

## Nepal's Fitful Peace Process

### I. OVERVIEW

Nepal is entering a new phase in its fitful peace process, in which its so-called “logical conclusion” is in sight: the integration and rehabilitation of Maoist combatants and the introduction of a new constitution. The Maoists, the largest party, are back in government in a coalition led by the Communist Party of Nepal (United Marxist-Leninist), UML party. Negotiations, although fraught, are on with the second-largest party, the Nepali Congress (NC), to join. Agreement is being reached on constitutional issues and discussions continue on integration. None of the actors are ramping up for serious confrontation and few want to be seen as responsible for the collapse of the constitution-writing process underway in the Constituent Assembly (CA). But success depends on parties in opposition keeping tactical threats to dissolve the CA to a minimum, the government keeping them engaged, and the parties in government stabilising their own precariously divided houses. It will also require the Maoists to take major steps to dismantle their army.

The fundamentally political nature of the transitional arms and armies arrangements became clear when the United Nations Mission in Nepal (UNMIN) departed in January 2011, as did the resilience of the peace process and the Maoists' continued buy-in. That is encouraging, as is the fresh momentum. But major challenges remain. The CA may need a short extension when its term expires on 28 May 2011 if the parties cannot quickly agree on integration or federalism. But the Madhesi parties and sections of the NC and UML are willing to argue against extension, largely as a bargaining posture, and to slow down negotiations to suggest that the CA is ineffective. All parties in government are in the throes of factional struggles; internal disagreements and threatened splits complicate the outlook. In their rush to get to the finish line, all parties risk doing the bare minimum to “complete” the process. After 21 months of fighting over access to power, including sixteen unsuccessful votes to select a prime minister, and limited progress in the year before that, the Comprehensive Peace Agreement (CPA) has become a ragged document.

There has been no empirical survey on the state of land-holdings and no land reform measures implemented yet. The Disappearance and Truth and Reconciliation Commissions have not yet been formed. Plans for what the CPA calls the “democratisation” of the Nepal Army are so

far largely self-directed and more concerned with beautifying the bureaucracy surrounding the army, rather than making the institution more accountable and smaller. These long-term projects would be easy to push on to the back burner. But to do so would undermine implementation of the new constitution and the deep political reform envisaged in the CPA, and consolidation of lasting peace. State restructuring, though broadly agreed to be essential or unavoidable, plays out in public as a binary debate on the Maoists' contested definition of federalism, rather than on what it is Nepalis want out of this change and how best to deliver that.

The immediate tasks, integration and getting the new constitution right, are critical to addressing these issues in the long term. This government has close to the two-thirds majority needed to pass the constitution or extend the CA. But the resistance of some in the NC and the Madhesi parties, encouraged by India, could make for another messy, last-minute action, in which substantive issues are compromised to defend power-sharing arrangements. Further, a constitution, or a plan for its deferral, that any of the larger parties does not sign off on would be contested from the start. Visible progress is needed to reassure the fractured polity and public that the task of transforming the state has not been abandoned and to counter the threat of localised violence in the lead up to the 28 May deadline. Ideally, extension of the CA would be short and accompanied by a non-negotiable timeline for resolution of the federalism question, and public disclosure of even a partial draft.

The NC and Madhesi parties from the country's southern Tarai region should join the government to make decisions truly consensual and share the political gains of success. Until then, the ruling UML-Maoist coalition needs urgently to engage with these parties. The Maoists must finally make a good faith gesture on dismantling its People's Liberation Army (PLA). The NC must go beyond its rhetorical dichotomy of democracy versus Maoist state capture and contribute constructively to negotiations.

The Maoists are undergoing a transformation, dramatically visible in divisive public spats between the leaders, as the party simultaneously acts as a revolutionary movement, a political party aggressively pushing the limits of democratic practice, and an expanding enterprise of financial interests and patronage. With the Maoists announcing, while in government, the creation of a new “volunteer” outfit, continuing extortion by the party's various wings, monopoly

over decision-making and intimidation in some districts, and ideological reiteration of “revolt”, they are a difficult partner to trust. This is their moment to acknowledge that capturing state power through armed force is no longer on their agenda, and to address the deep discontent within the leadership.

For the NC and UML, which have done little to rebuild their political organisations and regain political space after the 2008 CA elections, contributing positively to immediate and medium-term peace process goals could revitalise their bases. Their greatest challenges come from divisions within, rigidity towards the new political order, and the social changes at the grassroots. Their weak organisations and internal disputes, reservations about the extent of reform proposed by the peace process and poorly articulated party policies may further marginalise them.

Most Madhesi parties, whose participation in national politics in the last two years has been largely limited to making up the numbers for a variety of alliances, still look to New Delhi for assistance. Their political agenda is devalued by their opportunistic political alliances, but they retain the ability, with some assistance, to mobilise in order to give the government a hard time and push for a role in decision-making so their concerns are addressed.

With the departure of UNMIN, New Delhi again finds itself in a leadership role in international engagement with Nepal. The new coalition demonstrates the limits of its policy of isolating the Maoists and India must now reassess whether it can continue to hold this position and whether dissolution of the CA, its preferred option, will have controllable consequences. Re-engagement with the Maoists will require the various sections of the Indian establishment to manoeuvre themselves out of the corner they have painted themselves into; having supported and encouraged Nepali actors in taking extreme anti-Maoist stances, they will have to backtrack, potentially leaving allies in Kathmandu to pay the political price. The rest of the international community needs to offer consultative, unstinting and transparent support to implementing long-term peace process commitments.

## II. SOME STEPS FORWARD

The broad links between peace process issues, particularly constitution-drafting and integration, and power sharing, the rifts within the parties, and the variable impact on Nepali politics of New Delhi were clear throughout the deadlock over the election of a new prime minister.<sup>1</sup> They all played

into the circumstances and deals surrounding the sixteen futile rounds of voting and eventual formation of the UML-Maoist government in February 2011, the engineering of the departure of UNMIN from September 2010, and the midnight extension of the Constituent Assembly in May 2010.<sup>2</sup> Although the present government could garner the two-thirds majority needed to pass a partial constitution, leadership of the government could again become a destabilising bargaining chip for a range of issues. Essentially, the peace process has been reduced to completing integration and hence disbanding the PLA, and quick promulgation of a new constitution; other commitments to institutional and social reform, and to addressing impunity, have largely fallen by the wayside.

The Unified Communist Party of Nepal (Maoist), UCPN(M), agreed to extend the Constituent Assembly as part of a deal in which Prime Minister Madhav Kumar Nepal resigned in June 2010. Sixteen rounds of unsuccessful parliamentary voting followed to elect a new prime minister over the next seven months. In eleven of them, the NC candidate contested unchallenged; in the last few rounds there was not even the required quorum present.<sup>3</sup> There was a good deal of squabbling within the parties about prime ministerial candidates and possible coalitions. There was no progress on integration, though the three largest parties, the UCPN(M), NC and UML, did occasionally huddle together to re-state their positions on the “package deal” of integration, power sharing and the constitution. In the meantime, there was a vigorous undermining of UNMIN and a

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Group Asia Reports N°126, *Nepal's Peace Agreement: Making it Work*, 15 December 2006; N°155, *Nepal's Election: A Peaceful Revolution?*, 3 July 2008; N°163, *Nepal's Faltering Peace Process*, 19 February 2009; N°184, *Nepal: Peace and Justice*, 14 Jan 2010; N°199, *Nepal: Identity Politics and Federalism*, 13 January 2011; and Crisis Group Asia Briefings N°68, *Nepal's Fragile Peace Process*, 28 September 2007; N°72, *Nepal: Peace Postponed*, 17 December 2007; on the resilience of Nepal's political process and how they act against transformations, Asia Report N°194, *Nepal's Political Rites of Passage*, 29 September 2010; on the changing peace process context and variable international influence, Asia Reports N°132, *Nepal's Maoists: Purists or Pragmatists*, 18 May 2007; N°136, *Nepal's Troubled Tarai Region*, 9 July 2007; N°156, *Nepal's New Political Landscape*, 3 July 2008; 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](http://www.crisisgroup.org/nepali).

<sup>2</sup> Under the terms of the peace agreement and interim constitution, the CA was elected in April 2008 with a 28 May 2010 deadline to draft and announce the new constitution. This was extended by one year the night it was due to expire.

<sup>3</sup> “Voting being repeated to satisfy Maoists, speaker: Paudel”, [myrepublica.com](http://myrepublica.com), 10 October 2010.

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<sup>1</sup> On these issues, see past Crisis Group reporting: on the CPA, major peace process issues and contestation about them, Crisis

steady erosion of the restrictive authority of the arms and armies agreement over the Nepal Army (NA).<sup>4</sup>

UNMIN's January 2011 departure was followed by some movement on the peace process, namely the handover of the Maoist People's Liberation Army (PLA) to the government, and a parallel agreement to amend parliamentary rules so that a fresh election would have to produce a new government. But UNMIN's critics, who had insisted there would be progress when the mission was no longer there "shielding the Maoists", were probably not expecting the UML and UCPN(M) to reach the deal which allowed Maoist chairman Prachanda to bow out of the prime ministerial contest in order to support the UML chairman Jhala Nath Khanal.<sup>5</sup> The handover of the PLA to the government was, broadly speaking, symbolic. The still-intact chain of command has not begun reporting to the special committee for supervision, integration and rehabilitation of Maoist army combatants created in 2009,<sup>6</sup> and the

shambolic national monitoring mechanism cobbled together to replace UNMIN has more notional than actual value.<sup>7</sup> Yet there is no fear of a breakdown in the Maoist cantonments and the Nepal Army has not gone any further in challenging the restrictions placed on it.

Prime Minister Khanal pulled through a difficult start in office, weathering criticism from his own party, the NC and even dissenters in the UCPN(M). He urged acceptance of the deal within the UML, negotiated with the Madhesi Janadhi-kar Forum (Nepal), MJF(N), led by Upendra Yadav to join the government, and continues to court the NC as well. But the complex factional dynamics within the UML and UCPN(M), which led to disagreement over ministerial portfolios and persistent calls to scrap the deal, could yet weaken the coalition.<sup>8</sup> The government faces other chal-

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<sup>4</sup> In September 2010, with days to go for UNMIN's mandate to expire, the caretaker government and Maoists reached a four-point deal which allowed one final extension of the mandate. The unwritten fifth point was that the NA could resume procurement of ammunition it said was needed for peacekeeping training. The NA resumed recruitment in 2010, in violation of the agreement on monitoring of the management of arms and armies (AMMAA). In 2010, a smear campaign against UNMIN had alleged a pro-Maoist bias and questioned the competence of its leadership and the UN Department of Political Affairs. The caretaker government's September 2010 request for an extension barely referred to the peace process, and did not acknowledge the complex political stalemate or UNMIN's role as a political, not just technical, mission. On the previous government's anti-Maoist stance, the NA's resistance to change and Indian support for these positions, see Crisis Group Report, *Nepal's Future: In Whose Hands*, op. cit.

<sup>5</sup> Despite its limited influence on party politics and peace process negotiations, UNMIN's presence had been blamed for lack of progress on all fronts. The UML-Maoist deal only came to light after Khanal was elected. It drew sharp criticism from the conservative faction of the UML, which objected to the content and said that Khanal and his supporters had negotiated in secret. The NC added the fear of "leftist entrenchment" and polarisation to its chorus of Maoist "state capture". The opponents of the deal did have some substantive and understandable concerns about commitments to the creation of a new security force that would comprise PLA combatants and personnel from the other state security forces; to allocating the home ministry to the Maoists; and to rotating the premiership between the UML and UCPN(M). The agreement is clearly a starting point for negotiations; Khanal and Prachanda cannot have believed it would remain secret or be broadly acceptable, and one of Khanal's first acts as prime minister was to ask the NC to join the government. But negotiations on extension of the CA could still be complicated if Prachanda argues that, as the leader of the largest party, he should take over as prime minister before 28 May.

