

Countries at the Crossroads

Countries at the Crossroads 2012: Nepal

Introduction¹

Nepal has been undergoing a post-conflict transition since April 2006, when a popular movement led by the combined forces of the parliamentary political parties, civil society, and the Maoist rebels forced King Gyanendra Shah to give up executive power. Gyanendra usurped power in 2002 by dissolving the elected government, and then declared a state of emergency in February 2005, since which time he headed the government himself.

The CA, which was agreed upon by the parliamentary political parties and the Maoists during the movement against Gyanendra's power grab, was finally elected in April 2008 after two postponements. The CA was originally mandated to promulgate the supreme law in two years.

The CA was granted a fourth six-month extension in December 2011, giving it until May 27, 2012, to finalize a constitution. When a Supreme Court injunction—which was popular but the constitutionality of intervening on a political matter was questioned by legal experts—prohibited further extension, the ruling led to the dissolution of the Constituent Assembly (CA).

With the dissolution of the CA on May 27, 2012, Nepal was plunged into further uncertainty. The CA, which also served as the Parliament, had failed over the course of four years to craft a constitution despite four extensions of the deadline. The government of the Unified Communist Party of Nepal-Maoist (UCPN-M), the United Democratic Madhesi Front (UDMF), and other smaller political parties announced an election for a new Constituent Assembly for November 7, 2012, but it could not be held because the Nepali Congress (NC) and the Communist Party of Nepal-United Marxist Leninist (CPN-UML), as well as other small parties, opposed it.

Several factors contributed to the failure. First, the initial two-year term of the CA was not long enough for groups that had been engaged in violent conflict to overcome their mutual suspicions, conclude the peace process, and finalize the constitution. Second, the formation of four governments in the four years since the constitution-writing process began wasted considerable time. Third, major infighting within the NC, CPN-UML, and UCPN-M and multiple splits among the Madhesi and other smaller parties sapped energy and resources, diverting focus from the writing of the constitution. Finally, the parties disagreed on the best political model for the country, specifically about how to design the federal system. The unwillingness of the top political leaders to take the issue to vote in the CA eventually led to the failure to complete the constitution.

The departure of the United Nations Mission in Nepal (UNMIN) in January 2011, after the CPN-UML-led government did not extend its term, deprived the peace and constitution processes of a nonpartisan external actor that could have facilitated dialogue. However, by late 2011, hope had increased that the constitution might be completed. At that time, the High Level Taskforce of the Constitutional Committee of the CA, which was composed of the top leadership of the major political parties, agreed to resolve the remaining contentious issues, including the modality for integration of the Maoist People's Liberation Army (PLA) into the Nepal Army.² The PLA cantonments had been handed over to the Nepalese Army in April 2011 under the watch of the Maoist-led government, beginning the conclusion of the peace process. This generated hope that the constitution would gain momentum for finalization.

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The 2006 regime change and the subsequent transition period resulted from the 10-year violent Maoist rebellion that claimed more than 13,000 lives on both sides from 1996 to 2006. Throughout the 1990s, corruption, abuse of power, and power struggles became endemic, leading to the formation of 13 governments in 12 years. The Maoist rebels targeted the frustrated population, the neglected rural poor, marginalized ethnic and caste groups, and women, exploiting their frustration with the state that did not respond to their diverse problems and aspirations.³ Meanwhile, the state administration is overwhelmingly dominated by the Caste Hill Hindu Elite (CHHE), excluding diverse groups such as the Dalit, Adivasi Janajati (indigenous nationalities), Madhesi, and Muslims, who make up more than two-thirds of the population.⁴

Movements representing marginalized populations have grown considerably since 1990. Their major demands have been proportional representation in state agencies, access to resources, recognition, and autonomy, to be facilitated through a new federal model.

While the former two demands have been accepted on a limited basis both in principle and at policy level, the latter is still hotly contested and was the cause of the CA's dissolution. Although both the CA Committee on State Restructuring and Distribution of State Power, which proposed 14 provinces, and the State Restructuring Commission, which proposed 11 units, recommended identity-based federalism to provide autonomy to larger ethnic groups at the provincial level and at subprovincial level to smaller groups, the NC and CPN-UML rejected the outcome of the democratic procedures and prevented the issues from being voted on in the CA. The parties instead advocated for "non-ethnic federalism" that would encompass mountain, hill, and Tarai/Madhes. The indigenous nationalities and Madhesi criticized this as a way to make the dominant group hold a plurality or majority in most provinces. Despite a petition of more than two-thirds of CA members supporting the identity-based federalism, the chairperson of CPN-UML, allegedly at the insistence of both CPN-UML and NC leaders, refused to settle the disagreement through a vote in the CA.⁵

