

EMERGING VOICES

Investigating the *Jana Adalat* of the 1996–2006 armed conflict in Nepal

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Abstract

The Communist Party of Nepal (Maoist) (CPN-M), an organized armed group, engaged in a non-international armed conflict against the Government of Nepal between 1996 and 2006. During the armed conflict, the organized armed group operated a judicial system in the territories under its effective control, called the Jana Adalat (the People’s Court). The legitimacy of the Jana Adalat has been a contentious subject matter. This article examines the historical, legal and practical dimensions of the Jana Adalat, especially focusing on the perspectives of the CPN-M.

Keywords: Nepal, Maoists, non-State armed group courts, summary justice, regularly constituted courts.

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Introduction

A non-international armed conflict (NIAC) occurred in Nepal, from February 1996 to November 2006, between the Communist Party of Nepal (Maoist) (CPN-M) and His Majesty’s Government (HMG) of Nepal. The CPN-M was a particular type of “political armed group”, one which used violence, including detentions, as a “legitimacy-contestant”.¹ The justice system operated by the CPN-M in the territories it deemed as liberated was known as the *Jana Adalat* (the People’s Court). The Government of Nepal, naturally, repudiated and condemned it. The International Bar Association deemed the Court as unconstitutional and contrary

to human rights, and appealed to the CPN-M to instate a “properly constituted court”.² In contrast, the CPN-M accused international organizations of “inherent bias against the rebels”.³ The Office of the United Nations High Commissioner for Human Rights (OHCHR) in its *Nepal Conflict Report* has concluded that the *Jana Adalat* was in violation of international humanitarian law (IHL) and international human rights law.⁴

There is no known consolidated study on the *Jana Adalat* that also incorporates the perspectives of the CPN-M. As stressed by Miroiu, rather than dismissing the legitimacy-contestants, perhaps there should be an effort to understand their role within the “social order”.⁵ This article contextualizes the *Jana Adalat*, especially from the perspective of the CPN-M. In doing so, it relies on CPN-M party instruments, including statements of the party leaders, common minimum policies and two regulations that were enforced by the CPN-M in their controlled/liberated territories. One of these regulations, the *Karyabidhi Sambandhi Kanooni Byawastha*⁶ (Provisions related to Procedural Law), has not been explored in previous research related to *Jana Adalat*, or scholarship about courts operated by non-State armed groups in general. The article also draws on independent studies containing primary and secondary data that illuminate the practices of the *Jana Adalat*.

The article first briefly recapitulates the ongoing discussion concerning the lawfulness of courts constituted by organized armed groups (OAGs). It then describes the foundations of the People’s War (*Jana Yuddha*) in Nepal, the CPN-M’s claim of legitimate representation of the Nepali people and their control over parts of Nepal. After that, it describes the structure of the *Jana Adalat*, the response of various actors towards the *Jana Adalat*, the CPN-M policies and regulations concerning essential guarantees of fair trial applicable to the *Jana Adalat*, the documented practices regarding the same, and the challenges encountered by the CPN-M in operating the *Jana Adalat*.

Lawfulness of the courts established by organized armed groups

Sub-article 1(d) of Article 3 common to the four Geneva Conventions lays down a prohibition (in the case of a NIAC) on “the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees recognized as indispensable by civilized

1 Andrei Miroiu, *Political Theory of Armed Groups: Social Order and Armed Groups*, Springer, Cham, 2020, p. 7.

2 International Bar Association, *Nepal in Crisis: Justice Caught in the Crossfire*, London, September 2002, p. 5.

3 CPN-M, “Building Red Power in Nepal”, *A World to Win*, Revolutionary Internationalist Movement, Vol. 30, 2004, p. 17.

4 OHCHR, *Nepal Conflict Report*, Geneva, 2012, p. 157; International Bar Association, above note 2, p. 24.

5 A. Miroiu, above note 1, p. 49.

6 CPN-M Provisions related to Procedural Law, 2006 (author’s translation) (on file with the author).

peoples”.⁷ The provision essentially prohibits summary justice,⁸ that is, summary punishment or execution, and protects all civilians and combatants who have fallen in the hands of a party to the NIAC (and who are prospectively subjected to criminal prosecution).⁹ The provision concerns criminal detentions rather than security detentions, although “the two situations are usually conflated”.¹⁰ It is widely agreed that common Article 3 binds OAGs.¹¹

Several scholars¹² and the International Committee of the Red Cross (ICRC) in its 2020 Commentary on the Third Geneva Convention (GC III)¹³ have deduced that the phrase “regularly constituted court” under sub-article 1(d) of common Article 3 includes the courts constituted by OAGs. The 2020 Commentary further clarifies that such courts must afford “essential guarantees of independence and impartiality”, otherwise their conducts amount to summary justice;¹⁴ that the question of “whether an armed group can hold trial providing these guarantees is a question of fact and needs to be determined on a

7 Article 3 common to the four Geneva Conventions; the term “civilized nations” is currently read as “generally recognized as indispensable under international law”. International Committee of the Red Cross (ICRC), *Commentary on the Third Geneva Convention: Convention (III) Relative to the Treatment of Prisoners of War*, 2nd ed., 2020 (ICRC Commentary on GC III), para. 719, available at: <https://ihl-databases.icrc.org/ihl/full/GCIII-commentary> (all internet references were accessed in November 2021).

8 *Ibid.*, para. 725.

9 The scope of application has been clarified in this manner. Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, p. 1397.

10 Human Rights Committee, General Comment No. 35, UN Doc. CCPR/C/GC/35, 16 December 2014, para. 15.

11 International Criminal Tribunal for Rwanda, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-I, Judgment (Appeals Chamber), 1 June 2001, paras. 47–50; Gary Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, Cambridge University Press, New York, 2010, p. 158; Liesbeth Zegveld, *The Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, New York, 2002, pp. 14–15; Marcos Kotlik, “Towards Equality of Belligerents: Why Are Armed Groups Bound by IHL?”, SSRN, 1 February 2012, p. 16, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2621783; Cedric Ryngaert, “Non-State Actors in International Humanitarian Law”, in Jean d’Aspremont (ed.), *Participants in the International Legal System: Multiple Perspectives on Non-state Actors in International Law*, Routledge, Abingdon, 2011, pp. 1003–5.

