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# DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT OF NEPAL

## FINAL REPORT

OCTOBER 2012

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This report presents the findings of a Democracy, Human Rights, and Governance (DRG) Assessment of Nepal. The field research and interviews were conducted from July 9 through July 27, 2012. The assessment team consisted of Guilain Denoeux (Team Leader), Harry Blair, Ameet Dhakal, Christopher Hobbs, and Mike Calavan. Dr. Denoeux is the report's primary author.

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## **DISCLAIMER**

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.



# TABLE OF CONTENTS

<b>ACRONYMS AND ABBREVIATIONS .....</b>	<b>III</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>V</b>
<b>1.0 INTRODUCTION .....</b>	<b>I</b>
<b>2.0 KEY CHALLENGES TO DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE IN NEPAL .....</b>	<b>3</b>
2.1 THE KEY DRIVER BEHIND NEPAL'S CURRENT CRISIS.....	4
2.2 THE CORE DRG PROBLEM .....	5
2.3 BRINGING SECOND-ORDER VARIABLES INTO THE ANALYSIS .....	5
2.3.1 SOV 1: Political Parties.....	6
2.3.2 SOV 2: Nature and Scope of Societal and Political Demands.....	8
2.3.3 SOV 3: Systemic, Institutionalized Corruption .....	9
2.4 ACCOUNTING FOR RULE OF LAW AND COMPETITION DEFICITS...AND FOR THESE DEFICITS' CONTRIBUTIONS TO THE CORE DRG PROBLEM .....	9
2.4.1 ROL Deficits .....	9
2.4.2 Competition Deficits .....	10
2.5 ADDITIONAL STEP-ONE BACKGROUND ANALYSIS .....	11
2.5.1 Consensus.....	11
2.5.2 Inclusion .....	12
2.5.3 Competition and Political Accountability .....	13
2.5.4 Rule of Law.....	15
2.5.5 Government Effectiveness and Administrative Accountability .....	17
<b>3.0 STEP TWO: KEY ACTORS AND INSTITUTIONS .....</b>	<b>19</b>
3.1 KEY ACTORS.....	19
3.1.1 The Nepali Congress .....	20
3.1.2 The Communist Party of Nepal—United Marxist Leninists.....	22
3.1.3 The Maoist Parties.....	23
3.1.4 Madhesi Parties.....	29
3.1.5 The Janajati .....	30
3.1.6 Dalits .....	31
3.1.7 Conservatives .....	33
3.1.8 Concluding Comments on Key Actors.....	35
3.2 INSTITUTIONS AND ARENAS .....	36
3.2.1 The Executive .....	36
3.2.2 Security Agencies.....	37
3.2.3 The Legislature .....	38
3.2.4 The Judiciary and Legal Professionals .....	38
3.2.5 Local Government.....	39
3.2.6 Political Parties and Electoral Institutions .....	40
3.2.7 Civil Society.....	41
3.2.8 The Media .....	43
3.2.9 Private-Sector Business Interests .....	43
3.2.10 Non-State Actors .....	45
3.2.11 Regional Actors.....	46
<b>4.0 OPERATIONAL AND PROGRAMMATIC ENVIRONMENT .....</b>	<b>49</b>
<b>5.0 DRG STRATEGIC AND PROGRAMMATIC RECOMMENDATIONS .....</b>	<b>56</b>
5.1 GUIDING PRINCIPLES AND ASSUMPTIONS .....	58
5.2 PRIORITY PROGRAMMATIC RECOMMENDATIONS AND ILLUSTRATIVE ACTIVITIES.....	58

**BIBLIOGRAPHY .....63**  
**ANNEX 1. CROSS-SECTORAL SYNERGIES.....64**  
**ANNEX 2: REPRESENTATIVE LIST OF PERSONS INTERVIEWED .....71**

# ACRONYMS AND ABBREVIATIONS

ADDCN	Association of District Development Committees of Nepal
ADR	Alternate Dispute Resolution
APF	Armed Police Force
APM	All-Party Mechanism
CA	Constituent Assembly
CBO	Community-Based Organization
CC	Central Committee
CDCS	Country Development Cooperation Strategy
CIAA	Commission for the Investigation of Abuse of Authority
CNI	Confederation of Nepalese Industries
COSA	Chief of Staff of the Army
CPA	Comprehensive Peace Agreement
CPI	Corruption Perception Index
CPN-M	Communist Party of Nepal—Maoist
CPN-UML	Communist Party of Nepal—United Marxist Leninists
CSO(s)	Civil Society Organization(s)
DDC(s)	District Development Committee(s)
DFID	Department for International Development (UK)
DMF	Democratic Madhesi Front
DRD	Democracy, Human Rights and Governance
DRGA	Democracy, Human Rights, and Governance Assessment
EC	Election Commission
EIG	Education for Income Generation in Nepal Program
EU	European Union
FNCCI	Federation of Nepalese Chambers of Commerce and Industry
FNJ	Federation of Nepali Journalists
FPTP	First-past-the-post
FRN	Federal Republic of Nepal
GDP	Gross Domestic Product
GON	Government of Nepal
HR	Human Rights
ICG	International Crisis Group
IFES	International Foundation for Electoral Systems
INL	Bureau of International Narcotics and Law Enforcement Affairs (Department of State)
ISI	Inter-Services Intelligence
JC	Judicial Council
LDO	Local Development Officer
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
LGCDP	Local Government & Community Development Programme
M&E	Monitoring and Evaluation
MuAN	Municipal Association of Nepal
MJF	Madhesi Janaadhikar Forum (also sometimes referred to as MPRF, see below)

MPRF	Madhesi People’s Rights Forum
NA	Nepal Army
NC	Nepali Congress
NDI	National Democratic Institute
NGO	Nongovernmental Organization
NHRC	National Human Rights Commission
NID	National Investigation Department
NP	Nepal Police
NTTP	Nepal Transition to Peace Initiative
PI	Presidential Initiative
PLA	People’s Liberation Army
PM	Prime Minister
PR	Proportional Representation
RCCC	Royal Commission for Corruption Control
RF	Results Framework
RJP	Rashtriya Janashakti Party
ROL	Rule of Law
RPP	Rashtriya Prajatantra Party
RPP(N)	Rashtriya Prajatantra Party (Nepal)
SACWP	Small Arms Control Work Plan
SAF	Strategic Assessment Framework
SC	Supreme Court
SO	Strategic Objective
SOV	Second-Order Variable
SPA	Seven Party Alliance
SSP	Special Security Plan
UDMF	United Democratic Madhesi Front
UCPN (M)	Unified Communist Party of Nepal (Maoist)
UML	See CPN-UML
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNICEF	United Nations Children’s Education Fund
UNDP	UN Development Programme
UNV	United Nations Volunteers
USAID	United States Agency for International Development
USG	United States Government
VAT	Value-Added Tax
VDC(s)	Village Development Committee(s)
VIE	Violent Islamic extremism or violent Islamic extremist
YCL	Young Communist League



# EXECUTIVE SUMMARY

The principal driver of Nepali politics over the past 15 years has been the social and political assertion of long-marginalized communities. These formally excluded constituencies are claiming their share of the public sphere and are unwilling to moderate their demands for the sake of “maintaining social harmony” or “preventing national disintegration,” which they view as convenient excuses by the high castes and other old elites to protect their privileges and perpetuate their domination. Their demands have crystallized around the issue of federalism, in particular, around “single ethnicity-based federalism,” i.e., the notion that the states to be established should confer special recognition and advantages onto the particular ethnic group that happens to represent a plurality of the population within that state, and/or that claims the “state-to-be” as its “historical domain.”

From the Strategic Assessment Framework (SAF)’s perspective, therefore, the expansion of political consciousness and mobilization among historically neglected communities now moving from the periphery to the center of the political system is the dominant force that is reshaping the political system and will continue to do so in the next decade. The communities in question are mobilizing not only due to the political and social ferment in their midst, but also, to a large extent, because they are being coaxed by elites from within their own ranks. The ongoing, dramatic “rise in inclusion,” therefore, also entails more vigorous demands by elites from within politically emerging communities. The demands in question are for a seat at the table where critical political and governmental decisions are made, and more broadly, for a greater share of the political and economic spoils of the system.

The rise in inclusion has generated new demands that the political system, the political establishment, and governmental institutions alike are unable or unwilling to accommodate. Existing societal, political, and governmental arrangements still reflect, to a significant degree, an “old order” and “old logic” that have been overtaken by new realities. A new order that better reflects these new realities has yet to emerge; difficult bargaining over what this new order will look like constitutes the root of the current political gridlock. Using the five variables of the SAF, Nepal’s core Democracy, Human Rights and Governance (DRG) challenge—or rather, the primary source of the many challenges Nepal faces in the DRG area—can be conceptualized as the widening gap between inclusion and government effectiveness (or institutional performance). Government effectiveness, which was always low to begin with, has become utterly inadequate to enable the political and governmental systems to cope with, and respond to, the multiplicity of demands placed on them.

The primary and most evident manifestation of the many DRG deficits generated by the inclusion/government effectiveness gap has been a crisis of consensus. That crisis has crystallized around the issue of the specific form that “state restructuring” should take. It pits advocates of ethnic-based federalism against those who claim that establishing states along ethnic lines will prove divisive and yield unworkable, unsustainable arrangements that will hinder political and economic development. Related disagreements revolve around the number of states to be created, their boundaries, and their names (specifically, whether states should be named in such a way as to confer special recognition to the larger ethnic group found in each of them). Bitter disputes over the form that state restructuring should assume, combined with very low, preexisting institutional capacity, have resulted in political stalemate and policy gridlock.

Three additional and inter-related “second-order variables” deserve to be singled out if one is to account for the other deficits Nepal faces in the DRG sector, particularly in the rule of law and competition arenas. The first consists of the critical role that political parties play in shaping political processes, governmental outcomes, and even social and economic life. Parties dominate the public administration. They control appointments, assignments, transfers, promotions, demotions, and budgets. They also engage in state capture—and state capture, in turn, provides parties with the resources they need to sustain their extensive

patronage networks. Parties have systematically undercut government effectiveness and administrative accountability, including by operating as the principal vehicles through which escalating political, social, and cultural demands have been placed on already overburdened governmental institutions; by reinforcing the logic of rent-seeking, patronage, nepotism, and clientelism within governmental institutions (thus further sapping these institutions' operational capacities); and by systematically ensuring that government institutions, infiltrated by political interests from the outside, and controlled by them from the inside, operate to serve those interests as opposed to the public interest. Another "second-order variable" reflects the fact that the demands emanating from historically marginalized communities have been primarily (though not only) over such issues as respect, dignity, and compensation for historical injustices—not over the need for greater government effectiveness, more transparency, more accountability (of politicians and bureaucrats), enhanced respect for the rule of law, and better services. Finally, systemic, institutionalized corruption also has thoroughly undermined government effectiveness and administrative accountability.

Key actors consist primarily of the country's main political parties: the two Maoist parties, the Unified Communist Party of Nepal [UCPN(M)] and the Communist Party of Nepal-Maoist (CPN-M); the Nepali Congress; the Communist Party of Nepal-United Marxist Leninists (CPN-UML or UML); and the various Madhesi parties, which represent the populations living in the Terai, or Madhes region. The Janajati—the largely indigenous ethnic minorities that comprise about 37 percent of the population—also represent an increasingly potent political force that has asserted itself in the past few years. That soon may be the case as well for the Dalits (the so-called "untouchables") who have been the most marginalized, oppressed, and discriminated against community in Nepal. Conservatives are represented by three main parties of limited electoral strength: the Rashtriya Prajatantra Party (Nepal), or RPP(N), the Rashtriya Prajatantra Party (RPP) and the Rashtriya Janashakti Party (RJP)—though the right wing also features a small radical fringe made up of Hindu revivalist and militant currents among the Brahmins and Chhettris. The RPP(N), RPP, and RJP all call for a referendum on federalism and secularism. In the past several years, they have been relegated to the sidelines of Nepali politics. However, if the current political stalemate and policy gridlock were to endure, and if public frustration with it and with the broader course on which the country embarked in 2006-2008 were to mount, conservatives could benefit from growing disillusionment with federalism and identity politics.

An analysis of the dynamics associated with parties in Nepal points to the following conclusions:

- a) Even for the old parties, politics now has become bound up with the issues of identity and federalism. The first force, identity politics, is unlikely to abate in the short term, while the second process, federalization, is likely to be the single most important challenge facing Nepal in the next decade. Unfortunately, identity politics and successful federalization will be difficult to reconcile.
- b) The number of new actors and constituencies that have been mobilized in recent years has increased dramatically. The Madhesi have reshaped Nepali political dynamics since 2006, and the ongoing mobilization of the Janajati is having the same effect today. As noted above, Dalits are likely to become a powerful political bloc in the next several years. Meanwhile, conservatives stand ready to take advantage of potential large-scale disappointment with identity politics and a botched state restructuring process. Such trends and scenarios may exacerbate further the country's crisis of governance.
- c) Influential politicians among the Janajati, Madhesi, and the Maoists are casting ethnicity-based federalism in ways that might prompt some of those listening to them into believing the forthcoming identity-based federal arrangements will be a silver bullet for resolving pressing problems and addressing needs. At the very least, these politicians are not doing enough to contain the excessive expectations that state restructuring generates in some circles. There is high potential for major disappointment down the road with how federalism plays itself out in practice.
- d) The Nepali political landscape has undergone steady factionalization in the past several years. That trend even has accelerated in recent months and seems unlikely to abate in the short term. Continued elite infighting is likely to prolong political stalemate and policy gridlock, and the crisis of governance Nepal has been experiencing is likely to intensify before it subsides.

An examination of key institutions points to the persistent, marked under-representation of ethnic minorities and women in decision-making arenas: in the executive branch, the upper and even middle ranks of the bureaucracy, the judiciary and court system, the security agencies, the legislature, and local government. The absence of women and members of historically disadvantaged communities is particularly noticeable at the highest levels of the civil service, the security agencies, and the judiciary. Thus, the “rise in inclusion” highlighted above has yet to translate into a significantly heightened presence of hitherto excluded groups in those circles where key decisions are made. Pressures to that effect will be a major force driving Nepali politics in the next decade and beyond.

Step 3 provides another set of considerations that helps filter the subsequent strategic and programmatic recommendations. Namely, the DRG strategy must be aligned within the broader framework of the Nepal Mission’s Country Development Cooperation Strategy (CDCS), as discussed in the preceding sections. As such, the DRG strategy should also reinforce and be compatible with the crosscutting elements of the Mission’s portfolio, as discussed in the Cross-Sectoral Annex (Annex 1). Rendering the DRG recommendations compatible with the CDCS is the most critical filter that has emerged from this Step 3 of the assessment methodology. Beyond prioritizing crosscutting interventions that support the three Presidential Initiatives (PIs), USAID/Nepal is looking to focus resources on governance enhancements improving the delivery of services, especially in sectors supported by other Mission programs. If the Mission moves forward with two Development Objectives, one will likely emphasize programming focused on making governance systems more effective, participatory, and accountable, while the second may focus on making communities more economically, environmentally, and socially robust. Although these Development Objectives are, at the time of this assessment, still being finalized, these general areas can align with key elements of the assessment’s analysis. For example, to enhance the delivery of public services to support governance systems, there will need to be capacity building of elements of the GON, civil society, and the private sector. In addition, related policy work at the national level will be needed to maximize program impacts in other sectors. Furthermore, the Mission is strategically supporting the relative importance of improved service delivery and governance at local levels, despite national-level fluctuations, especially in regard to the core mission programs in the Global Health Initiative, Global Climate Change, and Feed the Future.

The DRG Assessment of Nepal has identified improving inclusion as one of the key needs currently facing the country. The findings of the assessment indicate that the mobilization of large elements of previously marginalized groups has, to a large extent, overwhelmed the democratic processes and institutions that exist to constructively channel the greater political engagement and demands that have come about as a result of this higher popular mobilization. While Steps 1 and Step 2 of this DRG assessment were able to glean these findings from a macro-analytical framework largely situated at the national level, filtering the findings through Step 3 and specifically incorporating the implications of USAID/Nepal’s five-year strategic visioning process offer a critical readjustment of how the problem of inclusion can be addressed. Namely, inclusion can come about not just through changes in national processes, such as political party reform (which the DRG assessment doubts will lead to much in the current political climate), but also by a bottom-up approach. Such an approach can seek to increase the opportunity to engage people at the grassroots where greater participation in local governance can be motivated by the prospect of tangible benefits in the form of improved public services, as well as by the symbolism of greater participation by all walks of life at the local level.

A second key element of the CDCS that helps filter the analytical findings from Steps 1 and 2 relates to the Mission’s move to focus on making governance systems more effective, participatory, and accountable. In Step 1, the DRG assessment identifies the core DRG problem as stemming from the gap between inclusion and government effectiveness. However, given the current political impasse over federalism, the long-term thinking in the Mission suggests that the recommendations should focus more on “governance systems” rather than just government *per se*. This is significant since it places priority not just on governmental delivery of services, but also on the identified need for greater participation, transparency, and accountability.

Step 4 of the DRG Strategic Assessment Methodology's filtration process has identified the following objectives as addressing Nepal's core DRG problems in a feasible fashion that is consistent with the Mission's priorities, as reflected in the 2012 CDCS process.

### **DRG OBJECTIVES**

- *Support legitimate national-level political institutions that can peacefully resolve conflicts over identity and manage competition over resources in an era of rapid social mobilization.*
- *Prepare sub-national actors for a devolution of power, including developing the capacity of civil society to channel community participation in local governance. On the supply side, as local government institutions evolve under the new devolved structures, build the technical and managerial capacity of local government to generate transparent publicly accessible planning, budgeting, spending, and evaluation information in priority sectoral areas.*
- *Strengthen media and CSO capacities to disseminate evidence-based information regarding the transition to federalism and further decentralization.*

In accordance with these objectives, the proposed DRG strategy is built around the following working hypothesis:

### **DEVELOPMENT HYPOTHESIS**

If... (changes in current situation)

- At the national level, policies, systems, and frameworks are put in place to support a new constitution and federal (decentralized) structure, with local structures included in the discussions and design of systems so that both national and sub-national government entities (elected and administrative) develop administrative, fiscal, and communication processes that are consistent;
- Top-down dictates by political elites (placing pressure and creating conflict at lower levels) can be mitigated by the creation of space for bottom-up debate and decision making based on community rather than party, social standing or ethnicity;
- Technical and managerial capacities in the governance of institutions (both local government, civil society and other bodies) can be strengthened to better respond to people's needs and deliver services;
- Endemic widespread and deep culture of corruption (and rent-seeking) can be held in check through popular pressure as well as accountable and transparent systems;
- The creation of peaceful, transparent, and inclusive mechanisms and forums for expression of concerns can replace demonstrations and strikes (such as bandhs) as the preferred method for making voices heard; and
- The semi-independent media and civil society can be empowered to be an evidence-based watchdog and a relatively unbiased source of accurate information about the transition to federalism and further decentralization...

Then...

- A legitimately inclusive and participatory political and civic culture, harnessing more accountable and transparent systems (planning, decision making, distribution of services and resources) and institutions (focusing at this point at sub-national levels) will be in place to be ready for, participate in, and manage the transition to federalism and subsequent decentralization, as well as provide more equitable services.

The programmatic recommendations that follow include the following four axes:

- **Support national-level institutions that can peacefully mitigate conflict.** The DRG assessment has identified a national-level political paralysis that has resulted from unresolved grievances in a context of a rapidly mobilizing society. A priority recommendation therefore includes support for the institutions addressing old grievances, such as a truth and reconciliation commission, transitional justice, the Nepal Peace Trust, and the Carter Center's work. Of secondary priority is the

recommendation to closely monitor other democratic institutions whose functions are normally related to the management of conflict in the political process. As politics normalize and become less volatile, support for other key democratic institutions such as the judiciary, legislature, and the electoral system should be considered. However, for the moment, it is recommended that further assistance to the judiciary, the legislature, and electoral systems be held in abeyance until the stalemate is overcome and political will for reform is enhanced.

- **Prepare for federalism.** To best address popular perceptions of poor government effectiveness, it is essential that Nepal make progress on the devolution of power. This will ultimately involve capacity building of local government institutions once new structures are put in place. Technical assistance should be deployed to help ground the debate about federalism in substantive, tangible public policy issues, especially those that relate to the devolution of power to the new provinces to be created; to the distribution of authority within those new entities; and to the mechanisms and procedures most likely to help “make federalism work.” At the level of districts, towns, and villages, USAID and other donors could contribute to a more informed public debate about federalism. At the central level, USAID could engage various parts of the central bureaucracy (e.g., the National Planning Commission) in developing the knowledge to begin scoping, planning, and strategizing about the potential forms federalism could take and subsequent way the government would need to adapt.
- **Advocate for greater transparency and accountability.** Given the gap between entrenched political elites and the rapid mobilization of previously marginalized communities, it is recommended that efforts to increase accountability and transparency be supported at both national and sub-national levels. While the current environment favors a demand-side (i.e., civil society) emphasis, opportunities should also be explored for developing greater transparency in public affairs as the political climate improves as public dialogue becomes less vehemently confrontational. This track includes the following programmatic areas of emphasis:
  - *Civil society strengthening.* Building up resiliencies nationwide against further erosion in the quality of local governance is critical, but the manner in which that objective is cast cannot be limited to just an exercise in “strengthening the capacity of local government institutions.” It must include as well systematic efforts to nurture, at the local and national levels alike, the readiness of civil society organizations (CSOs) and community-based organizations (CBOs) to advocate on accountability and transparency issues, and the basic skills for doing so effectively.
  - *Transparency in interparty relations.* The custom in interparty deal-making appears to be that second tier leader’s negotiate with each other and report back to the top tier of their respective parties, who then decide on cutting the final deal. USAID, other donors, and much of the Nepali intelligentsia (as expressed in Op-Ed media) wish to reduce this secrecy and make the process more transparent. Accordingly, rather than clearing the smoke, a better approach might be to work on getting more smokers into the room by bringing more players representing minority and disadvantaged groups inside. In the Nepali context, this would mean more women politicians, more youth, and more leaders from the Madhesi, Janajati, and Dalit communities.
  - *Use of local media.* Nepal presently has something like 340 local FM stations scattered around the country. Their line-of-sight transmission necessarily restricts coverage to fairly small catchment areas, so they are highly local. Rather than put much effort into local programming, however, station owners tend to broadcast syndicated programs produced in Kathmandu (in many cases made with donor funding).<sup>1</sup> While at present this syndicating practice does little to improve governance, it could be turned to account by producing programs in the DRG area that could then be syndicated. Radio programs (as opposed to those for television) are relatively cheap to

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<sup>1</sup> The Martin Chauturi center has studied local broadcast media quite extensively. Presently the center is organizing a conference on the topic, to be held on 1-2 April 2013 <[http://www.martinchauturi.org.np/index.php?option=com\\_content&view=article&id=296](http://www.martinchauturi.org.np/index.php?option=com_content&view=article&id=296)>.

- produce and could focus on almost any DRG subsector. Thus a small investment in DRG programs could have a large impact.
- *Accountability.* While multiparty elections can provide accountability by compelling local elected officials to heed public wants at the cost of losing their seats, they are at best a crude instrument for keeping leaders in line, providing or withdrawing a blanket mandate for a number of years. For fine-tuning accountability, civil society has to play the major role, especially at the local level, where other instruments of accountability like public interest lawsuits or investigative journalism generally cannot exist.
  - **Advocate on crosscutting DRG issues.** The assessment has identified gender relations, including protection of LGBTI rights, as a DRG sub-sector in need of improvement in Nepal. The civil society strengthening initiative described above provides a platform from which to build the capacity of rights groups to advocate against social and legal discrimination against women and persons of lower caste. In addition, gender-specific components should be disaggregated and reinforced wherever possible in the DRG portfolio. A good first step would be the elaboration of context-specific goals and indicators that could serve as reference points around which to align the various gender interventions across the DRG sector.

The Cross-Sectoral Annex identifies synergies between DRG interventions and the cross-sectoral approach inherent in the CDCS. There is ample opportunity for integration and alignment of the DRG sector with the PIs. DRG has special expertise that can reinforce elements of the PIs and/or deal with dimensions that can create synergies. These are in the areas of building CSO organizational capacity; building networks of service delivery and advocacy NGOs, and the media, to do more evidence-based advocacy and outreach; creating more non-political space for local-level discussions with less interference by central elites, as well as alternate dispute resolutions (ADR); and supporting anti-corruption efforts.

There are already natural points of integration with the PIs (and other programs). This annex describes both these points and provides some additional ideas for crosscutting integration of DRG programs with Presidential Initiatives. This is demonstrated through a series of tables that, on one hand, describe briefly the objectives and activities of the PI, and on the other ideas on how DRG programming can complement, support, or integrate within the broad DRG categories of Rule of Law and Human Rights, Governance and Decentralization (including anti-corruption), Political Competition and Consensus Building (including political participation), and Civil Society and the Media. The DRG category of Rule of Law and Human Rights includes several elements of direct relevance to cross-sectoral objectives. In particular, this category includes improving the enabling legal and regulatory environments, as well as rights issues, such as in regard to gender and ensuring the engagement and empowerment of women. Land tenure and property rights issues also fall under this category, which is of relevance to Hariyo Ban, for example. The DRG category of Political Competition and Consensus Building offers room to develop forums—especially at local levels—around which participation in public policy dialogue and decision making around concrete developmental issues can be enhanced, such as in agriculture. Local-level forums of this nature are more likely to be able to be somewhat insulated from national elite capture. The Governance and Decentralization category opens the door for targeted institutional capacity building and for anti-corruption measures, such as in regard to transparency and accountability. Finally, the Civil Society and the Media DRG category provides another axis for capacity building, this time on the civil society/community side of the political equation. Media, especially at the community levels, represents considerable opportunity for engagement on crosscutting issues.

# I.0 INTRODUCTION

When pro-democracy demonstrations broke out in Nepal in early 1990, the country had been under the tight grip of the monarchy for 30 years, and had only known heavy-handed authoritarian rule since its emergence as a nation-state in 1768. An attempt at democratization had taken place in 1959, but King Mahendra had been quick to put an end to that experiment the following year, when he dissolved Parliament, banned political parties, and arrested the prime minister (PM) after invoking the emergency powers granted to him by the constitution. Faced with a resurgence of demands for a more participatory system in February 1990, King Birendra initially demurred. Sustained street protests, however, eventually compelled him to agree to a thorough transformation of the political system into a multiparty, constitutional monarchy. Under the new constitution adopted in November 1990, the king served as head of state and retained significant prerogatives, but most executive powers were vested in a cabinet headed by a PM representing the coalition with a majority in the directly elected lower house of a bicameral Parliament. Unfortunately, the new multiparty democracy did little to address longstanding inequalities and the systemic socioeconomic and political marginalization of large segments of the population. A small group of elites with a narrow social base continued to dominate a political system featuring high levels of political infighting and government inefficiency.

In February 1996, the Communist Party of Nepal (Maoist) launched a violent campaign to overthrow the monarchy, destroy what it denounced as Nepal's feudal system, and create a "peasant-led revolutionary communist regime." That insurgency would last 10 years, feature large-scale abuses on both sides, and result in the death of over 13,000 persons. The Maoists soon grew into a formidable political and military force controlling large swaths of the country's territory. Their superior organizational and tactical skills, and their ability to mobilize many hitherto excluded constituencies, contributed greatly to that process, but the Maoists also benefited from political disarray in Kathmandu, the inability of the mainstream political parties and the monarchy to form a united front, and the excesses committed by the Nepalese police and army.

The declining legitimacy of the monarchy was further shaken by the Palace massacre of June 2001, when the then-crown prince killed nine members of the royal family, including his parents, King Birendra and Queen Aishwarya, a sister and a brother.<sup>2</sup> The crown prince's brother, Gyanendra, ascended the throne but almost immediately demonstrated poor political acumen. His greatest miscalculation took place on February 1, 2005, when—citing the need to crush the insurgency and the inability of the political class to do so due to factionalism and corruption—he sacked the PM, placed him and key party leaders under house arrest, dissolved Parliament, imposed a curfew, and declared a state of emergency.<sup>3</sup> That decision backfired, prompting the mainstream parties and the Maoists to reach out to one another. In the wake of violent strikes and protests against direct royal rule, the king reinstated Parliament in April 2005, just as Maoist rebels called a three-month ceasefire. In November 2004, the so-called Seven Party Alliance (SPA), which brought together the main opposition parties, struck a "Twelve-Point Agreement" with the Maoists. Intended to serve as a roadmap for resolving the conflict and restoring democracy in Nepal, the agreement, brokered by India, was explicitly directed at the monarchy. Those events paved the way for the November 2006 Comprehensive Peace Agreement (CPA) between the Maoists and the SPA, which put a formal end to the insurgency and brought the Maoists into the political process.

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<sup>2</sup> The alleged trigger for the massacre was a disagreement over whom the crown prince should marry. Following his shooting spree, the crown prince killed himself.

<sup>3</sup> Apparently, the king mistakenly thought that he could take advantage of political divisions within the Maoist movement to eradicate the insurgency militarily while side lining the mainstream political opposition.

In January 2007, an interim constitution was promulgated, and in April 2008, elections were held for a Constituent Assembly (CA) also tasked with acting as an interim legislature. The Maoists won a plurality of the seats, but fell short of an absolute majority.

The CA's first major decision, on May 28, 2008, was to abolish the 239-year old monarchy and declare Nepal a secular republic. On August 15, 2008, a government headed by Maoist leader Prachanda took office. The four years that followed witnessed high levels of elite infighting and cabinet instability, and Nepal was even without a government for several months in 2010-2011. Most importantly, the CA missed four deadlines (May 2010, May 2011, November 2011, and May 2012) for drafting a new constitution. Invoking a Supreme Court decision against a further extension of the CA's term, Maoist PM Baburam Bhattarai ordered the disbanding of the CA on May 27, 2012, and declared that fresh polls for a new CA would be held on November 22 (an event that, as it now turns out, will not take place in light of continued disagreements and further delays and disarray since Bhattarai's announcement).

Against this backdrop, the political stalemate and policy gridlock that have characterized the past several years are unlikely to end any time soon. The political scene will experience further factionalization and fragmentation before it begins to coalesce. Breakthroughs in negotiations that might be substantive enough to stabilize political dynamics are improbable as well—especially in light of a recent increase in the number of potential spoilers of any grand political bargain. Nepal probably will muddle through—as it has done in the past—and daily life for most Nepalis likely will not change in any significant way, but the developmental costs of political infighting and institutional decay will continue to mount.

To make matters worse, as of this writing Nepal finds itself in a constitutional vacuum. It is unclear whether the current government (paralyzed as it is) retains a legitimate mandate and what steps should take place next. Sharp disagreements persist, both within and across parties, over whether the disbanded CA should be reinstated; whether, instead, fresh elections should take place—and, if so, when, and under what specific electoral arrangements; whether the body that would be elected would function as a Parliament, as a new CA, as a Parliament-cum-CA, or a CA-cum-Parliament; and whether Prime Minister Baburam Bhattarai must step down and a new government be formed as a precondition for new elections. Uncertainty and the prevailing sense of disorder and drift are compounded by continued brinkmanship and constant political maneuvering by opportunistic actors all too ready to alter their positions on the most critical issues facing the country in order to advance their own personal interests.



# 2.0 KEY CHALLENGES TO DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE IN NEPAL

## STEP ONE: UNPACKING NEPAL'S DRG CHALLENGES

Step One provides a strategic analysis of Nepal's key challenges in the Democracy, Human Rights, and Governance (DRG) sector, relying primarily on the five variables—inclusion, government effectiveness, consensus, competition, and rule of law (ROL)—of the Strategic Assessment Framework (SAF). It proceeds as follows.