The last four years also failed to establish the Truth and Reconciliation Commission and Commission on Disappeared Persons, leading to a failure to prosecute conflict-era crimes and a continuation of the culture of impunity. The long period of transition toward a new constitution has preoccupied policymakers and distracted their attention from other pressing infrastructural and governmental issues, such as extended power cuts, frequent shortages of gasoline, and widespread poverty and inequality. These problems have generated deep public frustration, making the political class very unpopular. However, the conclusion of the peace process, significant progress by the CA in settling most of the contentious constitutional issues, and increased democratic participation of the hitherto excluded groups represent the positive progress made during the last four years.

Accountability and Public Voice

Nepal held its first general election in over a decade in 2008. For a post-conflict society, the CA election was held in a reasonably free and fair manner. However, there were some incidences of deaths, threats, and confrontations among competing parties during the campaign, and these were more frequent than during parliamentary campaigns in the 1990s.⁶ The NC and the CPN-UML—the parties that controlled the powerful government ministries such as home affairs and finance—abused state power and resources during the election, and the Maoists intimidated opponents and ordinary citizens in many rural areas. The legal framework allows for equal

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campaign opportunities, but in practice small parties outside the government are seriously disadvantaged due to limited resources. Campaign finance laws restrict the amount allowed to be spent on elections, but these laws were largely ignored.

Regular elections were not held in Nepal after 1999, when the Maoist armed conflict escalated. Parliamentary and local elections were postponed because of threats and obstructions by the rebels. Moreover, the delay in completing the Constitution further stalled local elections, which were last held in 1997. Ten years without representative local bodies has undermined accountability at the local level. All-Party Mechanism and Peace Committees with representation from most of the locally active political parties were formed to disburse budgets for local governments and have contributed to stability at the local level; however, many have not been accountable to the local population. These committees have often spent the budget without following proper procedures, prompting the Commission for Investigation of Abuse of Authority (CIAA) to ask the government to shut them down.⁷

In the 2008 parliamentary elections, 240 members were directly elected and 26 were appointed by the cabinet. The remaining 335 members were selected proportionally to reflect the total Nepali population according to ethnicity, caste, regional identity, region, and gender.⁸ The absence of a minimum threshold enabled half a dozen small parties representing indigenous, regional, and Dalit groups to be elected to the CA and be vocal about their concerns. The election also saw an increase in the representation of youth, especially through the Maoist party.⁹ The expanded levels of government are designed to increase access to government and accountability.

Frequent changes in government and factionalism within political parties have created instability and weakened governance. Four prime ministers have taken power since the 2008 election. Each of them has hailed from communist parties (two each from the UCPN-M and the more moderate CPN-UML) and all have been male Bahuns, the 'highest' caste of the traditionally dominant CHHE. Thus, the frequent rotation of power has not resulted in diversification along ideological, gender, ethnic, or caste lines.

The legislature elects the executive, which dominates the other branches of government. The ceremonial presidency has emerged as a threat, however. The current president, Ram Baran Yadav, who was an NC nominee and still retains contact with the party, nullified the decision of the erstwhile cabinet led by Prachanda, the supreme Maoist leader, to sack the army chief. This led to the prime minister's resignation in 2009. Even though the president has not heeded the opposition's call for a unity government since the dissolution of the CA, the potential itself has influenced actions and reactions of political actors.

The heart of political power, especially over the crafting of the Constitution, lies outside of the governmental system and the CA. Final decisions on most contentious issues—such as the particulars of the executive, judiciary, and citizenship—were reached by the supreme political leaders of the three major political parties, all of whom are male Bahuns and often outside the CA. Since late 2011, the top leader of the UDMF, whose support has been necessary to maintain the majority coalition, has also been involved in decision making.

Whether the executive would be parliamentary, presidential, or mixed presidential under the new Constitution was highly contested. The Maoists advocated for a presidential system, the NC for a parliamentary system, and the CPN-UML for a directly-elected prime minister with a ceremonial president. The intelligentsia and ordinary citizens were equally divided on the issue. There was concern that a parliamentary system would perpetuate the chronic governmental

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instability witnessed during the 1990s, while others feared that the presidential system could facilitate the rise of autocrats. Finally, a compromise was reached to adopt a mixed executive with power divided between the elected president and a prime minister elected by the parliament.