12 James E. Bond, “Application of the Law of War to Internal Conflicts”, *Georgia Journal of International and Comparative Law*, Vol. 3, No. 2, 1973, p. 372; Sandesh Sivakumaran, “Courts of Armed Opposition Groups: Fair Trials or Summary Justice?”, *Journal of International Criminal Justice*, Vol. 7, No. 3, 2009, p. 499; L. Zegveld, above note 11, pp. 69–70. Daragh Murray, *Human Rights Obligations of Non-State Armed Groups*, Hart Publishing, Oxford, 2016, p. 211.

13 The ICRC cites opinions of scholars and an opinion of the European Court of Human Rights. ICRC Commentary on GC III, above note 7, para. 728.

14 The 2020 Commentary on GC III explains in detail the interpretation of the terms independence and impartiality and provides an illustrative list of judicial guarantees. *Ibid.*, paras. 714–24. An explanation of judicial guarantees is also found in the ICRC Customary Law Study; see Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005, rule 100; the Commentary on Additional Protocol II asserts that Article 6 of Additional Protocol II “supplements and develops article 3(1)(d)”. Y. Sandoz, C. Swinarski and B. Zimmermann, above note 9, p. 1397; the Elements of Crimes of Article 8 (2)(c)(iv) of the International Criminal Court Rome Statute considers this position as the standard to find war crime of sentencing or execution without due process. International Criminal Court, *Elements of Crimes*, p. 34, available at: <https://rb.gy/lbsk2o>; However, Jonathan Somer reasons that Additional Protocol II has not modified common Article 3 as the latter has a broader scope of application than the former. Jonathan Somer, “Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict”, *International Review of the Red Cross*, Vol. 89, No. 867, September 2007, p. 670.

case-by-case basis”;¹⁵ and that common Article 3 does not imply that States must “recognize or give legal effect to the results of a trial” by such courts.¹⁶

However, diverse opinions are prevalent on whether OAGs have a right to introduce law, try and pass and enforce judgements for the function of courts they constitute.¹⁷ As regards whether OAGs have an obligation under IHL to set up courts, the prevalent conclusion is that there is no such obligation.¹⁸

This section concludes that it cannot be ascertained apart from an academic conclusion that OAGs have a right or an obligation to constitute courts, although it is apparent that such courts would fall under the definition of regularly constituted courts under sub-article 1(d) of common Article 3.

These might be awkward conclusions; however, as noted by Kolb, the law of NIAC is marked by “minimality of rules ... unbalancedness ... and chaoticness”.¹⁹

Contextualizing the *Jana Yuddha* and its *Jana Adalat*

Curiously, in spite of the somewhat chaotic nature of the law of NIAC, OAGs usually regard themselves as the legitimate authorities – as equally exemplified in the Nepali context. In this regard, scholars have suggested that the legitimacy of OAG courts should be thought of “creatively” for their maximum enhanced compliance with IHL.²⁰ The aims, convictions, self-image, concern for public relations and people’s support and military strategies are some of the factors demonstrated to influence compliance of OAGs with IHL.²¹

15 ICRC Commentary on GC III, above note 7, para. 730.

16 *Ibid.*, para. 731.

17 For elaborate discussions on the matter, see L. Zegveld, above note 11; S. Sivakumaran, above note 12; J. Somer, above note 14; ICRC Commentary on GC III, above note 7; Jan Willms, *Justice Through Armed Groups’ Governance – An Oxymoron?*, Governance Working Paper No. 40, Collaborative Research Center, October 2012; Manuel J. Ventura, “Automatic Criminal Liability for Unlawful Confinement (Imprisonment) as a War Crime? A Potential Consequence of Denying Non-State Armed Groups the Power to Detain in NIACs”, in Ezequiel Heffes, Marcos D. Kotlik and Manuel J. Ventura (eds), *International Humanitarian Law and Non-State Actors: Debates, Law and Practice*, Springer, Berlin, 2020; David Tuck, “Detention by Armed Groups: Overcoming Challenges to Humanitarian Action”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011; Laurence Hill-Cawthorne, *Detention in Non-International Armed Conflict*, Oxford University Press, Oxford, 2016; Marco Sassoli and Yuval Shany, “Should the Obligations of States and Armed Groups Under International Humanitarian Law Really be Equal?”, *International Review of the Red Cross*, Vol. 93, No. 882, 2011.

18 D. Tuck, above note 17, p. 764; L. Hill-Cawthorne, *ibid.*, p. 69; Marco Sassoli, *International Humanitarian Law: Rules, Controversies and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, Northampton, MA, 2019, paras. 10.02 and 10.14; G. Solis, above note 11, p. 159; J. Somer, above note 14, pp. 689–90.

19 Robert Kolb, *Advanced Introduction to International Humanitarian Law*, Edward Elgar Publishing, Northampton, MA, 2014, pp. 29–36.

20 E. Heffes, M. D. Kotlik and M. J. Ventura, above note 17, p. 20.

21 Olivier Bangerter, “Reasons Why Armed Groups Choose to Respect International Humanitarian Law or Not”, *International Review of the Red Cross*, Vol. 93, No. 882, 2011, pp. 365–7; *The Roots of Behaviour in War*, and its update, *The Roots of Restraint in War* also explore the formal and informal sources that influence the behaviour of armed forces during armed conflicts, including those of non-State armed forces. See Daniel Muñoz-Rojas and Jean-Jacques Frésard, *The Roots of Behaviour in War*:

The CPN-M and its claim of historical legitimacy behind the *Jana Yuddha*

The foundation of the Nepali Maoist movement was laid in 1949, a few years before a nation-wide people's revolution led to the abolition of a feudal autocratic system of government known as the *Ranashahi*.²² The revolution introduced a prototypical “liberation army” in Nepal, although not all the revolutionaries identified or supported the Maoist ideologies flourishing in neighbouring China. In 1962, the King replaced the newly introduced multi-party system with the *Panchayat* system,²³ accusing the parties of “internecine fighting at the country's expense”.²⁴ In 1971, a faction of the Communist Party of Nepal (CPN) launched an underground guerrilla movement called the *Jhapa Uprising*.²⁵ In 1990, the multi-party system was restored and a new Constitution was adopted following a seven-week struggle for democracy called the *Jana Andolan* (the People's Revolution).²⁶ The Constitution guaranteed periodic elections and a range of civil and political rights. However, a faction of Nepali communists opined that Nepal remained a “semi-feudalistic formal democracy”, rather than a “real democracy”.²⁷ Concurrently, the facts on the ground revealed that despite national economic growth: (a) more people were living under absolute poverty than ever; (b) the expanding infrastructure eluded most of the population; and (c) inequality among linguistic, ethnic, religious, racial, caste and religious groups had increased.²⁸

In this atmosphere, a faction of the CPN disassociated itself from the CPN-UML (Communist Party of Nepal – Unified Marxist–Leninist) by abandoning the policy of *Bahudaliya Janabad* (multi-party people's democracy) and adopting what it called *Naulo Janabad* (new democracy).²⁹ Invoking Mao's doctrine of “war as an instrument of political transformation”,³⁰ the faction declared that an armed struggle was the logical next step in Nepali politics to remedy the historical social injustice towards Nepali people. It separated from the CPN-UML, transformed into CPN-M and expeditiously decided to launch its own protracted

Understanding and Preventing IHL Violations, ICRC, Geneva, 2004, pp. 1–16; ICRC, *The Roots of Restraint in War*, 2018, pp. 6–71.