- a) Section 2.1 highlights the dramatic and rapid escalation of demands for political inclusion in the past several years. It argues that this process represents the single most important driver of politics in Nepal today, and a critical root cause of the current political stalemate and policy gridlock.
- b) Section 2.2 then conceptualizes the core DRG challenges faced by the country as stemming from the gap between those demands for inclusion on the one hand, and increasingly low levels of government effectiveness and broader institutional performance on the other. Section B proposes, in particular, that the country's ongoing crisis of consensus can be understood as a consequence of the high inclusion over government effectiveness ratio.
- c) Section 2.3 introduces three critical, Nepal-specific "second-order variables," and explores the multiple ways in which they feed into both the crisis of consensus and rising demands for inclusion, while also systematically undermining government effectiveness and administrative accountability.
- d) Section 2.4 highlights the nature of the primary deficits in the rule of law and competition arenas. It then shows how these deficits can be viewed, to a significant extent, as by-products of the previously introduced variables and their interrelationships. Section 2.4 then examines how rule of law and competition deficits, in turn, feed back into, and exacerbate the core DRG problem. It concludes with a chart that captures the logic outlined in Sections 2.1 through 2.4 by highlighting key variables and the most significant relationships among them.
- e) Section 2.5 provides additional analysis of the five key variables used in Step One of the SAF.

This document attempts to make sense of those dynamics and explores their programmatic implications. The analysis in it is based on three weeks of extensive field interviews, a comprehensive review of the academic literature on Nepal, and an examination of reports produced by international organizations and donors active in the country. Interviews were conducted with a broad range of government officials (current and former, and at both the national and district levels), party leaders, independent analysts, and representatives of the media, civil society, the private sector and donors. The team made a conscious effort to ensure that informants reflected the ethnic, caste-based, and political diversity of the country. For one, each of the

political parties and constituencies that Step Two (Key Actors and Institutions) examines were the subject of multiple interviews. Furthermore, and as reflected in the structure of Annex 2, Kathmandu-based interviews were complemented by dozens of one-on-one as well as group meetings in Nepalgunj/Banke and Liwang/Rolpa. During those field visits, local activists, members of political parties and professional associations, as well as individuals involved in GON programs and donor-funded activities provided the team with essential non-Kathmandu-centric perspectives, and with critical insights into “how things look and work (or not)” far beyond the capital.

## 2.1 THE KEY DRIVER BEHIND NEPAL’S CURRENT CRISIS

The principal driver of Nepali politics in the past 15 years has been the social and political assertion of long-marginalized communities. The most significant of these communities (the Madhesi, Janajati, and Dalits) will be examined in some detail in Step Two, but in the meantime two overarching points need to be underscored regarding the process of social and political mobilization that is the focus of this section:

- a) Whole new sets of formally excluded social actors have emerged and are still emerging, claiming their share of the public sphere. They are unwilling to moderate their demands for the sake of “maintaining social harmony” or “preventing national disintegration,” which they view as convenient excuses by the high castes and other old elites to protect their privileges and perpetuate their domination.
- b) The demands of these newly activated social constituencies have crystallized around the issue of federalism, and in particular, around what is referred to as “single ethnicity-based federalism.”<sup>4</sup>

The societal and political processes summarized above are irreversible; they are still playing themselves out and it will take years before they run their course. From the SAF’s perspective, therefore, the spectacular rise in inclusion is the dominant force that is reshaping the political system and will continue to do so in the next decade. “Rise in inclusion,” here, should be understood in part as the *expansion of political consciousness and mobilization among historically neglected communities now moving from the periphery to the center of the political system*. These new constituencies are mobilizing not only due to the political and social ferment in their midst, but also, to a large extent, because they are being coaxed by elites from within their own ranks. “Rise in inclusion,” therefore, also refers to heightened demands by elites from within politically emerging communities. The demands in question are for a seat at the table where critical political and governmental decisions are made, and more broadly, for a greater share of the political and economic spoils of the system.

It is difficult to generalize about the ultimate motivations of these new elites. Some interviewees described the new elites’ demands as reflecting primarily, though not exclusively, self-interest. According to that perspective, elites are seeking a greater share of political and economic power for themselves first and foremost, and only secondarily for their communities. That viewpoint highlights the instrumentalization of community-based demands by elites engaged in constant maneuvering to improve their positions relative to one another. Another, somewhat different interpretation (based largely on the experience of Madhesi political mobilization) suggests that even when these elites initially are driven by a genuine desire to improve their respective communities’ relative influence, once they become part of the “political establishment” they tend to drift toward more self-interested behavior. Be that as it may, the point to emphasize is the key role that elites play in driving the inclusion process.

Demonstration effects have played a role as well. For instance, Madhesi mobilization post-2006 appears to have inspired the more recent and still ongoing mobilization by the Janajati. Both are creating incentives for Dalits to become more politically assertive, as Step Two will discuss in greater detail. This “diffusion effect” is

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<sup>4</sup> The label “single-ethnicity based federalism” refers to the notion that the states to be established should confer special recognition and advantages onto the particular ethnic group that happens to represent a plurality of the population within that state, and/or that claims the “state-to-be” as its “historical domain.”

felt both at the community or ethnic-group level and at the level of elites, since politicians endeavor to use community-broad mobilization for personal advantage.<sup>5</sup>

## 2.2 THE CORE DRG PROBLEM

The rise in inclusion has generated new demands that the political system, the political establishment, and governmental institutions alike are unable or unwilling to accommodate. Put differently, *the political fallout of rapid societal and political mobilization have outstripped or overwhelmed the institutional capacity of the system to respond.* Existing societal, political, and governmental arrangements still reflect, to a significant degree, an “old order” and “old logic” that have been overtaken by new realities. A new order that better reflects these new realities has yet to emerge; difficult bargaining over what this new order will look like constitutes the root of the current political gridlock.

Using the five variables of the SAF, therefore, Nepal’s core DRG challenge—or, rather, the primary source of the many challenges that Nepal faces in the DRG area—can be conceptualized as the widening gap between inclusion and government effectiveness (or institutional performance). This high ratio of inclusion over government effectiveness has become the key force fueling DRG deficits. Specifically, government effectiveness, which was always very low to begin with, has become utterly inadequate to enable the political and governmental systems to cope with, and respond to, the multiplicity of demands placed on them.

The primary and most evident manifestation of the many DRG deficits generated by the inclusion/government effectiveness gap has been a crisis of consensus. That crisis has crystallized around the issue of the specific form that “state restructuring” should take. It pits advocates of ethnic-based federalism against those who claim that establishing states along ethnic lines will prove divisive and yield unworkable, unsustainable arrangements that will hinder political and economic development. Related disagreements revolve around the number of states to be created, their boundaries, and their names (specifically, whether states should be named in such a way as to confer special recognition to the larger ethnic group found in each of them). Bitter disputes over the form that state restructuring should assume, combined with very low, pre-existing institutional capacity, have resulted in political stalemate and policy gridlock.

## 2.3 BRINGING SECOND-ORDER VARIABLES INTO THE ANALYSIS

Three additional and inter-related “second-order variables” (SOVs) deserve to be singled out if one is to account for the other deficits Nepal faces in the DRG sector, particularly in the ROL and competition arenas. These variables are:

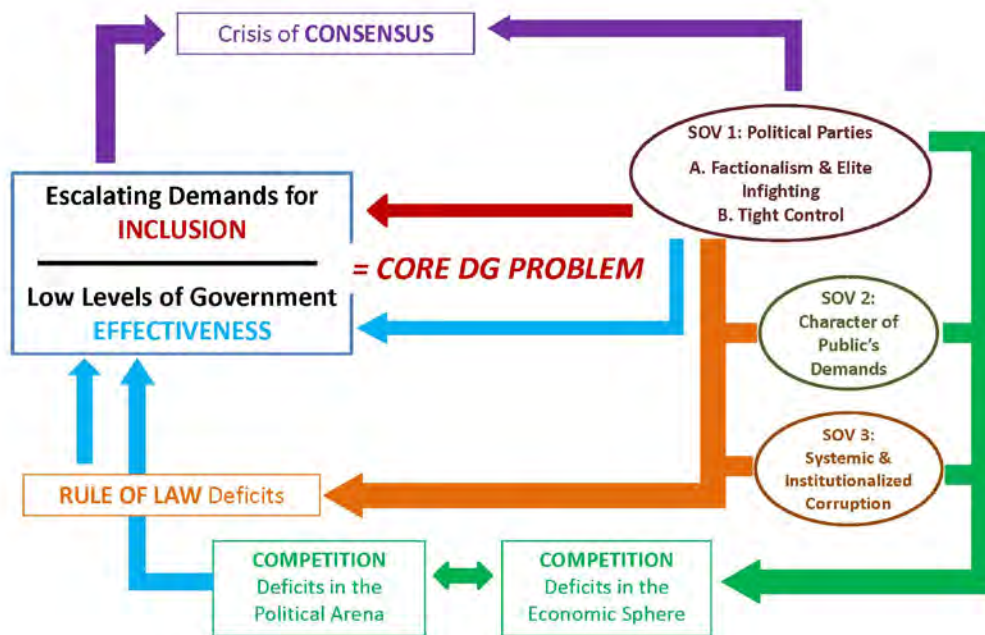
- a) The critical role that political parties play in shaping political processes, governmental outcomes, and even social and economic life;
- b) The specific character of the political demands that are being expressed by the population in general, and by historically marginalized groups in particular; and
- c) Systemic, institutionalized corruption.

Under the SAF methodology, these three SOVs are usually analyzed under other core variables in Step One. For instance, corruption is examined under both “rule of law” and “government effectiveness,” while the role of political parties is explored under “competition” and “political accountability.” In Nepal’s case, however, the three SOVs investigated below are significant enough, and cut across enough DRG sectors, that they deserve to be scrutinized in their own right. Figure 2.1 captures how these SOVs relate to each other and feed into the core DRG challenge highlighted above. It also provides the basis for the narrative below.

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<sup>5</sup> The reports of the International Crisis Group referenced in the bibliography provide the most useful background analysis of the processes summarized in this section and the following one.

**FIGURE 2.1. UNPACKING NEPAL’S GOVERNANCE AND DEMOCRACY CHALLENGES**



### 2.3.1 SOV I: POLITICAL PARTIES

Political parties—especially party leaders—are the preeminent political, governmental, and increasingly, economic actors in the country. (For a detailed analysis of political parties and their central role in Nepal’s political economy, please refer to the relevant section in Step Two [Section 3].) When political bargains are forged, they are struck behind closed doors among party leaders. Conversely, political stalemate and policy gridlock largely stem from the failure of party leaders to reach the necessary agreements. Meanwhile, at all levels of government, from Kathmandu down to villages, civil servants are largely subservient to political-party leaders and/or act in collusion with them.

For the purposes of the present analysis, two features of political parties stand out: 1) their *tight grip over all aspects of public life* in general, and 2) the *debilitating and intensifying infighting and factionalism that exist both within and among parties*—a phenomenon that Step Two explores at some length as it examines Nepal’s main political parties.<sup>6</sup>

Largely because they loom so large in shaping political, governmental, social, and economic life in the country, political parties represent one of the outstanding root causes of the challenges encountered in every single of the five areas assessed under the SAF. They also feed into the other two SOVs discussed in this section, as shown below.

<sup>6</sup> Debilitating factionalism within Nepal’s political elite was underscored by some of the developments that occurred during the first two weeks the team was deployed in country. A new Madhesi party was created. There was talk of the imminent emergence of a new Janajati party. The UCPN(M) experienced a split that led to the creation of a rival Maoist party (the CPN-M). The plenum of the UCPN(M) saw major infighting (and the throwing of chairs and water bottles at opponents) among no fewer than three rival factions—all that within a party that had just experienced a formal split that had resulted in the departure of its hard core. Janajati leaders within the UML threatened to leave the party over the top leadership’s opposition to “ethnic-based federalism.” The other two main parties, the NC and, especially, the UCPN(M), were also faced with a potential exodus of Janajatis. Meanwhile, the intra-party rifts within the UML worsened after indigenous leaders (Janajatis) were stripped from their leadership positions in the party for advocating on ethnic federalism stances that were incompatible with the party’s official position on the issue.

## **POLITICAL PARTIES AND THE CRISIS OF CONSENSUS**

Constant bickering among party leaders, both within and across parties, is a primary cause of the crisis of consensus highlighted above. The past five years have witnessed party leaders leveling against one another, charges of broken promises, disregard of key commitments made under prior formal agreements, and violations of previous tacit understandings. That history has intensified mutual distrust among party leaders and fueled widespread suspicion of the ultimate intentions and motives of their counterparts. That situation, in turn, has rendered necessary compromises more difficult, particularly over the more intractable issues associated with state restructuring.<sup>7</sup>

## **POLITICAL PARTIES AND THE RISE IN INCLUSION**

Party organizations and leaders have played a critical role in the social and political mobilization of hitherto excluded or marginalized communities. First and foremost, throughout the “people’s war,” the Maoist party was instrumental to the mobilization of the lower classes, castes (including Dalits), ethnic minorities (the Janajati), and women. Madhesi parties had similar effects after 2006, in the aftermath of two general strikes in the Madhes region that forced elites in Kathmandu to begin considering longstanding Madhesi grievances. Since then, Madhesi parties have been a critical driver of the federalist agenda, as discussed further in Step Two’s analysis of these parties. The soon-to-be created Janajati party(ies) will fit within, and further accentuate, the same trend. Their *raison d’être* will be to provide a vehicle (vehicles) through which the demands of ethnic minorities can make their voices heard and their influence felt at the very heart of the country’s political and governmental spheres. As Step Two will suggest, it is only a matter of time before Dalits, who remain Nepal’s most marginalized and discriminated against community, become more proactive politically as well, and organize themselves to demand their rights far more vigorously than they have done thus far. Meanwhile, at the regional and sub-regional levels, countless parties—including conservative, right-wing identity-based groups—have been established in recent years. In the name of inclusion, they too are demanding to be counted. One should note, by contrast, that the difficulties the “traditional parties” (e.g., the Nepali Congress [NC] and the United Marxist-Leninists [UML]) have experienced in adapting to the surge of demands by formerly quiescent groups is a primary reason for both those parties’ relative decline and for the rise in the political influence of those parties discussed above.

## **POLITICAL PARTIES AND DEFICITS IN GOVERNMENT EFFECTIVENESS AND ADMINISTRATIVE ACCOUNTABILITY**

Parties have undercut government effectiveness and administrative accountability in several ways, including:

- a) By operating as the principal vehicles through which escalating political, social, and cultural demands have been placed on already overburdened governmental institutions, thus overwhelming these institutions’ ability to respond;
- b) By reinforcing the logic of rent-seeking, patronage, nepotism, and clientelism within governmental institutions, thus making a mockery of such criteria as performance-based operations or merit-based recruitment and promotions, and further sapping these institutions’ operational capacities; and
- c) By systematically ensuring that government institutions, infiltrated by political interests from the outside, and controlled by them from the inside, operate to serve those interests as opposed to the public interest. The vital role that unions play across the bureaucracy represents a critical component of this process. The entire civil service is unionized, and each of the major unions is affiliated with one of the country’s main three parties. Unions thus function as one of the chief mechanisms through which parties ensure the bureaucracy cannot operate independently from political interests.

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<sup>7</sup> Intra-elite wrangling is driven primarily by individual maneuvering, clashes of personal ambitions, and broader opportunistic and rent-seeking behavior on the part of key leaders. Still, one should not dismiss the role that other factors play (at least occasionally). Among those factors, the following stand out: real policy differences; fundamental disagreements over how the state ought to be restructured (especially regarding the issue of ethnicity-based federalism); political parties’ need to take into account the varied aspirations and interests of the different constituencies they represent; and with regard to intra-party disputes, mutual recriminations regarding past and present strategic and tactical choices (even though arguments along those lines, too, can be mere covers for self-interested behavior by party leaders).

In short, by digging even further into the sinews of the state, and by functioning from within that state as “agents of non-performance and un-accountability,” parties play a key role in the systematic (and systemic) undermining of state capacity, autonomy, and legitimacy.

### 2.3.2 SOV 2: NATURE AND SCOPE OF SOCIETAL AND POLITICAL DEMANDS

It is useful to reflect on the exact nature of the demands generated by the rapid, dramatic political and social mobilization discussed earlier. The demands in question, especially those emanating from historically marginalized communities, are primarily (though not only) over such issues as respect, dignity, and compensation for historical injustices. Even the call for “ethnic-based federalism” is cast primarily in that light—ethnic-based federal arrangements being viewed as a form of reparation for past wrongs, and as a way of ensuring that in the new Nepal, ethnic minorities will receive the level of recognition and influence to which they aspire. More generally, the demands stemming from rapid social and political mobilization have been for the most part about greater representation in government, for the right to be heard and to be counted, and for a redefinition of Nepali identity to provide for a greater acknowledgement of the country’s cultural diversity. By the same token, *the demands in question have not been primarily about increased government effectiveness, more transparency, more accountability (of politicians and bureaucrats), greater respect for the ROL and better services.* That is not to say that demands along those lines are not occasionally expressed; it is only to underscore that they are seen as secondary to the more identity-related and historical grievances discussed above.<sup>8</sup> Among the many factors that account for this situation, three can be singled out.

- a) The first and most important is the fact that the country as a whole has not yet come to grips with the degrading way in which a majority of its population was treated for centuries by a small group of male, upper-caste Hindu elites. Until that process takes place and people truly feel represented and valued by the state and the nation that claim their allegiance, demands for services and better governance will continue to take a back seat to those that explicitly or implicitly aim to provide redress for past injustices. Nepal will not move beyond identity politics, and cynical elites bent on self-aggrandizement will not be deprived of the powerful tools with which identity politics provide them, until it finds ways of addressing legitimate historical grievances that further, as opposed to undermine, prospects for reconciliation, social and economic development, and democratic governance.
- b) Another, albeit very different, “cultural-historical” factor entails a tradition of deference to power as well as a high degree of tolerance for abuses of authority and poor performance by government officials and politicians alike. During the team’s interviews, the question: “How much are Nepalis ready to tolerate when it comes to poor governmental performance and corrupt, self-serving behavior by politicians?” was raised frequently. Directly or indirectly, the answer invariably was: “A considerable amount.” This high degree of tolerance for non-performance, impunity, and corruption thus feeds directly into SOV 2, into ROL deficits, and above all, into very low government effectiveness (the overall failure by the Nepali public to demand more from their government being a primary driver of poor institutional performance).
- c) The third factor which helps account for the primarily identity-based nature of the political demands being expressed goes back to the preeminent role of political parties, and specifically, of party leaders. The latter have no incentive to press their constituencies to demand better government services and improved governmental performance in general; after all, since they control government, they would be the targets of those demands. Since they directly benefit from the lack of transparency and accountability, they are unlikely to press demands for an end to rampant corruption, backroom deals, and overall opacity in decision making. By contrast, many of those leaders—especially among recently or newly mobilized Madhesi and Janajati constituencies—find it politically expedient and

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<sup>8</sup> On identity politics in Nepal, see in particular International Crisis Group, “Nepal: Identity Politics and Federalism” (2011).

rewarding to whip up the emotions and passions associated with identity politics. Doing so allows them to tap into a broad base of support that they can unleash against their political opponents.

### **2.3.3 SOV 3: SYSTEMIC, INSTITUTIONALIZED CORRUPTION**

How institutionalized corruption thoroughly and steadily undermines government effectiveness and administrative accountability is self-explanatory and needs no elaboration. What deserves to be highlighted, here, are the primary ways in which corruption relates to the other two SOVs above.

- a) SOV 1 directly feeds into SOV 3 in that party leaders are arguably the main enablers of corruption, both grand and petty. They provide the political and governmental cover that allows corruption to flourish. Being the main beneficiaries of corruption, they have no interest in adopting meaningful steps to curb it. Conversely, grand corruption plays a critical role in generating the resources that enable parties to maintain their control over society. Meanwhile, party leaders tolerate petty corruption, and even tacitly encourage it, as a means of cementing the loyalty of rank-and-file members to their organizations. The dominant role of political parties and the widespread nature of corruption are thus inextricably related to one another.
- b) Meanwhile, as suggested by the discussion of SOV 2 above, the fact that societal and political demands revolve primarily around identity-based issues and past wrongs—as opposed to, among other pressing alternatives, the need for greater accountability and transparency—represents one of the key factors that enables corruption to flourish. That situation does underscore again that progress in the areas of transparency and accountability—no matter how needed it is to overcome waste, mismanagement, and diversion of scarce and badly needed developmental resources—requires a broader process of coming to terms with the past. It also calls for institutionalizing recognition of the cultural diversity of Nepal’s population and for better protections for the inherent human rights of its many component communities.

## **2.4 ACCOUNTING FOR RULE OF LAW AND COMPETITION DEFICITS...AND FOR THESE DEFICITS’ CONTRIBUTIONS TO THE CORE DRG PROBLEM**

### **2.4.1 ROL DEFICITS**

The three SOVs discussed above may not account for all the deficits that exist in the ROL sector, but they go a long way toward explaining the overarching challenge in this area: impunity for the politically well-connected in general, and the ability of key political actors at both the national and local levels to operate beyond the actual reach of the legal system in particular (which, itself, suffers from serious additional, but unrelated, shortcomings).<sup>9</sup>

That situation is made possible by:

- a) The grip of political parties and party leaders over political and governmental affairs (SOV 1). Substantive progress toward the ROL would endanger these actors’ means of rent seeking and predation.
- b) The weakness of public demands for genuine ROL, and the continued (though perhaps diminishing) tolerance that exists toward abuses of authority and public office. Nepalis still do not seek and demand justice with the degree of intensity and persistency for which their situation would seem to call (a manifestation of SOV 2).
- c) The pervasive and institutionalized nature of corruption (SOV 3).

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<sup>9</sup> For an analysis of ROL issues in Nepal, see Department for International Development (DFID), “Nepal Rule of Law Assessment” (London and Kathmandu: DFID, 2011).

Beyond individual political actors, parties also undermine the ROL, due in large part to the nexus between them, armed groups and criminality more broadly. They can be key players in criminal and violent activities. Step Two will examine this phenomenon in some detail. As will be shown, parties frequently rely on armed groups to enforce their decisions and to intimidate, harass or physically harm opponents and critics. Politicians often orchestrate the activities of criminal groups for personal profit, while criminal groups rely on prominent politicians for protection from the law. That situation feeds into a general atmosphere of lawlessness, corruption (SOV 2), disregard for formal rules, and institutional weakness (the latter being one of the two key components of the core DRG challenge, as shown earlier).

## **2.4.2 COMPETITION DEFICITS**

Competition deficits in the political arena and the economic sphere feed into each other and sustain one another. Political dominance confers wealth and wealth sustains and reinforces political advantage—a situation that the evolution of the Maoist party in the past five years epitomizes most clearly. The nexus between power and wealth—and between competition deficits in, respectively, the political and the economic arenas—is unusually strong in Nepal, even by the standards of poor countries featuring an intertwining of political and economic interests. The consensus among those interviewed on this issue was that, in the past several years, the line between business and politics has become even more blurred than previously. Politicians become businesspeople and businesspeople become politicians to a far greater extent than was true in years past. Maoists now preside over a major economic empire—they are not only the dominant political force in the country, but the dominant economic one as well. Senior Maoist leaders have become prominent businessmen, and the reverse is true as well; individuals who were not Maoists have joined the party because of the economic advantages influence within the party confers. Similar revolving doors between business and politics can be observed with respect to other political parties. The CA dissolved on May 27, 2012 featured no fewer than 14 of the most prominent business leaders in the country. Meanwhile, prominent businesspersons seek the presidencies of business organizations such as the Federation of Nepalese Chambers of Commerce and Industry (FNCCI) and the Confederation of Nepalese Industries (CNI) primarily because those positions provide access to key governmental and political decision makers, and that access, in turn, is used routinely for economic advantage.

This power-wealth nexus feeds into the intense elite factionalism and political infighting highlighted earlier. Political contestations are all the fiercer, and compromise among party leaders at the national level is all the more difficult, precisely because political contests are not merely about power. Their outcome also determines who gets which share of the country's economic pie. In this type of environment, compromise is not impossible, but when it occurs, it is most likely to take the form of collusion that protects the vital political and economic interests of all key parties involved. Unsurprisingly, that is precisely the form that political bargains take in Nepal.

As was shown to be true for ROL, the single most important root cause of the competition-related deficits that have been examined is the stranglehold that a few individuals exercise over political parties, and the grip of those parties over political dynamics, civil society, and (to a lesser extent) media organizations. Party collusion at the national and local levels alike significantly restricts opportunities for meaningful competition in both the political and the economic spheres.

Two of the variables discussed above—institutionalized corruption and the lack of autonomy of the economic sphere relative to its political counterpart—significantly constrict political space. They provide the politically powerful and connected with illegally generated resources that those actors use to sustain their political dominance and maintain a skewed playing field. Both factors also hinder economic growth, prevent the accumulation of wealth in the hands of truly independent actors, and make it impossible for such potential actors to access the resources they could tap to build truly autonomous political organizations that would create pressure for greater accountability, transparency, and government effectiveness.

For those same reasons, deficits in the ROL and competition areas feed back into the core DRG problem, i.e., the inclusion/government effectiveness gap. Insufficient opportunities for meaningful contestation



directly translate into inadequate avenues for holding the state accountable for poor performance. Meanwhile, the large degree of impunity that the politically well-connected enjoys, and a significant lack of respect for formal rules and procedures, constitute critical cause of the severe institutional deficiencies found across the state apparatus, from Kathmandu down to the local level.

## 2.5 ADDITIONAL STEP-ONE BACKGROUND ANALYSIS

This section provides additional analysis of the five variables used in Step One of the SAF. It has been kept relatively brief to enable the reader to move quickly into the detailed political-economy review of Nepal offered in Step Two.

### 2.5.1 CONSENSUS

As highlighted earlier, Nepal's current political crisis reflects fundamental disagreements among the leading political parties and key constituencies in the country about what the contours of the political system ought to be. Instead of operating as an opportunity to unify the country, the constitution-drafting process has widened preexisting cleavages and turned into a frenzied contest by politicians to secure special privileges for themselves and the communities they represent. The proposed restructuring of Nepal into a federal state has been the most contentious of all issues, and disagreements over its modalities and implementation are likely to continue to dominate the national debate for several years. For that reason, this issue is discussed throughout the document and need not be addressed here as well (Step Two analyzes in detail the contrasting views of Nepal's main political parties and constituencies regarding state restructuring).

From the moment the CA was elected (April 2008), disagreements over the type of political system the country should adopt raged as well.<sup>10</sup> While a tentative compromise appears to have been reached on this issue, disputes are likely to reemerge down the road. Initially, the Maoists favored a presidential system, with a directly elected president enjoying considerable authority. In contrast, the other main parties strongly favored a parliamentary system, with a bicameral Parliament, a prime minister (PM) reflecting the balance of power in the lower house and acting as chief executive, and an indirectly elected (by Parliament) president endowed with mostly ceremonial powers. Since 2008, the country's politicians have suggested they might agree to a compromise in the form of a semi-presidential system with a directly elected president, a PM from the party or coalition of parties with a majority in Parliament, and executive prerogatives divided between the president and the PM. Even then, sharp disagreements have manifested themselves over the scope of the prerogatives that, respectively, the president and PM should enjoy, and over the exact division of power between these two figures. These disagreements have not been front-and-center of the public debate recently, because the latter has been dominated by the state restructuring issue; they are likely to reemerge, however, whenever a final agreement on the nature of the political system has to be reached. The Maoists have not abandoned their goal of a strong presidential system; they view any accommodation on this issue merely as a short-term compromise.

From 2010 onward, discussions within the CA moved toward a similar compromise regarding the electoral system. Advocates of a single-members district, first-past-the-post (FPTP) system and proponents of proportional representation (PR) with party lists met each other halfway by suggesting a combination of the two systems for national, provincial, and local-level elections. But the relative weight placed on each system—in particular, whether a majority of the seats should be decided by FPTP—has yet to be determined.

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<sup>10</sup> The interim constitution adopted in 2007 provided for a prime minister as head of government and a president as head of state. Most executive powers were vested in the PM. The PM was to represent a party, or coalition of parties, with a majority of seats in the CA, and would be dependent on that coalition's continued support to remain in office. He/she was to be chosen by a ballot of the CA. The CA also elected the president. Since the CA's disbanding in May 2012, Prime Minister Baburam Bhattarai has remained as head of a caretaker government. President Ram Baran Yadav was elected in July 2008.

Fundamental disagreements also persist regarding the extent to which the judiciary should be a truly independent branch of government. The Maoists have not yet accepted that principle. In 2008–2009, the Maoist-led government repeatedly sought to assert its authority over the judiciary; at the time, then PM Prachanda made several statements to the effect that, in his view, a government enjoying a popular mandate should not be constrained by rulings emanating from the Supreme Court (SC) or any other judicial authority. At present, Nepal’s judiciary is constitutionally separate from the executive and legislative branches and enjoys independence from political influence. The Maoists’ view is fundamentally at odds with that of other key Nepali political forces and influential constituencies, especially among professionals and private sector elements.

Persistent and significant consensus-related challenges, however, should not detract from the advances that have taken place in this area, particularly when one considers where Nepal stood as recently as the mid-2000s. Put differently, looking at the magnitude of Nepal’s current crisis of consensus, one might lose sight of the critical steps that have taken place toward resolving disagreements—including violent ones—that seemed particularly daunting not so long ago. In 2006, the Maoists accepted to put down their arms and join the democratic political process. Since then, they have moderated their views on key issues and have proven that they can work with members of the very parties they fought for so long. Most importantly, they accepted the disbanding of their army (the People’s Liberation Army [PLA]). Though Maoists still comprise dogmatic elements (see Step Two for elaboration), many of their leaders have proven to be pragmatic and flexible in their approach to other actors. They have shown their readiness to make significant concessions, including on issues (such as the fate of former Maoist combatants) that run against the interests of large portions of their base. In July 2011, the Maoist party’s central committee chose Baburam Bhattarai as its candidate for PM in part because the party’s own leader (Puspa Kamal Dahal, better known as Prachanda) had become unacceptable to opposition figures. That particular development demonstrated how far the Maoists had gone in the direction of accepting the need for political compromises, even when the latter might affect significantly intra-party dynamics and the perceived autonomy of the party relative to other actors.

The November 2011 agreement on the demobilization of Maoist ex-combatants was a milestone as well. Many analysts had anticipated that disputes over that issue would hinder Nepal’s political development for years to come. Instead, the question now appears to have disappeared as a significant source of political polarization.

Overall, in six short years, Nepal achieved the following: it ended a decade-long, particularly bloody conflict, marked by major human rights abuses on both sides; it discarded a feudal monarchy and converted from a Hindu kingdom into a secular state; it witnessed the transformation of an armed insurgent group into a political movement that operates within the confines, imperfect as they are, of the Nepali political system; it declared itself a democratic republic and decided in favor of a federal future; and it made significant progress toward a new constitution. Additionally, in an unprecedented move, the US government revoked the terrorist designation of the CPN (Maoist) on August 28, 2012. The turmoil and political bickering that so preoccupy—and rightly so—observers of the Nepali political scene should not obscure those considerable achievements.

## **2.5.2 INCLUSION**

As discussed above, the inclusion dimension is at the heart of the political crisis that has gripped Nepal in the past several years. Step Two will provide further illustrations of the many ways in which that process has been playing itself out. A country once ruled heavy-handedly out of the palaces of Kathmandu, and in which a highly exclusivist view of national identity and unity prevailed, has been fundamentally transformed in the past seven years—even though much remains to be done to overcome discrimination on the basis of caste, ethnicity, gender, and regional affiliation. Ethnic minorities that once were ignored have made their voices heard. Though to a much lesser extent, as discussed further below, women have become more active and visible players as well.

