

# NEPAL'S POLITICAL RITES OF PASSAGE

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## NEPAL'S POLITICAL RITES OF PASSAGE

### EXECUTIVE SUMMARY

Nepal's transition from war to peace appears chaotic. Many commentators warn of coming anarchy; the establishment fears a collapse of the social order and the fragmentation of the nation. But such fears are misguided. Nepal is not in chaos; its transitions may be messy and confusing but they are not anarchic. There is an order within the political change, albeit one that can be mysterious and unappealing to outsiders; the resilience of Nepal's political processes acts against fundamental transformations.

This report attempts to understand the country's political processes and cultures and reassess the state of the peace process by examining three major questions.

Has Nepal put its civil war with the Maoists behind it? The shift from war to peace was rapid and remains incomplete. But the peace process is much stronger than it often seems. There have been significant structural transformations of the Maoist movement since the 2006 ceasefire. For example, the shift to "quantity rather than quality" for electoral politics broadened the movement but diluted its revolutionary core. Still, the Maoists remain highly organised and disciplined – and the most effective political force in Nepal.

The political atmosphere is more polarised than ever. Factions within the major parties as well as fringe groups openly call for a revision of the peace process. Neither side is likely to go back to war easily but there are also limits to how hard they can be pushed. The Maoists are by now better prepared for open politics than for war. But they will not accept sidelining indefinitely. The army has some elite support for renewed conflict. But it is unlikely to act without Delhi's nod, which is itself improbable unless there is unexpected Maoist domination of the state.

Do the multiple, complex new forms of political violence and contestation add up to serious new conflict risks? There has been a mushrooming of political parties and groups pressing ethnic and regional agendas. There has also been a perceived increase in organised crime and political violence. Many see this as a direct consequence of the Maoist insurgency and fear the prospect of anarchy or national disintegration.

The picture, however, is not so simple. None of the new groups challenges the state in the way the Maoists did. They offer no existential threat to the political system but largely work within it; their cadres have often joined under low risk conditions for immediate benefits and lack the dedication of hard-core Maoists. Opportunism is the name of the game, and groups are making the most of the weak law and order situation during the transition.

The ways violence is used are ordered and bounded by political and economic structures. The involvement of mainstream parties, police and administration officials in profiting from violence and offering protection is becoming institutionalised. Political culture as a whole has not been transformed but has become more tolerant of overt use of force; the patterns that are being consolidated will be hard to uproot.

The only real risk of serious unrest stems from the gathering backlash against federalism and programs for political inclusion, such as quotas and reservations. Powerful elites are not keen on dismantling the unitary state and are even less happy to relinquish their privileged access to jobs, money and political power. The transition to federalism will present the most serious challenge, and conflict risk, of the near future.

What is the new role and nature of the state, as embodied by the security forces, political institutions and the civil service? How the state behaves is of critical importance in reducing conflict risks. In the most immediate terms, the state's response to instability can be seen in policing and public security efforts. These have been undermined by a lack of strategic clarity, the politicisation of policing and internal rivalries within the security sector. In any case, security challenges cannot be dealt with solely by this sector. The roots of instability lie in entrenched political cultures that good policing alone cannot address – and that the army is particularly incapable of tackling. Defusing conflict risks in the long term will require constructive reform.

Development experts assume that the state is there to provide services and that if it fails to do so it will face a crisis of legitimacy. Nepal features high on the lists of

fragile or failing states. But the state is more flexible than fragile. It endures – and has survived the conflict surprisingly unscathed, and unreformed. This is partly because its own *raison d'être* is not serving citizens so much as servicing the needs of patronage networks and keeping budgets flowing and corruption going. The state is dysfunctional by demand. It is slow to reform because elite incentives are invested in the status quo and public pressure is rarely acute.

Nepal's revolution is proceeding in accordance with long-standing political rites. Party behaviour – even revolutionary behaviour – is highly constrained by a set of sophisticated unwritten rules. The Maoists are not the outsiders they sometimes appear: they share a surprising amount of political values with the other parties. But their reincorporation into the political world is still incomplete, as is their revolution.

**Kathmandu/Brussels, 29 September 2010**

## NEPAL'S POLITICAL RITES OF PASSAGE

### I. INTRODUCTION

The euphoria of the April 2006 people's movement that promised peace, democracy and change has given way to renewed violence. The Maoists are out of government and on the streets, threatening "a decisive revolt". In April 2010, the embattled government, which commanded a parliamentary majority (just), prepared to call the army out in its defence. The peace process is in tatters, with its signatories questioning its rightness and relevance. The main parties' youth groups engage in almost daily clashes. The Maoists continue to murder opponents or critics. The Nepali Congress's (NC) activists kill one rival and their student leaders chop off the fingers of another in Kathmandu's main campus. The Communist Party of Nepal (Unified Marxist-Leninist), UML, Youth Force (YF) carries *khukuri* knives and uses the force of arms to protect its leaders and muscle in on contracts.

Armed groups in the Tarai plains kidnap, murder and loot. Ethnic activists warn they will take up arms to secure autonomous states. The elites retrench, turning against secularism, federalism and republicanism. Fear and loathing stalk the capital when the Maoists descend for May Day demonstrations. Youth are disillusioned. With more jobseekers than jobs on offer, most dream of opting out by migrating overseas. The people are close to breaking point, betrayed by politicians who promised the paradise of New Nepal but have delivered only dysfunction and disorder. Critics claim that the Maoists, for some the harbingers of change, still threaten to become the next Khmer Rouge. In the same breath they accuse them of being just like the old parties, only more so.

The state has retreated and delivers neither public security nor public goods. It fails to meet popular aspirations and is unrepresentative, unsuccessful and unloved, teetering on the brink between fragility and failure. The parties have already missed the original deadline of 28 May 2010 for the new constitution. Prime Minister Nepal resigned on 30 June 2010; he continues to head a caretaker government due to the failure to agree on a new prime minister in eight rounds of parliamentary votes since his resignation. The state is close to collapse.

Yet Nepal's politicians have a habit of coming up with last-minute agreements. They trade venomous insults in public but in private tap into a deeper vein of common values and mutual recognition. Their cadres may be knifing each other but the top leaders exchange smiles, handshakes and hugs.<sup>1</sup> They detest each other's politics but quietly convene in district headquarters and far-flung villages to carve up budgets and post-conflict compensation. They take the long-suffering people for granted. But the people take their rulers' behaviour for granted too. The relationship is simultaneously one of grudging tolerance and mutual mistrust. As one district police chief put it, "The people have no trust in the state and the state has no trust in the people".<sup>2</sup> But the people still believe that things are better than during the war and will probably get better yet.<sup>3</sup>

Nepal is not in chaos. Its transitions may be messy but they are not anarchic – and most likely never will be. There is structure beneath the surface of apparently random events. A sophisticated political culture shapes party behaviour. It defines the parameters for revolt, even when rebels appear to present an existential threat to the status quo. There are rules of the game that must be acknowledged and honoured, as much in the breach as the observance. Even revolution proceeds in accordance with preordained rites.

<sup>1</sup> For the photo of Mohan Baidya, Madhav Nepal, Prachanda and Ishwor Pokharel hugging and grinning, and details on their warm personal relations see: Rajendra Phuyal, "Kahile arop, kahile angalo", *Kantipur*, 16 January 2010. On the three Bahun men at the top of each party: Haribahadur Thapa, Gopal Khanal and Ganga B.C., "3 dal, 3 neta", *Kantipur*, 10 April 2010.

<sup>2</sup> Crisis Group interview, Lamjung, April 2009.

<sup>3</sup> In a 2010 Himalmedia survey, 37.3 per cent of respondents said the situation in the country had improved and another 20.7 per cent said the country's situation was good and could improve gradually. 64.2 per cent said that peace and security in Nepal had improved. "Janata parivartan chahanchhan", *Himal Khabarpatrika*, 29 April 2010.

## A. TURBULENT TRANSITIONS

Nepal is passing through multiple turbulent transitions.<sup>4</sup> In many respects the post-conflict dynamics have cemented the case against a return to war. But the shift from war to peace was rapid and remains incomplete. The root causes of the Maoist insurgency have barely been addressed, redress for past wrongs has been minimal and steps to guard against repetition only tentative. The relatively straightforward structure of the ten-year war has given way to a more complex scenario, in which new demands and new actors have gained prominence. The “peace process” is a reassuring concept but only embraces certain aspects of the transitional processes. It has not delivered a linear progression from conflict to stability. Instead it has prompted new conflicts and reinforced more cyclical patterns of political violence.

The two armed parties have maintained a solid ceasefire since the immediate aftermath of the April 2006 people’s movement. But violence has not ceased: there have been hundreds of killings in the Tarai, high-profile assassinations in the capital and major cities, repeated armed clashes between political party youth wings and violent competition for state and private resources.<sup>5</sup> Maoist combatants are yet to be integrated and rehabilitated.

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<sup>4</sup>Recent Crisis Group reporting on Nepal’s transition includes Asia Report N°163, *Nepal’s Faltering Peace Process*, 19 February 2009; Asia Report N°173, *Nepal’s Future: In Whose Hands?*, 13 August 2009; and Asia Report N°184, *Nepal: Peace and Justice*, 14 January 2010. Full Nepali translations of all reports and briefings from 2007 onwards are available at [www.crisisgroup.org/nepali](http://www.crisisgroup.org/nepali).

<sup>5</sup>Statistics on violent incidents in Nepal are weak and often contradictory. Nevertheless, the data does present a relatively accurate picture of the scale of violence in the country. The Informal Service Sector Centre (INSEC) puts the number of killings since the April 2006 ceasefire at between 1,883 and 1,893. INSEC’s Human Rights Yearbooks from 2006 to 2009 and Trend Analyses for 2010 report a total of 1,883 killings from the April 2006 ceasefire to June 2010 (252 from May to December 2006, 545 in 2007, 541 in 2008, 473 in 2009 and 72 from January to June 2010). The same yearbook numbers, when combined with the most recent “Report on killings” for 2010, estimates 1,893 (the difference being 82 from January to May 2010). Between 2007 and 2009, 886 people were injured in violent clashes (199 in 2007, 357 in 2008 and 330 in 2009). See Nepal Human Rights Yearbooks 2008 to 2010, INSEC; Monthly Trend Analyses January-June 2010, INSEC; “Report on killings”, January–May 2010, INSEC. The period between mid-April 2008 and mid-April 2009 saw a record 768 strikes and 1,011 road blockades. Kosh Raj Koirala, “2065 B.S.: A Year of Strikes”, [myrepublica.com](http://myrepublica.com), 14 April 2009. Since then, from May 2009 to July 2010, there have been 140 days of blockades. “Protests, Rallies, Bandhs and Blockades Maps May 2009-July 2010”, OCHA, [www.un.org/n/maps/mapssubcategory=2&subsubcategory=43](http://www.un.org/n/maps/mapssubcategory=2&subsubcategory=43).

Other parties accuse the former rebels of maintaining their youth wing, the Young Communist League (YCL), as a paramilitary outfit. The UML and some other parties have responded by building their own forces. At the same time, Maoist cadres have been the major victims (apart from unaffiliated citizens) of lethal violence. At least 79 party workers have been killed during the ceasefire period.<sup>6</sup> Successive governments have promised to restore law and order. But since the launch of a much-vaunted “special security policy” in August 2009, there have been hundreds of killings.<sup>7</sup>

## B. POLARISED PERSPECTIVES

There are starkly divergent views on current patterns of instability. The Maoists, and most of the newer political movements, insist that rapid social transformation is the solution. But for many others, too much uncontrolled change is itself the problem. Some feel that there is already too much democracy – that unbridled demands for rights have eclipsed formerly stable social responsibilities. Others argue that the problem lies not in calls for rights but in the state’s inability to respond to them. Those who argue for fundamental change tend to accept instability as a natural aspect of the transition. Others, including many senior representatives of the state and the older political parties, fear a catastrophic breakdown of national unity, discipline and the social order.

Many see instability as a consequence of the Maoist insurgency. It undermined the state and taught people to “follow the Maoists’ example” by using violence in the name of political mobilisation.<sup>8</sup> “We’ve started a very

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<sup>6</sup>In March 2010, a Maoist newspaper estimated 72 Maoists had been killed since the peace deal. “Shantipraksiyapachhi 72 Maobadi karyakartako hatya”, *Janadesh*, 2 March 2010. Since then at least seven more have been killed. “Report on the killings”, INSEC, March 2010-May 2010 at [www.inseconline.org/index.php?type=reports&id=2&lang=en](http://www.inseconline.org/index.php?type=reports&id=2&lang=en); “YCL cadre ‘murdered’”, *Republica*, 10 June 2010; “PLA man found dead”, *Republica*, 27 June 2010; “YCL leader shot dead in Bara”, *The Kathmandu Post*, 30 July 2010.

<sup>7</sup>The state-owned newspaper puts the number of people killed “under various pretexts” between the launch of the home ministry’s special security plan (SSP) on 17 August 2009 and early March 2010 at 58. “Special security plan to be bolstered”, *The Rising Nepal*, 4 March 2010. INSEC reports a total of 225 killings for the same period (182 from September to December 2009 and 43 in January and February 2010). “Nepal human rights yearbook 2010”, INSEC, February 2010, p. 371; Monthly Trend Analyses, January-February 2010, INSEC. Because of the discrepancy in INSEC’s own figures as noted in fn. 5, estimates for the number killed from the SSP launch to June 2010 are either 254 or 264.

<sup>8</sup>Arguments along this line often also draw on the fact that many leaders of post-Maoist movements were with the Maoists

worrying tendency: 'If I can get ahead in politics by killing a man then I'll kill'", observed one social worker in a restive district.<sup>9</sup> "We're now experiencing the product of the conflict – we're reaping what was sowed", commented a chief district officer (CDO).<sup>10</sup>

For some, increased ethnic and regional mobilisation threatens national disintegration. "Look at the upsurge in ethnic activism, with every group suddenly jumping up to demand rights", complained a senior official. "This is the poison the Maoists have fed them".<sup>11</sup> More often than not, such fears are related not solely to organised political movements but to a broader concern at the breakdown of traditional deference and social hierarchies. "The whole social order has disintegrated", complained one police officer. "Look at the language young people use – they no longer respect their elders".<sup>12</sup>

For the Maoists and groups campaigning on ethnic and regional agendas, however, the slow nature of change in social and political structures is the problem. Reform and transformation would answer calls for greater rights; unrest is caused not by raising demands but by failing to address them. In this view, the current transition will be productive. But it will be rocky unless and until the state and major political actors embrace the need for more dramatic change. As one district-level Maoist leader explained when asked why his party had not participated in Democracy Day celebrations in 2009, despite leading the government:

We have our own definition of *loktantra* (democracy). The *loktantra* we have now is incomplete and we don't recognise it as *loktantra*. Let Christians celebrate Christmas and Muslims Eid; we'll celebrate the days that fit with our values and beliefs in the same way – but this *loktantra* does not. For some people what we have now is already too much *loktantra*. For others, this much is just fine. But we think there is much further to go. People's rights are still not secured. We're only partly along the way so we say very frankly that we're still struggling – peacefully – to achieve the goal of all people getting full rights.<sup>13</sup>

The halting nature of political change and the difficulties of forging consensus or delivering results have led to a widespread sense of frustration. The public is impatient

with the police and administrative officials; other parties are impatient at the Maoists' failure to complete a transformation; the Maoists are frustrated at the blocking of their agenda and their failure to regain a place in government; security forces are impatient with an unhelpful political leadership. Public security may not have reached crisis point but there are growing questions of legitimacy and confidence. Peace has not lived up to its promise, either for those who sought a return to the old order or those who hoped for radical change.

There is also a widely shared sense that while the conflict was bloody it offered certainties that were, in comparison to the more confusing post-ceasefire scenario, reassuring. "There was plenty of *shanti-suraksha*<sup>14</sup> during the conflict", said one police officer. "People knew where they stood and were only scared of the Maoists, the rest was OK".<sup>15</sup> Some police and army personnel suggest that it would have been easier if there had been a fight to the finish and one clear victor, whether the Maoists or the state.<sup>16</sup> Maoist activists also look back fondly on the armed struggle. Back then they knew who their enemies were and focused on a single-minded political-military campaign.<sup>17</sup> Many have found it harder to cope with the messy realities of working peacefully in a fragmented, pluralist environment.<sup>18</sup>

### C. QUESTIONS AND CULTURES

Many questions about the peace process remain open. Was the twelve-point agreement a mistake? Can the Maoists ever be "mainstreamed"? Could one side have eventually achieved a decisive victory if there had not been a ceasefire? Was the restored parliament justified in declaring Nepal a secular state? Should the monarchy have been removed (at all, or without a referendum or real electoral choice)? Was signing up to federalism a mistake?

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<sup>14</sup> Literally "peace and security", but a phrase that in many contexts equates to "law and order".

<sup>15</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>16</sup> A police officer who had fought against the Maoists said: "Sometimes I feel nostalgic for the conflict. At least we knew where things stood. It was tough and dangerous but there were two sides and we had a sense of purpose. It might have been easier now if we'd gone for a final battle. Instead no one won and no one lost so we're in this confusing situation. A more clear-cut outcome might have been better, whoever won". Crisis Group interview, Parsa, April 2009.

<sup>17</sup> Crisis Group interviews, Maoist cadres, Salyan and Banke, February 2010.

<sup>18</sup> A Maoist area in-charge and veteran of the movement said: "We can't go ahead in a one-sided way. We need to work with others. It's a much more complicated situation." Crisis Group interview, Banke, February 2010.

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earlier, even though some of them only for short periods of time. Well-known examples include the Tarai armed group leaders Jai Krishna Goit and Jwala Singh, Madhesi leader Upendra Yadav and Tharu leader Laxman Tharu.

<sup>9</sup> Crisis Group interview, Kalaiya, 5 April 2009.

<sup>10</sup> Crisis Group interview, Kalaiya, 5 April 2009.

<sup>11</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>12</sup> Crisis Group interview, Arghakhanchi, 21 April 2009.

<sup>13</sup> Crisis Group interview, Lamjung, 24 April 2009.



But there are really three key questions. First, can the Maoists be accommodated within the existing political order with mutual compromises – and with some productive transformation? Second, do any of the other challenges to traditional politics and the state add up to game-changing forces? Third, what will be the role of the state?

The answers require looking at transformations, institutions, ideologies and – the central thread of this report – political cultures. “The War That Was” (Section II) asks to what extent the civil war has been resolved; “The Conflicts to Come” (Section III) assesses the nature of new threats to stability. Questions of institutions, relations and processes are most fully developed in the third section. Despite its critical role, the state hardly ever receives serious consideration – in Crisis Group’s reporting or elsewhere. “The Enduring State” (Section IV) tries to redress the balance by examining the nature, interests and behaviour of the state, and asking how these factors affect the prospects for conflict resolution and the risks of greater unrest.

This report does not directly address Nepal’s immediate priorities, such as constitution-writing or power-sharing. Future reports will address some of these issues such as the debates over federalism. This report draws on long experience of politics in the capital but is based primarily on interviews carried out beyond Kathmandu, in around half of Nepal’s 75 districts across all five development regions.<sup>19</sup> It offers some fundamental re-readings of the peace process and Nepali politics in general to help interpret events. But it does not offer any neat prescriptions. It is therefore presented as a background paper without recommendations.

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<sup>19</sup> Crisis Group attempted to visit a fair cross-section of districts, but travel plans were affected by practical considerations and the far-western region is woefully under-represented, with just two research visits to Kailali. Crisis Group visited many of the more interesting, or sensitive, districts more than once and, in some cases, repeatedly. Research took place from February 2009 to March 2010, although some interviews are from before and after that period.

## II. THE WAR THAT WAS

### A. PEACE, PROCESS

The peace process is much stronger than it often appears. The compulsions on the parties to collaborate – even as they maintained major political differences – guarded against complete collapse, in particular in the early stages. At the same time, the “peace process” does not adequately describe the reality of recent political change. The critical negotiations were those that preceded the peace, in particular the series of talks and expanding engagement with the Maoists that led to the November 2005 twelve-point agreement.<sup>20</sup>

The May 2006 ceasefire delivered a durable military truce. But the negotiations since then have done little more than reiterate, or elaborate, the basic configuration developed in 2005. There have been elections, a transition to a republic and a declaration of federalism. But progress has not been linear. The war is indeed over but there is much unfinished business.

#### 1. The compulsion to collaborate

The compulsions that led to the peace process were fundamental. Realising that they could not win militarily, the Maoists needed the parties to get back into mainstream politics. For the parties, the alliance with the Maoists was the only way to restore democracy. The conflict was reshaped with the abolition of the monarchy; the Maoist-state polarisation re-emerged and has in fact worsened since the Maoists’ resignation from government in May 2009. While this has exacerbated the sense of a return to the old adversarial shape of conflict, it has also made clear that a war would not be any more decisive now than it was then.

The old compulsions have been complemented by new pressures. One is the flow of resources that the peace process precipitated. Many of the efforts made under its framework receive significant outside funding, from the allowances for the Maoists’ cantoned People’s Liberation Army (PLA) to interim relief payments for conflict victims.<sup>21</sup>

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<sup>20</sup> See Crisis Group Asia Report N°106, *Nepal’s New Alliance*, 28 November 2005.

<sup>21</sup> The World Bank’s Emergency Peace Support Project has pledged \$50 million to the government of Nepal, \$18.55 million was earmarked for payments to cantoned Maoist combatants and \$28.23 million for conflict victims and their families. The grant for cantoned Maoist cadres was suspended after reports of misuse. The World Bank now plans to reassign the money to conflict victims. “Restructuring Paper on a Proposed Project Restructuring of Nepal Emergency Peace Support Project”, World Bank, 22 April 2010. The Nepal Peace Trust Fund

In order not to upset donors and keep funds flowing, the parties accept their terminology and some formal structures and ensure some targets are reached, regardless of connections between the formal peace process and actual political struggles.

The benefits of political cooperation are immediate and tangible and all parties need them to sustain their patronage networks. "How does an all-party meeting work?" asked a district education officer. "Students who've failed their exams pressure the principal to pass them; he comes to the CDO, who calls an all-party meeting to help resolve the situation. The NC, UML and Maoists look at the list, say 'OK – that's three of our people each, let's pass them' and they get passed".<sup>22</sup> The reason why some institutions set up under the peace process work is precisely because they have been co-opted by such political processes. The Local Peace Committees (LPCs) are a case in point. Some of them have stalled over disagreements over chairmanships or the distribution of interim relief payments.<sup>23</sup> But in many cases compromise was reached,

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(NPTF), with a donor commitment of approx. \$54.5 million, has allocated 54.94 per cent of its budget to cantonment management (including a subsistence allowance of Rs. 72-110 (approx. \$1-1.5) per day to each combatant through the Local Cantonment Management Committee) and physical infrastructure for the cantonments. "Four monthly progress report: Report No. 9", Ministry of Peace and Reconstruction, Government of Nepal, July 2010. Complementing the NPTF is the United Nations Peace Fund for Nepal (UNPFN) with a total budget of \$32.1 million. It has allocated \$1.2 million for the verification of Maoist combatants, \$14 million for the rehabilitation and reintegration of discharged combatants and more than \$11 million for conflict victims and transitional justice institutions. All the funds are channelled through UN agencies, particularly UNDP, UNICEF and OHCHR. "UN Peace Fund for Nepal Fact Sheet", UNDP, 14 June 2010. All parties try to profit from interim relief and compensation for victims. For example, the NC submitted a list of 1,328 supporters killed during the conflict to Prime Minister Nepal, demanding the government declare them martyrs and compensate their families. Balkrishna Adhikari, "Kangresdvara 13 say 28 shahidko nam prastav", *Naya Patrika*, 19 April 2010. Different from the Rs. 100,000 (approx. \$1,300) interim relief for a conflict victim, the families of government-declared martyrs are entitled to Rs. 1,000,000 (approx. \$13,000). Similarly, the Maoists sometimes press for their supporters to be categorised for example as internally displaced persons (IDPs). In Bhojpur, for example, disagreement over declaring Maoist supporters IDPs was one reason for the Maoists to boycott the LPC. Crisis Group interview, human rights activist, January 2010.

<sup>22</sup> Crisis Group interview, April 2009.

<sup>23</sup> For example in Palpa, the Maoists started boycotting the LPC after accusing its coordinator, an NC leader, of hiring NC supporters as LPC staff. Earlier, there had been a dispute when the newly formed UML-led government stopped paying the LPC secretaries appointed under the Maoist-led government. Narayan Pangeni, "Kangres karyakarta raheko shanti samitima

relief payments were handed out (though not necessarily to victims) and the LPCs now function as effective all-party bodies for negotiating local issues.<sup>24</sup>

The effects of politicisation are enabling because they are limiting at the same time. A senior civil servant in a western district said: "Yes, there's the odd incident but overall the situation is good. The parties talk aggressively sometimes but they actually work together. The local peace committee is up and running and the more they do the better – they can solve problems".<sup>25</sup> Informal distributions provide a stable framework in which political tensions can play out with a degree of certainty that the rules of the game will not be called into question.

## 2. Unfinished business

The ceasefire ended armed conflict, the Maoists entered open politics and elections were held in April 2008. But much other business remains unfinished. The Maoists have only returned some of the property they seized.<sup>26</sup> Many people displaced by them are still afraid to return.<sup>27</sup>

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charko matbhed", *Janadisha*, 6 April 2010. In a rare case, the parties in Nuwakot altogether failed to form an LPC and had to return the budget of Rs. 650,000 (approx. \$8,600). "Samiti nabanda rakam phirta", *Nepal Samacharpatra*, 16 April 2010.

<sup>24</sup> For example in Syangja a 21-member LPC had been set up by April 2009 and appeared to be functioning well. According to a senior government official all parties cooperate and the committee investigated problems and enabled compensation claims. Crisis Group interview, Syangja, 20 April 2009. In Dhankuta, 103 names of people killed during the conflict had been submitted to the Ministry of Peace and Reconstruction and at least 40 had received relief payments by January 2010. Crisis Group interview, government official, Dhankuta, January 2010. A journalist in Taplejung said that most of the relief payments have been made, but that UML, NC and Maoists had each nominated one non-victim as well. Crisis Group interview, February 2010. A human rights activist in Banke said about interim relief: "Not all [victims] have received it; but all fake cases have". Crisis Group interview, February 2010.

<sup>25</sup> Crisis Group interview, Gulmi, 21 April 2009.

<sup>26</sup> The Maoists appear to have returned most of the land they seized during the conflict in the central and eastern Tarai as well as in the hills. The situation is different in the mid and far western Tarai, where they appear to hold on to most of the seized land. "Land commitments in Nepal's peace process only partially fulfilled", The Carter Center, June 2010.

<sup>27</sup> In a 2009 survey of IDPs conducted by the Norwegian Refugee Council, 38 per cent of respondents said they did not want to return to their place of origin due to a lack of security. "Distant from durable solutions: Conflict induced internal displacement in Nepal", Norwegian Refugee Council and the IDP Working Group, June 2009. A 2008 INSEC report on IDPs in the Mid-Western and Far-Western Development Regions cites trauma caused by Maoist assaults on returnees who refused to support them in the CA elections as a major factor for the reluctance of

Crimes committed by both sides remain unaddressed. There has not been a single prosecution in a civilian court, nor has either the Truth and Reconciliation Commission or the Commission on Disappeared Persons been formed.<sup>28</sup> "Peace isn't here yet, absolutely not", said a government official, "We've got respite from the conflict but not social peace. People are still at risk and there's a sense that anything can happen at any time".<sup>29</sup> But there is also confidence that there will not be a return to war. For example, some heavily hit areas have seen significant investment.<sup>30</sup>

The failure to address these issues has prolonged the conflict hangover. Social mistrust and fear are still deep, exacerbated by continuing intimidation and violence; there have been a number of revenge killings. Incidents like the killings of three Maoist cadres in Dhungesanghu village development committee (VDC) of Taplejung during 2009 are not isolated episodes.<sup>31</sup> The general atmosphere of mistrust is tangible. Maoists outside Taplejung are convinced

they were attacked for revenge;<sup>32</sup> Maoists in the district itself suspect attempts to provoke them into counter-violence.<sup>33</sup> Others are worried that even the slightest incident could result in clashes and all recognise that minor disputes quickly escalate into *khukuri* violence.<sup>34</sup> And "whatever the cause of violence", an NGO representative said, "every case becomes politicised".<sup>35</sup>

The question is how far any of the unfinished business matters for the peace process and what of it could result in a return to conflict. Whatever has not been addressed primarily affects those constituencies not powerful enough to force addressing. Conflict victims have been used as bargaining chips by all parties, but do not have any leverage. Their grievances persist as background pressure and translate into local violence but not into national politics. None of the pending issues is important enough for any of the decisive parties to go back to war or force major political confrontation.<sup>36</sup>

## B. STRUCTURAL TRANSFORMATIONS

The reason the Maoists were – and remain – important is that they represented an existential challenge to the state and the political system. No other movement has presented a systematic and fundamental challenge of this nature. Nor are they likely to. The other parties are neither transformed nor transformative. The Madhesi parties are no exception. They introduced a new single agenda but otherwise operate in the same ways as other established parties. While individual politicians are open to new ideas, the erstwhile "mainstream" parties are uninterested in, and incapable of, significant reform. They not only *represent* the status quo (in terms of political culture and program); in many respects they *are* the status quo. Their role, defined by circumstance as well as free will, is precisely *not* to change and *not* to offer innovation.

