and sources of information.[76] The politicisation of the judiciary did not help their cause, especially as the king grabbed more power and the courts refused to rein in the RNA.[77] There were notable exceptions, such as NHRC's 2003 report on the Doramba massacre, but overall the excesses of the palace and army, and intimidation by the Maoists, kept the domestic human rights community in check.

The impact of Nepali civil society was also limited by its own weaknesses. First, it has often suffered from the same exclusive tendencies as the state itself. Long-circulating rumours about the systematic violations carried out against Tharu communities in Bardiya received little civil society attention at the time, and some human rights defenders privately admit that their own organisations' caste and ethnic make-up led them to ignore or downplay these cases.[78] Awareness has grown, but this pattern has yet to change decisively. As one commentator put it, "For us ordinary citizens, living amidst anarchy and fear, what has become glaringly evident is the lack of civil society, particularly in the human rights sector. … National human rights groups, such as the Informal Sector (INSEC) utterly lack credibility thanks to their lack of inclusiveness and past actions".[79] Second, most human rights organisations are politicised. Many are directly associated with particular parties, and thus throughout the conflict and since have been limited in the extent to which they have been able to press for real accountability.[80]

International military support. All of the most serious army abuses uncovered to date took place as the U.S., UK and India stepped up military aid to the state, and in particular to the RNA.[81] Despite some lip service to human rights, this assistance was largely unconditional right up to the February 2005 palace coup – and was accompanied by strong political support to the state and the military. During the same period, the UN Department of Peacekeeping Operations (DPKO) also steadily

[74] See the "40-point demand" submitted to Prime Minister Sher Bahadur Deuba on 4 February 1996 by Dr Baburam Bhattarai on behalf of the United People's Front Nepal, reproduced in Crisis Group Asia Report N°104, *Nepal's Maoists: Their Aims, Structure and Strategy*, 27 October 2005, Appendix F.

[75] Crisis Group Report, *Nepal: Dealing with a Human Rights Crisis*, op. cit., pp. 5-7.

[76] Crisis Group interviews, Nepalgunj, Gulariya, Dhadingbesi, Besishahar, May-June 2009.

[77] Crisis Group interview, human rights lawyer, Nepalgunj, May 2009. "The judges changed after the king's rule. Before that they were liberal, sympathetic to the accused and detainees. There was a regular channel for their promotions. But after, they were motivated by fear and greed – the king could do anything with anyone".

[78] Crisis Group interviews, Kathmandu, January 2009.

[79] Daulat Jha, "The chilly winter ahead", *The Kathmandu Post*, 23 December 2008.

[80] Crisis Group interviews and observations, Bardiya, Banke, Dhading, Morang, Kathmandu, May-June 2009.

[81] Overall U.S. military aid from October 2001 to October 2004 was over $29 million. "US jittery over Nepal", *Asia Times*, 16 March 2005. U.S. training expenditure increased steadily from the November 2001 state of emergency reaching its highest point from October 2002 to September 2003 at $1,470,892. "Foreign Military Training In Fiscal Years 2003 and 2004, Volume I", U.S. Department of Defense and U.S. Department of State Joint Report to Congress, June 2004. The palace and army had played effectively to U.S. preoccupations regarding terrorism, drawing a "terrorist group" designation for the Maoists in October 2003. UK assistance was also substantial, some £8.9 million between April 2002 and April 2004 including helicopters. "Nepal: Between a Rock and a Hard Place", Human Rights Watch, 6 October 2004, pp. 89-91. India significantly stepped up its longstanding military assistance from late 2001, supplying the bulk of RNA weaponry and ammunition and being the first (after the Nepali government) to brand the Maoists "terrorists".

increased Nepali participation in peacekeeping operations, continuing to do so even after the palace coup.[82] UN missions not only serve an internal patronage system (allowing the top brass to reward or punish officers by granting or denying postings) but are a major source of income and prestige for the army as a whole, and senior officers in particular.[83]

By refusing to take seriously the solid evidence of systematic state crimes – which was available at an early stage in the conflict and in shocking detail with the Doramba massacre – and the RNA's unwillingness to impose any internal accountability, these international backers not only encouraged a flawed military strategy but undermined their own moral and political leverage. They also weakened calls by the European Union (EU) and others for an end to the abuses. The U.S. saw its military support and pressure as one of the factors that had pushed the Maoists to the negotiating table in January 2003, but in the face of mounting evidence of abuses the U.S. Congress imposed conditions on funding in December 2004. Before this change in stance could be tested, the royal coup led to a more confrontational situation in which the king's ministers accused the U.S. of double standards.[84]

IV. AFTER THE WAR

A. PROMISES BUT NO PROGRESS

The CPA included multiple provisions on rights and justice.[85] The primary commitments were to publicise (within 60 days) the names and status of the disappeared[86] and to create a truth and reconciliation commission (TRC) "to investigate truth about those who have seriously violated human rights and those who were involved in crimes against humanity in course of the war and to create an environment for reconciliation in the society".[87] There was also agreement to withdraw political cases,[88] to end impunity,[89] and to provide relief for victims and the families of the disappeared.[90] The Interim Constitution, promulgated in January 2007, further specified that the state's responsibilities include "provid[ing] relief to the families of the victims, on the basis of the report of the Investigation Commission constituted to investigate the cases of persons who were the subject of enforced disappearance during the course of the conflict".[91]

These sweeping pledges masked fundamental problems. Most notably, neither of the parties that made them represented or controlled the army. Those who concluded the deal were also unrepresentative of many of the victims of the conflict – especially women and marginalised groups.[92] There were no provisions for implementation or meaningful monitoring. Although OHCHR and NHRC

[82] The number of Nepali military observers, police and troops deployed in peacekeeping operations was just under 1,000 from 2001 to September 2003. It nearly doubled in October and grew to over 2,200 in December 2003. It was 3,400 by the end of 2004, at which time Nepal was the fourth-largest troop contributing country overall (having been eleventh in 2001). It has stayed in fourth or fifth position since then and had approximately 4,300 people deployed in late 2009.

[83] Following a court case filed in 2001, senior officers have been accused of misuse of the Army Welfare Fund – into which deductions from Nepali peacekeepers' salaries are paid. The fund had been completely unaudited for decades and the army has repeatedly defied Supreme Court orders to disclose information. "NA accused of violating SC order", *The Himalayan Times*, 1 June 2009.

[84] As Tulsi Giri, the deputy premier following the palace coup, said: "'What did America do after 9/11? What is India doing in Kashmir … Every country has a problem which it is trying to solve, but then it's not justice that you make comments on how Nepal is dealing with it'". "Nepal govt hits out at foreign criticism", *Indian Express*, 16 February 2005.

[85] The full text of the agreement is available with side-by-side English and Nepali versions as a schedule to the UNDP-produced copy of the Interim Constitution, at www.nic.gov.np/download/interim-constitution.pdf.

[86] CPA, Articles 5.2.3 and 7.3.2.

[87] CPA, Article 5.2.5.

[88] CPA, Articles 5.2.2 and 5.2.7.

[89] CPA, Article 3.4. There is also a promise to "ensure that impunity shall not be encouraged". Article 7.1.3.

[90] CPA, Article 7.1.3.

[91] Interim Constitution, art. 33. Although the specific provision for a disappearances commission did not make it into the CPA, it was already in the "decisions of the meeting of high level leaders of the Seven Political Parties and the CPN (Maoist) held on November 8, 2006" which was referenced in the CPA. That agreement provides: "A high-level commission to investigate and publicize the whereabouts of citizens that were alleged to be disappeared by the State and the Maoists in past shall be constituted". It also includes a provision for a TRC. A copy is available at http://peace.gov.np/admin/doc/cover%20and%20con.pdf.

[92] Not a single member of the negotiating teams, or signatory or witness to the CPA was a woman. "Women's participation in peace negotiations: Connections between presence and influence", United Nations Development Fund for Women (UNIFEM), September 2009; see also "Negotiating Peace in Nepal: Implications for Justice", ICTJ, June 2009.

were to monitor the human rights provisions of the deal,[93] no one was bound to listen to them. The agreement was silent on prosecutions, instead focusing on reconciliation and compensation. There were strong signals from the beginning that the parties preferred a closed-door deal on justice to any inclusive or consultative process.[94]

This paying of lip service rather than taking action on accountability and impunity set a strong pattern. The NHRC sent a letter to the UML-led government in June 2009, complaining that its recommendations in hundreds of cases had never been implemented.[95] When a major newspaper reported in November that the cabinet had decided to finally implement nearly 500 of those recommendations, the government's only response was to issue a denial the following day.[96]

This is not to say there has been no progress at all. The government has proposed draft legislation for both the TRC and disappearances commission.[97] The two iterations of the TRC bill were prepared by the ministry of peace and reconstruction prior to the constituent assembly elections and were criticised for insufficient public consultations and including amnesty provisions. After the elections, the ministry began consultations under the UCPN(M)-led[98] government and has held several sessions since the UML-led coalition took over in May 2009.[99]

Work on the disappearances commission has been more and less problematic. A landmark Supreme Court decision in June 2007 provided much needed standards.[100] This created space for human rights organisations to play a somewhat more effective scrutinising role but did little to speed up the process. Following a November 2008 cabinet decision, the UCPN(M)-led government started providing interim relief of Rs.100,000 (approx. $1,358) to each family of the disappeared.[101] In February 2009 it presented legislation criminalising disappearances and setting up a commission. However, its decision to do so by ordinance, bypassing parliamentary debate and without broad consultation, was controversial. Critics accused the government of flouting democratic process and attempting to prevent scrutiny of Maoist abuses.[102] The

[93] CPA, Articles 9.1 and 9.4.

[94] For an example reduced to writing, the 22 November 2005 twelve-point understanding between the Maoists and mainstream parties provides: "Regarding the inappropriate conducts that took place among the parties in the past, a common commitment has been expressed to investigate the incidents raised objection and asked for the investigation by any party and take action over the guilty one if found and make informed publicly. An understanding has been made to resolve the problems if emerged among the parties now onwards through the dialogue by discussing in the concerned level or in the leadership level". A copy is available at http://peace.gov.np/admin/doc/cover%20and%20con.pdf.

