

# Looking back at the CPA: an inventory of implementation

Deepak Thapa

The Maoist conflict effectively ended when the Maoists declared a ceasefire on 27 April 2006, just three days after the victorious close to the second People's Movement. But it was not until seven months later that hostilities formally ceased with the 21 November signing of the *Comprehensive Peace Accord* (CPA) between the Government of Nepal and the Communist Party of Nepal-Maoist (CPN-M). For that reason, the CPA is considered the most important document in Nepal's post-2006 peace process.

Given that it laid out the terms and conditions to bring the conflict to an end, the CPA is fairly exhaustive. Its various sections deal with different aspects of the conflict, and much of it is devoted to matters such as outlining how a ceasefire would operate, how human rights standards would be adhered to, how differences would be settled, and how the CPA itself would be implemented.

But on a couple of crucial matters the CPA is quite incomplete. The first relates to the issue of the two mutually antagonistic armed forces. The CPA lays out just the broad contours of how the Maoist's People's Liberation Army (PLA) and the Nepali Army would operate. The actual modalities were spelt out in the Agreement on Monitoring and Management of Arms and Armies (AMMAA), which was finalised on 8 December 2006. These two agreements are inextricably linked, made clear from the fact that they were coupled as Schedule-4 in the Interim Constitution 2007.

The second is that the CPA deals only rather cursorily with the even more important question of what it terms 'the Political-Economic-Social Transformation and Conflict Management'. It recognises that such a transformation is necessary for an end to the conflict, but provides few details on how an inclusive system of governance is to be created through restructuring of the state. That commitment in the CPA is made in reference to various earlier pacts reached between the Seven Party Alliance (SPA – formed in 2005 by seven major political parties following the royal takeover of government) and the Maoists, including the *12-Point Understanding* of November 2005, and the *8 November 2006 6-Point Understanding* [see article on peace accords, p. 13]. The latter is a more substantial document in this regard, and is acknowledged as such in the CPA: 'The decision taken by the meeting of high level leaders of the Seven Political Parties and the CPN-Maoist on November 8, 2006 shall be the main policy basis for long term peace' (Article 6.2).

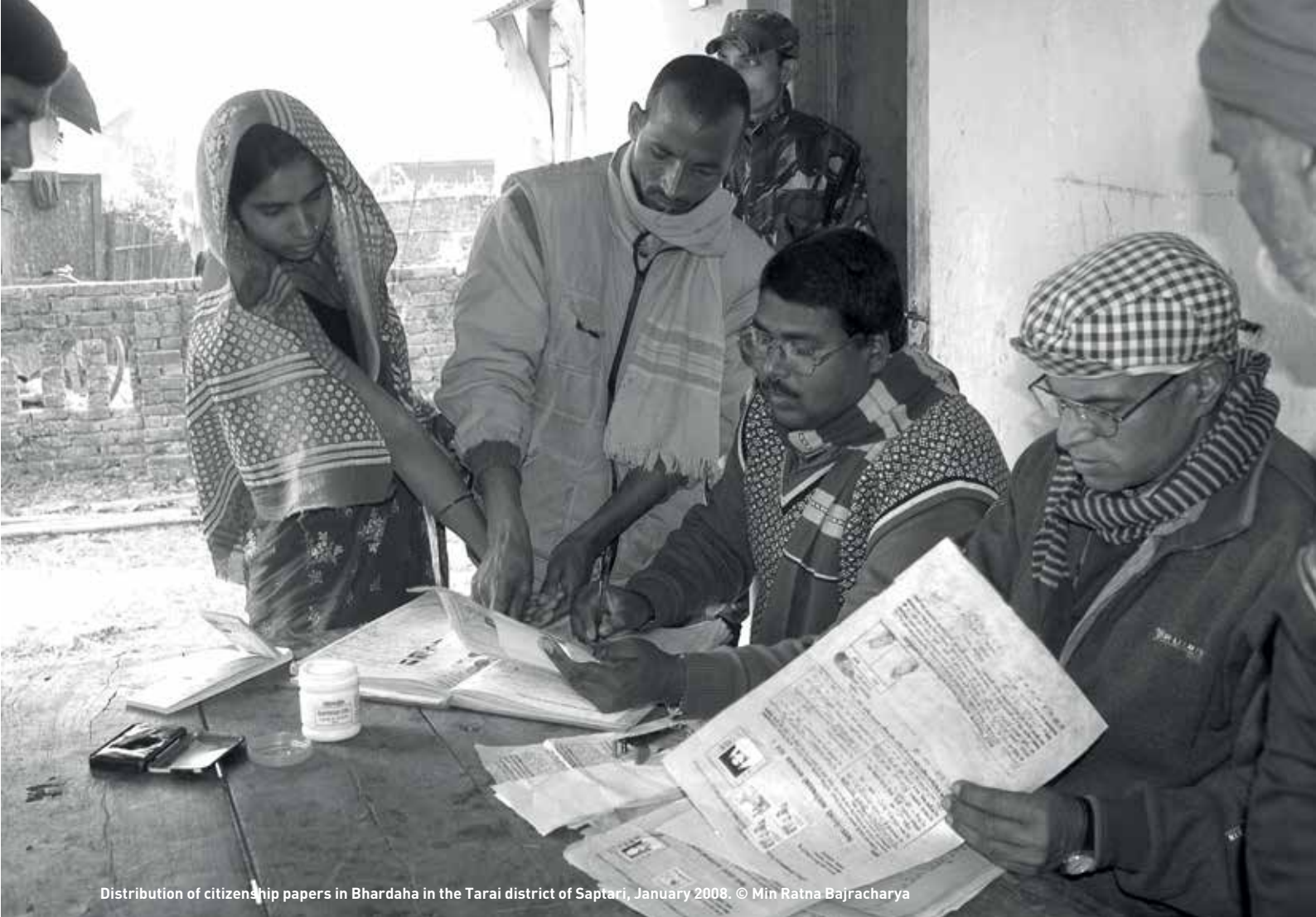
But the CPA is still consequential since it has been the main document that has guided the peace process throughout the long transitional period.

