



Corruption and Anti-Corruption in Nepal

Lessons Learned and Possible Future Initiatives



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Executive Summary

This study uses a political economy methodology to analyze the context in which corruption is taking place in Nepal, and the dominant formal and informal institutions and actors relevant for strengthening integrity in Nepal's development. Commissioned by the Norwegian Embassy in Nepal with support from UNDP, the study seeks to understand the context in which corruption occurs, to examine what can be done to promote integrity, transparency and accountability, and to suggest possible entry points for prioritized anti-corruption interventions.

Part 1: Situation Description

Informal practices of governance are prevalent and sustain corruption in Nepal. These are the unwritten 'rules of the game' that govern politics in practice. In addition to the Constitution and laws, Nepal's informal institutions, ranging from bureaucratic and legislative norms to clientelism and patronage, often have a profound—and systematic—effect on political outcomes. Examining these *together with formal institutions* allows us to better understand the incentives and constraints that underlie corrupt behaviour.

The illicit rents available to political actors, benefits of patronage available to citizens, and obligations to one's network, provide strong incentives to participate in corruption in Nepal. Furthermore, the costs of corruption are minimal to participants in it, because the risk of being punished is low. This is because actors who benefit from the status quo effectively block any challenges to the system of sharing spoils that maintains corruption. Moreover, oversight agencies are weak, in part because it is in the interest of those in power for them to remain so.

Factors that contribute to corruption in Nepal today include a social order that maintains client-patron relations and the obligations to one's network in a way that is directly contrary to rule of law; the domination of one particular ethnic group in the exercise of political and bureaucratic power, which makes for tighter networks among its members; the barriers to entry of women (who are reportedly less corrupt) in the ruling class; and poor leadership. Power is concentrated in a small ruling elite, which is supported by a growing, intermediate-sized group of government officials, growing upper middle class, and merchants; and this power is not effectively checked by workers and peasants, who are the vast majority of the population.

Historical foundational factors also have an influence and need to be considered in designing and selecting anti-corruption interventions. Nepal's lack of colonial experience was an advantage, as it preserved local culture and identity. However, there was little development of transportation and basic education systems, or other institutional and physical infrastructure. Nepal was kept isolated and remained medieval society in a feudal estate controlled by the hereditary Rana rulers from 1847 to 1950. In this context, it has been only a generation of Nepalese exposed to and interacting with those outside their families and villages, only a generation that has had any form of public services like health or education, and only a generation exposed to international norms to which Nepal subscribes.

Part 2: Lessons Learned for the Promotion of Integrity, Transparency and Accountability

This part of the report discusses Nepal's past experiences in promoting integrity, transparency and accountability, which are described and found have largely been unsuccessful. The reason is that groups of powerful actors and informal institutions are responsible for sustaining corruption in Nepal, and they also hold the keys to changing the situation. Illicit rents available to political actors, benefits of patronage to citizens, and obligations to one's network, provide strong incentives to participate in corruption. The risk of an individual being caught and punished is low, not because oversight agencies and civil society do not exist, but because networks of powerful actors are able to block any individual challenges to their power. Any future efforts to fight corruption needs to take this into account.

From a political economy viewpoint, the crux of the problem is one of collective action: there is a lack of countervailing forces (within and outside government), able to change the existing incentive structure that is at odds with statebuilding, and break the status quo. If these forces (the 'losers' of the status quo) are encouraged to come together as they are beginning to do since 2006, and empowered to broadly participate in the underlying (and evolving) political settlement in Nepal, the outcome will be potentially more compatible with statebuilding and democratic governance.

Part 3: Prioritized Donor Interventions

This part of the report identifies prioritized interventions (short, medium and long term) that can have positive impact in reducing the space for corruption, building on existing structures and tools in Nepal, and instruments to which Nepal is a party. Some factors that cause corruption are difficult to change through policy. Others, however, could and should be promoted by donors. We propose a three-fold strategy, to apply to specific initiatives, examples of which are offered.

In Nepal's context of selective distribution of limited public resources (particularism), high poverty and inequality, ethnic tensions, and informal institutions that conflict with and prevail over the rule of law, **donors will not be able to effect much change in the area of corruption without a change in governance regimes** (from closed/particular to open/universal) .¹ The following are three strategies to this end, that can be employed in the current context.

1) As a first strategy, consider that the highly uncertain political environment, new social movements, and recent experience with armed conflict means that Nepal is in a transition period that may settle at a new equilibrium point of state-society relations in the next few years, or may institutionalize its present systems – this is not yet determined, so it poses an opportunity. Donors should be poised to **make use of opportunities to set the norm for integrity, formally and informally** (i.e. looking for entry points in the leadership crisis, Constitutional deadlock, transition to decentralization and federalism, local elections).

¹ See Alina Mungiu-Pippidi et al. (2011) for the theory of change on which these recommendations are based, as well as the details of "success cases" their research examines, and what explains them. A fairly bare bones approach is forwarded for Nepal, given the diagnosis in Parts 1 and 2 of this report, and its low GDP per capita.

For example, to the extent that the new Constitution-making process encourages national debate and allows representatives from political and civil groups to discuss and develop a consensus on the country's political future, the resulting document should be more 'institutionalized' (that is, having less of a gap between it and the informal rules) as compared to the interim one, and may even incorporate some of the now-prevailing informal rules. Similarly, the federalization of the country may (and should) be able to properly embed existing informal institutions so as to address the issues previously raised in this study.

The rules that will be difficult to change are the formal rules that conflict with and are overridden by informal rules, which serve the interests of those in power and may enjoy legitimacy. For example, personnel management in the bureaucracy is highly personalized rather than institutionalized, as seen in the mechanisms for staff transfers discussed earlier in this report. Formal rules governing recruitment, promotion, transfer and dismissal of public officials are rarely if ever followed. With the change in government or with the change in the Minister, there is reshuffling of the bureaucracy. There is a Nepalese saying "*hamro manchhe*" (our man) is preferred over "*ramro manchhe*" (good man), similarly, "*thulo manchhe*" (big man) is preferred over "*sano manchhe*" (small man).

A common assumption of intervenors/donors is that "there is some natural trajectory whereby local 'traditional' sources of legitimacy evolve in the direction of a rational-legal political order"², which may not be the case. Exploring ways to bridge informal and formal systems of governance and justice can be a way to leverage concepts and benefits of the future statehood of Nepal for local actors, ensuring the enjoyment of legitimacy by a wider society. Notions of moral obligation/integrity and inter-personal accountability in the context of Nepalese ethnic groupings and other customary or pervasive interactions can be drawn upon, including the behavioural consequences of broken expectations of patronage relations and corruption.

2) Second, **develop the leadership of those who have the power to make the desired structural and system changes**, and promote a culture of integrity, transparency and accountability. This entry point is to support the processes by which agents of change are able to mobilize people, ideas, and resources to achieve political system reform, innovations in governance, and development results.

3) A third strategy for donors in Nepal is to **empower and support collective action by the losers in the current system**, described in this report. A starting point is a comprehensive social mapping exercise, to identify existing structures and disaffected groups. Civil society and other non state actors have the potential to reduce corruption and improve governance in Nepal by *changing and shaping the incentives* of political leaders to favour a new governance regime.

Using these strategies, the following are specific **prioritized interventions that could be supported by donors in the short, medium and long term:**

² OECD/DAC (2010a), p. 54.

Short Term AC Interventions

- Support existing government initiatives in which government shows commitment, including revenue generation, asset declaration, right to information, public procurement and e-bidding, Good Governance Act, and the constitutional process (looking for opportunities to influence norms and develop leadership).
- Where there is positive engagement with government (in areas listed in the bullet point above), strengthen GoN capacity to communicate new norms and successes, and mobilize support for these through media such as radio and mobile phone messaging, as well as internet.
- Support a local partner to lead a multi-stakeholder national forum on good political leadership and its features in Nepal; the role of politics in relation to the rule of law and patronage; the importance of impartiality; the benefits of the rule of law and formal rules based system of governance in Nepal compared to the prevailing informal patronage system; the role of the military and the use of force in relation to civil rule, etc. with the agenda to be defined by the partner and stakeholder committee.
- Join public financial management SWAp, with particular support to addressing political factors that may challenge its successful implementation.
- Advocate for integrity and accountability in formal as well as informal settings. When appropriate, use these exchanges to encourage appointments of heads of oversight bodies. To speak credibly on this, consider ways to demonstrate donor integrity and accountability to Nepalese people.
- Support building constituencies for collective action towards change. Identify and develop relationships with change agents, such as emerging leaders, private sector actors, and professional associations, and seek opportunities to shift norms.

Medium Term AC Interventions

- Strengthen civil society, media and investigative journalism
- Support local research initiatives by civil society to analyze existing data (like Living Standards Survey) or new work on corruption and governance.
- Support local elections, and legalize the ‘all party mechanism’ for oversight

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- Strengthen capacity of local bodies in planning and monitoring of development projects, and civil society engagement in the processes under future Constitution
- Support development of a public expenditures monitoring mechanism that is public and updated annually; information is a basic requisite for accountability of public funds by government, citizens and development partners.
- Promote transparency in political party financing to discourage seat buying³
- Support non state actor advocacy and watchdog groups to partner with government at national and sub-national levels, on the above issues

Long Term AC Interventions

- Targeted technical support for restructuring the federal system
- Targeted technical support for asset recovery; anti-money laundering
- Targeted technical support if government is keen to reform legislation:
 - amendments to existing anti-corruption laws (Civil Service Act, Corruption Prevention Act, CIAA Act, Nepal Rastra Bank Act, Judiciary Council Act, Military Act);
 - formulation of new laws (conflict of interest, NVC, integrity in public life, protection of witness, victim or experts, extradition, mutual legal assistance, transfer of criminal proceedings etc.);
 - amendment of Local Self Governance Act;
 - new legislation on disclosure of income and expenditures of political parties; amendment of Association Registration Act;
 - new laws relating to regulation of INGOs/NGOs
- Enable economic growth; Promote employment creation (create alternative to rent seeking and enhance tax base for increased revenues and the development of accountability)
- Reduce donor dependence (reduce “unearned” revenues that do not enhance accountability through dependency of Government on tax payers)
- Promote meritocracy and impartiality in the public sector (if government keen)

³ Public campaign financing is possible, but we do not have evidence that it would work in the current governance regime. There were reliable reports in our interviews of some parties “selling” CA seats to businesspersons, thus it seems public finance would provide a floor from which illegal contributions would be added.

- Promote judicial independence and rule of law (if government keen)

In the long term, it may also be possible to work towards the rule of law (starting with an autonomous judiciary) **and impartiality**. These factors are shown in cross-country research to have significant effects on the level of corruption, but it is difficult for donors to influence,⁴ and it is recommended that interventions in this area be limited to technical assistance upon request and if sufficient domestic commitment is shown.

Conclusions

Overall, we find that a change in a more pluralist governance regime would be required to significantly control corruption in the Nepal context. Although daunting, this could begin by looking for opportunities to create a shift in norms. Nepal is in a post-war transitional period which is conducive to a change in equilibrium, and collective action and effective and ethical leaders have the potential to instigate these changes.

⁴ See for example Francis Fukuyama (2004).

Introduction

The objective of this study is to assess the current environment in which corruption occurs in Nepal, extract lessons from past government and donor anti-corruption interventions, and come up with realistic recommendations for strengthening accountability, transparency and integrity in Nepal while taking into account the immediate needs of state building. The study has been commissioned by the Norwegian Embassy in Nepal, and has been drawn up by an independent team of researchers with support from UNDP and UNODC staff. Substantial guidance and suggestions have been provided by Fredrik Eriksson, Senior Advisor in anti-corruption at Norad, responsible for the contract and supervision. Several concerned and external sources have been consulted on the study report, from which it has benefited greatly.

The study is driven by two central questions: *why* donor interventions to strengthen governance and anti-corruption institutions in Nepal have had limited impact, and *why* political will to fight corruption is lacking in the country. To address these questions, the study pays particular attention to the politics and economic processes that define interests and incentives in the country, and the way they influence political choices. Overall, our approach considers how the interests of those in power could align with integrity or anti-corruption initiatives, considering the formal and informal 'rules of the game' that govern Nepal.

Nepal has been facing a number of significant governance challenges. Following ten years of violent conflict between 1996 and 2006, the country is characterized by a political environment marked by uncertainty, widespread impunity, absence of rule of law, and limited accountability at the local level. As noted by virtually all those consulted in this study, Nepal is currently experiencing political instability, and has many of the characteristics of a fragile state.⁵ Fragile states have yet to establish a stable political and security environment that would allow the government to deliver core services over the entirety of its territory and population, including the poor.⁶

This instability and uncertainty is related to the fact that **Nepal is coping simultaneously with a multitude of sharp political transitions**. These include changes from an active monarchy to a democratic republic; from a unitary to federal structure; from a Hindu state to a secular state; from a state sponsored "one-language, one-culture" policy to the recognition and acceptance of multi-cultural, multi-ethnic, multilingual policy; and from a winner-takes-all, majoritarian (first-past-the-post) electoral system to an inclusive, mixed electoral system that has elements of majoritarian, proportional representation, and quota systems.

Frequent changes in government have been accompanied by policy changes and reshuffling of ministers and bureaucrats, particularly in key positions, disturbing the policymaking and implementation process. Not surprisingly, this situation has created opportunities for corruption, because financial controls and oversight mechanisms are weak, illegal armed groups threaten violence to get payoffs, impunity is widespread, and the state lacks the institutional capacity to absorb large inflows of foreign aid.

⁵ See Government of Nepal, Ministry of Finance (2010), p. 15.

⁶ OECD/DAC (2010a).

Corruption is seen by key experts interviewed in this study as contributing to political instability in Nepal. For example, respondents suggested that unequal distribution of public resources leads to conflict between different social groups. Also, it was widely held by those interviewed that business houses have unfairly influenced political parties in the allocation of seats in Parliament. To the extent that voters perceive that elected officials do not represent them, this weakens the legitimacy of the legislature, its members, political parties, and elections in general.

Corruption is also reported by those interviewed to be contributing to disorder and lawlessness across the country. Localized regional, religious, ethnic, caste and lingual conflicts that are being waged in different parts of the country have given rise to armed and criminal groups that are sustained through corruption. These groups are often under the protection of the political parties, and manage to co-opt and/or strong-arm bureaucracy to favour their private agendas.

The euphoria of having a New Nepal has raised public expectations that are not being met or managed adequately by the government.⁷ Corruption and mismanagement of public funds are seen by key experts as exacerbating this gap, thus contributing to delegitimisation of the state. Yet many of those interviewed note that in the current political crisis, control of corruption has taken a back seat to drafting a new Constitution.

In this light, corruption should be treated as a core concern in the development agenda for Nepal. As stated by Transparency International (TI) Nepal, “corruption has failed successive governments, raised development costs, eroded the work ethos, and promoted a materialistic, inhuman attitude based on money. This has deepened poverty, impeded social and economic development, eroded public services and undermined democratic values.”⁸ Furthermore, according to our interviews, it has widened economic and social inequalities, thereby contributing to conflict.

This outcome has occurred despite government and donor supported initiatives intended to reduce corruption. Many development partners have a policy of zero tolerance of corruption in the use of their funds. In part because of this, the World Bank, Asian Development Bank (ADB), UK Department for International Development (DFID), Norad, Danida, United Nations Development Programme (UNDP), SDC, USAID and others have supported anti-corruption initiatives in Nepal since the mid 1990s.

In government, there are over a dozen agencies directly or indirectly related to combating corruption (see Table 3 below and Appendix 6), including the Commission for the Investigation of Abuse of Authority (CIAA) and the National Vigilance Centre. Furthermore, legal frameworks and policies are in place to address corruption, with over two dozen relevant laws (see Appendix 4 for summary and history of Nepal’s anti-corruption legal framework), including the United Nations Convention Against Corruption (UNCAC) ratified by Parliament in early 2011, and the 2009 National Anti Corruption Strategy.

⁷ Sharma, Suhindra and Bal Krishna Khadka (2011).

⁸ Transparency International Nepal, Project Document, 2002-2005.

As captured in the interviews conducted for this study, however, the effectiveness of these government and development partner-supported interventions in reducing corruption appears to be minimal in practice. The overwhelming impression among our respondents is that corruption has continued to flourish in the country, in spite of the massive influx of foreign aid that followed the pacification of the country. If anything, there is the perception that with large amounts of resources from both domestic and foreign aid going for reconstruction and development following the peace process, there are greater opportunities for corruption.

Following the Paris Declaration, increasing donor funds are being channelled through the Government system, using sector wide approaches. This has raised concerns in the donor community about fiduciary risks, as well as lack of transparency and inappropriate use of these funds away from the intended development purposes. In the absence of strong and coordinated action on the part of the Government of Nepal and the donor community against corruption, corruption threatens Nepal's political and economic development and business climate. Furthermore, corruption limits the country's ability to achieve the Millennium Development Goals, when funds intended to provide basic services and critical infrastructure and development do not reach the intended beneficiaries in time and in their totality.

In a context of increasing demand for development effectiveness, donors and UN agencies such as the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) are interested in supporting the Government of Nepal, civil society organizations and the private sector in identifying ways to ensure greater transparency, accountability and tracking of both Government and donor funds from central to local levels, and to reduce fiduciary risks. By contextualising corruption and identifying some key entry points, this study aims to inform those efforts, and provide guidance on the way forward.

Political Economy Methodology

As a methodology, this study uses a political economy approach to examine how power and resources are distributed and contested in Nepal, with particular reference to corruption. Political economy analysis is "concerned with the interaction of political and economic processes in a society: the distribution of power and wealth between different groups and individuals, and the processes that create, sustain and transform these relationships over time."⁹ As such, it is a historically grounded approach.

This type of analysis is fundamental to anti-corruption if the intention is to change the status quo to a situation with lower prevalence of corruption. Understanding historical patterns, as well as knowing which actors (individuals and organizations/institutions) have informal or formal influence (exercise of authority/power) over the nature of political and economic relationships will provide leads for how a change from corrupt relationships and behaviour could be achieved.

⁹ OECD (2009).

From a political economy perspective, it becomes clear that longer time horizons are required to achieve significant change – on the order of twenty years, though possibly less time when opportunities like crisis, regime change, or pivotal elections arise. The extent and nature of change needed, as well as the extent and continuity of influence to change will affect the time required for achieving wanted change.

There are great uncertainties as to what type of influence will be effective to achieve the wanted change. The logic and rationality of various forms of corruption (and their potential remedies) will vary with the context, although the acts or elements involved are similar across contexts. Within a given context, some factors sustaining corruption are deeply ingrained, and unlikely to be changed by donors, while others may be more likely to respond to external influence.

Tools and Data Collection

Specific tools that guided the study include the UK Department for International Development (DFID)'s How to Guide to Political Economy Analysis (2009) and the Power & Change Analysis (2007) from the Netherlands.

To operationalize the overall objective of this study, the research team carried out various activities. Preliminary desk research included: (a) review of the existing literature on corruption in Nepal (b) review of literature on corruption in other post-conflict contexts, (c) review of existing writings on the current political and economic situation of Nepal, the root causes of conflict, the underlying political settlement, the context of corruption, and the informal systems, (d) a quick Power & Change Analysis, (e) mapping of previous anti-corruption initiatives, (f) review of the Nepalese legislative framework (g) review of peace agreements and (h) development of an interview guide. This preliminary research served to guide the field work.

Fieldwork took place over the last two weeks of August 2010, and consisted of semi-structured interviews of diverse stakeholders in Kathmandu as well as the districts of Janakpur and Pokhara. The interviews included approximately 100 key experts including government officials; political party leaders; representatives of civil society organizations (CSOs), the media and the private sector; analysts and academics; and donors and development partners.

The interviews were carried out by a team of six researchers, led by a political economist contracted by Norad. Team members included two national governance experts, as well as staff from UNDP Nepal (national), UNDP Asia-Pacific Regional Centre, and UNODC. Interviews were generally carried out in pairs of one national and one international member.

In conjunction with this mission, Transparency International Nepal hosted a half-day workshop on political integrity and corruption, with about 70 participants from government, civil society and the private sector. TI, political party representatives, government officials and the team leader spoke on a panel, followed by an open discussion in Nepali that was framed by TI. This activity provided an opportunity for the team to observe dialogue among multiple stakeholders on corruption issues.

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During the desk review and 2 weeks of interviews, the research team attempted to:

- i) Assess the current context in which corruption occurs in Nepal.
- ii) Gain perspectives of different state and non-state actors on corruption, and more broadly, how power and resources are distributed and contested.
- iii) Document lessons learned from past donor and Government initiatives.
- iv) Draw on experiences from other post war/reconstruction situations.
- v) Identify prioritized interventions that could reduce opportunities for corruption.

Structure of Report

This report is organized around the objectives proposed in the Terms of Reference, discussing ‘foundational factors’ proposed in the Power & Change Analysis, which influence Nepal today.