[95] "Memorandum to Prime Minister Nepal", NHRC, 26 June 2009.

[96] "Govt to act on NHRC recommendations – a positive step: NHRC chief", *Republica*, 24 November 2009. For the government's denial, see "Govt refutes report on action against security officers", nepalnews.com, 25 November 2009.

[97] Draft legislation to criminalise torture was prepared in 2007 under the interim government, but never made public. In a 17 December 2007 decision, the Supreme Court ordered the government to criminalise torture in accordance with the Interim Constitution and the country's treaty obligations under the Convention Against Torture and its Optional Protocol. The government has yet to comply with that decision. "Criminalize Torture", Advocacy Forum, 26 June 2009. Available at: www.advocacyforum.org/downloads/publications/criminalize-torture-june26-report-english-final.pdf.

[98] The CPN(M) was renamed the Unified Communist Party of Nepal (Maoist) following its merger with the Unity Centre (Masal) in January 2009. This report uses "CPN(M)" for the pre-unification party and "UCPN(M)" for the post-unification party as well as for references that span both periods, such as the coalition government led by the CPN(M) and then UCPN(M) from April 2008 to May 2009.

[99] Between December 2007 and December 2009 consultations were held in Palpa, Dhankuta, Nepalgunj, Dhangadhi, Hetauda, Lalitpur, Udaypur, Ramechhap, Jumla and Dang. A national consultation and three thematic consultations were held in Kathmandu.

[100] On the basis of dozens of habeas corpus petitions filed on behalf of people disappeared by the security forces, the court ordered the government to establish a commission of inquiry on conflict-related "enforced disappearances" in compliance with international standards, enact a law to criminalise enforced disappearances, prosecute those responsible and provide adequate relief to families.

[101] The government has also been providing relief to the families of those who were killed and to internally displaced persons (IDPs). The families of the deceased have been receiving Rs.100,000 (approx. $1,340) under the Emergency Peace Support Project (EPSP) approved by the World Bank in May 2008, with a promise of another Rs.900,000 ($12,080 – a total of Rs. 1 million or $13,420) to be distributed at a later date. According to the peace ministry's website as of December 2009, the number of families who had received EPSP funds was 11,038. A complete list of the names and beneficiaries is available at www.epsp.gov.np/eng/index.php?page=deceased_main. A number of organisations reported that some families of the disappeared had registered as families of the deceased to receive more certain relief. As of 15 January 2009, 52,160 IDPs (14,031 families) had been identified and Rs.370 million under the Special Program for IDPs under the Nepal Peace Trust Fund had been disbursed. "Nepal Peace Trust Fund Four-Monthly Progress Report: Fifth Report (16 Sep 2008 – 15 Jan 2009)", Peace Fund Secretariat, Ministry of Peace and Reconstruction, 28 February 2009, at www.peace.gov.np/admin/doc/Part%20PRV%20v2.pdf.

[102] "Maoists are laying disappearances blame at state's door", *The Himalayan Times*, 10 February 2009; and "Politics of ordinance", ekantipur.com, 23 March 2009. A copy of the ordi-

ordinance lapsed in the absence of ratification by parliament. The most recent draft proposed by the UML-led government in October 2009 still fell short of basic standards.[103]

The pending legislation for both commissions provides a ready excuse for not prosecuting conflict-related crimes through ordinary courts. No person has been prosecuted in civilian courts for serious abuses committed during the conflict or since. The police have now registered at least 65 formal complaints (FIRs) related to killings or disappearances of civilians during the conflict, but only after extraordinary efforts by the victims and human rights organisations and often under court order.[104] One of the few cases in which arrest warrants have been issued is that of Maina Sunuwar, but no one has been taken into custody.[105] For most of the other complaints there has been no investigation at all. Although legally bound to investigate, many police officials and some judges have claimed they cannot proceed because these are "political cases" or will be dealt with by the TRC.[106]

B. THE ARMY

There is ample scope for individuals to be prosecuted for war crimes committed by the security forces and a strong basis to consider charges of crimes against humanity, particularly for the concentrated patterns of torture and disappearances in certain districts.[107] However, there are two primary obstacles to establishing criminal liability. First, while crimes such as murder and rape are on Nepal's statute book, some of those which were most persistent during the conflict – in particular torture and enforced disappearance – have not been domestically criminalised; crimes against humanity are recognised in customary international law and by the International Criminal Court (see below) but have never been prosecuted in Nepal's courts. Secondly, and more importantly, is reluctance to challenge the army's self-policing and prosecute cases in the civilian courts – even those involving other security officials who are not subject to military jurisdiction. Despite extensive evidence of systematic crimes committed by the security forces, no prison sentence has been imposed on a senior army officer for human rights abuses.[108]

The army acknowledges that there have been allegations of disappearances, extrajudicial killings, torture, intimidation and "extrajudicial custody".[109] It says that nearly 60 per cent of over 4,300 cases raised by the NHRC, OHCHR, ICRC and other organisations have received "clarification" with relevant "justification" forwarded to the concerned party.[110] However, in the vast majority of cases they have refused to make any details public and often the "justifications" simply confirm that an individual was "killed in crossfire" or deny the incident.[111]

nance was made available on the peace ministry's website at www.peace.gov.np/admin/doc/Dis-Ord-Eng.pdf.

[103] An earlier draft of June 2009 had been widely criticised for flawed legal definitions and lacking minimum and maximum penalties. "ICJ calls for amendments to Bill on Disappearances", press release with accompanying letter to Minister for Peace and Reconstruction Rakam Chemjong, 16 July 2009; "Nepal: Joint Memorandum on the Disappearances of Persons (Crime and Punishment) Bill", Accountability Watch Committee (AWC), Advocacy Forum, Amnesty International, Asian Federation Against Involuntary Disappearances (AFAD), Human Rights Watch, ICJ, ICTJ, INSEC, 30 August 2009. Most of the criticism still applies to the more recent draft. Importantly, only maximum but no minimum penalties have been introduced, and significant concerns regarding the formation and operation of the commission remain.

[104] Advocacy Forum and Human Rights Watch have compiled detailed information about these cases in "Waiting for Justice" and "Still Waiting for Justice", both op. cit.

[105] One of the accused, Niranjan Basnet, was able to leave Nepal for deployment in a UN peacekeeping mission in September 2009. See further discussion below.

[106] "Still Waiting for Justice", Advocacy Forum and Human Rights Watch, op. cit., pp. 27, 34. As the father of a girl killed by the security services said: "The police out here always say, 'I can't do anything against the army officers'. The district police chief said directly: 'Until the TRC is formed, I can do nothing'". Crisis Group interview, May 2009.

[107] Crimes against humanity, as defined in the Rome Statute of the International Criminal Court, are "any of the following acts [including "murder", "torture" and "enforced disappearance of persons"] when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. … 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts … against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack". In its report on Bardiya, OHCHR-Nepal recognised that enforced disappearances can constitute a crime against humanity, but stopped short of concluding such crimes had been committed. "Conflict-related Disappearances in Bardiya District", OHCHR-Nepal, op. cit., pp. 24, 69. Crimes against humanity also have not been made criminal offences under Nepali law.

[108] Military courts did impose custodial sentences on two mid-ranking officers: Lieutenant-Colonel Babi Khatri (later promoted colonel) for his involvement in the murder of Maina Sunuwar and Major Ram Mani Pokharel for the Doramba massacre.

[109] "Human Rights Journal 2008", Nepalese Army Directorate of Human Rights, June 2008, p. 62.

[110] "Human Rights Journal 2008", Nepalese Army Directorate of Human Rights, June 2008, p. 14.

[111] Crisis Group interviews, May-June 2009. The army has further claimed that penalties have been imposed on at least 175 personnel, ranging from demotion to ten years' impris-

The army has refused to cooperate with any police investigations or orders from civilian courts, and has promoted some accused of serious abuses. For example, in the case of Maina Sunuwar, one of the individuals subject to an outstanding arrest warrant, Colonel Babi Khatri, was given a military intelligence post in NA headquarters.[112] Another, Niranjan Basnet, was sent on a UN peacekeeping mission (see below). Similarly, a primary alleged perpetrator in the disappearances in Bardiya has been promoted.[113] While the army has assured OHCHR that an investigation of the Bardiya allegations is being conducted, it has refused to share any further information.[114] The pervasiveness of unlawful behaviour, its close alignment with military objectives and the potential international embarrassment help explain why the security services have gone to great lengths to bar outside scrutiny.

C. THE MAOISTS

The Maoists have been more forthcoming than the security forces in accepting responsibility for killings and disappearances.[115] Instead of issuing denials or patently false versions of events, they often have claimed justification and in some cases admitted "mistakes". Beyond that their response has been similar. They have carried out their own internal investigations but taken no concrete action against high-profile perpetrators and refused to cooperate with the police and judiciary.

For example, immediately after the Chitwan bus bombing which killed some 35 civilians in June 2005, Prachanda issued a public statement admitting responsibility, expressing his "shock" and condolences and stating that such an attack was against the party's policy.[116] The Maoists conducted an internal investigation which concluded that the incident was a "grave mistake", recommended that the five persons responsible be suspended and informed OHCHR that they had been detained and sent to a "labour camp".[117] Even though four of the five names were eventually made public, the Maoists have refused to cooperate with a police investigation. They benefited from playing to "the people" and OHCHR in their initial reaction, but have faced no consequences for failing to do anything since; indeed, it has been a pain-free way for Prachanda to avoid upsetting the powerful PLA.

