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How Not to Wage a Counter-Insurgency: Nepal, the Maoists, and Human Rights

by John Norris

ASIA'S MOST LETHAL ARMED CONFLICT IN RECENT years is being waged largely unnoticed in the mountainous Hindu Kingdom of Nepal, between the royalist government and Maoist insurgents. Since 1996, more than 8,700 people have died in the armed conflict, and more than 1,700 people have been killed since the collapse of peace talks in August 2003.

Nepal's increasingly deadly war offers several lessons for the international community. First, and perhaps most importantly, a counter insurgency campaign that ignores fundamental human rights can quickly cause a minor revolt to snowball into a full-scale civil war. Second, the conflict in Nepal shows that international efforts to eradicate terrorism should not come at the expense of bringing past or present abusers of human rights to justice. Third, the imminent threat of social chaos brought about by the escalating civil war compels the active involvement of the international community in efforts to forge both peace and a more equitable social order in Nepal.

This article is a broad exposition, from a policy perspective, of Nepal's precarious democratic transition and the government's efforts to wage a counter-insurgency campaign against the Maoists. It seeks to promote an open dialogue in the international community regarding the human rights challenges facing Nepal by articulating the complex political and social context in which the promotion, protection, and enforcement of basic human rights principles takes place.

1990-2003: POLITICAL AND SOCIAL TURMOIL UNDER A CONSTITUTIONAL FAÇADE

A BRIEF CONSIDERATION OF POLITICAL DEVELOPMENTS since 1990 underscores the role of human rights abuses in fueling the present armed conflict in Nepal. Democracy protests rocked Kathmandu in April 1990 as part of a "people's movement" calling on Nepal's monarch to establish a constitutional monarchy, dismiss the cabinet, and dissolve the *panchayat*, which is a partyless system of government rule where local council and district representatives elect the members of the national legislature. The protests did not abate even though security service officials opened fire on the demonstrators. The rising tempo and intensity of the protests forced King Birendra to make sweeping democratic reforms, including drafting a new constitution. The palace preserved a substantial amount of power in the new constitution, however, by excluding a vast portion of the body politic from the drafting process. Caught off-balance by the speed of these developments, the leaders of the democracy movement were unable develop ways to codify democratic practices in the new constitution.

By November 1990, the contours of Nepal's new constitution emerged, but the cloud of backroom deals hung heavily over the process. Much of the constitution was a gentleman's agreement between King Birendra, the Congress Party, and a broad coalition of Communist groups. Some key aspects of the new constitution, including the control of the armed forces and the king's powers to intervene in periods of emergency, remained disturbingly ill-defined. Under the new constitution, the king remains the commander in chief of the

Royal Nepalese Army (RNA). This was the result of the RNA's petition to the palace during the drafting process to maintain the king as its commander in chief. Further, article 127, entitled, "Power to Remove Difficulties," provides that "[i]f any difficulty arises in connection with the implementation of this Constitution, His Majesty may issue necessary orders to remove such difficulty and such orders shall be laid before parliament." The king has often invoked this clause to justify action that most observers have regarded as extra-constitutional. This uncertain distribution of power made it unclear whether the constitution established a genuine multi-party democracy with the monarch as a figurehead, or whether it maintained a strong monarchy dominating a weak parliamentary system.

Nepal's fledgling democracy walked with shaky legs on precarious grounds. The new constitutional leadership did not attempt to reform or transform the security services, which historically served to enforce autocratic rule. There was no credible effort to account for the many human rights violations committed during the earlier *panchayat* regime, which ranged from the armed suppression of peaceful protests to extra-legal acts of political violence such as the abduction, indefinite detention, and murder of political opponents. Aware of the RNA's continuing loyalty to the king, the political parties appeared content not to make too many waves during this transition period.

Unfortunately, the failure to bring past violators of human rights to justice fostered a broad sense of impunity. The new constitutional order failed to develop a judicial mechanism to hold the military, police, and the palace accountable for human rights violations prior to 1990. The newly ascendant political parties appeared willing to overlook corruption and political intimidation as long as they benefited from the new constitutional order. Instead of revolutionary change or genuine democracy, many Nepalese saw a system in which the new political elite simply cut themselves a large piece of the social and political pie.

High expectations for the new constitutional order quickly evaporated as the political system was whipsawed by a long sequence of no-confidence votes, change in governments, supreme court disputes, internal party leadership battles, and opportunistic coalition-hopping. Since 1990, Nepal has seen fourteen governments—hardly a recipe for social progress or building institutional confidence.