After this introduction, Part 1 of the report gives a situational description of the political economy of Nepal as it relates to corruption. Part 2 discusses lessons learned from past anti-corruption efforts, to gain insights on what can be done to promote integrity and achieve change in the future in Nepal. Part 3 makes recommendations for prioritized donor interventions, and considers potential effects of donor involvement. Supplementary material is provided in the annexes.

Part 1. Situation Description

This part of the report considers what the forms of corruption are in Nepal, and how it is viewed by the public and key experts we interviewed. It also examines the informal structures through which corruption thrives, and the institutional arrangements that attempt to fight it. Informal norms prevail over the rule of law, and political interests favour and maintain a clientelistic system within which corruption flourishes unchecked.

1. Forms of Corruption in Nepal

Corruption is understood in this study as *the use of entrusted power for private gain*. Although private-private corruption falls under this definition, it is not contemplated in Nepalese law and we did not research it; our focus was on corruption involving public officials including bureaucrats and politicians.

Nepal's Prevention of Corruption Act 2002 is based on the understanding of corruption as being an inappropriate mixing of public and private interests, and appears to cover the core international norms to which Nepal subscribes. However, some acts such as nepotism given in UNCAC are not explicitly (but arguably implicitly) prohibited by Nepalese law.¹⁰ Nepalese anti-corruption law also includes some offenses that are not categorized as corrupt acts under UNCAC, for example giving false particulars to get a public service job.¹¹

¹⁰ Although a close legal textual analysis comparing Nepal's legislation (see Appendix 4) to UNCAC is beyond the scope of this report, we consider that the core corruption offences listed in UNCAC (articles 15 to 19) are prohibited by domestic law, directly or indirectly (in the 2002 Act's broad language). In this regard, we caution the reader that the Nepal Integrity Scorecard for Anti-Corruption Law in the *Global Integrity Report 2009* (available at globalintegrity.org) is not conclusive; see reviewers' comments.

¹¹ Analysis of acts legally considered to be corrupt in Nepal, as compared to of the details of complaints and text of court rulings (not available to us in this study), would be required in order to determine if and how they relate to international norms of corruption. For example, giving false particulars to get a public service job does not appear to be a corrupt act in terms of UNCAC. However, it is possible that this act is somehow related to an UNCAC offense (nepotism or cronyism, for example, if falsification is done by unqualified relatives or friends to get a job).

Table 1: Corruption Offenses in Nepal

➤ Giving and taking graft (cash, goods, bribe or any kind of gain or benefit)
➤ Public servant accepting goods or services free of cost or at lower prices
➤ Public servant taking gift, present, award or donation
➤ Public servant taking commission, remuneration, brokerage fee, benefit or advantage (e.g. commissions on public contracts)
➤ Public servant under the duty of collecting revenues, causes revenue leakage, or helps or abets, or embezzles revenues
➤ Public servant getting illegal benefit or causing illegal loss with malafide intention (covers broad range, including specifics on construction sector)
➤ Public servant preparing false documents, translating false documents, tampering with government documents or causing damage to government or public documents (involves public harm for private gain)
➤ Disclosing the secrecy of question papers or altering results of a public examination
➤ Public servant engaging in illegal trade or business
➤ Falsely claiming to hold (or enjoying) any public servant position, power, capacity or facility
➤ Giving false particulars to get a public service job
➤ Public servant damaging or using public property for personal purposes
➤ Exerting pressure to commit any offence punishable under this Act
➤ Giving false information for an audit report of a public institution
➤ Illegally acquiring property – living beyond one’s means
➤ Attempted corruption, or being an accomplice to corruption

Source: Anti-Corruption Act 2002, Section 2

More than half (55 percent) of the corruption cases filed by CIAA at the Special Court are related to fake certificates, illegally issued in exchange for rewards (see Table 2 below). The next highest number of cases relate to financial crimes like bank fraud and embezzlement (15 percent). Illegal acquisition of properties (unexplained wealth) constitutes around 6 percent of cases.

Table 2: Types and Outcomes of Corruption Cases in Special Court (1990-2010)

Type of Case	Convicted	Acquitted	Total
Fake government certificates	324	17	342
Bank fraud and embezzlement	85	10	95
Embezzlement of public properties	31	15	45
Illegal owning of properties (unexplained wealth)	7	33	40
Bribery	7	18	25
Forgery of documents	18	6	24
Procurement/construction	12	9	21
Public vehicle registration crime	18	1	19
Embezzlement of forest resources (public harm for private gain)	4	3	7
Total	506	112	618

Source: Compiled by Yuva Raj Subedi, CIAA

This is not to say that bribery or other less-reported acts of corruption occur infrequently. As interviews with CIAA officers and other key experts point out, many acts of corruption are difficult to prove, and cases lack evidence for referral to court. Other acts are not visible to the general public, and remain unreported. Therefore, formal complaints and court cases do not represent the scale and prevalence of different types of corruption in Nepal.¹²

As discussed in the report's introduction, corruption is generally acknowledged by key experts interviewed in this study to be harmful to politics, society and the economy. This is consistent with this group's tendency to value universalism and modernization. At the same time, corruption appears to be widely tolerated by the public as well as bureaucrats and political leaders, and is seen as useful or at least unavoidable in the current system.

Some public officials interviewed few questioned whether using one's position in public office for personal benefit is really corruption or not. A number of those who accept or go along with corruption say that to access income, jobs and services, there is no alternative but to participate. Others expressed discomfort or disagreement with informal practices associated with corruption (described in the next section below), and some made a point of rejecting them.

2. Informal Practices that Sustain Corruption

Informal practices are prevalent and sustain corruption in Nepal.¹³ These "informal institutions" are regular behaviours based on socially shared, unwritten rules that govern politics in practice. They are created, communicated, and enforced outside officially sanctioned channels. Although politicians and the public alike eschew many

¹² This could be measured by a survey of corruption *experience* reported by citizens, officials and the private sector, as has been carried out in other countries using methodologies developed by the World Bank, UNDP and others.

¹³ In political economy terms, these are "informal institutions." See Gretchen Helmke and Stephen Levitsky (2003).

formal rules in Nepal, creating what may seem like chaos to the casual observer, there is logic and continuity found in the informal norms and practices.

In addition to the Constitution and laws, Nepal's informal rules and practices, ranging from bureaucratic and legislative norms to clientelism and patronage, have a profound—and systematic—effect on political outcomes. Examining these *together with formal institutions* allows us to better understand the incentives and constraints that underlie corrupt behaviour, and assess the degree to which they favour or hinder the achievement of the rule of law in Nepal.

Corruption is often part of a set of exchanges within patron-client systems through which elites construct political compromises with individuals or groups who would otherwise threaten the political stability of the system. By co-opting them, they prevent collective action that could change the status quo. Moreover, where patron-client relationships are institutionalised in the political system, impartiality and equality will not be respected. This is arguably incompatible with any ambitions to establish the rule of law as it is the direct opposite in *how power is used*, i.e. guided by social relationships of reciprocity. Below, we discuss clientelism in general, then look at specific informal institutions in Nepal.

Clientelism is generally the exchange of material rewards (i.e. state jobs, contracts and services) for political support. It involves asymmetric but mutually beneficial relationships of power and exchange, a non-universalistic quid pro quo between individuals or groups of unequal standing. 'Patrons' and 'sub-patrons' (often politicians and businesspersons in Nepal) and 'brokers' (typically bureaucrats) mediate and give 'clients' selective access to goods and opportunities. 'Patronage' is the support by influential patrons. Those in control place themselves or their clients in positions from which they can divert resources and services in their favour. The clients are expected to return their benefactors' help, politically and otherwise, by working for the patron, or boosting the patron's prestige and reputation.

In electoral democracies, clientelism is associated with the particularistic (non universalistic) use of public resources and with the electoral arena. Votes and support are exchanged for jobs and other favours from the incumbent and political opponents. In this process, the client renounces his/her autonomy as a citizen, and the patron leniently weakens the hierarchical controls he or she has.¹⁴ As a result, the client gains a measure of dominated power and the patron gains a position of dominating authority.¹⁵ As discussed later in this section, in Nepal patron-client relations can eventually equalize, evolving sometimes over generations into horizontal networks.

Clientelistic practices by state officials and party leaders interfere with the right of associational autonomy by preventing citizens from taking collective action by coercing or co-opting grassroots leaders and activists; creating incentives for zero-sum competition among popular organisations in a context of limited resources and generating public mistrust due to the perceived inequality in the distribution of

¹⁴ Vincent Lemieux (1987).

¹⁵ Luis Roniger (2004).

clientelistic rewards.¹⁶ Collective action is discouraged by the fear of losing material rewards, and non-cooperation among organisations and individuals.¹⁷

At the local level, the distribution of benefits by parties creates a (dis)incentive structure for associational autonomy and collective action.¹⁸ In our interviews, particularly in Terai, it was explained that when funds are transferred from the central government, or donors give grants at the district or local level, a portion of these funds are allocated among the political parties or their sister organizations, in proportion to their representation in the district or local area. In some areas of Nepal, political parties, in turn, are forced by threat of physical violence to give a portion of their revenues to the different armed groups.

Chakari is an informal practice at all levels of government of cultivating political favour through greetings, gifts, services or attendance at a patron's house or office, for up to several hours. It is done in public in view of others, and is often a means to pass on information among unequals, allowing people to express ideas and air grievances. If the donor is noticed and allowed to be heard, which is not required in the case of strangers, and the gift or greeting is accepted, then the donor has the right to a response, and the patron owes him or her social debt. Gifts are not necessary, Chakari is commonly spending time in the presence of the person whose favour is sought, and this is seen as merit and worth rewarding. Positions in the public service are filled, and government decisions are made this way. By practicing Chakari over several generations, a family may even be able to raise their class or caste status.¹⁹

The history of Chakari is that it was officially introduced by the Rana government as a way to keep rivals or opponents from posing a threat. By requiring the rivals to spend set hours each day at the palaces, the Ranas could see that they were not elsewhere brewing dissent. Under the Rana's "pajani" system, every year, disloyal public servants were sacked. Chakari became a way to judge loyalty and reliability, with government employees required to perform it to keep their jobs and be promoted.

Afno Manche (one's own people) is a related social institution that is pervasive in Nepal and shapes political behaviour. It refers to people in one's inner circle who can be approached in times of need. There is a strong distinction made between afno manche, and other people, who are essentially non-persons. When *Chakari* is practiced persistently over time, and the debt grows, the vertical relationship between the donor and patron becomes horizontal and converts to a relation of afno manche. This status is not automatically conferred based on ethnicity or caste. In some instances membership is acquired through traded privileges. Other ways are through invitations to weddings, feasts and festivals. Afno Manche is also rooted to the extended family system where family relationships involve a number of layers, from one's family to marital relationships.

Jagir and birta systems (sharing of the spoils). During the early days of Nepal's unification process, land was the primary resource to be shared, and the army was

¹⁶ Gabriella Ippolito-O'Donnell (2007).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Dor Bahadur Bista (1991).

paid not in cash, but in land acquired in the war (called the *jagir* system). Similarly, lands were allocated to public officials in return for special favours (called the *birta* system). The *jagir* and *birta* systems gave rise to a system of dual ownership of land – an absentee landlord and a peasant tenant who shared it. Now the word *Jagir* refers to employment in government services.

Related to *Jagir* is today's system of paying for public sector job transfers, with the expectation that the payment will be recovered and a profit will be made. Ministers and high level bureaucrats directly or indirectly participate in the system in which officials pay large sums for a job transfer, who in turn recover their costs by collecting smaller sums from the public in exchange for delivery of services. Officials may have a limited time period in which to maintain their position before it is bought by someone else, so there is an incentive to generate as much revenue as possible, in the shortest amount of time. At the bottom level of the system, individual winners (the public servant's clients or network members) gain selective access to services, while losers pay for services that should be free, or are left out. These payments are demanded by the job transfer system throughout the public service, which maintains politicians' power.

Looking at the bottom level of the system, a Report Card Survey on the satisfaction of delivery of public services (drinking water, electricity, telephone, police, land revenue, education and health) in Chitawan district in central Nepal revealed that service users bribe officials in most agencies, while land revenue tops the list of corrupt offices.²⁰ Similarly, a South Asian survey on prevalence of corruption indicated land administration to be the most corrupt sector in Nepal.²¹ Other areas included the customs department, the police and the judiciary. Another survey found bribery reported in revenue, customs, police, courts and local administration agencies.²² It should be noted that, since these surveys, corruption in key customs locations has been reduced.

3. Anti-Corruption Institutions

Nepal's formal institutions, legal frameworks and policies are currently being debated and created. Although the formal system has provisions for helping insulate public institutions from private influences, in practice decisions are made, and resources allocated, by a different set of informal 'rules' that serve personal interests. Formal governance in Nepal is largely ineffective, and is in conflict with informal rules and practices, which aim to achieve different objectives. Without rule of law predominating over informality, the anti-corruption legal framework cannot be implemented effectively.

That said, there is the potential that through the new Constitution-building process, these conflicts may be reduced. Likewise, it is possible that any discrepancies between the citizens' understanding of corruption and normative definitions may be narrowed.

²⁰ Transparency International Nepal (1999a), Report Card Survey of Chitawan.

²¹ Transparency International Nepal (1999b), Household Survey on Corruption.

²² Media Service International, Corruption Poll Survey (2000).

Corruption and Anti-Corruption in Nepal

There are over a dozen agencies directly or indirectly related to combating corruption (see Table 3 below and Appendix 6) and there are over two dozen relevant laws (see Appendix 4 for summary of anti-corruption legal framework). There is no shortage of frauds and scandals in Nepal. However, most corruption cases do not result in legal prosecution or conviction.

Some anti-corruption agencies are involved in investigating and prosecuting corruption crimes (e.g. CIAA, Attorney General), while others are involved in adjudication process (e.g. Special Court and Supreme Court). The National Vigilance Centre is engaged in corruption prevention activities. It has emerged as a government watchdog, and is highly under resourced. Others tackle sector specific corruption cases, like the Department of Revenue Investigation to control revenue leakages, the Judicial Council to combat corruption within the judiciary and recently, the Independent Review Committee in public procurement. The government has yet to establish a separate anti-money-laundering institution as required by law, so this task falls to the Revenue Investigation Department. The Department for Crime Investigation and Nepal Investigation Department also support corruption investigation activities.

Table 3: Government Anti-Corruption Agencies in Nepal

	Anti-Corruption Agency	Type	Major Focus
1	Commission for the Investigation of Abuse of Authority (CIAA)	Constitutional body	Investigation and prosecution of cases of corruption and improper conduct
2	National Vigilance Centre (NVC)	Prime Minister's Office	Awareness raising and corruption prevention
3	Special Court	Judiciary	Adjudication of corruption cases
4	Office of Attorney General	Constitutional	Public prosecutor
5	Judicial Council	Constitutional	Combating corruption in judiciary
6.	Revenue Investigation Department	Ministry of Finance	Detection of revenue leakage
7	Independent Review Committee	Committee under Public Procurement Act	Corruption related to public procurement over Rs30 million.
8	Central Arrear Collection Office	Financial Comptroller/Ministry of Finance	Collection of government dues and arrears
9	Parliamentary Committees including Public Accounts Committee and State Affairs Committee	Parliament	Parliamentary oversight
10	Office of Auditor General	Constitutional	Auditing of books of accounts
11	Offices of Regional Administrators and Chief District Officers	Ministry of Home	Handling regional and district-level corruption cases, within the authorities delegated by CIAA
12	Office of Financial Comptroller	Ministry of Finance	Government budgetary control

The CIAA has authority to investigate cases of improper conduct and abuse of authority against public officials except sitting judges and army personnel. CIAA brings cases to the Special Court, whose verdict can be appealed in the Supreme Court. The Special Court was not considered by those interviewed to be very effective. The constitution has made separate provisions to look into corruption in the Judiciary and the Nepalese Army. The Judicial Council has started taking action against judges who are corrupt and exhibiting improper conduct, however, people in general still perceive that there is corruption within the judiciary that needs to be addressed.

CIAA was active in the recent past, and former politicians and civil servants have been both investigated and convicted up to the Supreme Court. Nonetheless, it was generally perceived by the key experts interviewed (in August 2010) as weak and less effective than before. Recently, a former Minister's 2004 court conviction was upheld by the Supreme Court in March 2011. Judging from the positive media coverage, it is possible this has enhanced the public's view of the CIAA (or more likely, the Supreme Court).

This kind of isolated but powerful action against high level corruption appears to have given some hope and optimism to the Nepalese people. However the conviction was the result of the previous wave of CIAA activity discussed below, not recent efforts. Moreover, several politicians we spoke with (before this decision) frankly expressed that the likelihood of detection, conviction and serving a jail term are so low that corruption pays.

Corruption and Anti-Corruption in Nepal

Immediately after the enactment of the 2002 anti-corruption law in Parliament, CIAA took a high profile action, carrying out a midnight raid on the houses of 22 officials of the Revenue Service within the Ministry of Finance and taking the officials under custody. This was a watershed event in the anti-corruption drive in Nepal. An emboldened CIAA started taking high-profile actions against senior political leaders and bureaucrats. From 2002 to 2005, CIAA saw a dramatic increase in corruption complaints (see Table 4 below).

Table 4: Corruption Complaints at CIAA (1990/91-2009/10)

<i>Year</i>	<i>Number Complaints Lodged</i>	<i>Number Complaints Resolved</i>	<i>Number of Prosecutions (Court cases)</i>
1990/91	564	-	-
1991/92	1069	581	1
1992/93	1050	618	5
1993/94	1020	526	6
1994/95	1003	636	1
1995/96	1085	711	2
1996/97	1501	750	22
1997/98	1606	920	6
1998/99	1313	861	12
1999/00	859	498	5
2000/01	1261	698	26
2001/02	2522	2015	61
2002/03	3966	2481	147
2003/04	3732	3188	98
2004/05	4759	3709	113
2005/06	4324	3353	114
2006/07	3564	2976	115
2007/08	2732	2135	65
2008/09	4149	3303	47
2009/10	4295	3067	27

Source: CIAA Annual Reports

Because the new anti-corruption law came when the monarchy was active in Nepal's politics, parliamentary parties viewed anti-corruption activities as politically motivated, and attempted to discredit CIAA actions. After the royal takeover in 2005, the King established a separate anti-corruption agency, the Royal Commission on Corruption Control (RCCC), charging CIAA to be ineffective, and started taking high-profile actions against opposing political leaders. This included convicting the deposed Prime Minister Sher Bahadur Deuba and his minister Prakash Man Singh of Rs180 million corruption in awarding access road construction works related to the Malamchi Drinking Water Project. RCCC even managed to send Deuba and Singh behind bars for a brief period. They were released after the Apex Court decided that the formation of RCCC was extra-constitutional, and nullified its actions.

Since 2006/2007 there has been a significant decline in the number of prosecutions achieved by CIAA. CIAA has lost most the high profile cases that it has taken to Court. It has had the most success with the corruption cases involving fake certificates.

CIAA's decline in effectiveness has followed the retirement of the Chief Commissioner in late 2006, who has yet to be replaced. Since 2009, CIAA has been left without any commissioners at all, weakening the institution by leaving it without leadership, authority, and management. One was appointed by the government, but he has not been able to perform his duties, as there is no Chief Commissioner to take his oath. Attempts by the government to appoint a Chief Commissioner and commissioners have been challenged by the Maoist Party in the Supreme Court, on the grounds that the oppositional member in the Constitutional Council was not informed in time of the meeting to recommend the Chief Commissioner. The Supreme Court also asked the government to quash the decision of the Constitutional Council.

Following the ratification of UNCAC in February 2011, several CA members have called for the Chief Commissioner to be appointed. However, in the absence of consensus on this matter among the political parties, the government has been unable to fill the vacant positions. Civil society efforts to pressure the government, and donor pleas have remained unsuccessful.

This state of affairs is influenced by the vested interests of powerful political actors who benefit from corruption and weak governmental oversight. In other words, it is in their interest to leave the positions vacant, and to encourage further factionalization. Some politicians at least nominally agree with the idea of oversight (e.g. to fulfil international obligations, to gain domestic and international legitimacy) but each faction wants their "own" man/woman. CIAA is valued and to some extent feared as a potential instrument to control foes. The deadlock shows the depth of the vested interests, and the lack of what would be needed to overcome it (short of an elite pact not to prosecute each other): countervailing forces that are strong enough to shift the interests.

Currently, in restructuring the state for federalism, the drafting of the new constitution has triggered a debate on the role and status of the CIAA in the future federal structure. Anti-corruption institutions like the CIAA, NVC and the Special Court are basically centralized agencies, designed to tackle corruption at the centre. With

corruption clearly present at the local level, there is a need to develop local level accountability mechanisms in the context of the decentralization process that is being implemented, and the future federal structure.²³

To be sure, decentralization is not problem-free, and may lead to increased corruption. The main challenge is that if adequate resources are not available for localities to meet basic needs, corruption will necessarily be a survival strategy. Locally elected officials could seek rents through local clientelist systems. And although the fiscal decentralization process has yet to result in much local revenue generation, local tax collection could become a new source of rents. These are, however, all challenges that need to be addressed, as the question today in Nepal is not whether to decentralize or not, but *how*.

