

The Peace Process in Nepal: is it failing?

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I am grateful to Ashok Guring for asking me to speak here at the New School. As you know, Ashok, it was many weeks ago that you asked me to do this, and to propose a title for my talk. Alas, I didn't know then just how appropriate this title was going to prove by tonight. In recent days there have been calls for the revision of the Comprehensive Peace Agreement, accusations and counter-accusations that it is being broken by Maoist agitation or threats of mobilization of the Army, and calling into question even of the 12-point Understanding, which was the very foundation of the peace process. It is indeed timely to ask whether the peace process is failing; if so, why; and what is required to save it.

For over three and a half years, I spoke in Nepal and on Nepal on behalf of the United Nations – first representing the High Commissioner for Human Rights, up to and during the *Jana Andolan*, and then representing the Secretary-General. I no longer speak for the UN on Nepal, and tonight I want to make very clear that I am speaking only for myself. Some may question my right to speak critically of events in Nepal, but I do so solely as a friend of Nepal, and as someone who deeply wants to see Nepal go forward in peace, respect for human rights, and socio-economic progress for all its diverse peoples.

In another sense, too, I want to speak tonight in a different voice. In Kathmandu, one tries to follow the details of every twist and turn of the complex politics of Nepal, and whatever is reported in the daily media - and in the positions I held, I was very often expected to comment upon it. It is easy to fail to see the wood for the trees, and hard to maintain a focus on the deeper realities of the situation. Here in New York, one looks through the other end of the telescope. And sitting as I am briefly in the UN's Department of Political Affairs, which follows and sometimes mediates conflicts around the world, one has more of a comparative perspective. So this evening I want to try to address what I regard as the larger underlying issues of the peace process in Nepal, which I believe is the way to address the question of what needs to be done to get it back on track.

The fundamentals of the peace process were negotiated in the 12-point Understanding, agreed in Delhi in November 2005 between the Communist Party of Nepal (Maoist) – which from now on I will refer to just as the Maoists – and the Seven-Party Alliance – the alliance of political parties represented in the Parliament elected in 1999 and dissolved in 2002 – whose leading negotiators were from Girija Prasad Koirala's Nepali Congress. It was an unusual basis for a peace process, because it was not an agreement between the rebels and those in control of the state and its army, but an alliance to end control of the state by what it called “autocratic monarchy”. But as the literature expects peace processes to do, it came out of a stalemate on the battlefield: the recognition of the

Maoists that they would never be able to capture the state by force of arms, and the failure of the then Royal Nepalese Army to achieve victory over the People's Liberation Army (PLA) even when fully unleashed, latterly by King Gyanendra.

The bargain that was then struck between the two sides was crucial, and needs to be remembered today. The Maoists committed themselves to the values and norms of multi-party democracy, human rights and rule of law. The parliamentary parties accepted what had been the Maoists' agenda of election of a constituent assembly and "progressive restructuring of the state". The combatants on both sides of the armed conflict – "the armed Maoist force and the royal army" – would be kept under UN or other international supervision in the course of the election. The 12-point Understanding became the basis on which the people of Nepal could unite – under the leadership of civil society, as much as of the political parties – to express their demand for peace and change.

Once the *Jana Andolan* had compelled the King to step aside, a fuller peace process began to be negotiated. The Seven-Party Alliance was now in the stronger position. The old Parliament was reinstated as the basis for a Nepali Congress-led government, contrary to the Maoists' proposal of a national political conference as the basis for an interim government. The new government had command of the Nepalese Army, and the strong backing of the Indian and US governments in insisting on not only cantonment of the Maoist army, as agreed in the 12-point Understanding, but also what came to be called "weapons separation", before the Maoists could join an interim parliament and government. The Maoists agreed to storage of their weapons under UN surveillance, but not to surrendering ultimate control.

