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DEMOCRACY AND GOVERNANCE ASSESSMENT

SEPTEMBER 2005

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ACRONYMS AND ABBREVIATIONS

CIAA	Commission for the Investigation of Abuses of Authority
CBO	Community Based Organization
CPN-UML	Communist Party of Nepal/United Marxist-Leninist
CSO	Civil Society Organization
DANIDA	Danish International Development Agency
DC	District Committee
DCHA	Democracy, Conflict and Humanitarian Assistance
DDC	District Development Committee
DDR	Disarmament, Demobilization and Reintegration
DFID	Department for International Development (UK)
DG	Democracy and Governance
EU	European Union
GNI	Gross National Income
ICG	International Crisis Group
IDEA	International Institute for Democratic and Electoral Assistance
IFES	International Foundation for Electoral Systems
MP	Member of Parliament
NC	Nepali Congress
NC-D	Nepali Congress- Democratic
NCCS	Nepal Centre for Contemporary Studies
NDI	National Democratic Institute for International Affairs
NGO	Nongovernmental Organization
NSP	Nepal Sadbhawana Party
OPMCM	Office of the Prime Minister and Council of Ministers
PR	Proportional Representation

RCCC	Royal Commission on Corruption Control
RNA	Royal Nepalese Army
RPP	Rastriya Prajantra Party
SAGUN	Strengthened Actions for Governance in Utilization of Natural Resources
TADA	Terrorism and Disruptive Act
TAF	The Asia Foundation
UNDP	United Nations Development Programme
UNHCHR	United Nations High Commissioner for Human Rights
UPF	United People's Front
USAID	US Agency for International Development
VDC	Village Development Committee

EXECUTIVE SUMMARY

Nepal started a democratic transition in 1990 that has never been fully realized. Political party immaturity, vested interests, and a 200-year history of absolute monarchy continues to hinder democratic development and good governance practices. The elitist nature of Nepali society and politics still excludes large portions of the country and population, and the Maoist insurgency that started in the mid-1990s rooted easily in the country's marginal areas. Facilitated by the absence of central authority in rural areas, the insurgents' use of force has given them substantial control over roughly 80 percent of the territory of Nepal.

Nepal's tenuous democratization process was further derailed in October 2002 as King Gyanendra dismissed the elected prime minister after the latter's dissolution of Parliament and call for new elections, and used the inability of the governmental leaders and parties to tackle the insurgency as justification for his actions. Although national elections have been promised by the king, they have yet to be held. The king has ruled since through a series of appointed prime ministers and by decree.

In February 2005, Nepal was plunged into even deeper crisis when the king dismissed his appointed prime minister, took over his responsibilities, and declared a state of emergency. Many politicians were detained, the media was restricted, and the security force's powers increased. The state of emergency was lifted in May 2005, and the restrictions on civil liberties have eased somewhat, but a kind of soft authoritarianism continues in place.

THE DG PROBLEM

Nepal has difficulty with all five key elements of a democracy. It lacks **consensus** on the nature of the state itself and on the resolution of the conflict, and as the current crisis continues, the views of key actors on these critical issues diverge even further. The 1990 constitution based on a constitutional monarchy has come under question, with some calling for a constituent assembly and a republic. The king continues consolidating his autocratic rule, while the former governing parties have formed a tactical alliance demanding a restoration of the former parliament and a review of constitutional issues. The Maoists have taken advantage of the political fighting and continued attacks¹ while the RNA carries on its own offensive against them. Military experts say a military solution is not possible, leaving a negotiated settlement as the only viable option. At the time of the fieldwork for this Assessment, none of the three major actors (king, parties, and Maoists) appeared willing to make significant moves toward resolving Nepal's crisis.

Though the courts are functioning and the legal framework seems adequate for a judiciary to function, the ongoing conflict and the current political crisis render the term "**rule of law**" almost meaningless. The vast majority of citizens do not rely upon the law—and the state's ability to uphold laws—to secure their rights and ensure their security. Much of this is a direct impact of the conflict: the state is not capable of providing security, or upholding law and order in its conflict-affected areas. At times the state itself is a threat to personal security. The judiciary, in particular the Supreme Court, has shown signs of independence. In recent decisions, such as its interim order allowing FM radio news broadcasts and its

¹ Although after the Assessment fieldwork the Maoists announced a unilateral ceasefire for three months.

willingness to grant habeas corpus writs for the release of political prisoners, the Court is trying to reassert its constitutional role and independence. At the moment it is the only institutional check on the powers of the executive. Impunity, inefficiency, case backlogs, and enforcement of court decisions, however, remain critical issues.