4. Local Level Accountability

Nepal has a two-tier structure of local government, a village/municipality level, and a district level. Village Development Committees (VDCs) are the executive branch of village government, with provisions for a directly elected Chairperson, Vice-Chairperson and nine members. There are 3,915 VDCs. In 58 municipalities, the government structure calls for an elected government that varies in size depending on the land area and population.

The District Development Committee (DDC) is constituted by an indirectly elected body with a President, Vice-President and members that represent a group of VDCs, and some nominated members elected by an electoral college formed by the elected members of Village Councils and Municipality Council of the respective district.

The current local government structure was created by legislation in the 1990s, following the brief restoration of multi-party democracy.²⁴ It was patterned after the model set up under the Partyless Panchayat system, introduced by the King after his royal coup interrupted the democratic experiments of 1951-1960. Decentralization was introduced in the 1960s as a strategy to legitimize the authoritarian regime under absolute monarchical rule, and to delegate and deconcentrate administrative power to the central administration's local or field branches.²⁵

Even before decentralization, dating back to the Lichhavi period in ancient times, there was the practice of local government in Nepal. In medieval times, the term panchayat referred to a kind of consensual governance led by a council of five people respected in the local community. After unification, village councils operated unofficially with some autonomy, but formal power was held by centrally appointed officials and courts of law. In some areas, the Rana regime did formalize village panchayats in 1926, with 170 recognized by the end of the regime in 1951. Village

²³ Fiscal decentralization is underway (under current the unitary structure), and political decentralization (federalism) is directed by the interim constitution to be part of the new Constitution being drafted.

²⁴ Local Government Acts of 1992, and the Local Self-Government Act of 1999.

²⁵ Krishna Hachhethu (2008).

government was recognized by the democratic government that took office, but elections were only held in a few municipalities in the 1950s.²⁶

Local elections have not been held in Nepal since 2002, so there is no opportunity for citizens not benefiting from the status quo to express their dissatisfaction through votes. As provided by in the Interim Constitution, an “all-party mechanism” comprising of political representatives from different parties is supposed to run local bodies until a new constitution is drafted. However, due to differences in the interpretation of all-party representation, the mechanisms have failed to work in most places. This has resulted in government representatives (VDC Secretaries, Executive Officers in Municipalities and Local Development Office in DDCs) running the local bodies.

Local government is potentially more accountable to the people, as it is closer, and presumably more informed than other levels of government about the needs and preferences of those under their jurisdiction. However, as discussed earlier in this report, in Nepal where the government or NGOs are delivering local services today (less so in remote rural areas), clientelism exists. This provides a disincentive to the collective action necessary to hold government to account.

At the local level, there is only one way for people to make complaints about corruption: to the local delegate of the CIAA. Individuals cannot file corruption charges in court, for example. However, the CIAA has delegated its authority to the Chief District Officer (CDO) to handle local level cases of corruption. As CDOs are tasked with multiple functions and many people have yet to gain confidence on them the delegation of authority to CDOs has been self-defeating. When claims are made, the CIAA is overburdened with investigating cases at the centre, so it takes a long time to decide on a single case of corruption.

Now the CIAA is considering establishing its own outreach units in the districts. The directive to establish Local Level Coordination Forums is an attempt in this direction but, again, these forums are expected to be headed by CDOs. The absence of elected representatives at the local level, the frequent transfer of deputized staff, and the lack of willingness (and also ability) on the part of local administrators to take actions against defaulting staff members have severely hampered the creation of an effective local level oversight mechanism.

5. Political Competition and Who Has Power

Here we look at the nature of political competition, and who has power to influence and mobilize others, as well as the capacity to plan and implement policy. In order to achieve change from a negative situation where corruption is prevalent, it is necessary to map who has power, including actors who stand to lose from (and block) change, as well as groups and emerging coalitions who may be able to collectively influence politicians to have an interest in changing the status quo.

Political competition in Nepal is carried out through nonviolent elections. The intra-party wrangling seen today has long been a feature of Nepalese political parties. This

²⁶ Interim Government Act of Nepal 1951.

started after a deep cleavage within Nepali Congress Party which came into power in early 1990s after securing simple majority. The party was divided into two factions called 74 vs. 36 (out of the 110 seats they secured in the house of 205). The faction of 74 was led by then-Prime Minister G.P. Koirala while the faction of 36 was led by Sher Bahadur Deuba.

The government led by Koirala failed to garner sufficient votes in the house while presenting budget programs, as disgruntled members abstained from voting. As a result, the PM dissolved parliament in 1994 and went for a midterm poll, trying to punish his opponents. However, midterm elections resulted in a hung parliament, which, invited horse trading of MPs. This created political instability; on average, every six months after 1995 there were changes in government. The Maoist factions in Parliament did not participate in the midterm poll, and moved to armed rebellion in 1996.

In the 1999 elections, with Koirala bowing out, Nepali Congress gained a simple majority. Congress continued to have infighting between two rival factions and officially split in 2002. They were unified only on the eve of CA elections in 2008. Another major political party CPN-UML also split in 1995 over a dispute over the Mahakali Project Treaty with India. Internally, the party is still divided into at least three factions. Even within the Maoist party, which emerged as the largest party after war ended, there are divisions. Several regional political parties like MJF, Nepal Sadvawana Party (NSP) and Terai Madhes Loktantrick Party (TMLP) have emerged. NSP is divided into four political parties, MJF into three and recently in December 2010, TMLP divided into two. Some of the smaller parties have also split into groups and factions.

Table 5 below summarizes party representation in the Constituent Assembly, following the 2008 elections. Looking across rows, the numbers in each column give an indication of how inclusive the political parties are. For example, in the bottom row we see that out of 601 members, 154 are from ethnic groups and 195 are women. The Bahun-Chettri occupies 208 out of 601 seats, close to 35 percent. The column on the far right gives the percent of seats held by each party.

Table 5: Party Representation in the Constituent Assembly

Party	Ethnic group	TM Ethnic	Tarai – Madhes	Hill Dalit	TM Dalit	Chhetri -Bahun	Woman	Total	%
1. UCPN (Maoist)	71	21	24	17	4	92	75	229	38.10
2. Nepali Congress	30	7	20	7	2	48	44	114	18.97
3. CPN (UML)	31	7	19	8	1	42	36	108	17.97
4. MJ Forum		8	38		4	3	13	53	8.82
5. TAMALOPA		1	17	2		1	6	27	4.49
6. RPP	2	1	1		1	3	4	8	1.33
7. CPN (ML)	1	2	1	1		3	4	8	1.33
8. Janamorcha Nepal	3		1	1		3	2	8	1.33
9. CPN (Unified)	1	1				3		5	0.83
10. Sadbhawana	1	4	4				2	9	1.50
11. RPP-Nepal	2	1				1	2	4	0.67
12. Rastriya Janashakti	2					1	1	3	0.50
13. Rastriya Janamorcha	2			1		1		4	0.67
14. Nepal Majdor Kisan	3					1	1	4	0.67
15. Rastria Jana Mukti						2	1	2	0.33
16. CPN (United)	1					1	1	2	0.33
17. Sadbhawana (A.)			3				1	3	0.50
18. Janata Dal			2				1	2	0.33
19. Federal LRM	2						1	2	0.33
20. Samajbadi PJ						1		1	0.17
21. Dalit Janata					1			1	0.17
22. Nepal Pariwar Dal						1		1	0.17
23. Nepal Rastriya	1							1	0.17
24. Nepal Loktantric S.	1							1	0.17
25. Chure Bh Ekata						1		1	0.17
Total	154	53	130	37	13	208	195	601	100.00

Source: Election Commission Nepal

Perspectives on Harmfulness of Corruption

With regard to corruption, among political parties there is corrupt abuse of formal procedures. The intraparty accusations and counter accusations are rife. For example, it was said in interviews that posh jobs are allocated to certain factions, and that the government is not following party guidelines. As discussed in other sections of this report, parties are a part of the patron-clientelistic system which maintains power arrangements (and in the process, corruption which takes place within it), extending its reach through politically affiliated “sister” organizations at the local level.

Politicians and Parties: The key actors included in Nepal’s power sharing agreement are the seven political parties and the Maoists and their political leaders, who drafted the interim constitution.²⁷ The document has been amended eight times in three years to accommodate various contending voices, suggesting that the political space is very much being contested, and politicians are somewhat responsive to their constituents. Accommodating diverse and conflicting interests has been important to the formal decisionmaking process in Nepal.

The drafters of the constitution had envisioned consensual decision making. However, when 2008 Constituent Assembly elections resulted in Maoists as the party with the greatest share of the vote (30%, with 38% of seats in CA), and with no party achieving the required majority, the idea of having a government by consensus (2/3 majority) was exchanged for a simple majority. With the interim agreement in place, politicians for the past three years have been attempting to achieve consensus to come

²⁷ On the accomplishments and limitations of power-sharing in Nepal, see Jason Miklian (2009b).

up with a new Constitution; this process has largely put the issue of corruption on the back burner.

Executive: According to the Interim Constitution, the head of government is the Prime Minister, who holds Executive power with the Cabinet.²⁸ For seven months until February 2011, this position was vacant, following the resignation of the previous PM in June 2010. This situation has had a number of implications for corruption, including the inability of the government to designate heads for oversight bodies such as the Commission for the Investigation of Abuse of Authority (CIAA), and the delay in handing down the annual budget, which created incentives for agencies to keep and illegally shift unspent funds to use for other purposes in the current fiscal year.

Head of State: The President is the head of state, as well as Supreme Commander of the Nepalese Army. Use of the army is subject to the PM's recommendation. A recent bone of contention started after the Army refused to integrate Maoists PLA fighters into the Nepalese Army. This in turn led Maoists PM Prachanda to attempt to sack the Army Chief, which was successfully blocked by the President. In the wake of the dispute with the President's move, Prachanda resigned in May 2010.

Judiciary: In the drafting of the constitution, there is debate on whether the judiciary should be brought under the control of the parliament or be left independent, as it is now. The Judiciary is seen by some as legitimate, as evidenced by the number of people who turn to it for justice (mentioned by those interviewed within the legal system) and by others, as inefficient and corrupt.²⁹ It is difficult to know on what these perceptions are based. Perceptions may be affected by people's experiences with the Maoist People's Courts, which operated in certain areas during the conflict. When Nepal's current Vice President was a judge, he was charged with corruption, but cleared; this as well as the Supreme Court's recent upholding of the conviction of a former Minister for corruption, likely shape views of the judiciary.

Bureaucracy: The bureaucracy is a highly politicized institution that serves as a nexus for corruption with politicians and businesspeople. Its total strength is 80,000. It is said to lack representation, and be dominated by Brahmins, although affirmative action is slowly changing this. Managing the growing number of unions affiliated with different political parties has come as a big challenge in the bureaucracy. The government ministries and departments are informally known as "dry" or "wet," based on the perceived opportunities for corruption, and officials vie for places in the wet ones. During the formation of the present government in June 2009, the Minister of Supplies insisted as a condition of taking office that the government not take away the control of Nepal Oil Corporation, a state-owned monopoly, from the Ministry of Supplies to the newly established Ministry of Energy.

Army: The Nepalese Army is politically weak, but militarily strong. On security matters they do have power, as armies in other countries do. Democratization of the security forces is high on the agenda of the Comprehensive Peace Agreement. This

²⁸ Legislative power is vested in the Constituent Assembly, which amended the Constitution in 2008 to abolish the monarchy. The head of state is the President.

²⁹ See USAID 2011 Survey.

includes making it more inclusive, respectful of human rights, and smaller in size. The total strength of the army is around 95,000. Military expenditures account for 12% of Nepal's national budget.³⁰

The Army does not have economic power per se, but its welfare fund has now reached 16 billion rupees (roughly \$223M), bolstered by employee contributions and funds from UN peacekeeping missions. The welfare fund is managed by a committee chaired by the Commander-in-Chief, of which, the prime minister and the defence minister are the patron and the co-patron, respectively. The fund is for services for current and retired army personnel and their dependents, numbering about 700,000. It operates schools, hospitals, and petrol pumps and receives income from these institutions, along with interest from banks and financial institutions amounting to 830 million rupees (\$11.5M) a year. The fund has sold land plots to its clients and plans to establish medical college in the near future. An Auditor's General report has questioned the transparency of fund operations, prompting public debate on whether the army should do such business activities.

Police: The Nepal Police is under the Ministry of Home Affairs. Its leadership has turned over, with the successive changes in the government. It is perceived as corrupt, according to media and survey reports.³¹ The total strength is around 47,000. In 2002, the Armed Police Force was created to deal with Maoists insurgency, as the Royal Nepalese Army under the King's command did not quell the insurgency. There are about 25,000 officers in the armed police force.

Local Level Government: as stated in the previous sub-section, there have been no elections at the local level (VDCs, DDCs, Municipalities) since 2002. As provided by in the Interim Constitution, an "all-party mechanism" comprising of political representatives from different parties is supposed to run the local bodies until a new constitution is drafted. However, due to differences in the interpretation of all-party representation, the mechanisms have failed to work in most places. This has resulted in government representatives (VDC Secretaries, Executive Officers in Municipalities and Local Development Office in DDCs) running the local bodies. As described elsewhere in this report, in many localities, the parties with presence in the area are quite influential, and systematically collect shares (proportional to their local representation) of state contracts and donor projects through their members and cadres who participate in project "users group" committees.

Businesspeople: The private sector accounts for nearly 75 percent of GDP, primarily due to agricultural business. The manufacturing sector accounts for less than 7 percent of GDP, and its share has been declining over the past decade.³² Business houses and industrialists have expanded with the economic liberalization of the 1990s. They are dominated by certain ethnic groups like the Sherpa (travel and trekking), Thakalis (construction business), Newars (trading and industries), Marwadis (business and industries) and elite Brahmin and Chhetri families.

³⁰ See <http://www.tradingeconomics.com/nepal/military-expenditure-percent-of-central-government-expenditure-wb-data.html>.

³¹ See USAID 2011 Survey.

³² World Bank (2010).

According to private sector organizations interviewed in the capital and districts, the private sector in Nepal is still nascent, family managed, and growing. Large firms operate in conglomerates, with each business house owned by a particular family having its own financing company, its own insurance business, and other interests. Until recently, private enterprises tended not to get too large, to stay under the tax radar. It was also a survival strategy, as profitable businesses would catch the eye of royal family members. During the days of active monarchy, it was difficult to have a lucrative business without entering into partnership with the royals. It was reported to us in interviews that royal family members continue to be influential in business.

Normally, political and private sector leaders do not overlap, but there exist close links between the two. All big business houses have political connections. This is reflected by the nomination of big businesspeople as members in CA by all of the three major big political parties. The interests of businesspeople are represented by several associations. Federation of Nepalese Chamber of Commerce and Industry (FNCCI) is the apex body, yet its leadership is being challenged by other bodies like Confederation of Nepalese Industries (CNI) and Nepal Chamber of Commerce (NCC). There are a number of associations representing industries like carpet, garment, hotel, construction and transport. Businesspeople are politically divided, and this is much more evident than before, according to observations by key experts we interviewed.

There are also conflicts between businesses. For example, there are periodic disputes between transport operators and businessmen over the former's use of syndicate system. The conflict between trade unions and the business communities and disagreement on wages gets often politicized and has resulted in frequent closure of industries. It is not common for the private sector to fight corruption in Nepal, however groups interviewed that represent the private sector at the national level as well as in the two districts visited in this study, perceived that their members – particularly businesses at risk of going bankrupt if too much rent is extracted from them – would benefit from a reduction in the level of corruption.

Traditional Groups: Under monarchy, Hindu religious groups and priests did have some influence on governance, but this has waned with the declaration of a secular state. There are dissatisfied groups trying to have Nepal declared a Hindu state.

Civil Society Organizations: With the onset of multi-party democracy, and with donor support to non-state actors, CSOs mushroomed in the 1990s.³³ As a result, there are now an estimated 45,000 NGOs in Nepal, which is an impressive number. However, in general, they do not appear to play a strong role in democratic governance, or hold government to account. They largely carry out projects and deliver basic services to communities.³⁴

Ethnic movements emerging in the country, such as the Madhes, Tharu, Limbuwan and Khambuwan movements, are part of civil society. The Madhesi civil society movement gave rise to the MJF political party. These groups have the potential to influence government policies and actors. For example, with the debate on federalism,

³³ Dev Raj Dahal (2001).

³⁴ For details see Chandra Bhatta (2010)

ethnic groups have organized and voiced their concerns over inclusion and promotion of their rights in a federal structure, and successfully influenced legal structures and policies. They support federalism and decentralization, and are non violent.

Uncivil Society: There are over 100 armed groups operating inside the country, mainly in the Terai plains. These include a few organized, politically motivated groups, and a number of criminal groups. Since 2006, the interim government has controlled most of the national territory. However, political exclusion and discrimination have fanned secessionist ideology in the Terai plains in the south, which did not emerge until after the war ended. Rising political violence has challenged the government's control over this area, which contains 17 per cent of Nepal's land area and 48 per cent of its 26 million people.³⁵ Insecurity has prompted resignations by Village Development Committee (VDC) Secretaries in Terai and Eastern Nepal, and has effectively reduced the presence of the state in these places.³⁶

As explained by those interviewed in Terai, credible threats of violence are used to intimidate public officials to agree to corrupt deals. Also, members of armed groups bribe border and customs officials to cross borders and trade in weapons. Threats of violence are also used to maintain impunity of those in one's network who commit corrupt or other illegal acts. Control of armed groups is under the jurisdiction of the police, which has been ineffective in stopping them, if not complicit in their activities. From time to time, the police effectively crack down on the armed groups. But our interviews reported that when jailed, group members use political connections in Kathmandu to gain release.

These armed groups are not factions of political parties, rather, they physically threaten the political parties and receive payoffs from them, in exchange for security. The open and unregulated border in the South provides potential hiding for the armed groups. Although the army has not been called on to step in, several key experts interviewed said they consider that it would have the strength to restore security and state control in Terai.

External Actors: The primary external actors of Nepal are India, China, US, the European Union, and the UN – because of its involvement with the peace process in Nepal. Others like the World Bank, ADB and other multilateral and bilateral donors also exert considerable influence on policymaking in Nepal.

According to Nepalese foreign policy experts and government officials interviewed, Nepal exercises limited autonomy in shaping its own policies. A number of factors account for this. For one, Nepal is heavily dependent on foreign aid. Another is dependence on India in trade, aid and politics, due to geography and tradition. It is landlocked by India on three sides. This was frequently cited in interviews as having an influence on government policymaking. China also shapes its policy, or attempts to, for example in regard to Tibetan refugees.

Indian influence is pervasive. India acts as a big brother, and has long had an upper hand in Nepal's politics. In 1950 when Nepal had a first movement against Rana

³⁵ Nepal Central Bureau of Statistics. Census 2001.

³⁶ VDCs are the lowest level of political administration in Nepal.

rulers, the then-King Tribhuvan sought asylum in India, and even the tripartite agreement between Rana rulers, Nepali Congress and the monarchy was signed in New Delhi, India. During the People's War Maoist top leaders took refuge in India.³⁷ The agreement between the Seven Political Parties and the Maoists made in November 2005 was said to be assisted by India, and penned in New Delhi. Nepal is increasingly concerned that the main document defining its relationship with India (the Nepal-India Peace and Friendship Treaty signed in the 1950s) needs review.

6. What Causes Corruption in Nepal?

Scarcity of public resources requires selective distribution, and makes corruption a survival strategy for politicians in Nepal today. Rule of law does not apply to those in power; they are above the law. Informal rules prevail, with client-patron relations structuring politics.³⁸ This system creates incentives for the 'winners' to maintain the status quo, and disincentives for the collective action that is needed to change the governance regime, effectively fight corruption, and more equitably distribute resources. Poor leadership makes it all the more difficult to overcome the odds against mobilizing for change.³⁹

All of this rests on foundational factors, such as longstanding social and economic structures, and the domination of one particular ethnic group in the exercise of political and bureaucratic power, which makes for tighter networks among its members. Social structures also create barriers to entry of women (who are reportedly less corrupt) into politics. These factors important to take into account when formulating anti-corruption interventions, because they are difficult to affect through policy change, and donors may be able to do little to influence them.

Social and Economic Structures. Nepal's social and economic structures influence corruption. Power is concentrated in a small ruling elite, which is supported by a growing, intermediate-sized group of government officials, growing upper middle class, and merchants; and this power is not effectively checked by workers and peasants, who are the vast majority of the population.

