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## NEPAL: Restoring Political Stability



Nepal Political Map 1999, available at: <http://www.askasia.org/image/maps/nepal1.htm>

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PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning fundamental questions of public international law and foreign relations. PILPG has also advised four international criminal tribunals.

The four primary practice areas of PILPG are:

- Peacebuilding
- International Justice
- Post-Conflict Political Development
- Public International Law

As a *pro bono* law firm, PILPG relies almost exclusively on volunteer legal assistance from more than sixty legal advisors and former diplomats, as well as major international law firms. On average PILPG is able to provide over \$1.5 million worth of *pro bono* services annually.

PILPG provides legal assistance to a large number of clients without a physical infrastructure or any full time paid staff, and is thereby able to commit over 95 percent of its resources directly to project activities. Frequently, PILPG sends members in-country to facilitate the provision of legal assistance, and its members often serve on the delegations of its clients during peace negotiations.

PILPG maintains volunteer points of contact in Washington DC, New York, Boston, Cleveland, Seattle, London, Paris, Rome, The Hague, Stockholm, Belfast, Krakow, Budapest, Zurich, and Nairobi.

From 1996-1998, PILPG operated under the auspices of the Carnegie Endowment for International Peace. In July 1999, PILPG was granted official Non-Governmental Organizations status by the United Nations.

## EXECUTIVE SUMMARY

After thirty years under an executive monarchy, Nepal's transition to democratic governance in 1990 has been plagued by political instability and, at times, violent conflict. This instability is exacerbated by continued economic hardships and the "People's War" launched in 1996 by the Communist Maoist Party of Nepal (Maoists). The Maoists renounced mainstream politics to initiate a military movement in 1995 primarily in the rural countryside. On February 13, 1996, Maoists launched attacks on police posts and local administration offices in several districts across mid-western Nepal, beginning an insurgency that has devastated the country's economy and taken the lives of over 9,000 Nepali citizens to date.

While the Maoists attempted to expand their operations in rural parts of the country, the Government of Nepal took measures to re-establish security and control over these areas. However, these efforts did not have much success due to limited resources and an extraordinary royal family massacre. In June 2001, the popular King Birendra and much of the royal family were killed by a gunman, apparently the crown prince, who himself died of a gunshot wound sustained that night (believed to be self-inflicted). Public grief and conspiracy theories about the unknown motivation of the massacre paralyzed the country for several weeks. The country's monarch is now the late king's brother, Gyanendra, but political uncertainty remains. In November 2001, the Maoists ended peace talks with the Government and began attacks throughout Nepal.

In May 2002, Parliament was dissolved, but new elections (required within six months of the dissolution of parliament) did not take place because of the growing Maoist violence. The remaining branches of government were dissolved by King Gyanendra in 2002, and Prime Minister Chand resigned the following year, as did the next prime minister in 2004. While elections have been discussed, no date has been fixed (elections were last held in May 1999). Peace talks with rebels broke down in August 2003, marking the end of the latest ceasefire.

On May 7, 2004, the Public International Law & Policy Group in conjunction with the National Democratic Institute for International Affairs held a one-day negotiation simulation designed to stimulate debate and identify potential solutions for the growing conflict between the Nepali monarchy, political parties, and Maoists. The simulation held at the National Democratic Institute for International Affairs was designed according to the methodology used by the United States Department of State's National Foreign Affairs Training Center and brought together individuals from different professional backgrounds, including policy experts, legal professionals, and peace and conflict professionals.

While there are no clear answers to the Nepali conflict and there are a multitude of issues involved, the primary topics addressed and debated during the simulation were the restoration of government, reintegration of armed forces, the peace process, the constitution, and the role of international bodies.

## **LESSONS LEARNED: BEHAVIOR OF PARTIES**

This simulation brought forth each delegation's underlying agenda which was a significant factor when negotiations stalemated on specific issues. The following is a summary of each delegation's perspective during the simulation on key points including elections, restoration of government, role of an international body, and the constitution.

### **Political Parties Delegation**

The central issue for the political parties was the restoration of parliament. The political parties argued for consensus on the process for restoring Parliament and electing a candidate as Prime Minister. They also wanted an agreement from the King that he would not interfere for a determined length of time to allow this process to take place. The concern was that without this agreement on a power-sharing mechanism, the King would still have the power to remove the Prime Minister.

While the political parties spoke of working towards restoring parliament or a constituent assembly, they also proposed having an interim government to oversee elections. This request reflected parties' belief that the King would hesitate to allow a constituent assembly without an electoral mandate. The political parties agreed that if the Maoists demanded involvement, the political parties would offer them a role as observers in parliament and, after elections, the opportunity to enter negotiations to draft a new constitution. As observers, the Maoists would be able to make suggestions, but incorporating these suggestions would remain under the discretion of the political parties.