The demand for inclusion emanating from new social forces and their (typically self-appointed) representatives will remain the primary driver of Nepali politics in the coming decade. It will take even more

years before this process runs its course and Nepal’s political system and public sphere can be deemed sufficiently inclusive. As Step Two will discuss, Janajati assertion will be one of the main dynamics that will shape the political context of the next five years and beyond. Other constituencies will step into the fray—it is likely, for instance, that Dalits (an estimated 20 percent of the population) will become increasingly vocal and organized as a political force. Sub-groups based on regional and other attachments also will enter the public sphere as they redefine their identity relative to the larger ethnic group from which they will “unnest” themselves. That will be particularly true if, as recently has been the case with regard to several Janajati organizations, the state provides financial support to particular communities or sub-sets within them.<sup>11</sup>

Nepal still has a long way to go to increase women’s participation in political processes and their influence over governmental decisions. The societal discrimination, domestic violence, and other abuses in both the public and private spheres to which women continue to be subjected (and that are discussed in greater detail in the ROL section below) constitute powerful impediments to women’s ability to participate meaningfully in local as well as national politics. To be sure, the presence of 197 women in the 601-member CA represented an important development, especially in a country where, for hundreds of years, women had been largely invisible in political life. Women members of the CA even formed a caucus to advocate on issues of particular concern to women, and some of them even made their way into several of the committees charged with designing the new constitution. But presence did not confer true influence. Women’s political careers remain dependent on party leaderships controlled by men. That dependence constricts women’s ability to advocate, on gender-related and other issues alike, for positions that are not consistent with those of their male colleagues, especially in a society and polity in which patriarchal norms still dominate. Women’s ability to move into senior decision-making roles remains hindered not only by those norms, but also by unequal access to education and training opportunities. For instance, as a recent USAID study noted, due to their concentration in the lower echelons of the bureaucracy, women “have fewer chances to attend training and seminars and therefore less opportunity to build skills and find mentors that will promote their advancement in the system.”<sup>12</sup> In the courts as well as in the police force, and from national-level decision-making institutions to local politics and local-governance bodies, women are consistently and seriously under-represented. Because they sit in mostly low- or mid-level positions, they typically face insurmountable obstacles in their efforts to advocate on concerns of direct interest to women, and to enhance the likelihood that public policy will address persistent, serious gender inequalities.

Nepal has distinguished itself as one of three Asian countries to formally grant separate recognition to its community of sexual minorities known as the lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. This recognition, which has been upheld in the country’s courts, provides for the inclusion on identity documents as to the individual’s sexual preference. However, the implementation of these provisions has lagged behind the formal approval of this process, with very few third-gender ID cards or passports actually being issued. Despite the lagging implementation, Nepal has developed a reputation as a haven for the international LGBTI community, with the first and high profile public lesbian marriage taking place between an American and a Nepali in 2009. Nepal has several LGBTI associations, including the prominent Blue Diamond Society, whose president, Sunil Pant, was elected to the Constituent Assembly. Indian, Pakistani, and Sri Lankan lesbians have increasingly fled to Nepal which has developed an international reputation for its tolerance of LGBTI preferences, even though the practical acceptance of such practices lags behind the formal endorsement of them.

### **2.5.3 COMPETITION AND POLITICAL ACCOUNTABILITY**

The main constraints on competition were highlighted earlier, and they are indeed significant. There is intense competition in the Nepali political system, but that competition takes place mostly within a narrow circle of

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<sup>11</sup> For instance, some of the Rai sub-communities have begun to differentiate themselves from the larger clans within which they historically were subsumed.

<sup>12</sup> USAID, “USAID Nepal Country Gender Analysis,” (Washington, DC: USAID/A/ME, 2011), p. 9.

elites that are not truly accountable to their base. These elites are prone to backdoor decision making that often makes a mockery of transparency and accountability principles. While a significant amount of contestation takes place, it is far too often of the debilitating type with regard to its impact on the country's political and socioeconomic development prospects. Contestation is mostly about personal positioning and self-aggrandizement, undercutting rivals, securing greater access to the spoils of the system, competing over power and economic advantages (especially over state resources)—and only very secondarily about policy disagreements. Moreover, it is still often accompanied by at least a degree of “targeted violence”—for instance, when parties mobilize gangs or paramilitary youth groups to undermine their rivals (though, as will be discussed further below, violence pitting various parties' youth wings against each other has decreased markedly in the past two years).

As the relevant discussions of civil society and the media in Step Two will document, media and civic leaders operate under significant constraints, both legal and extra-legal. They—especially the former—routinely are the victims of harassment, intimidation, and even physical violence. Indeed, journalists know that expressing certain opinions could cost them their life, and a significant degree of self-censorship does exist as a result. Still, and without downplaying the above constraints on competition, it is important to put them in historical perspective and highlight at least three main positive developments in this area.

- a) *Elections*: Independent analysts and international monitors alike described the critical 2008 CA elections as having been, by and large, reasonably free and fair. That and the generally recognized professionalism of the Election Commission (EC) represent significant achievements, as the relevant discussion of electoral processes in Step Two discusses in greater detail.
- b) *Media and civil society*: For all the legal and extra-legal constraints on their activities, journalists and civil society leaders operate with a degree of freedom that would have been unimaginable under the monarchy—especially as recently as 2005, when King Gyanendra was engaged in a major political crackdown. The legal framework for civil society and the media, though still inadequate by modern democratic standards, has been improved. Nepal's public sphere is more open today than it has ever been. The country now witnesses wide-ranging debates on a broad range of issues that would have been considered out-of-bounds a decade ago. The space for critical media coverage and nongovernment organization (NGO) activity has expanded rapidly and significantly in the past seven years (see Step Two for elaboration).
- c) *Pluralism of politics*: The extremely fragmented nature of the current political landscape hinders any single political faction's ability to impose itself and its views on the others. Fault lines run deep—not only between parties, but within them as well—as will be shown in the examination of the internal dynamics of these parties in Step Two. There are so many players and potential spoilers today, and the divisions within every single political organization manifest themselves along so many crosscutting lines (personal rivalries and ambitions, opportunistic considerations, as well as disagreements over strategy and tactics) that it has become difficult to envision any form of hegemonic domination that could be sustained over time. To be sure, factionalism and infighting are debilitating from a policymaking perspective, since a multiplicity of players with conflicting agendas and demands are pulling the country in many conflicting directions, with the ultimate result often being political stalemate and policy paralysis. But from a competition perspective, that situation creates a genuine degree of pluralism. By the same token, increasingly frequent and significant shifts in alliances and coalitions among parties has rendered politics much more fluid, and the lines demarcating political organizations far less sharply delineated, than used to be the case. Meanwhile, all the main political organizations and leaders also have discovered in the past few years that they no longer can assume the automatic political support of constituencies they once took for granted. From a competition perspective, these developments contain positive elements.

## 2.5.4 RULE OF LAW

As noted earlier, the high degree of impunity that the politically connected enjoy, their occasional reliance on “targeted” violence to achieve political objectives, and pervasive, institutionalized corruption all undermine the ROL in Nepal. De facto denial of justice is particularly common in rural areas, where individuals’ first response to perceived infringements on rights is not to go to the courts or the police (they often have little faith in those institutions) but to seek access to an influential local figure who might intercede on their behalf.

Access to justice remains a particular challenge for the poorest and most marginalized groups, as well as for women. That situation reflects, in part, the persistence of discriminatory provisions in the existing legal system, and in part, the unwillingness or inability of law enforcement officials to enforce those provisions that do exist and provide for legal recourse. While the judiciary is generally perceived as enjoying a degree of independence, that is far more true with regard to appeals courts, and especially, the SC than with respect to the lower tribunals. At the grassroots level, the independence and caliber of judges, the administrative capacity of courts to process cases, and the overall environment in which the justice system operates are often highly problematic. Many courthouses destroyed during the war have yet to be rebuilt. Resources, equipment, and budgets are grossly inadequate. Inefficiency, case backlogs, and (at best) inconsistent enforcement of court decisions are the norm. The machinery of the justice system, especially outside Kathmandu, is antiquated and moves very slowly. Cases are frequently withdrawn after political pressure is applied.

From the national level down to villages, investigation and prosecutorial capacities are especially inadequate. Indeed, deficiencies in those two areas represent one of the weakest links in the justice sector: even if there is political will to put those guilty of crimes behind bars, that will not happen if evidence collection, preservation and presentation is defective. While the legal community represents a force that politicians have to think twice before alienating, that community enjoys, in society at large, very few allies upon whom it could rely to advance a ROL agenda vigorously and effectively.

Human trafficking, often carried out with the complicity of politicians and local- and national-level government officials (especially customs agents and border police) continues on a large scale. Experts estimate that nearly 400,000 women and girls were trafficked to India between 2005 and 2010.<sup>13</sup>

Meanwhile, the gross human rights abuses that took place during the war have yet to be investigated, let alone prosecuted, and the victims or their families have yet to receive justice. As Human Rights Watch has noted, “many victims’ families have identified alleged perpetrators of extrajudicial killings and enforced disappearances, and provided evidence to the police. But time and again, the police have been derelict in their duties, and failed to conduct investigations, even in the face of Supreme Court orders.”<sup>14</sup> From the Nepal Army and the police to the Maoists and other political parties, those responsible for war-era human rights violations have no interest in a serious accounting of those crimes—let alone one that would result in the perpetrators being punished. A conspiracy of silence thus prevents justice from being carried out. Even though the November 2006 Comprehensive Peace Agreement (CPA) called for the establishment of a truth and reconciliation commission, it seems extremely unlikely that such a body will see the light of day any time soon, especially now that the issue has been eclipsed by the federalism debate. As Human Rights Watch has concluded, “all signs are that those responsible for HR abuse will be allowed to go free. To add insult to injury, in some cases of alleged wartime human rights violations, the alleged perpetrators are being promoted, appointed into senior government positions, or allowed to go on peacekeeping duties without ever facing a genuine and independent investigation.”<sup>15</sup>

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<sup>13</sup> Lok Raj Baral with Raymond Lu, “Countries at the Crossroads 2010: Nepal,” (New York: Freedom House, 2011), p. 8.

<sup>14</sup> Human Rights Watch, “Adding Insult to Injury” (New York: Human Rights Watch, 2011), p. 1.

<sup>15</sup> Ibid.

In addition to those already discussed, certain ROL deficits directly relate to human rights violations. They fall under three main categories:

- a) *Social discrimination against lower castes, women, and persons with disabilities:* This phenomenon is particularly pronounced in rural areas, but it is pervasive elsewhere as well. Even though discrimination based on caste has been criminalized since May 2011 (via the “Caste Discrimination and Untouchability Act”), the practice remains widespread.<sup>16</sup> Across castes and ethnic groups, women suffer from the greatest levels of discrimination, especially on issues such as marriage, inheritance, transmission of citizenship to children, divorce, and protection against violence.<sup>17</sup> Dowry-related violence and sexual assault of women remain widespread and are rarely prosecuted. As Human Rights Watch recently observed, “sexual violence cases are often settled in private and, even when complaints are filed, police rarely carry out investigations.”<sup>18</sup> Discrimination against women stems from both discriminatory provisions in existing laws and the disregard of those legal provisions that are supposed to protect women’s rights. Widows face particular social stigma, while traditional beliefs about witchcraft often result in physical abuse of women, especially in rural areas. Dalit women are particularly affected.<sup>19</sup>
- b) *Abuses by the security forces:* These practices include excessive use of force while arresting and/or detaining individuals, routine disregard for the 48-hour maximum detention period (until formal charges are filed) for which the law provides,<sup>20</sup> and the occasional resort to torture of prisoners.<sup>21</sup> As worrisome as the excesses themselves (and contributing to their perpetuation) is the GON’s consistent failure to punish their perpetrators. Meanwhile, conditions in both prisons and detention centers remain extremely poor.
- c) *Harassment of, and violence against, Tibetan refugees:* In recent years, and allegedly due to pressure by the Chinese government to prevent protests over Chinese rule in Tibet, Tibetan refugees in Nepal have faced an increasingly precarious situation. Many have been the victims of arbitrary arrest and detention while others have been forced to return to China. Tibetan detainees routinely experience beatings and other forms of mistreatment. There have been reports of sexual assault of women among them, both while carrying arrests and in detention. <sup>22</sup> In 2008 alone, the authorities are believed to have arrested over 8,000 Tibetan refugees (out of a total population of 20,000 Tibetan refugees in Nepal) over the short span of four months.<sup>23</sup>

For all the weaknesses that exist in the ROL sector, two bright spots can be mentioned. The first relates to the SC. In the past several years, the SC has asserted its authority and independence from political interests on several critical occasions, as discussed further in Step Two. For instance, when in the fall of 2011 the

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<sup>16</sup> See US Department of State (DHL), “2011 Country Reports on Human Rights Practices: Nepal” (Washington, DC, 2012), p. 22.

<sup>17</sup> USAID, “USAID Nepal Country Gender Analysis,” (Washington, DC: USAID/A/ME, 2011), pp. 15-16. For further information about how citizenship laws continue to discriminate against women, and how the draft constitution approved by the political parties prior to the CA’s disbanding did not provide for any significant improvement to that situation, the reader may refer to International Crisis Group, “Nepal’s Constitution (II)” (September 2012), p. 29.

<sup>18</sup> Human Rights Watch, “Nepal: Country Summary” (New York: Human Rights Watch, 2012), p. 4.

<sup>19</sup> US Department of State (DHL), “2011 Country Reports on Human Rights Practices: Nepal” (Washington, DC, 2012), pp. 24-25.

<sup>20</sup> According to the State Department, in 2011 “pretrial detention often exceeded the period to which persons subsequently were sentenced after a trial and conviction” (“2011 Country Reports on Human Rights Practices: Nepal” [Washington, DC, 2012], p 9).

<sup>21</sup> Advocacy Forum, a human-rights NGO who interviewed 4,187 detainees between January and December 2011, stated that 689 of them (approximately 16 percent) reported having been subjected to torture by state agents. The Department of State, which relayed that statistic in its most recent human rights report on Nepal, notes that in 2011 the GON “generally failed to conduct thorough and independent investigations of reports of security force brutality and did not take significant disciplinary action against those involved” (“2011 Country Reports on Human Rights Practices: Nepal” [Washington, DC, 2012], p. 5).

<sup>22</sup> Human Rights Watch, “Nepal: Country Summary” (January 2012), p. 4.

<sup>23</sup> Bruce Vaughn, “Nepal: Political Developments and Bilateral Relations with the United States” (Washington, DC: Congressional Research Service, 2011), p. 10.

cabinet recommended to President Yadav that he pardon a Maoist party member who was sentenced to life in prison for murder, the SC specifically ruled that the president could not do so. The November 2011 SC's ruling that the term of the CA could not be allowed to stretch beyond one final six-month extension was a courageous decision as well, and one that went against the preferences of a majority of the political establishment. Many Nepali observers were encouraged by those developments, which stand out as the only clear instance of a governmental institution standing up to the country's dominant political interests.

The second major positive development in the ROL area in the past two years has been the sharp decline in the number, size, and activities of armed groups. As Step Two will discuss in further detail, the reestablishment of an effective police presence in many rural areas, tighter security measures by the authorities, as well as successful talks between the government and armed outfits all have contributed to that process. Thus, activities by armed groups, viewed as a major and worrisome problem back in 2008-2009, is no longer regarded as a significant threat today.

## **2.5.5 GOVERNMENT EFFECTIVENESS AND ADMINISTRATIVE ACCOUNTABILITY**

With the partial exception of a few agencies, institutional performance is very low across the state bureaucracy and at all levels of government, from Kathmandu down to the local level. This situation reflects not so much institutional deficiencies that could be remedied through standard public administration reform, but the nature of a system dominated by the logic of clientelism and state capture. The state truly does what it has always done and what the dominant political players continue to expect it to do: it functions as a venue for the distribution of patronage intended to sustain the power of elites. It consistently fails to provide even basic services because that is not the primary role that key actors in the political system envision for it. It is resilient to institutional reforms in the direction of better governance for the same reason.

Absenteeism is a major problem throughout the bureaucracy. It reflects a combination of factors, including low salaries, the absence or weakness of monitoring and accountability mechanisms, and the protection from which one benefits if one enjoys the right political connections. The frequent rotation of civil servants at both the national and local levels also represents a major cause of institutional dysfunction. On average, local civil servants are moved out of their position every 18-24 months. That phenomenon impedes the accumulation of expertise and know-how in any given sector of the bureaucracy. It also undermines institutional memory and raises serious questions about the potential long-term gains that might result from training activities. Yet, it is built into the system, since every time a new minister is appointed, he or she appoints to civil service positions his/her own set of clients, who act in similar fashion for lower levels of the bureaucracy. Due to the game of musical chairs being played in the corridors of power in Kathmandu, and because of the increase in the number of parties and factions that have demanded and received a role in government, civil servants' rotation in and out of positions has become almost an institutionalized practice.

High levels of absenteeism and frequent rotation of civil servants have a particularly debilitating impact on the coherence and effectiveness of public policy making and implementation. Other ubiquitous problems that feature in this equation include the lack of adequate incentives structures; the absence of any real human resources policy and strategic management across the civil service; the lack of top leadership in key agencies because political parties cannot agree on the proper persons (see below); the peripheral role that merit, performance, and competence play in appointments and promotions; poor record keeping and management; low cooperation across state agencies; and organizational confusion, marked in particular by the existence across the executive bureaucracy of multiple authorities with poorly delineated and frequently overlapping roles and responsibilities.

Meanwhile, there has been no meaningful progress on the anti-corruption front. In fact, the situation in that area has deteriorated steadily in recent years, as reflected in Nepal's scores and ranks in Transparency International's Corruption Perception Index (CPI). Institutions tasked with fighting corruption—most prominent among them the Commission for the Investigation of Abuses of Authority (CIAA), Special Court, Auditor General's Office, Public Accounts Committee, and Public Procurement Monitoring Office—have yet to be empowered, due to a clear lack of political will to do so. Revealingly, the CIAA has been waiting for

someone to be appointed to head it for several years now. Lack of leadership, credibility, and human and financial resources have hobbled all five institutions above.

The Public Accounts Committee and the Auditor General’s Office are tasked with monitoring state spending and reviewing the financial reports submitted by state agencies. Their shortcomings, therefore, represent major hindrances to progress on the transparency and accountability fronts, especially since waste, mismanagement of resources, and embezzlement are widespread across state agencies. Along similar lines, the institutional weaknesses of the Public Procurement Monitoring Office are particularly problematic since government contracts are a major source of corruption.

The Special Court was created in 2002 with the specific task of handling corruption cases. The CIAA, which under the interim January 2007 constitution serves as Nepal’s lead anti-corruption agency, has been granted, at least on paper, investigative and prosecutorial powers (it also serves as an ombudsman’s office). It is supposed to turn the results of its investigations over to the Attorney General’s Office and to government prosecutors, who in turn are expected to plead corruption cases before the Special Court. The Attorney General’s Office, however, is vulnerable to political interference, and as discussed above, prosecutorial capacities in Nepal are underdeveloped. The impact of the CIAA’s investigations is diminished accordingly. It is not surprising, therefore, that while the CIAA occasionally has pursued aggressively corruption cases against prominent politicians, few such cases have resulted in convictions. Besides, the army, the private sector, and the judiciary (which are the sources of many of the most significant corruption cases in the country) remain outside the CIAA’s jurisdiction. Until these problems have been resolved, the CIAA’s credibility in the public eye will remain low, and that lack of trust, in turn, will continue to thwart its ability to carry out effectively its official functions. On the other hand, there is now much wider media coverage of corruption issues than used to be the case, and the CIAA has been a primary source of material on this subject. Journalists who do report extensively on those issues, however, are vulnerable to retribution, from intimidation and threats all the way to physical attacks.

## **FIGURE 2.2. CORRUPTION PERCEPTION INDEX EVOLUTION IN NEPAL’S RANK AND SCORE, 2004-2011**

Note: Scoring is on a scale from 0 (“Highly Corrupt”) to 10 (“Very clean”). In 2011, New Zealand received the highest score (9.5) and Somalia the lowest (1). Nepal has been included in the rankings since 2004. Since then as well, the number of countries assessed has ranged from 145 in 2004 to 183 in 2011.

Year	Nepal’s rank /number of countries assessed	Nepal’s Score
2004	90/145	2.8
2005	117/158	2.5
2006	121/163	2.5
2007	131/179	2.5
2008	121/180	2.7
2009	143/180	2.3
2010	146/178	2.2
2011	154/183	2.2



## 3.0 STEP TWO: KEY ACTORS AND INSTITUTIONS

As Step One discussed, the primary driver of Nepali politics in the past two decades has been the rapid and marked expansion of the politically relevant and politically active strata of the population. A combination of social, political, and economic trends have propelled new actors and constituencies to the fore of the political scene, and the more assertive and better organized of these constituencies have placed demands on the political system to which the latter has struggled to respond. The identity of the actors examined in this section, and the sequence in which they are presented, reflect that dynamic as well as the key role that Step One placed on the inclusion variable. The nature of the actors discussed below also is consistent with the key role that political parties have played in shaping the country's political life. Having discussed the key actors that give Nepali political life its distinctive tempo, this section examines more briefly a few key institutional sectors (executive, legislature, civil society, media and the like) and arenas (such as regional forces and dynamics) that affect Nepali politics and/or provide the venues within which it is conducted.

### 3.1 KEY ACTORS

This section begins by focusing on five key actors that are introduced according to a timeline that reflects their former status as the country's dominant players, in the case of the NC and the Communist Party of Nepal–United Marxist Leninists (CPN-UML or UML), or their more recent appearance as forces to be reckoned with (in the case of the Maoists, now the single most potent political force in the country, the Madhesi, and most recently, the Janajati). The analysis then proceeds with an examination of two additional actors: socially conservative forces (referred to in this section as “conservatives”), who, under some circumstances, could witness a rise in their presently limited political influence; and Dalits (the so-called “untouchables”), who are likely to experience an increase in their political power in the next few years.

To provide consistency with the analysis presented in Step One, the discussion below highlights the specific nature of the contributions that key actors have made, are making, or are likely to make to the process of expanding political participation to an ever broader and more diverse array of constituencies. These actors' respective positions on the process of state restructuring are discussed as well, since that process is likely to be critical to the remaking of Nepali politics in the next decade. This sub-section concludes with observations that explicitly relate its detailed, “granular” analysis of key political actors with the broader themes Step One highlighted, and in particular what it identified as Nepal's core DRG challenge. Above all, the focus on political parties below reflects Step One's emphasis on parties and party leaders being the country's pre-eminent political, social and economic actors; on these parties having operated as the principal vehicles through which demands for inclusion have been articulated; on their role as “agents of institutional non-performance;” and on the contributions that party rivalries and elite maneuvering have made to the current crisis of consensus.<sup>24</sup>

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<sup>24</sup> For detailed, insightful analyses of political parties in Nepal and of their roles in the dynamics analyzed throughout this report, one should consult the various International Crisis Group (ICG) reports issued in the past several years. One of the two August 2012 ICG reports features an up-to-date examination of the political party scene, of trends within each of the major parties, and of the challenges that parties in Nepal currently face. See “Nepal's Constitution (II): The Expanding Political Matrix.” Three ICG reports published in 2011 also contain sections that are devoted to each of the major political parties: “Nepal: Identity and Federalism,” “Nepal's Peace Process: The Endgame Nears,” and “Nepal's Fitful Peace Process.”

### 3.1.1 THE NEPALI CONGRESS

Established in 1948, the NC is the oldest democratic party in Nepal. It has been at the forefront of the democratic struggles of the past 60 years, even though, as is true of all other parties, its internal structures and operations leave a lot to be desired from a democratic perspective. Former NC leader (and Nepali Prime Minister) G.P. Koirala, who died in March 2010, was well-known for making decisions without much consultation, and that legacy is still felt today, as the party's top leaders (who are engaged in recurrent infighting) tend to monopolize decision making, creating much frustration among "second generation" cadres in particular. That being said, the NC spearheaded Nepal's first struggle for democracy in the early 1950s. Four decades later, it again led the democratic movement of 1990-1991 that called for a constitutional monarchy and the establishment of a multiparty system. On issues such as what a party should look like, how it should be organized, and how it should conduct its affairs, the NC has served—directly or indirectly—as a model, or at least as a basic frame of reference, for the many other democratic parties that have appeared since the 1990s. The NC also has longstanding, close ties to India's political establishment.

As of this writing, the NC and the UML (discussed below) constitute the main opposition to the Maoists. In the 2008 elections to the CA, the NC captured the second largest number of seats (19.1 percent), after the Maoists (38.2 percent) and slightly ahead of the UML (18.1 percent). Historically, the NC had been the most influential party in the Terai, but its position there is now much weaker than it used to be. That situation reflects the expansion of grassroots mobilization among the Madhesi, the NC's inability to respond effectively to the new demands that emerged as a result of that process, and the rise of a new generation of Madhesi politicians. The absence of prominent Madhesi figures in top leadership positions within the NC also undermined that party's ability to retain the allegiance of the Madhesi.

From an inclusion perspective, the NC's main contributions were threefold.

- a) First and foremost, by playing a key role in the onset of the democratic movement in February 1990, the NC challenged the idea that the monarchy should have unchecked powers. Similarly, by calling for the establishment of a multiparty system, the NC threw its weight behind the idea that participation ought to be expanded to a broader range of constituencies, and that these constituencies' representatives should have a say in decision making.
- b) Second, through its leadership of the pro-democracy movement, the NC was instrumental to the broadening of political space, thus making it possible for other groups that did not necessarily fall under the aegis of the party to articulate their own demands and grievances, including some related to language, culture, and identity. In the process, the NC contributed to the questioning of the narrow definition of Nepali identity that had prevailed until then.
- c) Finally, in 2005-2006, the NC played a leadership role in the alliance the parliamentary parties struck with the Maoists against the monarchy. Reaching out to the Maoists in order to sideline the monarchy created much trepidation among the mainstream parties. The NC's leadership throughout that process was critical. The consequent abolition of the monarchy and the integration of the Maoists (and of the newly mobilized constituencies they brought with them) into the formal political system represented yet one more critical step toward a far more inclusive political arena.

While back in the 1950s the NC's social base featured a significant lower-middle class component, the party's membership now comprises predominantly middle class elements, professionals, businessmen, and industrialists. That social base is reflected in the party's left-of-center, social-democratic orientation. While the NC remains a member of the Socialist International, it in fact advocates a liberal democratic path and a free market system with a robust safety net for the poor. It presents itself as a staunch defender of property rights and basic personal freedoms—and as a necessary counterweight to what it implicitly or explicitly describes as the totalitarian ambitions of the Maoists. Beyond that, however, the party's platform remains poorly developed, a liability that could cost the party dearly in the next elections.

In recent years, the NC has struggled to adjust to Nepal's new political environment. It has had to come to terms with the fact that reflexive anti-Maoist stances no longer automatically receive the support of India. It has yet to show that it can go beyond the politics of obstruction, rejection, and delaying tactics that has characterized its stance toward Maoist-dominated governments; and that it can provide the electorate with more than a simple, dichotomous worldview or rhetoric in which it portrays itself as the standard-bearer of democracy while reducing the Maoists to a totalitarian party bent on state capture. The NC has no coherent political program and it even has failed to articulate a clear position on such vital issues as inclusion and federalism. Its leaders are fundamentally divided on such basic questions as whether bringing the Maoists into the mainstream was a strategic mistake, or whether quotas for traditionally marginalized groups are legitimate.

Like the UML, the NC also often lacks a direct physical presence and organization at the grassroots level—and it certainly is hard pressed to compete with the Maoists in that regard. There is a sense that the leadership has neglected party organization, especially at the local level, for years, and that it has no clear strategic sense of its relative strengths and weaknesses in the various constituencies across the country. In this context, it is unclear that the national leadership can expect party branches compliance with its directives at the local level. By the same token, the party is unable to generate much genuine enthusiasm, including among those who vote for it. The latter typically do so because they feel that, for all its liabilities, the NC remains the one party that can be relied upon to protect property rights as well as freedom of expression and association, and to advocate for less government intervention in economic transactions.

The NC's effectiveness and appeal have been further undermined by debilitating and mostly personality-driven infighting at the leadership level, especially between current party president Sushil Koirala and former Prime Minister Sher Bahadur Deuba.<sup>25</sup> Due in part to that infighting, the party's senior leadership no longer exercises over the rank-and-file the kind of authority that is once enjoyed—a phenomenon exacerbated by the perception that national leaders have played their cards poorly and made too many concessions to the Maoists. None of the NC's current main leaders inspire much confidence or generate significant support within the electorate, and at the same time, the party has proven no more effective than its competitors in promoting young members to leadership positions.

The NC thus faces very uncertain electoral prospects. Its main advantage at this point may be simply that since it has not played a key role in any of the governments since 2008, others are responsible for the current disorder and sense of drift. But that is unlikely to buy the party much political mileage. The NC's organizational weaknesses, factional politics, and inability to renew its message—harping, as it does, on its credentials as “the defender of democracy” and as an opponent of identity-based politics—will yield only limited political benefits. Unless the party reinvents itself, rebuilds its organization, energizes its base, actively promotes second generation leaders, finds a way to reach out to historically disadvantaged groups, and puts an end to debilitating infighting, it is hard to envision a bright future for it.

As late as 2006, the NC was opposed to federalism. It has moved on that issue out of perceived political necessity, but in private many of its most senior leaders continue to express great misgivings toward the idea. When in 2007, former NC leader G.P Koirala publicly committed to supporting the Madhesi parties' demand that Nepal be declared a federal state, he did so unilaterally, reportedly without even consulting the party's central committee on the issue. To this day, a large, influential section within the party's top leadership complains that the NC committed itself to supporting federalism without meaningful internal debate. While that section of the party now concedes federalism is unavoidable, it insists that development criteria, economic resources, and geography—not language or ethnicity—should be the basis for delineating the boundaries of the various provinces. Others in the party suggest that the NC should take a more proactive position on federalism, if it is to retain the support of key constituencies in the country, but they, too, want federalism to be linked to development, not ethnicity or culture. Only a minority within the NC—typically

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<sup>25</sup> Those disputes even led to a four-year long formal split of the party into two entities that eventually “reunited.”

local leaders from indigenous and Madhesi background—actively support ethnic federalism, and threaten to leave the party if it does not adopt a position that is more consistent with their views.

Thus, the official stance of the NC on federalism is acceptance of the principle, as long as it entails the creation of multi-ethnic states—a position that in July 2012 the party formally declared as its “bottom line” on the issue. One red line for the party is naming the states-to-be after a single ethnic group, an idea to which the NC is firmly opposed. The main rationale for naming states after a single ethnic group (presumably the largest such group in any given state) would be to confer special advantages to that group, an outcome which the NC views as neither desirable nor feasible (since no single ethnic group would represent more than a relatively small plurality in any of the states to be created). The NC also favors a smaller number of states; in particular it has floated a proposal that would entail the creation of five or six federal provinces, two of them solidly in the Terai, but all of them with some access to the southern border.

### **3.1.2 THE COMMUNIST PARTY OF NEPAL—UNITED MARXIST LENINISTS**

The UML, currently Nepal’s third largest party, emerged in the early 1970s (when political parties were still banned) as a small Marxist movement initiated by radical youth in their late teens and early twenties, who first made a name for themselves when they beheaded nine landlords. A few years later, the UML formally renounced violence, but continued to operate underground, progressively expanding its influence. In 1990, the UML collaborated with the NC to demand the establishment of a multiparty democracy. A year later, it took part in the parliamentary elections and became the second largest party after the NC in the National Assembly. At the time, the UML differentiated itself from the NC in two main respects. Politically, it openly advocated the establishment of a secular republic, while the NC remained wedded to the concept of Nepal as a Hindu monarchy. On socioeconomic issues, it was clearly to the left of the NC, advocating for instance a greater level of income redistribution.

