



## Nepal's endless peace process, 2006-12

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Author: Jon Lunn

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This note gives an account of Nepal's peace process from the signing of the Comprehensive Peace Agreement in November 2006 to the dissolution of the Constituent Assembly, its mandate unfulfilled, in May 2012. The note will not be updated. It should be read in conjunction with SN06739, which summarises more recent developments.

Following the political crisis of April 2006, when the autocratic rule of King Gyanendra was brought to an end, Nepal became involved in an apparently endless peace process that often seemed incapable of reaching a final destination.

Under the Comprehensive Peace Agreement signed in November 2006, the Maoist insurgency came to an end and there was agreement that its fighters would be demobilised and integrated into the Nepali Army. In August 2008 a Constituent Assembly was elected which was supposed to agree a new Constitution for the country (although it has already become a Republic). Its mandate, which was supposed to have been accomplished by May 2010, had to be renewed on several occasions. However, after the Supreme Court ruled that there could be no more extensions and elections to a new Constituent Assembly must be held, it was dissolved on 27 May 2012.

The main issue to hold up negotiations on a new Constitution was federalism, which the Maoists, along with a host of ethnic and indigenous groups strongly supported as a means of addressing long-standing problems of marginalization and inequality which fuelled the civil war between 1996 and 2006. Identity-based political mobilisation increased significantly.

Protracted efforts to agree a new Constitution saw a succession of coalition governments come and go. In August 2011 senior Maoist Baburam Bhattarai became prime minister. However, with the dissolution of the Constituent Assembly in May 2012, his government lost much of its legitimacy. It was clear that there was a need to re-set the peace process.

The failure to agree a new Constitution aside, progress was made on some important issues during the period 2006-2012, although it was always hard-earned. For example, in November 2011 Bhattarai was finally able to secure agreement with the other main political parties over the terms for integrating Maoist fighters into the Army. This and other steps forward suggested that the peace process could prove more durable than pessimists assumed.

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## 1 Background: Nepal's protracted civil war and the 2005 'royal coup'

The International Crisis Group (ICG) has provided this useful background to Nepal's political and security crisis prior to the signing in November 2006 of the Comprehensive Peace Agreement:<sup>1</sup>

[...] Nepal has been ruled by hereditary prime ministers from the Rana clan or monarchs from the Shah family since the 18th century. A multiparty interlude from 1959-1960 ended when King Mahendra, father of Gyanendra, suspended the constitution following the election victory of the Nepali Congress Party. From then until 1990 a variety of constitutional formats emerged – none of which allowed for genuinely free political parties. Coming under increasing internal and external pressure, Nepal re-established multiparty democracy within the framework of a constitutional monarchy in 1990.

However, democracy failed to quell Nepal's chronic political instability in the 1990s. Maoist rebels began a violent insurgency campaign against the government in rural areas from 1996, attempting to establish a People's Republic. As the pattern of strikes and later bombings intensified through 2001 and 2002, Nepal's constitutional and political order seemed under threat of disintegration. On 22 July 2001 Prime Minister Sher Bahadur Deuba announced a unilateral ceasefire against the Maoists, which they immediately reciprocated. But the Maoists broke the ceasefire in November 2001, launching coordinated attacks on army and police posts. The conflict intensified over the following year and drew in the full participation of the Royal Nepalese Army.

In October 2002, King Gyanendra, facing a growing debate over potential plans to extend the state of emergency as a means to combat the Maoist insurgency, dismissed the government, assumed executive power and assured the public elections would be held in a timely fashion. However, the insurgency made the holding of elections impossible, and parliament remained disbanded. A January 2003 ceasefire between government and Maoist insurgents collapsed in August that year, sparking a catastrophic return to mass violence: over 1,000 died in the following four months alone. Although the reappointment of Sher Bahadur Deuba as prime minister in June 2004 marked an attempt to heal the rift between the palace and political parties, this ended with the royal coup on 1 February 2005.

King Gyanendra faced an unlikely and unstable opposition coalition, established in November 2005, between seven of the 'constitutional' parties then shut out of politics and the Maoist rebels. This coalition reached a 12-point agreement on a common programme for re-establishing democracy in the country. Some previously mainstream politicians began to question whether the King himself could be part of any solution; indeed, there were independent analysts who increasingly wondered whether the Monarchy itself might ultimately be a casualty of the crisis. This was certainly what the Maoists wished for. However, the end of the monarchy was not part of what became known as the Seven-Party Alliance-Maoist agreement.

The security situation had become highly dangerous in many parts of the country by the end of 2005. The Maoists ended a three-month unilateral ceasefire in January 2005. Although they claimed that they controlled up to 90 per cent of the country, the figure was probably nearer to one-third. However, they were able to conduct operations in most of the rest of the country, including areas close to the capital, Kathmandu. The Royal Government arrested hundreds of political opponents and clamped down on the media. Its security forces were accused of being behind many 'disappearances', extra-judicial killings and cases of torture of political opponents. The Maoists also committed gross human rights violations in the course of their armed insurgency.

