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Nepal: Rule of Law and Human Rights Challenges

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Following the Royal Coup of February 2005, Nepal's security situation has precipitously deteriorated while human rights abuses have continued to escalate. The conflict between the Royal Government and the Maoists has been marked by violations of international human rights law by both sides. For their part, the Maoists operate outside the law, using violence and fear tactic to impose and maintain their rule and control over increasing areas of rural Nepal. The Maoists engage in unlawful killing of civilians, and abduction and forced recruitment of civilians, including children. For their part, the Nepalese security forces often act with impunity and beyond the reach of civilian control or oversight. They commit violations of international human rights law including extra-judicial killings, disappearances, torture, arbitrary arrests and unlawful and secret detentions.

In an effort to better understand [Nepal's rule of law and human rights challenges](#) and examine ways forward, the U.S. Institute of Peace convened an expert panel on July 11, 2005. The panel included American government and non-governmental experts as well as Nepalese human rights and legal reform advocates; the participants were: Jonah Blank, Senate Foreign Relations Committee; Lisa Curtis, Senate Foreign Relations Committee; Sushil Pyakurel, Former Commissioner, National Human Rights Commission, Nepal; Veena Siddharth, Human Rights Watch; and Shambhu Thapa, President, Nepal Bar Association. This USIPeace Briefing, prepared by [Christine Fair](#), Kerem Levitas, and [Colette Rausch](#) of the Institute of Peace, provides a summary of the issues, challenges and policy options that were discussed at this on-the-record meeting.

Nepal's Troubled Constitutional History: The Roots of the Current Crisis

Nepal's post-independence history has been marked by political instability and constitutional uncertainty. Since the fall of the hereditary Prime Ministership in 1951, Nepal has seen several constitutions with political authority shifting from the King to a multi-party system and back to the King. However, in 1990, following massive street protests, then King Birendra bowed to political pressure to adopt a new democratic constitution.

The 1990 constitution, though frequently hailed as the foundation of the rule of law in Nepal, contains ambiguities that have been subject to different interpretations and have thus contributed to current instability. Perhaps of greater consequence is Article 127 "The Power to Remove Difficulties," which states that: "[i]f any difficulty arises in connection with the implementation of this Constitution, His Majesty [The King] may issue necessary Orders to remove such difficulty and such Orders shall be laid before Parliament." Since 2002, the King has appointed and dismissed three Prime Ministers, each time attempting to couch his actions in constitutional legitimacy by invoking this article.

Most panelists emphasized that while the Palace bears much responsibility for the current crisis facing Nepal, the Maoists share in this culpability. Since 1996, the Maoists have waged a bloody campaign to establish a "people's republic." In 2002, in response to rising Maoist violence and delayed elections, the King dismissed then Prime Minister Deuba and assumed full executive powers. While he maintained the trappings of a constitutional democracy by appointing a series of Prime Ministers, real authority rested squarely with the Palace. In February 2005, the King dropped even this semblance of constitutionality by again dismissing the Prime Minister, assuming full executive authority, and declaring a state of

emergency.

All contributors noted that Nepal's human rights and security situation has steadily declined since 2002 (Nepal had the dubious distinction of having the world's highest number of disappearances for both 2003 and 2004). In addition to the disappearances, common human rights violations include extrajudicial killings, rape, and severe restrictions on freedom of speech, assembly and association. Most panelists cautioned that both the government and the Maoist insurgents are complicit in these violations. All participants agreed that Nepal desperately needs a return to multi-party democracy to restore the governmental legitimacy necessary to negotiate a peace with the Maoists. Such legitimacy cannot be achieved without fresh elections -- an impossibility given that the Maoists control much of rural Nepal.

The February Coup: Exacerbating the Human Rights Crisis

Panelists were united in condemning the King's decision to remove Prime Minister Deuba and assume full executive authority in February 2005. The move was a serious setback for democracy and has damaged Nepal's standing in the world, raising concerns among some that it may turn into "another Uzbekistan." Furthermore, there is concern that the coup, rather than providing increased means to maintain security, served to bolster the Maoists' cause at the expense of the Palace.

One participant noted that the King has recently taken some positive steps toward restoring democracy, including lifting the state of emergency and releasing political detainees. However, human rights advocates on the panel questioned the significance of these developments, charging that little substantive progress has been made. They contended that political parties are barred from activity, that press freedoms remain severely limited, and that human rights activists do not have access to rural areas--where both the Maoists and the military are active. Furthermore, many of the political prisoners released have reportedly been re-arrested.