<sup>6</sup> The special committee met sporadically and mostly ineffectively until the end of 2010. Since the handover of the PLA, the

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special committee and its secretariat have restarted negotiations on integration and the secretariat nominally oversees the monitoring of both armies.

<sup>7</sup> The parties agreed to entrust UNMIN's monitoring role to the special committee the day the mission closed shop. The small monitoring teams that took the place of the UN monitors included representatives from the NA and Armed Police Force (APF), as well as the PLA and the secretariat of the special committee. The UN donated monitoring equipment to the government, which is struggling to replicate the conditions needed to use it, including ensuring uninterrupted power supply for the cameras and satellite internet connections to transmit photos of the weapons containers that are under observation in the seven main PLA cantonment sites and the Nepal Army's Chhauni, Kathmandu barracks. The new monitors have no cars or proper housing. The secretariat of the special committee continues to bicker about the details of continued monitoring. In February, almost a month after UNMIN left the cantonments, the special committee had reportedly only been able to visit three of the 21 satellite PLA cantonments. "Satellite camps unmonitored since UNMIN exit", *Republica*, 14 February 2011. Although the monitoring is weak, the joint teams – despite the challenges they face – have gone some way to build trust between all sides. Crisis Group interviews, Kathmandu, February 2011.

<sup>8</sup> Senior leaders of both the UML and UCPN(M) have made unhelpful comments about the government. Khanal's competitor in the UML, KP Oli, criticised his "human weakness" for signing the agreement without the consent of the party. Maoist vice-chairman Baburam Bhattarai has said the coalition is incapable of moving the peace process ahead. See, for example "Maoists can't be given home ministry: Oli", *myrepublica.com*, 18 February 2011; and "Peace, constitution not possible under Khanal govt: Bhattarai", *myrepublica.com*, 5 February 2011. Prachanda is under pressure from factions of the UCPN(M). For some leaders who oppose the current course of engagement and compromise, such as Netra Bikram Chand "Biplav", ministerial portfolios have little attraction; yet all factions of the party have to be represented and there are scores of aspirants. The conservative faction of the UML, like the NC, criticises the Maoist demand for the home ministry, saying the party will then control the Nepal Police and Armed Police Force in addition to its PLA. But it is unlikely that the UCPN(M) will be

enges too: the NC could resist any deal on integration; protests by Madhesi parties against extension of the Constituent Assembly (CA), and other means of obstruction tacitly supported by New Delhi, could be complicated if a sharp deterioration in public security or engineered outbreaks of localised violence, particularly in the Tarai and Kathmandu, are used as leverage.<sup>9</sup>

This government commands close to a two-thirds majority, which is needed to pass the new constitution or to extend the CA's term.<sup>10</sup> The opposition parties are not driven by a single motivation in calling for dissolution of the CA and fresh elections. The political identity of Madhesi parties, all but one of which are out of the government, lies in the demand for state restructuring and greater political and social inclusion. Yet they oppose an extension with the support of the Indian establishment, and have few ideas about what happens after that, other than a general election. The NC is still committed to the peace process, but is unsure whether it should join the government and in any case could not join in a leadership position. The party may thus tactically oppose the extension to push for a change in government.<sup>11</sup>

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able to compel either police force to act in its interest, and there is acknowledgement in private that the critical faction of the UML will be satisfied if it receives other powerful or lucrative ministries in exchange. Prime Minister Khanal has been criticised for the difficulty he is having in expanding his cabinet, but it took Madhav Kumar Nepal from 25 May to 11 September 2009, eight expansions, and the splitting of three ministries to make six to pay his dues to coalition partners. Nepal formed a cabinet of 44, the second largest since Sher Bahadur Deuba's 1996 government, which included just over 20 per cent of all MPs.<sup>9</sup> After months of relative calm in Nepal's southern Tarai region, in three days in late March 2011, four improvised explosive devices were detonated on civilian buses. One person died and over 40 were injured. No group claimed responsibility, but there is concern that such attacks may be targeted at discrediting the government and challenging extension of the CA. "Samvidhansabhavirudha manchit himsa", *Kantipur*, 28 March 2011.

<sup>10</sup> The concerns raised in May 2010 about the interim constitution provision which links declaration of a state of emergency with extension of the CA have not been mentioned this time around. This is perhaps the effect of a Supreme Court ruling in February 2011 that the CA was allowed to extend its term to complete its task, citing Articles 64 and 83 of the interim constitution. "CA extension decision irrevocable, says SC", *The Kathmandu Post*, 24 February 2011.

<sup>11</sup> Despite this sabre-rattling many in the mainstream parties are aware of the risks dissolution would entail, including both Maoist backlash and authoritarian assertion. Crisis Group interviews, New Delhi and Kathmandu, January-March 2011. Challenges to an extension could also come from within the government. When the CA was extended in 2010, over half of the UML's 108 CA members threatened to cross the floor, or even split from the party, if the simultaneous extension and resignation of PM Nepal, as demanded by the Maoists, did not go

The unwritten eighth point of the UML-Maoist deal was agreement to extend the CA by six months. But since the opposition sees the deal as evidence of the untrustworthiness of the coalition and its malign intentions, opposing extension is another way to reject and challenge this government. Neither Prime Minister Khanal nor Prachanda have renounced the clause on rotational power-sharing between their two parties, which gives the opposition and factions within their own parties further leverage. The other major challenge will be whether the parties can agree on federalism. Madhesi parties will need guarantees that these issues will be resolved by the end of the CA's extended term, or that handing over responsibility for the design of the new states to the state restructuring commission is not a ploy to delay and dilute the commitment to federalism.<sup>12</sup>

## A. TIMELINES AND SEQUENCING

The 28 May 2011 deadline for writing a constitution is ambitious, given the speed with which parties will need to agree on contentious issues. Further, few even in the NC, despite their occasional gloomy prophesying and scepticism about the CA's ability to demonstrate progress by the deadline, are willing to stand publicly against the constitution.<sup>13</sup> But if the last four years are any indication, progress will be scattered, slow and in lockstep with specific concessions on ministerial portfolios and CA-related issues.

The buy-in of the NC, especially by joining the government, is essential to reaching broad, relatively uncontroversial agreement on the CA. The NC has said that it will join the government if the UML-Maoist seven-point deal is scrapped. But it is clear that the Maoists will also have to make concessions on disbanding the PLA. The preferred sequencing of the NC and other actors means that progress must be made on integration before the renewal of the term of the CA. Some sections of the Maoists are convinced that if they give up the PLA before the constitution is secured, the other parties will not come through on the new statute, but there is little evidence for this.

The demand that the Maoists take irreversible steps on integration and rehabilitation before promulgation of the new constitution is reasonable and arguably would yield faster progress than even scrapping the seven-point deal. But the NC, confused about what it wants out of this process, keeps shifting goalposts. For example, "regrouping" of PLA combatants, earlier accepted as evidence of progress,

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through. This year, the faction opposed to Jhala Nath Khanal could do the same, if the NC were to raise the demand, or if the disgruntled Maoist faction led by Baburam Bhattarai were to do so. Crisis Group interviews, Kathmandu, February-March 2011.

<sup>12</sup> Crisis Group interview, Kathmandu, March 2011.

<sup>13</sup> See for example, "Consensus crucial for timely statute", *ekantipur.com*, 8 March 2011.

could again give rise to criticism that it is merely a symbolic step, as long as the PLA's structures remain intact.<sup>14</sup> The NC and sections of the UML are also reviving their demand that PLA personnel must be completely "de-linked" from the party before they can be integrated into the Nepal Army. Regrouping does not achieve this and neither do the integration options being proposed by the Maoists. This argument could be stretched to resist practically any movement on integration.

The big three parties will have to weigh the risks of brinkmanship against short-term gains they might make from denying each other success or concessions. Urgent decisions need to be made on whether the CA can pull together a draft constitution to present to the public that includes most issues and commitments and non-negotiable timelines to resolve the others. Without concrete evidence of progress, the parties will be relying on little more than their dubious charm, and the credibility of the CA, as much as it has been getting things done, will be strained further.

## B. CONSTITUTION DRAFTING

With the Maoists back in government and the UML's less sceptical faction at its helm, some of the unsavoury options on the table last year will be considerably harder to push through. These include the direct involvement of the president, tacitly backed by the Nepal Army.<sup>15</sup>

The CA is repeatedly called a failure by naysayers.<sup>16</sup> Yet, even through the deadlock CA sub-committees continued to discuss constitutional issues and at the higher level considerable progress has been made.<sup>17</sup> Days after the Maoists joined the new government, agreement was reached on a bicameral house and the formation of a constitutional court. Agreement on forms of governance, electoral systems and oversight of the judiciary depend almost entirely on the Maoists' increasing willingness to compromise. The party is already displaying flexibility on its demand for a directly elected executive president, among other issues.<sup>18</sup> The transitional mechanisms that will come into effect when the work of the CA is completed have been agreed upon, with the legislature-parliament, prime minister and president all retaining their present roles and responsibilities.

Federalism remains contested, as does the forum in which it should be discussed. The NC and UCPN(M) have flip-flopped on whether they support formation of the state restructuring commission mandated in the 2007 interim constitution. They cite the room to make decisions in the CA, the work already done by the CA's sub-committee, and the provision in the CPA for the commission, but their

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<sup>14</sup> "Regrouping" of Maoist fighters into those who want to be integrated, want rehabilitation packages, or want to retire could mean as little as giving them government-issued identity cards which are coded by their choice, to replace the UN-issued ones which mark them as verified PLA personnel. Or it could mean consolidation of some cantonments and closure of others, though if this does happen, there will doubtless be some manufactured hysteria over Maoist fighters being let loose in the country before 28 May. In any case, the logistics are considerable. As a first step the government will need to procure ID-making machines and send them to the cantonments. Crisis Group interview, Kathmandu, March 2011.

<sup>15</sup> These options have become more remote also because of sensitivity to public perception. UNMIN's final report to the Security Council noted the risk of confrontational moves by the president, the Nepal Army and the Maoists. "Report of the Secretary-General on Nepal's Request for United Nations Assistance in Support of its Peace Process", UN Security Council document S/2010/658, 23 December 2010. In response, President Ram Baran Yadav, Maoist Chairman Prachanda and the Nepal army immediately denied that they harboured such intentions. President Yadav said he felt "stabbed through the heart", Prachanda dismissed the analysis as based on "gossip", and the government described the report as "wild" and "malicious".

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<sup>16</sup> Crisis Group interviews, Kathmandu, January-February 2011. One monarchist analyst said he was certain that there could not be a constitution "or at least not one that won't be burnt in the streets".

<sup>17</sup> A high-level task force led by Prachanda resolved 127 of the 210 "contentious issues" forwarded to it by the CA's Draft Study Committee from October to December 2010. These included, among others, matters related to national interest, fundamental rights and directive principles, and separation of powers at the local level, and were endorsed by the constitutional committee, which will prepare the draft of the constitution. "Sub committee formed to settle statute issues", The Himalayan Times online, 25 February 2011. The term of the task force was not extended when smaller parties objected to decisions being made outside the framework of CA bodies. Since the formation of the new government, Prachanda has led the constitutional committee's dispute resolution sub-committee, which also includes the NC's prime ministerial candidate and head of its parliamentary party Ram Chandra Poudel and former UML prime minister Madhav Kumar Nepal. The sub-committee resolved more than half of the remaining 80-odd issues, leaving the questions of state restructuring and electoral systems and forms of governance. "No real progress in dispute resolution", *Republica*, 29 March 2011. Prachanda's nomination to this leadership role has in every case been unanimous and uncontested by all other parties. Prachanda's rivals within the Maoist party have been critical, saying that he had compromised on too many issues and "monopolised" the constitution-writing process.