The judiciary has issued some independent verdicts that restrained the executive in some areas. However, it has also been criticized for controversial decisions.¹⁰ For example, in December 2011 it ruled that the Constituent Assembly could not extend its term beyond May 27, 2012. Although some experts agreed that the CA was at fault for extending its term multiple times, the political nature of the extension put it outside the jurisdiction of the judiciary, whose purview is to interpret the Constitution.

The Nepali state is unable or unwilling to ensure that people's lives are free from structural and societal domination. For example, the state has been ineffective in protecting violence against women and Dalit as well as discrimination against indigenous peoples, Madhesi, and Muslims. The state has been unable to maintain basic law and order, resulting in criminal activity and destructive violence.

The civil service is generally recruited on a competitive basis, although it remains heavily dominated by male CHHE. This is in part because the civil service exam is administered in Nepali, their native tongue. Quotas were introduced for civil service recruitment in 2007 for the Dalit, indigenous nationalities, Madhesi, women, the disabled, and residents of geographically remote areas. Although this is slowly increasing participation, the new regulation only requires that 45 percent of new recruitments come from these groups, meaning that a relatively small number of recruits each year are meant to represent around 90 percent of the total population. The lower level of the civil service is often filled through temporary appointments without competition by supporters and cadres of ruling political parties.

Civic groups have played a significant role in Nepal. Many such groups have produced reports and analysis providing background on different political issues. Nongovernmental organizations (NGOs) operate in many areas, both delivering services and engaging in advocacy. Advocacy groups have lobbied political party leaders, CA members, and government officials, and have sometimes influenced the policy-making process. NGOs and civic organizations are free from legal impediments, but many are aligned with political parties and frequently promote partisan interests. Likewise, donors and other funders are also generally free from state pressures. However, they have been criticized for "inciting" marginalized groups, working under the influence of dominant group members, primarily supporting organizations led by the dominant group that ignore the interests of others, or pursuing their own agendas and priorities.

The media has improved its performance in covering corruption cases and promoting accountability. The constitutional provision that prohibits the revocation of media licenses has contributed to media growth and freedom, and the Nepali state generally does not scrutinize the media sector. In addition, intimidation and attacks against media groups have also declined in recent years due to enhanced security measures in the Tarai and other parts of the country. In 2010, Reporters without Borders ranked Nepal number 119, which represented a significant improvement from its ranking of 160 in 2005.¹¹ The Impunity Index, which calculates the number of unsolved journalist murders as a percentage of each country's population, ranked Nepal 7th in 2010,¹² indicating the persistence of serious challenges for journalist security. However, killers of two journalists sentenced to life imprisonment and the attackers of a journalist were sent to prison in 2011, indicating that the government had begun to take serious action against perpetrators of violence. The state also promptly investigated and prosecuted after a journalist was killed in early 2012. Journalists continue to be attacked during *bandhs* (general

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strikes that shut down markets and transportation), including during the three-day *bandhs* from May 20 to 22, 2012, called by the struggle committee of the indigenous nationalities to draw attention to their movement and concerns.

Despite expansion and development, the media still lacks professionalism in certain respects. Some media have launched systematic campaigns against the Maoists,¹³ while biases against or ignorance of the problems faced by women and marginalized groups are still widespread in the mainstream media. The mainstream media are controlled by the dominant CHHE, and mostly by male Bahuns. In 2008, 80 percent of the editors of the main newspapers were CHHE members, as are an overwhelming number of field reporters.¹⁴ With only occasional exceptions, opinion pieces and stories in mainstream media advocate against the identity-based federal model, which will provide autonomy to dozens of indigenous and Madhesi groups. For example, a popular weekly magazine, *Nepal*, which frequently runs articles against so-called ethnic federalism, is completely staffed by Bahun and Chhetri editors and correspondents. The director of the Himalmedia group, which publishes several popular Nepali and English newsmagazines, and editor of one of its newsmagazines, was candid enough to claim that their mission was to advocate for provinces that incorporate mountain, hill, and Tarai.¹⁵ Indigenous and Madhesi groups argue that such a federal model serves the interests of the CHHE as they would form either the majority or plurality in such ‘nonethnic’ regions.