- 22 M. D. Gurung, “Communist Movement in Nepal”, *Economic and Political Weekly*, Vol. 12, No. 44, 1977, p. 1849; S. D. Crane, *Maoist Insurgency in Nepal 1996–2001*, USAWC Strategy Research Project, U.S. Army War College, pp. 2–3.
- 23 A form of local governance based on a council of village elders called the *Panchas*.
- 24 S. D. Crane, above note 22, p. 4.
- 25 Arjun Karki and David Seddon, “The People's War in Historical Context”, in Arjun Karki and David Seddon (eds), *The People's War in Nepal: Left Perspective*, Adroit Publishers, Delhi, 2003, p. 10.
- 26 George Katsiaficas, *Asia's Unknown Uprisings*, Vol. 2, PM Press, Oakland, CA, 2013, p. 219.
- 27 The expressions are used in the Maoists' party documents. For example, “Revolution in Nepal, A Better World's in Birth”, *A World to Win*, Revolutionary Internationalist Movement, Vol. 29, 2002, p. 7. I do not necessarily agree with this political expression.
- 28 Mahendra Lowati, “Evolution and Growth of the Maoist Insurgency in Nepal”, in Mahendra Lowati and Anup K. Pahari, *The Maoist Insurgency in Nepal: Revolution in the Twenty-First Century*, Routledge, New York, 2010, pp. 8–10.
- 29 International Crisis Group, *Nepal's Maoists: Purists or Pragmatists?*, Asia Report No. 132, 18 May 2007, p. 6.
- 30 Mao Tse-tung, *On Protracted War*, pp. 151–2, available at: <http://www.marx2mao.com/Mao/PW38.html#s1>; A. Miroiu, above note 1, p. 44.

People’s War in Nepal.³¹ The *Jana Yuddha* began in February 1996. It constituted a NIAC having met the requirements of minimum intensity and sufficient organization (of the CPN-M).³²

The CPN-M held self-perceptions of “a genuine revolution”,³³ seeing itself as the legitimate representative of the Nepali people and of a democratic institution. Michael Miklaucic opines that although the NIAC was “brutal and economically devastating ... there is little indication that CPN-M leaders ... systematically used [it] for venal purposes”.³⁴ Further, the *Jana Yuddha* directly drove significant progress in Nepali democracy, including abolition of the monarchy, introduction of federalism, secularism and proportional representation of groups historically put at a disadvantage in various spheres of public and private life.³⁵ Notwithstanding these, this article does not intend to be a political commentary on the legitimacy of the *Jana Yuddha*, and, in any case, as a party to the conflict, the CPN-M was required to comply with IHL. However, it appears that the above self-perceptions guided the aims, policies and principles of the *Jana Yuddha*, and hence those of the *Jana Adalat*.

The aim, Common Minimum Policies and guiding principles of the *Jana Yuddha*

The aim of the *Jana Yuddha* was to form a counter-State with the motive of “supplanting the [existing State] to embark on a socialist revolution”.³⁶ The aim was two-fold – a protracted military warfare and State-building, the latter planned to be realized through “[political] mobilization and construction of capacity”.³⁷ The Common Minimum Policies of the *Jana Yuddha*, as mentioned in the titular party document, included: (a) guarantee of non-discrimination; (b) equality of opportunity with equal wage; (c) inclusion of socio-economic rights as

31 “Plan for the Historical Initiation of the People’s War”, September 1995; A. Karki and D. Seddon, above note 25, p. 18, available at: https://nepalconflictreport.ohchr.org/html/documents/1995-09-00_document_cpn-m_eng.html.

32 I have described in another publication how the indicators of intensity and organization have been met based on the facts on the grounds. See Yugichha Sangroula, “Lest We Forget the Realm of Armed Conflicts: A Guided Discussion on the Law of Armed Conflict/International Humanitarian Law”, *Kathmandu School of Law Review*, Vol. 7, No. 1, 2019, pp. 6–7.

33 CPN(M) and CPI-ML(PW), Joint Press Statement, 14 July 2000, cited in International Crisis Group, above note 29, footnote 10. Adversely, a political commentator has described the situation as a power trip, rather than a people’s war. Om Asta Rai, “What Was it All For: Revisiting the 40-Point Demand of the Maoists 20 Years Later”, *Nepali Times*, 5 February 2016.

34 Michael Miklaucic, “Contending with Illicit Power Structures: A Typology”, in Anne Peters, Lucy Koehlin, Till Förster and Gretta Fenner Zinkernagel, *Non-State Actors as Standard Setters*, Cambridge University Press, New York, 2009, p. 206; Olivier Bangerter, *Internal Control: Code of Conducts within Insurgent Armed Groups*, Small Arms Survey Occasional Paper No. 31, Graduate Institute of International and Development Studies, November 2012, p. 47.

35 The CPN-M explicitly and consistently demanded for these reforms throughout the *Jana Yuddha*.

36 Prachanda, “Two Momentous Years of Revolutionary Transformation”, in A. Karki and D. Seddon, above note 25, p. 212.

37 Thomas A. Marks and Paul B. Rich, “Back to the Future – People’s War in the 21st Century”, *Small Wars & Insurgencies*, Vol. 28, No. 3, 2017, p. 411.

fundamental rights; (d) secularism (with religion as an individual choice); and (e) balance between democracy and centralism.³⁸

The chairperson of the CPN-M, Prachanda, explained that the *Jana Adalat* was an exercise of coercive power, whereas political, economic, social, cultural and educational activities in the so-called “liberated territories” were exercises of non-coercive power and this approach was based on the dialectic separation between construction and destruction.³⁹ Policies particular to the *Jana Adalat* will be explored in the subsequent sections. In summary, the *Jana Yuddha* aimed to replace the then Government of Nepal and in that process the CPN-M gained control over parts of Nepal.