There is little institutional **competition** of interests in Nepal. Parliament has been dissolved and laws are issued by royal decree. The national elections anticipated for 2002 have yet to be held. The king has announced that municipal elections will be held within the year, but the principal parties claim they will boycott until Parliament is reinstated and constitutional issues discussed. The terms of office have expired for local elected officials, and the process of devolution is being thwarted by the king's decisions to add zonal and regional administrators which will centralize authority. There is still an animated competition of ideas in the Kathmandu Valley—particularly among the parties, human rights/democracy NGOs, and English-speaking media. However, the opportunities to translate those ideas into constructive actions remain largely closed as does the environment in general outside urban areas. There is no competition of interests in the areas under Maoist influence.

The lack of **inclusion** is a major issue. Although discrimination is prohibited by the constitution, large portions of the population have long been excluded socially, economically, and politically based on gender, caste/ethnicity, and geography. These have their roots in the caste system that still dominates Nepali society and which the Maoists exploited in their platform. While awareness of the problem has risen, little action has been taken to address their root causes. The current political situation has also disenfranchised the formerly active political class, and citizens are generally disaffected and withdrawing from the political sphere.

Nepal has suffered from a chronic lack of **good governance**. Government line ministries have been unable to deliver goods and services to the vast majority of Nepalis; elected officials have been unable to form stable and lasting coalitions in Parliament; grand and petty corruption is endemic; and there is a pervasive lack of security. Leaders are seen as elitist and nonresponsive to the needs of the general public. With the current political crisis there are no elected officials in office² and the king is ruling by decree. The lack of good governance helped fuel the conflict which, in turn, has severely exacerbated governance problems. The security services have been unable to defeat the Maoists, and human rights violations continue to be perpetrated by both sides in the conflict.

The **conflict** affects all of Nepal's efforts to consolidate democracy and provide good governance. It inhibits political party activity and government service provision, encourages anti-democratic tendencies in the monarchy and other actors, and gives impunity to the security services to conduct counter-insurgency. It affects the personal security of citizens and limits the government's ability to safeguard security. It restricts access to justice for average citizens through lack of physical access to court operations and intimidation of judges and witnesses. It also disproportionately impacts already marginalized groups by further restricting their access to resources and exposing them to human rights abuses. Finally, it disrupts economic activity to the extent that growth and development are severely constrained.

ARENAS AND ACTORS

There are three main actors in Nepal: the king, the political parties, and the Maoist insurgency. All three are critical to resolving the democracy and governance crisis and ending the conflict.

² Parliament was dissolved, and the terms of village and district-level committees were left to expire.

The **king's** actions are indicative of intent to restore and maintain the pre-1990 autocratic monarchical system. He has been very adept at marginalizing the opposition and consolidating his position using Article 127 of the constitution as justification. He is currently in a position of dominance, exploiting the widespread respect for the Nepalese monarchy and his control of the security forces and state machinery. However, his unilateral action and uncompromising position are alienating the political parties, politically active civil society and the media, and undermining support for the concept of a constitutional monarchy.

While in power, the **political parties** proved inept at governing and providing a stable government. Now out of power, their primary objective appears to be a return to power. They are led by entrenched leaders with authoritarian holds on their parties. The parties are opportunistic rather than program- or agenda-driven and the current alliance, created in reaction to the king's seizure of power, is unlikely to hold if they should regain power. They appear to be floating the idea of an alliance with the Maoists to leverage the king to restore Parliament, but so far the king appears unconvinced of the need to compromise or negotiate with anyone.

The **Maoists** are seeking to seize state power through violence and terror. Although they give indications of returning to a "bourgeois democratic path" (e.g., one of their demands is for a constituent assembly), their immediate agenda calls for "armed struggle" against the state and they continue to attack soft targets of the Royal Nepalese Army (RNA). They currently have the presence and armed capacity to strike throughout the countryside, and there is little incentive for them to negotiate or disarm. The insurgency has effectively exploited the traditional inequalities within the Nepalese system and the Assessment Team heard sympathetic comments about the Maoists from quite a few of the out-of-power political elites in Kathmandu.