The state has generally refrained from direct and indirect censorship of private print, broadcast, and web-based media. However, it often launches publicity campaigns through state-controlled print and broadcast media, such as the daily Nepali-language *Gorakhapatra* and English-language *The Rising Nepal*, Radio Nepal, Nepal Television, and its news agency, the Rastriya Samachar Samiti. All of these are led by political appointees. The state has taken action against those who have tampered with images for pornographic and sexual harassment motives. The government attempts to influence media personnel with foreign junkets, advertisements, and the distribution of funds from the state exchequer.¹⁶

Civil Liberties

Protection from state terror, unjustified imprisonment, and torture has advanced since the end of the civil war in 2006. The legal framework for the protection of Dalit, indigenous groups, Madhesi, Muslims, and women was improved in the 2007 Interim Constitution, and many of these measures were incorporated in the reports of the CA’s thematic committees.

Physical abuse by officers of the state has also declined due to increased awareness and greater consequences for perpetrating abuses. The UN Peacekeeping Mission, to which many members of the Nepal Army and Nepal Police are assigned, has also played an indirect role in deterring abuse because security personnel do not want to jeopardize their high-paying UN assignments.

However, there has yet to be accountability on either side for crimes committed during the civil war period. Some political parties have supported a general amnesty for all violations related to the civil war. In late 2011, for example, the Baburam Bhattarai–led government recommended pardoning those convicted of conflict-era crimes.¹⁷ It also declined to extend the term of the United Nations Office of the High Commissioner of Human Rights (OHCHR), which left the country in December 2011, possibly weakening the monitoring of human rights in the country.¹⁸ The state has not yet formed a Truth and Reconciliation Commission and a

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Disappearance Commission, as required by the Interim Constitution of 2007. Furthermore, Nepal has yet to criminalize torture and forced disappearance,¹⁹ and torture is sometimes used to force suspects of crimes to confess. Prison conditions remain dismal. Prisoners are packed in overcrowded rooms without proper amenities, such as an adequate number of toilets. Prisoners' safety is not guaranteed. On December 17, 2011, a prisoner affiliated with the Nepali Congress and accused of murdering a cadre from the rival CPN-UML died due to injuries from attacks by gang members in the same cell block.²⁰ Earlier in the year, a Muslim prisoner was shot to death inside a prison.

Peaceful protests and mobilizations are generally tolerated, except for activities by Tibetan activists. The Nepali government is cracking down on the long-resident Tibetan population and its supporters in an effort to appease China. Although troubling, this development has received disproportionate international attention as compared to other ongoing issues in Nepal.

Arbitrary arrests of peaceful activists have declined as the law and order situation has improved. Extended detention without trial rarely occurs, but the police may detain suspects for 25 days without trial for investigation purposes. The police have often used this period to psychologically harass the accused, primarily by holding them for the full period in filthy and overcrowded detention rooms.

Crime and killing have begun to decline in the country, including in the Tarai since the launch of the Special Security Plan in mid-2009. The total killings in the country dropped from 541 in 2008 to 473 in 2009 and 459 in 2010.²¹ The number of killings by state forces also decreased, but these still occur at a significant level, with 50 deaths in 2008 and 32 deaths in 2010.²² Violent acts by Madhesi and indigenous armed groups in the Tarai and Eastern Nepal, which witnessed a rise in violence even after the Maoist conflict ended, have also declined. According to survey reports, the residents felt safer in 2010 compared to 2009.²³ However, crimes still occur frequently across the country, and more so in the Tarai. There are regular lootings and killings, some occurring in broad daylight, including in the capital. Muslims in particular have been targeted. A Supreme Court justice was killed in broad daylight in the capital in early June 2012.

The government has set up a new human rights office within the prime minister's Office against Human Trafficking. NGOs have increased awareness of the problem of trafficking and have worked not only to prevent it but also to rescue those who have been sold to prostitution in India. NGOs engaged in rescuing trafficked women have faced some difficulties in doing their work, particularly in the Gulf countries, where they lack a specific rescue mechanism and are constrained by limited resources.²⁴

Redress mechanisms have been extended in Nepal. In 2011, the district courts were given the rights to hear citizen petitions when rights are violated.²⁵ In addition, citizens can lobby the Human Rights Commission, other human rights defenders, and the political leadership to address their concerns and problems.

The Nepali state has made considerable gains in promoting formal gender equality, but some serious issues remain. Citizenship standards remain unequal: it takes longer for a Nepali woman's foreign spouse to acquire Nepali citizenship than for a Nepali male's foreign spouse. The state has formally passed measures to address gender discrimination, but these have yet to take hold in practice, perhaps due to lack of political will. Gender-based discrimination is socially entrenched in patriarchal traditions, in which women do most household chores and are viewed as inferior to men. Despite the formal declaration of a secular state in 2006, the polity

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and its laws are still influenced by the Hindu ideology of the caste hill elite. This has contributed to the continued disparities in citizenship regulations and the weak implementation of women's right to inherit property, which was formally extended in 2006. Violence against women, especially within the home, is also common.