The UML developed a strong base of support among the lower middle class, the working class and Janajati, though the dominant position it had enjoyed among the Janajati was challenged by the Maoists after the latter entered the political scene. From an inclusion perspective—in particular with respect to the main trend highlighted in Step One, i.e., the steady broadening of political participation to include an ever broader array of constituencies—the UML’s main contribution during the 1980s, and especially during the 1990s, stemmed from the party’s success in reaching out to lower-middle and working class elements, particularly long marginalized ethnic minorities, and in bringing them into mainstream politics to a far greater extent than the NC had been able to achieve.

Infighting within the UML has been as debilitating as that raging within the NC. The party is divided into two main factions: one headed by party chairman and former PM Jhala Nath Khanal, and the other by former PM Madhav Kumar Nepal. While the rivalry is based largely on personal animosities, it also reflects differences regarding strategy and tactics. For one, until 2011 (when the Maoists played an instrumental role in his having to relinquish the prime ministership), Khanal consistently advocated in favor of engaging with the Maoists, whereas Nepal headed a more openly anti-Maoist and conservative camp within the party. Other sharp internal disagreements relate to what the party’s stance should be regarding India and state restructuring (the Khanal faction for instance, has shown a far greater level of commitment to federalism than the Nepal faction, which at best is lukewarm toward the idea). These divisions (and the fact that, as is true of other Nepali parties, the UML’s behavior is driven largely by opportunistic considerations) largely explain why between May 2009 and July 2010, the UML led a strongly anti-Maoist government, while from March 2011 through May 2012, it presided over a government backed by the Maoists.

From among all the mainstream parties, the UML faces the greatest challenges when it comes to its political future. In terms of both its ideological appeal and its social base, it is threatened by parties that are encroaching on its traditional electorate. From the left, for the allegiance of lower-middle and working classes as well as ethnic minorities, it is challenged by the Maoists, which have displaced the UML from the perch the party once occupied at the top of Nepal’s left. Meanwhile, as a party that can claim to stand for democracy due to its proven commitment to mainstream democratic politics, the UML faces competition from the NC,

which has long posed as the standard bearer of democracy in the country. Even more importantly, the UML will suffer from the formation of at least one, and more likely several Janajati parties. Most UML members from Janajati and Madhesi backgrounds are unhappy with their party's opposition to single ethnicity-based federalism and are threatening to leave the party. In July 2012, dissident Janajati leaders of the UML took strong exceptions to the decision of the party's Standing Committee to oppose reinstatement of the CA, and one of those dissidents (Ashok Rai, one of the party's vice chairmen) portrayed the decisions as symptomatic of what he described as the UML's "regressive thinking" toward ethnic minorities. These challenges are reflected in the perceived decline of the party nationwide and in its diminished organizational strength and vitality at the grassroots level. For those reasons, analysts believe that the UML would not fare well if elections were held today, and that it is likely to emerge as the main loser in the next elections.

Regarding state restructuring, the UML leadership has made it clear that it views single ethnicity-based federalism as unacceptable. In an interview on July 9, 2012, the UML General Secretary stated that the UML is committed to the principle of seven multi-ethnic provinces/states. The name of each state would refer to the two dominant ethnic groups in it and to the shared geographical name of the region out of which that state would be carved out. For instance, the province in the east would be named "Limbuwan, Khumbuwan-Koshi." During the final negotiations on federalism that preceded the dissolution of the CA, the UML and the NC collaborated closely to put forward a unified stance on that issue. Since then, some key UML leaders have opposed the idea of federalism altogether, while others have demanded that a national referendum be held on the issue.

### **3.1.3 THE MAOIST PARTIES**

#### **THE UNIFIED COMMUNIST PARTY OF NEPAL (MAOIST)**

On February 4, 1996 the Maoist party launched an insurgency that would last 10 years. Since then, the Unified Communist Party of Nepal (Maoist) [UCPN(M)] has been instrumental in reshaping Nepal's political landscape. The party came into the political mainstream in several stages in 2005-2006: by signing the September 2005 12-point agreement with the mainstream Seven-Party Alliance (led by the NC and UML) to form a common front against King Gyanendra; by deciding to suspend its insurgency in May 2006 and by agreeing to a ceasefire that delivered a durable military truce; and by institutionalizing its decision to enter the peace process and renounce violence by signing the CPA in November 2006, when the party agreed to give up its weapons. The UCPN(M) participated in the elections to the CA in April 2008 and—to its surprise and that of most observers and political actors—it became the largest force in it with 218 out of 601 seats.

Even though the Maoists are undergoing significant turmoil today—as discussed further below, one section of the party formally broke from it in June 2012, while the rest of the UCPN(M) remains deeply divided—overall the Maoists still represent the dominant and best organized political force in the country. They can tap into a broad pool of experienced cadres (over 40,000 of them nationwide) and their mobilization capacity far exceeds that of other parties. It is revealing that while no party seems particularly eager to face the electorate, Maoist PM Bhattarai's May 27, 2012 decision to disband the CA and call for fresh polls seemed to suggest that the Maoists felt more confident about their overall level of political support in the country than was true of the NC and the UML.

The Maoists are, by far, the best financed political machine in the country. The UCPN(M) as well as its leaders have amassed considerable wealth, and the Maoist leadership can be said to preside over an economic empire as much as over a political organization. Throughout the 10-year long civil war, the Maoists extorted millions of dollars from Nepali businessmen (for whom paying the Maoists became part of the cost of doing business). After the conflict came to an end, the UCPN(M) received a fixed share (1,000 out of 7,500 Nepali Rupees) of the stipend that the state paid to each ex-Maoist combatant in the cantonments. As importantly, because the Maoists greatly inflated the number of those ex-fighters, the party received the entire stipends allotted for thousands of combatants who in fact did not exist. More recently, the party received a percentage of the voluntary cash payments extended to thousands of ex-fighters as part of the demobilization agreement. Perhaps most significantly, the UCPN(M) has led or been part of most governments since 2008, and it is solidly embedded in local governmental and political structures. It is widely assumed that, as a result, it has

been able to divert to party coffers—and to individual Maoist leaders—a significant amount of state resources. One well-informed analyst suggested that the party sits on assets (including land, capital investments, and companies controlled by individuals who operate as fronts for the Maoists) worth over \$600 million.

From the perspective of this report's central themes—the rapid and unprecedented social mobilization Nepal has experienced in the past 15 years, the expansion of the politically relevant strata of the population to include henceforth marginalized communities, and the divisive issue of ethnic-based federalism—the primary historical significance of the Maoists has been twofold.

- a) First, between 1996 and 2006, the Maoists played a critical role in the social and political mobilization of the lower classes and castes (including Dalits) as well as ethnic minorities (the Janajati). At the grassroots level, down to the smallest and most isolated villages in the hills and plains alike, they challenged old hierarchies and decision-makers associated with the higher castes. By so doing, they were instrumental to the undermining of once resilient power structures.
- b) Second, the Maoists mobilized the constituencies above not only by invoking class-based rhetoric but also by tapping into identity- and ethnicity-related themes and grievances. The current salience of those themes, therefore, is part and parcel of what the Maoists brought with them to the negotiation table in 2006. Even today, the UCPN(M)'s insistence (at least in public) on identity being a cornerstone of state restructuring is one of the features that most distinguishes it from the other two main political forces (the NC and the UML). On July 13, 2012, UCPN(M) Chairman Puspa Kamal Dahal (better known as Prachanda) publicly warned against what he portrayed as the danger of a “counter-revolution” by “reactionary forces” bent on stopping federalism and preventing marginalized communities and ethnic groups from achieving their rights. He then called upon the formation of a broad front of forces aimed at advancing the federalist agenda.

The Maoists' main social base reflects that history, and consists of the more economically disadvantaged strata of the population—constituencies that historically have felt left out and neglected. Of the three main parties, the UCPN(M) has been the most effective at recruiting the Janajati, and it is currently engaged in a desperate effort to prevent an exodus of Janajati activists in its ranks to the Janajati party(ies) that are likely to emerge soon. The UCPN(M) has a nationwide presence and is particularly influential in the hill areas and the Terai.

The Maoists have become part of the political mainstream in several important respects: through their avoidance of violence; by participating in the peace process, elections, and parliamentary politics; as well as through marked changes in their rhetoric. For the sake of moving the peace process and constitution-drafting processes forward, the Maoists have made significant compromises (including giving up the People's Liberation Army). At the same time, the UCPN(M) has maintained a rhetorical ambivalence and vagueness regarding its ultimate goals that have fed its political opponents' deep suspicion of its motives.

In short, the party remains caught between, on the one hand, its effort to refashion itself as a pragmatic, mainstream political force, and on the other hand, its revolutionary, anti-system, violent past, a rhetoric that continues to feature militant claims, as well as patterns of behavior that justify skepticism about its ability to operate within a democratic framework. The most relevant issues in this context include the following.

- a) Philosophically, the UCPN(M) has not abandoned Marxist rhetoric and remains nominally wedded to the goal of establishing a socialist state. It continues to use the language of state capture. It has yet to internalize the values and principles associated with a democratic, open society, including the rule of law, constitutionalism, human rights, the primacy of individual freedoms, the right to private property, and the need for accountability and transparency.
- b) It has expressed no regret for its use of violence, extortion, expropriation, kidnappings, and other human rights abuses during the 10-year long civil war.

- c) It has not ruled out a new insurrection—indeed, it explicitly has mentioned that such an option remains on the table if “reactionary forces” prevent the party from making significant progress toward its main policy goals.
- d) Party leaders proclaim that down the road they still intend to restructure the current multiparty parliamentary system into one that will concentrate power in the single office of a directly elected president. They have not given up on their long-term objective of creating a strong presidential regime and describe their willingness to operate within the confines of the present system only a short-term compromise.
- e) The party has been slow to return land it seized during the war years to its original owners, even though it committed itself to doing so under the 2006 CPA and again in the 2011 Seven-Point Agreement.
- f) Cases such as that of former UCPN(M) MP Bal Krishna Dhungel have done little to reassure those who believe that the Maoists simply cannot be trusted to deliver on ROL issues. In January 2010, the SC convicted Dhungel of involvement in the 1998 murder of Ujjan Kumar Shrestha of Okhaldhunga. But the police have yet to arrest Dhungel, and the dominant perception is that he will not be brought to justice because of the political support he enjoys from his party’s leadership.

### **THE COMMUNIST PARTY OF NEPAL-MAOIST**

In June 2012, long-brewing internal disputes within the UCPN(M) resulted in a formal split that saw the formation of a breakaway organization, the Communist Party of Nepal-Maoist (CPN-M). The CPN-M is headed by Mohan Baidya (also known by his *nom de guerre* Kiran), who previously had served as senior vice-chairman of the UCPN(M), where he had led that party’s “purist” or “dogmatic” faction. Deep divisions within the UCPN(M) between the “Kiran faction” and the rest of the party’s leadership—especially Prachanda and the party’s main ideologue (and current Prime Minister) Baburam Bhattarai—had been in evidence ever since 2006. At that time, Kiran had opposed Prachanda and Bhattarai’s decision to engage in the peace process and mainstream politics, denouncing it as a betrayal of the Maoists’ commitment to a one-party revolutionary state. In the years that followed, Kiran opposed every single compromise that Prachanda made regarding the peace process.<sup>26</sup>

From an ideological or policy perspective, the Kiran faction’s main argument was that the party had turned its back on its revolutionary ideals and made far too many concessions to mainstream parties and to the existing order of things in Nepal. In the view of Kiran and his supporters, those compromises had betrayed the spirit of the “people’s war” and the sacrifices that rank-and-file members of the party had made during it. The party, as they viewed it, had lost its soul and *raison d’être*. Those arguments resonated with important constituencies within the UCPN(M), which felt bitter at what they viewed as the leadership’s broken promises. From 2011 onward, the Kiran faction became particularly critical of the following:

- a) What it denounced as the “humiliating” terms for the integration of former Maoist combatants into the Nepalese Army (NA) (It opposed the November 2011 Seven-Point Agreement on reintegration, urging that a larger number of ex-combatants be allowed to integrate the NA; that more slots in higher ranks (major and above) be set aside for ex-Maoist fighters; and that additional provisions be

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<sup>26</sup> As is generally the case in Nepal, clashes of personal ambitions and egos also fed into the rivalry between the “establishment/pragmatic wing” of the party headed by Prachanda and its “unreformed revolutionary” faction headed by Kiran. Kiran agitated against Prachanda’s authoritarian leadership and denounced the excessive concentration of power and decision making in the hands of the chairman and a few senior party leaders around him. Decisive as well was the Kiran’s faction’s eagerness to gain access to a greater share of the material spoils under the control of the party, and its resentment at the control that Prachanda in particular exercised over the party’s wealth. Kiran’s complaints about the “lack of transparency” regarding party resources (what these resources were, the amounts involved, and how they were being spent) were not, in fact, about transparency. They were, instead, a call for redistributing economic resources within the party to accommodate the ambitions of one core group of leaders, those associated with Kiran that felt it was entitled to a larger share of the enormous wealth accumulated by the party over the years.

made for ex-PLA combatants with disabilities [who represented an estimated 10-15 percent of PLA combatants as of 2011].);

- b) The party's abandonment of its earlier stated commitment to democratizing and "right-sizing" the NA (a provision which the Kiran faction argued was an essential component of the broader agreement regarding demobilization of ex-Maoist fighters); and
- c) The lack of tangible progress toward real land reform (which, like the democratization of the NA, is called for under the CPA).<sup>27</sup>

Since its formation as a separate Maoist party, the CPN-M has stated repeatedly that it will not abide by the rules of parliamentary democracy and that it may not take part in elections. In July 2012, its leadership even announced it may re-launch a guerilla war next February 4 (the anniversary of its original insurrection in 1996) if it feels at that point it is left with no other means of defending the interests of its base. It is hard to know how seriously one should take those statements, especially when at the same time CPN-M leaders also emphasize their commitment to "friendly" relations with the UCPN(M). Another unknown, as of this writing, is the exact scope of the defections from the UCPN(M) to the CPN-M. By one count, at least one-third of the former UCPN(M) members of the now disbanded CA have left the UCPN(M) for the CPN-M, and their ranks include a majority of those senior leaders who launched the war in 1996. Similarly, out of 149 members on the UCPN(M)'s central committee, 44 left for the new party. Observers agree that what used to be the ideological hard-core of the UCPN(M) has defected to the CPN-M.

While the new party's resources pale in comparison with those available to the UCPN(M), the CPN-M represents a potentially significant spoiling force. It can disrupt daily life, shut down much economic activity, intimidate people (for instance at the polls), and may not hesitate to resort to violence against its opponents. Whether its leadership truly intends to re-launch an insurgency (which could have the effect of cutting it off from the larger share of the spoils to which it aspires) remains a big question mark. If it were to embark on the path of renewed guerilla warfare, it might mobilize former PLA fighters who may have exhausted the cash payments they received as part of the demobilization process, and now feel they have no appealing options in the new Nepal, and little to lose from taking up arms again. It seems doubtful, however, that such an insurgency could gain significant traction, for reasons discussed earlier. In the absence of a major game changer, it would be limited in its geographical scope and in the number of recruits it could mobilize, it likely would fall victim to extreme factionalism, and it probably would soon degenerate into armed banditry and other forms of criminal activities. Besides, many former Maoist cadres in the field, together with the logistical resources they control, have been won over by new, identity-based parties and movements. Most importantly perhaps, the memories of war-generated suffering are still fresh in people's minds, and the emotional and physical scars left by the violence are still there for everyone to see—particularly outside Kathmandu. In this context, it would be difficult to persuade people to take up arms again and put themselves on the path of yet another protracted civil conflict.

Since July 2012, the UCPN(M) and the CPN-M have been at loggerheads over who has a more legitimate claim to the offices and other physical properties around the country of what used to be a single party. In one instance, in Surkhet, CPN-M militants replaced an old sign board that indicated the party offices to be the UCPN(M)'s with a new sign suggesting the same offices were now the CPN-M's ... only to see UCPN(M) cadres bring down that new sign board only two hours later.

The formation of the CPN-M has not resulted in a decline of friction within the UCPN(M)—far from it. The latter party is increasingly split into three main factions associated with, respectively, Prachanda, Bhattarai, and Deputy Prime Minister and Vice Chairman Narayankaaji Shrestha ("Prakash").

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<sup>27</sup> The Kiran faction was always keen to point out that the CPA calls for "parallel commitments" by the Maoists and the state. Thus, for instance, while under the CPA the Maoists committed themselves to returning property seized during the civil war, the CPA also calls for the formation of a commission to explore land reform.



- a) The main and strongest faction is led by Prachanda, who is believed to enjoy the support of over 70 percent of Maoist cadres. Prachanda has headed the UCPN(M) for the past 27 years and he led the party through the 10-year long “people’s war.” His resilience as a leader often has been attributed to his ability to manage the rival factions found in the party and to play them against one another, but recent and ongoing developments suggest that he is finding it increasingly difficult to do so successfully. Within the party, Prachanda is not wedded to a specific ideological position; he is widely viewed as a pragmatic, if not opportunistic leader. By 2004, Prachanda had concluded the Maoists would not be able to take Kathmandu militarily, and that some form of accommodation with other political forces was needed to put an end to the civil war and pave the way for the formal integration of the Maoists into the political process. He argued for a tactical alliance with the monarchy, aimed at sidelining the mainstream parties. However, Baburam Bhattarai, the party’s main ideologue, strongly disagreed. He advocated instead reaching out to the mainstream parties to isolate and neutralize the monarchy. Disagreements between the two leaders grew to the point where Prachanda decided to relieve Bhattarai from all of his party responsibilities and to put him under de facto house arrest in Rolpa. Prachanda and Bhattarai only patched up their differences in 2005, after the king seized all power and engaged in an across-the-board political crackdown. Having argued that the monarchy could not be trusted, Bhattarai felt vindicated by the course of events. But Prachanda remained the undisputed head of the party.
- b) Vice chairman of the UCPN(M) and current Prime Minister Baburam Bhattarai leads the party’s second strongest faction. Although he reportedly enjoys the backing of about one-quarter of the central committee’s members, his support base among the party’s rank-and-file members is much weaker. He is said to command the allegiance of only 10 to 15 percent of party cadres. Two main reasons may explain this phenomenon. First, unlike Prachanda, who enjoys a stature as the party’s historical leader, Bhattarai was not even among the founding members of the party, which he only joined before the 1991 parliamentary elections. Second, Bhattarai is widely seen in the party as too close to India—some denounce him as “India’s man.” Bhattarai has long argued that is an unfair accusation, spread by his opponents and in particular by Prachanda himself, in order to discredit him. Be that as it may, India remains an important factor in the Nepali left’s political discourse: much of the left’s nationalism is built on anti-Indian sentiment in general, and on the allegation that India represents a dangerous “expansionist force” in particular.<sup>28</sup> Consequently, the perception of Bhattarai as “pro-India” is politically damaging to the PM, as is the charge that he is a “revisionist.” For his part, Bhattarai views Prachanda as far too ready to make concessions to the hardliners in the party for purely opportunistic reasons. Ultimately, deep personal animosities represent the single most important source of the friction between Prachanda and Bhattarai. Bhattarai is known to regard Prachanda as a corrupt megalomaniac who is all too prone to engage in revolutionary outbidding while always being ready to sign on any compromise as long as it advances his personal interests. Both leaders have traded accusations of corruption and nepotism for years.
- c) The Prakash faction, which is believed to enjoy the support of about 10 to 15 percent of the party’s cadres, had opposed the launching of an insurgency in 1996 and it split from the mother party when the latter did decide to pick up arms. It reunited with the “mother party” in 2007. Neither Bhattarai nor the Kiran faction (now associated with the CPN-M, as discussed earlier) was keen to bring Prakash and his followers back into the party fold, but Prachanda felt he needed it to maintain his grip on the UCPN(M). Many party members, especially ex-combatants, are hostile to the Prakash faction due to the latter’s decision to sit out the war. They view Prakash and his followers as “free riders”, having avoided the hardships and suffering that other Maoists experienced during the “people’s war”, who came back to reap its benefits after it ended. Against this backdrop, one can understand why the Prakash faction remains grateful to Prachanda for allowing its re-entry into the

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<sup>28</sup> At one point during the “people’s war,” the UCPN(M) leadership had instructed its fighters to dig trenches along Nepal’s southern border to prepare for an all-out war with India.

party, and why it often sides with him in internal power struggles. By the same token, the faction is predictably staunchly anti-Bhattarai and constantly criticizes him for what it denounces as his readiness to compromise the country's sovereignty relative to India.

Because factionalism within the party reflects personal, policy-related, as well as tactical and strategic disagreements that do not always neatly align with each other, it can lead to alliances that may seem counterintuitive. For instance, when Kiran was still affiliated with the UCPN(M), he often found himself siding with Bhattarai—despite their differences over India, the peace process, and what the Maoists' stance should be regarding their main party rivals—because he wanted to break Prachanda's stranglehold over decision making. Similarly, while Bhattarai and Prachanda agree on many key strategic and tactical issues—including the necessity of making compromises with other parties—they have found themselves locked in an intense power struggle. Their disagreement regarding India may contribute to that rivalry, though the former also is largely a consequence of the latter (India providing Prachanda in particular with a powerful weapon with which he can try to sideline Bhattarai).

The July 2012 plenum of the UCPN (M) saw tensions between supporters of, respectively, Prachanda and Bhattarai reach a boiling point. At one point cadres affiliated with the Bhattarai faction hurled chairs at Prachanda, while Bhattarai supporters accused two senior members of the party of manhandling Bhattarai. Several scuffles between the two factions took place throughout the plenum. At one juncture, police personnel had to intervene and Bhattarai had to be escorted out of the plenum hall.

Overall, the Maoists may remain the strongest political force in the country, but they are more divided than they ever have been. Their level of organization and discipline no longer is what it once was. The sense of purpose and organizational cohesion that had been one of their main electoral weapons will not be much in evidence when elections finally are held. Many once-loyalist constituencies (especially former PLA members) have split from the mother party, while those who remain in it are squabbling among themselves. Prachanda's image and credibility have dipped. While it is true that the party's considerable wealth allows it to maintain extensive patronage networks that provide it with a definite political edge, it also is the case that the party will not be able to run with the same anti-establishment message that characterized its 2008 campaign. After all, the Maoists have led three out of the four most recent governments, and they arguably are more enmeshed in the country's political economy than any of their rivals.

The actual position of the UCPN(M) vis-à-vis state restructuring is hard to pin down, and there appears to be a disconnect between what senior party leaders proclaim in public and what many of them reportedly favor in private. Publicly, Prachanda and others have stated that federalizing Nepal on the basis of identity (ethnicity) is “non-negotiable”—a stance that reflects, to a large extent, the leadership's determination not to lose the support of key Janajati and Madhesi constituencies. Yet, even publicly, the party has changed its official position several times regarding what the number of states should be. In its 2008 manifesto for the elections to the CA, the UCPN(M) had proposed 13 provinces—eight in the hills and five in the southern plain—with sub-units delineated to provide a degree of autonomy to geographically concentrate ethnic groups and/or to protect particularly small and vulnerable communities. However, when the major parties in the CA started serious negotiations on what a federalized Nepal should look like, the UCPN(M), NC, and UML agreed that there should be seven to eight multi-ethnic provinces in total, and that both identity and capability issues should be considered when carving out the states-to-be. But when the Janajati—the UCPN(M)'s primary constituency—protested against that formula, the party quickly dropped the idea and proposed instead 10 federal provinces, carved out mainly on identity basis. At that point, the UCPN(M) also stated that each province/state in the hills should be named after the main ethnic group in it. Later on, during negotiations with the NC and UML, the party agreed to yet another formula: 11 provinces, with the naming of each of them left for the future provincial assemblies to decide. When Madhesi-based parties protested against that model, insisting that they would not accept more than two provinces in the Madhes, the UCPN (M) relented, and dropped the 11-province model.

### 3.1.4 MADHESI PARTIES

The Madhesi consist of an ethno-regional group that lives in the Terai, or Madhes region, which consists of the fertile plain in the lower-third section of Nepal that stretches east to west, along the border with India.<sup>29</sup> Most Madhesi live in the eastern Terai. While the Terai represents only about a quarter of the country's total land area, it is home to nearly half of the country's population and constitutes the heart of Nepal's economy (with regard to both the industrial and agricultural sectors).

The primary bases for the Madhesi's sense of distinct identity lie in the separate, plains-based languages they use; in their broader social and cultural distinctiveness from hills-based people, who historically have dominated Nepal's political and governmental spheres and whose cultural norms were long imposed on Madhesi (and other ethnic groups); and most importantly, in the discrimination that historically has targeted Madhesi, who are still viewed by many inhabitants of the hills with a mixture of derision and suspicion. Hills-based people have been known to question, implicitly or explicitly, Madhesi's "Nepaliness," suggesting that the Madhesi are more Indian than Nepali, and that their true loyalty lies more with India than Nepal.<sup>30</sup> Thus, while by and large the Madhesi represent an economically vibrant community, they historically have felt discriminated by the state and society at large.

Madhesi parties are relatively new players in Nepali politics. They came to the fore in 2006-2007, propelled by two general strikes in the Terai that forced elites in Kathmandu to address their grievances. Since then, Madhesi parties have been a primary driver of the federalist agenda in the country. In fact, it was only after Madhesi demanded federalism that the Maoist embraced that agenda. Thereafter, the Madhesi single-handedly pressured successive coalition governments led by the NC, Maoists, and UML to accept the idea that Nepal should become a federal state. A watershed in that process was the 2008 amendment to the January 2007 interim constitution that relabeled Nepal a "Federal Democratic Republic."

In the April 2008 CA elections, all Madhesi parties combined secured approximately 90 seats, thus forming the fourth largest political bloc in the CA (after the Maoists, the NC, and the UML). Since then, the Madhesi political landscape has become increasingly factionalized. For one, the number of Madhesi parties has risen from five in the immediate aftermath of the April 2008 CA elections to 19 at the writing of this assessment. These parties revolve largely around prominent Madhesi personalities (several of whom are widely regarded as among the most corrupt and opportunistic politicians in the country) who engage in intense political maneuvering with one another. Squabbling, name-calling, and reciprocal allegations of corruption are the norm within each Madhesi party.<sup>31</sup> Indeed, Madhesi parties are even more personality driven and prone to

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<sup>29</sup> "Madhes" and "Tarai" are often used interchangeably, though the former usually designates more specifically the plains of eastern and central Tarai. "Madhesi" refers to the inhabitants of the Madhes, but the term can be misleading in that not all those who live in the Madhes region define themselves as "Madhesi." For one, many ethnic groups, especially the Tharus in the mid-western Tarai, claim an independent identity: they view themselves as the original inhabitants of the Tarai and contend that Madhesi only came in much later as migrants. Hill-based or hill-origin people also live in the Tarai (according to the 2001 census, hill-origin people make up approximately one-third of all Tarai residents). They often moved there during the second half of the twentieth century for a variety of reasons: because it was then that the area and its particularly fertile land were open for development; because many were displaced from the hills by the insurgency between 1996 and 2006; and because it was relatively easy for them to acquire land in the Madhes—in sharp contrast to Madhesi, who have long faced difficulties in securing citizenship and proving ownership. The loss of land to hill-origin people, and the tendency for local government, the courts, and the police to be under the latter's control, has been a major grievance of both the Madhesi and indigenous groups such as the Tharus. One of the reasons why it often is hard for Madhesi to secure citizenship is that they are viewed as Indians (not even migrants) who happen to be in Nepal, having "leaked over" illegally.

<sup>30</sup> Though all Madhesi historically have been the victims of discrimination, the extent, manifestations, and impact of that discrimination have varied according to class and other affiliations, for significant social, economic, and linguistic diversity can be found among the Madhesi. For instance, Madhesi who are large landholders or Madhesi professionals in Kathmandu face different forms of social discrimination and constraints in the economic arena than lower-class Madhesi; their political orientations or views toward the Nepali state often are shaped by those differences.

<sup>31</sup> In July 2012, for instance, one of the main Madhesi parties, the Madhesi Janaadhikar Forum-Republic (MJF-R), which had long been divided between two factions led by, respectively, Rajkishor Yadav and Nandan Kumar Dutta, experienced a formal split. In a revealing sequence of events, the Yadav-led faction expelled Dutta and another three members of the party's central committee associated with him. Rival press conferences were organized that turned into fiasco. Several of the remaining committee members then declared that the committee had

internal splits than is true of their counterparts. Because they lack a common philosophical/ideological agenda, and because their leaders' previous political experiences were in very different parties (spanning the entire Nepali political spectrum), Madhesi politicians are particularly prone to be driven by pure opportunism and greed. Yet, despite those liabilities and the intense infighting in their ranks, Madhesi parties nonetheless formed an influential caucus in the CA, which enabled them to advance issues of common concern, especially the federalist agenda.

The main divide in the Madhesi political landscape today is between the Madhesi Janaadhikar Forum-Nepal (MJF-N), which is led by Upendra Yadav, and those Madhesi parties that operate under the umbrella of the United Democratic Madhesi Front (UDMF), which is part of the Bhattarai-led coalition government. The disagreements between Yadav's supporters and the UDMF extend to other related issues. For instance, the UDMF has called for elections to a new CA, whereas Yadav favors parliamentary elections, with the new Parliament operating as well as a CA. Previously, Yadav's MJF-N had been a strong advocate of a presidential system while other Madhesi parties had favored a parliamentary one.

Regarding state restructuring, Madhesi parties understandably would favor a single Madhesi province, if they thought it was a politically attainable goal. Their default option has been to advocate the establishment of two provinces—and no more—in the Madhes. Because concerns of the Madhesi are focused on the Terai, they generally are agnostic on the issue of the number of provinces/states that should be carved out in the hills. However, just prior to the May 27 deadline for drafting a constitution, the Janajati and Madhesi formed a loose alliance to support each other's agendas in the CA. At that point, Madhesi parties generally aligned their demands regarding the number and naming of provinces on the positions put forward by the Janajati caucus in the CA.

### **3.1.5 THE JANAJATI**

The term “Janajati” refers to the mostly hill-based, largely indigenous ethnic minorities that comprise about 37 percent of the population. In recent years, the Janajati have asserted themselves politically. They have displayed a stronger sense of separate collective consciousness, asserted themselves as a community, and in particular, shown a heightened determination to advance their interests independently from the other political forces in the country. They are the most recent newcomers (as a collective) to Nepali national politics, and their impact is just beginning to be felt.

In previous decades, the more politically inclined elements among them had sought to advance issues and grievances most directly related to their respective ethnic communities by joining existing political parties. In both 1960 and 1990-1991 democratic movements, the NC deliberately endeavored to mobilize the Janajati in its confrontation with the monarchy, and it met a degree of success in that effort, especially during the earlier period. By the early- to mid-1990s, the UML had made major inroads among the Janajati, but like other marginalized sections of Nepali society, many Janajati drifted toward the Maoists later on in the decade. Today, the Janajati remain active within the UML, and to a much lesser extent, the NC, but of all existing political forces, it is the Maoists who, thus far, have best been able to capture the allegiance of Janajati. While the 1990s and 2000s saw an increase in the readiness of the Janajati to mobilize in organizations of their own, that phenomenon was confined, for the most part, to civil society organizations (CSOs) that advocated on issues of immediate interest to the Janajati. By and large, the vast majority of Janajati leaders continued to be affiliated with the main three parties.