Their reaction to the fourteen alleged disappearances in Bardiya hit a similar dead end but for different reasons. The Maoists admitted to OHCHR that they had killed twelve of the fourteen in *jan karvahi* (people's action) but denied responsibility for the other two.[118] This largely confirmed what the Maoists had announced publicly or told the families at the time – that the individuals had been killed because they were informants or criminals judged by "people's courts". For example, the wife of one of the victims said a cadre came to her house with a newspaper report and said: "It was like this. People in the neighbourhood reported him and we hanged him until he was dead".[119]

The Maoists have long signalled that their use of violence is not subject to normal jurisdiction, a message that carried over into the ceasefire period, even after explicit acceptance that they would no longer lay claim to separate standards. Their cadres continue to commit serious abuses, and the Maoists continue to shelter them. The most prominent case involves Kali Bahadur Kham ("Bibidh"), former commander of the PLA Third Division, accused of overseeing the kidnapping, torture and murder of businessman Ram Hari Shrestha in the PLA cantonment in Chitwan in April-May 2008. The Maoists have refused police requests to interview Bibidh,[120] claiming he has been found not guilty in an internal investigation.[121] They also reinstated him to the central committee and in May 2009 appointed him commander of the PLA Fifth Division.[122] Separately, two suspects in the October 2007

onment, but have not disclosed who or for what. "Nepal's post-war culture of impunity", BBC News, 1 March 2009, referencing a statement by Brigadier General Ramindra Chhetri, an army spokesperson. In another instance in February 2009 the army claimed to have sentenced 66 personnel for human rights violations. Crisis Group Report, *Nepal's Faltering Peace Process*, op. cit., p. 21 (footnote 125).

[112] In May 2009, he was reportedly sent into retirement when the defence ministry rejected an army request to extend his tenure. "Accused in Maina's killing pensioned off", *Republica*, 28 May 2009.

[113] "Tharu samharaklai samman", *Himal Khabarpatrika*, 16 July 2009.

[114] Crisis Group interview, Kathmandu, May 2009.

[115] It is worth noting that relatively few formal accusations have been made against the Maoists – no doubt attributable in part to their continuing intimidation and harassment of opponents.

[116] "Attacks against public transportation in Chitwan and Kabhrepalanchok districts: Investigation report", OHCHR-Nepal, op. cit., para 38.

[117] Ibid, para 41.

[118] "Conflict-related Disappearances in Bardiya District", OHCHR-Nepal, op. cit., p. 53.

[119] Crisis Group interview, Bardiya, May 2009.

[120] The police have formally charged five Maoist cadres in the case. Only one, Govinda Bahadur Batala, has been arrested; he remains in police custody. Local Maoist leaders have not cooperated with the police to make further arrests. See "Remarks on pending accountability issues in Nepal", Richard Bennett, OHCHR-Nepal representative, op. cit.

[121] "Party acquitted me of Ram Hari murder charge: Kham", myrepublica.com, 23 January 2009.

[122] "PLA commanders transferred", nepalnews.com, 28 May 2009; "Ram Hari murder accused gets Maoist CC berth", *Republica*, 15 January 2009.

murder of journalist Birendra Sah were reportedly promoted to the UCPN(M) Bara district committee secretariat in December 2009.[123]

D. THE VICTIMS

Victims' dissatisfaction with the lack of progress on accountability since the end of the conflict is on the rise. OHCHR, other internationals and national human rights organisations have played a crucial role in bringing attention to the crimes, but there is great public impatience with their inability to produce results.[124]

The impact on the families of those unlawfully killed or disappeared has been devastating. Those left behind are predominantly women with small children and the elderly, who have lost their primary breadwinners.[125] Many are from rural, agricultural backgrounds.[126] The families were often caught between the army and the Maoists during the hostilities. Those perceived to be collaborating with one side – even under coercion – became the target of the other. Fear of reprisal did not necessarily end with the end of the conflict. Although those victimised by the state rarely knew the perpetrators or saw them again, those victimised by the Maoists sometimes did.

These overlapping frustrations are increasing tensions and low-level confrontations may step up a notch. This is particularly true in regions where alleged informers are still in or close to affected communities.[127] Some organised victims' groups are providing direction and support for peaceful campaigns; a few are taking a more aggressive stance.[128] There is little chance of widespread uprisings of victims as such, given that most of them are from extremely disenfranchised backgrounds, but their grievances may reinforce other issues, such as ethnic and regional rights, around which more militant campaigns are developing.[129]

Increased activism is also not without risk. Families and human rights defenders who have pursued cases against the security forces or the Maoists have faced serious harassment and threats of retaliation.[130] Moreover, victims are seeking justice in a still insecure environment where rule of law institutions have limited capacity. Calls for action are largely unheard.

E. PARTY APPROACHES

The major political parties view justice primarily as one element in a broader system of patronage and political negotiations. By leaving criminal cases in limbo, they have opened the door to massive political meddling in the criminal justice system and are actively taking part in it, including the withdrawal of hundreds of criminal cases.[131]

At the district level, victims' interests and their right to compensation have been used as a political football. This has been particularly evident in the drawing up of lists of various categories of victims to be compensated. Procedures varied across districts, but in many the process appears to have included plenty of horse-trading and historical revisionism, often in meetings of what was or was to become the district's local peace committee (LPC). As one human rights activist said: "There are more fake victims than real victims. … The IDPs are 100 per cent fake. The others, maybe 50/50".[132] In his view, the compensation is feeding into patronage networks.[133]

[123] "OHCHR concerned about promotion of alleged killers of Birendra Sah", nepalnews.com, 4 December 2009. Sah was killed soon after his abduction on 4 October 2007, as was later admitted by an internal investigation committee of the Maoists. "Maoists admit their cadres killed scribe Sah", ekantipur.com, 5 November 2007.

[124] Crisis Group interviews, Bardiya, Dhading, Lamjung, May-June 2009. Frustration with national human rights organisations is particularly high in the case of the NHRC, as illustrated by the occupation of its office by activists of the Maoist Victims' Association in December 2008. "Maoist victims lock NHRC office", *The Himalayan Times*, 15 December 2008.

[125] At least among the missing, indigenous ethnic groups and Madhesis are also over-represented. "Families of Missing Persons in Nepal: A Study of Their Needs", ICRC, op. cit., p. 2.

[126] According to INSEC, 73 of Nepal's 75 districts saw killings during the conflict, with the highest numbers in the Mid-Western region, but at least a dozen other districts with over 200 each. 2,381 of the reported killings were of "agricultural workers" while another 1,456 were "unidentified persons", the two biggest categories after "political workers" (5,717). "No. of Victims Killed by State and Maoist in Connection with the 'People's War' (13 Feb 1996-31 Dec 2006)", at www.insec.org.np/pics/1247467500.pdf. See also "Families of Missing Persons in Nepal: A Study of Their Needs", ICRC, op. cit., p. 2, noting that most of the missing come from "rural peasant backgrounds".

[127] Crisis Group interviews, Bardiya, Dhading, Lamjung, Morang, May-June 2009.

[128] Crisis Group interviews, Gulariya, May 2009.

[129] A notable 15 per cent of victims of the state among the missing said they were prepared to return to armed rebellion if the issue is not addressed. "An assessment of the needs of families of the Missing in Nepal", Post-war Reconstruction and Development Unit, University of York, April 2009, p. 6.

[130] Crisis Group interviews, May-June 2009. See also "Waiting for Justice", Advocacy Forum and Human Rights Watch, op. cit.

[131] See Section II.C above.

[132] Crisis Group interview, Nepalgunj, May 2009.

[133] Ibid.

It is difficult to know the degree to which this process has deprived true victims of killings or disappearances of much-needed relief.[134] But these reports should encourage donors, who have underwritten relief payments, to monitor the use of their funds more effectively.[135]

Although all of the parties have courted victims for their own purposes, the Maoists have had an advantage given the excesses of the security forces.[136] They have formed victims' committees, pressed for information about the disappeared and helped families obtain the relief funds they secured for victims when they were in government. They have not shied away from using the issue forcefully,[137] as they did during the constituent assembly elections in Jivanpur in Dhading district.[138] Indeed, Maoist leader Prachanda, in comments to PLA troops before the elections, said that proposed relief payments were not "just money" but part of politics: "So you see, if we plan to hold open meetings at the same time as we give out the money to martyrs' families, then that will be our preparation for revolt. That's not getting ready for an election but getting ready for revolt. This will improve our deteriorating relations with the people".[139]

Some victims are willing to interpret political motivations pragmatically. As one said: "If [the Maoists'] efforts get more attention, then I have to go along with it. Even during the war we had to be on one side or the other. Now it's the same".[140] But the message that reparations should serve party political self-interest is impossible to ignore. It also reinforces counterproductive divisions between the victims of the state and victims of the Maoists.

The Maoists are willing to reap the benefits of helping victims seek compensation and agitate for information about the disappeared, but they have stopped short of taking the steps necessary to ensure that information comes out. They know well that doing so would require them to open the door to an examination of their own conduct and their judgments throughout the war that it was justified. Other parties have similarly preferred to promote the interests of particular constituencies of victims in line with their own narrative of the war. For example, primarily pressing for compensation to those displaced by Maoist threats reinforces the image of other parties' supporters as the primary victims of a conflict initiated by an illegitimate rebel group.

For all parties, the constitution-writing process should be one focus for developing justice measures. Unfortunately, discussion so far has generated relatively little consideration of the need to include measures that would prevent repetition of conflict-era abuses. Even debate of the draft fundamental rights section was sparsely attended, despite its headline value and major disputes on which rights the new constitution should embody.[141] Ensuring justice in the longer term requires serious attention to the constitutional basis for rule of law institutions and accountability.

F. CIVIL SOCIETY

The discussion of justice questions has not been without some benefits. Public debate has broadened the scope of issues on the political agenda and has reduced the possibility for denial. Collective knowledge of the nature of conflict-era abuses has been enhanced, even if much of it is not purely evidence-based. However, this general awareness has not been sustained or translated into focused public pressure or policy responses.

The mainstream media and other opinion-makers have often been indifferent to justice and hesitant to push too far in analysing the culture of impunity within the security services. This has been particularly evident in the muted response to OHCHR reports on Maharajgunj and Bardiya.[142] As suspicions of Maoist intentions revived, few

[134] There are certainly individual cases where families are still trying to satisfy local officials with documentation to prove death or family relation, causing great aggravation and encouraging suspicion that the government is discriminating or the security forces are interfering. Crisis Group interviews, Kaski, Morang, Dhading, May-June 2009.