This is not to say that the Maoist demand for transformation is necessarily legitimate, or as consistently planned and pursued as their private and public pronouncements claim. Whether they will be primarily a force for transformation, primarily transformed by more powerful forces, or a mixture of the two, is the central question of the transition. The answer is not yet clear. But there is already

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IDPs to return. "Shashastra dvadvama madhya ra sudurpashchimka antarik vishapit", INSEC, September 2008, p. 13.

<sup>28</sup> For details see Crisis Group Report, *Nepal: Peace and Justice*, op. cit. Both bills were tabled in parliament in April 2010. Amendment proposals have been submitted and the bills are now awaiting discussion. Crisis Group telephone interview, peace ministry official, Kathmandu, June 2010. But there has been no substantive progress. On commitments to transitional justice as mere lip-service: Janak Nepal, "Sankramankalin nyay bhashamai simit", *Kantipur*, 27 March 2010.

<sup>29</sup> Crisis Group interview, Arghakhanchi, 21 April 2009.

<sup>30</sup> In Dang, a number of new mid-range hotels and multi-storey houses have been built over the last couple of years. Three new cement factories have opened in the districts to cater to the building boom. Crisis Group interview, journalist, Dang, February 2010. A hotel owner in Bhojpur had had money set aside for expanding his hotel since during the war, but built only after the peace deal, citing concerns over showing his wealth. Crisis Group interview, Bhojpur, January 2010. Land prices both in Dang and Bhojpur have gone up significantly. Crisis Group interviews, January-February 2010.

<sup>31</sup> During the conflict, children were among the first killed in Taplejung: a fifteen-year-old girl was killed by the Maoists and a fourteen-year-old boy was shot dead by the police inside a classroom, both in December 2001. This set the stage for particularly nasty violence. Between 2001 and 2006, just over 200 people were killed in Taplejung (129 by the security forces and 50 by the Maoists), of whom 75 per cent had been living below the poverty line. 32 of the Maoists' victims were abducted and tortured. The residents of some villages were heavily targeted. For example, security forces killed four Limbu villagers from one ward in Tapethok VDC between November 2001 and January 2003, either shooting them on sight or after arrest. All were poor but had no affiliation with the Maoists. "Dash varshe dvandvama Taplejung", *Vatavaran Samrakshan tatha Vikas Manch*, Taplejung, July 2009, p. 19.

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<sup>32</sup> Crisis Group interview, UCPN(M) district secretary, Dhankuta, 24 January 2010.

<sup>33</sup> Crisis Group interview, UCPN(M) district in-charge, Taplejung, February 2010.

<sup>34</sup> Crisis Group interviews, Dhungesanghu, 4 February 2010.

<sup>35</sup> Crisis Group interview, Taplejung, February 2010.

<sup>36</sup> The extent to which political violence committed by new groups is a result of the conflict is discussed in Section III.A.2.

more evidence of structural change than most interpretations admit.<sup>37</sup>

## 1. Entering the game

The Maoists gave up strategies as well as institutional structures for access to mainstream politics. Among the first and most visible changes were the “dissolution” of the Maoist parallel state and the cantonment of the PLA. On the face of it these were huge concessions, which were criticised by some, for example the Indian Maoists, as capitulation.<sup>38</sup> The practical impact was minimal, given that the “people’s government” existed in name only and the PLA remained a deterrent against a return to war even while in cantonments. But the ideological implications were profound. Both implied a renunciation of the claim to full parallel legitimacy and de facto recognition of the legitimacy of the old state.

The shift to electoral politics required the Maoists to change how they recruit and to redefine basic tactics. Rather than being a purely cadre-based party with strict admission criteria, they now needed “quantity rather than quality”.<sup>39</sup> While tactics in the past had aimed at “disruptive domination”, they now had to establish a permanent organisational presence capable of campaigning widely.

With mass mobilisation came greater financial pressures. The Maoists used their presence across the country to assert their claim to political space and a share in local budgets and other state resources. Better organised than other parties in many places, they successfully muscled their way into local bodies such as consumer committees, forest user groups and school or hospital management committees.<sup>40</sup> They not only secured new financing for the expensive electoral competition and the maintenance

of their extensive party structure but also obtained access to local state and para-statal appointments for their cadres.

Individual cadres had to learn the new rules of the game. Only a handful of Maoist leaders had any experience in parliament and none of them in government when they entered the interim government on 1 April 2007. They faced adversaries who knew precisely what they were doing and had well-established networks in the bureaucracy. The Maoists made early efforts to build similar networks.<sup>41</sup> They also reached out to and reassured the business community.<sup>42</sup>

Entering open politics came with serious risks, but the transformation was less radical than the classic guerrilla to politician dichotomy might suggest. Despite their limited parliamentary experience, the Maoists had always been a political party. Even during the war, their organisational structures and ways of operating reflected this.

## 2. The wary embrace

The Maoists do have a different view of the state to other parties. They are still a revolutionary party in philosophy and wish “the people” to be actively involved in defining and protecting their own interests. This means keeping the state subordinate to the people – and has set them on a collision course with other parties in constitution-writing, especially their view of the judiciary and their belief that there should be a fundamentally reconstructed security sector.<sup>43</sup> Many Maoists express a genuine belief in popular

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<sup>37</sup> Most recent reporting on the Maoists, including Crisis Group’s papers, has focused more on ideological and policy issues than on structural factors. See for example Crisis Group Asia Report N°132, *Nepal’s Maoists: Purists or Pragmatists*, 18 May 2007, work by analysts like Kiyoko Ogura, who offers detailed descriptions of formal changes in structure and policy, most analysis by journalists (for example Aditya Adhikari’s work) – and the bulk of writing by Maoists themselves, be it the prolific journalism in Maoist and other publications, or the rash of books that have appeared as some comrades find more time on their hands.

<sup>38</sup> See Crisis Group Report, *Nepal’s Future: In Whose Hands?*, op. cit., p. 12. Late Azad, spokesperson of the CPI(M), reiterated this position in a long interview in *The Hindu*, 14 April 2010, available at [www.thehindu.com/multimedia/archive/00103/Edited\\_text\\_of\\_12\\_2\\_103996a.pdf](http://www.thehindu.com/multimedia/archive/00103/Edited_text_of_12_2_103996a.pdf).

<sup>39</sup> Crisis Group interview, NC district leader, Musikot, 22 February 2010.

<sup>40</sup> For a discussion of the importance of local bodies for party politics see Section III.B.1.

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<sup>41</sup> Especially in key ministries, they tried to exchange senior civil servants likely to oppose them for ones likely to support them. In October 2008 alone, the Maoist-led government transferred sixteen ministerial secretaries. For example, they made Govinda Kusum, at the time at the ministry for general administration, secretary at the home ministry. Umesh Mainali, who had previously held this position, was transferred three times and ended up at the ministry for science and technology. “Lagattarko saruwa, karmachari sashankit”, *nijamati.com*, 24 December 2008. Kusum is considered to be generally left leaning and the home secretary a plum post, while the ministry for science and technology is seen as one of the least popular postings. Crisis Group telephone interview, journalist, August 2010.

<sup>42</sup> See Crisis Group Report, *Nepal’s Maoists: Purists or Pragmatists?*, op. cit., p. 16.

<sup>43</sup> For example, the Maoist draft constitution does explicitly not grant the federal supreme court authority to rule on the consistency of laws with the constitution. “Janatako sanghiya ganatantra nepalko samvidhan 2067”, UCPN(M), 29 May 2010, Article 154(4). Instead, it vests this power in a special judicial committee under the federal legislature. *Ibid*, Article 172(2(a)). The draft grants the federal legislative and executive “unconditional authority” over the security sector, including the army. *Ibid*, Article 247(2). The president is defined as supreme commander; the army’s commander-in-chief is appointed by the president on recommendation of the council of ministers and

action, armed if need be, as a legitimate means to resist oppression. This central strand of Maoist thinking appears to be intact despite the compromises of the peace process; it naturally colours approaches to the state. It also raises equally genuine fears in other parties that the Maoists are not willing to accept pluralistic norms or subordinate themselves to the constitutional and institutional order.

Still, the Maoists are not anarchists. Far from it: they have warily embraced the state, even if they would like to rebuild it.<sup>44</sup> They believe in authority, and occasionally indulged their authoritarian streak once in government, stressing the need for order and discipline.<sup>45</sup> They adhere to the Leninist line that state power is all that really counts.<sup>46</sup> They resent newer movements' disrespect of the state – although they might respect them if they dared challenge the state directly.<sup>47</sup> In short, the Maoists want to control the state; they do not want it to wither away or collapse.

There has been one major shift in their stance. The peace has in effect led them to abandon their promise to smash the state. The Maoists have accepted much of the state in

its previous incarnation, albeit with certain caveats.<sup>48</sup> The post-ceasefire period changed the state, and the Maoists' relation to it. Government gradually returned to many rural areas, with the withdrawal of Maoist parallel bodies and the re-establishment of police posts. As an assistant CDO commented, "The Maoists used to be *very* suspicious of every administration decision but now they understand our role and support us. It's a big change".<sup>49</sup>

Gaining a stake in the state, and government, has reshaped Maoist behaviour. But the impact has been mixed. For example, it appears that while the Maoists were in government they returned much more land than when they were in opposition.<sup>50</sup> At the same time, however, the YCL behaved far worse when its parent party was in power.<sup>51</sup> Their unexpected electoral success threw up new opportunities to lock the Maoists into pluralist politics but also sowed confusion.

There was not the immediate, complete transformation that some had hoped for: "Yes, the situation is much better than during the conflict but the great hopes we have hadn't been realised. We hoped that having a Maoist prime minister would quickly make them behave responsibly – but in fact the Maoists are still working with threats and intimidation".<sup>52</sup> Nevertheless, the Maoists' orientation towards the state has probably changed irrevocably: a return to seeking its elimination is highly unlikely. Contestation is increasingly taking place within established state structures; even on constitutional issues there remain few fundamental disagreements with other parties.<sup>53</sup>

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can be removed by the council of ministers in accordance with the law. Ibid, Article 249.

<sup>44</sup> "Look, the army and the courts are still not working to the government. Obviously a conflict situation is still there. No one is greater than the state – and this government is now an elected one with a mandate. Remember it was when Gyanendra pretended he was above the law that he got kicked out". Crisis Group interview, UCPN(M) district secretary, Lamjung, 24 April 2009.

<sup>45</sup> For example: "Other parties *want* instability – they don't want to let us govern and don't want to let us have any credit". Crisis Group interview, Lamjung, 24 April 2009.

<sup>46</sup> "*The proletariat needs state power*, the centralised organisation of force, the organisation of violence, both to crush the resistance of the exploiters and to *lead* the enormous mass of the population – the peasantry, the petty bourgeoisie, and semi-proletarians in the work of organizing socialist economy". Lenin, *State and Revolution*, p. 14 (emphasis added). From [www.cym.ie/documents/State\\_Rev.pdf](http://www.cym.ie/documents/State_Rev.pdf), which uses the Peking 1976 edition. Also "As long as we are in the minority we carry on the work of criticising and exposing errors and at the same time we preach *the necessity of transferring the entire state power* to the Soviets of Workers' Deputies, so that the people may overcome their mistakes by experience". Lenin, "The Tasks of the Proletariat in the Present Revolution" (also known as the "April theses"), published in *Pravda* on 7 April 1917. Available at: [www.marxists.org/archive/lenin/works/1917/apr/04.htm](http://www.marxists.org/archive/lenin/works/1917/apr/04.htm). This is the origin of the Bolshevik slogan "All power to the soviets!" that was bizarrely rendered into Nepali and used on banners soon after the April 2006 people's movement. Crisis Group interview, 26 April 2010.

<sup>47</sup> Crisis Group interviews, Maoist district leaders, January-February 2010.

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<sup>48</sup> Baburam Bhattarai may still have said "we will create havoc" in front of cadres in Butwal in 2009. Suvash Devkota, "Ekdaliya shashan ko chahana", *Himal Khabarpatrika*, 20 March 2009. What is more remarkable is that the Maoists have challenged and fought other parties but done next to nothing to destabilise the state since 2006.

<sup>49</sup> Crisis Group interview, Arghakhanchi, 21 April 2009. A senior police officer compared the relatively calm atmosphere in Rukum and the discipline of the Maoist cadres with the unrest and resistance by ethnic activists he found in his previous deployment in an eastern hill district.

<sup>50</sup> The Carter Center notes three periods during which the Maoists returned the most land: right after the CPA, immediately before the 2008 CA elections and while they led the government. "Land commitments in Nepal's peace process only partially fulfilled", op. cit., p. 10.

<sup>51</sup> Possibly because of greater opportunities for political protection. On the use of violence by parties see Section III.B.

<sup>52</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>53</sup> Federalism is the only fundamental transformation of the state the Maoists still hold out for, see Section IV.C.1. On major shifts in the Maoists' ideology see Crisis Group Report, *Nepal's Maoists: Purists or Pragmatists?*, op. cit.

### 3. Form and substance

The Maoists transformed their organisation to match the requirements of open politics. They increased their presence through new recruitment and expanding their fraternal organisations,<sup>54</sup> often taking in individuals they would earlier have rejected as “feudalists” or “anti-social elements”.<sup>55</sup> In particular, the Maoist trade unions have been successful in broadening their base, supported by popular projects like the campaigns for an increased minimum wage, the regularisation of employment contracts and the introduction of a service charge in hotels and restaurants.<sup>56</sup> The Maoists now have an organisational presence and levels of activity unrivalled by other parties.

Despite their expansion, the Maoists maintain a surprising level of discipline. This is partly explained by the party retaining and adapting past strengths like the large number of full-time workers for its organisational core. Full-timer numbers vary greatly, but in many districts reach into the hundreds.<sup>57</sup> The simple conditions under which these cadres often live indicate their dedication.<sup>58</sup>

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<sup>54</sup> For a list of fraternal organisations see Crisis Group Asia Report N°104, *Nepal's Maoists: Their Aims, Structure and Strategy*, 27 October 2005, p. 11.

<sup>55</sup> For example, in Dang, a local landlord with property near Ghorahi joined the YCL to bolster his joint case with a neighbouring landlord (who is with the Rastriya Prajatantra Party) to have the nearby house of a landless person demolished. The house of the latter had been on the contested plot of public land for the past 34 years. Crisis Group interview, land rights activist, Ghorahi, 19 February 2010. The Maoists were desperate to recruit numbers and muscle in urban areas, where they had little hold during the conflict. A UML youth leader cited the example of Khalanga in Salyan, where the Maoists had only recruited a single person during the war. Crisis Group interviews, Salyan, 20 February 2010; NC leader, Rukum, February 2010.

<sup>56</sup> Industrial action by the Maoists' All Nepal Federation of Trade Unions (ANFTU) likely contributed to the August 2006 raise in the minimum wage. The demand for regularising employment contracts had been raised by other unions before, but the Maoists appear to press for it more successfully. Robert Kyloh, *From Conflict to Cooperation: Labour Market Reforms that can Work in Nepal* (Geneva, 2008), ch. 5. A 10 per cent service charge in hotels and restaurants was agreed on in January 2007, with Maoist trade unions, among others, involved in brokering the deal. “Hoteliers agree to 10% TSC”, *ekantipur.com*, 1 January 2007. In late 2009, the Maoist-affiliated All Nepal Hotel Workers' Union secured salary raises for hotel workers in Kathmandu. “Hotel workers get raise”, *The Kathmandu Post*, 17 December 2009.

<sup>57</sup> A journalist estimated the number of YCL whole timers in Dang at 200. Crisis Group interview, Ghorahi, 19 February 2010. An UML youth leader in Salyan compared the UML's eight whole timers to the Maoists' 200 to 250. Crisis Group interview, Salyan, 20 February 2010. Estimates by different

At the same time the Maoists manage to maintain a sense of purpose and organisational cohesion beyond this inner circle. They have dramatically expanded the number of positions within the party and movement; even though humbly remunerated these grant a sense of importance to committed cadres. Similarly important are the regular training and programs held by the party; Maoist cadres across the country are consistently able to argue the party line.<sup>59</sup> Local leaders of other parties are often painfully aware of the advantage the high level of activity grants to the Maoists. An NC leader in Rukum commented on the large number of active, young people in the Maoists and reflected on the ability of his own party to attract them: “We do have young people but no work for them; there is political unemployment, even in Tarun Dal”.<sup>60</sup>

The Maoist capacity for and use of violence has reduced and changed, but not vanished. The cantonment of the PLA was a symptom of its already diminished relevance. Almost simultaneously, the Maoists started establishing the YCL. Although built on the former “people's militia”, the new organisation differed significantly in set-up and purpose. It was initially bolstered by PLA commanders and combatants who never entered the cantonments,<sup>61</sup> and later took in large numbers of young people regardless of previous affiliation with the party. Different from the PLA,

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parties in Bhojpur, including YCL leaders, of the whole timers in the YCL ranged from 120 to 150. Crisis Group interviews, Bhojpur, January 2010. Numbers are not consistently as high across districts. Maoist whole timers in Panchthar number between fifteen and twenty. Crisis Group interview, UCPN(M) district in-charge, Phidim, 3 February 2010.

<sup>58</sup> For example, a dozen YCL cadres observed in Banke lived together in a rented, simple two storey house in a village. They appeared firmly under the control of their female commander. Crisis Group observation, Phattepur, February 2010.

<sup>59</sup> Crisis Group interviews, January-March 2010. “Look at the Maoists: their whole timers still go from Kailali to Bajhang. They still have that dedication. And they are clear. They always know what their line is, their strategy”. Crisis Group interview, human rights activist, Nepalgunj, February 2010.

<sup>60</sup> Crisis Group interview, NC leader, Rukum, February 2010. A Maoist leader put the number of positions in a zonal committee at 191 and in the corresponding district committees at 500. “Maoist can't publicise details of donation”, *ekantipur.com*, 29 April 2010.

<sup>61</sup> An NC leader in Rukum claimed the entire YCL in the district to be former PLA. Crisis Group interview, February 2010. However, a human rights activist said that local thugs in Musikot had joined the YCL after the ceasefire. Crisis Group interview, February 2010. An outlier is Bhojpur, where the YCL deputy in-charge pointed out that the vast majority of the over 100 YCL whole timers in the district, including himself, had been in the PLA. Crisis Group interview, January 2010. The district in-charge recounted how they had brought the former combatants from a nearby cantonment in three batches before the verification process. Crisis Group interview, January 2010.

the purpose of the YCL was not to fight the security forces, but to provide the Maoists with muscle in everyday politics. Organisation and deployment vary widely. In some areas, YCL cadres live together in rented or captured buildings and are involved in parallel policing.<sup>62</sup> But it is difficult to describe the YCL as paramilitary. Camps still appear to be few and far between and in many districts YCL cadres are far less organised.<sup>63</sup>

The Maoist success in appointing loyal cadres to positions in local bodies has brought about new constraints. It would be hard to convince cadres on lucrative posts to go back to war. But it also helps secure organisational cohesion. The appointments bind people closer to the party – which is important where there are real alternatives like Matrika Yadav's CPN(M) in the eastern and central Tarai.<sup>64</sup>

Maintaining the whole timer structure has put less strain on Maoist finances than sometimes argued. It is unlikely to be a major driver for violent capture of local state resources beyond political appointments; nor for involvement in other criminal practices. Maoist whole timers usually receive only a small stipend; the costs for food, lodging and clothes are minimal, since many cadres appear

to live with their families.<sup>65</sup> The Maoists reportedly still have money from the conflict and their time in government,<sup>66</sup> they have access to a wide variety of income sources: property captured during the conflict provides local revenue;<sup>67</sup> so does access to local budgets.<sup>68</sup> Donations are demanded for specific programs.<sup>69</sup> The Maoists have also opened up new legal sources of regular income.<sup>70</sup>

The merger of CPN(Marxist-Leninist-Maoist), Unity Centre (Masal) and CPN(Unified) into the Maoists are significant signs of their perceived strength and permanence.<sup>71</sup> For the three smaller leftist parties attaching themselves to the party which looks likely to capture the majority of the left vote only makes sense. For the Maoists, it demonstrates their ability to deal pragmatically with ideological differences and to transcend the tribalism of having fought the revolution as comrades.

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<sup>62</sup> For example, in Phattepur, Banke district, around a dozen cadres live together and claim to protect villagers from armed robbers. Crisis Group interview, UCPN(M) area in-charge, 28 February 2010. In Dang, the YCL has rented half a *bigha* (approx. 8,317 square metres) of land on which some cadres live. Crisis Group interview, journalist, Dang, February 2010. There are differing accounts of YCL presence in the capital. An April 2009 article in *Deshantar Saptahik*, an NC-affiliated weekly, citing a Home Ministry report claims there are about 100 YCL camps in Kathmandu valley that house almost 8,000 YCL cadres. "YCL-baare grihako gopya prativedan", Kedar Subedi, 26 April 2009. *Kantipur* more recently reported only 28 YCL camps in and around the capital (twenty in Kathmandu, one in Lalitpur and seven in Bhaktapur) and estimates that around 2,000 YCL cadres live in these camps. "YCL arhasainik samrachanamai", 22 January 2010.

<sup>63</sup> For example, despite the over 100 YCL whole timers in Bhojpur (see fn. 67), there are only two VDCs in which some of the cadres live together; in Dhankuta there is strong YCL activity, but no signs of camps; Maoist leaders in Panchthar claim that there are over 1000 YCL cadres, but only fifteen of them whole timers. Crisis Group interviews, January-February 2010.

<sup>64</sup> For instance, the Dhanusha in-charge of Matrika's CPN(M) claimed that many Maoist cadres, including their current district in-charge, had not defected to Matrika because the party had provided them with positions, for example in hospitals or the railway administration. Crisis Group interview, Janakpur, 16 October 2009. Matrika Yadav split from the UCPN(M) in February 2009 and re-formed what he insists is the authentic continuity of the original CPN(M). Crisis Group telephone interview, CPN(M) central leader, June 2010. This report uses "CPN(M)" not for the Maoists before their merger with the Unity Centre (Masal) into the UCPN(M) (see fn. 71), but for Matrika Yadav's party.

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<sup>65</sup> Crisis Group interviews, Bhojpur and Banke, January-February 2010.

<sup>66</sup> Crisis Group interview, UML district chairman, Taplejung, 4 February 2010.

<sup>67</sup> In Bhojpur, for instance, the Maoists depend on the produce of land they captured during the conflict; they argue this is why they are unable to return it. Crisis Group interview, YCL district leader, Bhojpur, January 2010. But overall relatively few plots had not been returned by January 2010. Crisis Group interview, CDO, January 2010. NC leaders themselves were only able to point out a handful. Crisis Group interview, January 2010. In Dang, the Maoists have rented out captured land against a proportion of the harvest. Crisis Group interview, journalist, Dang, February 2010.

<sup>68</sup> Crisis Group interviews, UML district leader, Lamjung, April 2009; UML vice-chairman, Bhojpur, January 2010; NC secretary, Salyan, February 2010.

<sup>69</sup> Crisis Group interview, NGO director, Taplejung, February 2010.

<sup>70</sup> According to a human rights activist in Banke, the Maoists have used the Voluntary Declaration of Income Scheme (VDIS), a tax amnesty for previously undeclared income implemented under Maoist Finance Minister Baburam Bhattarai, to legalise money raised during the conflict, which they now invest. "They have hospitals in Butwal, Dhangadhi, everywhere", he said, also pointing to a hospital in Nepalgunj itself. "The Maoists have money, which they now use for buying houses, land, and so on". Crisis Group interview, Nepalgunj, February 2010.

<sup>71</sup> CPN(M) and CPN(MLM) merged in 2007. "CPN-M, CPN-MLM to unite today", *ekantipur.com*, 24 September 2007. The CPN(M) was renamed Unified CPN(M), UCPN(M), after the January 2009 merger with the Unity Centre (Masal). Crisis Group Report, *Nepal's Faltering Peace Process*, op. cit., fn. 2. The CPN(Unified) came into the Maoist fold in April 2010. "CPN (Unified) in Maoist fold", *The Kathmandu Post*, 4 April 2010.

#### 4. Transforming or transformed?

The transformation of the Maoists is a central concern of other parties. Most want to see the United Communist Party of Nepal (Maoist), UCPN(M), become a “normal” political party.<sup>72</sup> In essence, this means the Maoists accepting the norms of existing political practice, abandoning their revolutionary goals and irrevocably renouncing violence.

But the question of transformation of the state *by* the Maoists is just as critical, if not more so. Despite what many political party leaders pretend, the peace process was not meant just to change the Maoists but to transform the state and political culture. Without the Maoists there would be no republic, no constituent assembly, no federalism and no hope for fundamental change in Nepal politics. But have the Maoists reached the end of their transformative agenda?<sup>73</sup>

#### C. RISKS OF A RETURN TO WAR

More than four years after the peace deal was signed, the political atmosphere is more polarised than ever. Factions within the major parties as well as fringe groups are openly calling for revision of key provisions of the peace process.<sup>74</sup> Defence Minister Bidya Bhandari, the Nepalese

Army's (NA) most voluble and obedient spokesperson, has vehemently opposed army integration and defended fresh army recruitment.<sup>75</sup> Maoist leader Mohan Baidya has consistently called for reviewing the party's current strategy.<sup>76</sup> Many doubt the Maoist commitment to open politics.<sup>77</sup> Some are thinking aloud about a deliberate return to violent conflict. Previously discussed privately within the army and with potential support from Kathmandu middle and upper classes, political leaders have started discussing the deployment of the army more openly.<sup>78</sup> Both the “Sri Lanka solution” and the “Bangladesh model” are talked about in the press.<sup>79</sup> Prime Minister Nepal and various ministers have threatened to mobilise the army against Maoist protests on several occasions.<sup>80</sup>

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janatale bhane girijale maobadisita gareko samjhauta galti thiyo”, *ibid.* Bishwadip Pande, Baburam Bhattarai's personal assistant when the twelve-point agreement was negotiated, criticised opponents of the agreement, emphasising that it was based on a genuine effort by the political leaders involved (and recounting how he drafted it on his own laptop). “Barahabundeka virodhi”, *Nagarik*, 7 January 2010.

<sup>75</sup> For example, Bhandari publicly challenged Prime Minister Nepal on integration. “Defence Minister defies PM-led Special Committee”, *The Kathmandu Post*, 20 January 2010. On army recruitment: “Defense Minister wants CPA reviewed”, *Republica*, 8 October 2009.

<sup>76</sup> For example, he continues to criticise the central committee's October 2005 decision to work towards a people's republic through multi-party democracy. “Maobadiko antarik dvandva: almalma shantipurna karyaniti”, *Mulyangkan*, August 2010. On the October 2005 Chunbang meeting and its importance for the 2005 twelve-point agreement see Crisis Group Report, *Nepal's Maoists: Purists or Pragmatists?*, *op. cit.*, p. 5.

<sup>77</sup> For example: Parshuram Kaphle, “Arko shaktikhori prakaran: virodhvara satta ra senamathi niyantran garna prachandako nirdeshan”, *Rajdhani*, 8 March 2010. A pro-NC weekly warned of the Maoists preparing to use “napalm bombs” in Kathmandu during their May 2010 protests. “Nepa bamko prayog garine”, *Ghatana ra Bichar*, 28 April 2010. On Prachanda as Pol Pot: Pradip Nepal, “Ekkaisaun shatabdika polpotharu”, *Naya Patrika*, 3 May 2010.

<sup>78</sup> This was particularly the case in the run-up to the Maoists' May 2010 protests: “Sena parichalan hunasakchha”, interview with Shankar Pokharel, *Drishti*, 27 April 2010; Rajendra Thapa, “Sena parichalan samvaidhanik? Asamvaidhanik?”, *Rajdhani*, 29 April 2010.

<sup>79</sup> See Crisis Group Report, *Nepal's Future: In Whose Hands?*, *op. cit.*, p. 16. On calls for the “Bangladesh model” see front-page “Chahinchha sakaratmak sainik hastakshep!”, *Punarjagaran*, 18 May 2010. Regular calls for army intervention used to be the preserve of the eccentric publisher's note in *Spotlight* and the entertainingly loony fringe of the right wing, *People's Review* – but the spread to *Punarjagaran* and other mainstream party-allied publications suggests the depths of despair.

<sup>80</sup> For example, “Govt tells army to brace itself”, *The Kathmandu Post*, 28 April 2010.

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<sup>72</sup> On widespread acceptance of the Maoists as a political party see Crisis Group Report, *Nepal's Future: In Whose Hands?*, *op. cit.*, p. 37. According to the 2010 Himalmedia survey, 75.3 per cent say Maoist and YCL behaviour has improved; 24.1 per cent view them as peaceful like any other party; while 23.7 per cent think the Maoists still believe in using arms. 67.5 per cent believe somewhat or strongly that the Maoists have given up arms and violence for good. “Janata parivartan chahanchhan”, *op. cit.*

<sup>73</sup> This is certainly a question that occupies Maoist activists at all levels. Many see the post-war developments like the CA and republic as important achievements and believe that their party still stands for fundamental transformation. A YCL area in-charge said: “There's no way we've abandoned the revolution. We're still struggling for fundamental change. We've achieved the CA elections and the republic”. Crisis Group interview, YCL leader, Banke, February 2010. But critical undertones also exist. For example, a Maoist student leader in Salyan spoke about the need for younger cadres to keep an eye on national leaders and ensure they keep pursuing a revolutionary agenda. Crisis Group interview, February 2010.