Amidst this revolving turnstile of coalitions mostly involving the dominant Congress Party and various smaller parties, the Maoists were only one of Nepal's many feuding far-left factions. But violent efforts directed by the Congress Party leadership to suppress leftist political activity galvanized both the Maoists and a rising tide of localized resentment against the government. In 1995, the congress-led government launched "Operation Romeo" in order to round up leftist groups accused of committing unspecified acts of terrorism. Under the direction of local party leaders, police forces conducted a broad sweep of several villages, arresting individuals without warrants and subjecting them to torture. Nearly 6,000 residents were driven out of their villages, and more than 130 people were arrested without warrants. These heavy-handed police operations provided vital momentum for the insurgency movement.

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During the course of Operation Romeo, Maoist leaders publicly embraced violence as their *modus operandi*, although they probably adopted their doctrine of revolution through “people’s war” as early as 1992. The Maoists’ anti-imperialist, anti-monarchy, and anti-feudalist rhetoric appealed to the lower castes and rural families that felt long-neglected by the Kathmandu elite. Their arguments assailing corruption and political deadlock resonated with many Nepalese, and their strong ideological stance stood in stark contrast to the constant compromise of values that seemed rife within the parliamentary system. But few Nepalese knew or cared about Communist theory. Their support of the insurgency reflected instead their disillusionment with an unresponsive and exploitative government.

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Despite their popular appeal, the Maoists were poorly positioned to conduct an armed conflict against the government. Most accounts suggest that the Maoists began their armed struggle with only a handful of dilapidated rifles. They began attacking government facilities in February 1996 after a period of government unresponsiveness to their demands. Rebel and government forces have since then engaged in an ever-intensifying cycle of attacks and reprisals. Hopes for a peaceful return to social order took a turn for the worse in June 2001 when Crown Prince Dipendra massacred ten members of the royal family—including the king, queen and his brother—before taking his own life.

After a round of peace talks between the Maoist rebels and the government collapsed in 2001, the armed conflict steadily increased in its lethality. After pulling out of the peace talks in November 2001, the rebels launched high profile, well-coordinated attacks against military, police, and government facilities across the country. Feeling personally betrayed by the rebels’ unilateral withdrawal from the talks, Prime Minister Deuba declared a state of emergency and for the first time ordered the RNA to quash the insurgency. The RNA had resisted earlier pleas by political leaders to play a role in the conflict,

insisting that it could not act until the government declared a state of emergency. Although the military had long been confident that it could easily break the insurgency when the chance arose, the task proved far more difficult and casualties escalated beyond expectations. By most reasonable measures, Nepal had a full-blown, armed internal conflict at this point.

In May 2002, largely due to continued squabbling within his Congress Party, Prime Minister Deuba asked the new King Gyanendra to dissolve the lower house of parliament and call for new elections, which were slated for November 13. Prime Minister Deuba also dissolved locally elected bodies and replaced them with appointed officials to curb Maoist control of local government offices. When the Maoists declared that they would mobilize a national strike against the parliamentary elections, Deuba requested the ballot be put off for a year due to security concerns. On October 4, King Gyanendra, assailing the incompetence of the political parties, dismissed Deuba’s government and assumed executive powers. He appointed a former premier, Lokendra Chand, as Prime Minister. Since the king’s assumption of power, Nepal has sailed in uncharted constitutional waters, and daily government operations are now far removed from any design originally imagined during the drafting of the 1990 Constitution.

According to most insiders, King Gyanendra hoped to quickly



Sarah Hymowitz

Residents of Kathmandu are concerned about the success of a democratic transition in the midst of a counter-insurgency campaign.

strike a peace deal with the Maoists and undertake a series of sweeping government reforms before returning the reigns of power to elected officials. Hopes among the public ran high with the January 2003 announcement of a ceasefire and subsequent peace talks. But progress at the peace table quickly eroded. Political parties became increasingly frustrated by the marginal role they played during the negotiation process; and both Maoists and government forces became increasingly suspicious of each other, violating the code of conduct set up to govern their behavior during the ceasefire.