[135] The World Bank suspended a grant for Maoist combatant salaries after the emergence of the Shaktikhor video in May 2009 (see fn. 139 below), on suspicions that the Maoists diverted some of the funds for party use. "WB to release $18m peace grant", *Republica*, 21 November 2009.

[136] As a woman living in Kaski said: "Now after my husband has gone, I have nothing left to do. The state made us Maoists. The only thing I have now is the party". Crisis Group interview, June 2009. Similarly: "The reason the number of people supporting the Maoists increased is because the state went around disappearing people! It's not because they believe in the ideology, but because of what the state did". Crisis Group interview, father of disappeared man, Urlabari VDC, Morang, June 2009.

[137] "Kin of missing to act tough", The Himalayan Times Online, 12 May 2009.

[138] See Crisis Group Report, *Nepal's Election: A Peaceful Revolution?*, op. cit., p. 5.

[139] Prachanda, address to PLA training meeting, Shaktikhor cantonment, 8 January 2008, translated from transcript published as "Yasto chha maovadi janayuddhako dirghakalin rananiti", *Nagarik*, 6 May 2009. For an analysis of the address and its implications, see Crisis Group Report, *Nepal's Future: In Whose Hands?*, op. cit., pp. 9-11.

[140] Crisis Group interview, Dharke, Dhading district, May 2009.

[141] Fewer than 40 CA members and five observers in the press gallery turned up to the first day of the debate on 7 June 2009. Crisis Group interview, international legal observer, December 2009.

[142] "Media blackout", ekantipur.com, 28 December 2008.

journalists or activists wished to focus on past violations by the army and police. In any case, atrocities carried out against people from communities who remain at a great distance – physically, politically and emotionally – from Kathmandu find little traction in the capital.

While new movements have sprung up around particular forms of group- or interest-based justice rhetoric – for example, the many organisations calling for ethnic or regional rights as a form of redress for historical discrimination – the broader coalition around basic human rights has weakened. As with national politics, the search for peace and opposition to autocratic monarchy had helped bring activists together on a common platform. Such shared interests have dissipated as the peace process progressed. Many rights activists have reverted to more partisan stances; the longstanding criticism that human rights is an externally driven and funded discourse risks gaining currency.

Ironically, the U.S. and UK governments, which rights activists regularly criticised for their support to the army during the conflict, have become – along with other internationals – more vocal in some of their calls for action on justice than domestic organisations. For example, these international actors led demands for Major-General Toran Jung Bahadur Singh, who was in overall command of the troops allegedly responsible for the Maharajgunj violations, to be denied promotion.[143] Major national activists only added their voices to this campaign after some weeks.[144] Domestic organisations reacted more convincingly in the case of Niranjan Basnet, one of the accused in the case of Maina Sunuwar, who was expelled from a UN peacekeeping mission in September 2009 (see below).

[143] Despite objections, the government decided to promote him to lieutenant-general on 24 December 2009. The Supreme Court stayed the promotion on 3 January 2010. "SC continues stay on Toran promotion", *Republica*, 10 January 2010.

[144] The Accountability Watch Committee (AWC), an umbrella body for individuals and organisations working on human rights and justice issues, registered their protest only when Maj-Gen Singh's promotion became imminent. "Government urged not to promote Toran", myrepublica.com, 26 November 2009. That he was likely to be promoted had been known at least since the end of September. "Toran to be promoted finally", myrepublica.com, 23 September 2009.

V. WHAT NEEDS TO BE DONE

A. PROGRESS ON PROSECUTIONS

The focus now should be on prosecuting the most serious crimes identified by NHRC and OHCHR for which there is already substantial evidence. Selection is important: if prosecutions are to be successful, legally and politically, the first cases pressed must be watertight in terms of evidence and appear even-handed in terms of the institutional affiliations of the accused. Casting too wide a net could be unhelpfully perceived as a witch-hunt, triggering greater resistance while not necessarily resulting in viable cases. The judicial system has limited capacity; it can cope with a handful of well-prepared cases but would be unlikely to pursue too wide a range of cases with sufficient vigour.

International solutions such as the International Criminal Court (ICC) are hardly feasible. Nepal is not a party to the Rome Statute of the ICC and thus crimes committed in its territory or by its nationals do not automatically fall within the court's jurisdiction. The UN Security Council can refer situations to the ICC but such an unusual intervention is highly unlikely in Nepal's case.[145]

Strengthening national institutions to enable them to handle serious crimes is a much more sustainable long-term objective. The criminal justice system is far from perfect.[146] But many observers believe it could handle

[145] In addition, ICC jurisdiction reaches back only to 1 July 2002. The prospects of the government signing up to the ICC are slim. "Maoist, Nepal Army agree on Rome Statute: Not in Nepal", *Republica*, 9 March 2009.

[146] For instance, the official capacity for all prisons across the country as of November 2008 was 5,000 while the total inmate population was 8,810. Of those, 59.4 per cent were pre-trial or on remand. See "Inside Prisons and the Rights of Detainees: A Photo Exhibition on Prison Conditions in Nepal", OHCHR-Nepal, 2008, p. 8. According to the International Centre for Prison Studies at King's College London, Nepal has the sixth-lowest prison population rate (number of prisoners per total population) in the world. Torture also continues to be a significant problem. From April to June 2009, Advocacy Forum found 20.2 per cent of 1,047 detainees interviewed said they had been subjected to torture or other cruel, inhuman or degrading treatment, although longer-term trends have shown a gradual reduction. "Prevention of Torture in Nepal", quarterly briefing, Advocacy Forum, April-June 2009. There are also significant deficiencies in the investigative capacity and techniques of police. As one criminal court judge said "It's all based on the culprit's statement and credibility. All criminal cases depend on interviews. They do not even take fingerprints". Crisis Group interview, Nepalgunj, May 2009.

the most serious crimes that have been identified with support in three main areas:

- **Special investigation and prosecution units.** Even in the highest profile cases, political interference and intimidation will remain a problem. The best way to guard against it is to set up special units in the police and attorney general's offices to work together and deal only with these cases. Staffing them with senior and experienced officials, backed by sufficient resources and insulated from politically motivated transfers or conditions of service, would add to their resilience.
- **Witness protection.** Perhaps the greatest risk in pending cases is the safety of victims, witnesses and advocates. A strong witness protection program is critical to ensure individuals – including members of the security forces or PLA – are able and willing to participate.
- **Forensic expertise.** Both the police and NHRC need more training and capacity in exhumations, crime scene investigations, DNA analysis and ballistics testing.

The government should assess resource needs in these areas and develop plans to address them, requesting international assistance as appropriate.

B. BUILDING BETTER COMMISSIONS

Nepal's history of inadequate commissions of inquiry does not offer an encouraging precedent. There is a high risk that commissioners will be politicised, inquiries will be half-hearted and violators will refuse to cooperate. The human rights community and donors have had some impact on the process so far, but, as already mentioned, there are still deficiencies in the draft laws for both the TRC and the disappearances commission.[147]

Potential pitfalls for the commissions should be emphasised. The appointment of politically affiliated commissioners has compromised past inquiries in Nepal. The selection process must be completely transparent and should include representatives of victims and civil society, with care taken that marginalised groups and women are included. Commissioners also need broad autonomy and personal security provisions to avoid interference and intimidation as proceedings are conducted. Without publicising findings and making recommendations that will actually be implemented, commissions will do little to address the abuses during the conflict.

The gain from a TRC is unclear from the perspective of non-repetition. The idea of a TRC emerged as the result of international suggestion with little domestic debate, and the well-known South African model quickly became the primary point of reference.[148] The establishment of the TRC itself is part of the CPA. But its mandate and scope are still open to discussion. Nepal needs to develop a commission that is responsive to the victims of the conflict and its own culture, history and society. Nepal certainly has deep divisions, many of which have fed into violence before and may do so again. But they are entrenched in longstanding socioeconomic institutions rather than solely the legacy of the conflict. It is difficult to see how they would be amenable to a reconciliation process based on public accounts of victims and perpetrators.

A TRC could contribute to generating information and establishing a historical record of what happened during the conflict, which could possibly feed into prosecutions at a later point. However, any truth commission that aims to include the accounts of perpetrators will need carrots and sticks to encourage perpetrators to appear. In South Africa, perpetrators were granted immunity from criminal or civil suit in exchange for full public disclosure.[149] But as long as there is no credible threat of prosecution – which will be the case until the army and Maoists turn at least some alleged perpetrators over to the civilian courts – any form of immunity is unlikely to be a sufficient incentive. Blanket amnesties, which appeal to both sides, are widely deemed to be ruled out by international standards. However, should prosecutions become a reality, various types of conditional immunity could be explored to entice individuals to testify. Pardons of perpetrators after full trial and conviction could also

[147] See "Disappearances in Nepal: Addressing the Past, Securing the Future", ICJ, op. cit.; "ICJ calls for amendments to Bill on Disappearances", press release, op. cit.; and "International Center for Transitional Justice (ICTJ) Comments on Nepal's Disappearances Ordinance", ICTJ, 12 February 2009.

[148] An ICTJ paper argues that the ready availability of a South African expert's expertise as well as the focus of the South African TRC on amnesties were driving factors behind this. "Negotiating Peace in Nepal: Implications for Justice", op. cit.

[149] The South African TRC was established in December 1995 by the national unity government under the leadership of Nelson Mandela. It was empowered to grant amnesty to perpetrators in exchange for a full public accounting of their crimes. Although still the best known example of a truth commission, it was not the first and is certainly not the only model. Other prominent examples include Argentina, Chile, East Timor, El Salvador, Guatemala, Liberia, Peru and Sierra Leone. For an overview through 2001, see Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York, 2002). The only other experience to receive any significant attention by the parties to Nepal's peace process was Peru.

be considered in a limited number of cases, but only in the interest of national reconciliation.