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<sup>1</sup> Extracts from the ICG's Home Page on Nepal  
Available at: <http://www.crisisgroup.org/home/index.cfm?id=2929&l=1>

## **1 February-April 2006: returning to constitutional rule**

Despite widespread domestic and international opposition to his plans, the King announced that municipal elections would be held on 8 February 2006 as the first stage in a 'transition to democracy'. Fears about the credibility of the municipal elections were borne out by events. Turn-out was extremely low (latest estimated at 22 per cent) and the day was marked by protests against the Royal Government in many parts of the country:

The elections triggered a full-blown political crisis. The Seven-Party Alliance and the Maoists announced that they would impose a blockade on the capital, Kathmandu, and launch an indefinite general strike in early April 2006. As the crisis deepened, the bulk of the international community appeared to lose patience with the King. The US was the most reluctant to criticise him, but even it began to acknowledge that his actions had deepened the crisis.

The general strike began on 5 April 2006. After 19 days of escalating protests, on 24 April King Gyanendra announced that he would reinstate Nepal's dissolved Parliament and hand over power to the Seven-Party Alliance. A previous offer on 21 April to appoint a new government (he disbanded the previous one in February 2005 in a 'royal coup') was rejected by the popular movement mobilised against him, despite considerable pressure on it from most of the diplomatic community to accept the offer. The 24 April announcement was a clear victory for the Seven-Party Alliance and Maoists. The Maoists were quick to claim credit for the fact that the social base of the popular movement included the poor, ethnic minorities, *dalits* and other marginalised groups in society. In capitulating, the King also implicitly accepted the November 2005 12-point agreement which had been the basis for the cooperation between the SPA and the Maoists. This opened the way to the election of a Constituent Assembly to revise the 1990 Constitution and for peace talks with the Maoists. The Maoists hoped that the Constituent Assembly would ultimately lead to the establishment of a Republic.

## **2 April 2006-January 2007: the Comprehensive Peace Agreement<sup>2</sup>**

The new Government established on 30 April 2006, led by Nepali Congress (NC) veteran Girija Prasad Koirala, took a number of rapid steps towards creating a new democratic order in Nepal. With the endorsement of Parliament, the King was ordered to pay tax on income and property. He was stripped of his status as a divine ruler and lost his immunity from prosecution. The Government also took upon itself powers to appoint (or not) his successor. The 'Royal' in the title of the Nepalese Army was removed and the King's authority over it taken away. The Government is no longer 'His Majesty's Government'. There were moves to end media censorship, including in the crucial sphere of broadcasting. The practice of untouchability was declared a 'social crime' and legislation was announced to punish it and promote the wider upliftment of the *Dalit* community in Nepal. There was particular controversy over the decision to end Nepal's unique status as a Hindu nation by declaring it a secular state.

The new Government also declared the deeply flawed February 2006 municipal elections invalid and granted compensation to the families of all those killed by the security forces in the course of the April protests. Investigations into such killings and other abuses were initiated. All political appointments made by the King since the King's October 2002 seizure

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<sup>2</sup> This section draws extensively on the ICG's report, *Nepal's Peace Agreement: Making it Work*, Asia Report No. 126, 15 December 2006

of power were also revoked by the Government. In addition, it undertook a review of judicial and civil service appointments since that date. Royal expenditure also came under close scrutiny, including military procurement deals. The Supreme Court also ordered the release of three members of King Gyanendra's cabinet who had been detained when the new Government took power.

Perhaps surprisingly, many of these moves were met with a mixture of ambivalence and hostility on the part of the Maoists, who argued that major constitutional changes should only be made by the elected Constituent Assembly provided for in the 12-point agreement of November 2005. Nonetheless, the Maoists declared themselves ready to take part in substantive peace talks with the new Government. They declared a three-month ceasefire on 26 April. The new Government reciprocated. Renewed peace negotiations (the first since 2003) began on 26 May. At those talks, a 25-point code of conduct was agreed, designed to end violence and intimidation, while negotiations proceeded. A second round of talks took place in June 2006. The parties signed an 8-point agreement at the talks, which provided for (amongst other things) the dissolution of Parliament, the formation of a broader-based Interim Government and Interim Legislature, both of which would include the Maoists, and the participation of the UN in monitoring a future disarmament process. An interim Constitutional drafting committee was also established. In July tensions arose between the Seven-Party Alliance and the Maoists. Elements within the former were unhappy about the proposal to dissolve Parliament, while there was unease on the Maoist side about the terms of disarmament. However, the ceasefire held and discussions continued. Koirala and the Maoist leader Prachanda, often became directly involved.<sup>3</sup> By September 2006, following an impressive show of strength in the form of a short nationwide shutdown, the peace talks got back on track. In October 2006, the parties agreed that a Constituent Assembly, which would double up as a Legislature, would be elected in June 2007.

With the UN Secretary-General's Personal Representative, Ian Martin, playing an important brokering role, negotiations advanced throughout November 2006. On 21 November the Government and the Maoists signed a Comprehensive Peace Agreement (CPA), in which an end to the war was formally declared and the contours of a transition agreed. On 28 November the parties also signed an Agreement on the Monitoring of the Management of Arms and Armies (AMMA). It was witnessed by Ian Martin on behalf of the UN. The Maoists had strongly resisted pressure to disarm at this stage of the peace process, fearing a trap.