The extent of the CPN-M’s control over territory of Nepal

The *Jana Yuddha* was planned in three stages: strategic–defensive, equilibrium and strategic–offensive. Formation of “base areas” was part of the first stage.⁴⁰ Base areas were where the CPN-M exercised most control. First, following the CPN-M attack, the Government of Nepal “removed around 65% of the police units located in rural areas and merged them with units located in towns”,⁴¹ after which the group took advantage of the authority vacuum and established their base areas in Rukum, Rolpa, Jajarkot and Salyan. Soon after, the People’s Government, the People’s Committees, the People’s Court and the People’s Jail were created in the base areas.⁴² The liberated areas became part of the “new regime”.⁴³ The expansion of the new regime was gradual⁴⁴ and aided by the formation of the People’s Liberation Army (PLA),⁴⁵ the prevention of state elections,⁴⁶ support of or dominance over local people,⁴⁷ and the near absence of state security caused by the vacated police units. In 2003, the CPN-M divided these liberated/controlled areas into various autonomous regions.⁴⁸

38 *Common Minimum Policy & Programme of United Revolutionary People’s Council*, adopted by the First National Convention of the Revolutionary United Front of CPN-M, September 2001 (on file with the author). Policies (c) and (d) are particularly remarkable since the 1990 Constitution presented Nepal as a Hindu nation and did not recognize key socio-economic rights as fundamental rights. For example, food and health were not recognized as fundamental rights and rather as directive principles and state policies within Article 24(1) of the 1990 Constitution. For a detailed analysis, see Geeta Pathak Sangroula, “Breaking the Generation Theory of Human Rights: Mapping the Scope of Justiciability of Economic, Social and Cultural Rights with Special Reference to the Constitutional Guarantees in Nepal”, *Kathmandu School of Law Review*, Vol. 3, Human Rights and Democratization Special Issue, 2013, p. 36.

39 “Revolution in Nepal”, above note 27, p. 80.

40 A. Karki and D. Seddon, above note 25, p. 31.

41 M. Lowati and A. K. Pahari, above note 28, p. 22.

42 Li Onesto, *Dispatches from the People’s War in Nepal*, Insight Press, Chicago, IL, 2005, p. 222; Prachanda, above note 36.

43 Bishnu Raj Upreti, *Armed Conflict and Peace Process in Nepal*, Adroit Publishers, New Delhi, 2006, p. 107.

44 CPN-M, above note 3, p. 11.

45 B. R. Upreti, above note 43, p. 107.

46 “Revolution in Nepal”, above note 27, p. 3.

47 L. Onesto, above note 42, p. 128.

48 CPN-M, above note 3, p. 117.

The extent of the territory under the CPN-M's control remains disputed. The CPN-M claimed to have "liberated more than 80% of the territory"⁴⁹ and that ten out of twenty-three million people lived in these territories.⁵⁰ In a survey, the International Bar Association traced *de facto* governance in twenty-three districts⁵¹ and a U.S. Army War College research project has reported the CPN-M's "presence in 68 districts".⁵² The CPN-M reportedly controlled all the borders in west Nepal. It has also been mentioned, however, that the CPN-M was "only able to control territory on a permanent basis in a few districts in the Midwest, including Rukum and Rolpa"⁵³ and that it was unable to control district headquarters.⁵⁴ It appears that the extent of control and influence varied, and the majority of the effective control was exercised in rural territories.

The structure of the *Jana Adalat*

The *Jana Adalat* was established around three years after the start of the NIAC.⁵⁵ As a policy, it was supposed to be appointed by the (People's) House of Representatives.⁵⁶ However, this was aspirational and contingent upon the CPN-M's war victory. During the NIAC, the *Jana Adalat* was actually established by the People's Representative Council of the party.⁵⁷ The CPN-M has stated that the *Jana Adalat* was comprised of three levels, namely the district courts, the appellate courts and the court of last resort,⁵⁸ akin to the LTTE (Liberation Tigers of Tamil Eelam)-established court system in Sri Lanka.⁵⁹ Village-level *Jana Adalat* seem to have also existed, but only sporadically.⁶⁰ Although not mentioned in the CPN-M Public Legal Code itself, separate civilian and criminal courts seem to have existed in some districts.⁶¹ Most of the cases decided by the *Jana Adalat* were regarding "land and false bonds" and few were criminal in nature.⁶²

According to the CPN-M, district courts were three-in-one committees whose "[m]embers were elected on a 3-in-1 basis... 40% from the Party, 20% from the People's Army and 40% from the masses".⁶³ "Masses" generally stood

49 Epilogue, CPN-M Public Legal Code, 2003/4 (author's translation) (on file with the author).

50 "Revolution in Nepal", above note 27, p. 3.

51 International Bar Association, above note 2, p. 29.

52 S. D. Crane, above note 22, p. 13.

53 International Commission of Jurists (ICJ), *Nepal: Justice in Transition*, February 2008, p. 3, available at: <https://www.icj.org/wp-content/uploads/2012/04/Nepal-Justice-in-Transition-Thematic-reports-2008.pdf>.

54 Ashok Mehta and Mahendra Lowati, "Military Dimensions of the 'People's War': Insurgency and Counter-Insurgency in Nepal", in M. Lowati and A. K. Pahari, above note 28, p. 176.

55 B. R. Upreti, above note 43, p. 107.

56 CPN-M Common Minimum Policy, above note 38, policy 18.

57 B. R. Upreti, above note 43, p. 107.

58 OHCHR, above note 4, p. 187.

59 S. Sivakumaran, above note 12, p. 493.

60 B. R. Upreti, above note 43, p. 107.

61 L. Onesto, above note 42, pp. 94–5.

62 Specific statistical data is unavailable. *Ibid.*, pp. 130–1.

63 *Ibid.*, pp. 128–9.

for “mass [sister] organizations” of the CPN-M.⁶⁴ Women were reportedly encouraged to join the three-in-one committees.⁶⁵ Each appellate court consisted of a senior political cadre of the party, and the court of last resort consisted of three judges, including a member of the CPN-M Central Committee.⁶⁶ Apparently, the Joint Revolutionary People’s Council of the CPN-M reserved a review power as the supreme legal authority over the entire judicial system.⁶⁷

The CPN-M Common Minimum Policy recommended that “masses should be involved in major counter-revolutionary criminal cases”⁶⁸ in accordance with the principle of mass line-based people’s participation.⁶⁹ The CPN-M Public Legal Code stipulated that the district court was the court of first instance and its decisions were subject to appeal.⁷⁰ Hence, in principle, the *Jana Adalat* was conceived as a regular court system, as opposed to an *ad hoc* one.