As noted above, elections are important to the political parties. The parties' recognized that organizing a successful election would require the participation of the King and that incorporating the Maoists would be problematic given their lack of political credibility and legitimacy from the governmental perspective. To address security concerns, the political parties considered establishing a ceasefire or seeking assistance from the United Nations to provide international oversight and monitoring of the ceasefire.

### **King Monarchy Delegation**

The King Monarchy's ("Monarchy") agenda was similar to the Political Parties' because the Monarchy was willing to amend the constitution but was not open to discussions on a "constituent assembly" that would change the constitution. They also recognized the need to address caste and ethnic issues. These issues included how to incorporate the rural and poorer areas of the country into the greater Nepal since these areas are vulnerable to Maoist control. The Monarchy was willing to consider a federal system of government based on geographic regions, so long as the monarchy remained in place. It was also open to "soft" international support such as military training, but maintained that external intervention was not acceptable.

The Monarchy encouraged discussion among all three delegations, but discouraged a ceasefire because the Monarchy argued that ceasefires were often used in the past by Maoists as a mechanism to enable them to re-group and re-arm. The Monarchy considered using the tension

between the political parties and the Maoists to create an incentive for all groups to come to an agreement or compromise. The Monarchy was confident in its military capability, believing that, if necessary, they would have the option of continuing military action even during talks with Maoists.

The Monarchy viewed themselves as providers of stability during Nepal's development towards a more democratic state. They were open to holding local body elections in secure areas. The Monarchy also saw room for a roundtable dialogue on constitutional changes, but not a constitutional assembly. They enumerated certain conditions for such a dialogue, including keeping the royal title, restricting the changes and amendments to the constitution, and opposing the creation of a new constitution.

### **Maoist Delegation**

Although the Maoists entered into negotiations with a forty-point agenda which included appealing to populist aspirations, demanding that the powers and privileges of the royal family be curtailed, declaring Nepal a secular nation, and mandating the drafting of a new constitution through a constituent assembly, the question of how to implement the agenda remained vague and unclear. The lack of clarity stemmed from the Maoist reluctance to discuss or debate the majority of these points, making attempts to negotiate problematic. However, they did organize a clear strategy which was to focus on the political parties who would serve as a vehicle for achieving their goals. The main goals discussed were an amnesty for Maoist cadres, and the release of current Maoist prisoners.

While Maoists were in favor of a restoration of government, they sought to have an organized role in the process. They wanted more than a marginalized share of the government and discussed exercising authority similar to that held by the ministries. In particular, the Maoists' primary demands were control of the Defense and Interior Ministries. The Maoists agreed with the political parties on the creation of a secular state where the Monarchy would be divorced from the political side of government. The Maoists also agreed on the formation of an election commission. However, Maoists were not in favor of foreign military assistance.

If negotiations were to begin on a new constitution, the Maoists wanted to limit the Monarchy's power. While there was not a strong desire to remove the king, there was an attempt to prevent the king from interfering in the politics of government. The Maoists also argued for setting up a timetable and a caretaker government that would be the body responsible for creating a Constitutional Assembly.

### **LESSONS LEARNED: THE SUBSTANTIVE ISSUES**

In 1990 multi-party democracy replaced a Palace-dominated *panchayat* system, a form of government where elected local and district councils nominated members to a *Rastriya Panchayat*, or National Parliament. Under this system, the King retained sole authority over all governmental institutions and nominated candidates for elections, many of whom ran unopposed. Political parties were banned, and there was no universal suffrage until 1980. This system lasted 30 years, with thousands of pro-democracy activists being jailed, exiled, tortured, and executed.

In 1990, Katmandu erupted in political protests under the banner of the "people's movement for the restoration of democracy." Supported by united leftist parties under the umbrella of the United Left Front and the Nepali Congress, as many as 100,000 people demonstrated in the streets demanding democracy and an end to the country's absolute monarchy. Since 1991, conflicts among and within parties have made it difficult to maintain governing coalitions and have produced 13 different prime ministers. This instability is exacerbated by continued economic hardships, the "People's War" launched in 1996 by the Maoists, and the King's assumption of executive powers which the political parties consider to be unconstitutional and a "regression" in Nepal's movement for democracy.