Loyal to the king, the **military** has never had an effective civilian oversight from Parliament, even during the relatively democratic era of the 1990s. In the Team's interviews, the RNA spoke of the need for reconciliation between the parties and the king, and for a negotiated end to the conflict. They are a major actor, both in terms of the conflict and the political situation. Given the growing levels of discontent, it is unlikely that the monarchy could survive as a governing institution without their support. The **police** appeared to be more politicized than the army in that they tend to support whoever is in power. The formation of the **armed police** as an additional security force³ has created another actor but, at present, they appear to be firmly under RNA control.

The higher courts within the **judiciary** have served as one of the few institutional checks on the power of the executive, especially since the appointment of the new Supreme Court Justice in August 2005. However, it is only partially independent and enforcement of its decisions remains a critical constraint. The **bureaucracy** played an important continuity role throughout the political crisis by ensuring the continuation of services to the Kathmandu Valley and district headquarter towns—without which the current system would likely collapse. There is a problem with the executive (and in some locations, military) interference along with the use of the state machinery for political purposes. The conflict has curtailed everyone's ability (NGOs as well as government) to provide services to the vast majority of Nepalis.

The **media** and **civil society** in the Kathmandu Valley and a few district towns are starting to challenge the authority of the king, and are calling upon the parties and the Maoists to resolve the crisis. Civil society organizations working on democracy issues are politicized, and many are politically affiliated. In contrast to the parties, which have failed to attract any serious popular support in their campaign against

³ Before the RNA entered combat in 2002, the armed police had sole responsibility for opposing the Maoists.

autocracy, civil society has shown itself able to mobilize a sizeable constituency demanding a return to constitutional governance. While it is presently out in front, however, this civil society movement is relying on the political parties to resolve the crisis and lead the nation. The news media still face lingering restrictions imposed during the state of emergency, but FM stations and the Kathmandu print media are starting to test these limits. Media in Maoist and RNA-active areas still face serious constraints.

The **international community** has been very active on both the diplomatic and development side of the democracy and governance problems in Nepal. It is focused on a reconciliation of the legitimate political forces, and the restoration of democracy and peace and stability. The main international players are the U.S., the British, the Indians, and the Chinese. The first three are actively urging the principal actors to resolve the crisis and, until the 2005 royal takeover, were providing material assistance to the RNA to fight the insurgency.

CRITICAL ISSUES

Three main issues facing democracy and governance were identified during the Assessment:

- **Lack of commitment to democratic values and systems.** The actions of the three main political actors remain anti-democratic despite their rhetorical support for democracy. The parties' focus is on gaining power while the king is moving to consolidate his power. Maoist propaganda supports bourgeois democracy, but they have not abandoned their armed struggle. Their insurgency feeds on this lack of commitment by other actors and empowers undemocratic tendencies. The general population suffers from this lack of commitment, and most Nepalis have a stronger desire for peace and stability than for democratic governance.
- **Inability of the principal actors and institutions to govern effectively.** This is a systemic problem in Nepal which pre-dated the conflict, helped fuel it, and is exacerbated by it. It is an issue of political will for good governance as well as a lack of human and institutional capacity for good governance. Governments changed frequently, there is little accountability, and the public administration is cumbersome and politicized. The state is unable to ensure equitable service delivery, provide security, protect human rights, prevent corruption, or address impunity. Since assuming direct control of the state, the palace has proven no more able to govern than Parliament.
- **Marginalization and disenfranchisement of large sections of the population.** Since 2002, participants in the democratic dispensation of the 1990s have been increasingly disenfranchised while other groups such as Dalits, Janajatis, and women have always been marginalized. The Maoists have exploited these exclusions, raising their profile and increasing their salience in the public mind. At the same time, the conflict has postponed actions to address them.

RECOMMENDATIONS

Nepal meets the criteria for a fragile state in crisis. These three critical issues are contributing factors to that fragility, and the Assessment Team recommends they be addressed directly in democracy and governance programming. Specifically:

- **Build commitment to an inclusive multiparty democracy** through changing incentive structure, building leadership, increasing demand, and building a national consensus and vision for the future of Nepal. Structural reforms and government/party/civil society collaboration could open space and

create political will for new leadership and better governance. A first priority is to build a national consensus on how to initiate a peace process and how to form Nepal's democratic structures.