<sup>74</sup> A front page story in an NC-affiliated weekly in March 2010 declared the deadlock between the Maoists and the other parties impossible to resolve and proposed to reinstate the 1990 constitution to avoid a constitutional vacuum. “47ko samvidhan nai vikalpa ho”, *Punarjagaran*, 30 March 2010. An article in the same issue claims a *Nepali Times* online reader poll, according to which 62 per cent of the respondents think signing the 2005 twelve-point agreement with the Maoists was a mistake, proves initial doubts about the agreement were correct. “62 pratishat



Continued Maoist and state militarisation is a worrying reminder that both former belligerents remain prepared for a possible return to conflict. In addition to the PLA combatants in the cantonments, those who now form the core of the YCL could easily be transformed into armed squads. The state is increasing the capacity of its security forces, especially in areas relevant for counter-insurgency. Between March and August 2010 the Armed Police Force (APF) increased its numbers from over 25,000 to over 31,000;<sup>81</sup> it has also imported weapons and ammunition from India.<sup>82</sup> The army has resumed infantry recruitment to remain at its current strength;<sup>83</sup> Army Chief Gurung had earlier been quoted as saying that “strengthening the NA means preparing it to maintain law and order during times of conflict”.<sup>84</sup> The army has also demanded an additional Rs. 118 billion (approx. \$1,581 billion) for its Ten-Year Strategic Plan which includes the purchase of ten helicopters.<sup>85</sup> The NA would not accept structural changes which it would perceive to undermine its autonomy from the parties.

However, neither the Maoists nor the army are likely to go back to war easily. The Maoists do not have a reason to. They are well entrenched in local politics and are likely to fare well in future elections. The NA may have the support of some conservative party leaders as well as a good proportion of the Kathmandu elites, but is unlikely to act without Delhi's nod; and that nod is unlikely to come except in extremis. Delhi continues to see the Maoists as a security threat. The most likely scenario for India supporting an army intervention would be severe political confrontation between out of government Maoists and the state with a credible possibility that the Maoists might emerge as the controlling force. The escalation of India's Naxalite problem has so far not changed Delhi's policy towards Nepal's Maoists, but real or purported links between them could be used to legitimise intervention.

The Maoists have strong incentives not to go to war and are unlikely to drive the army to the brink deliberately, but as long as they are united and not fully demilitarised there is a limit to how far they can be sidelined without risking a violent response. As the largest party in the Constituent Assembly, they still believe they have a popular mandate to lead the government and may rethink their current strategy once they have exhausted all peaceful options. They are also likely to respond violently should their local dominance, and with it the financial viability of their organisation, be challenged.

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<sup>81</sup> “MoF okays APF recruitment”, *Republica*, 10 March 2010. Crisis Group interview, APF officer, September 2010.

<sup>82</sup> “Arms import not against CPA: Rawal”, *Republica*, 21 February 2010. According to *Naya Patrika*, there have been thirteen imports of either arms or security equipment for the Nepal Police (NP) and the APF since April 2008, at least three of them under the Maoist-led government. “Dui varshama 13 patak hatiyar kharid”, *Naya Patrika*, 13 May 2010.

<sup>83</sup> More than 50,000 candidates applied for the 3,464 infantry positions for which the NA announced recruitment on 2 August 2010. “57,513 apply for 3,464 NA vacancies”, *Republica*, 9 September 2010.

<sup>84</sup> “NA recruitment must continue: CoAS”, *Republica*, 17 February 2010.

<sup>85</sup> “Army seeks Rs. 118b for strategic plan”, *Republica*, 11 March 2010.

### III. THE CONFLICTS TO COME

New militant groups have become more prominent since the peace deal. Militant ethnic activists and youth wings of political parties are involved in forceful protests like strikes, extortion, kidnapping, killings and clashes over tenders. While a small number of armed groups with an ethnic agenda operate relatively autonomously, most violence is indirectly sanctioned and sometimes directly supported by mainstream political parties.

Not all is good in New Nepal, but not all that is bad is new. Criminal-political links are not a post-conflict phenomenon. Particularly in the Tarai, local leaders and landlords have long used gangs to control local politics.<sup>86</sup> Nationwide, a limited use of violence by political parties to intimidate opponents, influence elections and capture public contracts was already “politics as usual” during the 1990s. As an NC leader in a mid-western district said: “We have all used violence. So has the UML. The UML were worse than the Maoists in the 1997 local elections: they wouldn’t let me visit any of the villages in my constituency”.<sup>87</sup> A UML youth leader in the same district confirmed: “during elections everyone uses violence”.<sup>88</sup> The important question is whether post-2006 political violence is qualitatively or quantitatively different in a way which presents risks of new armed conflict.

For traditional elites it is easy to see the loss of deference and rise of claims by marginalised groups as a negative process. It is tempting to conflate such societal changes with weakened public security. But while the two are connected in some instances, much of the worst violence is committed in struggles involving elites on both sides.

#### A. THE LIE OF THE LAND

The incidence of violence is high, even though evidence from surveys suggests it may not be rising.<sup>89</sup> According to INSEC, 473 people were killed in 2009, the majority in the Tarai. While most perpetrators remain unidentified, organised political groups were responsible for many deaths. Tarai armed groups killed 25 people, the Maoists three, the UML’s YF and the Tharuhat Autonomous State Council (TASC) one each. The state remained the biggest single killer, responsible for 41 deaths.<sup>90</sup> The Office of

the United Nations High Commissioner for Human Rights (OHCHR) collected 57 credible allegations of extrajudicial killings by the state from January 2008 to June 2010.<sup>91</sup>

There is huge regional and local variation in the types of insecurity. Armed group and mafia violence, for example, is rampant in the eastern and central Tarai; it has seen the worst post-ceasefire violence and continues to witness more killings, extortion cases and abductions for ransom than any other region.<sup>92</sup> Disruptive ethnic activism is more prevalent in the western Tarai and the eastern hills. Party clashes flared up around student elections across the country, but largely in urban areas and district headquarters where there are higher education institutions. *Bandas* (strikes) and *chakka jams* (bans on vehicle traffic) have greatest impact on those travelling or living along highways;<sup>93</sup> only if they are extended do knock-on effects like supply shortages affect wider swathes of the population.

Assessing what this violence means for the peace process is difficult. If the unexpectedness of the Maoists’ rise from a small fringe group to a central political player is any indication, then any of the more than 100 supposedly armed groups could be a potential conflict risk. Many base their claim to political relevance on precisely this. But the comparison with the Maoists does not hold up. The aims and strategies of most new groups are fundamentally different; so are the expectations of their cadres, whose reaction to escalating violence is uncertain.

#### 1. Emerging prominent actors

**Political party youth wings.** After 2006, several parties expanded their youth organisations and equipped them with a more militant outlook.<sup>94</sup> YCL and YF are now the

<sup>86</sup> Frederick Gaige, *Regionalism and National Integration in Nepal* (Berkeley, 1979), pp. 145-146.

<sup>87</sup> Crisis Group interview. NC district secretary, Salyan, February 2010.

<sup>88</sup> Crisis Group interview, DNYF leader, Salyan, 20 February 2010.

<sup>89</sup> See below, Section IV.A.

<sup>90</sup> “Nepal human rights yearbook 2010”, INSEC, February 2010.

<sup>91</sup> “Investigating allegations of extra-judicial killings in the Tarai”, OHCHR Nepal, July 2010.

<sup>92</sup> In 2007, 297 out of 545 killings (54.5 per cent) and 521 out of 1,007 abductions (51.7 per cent) took place in the twelve Tarai districts from Chitwan to Jhapa. In 2008, the same region witnessed 282 of 541 killings (52.1 per cent) and 368 of 729 abductions (50.5 per cent). In 2009, 213 of 473 killings (45 per cent) and 158 of 281 abductions (56.2 per cent) took place in the twelve districts. “Nepal human rights yearbook 2008”, INSEC, February 2008; “Nepal human rights yearbook 2009”, INSEC, February 2009; and “Nepal human rights yearbook 2010”, INSEC, February 2010.

<sup>93</sup> *Bandas* take different forms varying in intensity and scope, from the less restrictive *chakka jam*, which bans the use of vehicles, via local or regional *bandas*, which ban vehicle movement and close businesses locally, to the Nepal *banda*, the nationwide shutdown. For a further discussion of *bandas*, see Section III.B.4.

<sup>94</sup> The UML’s YF and the Madhesi Janadhikar Forum’s (MJF) Madhesi Volunteers (now Young Madhesi Forum), responded

most active youth wings. They emerged as the main perpetrators as well as main victims in clashes related to the Constituent Assembly (CA) elections in 2008 and the by-elections in 2009.<sup>95</sup> Political violence is not confined to electoral competition; a significant proportion results from conflicts over state resources, such as public contracts.<sup>96</sup> In other cases party interests are less obvious. Many clashes between youth wings originate in personal disputes and become institutionalised subsequently.<sup>97</sup>

**Tarai armed groups.** Much of the violence in the Tarai is committed in the name of Tarai armed groups; but almost none of it follows an overarching political agenda. Only a handful of groups were active at the time of the first Madhesi movement in 2007, most notably Jai Krishna Goit's Janatantrik Tarai Mukti Morcha (JTMM) and a breakaway JTMM faction led by Jwala Singh.<sup>98</sup> By

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to the threat perceived to be emanating from the Maoists' YCL. The NC has long discussed forming a militant youth organisation called Tarun Dasta. But intra-party controversy over these plans is considerable. "Tarun Dasta against NC principle: Koirala", *ekantipur.com*, 11 June 2010; "Cong at variance over new squad", *The Kathmandu Post*, 13 June 2010. An NC district leader said: "We are opposed to the idea of Tarun Dasta. It may have immediate benefits, but it's destructive. It might set an example for others". Crisis Group interview, Dhankuta, January 2010. Most youth wings claim to provide public security, and there are reports crediting them with fulfilling this purpose. For example: "Nepal at a crossroads: the nexus between human security and renewed conflict in rural Nepal", *International Alert*, October 2007; "YCL to help authorities nab crooks", *The Himalayan Times*, 9 March 2010. Parallel policing is sometimes approved of by local residents. However, most activities of such groups, including violence, fulfil immediate party objectives.

<sup>95</sup> According to the Democratic and Election Alliance Nepal (DEAN), political parties were directly responsible for 64 per cent of the violence leading up to the 2008 CA elections. Out of this proportion, the Maoists and YCL perpetrated 59 per cent. The UML was responsible for 18 per cent. With 67 per cent of the victims, the parties also bore the brunt of the violence. Of this proportion, the NC suffered the most (31 per cent), closely followed by the UML's cadres (30 per cent), and then the CPN(M) and YCL (20 per cent). See "Constituent Assembly Election Observation: Final Report", DEAN, 10 April 2008. Before the April 2009 by-elections, UN OCHA reported clashes between YCL and YF in two districts where by-elections were held. "OCHA Nepal Situation Overview", UN OCHA, 16 April 2009.

<sup>96</sup> The youth wings, especially YCL and YF, are involved in "capturing" tenders. Clashes over tenders are frequent, but often different parties and contractors settle commissions and their distribution peacefully. See Sections III.B.2 and III.B.3.

<sup>97</sup> See Section III.B.3.

<sup>98</sup> On the background of the early Tarai armed groups see Crisis Group Asia Report N°136, *Nepal's Troubled Tarai Region*, 9 July 2007.

now there are dozens of groups, frequently merging and splintering and therefore nearly impossible to track.<sup>99</sup>

**Eastern hills.** Ethnic activism in the eastern hills, demanding autonomous Kirat, Khambuwani and Limbuwan federal states, is becoming increasingly many-voiced. The most active Limbuwan groups are the different factions of the Federal Limbuwan State Council (FLSC).<sup>100</sup> The most

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<sup>99</sup> Many district leaders and cadres have left and either formed their own outfits or carry on working without the political coat. "There are new groups appearing daily, like the 'Ranabir Dal' and 'Rajan Samuha'. It's easy for four or five people to get a pistol, kill someone and then set themselves up as a 'group'". Crisis Group interview, Pathlaiya, 5 April 2009. Some early leaders like Goit, and to a lesser extent Jwala Singh, are still important. But organisational links between them and their cadre are often tenuous. Reports of efforts to counteract fractionalisation through mergers are often contradictory, possibly reflecting fickle alliances, lack of cohesion and unclear leadership structures. There appears to have been a serious attempt to merge thirteen factions into the Samyukta Tarai Mukti Morcha (STMM) under Goit, not including Jwala Singh but reportedly taking in many of his cadres. Crisis Group interview, armed group sympathiser, Kathmandu, February 2010. Up to now no political activities have been attributed to the STMM and given the organisational weakness of the groups comprising it, it is unclear whether real unity in action could follow.

<sup>100</sup> There are currently three FLSCs: one led by Sanjuhang Palungwa, FSLC(P), one by Kumar Lingden, FLSC(L), and one by Misesk Hang, FSLC(Revolutionary). They are most active in Jhapa, Ilam, Panchthar and Taplejung, where they carry out disruptive strikes and tax the transport sector, especially the lucrative cardamom trade (up to Rs. 60,000 (approx. \$790) per truck). Crisis Group interviews, Panchthar, August 2009 and February 2010. All three have youth wings called Limbuwan Volunteers, which are involved in extortion and hire out muscle for local disputes, particularly in Jhapa. Crisis Group interviews, Jhapa, September 2009. While FLSC(P) and FLSC(R) operate outside the parliamentary system, the FLSC(L) contested the CA elections under the umbrella of the Federal Democratic National Forum (FDNF). At the same time, FLSC(P) cadres insist that they represent the establishment side of the Limbuwan movement. Crisis Group interview, FLSC(P) cadres, Jhapa, February 2010. All three FLSCs have gradually moved away from militant rhetoric and towards an increasingly accommodative line stressing ethnic harmony. Their leaders insist that an autonomous Limbuwan would grant the same rights to all ethnic groups. Crisis Group interviews, Jhapa, Panchthar, Taplejung, September 2009-February 2010. Some non-Limbu have joined the Limbuwan movement; the secretary of the Central Executive Committee of the FSLC(P) is a Magar. Crisis Group interview, FLSC(P) cadres, Jhapa, February 2010. The inclusive approach may have pragmatic reasons. A human rights activist in Jhapa said: "The attitude of the Limbuwan cadres changed with the first protests. Their demand for Limbuwan was made inclusive, as they realised that they need the help of members of other communities. Non-Limbu hooligans have joined them as well". Crisis Group interview, September 2009. There have been recent efforts to work jointly under a

militant movement in the eastern hills is the Kirat Janabadi Workers Party (KJWP), which similarly has split into at least three factions.<sup>101</sup>

**Tharu mobilisation.** Alienated by the Madhesi movement, formerly disparate Tharu organisations started jointly mobilising for a Tharuhat province in the central and western Tarai in 2008.<sup>102</sup> The most militant Tharu organisation in rhetoric is Laxman Tharu's TASC;<sup>103</sup> but

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United Limbuwan Front (ULF), to which the Limbu wings of all major parties signed up. See a letter circulated to the district offices of all ULF member organisations and directing them to organise protests to demand an autonomous Limbuwan state: "Jana pradarsan karyakramharu ayojana garne sambandhama", ULF, 26 January 2010.

<sup>101</sup> The KJWP had taken on the security forces directly in isolated incidents in 2008 and has a small number of firearms. But its focus appears to be extortion of businessmen and VDC secretaries as well as the collection of vehicle taxes. Although KJWP donation letters have appeared across the eastern hills and Tarai, they have real impact only in Khotang and Udaypur. Crisis Group interviews, Dhankuta, Bhojpur, Sunsari, January-February 2010. The KJWP had had a small presence in Bhojpur, but was chased out by the Maoists. See Section III.C. In 2009 the KJWP split into one group led by Rabin Kirati and one led by Binod Rai (nom-de-guerre: Biswas Bidrohi). The rift seems to have occurred over the distribution of party funds. Crisis Group interview, human rights activist, Jhapa, September 2009. A second split occurred when Ananta Kranti, the brother of Binod Rai, set up the Samyukta Jatiya Mukti Morcha. Crisis Group interview, Kathmandu, July 2010. The KJWP led by Binod Rai, which had emerged as the most active faction, appears weakened after recent arrests. An attack on a police post in Khotang in May 2010, possibly to press for the release of a leader, was followed by the arrest of more than two dozen cadres including senior leaders. "Big KJWP fish in net", *The Kathmandu Post*, 7 June 2010; "Cops nab 20 KJWP men", *The Kathmandu Post*, 9 June 2010.

<sup>102</sup> The "one Madhes – one Province" demand had long been a point of contention. The cabinet decision to include the Tharus under the Madhesi category for a civil-service quota system promulgated in 2009 prompted protests which were predominantly organised by an umbrella-organisation, the Joint Tharu Struggle Committee (JTSC).

<sup>103</sup> TASC is the biggest organisation within the JTSC. It announced the formation of parallel government structures and a Tharuhat Liberation Army in November 2008. The accounts of TASC leaders differ as to whether this volunteer force has already been formed, but they insist that its primary purpose is self defence. Crisis Group interviews, Kathmandu and Banke, July 2010. Notably the Tharu Kalyankari Sabha (TKS), elite-dominated and traditionally close to the Kathmandu establishment, has been working more closely with TASC. Although there is no formal association, some Tharu activists are members of both organisations, including TASC president Yogendra Tharu who also contested the 2008 CA elections for the Federal Democratic National Front (FDNF). Crisis Group interview, TASC leader, Kathmandu, July 2010.

there has been little militant action.<sup>104</sup> *Bandas* called in 2009 were successfully enforced – the indefinite shut-down called in April lasted more than ten days. But after May 2009, protests have come to all but a standstill.<sup>105</sup> The movement is likely to wait for an issue with sufficient public appeal; it also still appears weakened after disagreement over Laxman Tharu's short-lived alliance with the MJF in February 2010.<sup>106</sup>

**Matrika Yadav's CPN(M).** Matrika Yadav founded the CPN(M) in February 2009 after the formation of the UCPN(M), accusing the party's leadership of having abandoned its revolutionary agenda.<sup>107</sup> Many Maoist district leaders view Matrika and those who joined him as misguided, but ultimately pursuing the same goals.<sup>108</sup> Some security officials take the CPN(M) seriously and expect future trouble from its side.<sup>109</sup>

## 2. Learning from the Maoists?

Many believe the Maoists' success has encouraged the proliferation of armed groups claiming to struggle for an ethnic agenda. "They're following the Maoists", said a police officer about the armed groups, "they also killed and looted but are now in government".<sup>110</sup> A similar argument is made about PLA integration. There are concerns that it would set a precedent which other groups

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<sup>104</sup> Apart from several incidents in 2009 in which Tharuhat cadres destroyed VDC offices and collected government taxes for natural resource extraction.

<sup>105</sup> Crisis Group interviews, Dang, Banke, Kailali, February 2010. One exception was a TASC-called *banda* in April 2010 after three cadres had been beaten up by cadres of the Madhesi Janadhikar Forum (Loktantrik), MJF(L). "Tharuhat calls transport strike in Dang, vehicles vandalised", *ekantipur.com*, 23 April 2010.

<sup>106</sup> Crisis Group interview, Carter Center employee, Kathmandu, 26 March 2010.

<sup>107</sup> "Matrika Yadav to announce 'restructured CPN-Maoist' Wednesday", *myrepublica.com*, 10 February 2009. Since then the CPN(M) re-captured land returned by the Maoists in the Tarai, and blockaded government offices accused of financial irregularities. "Matrika locks DDC", *Republica*, 1 May 2009. CPN(M) cadres have also extorted VDC secretaries in the eastern Tarai and hills. "Matrika's group in extortion drive", *Republica*, 16 March 2010.

<sup>108</sup> Crisis Group interviews, UCPN(M) district leaders, Dhankuta, Janakpur, January-February 2010. Confrontations with cadres of the UCPN(M) are rare. One exception was a clash in Biratnagar in the run up to the by-elections in April 2009. "Situation turning to normalcy in Biratnagar after shoot-out", *myrepublica.com*, 9 April 2009. More recently in Syangja: "Six injured in YCL attack", *The Kathmandu Post*, 7 April 2010.

<sup>109</sup> Crisis Group interview, police officer, Dhangadhi, 25 February 2010.

<sup>110</sup> Crisis Group interview, Pathlaiya, 5 April 2009.

could use to press for their armed wings to be integrated. Current armed groups are also often seen as a continuation of the Maoist struggle, enabled by former Maoist cadres who have joined new groups or set up their own. The same officer said: “the Maoists have taught people how to take up arms – and some of these are former Maoists”.<sup>111</sup>

Many of the new groups liken themselves to the Maoists, copying much of their language, rituals and imagery. Some claim to have an armed wing and most threaten violence should their demands not be fulfilled.<sup>112</sup> Many boast of elaborate organisational structures with units at the village, district and central level. Some have proclaimed parallel government structures seemingly akin to the Maoists’ “people’s governments”.<sup>113</sup> The self description of some as being “underground” implies fundamental opposition to the state.

These self portrayals grossly misrepresent both actual capacities and strategies. There is violence, and there is logic to most of it, but it is not the same as the Maoists’. None of the new groups, apart from Matrika Yadav-led CPN(M), has transformative aims even remotely as comprehensive as those of the Maoists. There is no evidence to suggest any of them plans to take on the state in the way the Maoists did in 1995-1996 or would be able to. Some groups have conducted public rallies with uniformed and armed cadres, but with no more than a handful of firearms on display. The Maoists may famously have started their “people’s war” with only one functioning rifle, but they had also spent years building organisational strength and a popular base in Rolpa and Rukum. They see the violence of new groups as fundamentally different from their own and illegitimate for not targeting the state. One Maoist commented on militant Kirat groups in the eastern hills: “They have some weapons, but they are not using them against the state. They are using them against the people”.<sup>114</sup>

To the extent that there is a political aim to violence or threats of violence, it is to negotiate a fairly limited agenda. The vast majority of the new groups focus on the creation

of a federal state along ethnic lines. In many cases this goal does not guide action but is proclaimed to legitimise it and offer a degree of protection from the administration. But most of the violence is simply criminal. Kidnappings, killings and bombings carried out by Tarai armed groups and the KJWP in the eastern hills serve to create terror and prepare the ground for extortion.<sup>115</sup>

Practical experience in guerrilla warfare is limited to few leaders. Only a minority of the new groups have been set up by Maoist defectors.<sup>116</sup> And with the exception of Matrika’s CPN(M), none of them has seen a large influx of Maoist cadres. Occasional reports about defections of Maoist combatants mostly originate with the groups they are supposed to have joined, and could not be independently verified.<sup>117</sup> Many leaders and cadres in the Tharu movement as well as ethno-political groups in the eastern hills come from party backgrounds other than the Maoists, in particular NC and UML.<sup>118</sup>

The new groups are not so much replicas as by-products of the Maoist insurgency. The former rebels did justify their own violence with their agenda of ethnic justice and class struggle and have thereby helped legitimise the political violence of others.<sup>119</sup> They have also set an example of an insurgent group entering government. Despite superficial if deliberate similarities the new groups pursue different aims with different methods and capacities.

### 3. Recruitment, risks and results

Beyond similar self-presentation lie vastly differing organisational structures and recruitment patterns. The overall very limited attempts to build popular support and

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<sup>111</sup> Ibid.

<sup>112</sup> The Tarai armed groups presented themselves as a military force from the start. The KJWP has made it a point to display small numbers of uniformed cadres and firearms throughout 2009. “Kirat outfit’s press meet at gunpoint”, *The Himalayan Times*, 28 August 2009. FLSC(R) leaders say they are unarmed now, but claim to be ready for war if their demand for an autonomous Limbuwan is not fulfilled. Crisis Group interview, August 2009.

<sup>113</sup> On the Maoists’ “people’s government” see Crisis Group Reports, *Nepal’s Maoists: Their Aims, Structure and Strategy*, op. cit.; *Nepal’s Maoists: Purists or Pragmatists?*, op. cit., p. 13.

<sup>114</sup> Crisis Group interview, UCPN(M) district secretary, Jhapa, 10 February 2010.

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<sup>115</sup> “They started first killing businessmen and government officials [...] Their main objective was to terrorise the people, to set an example. Then they started abducting and extorting”. Crisis Group interview, human rights activist, Dhanusha, 15 October 2009.

<sup>116</sup> But some of the most important ones were founded by former Maoists. These include the JTMMs led by J.K. Goit and Jwala Singh, the KJWP, the TASC and Matrika Yadav’s CPN(M).

<sup>117</sup> “Combatants join Limbuwan”, *People’s Review*, 5 August 2009.

<sup>118</sup> Crisis Group interview, FLSC(L) cadres, Phidim, 2 February 2010. All three cadres interviewed had quit either the NC or UML to join the FLSC. According to one, his father had joined the Limbuwan cause after a long career as local NC leader. In the Tharu movement, TJSC chairman Yogendra Chaudhary had previously been with the NC. Crisis Group interview, TJSC leaders, Kathmandu, June 2010.

<sup>119</sup> Pramod Mishra makes the argument persuasively: “Banda, violence and grocery”, *The Kathmandu Post*, 10 March 2010. On the Maoists’ legitimisation of their own violence see also Crisis Group Report, *Nepal: Peace and Justice*, op. cit., p. 11.

organisational bases are instructive.<sup>120</sup> Many of the new groups have a small core of dedicated cadres, but have tried to increase their numbers by taking in opportunists less interested in the cause than in the perks. Involvement in illegal but lucrative activities has become more important as a result. This has jeopardised claims for genuine political agendas and with it wider public support. It also means that the new groups' capacity to escalate conflict for political goals is limited. Unlike individuals who joined the Maoists immediately before or during the civil war, those who join party youth wings or armed groups now sign up under low risk conditions; their reaction in case of violent confrontation with the state is uncertain.<sup>121</sup>

The YCL, as discussed, has bolstered its numbers with opportunistic newcomers, particularly in district headquarters with little Maoist presence before 2009.<sup>122</sup> The same applies to the YF. In its attempt to increase the size of its youth wing, the UML has engaged with individuals with a record of criminal and violent activities, often *gundas*<sup>123</sup> who were affiliated with the party less formally previously.

Extortion and illegal taxation have also attracted opportunists, including some former YCL cadres, to various Kirati groups, including those with a serious political

agenda.<sup>124</sup> This is true for FLSC(L), FLSC(P) and Khambuwan Rastriya Morcha, although at their core they consist of dedicated and politically motivated cadres and their cause resonates widely among Rais and Limbus, including among established elites.<sup>125</sup> The KJWP, in contrast, is generally regarded as a criminal outfit and appears to enjoy little public support. The group originally split from the Maoist-affiliated Kirat Rastriya Morcha (KRM), but has retained hardly any of the original members.<sup>126</sup> In Bhojpur, the two main KJWP cadres were described as apolitical criminals; their eviction by the YCL was welcomed by many, including other Kirat activists who were concerned that KJWP extortion would jeopardise their own legitimacy.

Tarai armed groups differ fundamentally from other groups in their allegiance to rural elites. Although the top leadership of the original groups mostly consists of highly educated individuals with a clear political agenda,<sup>127</sup> many leaders in the districts come from pre-existing criminal

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<sup>120</sup> Tarai armed groups do not appear to hold public programs beyond rare press conferences or displays of small numbers of armed cadres. The same is true for the KJWP in the eastern hills. Other Kirati groups make more efforts. For example the FLSC(L) has held rallies and conventions which it claims in press releases have been attended by thousands of supporters. "Birtamod, Jhapama Limbuwanko vishal amshabha", FDNF mass email, 11 December 2009. A press release signed by Kumar Lingden announced simultaneous rallies in Birtamod, Damak, Dharan and Dhankuta for 28 January 2010. Press release, FLSC(L), 26 January 2010. Available at: [http://groups.google.com/group/dfn-blog/browse\\_thread/thread/bb8ad600cda5135b](http://groups.google.com/group/dfn-blog/browse_thread/thread/bb8ad600cda5135b). The TASC claims to conduct an awareness campaign in villages in the mid- and far-western Tarai. Crisis Group interview, TASC district leader, Banke, 15 July 2010.

<sup>121</sup> On the importance of initial recruitment patterns for the subsequent development of insurgent organisations see Jeremy M. Weinstein, *Inside Rebellion* (New York, 2007); pp. 301-305 deal with Nepal's Maoists.

<sup>122</sup> Crisis Group interview, DNYF leader, Salyan, 20 February 2010; human rights activist, Rukum, 21 February 2010.

<sup>123</sup> The term *gunda* applies to criminal figures with political connections and a reputation for violence, who support politicians as violent enforcers and receive political protection in return, often for independent semi-legal or illegal enterprises. As private enforcers, the role of *gundas*, even if illegal, is a public one. The capital of *gundas* lies in their reputation; one does not become a *gunda* by calling oneself one, but by being recognised as one by others.

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<sup>124</sup> For example, the Limbuwan Volunteers who tax vehicles in Panchthar, Ilam and Jhapa consist of young men who worked for the YCL in the same capacity until the Maoists stopped the illegal taxation. Crisis Group interview, journalist, Jhapa, February 2010. A resident of a settlement near Birtamod, where there had been clashes with Limbuwan activists, said: "Extortion by the Lingden group is still going on. These demands are not for the Limbus. The problem are the hooligans. They are in the movement from many castes. They need money for drinking and lavish lifestyles". Crisis Group interview, Charpani, 4 September 2009.