While the CPA and the AMMA were a massive step towards peace and the restoration of democracy in Nepal, many pitfalls remained along the way. The first deadlines for forming an Interim Legislature and Government were missed. However, the Interim Legislature met for the first time on 15 January 2007. The composition of the 83-strong Maoist delegation is strongly biased towards previously excluded groups.<sup>4</sup> The old Parliament was dissolved simultaneously. An Interim Government was established on the following day. Although the Maoists did not join in it immediately, negotiations continued to facilitate their participation. An Interim Constitution was also endorsed by the first meeting of the Interim Legislature and came into force. Concerns were expressed as to whether free and fair elections to a Constituent Assembly would be possible by June 2007, as scheduled.

The deployment of UN arms monitors also got under way. Seven main cantonment sites for Maoist forces were agreed in AMMA, where fighters were to be assembled and arms and

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<sup>3</sup> Prachanda is a nom de guerre meaning 'fierce one'. His real name is Pushpa Kamal Dahal.

<sup>4</sup> "Nepal's Maoists promote weaker sections", *Hindustan Times*, 12 January 2007

ammunition locked in secure stores. Both would be registered by the UN, but the Maoists would keep the keys to the stores as part of the deal. The plan was for the Nepali Army to put a similar number of weapons under supervision. In early January 2007 an advance team of 35 UN arms monitors began making inspection visits to the cantonments. The process of locking up and registering weapons and personnel formally began on 15 January 2007, triggered by the convening of the Interim Legislature.

The Maoists continued to allow instances of intimidation, extortion and abductions by their cadres to go unpunished, although there were indications that such abuses had declined in recent months. Many rural areas remained effectively under the control of Maoist cadres and militias. The militias were distinct from the People's Liberation Army and were not covered by AMMA. The Maoist 'people's governments' were due to dissolve with the establishment of an Interim Government.

The Army and King, while now formally powerless, reluctantly acquiesced in the changes introduced following the political crisis in April 2006. The report of an investigation into abuses of state power and funds since the royal coup of 2005 recommended that action should be taken against 202 people, including Gyanendra.

Western donors kept a distance from the peace process, while declaring their broad support for it, leaving India and the UN to take the lead. However, they remained nervous about the intentions of the Maoists.

### **3 January-September 2007: Interim Government under siege**

The process of placing Maoist forces and arms under UN supervision took place relatively smoothly, although registration and verification issues remained partly unresolved for a while. Following protracted negotiations, the Maoists finally joined the Interim Government in April 2007.

In the months immediately following its establishment, the Interim Government appeared to work relatively well. The Maoists were awarded five cabinet ministries, which although not the most powerful, nonetheless had strategic value: the Information and Communications Ministry, which oversees the state-owned media, Local Development, Forestry, Housing and Planning and the Voluntary Sector.<sup>5</sup> There was also some co-operation with the other parties in the Interim Government on policy issues. For example, the Maoists backed parliamentary amendments to the Interim Constitution to introduce a federal structure for Nepal and several revisions to the electoral system.<sup>6</sup> The Maoists had increased dealings with representatives of Western and regional governments after joining the Interim Government, although levels of mutual mistrust remained considerable.<sup>7</sup> A 1,000 strong UN mission in Nepal (UNMIN), headed by the Special Representative, Ian Martin, was established during the first few months of 2007, following the passage of UN Security Council Resolution 1740 on 23 January 2007. Established at the request of the Interim Government, its mandate was to support the peace process.

In July 2007 the Maoists began to call for the establishment of a Republic *prior* to the holding of elections to the Constituent Assembly, which were due to be held on 22 November 2007. In August the Maoists presented a list of 22 demands which they said had to be filled before

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<sup>5</sup> There were reports of harassment of the private media by Maoist cadres. "Maoists gag media, shut two dailies", *Hindustan Times*, 13 August 2007

<sup>6</sup> ICG, *Nepal's Maoists: Purists or Pragmatists?*, Asia Report No. 132, 18 May 2007, pp. 17-18

<sup>7</sup> *Ibid.*, p. 18

the elections were held. On 18 September, having failed to secure the agreement of the rest of the Interim Government to these demands, the Maoists announced that they were withdrawing from it and would do everything they could to discredit the electoral process through mass protests. The two reasons given were their determination to see an immediate move to a Republic and the refusal of other parties in the Interim Government to accept a full system of proportional representation for the elections to the Constituent Assembly, instead of the mixed proportional and first-past-the-post system that is currently proposed under the Interim Constitution. However, the Maoists ruled out any return to armed conflict.

Negotiations quickly got under way to bring the Maoists back into the fold. International reaction to their withdrawal was relatively muted. India sought to mediate behind the scenes. A series of bomb blasts in Kathmandu heightened the atmosphere of tension in the capital.<sup>8</sup>

Analysts saw the withdrawal as part of a 'strategy of tension' designed to ensure that the Maoist goal of a Republic could not be frustrated. According to the ICG, the Maoists' expectation had always been that the monarchy was unlikely to be removed without further confrontation.<sup>9</sup> Some claimed that fall-back plans had been drawn up by the Maoists to revert to mass protest if events did not proceed on a basis acceptable to them. The raw materials certainly still existed for them to do so. While the Maoists' 'people's governments' at local level had been officially dissolved following the establishment of the Interim Government, the deployment of other parallel structures – in particular, semi-underground Young Communist League (YCL) committees – to those of the state meant that their control over many parts of the countryside remained largely unchallenged. These structures also had an urban presence. The YCL had been associated with numerous acts of violence. The PLA could quickly be reactivated and, under the arrangements for the storage of arms, it would be easy for the Maoists to regain access to their weaponry if the peace process fell apart.