However, these policies were most likely aspirational for the then emerging “new regime”, in the light of documented gaps between policies and practices of the *Jana Adalat*. To elaborate, first, between 1999 and 2003, or before the CPN-M Public Legal Code was enforced, there was admittedly a lack of uniform, objective and consistent normative standards in place.⁷¹ Second, throughout the NIAC, the actual structure of the *Jana Adalat* varied from one territory to another. To exemplify, in some areas, the District-in-Charge of the CPN-M, rather than the three-in-one committee, reportedly determined the verdict and punishment,⁷² whereas in some remotely located areas, the party leadership, the PLA or militia leaders usually performed the judicial functions.⁷³ Third, in a few districts including Bardiya, Banke, Kailali and Kanchanpur the *Jana Adalat* reportedly “operated out of stand-alone signposted buildings”;⁷⁴ otherwise, the courts were mostly mobile.⁷⁵

Legal status of the *Jana Adalat* according to the Government of Nepal

The Government understandably considered the *Jana Adalat* an illegal parallel system. The CPN-M members’ rebellion *prima facie* amounted to a crime against

64 *Ibid.*, pp. 126–7.

65 *Ibid.*, p. 174.

66 B. R. Upreti, above note 43, p. 107.

67 *Ibid.*

68 CPN-M Common Minimum Policy, above note 38, policy 19.

69 *Ibid.*, policy 19.

70 CPN-M Public Legal Code, above note 49, section 20.

71 This is reflected in the preamble of the CPN-M Public Legal Code. *Ibid.*

72 OHCHR, above note 4, p. 91. However, the 2020 Commentary on GC III has suggested that courts can be composed from members of OAGs “as long as procedures are in place to ensure they perform their judicial functions independently and impartially”. ICRC Commentary on GC III, above note 7, para. 716.

73 OHCHR, above note 4, p. 187.

74 ICJ, above note 53, p. 8.

75 “Revolution in Nepal”, above note 27, p. 80.

the State by the virtue of “causing disorder with an intention to overthrow the government”⁷⁶ as well as a “breach of public peace”⁷⁷ and administration of the *Jana Adalat* qualified as multiple criminal offences including illegal detention, abduction, hostage taking and theft.⁷⁸ It also amounted to a violation of multiple fundamental rights including personal liberty and freedom of movement.⁷⁹ The gravity of the offence was aggravated when the CPN-M was declared a terrorist organization under an ordinance that later in April 2002 became the Terrorist and Disruptive Acts (Prevention and Punishment Act) (TADA). The Government also did not recognize the situation as NIAC. It typically “preferred instead to portray it as a fight against criminals and terrorists”.⁸⁰ The Comprehensive Peace Agreement (CPA) did not recognize or give legal effect to the decisions of *Jana Adalat*, implicitly or explicitly, and to recall the conclusion drawn in the 2020 ICRC Commentary on GC III, that there is no obligation under common Article 3 for States to recognize or give legal effect to decisions of OAG courts.⁸¹ The CPA, however, implicitly vitiated the legal status of the *Jana Adalat* by requiring the CPN-M to restore criminal investigations according to prevailing law, and to cease activities that obstruct public agencies and employees.⁸² By virtue of the CPA, the *Jana Adalat* was subsequently dissolved on 18 January 2007.⁸³

The judiciary of Nepal has neither made any explicit observations regarding the legal status of the Public Legal Code and the *Jana Adalat* nor upheld any of its judgements. However, the Supreme Court of Nepal in a case concerning the arbitrary nature of the TADA, plainly observed that both preventive and punitive detentions should be “as prescribed by the law”.⁸⁴ The Supreme Court of Nepal also implicitly took cognizance of the *Jana Adalat* when it concluded a case pending since 1984 after the latter issued its own verdict on the matter.⁸⁵ This seems to be a stand-alone case, although existence of other similar but undocumented cases cannot be ruled out. Hence, a conclusion about the judiciary’s stance on the subject matter cannot yet be drawn, based on available evidence.

Legitimacy of the state laws and judiciary from the CPN-M’s perspective

CPN-M firmly classified the official Nepali legal system in two categories: (a) repressive legal provisions, such as those on public security, land administration

76 Government of Nepal, Crimes against State and Punishment Act, Nepal, 1989, section 3.2.

77 Government of Nepal, Some Public (Crime and Punishment Act), Nepal, 1970, section 2.

78 Government of Nepal, General Code (Muluki Ain), Nepal, 1963.

79 Constitution of Nepal, 1990, Arts 12(a) and 12(d).

80 Anthony Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law*, Cambridge University Press, New York, pp. 56–7.

81 ICRC Commentary on GC III, above note 7, para. 731; see the earlier section “Lawfulness of the courts established by organized armed groups”.

82 CPA held between Government of Nepal and Communist Party of Nepal (Maoist), November 2006, clauses 5.1.6, 5.2.11.

83 ICJ, above note 53.

84 *Wenraj Adhikari v. HMG*, DN 6487 (author’s translation).

85 ICJ, above note 53, p. 13.

and reform, taxation, exploitation of natural resources and parental property (which it considered discriminatory on the grounds of gender),⁸⁶ and (b) agreeable legal values, such as the guarantee of fundamental rights and principles of natural justice.⁸⁷ It asserted its right to rebel against an oppressive system⁸⁸ and objected to “being placed in the same category as Bin Laden”.⁸⁹ It also alleged that the Government of Nepal engaged in “state terrorism in the guise of democracy, constitution and human rights”.⁹⁰

The CPN-M alleged the State judicial system to be “a top to bottom corruption”.⁹¹ A judge of the *Jana Adalat* went as far as to say, “At state they ‘sell justice’ ... it is a commodity of exchange.”⁹² As a general policy, the CPN-M did not cooperate with the State’s criminal investigations.⁹³

The “People” in the People’s War and the People’s Court

“People” as defined by the CPN-M

The CPN-M classified individuals as *Janata* (People) and *Dushman* (Enemy) and elaborated that “anyone can fall in the category of *Dushman*, regardless of their position, all that is necessary is animosity towards the Maoist movement, others are *Janata*”.⁹⁴ This category was based on their ideologies of class struggle and *Bargiya Pakshyadharita* (class preference), derived from a narrative of historic oppressor and oppressed that not all social scientists agree with.⁹⁵ Primarily, class preference seems to be arbitrary and contradictory to both common Article 3 and the CPN-M’s Common Minimum Policy. The CPN-M defended its position in section 2.1 of the CPN-M Public Legal Code, which reads “[this] law shall be based on class preference, however, everyone shall be entitled to the equal protection of the law”.⁹⁶ Taking this into account, it appears that class preference can have relative interpretations. However, it cannot be concluded whether class preference is inherently and irreconcilably against the principle of non-discrimination without delving into its philosophy—doing so is outside the scope

86 CPN-M, 40 Point Demand to the Government, 1996, available at: <https://www.satp.org/satporgtp/countries/nepal/document/papers/40points.htm>.