<sup>18</sup> There will certainly be some contestation of specific provisions. For example, the NC now opposes the agreed-upon proposal for a constitutional court.

positions are mainly driven by the need to obstruct, speed up, or slow down the process.<sup>19</sup>

The Madhesi parties have consistently opposed the state restructuring commission, arguing that the proper venue is the CA. They fear that the commission will be a means of delaying and watering down federalism. Though it is disingenuous to assume that decisions in the commission will be any more “rational” or technical and hence less political than in the CA, the CA sub-committee potentially allows smaller parties a greater voice in the discussion, which might in a commission be taken over by representatives of the three big parties.<sup>20</sup>

While the NC and many in the UML are deeply uncomfortable with federalism, they and other parties will make tactical decisions on it, based on the comparative political gains of reaching partial agreement, delaying all agreement, or bartering for other deals such as integration. If major decisions are deferred to a commission, they will eventually need to be passed by the CA, or by the legislature-parliament, which will continue if the CA is dissolved following promulgation of the rest of the constitution, or by the house that replaces it following a general election. Whatever the scenario, the outcomes that the federalism lobby envisages are not articulated exclusively by the Maoists and will be kept on the table by identity groups.<sup>21</sup>

A loud minority is calling for reinstatement of the 1990 constitution, another for a referendum on past decisions such as federalism, declaration of the republic and secu-

larism, as well as the future of the CA. This group argues that the February 2011 Supreme Court ruling on the CA's extension constituted interference in politics and so does not have legitimacy.<sup>22</sup> But the political actors who support this position for ideological reasons do not have broad political support in Kathmandu.

There will undoubtedly be groups unhappy with parts of the constitution. The challenge for all parties as they speed through the drafting process will be to produce a reasonable constitution that is unambiguous on matters like the role of the executive, control of the security forces and federalism, but which also has the room to accommodate Nepal's political exigencies.

### C. INTEGRATION AND REHABILITATION OF MAOIST ARMY PERSONNEL

Although the fundamental decisions will be negotiated at the highest political levels, resumption under the new government of meetings of the special committee and the commitment to a 50-day plan for integration are positive signs. For the UCPN(M) and Prachanda personally, the PLA is of mixed political utility. Since the CPA, it has contributed little to the party except through diversion of part of combatants' salaries to party coffers. The PLA has not systematically been used in any major political action, such as strikes or during campaigning for the CA election. Dogmatists maintain that, as per Mao, “without a people's army, the people have nothing”, but Prachanda and other leaders know that negotiating away the PLA is central to the peace process.

Ex-combatants will probably have the choice of being integrated into the security forces, opting for a rehabilitation package, retiring or entering political life. No survey of preferences or skills has been conducted yet. Though the combatants are unlikely to have absolute freedom to choose, they would still benefit from knowing their options, and so it would be good to reach agreement, if not on numbers then on the modalities (the standards, ranks, etc) of integration and on the rehabilitation packages before the survey. The Maoists still sometimes talk of needing the survey done before an agreement among the political parties on numbers, but there is consensus that 6,000 to 8,000 will be integrated. Unofficial estimates suggest that about 13,000 to 14,000 of the 19,000 ex-combatants are still in the cantonments.<sup>23</sup>

<sup>19</sup> For example, the Maoists attempted to form the commission while in government, and the NC opposed it. Now the NC wants it, and the Maoists oppose it.

<sup>20</sup> Crisis Group interview, Kathmandu, March 2011.

<sup>21</sup> While even members of the most conservative parties admit that a state structure that enables Kathmandu's stranglehold over resources and decision-making needs to be changed, they are uncomfortable with the term “federalism”. They associate the term with the Maoists' identification of it with ethnically determined state boundaries, names and *agradhikar* (first rights). “Why not do the same thing, but call it extreme decentralisation”, a senior leader of a rightist party asked. Crisis Group interviews, Kathmandu, January-February 2011. For more on federalism, see Crisis Group Report, *Nepal: Identity Politics and Federalism*, op. cit. The public debate is mired in an obsession with the spectre of fragmentation and cynical, patronising opinions such as “Nepalis don't know what federalism is and don't want it”. There is little acknowledgement of the multiple possibilities of “federalism”, of replacing *agradhikar* with the more palatable and proven measure of affirmative action, or the desirable long-term outcomes from state restructuring including greater responsiveness and local accountability of state institutions. The Maoists have done little to help untangle this or explain their position and points of flexibility more clearly, and the Madhes-based groups have not contributed constructively to the public discourse either.

<sup>22</sup> Crisis Group interviews, January-March 2011. See, for example, Surya Dhungel, “The disturbing verdict”, *Spotlight*, 19 March 2011.

<sup>23</sup> Negotiations on the PLA will force the parties to renounce some of their cant. For example, the Maoists say it is “unscientific” to decide numbers before a survey, but have often invoked a previous agreement made with Girija Prasad Koirala to

The timing of the survey and prerequisites for it is just one area where decisions can be held up. The Maoists, who now seem to want to move quickly on integration,<sup>24</sup> came up immediately against the NC, which demanded that the monitoring mechanism that replaced UNMIN first be strengthened by being fully-staffed and equipped.<sup>25</sup> The NC seems deeply confused about what it is willing to accept, variously insisting on no integration whatsoever to cautiously considering Maoist proposals. It obstructs by tactically advancing and then withdrawing its agreement to the modalities and numbers for integration. It has exhibited minimum flexibility, agreeing only to small modifications of existing Nepal Army criteria, and constantly shifts the goalposts on what the UCPN(M) must do before there can be agreement.<sup>26</sup>

The Maoists themselves have done their share to keep alive the mistrust.<sup>27</sup> They have not allowed an independent headcount with positive identification in the cantonments since the UN verification process was completed in December 2007. The party has kept up its rhetoric about “people’s revolt” if there is no constitution and is forming a new force putatively for this purpose. This hardly builds an environment of trust, especially in conjunction with fears

that it is attempting to retain PLA structures, including within the framework of the state. If the party chooses to, it could return to insisting that integration and democratisation of the Nepal Army have to be parallel processes, which will again hold up negotiations.

Some UCPN(M) leaders say they were spooked by the discharge of the disqualified combatants in January 2010, during which tensions occasionally ran high against the party leadership, and Prachanda himself has said that the party needs time to deal with the PLA and individuals’ aspirations.<sup>28</sup> Though the PLA is the subject of much discussion and remains well-represented in the party’s decision-making bodies, there has been a distinct drop over the past year in its public visibility as a distinct entity with its own voice.<sup>29</sup>

The discussion on modalities is fractured, though the idea of the “mixed force” under the NA remains one option, as proposed days before the formation of the UML-Maoist government by the three big parties. This would have representation from the PLA, NA and APF, and be under NA command.<sup>30</sup> The creation of such a new force with a half-baked, contested mandate, suspicion within and a resentful

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integrate 3,000 to 5,000. See “PLA integration”, *The Kathmandu Post*, 13 September 2009. The NC and its ilk will have to decide whether the UCPN(M) is getting the lion’s share of the Rs. 5,000 (\$68) monthly salary the government pays PLA fighters because “there are hardly any fighters left in the camps”, or whether “the Maoists still have an intact army”. These political actors also say, sometimes on the same day, both that “the Maoists are never going back to war” and that Maoist state capture using violent means is imminent. Likewise, some argue that barely any “real PLA” were sent to be cantoned, while others say the cantonments are hotbeds of rebellion. Crisis Group interviews, Kathmandu, New Delhi, January-February 2011.

<sup>24</sup> One central committee member and a PLA commander insisted that the party’s bottom-line was the constitution and not making a fuss about integration. He likened the PLA to the feet and the constitution to the mind and said, “it’s foolish to think that the feet are indispensable for walking, the head does the real work”. Crisis Group interview, Kathmandu, February 2011.

<sup>25</sup> Crisis Group interviews, Kathmandu, February 2011. The Maoists argue that rather than reinventing the monitoring process, there should be concerted effort to move the integration and rehabilitation process forward; this was also UNMIN’s position.

<sup>26</sup> Crisis Group interviews, Kathmandu, February 2011. For example, the NC says time in the PLA can be counted as part of years of service when determining rank, but combatants will still need to go through the training and tests for promotions to their designated rank. This would also bring integrated combatants up to retirement age quickly. But the NC is not budging from its three basic positions: no “bulk” integration, integrated personnel must meet the standard norms for recruitment, and the NA’s standards will determine rank.

<sup>27</sup> However, the Maoists have taken some steps on integration, including handing over the PLA to the government in early 2011 and allowing the NA to resume ammunition procurement.

<sup>28</sup> In January and February 2010, the Maoists finally discharged some 4,000 personnel disqualified in the UN verification process for not meeting the cut-off date of recruitment or minimum age for cantonment. The discharge process, widely seen as a trial balloon for integration and rehabilitation, has thrown up problems. Contrary to assumptions that most would be accommodated in the Young Communist League (YCL) or Maoist unions, a number have been left to their own devices and express deep disillusionment and occasionally anger at the party. Others have been formally or informally absorbed into local party structures, which keep an eye on them. Crisis Group interviews, Kathmandu, January-February 2011.

<sup>29</sup> Of the sixteen standing committee members, those who held direct war-time commanding responsibilities in the PLA include Barsha Man Pun “Ananta” (Commander Eastern Division), Netra Bikram Chand “Biplov” (Mid Central Command Special Regional Bureau In-Charge), Ram Bahadur Thapa “Badal” (Commissar Eastern Division) and Janardan Sharma “Prabhakar” (PLA Deputy Commander). Except Biplov, all have been cabinet members. The PLA and Commander Nanda Kishore Pun “Pasang” do not take public positions on matters independent of the party line, instead they participate in discussions and activities of the special committee, its secretariat and the monitoring mechanism.

<sup>30</sup> The NA has proposed various options. The latest, which it put forward in March 2011, suggested the formation of a separate security force of 12,000 personnel, half of whom would be drawn from the PLA. Unlike earlier NA plans, which asked that any force including ex-Maoist combatants be unarmed and not responsible for security of national parks or along the border, this proposal did not include such caveats. “PLA integration: Army mellows on PLA fighters’ entry”, *ekantipur.com*, 28 March 2011. Phanindra Dahal, “Nepal Army’s rider on PLA combatants’ integration”, *The Kathmandu Post*, 28 February 2011.

relationship to overall command and control, is a bad idea and will not help achieve broader goals of security sector reform, such as downsizing and democratising the NA. Yet, politically, this option allows all the parties to skirt potentially intractable differences on rank harmonisation and norms for entry into the NA, just as it allows the NA to accept integration, but keep the former PLA combatants penned away, unable to “contaminate” the larger force, and still broadly under army control. To counter this proposal, the NC will have to do more than reiterate its insistence that a certain number of PLA combatants go through what is essentially a recruitment process into the NA.<sup>31</sup>

### III. POSITIONS OF KEY ACTORS

There are deep divisions within nearly every party, even small ones, a symptom of Nepal's turbulent political landscape. These fault lines will persist for some time no matter what course Nepal's politics takes in coming months.<sup>32</sup> The intense disagreements within the Maoists, NC and UML over their own candidates for the marathon parliamentary voting in the second half of 2010 were only partially indicative of differing opinions on the individuals' abilities to win the election or the wisdom of specific alliances. They highlighted rivalries at the top of each party and factionalism within their central committees.

Prachanda first proposed the Khanal-Prachanda alliance six months before it came to fruition. He did so as much to build a stable alliance as to counter the influence within the UCPN(M) of Maoist vice-chairman and ideologue Baburam Bhattarai and his acceptability outside the party as a potential prime minister. Within the UML, resistance to the alliance from the camp of former deputy prime minister K.P. Oli was equal parts fear of Maoist encroachment on the UML's political space and a reaction to Khanal defeating Oli to become party chairman in February 2009.<sup>33</sup> Within the NC, the spasmodic leaning towards the Maoists by Sher Bahadur Deuba, former prime minister and leader of the splinter NC (Democratic) which reunited with the NC

in September 2007, was an attempt to counter the influence of president Suhsil Koirala and parliamentary party leader Ram Chandra Poudel.