There was also evidence of growing discontent amongst the Maoist rank-and-file, many of whom were languishing in poor conditions in their cantonments, and of growing suspicion of the UN, which was supposed to be facilitating a process of merger between the PLA and the Army. There had long been tensions within the ranks of the Maoist leadership over strategy and tactics. These differences came to the surface during 2007 as those sceptical of the compromises ('rightist deviation') involved in taking part in the Interim Government appear to have regained some ascendancy.<sup>10</sup> According to some reports, over a thousand fighters had left their cantonments and joined other armed factions.<sup>11</sup>

The Interim Government as a whole faced a serious challenge to its authority during 2007 in the plains of Tarai Region, which runs along the long border with India, to their authority and legitimacy. The bulk of the population in Tarai calls itself Madhesi. Meaning 'people of the middle country', the Madhesis cross caste, linguistic and religious lines. Madhesis make up one-third of Nepal's total population. Discrimination against them takes many forms, according to analysts. For example, perceived as Indians by the mainly hill-dwelling Nepali Hindu elite, many have found it hard to gain citizenship and establish title to their land-holdings. Violent protest erupted there in January-February 2007, following the promulgation of the Interim Constitution, triggered by the Madhesis' belief that they had been excluded from the peace process that followed the April 2006 crisis. The most prominent Madhesi

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<sup>8</sup> "Nepal parties hold crisis talks", *BBC News Online*, 18 September 2007

<sup>9</sup> ICG, *Nepal's Peace Agreement: Making it Work*, p. 19

<sup>10</sup> ICG, *Nepal's Maoists: Purists or Pragmatists?*, Executive Summary and pp. 19-20

<sup>11</sup> "Prachanda under fire from his men", *Hindustan Times*, 5 August 2007

organisation to emerge at the time was the Madhesi Janadhikar Forum (MJF).<sup>12</sup> Much of the violence was against Maoist cadres. As long-term supporters of a federal Nepal, in the past the Maoists had felt confident that they represented the interests of those regions that felt marginalised. However, this confidence was challenged in Tarai.<sup>13</sup>

Talks got under way to try and stabilise the situation in Tarai in June 2007. While the Interim Government expressed its openness to taking steps to remedy the marginalisation of the people of Tarai, its hands were to a significant extent tied by the fact that many of these issues should in principle wait until the Constituent Assembly, in which Madhesi groups were calling for at least 30 per cent representation. An agreement was reached with Madhesi groups in late August 2007 that the elections should take place on the basis of a mixed system of proportional representation and first-past-the-post. The Interim Government also launched a commission of inquiry into the violence of January-February 2007, declared all those who died 'martyrs' and offered compensation to their families.<sup>14</sup> But it was clear that the Tarai region could easily flare up into violence once again should militants there again feel that Madhesi interests were going to be short-changed by the peace process. In addition, the assertion of Madhesi interests had produced the first signs of a political awakening by those minorities in the Tarai which viewed themselves as 'non-Madhesi' and resented being lumped in with them.

#### **4 October 2007-May 2008: elections and the end of the monarchy**

Negotiations with the Maoists appeared to be making little progress until suddenly a 23-point agreement was reached on 23 December 2007. This agreement gave the Maoists most of what they had been seeking. For example, it was agreed that the Constituent Assembly would declare Nepal a federal democratic republic as soon as it convened and that a larger number of seats to the Assembly would be elected by proportional representation. It was also stated in the agreement that the King would have no powers from that day onwards. The Maoists rejoined the Interim Government and the elections to the Constituent Assembly, which had had to be postponed on several occasions, were set for 10 April 2008.<sup>15</sup>

Events in Tarai continued to threaten the viability of the peace process. A loose alliance of radical Madhesi groups, called the United Democratic Madhesi Front (UDMF), declared itself dissatisfied with the level of representation promised in the Constituent Assembly and launched a new wave of protests during January-February 2008. However, a deal was done that in the end persuaded Madhesi parties in the UDMF to file nominations for the elections.

While there were outbreaks of violence during the campaign period, overall all parties were able to operate relatively freely. The UN set up an independent Electoral Expert Monitoring Team, which reported directly to the Secretary General. Aside from up to 1000 international observers from the EU, Asian Network for Free Elections and Carter Centre, an estimated 90,000 national observers from 148 organisations also monitored the polls.<sup>16</sup> There were concerns beforehand that the complex voting system and rigging might diminish the credibility of the poll. Indeed, following the elections, results did take a long time to come out. However, there were few allegations about the process itself. This was the case despite the fact that the outcome was unexpected.