The government has also established quotas for women in public services, including the security sectors. The 2008 electoral law also required that half of the proportionally elected seats be filled by women. Women's presence in the public sectors and political offices has increased as a result of these reforms, but they are still heavily underrepresented. Since 2006 the state has introduced major political reforms to recognize the rights of traditionally excluded groups. For example, the Madhesi and other groups have been granted citizenship certificates; public holidays have been declared during the festivals of indigenous populations, Madhesi, and minority religious groups; and positions have been reserved in the public and security sectors for Dalit, indigenous, and Madhesi groups. A new inclusion bill was tabled in January 2012 that would expand and further institutionalize such quotas. However, the disproportionate domination of CHHE continues in most state sectors and civil spheres, including in media, academia, human rights organizations, state-declared public holidays, and so-called national heroes.²⁶ Furthermore, compared to other minority groups, Muslims enjoy fewer rights both formally and in practice.

Untouchability is still a pervasive social problem, even though urbanization and societal efforts have helped reduce the social stigma. The Dalit face exclusion because they are allegedly untouchable, even in urban areas. In December 2011, a Dalit was killed by a high-caste male for touching the cooking area.²⁷ Dalit activists and members of the Constituent Assembly had to launch a sustained movement before the government committed to punishing the perpetrator of the murder.

The declaration in 2006 of a secular state lessened the explicit and widespread official support for CHHE-centric Hinduism. Legally, followers of all faiths are free to practice their religions; in practice, however, the state is dominated by a Hindu caste ideology and the legal system remains heavily influenced by Hindu values and norms. The state supports Sanskrit schooling through a university in which predominantly males from the Brahmin caste receive free residential education up to a Ph.D. level, while no other religious and linguistic groups receive such educational support from the state. People continue to be jailed legally for multiple years for allegedly killing cows. Even though the harsh punishment of 12 years remains in the law, the judges in recent years have often sentenced people for fewer years. Furthermore, the spread of Hindu ideology begins early in the morning on state and private TV and radio programs.²⁸ Top state officials from the president to the prime minister to cabinet ministers regularly attend Hindu festivals, which are widely covered by the media. Significant numbers of Madhesi are Hindus, but the CHHE have discriminated against the Madhesi Hindus in the realms of citizenship, language, and culture. Mosques and churches have been bombed in recent years by the underground armed Hindu group, the Nepal Defense Army.

The state is not involved in the appointment of religious or spiritual leaders. However, it does appoint persons involved in maintaining and managing religious institutions, such as the Pashupati Temple Board and the Haj Committee. In 2010, a major controversy and sustained protests arose over burial ground behind Pashupati Temple after Kirati and Christians were barred from burying their dead there.

The state recognizes freedom of association and assembly. Business organizations, civic associations, and political organizations are allowed to organize, mobilize, and peacefully advocate for change. The state also generally permits public protests and demonstrations,

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although it occasionally attempts to stop strikes that aim to shut down roads, schools, and markets. In the capital, the state has declared certain areas off limits for demonstrations.

The state also supports the establishment and operation of trade unions. However, most trade unions are affiliated with major political parties and they often promote the interests and bidding of these parties, who sometimes use the coercive muscle power of the trade unions to intimidate business and political opponents. While the trade unions in Nepal have worked in the workers' interests, their overtly partisan activities undermine their commitment to put workers first. Many industries and businesses were shut down due to the unruly and uncompromising activities of the trade unions.²⁹

Rule of Law

The judiciary currently comprises a Supreme Court, 16 appellate courts, and 75 district courts. The Supreme Court is the final court of appeal and the venue for judicial review. However, the judicial system will likely undergo significant restructuring under a new constitution. Among other things, the report of the Judicial Systems Committee of the CA envisions the additions of a constitutional court and a provincial-level court system.

The current court system is generally independent from the direct interference of executive and legislative bodies, although the appointment system can allow for political influence over the judiciary. The prime minister appoints the chief justice based on a recommendation from the Constitutional Council; four of the six council members are appointed by the prime minister. The remaining two judges are selected by the politically appointed chief justice.³⁰ The law minister claimed that he was offered bribes by lawyers for an appointment as justice to the Supreme Court.³¹ Ethnic and political biases exist in the appointment process as well. Among the 16 Supreme Court justices, there were no Dalit or non-Newar indigenous justices in 2011 and only a single female. Meanwhile, 11 justices, or 69 percent, were from CHHE groups (largely Bahun and some Chhetri), which make up only 31 percent of the population.³² The court is composed of the social elite and is considered by many to favor the status quo, obstructing reform efforts by the progressive forces that have dominated the polity since the 2008 election.