Despite their internal turmoil, the Maoists still set the agenda, to which the other major parties react. But while the NC and sections of the UML have found some favour for their oppositional stance in Kathmandu and New Delhi, that alone is not enough for these parties to regain wider support. These parties need to revitalise their local support base and systematically counter Maoist dominance in some districts, rather than being content to just divide the spoils of local development budgets.<sup>34</sup>

The level of inter-party violence has declined since Madhav Kumar Nepal's resignation as prime minister on 30 June 2010.<sup>35</sup> During Nepal's thirteen months in office, there were frequent inter-party clashes, most of them between members of the UCPN(M) and UML and affiliated groups, with violence spiking during Maoist protests.<sup>36</sup> While the Maoists were responsible for much of the local violence, they were also on the receiving end. During these thirteen months, armed groups reportedly killed four of them, UML cadres three, and unidentified attackers six.<sup>37</sup> It is too

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<sup>34</sup> Few political actors say that they are unable to do grassroots political work because of Maoist assertion and entrenchment, except in some UCPN(M) strongholds. When senior leaders do go back to their constituencies regularly, it appears to be of their own volition, rather than because of party policy. Nor is it clear whether individual leaders can or do act as the interface between district committees and party central committees. Crisis Group interviews, Kathmandu, January-February 2011.

<sup>35</sup> “Political party youth wings in Nepal”, The Carter Center, 28 February 2011. See also the South Asia Terrorism Portal (SATP), which provides a timeline of major political developments and violent incidents in Nepal. Available at: [www.satp.org/satporgtp/countries/nepal/timeline/index.html](http://www.satp.org/satporgtp/countries/nepal/timeline/index.html).

<sup>36</sup> Informal Sector Service Centre, INSEC, the national human rights organisation with the most comprehensive records, presents data on killings, abductions and beatings by political parties, affiliates and armed groups in its Human Rights Yearbooks. According to these statistics, Maoist party cadres and student and youth activists were responsible for approximately 38 per cent of all threats and beatings recorded in 2010 (532 out of 1,391) and 47 per cent in 2009 (922 out of 1,963). “Human Rights Yearbook”, INSEC, 2009 and 2010.

<sup>37</sup> See SATP timeline and “Human Rights Yearbook”, INSEC, 2009 and 2010, both op. cit. Monitoring reports paint this political violence as a “state versus Maoists” or “Maoists versus others” affair, ignoring the complexity of armed group and criminal violence, as well as the violence inflicted by other parties or their affiliates, and clashes between other parties, such as NC and UML. In the “Statistics of Human Rights Violations” section of their Human Rights Yearbooks, INSEC lists data only for the state, the Maoists and “others”, ignoring figures for groups that perpetrated more violence than the Maoists. For example, armed groups in the Tarai were to blame for 29 killings in 2010 while the UCPN(M) was only responsible for four.

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<sup>31</sup> The Nepal Army has its own opinions and has made presentations to former prime minister Madhav Nepal and to the special committee. Senior NA officers have been clear in public and private that integration would threaten, variously, the integrity, honesty and professionalism of the NA. Assuming all parties, including the NC, do want stronger civilian control over the NA, they would do well to assess the army's suggestions, such as placing former Maoist combatants in unarmed units, for their technical and political merits, no matter how much they yearn to keep the Maoists in check.

<sup>32</sup> Since 2006, at least seven new political parties have emerged out of direct splits from existing parties.

<sup>33</sup> On the UML's internal dynamics, see Crisis Group Report, *Nepal's Faltering Peace Process*, op. cit.



early to speculate on what the reduction in the killing of Maoists signifies. More broadly, the decline of clashes and attacks between Maoists and UML or NC could indicate that relations between political parties in the districts have calmed down, perhaps because local struggles over patronage and resources are nearing a new equilibrium.<sup>38</sup>

## A. UCPN(M)

There are tensions and rivalries between the three UCPN(M) leaders – Prachanda, Senior Vice-Chairman Mohan Baidya “Kiran” and Vice-Chairman Baburam Bhattarai, who is also the party’s main ideologue – and their supporters. These have played out in various forms over the past year, including in their frequent public sniping at each other, the disagreement over Prachanda’s candidacy in both election processes, the split into three of the lucrative trade union and widening rifts in other bodies.<sup>39</sup> A future split in the party is possible, but it is too early to say how it will play out, whether the radical fringe will go its own way, or whether the broadly pro-mainstream politics constituency currently represented by both Bhattarai and Prachanda will cleave in two.

The disagreements over the party’s tactics were clear at the plenum in Palungtar, Gorkha, and the resulting central committee meeting. Prachanda’s political paper, which the central committee eventually endorsed, was a mash-up of the straight ideological line of revolt of Mohan Baidya “Kiran”, and the geopolitically informed views of Baburam Bhattarai. It set out a two-pronged tactical plan: to work towards “peace and [a] constitution”, while also

preparing for “people’s revolt”. One analyst described the differences among the three leaders as being about “the ‘principal contradiction’;<sup>40</sup> the correct ‘revolutionary line’; the immediate tactics; and the problems facing the organisation”.<sup>41</sup> Other differences are more about personal vendettas and individual power within the party. Although there are three factions in the party, there are, in fact, only two lines, with Prachanda borrowing liberally from each depending on the circumstances.

Some of the differences are as follows:

- ❑ Prachanda and Kiran disagree on India with Bhattarai, who did his PhD at Jawaharlal Nehru University in Delhi. Bhattarai’s education makes him vulnerable to allegations of divided loyalties when he says that India is not the “chief enemy”, that the international conditions are not favourable for revolution, and that “nationalist” alliances with monarchists and others are a bad idea. Prachanda and Kiran feel hard done by India; Prachanda for his thwarted prime ministerial ambitions and Kiran for the extended imprisonment in Siliguri, which kept him away from critical negotiations in 2005 and 2006.
- ❑ Prachanda and Bhattarai disagree with Kiran who thinks that the September 2005 twelve-point agreement between the Maoists and the mainstream Seven-Party Alliance to jointly mobilise against the absolute rule of King Gyanendra was wrong. They argue that the gains the party has accrued from participation in the process (and democratic politics), including secularism, federalism and the republic, should be safeguarded.<sup>42</sup> All three agree a people’s constitution is needed, but

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“Human Rights Yearbook”, INSEC, 2006-2011. SATP fact-sheets on fatalities continue to use wartime categories in a way which suggests that violence still mainly takes place between security forces and “Maoist insurgents”. See its “Fatalities in Maoist Insurgency since March 2000”, SATP, [www.satp.org/satporgtp/countries/nepal/database/fatalities.htm](http://www.satp.org/satporgtp/countries/nepal/database/fatalities.htm).

<sup>38</sup> See Crisis Group Report, *Nepal’s Political Rites of Passage*, op. cit., pp. 21-24.

<sup>39</sup> See, for example, Post Bahadur Basnet, “District by district Bhattarai works up stake in party”, *Republica*, 28 March 2011. Each of the three top leaders have attempted to encroach on each other’s support base and during training for cadres in early 2011, each held parallel sessions with their own loyalists. In 2010 sections of the party argued that the party should only field a candidate who could garner a two-thirds majority, at a time when Bhattarai was the candidate of choice even for non-Maoists. The second time around, Bhattarai wrote a note of dissent on Prachanda’s last-minute withdrawal, arguing that the party should contest the election when it had a chance of winning. Prachanda bowed out when Bijay Gachhadar of the MJF(Loktantrik), encouraged by New Delhi, decided to contest, thus ensuring that the UCPN(M) would not get the Madhesi vote. It would have been difficult for the Maoists, if not impossible, to get UML support for another government led by them.

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<sup>40</sup> The more dogmatic faction of the party, which Prachanda supported at the plenum, argues that, since Nepal’s feudal class is supported by India, the party’s principal contradiction was with both India and “domestic reactionaries”. Bhattarai argued that India could not be the main enemy until it militarily invaded Nepal, and that the principal contradiction was with “remnants of feudalism, domestic reactionaries, comprador bourgeoisie and brokers who receive Indian protection”. Prashant Jha, “Maoists in Nepal: The Differences Within”, *The Hindu*, 6 December 2010.

<sup>41</sup> Prashant Jha, “Maoists in Nepal: The Differences Within”, op. cit.

<sup>42</sup> Plenum papers, Dr Baburam Bhattarai, “Partiko rajnitik ra sangathanatmak karyadisha ra tatkalin karyayojanabare”, 25 August 2010; Dr Baburam Bhattarai, “Antar parti bahasbare kehi thap spashtikaran”, 20 September 2010; Mohan Baidya “Kiran”, “Vartaman paristhiti ra hamro karyabhar”, 25 August 2010; Mohan Baidya “Kiran”, “Kendriya samitiko baithakma prastut prastavbare spashtikaran”, 21 September 2010; Pushpa Kamal Dahal “Prachanda”, “Karyadisha ra karyayojanabare prastav”, undated. Crisis Group interviews, journalists, UCPN(M) leaders, Kathmandu, January-February 2011.

Kiran says, rightly, that chances of that happening are increasingly slim.<sup>43</sup>

- ❑ Kiran and Bhattarai accuse Prachanda of talking the revolutionary talk, but two-facedly making deals and compromises. Prachanda was also widely criticised, even by his own staunch supporters in the PLA, for having megalomaniacal tendencies.<sup>44</sup> Prachanda and Bhattarai harbour deep personal antagonism for each other and trade allegations of self-aggrandisement, nepotism and corruption. Bhattarai thinks Prachanda goes too far to appease hardliners, who are already emboldened by the slowness and compromises in the peace process. Bhattarai, accused of being a revisionist, despairs of any of his colleagues being as rigorous as he is.

Some policy decisions, such as the confrontational attitude towards India and reaching out to China, were a direct result of certain ideological debates and positions. But it would be a mistake to expect all internal debates to lead to corresponding action, specifically with regard to Maoist rhetoric about revolt. Confrontation has limited appeal at this point for them.<sup>45</sup> The party remains capable of mass mobilisation and “people’s revolt”, though explained in private as street movements or protests, has the potential for targeted escalation and retaliation.<sup>46</sup> But there are many

reasons for the bulk of the party not to choose this course of action. The balance of power in Kathmandu has temporarily shifted in their favour, but the Maoists’ internal dynamics make it difficult to reach a coherent stand. The traditional parties and parts of the state apparatus will strongly resist any show of strength, with the unconditional support of New Delhi.

The UCPN(M) has a strong grassroots organisation. It also understands well, from both theoretical and political standpoints, the power and legitimacy conferred by a positive election result and the salutary effect on revolutionary movements of multiparty competition.<sup>47</sup> Its ambitious, if controversial agenda has staying power even in the face of widespread corruption within the party, as long as the Maoists share their part of the pie with more and more diverse groups.<sup>48</sup>

The transformation of the UCPN(M) is challenged both from within and outside. It has compromised on the constitution and inevitably, the party and its leaders are enmeshed in traditional structures of patronage, competition for resources and a wide range of economic activity. These are also the cause of some ideological and person-

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<sup>43</sup> Prashant Jha describes the Maoists’ preferred system of a “People’s Federal Republic” as featuring “an executive Presidency at the centre; federalism with ethnicity/nationality as a prominent basis; an ‘equal’ relationship with India; ‘democratisation’ of the Nepal Army through the integration of former PLA combatants and firmer civilian control; ‘first rights’ to local communities regarding natural resources; revolutionary land reform; and restricted multiparty political competition in which ‘pro-imperialist and pro-feudal’ parties would not be allowed to operate”. Prashant Jha, “Maoists in Nepal: The Differences Within”, op. cit. The party is already compromising on the executive presidency; ethnic/nationality-based federalism and first rights or *agradhikar* will be a hard sell; the previous government’s plan for democratisation is noticeably inadequate, and this government could redraft and implement it; restricting multiparty competition will invite a confrontation and backlash from the NA, India and the rest of the international community.