The fuller peace agreement which was then negotiated was enshrined in the Comprehensive Peace Agreement, and then in the Interim Constitution. Since then numerous agreements have for the most part repeated commitments to implement them, although they have also led to revisions in the Interim Constitution. Five aspects of the peace agreements have been unchanging and are fundamental, and it is the extent to which they have been respected or not respected which I want to examine this evening.

The first fundamental is the commitment to power-sharing and consensus. From the 12-point Understanding on, the major parliamentary parties and the Maoists committed themselves to work together in an interim legislature and government. The Interim Constitution required the Government to conduct itself "consistently with the aspirations of the united people's movement, political consensus and culture of mutual cooperation". This requirement was to prevail not just until the election of the constituent assembly, but until a new constitution had been adopted. Before the election was held, the parties committed themselves, whatever the result, to continue to work together in a new interim government to steer Nepal through the process of drafting the new constitution. The assumption was that it would comprise all major parties in accordance with their respective strength at the ballot box.

The second fundamental is the commitment of the Maoists to the transformation of their movement, to conform to democratic multi-party norms and to respect the rule of law.

This was to include allowing those from the other political parties whom they had displaced to return home, recover land and property unjustly seized, and carry on political activities. First made in the 12-point Understanding, this commitment has been regularly reiterated, and once the Young Communist League had been established, has included a promise to end its paramilitary functioning.

The third fundamental is the commitment to transformation in the security sector: to the “integration and rehabilitation” of former Maoist combatants, and to an action plan for “democratization” of the Nepalese Army, determining its appropriate size, developing its national and inclusive character, and training it in the norms and values of democracy and human rights.

The fourth fundamental is the commitment to political, economic and social transformation. The Comprehensive Peace Agreement set out a radical and ambitious agenda, which included land reform and anti-corruption measures, as well as a general goal of economic security for backward communities. The Interim Constitution reflected in its preamble the commitment of the Seven-Party Alliance as well as the Maoists to “progressive restructuring of the state”, in order to resolve the existing problems of the country relating to class, caste, region and gender.

The fifth and last fundamental is the commitment to address the needs of victims of the conflict, and to build the rule of law by ending impunity. Repeated commitments have been made to investigate the fate of the disappeared, compensate victims of the conflict, enable displaced persons to return, establish a comprehensive truth commission, and – less frequently and more reluctantly - take action against those responsible for major human rights violations.

Such commitments are common to peace processes, and one can perhaps say that they are requirements of a successful peace process: transitional power-sharing; democratic transformation; security sector reform; addressing root causes of the conflict; and ending impunity. So what has so far been the history of the fulfillment of each of these commitments in Nepal?

The history of power-sharing has been an unhappy one from the outset. The UML as well as the Maoists were forthright in protesting the lack of collective decision-making within the Nepali Congress-led governments, and the same complaint applied to the Maoist-led government after the election. Common minimum programmes have been negotiated among coalition parties, and then seemingly forgotten. Throughout successive governments, each party has tended to treat the ministries it controlled as its own fiefdom and a source of jobs and rewards for its own supporters, rather than advancing proposals for consensus decision-making in the public interest. This has had particularly adverse consequences for the peace process in that the Ministry of Peace and Reconstruction has been from its creation a partisan ministry, rather than a consensus mechanism of peace implementation. Maoist unhappiness at Nepali Congress control of the Peace Ministry led to a promise in the 23-point Agreement of December 2007 to create a multi-party High Level Peace Commission alongside the Ministry, but it was never created, and the

Maoists were no more interested in creating it once they took control of the Peace Ministry than had been the Nepali Congress.

