

# Integration of the Army and New Constitutionalism in Nepal

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Constitution-making is a process involving a contested terrain and this is reflected in Nepal's political situation today, particularly on the question of integration of rebel combatants into the army and its "democratisation". It is important for Nepal's political parties and forces to leave aside their past mistrust and come together to reach an equitable settlement while integrating combatants. Political foresight is also needed to appreciate that democratisation of all institutions, including the army, is imperative for creating the new constitutional democracy that is Nepal.

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The constitution-making process in Nepal is dramatically poised amid uncertainty on many significant issues, while the deadline of 28 May 2010 looms large on the horizon. With a constitution-making committee, 10 subject-matter committees and three procedural committees in place, the process is critical in not just the creation of a new constitution for the country, but also significant in the context of post-conflict societies committing themselves to democratic constitutionalism.

Nepal's 12-year conflict between the Maoist – People's Liberation Army (PLA) and the state (represented in battle by the then Royal Nepal Army) arrived at a precarious peace, culminating in popular elections in early 2008. The PLA has been described as one of the largest non-state military formations in the world (Pathak 2008). At present the PLA is estimated to have a little over 19,600 members eligible for potential or possible integration.<sup>1</sup> The Nepal army at present has a strength of about 95,000 soldiers. The Nepal army previously known as the RNA, owed allegiance to the king of Nepal.

Given the violent conflict that ravaged the country, the issue of integration of armed combatants has become critical in

Nepal. The tenuous nature of the peace between the former combatants was in evidence when as recently as in mid-2009 prime minister Pushpa Kamal Dahal (Prachanda) of the Unified Communist Party of Nepal (Maoist) – (UCPN(Maoist)) – dismissed the chief of army staff over alleged insubordination. However, this dismissal was reversed by President Ram Baran Yadav of the Nepali Congress, leading to the prime minister resigning, and the other parties, in turn, forming a new coalition government.

There has been a serious formal commitment expressed in various instruments and representations regarding the integration of eligible armed combatants. Yet, the process has run into serious trouble, both in terms of disagreement with the principle of integration, and dispute over the scale and nature of integration from within the army. The issue of the reconfiguration of the RNA into one representative of a multi-ethnic people's democracy has also posed serious challenges.

This article commences with a section each on relevant portions of the Comprehensive Peace Agreement (CPA), the Interim Constitution (2063 of 2007), and the draft provisions of the Committee for the Protection of National Interest.<sup>2</sup> Section 4 deals with the political path of the process of integration and rehabilitation of combatants and democratisation of the army, including the prime minister's Action Plan for Integration. It briefly examines the policy of integration of combatants that was adopted in post-apartheid South

Africa. And the final section suggests the way forward based on constitutionalism and political foresight.

### 1 The Peace Agreement

The CPA was signed between the then government of Nepal and the UCPN(Maoist) on 21 November 2006. This “contract for peace” was meant to signify the end of 12 years of civil war. It was meant to encapsulate the agreement between the Maoists, the Nepal government and seven major political parties, through agreements, mutually agreed to codes of conduct – essentially a process towards a managed end of hostilities. Significantly, the CPA has a detailed section on “management of army and arms.”

The CPA is categorical that the democratic restructuring of the army was along with free and fair elections to the Constituent Assembly (CA) the most significant commitment necessary. The content of “democratic restructuring” was never quite specified. As the CPA related to the PLA, it draws from the commitment expressed in the letter sent on behalf of the government of Nepal and the UCPN(Maoist) to the United Nations on 9 August 2006.

The CPA had some of the following as its significant ingredients for a managed peace process. The Maoists’ army combatants were to remain within the specific cantonments.<sup>3</sup> The UN was expected to verify and monitor these cantonments. After placing the Maoist combatants within the cantonments, all the arms and ammunition except those required for providing security to the cantonments were to be securely stored and the keys to the single lock was to remain with the side concerned.<sup>4</sup> The UN was to monitor the process of placing the weapons under the single lock by keeping records and fitting a device along with a siren. In case of a need to examine the weapons placed under the single lock, the UN was to do so under the presence of the concerned side. The interim council of ministers was to form a special committee in order to inspect, integrate and rehabilitate the Maoist combatants.<sup>5</sup>

Similarly, the Nepali army was to be confined within the barracks.<sup>6</sup> A guarantee was expected that arms would not be used for or against any side. The Nepali army

was to store the same amount of arms in accordance with that of the Maoists and seal it with a single lock and give the key to the concerned side. In case of need to examine the stored arms, the UN would do so in the presence of the concerned side.