<sup>125</sup> Crisis Group interview, Bhojpur, January 2010. Ethnic resistance is not a recent phenomenon in the eastern hills. In the first half of the twentieth century, Limbu movements combined resistance against the alienation of communally held *kipat* land with a strong rhetoric against recent Hindu immigrants. Threats of violent uprisings resulted in several reversals of land legislation. Rex Jones, "Sanskritization in Eastern Nepal", *Ethnology*, 1976, vol. 15; Lionel Caplan, *Land and Social Change in East Nepal: A Study of Hindu-Tribal Relations* (London, 1970). Organised Limbu ethnic movements virtually vanished during the Panchayat years but ethnic sentiments linked to economic grievances persisted especially among poorer farmers. Lionel Caplan, "From Tribe to Peasant? The Limbus and the Nepalese State", *Journal of Peasant Studies*, 1991, vol. 18, no. 2.

<sup>126</sup> Crisis Group interview, human rights activist, Jhapa, 3 September 2009. The split occurred when KRM leader Gopal Khambu merged the group with the CPN(M) in 2007 and subsequently became a Maoist CA member and minister for culture and state restructuring in the Maoist-led government. The KRM had several predecessors, the earliest of which was Gopal Khambu's Khambuwan Rastriya Morcha. It was founded in the early 1990s but remained a fringe group until Khambu announced his support for the Maoists in 1997. Dambar K. Shrestha, "Ethnic Autonomy in the East", in *People in the 'People's War'* (Kathmandu, 2004).

<sup>127</sup> On the background of Goit and Singh see Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit., p. 9.

groups closely tied to local political leaders and landlords. They may have a genuine interest in the Madhesi movement, but need to prioritise obligations to their local patrons, to whom they often have close family ties and who remain their main source of protection.<sup>128</sup>

The varied backgrounds and mixed loyalties of their members have encouraged the fractionalisation and de-politicisation of the Tarai armed groups. Organisational links between district and central leaders are generally weak. In most cases they are limited to local cadres using senior leaders' names to generate fear, and sometimes passing on a percentage of their income in return.<sup>129</sup> A new class of armed group leaders seems to have emerged when low ranking cadres started operating independently. Most foot soldiers, often from lower caste backgrounds, participated primarily for material incentives and were only loosely affiliated to begin with.<sup>130</sup> Some local observers speak about a democratisation of crime, which they say used to be organised by members of Tarai middle castes.<sup>131</sup>

Tarai armed group leaders enjoy considerable legitimacy in those villages in which they act as patrons.<sup>132</sup> But their criminal activities and the fact that they target Madhesis as much as hill-origin *pahadis* has cost them wider sympathies.<sup>133</sup> Only a handful of senior leaders including Goit and Jwala Singh are still widely seen as political. Sympathisers admit that the local loyalties of many groups operating in the districts have harmed the movement.<sup>134</sup> Spates

of extrajudicial killings have made joining or forming an armed group a much less attractive option.<sup>135</sup>

The Tharu movement generated a lot of noise during 2009. Blockading the east-west highway is relatively easy and can effectively disrupt travel and trade in essential goods across the country.<sup>136</sup> Geographical advantage means that Tharu mobilisation like other Tarai agitation can always have a disproportionate impact. But the extent of public support is uncertain. Unlike ethnic activists in the eastern hills and more so in the eastern and central Tarai, Tharu activists in the west come up against strong Maoist organisational structures and widespread public support for them.<sup>137</sup> The effectiveness of Tarai *bandas* for getting attention nevertheless limits incentives for Tharu groups to resort to more violent tactics.

Matrika Yadav's CPN(M) is exceptional both in terms of recruitment base and public legitimacy. Matrika himself is widely regarded as unpredictable, but also principled and incorruptible.<sup>138</sup> His promise to continue revolutionary politics attracts committed Maoist cadres disappointed by the UCPN(M)'s course of accommodation. As a result the CPN(M) managed to built up its organisational capacity consistently if slowly over the last year. It is strongest in the eastern and central Tarai, has some presence in the western Tarai and is starting to organise in the eastern hills.<sup>139</sup> Matrika is adamant that his is not a regional party,

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<sup>128</sup> Crisis Group interviews, Sunsari, July 2008; Saptari, 9 February 2010.

<sup>129</sup> Crisis Group interview, police officer, Janakpur, 10 February 2010.

<sup>130</sup> Abductions, for example, sometimes work on a commission basis, which grants up to 50 per cent of the ransom to the individual cadres perpetrating it. Crisis Group interview, armed group member, Sunsari, July 2008.

<sup>131</sup> Crisis Group interview, Lahan, 9 February 2010.

<sup>132</sup> For example, Abinash Mukti, who was killed by fellow villagers on 20 July 2009, and Akash Tyagi, shot dead by the police on 21 July 2009, are revered as heroes by many in their home village of Lakshmipur in Dhanusha, where residents have started constructing a memorial for them on the Janakpur-Dhalkebar road. Crisis Group interviews, Lakshmipur, 10 February 2010.

<sup>133</sup> Crisis Group interviews, Saptari, Siraha, Dhanusha, October 2009. A Madhesi Mukti Tigers leader said: "When we were underground, when donations were collected, cadres increasingly used them for their personal things". Crisis Group interview, September 2009. A former district leader of Goit was pessimistic about a possible re-politicisation of armed groups: "Their approach will remain criminal. I observed it since the Goit period. They are talking Madhes, Madhes but asking money, money". Crisis Group interview, September 2009.

<sup>134</sup> They also insist that those groups will be excluded from efforts to unify the movement. Crisis Group interview, armed group sympathiser, Kathmandu, February 2010.

<sup>135</sup> Crisis Group interviews, Sunsari, Lakshmipur, September 2009-February 2010.

<sup>136</sup> A strike called by TJSC on 22 April 2009 lasted thirteen days, crippled transport across the Tarai and led to the increase of prices for basic commodities in Kathmandu.

<sup>137</sup> The TKS has always been rather elite driven and the TASC so far seems to have failed to establish strong organisational capacity. Its ability to assert itself on the ground appears limited. For example, TASC cadres were unable to resist when the YCL blocked it from collecting taxes on natural resources. Crisis Group interview, Carter Center employee, Kathmandu, 26 March 2010.

<sup>138</sup> Crisis Group interview, UCPN(M) district leader, Janakpur, February 2010.

<sup>139</sup> Crisis Group interviews, Siraha, October 2009. A UCPN(M) leader in Morang described the CPN(M) as strong. Crisis Group interview, February 2010. The CPN(M) office in Janakpur appeared well staffed. Crisis Group observation, October 2009. Their team in Dhankuta appears relatively small, at ten to fifteen cadres, but includes several former PLA combatants. Crisis Group interview, journalists Dhankuta, January 2010. The district leader is a former PLA commander. Crisis Group interview, CPN(M) district leader and central committee member, Dhankuta, February 2010. An organisation building team of the CPN(M) had visited both Dhankuta and Bhojpur. Crisis Group interview. But different from Dhankuta only individuals seem to have joined in Bhojpur and no organisational structures were built. Crisis Group interview, senior police officer, January 2010.

but there are doubts whether his Madhesi background will allow him to expand into the hills.<sup>140</sup> In the Tarai itself, caste politics may get in his way, as many of his cadres and leadership are Yadavs. Senior CPN(M) leaders insist that no armed uprising is planned,<sup>141</sup> but district leaders may have different aspirations and some of them sound more militant.<sup>142</sup>

## B. ORDER IN CHAOS

Post-2006 political violence to a large extent operates within existing political paradigms. The prevalence of *bandas*, extortion and clashes over tenders and other resources is indicative of weak rule of law, but not of anarchy. Instead, current insecurity is structured by informal relations between political parties, security forces, armed groups, criminals and youth wings. The result is impunity. The close connection of violence with established political forces makes a short-term escalation of violence unlikely. But the institutionalisation of the criminal-political nexus bears significant mid-term risks and makes the patterns that are being consolidated much harder to uproot.

Political parties are directly responsible for some of the current insecurity. Members of political parties or their sister organisations committed at least four killings and more than half (750) out of 1,327 beatings recorded by INSEC in 2009.<sup>143</sup> Much of this violence is rooted in competition over state and criminal resources which drive patronage networks; some of it is about political space in more general terms. Often, personal and party objectives are indistinguishable. The parties encourage and enable other violence, as they protect gangs and armed groups who pursue their own agendas but also lend muscle to the parties when needed.

The Maoists are not the only ones to use violence. Just two days after their student activists had chopped off the fingers of a UML student leader in Kathmandu, and on the day that a UML activist attacked by their cadres in Banke died, the NC called, with no apparent sense of irony, for the Maoists to renounce the use of violence as a precondition for forming a national unity government.<sup>144</sup>

Most of the press conveniently avoided reporting the death of the UML activist.<sup>145</sup>

### 1. Parties, patronage and the uses of violence

Neither the use of violence in politics nor the protection of criminal activities by politicians is new. Throughout the Panchayat era of non-party government centred on the palace and particularly from the 1980 referendum onwards, the government mobilised youth gangs to suppress the democratic opposition.<sup>146</sup> After the 1990 transition, political parties drew on these established networks and used *gundas* systematically in elections. In the eastern Tarai, bandit gangs had long helped to enforce the authority of local political leaders and easily slipped into the same role.<sup>147</sup> Informal but party controlled violence came to underlie not only electoral competition but also the capture of local state resources.

The form of democratic competition that emerged in Nepal after 1990 fundamentally rests on the informal distribution of state resources through political patronage networks.<sup>148</sup> The NC had solidified its power base while

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Kathmandu in April 2010. After NSU leader and Tri-Chandra Free Student Union Vice-President Bishnu Poudel was charged with the attack and arrested, NSU cadres demonstrated outside government colleges in Kathmandu. Suryaprasad Pande, "Prahari ra nevisanghka vidyarthibich jhadap", *Annapurna Post*, 23 April 2010. When their demands were not met, some demonstrations turned violent; NSU cadres torched six government vehicles and injured a police officer. Pratima Baskota, "Nevisanghhdvara sarkari gadi todphod", *Kantipur*, 27 April 2010.<sup>145</sup> *The Kathmandu Post* ran an inside-page mention under the bland headline "UML cadre dies", 15 April 2010. Its sister paper, *Kantipur*, offered more detail and a photograph of the victim, but on page 8. "Kangressanga jhadapma ghaite emale karyakartako mrityu", *Kantipur*, 15 April 2010.

<sup>146</sup> These gangs were often called *mandales* and were also used in Panchayat politics in general. The name originates with the Panchayat student wing Rashtravadi Swatantra Vidhyarthi Mandal (RSVM), who the Panchayat government had used to violently counter anti-Panchayat student protests in 1979. The RVSM was banned later in 1979. But the term *mandales* continued to be applied to Panchayat-affiliated gangs or youth groups, even though many of them were recruited from local sports clubs, or, particularly in the capital, from martial arts clubs with links to the Panchayat Sports Council.

<sup>147</sup> Crisis Group interview, Saptari, 9 February 2010.

<sup>148</sup> Political scientist Krishna Hachhethu describes the emerging relationship between parties and affluent local power-brokers as a "market-exchange system – 'votes for favours' and 'favours for votes'". "Nepali Politics: People-Parties Interface", in David Gellner (ed.), *Resistance and the State: Nepalese Experiences* (New Delhi, 2003), p. 154. "Politics did not become a positive-sum but a zero-sum context, thereby transforming them [sic] into a war game carried on in accordance with the parliamentary majoritarian rule of 'winner takes all'. The electoral process became a means of state capture rather than a

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<sup>140</sup> Crisis Group interview, analyst, Biratnagar, February 2010.

<sup>141</sup> Crisis Group interview, CPN(M) central committee member, Golbazaar, October 2009.

<sup>142</sup> Crisis Group interview, CPN(M) district leader and central committee member, Dhankuta, January 2010. See also "Yadav-led faction to launch 'people's war'", *myrepublica.com*, 6 October 2009.

<sup>143</sup> "Nepal human rights yearbook 2010", INSEC, February 2010.

<sup>144</sup> Cadres of the NC student wing Nepal Student Union (NSU) attacked a leader of UML's All Nepal National Free Student Union (ANNFSU) with *khukuries* at Tri-Chandra Campus in



in government for most of the post-1990 period, through distributing local positions, establishing close relationships with contractors and consolidating its longstanding networks in the police. The UML had consolidated its grip on the NGO sector and thereby had some control over, and access to, much of the funding flowing into development from outside government. State capture is both self serving and supports patronage networks at all levels. Political parties view it as a given; among senior party leaders there is a pronounced sense of entitlement.<sup>149</sup> Informal patronage is also spurred by public demand.<sup>150</sup> In a self-enforcing cycle of politicisation of the administration, people often look to parties, rather than the state, to provide services directly or to pressure the administration to do so.<sup>151</sup>

Much of the contestation over resources takes place in regional and district headquarters as well as VDCs;<sup>152</sup> this is

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means to good governance". Dhruva Kumar, "Obstacles to Local Leadership and Democracy", in David Gellner and Krishna Hachhethu (eds.), *Local Democracy in South Asia* (New Delhi, 2008), p. 28.

<sup>149</sup> "What would a fish do if not drink water?" was the response of Nepal's former Education Minister Ram Chandra Kushwaha to corruption charges made against him by the Public Accounts Committee (PAC). "Relief teacher quotas for current FY annulled", *Republica*, 24 February 2010. Kushwaha was later forced to step down over the charges. It comes as no surprise that a long list of influential personalities, including the president, the prime minister and Maoist leader Prachanda, publicly backed Unity Life Insurance. "Rashtrapati, pradhanmantri ra vipakshi neta nai yunitika samrakshak", *Naya Patrika*, 19 May 2010. Unity ran a pyramid scheme which lured more than half a million clients into investing more than Rs. 6 billion (more than \$78 million). Along with the promises of lucrative returns on investments, the company offered an "assurance plan" which covered death insurance, and a health plan which promised to provide treatment packages and free life-long checkups at its hospitals. "Unity's illegal operation rakes in Rs. 6 billion", *Republica*, 21 April 2010; and "Unity scam: Our collective failure", *Republica*, 25 May 2010.

<sup>150</sup> Hachhethu, "Nepali Politics: People-Parties Interface", op. cit., pp. 161-166.

<sup>151</sup> "There's been a big change in society. Maybe 60 per cent of people are involved in parties. There is no security for ordinary people so people need party support. All teachers are in politics, so are students". Crisis Group interview, Kalaiya, 5 April 2009. A human rights activist in Siraha gave an example: "Six days ago [name] was abducted. He was released only yesterday. Unidentified people had kept him south of the highway. When they shifted place, locals informed the Maoists and they deployed their cadres to free him. His father is a local Maoist leader". Crisis Group interview, October 2009. See Section IV.B.4.

<sup>152</sup> Big contracts are awarded from the regional headquarters, home to the directorates for health, education, roads and irrigation. Crisis Group interview, Bhojpur, January 2010. Regional contracts generally yield larger cuts than those at the district

where muscle matters most. Prominent local resources are VDC and District Development Committee (DDC) budgets, public contracts, humanitarian relief payments and lucrative local appointments.<sup>153</sup> The latter, ranging from temple trusts to school management committees, are both ways to retain loyal cadres and provide secondary opportunities for corruption and patronage. With all of these there is a continuum from amicable distribution to violent confrontation.<sup>154</sup> In most cases, contracts and appointments are fixed peacefully between parties, administrators and contractors.<sup>155</sup> But threats of violence by *gundas* and party youth wings often play out in the background, eg, protecting contractor cartels from outside competition.<sup>156</sup>

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and VDC level, which are under local scrutiny for example by user committees. Crisis Group interview, Kathmandu, August 2010. On district budgets, an NC leader commented: "We would take ten or twelve thousand out of a one lakh [100,000] water budget". Crisis Group interview, Salyan, February 2010. But even the smaller VDC budgets are important. "Development is still a problem. The money is sent to the VDCs but the use is not monitored. That way there are no changes from the times of monarchy". Crisis Group interview, UCPN(M) district secretary, Rajbiraj, October 2009.

<sup>153</sup> After the dissolution of elected local bodies in 2002, local party representatives have retained considerable informal influence over VDC and DDC budgets, for example through consumer committees or all-party mechanisms like LPCs. See fn. 155.

<sup>154</sup> A popular method for violently capturing contracts is to physically block competitors from the office where bids have to be submitted. Confrontations between gangs hired for this purpose by competing contractors, or sponsored by different parties, can escalate. There are countless variations, including intimidation before and after the bidding process. Crisis Group interviews, Rupandehi, December 2009; Biratnagar, February 2010. There are also numerous ways to subvert it. For instance, a contractor lacking access to *gundas* may bribe civil servants working in the office concerned to smuggle bidding documents inside and later negotiate the profit from the contract with more powerful competitors. Crisis Group interview, contractor, Rupandehi, December 2009. In some districts in the eastern Tarai, armed groups appear to have become involved. "Armed groups are more effectively involved in contract capture. They are the first choice of politicians. Armed groups can terrorise many, *gundas* only few. Armed groups work by making phone calls before the tender bid". Crisis Group interview, journalist, Lahan, October 2009.

<sup>155</sup> "The political parties bargain at the district level and distribute the VDC budgets", a human rights activist in Siraha said. "Each leader tries to distribute as much as possible to their own VDCs". Crisis Group interview, Lahan, October 2009; "YCL, YF bury hatchet for tender moolah", *The Kathmandu Post*, 17 November 2008.

<sup>156</sup> Crisis Group interview, Rupandehi, December 2009. Online submission of tender bids might curb corruption and violence. Balaram Baniya, "Aba sabai thekkama ilektronik biding", *Kantipur*, 27 March 2010; Achyut Wagle, "I-prokyorment ra arthik sushasan", *Nepal*, 17 April 2010. In Dang, where e-tenders have been introduced, a journalist credited them with some reduction

## 2. Mafia market

As a new competitor for political space and state resources, the Maoists entered a well established game,<sup>157</sup> but they also shook up established divisions of the spoils.<sup>158</sup> The renegotiation of local balances of power was and is often violent. Many clashes between party youth wings or gangs with party connections are over tenders, local positions in schools or hospitals and other state resources.<sup>159</sup> While they were in government, the Maoists used their influence in the administration. A UML district leader complained: “they get money meant for local development direct from the finance ministry and they seem to have taken tenders under control – we can’t accept this unilateral behaviour”.<sup>160</sup> After their withdrawal from government in April 2009 they still had local clout and continued to assert their claims to local resources.

Some violence without immediate material incentive is ultimately about patronage. This applies, for example, to the frequent escalation of minor disputes between indi-

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in violence. Crisis Group interview, Dang, February 2010. But e-tenders are more likely to displace the problem than to solve it; a contractor can still be threatened after winning the contract through online bidding. Crisis Group interview, MJF(N) district president, Morang, February 2010.

<sup>157</sup> In a 2010 Himalmedia survey 35.9 per cent of respondents said corruption had worsened (against 31.1 per cent who said it decreased), while a majority said political violence had decreased (64.2 per cent), as had organised crime (54.2 per cent) and the incidence of *bandas* (58.8 per cent). “Janata parivartan chahanchan”, op. cit. In the latest Transparency International corruption perception index, Nepal occupies position 143 out of 180, down from position 138 in 2008. In South Asia, only Afghanistan occupies a lower position (179). Corruption perception indices 2008 and 2009, Transparency International, available at [www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/). On the consequences of corruption and politicisation in the health sector, see: Sharan Prasad Sharma, “Politics and corruption mar health care in Nepal”, *The Lancet*, vol. 375, no. 9731, 12 June 2010.

<sup>158</sup> A typical example is Myagdi, where all parties united against the Maoists after government land was sold and leased out to the YCL. The parties, including the Maoists, had agreed in 2008 that no land from the Myagdi Food Corporation would be sold. The Food Corporation nevertheless sold land to a Maoist supporter, through a middleman and well below market value. Ghanshyam Khadka, “Maobadiviruddha sabai dal”, *Kantipur*, 14 February 2010.

<sup>159</sup> Crisis Group interviews, various districts, August 2009–February 2010. A worrying development is the use of firearms in tender-related clashes. “Students go berserk over college tender”, *The Kathmandu Post*, 6 July 2009. “The situation between Biratnagar *gundas* has become very tense. There have been murders to do with contracts. They are all afraid now”. Crisis Group interview, Biratnagar, September 2010.

<sup>160</sup> Crisis Group interview, Lamjung, 24 April 2009.

vidual party cadres into larger inter-party clashes.<sup>161</sup> The provision of everyday security is a central component of patronage and parties need to demonstrate that they can defend their supporters. There is a clear incentive for parties to retaliate visibly if one of their supporters is attacked, even if their affiliation is tenuous or unclear.<sup>162</sup>

The UML reacted to new competition from the Maoists by setting up the YF. There are strong indications that both Maoists and UML have recruited young gang members into their respective youth wings.<sup>163</sup> In the eastern and central Tarai, different parties started supporting armed groups to counteract the Maoists.<sup>164</sup> The increased use of youth gangs has heightened the dependence of parties on them, which itself increased pressure on parties to protect their involvement in illegal activities. While this was already the case earlier, the competition between YCL, YF and other groups has escalated the dynamic. A YF leader in a midwestern district said: “The YCL recruited many *gundas*. They feed them in a way that other parties can’t; they do this by getting in on tenders”.<sup>165</sup>

The relationship between parties and armed groups is one of compulsion and interdependency, but also convenience. Kidnapping and extortion have become big business in the central and eastern Tarai and urban centres in the west. Armed groups and gangs are responsible for most of the extortion. But they depend on a wider network including politicians and the police to operate with near impunity.<sup>166</sup>

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<sup>161</sup> “Much violence is not for political reasons, but is politicised”. Crisis Group interview, UML district chairman, 4 February 2010. However, this violence is often about political space at the same time. See next section.

<sup>162</sup> For example, NC and Maoist cadres in Humla clashed after a minor business dispute between an NC and a Maoist cadre in April 2010. “Curfew in Simkot after NC, Maoists clash”, *The Kathmandu Post*, 8 April 2010. A series of clashes between Maoist and UML cadres in Lamjung in early 2009 started with local Maoists attacking a contractor they say is not affiliated to the UML but who the UML itself claims is their cadre. Crisis Group interviews, Maoist and UML district secretaries, April 2009.

<sup>163</sup> Crisis Group interviews, Morang, Dang, Salyan, Rukum, January–March 2010. See Section III.A.3.

<sup>164</sup> “First the parties wanted to protect themselves from the Maoists, then to reduce the influence of the Maoists. The parties helped establish the armed groups. But leaders lost control”. Crisis Group interview, human rights activist, Dhanusha, 15 October 2009.

<sup>165</sup> Crisis Group interview, Salyan, 20 February 2010.

<sup>166</sup> According to a civil society activist in Nepalgunj, the UML protects a notorious local armed group leader and had him released from prison. Similarly, the NC secured the release of another local armed group leader after his arrest by the police. Crisis Group interview, February 2010. A human rights activist in Dhanusha alleged complicity both of major parties and the administration: “It is clear that political parties protected armed groups in the last year: NC, MJF, NSP and also the Maoists in

Politicians usually do not protect armed groups for direct financial gain. The gangs assist them during elections, tender processes and as general support to their authority. Protection from the law is the service they offer in return. "The parties need the armed groups and vice-versa", said an independent Madhesi analyst, "the former for pressure and the latter for protection".<sup>167</sup> As with *gundas*, the use of gangs and armed groups is institutionalised to a degree that makes it hard if not impossible for individual politicians to opt out.

For the police, convenience compounds need. Senior police officers often complain about political interference when they try to take action against armed groups and criminal gangs. They are indeed often pressured and politicians can credibly threaten transfers. The Tarai districts, which are the centres for extortion, are also smuggling hubs and offer lucrative if illegal income for senior officials, who generally pay significant amounts to be posted there.<sup>168</sup> Transfer threats are therefore very effective. The need to recoup the investment also renders protecting criminal groups against a cut of the profit tempting in itself.<sup>169</sup> The alliance between police and extortionists is

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one or two instances. They were also directly protected by CDO and SP. The SP would call the armed groups and demand a cut and say that he would otherwise finish them. For eight to nine months in 2008 the administration was only running after money". Crisis Group interview, October 2009. Similar observations were made in other Tarai districts. "Extortion money is shared with the local police as well", said a journalist in Rajbiraj. "If not, the cadres are immediately arrested". Crisis Group interview, September 2009. According to a journalist in Lahan: "The people from the armed groups say 'the police help us because we are paying the police chief as well'". Crisis Group interview, October 2009.

<sup>167</sup> Crisis Group interview, Biratnagar, September 2009.

<sup>168</sup> "The police have a full internal tender system", said a human rights activist in Nepalgunj. He claimed that district police chief positions start at Rs. 2,000,000 (\$26,000). A lucrative posting like Banke starts at Rs. 5,000,000 (\$65,500) and goes up into *crores* (ten millions) of rupees (one *crore* rupees corresponds to \$130,000). Crisis Group interview, February 2010. Even entering the police force often comes at a cost. In a prominent example, UML CA Member Dol Bahadur Karki was suspended in September 2010 for taking a bribe of Rs. 405,000 (\$5,400) for the recruitment of a police inspector. "'Crooked' Karki loses CA berth", *The Kathmandu Post*, 22 September 2010.

<sup>169</sup> "If you want a promotion you have to pay. So how to get the money? The DIG [Deputy Inspector General] of the eastern region gets a monthly payment. And they have to pay to the minister". Crisis Group interview, journalist, Rajbiraj, September 2009. For example, villagers in Banke accuse the police of doing nothing as a gang led by an NC district leader attacked them and killed one person in a dispute over forming a consumer committee for constructing a local road. "Gaun kabja gari aatank macchaunelai prahariko samrakshan", *Naya Patrika*, 20 April 2010; J. Pandey, "Daka aakramanma ekko mrityu, gaunbhar tras", *Kantipur*, 20 April 2010.

not always an easy one. Not all police chiefs can be bought off, and some rather take money from the armed groups' victims. The police reportedly killed several armed group leaders in Dhanusha in 2009 after businessmen had paid for the murders. The price for such an extrajudicial killing may be as low as Rs. 200,000 to Rs. 300,000 (\$2,600 to \$3,900).<sup>170</sup>

Ministers sit at the apex of the politics of administrative appointments, transfers and promotions. Their profit from criminal activities is mostly indirect; bribes paid to the police by criminals help to recover the hefty sums paid for transfers into lucrative districts in the first instance. But however indirect the link, there is little incentive (or moral clout) to push senior police officers harder on tackling lucrative crime. Sometimes the connections between armed groups and national level politicians are direct. For example, the police chief of Siraha was transferred after the police, probably extrajudicially, killed two armed group leaders said to be close to a state minister.<sup>171</sup>

Prominent journalists and civil society figures also profit from the economy of favours and connections by acting as go-betweens with armed groups.<sup>172</sup> In some instances they may be paid for brokering bribes or negotiating hostage releases.<sup>173</sup> These dynamics reflect more general broker roles. One customs officer at a major Tarai border crossing said: "It's not businesspeople that come to me directly. In fact, I get the most trouble from journalists. Every day

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<sup>170</sup> Crisis Group interview, police officer, Janakpur, February 2010.

<sup>171</sup> Crisis Group interview, journalist, Lahan, October 2009. A senior police officer said a group of CA members including the state minister had lobbied the home minister and the prime minister, threatening to pull out of the government if the police chief was not transferred. Crisis Group interview, August 2010.

<sup>172</sup> Human rights and civil society activists in Tarai districts frequently negotiate in extortion and kidnapping cases. Crisis Group interview, civil society activist, Nepalgunj, February 2010. A Maoist district leader in Saptari said: "I often negotiate with armed groups when somebody is abducted". Crisis Group interview, Rajbiraj, October 2009. Crisis Group's interviews with armed group leaders in Sunsari were facilitated by a local journalist and human rights activist. Crisis Group interviews, September 2009.

<sup>173</sup> A senior police officer in the eastern Tarai said: "Human rights activists are always negotiating in cases of abduction. I suspect they receive a cut as well". Crisis Group interview, Rajbiraj, February 2010. An extreme and controversial example is that of prominent journalist Rishi Dhamala, who was arrested alongside three other persons on charges of being linked with an armed group and conspiring to extort a Kathmandu-based businessman. The cabinet later withdrew the charges. See Crisis Group Report, *Nepal: Peace and Justice*, op. cit., fn. 12.

local journalists come to me acting as go-betweens and demanding concessions or special favours".<sup>174</sup>

There are indicators that organisational lines between political parties, *gundas* and armed groups are blurring. In Morang, for example, well-known *gundas* previously only informally affiliated with major parties have entered their district leadership in 2009.<sup>175</sup> Relations between parties and armed groups in the Tarai tend to be less formal, though still publicly known.<sup>176</sup> In Nepalgunj, a notorious armed group leader was regularly seen in the UML party office before he went underground after the killing of a VDC secretary in January 2009.<sup>177</sup> The arms race in which parties build up their youth wings and expand ties with criminal groups thereby risks institutionalising higher levels of political violence.