The most serious breakdown in power-sharing and consensus decision-making, of course, came in the aftermath of the Constituent Assembly election. The outcome of the election had been, and continues to be, difficult for many in the non-Maoist parties to accept. The Maoists had to concede the creation of a Presidency before the vote to implement the republic went ahead, but they resisted the claim to the post made by the Nepali Congress as second largest party. The election of outgoing Prime Minister Girija Prasad Koirala as President while Maoist Chairman Prachanda became Prime Minister would have kept in play the uneasy partnership that had been the main pillar of the peace process, but the Maoists feared that it would lead to the Presidency becoming a strong alternative power centre. Once Mr Koirala was denied the Presidency and the Nepali Congress was refused the Defence Ministry, the voices in the party which preferred to remain in opposition to a Maoist-led government prevailed.

In the manoeuvring over posts, the Maoists also alienated the UML, and by the time the new coalition government was formed, relationships among the parties were irrevocably soured. The Maoists' main coalition partner, the UML, was also its main protagonist at the local level, where their youth groups clashed, sometimes with fatal consequences. Although two of the three Madhesi parties joined the government and the third initially supported it, the big three parties never brought Madhesi representatives into their main negotiations. The Seven-Party Alliance, once the Maoists had joined it, had provided a forum where at critical moments a degree of consensus around the peace process could be re-established: but after the election no such body was in operation.

Power-sharing and consensus-building has failed at two further levels. The political parties have, to this day, been unable to rise above their partisan interests and agree on a formula to re-establish multi-party local government bodies, despite the fact that these are vital to the development agenda. Plans to establish local peace committees were not a substitute, and have been only belatedly and partly implemented. The Constituent Assembly itself, although unwieldy as a decision-making body, is remarkably representative, and has seen some promising alliances of women and marginalized groups across party lines. It could have been a forum for real debate and consensus-building, instead of which all major parties have used it as a forum for confrontation, with Madhesi parties, the Nepali Congress, the UML and today the Maoists all at different times engaging in blockages and boycotts, instead of democratic debate.

Today some in Nepal argue that there is nothing uncommon in international democratic practice about a government based on a simple majority of the elected body. True enough, but before normal political competition can begin in Nepal, there is a peace process to complete, a constitution to agree upon as the framework for future competition. That is why we urged all parties to work together in government after the election. And from a peace process perspective, it is patently obvious that a peace process based on power-sharing cannot be expected to succeed if not just one major party, but *one side* to the peace process is not part of the power-sharing – especially if it happens to

have emerged from an election as the largest single party. This is not just a matter of one political party feeling aggrieved, but about maintaining a viable peace process, which I believe is why the Secretary-General has expressed his agreement with all those in Nepal who say that a national unity government is desirable now, as it has always been.

The second fundamental aspect of the peace process is the commitment of the Maoists to the transformation of their movement, to conform to democratic multi-party norms and to respect the rule of law. Maoist leaders argue that this commitment is sincere, and ask for recognition that the transformation of a movement based on armed struggle is bound to take time. So it is, of course. But they must expect to be judged by what they do, as well as what they say, in private as well as in public. They created their Young Communist League, not solely as a movement of law-abiding youth activists based in their own communities, but as a paramilitary formation in quasi-barracks under former commanders from the People's Liberation Army. They used it in the contest for the Constituent Assembly election to deny other parties the space in some localities for free and fair campaigning. During that campaign, their rhetoric played on fears of possible return to armed struggle to encourage voters to see the election of Maoists as the way to secure the peace. Public statements before and since the election have threatened "revolt". What is known of internal debate has often suggested two lines, with the commitment to peaceful democratic practice uncertain in the long-term. The Shaktikor videotape revealed a highly disturbing private discourse, as do statements or interviews by Maoist leaders which talk of final insurrection to capture state power. It is time for one line, not two: the line expressed in the 12-point Understanding, of unambiguous and lasting commitment to multi-party democracy.

Some people saw the attempted replacement of the Chief of Army Staff as the last step in a creeping capture of the state. I see it in more complex terms, coming as it did after a series of highly political statements and interventions by the Chief which would have led to action in any country with democratic control of its armed forces. But democratic control does not mean partisan control. On the wider charge of state capture, the Maoists need to show a convincing commitment to independent state institutions, especially an independent judiciary. But so do other parties: some aspects of alleged Maoist state capture seem not so very different from the way in which each party in government has sought to have its supporters in the institutions of the state.