When elections to the CA were held in April 2008, Janajati leaders ran as members of existing political parties. Once in the CA, however, Janajati lawmakers began to mobilize around the call for federalism. They formed an informal caucus made up of some 214 members (over one-third of the CA) and began to press a federalist agenda, which in turn, contributed to further ferment over the issue of federalism among Janajati

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never officially taken a decision to expel the four members mentioned above. At that point, Dutta proclaimed himself the only legitimate leader of the MJF-R—a party from which, by the account of the rival faction, he had just been expelled.

communities at the grassroots level. Still, among the Janajati, including at the district level, discussion of autonomous regions had taken place since the 1990s. In that regard, the call for federalism among Janajati members of the CA mostly amplified and gave additional resonance and impact to preexisting aspirations or thinking at the grassroots level.

During the summer and early fall of 2012, most analysts believed that the establishment of a Janajati party (and, most likely, of several such parties within a relatively short period of time) was imminent. That forecast seemed consistent with the growing view among Janajati activists that their communities have not been well served by existing parties. These activists argue that existing parties have used Janajati support opportunistically, to advance agendas that have not addressed in any substantive way the Janajati's own concerns and grievances. Many Janajati resent the fact that the leaderships of the main political parties (which remain overwhelmingly made up of Brahmins and Chhettris) has been insufficiently sensitive to their demands—and that perception largely explains why vibrant Janajati civil society groups have been in existence for many years.<sup>32</sup> The Janajati do not feel they can rely on parties led by Brahmins and Chhettris to advance Janajati interests, arguing that they have been “burned” by these parties too many times. It is that perception—of being used, taken for granted, and left hanging—that, as of this writing, underlies the assumption that the emergence of one or more Janajati party(ies) is only a matter of time. A demonstration effect also probably has contributed to that situation: the decision by Janajati leaders to form a party of their own no doubt has been influenced by the example and successes of Madhesi mobilization along communal lines.

The Janajati feel that the state has been consistently insensitive to their grievances and aspirations. They resent that, for over 200 years, their languages, cultures, and distinct identities were suppressed by a central government determined to force ethnic groups to conform to the notion of a single Nepali identity revolving around the institution of the monarchy, the person of the king, a single culture, and a single Nepali language. Janajati activists believe that, left to their own devices, highest-caste elites would persist on that same path, display the same level of cultural intolerance, and continue to engage in political and economic discrimination against minority groups. Their perception that the unitary, centralized state that has existed in Nepal for over 250 years has operated as the key “enabler” of cultural suppression and systemic discrimination largely accounts for their insistence on ethnic-based federalism with considerable autonomy to constituent states. Those same activists also feel that naming provinces after the dominant ethnic group in each of them represents a form of necessary reparation for all the historical injustices that ethnic minorities were made to suffer at the hands of ruling elites. Specifically, Janajati leaders have urged that each of the main eight ethnic groups in Nepal, those that have strong geographical concentration in different regions, should be granted a province of their own.

### **3.1.6 DALITS**

The Dalits (the so-called “untouchables”) have been the most marginalized, oppressed, and discriminated against community in Nepal. They are at the bottom of both the Hindu caste system and the country's poverty trap. Discrimination based on caste has been illegal since the early 1960s and under the law it is a punishable offense for which one can be fined and receive up to one year in jail. In practice, however, discrimination against Dalits remains rampant and systemic. It is particularly pronounced in rural areas, where nearly 80 percent of Nepal's population still resides. In isolated villages and towns, everyone knows everyone else and it is extremely difficult for Dalits to escape the social and economic stigmas associated with their caste standing.<sup>33</sup> Their capacity to mingle freely with people from other communities remains extremely restricted, at best.

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<sup>32</sup> Current developments suggest that we may be witnessing a process by which the Janajati rights discourse is being moved from the civil society sphere to the political arena. The formation of one or more broad-based Janajati party(ies) would consecrate that trend.

<sup>33</sup> By contrast, in Kathmandu, strong discrimination against Dalits certainly exists as well, but a large urban setting provides a degree of anonymity that facilitates partial escape of the stigma associated with being a Dalit.

Dalits' overall presence in the bureaucracy and political arena is still negligible, and while they represent approximately 15 percent of the total population, they are absent from key decision-making arenas. That situation contributes to the perpetuation of discrimination against them. For instance, Dalits cannot count on the presence of Dalit police officers or judges to help enforce the laws that prevent discrimination against them. Cases of discrimination on grounds of "untouchability" either don't reach the courts, or, when they do, lawyers and judges do not give those cases proper attention.

The beginning of social mobilization among Dalits harks back to the 1960s and 1970s. Indeed, Dalits began to organize themselves long before Janajati and Madhesi. But at the time, this phenomenon was not a political movement. Instead, it focused on modest demands such as the right to enter temples and take part in communal feasts. Besides, up until 1990, the state actively discouraged public use of the term "Dalit," for fear that it would facilitate this group's mobilization against social discrimination.

The advent of multiparty democracy in 1990 opened up space for heightened mobilization by Dalits. Large numbers of Dalits had joined the NC in 1950, and even more rallied behind the UML in the early 1990s. But in both instances, Dalits were disappointed by those parties' failure to articulate, let alone deliver on, a comprehensive agenda of social reform that would have addressed head-on the discrimination targeting their community. Indeed, the mainstream parties showed little interest in addressing more than rhetorically the basic grievances and concerns of Dalits. They opposed the idea of quotas to promote Dalits in public life or any suggestion of reparations for historical wrongs. Discrimination persisted even within those parties, like the UML, that were nominally committed to greater social equality and the elimination of discrimination. Dalits predictably felt betrayed by these parties, which they had supported in their political struggles, but that never reciprocated by raising the issue of "untouchability"—instead asking Dalits to be "patient" and underscoring that that issue would take time to resolve. Politically active Dalits soon saw in the Maoist party an attractive alternative.

Indeed, it was the Maoist-led "people's war" that massively mobilized Dalits and brought their issues to the center of the inclusion discourse. A large number of Dalits joined the insurgency because of the Maoists' strong ideological position against caste-based discrimination; their inclusive agenda; the systematic efforts they exerted to reach out to Dalits; and the manner in which they interacted freely with Dalits, deliberately casting aside old historical prejudices through both practical and symbolic gestures (for instance, by sleeping in the houses of Dalits). Analysts estimate that, today, 80 to 90 percent of politically active Dalits are affiliated with the Maoists.

The Dalits operate under social, economic, and political constraints that are far greater than those faced by other oppressed and marginalized communities.

- a) Socioeconomic and educational conditions in their ranks are much worse than among the Madhesi and Janajati. Overall, the Madhesi consist of an economically vibrant community that features tens of thousands of well-to-do individuals. That certainly is not true of Dalits. Even Janajati are far better off in economic and educational terms than Dalits, who lack the human and financial resources to press effectively their agenda. The level of consciousness among Dalits has not yet risen sufficiently to allow for large-scale social mobilization, nor do the Dalits as a community enjoy the resources that would allow them to sustain such mobilization.
- b) The social discrimination that targets Dalits is much greater than that directed at the Janajati or Madhesi. There is no quick "political fix" to that problem. It is rooted in deep-seated social and cultural norms and will require more time to overcome. For instance, it will take decades before inter-caste marriages between Dalits and non-Dalits are viewed as natural and become common and before Dalits can mix freely with members of other communities.
- c) The above observations also suggest that it would be socially and politically counterproductive for Dalits to embark on a confrontational path for emancipation, since the challenge they confront is not merely to secure a fairer share in the political system and the public administration. Instead, they also

face the more complex task of being accepted as equals by other communities—and confrontation is unlikely to bring about greater social acceptance; indeed, it could trigger the opposite reaction. The Dalits thus must rely on persuasion and reaching out to those in other communities who are sympathetic to their plight.

- d) Most Janajati ethnic groups and the Madhesi are geographically concentrated, which gives them significant political leverage. Dalits, by contrast, are scattered across the national territory. This means that (with the possible exception of two or three constituencies in the entire country) there is no district where Dalits can win elections on a platform that revolves around Dalit-specific issues, concerns, and grievances.
- e) The cultural and socioeconomic differences that separate Dalits living in different regions also render nationwide mobilization by them particularly difficult. Culturally and socially, Dalits typically have more in common with other communities living side by side with them than with Dalits in other regions. For instance, Dalits in the hills are culturally closer to many other hill people than they are to Dalits in most other regions. Once the problem of untouchability has been resolved, Dalits can be expected to merge relatively smoothly into the social and cultural environment of the respective regions in which they live. Dalits in, say, the hills or the Terai will have no incentive to push a separate “Dalit” agenda there, as theirs is not a movement driven by the perceived need to preserve a culture or language. The acuity of the socioeconomic challenges Dalits face also varies depending on where they live. Hill Dalits are ahead in terms of education, health, and employment, while the worst conditions for Dalits can be found in the Madhes, where more than 50 percent of them are landless.

Dalits are no big advocates of federalism, since being scattered across the national territory they cannot aspire to a contiguous state. In none of the states/provinces that are currently envisioned would Dalits represent even a plurality. On the other hand, since Dalits know that their future depends on maintaining good relations with the communities around them, they can be expected to support federalism in areas where the communities in question strongly favor that option.

Approximately 50 Dalits, most of them affiliated with the UCPN(M), were elected to the CA in April 2008. They formed a caucus and began to work together on issues directly relevant to their community. Dalits feel they are among the biggest losers from the dissolution of the CA—which was prompted by disagreements over an issue, federalism, that they do not feel is of great relevance to them. The draft constitution that had been discussed within the CA would have addressed the overwhelming majority of the Dalits’ demands. It reportedly would have made “untouchability” a serious crime. Dalit rights would have been enshrined as fundamental rights—which would have made Nepal more progressive on that issue than India. That is why the Dalits have expressed support for a reinstatement of the CA, as opposed to new elections. The issues that matter the most to Dalits include enforcement of affirmative action provisions (45 percent of new recruitments in the civil service, police, and the military are set aside for members of historically marginalized groups); strict enforcement of existing legal provisions to prevent caste-based discrimination; formal acceptance by the political parties of the principle of reparation and of the need for special initiatives that go beyond the traditional affirmative action model; a bold agenda to address the issue of untouchability; and adoption of new legal provisions that can facilitate legal recourse for Dalits victims of social and economic prejudice. The political mobilization of Dalits has increased steadily in the past several years, and will continue to do so. It is likely to become one of the dominant political trends in the years ahead.

### **3.1.7 CONSERVATIVES**

The label “conservatives” is used here to refer to three main parties: the Rashtriya Prajatantra Party (Nepal), or RPP(N), the Rashtriya Prajatantra Party (RPP), and the Rashtriya Janashakti Party (RJP). The right wing also features a small radical fringe made up of Hindu revivalist and militant currents among the Brahmins and

Chhettris.<sup>34</sup> All three parties call for a referendum on federalism and secularism. In the past several years, they have appeared to be overtaken by the scope and speed of grassroots mobilization and have been relegated to the sidelines of Nepali politics. Their electoral strength is weak, and their presence in the CA was limited to about 20 members.

Nonetheless, if the current political stalemate and policy gridlock were to endure, and if public frustration with it and with the broader course on which the country embarked in 2006-2008 were to mount, conservatives could benefit from growing disillusionment with the “false gods” of federalism and identity politics. Constituencies dissatisfied with rising disorder and feeling that the system is being overwhelmed by the accumulation of demands would look for an alternative.<sup>35</sup> Should conservatives prove able to recast themselves in such a way as to take into account new social and political realities in the country, they might be able to derive some political advantage from those potential developments. They could claim vindication, since they have argued consistently that mobilization along narrow ethnic and regional agendas is dangerous and that it will lead to a breakdown of national unity, discipline, and the entire social order.

Still, even if the opportunity above was to arise and conservatives were able to seize it—and that would require overcoming many disagreements and persistent factionalism and competition in their ranks—conservatives would face limited political prospects. The RPP and RJP lack coherent platforms. Many in the electorate view all three parties as too closely associated with the old order, uncomfortable with democratic politics and insensitive to the social, cultural, and political demands of recently mobilized communities. Above all perhaps, these three parties compete with better organized forces—the UML, and especially, the NC—for much of what is their natural electorate, i.e., socially conservative constituencies that lean toward the moderate right, that fear disorder as well as broader societal and political decay, and that harbor great anxieties about federalism.

Different political sensitivities can be found among conservatives:

- a) Many conservatives are more concerned with secularism and republicanism than with federalism, and the degree of opposition to secularism in their ranks varies.
- b) Some conservatives—most significantly those affiliated with the RPP(N), led by Kamal Thapa—still advocate a restoration of the monarchy. Most conservatives, however, including RPP and RJP members, have made their peace with the existence of a republic and have concluded that a return of the monarchy is politically impossible and may not even be desirable.
- c) Most conservatives are Brahmins and Chhettris, and some of them are opposed to a meaningful, substantive redistribution of power to benefit other communities, especially historically disadvantaged ones. Others, however, are willing to accept such a political rebalancing, and even understand the necessity of it, but want guarantees against “reverse discrimination and oppression.” Put differently, they do not oppose state restructuring and a new political compact, but want to protect their community’s interest through that process.
- d) Some conservatives oppose any type of federal formula and insist on a unitary centralized state. Many others, however, are not opposed to federalism in principle, but they categorically oppose the formation of states based on ethnic identity. Instead, they call for provinces established on the basis of economic viability and geography. Instead of dividing the country into new administrative-political entities based on ethnic lines, many conservatives support greater devolution of power to local government.

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<sup>34</sup> For a recent discussion of these parties, their limitations and potential appeal, see International Crisis Group, “Nepal’s Constitution (II)” (September 2012), p. 21-22.

<sup>35</sup> On what the International Crisis Group described 18 months ago as “the real threat of a conservative backlash,” see “Nepal: Identity Politics and Federalism,” p. 25.



- e) Finally, while some conservatives still express rather unmitigated nostalgia for the “old order”—one in which social and political hierarchies were clearly defined and deference well entrenched—others are readier to accept the passing of that world, and are far more willing to concede that it entailed levels of discrimination and oppression that should not be tolerated. They recognize as legitimate the grievances of historically marginalized communities, and are not necessarily against a redefinition of “Nepaliness” that acknowledges the cultural diversity of the nation and the special identity of the groups that compose it. However, they also argue that ethnic-based federalism is not the proper way of correcting for historical injustices. In their view, much of the current turmoil and uncertainties can be traced back to “identity politics run amok” and to the inability of political leaders to manage the forces they have unleashed by tapping into identity-based sentiment.

These differences notwithstanding, conservatives are united in their insistence that the country’s traditional value system performs vital functions of political and social regulation that has been insufficiently recognized in recent years. They bemoan a “collapse of values” and a breakdown in traditional social hierarchies and norms, and contend that those processes undergird the current disorder and uncertainty. Most importantly perhaps, conservatives are united in their distrust of the Maoists. They believe that the mainstream parties made a strategic mistake in 2004 when they signed with the Maoists the Twelve-Point Agreement that sidelined the monarchy and provided for the entry of the Maoists into mainstream politics. That agreement, in their view, was an unnatural alliance between political forces that had radically different strategic objectives and interests (democracy for the political parties, and state capture for the Maoists). As conservatives view it, the agreement enabled the Maoists to gain a stranglehold over the political process, and the NC and UML now are confronted with the legacy of that strategic mistake. Conservatives do not believe that the Maoists ever can be “mainstreamed” and trusted to play by the rules of multiparty constitutional politics—except on a short-term, purely tactical basis that is intended to serve the totalitarian ambitions they have not abandoned.

### **3.1.8 CONCLUDING COMMENTS ON KEY ACTORS**

While analyzing the internal dynamics, strengths, and limitations of Nepal’s main political parties, this section also offered further evidence to support some of Step One’s key findings and claims. Conclusions that deserve particular attention from that perspective include:

- a) Even for the old parties, politics are now bound up with the issues of identity and federalism. The first force—identity politics—is unlikely to abate in the short term, while the second process—federalization—is likely to be the single most important challenge facing Nepal in the next decade. Unfortunately, identity politics and successful federalization will be difficult to reconcile. As will be discussed in Step Four, donors can play a useful role in helping Nepal address this problem.
- b) The number of new actors and constituencies that have been mobilized in recent years has increased dramatically. The Madhesi have reshaped Nepali political dynamics since 2006, and the ongoing mobilization of Janajati is having the same effect today. As discussed above, Dalits are likely to become a powerful political bloc in the next several years. Meanwhile, traditionalists stand ready to take advantage of potential large-scale disappointment with identity politics and a botched state restructuring process. Such trends and scenarios may yet exacerbate further the country’s crisis of governance.
- c) Influential politicians among the Janajati, Madhesi, and Maoists are casting ethnicity-based federalism in ways that might prompt some of those listening to them into believing that the forthcoming identity-based federal arrangements will be a silver bullet for resolving pressing problems and addressing needs. At the very least, these politicians are not doing enough to contain the excessive expectations that state restructuring generates in some circles. There is high potential for major disappointment down the road with how federalism plays itself out in practice.
- d) The Nepali political landscape has undergone steady factionalization in the past several years. That trend even has accelerated in recent months and seems unlikely to abate in the short term. One may

consider, for instance, some of the developments that occurred during the mere three weeks that the team was in the field: a new Madhesi party was created; there was talk of the imminent emergence of a new Janajati party; a powerful faction within the UCPN(M) left the party and created its own (the CPN-M); the plenum of the UCPN(M) witnessed major tensions pitting three rival factions against each other, even though the party had just experienced a formal split; Janajati leaders within the UML threatened to leave the party over the former's opposition to ethnic-based federalism, while the other two main parties, especially the UCPN(M), were also faced with a potential exodus of Janajati; and the internal rift within the UML worsened after the party's highest decision-making body decided to strip dissident indigenous leaders (Janajati) of their party responsibilities. Continued elite infighting is likely to prolong political stalemate and policy gridlock, and the crisis of governance Nepal has been experiencing is likely to intensify before it subsides.

## 3.2 INSTITUTIONS AND ARENAS

This sub-section provides an overview of key institutional sectors and arenas that affect Nepali politics and/or provide the venues within which it is conducted. The discussion has been kept relatively brief for one or several of the following reasons: some of the key dynamics involved already were examined in Step One; they were implicit in the above examination of actors; or, as in the case of local government institutions in particular, they will be discussed at greater length in subsequent sections due to their direct relationship to anticipated programming by the Mission.

One overarching point concerns the persistent, marked under-representation of ethnic minorities and women in decision-making arenas. This generalization applies to the executive branch, the upper and even middle ranks of the bureaucracy, the judiciary and court system, the security agencies, the legislature, and local government. The absence of women and members of historically disadvantaged communities is particularly noticeable at the highest levels of the civil service, the security agencies, and the judiciary. Thus, the "rise in inclusion" that was the central theme of Step One has yet to translate into a significantly heightened presence of hitherto excluded groups in those circles where key decisions are made. Pressures to that effect will be a major force driving politics in the next decade and beyond.

### 3.2.1 THE EXECUTIVE

Nepal has adopted a parliamentary system with a PM (currently Maoist Baburam Bhattarai) as head of government and a president (Ram Baran Yadav, of the NC, has occupied that position since July 2008) as a largely ceremonial head of state.<sup>36</sup> The PM represents the party, or coalition of parties, with majority in Parliament, and Parliament also elects the president. Both the president and the PM are accountable to Parliament. Nepal tends to produce hung parliaments, with no single party winning a clear majority. As a result, the cabinet typically consists of a wide-ranging assortment of parties with different orientations and social bases, and headed by individuals who are often distrustful of, and ill-disposed toward, one another. Governments, therefore, lack cohesion and are prone to frequent reshuffling. In the past 10 years, Nepal has had one government each year on average. The cabinet in place from May 2009 through July 2010, for instance, was an unstable coalition of 22 parties.

Much of the government's time and energy often is devoted to political maneuvering aimed at maintaining the internally divided coalition that brought it into office in the first place. That situation undermines the coherence of policymaking and implementation. For one, the government is not particularly concerned with

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<sup>36</sup> The president at times has asserted his authority, including in ways that go beyond his constitutionally mandated prerogatives. For instance, in May 2009, when then-Prime Minister Prachanda tried to dismiss Nepal Army Chief of Staff Rookmangud Katawal, Yadav ordered Katawal to remain in his post, ultimately leading to Prachanda's resignation. More recently, in July and August 2012, Yadav rejected two ordinances forwarded to him by the cabinet. Each ordinance would have paved the way for elections to be held on November 22, 2012, the date PM Bhattarai had announced when he dissolved the CA on May 27, 2012. The President cited the Election Commission's announcement on July 30 that it had become technically impossible to administer professional elections within such a short time frame.

promoting results-based management, streamlining procedures, and providing clear mandates to executive-branch agencies charged with service delivery. The short tenure of successive governments also creates disincentives for cabinet members to engage in long-term planning—to paraphrase Lord Maynard Keynes, they know not only that in the long run they are all dead, but that in the fairly short run as well, they are likely to be out of government. Predictably, in this context, their behavior is not driven by the desire to advance a particular vision or agenda, or to do what is in the long-term interest of the country. Instead, they seek to take advantage of their short tenure in government to advance their careers, promote their respective parties' interests (because their careers are tied to these parties' fortunes), and in many instances, fill their own pockets as fast as possible.

Those who preside over the executive branch have few effective policy tools at their disposal. The bureaucracy is highly politicized, corrupt, ripe with red tape, and under-resourced. It generally does not attract talent and low-paid civil servants hardly have any incentive to perform; instead, they routinely seek patronage from politicians all too willing to offer it in return for civil servants' willingness to do their bidding. The police are routinely embroiled in illegal schemes and the population generally does not trust its impartiality or competence. As discussed earlier, the relatively weak public demand for government effectiveness, accountability, and transparency diminishes pressure on the executive to deliver good governance. The institutionalized and endemic nature of corruption is not merely tolerated but accepted as a fact of bureaucratic life.

To the extent that the executive is subjected to checks and balances, the latter emanate from relatively free and vibrant media outlets, from a judiciary that has sought to assert its authority and independence on several occasions, and from the degree of oversight provided by parliamentary committees. Cabinet decisions, even when closely guarded or executed surreptitiously, are often leaked to the media, and their resulting publicization often results in parliamentary-committees and/or judicial investigations. In short, the government may not always feel pressure to be accountable, but it cannot take it for granted that it will get away with illegal, unethical, or disingenuous actions.

### **3.2.2 SECURITY AGENCIES**

In Nepal, law enforcement and security agencies as well as the army do not constitute political forces likely to act independently of the executive branch, or with the intent of undermining it. Experts interviewed noted that those agencies in charge of maintaining law and order—the Nepal Police (NP), Armed Police Force (APF), and National Investigation Department (NID)—understand they are subject to the authority of the government, and they have shown no inclination to overstep their constitutionally mandated roles. Instead, the main DRG problem regarding these institutions lies in their high degree of politicization. Every single party in power—especially that which happens to run the Home Ministry, under whose authority these agencies operate—misuses them to advance narrow party and individual interests.

As for the Nepal Army, since the “people’s war” ended in 2006 and the monarchy was abolished in 2008, it has displayed no political ambitions, remained in the barracks, and taken its orders from elected governments. It did not stand in the way of the Nepal’s transformation from a Hindu monarchy (an institution to which the army had been closely tied) into a secular republic. The strong institutional ties the NA maintains with its Indian counterpart,<sup>37</sup> which is firmly under the civilian control, and its longstanding relationship with the military of several Western democracies (especially the United States and United Kingdom), may have contributed to its willingness to accept critical political transformations that were not in line with its leadership’s preferences.

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<sup>37</sup> The head of the NA is an honorary general in the Indian army and vice versa.

### 3.2.3 THE LEGISLATURE

The 601-member CA—which from its election in April 2008 to its dissolution on May 27, 2012 also worked as an interim legislature—was the most diverse representative body in Nepal’s history. The election brought into Parliament unprecedented numbers of women and members of historically marginalized communities (Janajati, Madhesi, and Dalits). This diversity reflected, in part, the nature of the electoral system that was adopted, under which 60 percent of lawmakers were elected on a proportional representation (PR) basis, while the remaining 40 percent were chosen through a first-past-the-post (FPTP) system. Nearly one-third of the CA members elected under the PR system were women, while minorities featured on party lists in proportion to their share of the national population. The Maoists also brought into Parliament many of their young and ethnically diverse cadres, which helped transform the profile of a legislature that historically had been the preserve of old Nepali men of upper-caste backgrounds. In the end, the CA featured 197 women (up from 12 in the interim Parliament), 51 Dalits, and 77 Janajati. As Step One discussed at some length, however, presence does not automatically confer influence, and women in particular were unable to generate significant progress on gender-inequality issues.

The diversification and rejuvenation of the legislature, however, came at a relatively high cost in terms of the competence and independence of lawmakers. Those elected to parliament for the first time were usually unfamiliar with the specific nature of their roles and how best to discharge them. Many Maoist lawmakers were also ambivalent about their participation in a parliamentary system they have fought to dismantle. Lawmakers elected under the PR system felt indebted to party leaders and were prone to toe the party line instead of making their own choices.

Effective legislative oversight of the executive can be a challenge under a parliamentary system, since in such a system the executive usually is an extension of the legislature. Nonetheless, the CA was able to perform significant oversight functions for at least three reasons. First, each of the parties represented in the cabinet featured rival factions, at least one of which often challenged the policies and decisions of the very government in which its party was represented (most often because that faction had been on the losing end of the argument regarding what a particular policy should be). Second, in the context of particularly broad coalition governments, lawmakers affiliated with junior members of the coalition often acted independently of the government, and sometimes even challenged it. Finally, members of parliamentary committees in Nepal have a history of acting with a degree of independence from their respective parties, and the period during which the CA was in session was no exception. On numerous occasions, these committees openly challenged governmental decisions. They also seized the constitutional anti-corruption watchdog, the Commission for the Investigation of Abuse of Authority. In a number of corruption cases, investigations initiated by parliamentary committees resulted in prison sentences for high-ranking police officials.<sup>38</sup> Though parliamentary committees’ recommendations to the executive are not legally binding, they carry moral and political weight that makes it difficult for the government simply to disregard them.

### 3.2.4 THE JUDICIARY AND LEGAL PROFESSIONALS

The interim constitution adopted in January 2007 provides for a judiciary that consists of 75 district courts, 16 appellate courts, and the Supreme Court. The SC serves as both a final court of appeal and as a venue for judicial and constitutional review. Current procedures for selection of SC members give the PM excessive influence over the process. For one, the chief justice is appointed by the PM “on the [non-binding] recommendation” of the Constitutional Council, with four of that council’s six members also being appointed by the PM. The chief justice then selects other SC judges “on the recommendation” of the Judicial Council (JC), with three of the JC’s members being appointed by the PM and two by the chief justice (who, as noted above, is also selected by the PM).

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<sup>38</sup> One thinks, for instance, of the 2011 scandal involving the misappropriation of millions of rupees during the purchase of armored personnel carriers for NP personnel deployed in a peacekeeping mission in Sudan.

That being said, current SC justices have been appointed based largely on competence, and the SC has asserted its independence on several critical occasions. As mentioned above, the most recent instance was the SC's November 2011 ruling that the term of the CA could not be extended beyond the May 28, 2012 deadline, a ruling that the SC reaffirmed (in the face of considerable opposition by senior power holders) three days before the deadline in question. While the SC has become bolder in the past several years, and since the advent of multiparty democracy in 1990 more generally, it displayed independence and courage even under the absolute monarchy (1960-1990). Examples include the release of prisoners of conscience and the 2006 dismissal of the Royal Commission for Corruption Control (RCCC) that had been established by King Gyanendra. Since then, the SC has taken stances on human rights issues that often have run against the interests and wishes of the government and other key members of Nepal's establishment. For instance, it ordered the investigation of cases of "disappearance" during the insurgency, ruled out the possibility of a blanket amnesty for conflict-era human rights abuses, demanded the release of Tibetan protestors, and issued precedent-setting verdicts on equal rights for women and sexual minorities. In addition, the SC reopened several high-profile corruption cases in which those accused had been acquitted by the Special Court (which is tasked with handling corruption cases) and other lower courts. Following the reopening of those cases, three powerful former ministers were sent behind bars, while additional cases are still being considered.

The SC's two main weaknesses lie in its inability to ensure its decisions are enforced and in its limited resources. As far as the first factor is concerned, lack of cooperation from executive branch and law enforcement agencies has prevented many SC verdicts from being implemented.<sup>39</sup> Local administration, the police, and other state agencies can delay, dilute, obstruct, or simply prevent the enforcement of key SC decisions. Resource constraints, both financial and human, also undermine the SC's effectiveness. Still, in recent years the SC has been able to reduce significantly the backlog of cases waiting for a final hearing and verdict from it.

The situation with regard to the lower courts is much grimmer. Those tribunals remain extremely vulnerable to political pressure. Protections for lower-level judges are much weaker than they are for SC ones. The resources at the disposal of lower-level courts are scarce, and grossly inadequate salaries fuel systemic corruption at the lower-court level.<sup>40</sup>

### **3.2.5 LOCAL GOVERNMENT**

Nepal so far has remained a unitary state, with considerable power concentrated in the hands of the central government and little authority devolved down to local government units. Currently, the country is divided into 75 administrative districts, each of which features a district development committee (DDC). Below the district level, Nepal has a total of 3,915 village development committees (VDCs) and about 100 municipalities. At the level of villages and municipalities, local government bodies are elected directly by the people (though, as noted below, the last local elections were held in 2002).

DDC members are supposed to be elected by the municipal councils and VDCs. Each VDC features 47 elected officials—a VDC chair, a vice-chair, nine ward chairs (one elected from each of nine wards), and three ward members from each of the ward. At least one of the three ward members must be a woman. Ward number varies from 11 to 35 (for Kathmandu) on the basis of municipality size and population. Most municipalities have 19 wards. The municipal council elects the mayor, deputy mayor, the ward chair, and ward members.

Currently, there is a huge vacuum in terms of political representation at the local level, due to the absence of local elections in the past 10 years. That situation has contributed to rising corruption, misuse of resources,

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<sup>39</sup> For instance, even though the SC indicted Ramkrishna Dhungel, a sitting lawmaker affiliated with the UCPN(M), in a murder case, Dhungel continues to walk freely due to his political connections.

<sup>40</sup> For a more in-depth discussion of these issues, the reader should refer to Department for International Development, "Nepal Rule of Law Assessment" (London and Kathmandu: DFID, 2011).

mismanagement of development activities, and overall lack of accountability. The so-called “All-Party Mechanism” (APM), a committee of individuals appointed by the local branches of political parties, was established several years ago to facilitate local decision making. That mechanism, however, became the source of such corruption and collusive practices that in late 2011 the anti-corruption watchdog, CIAA, instructed the government to do away with it. Even though the government promptly complied by issuing directives to that effect, the absence of alternative processes for local decision making has resulted in continued operations by various APMs.

Because Nepal remains a highly centralized state, local bodies have few resources and limited authority to exercise. Services such as health, education, and local policing remain under the de facto control of the central government. Since most of the taxes and other resources are collected and mobilized by the central government, local governments typically face acute problems of resource scarcity; they depend on Kathmandu politicians, who dole out block grants to DDCs, municipalities, and VDCs. The analysis in this report suggests that one of the main challenges facing the forthcoming federalization process will be to change that situation and provide local government and local development bodies with the resources they need to discharge meaningful functions and exercise a significant degree of authority over local governance matters.