### 3. Fighting for political space

General contestation of political space is an important cause for clashes between political parties or their proxies. Being able to conduct party activities freely is particularly relevant during elections, but political space holds importance far beyond. Party activities are often an important element of local social life. Offering regular activities and programs is crucial for binding people into party networks. For securing their position in the party hierarchy, district leaders need to demonstrate to national leaders that they are able to garner support and assert themselves locally. Mass gatherings for important visitors offer opportunities, but can also represent awkward moments of truth.<sup>178</sup> Political space is also inseparably linked

to access to state resources and dispensing patronage, as well as the local balance of power, including during violent confrontations.

The same reasons which render political space so important also lead to ostensibly disproportional violence. Again, this is not a new phenomenon. The use of violence to restrict each others' political space was already common in the 1990s. Relations between UML and NC were often shockingly bad at the local level. Limited violence over political space is a given. A police officer in Bhojpur commented on NC complaints about intimidation by the Maoists: "The Maoists haven't used weapons. They only use their brains and hands; other parties should be able to counter that".<sup>179</sup>

The "people's war" and its aftermath have fundamentally changed the distribution of political space. UML and even more so NC party structures were significantly weakened during the conflict, when the Maoists targeted many of their representatives. The effects are lasting. An NC leader in Salyan said "the young don't know any of the NC faces anymore, only the Maoists".<sup>180</sup> In some of their former base areas, the Maoist dominance is so strong that it rarely needs further assertion. These districts may be quiet, but political space has been tightened. An NC leader in Rukum said that while party activities in the district capital faced little restriction and party workers could travel all over the district, cadres in the villages were still not able to assert their political views openly.<sup>181</sup> "The Maoists totally dominate", a police officer confirmed.<sup>182</sup>

The most violent confrontations over political space after 2006 took place between the YCL and the YF. The struggle between Maoists and UML is a potentially existential one for the latter. The two parties not only compete for votes, but also for party workers. In 2009, about half of the Maoist district leaders were former UML cadres.<sup>183</sup> In

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<sup>174</sup> Crisis Group interview, Birgunj, April 2009.

<sup>175</sup> Crisis Group interviews, Biratnagar, July 2008, October 2009 and February 2010. In the past it was generally known which party a particular *gunda* worked for, but the relationship either remained informal or formal positions were limited to youth organisations and student wings.

<sup>176</sup> There are exceptions. Although armed group members do not usually hold positions in parties, many are members, presumably as it is useful for political intervention. As one CDO said: "one cadre has two identities; one from Janatantrik, one from a big party". Crisis Group interview, district administrator, Lahan, 14 October 2009.

<sup>177</sup> Crisis Group interview, civil society activist, Nepalgunj, 24 February 2010.

<sup>178</sup> For example a local Maoist leader in Bhojpur recalled the embarrassment for local NC leaders when only around 60 mainly older people attended a function for visiting Sushil Koirala, then NC vice-president. Crisis Group interview, Bhojpur, February 2010. The assertion appears realistic; the NC in Bhojpur is in complete disarray. An NC leader complained bitterly about dysfunction and disputes within the party. Crisis Group interview, Bhojpur, January 2010. A late night NC meeting witnessed by Crisis Group researchers in a restaurant in Bhojpur in January 2010 featured shouting matches over petty

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issues such as the reimbursement for cookies at a function years back. Crisis Group observation, Bhojpur, January 2010.

<sup>179</sup> Crisis Group interview, Bhojpur, January 2010.

<sup>180</sup> Crisis Group interview, NC district secretary, Salyan, 21 February 2010.

<sup>181</sup> Crisis Group interview, NC district leader, Rukum, February 2010. Conversely, a UML-affiliated weekly accuses the Maoists of using brutal violence to prevent activities by other parties in Rukum, Rolpa and Salyan. For example, it cites unprovoked Maoist attacks on UML Rukum District Committee members in January 2010. Lokendra K.C., "Rukumma maobadidvara barbar hamla", *Budhabar*, 21 January 2010.

<sup>182</sup> Crisis Group interview, Rukum, February 2010.

<sup>183</sup> See Crisis Group Report, *Nepal's Future: In Whose Hands?*, op. cit., p. 12. The fundamental anxiety reflected in the statement of a UML district leader: "We can sort things out through

Taplejung, for example, many UML cadres defected at the height of the conflict;<sup>184</sup> this suggests some ideological dedication. One of the UML's responses has been to build up their own capacity for violence. For UML leaders, the large number of Maoist whole timers is a natural point of concern.<sup>185</sup> They set up the YF primarily out of a sense of being threatened by the Maoists' overpowering physical presence.<sup>186</sup> There are reports of prominent UML leaders openly supporting violence during district visits.<sup>187</sup> The other response is to try and isolate the Maoists, viewed by the latter as attempt to provoke them into a violent response.<sup>188</sup> In some hill districts the UML reportedly has attempted to form unity fronts,<sup>189</sup> for example with the NC for the election of school management committees.<sup>190</sup>

Violence between youth wings is by no means confined to UML-Maoist rivalry.<sup>191</sup> The limited involvement of NC cadres in clashes is the result of organisational weakness more than policy. Where local NC structures are still strong enough, its supporters have flexed their muscle.<sup>192</sup> During the 2008 elections and 2009 by-elections, NC cadres successfully captured booths in some hill and Tarai

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dialogue but each must recognise the other's right to exist". Crisis Group interview, Lamjung, 24 April 2009.

<sup>184</sup> Crisis Group interview, Taplejung, February 2010.

<sup>185</sup> A UML leader in Bhojpur compared the 135 YCL whole timers in the district (others provided similar estimates, see fn. 57) to the five whole timers in the YF. Crisis Group interview, Bhojpur, January 2010.

<sup>186</sup> As a UML district secretary said: "We had to set up the YF to counter the YCL. In the villages people are still scared of the Maoists; if the YCL comes people will be on edge". Crisis Group interview, Lamjung, 24 April 2009.

<sup>187</sup> At a DNYF district meeting also attended by communication minister Shankar Pokharel, the "central coordinator of the Youth Force Mahesh Basnet called on the Forces [YF] cadres to boldly retaliate against the excesses committed by the YCL". "Youth Wing would be managed soon: Pokharel", *The Rising Nepal*, 4 August 2009.

<sup>188</sup> Crisis Group interview, UCPN(M) district in-charge, Taplejung, 4 February 2010.

<sup>189</sup> Crisis Group interview, NC district leader, Salyan, February 2010.

<sup>190</sup> Crisis Group interview, journalist, Kathmandu, February 2010.

<sup>191</sup> Current perceptions about the YCL as the pre-eminent threat can colour accounts about past relations with other parties. Asked a year later about pre-election violence between UML and NC cadres witnessed by Crisis Group staff, a UML district leader said: "I don't remember any problems with the NC in the run-up to the election – with the Maoists, yes, but things were always fine with the NC". Crisis Group interview, Lamjung, 24 April 2009.

<sup>192</sup> For example, twelve people were injured in April 2010 when NC supporters clashed with police in Nuwakot after being denied entry to the district administration office to request an investigation into an YCL attack on an NSU member. "Prahari-kangres karyakarta jhadap, 12 ghaite", *Kantipur*, 16 April 2010. On NSU violence see also fn. 144.

districts.<sup>193</sup> But the NC has failed to rebuild most of its district structures after the conflict and there is little representation at the village level. District leaders complain bitterly about the failure to attract the young.<sup>194</sup> The NC's spending power possibly averted an even worse result in the CA elections.<sup>195</sup> The false sense of security which persisted in the party before the polls is now gone; some commentators are hopeful that the 2009 Mahasamiti's statute changes and the passing away of Girija Prasad Koirala have opened up NC ranks to newcomers and brought in more young people.<sup>196</sup>

The major parties are in the process of renegotiating political space. Some of the related violence is likely to cease once the contestation has settled in new equilibriums. But such settlements will still be based on implicit threats of violence. None of the major parties is therefore likely to go back on building up their youth wings or their involvement with criminal gangs.

#### 4. Rites of protest

Protests including *bandas* are a way of making one's voice and grievances heard at a time of political transition when the political pie is newly distributed. In particular, ethnic and regional activists have extensively used protests.

Nepal's political culture has well defined rules of performance for protests. Agitating groups face the choice of following these rules or breaking them. The former means engaging with mainstream politics on its own terms, but also provides easier access to it. The latter can be used to try to bypass established networks, but at the risk of being viewed as illegitimate. Most forms of protest are in essence polite and formulaic. But even harmless ones, like wearing black armbands or fasts-unto-death in which no one ever dies, are still taken surprisingly seriously. There

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<sup>193</sup> Crisis Group observation, Lamjung (April 2008 CA election campaign) and Sapahi, Dhanusha (April 2009 CA by-election).

<sup>194</sup> Crisis Group interviews, NC district leaders, Salyan and Rukum, February 2010. A Tarun Dal activist in Bhojpur complained about a complete lack of training and activities. Crisis Group interview, Bhojpur, January 2010.

<sup>195</sup> "We could not compete with NC spending", said a UML leader in Taplejung about the CA elections. Crisis Group interview, February 2010.

<sup>196</sup> A prominent NC youth leader was cautiously enthusiastic that the 12th NC general convention from 17 to 20 September 2010 would result in a more diverse central working committee and could create opportunities for substantive policy changes: "There are new faces but also old networks. The new people will not break with their old networks. They also have to think about their security, their security in the party. You don't come in as a new person and then directly go against your leaders. But they will also feel some pressure ... expectations that they will change things." Crisis Group interview, September 2010.

is plenty of scope for pushing the boundaries without breaking them; slogans get rougher but not too rough and even physical violence like manhandling is intended in the first instance to insult rather than injure. Nevertheless, calculated transgressions introduce ambiguity, at the same time indicating knowledge of and tentative adherence to the rules as well as the possibility of a radical break with them.

New groups try to leapfrog not just party structures but also the previously accepted steps of escalation. Even though the Maoists eventually took up arms, they had gone through decades of peaceful communist activism and recruitment in their core areas and three years of parliamentary politics. Many new groups have stepped up protests more rapidly and some did not bother with preliminary and peaceful steps at all. This is a result of a changing political culture emphasising a broader distribution of state patronage as a matter of right. The change is less radical than current militant struggles suggest, as it asks for the expansion of state patronage, rather than the state's transformation.<sup>197</sup> But it is understandably upsetting for political elites, including the Maoists, as protesting groups increasingly demand to enter negotiations as equals.

*Bandas* are a case in point. They are not new but the current political situation makes them a particularly attractive option.<sup>198</sup> For some, they may simply be the most effective way to achieve political aims. But for others they are the only way. *Bandas* do help some who were previously without means to hold the state accountable to make their demands heard.<sup>199</sup> Groups with weak party connections can now challenge the party monopoly to pressure the government, thereby sidelining and weakening patronage distribution through party networks. Examples are Rai and Limbu groups in the eastern hills and protests in the Tarai.

Those who use *bandas* now have good reasons for it.<sup>200</sup> They severely disrupt public life, inconveniencing and

angering many. But they also tend to be effective in achieving their aims, be it securing compensation for road traffic accidents or wringing concessions out of the government. The risk involved is minimal as the police rarely interfere.<sup>201</sup> *Bandas* also communicate political strength in ways important in the current political climate. A well observed *banda* may indicate public support for a group or a demand. It may also imply that a group's threats of violence are taken seriously. Both public support and capacity for violence are the basis for political voice.

Disruptive protests have gone some way towards levelling a very unequal political playing field. Opinions naturally vary widely between winners and losers of this process. Whether this can have real and lasting effects on social and political power structures remains to be seen. But there are hints at limits to their sustainability. Ironically, the success and regular use of *bandas* has undermined their power and rendered all less intrusive forms of public protest ineffective.

## 5. Bounded disorder

The nexus between armed gangs, politicians and administrators means that political violence, particularly over the distribution of resources, is probably here to stay. Although this is concerning from a rule of law perspective, resource clashes are unlikely to escalate; budget lines involving donor money risk getting cut off if violent contestation of local disbursement is too visible and no one involved is interested in losing the resources they are competing to control. Local political leaders would also risk upsetting important constituencies with uncontrolled violence. The armed groups would hardly be interested either. Their organisational structures and mobilisation strategies are geared towards varying mixes of pressure politics and criminal enterprise. The bulk of their members signed up for lower risks and not for open confrontation with the state. Paradoxically, the most militant and (criminally) active groups are the least likely candidates for new large scale violence.

More powerful actors enforce red lines and limit how far new groups can cross them. Especially the Maoists have

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<sup>197</sup> Similarly, anthropologist Genevieve Lakier notes that strikes and blockades "in Nepal have generally been used not to overturn the democratic system, but to work within it". "Illiberal Democracy and the Problem of Law: Street Protest and Democratization in Multiparty Nepal", in Mahendra Lawoti (ed.), *Contentious Politics and Democratization in Nepal* (New Delhi, 2007), p. 254.

<sup>198</sup> For statistics on *bandas*, see fn. 5. For definitions of different forms of *bandas* see fn. 93.

<sup>199</sup> Lakier argues that post-1990 political protests, many of them coercive and apparently out of step with the values of liberal democracy, afforded otherwise unrepresented groups to make themselves heard. Lakier, "Illiberal Democracy and the Problem of Law", op. cit.

<sup>200</sup> During the Panchayat years, *bandas* were the last, and very rare, step of escalation of public protests. Dissent usually started in private and then progressed via a series of increas-

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ingly public demonstrations. Only if the government failed to make concessions and de-legitimised itself sufficiently by cracking down on the protests, did calling a *banda* become acceptable; and even then it still carried considerable risks for those enforcing it. Richard Burghart, "The Conditions of Listening: The Everyday Experience of Politics in Nepal", in Richard Burghart (Christopher John Fuller and Jonathan Spencer, eds.), *The Conditions of Listening* (New Delhi, 2008 [1996]).

<sup>201</sup> Obstructing traffic on highways is a punishable act according to the Local Administration Act (amended in 2064 B.S.). "2065 BS: A Year of Strikes", myrepublica.com, 14 April 2009.

made clear that they take unwritten rules of political behaviour seriously, and punish transgressions where they are strong enough. For example, the YCL beat up and displaced cadres of Pallo Kirat in Panchthar over their secession demand and KJWP cadres in Bhojpur for extorting local businessmen. A wider public also polices these limits. Far from polarising less radical ethnic activists, Maoist actions were broadly welcomed in both districts.<sup>202</sup>

While much criminal violence is protected, not everybody can be targeted without consequence. Many victims of extortion and kidnapping in the Tarai are small businessmen or families who are sent remittances by relatives abroad.<sup>203</sup> Violence is routinely used against low caste landless tenants in local disputes.<sup>204</sup> In contrast, targeting influential individuals, like big businessmen or politicians, can be risky.<sup>205</sup> Local businessmen in Janakpur likely paid the police for killing at least one feared extortionist in 2009.<sup>206</sup> The victims of encounter killings – essentially police extrajudicial executions – are usually armed group members lacking both public sympathy and high-level connections.<sup>207</sup> A Goit or Jwala Singh could not be killed

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<sup>202</sup> An FLSC(L) cadre in Panchthar said: “We strongly oppose Pallo Kirat. They want to break a part out of the country! We did not oppose the YCL when they kicked them out of the district”. Crisis Group interview, September 2009. Crisis Group interviews, Bhojpur, February 2010. On Bhojpur, see also Section III.A.3.

<sup>203</sup> A journalist in Rajbiraj provided examples: “A few days ago in Naktiraiapur VDC [name] Miya, a 60-year-old man, was abducted. They ask ten lakh from his son who has recently returned from working abroad. In the same week in Malhaniya VDC a technical assistant was abducted, [name] Yadav.” Crisis Group interview, journalist, Rajbiraj, October 2009.

<sup>204</sup> Local observers including Dalit activists say landlords and local politicians frequently beat, rob or burn down entire settlements of lower caste agricultural workers in disputes over wages or the use of local resources such as public land or fish ponds. Crisis Group interviews, Saptari, Siraha, October 2009 and February 2010.

<sup>205</sup> Crisis Group interview, police officer, Janakpur, 10 February 2010.

<sup>206</sup> Pressure on the police to kill Akash Tyagi appears to have come from large parts of Janakpur’s business community. Journalists and human rights activists say several businessmen he threatened and attacked paid the police for his killing on 21 June 2009. Crisis Group interviews, Janakpur, October 2009 and February 2010.

<sup>207</sup> A journalist in Dhanusa said local media did not even report when the police killed two individuals he described as notorious rapists and murderers. Crisis Group interview, February 2010. But top-level connections do not always protect armed group leaders. “Manager” Mahato and Parshuram Yadav, two armed group leaders killed by the police in Siraha in June 2009, were reportedly connected to an MJF(Democratic) assistant minister. The MJF(D) later pressed for the DSP [deputy superintendent of police] at the time to be transferred. Crisis Group interview, journalist, Siraha, October 2009.

in a similar fashion.<sup>208</sup> This keeps armed group leaders dependent on their party connections.

Those armed group leaders with genuine political aims press for particular demands within the existing political order. Overstepping the boundaries of acceptable political violence too far would jeopardise chances for the eventual admission or readmission into the political mainstream. Negotiations with the government are a function of this. Apart from the security guarantees and prisoner releases which come with the talks, they allow militant groups to establish themselves as legitimate political players with mainstream aspirations. The outcome may not be of primary importance. No talks since those leading to the Comprehensive Peace Agreement (CPA) in 2006 came at a crunch point for either the government or armed groups involved. Failed or stalled negotiations at the same time legitimise further violence.

Given these constraints, a dramatic escalation of violence is unlikely in the short run. The risks of the institutionalisation of a criminal-political nexus play out in the mid-term; as non-violent strategies become less effective and smaller groups become more vulnerable to political violence, taking up arms might appear to be the only way to make their voices heard.

### C. ANARCHY OR ACCULTURATION?

Most of the so called armed groups are highly unlikely to get involved in violence that brings them into direct confrontation with the state. Both their *raison d’être* and organisational structures are too steeped in local politics, and there is no popular demand for them to speak of. The eastern Tarai, where the armed groups have discredited themselves with most of the general population, is a case in point.

The risky combination of relative autonomy from mainstream politics and a measure of public support currently exists only in the eastern hills. The aims of Rai and Limbu groups, including autonomous Khambuwan and Limbuwan states in a federal setting, have some popular base, including among Kirati elites. While there is little public support now for armed resistance, should the new constitution fail to reflect these aims, widespread support for protests is likely. Much would then depend on the reaction of the administration. Heavy handed and indiscriminate police action could galvanise support for a violent uprising. These factors could be compounded by the economic situation. Although better off than many other areas, the

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<sup>208</sup> Crisis Group interview, journalist, Janakpur, February 2010.

eastern hills are the only region in Nepal where the poverty rate is increasing.<sup>209</sup>

The only other exception is Matrika Yadav's CPN(M). With its committed and experienced leadership and cadre, it is the only group that could realistically try to launch a fully armed insurrection. But whether it could gain real traction would depend on its ability to strike the right alliances. Madhesi politics are dominated by Tarai landed elites, who are unlikely to subscribe to a revolutionary agenda. Matrika's land reform agenda is likely to hold some appeal among landless and low caste Madhesis, but there is no precedent for their successful mobilisation on the basis of their caste or class. Beyond the Tarai, his regional and caste background is an obstacle to mobilisation. However, a further influx of disappointed Maoists could strengthen his position; and particularly in the east, an alliance with the CPN(M) could be tempting for radicalising Kirati groups.<sup>210</sup>

Limited opportunities for young people in combination with rising education standards and aspirations are important, but will not encourage violence in themselves. Youth discontent did help Maoist recruitment during the civil war. In the meantime little has changed,<sup>211</sup> and political awareness has only grown.

Landlessness in Nepal is high, but party attempts to mobilise the landless have mostly been ad hoc and aimed at securing their votes but stopping short of supporting more assertive class-based movements. This does not mean it is not possible. The Maoist organised land grab in Dundejhari in December 2009 demonstrated that landless people can

be mobilised for radical action.<sup>212</sup> But no major party including the Maoists is likely to risk annoying powerful local elites by taking more than symbolic action.

The agendas of some groups have led to increasing local polarisation along ethnic lines. But communal violence is not an immediate risk. Prominent Tarai armed groups still use rhetoric of ethnic cleansing and occasionally threaten bureaucrats of hill origin or *pahadis* in general to leave the plains.<sup>213</sup> Although underlying tensions still exist, the Tarai has proved remarkably resilient to serious attempts at ethnic polarisation.<sup>214</sup> No tit-for-tat violence has occurred since the riots in Nepalgunj in 2006 and local attempts to establish *pahadi* self-defence groups were mostly unsuccessful.<sup>215</sup> Past Limbu and Rai protests in the eastern hills did have strong anti-Brahmin and Chhetri undertones. But most current Kirati movements emphasise ethnic harmony and welcome members regardless of their ethnic background.<sup>216</sup>

More serious risks may arise from future confrontations between proponents and opponents of federalism. There are growing movements both against federalism in general and federalism along ethnic lines in particular. For now diffuse and disparate, the groups involved range from far left nationalists to conservatives who simultaneously struggle for reinstating the monarchy and revoking secularism.<sup>217</sup> This may not be an impediment to joint

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<sup>209</sup> Magnus Hatlebakk, "Inclusive Growth in Nepal", CMI, Bergen, June 2008. Hatlebakk attributes the increase in poverty in the eastern hills between 1995 and 2003 to lower migration rates compared to other regions.

<sup>210</sup> As it has been in the past, see fn. 126.

<sup>211</sup> Crisis Group Report, *Nepal's Future: In Whose Hands?*, op. cit., p. 32. Unemployment rates are not particularly high, but underemployment is a real problem. The overall unemployment rate is 2.1 per cent, but urban unemployment is significantly higher, at 7.5 per cent. Unemployment is highest among urban youths (fifteen to twenty years), at 13 per cent. Underemployment (involuntarily working less than 40 hours per week) is at 6.7 per cent, up from 4.1 per cent in 1998/1999. Underemployment is highest among the twenty to 29 year olds, at around 8 per cent. "Report on the Nepal Labour Force Survey 2008", Central Bureau of Statistics, National Planning Commission Secretariat, Government of Nepal, August 2009. Nepal's total labour force has increased significantly over the last few years. According to the latest available World Bank figures, the labour force increased by 375,000 from 2005 to 2006, by 370,000 from 2006 to 2007 and by 416,000 from 2007 to 2008. "Labor force, total", World Bank, available at <http://data.worldbank.org/indicator/SL.TLF.TOTL.IN>.

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<sup>212</sup> A journalist in Dang asserted that "the Maoists can mobilise 5,000 to 10,000 people any day, especially on land issues". Crisis Group interview, February 2010.

<sup>213</sup> "Terror in Nepal's Terai as armed group's ultimatum ends", [thaindian.com](http://thaindian.com), 20 December 2008; "Jwala warning to judges", *The Kathmandu Post*, 29 July 2009.

<sup>214</sup> For example in Biratnagar, a small group of *pahadi* party activists and businessmen after the first Madhesi movement in 2007 called a meeting of influential individuals of hill origin to establish a *pahadi* self-defence organisation. At the meeting the idea was rejected as dangerous by the vast majority of participants and never got off the ground. Crisis Group interviews, Biratnagar, July 2008.

<sup>215</sup> One exception is the Chure Bhawar Ekata Samaj (CBES), but it is now largely inactive. Crisis Group interview, Dhanusha, October 2009. An exception is Siraha, where the group maintains an active committee. Crisis Group interview, Lahan, October 2009. The CBES was originally established to defend the interests of *pahadis* in the Tarai in response to the Madhesi movement. See Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit.

<sup>216</sup> See Section III.A.

<sup>217</sup> On the left, Rastriya Janamorcha has persistently spoken out against federalism. "Unite to dispose of imposed federalism: K.C.", [ekantipur.com](http://ekantipur.com), 7 March 2010; "Masal for alliance against federalism", *Republica*, 14 March 2010. The RPP(N), which also demands the reinstatement of the Hindu state and monarchy, wants a referendum on federalism. "Royalist party brings life to halt", *The Kathmandu Post*, 23 February 2010.



action. A cross-party alliance initiated by the leftist Rastriya Janamorcha in March 2010 also includes prominent NC and UML leaders.<sup>218</sup> Demonstrations organised by the royalist Rastriya Prajatantra Party (Nepal), RPP(N), are well attended.<sup>219</sup>

Conservative anti-federalism has a militant fringe. The Nepal Defence Army (NDA) seeks to reestablish Nepal as a Hindu kingdom and has been responsible for several terrorist attacks.<sup>220</sup> The Janabadi Hill Tigers are a little known group threatening violent opposition to attempts to establish a federal system.<sup>221</sup> The Khas Chhetri Ekata Samaj announced the formation of a paramilitary organisation.<sup>222</sup> Although there have not yet been systematic confrontations between pro- and anti-federalists, some violence between them has occurred.<sup>223</sup>

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Similarly, the Bhisma Ekata Parishad, a group mostly active in far-western Nepal, rejects ethnic federalism and demands a Hindu state. "Bandha for Hindu State: Mid, Far-West hit", *The Kathmandu Post*, 22 March 2010.

<sup>218</sup> "Anti-federalists form joint front", *Republica*, 18 March 2010. The anti-federalism theme is widely discussed in mainstream and party-affiliated publications. See for example the interviews with Professor Dil Bahadur Chhetri, chairman of Chhetri Samaj: "We are not a communal body: Chhetri Samaj", *Newsfront*, 15 February 2010; "Jatiya rajyale grihayuddha nimtyaunchha", *Rajdhani*, 16 February 2010. See also *Punar-jagaran* editorial, "Kshetri samajle rajdhanima bajaeko khatarako ghanti kaska lagi bajeko ho?", 16 February 2010.

<sup>219</sup> In a 2009 survey more than a quarter of respondents (26.7 per cent) opposed federalism and while almost half (48.1 per cent) supported federalism, only 19.5 per cent said they want federalism based on ethnicity or language. "Public opinion of federalism", editorial, Sudhindra Sharma, *The Kathmandu Post*, 8 December 2009.

<sup>220</sup> See Crisis Group Report, *Nepal's Troubled Tarai Region*, op. cit. After a devastating bomb-attack on a mosque in Biratnagar in May 2008, NDA cadres killed a Jesuit headmaster in July 2008 and bombed a church in Kathmandu in May 2009. "2 dead in Biratnagar mosque bomb blasts", *The Kathmandu Post*, 30 March 2008; "School principal shot dead", *The Kathmandu Post*, 2 July 2008; "Bomb rocks Dhobighat church; two killed, dozen others injured", *nepalnews.com*, 23 May 2009.

<sup>221</sup> Their activities so far are confined to Bhojpur, where the group placed several bombs, distributed leaflets and started demanding donations from the business community. A statement issued by the group also indicates opposition to the Maoists. "OCHA situation overview: covering period 16 April to 04 May, 2009", OCHA Nepal, 5 May 2009. In a letter the group states: "Janabadi Hill Tiger has been formed for the liberation of Nepali people since the 10-year people's war and federal republic failed to liberate them". "Donation terror in Bhojpur", *The Kathmandu Post*, 5 June 2009.

<sup>222</sup> Crisis Group interviews, Khas Chhetri Ekata Samaj leaders, Sunsari and Jhapa, September 2010.

<sup>223</sup> Cadres of the Kirant National Liberation Front, a Maoist sister organisation, attacked a Khas Chhetri Ekata Samaj office in

If and when it happens, implementing federalism will in the short term be a zero-sum game as parties, communities and individuals scabble for positions and resources within the new states. Given the emerging opposition to federalism as well as widely overlapping claims to territory and resources, new political conflicts at best and more serious unrest at worst are to be expected. Whether it is the former or the latter will to a great extent depend on the reaction of the state. Disproportionate and indiscriminate responses are likely to generate wider support for violent uprisings.<sup>224</sup> But addressing common grievances early on, combined with targeted measures against unpopular and disruptive groups, could keep down the heat.

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Bhojpur. "Khas Chhetri Ekata Samaj office vandalized", *myrepublica.com*, 14 July 2009. In Kathmandu, Newar activists attacked and injured federalism critics at an anti-federalism demonstration called by the Rastriya Janamorcha on 10 January 2010.

<sup>224</sup> A possibility ethnic leaders are conscious of: "The SSP [Special Security Plan, see Section IV.A.5] might prove a chance to reunite. If there is a fire in the house, then you need your neighbours." Crisis Group interview, FLSC district in-charge, September 2009.

## IV. THE ENDURING STATE

Of critical importance in reducing conflict risks and fostering constructive reform is the state's response to instability through policing and public security efforts. These have been undermined by a lack of strategic clarity, the politicisation of policing and internal rivalries within the security sector. In any case, security challenges are more deeply rooted in entrenched political cultures that good policing alone cannot address – and that the army is particularly incapable of tackling.

Development experts assume that the state is there to provide services and that if it fails to do so it will face a crisis of legitimacy. Nepal also tends to feature high on the lists of fragile or failing states. But the Nepalese state is more flexible than fragile. It endures – and has survived the conflict surprisingly unscathed, and unreformed. This is partly because its own *raison d'être* is not serving citizens so much as servicing the needs of patronage networks and keeping budgets flowing and corruption going. The state is dysfunctional by demand. It is slow to reform because elite incentives are invested in the status quo and public pressure is rarely acute.