The third fundamental aspect of the peace process, the future of the armies which fought the war, is the hardest to assess, because it was not fully negotiated: the Comprehensive Peace Agreement and the Interim Constitution only set out processes towards solutions, not the expected outcome. But despite suggestions to the contrary, the integration and rehabilitation of Maoist combatants to be determined by the special committee was intended and understood to mean integration of some Maoist combatants into state security forces, including the Nepalese Army. The action plan for democratization of the Nepalese Army was intended and understood to provide for a degree of downsizing and for recruitment which was more inclusive of under-represented groups, as well as to replace control by the Palace with control by the government. And the prohibition on any new recruitment by either army which began in the ceasefire code of conduct meant just

that: no new recruitment, not recruitment to fill vacancies in an army swollen by wartime. The agreements did not address the future of the paramilitary Armed Police Force, or of the Maoist militia.

The Maoists were the first to break the ban on new recruitment. As the cantonments were being established in late 2006, they swelled the numbers there by bringing in young people, many of them minors, attracted by promises of salary payments and future recruitment into the security forces. Together with no planning and poor government performance, this contributed to abysmal living conditions in the cantonments. It also gave rise to long arguments over payments, as non-Maoist ministers resented being expected to fund the living costs and pay salaries for numbers of Maoist personnel they knew to be grossly inflated, and to do so by handing over lump sums which they knew would be used for wider party purposes, including sustaining the YCL.

Meanwhile, the Nepalese Army maintained that its formal acceptance of the authority of the interim governments and of the transition to a republic, distasteful as it was to many of its officers, meant that it was now democratized. In fact, accountability to the Palace having come to an end, the Army was more autonomous than ever, with no effective control by an acutely underdeveloped Ministry of Defence. Although the Comprehensive Peace Agreement required the Interim Council of Ministers to prepare and implement the action plan for the Nepalese Army, the Army has argued publicly that any downsizing should only be considered by a government elected under the new constitution, and openly rejected the Government's stated commitment to recruitment of Madhesis. It went ahead with new recruitment to fill vacancies without prior notification to the Joint Monitoring Coordination Committee, which is responsible for monitoring the Agreement on Monitoring the Management of Arms and Armies, where the prohibition of new recruitment had been reiterated, and where the Nepalese parties had given final authority for reporting on compliance to the Special Representative of the Secretary-General.

From very early on, the United Nations, wanting to prepare the ground for UNMIN's exit, pressed the parties to commence the processes they themselves had agreed. The special committee was established in mid-2007, headed by the Nepali Congress Peace Minister: it met once, but never met again until it was reconstituted after the election. Neither the Maoist nor the non-Maoist parties made any effort to commence serious discussion on integration and rehabilitation. The Maoists did sometimes demand action on integration, especially when they were reflecting the frustration of those in the cantonments about the uncertainty of their future. But ultimately their leaders preferred to leave it until after the election: the continued existence of their army strengthened their hand while the election was being held and beyond, while settling its future was bound to be a difficult issue inside the party and the PLA. The other parties assumed that their position would be strengthened and that of the Maoists weakened after the election, when the issue of the armies would be easier to solve on their chosen terms.

After the election, it was late October 2008 before the Government announced the re-establishment of the special committee, only for it to give rise to objections from the Nepali Congress regarding lack of consultation, composition and terms of reference.

Thus it was January before the new special committee held its first meeting. During the long period in which no serious negotiation or technical analysis of options had been taking place, public statements by political and military voices had demonstrated the clash of divergent opinions. The Maoists dragged their feet on the discharge of those disqualified by UNMIN's verification, which should have been immediate. The Nepalese Army's active lobbying against any integration of Maoist combatants into its ranks became a major element of the crisis which led to the downfall of the Maoist-led government, and today any progress is hostage to the overall absence of political cooperation.