The country's political rulers arguably benefit from the fragmentation and divisions within and between various groups, which have impeded the formation of class-based national movements that could challenge the status quo – on the issue of corruption, as well as governance in general. Because of low levels of industrialization, as well as suppression of trade union activities (until the arrival of multiparty democracy in 1990), until recently there was no organized working class. In the agricultural sector, because of traditional subsistence farming and bonded labour, labourers have been suppressed by the landholders.⁴⁰

³⁷ On the history of the Maoists and the conflict see Mahendra Lawoti and Anup K. Pahari (eds.) (2010); and David N. Gellner (ed.) (2008). See also International Crisis Group (2007), and International Crisis Group (2005).

³⁸ Nepalese public servants blame low wages and lack of rewards for their corrupt behaviour. This situation is maintained because the bureaucracy serves as an instrument of spoiling for the political incumbents; to reform it would defeat its purpose. How this was overcome in the area of revenue collection, and if it will prove to be sustainable, merits further study.

³⁹ Devendra Raj Pandey (2005).

⁴⁰ Jason Miklian (2009a).

The class structure is legitimized by a Hindu caste system that was imposed in the mid 1800s. Earlier attempts to impose elements of a caste system were less successful, in the beginning of the Licchavi era. At unification, King Prithvi Narayan Shah considered the four varnas (colors) and thirty-six ethnic groups as equals. But in 1847, a Khas general became prime minister and invoked the caste system to legitimate his regime. He used Indian Brahman (Bahun) priests who were migrants from the plains to claim Indian Rajput background. This allowed him to be seen as having been created by god for the purpose of ruling, and to take the title Rana for himself and his family.

Local chiefs and upper classes accepted the divine origins of caste because the hierarchy gave them positions of power and authority along with the privileges they already enjoyed. For a fee, Bahun priests initiated aristocrats and the upper class. After the Bahun and the Thakuri (aristocrats), the next highest caste group is the Chhetri. This group includes high status people who played a part in unification, as well as children of Bahun fathers and ethnic mothers.

Although the caste system has an important influence in Nepal today, this should not be overstated.⁴¹ In Nepal, eighty percent of the population is Hindu, but Hinduism includes Shamanism, and even incorporates Buddhism. Also, the abolition of caste laws in 1963 has lessened the acceptance of the caste structure. That said, the caste hierarchy is supported by a minority of the population, which is socially located to mediate relations between Nepal and external actors. It has been accepted to the extent that it has been useful to consolidate class privileges.

Ethnic groups today comprise about 37% of Nepal's population.⁴² They have their own languages, traditions and cultures, and their own social structure apart from the Hindu caste system. The four largest ethnic groups include the Magars and Tharus which are mainly found in the western hill and Terai areas; the Tamangs in the central hill; and Newars which are concentrated in the Kathmandu valley. Anthropologically, Newars are not actually an ethnic group, rather, they are a complex and stratified group from different ethnic backgrounds.

As a result of the caste system, some groups were isolated from mainstream production and distribution in the feudalistic economic system. With the introduction of modern agricultural technology, it is reported by an economist interviewed that some marginalized people have failed to adapt to the new environment.

Higher caste people have a disproportionate share of professional/technical, legislative/administrative, and clerical jobs.⁴³ For example, inequality is evident in the civil service, with much higher success rates on the entrance examination among upper caste persons as compared to others.⁴⁴ The civil service is prestigious because aside from priesthood, public administration and politics are the only careers that can

⁴¹ Dor Bahadur Bista (2008).

⁴² Nepal Central Bureau of Statistics. Census 2001.

⁴³ *Ibid.*

⁴⁴ Haka Gurung (2006).

be undertaken without the risk of losing hierarchic caste position. For non-high caste people, it is a way of acquiring status.

The bureaucracy has expanded, along with increasing numbers of high school and university graduates. Since the 1980s, with the push for donors to use local professionals and organizations for consultancies and aid projects, graduates have also found employment in the field of international development, and started their own NGOs. This has also increased the size of the middle class.

Not only are there inequalities between groups, there are marked inequalities between subgroups. Although Janjati, Madhesi and Dalit groups as a whole are worse off than Bahuns, subgroups within them such as Newars, Rais and Gurungs are better off than other ethnic subgroups, and Kayasthas and Marwadis of Madhesi group are better off than Bahun/Chhetri group.⁴⁵ In terms of per capita income, Newars rank highest, followed by the upper caste.⁴⁶

Underlying Political Settlement. The understanding among elites about the rules of the game in Nepal is highly unstable, and has incentives in it for corruption. In order to understand the political settlement, one has to refer to more than three dozen agreements and understandings, including the 2005 elite pact to end the civil war, the Comprehensive Peace Agreement, and the Interim Constitution. One can easily get lost in the maze. The main agreements are summarized in Table 6 below (see Appendix 3 for a more extensive list).

Table 6: Main Political Agreements

Date	Agreement
November 2005	Agreement between the Seven Political Parties and the Maoists which led to successful April 2006 Movement, and subsequently opened up all the political events to date
May 2006	Declaration by the reinstated Parliament to strip the monarchy of all powers and bring army within the control of the government. The country was also declared a secular state.
November 2006	Comprehensive Peace Agreement between the government and the Maoists in that officially ended the civil war
January 2007	Interim Constitution to establish Interim Legislature Parliament to be shared with the Maoists, and commitment to hold elections to CA to draft new constitution
August 2007	First agreement with Madhesi people, and amendment of the Constitution to increase the allocation of seats in CA elections from the southern plains
February 2008	Second agreement with Madhesi people, on eve of CA elections

⁴⁵ Nepal Central Bureau of Statistics. Census 2001.

⁴⁶ Nepal Central Bureau of Statistics. Nepal Living Standard Survey 2011.

Since the Maoists signed the Comprehensive Peace Agreement in November 2006 and joined the Interim Government in January 2007, the country has faced a series of agitations waged by various groups like civil servants, ethnic communities and regional groups. Often one agitation is followed by another, mainly by different local groups demanding autonomy based on their ethnic or place of origin identity.

For example, the Madhesi group lives on the southern end of the East-West highway. In response to their demands for an autonomous Madhesi state, there was an agreement made between the government and the Madhesi Janadhikar Forum (MJF) in August 2007. Among other things, it promised an increase in the number of seats allocated to them in the Constitutional Assembly, and the future inclusion of the Terai plains in the federal structure.

This led to the Chure Bhabar Ekata Parishad Samaj group demanding rights for the inner Terai. These are people of hill origin living along the northern part of the east-west highway. Fearful of being included in a single Madhesi state as demanded by MJF, the Tharu community pressed for a separate state for Western Terai. Tharu are the original people from Terai, and mostly live in Western Terai. They are not related to Chure Bhabar, and do not like to be considered as Madhesi because they have a different language, culture and traditions.

Although the government agreed to these demands, which arose at the time of CA elections, most have not been fulfilled. Only 5 of the 22 points agreed with *Madhesis* and 5 of the 20 points agreed with *Janajatis* in August 2007 were implemented.⁴⁷ After the CA elections in April 2008, there were further agitations. Following an unsuccessful attempt to fire the Army Chief of Staff, the Maoists resigned from the government in May 2009, and politics have been chaotic since.

State Formation. The way in which the state of Nepal was formed has shaped the access to political and economic power by different groups, and the relationships between them. This also affects the sense of national political community.

State power was forged by King Prithvi Narayan Shah of the Kingdom of Gorkha (c 1742-1774) through the unification of small principalities of diverse region-ethnic groups that were ruled by kings. Soldiers from the Khas, Bahun, Gurung and Magar peoples provided the military force to fight rebellious groups until the Sugauli Treaty of 1816 was signed with the British East India Company and set the nation's political boundaries. The military backers became influential in the political system that emerged.

The principalities that came together to form the Kingdom of Nepal escaped control by the British Empire, which was increasing in influence in India at the time. In some regards, Nepal's lack of colonial experience was an advantage, as it preserved local culture and identity. However, there was little development of transportation and basic education systems, or other institutional and physical infrastructure. Nepal was kept isolated and remained medieval society in a feudal estate controlled by the hereditary Rana rulers from 1847 to 1950.

⁴⁷ Krishna Hachhethu (2009).

Under Rana rule, a sense of nation or patriotism was not developed.⁴⁸ The regime promoted the export of hundreds of thousands of Nepalese men to serve in British military regiments, fostering loyalty to a foreign power rather than Nepal. Concern for the national community was looked at with suspicion, as a threat to their interest in staying in power and enhancing their fortune. Moreover, those who tried to improve society's welfare were executed for treason.

⁴⁸ Dor Bahadur Bista (1991).

Part 2. Lessons Learned on How to Promote Integrity, Transparency & Accountability in Nepal

As the previous sections showed, corruption in Nepal is causing a systematic distortion of equality of access to public resources and free competition, which hinders development.⁴⁹ This part of the report discusses government as well as donor initiatives to date that have aimed to reduce corruption or increase integrity, accountability and transparency. We summarize lessons learned from these experiences, based on the (very few) project documents made available to us, and views of two former project personnel. We also offer lessons from other countries that may be relevant to Nepal.

7. Anti-Corruption Initiatives

Parliament unanimously ratified the United Nations Convention Against Corruption (UNCAC) on February 24, 2011, nearly eight years after signing of the agreement in 2003. This will require a revision of Nepal's existing anti-corruption laws, to align them with international norms.

A number of anti-corruption laws have been passed by Nepal's parliament in the past decade, as well as a 2009 national anti-corruption strategy. The anti-corruption laws are quite comprehensive, and include a number of measures to prevent corruption, increase transparency and accountability. However, their implementation has been slow and ineffective in recent years.

Anti-corruption agencies have been constrained by their limited institutional capacity to discharge their functions effectively. The delegated authority of CIAA to CDOs and Regional Administrators has been ineffective. In order to combat corruption at local level, there seems a need to expand the CIAA's presence on the ground, or otherwise improve citizens' access.

The Ministry of Finance has recently driven a number of initiatives that have effectively enhanced integrity, transparency and accountability. Examples of success include e-bidding for road construction contracts, and reform of the customs department to increase revenues.

Taxation and Accountability

The extent to which Nepal's government depends on different sources of revenue is a factor that influences governance, because some revenues like taxes require them to bargain with citizens, enhancing state-society relations, accountability and ownership of the results. In contrast, unearned income from natural resources or aid may reduce the government's interest in promoting economic growth, or providing incentives for business, and delivering goods and services.

The finance minister during the Maoist regime (August 2008 to May 2009) introduced tax reforms and was able to increase government tax revenue by 33 percent which is

⁴⁹ See Alina Mungiu-Pippidi et al. (forthcoming 2011).

historical. According to Maoist leaders and former Ministers interviewed, this was motivated by an interest in hydropower, an area lacking donor support. All the successor governments have been able to follow this trend. While this brings greater scrutiny from the public, so do other sources of revenue (from Nepal and overseas) come with their own pressures and accountabilities. Today, tax revenues, mainly indirect taxes such as those on imported goods (customs duties) provide a major source of income for the government. For the fiscal year 2010-2011, taxes represent 60 percent of revenues.⁵⁰

Foreign grants and loans have provided another important source of income for government survival, since the 1950s. In 2010-11, external aid amounts to 29 percent of the government's budget of \$4.257 billion.⁵¹ Commitments include donor grants of \$908 million and donor loans of \$309 million. **Donor support represents 50% of the capital expenditures (development) budget** and 12% of the recurrent expenditures budget. The Public Expenditures and Financial Accountability (PEFA) assessment found there is \$1 in off-budget support for every \$1 on-budget support.⁵²

Taxation systems have shaped accountability relationships and strengthened state capacities, in developing as well as developed countries.⁵³ Securing larger tax bases, better tax compliance, and comprehensive tax reform arguably helps improve state responsiveness and accountability.⁵⁴ It also builds incentives for citizens to pay taxes, so they see it in their interest to pay them.⁵⁵ Greater reliance on tax revenues brings more watchfulness by citizens of budget allocations and expenditures.⁵⁶

Resource wealth, on the other hand, creates 'rentier states' in which rents like foreign aid or natural resources provide a significant share of the government's revenues.⁵⁷ The foreign aid influx negatively affects revenue-generation because it reduces pressures on the state to develop other revenue generating activities like taxation of businesses and individuals.⁵⁸ This is problematic because when people are not taxed, they are less likely to demand representation, and to get enough basic public services including construction of roads, health facilities and schools.⁵⁹

Between 2000 and 2009, overseas remittances grew rapidly at over 30 per cent each year. During the global recession of 2008-2009, remittances from Nepalese workers abroad increased 47 per cent to US\$2.98 billion. Although the growth rate slowed to single digits in fiscal year 2009-2010, they are expected to reach \$3.5 billion in 2010-2011.⁶⁰ They benefit a third of households, and are a major contributor to the

⁵⁰ FACD Ministry of Finance 2010/2011.

⁵¹ *Ibid.*

⁵² World Bank, *Public Expenditures and Financial Accountability*. Available at: <http://siteresources.worldbank.org/SOUTHEASTASIAEXT/Resources/223546-1192413140459/4281804-1209417227555/4945415-121323794085/Sandesh2.pdf>

⁵³ Deborah Brautigam, Odd-Helge Fjeldstad and Mick Moore, eds. (2008).

⁵⁴ OECD (2008).

⁵⁵ Das Gupta, Arindam, Shanto Ghosh, and Dilip Mookherjee (2004).

⁵⁶ Moore, Mick; Unsworth, Sue (2007).

⁵⁷ Dunning, Thad (2005).

⁵⁸ Chaudhry, Kirin (1997).

⁵⁹ Brautigam, Deborah, Odd-Helge Fieldstad, and Mick Moore (eds) (2008).

⁶⁰ World Bank. *Migration and Remittance Fact Book 2011*.

country's economy – as much as 21 percent of GDP. Taxing these remittances would be one way to broaden the tax base and increase revenue.

Public enterprises set up by China, Russia and other friendly countries could have been an important source of revenue, but they became playgrounds for political appointees and corruption. As a part of the economic reform of the early 1990s, most were privatized. A few revenue-generating public enterprises such as the telecommunications company remain, but most are in the red, and heavily infested with trade union politics.

Until the 1970s, forest based income was the largest source of government revenue in Nepal, with the large-scale export of logs and timber to India. In the past, commissions on recruitment of soldiers into the British Army also provided valuable foreign exchange to the rulers.

See also UNDP Nepal study on the tax gains which have resulted from reducing corruption in the customs and inland revenue generation offices.

Donor support to fight corruption in Nepal includes support to anti-corruption agencies and NGOs, as well as broader good governance programs that have an effect on integrity, transparency and accountability. While the section below suggests that past anti-corruption initiatives were somewhat successful in Nepal, their implementation did not meet donor expectations.

In our view, the apparently limited impact of the projects and programs in the past decade was mainly due to unrealistic donor expectations about what the interventions could achieve. The expectations were based on implicit theories of change that failed to adequately consider and address political and systemic factors. It was not so much a question of insufficient contextualization of models used elsewhere, rather, an incomplete approach that has been implemented piecemeal, at a small scale, and without coordination.

The Government's Ninth Plan and the Priority Reform Program presented at Nepal's Development Forum in 2000 in Paris identified civil service reform and anti-corruption as key priorities for public administration reform in Nepal. The Government recognized that lack of efficiency, transparency and accountability in key departments were major challenges in achieving development effectiveness. This poor governance contributed to a demoralized bureaucracy, misallocation of budget resources, ineffective implementation of development programs and poor service delivery.

In this context, the Government and ADB agreed on the package of reforms under the Governance Reform program and other donors also responded positively to the government's pledge to anti-corruption. As a result, both multilateral and bilateral donor agencies have been involved in supporting good governance and anti-corruption activities in Nepal.

The Nepal Aid Group Meeting in London was a starting point for the government's push for a new anti-corruption law in 2002, although the need for a new law had already been suggested by a High Level Committee formed in 1999. In light of the

country's financial crisis in early 2000, donors wanted to reduce fiduciary risks arising from budgetary support.

The law not only created new anti-corruption institutions like the National Vigilance Centre (NVC) and the Special Court, it also substantially increased the power of the CIAA. As discussed earlier in this report, this resulted in a dramatic increase in corruption complaints for a few years, and raised the number of CIAA prosecutions. Since 2007, however, its activity level and effectiveness have declined significantly.

Specific Donor Initiatives

The **Asian Development Bank** (ADB) ran a project from December 2008 till June 2010 with a budget of \$382,000 to support five government agencies, namely the Office of the Auditor General (OAG), National Vigilance Centre (NVC), Public Accounts Committee (PAC), the Special Court for Anti-Corruption and the Department of Revenue Investigation (DRI).

OAG support comprised: i) construction of a building, and ii) Provision of Audit software package IDEA (along with 14 laptops) and training of four auditors in the computer aided auditing in India. One of the motivating factors for OAG was the success of a similar ADB project in Bhutan. However, in Nepal, the project did not really work on the interface between the OAG and the PAC. This remains one of the challenges, notably as the OAG reports are highly technical and drafted in a traditional way. In spite of INTOSAI (International Society of Supreme Audit Institutions) having developed several guidelines on producing user friendly audit reports, the OAG is still reluctant to make significant changes. This is also due to the absence of leadership for over three years.

There was no success in getting two other activities off the ground at OAG, namely i) preparation of final audit guidelines for the DDCs; and ii) State run enterprises audit guidelines. This may have been related to an expectation to be compensated for drafting these guidelines on the part of OAG officers. Absence of a full time AG also adversely affected project delivery.

PAC initiatives included training of the members; a study tour to Philippines, and supporting the communications system of the conference hall. The PAC in Nepal suffers from frequent turnover. All the members are rotated in a two years cycle. Unfortunately this has resulted in the replacement of all the previously trained members. This poses a serious impediment to the success of their efforts, as the work of scrutiny of audit reports is highly technical. The present PAC has been very proactive in the past seven months and taken on some very important and sensitive matters for scrutiny. It has also been very transparent in its working. Any new initiatives should address the issue of coordination between OAG and PAC and support for clearance of huge backlog with the PAC.

The **NVC** was supported with a software package for tracking of asset declarations. The project also assisted in expanding the pool of technical auditors and their capacity building. Currently, budget resources available to NVC are meagre, and hence they are highly donor dependant, and sustainability is a concern.

ADB support under the project to the **Special Court** was mainly for framing of regulations for the Special Court functioning. This task was important to enhance the powers of the Special Court. However, the project met only with partial success, as it faced initial resistance from the project steering committee, and at present the draft guidelines have just reached the Supreme Court, from which they are expected to reach the legislature. The Philippines was taken as a model in this work.

DRI was added at a later stage in the project, due to withdrawal of the initial partner CIAA who was disappointed with the proposed support (less than expected). The project supported DRI to set up a central information system for facilitating real time exchange of information between the central office and the five regional outreach offices. ADB support also included support to joining the Asia-Pacific ADB-OECD Anti-Corruption Pact and drafting of a money laundering act.

DFID supported a *Civil Society Anti-Corruption Project (CSACP)*, as a component of DFID's Enabling State Project. This project had 7 sub-projects: (i) capacity building for the PM's office, (ii) department of prison management, (iii) civil society, (iv) community mediation, (v) FNCCI, (vi) Nepal Police capacity building, and (vii) CIAA support.

The civil society project built on previous successes under the Good Governance Programme in Pro-Public with Swiss Development Programme support. It was the only project implemented by an NGO. The project was implemented in 10 districts (from the Far East to the Far West), all in of Terai except in Pokhara. These districts were chosen based on the size of the population and the potential for corruption due to major trade. Some districts liked being included, some did not like the stigma. Kaski was included for its land transactions and to have one district in the hill region. There was goodwill in some districts and hostility in other districts.

With regard to the project targeting the private sector, there was very little ownership from the business community, and they sub contracted the project to a private consulting for implementation. The project was perceived as donor driven rather than driven by the private sector. All of this took place in a politicized environment of heightened armed conflict, that was quite fluid. In retrospect, those interviewed who were familiar with the project reflected that the sector had other, more pressing concerns, at that time.

The Royal Coup in February 2005 led DFID to cancel its support to the Police, to CIAA, to prison management, and to PM. This complicated project implementation as the Ministry of Home Affairs, a key driver of the project, urged CDOs not to cooperate with DFID following its cancellation of projects. The project still ran from 2005 to 2008. In each district there was a Field Coordinator, a Communication officer and five social mobilizers. The project drew on the good governance radio listeners club.