### A. PUBLIC SECURITY, POLICING, POLITICKING

Statistics on violence are weak and in any case do not necessarily capture insecurity as it is experienced. As an international security analyst explained, “We've tried to look at statistics but they're very unreliable. Not all offences are reported to authorities and the police may be keen to downplay or under-report incidents that have political implications. There is no clear picture of whether things are the same, better or worse”.<sup>225</sup> The difficulty of making people feel secure is not lost on administration officials. “Security is a psychological feeling as much as anything else,” pointed out one official. “The statistics show that many types of crime have decreased but we have to make people *feel safe*”.<sup>226</sup>

But security for whom?<sup>227</sup> The reasonable answer is for the people of Nepal: the state's security sector should be designed to meet citizens' needs.<sup>228</sup> But the peace process

rests on a delicate balance of elite interests. Security policies are disproportionately influenced by the concerns of powerful institutions, influential urban classes and the existing security forces.<sup>229</sup> Designing new structures is attractive in theory but probably unworkable in practice. Any efforts towards reform have to acknowledge and address a complex array of vested interests.

Public security in Nepal was never equal in the first place. Those whom the state never protected have little to lose and may see current transformation as opportunity rather than threat. But others who were well protected by the state in the past are understandably dismayed by becoming targets of new forms of insecurity. A human rights activist in the Tarai said: “I have worked with INSEC for twelve years. During the people's war I never felt insecure. But afterwards I did”.<sup>230</sup>

It is hard for ruling groups to understand the perspective of those exploited, or neglected, by the state. Like politics, policing has often been pretence. Powerful people have almost never felt the hand of the law and the police have rarely been impartial enforcers of order.<sup>231</sup> When actual power so often flows outside the structures that ostensibly exist to regulate it, there can be little surprise that the formality of policing is subverted by power relations.

Public security is probably not in as dire a state as commentators make out. Some statistics are encouraging.<sup>232</sup>

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*Afghanistan: Still Searching for a Strategy*, 18 December 2008; Crisis Group Africa Report N°150, *Congo: Five Priorities for a Peacebuilding Strategy*, 11 May 2009; Crisis Group Asia Report N°180, *Handing Back Responsibility to Timor-Leste's Police*, 3 December 2009; Crisis Group Asia Report N°182, *Bangladesh: Getting Police Reform Back on Track*, 11 December 2009.

<sup>229</sup> There are major differences in perceptions of insecurity among those in Kathmandu and people elsewhere. For many in rural areas, the current state of insecurity is still seen as better than the fear of violence and constant security checks during the conflict. Many in Kathmandu see the current decline in the rule of law in the city as more shocking because they experienced so little of the conflict before the peace agreement.

<sup>230</sup> Crisis Group interview, 15 October 2009.

<sup>231</sup> See “Cultures of Impunity” in Crisis Group Report, *Nepal: Peace and Justice*, op. cit., pp. 5-13.

<sup>232</sup> The UML-supporting weekly *Budhabar* reported comparative statistics which appear to show that the current government has managed to reduce all major crime statistics. “Tathyankale bhanchha – ‘sarvadhik saphal shanti-suraksha’”, *Budhabar*, 31 March 2010. Still, many crimes are probably not reported – and even when they are, police often refuse to file cases, first information reports (FIRs), etc; there is certainly major undercounting. Reporting crime has too many negative consequences – it will lead at best to months or years of tiresome and likely fruitless legal process, at worst to demands for bribes and harassment of the victim rather than pursuit of the offender.

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<sup>225</sup> Crisis Group interview, Kathmandu, 16 April 2009.

<sup>226</sup> Crisis Group interview, Kalaiya, 5 April 2009.

<sup>227</sup> This is also the title of Charlotte Watson and Rebecca Crozier's, “Security for whom? Security sector reform and public security in Nepal”, *International Alert*, January 2009.

<sup>228</sup> Related past Crisis Group reports include: Crisis Group Asia Report N°157, *Reforming Pakistan's Police*, 14 July 2008; Crisis Group Asia Report N°138, *Reforming Afghanistan's Police*, 30 August 2007; Crisis Group Asia Briefing N°85, *Policing in*

Parties in opposition will always use weak law and order as a stick to beat the government. The Maoist-led administration earned a worse reputation than was warranted.<sup>233</sup> Similarly, UML Home Minister Bhim Rawal has had a torrid tenure, with two high-profile assassinations of media barons prompting campaigns for his resignation.<sup>234</sup> But his record includes more successes than his detractors claim.<sup>235</sup>

Violence and brutal rough justice have long been endemic in Nepali society. They are not just recent, conflict-driven phenomena. Vigilantism is a real risk. The transitional period has seen lynchings, the burning alive of a woman in Dhanusha suspected of abducting children,<sup>236</sup> the lynching of three teenage students just outside the capital, and other bloody incidents in the hills and the Tarai.<sup>237</sup> Statutes are not always in line with social norms and traditions – where they clash, accepted convention often overrides the rule of law.

Public security has become a major concern during the transition. The peace agreements addressed the topic,

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<sup>233</sup> For example, at the height of anti-Maoist sentiment as their administration was about to collapse, one NA division commander said: “In this region the security situation is much better than before. Look at the map [of recent incidents] – where are the bombs? Where are the threats? There’s almost nothing happening. Of course, if the chief asks I’ll tell him the situation’s bad because that’s what he wants to hear. But in reality it’s fine”. He continued, “Of course Girijabau [late Girija Prasad Koirala] and Khadga Prasad [UML leader K.P. Oli] shout and scream about anarchy but that’s just politics – they’re determined to pretend everything’s going wrong. But as far as I can see the real security problems are only in the eastern Tarai and, now, in the eastern hills. The rest of the country isn’t in such a bad state. For the NC and UML it makes sense to cry that the country’s falling apart – but in reality they’re shit-scared that the Maoists are more popular than they are – and schemes like the self-employment loans are making them more so”. Crisis Group interview, senior Nepalese Army commander, April 2009.

<sup>234</sup> “UML asks Rawal to quit”, *The Kathmandu Post*, 5 March 2010; “FNJ asks Nepal, Rawal to quit”, *Republica*, 6 March 2010. Jamim Shah, controversial media entrepreneur and former publisher, was shot in broad daylight in Lazimpat, where most foreign embassies are located and considered one of the safest areas of Kathmandu, on 7 February 2010. Arun Singhaniya, media entrepreneur and publisher of *Janakpur Today*, was killed on one of Janakpur’s busiest junctions, supposedly with round the clock police presence, on 1 March 2010.

<sup>235</sup> See fn. 233.

<sup>236</sup> “Woman burnt to death in Dhanusha”, Suresh Yadav, *myrepublica.com*, 12 April 2009.

<sup>237</sup> Bhaktapur residents beat the three teenagers to death after accusing them of attempting to kidnap a child. “Kin receive lynching victims’ bodies”, *Republica*, 18 August 2009. On the spate of lynchings in early 2009 see: “Innocent”, *Himalayan Times* editorial, 28 April 2009.

which suggests some foresight.<sup>238</sup> But it has been hard for all state security forces to adapt to the changed post-conflict circumstances – especially as no one felt they had lost the war.

The police were expected to switch back to “normal” policing but had been severely undermined by being sidelined during the conflict; they also had to cope with the YCL’s parallel policing activities. The APF was set up as a counter-insurgency force and also as a counterbalance to an unbiddable army; their numbers have been boosted but their peacetime role remains unclear. The army, which enjoyed real power from 2001 to 2006, feels its legitimacy is undented and is determined to oppose the Maoists’ political aims. It has survived the loss of its guiding institution, the monarchy, but still clings to the idea of the unitary, Hindu state.

For the Maoists, the transition has thrown up different challenges. Maoist militias had taken on significant policing roles during the conflict. Many of these were initially retained by the YCL but it has been trying to step back from the parallel functions which contravene the peace agreements. The PLA was at the sharpest end of the war and suffered significant losses. Nevertheless, during the fighting it had a clear sense of purpose and a comforting self-image of revolutionary sacrifice. Confined to cantonments and sidelined, its future remains uncertain.<sup>239</sup>

## 1. A tiger with no claws

*“Now people aren’t afraid of us. We’re like a tiger with no claws”.*<sup>240</sup>

Many of the challenges facing policing are widely accepted, although often loosely defined. Law and order is

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<sup>238</sup> The CPA specifically mandates the Nepal Police and APF with “maintaining lawful arrangements and peace and order as well as that of criminal investigation in line with [...] the prevailing laws”. CPA, Article 5.1.6. Various other agreements also address law and order during the transition. The December 2007 23-point agreement by the seven parties’ top leaders notes that “effective provisions for the maintenance of law and order situation in the country [...] shall be [among] the top priorities of the interim government”. 23-point agreement, 23 December 2007, Article 16. The Interim Constitution elaborates: “It shall be the objective of the State to maintain law and order and peace [...] while maintaining a system where people can reap the benefits of democracy”. Interim Constitution, Article 34(2).

<sup>239</sup> No progress has been made on the issue of integrating the PLA into the National Army. The issue is closely linked to public security, which many see as the most urgent problem. Both sides have become deeply reluctant to enact the compromises that were part of the peace agreement by moving towards integration which will be essential to eventually tackling public order issues.

<sup>240</sup> Crisis Group interview, Pathlaiya, 5 April 2009.

weak – although the sense of continual deterioration conveyed by many media reports is not reflected in statistics.<sup>241</sup> Nor does it necessarily represent public perceptions.<sup>242</sup> The transitional situation has politicised policing – from policy decisions, promotions and transfers to pressure to release suspects or drop cases. But it is far more complex than most accounts make out (see below) and there is no quick-fix solution.

The civil police depend on close working relations with local populations. They need information; they also need to be accessible. But engagement with communities presents challenges. “People are much more aware now: they’ll come from the villages to enquire about their cases”, observed one district police chief. “That’s a good thing and we should welcome it. But there is pressure: people and parties demand instant action and have no patience to let us work at our own pace”.<sup>243</sup> The pressure generated by the public’s impatience is widely felt.<sup>244</sup> Even when the police do deal with cases efficiently, the judicial process offers little support for victims.<sup>245</sup>

Police officers feel they have lost control. While many have called for community policing (there have been

some pilot programs but so far of limited scope and impact<sup>246</sup>), the overwhelming perspective of the police themselves is that they have been hamstrung by losing the ability to inspire fear and awe. “People used to be scared, they wouldn’t dare do anything anywhere near our barracks”, complained one junior APF officer.<sup>247</sup> As one of his colleagues added, “People used to respect the police and be scared of them; one constable could easily walk round villages and instil some fear”.<sup>248</sup>

Nepal imported its colonial-style policing model from India, whose police force was modelled by the British raj on the brutal police in Ireland. Their task was not community relations but the ruthless control of subject populations.<sup>249</sup> Some officers familiar with India still envy the discipline the Indian police can impose.<sup>250</sup> Such sentiments lead easily to a sense of powerless frustration:

When the base was first established here people took it seriously – there was a sense in town [Birgunj] that one should think twice before causing trouble because there’s a whole armed battalion up the road. But now people are happy to cause trouble right under our noses and they’ve lost that fear. It won’t be long before they’re burning tyres right outside our gate knowing there’s nothing we can do about it.<sup>251</sup>

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<sup>241</sup> See fn. 233.

<sup>242</sup> Most people do feel safer than during the conflict. In one large survey conducted in June and July 2009, 75 per cent of the 3,004 respondents said they felt safer in their locality than they had a year before. The survey suggests that perceived incidence of crime may be higher than actual incidence and shows that perceived crime risks are significantly higher in the Tarai than in hill districts. “Treading water? Security and justice in Nepal in 2009”, Interdisciplinary Analysts and Saferworld, March 2010, pp. 21-22, 24. In May 2007, 70 per cent had responded that they felt safer than before the April 2006 people’s movement. “Public safety and policing in Nepal: An analysis of public attitudes towards community safety and policing across Nepal”, Saferworld, January 2008, p. 7. The 2010 Himalmedia survey cited earlier found that 64 per cent of respondents felt law and order had improved; a majority of respondents believed that extortion, political violence and organised crime had fallen (p. 33).

<sup>243</sup> Crisis Group interview, Gulmi, 21 April 2009. The CDO of the same district commented: “In a democracy people should raise their voices – that’s a good thing. It’s because people didn’t get heard that they resorted to the people’s movement. If we’re transparent people will be patient. For example, post-conflict compensation is taking a long time but people know the process is happening”.

<sup>244</sup> For example, “People don’t want us to implement the law in any case. If there’s a car accident and I promise to arrest the driver, file a case and take it to court will they accept it? No – they want instant action”. Crisis Group interview, Lamjung, 23 April 2009.

<sup>245</sup> “In prosecuting cases there’s no support for the victim: getting a conviction does nothing for them. Victim support is key to a better system. If a family loses a breadwinner convicting the killer won’t help them live – they can be reduced to begging”. Crisis Group interview, Arghakhanchi, 21 April 2009.

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<sup>246</sup> Interdisciplinary Analysts and Saferworld found that only 9 per cent of their 3,004 survey respondents were aware of the concept of community policing and only 42 out of the 3,004 respondents said that community policing pilot programs had taken place in their area. “Treading Water?”, op. cit., p. 39.

<sup>247</sup> Crisis Group interview, Pathlaiya, 5 April 2009.

<sup>248</sup> Crisis Group interview, Pathlaiya, 5 April 2009.

<sup>249</sup> “That the Nepal Police has borrowed heavily from the Indian police system is common knowledge. What is less known though is that the Indian police itself was the creation of the British to expressly serve their interests in a colonised state. When police reorganisation was taking place in India in the mid-19th century, the British already had a model that had worked well in another colonial situation – Ireland .... The militarised structure of the Irish police was thus grafted onto a force that was to work among civilians in India, and we adopted the same system lock, stock and barrel when we set up our own national police force back in the 1950s .... Not much thought seems to have been given to whether policing would be better served by letting loose on one’s own people a quasi-military police force modelled after one meant to keep a colonised population under check”. Deepak Thapa, “Army of cops”, *The Kathmandu Post*, 4 February 2010.

<sup>250</sup> For example, one APF junior officer complained: “Look across the border – there are no problems there. There are no *bandas* and even one unarmed police officer is enough to keep people in line. Everyone obeys the police and is scared of them. But here they beat up the police”. Crisis Group interview, Pathlaiya, 5 April 2009.

<sup>251</sup> Crisis Group interview, Pathlaiya, 5 April 2009.

In the words of one police chief in a relatively quiet and trouble-free district, “The only people who obey me are my men – no one else. Why should I pretend we’re doing a great job?”<sup>252</sup>

The police feel under attack and insecure. There have been direct attacks on officers and police posts.<sup>253</sup> The KJWP attacked police, as did the Mongol Revenge Group.<sup>254</sup> The police bodyguard of the Parsa assistant CDO was shot dead in an attack.<sup>255</sup> Following a wave of killings, abductions and other serious crime, the Banke police chief claimed that he himself felt insecure<sup>256</sup> – a statement that aroused criticism from local observers.<sup>257</sup> It is easier to sympathise with more junior officers and constables. As one put it, “Look at what we have to put up with. People swear at us, assault us ... which other police force in the world would put up with this? But we’re suffering it in silence”.<sup>258</sup>

Human rights are often perceived as an obstacle: “And now with human rights we’re not allowed to do anything. We have guns and *lathis* [long batons] but can’t even use them as a threat because it’s no longer allowed”.<sup>259</sup> Some also accuse the police of citing human rights constraints as an excuse not to do their job – or even claim that sus-

pects have been released because of pressure from human rights activists, when this is not the case at all.<sup>260</sup>

The police lack basic resources. They remain poorly trained and equipped and relatively few compared to the population and terrain.<sup>261</sup> In many districts, post-conflict reconstruction has hardly begun: a huge number of police posts have been re-established across the countryside but are operating from rented or borrowed accommodation.<sup>262</sup> However, several officers reiterated that lack of personnel or equipment was not their most pressing problem.<sup>263</sup> The greater difficulty lies in the political and institutional context.

The police are part of the broader administrative framework and much of what they can or cannot do depends on the stance of home ministry officials, in particular the chief district officer. The CDO plays the main role in district security. It is he who guides the police, gives the lead and

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<sup>252</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>253</sup> Attacks on police are not uncommon. For example, “Six months ago there was a scuffle between Limbuwans and police. They took out their *khukuris* and chased the police off. That was at the national convention of the Lingden group. The LPC had previously agreed that no group would carry weapons. Then an APF base was established six months ago. It was after that that the patrolling stopped”. Crisis Group interview, human rights activist, Phidim, August 2009.

<sup>254</sup> The KJWP carried out two attacks on police posts in Khotang in 2008 and one in May 2010. See fn. 101. One police officer was killed in the Mongol Revenge Group’s February 2009 attack on a police post in Pyuthan. “Police reinforcements sent to Syaulibang”, *myrepublica.com*, 7 February 2009; “Mongol behind Pyuthan attack”, *ekantipur.com*, 12 February 2009.

<sup>255</sup> “Asst CDO attacked, bodyguard dead”, *Republica*, 12 January 2010.

<sup>256</sup> “Banke SP threatened”, *The Kathmandu Post*, 15 February 2010.

<sup>257</sup> A human rights activist said: “He is surrounded by armed police! How can he say that? What kind of message does that send? How are ordinary people supposed to feel safe?” Crisis Group interview, Nepalgunj, February 2010.

<sup>258</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>259</sup> Crisis Group interview, Pathlaiya, 5 April 2009. A civil society activist in Taplejung said: “Human rights have also made things worse in some respects. It constrains the police and helps the criminals”. Crisis Group interview, February 2010.

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<sup>260</sup> “The police have adopted a new strategy – they take money from criminals but then say they were pressured by human rights activists or *janabadis* to release them; that they had no freedom of action”. Crisis Group interview, human rights activist, Nepalgunj, February 2010.

<sup>261</sup> “We do need more manpower: I want to establish two more posts but there’s not enough resources; people ask for more police presence – some places are still seven, eight hours from the nearest police post even though roads reach all VDCs. We now need to send ten people to make an arrest where previously two would have been enough so we are overstretched”. Crisis Group interview, Gulmi, 21 April 2009.

<sup>262</sup> Crisis Group interviews, police officers and district administration officials, various districts, January-March 2010. A police officer in Bhojpur said: “95 per cent of police posts are in rented buildings or government buildings. There has been no reconstruction”. Crisis Group interview, January 2010. And according to an officer in Taplejung: “Most posts are in rented houses – out of 30 posts only ten are our own. The rest are rented or donated”. Crisis Group interview, February 2010. The state of their buildings is often dismal: “This DPO [district police office] was attacked twice in the conflict and destroyed. Look at our living quarters – it’s pathetic, even prisoners in the jail live more comfortably than my men.... The government is *obliged* to look after us. We’re on 24 hour duty and face the toughest challenges but they don’t care. They know we’ll still carry on our work so they’re bullying us. This isn’t a question of morale, it’s more basic than that. These are *essential* needs”. Crisis Group interview, Arghakhanchi, 21 April 2009.

<sup>263</sup> One police officer said, “All our police posts are in place: twelve *chaukis* [posts], three APOs [area police office] and the DPO. They’re all staffed: yes, manpower is thin but it’s not a huge problem. There’s no APF in the district”. Crisis Group interview, Arghakhanchi, 21 April 2009. In some areas, however, police recognise that additional numbers have helped. For example, “The govt has increased our manpower because of the increasing threats – having more personnel transferred from the west has helped a bit”. Crisis Group interview, Pathlaiya, 5 April 2009.

sets the tone.<sup>264</sup> The CDO takes all important security decisions and is also a magistrate with significant powers, including that of trying and jailing individuals under at least three acts.<sup>265</sup> The CDO's personality and administrative style affects the provision of security, as does the critical relationship with the district police chief.

## 2. Stepping back

Many police officers have responded to the difficult environment and their perceived loss of control by stepping back and doing their best to avoid getting involved in any tricky situations.<sup>266</sup> This reluctance to take risks leads to plenty of criticism; as one social worker in a restive Tarai district put it, "The administration are just doing 'time-pass'; they have *no* concern for law and order".<sup>267</sup> It is a line that many police officers cannot reject. One frustrated district chief complained that "We're only managers – we can't even imagine actually enforcing law and order".<sup>268</sup>

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<sup>264</sup> As of June 2010, all 75 CDOs were men.

<sup>265</sup> The Public Security Act, 2018 (1962) gives the CDO authority to arrest and hold a person under preventive detention if suspected to present a threat to national integrity and peace. Arms and Ammunitions Act, 2019 (1962) and Some Public (Crime and Punishment) Act, 2027 (1970) permit him to fine and arrest people for illegal possession of arms and for disturbing public peace respectively. According to the Local Administration Act, 2028 (1971), the CDO can issue orders to open fire and use force in case of civil unrest (see below). All of Nepal's laws, many also in English translation, are available on the website of the Nepal Law Commission, a statutory government body: [www.lawcommission.gov.np/](http://www.lawcommission.gov.np/).

<sup>266</sup> On the local administration delegating decisions to all-party committees see Section II.A.1. Historically, the state has sub-contracted its functions and delegated its authority to local dignitaries. For example, *subbas* in the eastern hills were responsible for collecting taxes and were allowed to administer justice, extract compulsory labour and raise small armies in return. Philippe Sagant, *The Dozing Shaman* (Delhi, 1996), ch. 5. From 1861, *jimidars* in the Tarai had similar rights and responsibilities. See Mahesh C. Regmi, *Landownership in Nepal* (Delhi, 1977), ch. 7.

<sup>267</sup> Crisis Group interview, Kalaiya, 5 April 2009. According to a human rights activist in Siraha: "The police seems to be rather passive. During the year about twelve people were abducted. Eleven were released on pressure of civil society, not with the help of the police. The police seem to think that they are not responsible. If Maoist cadres were abducted, their party freed them at any cost, deploying the YCL and so on". Crisis Group interview, October 2009.

<sup>268</sup> Crisis Group interview, Arghakhanchi, 21 April 2009. In the words of another CDO, "The administration can only be a coordinator. Much depends on the style of decision-making: we can't impose decisions unilaterally – people would reject that – but if we reach decisions after full discussion in a wide group people will respect it. If we invite people to listen to their point

Other officers offer even more brutal assessments. "Go and ask people if I'm doing my job: a businessman, a college girl, a farmer", challenged one District Superintendent of Police (DSP). "They should all be able to say 'the police are here for me' (*mero pulis chha*) but go and ask: people won't say that. People don't trust us, or obey us".<sup>269</sup> Another said: "Ask *anyone* here 'is there rule of law in your country?' and *no one* will say there is".<sup>270</sup> The general preference of all officers – not entirely new – is to encourage aggrieved parties to reach private compromises rather than force the police to pursue formal proceedings: "To be honest ... we've given up on everything apart from pure crime. In other cases we encourage offenders to reach settlements with victims to their mutual satisfaction, calling in party leaders if need be".<sup>271</sup>

The formulation and signing of a compromise agreement (*milapatra*) is often the most that police can hope to achieve. Districts where police rush to show the paper commitments they have extracted from people clearly not prepared to put their vows into practice are exhibiting worrying trends. For decent and principled officers – of whom there are more than critics suggest – there is no pretending that this adds up to rule of law. As one says,

We now only do "patching management": we put a patch over the problem but have no idea if it will be a lasting solution or not. If we were to apply what we know we should be doing for law and order neither the community nor our bosses would digest it. We can't pretend there's rule of law.<sup>272</sup>

When the best form of defence is inaction, the prospects for rule of law are clearly poor. The lead given by ministers of all recent governments has been unambiguous: there has been no action on impunity, no effort to pursue even the most egregious crimes and no shame at the wilful flouting of the rule of law by powerful institutions, in particular the Nepal Army.<sup>273</sup>

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of view they also feel more responsible". Crisis Group interview, Syangja, 20 April 2009.

<sup>269</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>270</sup> The officer, who studied in Indian universities, also commented: "Our laws are fine but they're just on paper: we're not implementing them. Peace, law and order have only improved in our reports – mine and yours. I have to write that or my boss will be upset". Crisis Group interview, Lamjung, 23 April 2009.

<sup>271</sup> Crisis Group interview, Arghakhanchi, 21 April 2009.

<sup>272</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>273</sup> See Crisis Group Report, *Nepal: Peace and Justice*, op. cit. Since then there has been little progress either on the commissions (see fn. 28) or emblematic cases. For example, the Nepal Army defied orders by the courts and Prime Minister Nepal to hand over Major Niranjana Basnet – accused in relation to the

### 3. The politics of policing

In the post-election period, the catchphrase “politicisation of crime and criminalisation of politics” has rapidly become worn from overuse. Some crime is certainly enmeshed with politics and politics does indeed have links to organised violence, corruption and other serious offences.<sup>274</sup> But as discussed (see Section II.B), the structures in which crime and politics intersect are complex – and rarely as novel as they are presented.

That politicians expect to be able to pressure the police and that such pressure is detrimental to policing and the rule of law is beyond doubt. “The problem for us in rule of law is from the political sector”, complained one police chief. “We’re dealing with the criminal sector and can take them on but handling the parties is more difficult”.<sup>275</sup> Another is even more blunt: “Now we have to think very carefully before arresting anyone with the slightest political connection. We can hardly do anything”.<sup>276</sup> Small incidents of public disorder can take on political overtones:

How does politics affect policing? Imagine: two people get together to commit a crime. Then the thieves fall out and fight each other. One happens to be linked to the UML, the other to the NC. So this will be labelled a “UML-NC clash” and the parties will bring out demonstrations in protest against one another. Or two boys get in a fight over a girl in a disco and one hits the other ... then it becomes “YF attacks YCL”.<sup>277</sup>

At the same time, the involvement of political parties can be beneficial to police in allowing them to delegate responsibility for handling local conflicts. “Yes, there’s politicisation, though it’s relatively polite”, commented one DSP. “The three parties and Janamorcha are strong and often they sort things out among themselves. That’s not a bad thing: if they can keep the peace without bringing us in then why not?”<sup>278</sup> He explained in more detail how this works:

We’re lucky with the CA members we have from this district. They’re both top-level and good. Also the district party leaders are good and they do help us in controlling the situation. There’s no bitterness between the parties; all the individual leaders are sensible and

cooperative .... This isn’t how we’re meant to work but, for example, during the student union elections the Maoists were causing trouble so I called the Maoist CA member and asked him to sort it out. He sent the district in-charge and the situation was resolved. This is how we have to work.<sup>279</sup>

As a CDO pointed out, pressure is not always absolute and can leave space for negotiation: “The main thing is cooperation between the parties and a lack of interference or pressure on us if we arrest people or take action – now there is some pressure but we can talk to them”.<sup>280</sup> Furthermore, politicians do not always intervene in the way their supporters would like. One district-level UML leader complained that their appeals to UML Home Minister Bhim Rawal to have their cadres released following clashes with the YCL were turned down.<sup>281</sup> According to a district NC leader, the UML had in fact unsuccessfully pressured the police to open fire on the YCL.<sup>282</sup>

The police and district administration are all too aware of their strengths and weaknesses. When policing is inherently political, it makes sense to cultivate allies in the parties and to avoid trouble by accepting the local balance of power and working within it rather than confronting it. There is no shortage of examples of the police and administration tacitly accepting Maoist assistance in districts where they have a strong hold, or of allowing them to take on quasi policing roles where convenient.<sup>283</sup>

### 4. Crime-fighting, in-fighting

The different forces within the security sector should have complementary roles, clearly demarcated responsibilities and good working relations.<sup>284</sup>

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<sup>279</sup> Ibid.

<sup>280</sup> Crisis Group interview, Syangja, 20 April 2009. It is important to note that political pressure is applied even to the most senior bureaucrats, not just to officials in the districts. See retired Home Secretary Umeshprasad Mainali, “Karmacharitantramathi rajnitik prahar”, *Kantipur*, 28 April 2010.

<sup>281</sup> Crisis Group interview, UML youth leader, Salyan, 20 February 2010.

<sup>282</sup> The UML reportedly also wanted the CDO removed. Crisis Group interview, Salyan, 21 February 2010.

<sup>283</sup> Endorsement of this, no matter how illegal, is sometimes more than tacit. For example, Maoist trade unionists could be seen on the highway just before Butwal checking vehicle licenses together with police in February 2010. Crisis Group observation.

<sup>284</sup> In an ideal world, this suggestion by a junior APF officer would be taken up: “Quick response teams would be a good idea – with joint teams of NP, APF and district officials able to sort out problems on the spot”. Crisis Group interview, Pathlaiya, 5 April 2009.

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death of Maina Sunuwar – to a civilian court and cleared him of all blame after an internal investigation. “Army acquits Niranjana Basnet; Claims UN violated norms”, *Republica*, 14 July 2010.  
<sup>274</sup> On growing corruption in the police and action against SSP and SPs see Navaraj Mainali, “Praharima karbahi”, *Drishti*, 25 May 2010.

<sup>275</sup> Crisis Group interview, Arghakhanchi, 21 April 2009.

<sup>276</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>277</sup> Ibid.

<sup>278</sup> Crisis Group interview, Arghakhanchi, 21 April 2009.