Since the February coup, notions of accountability, independent judicial oversight and basic freedoms no longer exist within the Nepalese government. The King has imposed strict limits on press and political freedoms, while extra-judicial killings, torture and unlawful arrest continue unabated. Panelists also noted the fact the security forces are known for their heavy-handed tactics. One panelist noted an instance in which, in retaliation for a Maoist attack on the Special Forces, the Military dropped explosive munitions on civilian targets. While locals often fear and dislike the Maoists, disproportionate military responses have increased anti-government sentiment. The Maoists themselves are routinely implicated in murder, abduction, extortion and reportedly recruit child soldiers.

Of equal concern to several participants is the inability of the human rights community to investigate these instances of abuse. Human rights workers have difficulty accessing much of rural Nepal, where many of the abuses take place. This limits their ability to report on the violations of both the government and the Maoists. In a particularly disturbing development, the term of the commissioner of the Nepal Human Rights Commission expired in May. Unable to have a new commissioner approved by Parliament, the King has directly appointed the current commissioner. One participant noted that the King's role in the appointment has tainted the independence, credibility and public perception and faith in the commission.

The Role of the United States and the International Community

In response to the rising threat from the Maoist insurgency, the United States has closed ranks behind the King, doubling economic assistance over the past two years and providing counter-insurgency training to the Royal Nepalese Army. One panelist said the U.S. fears that any reduction in support for the King would translate into gains for the Maoists and increased Chinese influence in the Kingdom. However, other panelists countered that the results of the February coup have in fact bolstered the Maoists and thus seriously undermine the validity of this logic.

Moreover, other panelists opined that U.S. policy makers suffer from a dearth of reliable information about developments in Nepal and the actual strength of the Maoists because of limited U.S. access to

areas outside of Katmandu. Furthermore, there has been little effort to conduct a thorough analysis of the situation in Nepal to understand possible contingencies. Thus, one U.S. government representative noted that the United States has little solid evidence to support its position that curtailing support for the King would result in a Maoist takeover. For these reasons, the majority of the participants questioned the wisdom of a "status quo policy" of supporting the King at all costs. Instead, they argued that the United States should work closely with India and the United Kingdom, the other major players in Nepal, in order to promote democracy, the rule of law and human rights.

Elements of a Forward-Looking Strategy

All panelists agreed that it is becoming increasingly apparent that there is no military solution to the conflict in Nepal. As such, a policy of supplying increased military and economic assistance to the King is of dubious merit. In June, the United States delayed a planned shipment of arms to Nepal. Some panelists noted that this was a laudable decision, as supplying lethal military aid in the current climate would be seen as a tacit endorsement of the King's heavy-handed tactics.

Panelists agreed that the international community should maintain pressure on the King to take specific and direct actions to re-establish full democratic and constitutional rule, including restoration of freedoms; release of people unlawfully detained; and adherence to international human rights standards including those relating to arrest, detention and torture. Some panelists acknowledged that the King has taken a few positive steps, but wondered whether these steps were sincere or were simply a ploy to gain international support. For example, the King signed a Memorandum of Understanding (MOU) with the UN's Office of the High Commissioner for Human Rights (OHCHR) to establish a monitoring mission; however, the King has failed to implement the terms of the MOU. Additionally, although the King did lift the state of emergency, he also continued to clamp down on fundamental rights and freedoms. The Supreme Court releases people following habeas corpus proceedings, yet these people are then arrested by security forces, defying the court's order. One panelist remarked that the King has the responsibility of protecting Nepal's citizens, not threatening them by conducting arbitrary arrests, using excessive force, and curbing freedoms of movement and speech.

Panelists were in agreement in calling for both the Royal government and the Maoists to comply with international human rights standards, including adherence to International Humanitarian Law (IHL). Further, the Maoists should allow human rights monitors, lawyers and journalists the freedom and security to carry out their work. The panelists called for both sides to work together to bring peace. Both sides have contributed to the problem and need to work together to resolve it. One panelist remarked that neither a Maoist communist dictatorship nor a monarchy unresponsive to the people will promote peace. Further, there must be political dialogue in order to bring lasting peace and restore civil liberties and democratic rights of the people; the international community should assist in bringing the parties together to this end.

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