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<sup>13</sup> This discussion draws on the ICG report, *Nepal's Troubled Tarai Region*, Asia Report No. 136, 9 July 2007

<sup>14</sup> Ibid

<sup>15</sup> ICG, *Nepal's Election and Beyond*, Asia Report No. 149, 2 April 2008, pp. 2

<sup>16</sup> Ibid., pp. 14-15



The majority expectation prior to the elections was that the Maoists might not do well and could then be tempted to return to war. In fact, they performed strongly, much better perhaps than even they had dared to hope, winning 30 per cent of the vote and ending up as by far the largest party in the Constituent Assembly.<sup>17</sup> The final tallies were announced by the Election Commission on 25 April 2008. The Maoists won 220 of the 601 seats in the Constituent Assembly, well ahead of the NC and the Communist Party of Nepal – Unified Marxist Leninist (CP-UML), which won 110 and 103 seats respectively. A host of other political parties won a small number of seats. Pro-monarchy parties constituted only a tiny rump in the Constituent Assembly.<sup>18</sup>

There was plenty of speculation about why the Maoists did so well. A widespread view was that they were the beneficiaries of a massive popular repudiation of the ‘traditional politicians’ – the high caste Hindu elites in and around the NC and, to a lesser extent, the UML. Others pointed to the fact that they were the only large party that not only talked about including marginalised and excluded social groups in the democratic process but also did so. They received the vast majority of Dalit votes in the elections. Dalits constitute 14 per cent of the population.

The Maoists were quick to announce that they would now seek to play a more dominant role in the Interim Government.<sup>19</sup> The priority of the Maoists appeared to be to establish a strong Presidency once the monarchy had been abolished. Their leader, Prachanda, said that he would be a candidate for the post. Aside from this, the Maoists’ priorities were to push forward with the abolition of the monarchy and the successful integration of its fighters, who were becoming increasingly fractious in their cantonments, either into the Army or back into society.

The elections to the Constituent Assembly sealed King Gyanendra’s fate. Although a royalist ‘last stand’, in alliance with elements within the Army, could be ruled out, it appeared unlikely. Senior army figures stated that they would work with any democratically elected government.<sup>20</sup>

On 12 May the Interim Government announced that the Constituent Assembly would meet for the first time on 28 May and that its first business would be to declare Nepal a Republic. Nepal was duly declared a Republic when the Constituent Assembly met on 28 May 2008.

## **5 June 2008-May 2009: rise and fall of the first Maoist-led Government**

However, the process of forming a new transitional government proved tortuously slow and it was not until August. Maoist leader Prachanda (Pushpa Kamal Dahal) had to abandon his attempt to become President, settling instead for the post of Prime Minister.<sup>21</sup> The new government’s credibility and effectiveness was compromised by the absence from its ranks of the NC, the second largest party in the April elections, with 19 per cent of the seats. The process of finding a President was also fraught, although in the end Ram Baran Yadav, a NC leader, was elected to the position.

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<sup>17</sup> “From lotus flower to the fierce one: the story of the Maoist who took power in Nepal”, *The Independent*, 15 April 2008

<sup>18</sup> “Maoists victorious, but short of majority”, *Times of India*, 27 April 2008

<sup>19</sup> “Maoists seeking to lead coalition government”, *San Jose Mercury News*, 25 April 2008

<sup>20</sup> “Nepal army ready to obey a Maoist govt”, *The Times of India*, 16 April 2008

<sup>21</sup> “Agreement between the political parties to amend the Constitution and take forward the peace process”, 25 June 2008

From the outset, the Maoist-led Government failed to function well. Relations between the Maoists and their main coalition partner, the UML, with 18 per cent of the seats in the Constituent Assembly), which was experiencing a bitter internal power struggle, were difficult. While the Maoists, by now renamed the Unified Communist Party of Nepal (Maoist) following a merger with a smaller left-wing group, took some steps to turn themselves into a 'normal' political party, there remained a long way to go. Some of the party's 'parallel structures' remained in place and its pledge to return property seized during the conflict was largely not honoured; there continued to be clashes between the parties, often involving their youth wings, at local level.<sup>22</sup>

Former King Gyanendra kept a low profile. The Government announced that it was reopening the investigation into the 2001 'palace massacre', in which his predecessor, Birendra, was amongst those murdered by Crown Prince Dipendra.<sup>23</sup>

The vital process of integrating an estimated 19,000 Maoist cadres from the People's Liberation Army into the Nepali Army barely got started under the first Maoist-led Government and it was this issue which ultimately brought it down. At the time the government was formed, Maoist combatants had been in their cantonments for two years and were still there, although military discipline within their ranks appeared to remain intact.

Many within the higher ranks of the Army remained highly sceptical about the prospect of integration on any terms, as did other political parties.<sup>24</sup> There were also disputes over how to deal with under-age combatants, of which there were a significant number. The Maoist-led Government also had limited success in terms of promoting the 'democratisation' of the Army, including accountability for alleged crimes against humanity under the 'old dispensation'. One commentator claimed:

The challenge of reforming the Nepalese Army will probably be even more complex than rehabilitating Maoist combatants. Despite its aggressive denials, the army is composed of even more politically indoctrinated members than the Maoists [...] The reform of an institution as ossified as the Nepalese Army will be long-drawn. More inclusive recruitment policies, better orientation of soldiers and socialisation of officers will take time. The smooth transition of the military from a Gorkhali Army to the modern force of a new federal Nepal must underpin Nepal's democratic future.<sup>25</sup>

Both the Maoists and the Army continued to recruit new soldiers, despite rulings by the Supreme Court that they should cease to do so.<sup>26</sup>

In mid March 2009 the Government controversially ordered eight Generals in the Army to retire, despite their stated desire to stay on.<sup>27</sup> The Generals refused to go and the Nepalese Supreme Court ruled that their retirements should be put on hold. In April Prime Minister Prachanda sacked the Army Chief of Staff, General Rookmangud Katawal, on the grounds that he was obstructing the integration of Maoist cadres into the Army. Prachanda found himself isolated as key opposition parties, including the NC, and several parties within the governing coalition rallied in support of the Army Chief of Staff. Two parties eventually

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<sup>22</sup> OCHA Nepal situation overview, No. 43, 1-15 March 2009, p 2

<sup>23</sup> "Nepal to start new probe into palace massacre", *Times of India*, 1 March 2009

<sup>24</sup> ICG, *Nepal's faltering peace process*, pp 13-16

<sup>25</sup> C.K. Lal, "The proletariat and the Praetorian Guard", *Nepali Times*, 28 March 2008.

