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Reconciliation and Transitional Justice in Nepal

A Slow Path

Summary

- The 2006 peace agreement between Maoist insurgents and the government of Nepal promised constitutional and political reform, reconciliation, and transitional justice.
- Implementation of the agreement, however, has been slow.
- Yet, despite skepticism about government accountability, more than sixty thousand victim complaints have been submitted, suggesting an enduring hunger for justice.
- The government can help satisfy that appetite by clarifying jurisdiction, furnishing resources, and creating mechanisms.
- Meanwhile, Nepal's people and politicians have grown accustomed to working together. Disaffected groups no longer feel that violence is their only recourse.
- If these gains are to continue, the transitional justice process must continue to advance, even if piecemeal.

“How bleak is the outlook for justice and reconciliation in Nepal? On balance, there may be reason for guarded optimism.”

Introduction

Nepal's capital city is a boisterous place. By day, Kathmandu's roads are a vehicle-clogged chaos. Even in the relative quiet of the evening, a visitor senses a city brimming with life and cautiously optimistic. This is a stark contrast to 2006, when streets in the evening were not just quiet but dark and desolate as well, armored personnel carriers standing sentinel at checkpoints.

That year was momentous for Nepal. In the spring, nineteen days of public protests in Kathmandu became known as Jana Andolan II—the People's Movement II. Jana Andolan I had in 1990 ushered in parliamentary democracy. Those initially peaceful demonstrations had turned violent, injuring some security forces and leaving dozens of protestors dead or wounded. King Gyanendra reluctantly declared that he would relinquish executive authority to political parties and reconvene the dissolved parliament.

The backdrop to this turbulence was a violent conflict between Communist Party of Nepal-Maoist (CPN Maoist) insurgents and government forces, a ten-year war that had taken more than thirteen thousand lives.¹ After the king stepped down, the new government in May began peace talks with the CPN Maoist. A cease-fire was declared. In November 2006, the government and the rebels signed the Comprehensive Peace Agreement (CPA), which laid out a path to peace and

brought the CPN Maoist into parliament and a coalition government. Key elements were provisions for reconciliation and transitional justice.

The Nepalese watched anxiously to see whether these and other provisions would be implemented. Had they known then what they know now, they might have been disappointed. But they might also have taken heart that though the steps of reform were small and slow, they did advance. This is a story not of a breathtaking sprint toward justice and stability, but of how peace can take root slowly, almost imperceptibly.

Transitional Justice, a New Concept

In 2006, most Nepalese were only just beginning to hear about transitional justice. The question was whether it could work in Nepal to hold people accountable for abuses committed during the insurgency. The term has come to mean a process or a series of processes that address past abuses to accomplish such goals as establishing the truth of what happened, acknowledging the suffering of victims, holding perpetrators accountable, compensating for wrongs, preventing future abuses, and promoting social healing.

War crime tribunals are perhaps the best-known mechanism but are by no means the only one. Some mechanisms are judicial, such as tribunals. Others are nonjudicial, such as trauma-healing programs, reconciliation projects, reparations, or memorials. Whatever form it takes, transitional justice has the same fundamental rationale: by addressing the past, the future will not be scarred by wounds that make it difficult for peace and security to grow. The rationale is sound but the task enormous; healing a society after atrocities and abuses is almost always a complex and long-term undertaking.

It is unclear whether the CPA authors appreciated how challenging transitional justice can be to put into practice. And although some skeptics question whether the CPA signatories really wanted to see that happen, no one doubts their readiness to sign an ambitious peacebuilding agenda. The CPA not only called for restructuring the state and drafting a fresh constitution but also included progressive provisions for a truth and reconciliation commission. The commission's goal would be to create "an atmosphere for reconciliation in society" by probing "into those involved in serious violations of human rights and crimes against humanity in the course of the armed conflict."²

Toward Justice

Implementing the peace agreement, however, posed a greater challenge than drafting it. Most of Nepal's people were eager to see the fighting cease and to tackle the issues that had driven the conflict. Their political leaders, however, were juggling competing interests, power dynamics, personal ambitions, and party interests. The open wounds of the conflict were also casting a shadow over hopes of moving forward.

Issues were profound and had far-reaching implications. The nature of the state had to be decided. What type of federal system and how many states should Nepal establish? What type of electoral system, governance, and judiciary should be set up? How should power be shared across national, provincial, and local governments?

Many issues are related, directly or indirectly, to transitional justice. How could the rule of law be fostered and the era of impunity ended? How could security forces, Maoists and other political leadership be held accountable when they are in government? How could conflict be prevented if accountability was not handled carefully? How could the needs of the victims be met and the

exclusion of marginalized groups ended? How could failure to do so avoid fueling resentment and provoking violent conflict?

Progress therefore came slowly. Not until 2015 was the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CEIDP) established. The TRC and the CEIDP had been envisioned in the CPA as well as the Interim Constitution promulgated in 2007, but creating the two commissions had stalled in the years of political stalemate and judicial wrangling over whether the guilty could be given amnesty.