The proposed disappearances commission has both a more clearly defined purpose and a more urgent relevance to families of victims. Again, both sides are concerned at the prospect of revealing investigations and possible criminal liability. Nevertheless, a well constructed body would support the peace process. It would constitute an important confidence-building step for the Maoists, who need to deliver something to the large constituency of alleged victims and their families who are affiliated with the party. At the same time, serious exploration of state violations would put significant pressure on them to reciprocate. A disappearances commission would not necessarily lead to prosecutions but would address families' demands for truth and make an important contribution to the historical record, guarding against denial and contributing to substantive measures to prevent a repetition of such crimes.

If capable and suitably empowered bodies are established, they would deserve substantial international support and technical assistance. But the signs are far from promising. In their absence, efforts should remain focused on obtaining some measure of accountability through criminal prosecutions.

C. LINKING INTERNATIONAL MILITARY ASSISTANCE TO JUSTICE

Among the important providers of military assistance to Nepal, there has been silence from India and China on NA accountability for past abuses. The U.S. and UK have not spared the army public criticism and frequently employed tough language.[150] But, with a few exceptions, they have taken little action. The overall message to the army is clear. Open political involvement will not be tolerated, and known human rights abusers may lose access to training opportunities in the U.S. and UK, but there is little pressure on the institution as such to reform.

The U.S. maintains a policy of excluding from training any members of the security forces implicated in human rights abuses but has not applied it rigorously.[151] After a short period of tougher measures from the end of 2004 and after the 2005 royal coup, it re-engaged significantly with the army after the peace deal in 2006. Driven by fear of Maoist domination, this policy sought to rehabilitate the army and shore up the legitimacy of the mainstream parties for the peace talks. Different legislative restrictions imposed since have had little tangible effect,[152] as overall training expenditures rose sharply[153] and prestigious training opportunities were granted to senior officers.[154]

Concerned not to risk their access and potential influence, the UK has so far avoided any systematic sanctions against the army as an institution or its top brass. The UK has a long history of engagement with the NA and its training opportunities are particularly important to senior officers. Since the mid 1950s a limited number of NA officers

[150] For a powerful coordinated example, see the 29 August 2009 joint statement of ten donors – Australia, Denmark, Finland, France, Germany, Japan, Norway, Switzerland, the UK and U.S. – calling for the government to meet its commitment to establish a disappearances commission, for the army and Maoists to cooperate fully on disappearances cases and for the army to cooperate in the Maina Sunuwar case. "Embassies urge action on disappearances", press release, 29 August 2009.

[151] Under the "Leahy Amendment", U.S. military assistance, including military training, is barred to units or individuals where credible evidence of human rights abuse exists. Senator Leahy expressed concerns about whether the law was being implemented in the case of Nepal in September 2008. "Statement of Senator Patrick Leahy on Nepal", Congressional Record, 24 September 2008, S9391.

[152] The U.S. Foreign Appropriations Bills imposed restrictions on assistance to Nepal under the "Foreign Military Financing" (FMF) program from fiscal year 2005. Appropriations for fiscal year 2008 restricted "International Military Education and Training" (IMET) to Expanded IMET, which focuses on auditing, military justice and civilian oversight. Fiscal year 2009 subjected any training expenditures to "regular notification procedures", requiring the relevant executive agency to advise the Senate Foreign Relations Committee, House Foreign Affairs Committee and appropriation committees of specific plans for expenditures before signing any obligation. For fiscal year 2010 see fn. 157 below.

[153] U.S. military training assistance to Nepal decreased from $856,301 in 2004 to $577,640 in 2005, but rose again from 2006 ($1,174,977) to a high $1,293,778 in 2007. The 2007 expenditures are the latest available. All but a small share of it ($142,611) was spent on training the NA. More than half of the 2007 funds were disbursed under the Department of State IMET program ($718,383), $352,197 under Department of Defense (DoD) Regional Centers training and $177,387 under the DoD Combating Terrorism Fellowship Program.

[154] Brigadier General Victor Rana, who was Chief of Operations in the Directorate of Military Operations at the time and had control over the battalions active in the Maharajgunj barracks during the alleged torture and disappearances there, was an international fellow at the U.S. National Defense University in 2009. www.ndu.edu/ismo/docUploaded/Class%20of%202009.pdf. The international program trains "select members of the International Defense Community" to "prepare future leaders of the Armed Forces and civilian leaders for high-level policy, command and staff responsibilities". Subsequently, OHCHR expressed concern to acting Chief of Army Staff Chhatra Man Singh Gurung that Rana had been recommended for promotion or extension despite the allegations. "OHCHR calls for comprehensive human rights vetting as part of peace process", press release, 28 August 2009.

receive training at Sandhurst every year, and many top officers have attended the academy.[155] Training opportunities are also provided through academic scholarship programs such as the Chevening scholarships. One of the most noteworthy beneficiaries was Ajit Thapa, the primary alleged perpetrator named in the OHCHR investigation of the Bardiya abuses. Promoted to lieutenant-colonel, he studied security sector reform at the University of Bradford in January-March 2007, before the British embassy had a vetting system in place. The embassy subsequently introduced vetting, and in 2010 rejected two NA nominees for the 2010 course because of human rights concerns.[156] However, the UK has maintained its overall level of engagement, continuing to host visits by army chiefs even long after it was clear that the NA had committed serious human rights abuses.[157]

For donors who provide military assistance and training it is time to move from rhetoric to action. Vetting is an important component, but measures must go further to put pressure on the army as an institution, even if India and China are unlikely to follow suit.[158] Legislative restrictions on some U.S. military assistance for fiscal year 2010, which require cooperation with investigations and prosecutions of human rights violations, are a good starting point.[159] Other donors, especially the UK, should follow suit. Given the prestige of overseas training institutions, the effects could be considerable even without India and China. But for real impact, conditionality must apply across all categories of military assistance and in particular target opportunities for senior personnel.[160] Important benchmarks will be a significant reduction in the number of trainings and spending on military assistance. Progress on integration, accountability for abuses and democratic control, on the other hand, should prompt enhanced support, including trainings for newly formed or re-structured units.

Targeted visa bans for individuals facing credible allegations of war crimes are likely to be effective. Innocent individuals would have an incentive to undergo trial and have their names cleared, which would in turn raise overall pressure to follow through with prosecutions. A blanket visa ban for Maoist leaders is already in place in the U.S., until the UCPN(M) is removed from the terrorist

[155] Former Chief of Army Staff Pyar Jung Thapa was trained in Sandhurst in 1966, then at the UK School of Infantry in 1967. He later participated in a Ranger course in the U.S. In 1977 he returned to the UK to attend the army staff training in Camberley. "Profile of Chief of Army Staff Thapa", nepalnews.com, 10 September 2002. Places available to the NA in Sandhurst have varied over the years. Three places were offered in 2006, two each in 2007, 2008 and 2009 and one in 2010, which was, however, declined by the NA. Since 1993, the UK also offers one place every three years to the NA at the Royal College of Defence Studies.

[156] Lt-Col Thapa's Chevening Fellowship application did not mention his Bardiya posting. Although the embassy works closely with OHCHR and other embassies on processes to promote human rights and has a policy of not knowingly sending people accused of serious human rights abuses for study in the UK, officials say that they would not have had information linking Lt-Col Thapa to the Bardiya abuses at the time he applied. Email communication, British embassy, Kathmandu, January 2010.

[157] Retired General and COAS during the Maoist uprising Pyar Jung Thapa was invited to a ceremony at Sandhurst. "Nepal's ex-army chief barred from leaving country", Indian express.com, 14 May 2007. On his July 2007 visit to the UK, COAS Rookmangud Katawal also promised British Foreign Office Minister of State Lord Malloch-Brown to hand over all documentation relevant to alledged rights violations by the army, in particular on the Maina Sunuwar case. However, he did not.

[158] India suspended its military assistance to Nepal after the 2005 royal takeover, but resumed non-lethal assistance in May 2005. "Nepal: military assistance contributing to grave human rights violations", Amnesty International, June 2005. In December 2009 there were reports that it might restart supplies of lethal military equipment. See, for example, "India likely to supply 50 phased out tanks to Nepal", *Republica*, 16 December 2009. These were denied by the Indian foreign ministry but India offered increased non-lethal assistance, such as support to construct a military airport in Surkhet district. "CoAS Gurung takes part in Indian Army's ceremony", ekantipur.com, 12 December 2009. China, which had at no time during the civil war restricted military aid to Nepal, also promised increased military assistance in December, offering CNY 20.8 million (approx. $3 million) in non-lethal military hardware and training. "China offers Rs 220m military aid to Nepal", nepalnews.com, 16 December 2009.

[159] For FMF the appropriations bill provides that funds "may be made available for assistance for Nepal if the Secretary of State certifies to the Committees on Appropriations that the Nepal Army is – (A) cooperating fully with investigations and prosecutions by civilian judicial authorities of violations of internationally recognized human rights; and (B) working constructively to redefine the Nepal Army's mission and adjust its size accordingly, implement reforms including strengthening the capacity of the civilian ministry of defense to improve budget transparency and accountability, and facilitate the integration of former rebel combatants into the security forces including the Nepal Army, consistent with the goals of reconciliation, peace and stability. (2) The conditions in paragraph (1) shall not apply to assistance to support the deployment of members of the Nepal Army in humanitarian relief and reconstruction operations in Nepal". Fiscal Year 2010 Consolidated Appropriations Act, H.R.3288, U.S. Congress, 16 December 2009.

[160] The U.S. foreign operations appropriations for fiscal year 2010, for example, impose tougher conditions on the FMF program than on IMET. Fiscal Year 2010 Consolidated Appropriations Act, H.R.3288, U.S. Congress, 16 December 2009. Funds disbursed under IMET made up significant proportions of overall military training for Nepal in past years. See footnotes 151 and 152.

list. This list could be used for more leverage on the Maoists if they want to get off it, and the State Department has already set out conditions to be met for this to happen.