87 B. R. Upreti, above note 43, p. 108.

88 CPN-M, “Excerpts from the Second National Conference”, *A World to Win*, Revolutionary Internationalist Movement, Vol. 27, 2001, pp. 50 and 53.

89 CPN-M, above note 3, p. 17.

90 Prachanda, above note 36.

91 Arjun Karki, “A Radical Reform Agenda for Conflict Resolution in Nepal”, in A. Karki and D. Seddon, above note 25, p. 446.

92 ICJ, above note 53, p. 7.

93 L. Onesto, above note 42, p. 86.

94 Michael Hutt, “Reading Maoist Memoirs”, *Studies in Nepali History and Society*, Vol. 17, No. 1, 2012, p. 127.

95 Yurendra Basnett, *From Politicization of Grievances to Political Violence: An Analysis of the Maoist Movement in Nepal*, Development Destin Studies Series No. 07-78, London School of Economics, 2009, p. 20. But see Suresh Dhakal, “Democracy, Democracies and Democracy Discourses in Nepal: An Anthropologist’s Engagement”, *Dhaulagiri Journal of Sociology and Anthropology*, Vol. 7, 2013, p. 151.

96 CPN-M Public Legal Code, above note 49, section 2.1.

of this article. However, while reserving any detailed judgement of the theory, it appears that such class preference was discriminatory in practice as the CPN-M reportedly killed so-called “feudalists” and “royalists” in their power.⁹⁷ In reference to the *Jana Adalat*, a report quotes an interviewee who said, “you have to be a Maoist to win a case”⁹⁸ (referring to the *Jana Adalat*).

The People’s response towards the *Jana Adalat*

Multiple reports demonstrate a decline in the number of cases registered at state courts after 2001, although it is not clear whether the decline was significant.⁹⁹ The decline was peculiar to rural areas, a significant proportion of which had come under the CPN-M’s control. It is reported that 90% of the cases were settled locally in some CPN-M-controlled/liberated areas.¹⁰⁰

While the CPN-M stated that it had obtained the people’s mandate by consensus in the areas they had liberated,¹⁰¹ independent reports reveal that people were governed by a range of ways, including familiarity, sympathy, feeling of alienation from the State, revenge, co-option, fear and coercion.¹⁰² A report¹⁰³ has classified people based on their relationship with the *Jana Adalat*, which can be summarized as: (a) CPN-M members, supporters or sympathizers; (b) people who found its procedures native and culturally appropriate, cost-effective and easily accessible in contrast to the state judicial system, particularly those residing in remote rural areas; (c) people who habitually sought out informal justice systems, even, in some instances, in serious criminal cases such as rape, who probably found the *Jana Adalat* an upgrade anyway; and, finally, (d) people who were coerced to cooperate.¹⁰⁴

Regarding (d), documented instances include: restricting freedom of movement for official purposes, which could also cause statutes of limitations in cases such as rape to expire;¹⁰⁵ compelling lawyers to hand over case files;¹⁰⁶ threatening people not to use district courts, and threatening lawyers to prevent them from attending courts;¹⁰⁷ creating a state of fear for lawyers, causing them

97 OHCHR, above note 4, p. 86.

98 Reliefweb, “Nepal, Rebels Accused of Running Parallel Government”, 14 September 2006, available at: <https://reliefweb.int/report/nepal/nepal-rebels-accused-running-parallel-government>.

99 ICJ, above note 53, p. 19.

100 B. R. Upreti, above note 43, p. 107.

101 M. Hutt, above note 94, p. 125.

102 *Ibid.*, p. 126; Ina Zerkevich, *Maoist People’s War and the Revolution of Everyday Life in Nepal*, Cambridge University Press, Cambridge, 2019, p. 44; A. Karki and D. Seddon, above note 25, pp. 21 and 30.

103 Saferworld, “Justice Mechanisms and Conflict Dynamics in Nepal Local Perceptions and Impacts”, May 2016, available at: <https://www.saferworld.org.uk/resources/publications/1069-justice-mechanisms-and-conflict-dynamics-in-nepal-local-perceptions-and-impacts>.

104 *Ibid.*, p. 2.

105 M. Lowati and A. K. Pahari, above note 28, p. 117; ICJ, *Human Rights Report, Nepal*, June 2020, p. 29; ICJ, above note 53, p. 21.

106 International Bar Association, above note 2, p. 31.

107 *Ibid.*, p. 29.

to turn to other occupations or flee;¹⁰⁸ murdering lawyers;¹⁰⁹ creating barriers to the delivery of subpoenas and execution of judgements;¹¹⁰ and making it difficult to arrest or detain absconding offenders, and to execute penalties and punishments.¹¹¹ These coercions amount to multiple violations and were against the CPN-M's own policies and regulations that were based on a dialectic separation between coercive and non-coercive exercise of power discussed earlier.

Essential guarantees at the *Jana Adalat*

The regulations

The definitions of crime and punishment were not uniform and consistent before the CPN-M Public Legal Code was introduced. The members of the CPN-M relied on the Maoist principle of “do not ill-treat captives” included in Mao’s eight points for attention.¹¹² Death penalties were given occasionally.¹¹³ Drug-trafficking, smuggling, thievery, black-marketing, looting, murder, rape, domestic violence and dowry were regarded as the greatest maladies in society.¹¹⁴ Reportedly, shamanism, animal sacrifice and some Hindu festivals were forbidden, especially in the base areas.¹¹⁵

Nonetheless, the CPN-M Common Minimum Policy which applied from the beginning of the NIAC contained some guidelines for the administration of justice. It stated that the “security organs shall exercise the functions and rights of the procuratorial organs”¹¹⁶ and that office-bearers or state organs of the People’s Government were liable for disciplinary action or criminal prosecution if they violated the laws (of the People’s Government) or did not discharge their duties properly. People had the right to lodge complaints in such matters against the office-bearers.¹¹⁷

The CPN-M Public Legal Code was designed to implement the *Jana Adalat*. Part 3 of the Code described the crimes and punishments. Crimes were broadly categorized as serious and simple offences, including: crimes against the State, corruption, homicide, foeticide and infanticide, battery, looting, arson, soliciting prostitution, extra-marital sexual intercourse, incest, rape (including statutory rape), theft, fraud, forgery and narcotic offences. Punishments were classified as simple punishment, imprisonment, labour imprisonment, fine and fine along with confiscation of property. The maximum term of imprisonment was ten

108 *Ibid.*

109 *Ibid.*

110 ICJ, above note 53, p. 19.

111 *Ibid.*

112 Mao, above note 30, pp. 343–4.

113 ICJ, above note 53, p. 11.

114 CPN-M, *Declaration of the Beginning of the Jana Yuddha* (on file with the author). L. Onesto, above note 42, pp. 75–6.