<sup>26</sup> OCHA Nepal situation overview, No. 43, 1-15 March 2009, p 1

<sup>27</sup> "Nepalese generals made to retire", *BBC News Online*, 18 March 2009

withdrew, leaving the Government facing a vote of no confidence with a very small majority.<sup>28</sup> When President Ram Baran Yadav came out on the side of the Army Chief of Staff, declaring that his sacking was unconstitutional and reinstating him, Prachanda decided that his position had become untenable. On 4 May 2009 he resigned.

While overall levels of unrest in the Tarai, the lowland region adjoining India, were reduced during much of this period, it remained highly unstable and ungoverned and there were moments of renewed turbulence. The main political force to emerge from the unrest in late 2007/early 2008, the Madhesi Janadhikar Forum (MJF) experienced its own internal divisions and faced increased competition for Madhesi support from other parties. Other minorities in the region continued to express dissatisfaction about the tendency of the Centre to treat them all as 'Madhesi'.

The Constituent Assembly met for the first time in late May 2008. Progress was painfully slow. For example, public consultation in the rural areas only began in earnest in late February 2009. In some districts, local people affiliated to non-Maoist parties refused to take part.<sup>29</sup>

## **6 May 2009 and May 2010: a beleaguered anti-Maoist Government**

The year following the fall of the first Maoist-led Government was one of crisis and stalemate. More than 20 parties met in Kathmandu on 5 May 2009 to try and form a new coalition government, with the UML and NC taking the lead. The Maoists did not attend, although both the UML and NC initially said that they hoped that they would. However, efforts to quickly agree a 'government of consensus' foundered, with the Maoists insisting that the reinstatement of the Army Chief of Staff be rescinded before it would consider joining a new government. President Yadav eventually instructed the UML and NC instead to agree a 'government of the majority', led by veteran UML leader Madhav Kumar Nepal as Prime Minister.

After several weeks of Maoist-led protest on the streets and obstruction within parliament, a 22-party coalition government was finally formed on 23 May. However, it quickly proved a weak and fractious administration, able to achieve little. Throughout the rest of 2009, the Maoists regularly challenged its legitimacy, campaigning for what it called "civilian supremacy" over the Army, showing in doing so their continuing ability to mobilise on the streets. They laid siege to the Constituent Assembly between June and December, effectively preventing it from sitting. A major round of protests began in November 2009. In December they unilaterally announced the creation of 13 autonomous ethnic and regional states across Nepal and held a three-day countrywide general strike.<sup>30</sup> Opponents condemned the largely symbolic announcements on statehood as a violation of the CPA.

The constitution-making process, which was supposed to be completed by 28 May 2010, remained well behind schedule and the deadline passed unmet. A basis for resolving the two key outstanding issues, which are whether to have a parliamentary or presidential system of government and what type of federalism to introduce, continued to elude the parties to the process. Minority groups remained suspicious that the larger parties, including the Maoists, might agree a watered-down version of federalism.<sup>31</sup>

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<sup>28</sup> "Nepal PM quits in army chief row", *BBC News Online*, 4 May 2009

<sup>29</sup> OCHA Nepal situation overview, No. 42, 16-28 February 2009, p 1

<sup>30</sup> "Nepal and Bhutan in 2009", *Asian Survey*, January/February 2010, pp. 171

<sup>31</sup> "Nepal and Bhutan in 2009", *Asian Survey*, January/February 2010, pp. 168-69

28 May 2010 was also the deadline under the CPA for completing the integration of Maoist fighters into the country's security forces. There was also no progress on the issue by the deadline. Opponents of the Maoists continued to call for fresh screening of its cadres, on the grounds that previous programmes, led by UNMIN, were inadequate.<sup>32</sup> This helped to sustain political mistrust.

There was a glimmer of hope in January 2010 when the leaders of the UML, NC and Maoists agreed to establish a 'high-level political mechanism' (HLPM) to try and speed up the peace process and the constitution-making process.<sup>33</sup> It comprised the Prime Minister, GP Koirala and Prachanda. Following representations from the HLPM, the Maoists agreed to call off an indefinite "people's revolt" due to begin in that month and stated that they favour a "national government".<sup>34</sup> Some argued that the aim should be to agree what was called a 'concise' constitution by 28 May 2010, with a complete one to follow within a year. The Maoists opposed this idea and returned to street protests.<sup>35</sup> However, in the end, they were prevailed upon to compromise, reaching agreement with the Government to extend the time-frame for the peace process by a further year, with a new deadline of 28 May 2011 for the completion of all outstanding tasks, including agreeing a new Constitution.