Donors have also made significant financial contributions to peace process-related projects. In particular a World Bank grant and the multi-donor Nepal Peace Trust Fund (NPTF) contribute to financing the cantonments and the interim relief payments to conflict victims. This assistance was explicitly linked to both sides' recognition of human rights principles. The agreement on the NPTF states: "Whereas respect for human rights, democratic principles, the rule of law and good governance, which governs the domestic and international policies of the Signatories, are the fundamental principles on which the cooperation among the Signatories rests and which constitute essential elements of this JFA".[161] If these provisions are to constitute more than lip service, then they should be used to set clear benchmarks for progress on justice issues for continuing assistance.

D. UNITED NATIONS: PRINCIPLES AND PEACEKEEPING

The UN would help both Nepal's peace process and itself by consistently applying a principled approach both across and within agencies. The United Nations Mission in Nepal (UNMIN) is not a peacekeeping operation but a special political mission (led by the UN's Department of Political Affairs). However, DPKO is involved through the provision and support of arms monitors, even if they are unarmed and not in uniform. While UNMIN is mandated to support a peace process which rests on commitments to rights, accountability and security sector reform, DPKO does not believe it is its role to press the NA on addressing past human rights violations or establishing democratic control of the military. Its unwillingness to take account of these issues counteracts the efforts of UNMIN and OHCHR and does nothing to help the aims of the Security Council in its broader support to the process.

DPKO has consistently received credible reports about specific NA war crimes through OHCHR. While it has expelled individual human rights violators from its missions on occasion, it has taken less action than even its careful approach permits. It has refused to bar entire units alleged to have been involved in violations or to take a stance on the army's suitability as a whole. The fact that it continued to increase NA troop contributions and award plum positions to high-ranking officers, even after reports of abuse started to increase, certainly assured the generals that domestic misconduct would not seriously jeopardise access to the lucrative missions.[162]

DPKO has always accepted that individuals facing credible allegations of serious human rights violations should be screened out and barred from missions. But it places the entire responsibility with the NA and government to send clean troops and has not developed any comprehensive vetting policy of its own.[163] It has reacted to some OHCHR interventions, which has resonated up and down the ranks,[164] but the effectiveness of these efforts has been limited thus far by DPKO's disinterest in taking responsibility for a more systematic approach.[165]

The most shocking failure to have occurred as a result was the September 2009 deployment of Major Niranjan Basnet in the UN peacekeeping mission in Chad. Basnet is one of four accused in the Maina Sunuwar case and faces a suspension order and arrest warrant by the Kabhre District Court.[166] DPKO has reacted promptly to receiving information about his deployment by repatriating him to Nepal.[167] But subsequent reactions by the NA have

[161] Joint Financing Arrangement on the Nepal Peace Trust Fund between The Government of Nepal and The Donor Group, February 2007, at: www.peace.gov.np/admin/doc/Joint%20Financing%20Agreement%20between%20Government%20and%20Donors%20of%20the%20Peace%20Fund.pdf.

[162] On the overall increase of troop contributions see footnote 82 above. In late 2003, DPKO appointed Maj-Gen Balananda Sharma as third Nepalese force commander for the United Nations Disengagement Observer Force (UNDOF) on the Golan Heights. "Maj Gen Sharma in UN Forces", *The Kathmandu Post*, 29 December 2003.

[163] The NA is not even required to provide DPKO with a list with the names of those selected for a particular mission before deployment.

[164] Crisis Group interview, human rights lawyer, 15 May 2009. DPKO receives input on alleged perpetrators from OHCHR, individual diplomatic missions and NGOs such as Advocacy Forum. The army reportedly has developed its own list and vetting policy but has not shared it.

[165] After extensive discussions between OHCHR and DPKO, the latter commissioned a confidential study on human rights vetting. Its recommendations include requiring member states and individual peacekeepers to certify that they meet certain integrity standards, developing a more proactive vetting system specifically for candidates for senior peacekeeping positions, and designing a process for addressing credible allegations that arise after deployment. However system-wide discussions on any policy are not expected to start until sometime in the first trimester of 2010. Crisis Group interviews, New York, December 2009.

[166] "Court orders suspension of Major Basnet", *Republica*, 17 September 2009.

[167] On 4 December the UN made the following statement: "DPKO vets all senior appointments to its missions. However, with more than 115,000 personnel currently in the field, it is impossible to vet each and every peacekeeper deployed.

amply demonstrated that its internal vetting can not be trusted.

The concerted calls for Basnet's arrest upon arrival[168] only prompted his being taken into detention by military police – despite the civilian arrest warrant.[169] The NA also has sought to justify Basnet's deployment, claiming he was "cleared by an independent military board of enquiry".[170] Far from admitting to having made a mistake, the army has lobbied for a letter of complaint to be sent to DPKO.[171]

DPKO's reluctance to adopt pre-deployment measures is partly understandable – many of the troop contributing armed forces the UN has to rely on face human rights abuse allegations in their home countries. But not all of them have been accused of systematic crimes and lied and dissembled to cover them up.[172] At the bare minimum, DPKO must therefore introduce rigorous screening, if only to maintain the credibility of its own commitment to basic human rights principles. Short of barring the entire NA or even individual units, it would be possible to make additional contributions conditional on concrete steps to address impunity, including cooperating with civilian authorities. The argument of a scarcity of peacekeepers only carries so far. DPKO did cope for decades with far lower contributions from Nepal.[173] And while the scarcity argument in general applies to the rank and file, senior appointments are well sought after. Conditionality here would hardly interfere with DPKO's operational needs, but apply pressure to the NA where it hurts most.

OHCHR still plays a critical if limited role, but struggles with diminishing legitimacy. After its establishment in May 2005 the monitoring mission produced solid reports on violations, won further commitments by both sides to abide by international standards and perhaps contributed to a drop in the number of reported disappearances.[174] But once the military ceasefire opened up the space for political negotiations it was increasingly unable to build political pressure for domestic action on human rights issues.

While it has continued to produce some important documentation of abuses, OHCHR has struggled to build good working relationships with national bodies and generated frustration in the domestic human rights community. This is most evident publicly in the barrage of criticism from NHRC commissioners that OHCHR is competing with it.[175] NHRC suffers from its own serious problems,

---

Therefore, the United Nations relies on its troop- and police-contributing countries – which ultimately have the mandated responsibility for the good conduct, order and discipline of their forces – to screen all contingent members nominated to take part in peacekeeping operations in accordance with international norms and standards. With regard to this specific case, due to the serious nature of the allegations against Major Niranjan Basnet, who was deployed as a member of the Nepalese contingent, a decision has been made to repatriate him immediately". "Daily Press Briefing by the Office of the Spokesperson for the Secretary-General", 4 December 2009.

[168] These included the pleas of Maina Sunuwar's mother, international and later also national human rights organisations. "Maina's mom asks PM to arrest Maj. Basnet", ekantipur.com, 8 December 2009; "Amnesty urges to arrest Basnet", *The Himalayan Times*, 9 December 2009; "Human rights defenders: hand Basnet over to civilian court", *Republica*, 17 December 2009.

[169] The police made no effort of its own to arrest Basnet, citing a lack of specific orders and the army's supremacy in dealing with its own personnel. *The Kathmandu Post* cites police spokesman and Deputy Inspector General Bigyan Raj Sharma: "Even if there is an arrest warrant on any Army personnel, it's under Nepal Army's authority". "Expelled Army Major returning", *The Kathmandu Post*, 10 December 2009.

[170] "Amnesty urges to arrest Basnet", *The Himalayan Times*, 9 December 2009. Basnet was not among the three eventually court-martialled for the crime.

[171] "Govt to lodge written complaint with UN", *Republica*, 16 December 2009.

[172] OHCHR charged the NA with providing "incomplete and misleading information" on detainees in the Maharajgunj barracks, for example noting that the detainee list provided to OHCHR by the NA was at variance with the NA's own task force report on the Maharajgunj detentions. OHCHR-Nepal, letter to Prime Minister Nepal, 26 July 2009, fn. 7. In the case of one alleged Maharajgunj detainee, it "found evidence contradicting the Nepalese Army's claims that the victim had died in a bomb explosion". Report of the United Nations High Commissioner for Human Rights to the UN General Assembly, A/61/374, 22 September 2006. OHCHR's investigations of disappearances in Bardiya also showed that the NA attempted to cover up killings. "Conflict-Related Disappearances in Bardiya District", OHCHR-Nepal, op. cit., pp. 46-50.

[173] Nepal rose from its position as eleventh-largest troop contributing country in September 2003 to being the fourth- and fifth-largest from February 2004 until today. For the rise of the absolute numbers from 2001 onwards see footnote 82.

[174] The mandate of OHCHR-Nepal, set forth in the April 2005 agreement with the royal government, includes to "monitor the observance of human rights and international humanitarian law, bearing in mind the climate of violence and the internal armed conflict in the country … [and] "advise and assist the National Human Rights Commission". Agreement Between the United Nations High Commissioner for Human Rights and the Government of the Kingdom of Nepal Concerning the Establishment of an Office in Nepal, April 2005. It has been extended four times, most recently in June 2009 when it was extended for one year.

[175] For example, Commissioner Gauri Pradhan complained in July 2009: "We have said that the mandate provided to NHRC by the Interim Constitution of 2007 cannot be transferred to any other national or international organization. And that the government should consult with NHRC before deciding on what role OHCHR will have in Nepal in the future.

not least the continued appointment of politically affiliated commissioners.[176] While it is difficult to say who is to blame, especially as OHCHR has made well-intentioned if ultimately ineffective efforts to improve NHRC's capacity, the tensions have undermined the human rights community in general.[177]

OHCHR's limited impact is also illustrated by the fact that the government replied to only one of its reports and the minimal media coverage of the most serious findings. Part of the blame lies with OHCHR itself. It is broadly perceived to have pulled its punches since 2006, often unwilling to be forceful when it could. The delay in publishing its December 2008 report on the Bardiya disappearances due to government concerns earned it substantial criticism.[178] But the un-receptiveness of the government is also encouraged by OHCHR's mandate, which provides great access but does not oblige the government to respond to reports.