## **Elections**

Since the breakdown of elected government in 2002, the political parties remain out of government in part due to their inability to form a common platform for negotiating with the King. In recent months, the King has traveled the countryside promoting his agenda, stating that elections will be held sometime within the next 18 months. Meanwhile, the parties have stepped up their agitation, calling all-day *bandhs* (general strikes) that have paralyzed the capital and have led to violence. The Maoists have also called their own *bandhs*, shutting down travel and trade throughout the country. It is clear that steps must be taken to provide Nepal with a timetable and process for holding elections.

- The Monarchy, political parties, and Maoists agreed that elections should be held as soon as possible. However, due to security concerns discussions moved toward restricting elections to the areas where security permitted.
- Elections should take place in phases allowing districts to vote on separate days, similar to how Indian elections are undertaken.
- The Monarchy supported local, but not national elections. They agreed to look at a proportional representational system, reserving seats for lower castes or women.
- The Monarchy and Maoists had different goals for elections; the Monarchy sought local and village elections while the Maoists called for national elections. Furthermore, the Monarchists considered political parties to be the only legitimate political forces, rejecting the idea of the Maoists as a political entity.
- A major obstacle that stalled progress on holding a referendum was the inability for the delegates to agree to a ceasefire.
- The Maoists did not consider a ceasefire to be necessary, but agreed that an end to offensive maneuvers was important. They agreed to suspend offensive military actions and take measures against those who resort to violence. However, the Maoists reserved the right to fight in defense if they detected armament of behalf of the Monarchy.

- The Maoists also offered to allow monitors to ensure free and fair elections. However, the Maoists were concerned that the Monarchy, as both an institution and a political party through its direct affiliation with the Royal Loyalist Party (RPP), would in effect give the King two voices during the peace process and in the new government. Their proposed solution was to limit the Monarchy's involvement to that of the RPP.
- The political parties pushed for intervention from the UN or another type of international body to conduct national elections. With security concerns no longer an obstacle, the political parties and Maoists expected movement in the political process which had been stalled by the Monarchy in the past.

### **Restoration of Government**

Negotiations on the restoration of government were difficult because each delegation had their own goals for the process and end results. Therefore, there was no single solution on how to bring the government back into power.

- The Maoists emphasized that they have the support of the people and resent the government's treatment of them. Their bottom line called for a short timetable which would guarantee when the monarchy would relinquish power. This timetable would be approximately one year but no more than two years. The monarchy would be able to retain money and palaces but would give up political power.
- The royal title would be restricted to the immediate royal family and the Maoists wanted the Monarchy to agree to an independent investigation into the massacre of the royal family.
- The political parties agreed that the King did not need to step down, only that he should relinquish his power.

In response to the Maoists' demands and the Maoist argument that the Monarchy should not have a political role in Nepal, the Monarchy continued to stake their claim on political authority due to the problems that occurred in the 1990s when the Maoists walked away from the political process after their hopes for a total communist victory were dashed. They also argued that the Maoists lack the structures of internal democracy necessary to participate in government. Also complicating negotiations was the Maoists' inability to articulate to the Monarchy the specific type of "constituent assembly" they envisioned to replace existing institutions.

### **Constitution**

Given the importance of restoring the government and holding elections, not much time was devoted to negotiations on the constitution. However, two questions that arose were what the role of the constitution should be and how will a Constituent Assembly be elected without revising the constitution first. A significant move forward for these negotiations was the Monarchy's willingness to engage in a three-way constitutional dialogue and consider amendments to the constitution.

- The Monarchy was willing to engage in a genuine constitutional dialogue where the delegations would examine ways to amend the constitution and the structure of government. These approaches included set-asides for minorities and women in an effort to guarantee their representation or proportional representation.
- The Monarchy supported a multi-party democracy and a Constitutional Monarchy. These measures demonstrated that the delegations perceived the 1990 Constitution as legitimate. In addition, these measures demonstrate that the Monarchy, unlike the political parties, was only willing to discuss and support legitimate political interests.
- The delegations were willing to discuss caste and regional issues voiced by the Maoists through constitutional amendments.

### **CARETAKER GOVERNMENT**

During the simulation negotiations repeatedly stalled on the issues of the restoration of government and the constitution. As a result, the Monarchy suggested dual-track negotiations on the constitution and the creation of a caretaker government, the first step in restoring the elected institutions. This approach was supported by the majority of delegations. The Monarchy was the only delegation agitated by this separate negotiation because they wanted to keep negotiation efforts on constitutional issues. However, all three delegations met apart from the general negotiations to take on the issue of a caretaker government.