The council of ministers would control, mobilise and manage the Nepali army as per the new Military Act.<sup>7</sup> The interim council of ministers was expected to prepare and implement the detailed action plan of democratisation of the Nepali army by taking suggestions from the concerned committee of the interim parliament. This included tasks such as determining the right number of the Nepali army, preparing the democratic structure reflecting the national and inclusive character and training them as per democratic principles and values of human rights.

The CPA called for the termination of military action and armed mobilisation and affirmed that both sides express a commitment to refrain from carrying out activities including: use of any type of weapon or acts of attack against each other.<sup>8</sup> Importantly, both sides committed not to recruit additional armed forces or conduct military activities, including transporting weapons, ammunitions and explosives.<sup>9</sup> Armies of both sides were not to bear arms or show their presence wearing combat fatigue during any public programme, political meeting or civil assembly.<sup>10</sup> Finally, both sides agreed to maintain a record of the government, public, private building, land and other property seized, locked up or not allowed to use in course of the armed conflict and return them back immediately.<sup>11</sup>

### 2 Interim Constitution of 2007

The interim constitution of Nepal came into force on 15 January 2007. An agreement to have a CA and a new constitution was one of the results of Jana Andolan II in 2006.<sup>12</sup> In principle, the CA can ignore the provisions of the interim constitution. However, in reality constitution-making processes elsewhere have shown that interim provisions are often reflected in final versions, or conversely can act as absolute negatives and inspire complete moves away from such values. Either way interim constitutions act as legal sounding-boards for constitutional dialogue.

Article 144 provides for an institution of the Nepal army, and provides that the council of ministers shall appoint the commander-in-chief of the army.<sup>13</sup> The interim constitution also provides that the council of ministers shall control and manage the Nepal army, and significantly shall with the consent of “all” political parties and by seeking the advice of the concerned committee of the legislature, formulate an extensive plan for the “democratisation of the Nepal Army and implement it”.<sup>14</sup>

The interim constitution further provides that the

action plan that the Interim Constitution in 144(3) declares shall include determination of the appropriate number of the Nepal Army, its democratic structure, and national and inclusive character. And further that training shall be imparted to the army in accordance with the norms and values of democracy and human rights.<sup>15</sup>

Finally, the interim constitution deals with the establishment of the National Defence Council, which comprises the prime minister, the defence minister, the home minister and three ministers designated by the prime minister. The task of this council is to provide “recommendations to the Council of Ministers on mobilisation, operation and use of the Nepal Army”.

### 3 Draft Provisions

The Committee for the Protection of National Interest, one of the 10 thematic committees of the CA, has as per Rule 66 of the Constituent Assembly Rules and Legislative Parliament Rules, specified the working areas of the committee to include the identification and definition of national interest, national security, and the duties of the Nepal army and its operation.

Rule 73 of the Constituent Assembly and Legislative Parliament specifies the preparation of a preliminary draft as one specific function of a thematic committee. On 25 May 2009, the Committee for Preserving the National Interests was the first to present a draft at the CA. Seven members registered dissent on specific portions. The member from the Nepali Congress objected to the clause that supported the integration of the Maoist PLA members into the Nepal army, as per the CPA.

Draft Article 22 deals with the “National Defence Council”. It provides that the National Defence Council shall formulate policies about Nepal’s overall national interests, security, and defence and make recommendations to the council of ministers/head of the executive on mobilisation and management of the Nepal army.<sup>16</sup>

The concept paper also has detailed provisions regarding Nepal’s national army. It calls for the institution of Nepal national army for safeguarding the sovereignty, integrity, independence and national unity and for national development and construction works.<sup>17</sup> The constitution of the Nepal army with a national character is to be in accordance with the proportional, inclusive and democratic principles with the objective of ensuring sustainable peace, political stability, and economic prosperity.<sup>18</sup>