<sup>44</sup> Prachanda’s critics argue that the Chunbang Plenum centralised excessive powers in the chairman, who has since used them for personal benefit and to override those who disagree with him. Representatives of the 1,200 PLA members who attended the plenum accused Prachanda and the rest of the party leadership of playing with the futures of the combatants while they lived luxuriously in Kathmandu. Crisis Group interviews, Kathmandu, January-February 2011.

<sup>45</sup> The traditional parties and some sections of New Delhi believed that the tactic of isolating the Maoists was a relatively safe one, because they judged, just as Nepal’s right does, that the Maoists will not go back to war.

<sup>46</sup> During cadre training sessions earlier this year, Prachanda floated the idea of mobilising 500,000 for a “people’s revolt”. This was followed soon after by C.P. Gajurel claiming that the

Maoists needed to create a new force, as the YCL was no longer effective, a claim many Nepalis will find incredible. “Maoists to form tougher youth wing”, *The Kathmandu Post*, 25 February 2011. In February, the central committee decided to form the “People’s Volunteers’ Mobilisation Bureau” at the behest of the Kiran faction. It is headed by his supporter and standing committee member Netra Bikram Chand “Biplov”. Officially, the bureau will push for the constitution and prepare for “revolt” if it is not written. It will require unprecedented sophistry for the UCPN(M) to explain aggressive street protests even as it is a partner in government. Leaders also say that the bureau will focus on “manufacturing, production and reconstruction” and will be responsible for overall coordination and planning for various Maoist-affiliated bodies. This provides a better clue for the motivations behind the bureau, namely consolidating control over party organisations which are all deeply divided. Leaders of the YCL, student and other unions, as well as Prachanda and Bhattarai loyalists, have expressed reservations about the bureau. Crisis Group interviews, Kathmandu, March 2011.

<sup>47</sup> “Present Situation and Our Historical Task”, adopted by the Central Committee meeting of the Communist Party of Nepal (Maoist), June 2003. See also Aditya Adhikari, “The Ideological Evolution of the Nepali Maoists”, *Studies in Nepali History and Society*, 15(2), December 2010 (forthcoming).

<sup>48</sup> Political legitimacy is not determined exclusively or even primarily by service delivery in Nepal. See Crisis Group Report, *Nepal’s Political Rites of Passage*, op. cit. But a party that enables increased access and availability to goods and services, greater participation in networks of patronage and distribution, and improved political stability will still have an edge in terms of mobilisation over a party that does not.

ality-driven schisms within the party.<sup>49</sup> Traditional political actors as well as new political groupings could step into the space opened up by a seeming de-radicalisation of the UCPN(M). Identity-based parties have already disaggregated parts of the Maoist agenda. The Maoists' ultra-nationalist stance further risks alienating the Madhesi parties, who identify it with traditional hill-centric definitions that question Madhesi loyalties. If the Maoists use nationalist rhetoric to reach out to the royalist right, even sections of the UCPN(M) will be critical.<sup>50</sup> New Delhi remains deeply suspicious of the Maoists' willingness to secure India's strategic and security interests and be junior partners in the India-Nepal relationship.

By participating in mainstream politics, the Maoists are part of a system that is deeply resistant to reform. But they are still the only party that challenges the Nepali state as it is now. If the Maoists still want to change elements of the system, even while they themselves are changed by it,<sup>51</sup> they will have to gain trust, offer partners tangible returns and build lasting alliances. This will be difficult, as long as they retain the ability to intimidate and keep the option of returning to violence on the table.

## B. NEPALI CONGRESS

Maligned as the late Nepali Congress leader G.P. Koirala was for his ambition, high-handedness, corruption and nepotism, his death left the NC with no national leader capable of taking the reins of the peace process. Instead, the NC's political arsenal seems limited to obstruction. The party continues to position itself as the last holdout standing for democracy against the threats of Maoist entrenchment and left-wing polarisation, but is itself torn by

factional politics. Potential alliances with the Maoists and resistance to them are used by NC members against each other.

The NC has demanded progressively more of the UCPN(M), shifting goalposts to bolster its own fluctuating political influence. The influence of its conservative wing, which is deeply suspicious of the Maoists and resentful of its own loss of power, has much of the top leadership taking a hard anti-Maoist line. But the success of this position relies on the support of fair-weather friends and the continuation of a hard anti-Maoist line in New Delhi and in last resort, the Nepal Army, both of which could erode democratic space. The NC has made limited attempts to shore up its support base and provided little input to major debates, and the party's overall influence in the peace process has waned. But that makes little difference to its ability to obstruct, reject, spoil and delay.<sup>52</sup>

One critical challenge the NC faced in adjusting to the new political reality was its own structure, with G.P. Koirala making all the decisions in an ad hoc manner. The party took its first steps towards internal democratisation in September 2010, when its general convention for the first time elected a president. On the face of it, the new central working committee, which included quotas for nominees from traditionally marginalised groups, and younger "second generation" leaders, is more inclusive than any in the party's history. In reality, the struggle over key positions and control of the central working committee reflects schisms among top leaders, particularly between Sushil Koirala (and his candidate for prime minister, Ram Chandra Poudel) and Sher Bahadur Deuba. To a lesser extent there is a division between those who endorse the peace process, flawed though it might be, and those who think it was a mistake, which sometimes overlaps with the factions of the top leaders.<sup>53</sup>

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<sup>49</sup> The business interests of the Maoist party, individual leaders and their relatives serve multiple purposes, and involve party structures. Some are central-level investments, such as the Janamaitri Hospital in Kathmandu. Others are managed by the unions, and include a number of revenue streams, such as sharing of profits from the casinos in Kathmandu and targeted extortion of businesses. The YCL, which is being challenged by the new "people's volunteers", was after the war at the frontline of Maoist economic activity, involved in extortion and various industries including herb collection and processing, and trades such as timber. The YCL is still organised along economic lines; in 2008 the organisation was restructured to form separate production and construction units. These are still active and headed by YCL district or area in-charges. Some of these activities support the party organisation, and others expand the influence of individuals or factions within the party. Other activities, such as the large land dealings some senior Maoist leaders and their family members reportedly participate in, are for personal gain. Crisis Group interviews, Kathmandu, January-February 2011.

<sup>50</sup> Crisis Group interview, Kathmandu, March 2011.

<sup>51</sup> Crisis Group interview, Kathmandu, March 2011.

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<sup>52</sup> The NC has, for example, proposed six states in contrast to the Maoists' fourteen, but has done little outreach with this idea, focusing instead on its opposition to ethnic-based federalism. For more on the NC's proposal for federalism see Crisis Group Report, *Nepal: Identity Politics and Federalism*, op. cit., p. 12.

<sup>53</sup> The party's twelfth general convention was the first since the NC re-united in 2007 following the split of the NC-Democratic led by Deuba in 2002. Over 3,000 delegates attended to elect the 85-member central working committee. 21 places were reserved for nominees from marginalised groups, indicating the party's acknowledgment of the need to recognise these constituencies. Yet, in the federalism debate, the NC opposes quotas. The nomination, rather than election, of individuals to these positions also suggests a paternalistic attitude to minority representation. The so-called "hardline-moderate/peace process supporter" divide, too, is more complicated than this nomenclature allows. For example, a number of leaders in the Deuba faction are royalist and right-wing activists, such as Khum Bahadur

The ongoing dispute over appointments to top party offices and the Deuba-Poudel rivalry meant that the NC could not contest the prime ministerial elections with a full deck. The party has not led a single post-election government and has shied away from a consensus government even if it were to lead it, in order to tamp down internal disputes.<sup>54</sup> In many cases, the NC's district-level leadership remains shut out of Kathmandu politics, disconnected from the inter-party negotiations and from its own leadership, which often neglects to send instructions.<sup>55</sup>

The NC could coast for some time on its liberal democratic image and play the role of the "democratic opposition" to the Maoists without incurring a huge further loss of popular support and influence in Kathmandu politics; there are constituencies that will not vote for a leftist party and for whom identity-based politics has limited benefits. But without an imaginative re-invention, systematic reactivation of its networks, and re-commitment to politics outside Kathmandu, particularly in the Tarai, where it will have to make deals with Madhesi parties, the NC faces a future of shrinking influence and relevance as new parties emerge.<sup>56</sup>

### C. UML

The UML has maintained a decisive role in power-sharing not despite but because it is divided on ideology and strategy. There are differences on how to deal with the Maoists and with India, on state restructuring, for example,<sup>57</sup> and

these often fall along the same lines as personal rivalries, which is how the UML came to lead in succession a strongly anti-Maoist government and a government backed by the Maoists. The stark divisions within were clear in the party's near-split during the May 2010 CA extension vote, the controversy over party Chairman Jhala Nath Khanal's candidacy to replace Madhav Kumar Nepal and his closeness to the Maoists, and the challenges Khanal's own party has posed to the full formation of his cabinet.<sup>58</sup> But those within the UML are loath to precipitate a split in the party; being the third largest party is a good bargaining position, to split in two would make each faction smaller than Madhesi groupings, with a concomitant loss in influence.

Political equations at the centre are not replicated exactly at the grassroots, and in the districts the UML still maintains presence and influence and sometimes comes directly into confrontation with the UCPN(M) and the NC.<sup>59</sup> Yet, the UML, its radical agenda lost along the way and displaced by the Maoists from its perch at the top of Nepal's left, will need to do more than rely on its established networks if it

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Khadka, while others are seen as conservative, but still engaged with the peace process, including "second-generation" leaders such as Minendra Rijal. When he was prime minister in November 2001, Deuba recommended that King Gyanendra dissolve parliament and impose a state of emergency when the Maoists broke a four-month-old ceasefire. Yet Deuba himself is widely described, including by senior Maoists, as more "flexible" and open to arrangements with the UCPN(M) than Sushil Koirala. Crisis Group interviews, Kathmandu, January-February 2011.

<sup>54</sup> Crisis Group interviews, Kathmandu, January-February 2011.

<sup>55</sup> NC district leaders had expected directives from the central leadership for Democracy Day activities on 19 February 2011 in the 75 districts. The party had earlier announced that it was sending its central committee and CA members to every district to mark the occasion. ("Kangresle deshbar Prajatantra Divas manaune", ekantipur.com, 9 February 2011.) But the day passed without much clarity about where the party is headed at the district-level. While some district party offices were told to prepare for the possibility of fresh elections for a new CA if the current one fails to deliver a constitution on 28 May, others claimed that there was no such central directive and that the party would continue raising awareness about the need to complete the constitution. Crisis Group telephone interviews, March 2011.

<sup>56</sup> "Kangresko krantikarita", CK Lal, *Himal Khabarpatrika*, 15-30 March 2011.

<sup>57</sup> For example, the UML members of the CA's state restructuring sub-committee voted for the Maoist proposal, which al-

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lowed it to be passed by a majority, even though the UML leadership is ambivalent about identity-based federalism. See Crisis Group Report, *Nepal: Identity Politics and Federalism*, op. cit., pp. 10-12. Similarly, leftist Nepali nationalism has historically often been defined in opposition to India, but the Madhav Nepal government and K.P. Oli faction that supported it was closer to India than to its own coalition partners.

<sup>58</sup> Khanal has the majority in the parliamentary party, which allowed him to successfully leverage the threat of a split to extend the CA and force Madhav Nepal to resign as prime minister in May 2010. The UML's decision-making bodies – the central committee, politburo and standing committee – are evenly split between Khanal and the Madhav Nepal-K.P. Oli group, but tilting in Khanal's favour. After criticising the seven-point deal with the Maoists, the central committee passed it with a small amendment. For an overview of the UML's internal dynamics, see Crisis Group Report, *Nepal's Faltering Peace Process*, op. cit.