The final shape of federal arrangements has yet to be decided. Political leaders appear to have agreed on a three-tier system of government (local, provincial, national). While districts most likely will continue to function as administrative units, they will cease to do so as political ones, and DDCs will disappear. The number of VDCs also is likely to be reduced, possibly to one-third of the current number. Political party leaders also seem to be in general agreement that even after the country becomes a federal union, the center will retain a disproportionate level of authority and control over resources. Provinces and local government bodies are likely to receive block grants, just as the present DDCs and VDCs do.

Whether forthcoming federal arrangements will promote development and economic growth or hinder it remains a valid question. Sections of the business community have expressed concern that economic rivalries pitting the future provinces and local governments against one another might operate as a powerful brake on economic growth and the effective allocation of resources. They have called for reassurances that the country will remain a single market that ensures a smooth flow of goods, services, and capital across provinces, and that businesses will not be subjected to additional red tape and administrative constraints or multiple forms of taxation.

### **3.2.6 POLITICAL PARTIES AND ELECTORAL INSTITUTIONS**

#### **POLITICAL PARTIES**

Nepal’s main political parties, and the dynamics associated with them, have been discussed in great detail above. What must be reemphasized, here, is the ubiquitous and inescapable nature of parties in Nepal—they remain the dominant actors in the country’s public life. They lie at the intersection of politics, government, economic transactions, and social relations. They also play the key role in state capture—and state capture, in turn, provides the parties with the resources they need to sustain their extensive patronage networks. In effect, state and parties are joined at the hip. Parties totally dominate the public administration. They control appointments, assignments, transfers, promotions, demotions, and budgets.<sup>41</sup>

The central role that political parties play in Nepal has led some observers to describe them as “shadow states.” Instead of approaching civil servants, who are widely regarded as clients of party leaders, individuals often seek access to party leaders to secure goods and services, appeal decisions, resolve disputes, advocate for development schemes, or express grievances and other demands. Mid- and low-level politicians act as vital

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<sup>41</sup> For an insightful discussion of the role of political parties in Nepal, one should consult in particular International Crisis Group, “Nepal’s Political Rites of Passage,” (2010), especially pp. 19-21 and pp. pp. 40-41.

intermediaries between the population and the bureaucracy, while senior politicians directly usurp state authority; they make decisions that really should be in the hands of civil servants, police officers, or judges.

Parties also undercut the ROL, including via the key role they have played in the orchestration of violence. They had done so, in part, by relying on so-called *gundas*, a term which in Nepal refers to criminal figures with a well-known reputation for violence. *Gundas* often are involved in semi-legal or illegal enterprises and benefit from the protection of politicians for whom they act as enforcers. More generally, the nexus between parties, gangs, and criminality remains a key feature of the Nepali security landscape. Parties depend on armed groups as enforcers: to intimidate opponents and critics (including journalists and activists intent on exposing corruption); to protect their members from similar actions by other parties; to gain access to lucrative economic opportunities (including government contracts) that are critical sources of both personal enrichment and political patronage; and to provide “assistance” during elections. Occasionally, politicians even orchestrate the activities of criminal groups for personal profit. Criminal groups, for their part, rely on parties for protection from the law. The ability of senior police officers to take action against criminal gangs can be severely constrained by political interference. Between 2006 and 2010, there were several cases of notorious local armed group leaders being released from prison after prominent politicians intervened on their behalf.

### **ELECTORAL INSTITUTIONS**

The electoral system adopted for the April 2008 CA elections already has been discussed. The mixed FPTP/PR model reflected a compromise between the Maoists and their main party rivals.<sup>42</sup> As the electoral system has become more inclusive, it also has created pressure on the parties to become more inclusive as well. In the post-CA election period, political parties embarked on an effort to make their decision-making bodies more representative of the diversity of Nepal’s population—yet another manifestation of the primacy of the inclusion trend Step One highlighted. Even the NC, which had been known to be slow to recognize the need for greater diversity in its membership and leadership, reserved quotas for women and minority groups in its highest-level policy making body, the Central Working Committee.

Improvements have taken place in electoral and campaign-related legislation, but much remains to be accomplished in this area, particularly on the implementation front. For instance, election laws and regulations specify limits on how much money a candidate can spend during an election, and what kind of campaign materials he/she may or may not use. Under the law, candidates also must file a report of their campaign expenditures. But there are no mechanisms for tracking campaign finance sources and campaign expenditures, let alone for punishing candidates found to be in violation. Similarly, the electoral law requires that political parties submit the audited records of their annual income and expenditures, but it is silent on whether the election commission can launch its own probe if it is not satisfied with the records released. In practice, the EC has never done so. Nonetheless, the EC performs adequately with regard to the objective of holding free and fair elections. To aim at genuinely free and fair election would be setting the bar too high in the present Nepali context—elections have never been truly free in Nepal, nor are they likely to be in the near future. But despite relatively minor and isolated complains, both the main Nepali political players and international observers agreed that the most recent, critical 2008 elections were reasonably fair.

### **3.2.7 CIVIL SOCIETY**

As Step One noted, the space for meaningful civil society activity has increased noticeably since 2006, and that situation is reflected in the existence of a large and growing NGO community (there are currently about 30,000 registered NGOs in the country). The legal environment for NGOs has improved, especially since in May 2006 the government repealed a restrictive code that had barred them from engaging in activities that might “disturb social harmony.” That being said, NGOs continue to operate under significant administrative and political constraints. For one, the government-run Social Welfare Council retains the authority to monitor

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<sup>42</sup> The Maoists had advocated pure PR, with the country treated as a single constituency and party leaders nominating lawmakers according to the percentage of the popular vote received by each party.

NGO activities, refuse registration, or deny NGOs the right to carry out certain types of programs or activities. In July 2012, the government moved to tighten control over donor funding to NGOs.

There is a clear divide in performance and vitality between the two wings—service delivery and advocacy—in which the civil society sector is divided. The overwhelming majority of NGOs are concerned with service delivery. They are effective at mobilizing donor funding, and run numerous programs for social change and development. They are widely viewed as doing so more effectively than state agencies. But despite its relative dynamism, this segment of civil society presents three main structural weaknesses. First, many of its component members can be viewed more as “implementers” (of donor-funded activities) than NGOs in the strict sense of the term. Second, being overwhelmingly donor driven, these NGOs tend to shift priorities and focus to reflect the specific nature of donor funding at any given point—which creates real challenges with regard to sustainability and consolidation of any gains that are made through NGO programming. Third, the NGO community is known for the corruption that exists in its ranks. In key respects, NGOs suffer from the same kind of problems that mire political parties: widespread lack of transparency, rampant nepotism and favoritism, and patronage-driven behavior.

The advocacy segment of civil society is much weaker—to the point of being nearly nonexistent. Very few NGOs advocate with any significant impact on the national-level DRG deficits that plague the country, thwart development, compromise the effectiveness of donor funding, and indeed hinder effective civil society activity. No advocacy group can be found that articulates a compelling political vision capable of galvanizing the public behind a real reform agenda beyond local/regional level. An effective advocacy NGO willing to take on established political interests has yet to emerge. Ironically, part of the reason for that situation may lie in the relative strength of civil society’s service delivery segment. One might argue that the relative vitality and effectiveness of service delivery NGOs allows communities to muddle through, and that it helps make up, in part, for the severe deficiencies of state institutions. In the process, it also diverts from the need to advocate for structural political change and for improved performance, transparency, and accountability by governmental institutions.

Professional syndicates are well organized and powerful. Journalists, lawyers, university professors, doctors, and engineers have their own professional organizations, each of which counts thousands of members. In part because their decision-making bodies are elected through periodic, nationwide elections, these syndicates have the capacity to mobilize their members when they want to do so. However, each professional organization typically is affiliated with a specific political party, and therefore, lacks autonomy.<sup>43</sup> Professional organizations thus should be viewed more as appendages of political parties than as true CSOs.

Finally, Nepal features a handful of prominent civil society figures that have managed to maintain a degree of independence from existing party interests, and have been able to speak for, and to, the larger interest of society. These “icons,” however, lack national clout of their own, and under normal conditions they do not represent a cohesive force for change. They most effectively play their roles when they are joined by other societal forces and broader public opinion; that typically takes place at times of national crisis—especially when a particular political player (e.g., the monarchy in 2005) overreaches and makes a power grab. When that occurs, these civil society icons can play a significant role in mobilizing public opinion and creating the pressure needed to push back against the power grab in question. History suggests, however, that once the crisis is over and the common enemy defeated, the coalition of diverse interests that had emerged quickly disintegrates, and prominent civil society figures once again are relegated to the sidelines of political life.

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<sup>43</sup> History partially accounts for that situation. During the period of absolute rule by the monarchy (1960-1990), political parties were banned; in response, they endeavored to mobilize and organize professionals, who were allowed to form interest-based organizations. Each such organization, therefore, became a facto proxy for the political party to which it was most closely tied.



### 3.2.8 THE MEDIA

Nepal features relatively vibrant and independent media outlets. The media landscape includes 300 community radios, over a dozen daily newspapers with a nationwide circulation, and a half-dozen television stations with country-wide reach. In addition, each small town typically has several local newspapers. These media outlets relay a variety of contrasting views and political opinions. The private media sector plays a growing role, and unhindered internet service further contributes to a free flow of information. While radio and television stations reach a much larger audience (since even poor and illiterate Nepalis have access to them and their coverage can be accessed free of charge), national newspapers are far more influential with regard to shaping public opinion and setting the public agenda. Several surveys have pointed to a high level of public trust in the media.

In the past eight years, mainstream Nepali media outlets have played a vital role not only in informing the public, but also in challenging the government. In 2005, the media helped mobilize public opinion against the monarchy when the latter concentrated power in its hands and engaged in a major political crackdown. Key media outlets also agitated against the Maoists' use of violence as a political means, supported Nepal's transformation into a secular republic, and after 2008, denounced the Maoists' intolerance of public criticisms. The media also has been instrumental in exposing corruption cases. Journalists have reported extensively on the CIAA's investigations and have relayed allegations of graft, bribery, and embezzlement.

Journalists, however, operate under significant constraints, primarily the violence, intimidation, and harassment often directed at them. Because the perpetrators of those practices often act on behalf of powerful political interests, they usually are not punished, indeed, attacks against journalists often are not even investigated. That situation has fostered a culture of impunity among those who target journalists, and a tendency to self-censor among the latter.

The Nepali media's main weaknesses include an overall lack of professionalism, a propensity for yellow journalism, low ethical standards, and the tendency of many media outlets to do the bidding of particular political forces. Journalism remains a low-paying profession that, with few notable exceptions, does not attract sufficient talent, while opportunities for training and professional development are extremely rare. The media's extreme reliance on advertising revenues significantly undermines its ability to report objectively and fairly.

### 3.2.9 PRIVATE-SECTOR BUSINESS INTERESTS

One of the poorest countries with one of the lowest per-capita GDPs in the world, Nepal features a small and underdeveloped private sector. That situation has both historical and contemporary roots. With regard to the former, the country remained a closed society with a heavily regulated economy for nearly 200 years. It was not until the 104-year old Rana oligarchy came to an end in 1951 that Nepal began to open up to the outside world. Even then, however, and up until 1990, the economy remained under the tight grip of the monarchy. The king was viewed as the ultimate rightful owner of all economic resources in the country. To those whom he chose and who thereby were indebted to him, he distributed access to land, permits, and other economic opportunities. A strict license raj was in place, and one needed connections to the palace to do business in the country. With the Nepali state itself playing a heavy role in the manufacturing sector, there were few incentives for entrepreneurship. Nonetheless, trade, especially re-export trade to India, did present significant opportunities and drew the attention of the Nepali merchant class. Import duties in Nepal were kept deliberately far below those in India, on the other side of the open border. Consequently, the re-exporting to India of goods imported into Nepal was a source of relatively easy and substantial profits. A handful of business families with connections to the monarchy took advantage of that situation to amass considerable wealth. But real entrepreneurship became the real casualty of these arrangements, which helps explain why Nepal still lacks a vibrant manufacturing sector and entrepreneurial class.

The advent of multiparty democracy in 1990, and the subsequent opening and liberalization of Nepal's economy, did not change the basic nature of the country's political economy, especially the intertwining of

political and economic interests. A partially renewed set of economic actors simply came to the fore to benefit from preferential arrangements with a new group of politicians and government officials. The license raj system formally came to an end, but a web of patronage networks running from politicians to their clients in the private sector came to replace it. Businessmen could not achieve success in the economic sphere unless they enjoyed the required political connections.

This nexus between business and politics remains in place today—in fact, as Step One discussed, it is stronger than ever. Politicians often extort businessmen and almost always try to become businessmen themselves. Meanwhile, businessmen seek to win access to well-connected politicians and then use that access for economic advantage, specifically to try to squeeze their competitors out of profitable opportunities. Those in power at any level of government operate under the premise that they will control the economic opportunities in their respective areas, and that they will use those opportunities for self-aggrandizement as well as to build and sustain patron-client networks. Nepal features no tradition of economic actors operating autonomously from the political sphere. The nexus between power and wealth is unusually strong, even by the standards of poor countries that feature an intertwining of political and economic interests. One interviewee, who by background and experience was particularly well-positioned to speak to those issues, put it in the following terms: “It is not so much that politicians and government officials use power for economic advantage; in Nepal, power **is** economic advantage... political competition is primarily over who gets to have the key to the treasury.”

Among the primary extra-legal economic advantages that prominent businessmen enjoy because of their access to senior political leaders and government officials, the following can be mentioned:

- a) *Preference when bidding on government contracts:* There is no level playing field when it comes to government tenders. In fact, there may be no formal bidding process. Alternatively, the outcome of that process may be determined exclusively based on the political and governmental connections of those involved.
- b) *De facto exemption from formal, legal rules, including corporate taxes, VAT (13 percent), or having to provide formal contracts (let alone social-security benefits) to employees:* Altogether, such exemptions lower the cost of doing business to such an extent (estimated at approximately 50 percent by one analyst) that they can be decisive when competing with firms that do not enjoy such benefits.
- c) *The use of bootleggers and thugs controlled by political parties:* Such extra-legal actors can be relied upon to intimidate, threaten, and in some cases physically eliminate competitors in the business world. Those same elements can prevent competitors from gaining physical access to such documents as tender forms. The consensus among those the DRG assessment (DRGA) team interviewed on the subject was that such forms of extortion and intimidation in the business world is spreading.<sup>44</sup>

The situation analyzed above suggests that the business community hardly can be viewed as a potential “champion of (democratic) reform.” In fact, it represents a key impediment to progress in this area. Its most prominent members have learned how to work the system to their advantage—indeed, they are key actors in that system. Leading businessmen as a whole have no interest in substantive progress on issues of transparency, accountability, the de-linking of political and economic interests, and the creation of more leveled political and economic playing fields. Revealingly, by one account, the top 20 businesspersons in Nepal do not pay taxes. One of the most prominent economists in Nepal suggested that, on average, approximately 50 percent of the employees of the top five business groups in the country do not have

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<sup>44</sup> The DRGA team was told of a particularly revealing recent incident that illustrates how far political parties will go in extorting economic actors. After winning a bid on a Swiss Development Corporation contract, a Nepali firm was targeted by a political party that harnessed its contacts in the media to organize a defamation campaign against the firm in question. Cover stories were published that alleged improprieties by the CEO of the firm and called for a parliamentary probe into the matter. In parallel, however, individuals affiliated with the political party behind this defamation campaign privately approached the CEO and offered to pull the plug on the campaign immediately if he paid 50 million rupees (approximately \$5.6 million).

contracts (because their employers avoid formal regulations to that effect by tapping into their access to key political and governmental leaders). In their present configuration, the country's dominant private sector interests represent an impediment to economic reform, democracy, and sustainable development. They do not constitute potential stakeholders in governance and policy reforms.

### 3.2.10 NON-STATE ACTORS

In 2006-2007, dozens of armed groups emerged as an increasingly disruptive force across the Terai, and to a smaller extent, in the eastern hills. Several of these groups claimed a political agenda, and in the Terai many painted themselves as part of a broader movement of Madhesi mobilization against discrimination and "internal colonialism." In reality, only two or three such groups were driven, even then, only partly so, by political grievances. The rest were simply criminal outfits that engaged in extortion, robbery, kidnappings, collecting "taxes" from ordinary citizens, and other illegal activities, and they did not even bother to issue political platforms. Ironically, while average Madhesi saw these groups for what they were, i.e., criminal elements, and while they often were the victims of those groups' activities, many in the "Madhesi mainstream" also felt that these groups performed a useful function by making it more difficult for the state to suppress Madhesi activism.

By 2010, there were, according to the Home Ministry, 114 armed groups operating across the country, most of them in the Terai and the eastern hills. Some had emerged out the Maoist party (they typically were ex-combatants from the PLA). Others had broken away from Madhesi parties, while still others had simply taken advantage of an environment conducive to criminal operations. Three main forces combined to make the proliferation of armed criminal gangs possible:

1. The weakness of law-enforcement mechanisms and institutions;<sup>45</sup>
2. The demonstration effect exercised by the Maoist insurgency, which had helped legitimize the use of violence for political purposes (alleged or real) and had shown that "violence can pay" (both figuratively and literally); and
3. Collusion between criminal gangs, political parties, and law enforcement officials as well as other civil servants (such as Chief District Officers).

Since early 2011, the number, size, and activities of armed groups have declined markedly, and what was viewed as a major and worrisome problem back in 2008-2009 is no longer regarded as a significant threat. The last incident to date occurred on April 30, 2012, when a group calling itself the Terai Students Liberation Front detonated a bomb in Janakpur, killing five people and injuring at least 32 others.<sup>46</sup> The number of recorded armed groups across the country has dropped from 114 in 2008-2009 to fewer than two dozen at the writing of this report. Recent Nepali press reports as well as a top-ranking police official the DRGA team interviewed estimated that membership in those groups ranges from 20 to less than 100, with most groups leaning toward the lower figure. This downward trend can be attributed to three main factors:

- a) The significant progress toward reestablishing an effective police presence in rural areas;<sup>47</sup>
- b) Tighter security measures by the authorities;<sup>48</sup> and

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<sup>45</sup> Between 1996 and 2006, the Government of Nepal (GON) had relied heavily on the understaffed and underequipped NP to fight the Maoist insurgency. As a result, the NP suffered significant losses, both human and material, as police building and personnel became a primary target of Maoist attacks. By the time the CPA was signed in November 2006, only about 550 police posts out of 2000 were still functioning nationally. Elsewhere, police stations often had been destroyed or vacated, and police personnel had withdrawn from the communities in which they once had been active.

<sup>46</sup> Two months earlier, on February 27, a bomb explosion in the Babarmahal area of the capital had killed three persons and injured several others.

<sup>47</sup> Police facilities have been rebuilt (a process to which the USG has contributed via INL assistance). The Senior Law Enforcement Adviser at the US Embassy in Kathmandu estimated in July 2012 that 60 to 70 percent of villages and towns across the country now have full-time, 24/7 presence of the police; he expected that within two years, the police would have a direct physical presence in the overwhelming majority of localities across the country.

- c) Successful talks between the GON and approximately 17 armed outfits. This “soft” side of the GON’s strategy for countering the threat posed by armed groups has led to several agreements by which groups have agreed to, and formally announced, a stop in their activities.

### 3.2.11 REGIONAL ACTORS

Nepal is caught between two regional and global powers, India and China. In 1962, the two countries fought a border war in the mountains near Nepal. Nepal’s open border with India is approximately 1,000 miles long, about 100 miles longer than its mountainous northern border with China. Both India and China view internal developments in Nepal as critical to their security interests, and both, especially India, have Nepali actors upon whom they can depend to advance their respective agendas in that country. The Indian and Chinese political and security/intelligence establishments, especially those of India, have close ties with politicians affiliated with the major Nepali political parties. Many analysts believe that Indian and Chinese interference in Nepal’s internal affairs has increased sharply in recent years, and that the capacity of Nepali political and governmental actors to make independent decisions has decreased accordingly.

Indian and Chinese influence in Nepal has shaped the latter’s politics in two other critical ways:

- a) It has fuelled disagreements among Nepali actors over how that situation should be handled, and over how longstanding ties with India ought to be balanced against a more recently developing relationship with China.
- b) It has provided ammunition in internal political debates. As noted earlier, Bhattarai’s allegedly close ties to India have been a boon for his political opponents (including Prachanda). The PM has found it difficult to dismiss depictions of him as a proxy for Indian interests. Similarly, one of the many factors that forced the resignation of Prachanda as PM in May 2009, and that subsequently made him unacceptable to the opposition for another term as PM, was the efforts Prachanda had deployed to establish closer relations between Nepal and China and reduce India’s influence in Nepali affairs.<sup>49</sup>

#### INDIA

India remains, by far, the dominant foreign actor in Nepal. The roots of its influence are manifold.

- a) The two countries share historical ties and religious traditions. The social, familial, cultural, and economic bonds between India and the Terai region are especially close. Individuals in the Terai often have family across the border and vice versa. People from either side of the border can cross it without a visa and can work and live in either country.<sup>50</sup>
- b) Economically, Nepal depends heavily on India, which represents its primary source of imports and its main export market. A landlocked country, Nepal also relies on India for access to the sea through the port of Calcutta. In addition, India is the leading source of foreign investment in Nepal.
- c) As noted earlier, the Nepal Army’s institutional ties with its Indian counterpart are extremely strong.
- d) India is deeply involved in Nepali politics. It routinely supports one faction or another in intra-party disputes. That situation is a source of political arguments and allegations of “compromised

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<sup>48</sup> In July 2009, the GON launched a Special Security Plan (SSP) that entailed mobilization of the Armed Police Force to the central eastern Terai region (where illegal armed groups were most active) and closer cooperation among the APF, the NP and local communities. A base office of the APF was set up in all restive Terai districts, while security was tightened at all border posts. In addition, the Home Ministry implemented a Small Arms Control Work Plan (SACWP), under which people arrested with illegal firearms no longer can be released on bail and can be put behind bars for several years. Under the SACWP, the police stepped up arrests of people for illegal possession of arms and ammunitions. The SSP and SACWP have proven to be quite effective: since 2009, many armed groups’ members have surrendered to the authorities, some have been captured or killed, and others simply have disappeared altogether. Encouraged by its success in the central eastern Terai, from 2010 onward, the APF was mobilized in the eastern hills, where several armed outfits were still operating under the cover of ethnic political groups. There as well, the APF quickly brought the situation under control—the scope of extortion by such outfits has been considerably reduced, as has the number of killings and kidnappings.

<sup>49</sup> For an up-to-date discussion of the role of India and China in Nepal, and of these two countries’ evolving policies toward their neighbor, one should consult International Crisis Group, “Nepal’s Constitution (I): Evolution not Revolution,” (2012), pp. 27-28.

<sup>50</sup> On Indian interests in the Terai, see International Crisis Group, “Nepal’s Troubled Terai Region,” (2007), pp. 24-28.

sovereignty.” Many Nepali politicians and analysts alike complain that Nepal does not exercise full control over its own foreign policy and security decisions. They point out that India is far too involved in shaping debates on such issues as how to federalize the country (e.g., how many states should be created and what their borders should be) or who the next chief of staff of the NA should be.

- e) India was instrumental in shaping the November 2004 “Twelve-Point Agreement” that led to sidelining (and, ultimately, the abolition) of the monarchy, and provided for the integration of the Maoists into mainstream politics. Its role in subsequent developments related to the peace process, the transformation of Nepal into a secular republic, and the nature of the debates over federalization was equally critical.

Historically, India has viewed developments in Nepal as essential to its ability to defend its northern border. It has been concerned that instability in Nepal could spill over into India, and India’s Maoist insurgency in the past several years has exacerbated Delhi’s longstanding fears of “negative political demonstration effects” emanating from India’s northern neighbor.

The rise of violent Islamic extremism (VIE) since the 1990s, combined with India’s enduring rivalry with Pakistan and the latter’s known sponsorship of VIE groups to advance its interests abroad, has created particular apprehension in Delhi that Nepal might be used as a base from which to launch violent attacks against India. These concerns increased in the wake of the December 1999 hijacking by radical Islamic militants of a Delhi-bound Indian Airline’s Airbus A-300 from Kathmandu (commonly known as the IC 814 hijacking). Since then, India has been the target of several deadly attacks by radical Islamic groups with international connections. That trend has increased India’s fear that freedom of movement along its border with Nepal has created incentives for VIE groups, perhaps acting with the complicity of some in the Pakistani security services, to try to infiltrate India via Nepal. These concerns predictably have taken on heightened significance since the November 2008 Mumbai attacks.

Along similar lines, criminal networks involved in trafficking counterfeited currency and drugs to India are known to have taken advantage of the open border with Nepal. It is widely believed that several of these groups are being used by Pakistan, and in particular the Inter-Services Intelligence (ISI). To respond to these threats, Indian security agencies have relied on India-based gangs. The latter have sent hit men to Nepal, presumably on behalf of Indian security agencies, to murder individuals suspected of working for, or with, the ISI or VIE networks.<sup>51</sup>

As a result of these developments, security issues have loomed increasingly large in shaping the relationship between India and Nepal in recent years. With security taking central stage in the Indo-Nepal discourse, Indian security and intelligence agencies have become increasingly involved and powerful in Nepal’s internal affairs—including security and politics.

Finally, as India’s July 2012 power crisis demonstrated vividly, that country’s power deficits are serious and likely only to grow in coming years as India continues to experience rapid economic growth. Northern India, which can import power from Nepal, is reeling under particularly severe power shortages. India, therefore, sees access to Nepal’s hydropower as a core economic and strategic objective—one that is likely to create competition if not friction with China, which harbors ambitions in that sector as well.

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<sup>51</sup> Two high-profile Nepali citizens, both of them Muslims implicated in illegal activities, have been killed in Kathmandu in the past two years, while a third was shot at while in a Kathmandu detention facility. The first two were, respectively, Jamim Shah, owner of a media company, and Faizan Ahmad, General Secretary of Islamic Association of Nepal. They were killed in broad daylight. The third, Yunus Ansari, another media company owner, was serving a jail sentence for his alleged involvement in the circulation of counterfeited currency. The NP identified Indian nationals as having been behind these killings and shooting, and were able to arrest some of them.

## **CHINA**

Although China lacks the depth of historical ties that India enjoys with Nepal, it is a close second in terms of its influence in the country. It fears possible use of Nepali land by a third country, or by third country-based elements, and has voiced that concern publicly and repeatedly.

Its first and foremost interest in Nepal, however, relates to Tibet. Since the Tibetan uprising of the late 1950s, many Tibetans have crossed the rugged mountains between Nepal and Tibet and have settled in Nepal as refugees. Their current number is estimated at about 20,000. In this context, China has been determined to prevent Tibetan activists from using Nepal as a base from which they can promote the Tibetan cause. Chinese agents reportedly have crossed into Nepal and then slipped into India across the open border to infiltrate Tibetan exile groups operating in India (where the Dalai Lama lives). Chinese officials almost systematically bring up the Tibetan issue in high-level meetings with their Nepali counterparts, and they reportedly monitor developments in Nepal that relate to Tibet very closely. In March 2011, China was believed to have played an instrumental role in the GON's decision to prevent Tibetan refugees in the country from voting for a new political head of the exiled Tibetan community there.

China's concern regarding Tibet also has led it to express its own views on federalization. Beijing has made it clear to Nepali political leaders that it considers carving out several provinces along Nepal's northern border to be unacceptable, due to its potential implications for Tibet. China also has expressed its opposition to ethnic-based provinces, a position that largely reflects its fear that federalization along those lines might inspire its own ethnic minorities to express similar demands.

Finally, China has significant economic interests in Nepal. In that area its rivalry with India is particularly strong, especially with regard to energy generation and other large infrastructure projects.

# 4.0 OPERATIONAL AND PROGRAMMATIC ENVIRONMENT

In light of the priority DRG problems identified in Sections 2 and 3 above, the DRG assessment framework next calls for a review of USAID’s interests, assistance programs, resources, and comparative strengths and weaknesses. The objective is to identify which strategic or programmatic options for addressing the identified DRG problems might be a good fit for USAID/Nepal, particularly in light of the Mission’s development of a five-year Country Development Cooperation Strategy (CDCS). On these bases, the final element of the DRG assessment, which is the presentation of the assessment team’s strategic recommendations, will be provided in **Section 5** below.

1. The **basic USG policy goal** in Nepal can be summed up concisely: “To help create a stable, democratic and prosperous society in which protection of, and respect for, the rights of all is a core value for the national leadership.”<sup>52</sup> In the team’s view, these four elements all work together: Stability allows democratization and economic growth to occur, and nurturing the rights of all, which we interpret as inclusion, operates as a necessary condition for these two developmental processes to take place.

With the ongoing implementation of the 2006 Comprehensive Peace Agreement, stability has been largely achieved for the time being. However, the long process of demobilizing and integrating the People’s Liberation Army is moving unevenly, persistent criminal gang activity plagues parts of the Terai, and the trajectory toward constitutional consensus between the major political parties has proven difficult to maintain, with a workable consensus continuing to elude party leaders, who continue to resist demands for inclusion from the country’s heretofore marginal constituencies. The resulting impasse has led to continuing low levels of service delivery across all development sectors. This combination of rising demands for inclusion and ineffective governance constitutes what we have called the Core DRG Problem in Section 2 of this report. Helping to ameliorate this Problem will significantly enhance Nepal’s prospects for realizing the basic USG policy goal stated above.

2. **USAID’s current DRG program** in Nepal has as its principal goal the promotion of the country’s transition to democracy and stability. Specifically, the Mission’s DRG Assistance Objective is “Citizen participation in the democratic transition strengthened.”<sup>53</sup> For FY 2012, the DRG portfolio amounts to over \$11 million, or about 14% of the total Mission’s budget allocation. Currently, the program has five major components being implemented by four organizations:
  - Assisting the Election Commission with voter registration and election management (implemented by International Foundation for Electoral Systems or IFES) ;
  - Improving alternative dispute resolution at the local level (The Asia Foundation);
  - Building more representative and accountable political parties (National Democratic Institute or NDI);

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<sup>52</sup> US Embassy, “FY 2013 Mission Strategic and Resource Plan Report,” (20 May 2011), p. 1.

<sup>53</sup> USAID/Nepal, “Democracy and Governance Assistance Objective,” (19 March 2010), p. 1.

- Monitoring the peace agreements in place (The Carter Center); and
- Combatting human trafficking (The Asia Foundation).

In addition to the above programs, there is also support to the Nepal Peace Trust Fund, several CMM grants, and an award to the DOJ to implement more counter-TIP work.

Of these various programs, the IFES program is arguably the most critical in the short run, as it will engage with Nepal's most immediate challenge on the political front: creating a constitution and holding the next national election. The entire electoral system is thus far undetermined, and however it becomes structured, the first election to be held under it will be difficult at best to manage, so IFES will have the opportunity to provide significant assistance to the architects of the new constitution and to the election commission that will operate under it. If the next election precedes the constitution (perhaps a more likely scenario as of this writing), IFES can still have a major role in helping the election commission prepare for and conduct a "free and fair election" amid what will be widespread concern that the reported coercion and fraud of the last election will be repeated.

NDI's work, focusing on parliament as an institution and more particularly on party-building, is more critical for the medium term, though its activities alongside IFES in the next election will certainly be useful in the shorter term. In its party work, NDI's efforts to promote dialogue among party leaders, nurture future party leaders, and introduce intraparty democracy will all be helpful, but these are very long term initiatives in Nepal's setting and have enjoyed at best a modest success so far. For the next several years, a focus on helping parties to craft programs and policy initiatives that will deal with the Core DRG Program would be an extremely useful addition to their portfolio of activities. If Nepal is to successfully accommodate the demand for inclusion and provide effective governance, parties will have to change from rent-seeking patronage machines to organizations that can formulate and implement national policies.