UNMIN, which was established in 2007 to support the peace process, was viewed with mistrust by virtually all the parties in Nepal at some point or another during the peace process. During this period, it monitored the release of 3,000 child soldiers by the Maoists, with a view to subsequently overseeing the rehabilitation of the former child soldiers.<sup>36</sup> However, by May 2010 it found itself almost completely without friends amongst Nepal's main political parties.

## **7 May 2010-August 2011: failed quest for a 'consensus government'**

Under immense pressure from the Maoists, Madhav Kumar Nepal resigned on 30 June 2010. 16 subsequent attempts by the Constituent Assembly to elect a successor failed. On each occasion a vote was required after negotiations to agree a consensus candidate had collapsed. On the one hand, the prospect of another Maoist-led government was unacceptable to the other main parties, the NC and the UML; on the other, the Maoists were unwilling to contemplate a new Government that is not led by them.

During this prolonged stalemate, Madhav Kumar Nepal stayed on as caretaker Prime Minister. An agreement was reached by all the parties to the peace process in September 2010 to complete all remaining tasks of the peace process by mid January 2011. However, this deadline also passed without result due to the prevailing political stalemate. While the committees working in the CA continued to work on fleshing out what a federal future for Nepal might look like, consensus remained elusive.<sup>37</sup> The revised deadline for agreeing a new Constitution was itself missed. In addition, there was no significant movement towards the reintegration of Maoist cadres into the Army. The Maoists periodically talked about resuming a "people's revolt". Meanwhile, the security situation in the Tarai remained

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<sup>32</sup> "No, UN under fire in Nepal", *Times of India*, 12 May 2009

<sup>33</sup> "Panel to push Nepal peace process", *The Hindu*, 9 January 2010

<sup>34</sup> "Nepal Maoists to give peace a chance", *Hindustan Times*, 6 February 2010

<sup>35</sup> "Nepal's new constitution turning into a mirage", *Times of India*, 2 March 2010

<sup>36</sup> "UNMIN's continuous stay in Nepal vital for peace", [www.nepalnews.com](http://www.nepalnews.com), 7 March 2010

<sup>37</sup> ICG, *Identity politics and federalism*, Asia Report No. 199, 13 January 2011

precarious. It was estimated at the beginning of 2011 that the largely 'ungoverned' south and west of the country contained over 100 separate armed groups.<sup>38</sup>

A 17th attempt to elect a new Prime Minister on 3 February 2011 finally bore fruit, when Prachanda, the Maoist leader, was prevailed upon to withdraw his own candidacy in favour of Jhala Nath Khanal of the UML. Since that time Prachanda has not put himself forward for political office. In March, the Maoists finally entered a power-sharing government, receiving 11 ministries. But progress on other issues remained extremely slow. In May, all the political parties agreed yet another extension of the Constituent Assembly, this time one of three months, to 28 August. But the Maoists insisted that the deal should include the resignation of Jhala Nath Khanal by that deadline and the establishment of a 'consensus government'. It was clear that they were determined that this new government would have one of their own as Prime Minister. However, divisions amongst the Maoists were also deepening over the issue of integrating their former combatants into the Army, with one faction keen to make progress.

Writing about the impasse, the ICG wrote at the time:

The major elements of the peace process [...] have been reduced to bargaining chips in the struggle for the immediate benefits of power-sharing and longer-term realignments between and within parties.<sup>39</sup>

During this period, there remained a culture of impunity in Nepal.<sup>40</sup> For example army major Nirajan Basnet was taken into military custody in late 2009, following his return from UN duties in Chad in December, in connection with the death of a 15-year old Maoist combatant in 2004. However, he was subsequently subjected to a purely internal military investigation and in June 2010 declared "innocent".<sup>41</sup> Bills to establish an investigatory commission into 'disappearances' between 1996 and 2007 and to create a Truth and Reconciliation Commission remained unpassed by the Constituent Assembly, much to the concern of human rights groups.

The US Government continued to keep the Maoists, despite their regular requests to be taken off it, on its list of terrorist organisations, on the grounds that they had not yet completely demobilised and integrated their military forces.<sup>42</sup>

The only part of the September 2010 agreement that was rapidly implemented was the decision that UNMIN's mandate to support the peace process should be extended for four further months but then come to an end on 15 January 2011.<sup>43</sup> A last-minute deal was signed between the Maoists and the caretaker government on 14 January 2011 in which UNMIN's responsibilities in relation to the Maoist combatants would pass to a Special Committee for their supervision, integration and rehabilitation, headed by the Prime Minister. Concerns were expressed at the time that UNMIN's departure could damage the prospects for peace. Others argued that UNMIN had lost credibility and that the responsibility for the success or failure of this largely home-grown peace process was back where it belonged: with Nepalis

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<sup>38</sup> S. Bogati, "Trouble ahead in Nepal", [opendemocracy.net](http://opendemocracy.net), 17 January 2011

<sup>39</sup> ICG, *Nepal's fitful peace process*, Asia Briefing No. 120, 7 April 2011, p. 19

<sup>40</sup> For a full analysis of this issue, see the ICG's January 2010 report, *Nepal: Peace and Justice*, Asia Report No. 184

<sup>41</sup> Human Rights Watch, [Joint Letter to Nepal's Political Parties for Support in Civilian Criminal Proceedings against Major Basnet](#), 16 July 2010. Since then, he has been promoted and is now a Brigadier.