## Most promises kept?

Given the complexity of issues at the time the CPA was signed, any inventory of its provisions has to acknowledge that Nepal has been spared a relapse into war. In that sense, despite infractions by both the PLA and the Nepali Army, the CPA and the AMMAA were able to keep the two armed parties in check. The country has also witnessed a peaceful transfer of power numerous times, including by and to the Maoists, and has also been through the chaotic adoption of a new constitution. Yet, the peace has still held. But it is also true that the spirit of the CPA was able to prevail because of the scores of deals made afterwards – among and between political parties, and between the government and various violent and non-violent dissenting groups. Thus, the promises inherent in the CPA are now reflected, if somewhat imperfectly, in the new constitution and different government policies.

“These achievements have been marred by instances such as the curtailment of women's right to pass citizenship on to their offspring and the weakening of the spirit of secularism.”

The expectation of the CPA that the election to the Constituent Assembly would be held by 15 June 2007 was, in retrospect, somewhat optimistic, and indeed proved premature by almost a year. But the preliminary groundwork required for the election, primarily the



Distribution of citizenship papers in Bhardaha in the Tarai district of Saptari, January 2008. © Min Ratna Bajracharya

adoption of the Interim Constitution and the formation of the Interim Legislature-Parliament, took place fairly seamlessly.

The most significant aspect of the CPA was the reiteration of the commitment to the 'inclusive, democratic and progressive restructuring of the state by eliminating the current centralised and unitary form' (Article 3.5). Neither the CPA nor the Interim Constitution that followed explicitly mentioned federalism in the context of replacing the centralised state, even though the CPA provision was widely interpreted to mean that. The First Madhes Movement in early 2007 ensured through constitutional amendment that state restructuring would include federalisation into different provinces. It is the differing conceptions of a federal Nepal that have stood in the way of a complete realisation of that objective so far.

The record on inclusion and the end of discrimination envisaged by the CPA has been mixed, but tilts towards the positive. More than 50 legal provisions that discriminated against women have been amended, caste-based discrimination has been criminalised, local languages have been given official sanction, reserved quotas have been introduced in education and in government service, separate commissions have been mentioned in the

2015 Constitution for different marginalised groups, and secularism has been retained. Yet, these achievements have been marred by instances such as the curtailment of women's right to pass citizenship on to their offspring and the weakening of the spirit of secularism by unnecessarily providing a limiting definition of what secularism means.

The CPA also contains aspirational language that reflects the worldview of the Maoists, such as protecting and promoting national industries and resources, and more generally creating a conducive environment to increase investment and generate employment, and granting all citizens the right to education, health, shelter, employment and food. Both the Interim Constitution and the 2015 Constitution mentioned free basic health care and education up to the secondary level, but while basic health services have been provided, free education has only extended to the primary level. Other provisions have just remained commitments on paper, such as prosecuting corrupt holders of public office.

### Big omission

There is one area, however, where the CPA has not lived up to its promise, and that is on the issue of transitional justice. The CPA provides for a High-Level Truth and Reconciliation Commission (TRC) to investigate grave

violations of human rights and crimes against humanity in the course of the conflict, with the objective of enabling social reconciliation after a period of horrific impunity. While the omission of accounting for the thousands of people who were forcibly disappeared during the war was soon rectified by court order, it took nearly eight years before the TRC and the Commission of Investigation on Enforced Disappeared Persons were set up [*see article on transitional justice, p.32*].

It is not yet clear what form justice for victims of the conflict will take. The law that enacted the commissions has been criticised in-country and internationally for promoting

impunity. Despite repeated assurances, all evidence indicates that it is not a priority area for the government or the major parties that have come to power, almost all of which are implicated in the manner in which the war was conducted. This is evident both from the delay in establishing the two commissions, and the way in which successive governments have been less than forthcoming in allocating the necessary resources. International pressure certainly played a key role in ensuring that these transitional justice mechanisms were finally put in place. But, equally compelling was the fact the TRC was clearly provisioned in the CPA, a document that is not possible for any of the major political parties to disown.