Three years after Maoist combatants were cantoned and restrictions were placed on the Nepalese Army, pending what was to be a June 2007 election, both armies are understandably restless. It is remarkable, in terms of any international comparison, that there have been so few serious breaches of agreements, and fortunately for the political leaders, UNMIN is available to be blamed when they do occur, rather than their own failure to address the issues that could lead beyond temporary arrangements. But it is laying up further problems for the future to increase rather than reduce the numbers of personnel for which the state has a responsibility, without any plan for the future of Nepal's security sector: an army of wartime proportions and a paramilitary raised to fight the Maoist insurgency, whose numbers are being increased, alongside commitments to Maoist former combatants and undertakings to increase recruitment of under-represented groups.

I shall say less about the fourth fundamental aspect of the peace process, the commitment to political, economic and social transformation, but not because I think it less important. Those who talk of the Maoists "joining the mainstream" overlook the fact that while the former insurgents committed themselves to multiparty democracy, and must be held to that commitment, they did not abandon their commitment to fundamental change: indeed, the other political parties undertook to make such a commitment themselves. In so far as this referred to the end of the monarchy, it has been accomplished. In so far as it refers to restructuring the state, it is largely a matter for the new constitution, and requires a restoration of political cooperation if consensus is to be reached in the Constituent Assembly, where even a two-thirds majority requires Maoist support. But three years since the Comprehensive Peace Agreement is long enough to lament the inability of politicians in Kathmandu, or for the most part locally, to cooperate so as to bring some dividends of peace and beginnings of change to the poor and marginalized majority of Nepal's people. No effort has been made to forge a common vision for the "New Nepal" that is so often spoken about.

The fifth fundamental aspect of the peace process, the commitment to address the needs of victims of the conflict, and to build the rule of law by ending impunity, sadly can also be quickly addressed. Each side of the former conflict is concerned for its own victims, but little concerned for those it made victims, or for those who were simply caught in the middle of a ruthless war. Processes for compensation have been inadequate, and a process for addressing post-conflict issues of land and property has been non-existent. Three and a half years after the first commitment, in the Ceasefire Code of Conduct, to

investigate the fate of the disappeared, a commission of investigation has yet to be established. Not a single person has been properly brought to justice for a major human rights violation committed during the armed conflict or since. The Nepalese Army protects from the courts those involved in the killing of Maina Sunawar, the Maoists protect from the courts those involved in the killing of Ram Hari Shrestha, and the Nepali Congress is uninterested in accountability for the killings of YCL cadres by the security detail of one of its election candidates. Major reports by the Office of the High Commissioner for Human Rights on mass disappearances and systematic torture by the Nepalese Army in Maharajgunj barracks and in Bardiya district make no impact on Kathmandu opinion.

This summary of the non-implementation of key commitments of the peace process might be different if there had been serious mechanisms to monitor implementation. In the Ceasefire Code of Conduct, the two sides said that they would arrange for monitoring by national and international monitoring teams: the short-lived Ceasefire Code of Conduct Monitoring Committee, which included individuals of some independence, ended with the Comprehensive Peace Agreement, and undertakings to replace it came to nothing. The agreement of 8 November 2006 which preceded the CPA required a High-Level Joint Monitoring Committee to be formed to monitor implementation, and the CPA itself provided for a National Peace and Rehabilitation Commission. The August 2007 agreement with the Madhesi People's Rights Forum required a United Monitoring Mechanism to periodically review implementation. The 23-point Agreement of December 2007 required formation – within a month – of both a High Level Committee for Monitoring the Effective Implementation of the CPA and other Agreements, and a High Level Peace Commission. The post-election agreement of June 2008 required the formation of several commissions including a National Peace and Rehabilitation Commission – again within a month! The Common Minimum Programme of the Maoist-led government repeated this commitment, and said that the National Peace and Rehabilitation Commission would monitor the compliance and implementation of past agreements and understandings. This was again reiterated in the Common Minimum Programme of the present government, which also made a fresh commitment to a committee to monitor the implementation of agreements with the Madhesi. Yet despite these repeated commitments, there has been to this day no effective mechanism for monitoring implementation of the peace process, except for the Agreement on Monitoring the Management of Arms and Armies, under which UNMIN regularly convenes the Joint Monitoring Coordination Committee, which has now held over one hundred meetings.