115 I. Zerkevich, above note 102, p. 232.

116 CPN-M Common Minimum Policy, above note 38, policy 19.

117 *Ibid.*, policy 21.

years. In cases of damage to property, interim relief was the liability of the accused and compensation was the liability of the convict. The Code did not prescribe a death penalty.¹¹⁸

Part 2 of the CPN-M Public Legal Code outlined the principles of criminal law and procedure, notably including: non-discrimination; accessible and affordable justice; the right to a defence; reformatory justice; preference of “real justice” over “legal justice”; natural justice; creative application of the law; evidence- and legal criteria-based justice; and the dynamic nature of law.¹¹⁹ Part 3 specified that: punishment should be proportionate to the severity of the crime; crime should be eliminated, not the criminal; crime control requires identification of the root of the problem; and forgiveness over tit-for-tat.¹²⁰

Further, part 11 of the CPN-M Public Legal Code described the aspects of the trial procedure, which were: right to make a complaint (with one year as the statute for limitation for all crimes); investigation of the crime, recording of any witness(es)’ statements, the collection of further evidence, filing of a charge-sheet, the record of testimonies, evaluation of evidences, judgement, sentencing with right to appeal and execution of judgement.¹²¹

The CPN-M reportedly organized seminars in mid-western Nepal to introduce its Public Legal Code.¹²²

In 2006, towards the end of the NIAC, the CPN-M introduced another regulation titled *Karyabidhi Sambandhi Kanooni Byawastha*¹²³ (Provisions related to Procedural Law) as a complementary regulation to the CPN-M Public Legal Code. Some of its remarkable provisions included: (a) the requirement of written, scientific and organized documentation of evidence; (b) a stated prohibition on custodial torture; (c) the requirement of specific charges in a charge-sheet; (d) a right to file counterstatements; (e) the introduction of standard templates for various stages of trial; (f) a requirement of an arrest warrant; (g) provision for judicial custody; (h) the introduction of standard templates for steps involved in criminal procedure; and (i) the introduction of probation and parole.¹²⁴

Concerns could be raised about whether the phrase “real justice” in the CPN-M Public Legal Code endangered fair trial by being a possible leeway for justifying summary justice, especially since as discussed earlier, the CPN-M had admitted to a lack of uniform standard of justice in liberated/controlled territories before the Code’s enforcement. Another observation, upon a thorough reading of the Provisions related to Procedural Law, was that it did not clarify the process of appeal. Nonetheless, it can be deduced that these provisions indicate an endeavour to provide essential guarantees of fair trial. Further, during the NIAC in Nepal, provisions of probations and parole had not been introduced in the

118 CPN-M Public Legal Code, above note 49, part 3.

119 *Ibid.*, part 2.

120 *Ibid.*, part 3.

121 *Ibid.*, part 11.

122 ICJ, above note 53, p. 11.

123 CPN-M Provisions related to Procedural Law, above note 6.

124 *Ibid.*, chapter on criminal procedure.

criminal justice system of Nepal; it can be deduced that these particular aspects of the criminal justice system operated by the CPN-M were more progressive than those of their state counterpart. Lastly, it can also be observed that although the regulations were absent at the beginning of conflict, they gradually developed throughout the NIAC.

Documented misconduct

Notwithstanding the above-mentioned regulations, independent studies have *prima facie* revealed several instances of misconduct in various phases of trials that took place in the *Jana Adalat*, which could amount to a violation of both common Article 3 and the regulations of the CPN-M. These include instance of torture,¹²⁵ mutilations,¹²⁶ public humiliations as punishment,¹²⁷ gender-insensitive interrogation,¹²⁸ beating, lashing and slapping as punishments,¹²⁹ treatment of juveniles as adults¹³⁰ and execution for failing to heed summons.¹³¹ Notably, while public pronouncement of judgement is regarded as an essential guarantee,¹³² in contrast, using public humiliation as punishment is a clear violation of sub-article 1(c) of common Article 3.

Furthermore, the *Nepal Conflict Report* reported the following instances as violations of the principles of independence and impartiality:

No formal criteria for the qualification or selection of “judges”; No defence lawyer present in most proceedings; Poor case management and a lack of formal records kept by the courts; A common bias in favour of the complainant; No requirement for witnesses to take any form of oath before giving evidence.¹³³

Other reported practices that may amount to violation of the above principles include: that courts were presided over by local Maoist militia and did not employ legal professionals;¹³⁴ that detainees were moved around frequently and not given access to their relatives initially;¹³⁵ that accused spies were executed with insufficient evidence.¹³⁶ The OHCHR reported a lack of uniformity, proper management and transparency¹³⁷ in the administration of

125 OHCHR, above note 4, p. 126; L. Onesto, above note 42, pp. 74–5.

126 OHCHR, above note 4, p. 125.

127 M. Hutt, above note 94.

128 ICJ, above note 53, p. 13.

129 OHCHR, *Human Rights Abuses by the CPN-M: Summary of Concerns*, September 2006, p. 5; ICJ, above note 53, p. 10; International Bar Association, above note 2, p. 29.

130 OHCHR, *ibid.*, p. 5.

131 OHCHR, above note 4, p. 90.

132 ICRC Commentary on GC III, above note 7, para. 722.

133 OHCHR, above note 4, p. 199.

134 ICJ, *Attacks on Justice – Nepal*, 2008, p. 9, available at: <https://www.icj.org/wp-content/uploads/2012/04/Nepal-Attacks-on-Justice-2005-Publications-2008.pdf>.