THE PRESENT SITUATION

THE MAOISTS AND THE ROYAL NEPALESE ARMY continue to commit human rights abuses on a widespread basis, and there is virtually no political or legal recourse for the victims of such abuses. In August 2003, as the third round of peace talks were about to begin in western Nepal, government troops detained at least twenty Maoist suspects in the eastern village of Doramba. The troops led these individuals out of the village and killed them in what one diplomat described as “cold-blooded executions.” As this incident shows, government forces currently enjoy unfettered discretion to take any course of action they deem necessary to suppress the Maoist insurgency. A leading human rights organization notes that government security forces have been linked to more than 250 disappearances and “hundreds of alleged extrajudicial executions, thousands of arbitrary arrests and numerous reports of torture.”

Maoist rebels have been equal in their disregard of basic human rights and humanitarian law principles. Across Nepal, Maoist rebels practice extortion; they regularly target teachers, local politicians, and military figures for high profile and often-gruesome demonstration killings; and they use homemade explosive devices that often result in civilian casualties. There is also credible evidence that Maoist forces forcefully recruit adults and children into their units. As such, most rural Nepalese find themselves caught between Maoist and royalist military forces willing to use indiscriminate force against them.

Maoist and government forces have adopted new battlefield strategies as the war has resumed. The Maoists have moved away from mass attacks on district police and army headquarters and have instead used small cells to carry out a steady assassination campaign across the nation, including the capital city of Kathmandu. Army, police, and political party officials, particularly party members who are seen as close to the palace, are the most common targets. The Maoists have also expanded their activities in eastern Nepal and the Terai (the flatlands that border India), areas that were spared the worst fighting earlier in the conflict. For its part, the Royal Nepalese Army, having significantly upgraded its firepower and improved base defenses during the ceasefire, has claimed a number of successful offensives. It is difficult to assess the extent of battlefield losses on both sides, but the truth is that most of those killed in Nepal are civilians.

CONCLUSION: INTERNATIONAL AMBIVALENCE TOWARDS THE DETERIORATION OF HUMAN RIGHTS IN NEPAL

WITH THE MAOISTS AND THE ROYAL NEPALESE ARMY determined to use battlefield gains to secure leverage for future talks, the chances that the conflict will end quickly are bleak. The deteriorating situation in Nepal has proved a quandary for the international community, particularly among the main players. The United States,

India, and the United Kingdom have provided Nepal with substantial military aid in an effort to fight the Maoist insurgents. One local analyst explains that this international aid constitutes “an alliance of convenience and self interest; all have specific reasons why further upheaval in Nepal is not in their long-term interests.”

These countries approach the conflict from different angles. The United States casts the conflict in Nepal as another front in the war on terror. India and the United Kingdom are increasingly frustrated by the king’s unwillingness to embrace the mainstream political parties and establish an all-party government—a reasonable compromise given the difficulty of holding elections, but not a permanent solution in light of the increasing frequency and intensity of ongoing street protests organized by political parties opposing what they call a “royal regression.”

Despite mounting international pressure on the palace and the political parties to work together, King Gyanendra is reluctant to install a genuine, all-party government or fully restore the democratic process. Speculation concerning a possible change of prime minister is an almost daily occurrence. Current Prime Minister Surya Bahadur Thapa continues to stress the importance of restoring democracy, but this commitment has not gone beyond rhetoric.

A number of proposals to restore democracy, such as increasing the representation of traditionally disenfranchised groups, have been placed on the government’s agenda. But the reality is that the Nepalese political system faces formidable challenges, and much remains to be done at the groundwork level, such as improving negotiation processes and developing effective implementation mechanisms for a future peace deal. Ultimately, however, the prospects

for a lasting solution to the present conflict will remain an illusion until a genuine, democratic multi-party government is established that can fully participate in the peace process.

In many respects, the best option to address these challenges would be the establishment of low-key, behind-the-scenes international mediation mechanisms that offer a structured, well-managed setting in which the palace, the political parties, and the Maoists could discuss the country’s fate. But this currently is not a viable option because the Indian government remains adamantly opposed to outside mediation in a part of the world they view as within their strategic sphere, and the international community has been unwilling to convince India otherwise.

The international community must present Nepal with a common stance: the king should reinstate an all-party government; the parties should stop their perpetual infighting; and the Maoist insurgents should return to the peace table. Dialogue in the international community is necessary because all the parties involved in Nepal’s conflict lack the political courage to halt the country’s accelerating descent into senseless violence. *HRB*



King Gyanendra Bir Bikram Shah.