The effort to establish the office and fund its work will be wasted if there is not sufficient will to demand action on its most serious findings. OHCHR's next report to the Human Rights Council presents an opportunity to call for government responses to its recommendations. A consolidated appeal by OHCHR-Nepal's donors could add weight to this request.

… Primarily, OHCHR should have access to areas where there have been human rights violations, have the right to investigate cases only in coordination with NHRC. That is the right of the national institution; OHCHR shouldn't have the mandate to override the mandate of NHRC. There is the impression, and we feel this also, that OHCHR is competing with NHRC. This shouldn't happen". "OHCHR shouldn't compete with us", interview, *The Kathmandu Post*, 13 July 2009. NHRC was established in 2000 under the Human Rights Commission Act of 1997. It was made a constitutional body with the 2007 Interim Constitution. Its primary duty is "to ensure the respect, protection and promotion of human rights and their effective implementation". It is empowered to conduct inquiries and investigations into violations, make recommendations to relevant authorities, and publicise the names of any person not following their recommendations. Interim Constitution, Article 132.

[176] "NHRC: Send OHCHR packing", ekantipur.com, 26 June 2009.

[177] These tensions have been played upon by others eager to undercut OHCHR's efforts to pressure the army and government to address abuses during the war, such as its July 2009 objection to the proposed promotion of one the commanders who had been in charge of the Maharajgunj barracks. OHCHR-Nepal press release, 6 July 2009. In response, OHCHR was cast as "interventionist" ("Benetlai jarnelko chinta!", *Ghatana ra Bichar*, 8 July 2009), and criticised as having "no authority to accuse someone of the stature of Maj-Gen Toran Jung Bahadur Singh of illegalities without any proof". Letter from Robin Paudyal, *The Kathmandu Post*, 10 July 2009. On "Robin Paudyal", apparently a pseudonym used for pro-NA propagandising, see Crisis Group Report, *Nepal's Future: In Whose Hands?*, op. cit., p. 15. For a more balanced presentation of OHCHR's efforts, see "Past rights violations come to haunt Maj Gen Toran Jung Bahadur Singh", *The Himalayan Times*, 9 July 2009.

[178] "Strengthening human rights", ekantipur.com, 12 November 2008.

VI. CONCLUSION

Progress on justice in Nepal is intimately linked to the aims of the peace process and the public mobilisation that initially enabled it. Tackling justice is not only feasible but would also improve the chances of re-establishing productive political negotiations and salvaging the credibility of the parties and the state. For those directly affected by the conflict, in particular victims and their families, the pursuit of justice and reparation, as well as the truth about the abuses suffered, is not an abstract concern.

However, the conditions for action are poor. International actors can do more to target their support, especially if the UN can take a lead by making its engagement with Nepal on the peace process and peacekeeping operations more consistent. But there is already too acute a sense that outsiders are pushing an agenda which lacks broad-based national ownership and drive.

The reluctance of political leaders to take strong steps on justice is natural, and is intimately tied to the politics of patronage and power-broking. But influential sections of society, such as opinion-formers, decision-makers and the urban middle classes, show little enthusiasm to tackle political apathy. Justice simply is not a major issue around which powerful constituencies and organisations rally. The lack of civil society unity and energy reflects the dissipation of the motivation that initially underpinned the peace process as a whole. The gulf between influential urban constituencies and those who suffered most and want action is symptomatic of the biases built into the political system and the difficulty of forging common agendas in a polarised atmosphere.

For all the lip service, demands for justice lack teeth. The language of rights, redress and reparation is well honed but ritualistic. As long as it is not linked to social structures, institutions and sanctions, promises risk remaining hollow. The larger questions must be asked and answered by Nepalese society as a whole: Is it possible and indeed preferable to forget? Is the priority to pursue peace at any cost? Is peace without justice worth it and is it likely to last? Such questions relate to the future as much as the past. Simply saying "never again" will not ensure that abuses are not repeated.

Kathmandu/Brussels, 14 January 2010

APPENDIX A

MAP OF NEPAL

Map No. 4304 UNITED NATIONS
January 2007 (Colour)

Department of Peacekeeping Operations
Cartographic Section

APPENDIX B

GLOSSARY

AISC	Army Integration Special Committee
APF	Armed Police Force
CA	Constituent Assembly
COAS	Chief of Army Staff
CPA	Comprehensive Peace Agreement, November 2006
CPN(M)	Communist Party of Nepal (Maoist), now UCPN(M)
DoD	U.S. Department of Defense
DPKO	UN Department of Peacekeeping Operations
EU	European Union
EPSP	Emergency Peace Support Project
FIR	First Information Report
FMF	Foreign Military Financing
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IHL	International Humanitarian Law
IMET	International Military Education and Training
INSEC	Informal Sector Service Centre
LPC	Local Peace Committee
MJF	Madhesi Janadhikar Forum (sometimes referred to in other sources as the Madhesi People's Rights Forum, MPRF)
NA	Nepalese Army
NC	Nepali Congress
NHRC	National Human Rights Commission
NP	Nepal Police
NPTF	Nepal Peace Trust Fund
OHCHR	Office of the United Nations High Commissioner for Human Rights
PLA	People's Liberation Army (referred to in UN documents and agreements such as the AMMAA and December 2007 23-point agreement as "Maoist army")
RNA	Royal Nepalese Army
SSR	Security Sector Reform
TADO	Terrorist and Disruptive Activities (Control and Punishment) Ordinance
TRC	Truth and Reconciliation Commission
UCPN(M)	Unified Communist Party of Nepal (Maoist)
UML	Communist Party of Nepal (Unified Marxist-Leninist)
UNDP	UN Development Programme
UNMIN	United Nations Mission in Nepal
WGEID	UN Working Group on Enforced and Involuntary Disappearances
YCL	Young Communist League

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

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

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

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. 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 July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in thirteen additional locations (Baku, Bangkok, Beirut, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

Crisis Group raises funds from governments, charitable foundations, companies and individual donors. The following governmental departments and agencies currently provide funding: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Czech Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Arab Emirates Ministry of Foreign Affairs, United Kingdom Department for International Development, United Kingdom Economic and Social Research Council, U.S. Agency for International Development.

Foundation and private sector donors, providing annual support and/or contributing to Crisis Group's *Securing the Future* Fund, include the Better World Fund, Carnegie Corporation of New York, William & Flora Hewlett Foundation, Humanity United, Hunt Alternatives Fund, Jewish World Watch, Kimsey Foundation, Korea Foundation, John D. & Catherine T. MacArthur Foundation, Open Society Institute, Victor Pinchuk Foundation, Radcliffe Foundation, Sigrid Rausing Trust, Rockefeller Brothers Fund and VIVA Trust.

January 2010

APPENDIX D

CRISIS GROUP REPORTS AND BRIEFINGS SINCE 2007

CENTRAL ASIA

Turkmenistan after Niyazov, Asia Briefing N°60, 12 February 2007

Central Asia's Energy Risks, Asia Report N°133, 24 May 2007 (also available in Russian)

Uzbekistan: Stagnation and Uncertainty, Asia Briefing N°67, 22 August 2007

Political Murder in Central Asia: No Time to End Uzbekistan's Isolation, Asia Briefing N°76, 13 February 2008

Kyrgyzstan: The Challenge of Judicial Reform**,** Asia Report N°150, 10 April 2008 (also available in Russian)

Kyrgyzstan: A Deceptive Calm, Asia Briefing N°79, 14 August 2008 (also available in Russian)

Tajikistan: On the Road to Failure, Asia Report N°162, 12 February 2009

Women and Radicalisation in Kyrgyzstan, Asia Report N°176, 3 September 2009

Central Asia: Islamists in Prison, Asia Briefing N°97, 15 December 2009

Central Asia: Migrants and the Economic Crisis, Asia Report N°183, 5 January 2010

NORTH EAST ASIA

After the North Korean Nuclear Breakthrough: Compliance or Confrontation?, Asia Briefing N°62, 30 April 2007 (also available in Korean and Russian)

North Korea-Russia Relations: A Strained Friendship, Asia Briefing N°71, 4 December 2007 (also available in Russian)

South Korea's Election: What to Expect from President Lee, Asia Briefing N°73, 21 December 2007

China's Thirst for Oil**,** Asia Report N°153, 9 June 2008 (also available in Chinese)

South Korea's Elections: A Shift to the Right, Asia Briefing N°77, 30 June 2008

North Korea's Missile Launch: The Risks of Overreaction, Asia Briefing N°91, 31 March 2009

China's Growing Role in UN Peacekeeping, Asia Report N°166, 17 April 2009 (also available in Chinese)

North Korea's Chemical and Biological Weapons Programs, Asia Report N°167, 18 June 2009

North Korea's Nuclear and Missile Programs, Asia Report N°168, 18 June 2009

North Korea: Getting Back to Talks, Asia Report N°169, 18 June 2009

China's Myanmar Dilemma, Asia Report N°177, 14 September 2009

Shades of Red: China's Debate over North Korea, Asia Report N°179, 2 November 2009 (also available in Chinese)

SOUTH ASIA

Afghanistan's Endangered Compact, Asia Briefing Nº59, 29 January 2007

Nepal's Constitutional Process, Asia Report N°128, 26 February 2007 (also available in Nepali)

Pakistan: Karachi's Madrasas and Violent Extremism, Asia Report N°130, 29 March 2007

Discord in Pakistan's Northern Areas, Asia Report N°131, 2 April 2007

Nepal's Maoists: Purists or Pragmatists?, Asia Report N°132, 18 May 2007 (also available in Nepali)

Sri Lanka's Muslims: Caught in the Crossfire, Asia Report N°134, 29 May 2007

Sri Lanka's Human Rights Crisis, Asia Report N°135, 14 June 2007

Nepal's Troubled Tarai Region, Asia Report N°136, 9 July 2007 (also available in Nepali)