- **Strengthen institutional and human capacity for good governance** through institutional strengthening of critical institutions, promoting integrity and accountability, and strengthening enforcement of the rule of law. It is particularly important to strengthen the ability of parties and Parliament to govern and to strengthen enforcement of the rule of law. The parties must be transformed from opportunistic, patronage-driven organizations to governing institutions. The judiciary should be supported as part of the system of checks and balances. Anticorruption and integrity activities should be supported along with CSO and media monitoring and advocacy for transparency, accountability, and responsiveness to constituent needs (including delivery of goods and services).
- **Promoting equality and inclusion** through empowerment and re-engagement of the traditionally marginalized groups as well as the newly disenfranchised groups. This could be done through leadership training, the development of opportunities for advancement, support for CSOs capable of representing and advocating the cause of these groups at the local level, and participation in decision making (especially at the local level). A first priority is restoring the democratic system, holding free and fair elections, and ensuring access to information. Work on inclusion should begin now, but is a long-term effort as it addresses the deep-rooted cleavages within society.

The Assessment Team was able to review the draft 2006-2009 DG Strategy developed by USAID/Nepal. All of the activities the Mission had been considering fell within the three critical areas identified in this Assessment, and the Mission was able to use the Assessment's analytical framework and initial findings in the refinement of its strategy. Among other things, the Assessment Team recommended the Mission consider strengthening political parties in terms of their ability to govern effectively and with a democratic vision; and reinforcing other institutions that offer checks and balances on the executive, in particular, Parliament and the judiciary.

A final consideration needs to be given to the issue of peace. USAID/Nepal should be in a position that it can help facilitate an eventual peace process through its DG programmatic activities, including building constituencies for peace, facilitating negotiations, and discussions on critical issues such as peacekeeping elections or constitutional re-drafting, supporting the demobilization and reintegration of combatants, and channeling former insurgents and their supporters into democratic political processes.

I.0 INTRODUCTION

1.1 ASSESSMENT OBJECTIVES

The Democracy and Governance Assessment of Nepal was commissioned by the Office of Democracy and Governance in USAID/Washington in support of the USAID democracy and governance (DG) program in Nepal. USAID/Nepal is in the process of developing its three-year strategy (2006-2009), and the Assessment findings are intended to inform this strategy development and programming choices.

The Assessment followed USAID's framework for Conducting a DG Assessment:⁴ an analytical tool used to define country-appropriate programs that assist in the transition to and consolidation of democracy. The Assessment Team was composed of five experts in democracy and governance:

- Sue Nelson, Team Leader and expert in post-conflict transitions and DG programming
- Bishnu P. Adhikari, Democracy and Governance Advisor, USAID/Nepal
- Harry W. Blair, Political Scientist and Senior Research Scholar and Lecturer in Political Science at Yale University
- Judith Dunbar, Program Specialist, DCHA/CMM, USAID/Washington
- V. Kate Somvongsiri, Democracy Specialist, DCHA/DG, USAID/Washington.

Methodology

Fieldwork was conducted in Nepal from August 9-25, 2005. Due to the conflict, fieldwork was restricted to the Kathmandu Valley, although the Team was also able to conduct interviews in Pokhara. The Team met with political parties, government officials, constitutional commissions, members of the judiciary, the Royal Nepalese Army (RNA), and political analysts. It also met with civil society organizations (CSOs), journalists, academics, youth leaders, donors, international organizations, and the U.S. and other embassies. (Attachment A). Available documentation and other donor programming was also reviewed (Attachment C).

1.2 BACKGROUND

Nepal has had a turbulent political history since its establishment as a kingdom in 1768 by an expansionist Gorkha king⁵ (King Shah). A member of one of the noble families seized power in 1846 starting a dynasty of "Rana" prime ministers that ran the Shah kingdom until 1950. Then the Rana regime was forced to share power with the king and the Nepali Congress political party. The king was able to consolidate his position within the new government and, within 12 years, had instituted a new constitution based on a Panchayat (council) form of government. This system extended palace rule from the national

⁴ USAID, *Conducting a DG Assessment: A Framework for Strategy Development*, 2000.

⁵ Gorkha is an area west of Kathmandu.

level down to zones and districts to villages and towns.⁶ Political parties were banned, and all executive power was held by the king.