Three institutions were set up: The Corruption Monitoring Network (from political parties, bar association, journalist association and civil society, with 9 to 11 members per network); A Complaints Hearing Unit, an internal body, invited complaints, reviewed complaints, and the corruption monitoring network would enquire/settle

complaints; and Volunteer groups drawn from civil society, not fully integrated with the good governance clubs, but closely cooperating

Focusing on advocacy, at the local, district and national levels, meetings were organized on relevant issues, including UNCAC ratification and the CIAA vacant positions. Despite public pressure, the government did not seem to be responsive to NGO demands. The project also worked on the demand side for good governance through the complaints handling. People got into the habit of making demands (e.g. for health post workers, seats in the district, water supply, more efficient service delivery, etc.). This led to extracting commitments from the district authorities. The citizens' complaints platforms – weekly meetings – became quite effective. It did not cost much. In some cases it may have been picked up by the good governance platforms, but by and large the platforms disappeared after the project ended.

The project also established a partnership with CIAA in the districts through the law officers posted in the CDO office. CDO offices have been delegated by CIAA with the authority to handle complaints of corruption and investigate petty offences. However, the law officers lack resources and are unable to perform at the desired levels. The project shared information on corruption and assisted in investigation work.

The project also supported two other bodies, the Nepal chapter of the Global Organization Against Corruption (GOPAC), and the National Alliance Against Corruption, a body comprising of seven civil society organizations: Pro Public, Forum for Protection of Consumer Rights Nepal, SCOPE, Jagrit Nepal, JOSPA, Swati and United Youths.

Unfortunately, the CSACP project was not sustainable. There was no proper exit plan and the momentum was lost once the project funds dried up. As this project illustrates, donor supported projects in Nepal have developed some distortions over a period of time, due to creation of an 'allowances culture'. Many times, stakeholders participate in the project events not due to any dedication and commitment, but due to the attractive allowances attached with it. Such tendencies are very harmful, as they perpetuate dependency.

Swiss Development Cooperation (SDC) has been a long time institutional development supporter since 1995. SDC heavily supported two prominent anti-corruption NGOs in Nepal, namely, Transparency International and Pro-Public. SDC is still supporting Pro-Public's good governance programme.

DANIDA supported the Commission for the Investigation of Abuse of Authority (CIAA) in the wake of its popularity gained after its high profile actions in 2002. DANIDA support to CIAA involved two phases. In the first phase (2001-2003), through a direct grant from the Royal Danish Embassy, DANIDA supported CIAA in its specific activities like organizing training programmes, procurement of office equipments and providing national consultants and experts' services. The second phase (2004-2006) involved, along with DFID (until the royal takeover in 2005), joint support for the institutional development of CIAA.

USAID supported the anti-corruption agenda in 2005 supporting CIAA, the Special Court and local NGOs under its Rule of Law Project. Other bilateral agencies supporting anti-corruption programs were **GIZ**, the **Embassy of Finland** and more recently, the **Norwegian Embassy** which in December 2010 signed an agreement to support Transparency International Nepal for three years.

The **World Bank** has recently initiated a \$3 million programme on **social** accountability entitled “Programme on Demand for Good Governance (PRODG).” It is also taking leadership among donors on a Public Financial Management initiative. Previously, in early 2000, the World Bank supported various diagnostic studies in preparation of the procurement law and on public accountability.

8. Lessons Learned in Nepal

Donor support to civil society organizations has brought positive results. Particularly, service delivery monitoring by civil society organizations has been effective in increasing accountability at local level in the project districts. Local communities have been empowered with information and knowledge on the financing and delivery of local services and their capacity has been enhanced to air grievances through dialogue with local officials. Civil society organizations have been successful in introducing public hearing and social audit monitoring tools at the local level, and creating networks and complaints hearing units. However, the impact has been limited and scattered only in those districts where these projects were implemented. The sustainability of the activities seems however to be a major concern and needs to be addressed.

Donor projects have strengthened civil society voice. In the wake of royal takeover, donors withheld their support to the supply side of the governance equation (state agencies) but continued their support to demand side activities (NGOs).

Civil society support is critical, but it has to be the right kind of support, better coordinated through autonomous networks, and aligned with the agenda set in the National Development Forum (which needs to be held). It also needs to take into account or support the capacity of government to respond to civil society demands.

Most anti-corruption initiatives with government focused on formal institutions. They did not adequately take into account who holds power in Nepal, and what their interests are in sustaining corruption. There was insufficient attention to informal institutions and how to work in light of them.

Donors supported capacity building of individuals in anti-corruption and law and justice sector institutions. This had limited impact, given the frequent turnover of staff. More fundamentally, this type of intervention was limited by the lack of state autonomy, without which even capable officers cannot be effective in their jobs.

Donors have not formed partnerships with the key anti-corruption agencies and strengthened their institutional capacity or provided targeted technical support. Obviously, the lack of leadership in anti-corruption agencies is partially responsible for this.

Donor support to the private sector has been found inadequate and ineffective. Our review found only one project in this area, which was perceived by the business community as donor driven and not a priority to them, so they contracted it out.

Overall, **donor support contributed to governmental and non-governmental anti-corruption initiatives, but it remained ad hoc, not strategic, not continuous and not always balanced (demand vs. supply / formal vs. informal).** The key drivers of corruption may have been overlooked and the relationship between good governance and corruption (a dimension of bad governance) has not been fully explored.

Donor analysis of corruption issues in the country appears infrequent and incomplete. There has been no comprehensive mapping or measuring of corruption issues, and not enough attention on the linkage between corruption and poverty. Evidence gathering with external communication would be an important part of any new anti-corruption approach. There is a lack of data on experience with corruption (as opposed to perceptions data).

9. Lessons Based on International Experience

International experience suggests that there are many technical options but no best model or panacea for reducing corruption; solutions must be contextualized.⁶¹ As emphasized by recent Norad funded research,⁶² what works in a neopatrimonial or competitive particularistic regime is not the same as what works in a polyarchy⁶³ or an open democratic regime.⁶⁴

Common approaches include establishing or reforming an anti-corruption agency (ACA), developing a national anti-corruption strategy, reforming legislation, and enforcing existing laws. These are worth supporting in principle, however there must be government commitment as well as other facilitating factors that enable success in a particular country context. Emerging cross-country empirical research indicates that the only commonly recommended tool that is positively associated with lower corruption and a significant positive trend in controlling corruption is a Freedom of Information Act (FOIA).⁶⁵ ACAs, UNCAC, national anti-corruption strategies and others do not have a positive impact in all but a few contexts, under conditions not found in Nepal.

ACAs became popular in the 1990s after the success of Hong Kong's Independent Commission Against Corruption (ICAC). Other successful models are found in New South Wales, Australia's Independent Commission Against Corruption, and Singapore's Corrupt Practices Investigation Bureau (CPIB). These offer the advantage of centralizing necessary information and intelligence about corruption, and resolving coordination problems among multiple agencies through vertical

⁶¹ See UNDP (2010)

⁶² Alina Mungiu-Pippidi et al. (forthcoming 2011)

⁶³ Robert Dahl (1989).

⁶⁴ Douglas North, John Wallis and Barry Weingast (2009).

⁶⁵ Alina Mungiu-Pippidi et al. (forthcoming 2011)

integration. Its main contributions are synergy, coordination, and concentrated power.⁶⁶

ACAs are quite effective when they respond to a national consensus and a broad domestic coalition supports them. Without such support, policymakers have an incentive to weaken reforms and avoid any threat to powerful constituents who profit from official inattention to expenditures, access to governments contracts, and other manifestations of public sector inefficiency.⁶⁷

To protect against political interference, there are arguments in favour of allocating a set percentage of state budget funds to the work of anti-corruption bodies and services. This amount varies and is based on a costing exercise. There is also a need for specialised staff, including the secondment of designated personnel from prosecutorial services and law enforcement agencies to strengthen the work of anti-corruption agencies.

One of the major limitations of ACAs are that they have not proven capable of addressing the drivers of systemic corruption. This requires difficult reforms in procurement practices, public financial management, internal and external audits, and conflict of interest laws, among other initiatives.

In many post-conflict situations, donors have been concerned that pushing an anti-corruption agenda could destabilize the political system and possibly contribute to a return to conflict (e.g. donors' views in DRC).⁶⁸ This view was not expressed in our interviews in Nepal, however it is worth commenting that international experience suggests that if violence is resolved or reasonably contained, then it is possible to start on anti-corruption.

Anti-corruption initiatives are inherently political, as they challenge power. While it is not desirable to support a massive, politically motivated purge or witch hunt by one side, donors also need not shrink away from a *government led initiative* just because it is political. Take for example, successful reforms in Mexico, Peru and Hong Kong. They were driven by the political interests of leaders at the highest level.⁶⁹

Flexibility needs to be built into programmes in rapidly changing environments. Institutions, counterparts, and who is in power changes quickly. In Nepal, the same uncertainty that gives rise to corruption now, may also give rise to anti-corruption opportunities in the future.

There is an international trend towards focusing on prevention of corruption, more than enforcement. From a technical perspective, this makes sense. Without prevention, when corrupt actors are jailed, another group will emerge to take their place. And if society tolerates corrupt acts and holds politicians above the law, a donor will have little success in strengthening the enforcement side.

⁶⁶ P. Meagher (2005).

⁶⁷ Joel Heilbrunn (2004).

⁶⁸ UNDP (2010).

⁶⁹ They were eventually caught for corruption by the very mechanisms they put in place.

Rather than mainstreaming anti-corruption activities into the donor's larger development agenda, projects are often organized as discrete activities, or confined to governance programming. This limits their impact, misses opportunities in other sectors, and could potentially undermine development.

Worldwide, donors are concerned about the use of their funds, and have to account for them to their publics, as well as the national government they are supporting. Often they bypass government and develop parallel systems of control and accountability, so as to ensure funds are spent properly. Where this process is managed by the donors, the capacity that is built does not benefit the government. In some cases, however, arrangements are made whereby donors work through government systems or government manages externally hired accountant and auditors.

Aid recipients as a whole would like to see donors lead by doing, putting accountability and transparency into practice. The issue raised today is not so much one of corrupt practices among donors. Rather, there is a demand for more detailed and more accessible public information about aid commitments (as well as expenditures). Aid recipients would also like to see the results of studies and evaluations of aid programs and projects.

Part 3. Prioritization of Donor Interventions

In Nepal's context of selective distribution of limited public resources (particularism), high poverty and inequality, ethnic tensions, and informal institutions that conflict with and prevail over the rule of law, **donors will not be able to effect much change in the area of corruption without a change in governance regimes** (from closed/particular to open/universal).⁷⁰ The following are three strategies to this end, that can be employed in the current context.

1) As a first strategy, consider that the highly uncertain political environment, new social movements, and recent experience with armed conflict means that Nepal is in a transition period that may settle at a new equilibrium point of state-society relations in the next few years, or may institutionalize its present systems – this is not yet determined, so it poses an opportunity. Donors should be poised to **make use of opportunities to set the norm for integrity, formally and informally** (i.e. looking for entry points in the leadership crisis, Constitutional deadlock, transition to decentralization and federalism, local elections).

For example, to the extent that the new Constitution-making process encourages national debate and allows representatives from political and civil groups to discuss and develop a consensus on the country's political future, the resulting document should be more 'institutionalized' (that is, having less of a gap between it and the informal rules) as compared to the interim one, and may even incorporate some of the now-prevailing informal rules. Similarly, the federalization of the country may (and should) be able to properly embed existing informal institutions so as to address the issues previously raised in this study.

The rules that will be difficult to change are the formal rules that conflict with and are overridden by informal rules, which serve the interests of those in power and may enjoy legitimacy.⁷¹ For example, personnel management in the bureaucracy is highly personalized rather than institutionalized, as seen in the mechanisms for staff transfers discussed earlier in this report. Formal rules governing recruitment, promotion, transfer and dismissal of public officials are rarely if ever followed. With the change in government or with the change in the Minister, there is reshuffling of the bureaucracy. There is a Nepalese saying "*hamro manchhe*" (our man) is preferred over "*ramro manchhe*" (good man), similarly, "*thulo manchhe*" (big man) is preferred over "*sano manchhe*" (small man).

A common assumption of interveners/donors is that "there is some natural trajectory whereby local 'traditional' sources of legitimacy evolve in the direction of a rational-legal political order"⁷², which may not be the case. Exploring ways to bridge informal and formal systems of governance and justice can be a way to leverage concepts of statehood and benefits of the future statehood of Nepal for local actors, ensuring the enjoyment of legitimacy by a wider society.⁷³ Notions of moral obligation/integrity and inter-personal accountability in the context of Nepalese ethnic groupings and

⁷⁰ See Alina Mungiu-Pippidi et al. (forthcoming 2011).

⁷¹ Kevin P. Clements (2009).

⁷² OECD/DAC (2010a), p. 54.

⁷³ Masood Karokhail and Susanne Schmeidl (2005).

other customary or pervasive interactions can be drawn upon, including the behavioural consequences of broken expectations of patronage relations and corruption.

2) Second, **develop the leadership of those who have the power to make the desired structural and system changes**, and promote a culture of integrity, transparency and accountability. This entry point is to support the processes by which agents of change are able to mobilize people, ideas, and resources to achieve political system reform, innovations in governance⁷⁴, and development results. Leaders are conceived of broadly here, including elected officials, local and national government officers, opinion leaders, corporate leaders, and youth, women, community and traditional leaders. Interventions in this area have the potential to address power imbalances, although this is a politically sensitive area that requires local knowledge, risk analysis and partnership to avoid harm.

An example of this could be to work with leaders through the Constitution drafting process, and at the local level, through the decentralization and federalization processes. Through activities related to these, leaders would develop their own vision of (and mobilize others support for) a Nepalese state that values legitimacy and impartiality in the use of state power, as opposed to the patronage systems use of power with reciprocal social benefits and maintenance of power.

3) A third strategy for donors in Nepal is to **empower and support collective action by the losers in the current system**, described in the previous sections of this report. A starting point is a comprehensive social mapping exercise, to identify existing structures and disaffected groups, and ensure that funds are supporting “real” actions that do not just spring up in a call for funding. Civil society and other non state actors have the potential to reduce corruption and improve governance in Nepal by changing and shaping the incentives of political leaders so that they will prefer or accept a new governance regime.

Following the mapping, which could be carried out through a multi-stakeholder workshop, specific objectives and modalities (i.e. working outside of government/engaging with government) would be identified. Experience from other countries suggests supporting citizens to make use of FOIA as well as any legislation on disclosure of assets and interests. Programs could include community rankings of public services, naming and shaming, or community based monitoring. Collective action could bring a change in the dynamic and threaten the equilibrium.

In the long term, it may be possible to work towards the rule of law (starting with an autonomous judiciary) **and impartiality**⁷⁵. These factors are shown in cross-country research to have significant effects on the level of corruption. Impartiality is relevant in many various areas: application of law in courts of law; implementation of laws by the administration; the development of laws conforming with the RoL

⁷⁴ *Ibid*, p. 73: “an alternative approach, one that emphasises less the value judgements about the democratic nature of existing traditional structures, and more the inclusion and mutual gain and benefit (a non-zero-sum game so to speak) for the centre by working with traditional structures in provinces.”

⁷⁵ Mungiu-Pippidi et al. (forthcoming 2011). The author refers to the term universalism, encompassing the equal fair treatment of citizens by public institutions. See also Dahlström et al (2011).

requirement relating the development of generally applicable laws; hiring and firing in the public sector; ensuring competition in public procurement; conflict of interest regulations which aim to protect impartiality and trust in the fairness of the public administration and the legitimacy of the political system.

Donors could start immediately but results would take a number of years to make a difference on corruption. Rule of law is arguably more difficult for donors to influence,⁷⁶ and it is recommended that interventions in this area be limited to technical assistance upon request and if sufficient domestic commitment is shown.

From one perspective, the current post-conflict context may be a window of opportunity for change of governance regime in Nepal,⁷⁷ but from another perspective, there are also reasons to consider why gradual changes to the pattern of corruption might be preferable, given the current dynamics of patronage and corruption that influence stability.⁷⁸ The promises of “doing no harm” through donor interventions⁷⁹ warrant a clear understanding of the function of corruption in Nepal, particularly as a factor contributing to the robustness of ruling elite coalitions.⁸⁰

As examples of how these strategies could be implemented, the following are specific **prioritized interventions that could be supported by donors in the short, medium and long term:**

Short Term AC Interventions

- Support existing government initiatives in which government shows commitment, including revenue generation, asset declaration, right to information, public procurement and e-bidding, Good Governance Act, and the constitutional process (looking for opportunities to influence norms and develop leadership).
- Where there is positive engagement with government (in areas listed in the bullet point above), strengthen GoN capacity to communicate new norms and successes, and mobilize support for these through media such as radio and mobile phone messaging, as well as internet.

⁷⁶ See for example Francis Fukuyama (2004).

⁷⁷ Mungiu-Pippidi et al. (forthcoming 2011).

⁷⁸ See Philippe Le Billion (2003), p. 414: “Although corruption has in itself a corrosive effect on economies and rule-based institutions, corruption is part of the fabric of social and political relationships. This endogenous character means that conflicts may arise more from changes in the pattern of corruption, than from corruption itself. Domestic or external shocks affecting the pattern of corruption may therefore contribute to conflict, particularly when corruption is pervasive.”

⁷⁹ OECD (2010b).

⁸⁰ See William Cole and Thomas Parks (2010): The robustness of a political settlement depends on four key factors: coercive capacity; ability to co-opt; legitimacy with the population, and; support of the international community. Corruption is perceived as an instrument/method which forms part of the ability to co-opt.

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- Support a local partner to lead a multi-stakeholder national forum on good political leadership and its features in Nepal; the role of politics in relation to the rule of law and patronage; the importance of impartiality; the benefits of the rule of law and formal rules based system of governance in Nepal compared to the prevailing informal patronage system; the role of the military and the use of force in relation to civil rule, etc. with the agenda to be defined by the partner and stakeholder committee.
- Join public financial management SWAp, with particular support to addressing political factors that may challenge its successful implementation.
- Advocate for integrity and accountability in formal as well as informal settings. When appropriate, use these exchanges to encourage appointments of heads of oversight bodies. To speak credibly on this, consider ways to demonstrate donor integrity and accountability to Nepalese people.
- Support building constituencies for collective action towards change. Identify and develop relationships with change agents, such as emerging leaders, private sector actors, and professional associations, and seek opportunities to shift norms.

Medium Term AC Interventions

- Strengthen civil society, media and investigative journalism
- Support local research initiatives by civil society to analyze existing data (like Living Standards Survey) or new work on corruption and governance.
- Support local elections, and legalize the ‘all party mechanism’ for oversight
- Strengthen capacity of local bodies in planning and monitoring of development projects, and civil society engagement in the processes under future Constitution
- Support development of a public expenditures monitoring mechanism that is public and updated annually; information is a basic requisite for accountability of public funds by government, citizens and development partners.
- Promote transparency in political party financing to discourage seat buying⁸¹

⁸¹ Public campaign financing is possible, but we do not have evidence that it would work in the current governance regime. There were reliable reports in our interviews of some parties “selling” CA seats to businesspersons, thus it seems public finance would provide a floor from which illegal contributions would be added.

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- Support non state actor advocacy and watchdog groups to partner with government at national and sub-national levels, on the above issues

Long Term AC Interventions

- Targeted technical support for restructuring the federal system
- Targeted technical support for asset recovery; anti-money laundering
- Targeted technical support if government is keen to reform legislation:
 - amendments to existing anti-corruption laws (Civil Service Act, Corruption Prevention Act, CIAA Act, Nepal Rastra Bank Act, Judiciary Council Act, Military Act);
 - formulation of new laws (conflict of interest, NVC, integrity in public life, protection of witness, victim or experts, extradition, mutual legal assistance, transfer of criminal proceedings etc.);
 - amendment of Local Self Governance Act;
 - new legislation on disclosure of income and expenditures of political parties; amendment of Association Registration Act;
 - new laws relating to regulation of INGOs/NGOs
- Enable economic growth; Promote employment creation (create alternative to rent seeking and enhance tax base for increased revenues and the development of accountability)
- Reduce donor dependence (reduce “unearned” revenues that do not enhance accountability through dependency of Government on tax payers)
- Promote meritocracy and impartiality in the public sector (if government keen)
- Promote judicial independence and rule of law (if government keen)

Do No Harm

Several Nepalese experts interviewed suggested that the scale and nature of corruption took a turn for the worse with the flow of foreign aid into Nepal. According to a scholar, during the Rana oligarchy, there was no difference between public property and private property – therefore, corruption referred to bribes taken by low ranking public officials. Using strong punitive measures, the Ranas were able to control petty corruption. The system of punishment was so harsh that if a public servant was found to be corrupt, not just he or she but family members extending to the seventh generation could be liable for punishment. People handling accounting works were issued a special directive – “*kachha anchhodnu, jamma nagarnu*”

meaning, not to leave a penny outstanding and, at the same time, not to tally the total (so that the public never knows how much revenue has gone into the coffer).