<sup>59</sup> In January 2011, the UML central secretariat issued a three-month organisation strengthening plan to attract more cadres from working class backgrounds to the party base, and highlighted the need to appeal to cadres from other parties. The directive bemoans factionalism, the party's shift away from the working class towards the upper class and its inability to financially support its cadres but does not offer any concrete solutions. "Baicharik tatha sangathan sudhridhikaran abhiyan", CPN(UML) Central Secretariat, Kathmandu, February 2011. Application of the directives on the ground varies depending on the UML's presence and influence. In some districts the UML has been holding awareness campaigns about the constitution-writing process and "why it is being delayed"; in others increasing its membership by targeting defectors from other parties, particularly the UCPN(M); in still other areas, conventions are being organised for the first time in a decade, and the local leadership is planning for the next election. Crisis Group interviews, Kathmandu and telephone interviews, February-March 2011.

wants to set the agenda. It cannot just react to national politics and count on the uncertain rewards of opportunism.<sup>60</sup>

#### D. MADHESI PARTIES

Madhesi parties could mount the most systematic pressure on the government to either deliver a constitution or dissolve the CA. Supported by New Delhi, most of them are now calling for dissolution.<sup>61</sup> But this position is rife with contradictions. The constitution and federalism remain Madhesi demands and most of these parties also oppose the state restructuring commission. The CA is thus their only option. Their current position could be tactical, to push for a change of government near 28 May or to gain concessions on state restructuring. Disruption, particularly in the form of highway shutdowns aimed at Kathmandu, requires modest human and other resources and is a handy tool, even if there is a limited appetite for mass mobilisation or the price for the Madhes is deemed too high. More serious interventions, such as violent protests, could be a game-changer, particularly if anonymous violence against civilians continues simultaneously.

There have been splits and threatened splits in every Madhesi party, but these are usually more about individual disagreement and re-alignments in patronage networks rather than differences of opinion on political aims and strategies. A split in the MJF(N) is periodically threatened, and if this happens while the party is in government, it would weaken the coalition.

Madhesi parties often act and are treated as a bloc, and their role at the centre determined by the need to make up the numbers, rather than substantive alliances. There have

been tactical revivals of the United Democratic Madhesi Front (UDMF), supported by New Delhi, as a means of collective bargaining for ministerial portfolios and, often secondarily, the Madhesi agenda and a new constitution, in exchange for support to this government and the last.<sup>62</sup> Upendra Yadav's MJF(N) often breaks ranks; it joined the present government and urged the UDMF to vote for Prachanda last year. The demand for a single autonomous Madhesi state is understood to be tactical and often appears half-hearted.<sup>63</sup> Like the Maoists, the Madhesi parties are representatives of a broader social movement, in addition to being political parties; they will continue to play the politics of numbers in Kathmandu while reserving the threat of agitation outside.

The Madhesi parties face a number of challenges. Political dynamics in the Tarai have changed, but the elite actors have largely not, nor has their extractive attitude to Kathmandu politics. The parties' conspicuous self-interest does them no favours at a time when manufacturing and agriculture are barely limping along. As quickly as these parties were formed and gained support, so could their support base shrink for these and other reasons, including new political contenders.<sup>64</sup> If the Tharu movement mobilises

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<sup>60</sup> A stark reminder was the 38th anniversary in March 2011 of the Jhapa uprising, Nepal's first violent communist action and a cornerstone of the UML's narrative. The UML memorial program in the morning drew a scant couple of hundred people. The Maoist program later in the day was attended by approximately 10,000. "Maoists eyeing UML revolutionaries", *The Himalayan Times*, 10 March 2011.

<sup>61</sup> Bijay Gachhedra of Madhesi Janadhikar Forum (Loktantrik), MJF(L); Rajendra Mahato of Sadbhavana Party (SP); and Mahanta Thakur of the Tarai Madhes Loktantrik Party (TMLP) together visited New Delhi in mid-March 2011 and had a series of high-level meetings. They returned to Kathmandu threatening to launch a movement and calling for dissolution of the CA. MJF(L) is the largest Madhesi party with 28 seats and Gachhedra was deputy prime minister under PM Nepal. The SP and TMLP are both small and have suffered splits, but Thakur, who had a distinguished career in the NC before forming his own party in 2007, is sometimes seen as more than a Madhesi leader and was suggested as a compromise prime minister in a potential alliance between the UCPN(M) and Madhesi parties. For more on the Madhesi parties, see Crisis Group Report, *Nepal's Election: A Peaceful Revolution?*, op. cit.

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<sup>62</sup> The UDMF comprises the MJF(N), MJF(L), SP and TMLP. The split in the MJF and Upendra Yadav's willingness to work with the Maoists does not preclude attempts by the coalition to work together. In July 2010, all four parties presented to both the UCPN(M) and NC a concept paper outlining their three priorities: the peace process, constitution-drafting and Madhesi issues. The paper demanded implementation of the 2008 22-point and August 2007 eight-point agreements; guarantees of an autonomous Madhes province; steps to ensure reservation of Madhes in state organs; keeping decision-making in the CA rather than handing it over to a state restructuring commission; making the NA inclusive, including through bulk recruitment of Madhesis. The Maoists were also asked to sever ties with combatants and complete integration and rehabilitation in four months, and disband the YCL. The NC responded by stating that the demands for group entry into the NA, a single autonomous Madhes province and revoking of the decision to form a state restructuring commission were "vague and require[d] clarity". The Maoists responded unequivocally that they did not support the "one Madhes-one province" demand and the application of standard NA norms for integration and rehabilitation of Maoist combatants, and, infamously, that they did not accept "pluralism" as a philosophy in the new constitution.

<sup>63</sup> In later negotiations on government formation in 2010, the UDMF took the single Madhesi state off the table, but while Bijay Gachhedra's MJF(L) explicitly renounced the demand, other parties have not. In private all acknowledge that other groups living in the Tarai will need to be accommodated and that it will be difficult to avoid being connected to the north. Crisis Group interviews, March 2011.

<sup>64</sup> Crisis Group interviews, Kathmandu, February-March 2011. One political analyst explained: "Dignity alone is no longer enough and caste politics has a limited life-span; Madhesis look

again, the Madhesi parties would have to be accommodated. In Kathmandu, the parties, acting singly or in concert, will have to decide how best to leverage their strength for long-term gains. Other than the MJF(N), which appears to tolerate being left out in the cold occasionally, the Madhesi parties will need to balance their reliance on New Delhi, the utility of their support for a “democratic” alliance led by the NC (or UML, if it is in the mood), and the staying power and more supportive political agenda of the UCPN(M).<sup>65</sup>

## E. OTHER ETHNIC PARTIES AND MOVEMENTS

The most significant ethnic organisations do not expect the CA to meet their demands for ethnic federalism and say they will wait for the 28 May deadline to begin mobilising. The organisational landscape remains fragmented. The Federal Democratic National Party (FDNP), itself an offshoot of the Federal Democratic National Forum (FDNF), has lost its most influential Tharu representative, Laxman Tharu, who parted way to focus on building his base in the western Tarai.<sup>66</sup> This is a loss for ethnic activists who have been trying to form a broader *janajati* [indigenous nationalities] front.

However, leaders of various Limbu, Khambu and Tamang groups remain in contact to discuss consolidation of their networks and future strategies. These informal networks include activists from FDNF and FDNP, who advocate peaceful agitation, but also members of militant groups such as the Kirat Janabadi Workers Party (KJWP).<sup>67</sup> Scattered and declared defunct after a series of arrests in 2010, the KJWP has shown signs of regrouping; in March 2011 it burned a village development committee office in Udaypur.<sup>68</sup> In the eastern hills, at least, if *janajati* networks decide a protest movement is necessary to push for their vision of federal restructuring, the conditions are ripe and there would be significant public support. Much will depend on the state's response, the tools activists use, and the compromises individual leaders may be willing to make.

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across the border at a resurgent Bihar and also want economic improvement”.

<sup>65</sup> Crisis Group interviews, Kathmandu, February-March 2011. See also Tulanarayan Saha, “Madhesi morchako gulami prabriti”, *Kantipur*, 22 March 2011.

<sup>66</sup> For an overview of the most important ethnic parties, FDNF and FDNP, see Crisis Group Report, *Nepal: Identity Politics and Federalism*, op. cit., pp. 13-14.

<sup>67</sup> See Crisis Group Report, *Nepal: Identity Politics and Federalism*, op. cit., p. 16. Crisis Group interview, FDNP leader, Kathmandu, January 2011.

<sup>68</sup> “Workersdvara saharakima agajani”, *Nepal Samacharpatra*, 3 March 2011.

## F. TRADITIONALLY ROYALIST PARTIES, ROYALISTS AND THE HINDU RIGHT

There is more acknowledgement among these constituencies than within the NC or UML of the staying power of the UCPN(M) and of their own poor organisation.<sup>69</sup> Many traditionally royalist actors are now conservatives who accept that a return of the monarchy will be difficult and possibly even undesirable. They see Maoist entrenchment taking place through the new constitution and expect the UCPN(M) to secure a majority in the next general election, which will allow it to consolidate its control over the organs of the state. Since these gains will be, broadly speaking, legitimately won, the only counter the right wing sees to the Maoists now is through a broad “democratic alliance”. That seems like wishful thinking for parties whose structures in the districts are languishing and who look to the NC for leadership.

The far right continues to argue for Hindutva, or Hindu nationalism, restoration and preservation of the traditional privilege of the monarchy, dissolution of the CA, and a referendum on basic peace process commitments including federalism, secularism and republicanism. In its reading, Maoist totalitarian ambitions will be countered with an “authoritarian regime that will come into power disguised as a democratic front”.<sup>70</sup> Radical Hindu groups remain marginal, but are gradually increasing their organisational capacity. With minority groups asserting themselves and largely ineffectual political counterbalances to Maoist dominance, the royalist and Hindu right could see the conditions for retaliation falling into place.<sup>71</sup>

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<sup>69</sup> For instance, the re-unification of the Rashtriya Janashakti Party and Rashtriya Prajatantra Party announced on 6 February 2010, has not yet been formalised at the Election Commission. “RPP, RJP unite after five years”, *ekantipur.com*, 6 February 2010.

<sup>70</sup> Crisis Group interview, Kathmandu, February 2010.

<sup>71</sup> See also Crisis Group Report, *Nepal: Identity Politics and Federalism*, op. cit. The Nepal Defence Army (NDA), for example, remains more or less a one-man show, despite the arrests in March 2011 of some members in possession of explosives. The NDA's leader is in prison in Kathmandu for the 2009 bombing of the capital's oldest mainstream church in which three people died. But the members arrested recently told police that their aim was extortion and to create general instability. “Rajdhanima difens armika hartakarta pakrau”, *Annapurna Post*, 5 March 2011. There are legitimate groups that are not promoting violence yet, like the Hindu Swayamsewak Sangh, whose head says that “[a]s long as Nepal is a Hindu majority state, there is no danger to religious minorities. What we don't want them to do is convert”. Amish Raj Mulmi and Pranab Kharel, “A saffron wave”, *The Kathmandu Post*, 5 March 2011. Conservative Hindus are anxious about secularism not only because of the Maoists and the overturning of the old order, but also because of the visible proliferation of churches and foreign evangelical Christian groups. The next census,

## G. INDIA AND THE INTERNATIONAL COMMUNITY

India's position on the Maoists faces major challenges. The current government makes many in New Delhi deeply uncomfortable about what they call "left entrenchment" and includes the MJF(N) led by Upendra Yadav, India's least favourite Madhesi politician. The prospect of this alliance achieving some success, such as promulgating large parts of the constitution and securing an extension of the CA if needed, is difficult for parts of the Indian establishment to swallow. But it is nevertheless time for New Delhi to evaluate the costs of its overt micromanagement of Nepali politics: the strengthening of ultra-nationalist anti-Indian positions among the Maoists and the extreme right, as well as the opening up of space for day-to-day Chinese influence. New Delhi has also assumed that Beijing's influence in Nepal is increasing, particularly because of the Maoists, and that this poses a threat to India. This is sometimes a self-fulfilling prophecy, as the isolated Maoists would understandably seek support where it could. The Maoists are not the only actors who court China either.<sup>72</sup>

If New Delhi follows its line of keeping the Maoists out by any means to its logical conclusion, that would mean dissolution of the CA, and possibly a period of presidential

rule before elections.<sup>73</sup> Myriad factors would need to come together for this to transpire, including splits in some of the ruling parties and various actors dropping the demand for a new constitution. If political actors in Nepal adopted this approach to leverage concessions from the UCPN(M), they would need to believe they could control the outcome. For example, it looks unlikely that in the general election that will follow, the Maoists will fare too poorly.