135 OHCHR, above note 129, p. 5.

136 OHCHR, above note 4, p. 87.

137 OHCHR, above note 129, p. 8.

Jana Adalat, as also admitted by the CPN-M, as mentioned in the previous section. These may have, depending on the circumstances, amounted to violations of the principle of independence and impartiality, that in turn amount to summary justice.

Challenges before the *Jana Adalat*

First, the NIAC seems to have evolved quicker than anticipated by the CPN-M in its military strategy of a protracted war. While from the outset the Party preached that the *Jana Yuddha* was not going to be “smooth and easy”, it admitted to making mistakes and having weaknesses and inadequacies.¹³⁸ Further, the Party gradually shifted from “a global Maoist revolution” to a “more nationalist disposition”¹³⁹ and from “new democracy” to “a transitional republic” which was more sympathetic towards multi-party democracy.¹⁴⁰ It is plausible that these political shifts significantly impacted the policies and practices of the *Jana Adalat*. Further, as mentioned earlier, the *Jana Adalat* was instituted within three years after the start of the NIAC. By contrast, the LTTE courts in Sri Lanka were instituted ten years after the start of the conflict.¹⁴¹ The *Jana Adalat* was a prototype for CPN-M, and its evolution was gradual. Notably, soon after the somewhat comprehensive criminal procedures discussed in the earlier section were introduced by the CPN-M, the NIAC in Nepal terminated. Hence, it is difficult to draw conclusions regarding the impact of this particular regulation on the administration of the *Jana Adalat*.

Second, the CPN-M encountered challenges in determining the qualification of the judges and in selecting them in a manner commensurate with common Article 3 as well as with their own policies and regulations. The *Jana Adalat* mostly operated in rural areas, most of which were remotely located and where a lack of formal education had been a perpetual concern. Recruitment in the CPN-M was strongest among “School Leaving Certificate Failed” non-brahmins of rural communities.¹⁴² Most of the judges were local, in accordance with the Maoist principles of cultural revolution and democratic centralism. Hence, selection of individuals with legal education as judges was generally unviable. Further, when the TADA was promulgated, many lawyers who supported, provided legal counsel to or were members of the CPN-M were subjected to preventive detention without *habeas corpus* and some went missing or were killed.¹⁴³ It is plausible that these actions of the State deterred legal professionals from volunteering as both judges and legal counsels in the *Jana Adalat*. However, it is also plausible that the paucity of legal professionals was

138 CPN-M, *Document Adopted by the Third Expanded Meeting CC of the CPN (Maoist)*, March 1995, p. 13 (on file with the author).

139 M. Miklaucic, above note 34, p. 205.

140 *Ibid.*, p. 10.

141 S. Sivakumaran, above note 12, p. 493.

142 S. D. Crane, above note 22, p. 15.

143 International Bar Association, above note 2, pp. 31 and 32; ICJ, above note 134, p. 4.

caused by the CPN-M's own coercion directed at lawyers and judges, who consequently fled CPN-M-controlled areas.

Notably, both the CPN-M and the earlier mentioned practices corroborate that members of the Party, militia and PLA were involved as judges in the Court. While such practices *per se* do not necessarily violate the principle of independence under common Article 3,¹⁴⁴ the competence of such judges was questionable. The CPN-M has admitted to a lack of proper training of its members particularly after the NIAC intensified in 2001.¹⁴⁵ This obviously extends to the members appointed as judges in the various levels of *Jana Adalat*. Further, local compliance was also a challenge for the CPN-M as the interpretations of Maoist ideology varied from village to village, and were adapted for those with little experience with politics, in familiar terms.¹⁴⁶

The third challenge concerns resource constraints. The *Jana Adalat* was a war-time judicial system, and its creator, the CPN-M, was engaged in an inherently resource-intensive war against the Government of Nepal. The 2017 Garance Talks identified lack of resources as a common characteristic among armed groups.¹⁴⁷ Somer has discussed the apparent difficulty faced by OAGs in providing judicial guarantees “due to factual capabilities”.¹⁴⁸ Sivakumaran has observed that it is particularly challenging for OAGs to provide the necessary means of defence¹⁴⁹ and that the right to adequate time and facilities in armed conflict differs from a time of relative peace.¹⁵⁰ One of the resource constraints faced by the CPN-M was the lack of legally trained judges discussed above. However, further independent studies are necessary to fully identify and examine the implications of the resource constraints faced by the CPN-M in the administration of *Jana Adalat*.

Conclusions

Common Article 3 of the 1949 Geneva Conventions prohibits summary justice and since this provision binds OAGs, the CPN-M had an obligation not to carry out summary justice during the NIAC that took place in Nepal. The legitimacy of the *Jana Adalat* operated by the CPN-M is unclear from the perspective of international law, although the domestic law of Nepal clearly deemed it illegal. The stance of the Nepali state judiciary towards the *Jana Adalat* is inconclusive and further research is required in this regard, especially since it seems to have taken implicit cognizance of one judgement of the *Jana Adalat*.

144 ICRC Commentary on GC III, above note 7, para. 716.

145 “Interview with Prachanda”, *Kantipur Online*, 8 February 2006 (on file with the author).

146 M. Lowati and A. K. Pahari, above note 28, pp. 44–5.

147 Geneva Call, *Administration of Justice by Armed Non-State Actors*, Report from the 2017 Garance Talks, Issue 2, p. 9, available at: https://genevacall.org/wp-content/uploads/dlm_uploads/2018/09/GaranceTalks_Issue02_Report_2018_web.pdf.

148 J. Somer, above note 14, p. 676.

149 S. Sivakumaran, above note 12, p. 504.

150 *Ibid.*

Regarding the CPN-M itself, the OAG not only asserted the legitimacy of the *Jana Adalat*, but also formulated regulations to enforce it. These regulations reflect the OAG's intention to provide judicial guarantees. However, the article raised two concerns pertaining to the regulations, which were the idea of "real justice as opposed to legal justice" and the lack of appeal procedures. It was also observed that the provisions of parole and probation included in these regulations were absent in the state judicial criminal system during the NIAC and to this extent the criminal justice system of the CPN-M was more progressive than that of the state counterpart.

Having said that, the gaps between regulations and policies on one hand and the practices on the other, of the *Jana Adalat*, led to a conclusion that the CPN-M may well have violated the essential guarantees enshrined in common Article 3 and its own policies and regulations. Given the extent of the violations, the proceedings of the *Jana Adalat* may well be termed summary justice. Lastly, the rapid evolution of the NIAC and shifts in CPN-M policies, difficulties in selection of competent judges and resource constraints were identified as challenges in the administration of *Jana Adalat*.