With the increase in the country's development budget and the entry of larger projects through aid financing, corruption changed from graft in public works in the 1970s to the grand corruption more prevalent today.⁸² The cost of projects (or of goods such as imported fertilizers) escalated on account of competition in bribing. "Commission agents" acted as "promoters" and "developers" of projects, resulting in a form of state capture.⁸³ As a result, corruption grew in scale. It is recommended in the long term to decrease cash aid levels, provide more non-cash aid, and support government initiatives to increase its revenues and efficiency.

In terms of anti-corruption initiatives, an example of potential harm is the tendency for donors to support "strengthening civil society." Bolstered by development partners, Nepalese civil society has been growing in numbers since the reinstatement of multiparty democracy in 1990. However, one recent study found that their interventions have been too scattered across places and across target groups to have a meaningful impact on government accountability.⁸⁴ Moreover, it seems from our interviews with civil society as well as development agency officers involved in civil society programs, that support to promote voice and accountability has focused on generating *voice* (citizens' demand for good governance) more than on establishing *accountability* of the government supplying services. If demand outstrips the supply, the pressure may undermine the legitimacy and stability of a government that is unable to manage public expectations.

Despite increased civil society activities, poor people in Nepal still expect service delivery from the state and maintain a high degree of interaction with the government agencies, where they are present. In many areas, the government is the sole agency to supply public services like health, education, drinking water, sanitation and other infrastructure works. Where government is unable to provide such services, civil society organizations including NGOs and INGOs may be well placed to deliver, however this should be managed by government and aligned with its priorities. Otherwise there is a risk of weakening government legitimacy, and the statebuilding process.

There was a well publicized scandal in 2010 involving alleged misuse of funds in the Ministry of Education. When the details came to light, donors applied heavy pressure for the Minister to step down. Although they succeeded in doing so, some of those interviewed for this study have suggested that the resulting situation may have been worse than the 'cure'.

Conclusions

⁸² Devendra Raj Pandey (2005).

⁸³ Devendra Raj Pandey (2001).

⁸⁴ ODI (2007).

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As the report tries to make clear, a change in a more pluralist governance regime would be required to significantly control corruption in the Nepal context. Although daunting, this could begin by looking for opportunities to create a shift in norms. Nepal is in a post-war transitional period which is conducive to a change in equilibrium, and collective action as well as effective and ethical leadership have the potential to instigate these changes. As other studies have observed, even clientelistic arrangements that seem binding “remain open to attacks by countervailing forces stemming from competing networks, from the mobilization of alternative organizations in civil society or from among central elites willing to undermine clientelistic controls in the political arena, the administration and the access to economic markets.”⁸⁵

⁸⁵ Luis Roniger (2004).

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Appendix 1: Context in Which Corruption Occurs in Nepal

A. Political Context

The current political situation is marked by instability and uncertainty. Nepal is **coping simultaneously with a multitude of sharp political transitions**. These include changes from an active monarchy to a democratic republic; from a unitary to federal structure; from a Hindu state to a secular state; from a state sponsored "one-language, one-culture" policy to the recognition and acceptance of multi-culture, multi-ethnic, multilingual policy; and from a winner-takes-all, majoritarian (first-past-the-post) electoral system to an inclusive, mixed electoral system that has elements of majoritarian, proportional representation, and quota systems.

Frequent changes in government have been accompanied by policy changes and reshuffling of ministers and bureaucrats, particularly in key positions. It took sixteen rounds of voting in parliament, to elect a new prime minister. A caretaker government operated for more than six months in 2010-2011. All of this has disturbed the policymaking and implementation process. Due to the political crisis, economic development, poverty alleviation and good governance have taken a back seat. The euphoria of having a New Nepal has raised public expectations that are not being met or managed adequately by the government, and this contributes to further instability.

The Constituent Assembly, in its two year tenure, and one-year extension in May 2010, has not been able to make much progress on drafting a new constitution. Contentious issues have yet to be resolved. These include the type of federalism; the form of governance and electoral system; integration and rehabilitation of 19,000 Maoist PLA fighters; democratization of the Nepalese Army; judicial reform; land reform; the inclusion of marginalized people and communities in the political system.

Though political consensus was agreed on as a mode of political decision making, the number of politically motivated fragmented movements based on region, religion, ethnicity, caste and language groups, has made it difficult to achieve consensus. With Maoists becoming the largest political party, and with the arrival of new political actors, mainly Terai-Madhes based political parties, the political parties shifted from decisionmaking by consensus to majority rule. There continues to be a lot of uncertainty about what the new government structure will look like.

Not only does political uncertainty give space for corruption to flourish, it is contributing to disorder and lawlessness across the country. Localized regional, religious, ethnic, caste and lingual conflicts that are being waged in different parts of the country have given rise to armed and criminal groups. These groups are often under the protection of the political parties. Due to insecurity, the presence of state at the village level is gradually being reduced with the resignations of Village Development Committee Secretaries.

Nepal's ongoing political imbroglio is rooted in the past. The Maoists started their insurgency in 1996 and within a couple of years it spread like wildfire, engulfing the country. Following the royal palace massacre in June 2001, there were royal takeovers, first indirectly in 2002, by sacking the elected prime minister and

dissolving the parliament and directly, in 2005, using the army to take over the government. The royal takeover fuelled three political conflicts waged between (1) the Maoists and the parliamentary parties now being sidelined by the monarch, (2) parliamentary parties demanding for the restoration of their rights, and the highly disreputed King, and (3) the Maoists seeking to abolish monarchy, and the new reigning King seeking to establish rule by the monarchy.

The conflict changed when the Maoists and the seven parliamentary parties existing at the time signed an accord in November 2005 in New Delhi to wage a joint movement against the autocratic monarchy. This led to the successful April Movement in 2006, known as *Jana Andolan II*⁸⁶, in which the dissolved parliament was reinstated and the king stripped of his all powers. In a new power sharing agreement, Maoists joined the government and Legislature-Parliament formed under the Interim Constitution (IC). After several rounds of postponements, the elections to the CA were held on 10 April 2008. As per the agreement made earlier, the country was declared a republic by the first session of the CA by an overwhelming majority.

B. Economic Context

The effects of unfolding political events are clearly seen in the economic situation. The latest Economic Survey 2009/10 published by the Ministry of Finance speaks of *bandhs* (closures), strikes, labour problems, electricity supply problems (load-shedding) and contraction in external market as main factors for slower economic growth (3.5% as against the targeted growth rate of 5.5%). *Bandhs*, strikes and labour problems are definitely linked with politics, the supply of electricity is an infrastructure constraints while contractions in external markets (primarily, growing trade deficits) are related to external factors.

A diagnostic study on political instability and economic growth in Nepal reveals that political instability accounts for roughly 50 to 75 of the decline in Nepal's average economic growth rates.⁸⁷ It could also be argued that the failures of the economic reforms contributed to political instability. In early 1990s, when Nepal embarked on multiparty democracy, the implementation of economic reform programs has resulted in an economic growth rate of 6-7 percent. However, these pro-market, urban-centric reforms failed to achieve distributional equality.

The political instability in the mid 1990s due to the hung parliament situation (1995), and Maoist insurgency (1996), made the economy do a nose-dive. By 2000/01, at the height of political crisis, the economic growth rate fell close to zero. Due to the conflict situation, development expenditures declined (due to worsening security) while regular expenditures increased sharply (due to security related expenditures). This had an adverse impact on the economy. The country went into an unprecedented financial crisis in 2000.

⁸⁶ The People's Movement in 1990 which subsequently established constitutional monarchy in Nepal is referred as *Jana Andolan I*.

⁸⁷ Bishwamber Pyakurel(2008).

The financial crisis called for budgetary support – which in turn called for assessment of country fiduciary risks and reforming financial accountability and control system by the donors. A series of diagnostic studies were carried out by the donors (World Bank, ADB and DFID) related to financial accountability, public expenditure, public procurement, mid-term expenditure framework, and gaps in accounting and auditing systems and practices. As a result of these studies, various financial management measures and aid effectiveness tools were introduced: MTEF, SWAs, and Immediate Action Plans. **In the process of belt-tightening, in 2002, new anti-corruption laws and institutions were born.** This is how good governance and anti-corruption appeared on Nepal's development agenda.

At present, Nepal's economy is bolstered by foreign aid, which accounts for 50 percent of the development budget in fiscal year 2010/2011, tourism, and remittances from overseas employment. Policymakers attribute half of the reduction in poverty that took place from 1996 to 2004 (from 41 to 31 percent) to the inflow of remittances. It is estimated that the poverty level must be lower now, due to remittances.⁸⁸ With a GDP per capita of US\$427 in 2009, however, Nepal remains the poorest country in South Asia.⁸⁹

Data from the Department of Foreign Employment show that in 2009/10 nearly 300,000 Nepalese people have left for overseas employment, mostly to Malaysia and Gulf countries. These are just officially documented figures. With a porous Nepal-India border, and as many Nepalese people may have gone abroad via India. As discussed in the text of this report, remittances now estimated to be 21% of GDP.

The real sectors of the economy (agriculture and manufacturing) have declined, while there is a thriving finance sector. Exports of garments, carpets⁹⁰ and handicrafts have declined due to losing competitive strengths and labour problems. Imports of raw materials and petroleum products continue to contribute to trade deficits and an unfavourable balance of payments.

As the Nepalese rupee is pegged to the Indian rupee, in spite of increasing trade deficits, the foreign exchange rate between Nepalese rupee and US dollar has remained surprisingly stable. Nepal's economic dependence on India has come at the cost of imbalances in the bilateral political relationship. Internally, Nepal's politics may have guided the economy; externally, economic dependence with India has guided political dependency.

The economic reforms initiated in the early 1990s (economic liberalization, privatization, deregulations) did increase economic growth rates, but failed to achieve distributional equality. Economic disparity increased sharply between urban and rural people, between mountain/hill people and Terai people, between the rich and the working poor, between men and women, and between upper and lower caste groups. An increase in rural poverty and inequality fuelled the Maoist insurgency. Instead of putting out the flames, the political parties including the monarchy were fighting with each other for the power at the centre.

⁸⁸ World Bank (2008).

⁸⁹ World Bank, World Data Bank (Source: WDI and GDF 2010).

⁹⁰ Garment and carpets alone constitute 20% of Nepal's exports.

C. Current Conflict

Nepal's current conflict both contributes to corruption, and may in turn be aggravated by it. There are several dimensions to this conflict, discussed below.

First, the integration and rehabilitation of former combatants is still a contentious issue in Nepalese politics. The decade long Maoist insurgency (1996-2006) ended after the signing of Comprehensive Peace Accord between the government and the Maoists in November 2006. This led to the cantonment of 19,000 Maoist PLA fighters in seven different sites in the country. Nepal's successful conclusion of the peace process and writing of the New Constitution depends on how the combatants are integrated and rehabilitated into the society. Although various political parties and the Army showed greater flexibility in their positions on the issue of integration, there are still some hurdles to overcome in the integration process of the Maoist combatants. Without resolving those, there is little chance for long term peace.

Second, the cessation of Maoist conflict has triggered a number of other smaller, localized and sometimes violent conflicts, in the newfound environment of freedom, lawlessness and a weakened state. The Terai Madhesi communities are demanding equal representation and recognition of their language, culture and ethnicity. Similar demands are expressed by ethnic groups like Tharuwans in the western plains, Limbuwan and Kiratis in the eastern hills. Other ethnic groups known as *janatais* or indigenous groups are fighting for their identity (Tharu, Kirant, Rai, Limbu and Newar) as are the *dalits* (marginalized, exploited castes). Lately, the groups such as Bramhin and Cheetri are demanding their rights and inclusion in the constitution.

Third, various armed outfits are now operating in the Terai plains under protection from political groups within and outside the country. These include some sectarian groups, disgruntled voices of pro-royalists and pro-Hindu fanatics. The security problem is fundamentally a political one, as Nepal has the physical force and the capacity to stop the violence if there is a political decision to do so.

Fourth, there are external factors. Nepal's key external players – India, China, EU, US and UN – that stood firmly behind the April Movement in 2006, started to take a different course after the Maoists swept the CA elections. The Maoists' anti-India stand and their interest in relations with China, together with India's own Maoist problem, gave India reason to be wary of Maoists in Nepal. If China has an eye on Tibetan refugees in Nepal, India had an eye on Bhutanese refugees and not letting their Maoists get inspiration from Nepalese Maoists. The subtlety of external influence in Nepal's politics is more difficult to comprehend than what appears at first glance.

The UNDP Human Development summarizes Nepal's transition stage in terms of temporal dimensions, i.e., having to deal simultaneously with (1) the baggage of the *divided past*, (2) *high expectation (and also frustration) of the present*, and (3)

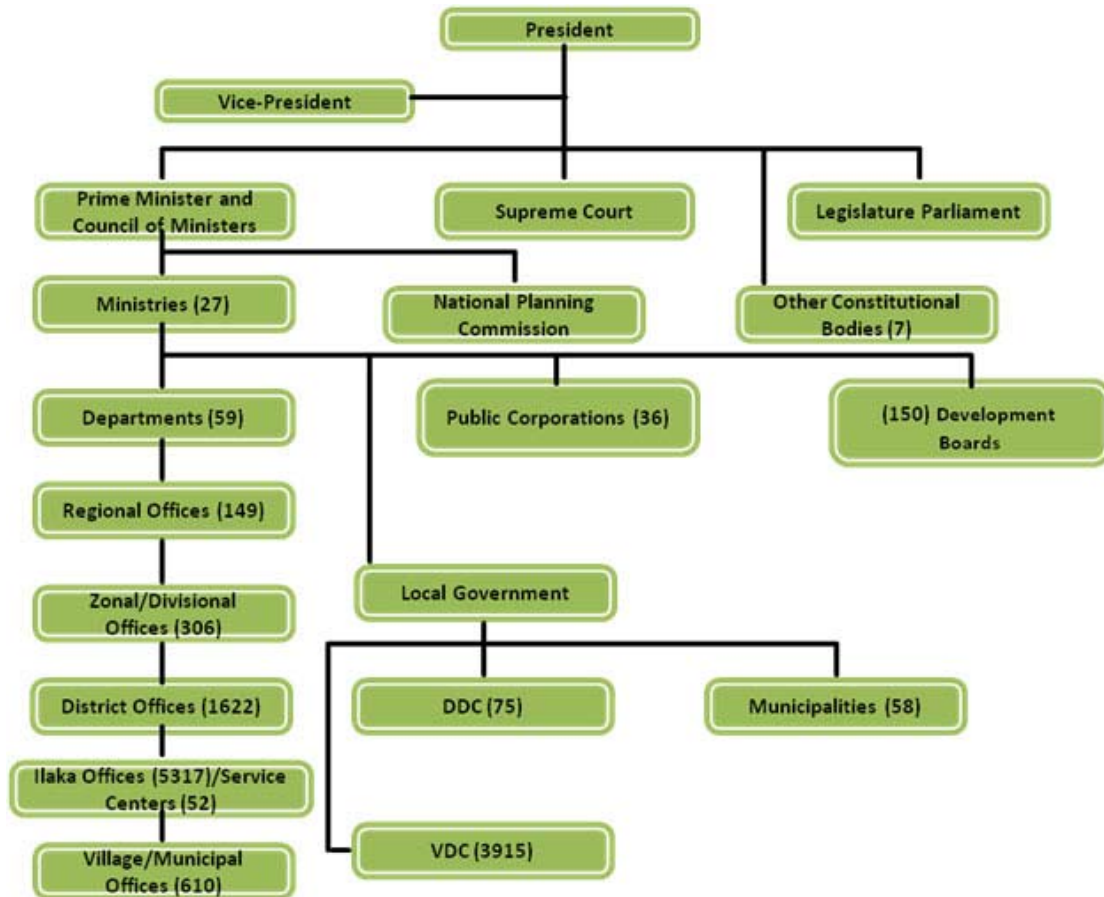
looking for *a shared future* through a process of participatory constitution making, among other activities for broadening and deepening democracy. Basically, these are the root causes of Nepal's continuing conflict. Others have described Nepal's crisis situation like Gramsci's *interregnum situation* where the old is dying and the new cannot be born.⁹¹ Regardless of the perspective, there is some agreement in Nepal that poverty, inequality, and social exclusion, compounded by poor governance which includes corruption, contribute to conflict today.

With decentralization, support deliberation over options for community and local government oversight and accountability. Before the 1950s the state did not provide any public services, and has done so selectively, since. A large part of the population in remote areas remains out of the state's reach, and with democratization there has been mounting pressure from ethnic and marginalized to gain access to basic services. With this agenda motivating decentralization, ensuring justice in access to public services is a critical problem in Nepal's decentralization.

Like centralized agencies, decentralized agencies as well may selectively meet demands of the most profitable clients. This is more likely where decentralization is associated with privatization of service delivery, because market forces produce inequality. Government may not have (or may lose) the capacity to regulate the power delegated to private bodies. Inequality may also arise if power or functions are transferred directly to civil society without going through (and being regulated by) the local government.

⁹¹ A. Donini (2008).

Appendix 2: Government Structure



Appendix 3: List of Political Agreements

Date	Political Agreements
22 November 2005	12 Point Agreement signed between Seven Political Parties and Maoists in New Delhi, India
18 May 2006	9 point Declarations made by the reinstated House
25 May 2006	25 Point Code of Conduct for Cease Fire signed between the Government and Maoists
16 June 2006	8 Point Agreement between Seven Political Parties and Maoists
8 November 2006	Agreement between leaders of Seven Political Parties and Maoists
21 November 2006	Comprehensive Peace Agreement (CPA)
8 December 2006	Monitoring of the Management of Arms and Armies, signed between the Government and the Maoists witnessed by UNSG representative
14 March 2007	Interim Constitution 2007
24 June 2007	5 point agreement with Civil Servants
10 July 2007	4 point agreement with Drivers' Association
7 August 2007	20 point agreement with NEFIN and Indigenous Joint Struggle Committee
30 August 2007	22 point Agreement between GoN and Madhesi Janadhikar Forum (MJF)
15 October 2007	9 point agreement between GoN and Chure Bhabar Ekata Parishad Samaj
15 October 2007	2 point agreement between GoN and National Bude Rights Struggle Committee
23 December 2007	23 Point agreement between Seven Political Parties
28 Feb 2008	8 point agreement between GoN and United Democratic Madhesi Front
1 March 2008	5 point agreement between GoN, Seven Parties and Federal National Republic Front
19 March 2008	5 point agreement between GoN and Federal Limbuwan State Council
1 April 2008	2 point agreement on the eve of CA elections by three major political parties(NC, UML and Maoists)
10 April 2008	CA Elections
25 June 2008	Agreement between political parties to amend the constitution and take forward peace process
1 August 2008	Maoist-led Government formed
17 Aug 2008	6 point agreement with Indigenous People and Tharu
5 Sept 2008	5 point agreement with Astray Holiya Mufti Samaj
11 Dec 2008	4 point agreement with Virus Killers Party
26 Dec 2008	5 point agreement with Sanyukta Janakaranti Terai Mukti Morcha
31 Dec 2008	5 point agreement with Terai Sanyukta Janakaranti Party
10 Jan 2009	6 point agreement with Janatantrik Terai Mukti Morcha (Rajan Mukti Samuha)
18 Jan 2009	5 point agreement with Kirant Janabadi Workers' Party
21 Feb 2009	5 point agreement with Liberation Terai Tigers Elem
14 March 2009	6 point agreement with Tharu and Indigenous
16 March 2009	6 point agreement with Sanyukta Muslim Rastriya Sangharsa Samiti
20 March 2009	4 point agreement with Terai Mukti Tigers
24 March 2009	5 point agreement with OBC
11 April 2009	19 point agreement with Tamsaling Sangharsa Samiti
12 April 2009	9 point agreement between Maoists and UML
4 May 2009	Maoists Led Government steps down
21 June 2009	4 point agreement with OBC
14 November 2009	3 point agreement with Kirat Janabadi Workers' Party
7 May 2010	7 point agreement with Akhil Terai Mukti Morcha
14 May 2010	3 point agreement between three political parties to extend the tenure of CA by one year
14 January 2011	3point agreement between the government and the Maoists to monitor PLA cantonments after the departure of UNMIN on 15 January 2011

Appendix 4: Anti-Corruption Legal Framework and Strategies

No.	Legal Framework / Strategies	Strengths	Weaknesses
1.	Interim Constitution of Nepal, 2007	<ul style="list-style-type: none"> • It provides for a strong constitutional anti-corruption body, CIAA to conduct or cause to be conducted inquiries into, and investigation of improper conduct or a corruption by a person holding any public office. • It also empowers CIAA that may conduct or may cause to be conducted an inquiry and investigation against any officials of the constitutional bodies removed from their office upon passing an impeachment on the ground of misbehaviour, any judges removed from the Judicial council on similar charges, and the person, to be prosecuted under the Army Law, after they are removed from the offices. • It provides for a Judicial Council that may carry out an investigation on a complaint received against a judge. • The constitution also requires political parties to submit income source of the party and detail of such sources while registering the party in the Election Commission. • The constitution provides for an Auditor General who audits accounts of all government offices, judiciary, legislative, and other constitutional bodies with due consideration given to regularity, economy, efficiency effectiveness and propriety. • It also provides for an Attorney General who defends the cases of corruption in the courts. • It also has a provision to pursue a policy of taking severe action and anyone who earns illicit wealth through corruption while holding a public office of profit. 	<ul style="list-style-type: none"> • It is an interim constitution; there is no certainty that its provisions are also incorporated in the new constitution. The Constitutional Bodies' Structure Determining Committee of the Constituent Assembly has recommended to limit the role of CIAA to investigation of improper conduct and corruption only and prosecution of corruption cases should be entrusted to Attorney General. • There is no provision of a single powerful agency that can investigate and prosecute cases of improper conduct and corruption of all public and private sector. There has been provision of various types of institutions in the constitution to look into cases of improper conduct and corruption.
2.	Civil Code 1863	<ul style="list-style-type: none"> • It has taken bribery as a criminal case. It empowers the concern person to file a case of taking bribe in the name of an employee of an office to the office of higher authority. • Under the Act, the briber can be punished imprisonment of 2-6 years or fine up to NRs 5000. 	This Act is not comprehensive.
3.	Commission for the Investigation of Abuse of Authority Act, 1991	<ul style="list-style-type: none"> • This Act is very comprehensive. CIAA may conduct investigations, file a case or take action against any person holding a public post for an abuse of authority. • CIAA may write to the appropriate authority to caution or to take departmental action against a person who is found to have committed an act of improper conduct. • It empowers CIAA to write to the concerned authority to make up for losses incurred. • It empowers CIAA to rectify bad results arising out of improper conduct. • It empowers CIAA to keep the accused in detention if there is adequate to do so. • CIAA may conduct inquiries and investigation in respect to corruption on the basis of a complaint 	<ul style="list-style-type: none"> • It provides limited power to CIAA. CIAA cannot investigate cases of improper conduct and corruption of sitting judges, officials of Constitutional Bodies and Nepal Army personnel. • CIAA cannot dictate on what kind of departmental action the concerned authority should take against the person. The authority often tends to impose soft departmental action. • CIAA may fine up to Rs 5000 to a person who lodges false complaint. This discourages people to lodge complaints.