The upcoming local development project will add a sixth component (with allocations coming to \$25 million spread over five years), working with sub-national governance to enhance state responsiveness to local level needs, cross-sector systems and institutions. Collectively, these programs enhance the capacity of governance institutions to pursue the Presidential Initiatives. The Mission's upcoming local governance programming will be able to directly support the new CDCS, as described below and in the next section of this assessment.

3. **Other USAID programs** support the three Presidential Initiatives:

- The Global Health Initiative (50% of USAID program spending in FY 2012) aims to help Nepal achieve three Millennium Development Goals in the health sector, focusing on child health, maternal health, and HIV/AIDS.
- The Feed the Future program (12%) centers its effort on strengthening food security and inclusive economic growth, with activities in basic education and workforce development, competitiveness, financial access, and economic policy.
- The Global Climate Change Initiative (14%) endeavors to fortify sustainable management of natural resources under changing climate conditions, concentrating on conserving biodiversity, maintaining sustainable landscapes, enabling communities to cope with climate change, and helping Nepal reduce emissions from environmental degradation.

Altogether these three initiatives accounted for 76% of FY 2012 program funds, with the DRG sector taking 14%, education 6% and economic growth outside the Presidential Initiatives 4%.

4. **The CDCS process:** The five-year strategy will ultimately support US foreign policy priorities in Nepal, focusing on achieving development results that have clear and measurable impacts. It will ensure strategic alignment with the GON development priorities, while support the needs, rights, and interests of Nepali



citizens. All of this must be done judiciously, prioritizing resources in the context of the Mission's needs, constraints and opportunities.

The Nepal Mission's CDCS, as presented in June 2012 contains a package of initiatives into which its DRG program will fit well. The DRG program's major commitment to increasing participation in, transparency of, and accountability for local governance will enhance the effectiveness of the public sector to deliver better health services and to support enhanced agricultural productivity and distribution of produce. DRG thus squarely supports two of the three Presidential Initiatives (Global Health and Feed the Future). Among the "non-initiative programs" included in the CDCS, education will receive a large share of attention along with health and agriculture as the three sectors of most interest in the local governance project. In addition, this project will serve to showcase Administrator Rajiv's "Second Track" initiative in which DRG supports the Presidential Initiatives.<sup>54</sup> Aligning the DRG strategy with the CDCS priorities will help enable the cross-sectoral synergies that are at the heart of the CDCS development hypothesis, which is:

*To succeed, Nepal must have a government, civil society and private sector that are fully responsive to the needs of the people. To be responsive, those actors must have the capacity to deliver basic services whereby society will engage, prosper, and improve the quality of their lives. By (1) strengthening governance systems of the GON, civil society organizations, and the private sector, and (2) through coordinated investments in priority areas at the community level, Nepal will become a more democratic, resilient, and prosperous country.*

Rendering the DRG recommendations compatible with the CDCS is the most critical filter that has emerged from this Step 3 of the assessment methodology. Beyond prioritizing crosscutting interventions that support the three Presidential Initiatives, USAID/Nepal is looking to focus resources on governance enhancements improving the delivery of services, especially in sectors supported by other Mission programs. If the Mission moves forward with two Development Objectives, one will likely focus on programming focused on making governance systems more effective, participatory, and accountable, while the second may focus on making communities more economically, environmentally, and socially robust. Although these Development Objectives are, at the time of this assessment, still being finalized, these general areas can align with key elements of the assessment's analysis. For example, in order to enhance the delivery of public services to support governance systems, there will need to be capacity building of elements of the GON, civil society, and the private sector. In addition, related policy work at the national level will be needed to maximize program impacts in other sectors. Furthermore, the Mission is strategically supporting the relative importance of improved service delivery and governance at local levels, despite national-level fluctuations, again especially in regards to the core mission programs in GHI, GCC, and FTF.

The DRG Assessment of Nepal has identified improving inclusion as one of the key needs currently facing the country. The findings of the assessment indicate that the mobilization of large elements of previously marginalized groups has, to a large extent, overwhelmed the democratic processes and institutions that exist to constructively channel the greater political engagement and demands that have come about as a result of this higher popular mobilization. While Steps 1 and Step 2 of this DRG assessment were able to glean these findings from a macro-analytical framework largely situated at the national level, filtering the findings through Step 3 and specifically incorporating the implications of USAID/Nepal's five-year strategic visioning process offer a critical readjustment of how the problem of inclusion can be addressed. Namely, inclusion can come about not just through changes in national processes, such as political party reform (which the DRG assessment doubts will lead to much in the current political climate), but also by a bottom-up approach. Such an approach can seek to increase the opportunity to engage people at the grassroots where greater participation in local governance can be

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<sup>54</sup> See "Remarks by Dr. Raj Shah, USAID Administrator: An Expansion of Human Welfare," at the Democracy, Rights and Governance Conference 2.0, Arlington, VA, 20 June 2011.

motivated by the prospect of tangible benefits in the form of improved public services, as well as by the symbolism of greater participation by all walks of life at the local level.

A second key element of the CDCS that helps filter the analytical findings from Steps 1 and 2 relates to the Mission's move to focus on making governance systems more effective, participatory, and accountable. In Step 1, the DRG assessment identifies the core DRG problem as stemming from the gap between inclusion and government effectiveness. However, given the current political impasse over federalism, the long-term thinking in the Mission suggests that the recommendations should focus more on "governance systems" rather than just government *per se*. This is significant since it places priority not just on governmental delivery of services, but also on the identified need for greater participation, transparency, and accountability.

5. Total **USAID resources** in budgetary terms for FY 2012 came to \$81.7 million, representing a 19% increase over the previous fiscal year, but for FY 2013 the Mission is facing a prospective 18% cut, according to the US Mission's plans released in May 2011. As for personnel, the USAID Mission will decrease its Direct Hires from 20 to 19 for FY 2013, while local staff will diminish by 10 from 58 to 48. PSCs and Eligible Family Member staff will hold steady at 8 and 11 respectively.
6. A number of **other donors** are active in supporting DRG work in Nepal. Most notably in connection with our own assessment, the UNDP is now into the fourth and final (though it is slated to be renewed for another term) year of its Local Governance and Community Development Programme (LGCDP), which presently covers virtually all the country's 3915 VDCs and more than 32,000 of its 35,000 wards. While the UN (including UNICEF, UNFPA, UNCDF, UNIFEM and UNV as well as UNDP) is the major supporter, LGCDP is also funded by ADB, JICA, Danida, DFID, GIZ, CIDA, the Norwegian Embassy and SDC. The program facilitates citizen participation by training Social Mobilizers to work with Ward Citizen Forums (WCFs) at ward level and the VDCs at village level in a facilitated, bottom-up process to discuss and formulate development priorities in a 14-step participatory planning process cycle for allocating GON block grants and additional resources provided by LGCDP itself. For USAID efforts to work on programs involving local governance (see Crosscutting Annex), the large LGCDP will be the principal program in operation, with USAID playing an enhancing (and we believe most useful) role, leveraging the bigger donor initiative.

UNDP has also been assisting the DRG sector through a number of programs at the national level, including its Electoral Support Project working with the Election Commission of Nepal, its Support to Participatory Constitution Building effort slated to run through 2012, an Access to Justice Project that includes an ADR component, and a capacity building project at the National Human Rights Commission.

The Asian Development Bank has been supporting its own large-scale (US\$ 115 million over 5 years ending in June 2013, which includes US\$ 9 million from CIDA) Governance Support Program. It focuses on local governance participation and capacity building.

Other important DRG donors working at the local level include the World Bank with its Program for Accountability in Nepal (PRAN), the Enabling State Programme (ESP) funded through a donor group sponsored by DFID but also including SDC, Danida and AusAID as participants, the State Building at Local Level (SBLL) project supported by SDC alone, and the Human Rights and Good Governance (HRGG) initiative supported by Danida alone. Also, Germany's Ebert Stiftung has had a small program working at the district level to promote interparty dialogues.

The World Bank's PRAN works with four in-country NGOs to strengthen their capacity to spread demand-side skills among CSOs more generally in Nepal. The program began in 2010 and ends in October 2012, but it sees a good chance for an extension from the Bank. Many of the skills it has been building should be useful when Sajhedari gets under way in some cases providing packages that can be directly incorporated into work with partner communities. In addition, the Bank has funded a relatively

small (US\$3 million) effort as part of its global Demand for Good Governance (DFGG) program, but after four years it is due to close out in October 2012.

The ESP initiative has set up a Rights, Democracy and Inclusion Fund (RDIF) project active in 68 of Nepal's 75 districts. It includes a program devoted to enhancing access to services for Dalits, former Kamiyas (bonded laborers), women, youths and user groups, as well as an intensive ADR program in five eastern districts. ESP will end in 2013, and its funders are presently in discussions to design new initiatives along similar lines, but its legacy should be of material interest to Sajhedari, especially the ADR component, which could overlap with its own coverage in the districts that are eventually selected.

In addition to supporting ESP and LGCDP, SDC has several programs of its own, including two of particular interest to USAID's DRG efforts. Its Good Governance Program (GGP) has worked in seven "cluster districts" (four in the Midwest and Far West, three in the East) and after its conclusion in July 2012 will be replaced with a new Strengthening Local Accountability and Governance Project (SLAGP) operating in the same areas and also focusing on the local demand side, working with NGOs in the immediate area.

A more intense version of SLAGP will be the aim of the State Building at Local Level (SBLL) program to begin shortly. SBLL will concentrate on just two districts in the Eastern region, supplementing LGCDP by providing intensive training for the Social Mobilizers and District Facilitators and offering additional funding to the VDCs on an incentive basis linked in with LGCDP's 31-part Minimum Conditions and Program Monitoring component by adding further conditions and thresholds. This SBLL project shows many similarities to what is contemplated for Sajhedari and should be of great interest to this USAID program when it gets started. Possibilities for information exchange, collaborative efforts and synergy should prove large.

Lastly, there is the Danida-assisted Human Rights and Good Governance (HRGG) project (ending in 2013), which endeavors to build stronger, long-term linkages between donors and CSOs in the DRG sector, mostly at the national level.

Despite the large number of active donors on the local governance front, there seemed to be little if any formal coordination among them. Most of those we met knew something—and in many cases a great deal—about other donors working in this subsector, and the involvement of so many donors in the LGCDP meant that a coordinating structure of a sort does exist. But the structure pertains only to that program, not to the whole arena of local governance. Donors in other developing countries have put together various kinds of country coordinating groups, sometimes with sectoral subgroups (e.g., on Rule of Law, or electoral assistance) that meet regularly on a formal basis. Some donors complain of the burden this imposes on time, but most have found them quite valuable in facilitating exchange of information and opportunities for joint endeavors. Such a group (and subgroups) in Nepal would be useful.

In view of all this donor focus on local governance, does it make sense for USAID to be developing a similar program that will become by far the largest in its DRG portfolio? The fact that four-fifths of the country's people live in rural areas would seem to argue for a serious development emphasis on local matters. The intense interest in local government structure shown during the constitution-making process supports this idea. There is surely plenty of room for many donors to involve themselves in local governance, though a more formal coordinating mechanism among them would be helpful, as argued in the previous paragraph.

In addition, as a result of its long experience in Nepal, USAID is in a position to play a leading role in promoting local development. Its decades of work in the health sector, particularly in helping to lower fertility and combat HIV/AIDS, give it a comparative advantage in strengthening participatory local governance as a mechanism to improve service delivery in this sector. By integrating their efforts with those of colleagues in the health sector, USAID implementers in the Sajhedari project will know what is

needed and how to monitor, evaluate and improve health services delivery. Similarly, implementers will be able to draw on the long USAID experiences in promoting agriculture and education in Nepal. It is fortunate that Sajhedari will move into action during the Presidential Initiatives and Administrator Shah's "second track" bringing DRG into harmony with the GHI and FTF endeavors.

7. As should be clear from our analysis in Step 1, **constraints on the recipient side** are many, beginning with the disconnect between elite control of the major political parties as well as the economy and government administration on the one hand and demands on the part of previously marginalized and now mobilized communities for inclusion on the other, compounded by low government effectiveness in delivering public services. As a result, the benefits of state activity have gone largely to elites at both national and local level, both openly through the possession of key positions in all these sectors and clandestinely through a myriad of corrupt practices.

These constraints all pose serious problems for USAID programming, particularly in the DRG sector, where they tend to reinforce one another. A state controlled for centuries by a closed elite will be reluctant to share power with communities they have managed to exclude in the past, while those same communities, now mobilized, will not be contented with the symbolic gestures that might have fobbed them off previously. A bureaucracy reserved for elites that had only modest incentive to perform earlier will not magically gain motivation if members of newly empowered communities begin staffing its ranks, but instead the new bureaucrats will be tempted to emulate their low-performing predecessors. Public sector venality will not suddenly disappear as upwardly mobile leaders gain positions as new elites. Any USAID initiative will find these constraints to be formidable at all levels, particularly the local arena, where traditional elites have entrenched themselves over many decades, tucked comfortably away from the scrutiny that media, opposition political leaders and donors can bring to bear at the national level.

For example, it has proven hard enough to establish even a modicum of honesty at the macro level. As the principal safeguard against malpractices in the public sphere, the Commission for the Investigation of Abuse of Authority (CIAA) has a strong mandate, but has proven weak in enforcing its charge (e.g., in December 2011, it declared the APM that had placed party representatives on all VDCs to be unconstitutional, but its judgment has been widely ignored, and party representatives continue to sit informally on these bodies). In addition, the fact that the political parties have not managed (indeed, perhaps have not wanted) to appoint a head for the CIAA has compounded its ineptitude.

As implied above, it is not just a neopatrimonial political system and corruption that hobble the bureaucracy's ability to deliver services effectively. It is also an outright lack of capacity resulting in ineffectiveness, compounded by a de facto entitlement stemming from an absence of accountability above as well as below. Government servants tend to be poorly trained for the most part (especially those in the rural areas) and thus ill-equipped to handle their jobs, and, because they are not held to account by higher levels or by able and energetic elected councils, they have little ability or motivation to perform well in their service delivery functions or even to show up for work.

A five-year USAID program is not going to fully train cadres of government servants to a high level of expertise as health workers, teachers, or agronomists. Such technical education is far beyond the reach of DRG projects. But by drawing on the experience of its sister programs in health, education and agriculture, USAID's local governance programming can help raise the level of technical capacity in these sectors, and in its work with local councils it can increase the degree of accountability that service deliverers have to render.

In many countries a further constraint to USAID's effectiveness stems from a general anti-Western bias among elites, and in some cases a specifically anti-American bias. This has not been the case in Nepal. There has been some degree of animus against donors recently in the form of criticism, largely from traditional elites, charging Western donors generally with causing the upsurge in demand from marginalized groups for inclusion by promoting civil society advocacy. USAID and the USG are included as targets, but only as part of a much wider field including DFID, Danida, Norad, SDC, and even the

World Bank. But from what the team could ascertain in its relatively brief visit, this criticism does not amount to a serious constraint on future efforts to promote inclusion. While traditional elites can complain about Western interference in what they conceive to be proper societal norms, they are also anxious to accept Western assistance, with the latter priority far outstripping the former.

## 5.0 DRG STRATEGIC AND PROGRAMMATIC RECOMMENDATIONS

The findings of Step 1 of this DRG assessment indicate that the key political challenge facing Nepal is to find legitimate political institutions that can peacefully resolve conflicts over identity and manage competition over resources in an era of rapid social mobilization. The spectacular rise in social and political mobilization has contributed to a significant inclusion issue relating to large portions of the population that had previously been marginalized. As consensus over the prevailing order broke down, new elites have arisen that have sought to use demands by politically emerging communities to cement their own positions as intermediaries with the state. These elites have sought to use identity-based symbolism to capture the social movements by spurring an increase in demands for greater local autonomy. As a result, the demands from previously marginalized communities have been largely over such symbolic issues as respect, dignity, and compensation for historical injustices. Even federalism is sometimes viewed from this prism, as a means for ethnic-based groups to advocate for reparations for past wrongs and for greater recognition and influence in the future.

As consensus over fundamental political arrangements has foundered, political parties have become caught up in the bickering, further compounding the political stalemate which has thus far stymied the reform process. The political immobility that has resulted from the antipathy between the parties has contributed to the failure to thus far resolve the relatively intractable issues associated with state restructuring, such as the advancement of federalism. At the same time, the parties have competed among themselves to play a critical role in mobilizing hitherto excluded and marginalized communities around particularistic (often ethnic) objectives rather than national reform. This practice has served to undercut government effectiveness and administrative accountability by bringing much higher levels of demand to bear on weak government institutions, as well as reinforcing the logic of personalistic and patronage relations as the basis for appointments to public jobs.

Another critical finding was that systemic, institutionalized corruption also corrodes government effectiveness and administrative accountability. This pattern has been exacerbated by the aforementioned political party leaders, who use these means to generate the resources parties need to maintain their hold over their adherents. Meanwhile, the weakness of demands from below for greater accountability and transparency has helped allow both grand and petty corruption to grow relatively unchecked.

Deficits have also been identified in the areas of rule of law and in regard to competition. The shortcomings in these DRG dimensions means corruption has been able to flourish, political party leaders are able to act with relative impunity, and a lack of bottom-up demand for significant reform has allowed for an amalgamation of political and economic elites. Nepal's core DRG problem is thus compounded by multiple associated deficiencies.

Step 2 of the DRG Assessment of Nepal offers insights that both reinforce the key findings regarding the core DRG challenges and helps to further filter the strategic approach that emerges from the assessment framework. The most prominent points in this regard are the growing centrality of the debate over federalism and the identity-based political perspectives that have emerged hand in hand with the mobilization of large swathes of hitherto marginalized groups. The significance of this for the recommended DRG strategy is that Nepal's way forward is closely tied to the resolution of the issues of federalism and decentralization. How identity politics are played out will be closely tied up with the reformed political structures that following the resolution of the federalism policy dialogue will be put in place at sub-national levels. To avoid the potential

pitfalls of identity politics, which can exacerbate conflict and lead to political immobility, alternative means of political participation will need to be promoted that are not captured by the political elites that currently compromise the role of the political parties, which are likely to remain factionalized and which do not currently represent a strong window of opportunity. Rather, more localized participation around concrete issues of development is needed, especially where such participation can engender more transparency and accountability over the raising and disbursing of public funds.

Step 3 has provided another set of considerations that helps filter the subsequent strategic and programmatic recommendations. Namely, the DRG strategy must be aligned within the broader framework of the Nepal Mission's CDCS, as discussed in the preceding sections. As such, the DRG strategy should also reinforce and be compatible with the crosscutting elements of the Mission's portfolio, as discussed in the Cross-Sectoral Annex.

The DRG Strategic Assessment Methodology's filtration process has identified the following objectives as addressing Nepal's core DRG problems in a feasible fashion consistent with the Mission's priorities, as reflected in the 2012 CDCS process.

### **DRG OBJECTIVES**

- *Support legitimate national-level political institutions that can peacefully resolve conflicts over identity and manage competition over resources in an era of rapid social mobilization.*
- *Prepare sub-national actors for a devolution of power, including developing the capacity of civil society to channel community participation in local governance. On the supply side, as local government institutions evolve under the new devolved structures, build the technical and managerial capacity of local government to generate transparent publicly accessible planning, budgeting, spending, and evaluation information in priority sectoral areas.*
- *Strengthen media and CSO capacities to disseminate evidence-based information regarding the transition to federalism and further decentralization.*

In accordance with these objectives, the proposed DRG strategy is built around the following working hypothesis:

### **DEVELOPMENT HYPOTHESIS**

If... (changes in current situation)

- At the national level, policies, systems, and frameworks are put in place to support a new constitution and federal (decentralized) structure, with local structures included in the discussions and design of systems so that both national and sub-national government entities (elected and administrative) develop administrative, fiscal, and communication processes that are consistent;
- Top-down dictates by political elites (placing pressure and creating conflict at lower levels) can be mitigated by the creation of space for bottom-up debate and decision making based on community rather than party, social standing or ethnicity;
- Technical and managerial capacities in the governance of institutions (both local government, civil society and other bodies) can be strengthened to better respond to people's needs and deliver services;
- Endemic widespread and deep culture of corruption (and rent-seeking) can be held in check through popular pressure as well as accountable and transparent systems;
- The creation of peaceful, transparent, and inclusive mechanisms and forums for expression of concerns can replace demonstrations and strikes (such as bandhs) as the preferred method for making voices heard; and
- The semi-independent media and civil society can be empowered to be an evidence-based watchdog and a relatively unbiased source of accurate information about the transition to federalism and further decentralization...

Then...

- A legitimately inclusive and participatory political and civic culture, harnessing more accountable and transparent systems (planning, decision making, distribution of services and resources) and institutions (focusing at this point at sub-national levels) will be in place to be ready for, participate in, and manage the transition to federalism and subsequent decentralization, as well as provide more equitable services.

## 5.1 GUIDING PRINCIPLES AND ASSUMPTIONS

In formulating our recommendations, we have been guided by several general *principles*. The following guiding principles are intended to help mission programmers consider how to incorporate some of the broader findings of this assessment. The guiding principles carry financial and personnel implications which will condition how these principles might actually be put into practice.

1. *Keep programming small, flexible, and nimble.* Nepal is undergoing a major transformation that is far from complete. State restructuring is in progress and new actors and forces are in flux.
2. *Maintain the ability to monitor political change.* Mission programmers and their implementing partners need to be closely attuned to the changing context. Ongoing political analysis is crucial for the DG portfolio. This can be done both through periodic assessment updates and through feedback from existing DRG programs.
3. *Beware of unanticipated counterproductive side effects of programming.* The mission needs to be alert regarding the potential for well-meaning interventions to actually reinforce counterproductive patterns. This is especially true in regard to political parties and inter-party relations. Similarly, “capacity-building programming” has the potential to unintentionally contribute to undemocratic, ineffective, and corrupt governance. It is important to observe the “do no harm” dictum, such as in regard to local government strengthening prior to state restructuring and local elections.

In developing strategic programming recommendations, the assessment team has also identified *assumptions* about the action field. Attention will need to be paid to ensure they continue to be realistic. If not, the Mission will need to adjust its DRG programs accordingly. These assumptions are as follows:

1. The situation in Nepal not only exhibits a high degree of flux, but the outcomes of the changes are not yet determined and are clearly not unilinear. It is difficult to make projections of political will too far in the future as the constellation of actors itself is changing as a result of the rapid social and political mobilization of previously marginalized groups.
2. The problems confronting Nepal’s broader developmental needs are at their roots political. Improving the political dynamics will open up new possibilities for more rapid advances in other sectors. Conversely, opportunities for greater participation by communities around local governance development issues will provide for new alternatives to those channels controlled by the political elites.

## 5.2 PRIORITY PROGRAMMATIC RECOMMENDATIONS AND ILLUSTRATIVE ACTIVITIES

### *I. Support national-level institutions that can peacefully mitigate conflict*

The DRG assessment has identified a national-level political paralysis that has resulted from unresolved grievances in a context of a rapidly mobilizing society. A priority recommendation therefore includes support for the institutions addressing old grievances, such as a truth and reconciliation commission, transitional justice, the Nepal Peace Trust, and the Carter Center’s work. While these institutions have their roots in conflict mitigation, their missions are closely related to the resolution of identity-based grievances that the DG assessment has identified as contributing heavily to Nepal’s political stalemate. For example, the Nepal



Peace Trust Fund (housed in the Ministry of Peace and Reconstruction) supports initiatives in such areas as voter education, public consultation for constitution drafting, community radio, and local peace committees to dialogue on the rights of indigenous nationalities. Similarly, the Carter Center has established networks for fostering public dialogue among highly divergent groups regarding possible solutions to civil conflicts and the identification of bridge-building reforms by political party representatives and civil society leaders.

Of secondary priority is the recommendation to closely monitor other democratic institutions whose functions are normally related to the management of conflict in the political process. As politics normalizes and becomes less volatile, support for other key democratic institutions such as the judiciary, legislature, and the electoral system should therefore be considered. However, for the moment it is recommended that further assistance to the judiciary, the legislature, and electoral systems be held in abeyance until the stalemate is overcome and political will for reform is enhanced. While the likelihood of impact in these areas is currently constrained by the political impasse and lack of political will, the situation needs to be closely monitored for emerging opportunities.

## ***II. Prepare for Federalism***

To best address popular perceptions of poor government effectiveness, it is essential that Nepal make progress on the devolution of power. This will ultimately involve capacity building of local government institutions once new structures are put in place. In the meantime, there are ample opportunities to encourage participation around other developmental sectors as prioritized in the CDCS, as well as short-term interim activities within the federal bureaucracy. For now, federalism will be the defining issue for both politics and governance in the coming decade. That being the case, development- and democracy-related programming should help position Nepal for a “smooth landing” with regard to state restructuring.

Technical assistance should be deployed to help ground the debate about federalism in substantive, tangible public policy issues, especially those that relate to the devolution of power to the new provinces to be created; to the distribution of authority within those new entities; and to the mechanisms and procedures most likely to help “make federalism work.” At the level of districts, towns and villages, USAID and other donors could contribute to a more informed public debate about federalism. At the central level, USAID could engage various parts of the central bureaucracy (e.g., the National Planning Commission) in developing the knowledge to begin scoping, planning, and strategizing about the potential forms federalism could take and subsequent way the government would need to adapt. This national-level approach may not require a significant amount of resources and may even be a matter of dialoguing with other donors to encourage these discussions/scenario developments. Once federalism eventually comes to being implemented, the bureaucracy would be well-positioned to address the technical questions involved in that multi-level transition. The overall objectives of both the local and national activities should be to help manage expectations associated with the implementation of federal arrangements; to improve the public’s understanding of the problems and opportunities likely to emerge, and of how challenges can be addressed and opportunities maximized so as to create win-win situations (or at least acceptable outcomes) for different communities and groups; and to disseminate information about the lessons that can be learned from other experiences in federalization. Side by side with this information dissemination/awareness-raising process, USAID should be ready to respond in a timely and effective manner to Nepali demands for technical assistance that may arise as federalization unfolds.

Successfully changing the focus of the federalism debate to these substantive issues requires complementary work under the first recommendation, however, so that those groups that have viewed federalism as a means for addressing identity issues see (and can present to their constituencies) a viable alternative mechanism for addressing those legitimate and long-standing identity-based grievances.

The creation of new civil service positions at the provincial level, the broader reorganization of state institutions, and changes in lines of authority should be conducted so as to minimize the potential for friction among communities and groups. The demands of ethnic minorities for inclusion and an end to discrimination should be addressed in ways that also acknowledge other groups’ (such as the Brahmins and Chhettris)

legitimate fears of reverse discrimination and marginalization. Erring on one side or the other of that fine line could create conditions favorable to destabilizing grievances. Attendant changes should provide meaningful opportunities for inclusion of historically marginalized groups (e.g., Madhesi and Tharus in the Terai) into the new federal institutions. At the same time, inclusion should not translate into providing unfair advantages to less qualified candidates for civil-service positions—which would exacerbate grievances among Brahmans and Chhettris and likely trigger a further reduction in government effectiveness. If state restructuring is to address simultaneously the imperatives of inclusion, fairness, and performance, historically disadvantaged groups will have to experience an increase in their ability to compete on merit for jobs in the public administration. Technical assistance could play an important role in facilitating this process.

Following are some programmatic recommendations to prepare for federalism:

*Bottom-up policymaking in the sectoral ministries.* Local governance may be conceived as a bundle of institutions intended to help bring benefits to local people, but it could also be put to use in informing policy at higher levels. For instance, the LGCDP-supported Ward Citizen Boards established for VDCs (WCF-VDC) budget prioritizing process could be employed to ascertain citizen preferences concerning health services delivery on a wider scale. People's health concerns in some places may center on malaria eradication, in others on dengue fever, drinking water, solid waste disposal, infant and child mortality, health impact of agricultural pesticides, etc. It should be possible to transmit the patterns of these concerns upward to district, (future) province, regional and national levels so as to become a significant factor in allocating program resources in the Health Ministry.

Along the same lines, farmers might be engaged to report upward through WCF-VDC channels their experiences with fertilizer applications to help the Ministry of Agriculture determine how to channel fertilizer supplies. The optimum application and necessary ratios of the three principal fertilizer components—nitrogen, phosphate, and potassium—vary somewhat from crop to crop and from soil to soil. Given Nepal's chronic fertilizer shortages, it would be most useful to the Ministry to build a database of experience on what works best where and on what crops. A similar solution would apply for agricultural pesticides.

Another potentially rich source of local knowledge that could be useful at the central level would be the experience accumulated by the user groups that have been so successful in Nepal. For instance, what has been learned about maintaining and enhancing the resource by forestry or irrigation user groups might be deployed to create and nurture mini-hydropower generation groups, who could be granted first use of power to be generated by a group's hydropower facility in return for maintaining it and selling the surplus power to the local grid.

*Further training for LGCDP staff.* The Social Mobilizers who manage LGCDP in Nepal's 3915 VDCs receive a one-week training course to acquaint them with their jobs, and even the District Facilitators who supervise them receive only two weeks' worth of training. There should be scope for more advanced training for these project staff who are the critical actors at the village level. Such training could take place even before the administrative aspects of the new federal structure are decided upon and put into place, thus giving new local governance programs a head start before it can get its own staff into the field.

### ***III. Advocate for greater transparency and accountability***

Given the gap between entrenched political elites and the rapid mobilization of previously marginalized communities, it is recommended that efforts to increase accountability and transparency be supported at both national and sub-national levels. While the current environment favors a demand-side (i.e., civil society) emphasis, opportunities should also be explored for developing greater transparency in public affairs as the political climate improves as public dialogue becomes less vehemently confrontational.

*Civil society strengthening.* Building up resiliencies nationwide against further erosion in the quality of local governance is critical, but the manner in which that objective is cast cannot be limited to just an exercise in "strengthening the capacity of local government institutions." It must include as well systematic efforts to nurture, at the local and national levels alike, the readiness of CSOs and CBOs to advocate on accountability

and transparency issues, and the basic skills for doing so effectively. As Step One discussed, societal demands for greater government performance are expressed neither systematically enough nor with the vigor that the country's dire situation requires. Therefore, it is critical that the inclination and ability of users' groups and CBOs to advocate for more transparency and accountability be increased. Existing and forthcoming assistance to those groups should incorporate systematic programming aimed at increasing their members' understanding of the importance of advocacy and at developing related skills. Opportunities should be created for citizens to monitor more closely the decisions that government officials and political party leaders make on matters of direct interest to the population. Strengthening the capacities of CSO watchdog groups is also warranted to build a check against the impunity with which security forces have carried out abuses and other human rights violations.

*Transparency in interparty relations.* The custom in interparty deal-making appears to be that second tier leaders negotiate with each other and report back to the top tier of their respective parties, who then decide on cutting the final deal. USAID, other donors, and much of the Nepali intelligentsia (as expressed in Op-Ed media) wish to reduce this secrecy and make the process more transparent. They want to clear the smoke in the "smoke-filled room."

But politicians invariably find themselves having to make compromise deals out of public view, even in a highly democratic polity. Good negotiators don't want to reveal their minimum acceptable positions and fear alienating their own constituencies as they necessarily bargain away positions and assets dear to their followers. This is in fact especially the case in more democratic systems, where constituents are free to vent their ire when they sense their leaders are giving away too much.

Accordingly, rather than clearing the smoke, a better approach might be to work on getting more smokers into the room by bringing more players representing minority and disadvantaged groups inside. In the Nepali context, this would mean more women politicians, more youth, and more leaders from the Madhesi, Janajati, and Dalit communities. Such a change would enable them to become directly involved in the deal-making on behalf of their own communities, rather than have big party leaders make the deals for them. The room would still be full of smoke, but the secretly negotiated deals emanating from it would be more likely to benefit a larger slice of the country's citizens.