The judicial system is heavily affected by bribery in the administration of justice, in the lower courts more so than the Supreme Court. The court system is also shaped by religion, with laws influenced by Hindu values and codes. The executive, legislative and other governmental branches generally comply with judicial decisions. However, although they may not openly object to judicial verdicts, they often ignore the rulings they do not favor during the enforcement phase. The judicial academy, with support from donors, has provided regular training to justices. It is an open question whether this training is sustainable once donor assistance ends.

The legal code provides for the presumption of innocence until proven guilty, but in practice this is not always upheld. Threats and torture are often used to elicit information from those charged with criminal offenses. However, it is generally believed that the incidence of torture and threats has declined.³³ Citizens are generally given a fair and public hearing by a competent and independent tribunal, but litigants face very long delays. The process of litigation may take years as it passes through the various levels of the courts, and is very costly. The district courts are located in the district headquarters, which means that travel may be difficult and expensive for the rural population. Those who do not speak Nepali face even more

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challenges and costs. Although the state ratified the International Labor Organization's (ILO) Convention on Indigenous and Tribal Peoples in September 2007, which recognizes indigenous peoples' right to alternative justice systems, it has not yet taken steps to implement it.³⁴

By law, citizens have access to counsel and legal aid is provided if they cannot afford lawyers. However, occasionally the court system, including lawyers, attempts to deny counsel to defendants. Recently, for example, the Bar Associations of the eastern districts made public calls against defense of a reporter in a case of contempt of court.³⁵

Prosecutorial independence is limited. In cases in which the accused is politically powerful or a relative, friend, or otherwise connected to the prosecutor, the charges are often lessened or thrown out. Prosecutions of public officials are rare and convictions are even rarer. However, some changes are beginning to take place. Chirinjibe Wagle, a former minister and a leader of the Nepali Congress, was convicted and arrested for embezzling state funds in March 2011. In February the court indicted a sitting minister, Jaya Prakash Gupta, for amassing disproportionate wealth. Nevertheless, other very influential politicians have been able to avoid court rulings through delaying tactics, while top political leaders have not been charged with amassing disproportionate wealth through corruption.

The police and the intelligence services are under civilian control. In a recent case, 34 police officers, including three former police chiefs, were charged with corruption in what is known as the "Sudan Scam" for receiving kickbacks while purchasing armored vehicles for the peacekeeping mission in Sudan. Three former police chiefs and two suppliers were found guilty of the charges in February 2012. However, the home ministers, who many believe had a role in the scam, were not charged by the Commission of Investigation and Abuse of Authority. A former police chief was also found guilty of amassing disproportionate wealth in April 2012, while another was found not guilty.

Following the 2006 regime change, the military leadership remained intact. The Nepal Army has attempted to influence the executive and legislative branches, especially with regard to the integration of the Maoist's People's Liberation Army (PLA) into the Nepal Army, through highly publicized pronouncements of its positions.

The armed forces have become more aware of human rights issues and potential violations through trainings and workshops from NGOs and civil society organizations. However, they are rarely held accountable for violations of such rights. According to Human Rights Watch and Advocacy Forum, "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 investigations."³⁶ Impunity, therefore, remains a crucial issue of general concern.

Many political parties maintain paramilitary forces to counter the formation of the Young Communist League (YCL) by the Maoists.³⁷ This trend has continued to expand, as indicated by the formation of the Akhil Force from the student wing of the CPN-UML in late 2011.³⁸ Major political parties have also relied on criminal elements to counter the YCL.

The state recognizes property rights but is unable to protect them or enforce contracts adequately. The Maoists have repeatedly pledged to return the land seized during the armed conflict, but the hardliner faction has challenged the leadership and stalled this process.

The term "indigenous" has become controversial, especially since the ratification of the ILO convention that recognizes indigenous rights. The dominant group has demanded inclusion in the indigenous category. Although a government commission rejected this claim, the CHHE-led government agreed to include them in the indigenous category after they called a general

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strike in May 2012. Other indigenous nationalities protested this decision, pointing out that it does not meet international norms or sociological and anthropological standards.