Independent monitoring is an area where Nepal's civil society might have played an important role. But despite the leading role which civil society, marginalized groups and women played in the *Jana Andolan*, peace process negotiations have been limited to a small group of political leaders, mostly from higher castes, and all of them men. Even if uninvited by the political parties, civil society actors might have mounted independent scrutiny of their fulfillment of their commitments; instead, much of civil society has reverted to partisan perspectives. The agreements with Madhesi and Janajati groups must

be now regarded as part of the peace process, and sincerity in their implementation is also crucial for building consensus around a new constitution.

If this is the state of Nepal's peace process, is it bound to fail? You may by now be surprised to hear me say that I believe that while it is in danger of failing, it is not yet bound to fail. My suggestions for the way forward correspond to my analysis of its fundamentals.

First, the commitment to power-sharing and consensus-building must be re-established. It should be reflected in a national unity government, including both sides to the original peace process and all major political forces, in accordance with commitments before the election and with the election outcome. Effective mechanisms should at last be established to implement and monitor implementation of peace process commitments and commitments to inclusion, and should include strong representation of women and marginalized groups, and independent civil society voices. Power-sharing and consensus-building should similarly be applied in local government. At the national level, priority should be given to building consensus around a new constitution. The Constituent Assembly should be a place of vigorous debate, and should never be impeded in its functioning either as interim legislature or as constitution-making body, or restricted in its right to discuss major national issues. The parties should cooperate together, and with civil society, in a mechanism to ensure continuous implementation of peace process commitments and resolve the most difficult issues for the new constitution.

Second, the Maoist leadership must be consistent, in public and private, in words and deeds, in its immediate and long-term commitment to democratic multi-party norms. The YCL – and other youth movements – must be instructed in these norms and in full respect for the rule of law. The sincerity of the leadership is to be judged by the action it takes when its cadres act outside these norms, and by what it says to its comrades as well as to the international community.

Third, hard discussions should take place towards an overall plan for the security sector. “Civilian supremacy” has become a Maoist slogan, but democratic control of the armed forces is a universal principle and the common interest of all political parties. Within such a plan, the size of the Nepalese Army and the role of the Armed Police Force should be decided, inclusive recruitment policies designed, and integration of former Maoist combatants into politically-neutral security forces carried out, along with rehabilitation of those who do not want or qualify for integration.

Fourth, a common minimum programme for socio-economic advancement of the poor and excluded should be agreed upon - and implemented. While restructuring the state is to be agreed upon in the new constitution, and political parties will compete in future on the basis of their respective programmes, they have agreed to embark together on real change.

Fifth, there should be equitable compensation for all categories of victims of the conflict, real efforts to investigate disappearances, and justice for the worst abuses by either side.

All political parties should support impartial law enforcement, instead of protecting their own loyalists from the law.

Can this happen? At this moment I do not know, and it may seem unlikely. But I believe that this is along the lines of what the overwhelming majority of Nepal's long-suffering people would want to see happen, and I believe that it is the interests of those concerned for stability in Nepal, including India. When I went back to the 12-point Understanding, I was struck by one of its least-often quoted commitments: that both the Maoists and the parliamentary parties would engage in "soul-searching" and not repeat their mistakes of the past. I hope that this commitment can be implemented in time to maintain the peace and pursue the change which both sides promised the people of Nepal.