<sup>42</sup> "UCPN(M) urges US to de-list it from terror watch list", [www.nepalnews.com](http://www.nepalnews.com), 19 January 2010

<sup>43</sup> *Report of the Secretary-General on the request of Nepal for UN assistance in support of its peace process*, S/2010/658, 23 December 2010

themselves.<sup>44</sup> Karin Lundgren, the UN Secretary-General's Special Representative, remained in post.

## **8 August 2011-May 2012: the Maoists return to office but the mandate of the Constituent Assembly expires**

Khanal eventually resigned in August 2011 with little to show for his tenure, apart from a further extension of the Constituent Assembly's life to 30 November 2011.

Khanal's replacement was senior Maoist leader Baburam Bhattarai. However, the 'consensus government' spoken of in May did not materialise. The new Maoist-led Government involved a bloc of Madhesi parties, called the United Democratic Madhesi Front (or Madhesi Morcha) and some representatives of indigenous (*janajati*) peoples, which have begun to mobilize more effectively in recent years. It did not include the two other large parties, the NC or the UML, both of which ultimately decided to remain in opposition. However, they continued to take part in negotiations to push ahead with Nepal's by now highly protracted peace process.

On 16 September 2011 Bhattarai made his first public address to the nation, saying that it had "one last chance for peace". He announced a 45-day deadline for reaching agreement on the reintegration of Maoist cadres into the Army. Bhattarai made a four-day visit to India in October. The visit marked a thaw in relations between the Indian Government and the Maoists in Nepal and several bilateral agreements, including one on investment, were signed.<sup>45</sup>

This thaw may have helped to create the conditions for an apparent breakthrough between the main political parties in their negotiations. On 1 November they agreed a deal on the "fundamental tasks of the peace process" which appeared at last to resolve the issue of the reintegration (or 'regrouping', as it is now being called) of Maoist cadres into the Army and several other issues. The deal was endorsed by Prachanda, but provoked strong condemnation from harder-line Maoists. The source of their opposition was the proposal that the 6,500 (out of over 19,000) fighters to be absorbed into the Army would be given non-combatant roles. The rest would be demobilised.<sup>46</sup>

The process of deciding what should happen to the cadres was due to be completed by 23 November, an extremely rapid timetable. At the head of the Maoist internal revolt was Prachanda's deputy, Mohan Baidya, known as Kiran, who called the deal a "betrayal". Kiran had once been Prachanda's political mentor. The deal also committed the parties to agree a first draft of the Constitution by the end of November and the Government, by the same date, to establish the Truth and Reconciliation Commission and Commission on Disappearances provided for under the CPA back in 2006. In another confidence-building measure, the Maoists reportedly indicated that they would accept the leader of the NC, Sushil Koirala, as the next Prime Minister. He would take office once the new Constitution had been promulgated.<sup>47</sup>

To the surprise of many, the 23 November deadline for the 'regrouping' of Maoist cadres was successfully met. The cadres were surveyed and chose either integration into the Army or voluntary retirement with a cash package.

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<sup>44</sup> S. Bogati, "Trouble ahead in Nepal", [www.opendemocracy.net](http://www.opendemocracy.net), 17 January 2011

<sup>45</sup> "Nepal PM under fire in Parliament over India pact", *Times of India*, 25 October 2011

<sup>46</sup> The full text of the 1 November 2011 deal is available via this [link](#)

<sup>47</sup> "An opening with Nepal", *Hindu*, 25 October 2011

The latest deadline for agreeing a first draft of the Constitution was not met. The mandate of the Constituent Assembly was duly extended once again on 1 December 2011 – for another six months to 27 May 2012. But the Supreme Court ruled that this must be the last such extension of the Assembly as currently composed – a new Constituent Assembly should then be elected.

The Nepali peace process appeared to have gained a new lease of life. But many challenges remained, as events during the first few months of 2012 illustrated. A request by Bhattarai to allow 2,500 additional cadres to join the Army was rejected by the NC. The NC also vociferously opposed proposals from the Maoists to create a strong, directly elected president through the new Constitution. Bhattarai faced continued criticism from Kiran and his supporters within the party that he was abandoning key principles and by March a clearly identifiable ‘pro-Kiran’ faction had emerged which formed alliances with a range of other parties, including some of those which were putting a strong emphasis on promoting a federal system of government for Nepal based on ethnic identities. The dissident Maoist faction and its allies threatened renewed social mobilization if this demand was not satisfied. A full-blown Maoist split looked increasingly probable. Meanwhile, the NC and the UML continued resist federalism in the negotiations.

Frantic efforts, as the latest deadline for agreeing a new Constitution approached, failed to produce an agreement. The Maoist-led Government and the NC reached agreement to extend the mandate of the Constituent Assembly for another three months but the Supreme Court rejected the plan, stating that the Government could do one of three things: hold fresh elections, implement an agreed alternative to the Constituent Assembly, or declare a state of emergency. There was no party consensus on any of these fronts. Accordingly, the Assembly (which, it will be recalled, had also acted as the Legislature) passed its sell-by date on 27 May and was dissolved, amidst mounting unrest around the country led by ethnically-based organizations agitating for federalism.<sup>48</sup>

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<sup>48</sup> “Chaos looms in Nepal as parties fail to agree constitution”, *Independent*, 29 May 2012