While the Monarchy was upset that caretaker government negotiations were called, they came up with their own agenda for these discussions. The Monarchy had a fairly detailed agenda regarding the caretaker government. Their position included:

- Creating a limited role for the Prime Minister supported by technocrats
- Nominating the Chief Justice for the role of Prime Minister since he is considered a nonpolitical candidate (despite ruling in favor of the King in several cases)
- Legitimizing the Chief Justice based on the model used in Bangladesh
- Reminding parties of the current government's international recognition
- Attempting to isolate Maoists while continuing conversation on democracy and constitutional reform
- Renaming the caretaker government as the "Government of National Unity" (GNU)

The Maoists and political parties were mainly concerned with elections and the mechanisms needed to enable successful and safe elections. They did not have a clearly defined agenda similar to the Monarchy.

### **Lessons Learned from Caretaker Government Discussions**

The Monarchy had a difficult time finding common ground with the Maoists and political parties regarding how the caretaker government would be organized and function. Several models for how a caretaker government should be fashioned were created; however, consensus was reached on only a few points.

- Agreement was reached among the Maoists and political parties that the institution of the Monarchy must be preserved. However, this agreement seemed incompatible with Maoists real aims.
- Maoists and the political parties united to push for the creation of a caretaker government before a constitutional convention.
- The structure proposed by the political parties allotted one space reserved for Maoists in the Prime Minister's cabinet. However, this proposal was unacceptable to the Maoists. They wanted representation in the interim government cabinet and suggested three positions.
- The Maoists agreed to the dual-track negotiations plan, but disagreed on the role they would play. They argued that a role as observers was unacceptable, seeking active participation instead. The Maoists proposed having political parties get directly involved in running the government instead of the civil servant system proposed by the Monarchy.
- The Monarchy emphasized a dual-track approach to negotiations where discussions would concern both the GNU and the process for constitutional change. Therefore, they argued for the Chief Justice to act as Prime Minister and for the chief ministers to be selected by competence and relevant experience. These chief ministers would be selected based on their ability to act deliberately and not initiate major changes.
- The political parties advocated for the reinstatement of the previous parliament based on the need for a government with electoral legitimacy. They also proposed determining the structure of representation before elections by turning to the constitution as a source of legitimacy.
- The Monarchy countered the political parties' proposal to reinstate parliament arguing that recalling parliament was unconstitutional. They assured the political parties that there would be a role for them under a technocratic caretaker government.

The Monarchy was hesitant to discuss this issue with the Maoists because the Monarchy doubted the credibility of the Maoists. While the Maoists argued that they did not need to be directly involved in the caretaker government, the Monarchy felt this was a promise made on tenuous grounds given the Maoists credibility issues.

### **LOOKING FORWARD**

In an effort to forge common ground, the Maoists and political parties downplayed points of contention on the restoration of parliament. While the political parties sought a restoration of parliament, this notion was unacceptable to Maoists who would have no role in a parliamentary system. During negotiations Maoists attempted to establish a relationship with the political parties, which was helpful in eliciting possible common ground between the two groups. However, in actual negotiations it is unlikely that this relationship would be possible given the

continuing debate between the Monarchy and the political parties over whether parliament can be recalled.

Nepal's past rounds of negotiations have been impeded by insufficient reforms to the negotiating process and agenda. In order to improve on past results, there should be a greater understanding of how future negotiations should be adjusted to promote agreement. To promote progress in Nepal's future negotiations, a number of suggestions were proposed.

First, the Monarchy has taken a central political role in the conflict and both the political parties and Maoists agree that the Monarchy needs to step down from power. Fingers are pointed at all delegations involved. The Maoists questioned the validity of the Monarchy's commitment to democracy, and the Monarchy challenged the Maoists democratic commitment citing the Maoist history of violence.

Second, as the political parties were preoccupied with getting their party in power, several issues were not discussed. These include infrastructure problems, child abductions, use of human shields, and ethnic or caste issues. A political resolution without violence is the way to establish a successful resolution to the current violence and political debate. This resolution must coincide with discussions on the topics not addressed during this simulation incorporating and representing the interests of the common people.

Third, because the political parties can affect the vote between the Monarchy and the Maoists, these negotiations demonstrated the possibility for political parties to act as an honest broker with international oversight. Without substantive party reform, the stalemate impeding progress will only keep Nepal in disarray.

In order for negotiations to move forward in the future, they will need to have well-articulated goals, party platforms, and greater unification among the negotiating parties. While the resignation of the Prime Minister appeared to be a solution to establish a unified front, the Prime Minister's replacement may not be sufficient to harmonize the political parties as a single entity. Security concerns amplified party polarization because the political parties are vulnerable to the military and to Maoist provocation. At the time of this negotiation simulation, the Maoists controlled roughly forty percent of Nepal and maintained an army capable of pressuring the Monarchy delegation through the threat of force. In the future, popular support for all positions and political rhetoric must focus on a commitment to peace.