Importantly, the concept paper deals with talks about the rehabilitation, management and integration of the combatants living in cantonments (PLA) and Nepal army on the basis of the 12-point agreement and the CPA.<sup>19</sup> This provision has been severely criticised and there were major differences among members on this issue during the drafting process. The concept paper also provides that the head of state shall be the supreme commander of the Nepal army<sup>20</sup> and shall appoint the commander-in-chief of the Nepal army on the recommendation of the head of the government/council of ministers.<sup>21</sup> The head of state is also made responsible to control, mobilise, run and manage the Nepal army in accordance with the law on the recommendations of the council of ministers.<sup>22</sup> The commander-in-chief can be removed by the council of ministers in accordance with the appropriate law.<sup>23</sup>

Finally, the concept paper seeks to ensure accountability of Nepal national army, paramilitary force, intelligence agencies and police organisations and states that these bodies shall remain accountable to the government

#### 4 The Path towards Integration

In many ways, the Maoists situation is somewhat similar to South Africa, where the African National Congress (ANC) at the time of the coming into being of a new

republic enjoyed large-scale popular support, which was reflected in their representation in the constituent assembly.

The integration in South Africa of what were called non-statutory forces (those who resisted apartheid) into the new South African National Defence Force (SANDF), is considered one of the great success stories of the post-apartheid nation state. The former military, which was Afrikaner-dominated was considered one of the great pillars of the apartheid regime. The “non-statutory” forces were anti-apartheid revolutionary soldiers, mainly drawn from the military wing of the ANC – the Umkhonto We Sizwe (MK) and the Azanian People’s Liberation Army (APLA) (Higgs 2000).

James A Higgs writes that the interim constitution provided for a transitional executive council and sub-council on defence – and these were provided future armed forces.<sup>24</sup> The sub-council drew members from the major political players. The interim constitution of 1993 allowed all MK and APLA members to register to enter the SANDF except if they were unhealthy, uninterested or old. Higgs writes about a racial shift that took place in the first three years of the integration process, with the Africans coming to comprise half the army (from one-third), the whites dropping to one-third (from half) while others comprised the rest.<sup>25</sup>

Issues like ranks and promotions were sorted through by compromise. For instance, an MK might rank an individual as a lieutenant colonel because of his standing in the organisation while the statutory forces might assess his experience as that of lieutenant. In compromise, the officer might be given the rank of a major, along with training to bridge any gap.<sup>26</sup>

The UCPN(Maoist) feel that integration is a political question. Brashaman Pun “Ananta”, a constituent assembly member, former PLA commander and spokesman

for the Maoists insists that the terms for integration and rehabilitation must be settled before the constitution is finalised.<sup>27</sup> He felt that details like the number of the combatants to be integrated could be decided by the “High Level Committee” consisting of leaders of the three major political parties.<sup>28</sup> But, in essence, the question of integration must be settled as per the terms of the 12-point programme, the CPA and the interim constitution. He also added that the feudal nature of the army must change.

Pun offered some details on the suggested process, whereby in every cantonment there would be three camps – one for those who wanted to be integrated; a second for those who wanted to join politics, or the political process; and a third for those who wished to be rehabilitated – given educational benefits or vocational training. The Maoists have always wanted any plan for reintegration to include space in the command structure of the Nepal army, unit level entry and possibly gradual merger of the two armies (Jha 2009).

Pun also articulated the UCPN(Maoists) expectation of the “democratisation” of the Nepal army.<sup>29</sup> He explained that “democratisation” would mean that the Nepal army would be “inclusive” (in the context of gender, caste and also have a secular character) and would be imparted training and education in respect for human rights. Pun also felt that democratisation warranted a strong defence ministry unlike its state at present with just 29 staff members, and in general felt that there must be “security sector reform”.<sup>30</sup>

More recently, the prime minister announced the establishment of a special committee on the supervision, integration and rehabilitation of (United Nations Mission in Nepal (UNMIN) verified) combatants. He also announced an “action plan”

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would pave the path for integration and rehabilitation within four months. The urgency of the timing is tied both to the term of the UNMIN (extended till 30 April 2010), as well as the final date for completion of the constitution-drafting process (28 May 2010).

Broadly, such integration and rehabilitation of the eligible combatants would be into three streams – of politics, integration in forces, and rehabilitation per se in the context of education and employment assistance (including vocational training). Combatants will choose based on interviews that the committee will conduct in the cantonments. The prime minister's action plan considers integration of combatants to include absorption in the Nepal army, the armed police force, the Nepal police and the National Investigation Department.

The action plan also provides for an UNMIN-supervised destruction of weapons of the PLA, and discharge of disqualified combatants from the cantonments. The disqualification process, which is extremely contentious, has already been made operational.