This system of government collapsed in 1990 from street protests and the worldwide wave of democratization that followed the fall of the Soviet Union. This resulted in the adoption of a 1990 constitution making Nepal a constitutional monarchy based on a multiparty democracy. The constitution was drafted by a Constitution Recommendation Commission of palace and party lawyers, but had limited public input. The monarch was able to maintain ambiguity in some of the clauses within the constitution which he has effectively exploited since—including his role as commander in chief of the armed forces, and the wording of Article 127 which says “*Power to Remove Difficulties: If any difficulty arises in connection with the implementation of this constitution, His Majesty may issue Orders to remove such difficulty and such Orders shall be laid before the Parliament.*”

As detailed in Section III, Nepal functioned under this constitutional arrangement until 2002, albeit unevenly and with little good governance. Even the elected majority governments were unable to maintain a government, and parliaments were dissolved and prime ministers changed frequently (Annex 3). In 2002, the king dismissed the prime minister (after the latter dissolved Parliament) and ruled through interim governments and appointed prime ministers until he took all power in February 2005. He declared a state of emergency and suspended many civil liberties. The emergency has since been lifted, but the king continues to consolidate his autocratic rule.

Nepal’s governance problems have been compounded by a growing Maoist insurgency. Started in 1996 by dissident ultra-leftist politicians, the insurgency has grown to affect over 80 percent of the countryside and, by 2005, had killed over 12,000 people. Initially the Maoists were able to garner some support in rural regions with their inclusive political platform. As the conflict and atrocities intensified, however, the rural populations became increasingly alienated from both the Maoists and the government.

Nepal still has a caste system that impedes the development of a government that represents all interests. Although there are a few encouraging signs, such as high primary school enrollment rates for women,⁷ there are few concrete opportunities for marginalized groups to access the resources, including political power, necessary to address their needs.

Although it made significant economic strides under its democratic constitution and subsequent liberalization, Nepal remains a poor country. Estimated per capita income is \$300, and rural farmers are still about 80 percent of Nepal’s 24 million people. More than 50 percent of Nepal’s population is landless or nearly landless.⁸ Rapid urbanization brought about by high levels of unemployment and the insurgency is almost 7 percent a year—the highest migration figure in South Asia.⁹

⁶ After a brief flirtation with multiparty democracy at the end of the 1950s.

⁷ The World Bank, “Nepal at a Glance,” *Human Development Report 2004*.

⁸ USAID/Nepal.

⁹ Environment and Public Health Organizations, *Nepal Country Report*, 2001.

2.0 DEFINING THE DEMOCRACY AND GOVERNANCE PROBLEM

2.1 CONSENSUS

For any political system to function over time, even at the most rudimentary level, there must be some basic agreement on the “operating rules of the game.” The principal players must subscribe to some common set of working rules for dealing with each other. For most of Nepal’s past, such an agreement has been in effect, but this is clearly not the case today.

During the Panchayat system, there was a kind of de facto consensus, under which the king and palace managed the polity in their own interest, operating under a barely disguised smokescreen of local participatory input while the political parties stewed in impotent dissatisfaction with their leaders either in jail, underground, or self-exiled in India. This was scarcely a democratic system, but things stayed on a more or less even keel.

With the democratic transition of 1990, a new consensus came into being, under which an elected parliament run by political parties would manage most of the affairs of state while certain critical domains remained under the monarch’s control, namely the army and a residual royal prerogative to intervene as needed to protect the constitution (Article 127).

This arrangement began to sag almost immediately under the weight of parties pursuing a politics of opportunism and feuding among themselves over the spoils of office. Within five years, one ultra-left party split off from the system, launching the violent rural insurrection that quickly picked up steam against an incompetent parliament and an indifferent palace. In 2002, the palace belatedly moved into the political arena firing the prime minister, deploying the army, and, in 2005, by taking over all executive power himself.

The outcome is an almost complete lack of consensus among the three principal political power centers in Nepal, and a lack of agreement among the people of Nepal on the future of democratic governance and how to achieve consensus. Each of the three main actors has formulated a goal that is incompatible with the goals of the other two players, and for each, that main goal has become in effect its only objective. In brief:

- *King*: Consolidate autocratic power and freeze out other actors;
- *Parties*: Restore “multiparty democracy,” manage state power for personal and partisan interests, and promote development as a secondary objective; and
- *Maoists*: Seize state power by force and establish a “people’s democratic dictatorship” bypassing the “bourgeois democratic” stage.