The state has not recognized the indigenous population's property and territory nor consulted with them regarding changes to their property and territorial usage. Related issues are at the heart of the ongoing federalism debate and contributed to the dissolution of the CA. Instead, modernization and development projects have transferred the indigenous land to nonindigenous groups. For instance, the land in the Tarai was either awarded to hill migrants under land reform schemes since the 1950s, or taken over by hill migrants and Madhesi caste groups. In more recent years, indigenous lands, which were initially nationalized, have in many cases been transferred to community forestry groups, which are often dominated by nonindigenous groups then returned to the indigenous people.³⁹

Anticorruption and Transparency

Corruption continues to be a major problem in Nepal. Corruption is widespread and occurs both at the top political levels and in lower levels of bureaucracy. According to Transparency International's Corruption Perceptions Index in 2011, Nepal's rank slipped eight places to 154, the second lowest in South Asia after Afghanistan.⁴⁰

Political patronage is an avenue and a major reason for corruption in Nepal. Political leaders depend upon cadres and supporters to win elections; thus, they rely on a clientelist system, which requires material and political resources to retain support. The fact that the private sector is relatively small has led to widespread dependence on the public sector for jobs and other resources, especially for the youth. However, jobs within the public sector are also scarce. For example, 9,000 youths applied for 300 police constable positions in 2011. As a result, people look to political patrons to obtain jobs, security, and resources, enabling the widespread patronage system to persist.

Low salaries and socioeconomic insecurity drive corruption among bureaucrats. In many cases, lower-level bureaucrats elicit bribes by delaying tasks and services. The state formally attempts to separate officeholders' public from private interests, but in practice such separation is often lacking.

Nepal's bureaucratic regulations, registration requirements, and other controls are excessive, increasing opportunities for corruption. The state continues to be involved in the economy, particularly in essential sectors such as the gasoline and power supply, as well as the national airline. Many public corporations operate at a loss due to inefficiency and corruption, among other issues. This has resulted in shortages of essential goods like gasoline and electricity. In recent years, the country has witnessed long hours—often more than 15 hours per day during the winter months—of power cuts.

Leadership positions in public corporations are often given to political appointees to reward their partisan and personal loyalty to top party leaders. However, there have been some recent positive developments in this regard. In 2011, the Electricity Authority's top managing position was filled through open competition. Since then, the government has announced that it will fill other positions through open competitions as well.

Positions within the customs and tax offices are particularly notorious for corruption, and many bureaucrats seek these positions specifically to enrich themselves. In the last few years there have been some strides in expanding tax compliance; however, the media have also

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reported that some larger businesses have engaged in schemes to avoid paying taxes. The opposition parties' paramilitary outfits are also alleged to have demanded informal taxes from businesses; police allegedly collect weekly payments in some urban locations.

Not all public officials comply with rules on asset disclosure. In 2011, at least 16 ministers and 84 Constituent Assembly members did not submit their property details.⁴¹ There has rarely been independent scrutiny or verification of their reports, beyond the occasional media inquiry.

The legal framework to control corruption is weak. There is growing frustration among citizens about the widespread levels of corruption; however, the political leadership continues to ignore the issue. The CA had not seriously debated mechanisms to control corruption in 'new' Nepal. It has proposed anticorruption agencies and mechanisms similar to those of the 1990s, which were ineffective. As before, the proposed anticorruption agency lacks power and independence, with the executive influencing the nomination of commissioners and allocating budget and staff to the agency. Such an executive-dependent agency is unlikely to prosecute top political leaders. Moreover, the anticorruption agency had been without commissioners for 13 months and the position of the auditor general by the end of 2011 had been vacant for four and half years.⁴² Vacancies in such important positions have made the bodies ineffective. Allegations of corruption are investigated, but there have been charges against the prosecutors and anticorruption agents alleging that they seek bribes to dismiss or weaken corruption cases.

The media, especially newspapers, have played an important role in exposing and covering allegations of corruption. Despite the growth, development, and expansion of the media, however, some stories are not fully investigated before they are published. Some journalists have made fraudulent claims. Journalists have written of extreme cases in which other journalists have committed blackmail for personal gain.

The 2007 Right to Information Act grants citizens the rights to access information from government bodies, political parties, and state-funded NGOs. It has generally increased transparency. However, reporters say that government officials often shirk from divulging information by directing the information-seeker to spokespersons, who may not be familiar with the issue.⁴³ In the absence of mechanisms to address the demands for information, bureaucratic delays and red tape result in limited access to information. The state is ineffective in protecting whistleblowers; the act contains whistleblower provisions, but they are rarely enforced. The framework for victim redress is very weak in Nepal, and redress for victims of corruption is almost nonexistent.