*Using local media.* Nepal presently has something like 340 local FM stations scattered around the country. Their line-of-sight transmission necessarily restricts coverage to fairly small catchment areas, so they are highly local. Rather than put much effort into local programming, however, station owners tend to broadcast syndicated programs produced in Kathmandu (in many cases made with donor funding).<sup>55</sup> While at present this syndicating practice does little to improve governance, it could be turned to account by producing programs in the DRG area that could then be syndicated. Radio programs (as opposed to those for television) are relatively cheap to produce and could focus on almost any DRG subsector. Thus a small investment in DRG programs could have a large impact.

*Accountability.* While multiparty elections can provide accountability by compelling local elected officials to heed public wants at the cost of losing their seats, they are at best a crude instrument for keeping leaders in line, providing or withdrawing a blanket mandate for a number of years. For fine-tuning accountability, civil society has to play the major role, especially at local level, where other instruments of accountability like public interest lawsuits or investigative journalism generally cannot exist. A highly effective civil society tool in a number of places (particularly in India) has been the **Citizen Report Card** (CRC), through which people register their reactions to public service provision in specific sectors, e.g., schools, police, public transportation, health. Conducting a CRC survey, when accompanied by publicity in the media, can be highly

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<sup>55</sup> The Martin Chauturi center has studied local broadcast media quite extensively. Presently the center is organizing a conference on the topic, to be held on 1-2 April 2013 <[http://www.martinchauturi.org.np/index.php?option=com\\_content&view=article&id=296](http://www.martinchauturi.org.np/index.php?option=com_content&view=article&id=296)>.

effective in holding service providers to account.<sup>56</sup> They can be repeated as needed to furnish an ongoing picture of how citizens view their local government. Social audits, public audits, and public hearings all also represent tools of accountability that have previously been used effectively in Nepal, and such practices can be propagated and institutionalized.

#### *IV. Advocate for crosscutting DRG issues*

The assessment has identified gender relations, including protection of LGBTI rights, as a DRG sub-sector in need of improvement in Nepal. The civil society strengthening initiative described above provides a platform from which to build the capacity of rights groups to advocate against social and legal discrimination against women and persons of lower caste. In addition, gender-specific components should be disaggregated and reinforced wherever possible in the DRG portfolio. A good first step would be the elaboration of context-specific goals and indicators that could serve as reference points around which to align the various gender interventions across the DRG sector. Although the Nepalese LGBTI community represents an emerging agent of change, USAID is already engaging them through other sectors, and their impact on the overall DRG sector in Nepal was not recognized by any of the interlocutors as significant as other political trends and actors. So it is not recommended that assistance to this group be prioritized at this time.

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<sup>56</sup> The Public Affairs Centre in Bangalore, India, has been the pioneer in CRC surveys, some of which have been undertaken at the behest of state and local governments wishing to improve their capacity to deliver public services, while other surveys have been conducted by the Centre on its own initiative.

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# ANNEX I. CROSS-SECTORAL SYNERGIES

## IMPLICATIONS OF THE DRG ASSESSMENT FINDINGS FOR OTHER SECTORS

The 2012 DRG Assessment of Nepal took place at a time of transition and uncertainty in the country, which all signs indicate will not be resolved in the short term. The assessment identifies the rapid and dramatic social and political mobilization of long-marginalized communities as overwhelming the political system's ability to cope with the increasing demands placed upon it by a citizenry that is dissatisfied with the political order that exists and harbors unresolved identity-based grievances. The key democratic institutions that normally would enable adaptation to greater citizen mobilization are themselves constrained by elite capture of political processes that has led to numerous DG deficits, such as in regard to political parties, the rule of law, and accountability. The established political elites have sought to channel the increased mobilization of marginalized groups into their spheres of influence, thereby muting the demands for systemic reform. The result has been a political stalemate and gridlock while the country struggles to establish a new political consensus that will minimize the conflict that threatens stability. This process is being played out, for instance, in regard to the debate over federalism, which will have a profound effect on local governance and community development.

The DRG problems that result from the combination of increased political mobilization with the dysfunctional constellation of elite interests have spilled over into other sectors to pose constraints on the broader development process. Moreover, the DRG problems that are at the core of the country's underdevelopment are not likely to be resolved during the next five year strategy cycle. However, the DRG assessment has highlighted a number of DRG interventions that would target some of the constraints to development that exist in other sectors. While the prospects for rapid democratization are low, there is potential for DG investments to contribute to the achievement of crosscutting objectives in the areas of food security, health, and management of natural resources.

In preparation for its 2013-2017 CDCS, the Mission has tentatively articulated a general development hypothesis, as follows:

*To succeed, Nepal must have a government, civil society and private sector that are fully responsive to the needs of the people. By: 1) strengthening governance systems of the GON, civil society organizations, and the private sector, and 2) through coordinated investments in priority areas at the community level, Nepal will become a more democratic, resilient, and prosperous country.*

The accompanying DRG Assessment of Nepal has used the Mission's tentative Development Hypothesis (DH) as a filter (see Step 3 of the assessment) that links the proposed DRG strategy with the broader Mission CDCS. The DRG strategy and DRG DH thus are designed to directly complement and contribute to the CDCS objectives, both in terms of discrete activities within the DRG sector and in regards to how DRG interventions can help achieve objectives in other sectors.

The objective of this annex is to identify synergies between DRG interventions and the cross-sectoral approach inherent in the CDCS. While USAID has in place many programs, several will be phasing down over the next 1-3 years. They will be subsumed or replaced by the Presidential Initiatives, whose funding projection represents over 75% of the Mission's portfolio (with DRG at 14% and Education at 6%).

The Presidential Initiatives (FtF, GCC and GHI) are major USG investments in Nepal. Their ability to program and meet the goals of USAID Forward and PPD6 will be influenced by the expected slow pace of the Nepalese political transition. The evolving frameworks, policies and regulations, as well as the decision-making processes, will be out of eyeshot of these technical programs.

There is ample opportunity for integration and alignment of the DRG sector with the PIs. DRG has special expertise that can re-enforce elements of the PIs and/or deal with dimensions that can create synergies. These are in the areas of CSO organizational capacity building; building networks of service delivery and advocacy NGOs, and the media, to do more evidence-based advocacy and outreach; creating more non-political space for local level discussions with less interference by central elites, as well as ADR; and anti-corruption.

This is not to say that DRG programming would be subsumed by the PIs. Rather, DRG can have its own programming such as the Sajhedari local governance project and other programs that the sector will develop as it becomes possible to implement at the national level. However, DRG expertise can either be embedded into PIs as a support component, or, can provide on call inputs as needed (this would require a funding mechanism).

USAID/Nepal's Presidential Initiatives include the following: an upcoming Feed the Future (FtF) program (in NW and W), Global Climate Change (GCC) program (Hariyo Ban with a supplemental Initiative for Climate Change Adaptation grant), a multi-faceted Global Health Initiative (GHI) program (with adjuncts in HIV/AIDS and disabled services), as well as programs in trade/economic growth (NEAT), disaster risk reduction (DRR) and of course the upcoming flagship DRG program, Sajhedari.

Sajhedari, as a flexible mechanism, has the opportunity for linkages with the PIs and other programs. It will stimulate local community-based development, some of which will surely link to DRR. It will provide grants to Water User Groups (FtF supports WUGs also, though in different parts of the country) and Forest User Groups (also supported through Hariyo Ban). The GHI program works with gender, civil society, local institutional systems and trafficking in persons, which are also part of the primary focus of USAID's DRG programming.

As an overview for integration of DRG with PIs, three initial recommendations stand out. The first is the need for internal coordination within USAID. If both DRG and FtF support WUGs, and DRG and GCC support FUGs and FCFGs, it is important to make sure the support is synergistic but consistent (meaning the same general rules of the road apply and these local institutions understand the overarching development hypothesis of USAID/Nepal). The second recommendation is to continually monitor the spread and coverage of both separate and integrated programs, so that USAID is not seen as being biased in its delivery of services and benefits (note that the feeling of being excluded by some groups at the benefit of others has been one of the sources of conflict, dispute and the ability of elites to manipulate them). The third recommendation, that has been described elsewhere in the DRG assessment, is for DRG programming to be nimble. While the debate wears on at the national level over the constitution and federalism, the focus for DRG will be at sub-national levels, with some capacity building and other assistance at national level. As described in the proposed DRG Development Hypothesis, it will be necessary to ensure that national and sub-national capacity building go hand-in-hand and are consistent. This is also true for crosscutting programming.

So there are already natural points of integration with the PIs (and other programs). This section will try to describe both these points and provide some additional ideas for crosscutting integration of DRG programs with Presidential Initiatives. This will be demonstrated through a series of tables that, one hand, describe briefly, the objectives and activities of the PI, and on the other hand ideas on how DRG programming can complement, support or integrate within the broad DRG categories of Rule of Law and Human Rights, Governance and Decentralization (including anti-corruption), Political Competition and Consensus Building (including political participation), and Civil Society and the Media. In several cases there are blanks in the

tables, where there is insufficient data, or where integrated engagement may not be appropriate or might be too preliminary.

The DRG category of Rule of Law and Human Rights includes several elements of direct relevance to cross-sectoral objectives. In particular, this category includes improving the enabling legal and regulatory environments, as well as rights issues, such as in regards to gender and ensuring the engagement and empowerment of women. Land tenure and property rights issues also fall under this category, which is of relevance to Hariyo Ban, for example. The DRG category of Political Competition and Consensus Building offers room to develop forums—especially at local levels—around which participation in public policy dialogue and decision-making around concrete developmental issues can be enhanced, such as in agriculture. Local level forums of this nature are more likely to be able to be somewhat insulated from national elite capture. The Governance and Decentralization category opens the door for targeted institutional capacity building and for anti-corruption measures, such as in regards to transparency and accountability. Finally, the Civil Society and the Media DRG category provides another axis for capacity-building, this time on the civil society/community side of the political equation. Media, especially at the community levels, represents considerable opportunity for engagement on crosscutting issues.

Several themes are woven throughout. The first is to provide safe political space for parties, government, civil society and other actors to discuss issues of mutual concern and find common ground (a lower-level NTTP structure is indicated based on the success at national level). The second is that capacity building can be done before and in preparation for federalism and decentralization (and management of services at lower levels), recognizing that organizational development has both technical and managerial facets, the latter referring to how the organizations are run—democratically with leadership rotation, participation, transparency and a culture of accountability. Finally, because the media seems to suffer less harassment and pressure, they are key to being the (relatively) neutral conveyors of information about the constitutional and federalism processes, keeping people (especially in rural areas) informed and linking national and sub-national preparation, as well as new “rules of the road” as they emerge. Note that these recommendations are separate but consistent with Sajhedari (either re-adjust Sajhedari or program a specific mechanism dedicated to integration). They are issues where DRG associates can provide assistance to the PIs. Finally, recommended cooperative interventions are linked to the Mission draft RF.

The PIs are also well structured for crosscutting synergies. They are “diffuse” in the sense that each project will deliver results in multiple IRs and sub-IRs in the results framework. Feed the Future is intended to contribute to IR 2.1 [Health and Education Outcomes Improved] through nutrition activities]; to IR 2.2 [Household Incomes Improved] through work with farmers as they expand their demand for better inputs and expand their markets; and IR 2.3 [Sustainable management of targeted natural resources approved] through work with community forest user groups; to all three IRs under Objective 1; and to a dozen or so of the sub-IRs. Expectations are similar for Hariyo Ban, Health for Life, and no doubt for other Health/Family Planning/HIV-/AIDS projects, as well as for the planned Education Project. Conversely, the portfolio is “interactive” in the sense that many results indicators can appropriately draw performance data from multiple projects, whether the data is qualitative or quantitative.

Crosscutting DG interventions can help other sectors tailor and adapt their programs to the evolving political context at local levels. This can be done through ongoing monitoring and analysis of the introduction of federalism, close coordination between the Sajhedari program and other sectoral programs, and the strengthening of community based organizations to build capacity to improve participation and oversight of local government once the political reform process moves ahead. The PIs (FtF, GHI and GCC) are major USG investments, but are time bound. Ensuring that the PIs are integrated early in the transition and GON systems to handle them will be vital to PI operations, sustainability, and the (USAID FORWARD and PPD6) transfer to local systems.



Feed the Future: USAID level goal—sustainably reduce global poverty and hunger				
USAID/Nepal FtF purpose: Reduce hunger and poverty and improve nutrition in Nepal. Multi-sectoral interventions will stimulate agricultural production, increase incomes, improve nutrition, and lower food insecurity				
FtF Program Areas	Rule of Law and Human Rights (ROL/HR)	Political Competition and Consensus Building (PCCB)	Governance and Decentralization (G/D)	Civil Society and the Media (CS/M)
<p><b>High Value Agricultural Production</b></p> <p>High-value crops and technologies</p> <p>Training and Support to Change Agents</p> <p>Expanding Small Scale Irrigation</p> <p>Improving Small Scale Market infrastructure</p>	<p>Ensure that in the development of national policies and frameworks that the status of WUGs are recognized, they can be registered and there are guidelines to protect their rights (organize, negotiate in the value chain, tax-free status, ability to make contracts and sue in court). Mission RF IR 1.3, sub-IR 1.3.1</p> <p>Ensure that women’s WUGs (and/or other form of agricultural production or marketing groups) have equal protection and equal access to services. Mission IR 1.1, 1.2, sub-IR 1.2.1</p>	<p>Provide support to local institutions to make election debates about agriculture issues, not just opposing political parties. Mission RF IR 1.2, Sub-IR 1.2.2. <i>Note: This may be accomplished through the establishment of lower-level NTTP-like forums to provide some barrier from political elites. This process can also incorporate ADR.</i></p>	<p>Both FtF and Sajhedari work with water user groups (WUGs). The OD of these groups are both technical (water management) and managerial (democratically run organizations, with systems for planning, decision-making, participation, etc.). DRG can provide input into the second facet. Mission RF IR 1.1, sub-IR 1.1.2</p> <p>DRG can assist in the area of securing land tenure and property rights, as well as reduces land-oriented corruption through direct TA and/or through civil society. Mission RF IR 1.2, sub-IR 1.2.1 and 1.2.3</p>	<p>See ROL/HR and G/D, especially if WUGs are to be considered non-profit organizations.</p> <p>The media, with USAID support, can disseminate successes in FtF, best practices, but at the same time mitigate the potential tension created by FtF supported areas and those that are not supported. Mission RF IR 1.2, Sub-IR 1.2.3, 1.3.2. <i>Note: Media, while considered part of the civil society cluster, is a truly crosscutting vehicle.</i></p>
<p><b>Nutrition and Hygiene</b></p> <p>Nutritious food production and consumption</p> <p>Improved hygiene and access to safe water</p> <p>Create a cadre of community facilitators and volunteers</p>	<p>DRG has a natural interest in gender and can lend their expertise to support FtF engagement and empowerment of women (the FtF WAE Index has strong linkages to DRG through issues of access to services, and ability to organize and be heard). Mission RF IR 1.2, Sub-IR 1.2.1</p>		<p>Ensure that facilitators and volunteers are part of a home base institution (rather than FtF) and that those institutions are well run. Mission RF IR 1.1, sub-IRs 1.1.1, 1.1.2</p>	
<p><b>Integration of Vulnerable Groups</b></p> <p>Literacy, nutrition and skills training</p> <p>Female-friendly farming practices</p> <p>Behavior change education</p>				<p>Where possible and appropriate, support FtF in the establishment of women’s CSOs so they can mobilize to gain equitable access to resources and services. Mission RF IR 1.2</p>

Global Climate Change—Hariyo Ban (Green forests) Program. US Level Goal: Climate-resilient low emissions development. Enable countries to accelerate their transition to climate-resilient low emissions sustainable development. USAID/Nepal GCC Goal: reduce threats to biodiversity and vulnerabilities to climate change, promotion of green technology and alternative livelihood opportunities				
FtF Program Areas	Rule of Law and Human Rights (ROL/HR)	Political Competition and Consensus Building (PCCB)	Governance and Decentralization (G/D)	Civil Society and the Media (CS/M)
<p>Improve Biodiversity Conservation</p> <p>Strengthen internal governance of target organizations at the local level to improve NRM, biodiversity and CC adaptation</p> <p>Increase incomes of vulnerable rural people through alternative sustainable livelihoods</p>	<p>As national frameworks and policies are developed, DRG can facilitate GCC participation at the table, as well as promote land tenure and property rights to protect vulnerable groups, especially after federalism and decentralization. Mission RF IR 1.3, sub-IR 1.3.1</p>	<p>Again, providing safe space at local levels (NTTP-like process) will allow local vulnerable groups and others to more objectively discuss mutual interests, avoid conflict and provide ADR services. Mission IR 1.2, sub-IRR 1.2.2, IR 1.3, sub-IR 1.3.2, IR 2.3, sub-IR 2.3.3</p>	<p>Target organizations are FUGs and FCFGs, who need both technical GCC and REDD capacity, but also need to run on democratic principles, with equitable participation, transparency and accountability. DRG can provide input into this second facet. Mission RF IR 1.1, sub-IR 1.1.2, IR 2.3, sub-IR 2.3.2, 2.3.3</p>	<p>See below. Also, FUGs may qualify as civil society in themselves.</p>
<p>Ensure Landscape Sustainability</p> <p>Support formulation of REDD+ policies</p>	<p>As national frameworks and policies are developed, DRG can facilitate dialogue about pro-poor policies regarding NRM. Mission IR 1.3, sub-IR 1.3.1</p>		<p>A core principle of the HB is equitable sharing of benefits. This requires that the “regulators” and “decision-makers” are committed to this principle. This requires that vulnerable groups know the quantity and quality of those benefits and can engage and ensure their rightful due. Mission IR 1.2, sub-IR 1.2.3, IR 2.3, sub-IR 2.3.3</p>	<p>Civil society and the media capacity as evidence-based watchdogs can be enhanced, so they may serve as advocates for vulnerable groups (both inside and outside the targeted areas). Mission IR 1.2, sub-IR 1.2.2 and 1.2.3</p>
<p>Increase Adaptation to Climate Change</p> <p>Increase understanding of climate change vulnerabilities</p> <p>Establish participatory systems for monitoring vulnerability</p>			<p>Adaptation includes, to some extent, disaster preparedness, mitigation and response (linkage to DRR), but these activities are naturally assumed by local government, who need the technical and organizational capacity to prepare and respond. Mission IR 1.1, IR 1.2, sub-IR 1.2.1</p>	<p>Support to the media can increase exposure of GCC issues, provide success stories and best practices to serve as replicable models. Mission RF IR 2.3, sub-IR 2.3.3</p>

Global Health Initiative. USAID Level Goal: health status improved (improved knowledge and empowerment resulting in increased demand), gender-equitable services are accessible, available and affordable, improved service quality, and national ownership. USAID/Nepal Goal: assist GON to provide sustainable, accessible and quality basic health services to its citizens, especially the poor, and strengthen its governance and service delivery systems				
FtF Program Areas	Rule of Law and Human Rights (ROL/HR)	Political Competition and Consensus Building (PCCB)	Governance and Decentralization (G/D)	Civil Society and the Media (CS/M)
<i>Note: A full-fledged GHI program is new. The GharGhar Maa Swasthya and District Rehabilitation programs are scheduled to close out soon, while the HIV/AIDS and Social Marketing projects still have several years to run. Because the GHI program is not yet in place, these recommendations come from the draft global DRG-PI Integration Tables.</i>				
<p>GHI Strategy of interest to DRG: strengthening health delivery systems and governance</p> <p>GHI strategy of interest to DRG: gender equality (women and girls)</p> <p>Family planning and reproductive health services</p> <p>Maternal, new born and child health</p> <p>Nutrition</p> <p>Infectious diseases, environmental and other public health problems</p> <p>Leadership at all levels</p> <p>(District-level Rehabilitation Services) STRIDE</p> <p>Social Marketing and Franchising</p> <p>HIV/AIDS</p>	<p>Federalism will change the role of central government towards policy development, coordination, and oversight of resources transferred to lower levels. Both the legislature and technical ministries will need new skills. The Health Ministry is a target of special need in these areas, because health services are one of the most complex services of government. Mission RF IR 1.1, 1.2., IR 1.3, sub-IR 1.3.1</p>	<p>The creation of lower-level NTTP-like forums can provide a safe space for discussion of local health issues with less interference from elites. These forums can also provide women, the poor and marginalized groups a means of participation while new local government structures are under development. Mission RF IR 1.2, sub-IR 1.2.2</p>	<p>In strengthening health delivery systems, DRG can provide technical assistance in non-technical institutional management and governance. Mission RF IR 1.1, sub-IR 1.1.2.</p> <p>To prepare for federalism and decentralization, it is assumed that the management of health services will devolve to some degree to local governments, who will need to be prepared to take on new roles and responsibilities --planning, budgeting and management, and oversight. Mission RF IR 1.1, sub-IR 1.1.3, 1.1.4.</p> <p>Health delivery systems can be a hotbed for corruption (procurement, black marketing inventory, and informal payments for services. DRG can assist in an integrated fashion by building the capacity of civil society to serve as watchdogs. Mission RF IR 1.2, sub-IR 1.2.3</p>	<p>NGOs/CSOs and the media are an important part of both social marketing and advocacy for gender equality. Both of these institutions can benefit from integrated DRG programming in institutional strengthening, especially in their internal governance, management, and creation of networks. Mission RF IR 1.2, sub-IR 1.2.3, IR 2.1, sub-IR 2.1.2</p>

In addition to the PIs, similar synergies may be found with other programs, such as in the area of education. While there is only one program in Education (EIG) that ends in 2013 and the documentation available was the Education Assessment for Early Grade Reading, it is difficult to chart a potential course for integration with the sector. However, the assessment had some interesting observations that could be considered, as follows:

#### **HORIZONTAL AND VERTICAL ACCOUNTABILITIES**

The basic horizontal accountability structure is the PTA that conducts a Social Audit, thus serving as a watchdog over the School Management Committee (SMC). The SMC has a minority of members who are elected and the assessment recommends that it should be totally elected. The PTA is composed of all parents and teachers and has leverage over the SMC and school. The assessment observes that this works fairly well, but could be strengthened in the areas of oversight of financial accountability.

Vertical Accountability, defined by the authors as higher levels holding lower levels accountable, deals mostly in terms of financial accountability (no audit of district transfer to schools), and performance (linking resources to actual improvements in learning).

From a DRG integration perspective, this is governance, where DRG has expertise. Education specialists may know the best practice structures, but they may not have the capacity building skills to ensure that the nuts and bolts of governance, participation and transparency are developed, enacted, expanded and sustained.

#### **MULTI-SECTORAL CIVIL SOCIETY**

The assessment provides an inventory of local NGOs that are working in the Education Sector. Many are already partners with Save the Children and Room to Read, or are a national chapter of an international organization. Of the 11 mentioned, three do stand out from the perspective of DRG:

- Educate the Children—concentrates on ensuring Dalit children receive access to education. Since this is a human rights issue, support to this NGO may be an option, coupled with organizational capacity building and networking with NGOs (in Nepal, the region or around the world) with the same writ of improving the lot of the marginalized (such as the network of NGOs working with Roma throughout Eastern Europe).
- Gaja Youth Club (GYC)—is a multi-sectoral NGO (not partnered with an INGO) that also does programs (though to what extent or to what level of quality is not known) in human rights and good governance, peace and rehabilitation.
- Nepal Education Support Trust (NEST)—their mission focuses on ensuring equal access to education, especially girls

#### **CAPACITY BUILDING IN PREPARATION FOR TRANSITION**

As with the PIs, as the transition evolves, lower levels of government and other governance structures will assume new roles and responsibilities, especially in what the assessment calls horizontal and vertical accountabilities. Lower levels of governance will have to garner participation in planning, equitably allocate resources, ensure transparency and accountability to quash corruption and develop performance standards. No matter the form of federalism and decentralization, existing structures will need these skills in order to navigate the new systems that will have to be put in place.

# ANNEX 2: REPRESENTATIVE LIST OF PERSONS INTERVIEWED

Agrawal, Manish	Director, H. P. Agrawal Group of Companies
Aulakh, Ravinder	Senior Economic Advisor, USAID/Nepal
Barrón, Maria	Director, Democracy and Governance Office
Basnyat, Nilu	Deputy Country Director, IFES/Nepal
Bhusal, Pampa	Spokesperson for CPN-M and former minister
Dahal, Dev Raj	Program Manager, Friedrich Ebert Stiftung/Nepal
Dulal, Bishwobhakta	Politburo member, UCPN (M); Dalit leader
Flemming, Denver	DOJ Senior Law Enforcement Advisor, US Embassy Nepal
Gurung, Prithibi Subba	Former Minister/Former Coordinator of the Janajati caucus in the CA
Holloway, Richard	Program Coordinator, Program for Accountability in Nepal (PRAN), World Bank
Jha, Prashant	Journalist
Jha, Ram Chandra	Former Minister for Local Development, UML Politburo member
Lederach, John Paul	Facilitator, Nepal Transition to Peace Forum
Levit-Shore, Sarah	Country Representative, The Carter Center
Lohani, Prakash Chandra	Former minister (including Finance, Foreign Affairs), Co-Chair, RJP
Long, Les	USAID Local Capacity Development Consultant
Lumsali, Rishiraj	Chairperson, Association of District Development Committees
Lutjens, Sheila	Deputy Mission Director, USAID/Nepal
Mahoney, Patricia	Deputy Chief of Mission, US Embassy, Kathmandu
Malik, Bidhya	Advisor, Office of the President of the FRN
Meeks, Jason	Political Officer, US Embassy, Kathmandu
Mishra, Praveen	Secretary, Ministry of Health and Population
Neelakantan, Anagha	International Crisis Group

Nishaant, Jay	Director of Parliamentary Programs, NDI/Nepal
Onta, Praytoush	Director, Martin Chautari (think tank/NGO)
Osborne, David	Police / Rule of Law Adviser, DFID
Parajuli, Ramesh	Program Coordinator, Democracy & Governance, Martin Chautari
Pane, Ramesh Neau	Local Development Officer for Rolpa District
Piper, Robert	UN Resident Coordinator
Prasai, Sagar	Deputy Mission Director, The Asia Foundation
Pun, Barsha Man	Finance Minister, UCPN(M)
Rajkarnikar, Bhaskar Raj	Senior Vice-President, FNCCI
Rana, Kuber Singh	Police Commissioner, Deputy Inspector General, Nepal Police
Rawal, Bim	UML leader
Rijal, Minendra	Former Minister for Parliamentary Affairs and Culture/Formal CA Member. NC Central Committee member
Sapkota, Bishnu	Program Advisor, The Asia Foundation/Nepal
Samser, Kuber	Assistant Inspector General, Nepal Police
Shakya, Sujeev	Founder and CEO, Beed Management (Kathmandu-based consulting firm). Chair, Nepal Economic Forum
Sharma, Sudhindra	Executive Director, Interdisciplinary Analysts
Sherpa, Lucky	UML leader and former member of CA
Shrestha, Kalyan Kumar	Justice, Supreme Court
Shrestha, Anup Kumar	Assistant Director, FNCCI
Thapa, Kamal	President, RPP Nepal/Formal Minister (including Foreign Affairs and Home Ministry)
Uprety, Neel Kantha	Acting Chief Election Commissioner
Varughese, George	Country Representative, The Asia Foundation/Nepal
Wall, Alan	Country Director, IFES/Nepal
Webster, Neil	Advisor, UNDP/Local Governance Community Development Project (LGCDP)
Yadhav, Upendra	President, MPRF/Formal Foreign Minister

**ADDITIONAL LISTS OF INDIVIDUALS WHO PARTICIPATED IN MEETINGS HELD BY THE TEAM DURING FIELD VISITS IN NEPALGUNJ/BANKE AND LIWANG/ROLPA**

Khungri VDC meeting, Rolpa

- Nandu Giri
- Bikram Shah
- Darga Bahadur Karki

- Durga Lal Bharati
- Harka Giri
- Ashok Giri
- Jaganath Giri (Teacher)
- Puskar Bharati (Office Assistant)
- Basanti Singh
- Poonam Singh
- Bamdev Bharati (Farmer)
- Prem Singh Bharati (Teacher)
- Ram Lal Bharati
- Durga Prasad Adhikari (Farmer)
- Padam Prasad Rijal
- Hum Lal Puri
- Om Bahadur Pun (Liwang District Facilitator)
- Krishna Shah Khungri (Social Mobilizer)

NGO Federation meeting, Liwang

- Bhola Nath Acharya (NGO Federation Chairperson)
- Dev Bahadur Oli (NGO Federation CSOs Mobilizer)
- Mahesh Neupane (NGO Federation Secretary)
- Hastmari Bantha Magar (NGO Federation Financial Assistant)

Nepal Bar Association meeting, Nepalgunj/Banke

- Ishwari Prasad Gyawali (Chairperson)
- Laxman Parajuli
- Bikash Acharya
- Janak Bahadur Shahi
- Aliub Siddique
- Prahalad Bahadur Karki
- Bishwajeet Tiwari

Members of political parties interviewed in Nepalgunj/Banke

*UCPN(M)*

- Tula Raj Bista (Bihani)
- Krishna Bahadur Tharu
- Santosh Kafle
- Dasharath Parajuli
- Tilak Singh Karki

*CPN-M*

- I.P Kharel
- Navin Sharma

*NC*

- Dr. Arun Koirala

- Bijaya Yadav

*UML*

- Dutta Prasad Acharya

*MPRF*

- Kaushal Kumar Mishra
- Kamata Prasad Sontar
- Terai Loktantrik

*TDMP*

- Girija Prasad Patak

DDC members interviewed in Nepalgunj/Banke

- Bishow Raj Dotel (LDO)
- Ramesh Shah (Social Development Officer)
- Sharad Kumar Paudel (Programme Officer)
- Tank Raj Aryal (Assistant Energy Officer)
- Khima nanda Aryal (Internal Auditor)
- Deepak Dhakal (Planning and Administration Officer)
- Min Bahadur Malla (District Facilitator)

Education for Income Generation (EIG) in Nepal Program (EIG), EIG Office, Nepalgunj

- Rabinddra D. Patel (Manager)
- Reshma Maharjan (M&E Officer)
- Janardan Nepal (Project Officer)
- Birendra Nepali (Project Officer)
- Yogesh Subedi (District Coordinator)
- Prakash Bhatta (Office Manager)

Federation of Nepali Journalists (FNJ), Nepalgunj/Banke

- Sukrarishi Chaulagain (President)
- Govinda Sharma (Treasurer)
- Janak Nepal

Sitapur VDC Meeting

- Tek Bahadur Reule (Farmer)
- Krishna B Bishowkarma (UML Representative)
- Padam Bishowkarma
- Jeevan Bishowkarma (Accountant)
- Nanda Kali Mall (Social Mobilizer)

Baijapur VDC Meeting

- Kesar Bdr. Sejawal (Baizapur VDC Secretary)
- Prem Raj Shrestha
- Tulsiram Tharu



- Rajaram Chaudhary (Social Mobilizer)
- Dilip Dangi
- Dhaniram Giri (Social Mobilizer)
- Churna Bahadur Chaudhari

Other persons interviewed in Nepalgunj/Banke

- Vishwa Raj Dotel (Local Development Officer for Banke)
- Bholu Mahat (Regional Coordinator, Informal Sector Service Centre [INSEC])
- Rabinddra D. Patel (Manager for Literacy, Life Skills and Peace at the Education for Income Generation in Nepal [IGN] Program)
- Prem Awasthi (Field Coordinator, Office of the Resident and Humanitarian Coordinator, United Nations)

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