The special committee on supervision, integration and rehabilitation of combatants (referred henceforth as “Special Committee”) is reported to have “reached an understanding on the modalities of the chain of command and control of the combatants living in 28 camps” (Bhandari 2010).

Finally, in a welcome step, the Special Committee has created a nine-member secretariat to oversee management of combatants. Significantly, this means that the combatants will be under civilian control.<sup>31</sup> The secretariat has representatives from the PLA, the military police, the Nepal army, and the armed police amongst others. This is a proactive step towards resolving the challenge of integration and rehabilitation of the combatants.

## Conclusions

Constitution-making is a contested terrain. Nepal's interim constitution marked a definite shift from the erstwhile monarchy. The interim constitution committed the nation to accepted ideals of constitutionalism – including those of democracy, universally recognised human rights, accountability of all institutions – including

the army, police and judiciary. Most importantly, the interim constitution places the army under categorical objective civilian control – yet another feature of constitutionalism.

In many ways this is an obvious step after the CPA, which not only ensures that the two warring entities, the army and the PLA, were contained in separate areas, with their arms locked away and putting an embargo on recruitment. But, the CPA goes a step further in mandating that the interim council of ministers were expected to prepare and implement the detailed action plan of democratisation of the Nepali army by taking suggestions from the concerned committee of the interim parliament.

Therefore, clearly there is an a priori understanding and commitment made to reconfiguring the institution of the Nepal army. The integration of the Maoist combatants will only further aid this process of reshaping the character of the army. In real terms demands for integration of PLA combatants have only involved between 4,000 and 8,000 members.<sup>32</sup> Even if these were integrated as units it is unlikely that these would radically alter the existing army of 95,000 soldiers. In any event integration of combatants would be spread over the army, the police, the military police and other entities.

Further, demands for democratisation of the army including allegiance to the nation and control by an objective civilian leadership, while strengthening the defence ministry, are inherently desirable institutional changes. Professionalisation of the armed forces through training programmes for all ranks, established within the country, induction of women and ethnic communities that are under-represented in the forces are also objectives that indicate an institution representative of a diverse constitutional democracy.

It is important for Nepal's political parties and forces to leave aside their past mistrust and come together to reach an equitable settlement while integrating combatants. Political foresight is also needed to appreciate that democratisation of all institutions including the army is imperative in creating the new constitutional democracy that is Nepal.

## NOTES

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- 1 The specific number of PLA combatants eligible to be in the camps is a matter of some dispute. Allegations have been made that the UCPN(Maoist) leadership added to the number of combatants in the camps, after peace was arrived at. However, the United Nations Mission in Nepal estimates the number of eligible combatants at around 19,602.
- 2 This committee is one of 12 thematic bodies in the constituent assembly, and specifically deals with issues on national security, the army, etc.
- 3 Para 4.1 provides that the main cantonments shall remain in the following locations: 1 Kailali, 2 Surkhet, 3 Rolpa, 4 Nawalparasi, 5 Chitwan, 6 Sindhuli, and 7 Ilam. Three sub-cantonments were to be placed in the periphery of each of these main cantonments.
- 4 Comprehensive Peace Agreement (CPA), Para 4.2.
- 5 CPA, 4.4.
- 6 CPA, 4.6.
- 7 CPA, 4.7.
- 8 CPA, 5.0.
- 9 CPA, 5.1.2.
- 10 CPA, 5.1.5.
- 11 CPA, 5.1.8.
- 12 See “A Simple Guide to the Interim Constitution of Nepal”, Centre for Constitutional Dialogue, United Nations Development Programme, 2007, Nepal.
- 13 144 (2) of the Interim Constitution.
- 14 144 (3) of the Interim Constitution.
- 15 144 (4) of the Interim Constitution.
- 16 Concept Paper, § 22 (1).
- 17 § 24 (1).
- 18 § 24 (2).
- 19 § 24 (2).
- 20 § 24 (3).
- 21 § 24 (4).
- 22 § 24 (6).
- 23 § 24 (5).
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- 27 Conversation with the author in Kathmandu on 19 January 2010.
- 28 Ibid.
- 29 Conversation with the author in Kathmandu on 19 January 2010.
- 30 Ibid.
- 31 “Former PLA Fighters Come under Civilian Control”, *The Himalayan Times*, 31 January 2010.
- 32 Conversations with representatives of various political parties, the PLA and the Army.

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