The state has not protected education from graft and corruption. Political and partisan influence can facilitate admission to colleges and universities. Student leaders affiliated with political parties attempt to boost their support base by lobbying and admitting future supporters due to the very competitive student politics, which is often the pathway to a political career. However, bribes are in most cases not necessary to gain admission or good grades.

The budget-making process provides some information to the general public. According to the Open Budget Index, Nepal's score for 2010 was 45 out of 100. This marked a slight increase from 2008, when the score was 43.⁴⁴ As the Nepali state only releases limited information, it is challenging to hold the government accountable. The auditor general is supposed to publish annual accounts of expenditures, but the position has been empty for years. The incomplete nature of the auditor general's report makes it difficult to compare the budget to expenditures.

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The Public Procurement Act requires competitive and open bidding for major contracts. However, because large sums of money are involved in commissions, such processes are often thwarted by contractors in collaboration with public officials. Contractors often form cartels and take contracts in turn, employing thugs affiliated with political parties to thwart competition. Foreign assistance is a large part of the Nepali state's budget, which is often distributed according to the donor agenda.

Recommendations

- Develop consensus among political and social actors to rejuvenate the constitution-writing process and promulgate a constitution.
- Establish checks and balances among the state agencies to control power abuse. Make the anticorruption agency independent and empower it to control corruption.
- Provide autonomy (provincial, sub-provincial, and/or non-territorial depending upon needs), ensure proportional representation in decision-making positions, and promote access to resources to traditionally excluded groups.
- Promote internal democratization of political parties; promote representativeness in mainstream media and human rights organizations.
- Reform the judicial system, bureaucracy, and security forces to reduce corruption and promote representativeness.
- Establish a rigorous process to bring conflict-era perpetrators to justice and diminish the overall climate of impunity.
- Ensure access to citizenship for all legitimate applicants regardless of gender, ethnicity, caste, or regional identity.

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² Phanindra Dahal and Kamal Dev Bhattarai. "Statute writing process sees significant progress," *The Kathmandu Post*, December 30, 2011; Sara Shneiderman and Mark Turin. "Nepal and Bhutan in 2011," *Asian Survey* 52 (1): 138-146, 2012.

³ Mahendra Lawoti, "Evolution and Growth of the Maoist Insurgency," chapter 1 in *The Maoist Insurgency in Nepal: Revolution in the Twenty-first Century*, edited by Mahendra Lawoti and Anup Pahari, London: Routledge, 2010.

⁴ Dalit is the term of choice of the former "untouchables" under the traditional caste system while Madhesi are people living in the southern plains who share culture, language and traditions with North Indians across the border (Madhise, on the other hand is a derogative term often employed by the hill residents). Adivasi Janajati or indigenous nationalities are marginalized groups settled in the mountains, hills and the southern plains.

⁵ Mahendra Lawoti, "Democratic deficit: Abiding by democratic procedures would have delivered a constitution," *The Kathmandu Post*, June 1, 2012.

⁶ Mahendra Lawoti, "Bullets, Ballots, and Bounty: The Maoist Electoral Victory in Nepal," chapter 14 in *The Maoist Insurgency in Nepal: Revolution in the Twenty-first Century*, edited by Mahendra Lawoti and Anup Pahari, London: Routledge, 2010.

⁷ Aditya Adhikari. "Flawed prescriptions," *The Kathmandu Post*, January 23, 2012 and Bimal Gautam; "CIAA wants local all-party mechanism scrapped," *The Republica*, December 25, 2011

⁸ Kare Vollan. "Group Representation and the System of Representation in the Constituent Assembly and Future Parliaments of Nepal," *International Journal on Minority and Group Rights*, 18: 343-368, 2011.

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- ¹⁶ Interviews with journalists, December 2011.
- ¹⁷ Human Rights Watch and Advocacy Forum. *Adding Insult to Injury: Continued Impunity for Wartime Abuses*, 2011. http://www.hrw.org/sites/default/files/reports/nepal1211Upload_0.pdf.
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- ¹⁹ Advocacy Forum – Nepal and REDRESS. "Held to Account: Making the Law to Work to Fight Impunity in Nepal," December, 2011.
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- ³⁴ Interview with indigenous activist, December 2011.
- ³⁵ Gopal Chintan. "Arajakatatarfa Nyayapalika," Kantipur, December 29, 2011, p.7.
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