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		<p>filed by any person or of information obtained by it from any source.</p> <ul style="list-style-type: none"> • There is no limitation of time for CIAA to file a case if corruption is committed by misappropriation of government or public property. • The person, who is detained or against whom the case is filed by CIAA, is automatically suspended for the period of detention or until the case is disposed. • CIAA may freeze the suspected account of the accused. • The Commission may order to ban issuance of passport of the accused or to put it on hold. • CIAA may issue an order prohibiting to leave a place by the accused. • CIAA may offer suggestions on law, decision, order or act which it feels impractical and on process and procedure of public agencies that it feels defective. • The Act requires a public servant to submit the statement of property within 60 days of his office assumption and every year within 60 days of the fiscal year. 	<ul style="list-style-type: none"> • CIAA is overpowered, hence, there may be a situation that the accused is suspended for a long period of time as it takes longer time to make a decision by the court. • No compensation for the accused who is acquitted by the court.
4.	Judicial Council Act, 1991	<ul style="list-style-type: none"> • The Act recognizes the judge's conduct as misconduct if he or she has performed any work to be deemed as corruption under the current law. • It empowers inquiry committee to exercise the power as conferred on to the Investigation officer under the Prevention of Corruption Act, 2002. • The Act empowers Council that may file a case to court of appeal against a judge. 	<ul style="list-style-type: none"> • The council may file the case against a judge. This is a newly amended clause. Its implementation is yet to see. • As of now no judge is dismissed on the ground of corruption.
5.	Revenue Leakage (Investigation and Control), 1995	<ul style="list-style-type: none"> • It empowers Revenue Investigation Department to investigate cases of revenue leakages. • The Act has clearly spelled-out cases of revenue leakages. • The Act has the provision that the arrested person can be kept in custody up to 45 days for the purpose of investigation. • The offender is subject to double fine and up to 3 years imprisonment. 	<ul style="list-style-type: none"> • The investigation of revenue cases by the Department may be influenced by political leaders.
6.	Commission for the Investigation of Abuse of Authority Rules, 2002	<ul style="list-style-type: none"> • It has clearly mentioned the functions of CIAA Secretary. • It has clearly stated the provisions of complaints , procedures of initial inquiry and investigation, and matters to be stated in charge sheet. • The Rules have clarified the other necessary action to be taken by the Commission as per the Act. 	<ul style="list-style-type: none"> • As per the Rules, the Commission may order to set aside or put on pending certain categories of cases. There is a possibility that the Commission may overlook some genuine cases and may put on pending.
7.	Prevention of Corruption Act, 2002	<ul style="list-style-type: none"> • This Act is a very powerful tool in combating corruption in the country. It is known to everybody. • The Act is applicable to all Nepalese citizens and public servants residing everywhere. • It has clearly defined 18 acts to be offences of corruption which ranges from bribe taking to property deemed to be acquired illegally. • The Act provides for punishment up to 10 years. If an act of corruption is committed by office bearer of constitutional body, or by special class officer or equivalent, he or she is liable to additional three years imprisonment in addition to the punishment 	<ul style="list-style-type: none"> • The provisions of the Act have not been fully implemented. • There is a risk that this Act may be misused for personal gain and innocent people may easily be victimized. • As of now, no one is severely punished under this law. • Only demand side is focused. • No coercive power to NVC.

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		<p>prescribed for the particular offence.</p> <ul style="list-style-type: none"> • This act also prescribes half punishment for committing attempts and to accomplices. • This Act empowers investigation officer to arrest the offender, and to conduct or cause to conduct search any places related to the offence. • On the preventive side, the Act provides for the establishment of National Vigilance Centre under the direct control and supervision of the prime minister with a number of mandates. 	
8.	Special Court Act, 2002	<ul style="list-style-type: none"> • The Act allows government of Nepal to form a special court to accomplish the trial and decision of special types of cases in a expeditious, prompt and effective manner. • It requires special court to decide a case generally within 6 months of filing the case and requires supreme court to decide on the appeal made over the decision of special court generally within 3 months. 	<ul style="list-style-type: none"> • The government may dissolve special court by publishing a notice in a gazette. • The Act does not empower court to further ask investigating agency to consider additional aspects of the cases. The Court has to decide within the frame of the case filed by the investigating authority. • Time frame to decide a case is flexible.
9.	Impeachment (Procedural Regulation) Act, 2002	<ul style="list-style-type: none"> • As per the Act, 25% of parliamentarians may submit impeachment proposal to dismiss the officials of constitutional bodies including judges of the Supreme Court. • In corruption charges, the Parliamentarian Inquiry Commission may inquire and investigate itself or can seek help from a suitable person or agency. • The official of a constitutional body is automatically dismissed from his or her post if an impeachment proposal is passed by the parliament. 	<ul style="list-style-type: none"> • No officials of constitutional bodies have been dismissed under this Act as of now. • Such impeachment proposal may easily be passed by the parliament if a party has two thirds of majority in the parliament. The officials of the constitutional bodies cannot perform their duties fearlessly and independently.
10.	Army Act, 2007	<ul style="list-style-type: none"> • The Act has provided for a three member committee headed by Deputy Attorney General to inquire and investigate cases of corruption committed by army personnel. The cases will be heard by an army special court. 	<ul style="list-style-type: none"> • No army personnel have been found taken action under this provision.
11.	National Vigilance Centre (Procedure), 2003	<ul style="list-style-type: none"> • It has clearly stated the procedures to be followed by NVC in carrying out its functions as prescribed in Prevention of Corruption Act, 2002. • It has specified the rights and duties of NVC Chief. • It empowers NVC to collect statement of property of civil servants and to assess their property statements and may forward to the concerned agency if further inquiry is deemed necessary. 	<ul style="list-style-type: none"> • Only preventive role given to NVC. • NVC has no power to take departmental action.
12.	Money Laundering Prevention Act, 2008	<ul style="list-style-type: none"> • It prohibits anybody to launder or cause to launder money. • It has defined a number of acts as offences of money laundering. • It requires banks and financial institutions to have a clear identity of their customers and their transactions. • It provides for a Financial Information Unit in Nepal Rastra Bank for collection and analysis of information relating to money laundering. • It requires government to establish Asset laundering Prevention Department. 	<ul style="list-style-type: none"> • No separate department has been established. Revenue Investigation Department has been designated to look into the offences of assets laundering. • The department can only file cases after the approval of Attorney General.

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		<ul style="list-style-type: none"> • The Act punishes anyone committing offence fine equal to the amount involved and/or imprisonment from one to four years. 	
13.	Anti-corruption Strategy, 2009	<ul style="list-style-type: none"> • It consists of 13-point anti-corruption strategies of the government. • The government of Nepal is committed to fully implement the strategies. • It commits to ratify UN convention on anti-corruption. • It commits to make public construction and public service delivery more systematic, competitive, transparent and accountable. • It envisages to maintain clean public administration and focuses on the use of innovative ideas to improve performance of public administration. • It focuses on the utilization of foreign assistance in the interest of the country and intends to make it transparent. Activities of NGOs who receive outside sources of funding will be made transparent and accountable. • It aims to make financial activities of political parties transparent. 	<ul style="list-style-type: none"> • Implementation part is very slow. Government is weak in implementation. • It requires financial resources for which no plan has been made. • Some strategies are very challenging for the government to implement.

Evolution of Anti-Corruption Legislation

Nepal has a very long history of anti-corruption legislation, dating back to the provisions made in the legal code in 1854.⁹² The first law on anti-corruption, the *Corruption Prevention Act*, was enacted in 1952 and regulations related to its implementation were brought out in 1953. The law sought to define corruption as taking or accepting of any other facilities, except salary and allowances, either directly or indirectly, or taking undue benefits more than what is required by the law, by taking benefits of opportunities from persons coming in contact with the public service. Investigations were to be carried out on the property holdings of the accused. The burden of proof was on the accused. Along with the confiscation of the amount involved, depending on the severity of the case, different categories of penalties - ranging from fines of Rs1 to Rs1000 and the maximum imprisonment of three years - were imposed. The convicted employees were also debarred from holding any other government positions in future. Government employees were also restricted from having any private business undertakings.

The Department for Prevention of Corruption was established to investigate corruption crimes. The investigating officer had to refer all the cases of corruption involving government officers to the King and non-officers to the relevant Secretary. In the case of non-government employees, the investigating officer could take punitive actions.

The Corruption Prevention Act 1952 was found to be inadequate or rather narrow to address the problems of corruption. The law only intended to control corruption by civil servants and, moreover, it was silent on investigative procedures. Therefore, a new anti-corruption law *Prevention of Corruption by Civil Servants Act* was enacted

⁹² There are about two dozen laws related to anti-corruption in Nepal. For details see *Compendium of Laws Related to Corruption* published by CIAA. The most relevant parts are discussed here.

in 1957. The scope of the law was expanded to cover different categories of corruptions done not just by the civil servants but also by the public authorities appointed by the government in various development boards, state-owned entities, municipalities and village councils. The Act is silent on defining corruption but listed various categories of acts that are punishable under the law. Along with the provisions for various forms of penalties, the maximum period of imprisonment was increased to five years. The Department for Prevention of Corruption was replaced by the Special Police Department to investigate and prosecute corruption crimes. The concept of the special court was also introduced to look after corruption cases.

Again in June 1960, a new anti-corruption law *Corruption Control Act 1960* was enacted to repeal earlier law enacted in 1952. This law further expanded the definition of public servants and also included further categories of corruption like fraud, theft and other misdemeanours in public service. The law was applicable even to the general public. Unlike in the previous laws, the burden of proof was shifted to the prosecutor. Four categories of penalties were prescribed in the law. These included: (1) imprisonment, (2) fines, (3) fines equivalent to the amount involved, and (4) confiscation of the assets. The law also made provision to reward informants with 10 percent of the amount involved. The maximum period of imprisonment was increased to eight years. Over a period of time, four amendments were made to the law.

After four decades of anti-corruption legislation, a new anti-corruption law was enacted in 2002. This was triggered by public outcry against rampant corruption that ensued at the time of Nepal's successive experiments with coalition governments in mid 1990s. The government established the Corruption Control Recommendation Committee (CCRC) in 1999. Based on the recommendations of CCRC, the government enacted the new anti-corruption law. In 2002, the government also enacted several other laws related to anti-corruption. These included: (1) the Special Court Act, (2) the Organization and Regulation of Political Parties, and (3) the Impeachment Act.

The Prevention of Corruption Act 2002 is the most comprehensive piece of anti-corruption law enacted in Nepal. The law lists more than a dozen categories of corrupt acts and makes provisions for punishing the acts of abetment of corruption. The maximum imprisonment term is increased to ten years. Unlike in previous laws, imprisonment is mandatory. Chapter 4 of the law makes provisions for corruption preventive measures, *inter alia*, the provision for the establishment of National Vigilance Centre (NVC) and compulsory declaration of property by public servants.

Legislative Changes Since 2006

With the people's movement in April 2006 the government formed the Rayamajhi Commission to investigate human rights violations and financial excesses committed by the Royal regime; and the Ojha Commission to investigate the excesses of RCCC⁹³. The Interim Constitution also broadened the jurisdiction of CIAA to cover

⁹³ The Royal Commission on Controlling Corruption (RCCC) was established by King Gyanendra, immediately after his takeover in February 2005. RCCC took many high profile actions amid criticisms from the political parties and the public criticism for its political motivations. In 2006, after

corruption cases related to the officials in the judiciary and in the army hitherto limited by the Constitution of 1991. Good governance, control of corruption and impunity also featured in the Directive Principles of the State in the Interim Constitution.

More laws related to anti-corruption were enacted by the Interim Government. These included: (1) Public Procurement Act 2006 and Regulations 2007 (2) Act on Promoting Market Competition 2006, (3) Rights to Information Act 2007, (4) Amendment of Special Court Act 2007 (5) Anti-Money Laundering Act 2008, and (6) Good Governance Act 2008.

This cursory review of the evolution of anti-corruption legislation indicates that the enactment of the laws has been prompted by political events in Nepal. One of the ironies is that the government that enacted the first comprehensive anti-corruption law, was deposed by King Mahendra on the grounds of corruption. Overall, there has been a trend in anti-corruption legislation towards (1) increasing the coverage and scope of the anti-corruption law to capture various forms of corruption committed by different categories of actors; (2) increasing the severity of the penalties, making imprisonment mandatory; and (3) de-linking investigation, prosecution, adjudication and appeal procedures related to corruption crimes through various institutional arrangements.

a year of its establishment, RCCC and its actions was annulled by the Supreme Court on the ground of its extra-constitutionality.

Appendix 5: Anti-Corruption Initiatives

Year	Milestones	Initiator	Reasons
1853	Civil Code enacted to punish corrupt public servants.	Rana Ruler	Main job of civil servants then was to collect taxes and revenues. To prevent misuse of collected taxes and revenues by civil servants, the provision was made as a stigma.
1954	Corruption Prevention Act, 1954 promulgated to prevent corruption of civil servant. Department of corruption control established	Nepal Government	There was a change in the regime. Rana Regime was abolished and democracy was established in the country.
1957	The 1954 Act is repealed by the enactment of Civil Servants' Act (Corruption Prevention) 1957. The Act broadly defined the corruption offences and stated the punishment to be imposed on the offenders. The Act provided for the establishment of Special Police Department to look into corruption cases and restricted courts not to take corruption cases without the consent of the government. The Department replaced Department of Corruption Prevention.	Nepal Government	Civil service act was introduced for the first time and planned development started with formulation and implementation of the first five-year plan.
1961	The Corruption Control Act 1961 promulgated with a more extensive definition of corruption offences. The Act included fraud, theft, and other misdemeanours apart from bribery.	The King	The King assumed absolute power and banned the multiparty system and introduced one-party panchayat polity (party less) in the country.
1975	The Constitution of Nepal (Second Amendment) 1975 made a provision for the establishment of the Commission for Prevention Of Abuse of Authority (CPAA) as a constitutional body.	The King	New king ascended the throne in 1971. The constitution was amended to address political nuisance of that time.
1977	The CPAA established and CPAA rules executed which empowered to investigate, prosecute and decide cases of abuses of authority by senior bureaucrats and public authorities.	The King	The CPAA was established to address and realize the constitutional provision.
1990	The Constitution of the Kingdom of Nepal, 1990 promulgated and provided for the establishment of the Commission for the Investigation of Abuse of Authority (CIAA). The Commission empowered only to investigate and prosecute cases of abuse of authority by public office holders.	Interim Government	Through people's Movement I, there was a change in the political system from absolute monarchy and panchayat system to constitutional monarchy and multi-party democratic system.
1991	The Commission for the Investigation of Abuse of Authority Act, 1991 enacted and empowered CIAA to investigate and prosecute cases of abuse of authority by politically appointed persons and senior public servants and to delegate its authority to any government institution for cases of abuse of authority by public servants (junior) other than mentioned in the clause 4(a). The Act required to prior informing to the prime minister in the case of politically appointed persons and to the speaker or the chairman of the concerned House of Parliament for members of parliament to take action against them on their cases of abuse of authority after receiving written approval from the prime minister or the speaker or the chairman of the concerned House of the Parliament. Judicial Council Act, 1991 enacted.	Nepali Congress Government	The CPAA had also similar provision. As per the Constitution, CIAA was unable to take action against judges, hence, the Act was needed to empower Judicial Council to initiate action against judges
1995	Transparency Nepal Chapter established.		
1997	The Supreme Court confirms that the CIAA can prosecute any person without having any prior approval from the prime minister or the speaker or the chairman of the concerned House of Parliament.	Supreme Court	The CIAA Act violated the constitutional provision. The need for non-governmental organizations was realized to

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	Pro Public, a major NGO, started its work on anti-corruption.		launch public awareness and anti-corruption drive in the country. As a result Pro public was established.
1999	The Government of Nepal constituted a seven-member Corruption Control Recommendation Committee under the convenor-ship of Mr. Mahadev Yadav.	Nepali Congress-led Government	There were complaints from all segments of society on rampant corruption. The Maoist Party had also blamed the government for indulging in corruption.
2002	<p>The Judiciary Inquiry Commission on Property established to investigate the disproportionate property holdings by public officials post-1991. The Commission asked 41,900 politicians and officials to submit property details, but 11,300 failed to comply.</p> <p>The Corruption Act 2002, CIAA Act (Amendment), Special Court Act, Impeachment Act, and the Act Related to Organization and Regulation of Political Parties enacted.</p> <p>Special Court established to hear corruption cases.</p> <p>The CIAA intensified its action against senior political leaders and bureaucrats. CIAA filed 27 cases to the Special Court on charges of corruption against 27 persons including two ministers and civil servants, majority from Revenue Service.</p> <p>National Vigilance Centre established and Special Police Department dissolved.</p> <p>CIAA drew its five-year strategic plan and restructured its organization.</p> <p>Nepal signed the ADB/OECD Initiative on Corruption in Asia and Pacific.</p>	<p>Nepali Congress Government</p> <p>CIAA</p> <p>Government</p> <p>CIAA</p> <p>Government</p>	<p>The motive was to punish corrupt political leaders and civil servants to clean up the administration and promote good governance</p> <p>As part of the implementation of the recommendations of corruption control recommendation committee, various laws were enacted.</p> <p>The amended CIAA Act further empowered CIAA to investigate on corruption cases.</p> <p>As per the provision of Corruption Prevention Act, the NVC was established.</p> <p>The Commission felt the need to move ahead with a clear strategic vision to fulfil its mandate.</p> <p>As part of her commitment to combat corruption, Nepal signed the ADB/OECD Initiative on corruption in Asia and the Pacific.</p>
2003	<p>Thapa government adopted anti-corruption strategy with a 13-point action plan.</p> <p>Nepal signed UN Convention on December 10, 2003.</p> <p>The Special Court sentenced former minister C.Wagle to a 2.5 years in prison including a fine of NRs 27.2 million.</p> <p>CIAA filed cases against three former Chiefs of Police on charges of corruption.</p>	Royal Government	Thapa government was formed by the king after removing elected government led by S. B. Deuba . Corruption control was the hidden agenda of the government. The corruption was also supposed to be one of the elements aggravating conflict in the country.
2005	<p>On February 16, the government formed a six-member Royal Commission for Corruption Control (RCCC) headed by the former secretary Mr. Bhakta Bahadur Koirala and had the power to investigate, prosecute and decide the cases of corruption.</p> <p>On July 16, the Commission convicted three-time prime minister Mr. S.B. Deuba and his minister Mr. P.M. Singh for a prison term of two years and a penalty of Rs 90 million each . Three</p>	Royal Government	On February 1, the King dissolved the Deuba Government and formed the council of ministers under his own chairmanship and Corruption control was one of the most important agenda of 21-point action programme issued by the Royal government.