There are barely concealed tensions within the cabinet and the home ministry.<sup>285</sup> The army feels it has been sidelined and that its mistreatment is at the root of insecurity,<sup>286</sup> it also has internal bad blood and management problems.<sup>287</sup> The APF has experienced mutinies,<sup>288</sup> its role is particularly ill-defined.<sup>289</sup> The Nepal Police generally have the toughest jobs under the worst conditions.<sup>290</sup> Almost all security personnel complain of inadequate budgets and being ignored by donors who shower munificence on other government agencies and NGOs.<sup>291</sup>

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<sup>285</sup> For example, one pro-UML weekly reported that the home minister and home secretary were no longer on speaking terms. "Grihamantri ra sachivbich bolchal banda", *Drishti*, 16 February 2010.

<sup>286</sup> "In internal security the administration looks behind to check if the police are there, the police look behind to check if the armed police are there, and the armed police look behind for the army. But we're not there, so naturally they're less confident. And when the general public can see that the army and government are busy fighting each other, it's no wonder that people feel emboldened to break the law with impunity – they know the state's in a mess". Crisis Group interview, senior army officer, April 2009.

<sup>287</sup> On NA tensions over mid-rank promotions, see Dipak Rijal, "Sainik adhikritma charam asantosh", *Nepal Samacharpatra*, 15 April 2010. A front page article of the *Janaastha* weekly reported a drunken argument between two major-generals about the growing influence of officers from hill ethnic groups in the upper ranks of the army. The fight at the NA headquarters' April 2010 new year party featured grave insults and might have deteriorated into a fistfight if not for the interference of the generals' wives and friends. "Jarnelharu shrimatika kurama janginda", *Janaastha*, 21 April 2010.

<sup>288</sup> In June 2008, junior officers in an APF barrack in Nepalgunj beat up their senior officer, protesting against poor food and accommodation. Another APF mutiny took place around the same time in Parbat. "Sashastra prahari dvara bidroha", *Nepal Samacharpatra*, 23 June 2008.

<sup>289</sup> The APF was established in 2001 partly with the intent of creating an armed force that would be under government (rather than palace) control to counterbalance the army. On the uneasy relationship between the parties and the army see Prakash Nepali and Phanindra Subba, "Civil-Military Relations and the Maoist Insurgency in Nepal", *Small Wars and Insurgencies*, 2005, Vol. 16, No. 1. Drawing on both NP and RNA officers, it acquired a mixed ethos in which army models were dominant. The comprehensive training for those from the police on military tactics was not matched by the little training on policing provided to those from an army background. Crisis Group interview, APF officer, September 2010.

<sup>290</sup> Discriminatory rations provision to the three forces (in which the police come off by far the worst) is a further grievance. Sagar Pandit, "Sena ra pulisma khanamai vibhed", *Naya Patrika*, 13 January 2010.

<sup>291</sup> As one DSP put it, "Foreign aid comes to everyone apart from the police and army so we're left out". Crisis Group interview, Arghakhanchi, 21 April 2009.

Relations between the different forces are resentful. The army is contemptuous of the police, seeing them (often rightly) as corrupt and politicised. The police feel they are taking the blame for the army's misbehaviour during the conflict: "There are some 800 disappeared and it's mainly the army's fault. We killed people but in encounters, legitimately. And we carried out post-mortems and handed over the bodies. Now it's time for the army officers to have regrets".<sup>292</sup> The police also sometime see the APF as a waste of money and space.<sup>293</sup> As for the domestic intelligence agency, the National Investigation Department (NID), it has long been seen as a black hole for home ministers to dole out sinecures to loyal party supporters.<sup>294</sup> This is not to mention the judiciary, which every incoming chief justice ritually promises to reform by rooting out corruption and making it efficient and responsive.<sup>295</sup>

Given these tensions, it is impressive that the security sector functions at all. But it is clear that the task of security sector reform, even if politicians grasp the nettle, will not be straightforward.

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<sup>292</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>293</sup> Crisis Group interviews, Taplejung, February 2010; Lamjung, April 2009. "Who carried out the elections? It was us. We set up the booths, we dealt with the public, helped bring people safely to vote, coped with the temporary police, faced all the problems", complained one police officer. "Ask the APF what they did. Just putting a couple of people on a hill behind the booth is nothing. But who even gave us a glass of water? Political leaders were eating rice and meat but we had nothing". Crisis Group interview, Lamjung, 23 April 2009.

<sup>294</sup> In a recent example, the *Annapurna Post* in a front page story claims to have evidence that dozens of NID employees bypassed application procedures and were directly appointed by Home Minister Bhim Rawal, Home Secretary Govinda Kusum and NID chief Ashok Dev Bhatta in exchange for bribes up to Rs. 1.2 million (approx. \$15,000) per appointee. "Guptachar bharna garda 12 lakhsamma lenden", 18 May 2010.

<sup>295</sup> After his appointment in March 2010, current Chief Justice Ram Prasad Shrestha admitted the judiciary's past efforts had failed to yield significant results and vowed to "intensify the (judiciary's) endeavours". "New CJ promises justice for all", *Republica*, 29 March 2010. His predecessor Anup Raj Sharma, after taking the oath of office in November 2009, had promised to focus on "expediting pending cases in court by making it mandatory for every single justice to take up at least three cases a day". "Sharma recommended for CJ", *Republica*, 1 December 2009. Chief Justice Min Bahadur Rayamajhi, appointed in May 2009, had vowed to tackle corruption by enforcing a new code of conduct that would "address 99 per cent complaints against judiciary and judges". "Parliament confirms Rayamajhee as new Chief Justice", *myrepublica.com*, 7 May 2009.



## 5. The cancer and the cure

The challenges of policing and the weakness of law enforcement demand a policy response. Indeed, the home ministers of both the Maoist-led and UML-led governments have implemented a variety of “special” policies. They have shown mixed results. None has been transparent, leading some to suspect that the only “special” element is secrecy. When pressed to explain Home Minister Rawal’s new special security plan (SSP), one seasoned police chief explained that “actually there is nothing ‘special’ about it – it’s really just about ensuring rule of law and doing those things that had lapsed during the conflict”.<sup>296</sup>

The SSP certainly appeared to deliver some results, as had previous Home Minister Bam Dev Gautam’s early 2009 special strengthening program to boost policing in the eastern Tarai and in the hills.<sup>297</sup> “Over the last two to three months we’ve strengthened policing, with more personnel and more posts. Things aren’t as bad as last year”, said one CDO in a district which has seen some of the worst crime and political violence. “Even the statistics will tell you there’s been some improvement. And more security forces mean more of a deterrent for criminals”.<sup>298</sup>

However, none of these plans has attempted any systemic reform of policing, let alone administrative methods and cultures. Nor have they offered any serious alternative to the structures of political involvement that impinge on policing. “Strengthening” has often delivered extra personnel, particularly APF, without a clear plan for what to do with them. Dramatic increases in the overall size of the APF have exacerbated militarisation but the value of

additional armed units is often questioned.<sup>299</sup> Despite initial positive reactions, most commentary on the SSP has become negative, pointing out that high hopes failed to materialise in practice.<sup>300</sup>

More than policy reform, police on the ground are crying out for strategic direction and leadership. “We need an all-party promise to pursue offenders and need an iron home minister. Then nothing would be impossible: we *can* enforce law and order”, commented one police chief at the time of the Maoist-led government. “If the home minister could tighten up like Baburam Bhattarai has done at finance things would be much better”.<sup>301</sup> Only a strong belief that there is leadership and that senior officers and ministers will back up officers on the ground will make the police feel safe in taking possibly controversial action: “What we need is political leadership – someone to say ‘do it’ and then back us up. To break a *banda* we may need to use force – who’ll support us?”<sup>302</sup>

Ultimately, most security problems are manifestations of a failure to deal with new demands and systemic challenges stemming from entrenched political and institutional cultures.<sup>303</sup> The police alone cannot tackle such problems. It is unreasonable to expect them to perform beyond the constraints set by their environment. The army, much as its supporters cry ever more loudly for its deployment to “bring the situation under control”,<sup>304</sup> is even less suited to the task. Nepal’s insecurity cannot be tackled by military means.

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<sup>296</sup> Crisis Group interview, February 2010.

<sup>297</sup> “IGP unveils strategy to fight crime”, Kantipur Report, 13 April 2009. For example an APF officer in a central Tarai district said in early April 2009: “The Border Outposts (BOPs) are a new effort to control the border. That has channelled smugglers into limited areas and helped revenue collection”. Crisis Group interview, Pathlaiya. A journalist in Sunsari was more critical: “There are the border security posts, but those are their earning places. They collect money from smugglers. Like Rs. 10 per sack of fertiliser or cumin.” Crisis Group interview, September 2009.

<sup>298</sup> Crisis Group interview, Kalaiya, 5 April 2009. A human rights activist in Siraha said: “Overall things have improved with the new Special Security Plan. But it is also often abused. Three MMT [Jantantrik Madhesi Mukti Tiger] cadres have been killed recently. We are investigating that incident. But there are fewer strikes. The local administration seems active, so people are scared. The security presence now is very good. Twelve to fifteen basecamps were established, 40-43 police posts, nine area police posts and the Border Security Force presence increased. Now you find a police post every five kilometres”. Crisis Group interview, October 2009.

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<sup>299</sup> Crisis Group interview, senior police officers, Taplejung, February 2010.

<sup>300</sup> See “Santoshjanak bhaena vishesh suraksha karyakram”, *Annapurna Post*, 10 January 2010.

<sup>301</sup> Crisis Group interview, Pathlaiya, 5 April 2009.

<sup>302</sup> Crisis Group interview, Pathlaiya, 5 April 2009. A colleague of his added: “We need strong laws and true autonomy for the security agencies – to implement the law without interference. There should be clear laws and rules banning *bandas* on highways and setting out compensation for accidents, etc. – and then they should be enforced”. Crisis Group interview, Pathlaiya, 5 April 2009. In fact, such laws already exist. But they are unenforceable without determined leadership and political back-up.

<sup>303</sup> See Section III.

<sup>304</sup> “Chahinchha sakaratmak sainik hastakshep!”, *Punarjagaran*, 18 May 2010. (Itself following on from front-page “Aba samhalne palo senako!”, 27 April 2010.) On possible NA deployment see Section II.C. On NA’s new PR efforts, Akanshya Shah, “Army: PR & beyond”, *Republica*, 6 January 2010.

## B. A NECESSARY EVIL<sup>305</sup>

The state lies at the centre of many questions in the peace process: How will it be restructured? What will happen to it if it fails to deliver basic services and meet citizens' heightened expectations? Might it be captured by the Maoists? Is it fragile, failing or failed? Is it present or absent across the country? Can a state which struggles to dispose of rubbish on the streets of its capital cope with federalism, political violence and competing external pressures?

For parties in government, securing the state, their control over it and ability to use its coercive force effectively is critical. For those outside, the state may be the object of desire but is also the source of potential repression and the abstract body to be blamed for social, economic and political ills. For donors and the development class, "state building" and "state strengthening" have come into vogue as the peace process has stuttered forward, throwing up new challenges and underlining the state apparatus's many existing weaknesses.

Little serious attention has been paid to the paradoxical nature of the state in Nepal.<sup>306</sup> For all its dysfunction it

has not collapsed; far from it. Despite its legacy of weak delivery and limited representativeness, the state has endured and survived ten years of conflict, a people's movement and the transition to a republic. The state may appear incapable but it remains the focus of demands from groups who are all too aware that it has never responded to those demands and quite likely never will. Both the reality and the ideal of the state retain a hold on the political and public imagination.

The state is not as elusive as some make out. It has its own rationales for existence and behaviour, among which providing services to the public is at times marginal. This neglect reflects how the state is constituted by its relations with different groups: its own servants, political parties, elite constituencies, external powers and – last and sometimes least – ordinary citizens.

### 1. Not set in stone

The state was referred to by its founder Prithvinarayan Shah and later Gorkha rulers as *dhungo* – a stone.<sup>307</sup> This nomenclature is misleading: the Nepalese state is a combination of the rigid and the pliable. Its resilience is based more on flexibility than strength: it has a remarkable capacity to adapt, absorb, co-opt, negotiate – and thereby endure. It is not monolithic. It has maintained much of its institutional culture through different transitions.<sup>308</sup>

The Nepalese state has rarely, if ever, achieved the ideals of sovereignty and authority.<sup>309</sup> Its national sovereignty has been threatened throughout its modern existence and

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<sup>305</sup> "A necessary evil" is from Thomas Paine: "Society in every state is a blessing but government even in its best state is but a necessary evil; in its worst state, an intolerable one". Thomas Paine, Isaac Kramnick (ed.), *Common Sense* (London, 1986 [1776]), p. 65. Paine's "government", contrasted with "society", embraces the state as considered here. The borrowing of this phrase is also intended as an indirect tribute to Saubhagya Shah, whose untimely demise in December 2009 deprived Nepal's academia of one of its few original voices. See Saubhagya Shah, "From Evil State to Civil Society", in Kanak Mani Dixit and Shastri Ramachandaran (eds.), *State of Nepal* (Lalitpur, 2002).

<sup>306</sup> Richard Burghart remains the primary point of reference for most academics: "The Formation of the Concept of Nation-State in Nepal", *Journal of Asian Studies*, vol. 44, no. 1 (1984), pp. 101-125. The other frequently cited reference is András Höfer's *The Caste Hierarchy and the State in Nepal. A Study of the Muluki Ain of 1854* (Innsbruck, 1979). Respected Nepali social scientist Harka Gurung pointed out that nine of the contributors to the most significant volume on nationalism and ethnicity in Nepal cite Burghart and eleven Höfer. Harka Gurung, "State and Society in Nepal", in David Gellner, Joanna Pfaff-Czarnecka and John Whelpton (eds.), *Nationalism and Ethnicity in a Hindu Kingdom. The Politics of Culture in Contemporary Nepal* (Amsterdam, 1997), pp. 495, 501. David Gellner's edited volume *Resistance and the State*, op. cit., tells us much about resistance but very little about the state. Much of the development literature has applied externally developed concepts rather than probing the nature of the Nepalese state. Crisis Group's past reporting has also fallen short in this regard. Other work offers some insights such as Lionel Caplan's ethnography *Administration and Politics in a Nepalese town* (London, 1975); Mahesh Chandra Regmi's *Imperial Gorkha:*

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*An Account of Gorkhali Rule in Kumaon (1791-1815)* (Delhi, 1999); Bengt-Erik Borgström, *The Patron and the Pancha: Village Values and Panchayat Democracy in Nepal* (New Delhi, 1980).

<sup>307</sup> Harka Gurung criticises historian Mahesh Chandra Regmi's rendition of *dhungo* as the concept of loyalty to the state, noting that Prithvinarayan Shah's *Divyopadesh* only mentions *dhungo* twice, on both occasions with negative connotations. "State and Society in Nepal", op. cit., p. 500.

<sup>308</sup> For example, as it expanded in size and scope in the early years of Panchayat rule.

<sup>309</sup> The Nepalese state defies many assumptions about states, particularly as expressed by two typologies that emphasise sovereignty and authority. The seventeenth-century Westphalian model established principles of territorial integrity and national sovereignty; the twentieth-century sociologist Max Weber articulated the most enduring definition of a state's internal authority: "The claim of the modern state to monopolize the use of force is as essential to it as its character of compulsory jurisdiction and of continuous operation". Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, G. Roth and C. Wittich (eds.), (New York, 1968), p. 56, cited in David Gellner, "Introduction: Transformations of the Nepalese State", in Gellner (ed.), *Resistance and the State: Nepalese Experiences*, op. cit., p. 2.

has at many stages, including the present, been severely compromised. It is subject to both outside political intervention in its internal affairs and dependence on donors (see below). Internally, the state has rarely managed to establish exclusive authority or to monopolise violence.<sup>310</sup>

State presence and capacity are hard to measure. In certain quantifiable respects, its reach has diminished. During the conflict, the Maoists' driving out of the civilian police and elected local representatives was the most notable shift (many other institutions, such as schools and health posts, were kept in place but indirectly controlled and taxed); during the post-ceasefire transition, the absence of VDC secretaries and other local government officials, especially in the Tarai, has been similarly visible.<sup>311</sup>

Nevertheless, the state has remained the main channel for resource distribution and the locus of political conflict. The last local elections were in 1997 and local bodies (VDCs and DDCs) were handed over to unelected officials in 2002. However, budgets still flow through these structures and most are overseen by ad hoc or more formal multiparty mechanisms. At the same time, parastatal or quasi-autonomous community bodies – such as school management committees, forest user groups, electricity

and water consumer associations and the like – have kept alive local political competition, with many positions contested by de facto party candidates.

## 2. Sovereign or subaltern?

In terms of conflict resolution and conflict risk, two constraints on Nepal's sovereignty are relevant: outside involvement in internal politics and the effects on the political economy of aid dependency.

External engagement in Nepal's internal matters is longstanding and structural. There is, however, no need to beat around the bush: in this context "external" means Indian. No other state approaches India's level of engagement nor could any other state aspire to the same quality of relationship, which is conditioned by history, geography, culture and the myriad social, economic and political ties which cross the open border.<sup>312</sup>

Indian involvement in Nepal's politics is transparently interventionist, perhaps more visibly so and more widely acknowledged (and resented) in the last year than at any point since the 1950s. But at the same time it cannot simply be described as external interference. First, this would misrepresent the outlook of Indian officials, who have inherited the British and then Nehruvian view of Nepal as a not

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<sup>310</sup> Until the Panchayat it had not even sought such a monopoly: Shahs and Ranas subcontracted the state's critical functions (raising revenue and administering justice) to a variety of local agents. See fn. 267. The developmentalist Panchayat state's record in extending its own authority through structural reforms was impressive but incomplete. For example the land reforms of the 1950s and 1960s ultimately changed little about the extremely uneven distribution of land but stamped state ownership and authority over it. See Mahesh C. Regmi, *Landownership in Nepal* (Delhi, 1977). Together with the older tenurial institutions, the state also abolished many of the functionary positions to which it had previously delegated much formal authority. See fn. 267. And despite the nationwide courts system, justice often continued to be meted out by local communities in line with customary norms and practices.

<sup>311</sup> According to OCHA, only 32 per cent of VDC secretaries were working from their respective VDCs in mid-2006. The rest were mostly working from district headquarters. In early 2008, 51 per cent of the secretaries were permanently present in their VDCs; 41 per cent worked from outside, visiting occasionally (8 per cent of the posts were vacant). By late 2009 the proportion of secretaries present in their VDCs was down at 42 per cent; 25 per cent worked from district headquarters and 14 per cent occasionally visited their VDCs. In 19 per cent of the VDCs the secretaries were permanently absent or the position was vacant. The reasons for low VDC secretary presences vary by region. OCHA cites security concerns in the eastern and central Tarai, points to "difficult terrain" in some mountain districts and provides no explanation for hill districts like Bhojpur, Panchthar or Rukum. "VDC secretary presence in Nepal: Note on 2006, 2008 and 2009 surveys", OCHA Nepal, 2010, available at [www.un.org.np/reports/OCHA/2010/2010-03-22-VDC-Secretary-Notes.pdf](http://www.un.org.np/reports/OCHA/2010/2010-03-22-VDC-Secretary-Notes.pdf).

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<sup>312</sup> Few other than the Maoists offer a serious critique of Nepal's compromised sovereignty. Still, the Maoists' repeated "semi-feudal, semi-colonial" hook is not entirely inaccurate but is shallow. Their critique has hardly developed beyond Baburam Bhattarai's 1986 doctoral thesis. In any case, the UCPN(M) is now almost as desperate as other parties to bask in attention from New Delhi and will pay little attention to Marxist analysis if India can ease its path back to power. The UML was often critical of India when in opposition but has never been more supine in power than now. The NC cannot forget its Indian roots and, even as it has neglected relations with India's Congress party since the 1970s, is comfortable in its subservience. Pro-palace politicians and parties are as keen to indulge in anti-Indian rhetoric as they are hypocritical: most have conjugal, financial or residential ties to India; depend on Indian largesse and patronage; or lust after recognition by India's Hindu right. The Madhesi parties, as the MJF's Upendra Yadav has discovered to his cost, rely even more directly on Indian blessings for their financial and political wellbeing – although they often play the relationship more cannily than their *pahadi* counterparts. Nepal's journalists and academics have written little that is worthwhile about Indian influence. Even those writers who decline Indian officials' "friendly gifts" (cash, laptops, etc.) are sensible enough not to be too frank in their criticisms. Exceptions include Dipak Gyawali and Ajaya Dixit on water resources, "Mahakali Impasse: A Futile Paradigm's Bequested Travails", in Dhruva Kumar (ed.), *Domestic Conflict and Crisis of Governability in Nepal* (Kathmandu, 2000).

fully sovereign extension of India's sphere of influence.<sup>313</sup> Second, it obscures the important point that Indian involvement is actively sought, and accepted, by most politicians and parties across the political spectrum. Any assessment of the Nepalese state that does not take into account the particularities of Nepal's compromised sovereignty would be incomplete.<sup>314</sup> India's role in shaping the peace process was critical, as was its role in fostering the post-election mess. Its policy may be murky and unaccountable but its influence will not diminish.<sup>315</sup>

Equally central to understanding the state is the mixed role of foreign aid.<sup>316</sup> In differing proportions and under different banners, aid has been a major component of state expenditure since the early 1950s.<sup>317</sup> Successive governments have all reaffirmed the need to keep aid flowing; donors have become more sophisticated in shaping and monitoring their contributions and outcomes. But aid is still primarily money, and as such the lifeblood of political conflict and institutionalised corruption. Corruption is a defining, structurally embedded feature of the polity. It is facilitated when external aid fills the gap left by the lack of a strong domestic tax base and related taxpayer pressure for accountability. An important part of the administration's job is to manage the disjuncture between donor expectations and societal expectations by providing a semblance of regulation. The donor response for many

decades was to ignore the problem. Corruption has become more of an issue for donors but even now few demand a sufficient level of accountability and significant aid from India and China is not transparent in any way.

### 3. The state's servants

The state is embodied in its civil servants. For bureaucrats and other state employees, its most critical function is to pay their salaries and provide them with security. In this, the state has a strong, but not unblemished, record. However embattled it was during the conflict and beyond, its payroll did not shrink. Where it failed was in providing basic security for its servants – a weakness that has become more acute during the transitional period.<sup>318</sup>

The institutionalisation of the modern state under the Panchayat established practical imperatives, namely the need to provide employment. For both civil servants and the state, the very fact that they were employed was as important as any services they provided. The rapidly expanding state of the 1960s and 1970s was the principle employer in an economy that had almost no alternative capacity to absorb the increasing numbers of people completing school or receiving degrees – as well as thousands with few formal qualifications.<sup>319</sup> The provision of secure employment, whatever its ostensible purpose, was a bulwark against dissatisfaction and unrest. Although the economy has diversified since 1990, with particular growth

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<sup>313</sup> Rakesh Sood's interview (where he reveals how "dialogue" with the Maoists is all him telling them what India wants): "It's difficult to reconcile Maoist desire for better ties with ongoing anti-India rhetoric", interview with Rakesh Sood, *Republica*, 29 April 2010.

<sup>314</sup> However, this report does not examine the ramifications of Indian interests in detail.

<sup>315</sup> With regard to the Maoists, India's policy is clear. It is worried about Chinese influence and will not accept Maoist political dominance; nor, as a function of that, any reform of the security sector including integration of Maoist combatants. See Crisis Group Report, *Nepal's Future: In Whose Hands?*, op. cit., pp. 18-24.

<sup>316</sup> The few Nepali or foreign writers who address this include Devendra Raj Panday, *Nepal's Failed Development: Reflections on the Mission and the Maladies* (Kathmandu, 2009 [1999]); Nanda R. Shrestha, *In the Name of Development: A Reflection on Nepal* (Lanham, Maryland, 1997); David Seddon, Piers Blakie, John Cameron and David Seddon, *Nepal in Crisis: Growth and Stagnation at the Periphery* (Delhi, 1980); David Seddon, Sally Westwood and Piers Blakie, *Nepal - A State of Poverty: The Political Economy of Population Growth and Social Deprivation* (Norwich, 1983); Charlie Pye Smith, *Travels in Nepal: The Sequestered Kingdom* (London, 1990); and Seira Tamang, "The Politics of 'Developing Nepali Women'", in *State of Nepal*, op. cit.

<sup>317</sup> On the establishment of an aid culture and the basic paradigms for donor engagement (in particular, India and the U.S.), see Eugene Mihaly, *Foreign Aid and Politics in Nepal* (Kathmandu, 2002 [1966]).

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<sup>318</sup> At least four civil servants have been killed in 2010. VDC secretaries appear particularly at risk: two were killed and at least one abducted in the first six months of 2010. "Bara VDC secy abducted", *The Kathmandu Post*, 26 Jan 2010; "VDC Secy shot dead", *The Kathmandu Post*, 27 January 2010; "Colleague's killing riles VDC secys", *The Kathmandu Post*, 17 June 2010. VDC secretaries in districts across the country decided to resign over extortion and threats, most notably by the newly formed Samyukta Jatiya Mukti Morcha, during June, July and August 2010. For example: "Secys resign en masse", *myrepublica.com*, 18 June 2010; "Banke VDC secys quit en masse", *Republica*, 21 June 2010. Civil servants in urban areas are targeted as well. The assistant CDO of Parsa was attacked and his bodyguard killed in Birgunj. "Parsa assistant CDO attacked", *The Kathmandu Post*, 12 January 2010. A DDC office assistant was shot dead in Janakpur. "Govt employee shot dead to avenge JTMM-R arrests", *The Himalayan Times* online, 11 June 2010.

<sup>319</sup> Particularly in small administrative towns, the civil service became an extremely important source of employment. Caplan, *Administration and Politics in a Nepalese Town*, op. cit.; Seddon et al, *Nepal in Crisis: Growth and Stagnation at the Periphery*, op. cit. The majority of civil servants were employed in the lowest pay grades. *Ibid*, pp. 111-116.

in the service sector,<sup>320</sup> providing jobs, and paying salaries and pensions, remains the state's most critical function.

State salaries have never been sufficient to offer a decent living.<sup>321</sup> Corruption is therefore inevitable. Senior civil servants pay high bribes for transfers to lucrative districts.<sup>322</sup> This investment is recovered through corruption and complicity in illegal activities. The politics of appointments, promotions and transfers generates an economy that deals in cash as well as party and personal connections. Even without taking into account the state resources creamed off by political parties, the administrative system provides in itself strong incentives for graft.

Civil servants also embody the ideology of the state, carry out other important functions and retain a degree of individual agency. CDOs and district police chiefs wield significant power and can shape local perceptions of the state for better as well as for worse. Many of them have served in several districts in very different parts of the country and have a more immediate sense of the nation, and the unitary state, than people in other lines of work.

For state administrators and the police, the transition has been deeply unsettling. Most of those now at the level of CDO or DSP started their careers under the Panchayat, in a more certain world where social and political hierarchies were clearly defined and deference well entrenched. Even the conflict offered a well ordered, if risky, scenario. The transitional period has presented more complex challenges. For some, it has aroused nostalgia for the war. "It was easier in the conflict – at least we knew where we stood", said one police officer who spent much of the conflict doing intelligence work in the Maoist heartland districts. "I often think it would have been better if one side or the other had won decisively, then we wouldn't be left in limbo as we are now".<sup>323</sup>

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<sup>320</sup> The service sector, which comprised 32.9 per cent of the GDP in 1988, has grown steadily: in 1998 it comprised 37.6 per cent and in 2008, almost half (49.6 per cent). "Nepal at a glance", The World Bank, 2009, available at: [http://devdata.worldbank.org/AAG/npl\\_aag.pdf](http://devdata.worldbank.org/AAG/npl_aag.pdf).

<sup>321</sup> In the early Panchayat years, most civil servants would have seen their salaries as a supplement to their own subsistence-level agricultural production. With the decline in the proportion of the population engaged in agriculture, large-scale migration and urbanisation, and increasing consumerism and outlays on private education and health, far fewer government employees can now hope to cover their expenses by legitimate means.

<sup>322</sup> District forestry officers are reported to pay between Rs. 1.5 and 2 million to staff in the Ministry for Forest and Soil Conservation for a posting in a Tarai district. "DFOs queue up for Tarai transfers", *The Himalayan Times*, 15 March 2010.

<sup>323</sup> Crisis Group interview, Nepal Police officer and former intelligence specialist, central region, April 2009.

The feeling of disorder and disintegration is a common and deeply felt sentiment, perhaps more difficult to cope with than the conflict itself. "This *is* the result of the conflict", said a police officer commenting on the clamour of new demands and assertiveness by formerly marginalised groups. "Everyone learned to stand up but no one knows how to sit down – it's a total collapse of values (*chhadapan ho, chhadapan*)".<sup>324</sup> The state's representatives are not purely conservative. "In ten years the Maoists spread awareness and broke down many bad ways of thinking", commented one senior official. "But where is something new going to come from to replace the old?"<sup>325</sup>

The sense that political leaders have no clear vision for how to handle the social transformations they have unleashed has accentuated a widespread unease. Given that even the most enthusiastic proponents of federalism have done little to flesh out what such a system will actually look like, it is not surprising that few bureaucrats have tried to envisage the changes it could bring to the way they work.

#### 4. Political parties: can't live with them, can't live without them

The state is locked into a mutually dependent and multi-faceted relationship with the political parties. The parties need the state to access resources, jobs and power; the state needs the parties because they have become an almost indispensable interface between the state and citizens. The parties have colonised the state through their constituencies of loyal civil servants and, when in power, by ministerial fiat; the state has colonised the parties by becoming their most dependable source of income and influence.