The TRC reports that it has collected nearly sixty thousand complaints, which include allegations of torture, rape, and murder by both security forces and Maoists. The CEIDP has received almost three thousand.³

The number of complaints suggests a continuing hunger for the truth and accountability. Concrete examples of accountability, however, are hard to find. Recently—in spring 2017—the Supreme Court sentenced three former army soldiers to life imprisonment for killing a fifteen-year-old girl during the civil war, but this was only the second such conviction.⁴ Many victims' families are skeptical of the ability of either commission to deliver justice. As the sister of one of the disappeared said, the CPA's "provisions were good, but the political party has been defining the process [of establishing the CEIDP] to their advantage and the commission will not proceed independently."⁵

Many others share this lack of faith. In January 2017, a Human Rights Watch researcher said that "it has become clear that no political party, including the Maoists, were ever committed to the idea of delivering on justice and accountability for victims. There is absolutely no political will."⁶ A former government official declared in an interview that the TRC is not functioning and doubted that it ever will. A human rights activist agreed. Both felt that political will is lacking because accountability would implicate not just high-level political actors but also high-ranking members of the security forces. In the absence of international pressure, the former official remarked, the government would do little to hold individuals accountable.

A former senior police officer observed in an interview that many who served with the security forces during the conflict see themselves as innocent because they were following government orders. If they are to be held accountable, many ordinary soldiers and police believe, the political leaders who dictated strategy should also be brought to trial. Should a tribunal be established, the jurists need to have the specialized training and experience to understand the realities of wartime actions. The situation is further complicated by the fact that veterans within the security forces are choosing to forget what happened during the conflict. In addition, new recruits are often uninterested in discussing—much less addressing—the past. Meanwhile, the wider divisions within society that catalyzed the conflict are not being tackled. The danger is that this inactivity will push Nepal back into political turmoil or violence.

A Case for Guarded Optimism

How bleak, then, is the outlook for justice and reconciliation in Nepal? On balance, there may be reason for guarded optimism. Yes, the country has a long way to go before it can overcome its trauma and divisions, and a variety of factors and forces could erode its social fabric unless carefully handled. The government's sluggish response and inefficient distribution of aid following the 2015 earthquake that killed nearly nine thousand, injured thousands more, and displaced nearly three million has left the public highly dissatisfied.⁷ The constitution adopted the same year continues to stir controversy, some groups—notably the Madhesi, in the lowlands that border India—demanding that it be immediately amended to better represent their interests.

Many countries—such as Libya, Yemen, Iraq, and Afghanistan—that have experienced violent conflict and a change of regime have failed to emerge from conflict. In contrast, Nepal has stopped the fighting and so far avoided a renewed cycle of violence. Some former Maoists combatants have integrated into the security forces or returned to civilian life. After many years of negotiation, a new constitution was finally adopted.⁸ In May and June 2017, local elections were held (in six of seven provinces) for the first time in twenty years; amid tight security, turnout was high and few violent incidents were reported.

No less important, the tone of some public discourse has shifted. Nepalese still bemoan corruption and self-interest among government officials and political party leaders, but those complaints used to be angry or resigned at the inevitability of corruption. Today, people see the possibility of accountability and are readier to participate to improve the quality of governance. In the past, disaffected groups felt that violence was the only option; today, they seem more open to constructive dialogue and to conflict resolution mechanisms.

Publicly at least, Nepal's political leaders are voicing a strong commitment to transitional justice. In June 2017, just after being elected prime minister, Sher Bahadur Deuba declared that “completing the transitional justice” would be a “major focus” of his government.⁹ Deuba's election, which was supported by the Maoist leader Pushpa Kamal Dahal, is itself a sign of reconciliation. In 2001–02, Deuba's cabinet put a bounty of five million rupees on Dahal's head. Today, the two men are honoring a gentleman's agreement to take it in turns to serve as prime minister, and are “promising to work together to institutionalize the gains” of the postwar years.

Recommendations

If Deuba's public commitment is not to be dismissed as rhetoric, the government needs to help the TRC and the CEIDP win the trust of victims' families and the respect of those accused of wartime crimes. Similarly, if the gradual shift in the national mood—from fear and anger to a unifying sense of building a society developing dialogue—is to continue, the transitional justice process must continue to advance.

What government actions might encourage progress?

Determine jurisdiction. The debate over whether the regular courts or the TRC should have jurisdiction over wartime crimes needs to be resolved openly and promptly. The act that established the TRC gives the commission jurisdiction. The Nepal Supreme Court, however, has ruled that it has jurisdiction over cases already lodged and that such cases cannot be transferred. The Court has also invalidated a general immunity provision in the TRC act. To date, no decisions have been discussed or made to amend the TRC in accordance with the Court's orders. Lack of resolution undermines rule of law.

Allocate resources. The government needs to commit adequate resources for the TRC and the CEIDP to function effectively and begin working. Resources include everything from logistical and administrative support to experienced and expert personnel. International donors are not interested in funding unless the government can show compliance with international legal obligations. The government must commit to providing adequate financial support or find a way to satisfy international donors.

Consider parallel mechanisms. Policymakers should recognize that the TRC and CEIDP cannot realistically handle tens of thousands of cases. To deal with the backlog, parallel mechanisms could be set in motion. Determining jurisdiction could clear the way for a division of labor whereby the courts would handle the most serious crimes. Those accused of serious crimes would be tried by

ABOUT THIS BRIEF

This Peace Brief examines the slow progress Nepal has made toward transitional justice and reconciliation since the 2006 peace agreement that ended a ten-year civil war. It complements other United States Institute of Peace (USIP) efforts in Nepal, which include facilitating discussions and sharing resources on transitional justice.

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jurists well versed in crimes arising from armed conflict. Victims' families would benefit by seeing their cases dealt with far more promptly than now.

Such steps would help Nepal move forward. The transitional justice process has been slow, imperfect, and undramatic, but it remains essential. If the past is ignored rather than addressed, then sooner or later conflict will return.

Notes

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