In New Delhi, this position is now being framed not so much in terms of the Maoists ignoring India's strategic interests or challenging the traditional relationship between India and Nepal by courting Beijing, but pose a serious threat to Nepal's hard-won democracy. In this account, India, although willing to work with anyone in power in Kathmandu, no matter how unpleasant, will do everything it can to help defend democracy.<sup>74</sup>

The UML-Maoist-MJF(N) alliance is a timely reminder for India (and China and other international actors) that its influence is variable and depends on Nepali actors, however hegemonic the relationship between the two countries may be.<sup>75</sup> India is now on the Security Council, and Nepal is still on the Security Council agenda. Despite its diplomats' claims that India can take care of its "rough neighbourhood"<sup>76</sup>, New Delhi's narrative of its dealings with Nepal could be challenged.<sup>77</sup> Beyond that, India

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scheduled to start in June 2011, is likely to show a decline in the number of Nepalis who identify as Hindu and, although some will switch to another identification such as Buddhist or animist, the number of Christians is likely to increase. Evangelical missions say that Dalits are no longer the primary targets for conversion; these days, poor Buddhists are equally attractive. Crisis Group interviews, October 2010 and February 2011.

<sup>72</sup> Crisis Group interviews, New Delhi, Kathmandu, February, March 2011. See also Prashant Jha, "Re-engagement", *Nepali Times*, 11-18 March 2011. When King Gyanendra took over in 2005, he agreed to close down the Kathmandu office of the Tibetan government-in-exile. Every government since then has allowed Chinese security forces to tighten border controls – occasionally deporting Tibetan travellers and refugees caught crossing illegally despite a decades-old Nepali policy of allowing them safe passage – in return for pledges of increased aid and soft loans. In March 2011, for the first time ever, the Chief of General Staff of the Chinese People's Liberation Army (PLA) visited Nepal. During the visit, which must have given New Delhi the vapours, General Chen Bingde pledged over \$17 million directly to the Nepal Army from the PLA. Traditionally, annual Chinese military assistance to Nepal has ranged from \$1 million to \$13 million. Indian aid still prevails, though; in December 2009, when Chief of Army Staff General Chhatraman Singh Gurung visited India, he was promised nearly \$55 million. Saroj Raj Adhikari, "Sainya sahayogko hodbaji", *Kantipur*, 26 March 2011. See also Pradip PM Malla, "China's Emphasis on Pancha Sheel", *People's Review*, 31 March-8 April 2011 for justification of the Nepal Army's openness to China and its PLA.

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<sup>73</sup> Crisis Group interviews, New Delhi, Kathmandu, February, March 2011.

<sup>74</sup> This dovetails with the rhetoric of many Nepali actors – the NC, Madhesi parties other than MJF(N), royalists, the Nepal Army – who disagree with each other, but who all feel threatened by the Maoists as well as by the prospect of reform and diversified political space.

<sup>75</sup> Moreover, New Delhi's clients in specific parties and state institutions aside, it is not only communist and right wing Nepali nationalism which is defined in opposition to India. There is also the state-sponsored understanding of nationalism dating to King Mahendra's reign in the 1960s, and reactions to overt Indian involvement in Nepal's politics.

<sup>76</sup> This is cited not only as a general claim but also with specific reference to Nepal's Maoists. Crisis Group interview, New Delhi, February 2011.

<sup>77</sup> New Delhi's efforts to oust UNMIN and, by extension, its backing for challenges mounted to the CPA and AMMAA won international support because of the dubious notion that UNMIN was hindering progress on the peace process by protecting the Maoists and maintaining the status quo. The stagnation in the peace process was more due to the largest party being kept out of government, than because a small political UN mission and its handful of unarmed monitors were singlehandedly propping up the Maoists. Crisis Group interviews, Kathmandu and New Delhi, January-February 2011.

needs to update its position or risk an attrition of its historical influence in Nepal.<sup>78</sup>

For the rest of the international community, it is best to allow Nepali actors to set the development and political agenda; to respond to the clear commitment to reform of institutions in the CPA; and to remember that Nepal's peace process is about more than just integration and the announcement of a new constitution.<sup>79</sup> Donors must review their own methods of operating and analysis to see whether continuing business as usual makes sense. This includes making realistic matches between what government agencies can spend and what donors would like to give, and refraining from proposing vague conditionalities that will not be followed through.<sup>80</sup>

#### IV. OTHER PEACE PROCESS COMMITMENTS

There has been limited implementation of the CPA and related agreements, and the Nepali state has entered into 24 agreements with specific groupings, ranging from organisations of landless people to representatives of major ethnic groups, to armed groups.<sup>81</sup> Many of these commitments will be addressed by the new constitution and state restructuring,

<sup>78</sup> For example, the first senior Nepali leader to visit New Delhi and have high-level meetings after Khanal was elected prime minister was Surya Bahadur Thapa, leader of the small Rastriya Janashakti Party. Although a veteran democratic leader formerly of the royalist persuasion, Thapa no longer has the influence within Nepal to create a democratic alliance.

<sup>79</sup> The "Peace and Development Strategy" issued in January 2011, four years after the signing of the CPA, by major donors including the UN and EU, does take the CPA as its basis and acknowledges the need for greater transparency in donor spending. Mukul Humagain, "Donors unveil new development strategy", *The Kathmandu Post*, 13 January 2011. It took over a year to draft amid such differences of opinion that at least one major development partner withdrew from the process. Crisis Group interview, Kathmandu, February 2011.

<sup>80</sup> Ministries routinely report not having the capacity to spend their annual budgets. In November 2010, major multilateral and bilateral donors issued a letter to the government of Nepal, stating that the slow pace of the peace process, the political deadlock and lack of leadership were making it difficult to justify mobilising resources for Nepal. "Donor concerns", *Nepali Times*, 24 November 2010. In March 2011, the UK Department for International Development (DFID) announced that it would increase aid to Nepal from £57 million (\$91 million) in 2010/11 to £103 million (\$165 million) by 2014/15. Also in March 2011, USAID announced a new \$30-million Nepal Economic Agriculture and Aid Program.

<sup>81</sup> This does not include the more than half-dozen bilateral and multilateral agreements reached between the political parties since the CPA and arms and armies agreements were signed.

but overall momentum for wide-ranging institutional reform has faltered. There has been limited, if any, implementation of laws already passed on inclusion. Governance, the most immediate peace dividend, does not inspire confidence. Widespread political and bureaucratic corruption remains the norm, the economy is limping along and the infrastructure crumbling. No deep reform on these fronts can be expected soon, but they must at least be put back on the agenda. Tangible progress on security sector reform can and should be a priority.

#### A. DEMOCRATISATION OF THE NEPAL ARMY

The Nepal Army resists any impetus to reform. Since 2006, control of the Nepal Army has been transferred from the king to the president, but little else has changed. NA loyalists argue that the institution should not be "politicised", that it is unfairly persecuted when it is in fact the most cohesive, responsible, nationalist, united and representative body in Nepal, and that to criticise it or push for reform is an anti-national impulse.<sup>82</sup>

Yet, in the last year alone, the chief of army staff lobbied for the exit of UNMIN in August 2010 at the urging of politicians (who were quick to deny any role); relations between him and the former defence minister have deteriorated sharply; a group of officers bypassed the chain of command to complain about promotions directly to the prime minister; in Kathmandu and New Delhi lobbying is already underway regarding who will be the successor to the present chief; and discontent within the military is privately acknowledged to fall along patronage and identity-group lines.<sup>83</sup>

Some of this politicking undoubtedly stems from political leaders playing favourites and relying on individuals within the army in an attempt to gain institutional support.<sup>84</sup> But

<sup>82</sup> See for example, Trailokya Raj Aryal, "Challenges ahead for Nepal Army", *Republica*, 2 March 2011.

<sup>83</sup> CoAS Gurung is hardly the first to use politics to get ahead, as some senior retired NA officers admit in private. Crisis Group interviews, Kathmandu, January-February 2011. On the disagreements between the defence minister and army chief, see for example, Bikash KC, "Defence Minister sits on CoAS' reshuffle bid", *Republica*, 9 January 2011. On discontent and ethnic tensions, see "Byarekbhitra sainik bidroha", *Jana Aastha*, 30 March 2011; and Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit., fn 287.

<sup>84</sup> In September 2009, Defence Minister Bidhya Bhandari publicly went to bat for the NA, arguing for recruitment for existing positions (in contravention of a Supreme Court stay order) and saying that the CPA and AMMAA needed to be amended to allow for resumption of arms and ammunition procurement. So vocal was the minister that her own party and cabinet colleagues felt the need to distance themselves, and in January 2010, the cabinet said that her views were not official. The personal and factional nature of the loyalty between the NA and



together, it gives lie to the conceit that the NA is, in comparison to mere politicians, a pure world unto itself; there is factionalism, criticism from its own, political lobbying and lack of transparency aplenty.<sup>85</sup>

The need for financial transparency is a sensitive aspect of NA reform. There have been some attempts to make the Army Welfare Fund (AWF) more transparent. But in January 2011, the auditor-general's office, which has oversight of the fund, said that it was not transparent and did not follow Army Welfare Regulations.<sup>86</sup> Procurement and accounting for peacekeeping earnings and spending are not subject to rigorous oversight from outside the NA, not least because the defence ministry is very weak.<sup>87</sup>

The last government's Comprehensive Work Plan for Democratisation of the Nepal Army should not be taken as a portent of changes to come, quite apart from the fact that it

needs to be reviewed by the new government.<sup>88</sup> The document, which is neither comprehensive nor a work plan, might generously be called a strategy document. The NA is understood to have had input into the drafting of the plan, and therefore it usefully explains how the institution, and those who believe its autonomy could provide a bulwark against the Maoists, see the NA's future.<sup>89</sup> It posits democratisation as something that should be done "despite limited resources". It makes no reference to the various allegations of impunity and arguments for enhanced civilian oversight which underpin the "democratisation" commitment.<sup>90</sup>

It allows parliamentary oversight to be enhanced on logistics and training, but says that details of military strategy and operations should be kept secret, which contradicts international standards for information sharing and accountability for decision-making in democratically controlled armed forces. There is no mention of reforming the military court or of the need to determine the relationship with civilian investigating bodies and the judiciary. It glosses over the range of areas requiring greater transparency in a single clause.<sup>91</sup> On inclusion, widely acknowledged as a critical component of NA reform, it says only that entry of historically marginalised groups "shall be ensured by law", with no recommendations for affirmative action.<sup>92</sup>

Neither the democratisation plan nor the national security policy drafted by the same committee addresses the serious and substantive overhaul that the defence ministry

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Madhav Nepal's government, and the resistance to civilian control of the NA became apparent later in 2010, when Minister Bhandari and Chief of Army Staff Chhatraman Singh Gurung have locked horns since late 2010 over promotions and transfers of senior officers as well as over Gurung's proposal to reorganise the divisional responsibility of five two-star generals. "NA defers transfer of brass", *ekantipur.com*, 14 November 2010; "Defence minister sits on CoAS' reshuffle bid", *Republica*, 9 January 2011.