This intertwining of parties and state offers some ballast against instability. As long as the parties need it, it will be in their interests to keep the state functioning. Similarly, the difficulty of reorienting the state to a partyless world is the strongest bulwark against autocracy: as King Gyanendra learned, and as the army is also aware, brute strength alone cannot challenge or replace the vast networks of patronage and loyalty with which the parties encircle the state. However, these stabilising factors also limit the scope for reform and the capacity of citizens or policy-makers to press for meaningful change.

The parties en masse have certainly captured the state. While the 1990s can be read as the decay of democratic ideals and collapse of Westminster-style democracy, they can also be seen as a triumph of the parties in invading and holding almost every powerful institution other than

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<sup>324</sup> Crisis Group interview, Arghakhanchi, 21 April 2009.

<sup>325</sup> Crisis Group interview, Lamjung, 23 April 2009.

the army. Perhaps not a successful democratisation of Nepal but a comprehensive Nepalisation of democracy.

Parties inescapably function in some respects as shadow states. People approach them to access services, to appeal decisions, to take forward petitions, to press for development schemes, to complain about corruption or other abuses, to intervene in disputes or to have people arrested or released from custody. While most politicians act as intermediaries, the more powerful leaders in effect usurp state authority by becoming arbiters of matters that should be in the hands of bureaucrats, police officers or judges. The boundaries between the roles of politicians and administrators have become increasingly blurred.

The politicisation of the state has rarely been carried out shamefacedly or silently. Apart from the most egregious cases of individual enrichment, it does not make sense for politicians or parties to hide their activities. By demonstrating their hold over transfers, promotions, appointments and budgets, they build power. The pressures they are under are tangible – be it to find a job for a loyal cadre or transfer an unpopular CDO – and their responses must be visible to be of value.

Still, the party politicisation of the state has not delivered a monopoly for any one party. The NC's dominance of government post-1990 did not leave it with exclusive sway over the bureaucracy: apart from the UML, even small parties such as the Janamorcha, the CPN(Marxist-Leninist) and Nepal Workers and Peasants Party have managed to retain pockets of support despite their almost total absence from government at the national level.

Against this backdrop, fears of Maoist intent and possible plans for state capture represent not so much moral outrage but concern that they will not be content with a share of the spoils and will instead pursue a decisive monopoly. "What is the Maoist strategy? Can we really be sure that they're not out to seize power? Their behaviour doesn't give us much reason to feel confident".<sup>326</sup> As one district-level Maoist leader responded:

How do you define state capture (*satta kabja*)?<sup>327</sup> Is it fine for a tiny elite to capture power for centuries and make all others suffer in silence? Why suddenly this talk of capture of power? It's because parties naturally

represent class interests and for the first time our party has brought the proletariat's interests to the fore so others are scared. They'd all captured power in the past but now use this phrase against us as if it were something new.<sup>328</sup>

As in every other area of the transition, the critical question is whether the Maoists will alter the patterns of state-party relations or whether they will settle for a major role within the existing system. The post-ceasefire evidence points towards the latter, although their rhetoric and strategy still targets the former. Whatever the outcome, capture of the state by political parties in one form or another is here to stay.

## 5. Of the people, by the people, for the people?

The state does not answer to ordinary citizens nor does it see serving citizens as its principal duty. Nevertheless, popular aspirations are often focused on the state, in spite of its demonstrated incapacity to fulfil them. But expectations are tempered by citizens' experience of the state's behaviour.

That popular expectations directly pressure the state and political parties to "deliver" is a core assumption of most donors and political analysts. It is not a new hypothesis: addressing a "revolution of rising expectations" was a founding plank of the first major aid programs in the 1950s.<sup>329</sup> But it is too often accepted unthinkingly. Development is often not the win-win game its proponents assume. Progress can imply social and cultural change, challenges to elite interests and other redistributions of power.<sup>330</sup>

The state's miniscule income tax base means that few citizens are tied to the state by the strongest form of obligation – direct taxation. This affects rights-based approaches:

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<sup>328</sup> Crisis Group interview, Lamjung, 24 April 2009.

<sup>329</sup> See Mihaly, *op. cit.*, p. 3: "Economic assistance came into use as a political device largely because of an idea ... that the underdeveloped countries are being swept by a 'revolution of rising expectations'. According to this view the peoples of these countries are no longer passive in the face of poverty and misery but are demanding a better life .... The concept of rising expectations has been so widely assumed to represent historical fact that it has escaped rigorous examination. Does the revolution in fact exist?"

<sup>330</sup> See Mihaly, *op. cit.*, p. 4: "What was the relationship, moreover, between expectation of a better life and the willingness to experience change? ... Is it not possible that men may want to improve their lot but are not prepared to pay a piece in terms of changes in position, privileges, and traditional modes of living? How important is this unwillingness to pay the price of change? How pervasive is it? And to what extent has it actually reduced the efficacy of aid?"

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<sup>326</sup> Crisis Group interview, Lamjung, 23 April 2009.

<sup>327</sup> The Nepali term *satta kabja* encompasses a range of meanings: it can stand for both the Maoist goal of complete seizure of state power (traditionally, in Marxist terms, in order to establish an interim dictatorship of the proletariat which will give way to pure socialism) and the more temporary capture of state resources by any party able to win elections or otherwise gain a hold over the state bureaucracy and resources – whether at the national or local level, but normally the former.

NGO-sponsored rights movements are quite different in nature to those that base their claims on assertions of power or demands for representation in return for taxation. The fundamental transformations in economic power relations that might give substance to such demands are yet to take place. In contrast, there is a strong trend of opting out. The working aim for economic migration; the elites' capital and offspring can be easily shifted around the globe. Those who can afford it do not depend on the state to provide education, health and other basic services.

Still, the state's history of unresponsiveness and weak capacity has not reduced its centrality to many demands. These may be channelled through political parties or take the form of individual or joint petitions made directly to those with the perceived power to intervene. Infrequent waves of mass protest have highlighted the sporadic and capricious nature of the occasions when the state has been forced to give in to public pressure. Even those who have been shabbily treated by the authorities throughout their lives often cling to the demand, and the hope, that the state must respond to their needs.<sup>331</sup> In this there is perhaps a conscious distinction between the state as an ideal (the *rajya*, with its hints at the just and contented *Ramrajya* of the *Ramayana*) and the fickle and selfish behaviour of its human incarnation as the administration (*prashasan*).

There is no direct relationship between the aspirations focused on the state and the state's compulsion to act. Dissatisfied citizens will not force change as long as they act within the system. It is only through more serious pressure tactics, in particular if they disrupt the influx and distribution of rents, that the state may be forced to take note.

## C. RESILIENCE AND RESISTANCE

### 1. Pressures and prospects for transformation

Remarkable social and economic transformation is taking place, but much of it beyond state control or without any conscious political direction. Economic migration is not only a useful pressure valve that reduces the tension of unemployment. It is also, slowly but surely, altering long-standing economic hierarchies and offering new openings for social mobility, even if at high cost to many exploited and underpaid workers. As a human rights activist in Dhanusha observed: "Ten or twelve years ago there were

clashes over wages and land but not any more. Most of the farm labourers went abroad and are earning well".<sup>332</sup> It is possible that patterns of political support are moving away from some of the earlier certainties of overlapping kinship and party networks.<sup>333</sup>

It may seem premature but it is important to consider the potentially dramatic changes that federalism will bring. Apart from the transition from monarchy to republic – more earth-shattering in prospect than retrospect – federalism is the one radical change that the Maoists may yet deliver, albeit not according to their original plans.<sup>334</sup> As the likelihood of other restructuring recedes, federalism will assume more importance for parties seeking to deliver change, just as it will prompt a backlash from critics and groups who feel it threatens their interests.

Federalism will necessarily increase local accountability in one respect: it will reduce the role of Kathmandu.<sup>335</sup> While major fiscal questions will almost certainly be decided by the central government or inter-state mechanisms, there will be significant devolution of spending powers, and therefore of both political debate and competition for contracts and commissions. Police controlled by state governments will be more readily held accountable for public security in the areas where they are operating.

However, there is no guarantee that state capitals will not become mini-Kathmandus in their own way: federalism does not equate to decentralisation. There is every reason to suspect that the political and administrative cultures of the current unitary state will form the template for those developed by new sub-national states. Political considerations will likely be more intense and immediate. For exam-

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<sup>332</sup> Crisis Group interview, 15 October 2009.

<sup>333</sup> Philippe Ramirez's political ethnography of Gulmi and Arghakhanchi describes a solid connection between family/lineage and party affiliation. Philippe Ramirez, *De la disparition des chefs* (Paris, 2000). It may well have been accurate at the time but party loyalty appears to have become more fluid in the last two decades. See, for example, the differing accounts of shifting party support in the CA elections described by social anthropologists in Gellner (ed.), *Views from the Field* (Kathmandu, 2008). On voter motivation in the 2008 elections, see also Sudhindra Sharma and Bal Krishna Khadka, "The reason why", *The Kathmandu Post*, 5 March 2010. (This article is based on their survey whose results have been disseminated in the media.)

<sup>334</sup> Federalism is seen as an important next step: "It is essential to move forward; to give people confidence. We can't take it back. If parties move against it they'll be seen as traitors". Crisis Group interview, Maoist Tharu leader, Nepalgunj, February 2010.

<sup>335</sup> A preliminary draft grants significant powers to the provincial governments, including in the areas of policing and taxation. "Report on Concept Paper and Preliminary Draft", Constituent Assembly, Restructuring of the State and Distribution of State Power Committee, Government of Nepal, January 2010.

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<sup>331</sup> An extreme example is the landless squatters, *sukumbasis*. Living in the most abject conditions and with their aspirations repeatedly disregarded by every party or government administrator, they nevertheless insisted on petitioning for attention and services they had never received nor, sadly, might reasonably hope to receive. Crisis Group interviews, Dudgehari/Baliya, Kailali, 26 February 2010.

ple, a Limbuwan police chief appointed by a Limbuwan state government and accountable to a state assembly will find it very hard to step back from internal politics or to resist pressure from powerful local parties.

Federalism will bring some significant changes to district administration, and possibly to local government structures. Will future CDOs or their successors only be drawn from within states? Will the sense of a national administrative cadre with Mechi-to-Mahakali (the easternmost to the westernmost administrative zone) experience be destroyed? Can the ideal of CDOs being impartial and above local politics be maintained or will they get dragged into local disputes? Or will the transition to federalism only demonstrate that these supposed strengths of the existing system are illusory and will, at worst, be translated into a more local format?

The current pressure for dramatic reform appears to be more intense than in past transitions. Public awareness has never been so high, nor has the state faced either a rebel party as powerful as the Maoists or as wide-ranging a challenge to its ideology and elite interests. But strong political and administrative cultures are both an impediment to productive change and a guard against extreme upheaval. In the past, rebels have been incorporated into state structures with mutual accommodation; existing elites have been eased out of primacy without being brutally discarded. Change within the rules of the game is always possible and generally acceptable. A change to the game itself would be more unsettling and less predictable.

## 2. The demand for dysfunction

It is a truism that the state ought to reform, become more transparent, responsive and accountable, and deliver basic services more reliably. The failure to do so is often blamed on the legacy of the conflict and lack of political will. But the difficulties run deeper. State dysfunction is systemic and logical: it rests on an interlocking set of incentives which reward poor performance and penalise improvement.

Many people benefit from the state's poor service delivery; indeed, some industries and occupations are predicated on it. If the state suddenly fulfilled its promise to deliver decent education and health care, most of the approximately 12,000 private schools<sup>336</sup> and nearly 150 private hospitals

would be out of business.<sup>337</sup> If road transport became more reliable and less *banda*-afflicted, the private domestic airlines would see a collapse in sales. If there were full employment in Nepal, the lucrative commissions of manpower agents and their party intermediaries would vanish. With uninterrupted urban electricity and water, the lure of gated communities with dedicated facilities would fade. With decent basic policing, the sizeable private security industry would see its market shrink.<sup>338</sup>

If government services were freely available to all without shortage or obstruction, there would be no incentive to bribe officials – and one of the main means for underpaid civil servants to boost their salaries would be cut off. The value of politicians as intermediaries to help their clients secure access (be it to hospital beds, to get a passport, or any other official work) would be severely undermined. Cynics would argue that parties thrive on large numbers of unemployed, underemployed and poor people – to fill their rallies and sign up as followers for minimal inducements. This is not to mention the vast aid and NGO sector, which needs state dysfunction for its *raison d'être*.

In short, large sections of Nepal's economy and political system rest on the solid foundation of state non-delivery and would be greatly disturbed by a dramatic improvement in efficiency.<sup>339</sup> Instead, the best action is inaction: delegate decisions, stall on difficult choices and where at all possible do nothing.<sup>340</sup>

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<sup>337</sup> By 2008 there were 147 private hospitals with 4,810 beds compared to 96 public ones with 6,944 beds. "Overview of Public-Private Mix in Health Care Service Delivery in Nepal", Health Sector Reform Support Program, Government of Nepal, June 2010. There are an additional 7,500 beds in the fifteen private medical colleges around the country. Of an estimated 8,000 doctors in Nepal, only 1,041 work for the Ministry of Health and Population. The dominant role of the private sector is also visible in specialised care. For instance, while there are 100 private centres for HIV patients, the public sector runs only 68. Similarly, the private sector accounted for nearly half (44.4 per cent) of the voluntary contraception surgery services provided in 2006/2007. *Ibid.*

<sup>338</sup> In 2009 there were close to 700 registered private security companies in Nepal, employing approximately 25,000 people. Ayushma K.C., "Private Security Companies", *The Nepali Security Sector: An Almanac* (Geneva/Pécs, 2009), p. 225. This is roughly equivalent to the total APF personnel. Govinda Thapa, "Nepal Police and the Armed Police Force", *op. cit.*, p. 155.

<sup>339</sup> This is systemic but also visible at the micro level: for example, if a teacher covers the whole syllabus in class in a government school and leaves the students well prepared for exams, what then would be the incentive for some of them to pay for private tuition on the side?

<sup>340</sup> For example, "If I catch a thief I could get in big trouble with the parties but if I catch none will my salary be stopped? No – so why should I arrest anyone? Better to do *namaskar* to

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<sup>336</sup> Out of approximately 32,000 schools in Nepal, almost 12,000 were privately run in 2009. These private schools accounted for 15.5 per cent of student enrolment, and employed around 27 per cent of teachers out of a total of almost 240,000. "Flash 1 Report 2009-10", Department of Education, Government of Nepal.



Grand schemes to transform the state and its functioning assume both that the principal actors want change (but have simply failed to come up with ideas of how to achieve it) and that reform can be achieved without any radical reshaping of incentives.<sup>341</sup> But even the best designed institutions or models are likely to be co-opted and reshaped by the forces that sustain existing patterns of corruption and non-delivery. At times, there is an almost wilful blindness to experience. For example, the sensible-sounding proposal to establish an independent police service commission to counter political interference in appointments and promotions has not confronted the reality of the longstanding public service commission, which has done nothing to block parties from exerting huge influence in the civil service.

The bodies that in theory should act as a check on the state and the executive have historically been very weak, and perhaps even deliberately weakened. The Commission for the Investigation of Abuse of Authority (CIAA), the National Human Rights Commission (NHRC) and the independent judiciary add up to a powerful set of institutions on paper. In practice, their ability to enforce their mandates and redress abuses of power has been extremely constrained. The pattern of ineffectiveness is so sustained that it can hardly be seen as an aberration. It *is* the norm, whereas the stated norms are in fact largely unattainable.

The state may indeed have to reform. But as long as the demand for dysfunction remains high, the state is well placed to offer an unlimited supply.

### 3. More flexible than fragile

The state may be unlikely to change dramatically, but it is also unlikely to fall apart. When presented with the manifest contradictions detailed above, it is easy to resort to terming the state “fragile” or “failing” – or even on the verge of being declared “failed”.<sup>342</sup>

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everyone”. Crisis Group interview, Lamjung, 23 April 2009. Dor Bahadur Bista’s analysis in *Fatalism and Development* (Patna, 1999[1991]) still resonates: “From the fatalistic perspective, there is no free will or choice in decision-making, nor in how an event will unfold” (p. 83).

<sup>341</sup> On weak “elite incentives to create effective public institutions” see: “An Upside-down View of Governance”, Institute of Development Studies, University of Sussex, April 2010, p. 19. Among the global factors stressed in the report only international aid plays a major role in Nepal; but the basic idea of elite incentives to maintain dysfunction is still applicable.

<sup>342</sup> Crisis Group has used similar terms to describe the peace process (most prominently in the titles *Nepal's Fragile Peace Process*, op. cit., and *Nepal's Faltering Peace Process*, op. cit.) and has stated, for example “The state has not failed. However,

For international development experts these terms are carefully, albeit variously, defined categories that take into account multiple factors.<sup>343</sup> Nevertheless, they fail to capture the paradox of the Nepalese state. “Fragile” implies a brittle friability; what we see instead is a resilient flexibility. “Failing” implies falling short of definable targets to achieve or sustain legitimacy; but the Nepalese state appears to derive its legitimacy, and secure its longevity, from elsewhere.

Models of democratisation or peacebuilding fail to capture the complexities of Nepal’s politics.<sup>344</sup> The concept of “political settlement” is perhaps more useful, in that it recognises that the unwritten contracts between elites are often more important than the words on the page in constitutions or peace deals.<sup>345</sup> The links between fragility and conflict risk are significant. But the nature of Nepal’s state does not fall neatly into any paradigm of political transformation. Much work remains to be done in understanding Nepal’s existing political processes.

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it lacks capacity and legitimacy”, Crisis Group Report, *Nepal's Peace Process: In Whose Hands?*, op. cit., p. 32.

<sup>343</sup> Most definitions of state fragility or failure consider service delivery and government control. For example the OECD defines those states as fragile in which “governments and state structures lack capacity and/or political will to deliver safety and security, good governance, and poverty reduction to their citizens”. “Concepts and Dilemmas of State Building in Fragile Situations From Fragility to Resilience”, OECD, 2008. The Failed State Index, a collaboration between *Foreign Policy* and The Fund for Peace, uses twelve indicators to measure instability, including the deterioration of public services and the delegitimisation of the state. The 2010 index ranked Nepal the 26th most unstable country. “The Failed State Index 2010”, available at [www.foreignpolicy.com/articles/2010/06/21/the\\_failed\\_states\\_index\\_2010](http://www.foreignpolicy.com/articles/2010/06/21/the_failed_states_index_2010).

<sup>344</sup> Recent state building literature has acknowledged that forms of legitimation differ according to country and context. See, for example, Alan Whaites, “States in Development: Understanding State-building”, DFID working paper, Governance and Social Development Group, Policy and Research Division, Department for International Development, London, 2008; Alina Rocha Menocal, “‘State-building for Peace’: navigating an arena of contradictions”, Overseas Development Institute Briefing Paper, August 2009; “The State’s Legitimacy in Fragile Situations: Unpacking Complexity”, OECD, 2010; “Building Peaceful States and Societies”, Department for International Development, London, 2010; “An Upside-down View of Governance”, IDS, op. cit.

<sup>345</sup> Whaites explains the need to understand the unwritten elite understandings and compromises that comprise a viable “political settlement” – which may be quite different to the content of formal peace agreements or constitutional arrangements. Whaites, “States in Development: Understanding State-building”, op. cit.

States have always generated discontent and rebellion. Nepal is no exception.<sup>346</sup> Still, it is important to understand why the state seems to survive such resistance, and at times even to thrive on it. It is remarkable how few rebellions seriously challenge the fundamentals of the state or threaten its *raison d'être*. The state may not always be accepted but it can still set the terms of revolt.<sup>347</sup> Under most circumstances the state adjusts to the people and the people adjust to the state – however much this may generate mutual resentment and dissatisfaction.

## V. CONCLUSION: REVOLUTION, RITES

Nepal is experiencing neither revolution, nor anarchy, nor chaos. It is in the midst of a complex rite of passage.

In Nepal, the word *sanskar* means “rite of passage”. It is an ancient concept but one which is very much alive for Hindus, Buddhists and all those influenced by them. But the idea of *sanskar* is much wider than just rites of passage, although it is the only term that encompasses them. It speaks of a much broader range of cultural values. And it has generated the concept of *rajnitik sanskar* – loosely translatable as “political culture” – which is ever-present in the subconscious of all Nepali politicians and those seriously interested in politics. Nepal's *rajnitik sanskar* is distinctive, developed and highly sophisticated. Political activists at all levels use the term and have a broadly shared understanding of what it encompasses. Deviation from supposed democratic norms is in fact entirely in keeping with well established, if unwritten, rules of political behaviour.<sup>348</sup>

Political leaders are often thought of as protagonists, exercising their power to decide and dispose. But in Nepal, they prefer to assume the role of passive *purohits* [Hindu priests] rather than active protagonists. They are custodians of values and practices but they reproduce the political order more by repeating time-honoured formulas than by creating or imposing their own. That they frequently appear hapless, feckless and powerless is no surprise.

The Maoists were protagonists and probably still are – and perhaps the only ones on the political stage. In a landscape peopled with so few doers, the Maoists naturally achieve prominence as the only party that suggests it might initiate and act. The rest prefer inaction. The Madhav

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<sup>346</sup> All sorts of people and groups resist the state and have done since its inception. See David Gellner, “Introduction: Transformations of the Nepalese State”, in Gellner (ed.), *Resistance and the State: Nepalese Experiences*, op. cit.

<sup>347</sup> The respected historian Prayag Raj Sharma has dismissed *janajati* political movements and has, so far, been proved wrong about his assertion that the monarchy is essential to Nepalese statehood. But he accurately pinpoints that ethnic movements have proposed no alternative conception of the state, even though he wrongly insists that unless they start afresh they will be irrelevant: “Whether they like it or not, only the state such as we have it today is able to provide all of us with an overarching sense of national identity. Sequestered ethnic groups, either singly or collectively, have nothing similar to parallel it. If they try to invent something artificially so late in the day, they cannot do it without first destroying the idea of the state”. Prayag Raj Sharma, “Nation-Building, Multi-Ethnicity, and the Hindu State”, in Gellner et al (eds.), op. cit., p. 482.

<sup>348</sup> Nepal's politics has received surprisingly little attention from ethnographers. Borgström (*The Patron and the Pancha*, op. cit.) and Caplan (*Administration and Politics*, op. cit.) made detailed studies in the Panchayat period. There is also Dor Bahadur Bista's polemic, *Fatalism and Development: Nepal's Struggle for Modernisation* (Madras, 1991). The Maoist movement has drawn the attention of social anthropologists, leading to some valuable short contributions: Gellner (ed.), *Views from the Field*, op. cit.; Judith Pettigrew, “Guns, Kinship, and Fear: Maoists among the Tamu-Mai (Gurung)”, in Gellner (ed.), *Resistance and the State: Nepalese Experiences*, op. cit.; Anne De Sales, “The Kham Magar Country: Between Ethnic Claims and Maoism”, in Gellner (ed.), *Resistance and the State: Nepalese Experiences*, op. cit.; Shneiderman and Turin, “The Path to *jan sarkar* in Dolakha District: Towards an Ethnography of the Maoist Movement”, in Michael Hutt (ed.), *Himalayan 'people's war'* (London, 2004). The only substantial work of political ethnography on party politics, Philippe Ramirez's fascinating, if not flawless, *De la disparition des chefs*, op. cit.

Nepal-led government has pleased its supporters precisely because it has achieved nothing. It has restored the comfort of a government that, like the state, exists in order to exist, and whose primary functions are to keep its members in business and the money flowing to the rest of the system.

If the Nepalese state depended solely on its capacity to perform functions, it would long ago have failed and collapsed. Instead, the state is part of a larger political performance in which the indicators for success and failure are harder to measure. What appears to be on show to the public is not necessarily the substance of what is being delivered. The institutions that supposedly govern political behaviour (be it parliament or the “independent” judiciary) are often detached from the systems that regulate power struggles and relations (be they networks of patronage or the selective application of theoretically illegitimate force and coercion).

In many ways, the rituals for the Maoists’ reincorporation in the body politic had already been completed in 2005. The people’s movement was the final rite – necessary mainly for legitimation and incidentally to force Gyanendra Shah to relinquish power. This is not to say it was predictable. Indeed, the less predictable elements – in particular, the Maoists’ election victory – are those that have shaped many subsequent developments. But the need for the movement and the way in which it sealed the Maoists’ readmittance with a final ceremony was largely scripted.

Nevertheless, the impact of the Maoists is real. They still hold out the possibility of more fundamental transformation and revolutionary change. While other new movements – be they ethnic, regional or ideology-based – have more or less accepted the established political culture the Maoists are not “just the same as the rest”. The existential threat they pose is not yet entirely extinguished. There are still real conflicts being played out. The peace process is not heading for a neat, logical conclusion.

**Kathmandu/Brussels, 29 September 2010**

## APPENDIX A

### MAP OF NEPAL



Map No. 4304 UNITED NATIONS  
 January 2007 (Colour)

Department of Peacekeeping Operations  
 Cartographic Section

## APPENDIX B

### GLOSSARY

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|              |   |
|--------------|---|
| ANNFSU       | All Nepal National Free Student Union   |
| ANTFU        | All Nepal Federation of Trade Unions  |
| ATMM         | Akhil Tarai Mukti Morcha  |
| APF          | Armed Police Force  |
| APO          | Area Police Office  |
| BOP          | Border Outpost  |
| CA           | Constituent Assembly  |
| CBES         | Chure Bhawar Ekata Samaj  |
| CDO          | Chief District Officer  |
| CIAA         | Commission for the Investigation of Abuse of Authority  |
| CPA          | Comprehensive Peace Agreement   |
| CPI(M)       | Communist Party of India (Maoist)   |
| CPN(M)       | Communist Party of Nepal (Maoist) [Nb. in the past, CPN(M) was the name of what is now the UCPN(M). Since January 2009, it is the name of a continuity CPN(M) led by Matrika Yadav] |
| CPN(MLM)     | Communist Party of Nepal (Marxist-Leninist-Maoist)  |
| CPN(Unified) | Communist Party of Nepal (Unified)  |
| DDC          | District Development Committee  |
| DFID         | Department for International Development  |
| DNYF         | Democratic National Youth Federation  |
| DPO          | District Police Office  |
| DSP          | Deputy Superintendent of Police   |
| FDNF         | Federal Democratic National Front   |
| FLSC(L)      | Federal Limbuwan State Council (Lingden)  |
| FLSC(P)      | Federal Limbuwan State Council (Palungwa)   |
| FLSC(R)      | Federal Limbuwan State Council (Revolutionary)  |
| FIR          | First Information Report  |
| IDA          | Interdisciplinary Analysts  |
| IDP          | Internally Displaced Person   |
| INSEC        | Informal Sector Service Centre  |
| JTMM         | Janatantrik Tarai Mukti Morcha  |
| JTSC         | Joint Tharu Struggle Committee  |
| KJWP         | Kirat Janabadi Workers Party  |
| KRM          | Kirat Rastriya Morcha   |
| KWP          | Kirat Workers Party   |
| LPC          | Local Peace Committee   |
| LV           | Limbuwan Volunteers   |
| MJF          | Madhesi Janadhikar Forum  |
| MJF(D)       | Madhesi Janadhikar Forum (Democratic)   |
| MMT          | Jantantrik Madhesi Mukti Tiger  |
| MVK          | Madhesi Virus Killers   |
| NA           | Nepalese Army   |

|         |  |
|---------|--|
| NC      | Nepali Congress  |
| NDA     | Nepal Defence Army   |
| NHRC    | National Human Rights Commission                                     |
| NID     | National Investigation Department                                    |
| NP      | Nepal Police   |
| NPTF    | Nepal Peace Trust Fund   |
| NRC     | Norwegian Refugee Council  |
| NSP     | Nepal Sadbhavana Party   |
| NSU     | Nepal Student Union  |
| OHCHR   | Office of the High Commissioner for Human Rights (United Nations)    |
| PAC     | Public Accounts Committee  |
| PLA     | People's Liberation Army   |
| RJM     | Rastriya Janamorcha  |
| RPP     | Rastriya Prajatantra Party   |
| RPP-N   | Rastriya Prajatantra Party Nepal                                     |
| RSVM    | Rashtravadi Swatantra Vidhyarthi Mandal                              |
| SJMMN   | Samyukta Jatiya Mukti Morcha Nepal                                   |
| SJTMM   | Samyukta Janatantrik Tarai Mukti Morcha                              |
| SP      | Superintendent Police  |
| SSP     | Special Security Plan  |
| SSP     | Senior Superintendent Police (Nepal Police)                          |
| STMM    | Samyukta Tarai Mukti Morcha  |
| TASC    | Tharuhat Autonomous State Council                                    |
| TKS     | Tharu Kalyankari Sabha   |
| UCPN(M) | United Communist Party of Nepal (Maoist)                             |
| UML     | Communist Party of Nepal (Unified Marxist-Leninist)                  |
| UN OCHA | Office for the Coordination of Humanitarian Affairs (United Nations) |
| UNDP    | United Nations Development Programme                                 |
| UNICEF  | United Nations Children's Fund                                       |
| UNMIN   | United Nations Mission in Nepal                                      |
| UNPFN   | United Nations Peace Fund for Nepal                                  |
| VDC     | Village Development Committee  |
| VDIS    | Voluntary Declaration of Income Scheme                               |
| YCL     | Young Communist League   |
| YF      | Youth Force  |

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

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

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

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

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September 2010

## APPENDIX D

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