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	<p>government officers and the contractor were also convicted in the same case.</p> <p>The CIAA sidelined but not disbanded.</p>	RCCC	The Commission convicted them for corruption in construction of Melamchi drinking water project.
2006	<p>The RCCC dissolved by the Supreme Court and cases brought by it thrown out.</p> <p>Eight-party Alliance agreed to adopt a policy under political-economic-social transformation to take action against public officials who have accumulated disproportionate property through misuse of authority</p>	<p>Supreme Court</p> <p>8-Political Parties</p>	<p>The offenders filed a writ petition to Supreme Court and the Court gave the verdict after hearing the case.</p> <p>An Integrated Peace Agreement was signed between Nepal Government and Nepal Communist Party (Maoist)</p>
2007	<p>On January 15, the Interim Constitution of Nepal promulgated and reaffirmed the status of the CIAA as a constitutional body vested with investigative and prosecutorial powers.</p> <p>Right to Information Act, 2007 enacted.</p> <p>The Public Procurement Act, 2007 enacted.</p> <p>The CIAA adopted Three-Year Strategic Plan (2007-2010).</p>	<p>Eight-party alliance government</p> <p>CIAA</p>	<p>Loktantra was established through people's movement II.</p> <p>There was a demand for this kind of Act from journalists for many years, the new government agreed to come up with the Act.</p> <p>The need for a separate procurement Act was recognized to address procurement related problems. There was also pressure from the multilateral donor agencies to enact such law.</p> <p>The first five year strategic plan was completed in 2007. In the changed context, the CIAA felt the need to come up with a new strategic plan to combat corruption.</p>
2008	<p>Money Laundering Prevention Act, 2008 enacted.</p> <p>Good Governance (Management and Operation) Act, 2008 enacted.</p>	Nepal Government	<p>As part of the preparation for fulfilling the obligation of UNCAC after its ratification, the Money Laundering Prevention Act was enacted.</p> <p>As part of the commitment of the government for good governance, the Act has been implemented.</p>
2009	Dahal Government adopted Anti-corruption Strategy and Action Plan 2009	Maoist-led Government	New government-led by Maoist party was formed after the election of constituent assembly. The strategy was brought out as part of the commitment of the government during CA election.
2010	On January 4, 2010, the Commission delegated its power to the Secretary of the CIAA until the assumption of office by new Commissioners of the CIAA. The Secretary is also performing the work of the Commission.	CIAA	Government was not able to appoint Commissioners in time. This arrangement has been made on an interim basis.

Appendix 6:

**Evolution in Roles and Responsibilities
of Constitutional Anti-Corruption Agencies**

Agency	Objective	Power	Appointment of the Commissioners	Tenure
CPAA 1975	Prevent abuse of authority	Cases involving abuse of authority shall be heard and decided.	The Chief Commissioner and other Commissioners shall be appointed by His Majesty.	Five years
CIAA 1992	Investigations of <i>improper conduct or corruption</i> by a person holding public office. CIAA will not have jurisdiction over (a) any official in relation to whom the constitution itself separately provides for such action, and (b) any official to be prosecuted under the Army Act.	In the case of improper conduct, CIAA may admonish such person, or forward a recommendation to the concerned authority for departmental or any other necessary actions. In the case of corruption, CIAA may bring or cause to be brought an action against such person or any other person involved therein in a court with jurisdiction in accordance with the law.	Appointed by His Majesty on the recommendation of the Constitutional Council.	Six years
CIAA 2007	Investigations of <i>improper conduct or corruption</i> by a person holding public office. Provided that the clause shall not be applicable to any official in relation to whom this Constitution itself separately provides for such actions, and to nay officials with regard to whom other law has separately made special provision. Investigations against (1) any official of a Constitutional Body removed from their office following an impeachment resolution, (2) any Judge removed by the Judicial Council on similar charges, or (3) any person proceeded against under the Army Act after they are removed from office, in accordance with law.	In the case of improper conduct, CIAA may warn such person, or forward a recommendation to the authority concerned for departmental action or any other necessary action as prescribed by the law. In the case of corruption, CIAA may lodge or caused to be lodged a case against such person or any other person involved therein in a court with jurisdiction in accordance with the law.	Appointed by the Prime Minister on the recommendation of the Constitutional Council.	Six years

Evolution of Anti-Corruption Agencies

With the enactment of the first anti-corruption law in 1952, the Department of Corruption Prevention was established in 1953. It was disbanded after the enactment of new anti-corruption law in 1957. The new law made provisions for the establishment of Special Police Officer as an investigating authority within the Special Police Force. The law also made provisions for the Special Judge to look after corruption cases. The role of the Special Judge was similar to the present-day Special Court.

Again, with the enactment of new anti-corruption law in 1961, a Special Police Department (SPD) was created. The department was located within the Ministry of Home Affairs till 1976 and, then after, within the Office of the Prime Minister. SPD functioned as a central-level anti-corruption agency till the arrival of Commission for

Prevention of the Abuse of Authority (CPAA) in 1977, i.e., after the second amendment in the Constitution of 1961. CPAA was given sweeping powers to investigate, prosecute and adjudicate corruption cases. The reason for the establishment of CPAA was that SPD, as an anti-corruption instrument within the executive, is not appropriate enough to tackle high-level corruption cases. A line of demarcation was drawn between CPAA and SPD - CPAA to look after corruption cases of high-level government officers (above Class I Officers) and SPD to look after cases of junior-level staff members (below Class I Officers). SPD was further demoted after the establishment of Commission for Investigation of the Abuse of Authority (CIAA) in 1991.

For a while, considerable confusion prevailed between SPD and CIAA over their jurisdictions until the Supreme Court verdict in 1996 made clear that CIAA is the primary agency to combat corruption in Nepal. SPD was made to function within the purview of authorities delegated by CIAA. More specifically, SPD was to look after corruption cases involving government employees ranking below Class II Level, residing within the Kathmandu Valley. With the enactment of new anti-corruption law in 2002 and with the provision to create NVC, SPD was finally dissolved in 2002. Unlike SPD which can investigate corruption crimes, NVC is given preventive, awareness and educative functions.

The second amendment in the constitution in 1975 gave birth to CPAA with a sweeping power to investigate, prosecute and adjudicate high profile corruption cases. CPAA continued to function until it was replaced by CIAA in 1991. The new constitution, introduced after the reinstatement of multiparty democracy in 1991, made provision for the establishment of CIAA. Though CPAA was established to tackle high-profile corruption cases, it could not make any dent other than one high profile action goes by the name of “carpet scandal⁹⁴” in Nepal. During the period of political instability leading to referendum in 1980, CPAA did little as the government misused its power to get people’s support.

Over the last fifty years, there had been a considerable shift, experimentation and transformation in the roles and responsibilities of the anti-corruption agencies. Within the executive, the Department of Corruption Prevention was seen transformed from Special Police Department to current National Vigilance Centre. The constitutional agency, CPAA, was transformed to CIAA thereby dissecting investigation, prosecution and adjudicative functions. Within the judiciary, the role of Special Judge conceived in 1957 was re-enacted as Special Court in 2002. There is also a shifting of anti-corruption initiatives from within the realm of the executive (SPD, NVC) to outside the executive (CPAA and CIAA).

⁹⁴ The scandal (1976-78) involved over-invoicing of exported carpets by the private businessmen to earn extra bonus vouchers allowing them to have the import facility. The case involved prosecution of 91 people, including four ministers.

Appendix 7: Anti-Corruption Donor Interventions

No.	Project	Donor	Start	End	Budget	Major Activities	Lessons Learned
1.	Good Governance Project, Phase 1-4	SDC	2000 July	2012 Feb	US \$.971 mi	Organized and popularized public hearing, public audit, citizen score card, media advocacy, and capacity building of good governance defenders.	Very effective in promoting good governance at local level but only demand side focused.
2.	Institutional Strengthening of CIAA (First Phase)	Danida	2001 July	2003 June	n.a.	<ul style="list-style-type: none"> • Support for training and Workshop (in- country and regional). • Payment of expert services. • Exposure visit. • Equipment and materials (such as computers, filing cabinets, furniture and a staff bus) in support of CIAA. 	<p>Impact difficult to measure, but made significant contribution to CIAA's operation.</p> <p>Focused only on curative side.</p>
3.	Governance Reform Program	ADB	2001 Dec	2005 Dec	-US\$ 30 mi loan -US\$ 2mi TA	<p>Establishment of Efficiency unit at MOF, and Change units at MoEd, MoAC, and MoHP.</p> <p>Development of computerized system for personnel management, support to strengthen CIAA and to establish special court, asset declaration of all politicians, refinement to pay policy and new wage scale, performance based incentive system, support to additional legislation such as whistle blower protection and money laundering and civil service act 2007.</p>	<p>In times of political instability and in absence of strong political will governance reform programs cannot be effectively implemented.</p> <p>The project did not consider on-the-ground conflict situation, as a result it was only partially successful.</p>
4.	Institutional Strengthening of CIAA(II Phase)	Danida, DFID	2003 Oct	2006 Aug	NRS 65 mi	MIS and Training support from Danida. Equipment, furniture and exposure visit from DFID.	Support withdrawn after King's takeover of political power but support to civil society organization continued. No impact of this project due to abrupt political change.
5.	Strengthening Rule of Law and Respect for Human Rights	USAID	2004 Oct	2005 Sept	n.a.	<ul style="list-style-type: none"> • Improved case management, and addressed chronic cases. • Semi-automated case management system. • Managed archives. • Drafted public defender system rules and guidelines. • Developed strategic plan of National Judiciary Academy. • Operationalized court-referred mediation. • Organized 5 regional anti-corruption conferences. • Trained 20 officials of 	The project had two components-rule of law and anti-corruption and It was felt to have a project with focused activity and in doing so attention is not diverted and resources are not divided.

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						<p>NVC/CIAA and 85 journalists.</p> <ul style="list-style-type: none"> Prepared two anti-corruption celluloid films. Provided grants. 	
6.	Strengthening Project Implementation and Quality Assurance	ADB	2004 Jan	2006 Dec	US \$ 0.6 mi	<ul style="list-style-type: none"> Provided capacity development support to establish Technical Audit Division at NVC. Trained 97 engineers (Public and Private) on technical auditing. Developed technical manuals for irrigation and rural road projects and updated technical audit manuals for highways and feeder roads, water supply and sanitation buildings and urban development. Conducted technical audit of 40 projects. 	Technical audit should be accorded top priority and legal mandate should be established for effective implementation.
7.	FNCCI Anti-corruption Project	DFID/ESP	2004	2006	£ .196 mi	<ul style="list-style-type: none"> Established a complaint hearing unit. Formed Corporate Ethics Forum. Developed and implemented Business Code of Conduct. Conducted Business Ethics and Corporate Social Responsibility Program. 	<p>Public Awareness is very important about corruption issues.</p> <p>Reports on Business Ethics and Anti-corruption Issues must be included in FNCCI's Publication.</p>
8.	Civil Society Anticorruption Project (10 districts- Jhapa, Morang, Dhanusha, Chitawan, Kaski, Rupandehi, Dang, Banke, and Kailali)	DFID/ESP	2005 Jan	2008 Mar	US \$.971 mi	Strengthened capacity of civil society and furthered zero tolerance and inculcated why culture among civil society members provided capacity building support to government offices and local bodies.	Successful to some extent to further zero tolerance and inculcate why culture among civil society members, but the impact was less due to low coverage of the project, sustainability is questionable and corruption may prevail within civil society.
9.	Media initiatives for Civic Resistance against Corruption	DANIDA	2006	2007	NRS 7.2 mi		
10.	Gender and Corruption	DANIDA	2006	2007	NRS 6.7 mi		
11.	Value-based Good Governance Project (3 districts)	DANIDA	2007	2008	NRS 8.88 mi	Budget monitoring groups formed at district, village and ward level. Activities involved orientation, public auditing, situation analysis and capacity building.	Sustainability, the idea was replicated in Chitawan district.
12.	Establishing Corruption Free Zones (3 districts)	DANIDA	2007	2008	NRS 6.3 mi	Establishment of district anti-corruption networks and anti-corruption enabling centres at the village level to monitor	Sustainability of the project, need to address anti-corruption issues

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						corruption and increase public awareness against the vices of corruption.	within the implementing agencies.
13.	Combating Local Level Corruption (5 districts)	DANIDA	2007	2008	NRS 6.4 mi	The project was limited to district level.	Sustainability
14.	Promoting Local Governance for Effective Service Delivery (6 districts)	DANIDA	2007	2008	NRS 63.79 mi	Pressure groups were formed in each district to monitor delivery of public services, training, workshops and discussion programs both at national and local levels.	Sustainability
15.	Good Governance and Anti-corruption in Municipalities	DANIDA	2007	2008	NRS 6 mi		
16.	Corruption in Judiciary	DANIDA	2008	2009	NRS 4.9 mi		
17.	Support to Anti-corruption Institutions	ADB	2008 Dec	2010 June	US\$.385 mi	<ul style="list-style-type: none"> • Developed web-based central information system at DRI. • Initiated computer-aided audit system. • Prepared final audit guidelines for DDC-incurred expenditure. • A conference system with recording facility installed at PAC. • Designed website, published landmark rulings and drafted regulation of special court and training on money laundering. • Development and airing of anti-corruption oriented radio program. • Tailor-made software for managing asset declaration firm. • Organized knowledge sharing study tour. 	<p>Capacity needs assessment is very necessary for capacity building.</p> <p>It is good to focus to strengthen support to one anti-corruption agency instead of many agencies with little resources.</p>
18.	Advocacy and Legal Advice Centre (ALAC) Project	TI/DFID	2009	2013	n.a.	Providing Anticorruption Legal Advisory Services to the victims and witnesses of corruption through availing hotlines.	The project has just started, should wait for some time for lesson learning.

Appendix 8: Distribution of Interviews

Distribution of Interviews

Government officials	39
Donors/INGOs	13
NGOs	10
Private sector	15
Politicians	6
Analysts	<u>7</u>
Total	90

Appendix 9: Terms of Reference

Terms of Reference for a background study on Anti-Corruption Efforts, Lessons Learned and Possible Future Initiatives for Nepal

Background

Nepal has been facing a number of governance challenges following the ten years of violent conflict between 1996 and 2006. The country is characterized by a fragile political environment, along with widespread impunity and absence of rule of law with limited accountability at the local level. More politically motivated decision making in the absence of elected local bodies, weak communication and monitoring systems, downward economic trends and increasing unemployment, especially among youth, present an increasing challenge for accountable, transparent and efficient use of both government and donor resources. With large amounts of resources from both domestic and foreign aid going for reconstruction and development following the peace process, there is an increased opportunity for corruption.

Corruption presents a major threat to Nepal's overall economic development, democratic governance and the business climate. Furthermore, it has cascading effect on the country's ability to achieve the Millennium Development Goals, when funds intended to provide basic services and critical infrastructure and development do not reach the intended beneficiaries in time and in their totality.

Transparency International's Corruption Perception Index 2008, ranked Nepal 121 out of 180 countries with an absolute score of 2.7 out of 10. Similarly, the latest World Bank Institute's governance indicators for corruption control give a percentile score of 29 to Nepal. There is a widespread perception that corruption spans across sectors and stakeholders - including political parties, ranges from petty to large scale corruption, and has been on the rise.

Although a number of legal and policy frameworks and institutions such as Commission for the Investigation of Abuse of Authority (CIAA) and National Vigilance Centre have been established and made operational along with the National Anti Corruption Strategy 2009 and the Government of Nepal has signed the convention against corruption, currently at Parliament for ratification, these may not reduce corruption unless they are accompanied by concrete actions and backed by strong political will from all actors and the government in particular.

The absence of full commission for more than four years in CIAA suggests a lack of political support for tackling corruption. Despite this, CIAA annually receives nearly 4,000 cases, and they have settled almost 80% of the cases.

A number of donors such as the World Bank, ADB, DFID, SDC, Danida and USAID have all been active in promoting good governance and anti-corruption initiatives

during mid 90s. However, most of these initiatives which were of technical nature did not have the desired impact.

Globally, the specialized anti-corruption interventions have made little progress, as witnessed by failure of most Anti-Corruption Agencies set up in the 1990s, following the positive result attained by Hong Kong's Independent Commission against Corruption. Strong political support, necessary legal frameworks and court system with the will and capacity to pursue corruption through enforcement is missing in many countries.

The available literature on Anti-Corruption presents great diversity in issues and approaches. The NORAD approach to anti-corruption focuses on: i) Political-structural analysis, focusing on systemic corruption ii) Rule of Law and its attention to control and prosecution of corruption iii) Public administration and systems improvement for preventing corruption iv) Extractive industries and service delivery-public sector corruption v) non state actors and the attention to transparency and accountability, and vi) capacity building and organizational development and a society's ability and capacity to address corruption.

Following the Paris Declaration, increasing donor funds are being channelled through the Government system using sector wide approaches, raising concerns among the donor community about ensuring full transparency and appropriate use of these funds for the intended development purposes and concerns on the fiduciary risks. Many donors also have a zero tolerance policy for the use of their development funds.

In a context of increasing demand for development effectiveness, a number of donors and UN agencies such as UNDP and UNODC are interested to support the Government of Nepal, civil society organizations and the private sector in identifying ways to ensure greater transparency, full accountability and tracking of both Government and donor funds from central to local levels, and to reduce fiduciary risks.

Against this background, the Norwegian Embassy, UNDP, and UNODC have agreed to carry out an independent study to assess the current situation, extract lessons from past experiences and come up with a strategy to supporting integrity in Nepal, without causing harm in terms of statebuilding, or adding to corruption.

Objectives of the Study

The objectives of the study are:

- i) To assess the current context in which corruption occurs in Nepal.
- ii) To get perspectives of representatives of different social groups and government officials on harmfulness of various forms of corruption.
- iii) To document the lessons learned from past donor and Government initiatives success and failure, as well as the reasons behind these (including UNCAC and others).

- iv) To draw on experiences from other post war/reconstruction situations based on secondary information (OECD DEVNET, TIRI studies and other relevant documents)
- v) To identify prioritized interventions (short, medium and long term) that can have positive impact in reducing the space for corruption (including drivers of change and entry points) building on existing structures and tools currently available in Nepal and instruments to which Nepal is a party.

Methodology

This is a political economy study with a special focus on state-building with a longer term integrity goal. Considering the complexity and magnitude of problems in Nepal, to have impact, anti corruption initiatives would require a joint effort from multiple stakeholders and donors over a long time frame. In this context, strategic analysis of the situation and identification of priority technical assistance needs are essential. The study will necessarily take a broad view of what constitutes anti corruption work, transcending the usual “fighting the corruption with anti corruption tools” approach.

Specific tools that will guide the study include DFID’s How To Guide to Political Economy Analysis (2009) and the Power & Change Analysis (2007) from the Netherlands.

Primarily, the study will provide a situational description, explaining what the context and dominant informal institutions look like, and which are relevant for any strengthening of integrity in Nepal’s development. The study will also consider how to promote integrity, and which forms of corruption to focus on, given the fragile situation and need for state building and securing the peace agreement. Finally, the study will suggest priorities in order to encourage development in Nepal towards lower levels of the most harmful forms of corruption. To this end, the study will examine the implications for donor support, and the potential effects of donor involvement.

The following may be incorporated in the analysis, as they relate to the topic at hand:

- Culture and historical contexts
- Authority and legitimacy of the state, and implications for state-society relations
- Prevalence and logic of corruption, and relation to state legitimacy
- The extent of rent seeking and crime, and the motivations behind them
- Where development funds come from, and how/if they are monitored
- Access to informal and formal mechanisms for justice and dispute resolution, and who resolves disputes, in practice
- Civil society and how to support its development
- Anti-corruption or integrity capacity development priorities/entry points

Scope of the Study

The study will focus on the following:

- i) Political economy analysis of Nepal with analysis of potential interventions/reforms
- ii) Desk review of relevant Nepalese legislative framework including laws, policies and strategies as well as informal rules of the game.
- iii) Consultative meetings with relevant stakeholders such as representatives of anti corruption institutions, CSOs, political parties, media, key donors and development partners.
- iv) Review of past efforts and documentation of lessons learned in Nepal.
- v) Recommendations for prioritized intervention by Government, non-state actors and donors.

Mission schedule

Preparatory work to start by 1 August 2010

Mission to start 16 August 2010 through 31 August 2010

Draft report is expected 16 September 2010

Final report is expected by 30 September 2010 or one week after feedback on the draft report is received.

Duration of the Mission: Two weeks from August 16, 2010 to August 31, 2010.

Study team

The study team will comprise of the following:

- One International Team leader from NORAD
- Three experts (one from UNDP RCB, One from UNDP BDP and one from UNODC)
- Two national experts (UNDP)

Deliverables

A background study report with a set of recommendations which will serve as a reference for future anti corruption initiatives in Nepal.

Norad

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