<sup>85</sup> On favouritism and politicking within the NA, see for example, "Uparathi Gaurav Shumsher Rana lai khula patra", *Sanghu*, 21 March 2011. On the NA's questionable priorities during the conflict, see Ranadhoj Limbu, "Lessons of war – I", *The Kathmandu Post*, 23 February 2009; and Ranadhoj Limbu, "Lessons of war – II", *The Kathmandu Post*, 24 February 2009. Brigadiers Limbu and Dilip Rayamajhi resigned from the Nepal Army in March 2007, saying that the army had become politicised and that the rules for promotion were not being followed. See "Army politics", *Sanghu*, 26 March 2007. Some argue that the Nepal Army is now more, and not less autonomous than it used to be before the peace process. Dipak Gyawali, "What 'dramatic political gains', Ms Landgren?!", *Spotlight*, 25 March 2011.

<sup>86</sup> Bikash KC, "Irregularities dog NA Welfare Fund", *Republica*, 19 January 2011. For example, in 2009/2010, the AWF earned Rs.746.7 million (\$10.3 million) and spent Rs.1.24 billion (approximately \$17 million), though it is not allowed to spend beyond its interest earnings. The fund has about Rs.16 billion (about \$215 million) in reserves. "Kalyankari Darpan", Nepalese Army Welfare Action Plan Directorate, 2010. Its projected earnings from interest payments in the 2010/11 fiscal year were Rs.930 million (about \$12.65 million). "Senako byajai arab nago", *Kantipur*, 8 August 2010. Recent media reports citing NA officials claim that the fund has over Rs.480 million (more than \$6.5 million) in failing banks. "NA millions caught in BFI cleft stick", *The Kathmandu Post*, 29 January 2011.

<sup>87</sup> The defence ministry has never been more than a P.O. box, though in recent years some international assistance has been offered to strengthen it.

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<sup>88</sup> See for example "Govt floats plan to democratise army", *The Himalayan Times* online, 6 January 2011; and "Army democratisation plan hits rough weather", *The Kathmandu Post*, 2 March 2011.

<sup>89</sup> Crisis Group interviews, February 2011.

<sup>90</sup> *Nepali Senako Lokantrikaranka Lagi Bistrit Karyayojana*, 2 August 2010.

<sup>91</sup> "Ensuring transparent and an accountable working culture: based mainly on decentralisation of power, accountability to the government; clear mandate, role, and responsibilities; income and expenditure of welfare fund; retirement, promotion, transfer, training, seminar; and on the selection of peacekeeping forces". "Main Priorities for Action Plan", *ibid*.

<sup>92</sup> *Ibid*. Elsewhere, the NA has a clear position on inclusion: "Recruitment is voluntary and competitive. Hence forcing citizens to sign up in the proportion of the demographic break-up of the nation would violate the rights of the people who may not want to join the Army and at the same time be unfair to those qualified and wishing to join". And "[v]arious Madhesi castes make 14.25 per cent of total population ... whereas only 6.26 per cent are seemingly serving in the army. The cause for this lesser degree of inclusion seems to be the lack of interest on the part of Madhesi communities to join military services. There is, for instance, almost no representation of Madhesi in the British or Indian Gurkhas". Available at: [www.nepalarmy.mil.np/inclusiveness.php?](http://www.nepalarmy.mil.np/inclusiveness.php?)

needs.<sup>93</sup> The security policy is another uninspiring document. In addition to listing “socio-economic challenges and threats”, which could describe a wide range of civic and identity movements, it spells out in detail that the NA can be mobilised in practically any situation including, for example, “[to prevent] destructive activities”.<sup>94</sup> It also does not explain how the optimal, appropriate and affordable size of the NA will be determined, or question the future of the paramilitary APF, which was formed for counter-insurgency purposes in 2001 and is now, at 30,000, twice its original size.<sup>95</sup>

## B. GOVERNANCE

As complicated as the issue of state restructuring is, urgent decisions need to be made on the implementation of a broad political settlement on it, and the restoration of local governance. Although local government has been as prone to bureaucratic and political corruption as other structures and mechanisms of the state, the politics and design of the transition has nevertheless been particularly hard on it. The last election to local bodies was in 1998.<sup>96</sup> Local bodies are now nominally headed by civil servants who have little will or ability to challenge local political dynamics. This means that the all-party mechanisms they head are essentially a means for political parties to divide up the spoils of local government budgets with no accountability. Local elections will at best be another interim measure until the federal structure of the state is decided

and the changes rolled out; these polls should ideally be conducted at the same time as the next general election.<sup>97</sup>

High-profile procurement scandals and abuse of authority in the past year further underlined the institutional tolerance, even support, for corruption, and the impunity with which members of Nepal's political order and bureaucracy operate.<sup>98</sup> The Supreme Court has begun clearing pending appeals filed against decisions by the special court which deals with corruption. In the last six months, the Commission for the Investigation of Abuse of Authority (CIAA) has filed or announced its intention of filing charges in the past six months against heads of state corporations and the Nepal police, as well as individuals.<sup>99</sup> The legitimacy of political actors is not compromised by their participation in these networks of political, bureaucratic and financial interests and their electoral survival depends more on their complicity in these networks than in pushing

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<sup>93</sup> The committee comprised Defence Minister Bidhya Devi Bhandari; Home Minister Bhim Rawal; Law and Justice Minister Prem Bahadur Singh; Federal and Parliamentary Affairs Minister and Minister for Culture Minendra Rijal; Minister Without Portfolio Laxman Lal Karna; and the defence and chief secretaries.

<sup>94</sup> The “socio-economic challenges and threats” include increasing conflict among communities and evaporating social harmony; economic inequality; ethnic [identification] and regionalism; distribution and utilisation of natural resources; and religious radicalism. The NA can be mobilised in situations where the police fail to maintain internal security; to prevent destructive activities; stop activities that are against national interests; prevent terrorist activities; and “put out resistance”. *Rastriya Suraksha Niti 2067*.

<sup>95</sup> “Armed Police Day special publication”, Armed Police Force Headquarters, 3 November 2010, p. 95.

<sup>96</sup> King Gyanendra did hold local elections in February 2005, but most political parties boycotted them. Turnout was under 25 per cent, but given that the vote took place under a military-backed regime, and that the second multiparty Jana Andolan or People's Movement to restore democracy began shortly after, this election was essentially irrelevant. Voter turnout in the 2008 election to the CA was close to 60 per cent.

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<sup>97</sup> Aditya Adhikari, “Long wait for local government”, *Himal Southasian*, October 2010. Bishnu Prasad Aryal, “Monitoring efforts go down the drain”, *The Himalayan Times*, 30 March 2011. Crisis Group interviews, Kathmandu, March 2011. Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit.

<sup>98</sup> These include a Rs.350 million (\$4.76 million) procurement scandal investigated by the Commission for the Investigation of Abuse of Authority (CIAA), that resulted in faulty armed personnel carriers being sent to Nepali police serving in Sudan, which led to the threat the units would be repatriated, and implicated former home minister (and peace process negotiator) Krishna Prasad Sitaula and former police chiefs; a bidding process for machine readable passports deemed by the Public Accounts Committee to have been faultily conducted; CA members allegedly allowing sale, misuse and tampering of their official passports; and the supreme court directing action against two former CIAA commissioners for abuse of authority. Cash-for-votes too continues to be a feature of Nepal's political machinery. Tapes allegedly leaked by the Indian embassy in Kathmandu during the failed election for a new prime minister in September 2010, reportedly contained Maoist leader Krishna Bahadur Mahara in conversation with a “Chinese” person offering cash to buy MPs. In August 2010, a Madhesi CA member alleged that he had been threatened by an Indian intelligence operative in Kathmandu with the cancellation of his daughter's admission in an Indian-run school.

<sup>99</sup> The CIAA is a constitutional body whose commissioners are political appointees, but as of March 2010, does not have a chief commissioner and is headed by a civil servant. In March 2011, the CIAA announced it would file charges against close to 50 senior police officers including the inspector-general, in connection with the armoured personnel carrier scam. In September 2010, the CIAA filed a case against UML CA members for taking a bribe to appoint a police inspector; in October 2010 directed the state-owned Nepal Telecom to scrap contracts for next generation networks, saying the bidding process had violated the Public Procurement Act of 2007; and in December 2010 against the Nepal Airlines Corporation and its executive chairman for the allegedly unlawful purchase of two Airbus aircrafts.

for systemic reform. But any party that addresses, in perhaps piecemeal but public ways, what is widely recognised as corruption would certainly gain politically.<sup>100</sup>

## V. CONCLUSION

For most of Nepal's political actors, the major elements of the peace process, namely integration and the new constitution, have been reduced to bargaining chips in the struggle for the immediate benefits of power sharing and longer-term re-alignments between and within parties. This is partly due to fatigue from upholding a fictitious notion of consensus and from managing the contradictions between a normative understanding of the peace process as demanding selfless, moral behaviour, and individual and party interests.

Having earlier assented to this framework of the peace process, the polity is now too fragmented and its ambitions and frustrations too broad and immediate to be contained by it. The focus on power through the state and its organs, which is now open to more actors and in more ways than before, is as much part of the transformative process as formal and institutional reform. This contestation is inevitable, and rather than just being bemoaned, needs to be contained and dealt with politically. The first steps towards that are the new constitution, state restructuring and security sector reform. Disbanding the PLA through integration and rehabilitation of its members is essential for progress on any of these fronts.

Sidelined groups have seen they can get Kathmandu's attention by challenging the state through violence. Multiple stress points remain, including sections of the Maoists and future splinter groups, identity-based groups in the eastern hills and the Tarai, a potential alliance of radical royalists, Hindu groups and army loyalists, and efforts to channel public frustration with the clunky dysfunction in place towards support of a "strongman".

The parties may be tired of dealing with the formal peace process, but they are locked into it and are committed to a new constitution. They ignore this at their own peril, even apart from the broader, serious risks posed by abandonment or continued attrition of the process. In the short term, the parties have few incentives to behave other than they have in the last four years. But now their own splintered constituencies are weakening them and wearing away at their ne-

gotiating power. The parties are coming up to what could be a last chance within this framework to reach a settlement that will allow them to function again as full political actors, address their own futures, and put into practice the reforms to which they are committed. Not to do so will mean prolonged, possibly heightened contestation and leave the door open to continued threats to Nepal's flawed but only democracy.

**Kathmandu/Brussels, 7 April 2011**

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<sup>100</sup> For example, the widespread respect for Baburam Bhattarai is in part due to the perception that he personally is "clean" and that he was a competent finance minister. For the many ways in which Nepal's political order as a whole, rather than individual parties, have "captured the state", see Crisis Group Report, *Nepal's Political Rites of Passage*, op. cit.

## APPENDIX A

### GLOSSARY

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AMMAA	Agreement on Monitoring of the Management of Arms and Armies
APF	Armed Police Force
AWF	Army Welfare Fund
CA	Constituent Assembly
CIAA	Commission for the Investigation of Abuse of Authority
CPA	Comprehensive Peace Agreement
FDNF	Federal Democratic National Forum
FDNP	Federal Democratic National Party
INSEC	Informal Sector Service Centre
MJF	Madhesi Janadhikar Forum
MJF(L)	Madhesi Janadhikar Forum (Loktantrik)
MJF(N)	Madhesi Janadhikar Forum (Nepal)
NA	Nepal Army
NC	Nepali Congress
NDA	Nepal Defence Army
PLA	People's Liberation Army
SATP	South Asia Terrorism Portal
SP	Sadbhavana Party
TMLP	Tarai Madhes Loktantrik Party
UCPN(M)	Unified Communist Party of Nepal (Maoist)
UDMF	United Democratic Madhesi Front
UML	Communist Party of Nepal (Unified Marxist-Leninist)
UNMIN	United Nations Mission in Nepal
YCL	Young Communist League

## APPENDIX B

### MAP OF NEPAL



## APPENDIX C

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