Elections, Democracy and Stability in Pakistan, Asia Report N°137, 31 July 2007

Reforming Afghanistan's Police, Asia Report N°138, 30 August 2007

Nepal's Fragile Peace Process, Asia Briefing N°68, 28 September 2007 (also available in Nepali)

Pakistan: The Forgotten Conflict in Balochistan, Asia Briefing N°69, 22 October 2007

Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus, Asia Report N°141, 7 November 2007

Winding Back Martial Law in Pakistan, Asia Briefing N°70, 12 November 2007

Nepal: Peace Postponed, Asia Briefing N°72, 18 December 2007 (also available in Nepali)

After Bhutto's Murder: A Way Forward for Pakistan, Asia Briefing N°74, 2 January 2008

Afghanistan: The Need for International Resolve, Asia Report N°145, 6 February 2008

Sri Lanka's Return to War: Limiting the Damage, Asia Report N°146, 20 February 2008

Nepal's Election and Beyond**,** Asia Report N°149, 2 April 2008 (also available in Nepali)

Restoring Democracy in Bangladesh**,** Asia Report N°151, 28 April 2008

Nepal's Election: A Peaceful Revolution?, Asia Report N°155, 3 July 2008 (also available in Nepali)

Nepal's New Political Landscape, Asia Report N°156, 3 July 2008 (also available in Nepali)

Reforming Pakistan's Police, Asia Report N°157, 14 July 2008

Taliban Propaganda: Winning the War of Words?, Asia Report N°158, 24 July 2008

Sri Lanka's Eastern Province: Land, Development, Conflict, Asia Report N°159, 15 October 2008

Reforming the Judiciary in Pakistan, Asia Report N°160, 16 October 2008

Bangladesh: Elections and Beyond, Asia Briefing N°84, 11 December 2008

Policing in Afghanistan: Still Searching for a Strategy, Asia Briefing N°85, 18 December 2008

Nepal's Faltering Peace Process, Asia Report N°163, 19 February 2009 (also available in Nepali)

Afghanistan: New U.S. Administration, New Directions, Asia Briefing N°89, 13 March 2009

Pakistan: The Militant Jihadi Challenge, Asia Report N°164, 13 March 2009

Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province, Asia Report N°165, 16 April 2009

Pakistan's IDP Crisis: Challenges and Opportunities**,** Asia Briefing N°93, 3 June 2009

Afghanistan's Election Challenges, Asia Report N°171, 24 June 2009

Sri Lanka's Judiciary: Politicised Courts, Compromised Rights, Asia Report N°172, 30 June 2009

Nepal's Future: In Whose Hands?, Asia Report N°173, 13 August 2009 (also available in Nepali)

Afghanistan: What Now for Refugees?, Asia Report N°175, 31 August 2009

Pakistan: Countering Militancy in FATA, Asia Report N°178, 21 October 2009

Afghanistan: Elections and the Crisis of Governance, Asia Briefing N°96, 25 November 2009

Bangladesh: Getting Police Reform on Track, Asia Report N°182, 11 December 2009

Sri Lanka: A Bitter Peace, Crisis Group Asia Briefing N°99, 11 January 2010

SOUTH EAST ASIA

Jihadism in Indonesia: Poso on the Edge, Asia Report N°127, 24 January 2007 (also available in Indonesian)

Southern Thailand: The Impact of the Coup, Asia Report N°129, 15 March 2007 (also available in Thai)

Indonesia: How GAM Won in Aceh , Asia Briefing N°61, 22 March 2007

Indonesia: Jemaah Islamiyah's Current Status, Asia Briefing N°63, 3 May 2007

Indonesia: Decentralisation and Local Power Struggles in Maluku, Asia Briefing N°64, 22 May 2007

Timor-Leste's Parliamentary Elections, Asia Briefing N°65, 12 June 2007

Indonesian Papua: A Local Perspective on the Conflict, Asia Briefing N°66, 19 July 2007 (also available in Indonesian)

Aceh: Post-Conflict Complications, Asia Report N°139, 4 October 2007 (also available in Indonesian)

Southern Thailand: The Problem with Paramilitaries, Asia Report N°140, 23 October 2007 (also available in Thai)

"Deradicalisation" and Indonesian Prisons, Asia Report N°142, 19 November 2007 (also available in Indonesian)

Timor-Leste: Security Sector Reform, Asia Report N°143, 17 January 2008 (also available in Tetum)

Indonesia: Tackling Radicalism in Poso, Asia Briefing N°75, 22 January 2008

Burma/Myanmar: After the Crackdown, Asia Report N°144, 31 January 2008

Indonesia: Jemaah Islamiyah's Publishing Industry, Asia Report N°147, 28 February 2008 (also available in Indonesian)

Timor-Leste's Displacement Crisis, Asia Report N°148, 31 March 2008

The Philippines: Counter-insurgency vs. Counter-terrorism in Mindanao, Asia Report N°152, 14 May 2008

Indonesia: Communal Tensions in Papua, Asia Report N°154, 16 June 2008 (also available in Indonesian)

Indonesia: Implications of the Ahmadiyah Decree, Asia Briefing N°78, 7 July 2008 (also available in Indonesian)

Thailand: Political Turmoil and the Southern Insurgency, Asia Briefing N°80, 28 August 2008 (also available in Thai)

Indonesia: Pre-election Anxieties in Aceh, Asia Briefing N°81, 9 September 2008 (also available in Indonesian)

Thailand: Calming the Political Turmoil, Asia Briefing N°82, 22 September 2008 (also available in Thai)

Burma/Myanmar After Nargis: Time to Normalise Aid Relations, Asia Report N°161, 20 October 2008 (also available in Chinese)

The Philippines: The Collapse of Peace in Mindanao, Asia Briefing N°83, 23 October 2008

Local Election Disputes in Indonesia: The Case of North Maluku, Asia Briefing N°86, 22 January 2009

Timor-Leste: No Time for Complacency, Asia Briefing N°87, 09 February 2009

The Philippines: Running in Place in Mindanao, Asia Briefing N°88, 16 February 2009

Indonesia: Deep Distrust in Aceh as Elections Approach, Asia Briefing N°90, 23 March 2009

Indonesia: Radicalisation of the "Palembang Group"**,** Asia Briefing N°92, 20 May 2009

Recruiting Militants in Southern Thailand, Asia Report N°170, 22 June 2009 (also available in Thai)

Indonesia: The Hotel Bombings, Asia Briefing N°94, 24 July 2009 (also available in Indonesian)

Myanmar: Towards the Elections, Asia Report N°174, 20 August 2009

Indonesia: Noordin Top's Support Base, Asia Briefing N°95, 27 August 2009

Handing Back Responsibility to Timor-Leste's Police, Asia Report N°180, 3 December 2009.

Southern Thailand: Moving towards Political Solutions?, Asia Report N°181, 8 December 2009

The Philippines: After the Maguindanao Massacre, Asia Briefing N°98, 21 December 2009

APPENDIX E

INTERNATIONAL CRISIS GROUP BOARD OF TRUSTEES

PRESIDENT'S COUNCIL

Crisis Group's President's Council is a distinguished group of major individual and corporate donors providing essential support, time and expertise to Crisis Group in delivering its core mission.

BHP Billiton
Canaccord Adams Limited
Fares I. Fares
Mala Gaonkar
Alan Griffiths
Iara Lee & George Gund III Foundation
Frank Holmes
Frederick Iseman
George Landegger
Ford Nicholson
StatoilHydro ASA
Ian Telfer
Guy Ullens de Schooten
Neil Woodyer

INTERNATIONAL ADVISORY COUNCIL

Crisis Group's International Advisory Council comprises significant individual and corporate donors who contribute their advice and experience to Crisis Group on a regular basis.

Rita E. Hauser *(Co-Chair)*
Elliott Kulick *(Co-Chair)*
Hamza al Kholi
Anglo American PLC
APCO Worldwide Inc.
Ed Bachrach
Stanley Bergman & Edward Bergman
Harry Bookey & Pamela Bass-Bookey
David Brown
John Chapman Chester
Chevron
Neil & Sandy DeFeo
John Ehara
Equinox Partners
Seth Ginns
Joseph Hotung
H.J. Keilman
George Kellner
Amed Khan
Zelmira Koch
Liquidnet
Jean Manas
Marco Marazzi
McKinsey & Company
Najib Mikati
Harriet Mouchly-Weiss
Yves Oltramare
Donald Pels and Wendy Keys
Anna Luisa Ponti & Geoffrey Hoguet
Michael Riordan
Kevin Torudag
Tilleke & Gibbins
VIVATrust
Yapı Merkezi Construction and Industry Inc.

SENIOR ADVISERS

Crisis Group's Senior Advisers are former Board Members who maintain an association with Crisis Group, and whose advice and support are called on from time to time (to the extent consistent with any other office they may be holding at the time).

Martti Ahtisaari *(Chairman Emeritus)*
George Mitchell *(Chairman Emeritus)*
Hushang Ansary
Ersin Arıoğlu
Óscar Arias
Diego Arria
Zainab Bangura
Christoph Bertram
Alan Blinken
Jorge Castañeda
Eugene Chien
Victor Chu
Mong Joon Chung
Gianfranco Dell'Alba
Jacques Delors
Alain Destexhe
Mou-Shih Ding
Gernot Erler
Marika Fahlén
Stanley Fischer
Malcolm Fraser
I.K. Gujral
Max Jakobson
Todung Mulya Lubis
Allan J. MacEachen
Graça Machel
Barbara McDougall
Matthew McHugh
Nobuo Matsunaga
Miklós Németh
Timothy Ong
Olara Otunnu
Shimon Peres
Surin Pitsuwan
Cyril Ramaphosa
George Robertson
Michel Rocard
Volker Rühe
Mohamed Sahnoun
Salim A. Salim
Douglas Schoen
Christian Schwarz-Schilling
Michael Sohlman
William O. Taylor
Leo Tindemans
Ed van Thijn
Simone Veil
Shirley Williams
Grigory Yavlinski
Uta Zapf