At the time of the Assessment, none of these three actors appeared willing to make significant moves towards consensus. The three-month cease-fire and offers to start negotiations with the political parties and/or the king announced by the Maoists after the Assessment (in early September 2005) may offer a window for changing the present crisis into an opportunity to work out a settlement and to build a new consensus around peace. The RNA has already come to the conclusion that a military solution is not possible and that the only solution is a negotiated solution.¹⁰ NDI research shows that 36 percent of Nepalis think the king needs to change for peace to happen, with 71 percent¹¹ believing peace talks are the best solution for the Maoist situation.

As discussed more fully in Section 4.0, the lack of consensus and *the lack of commitment for democratic values and systems is one of the three critical issues identified during this Democracy and Governance Assessment.*

2.2 RULE OF LAW

The rule of law in Nepal has been severely weakened by the conflict and has suffered even greater setbacks after the 2005 declaration of emergency. Although the courts are still functioning and the legal frameworks are adequate in terms of legal provisions, the lack of enforcement and the king's misuse of the constitution to consolidate his power is undermining the rule of law. The ongoing conflict has also limited the reach of the official justice system and police force to the Kathmandu Valley and district capitals.

As a result, most citizens cannot rely upon the law or the state's ability to uphold the law or provide security. The state itself can also threaten personal security. During the state of emergency, over 3,000 party activists were detained or arrested. High-profile cases included political party leaders and former prime ministers, some of whom were released within nine days, but others spent up to six months in detention. In addition, the RNA is accused of acting with impunity, justifying its actions by its need to combat the terrorist threat of the Maoists.

In government-controlled areas, the justice system is one of the few remaining functioning democratic institutions. In these areas, there is some semblance of law and order, and the courts and police are present and working, though the Team heard that, in some outlying towns where district courts are located, judges have come under RNA pressure to be cooperative in the anti-Maoist campaign. The judiciary is widely perceived as relatively independent and enjoys the greatest degree of popular legitimacy and confidence.¹² Despite problems of efficiency and effectiveness, the courts hear cases and make decisions—usually without interference. A key challenge is the enforcement of their decisions. This is a lack of institutional capacity problem as well as a decided lack of political will to enforce decisions that rule against the government.¹³

¹⁰ Assessment interviews with the RNA.

¹¹ NDI, *Results from the Second Wave of Survey Research, 2005.*

¹² Hachhethu, "State of Democracy in Nepal Survey Report" survey data from July 2004, which was still heard during Assessment interviews.

¹³ Although the Assessment heard that things were getting better, especially since the seating of the new Supreme Court Justice who is proactive and appears to be relatively independent.

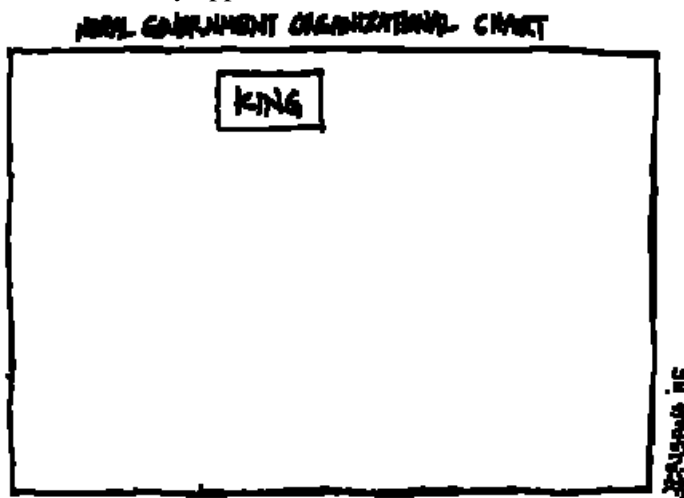
Access to justice is a serious issue which has been aggravated by the conflict. For example, physical access to courts is severely restricted for villagers who do not have the freedom of movement to go to district headquarters where courts are located. Even if that barrier is overcome, justice can still be elusive for the poor and marginalized who cannot afford court fees and the often requisite bribes. Human rights and access to justice problems pre-date the conflict, in particular in terms of caste and gender discrimination.

The lack of rule of law has created an environment where human rights abuses can go unchecked. Serious violations have occurred as a direct result of the conflict including torture, disappearances, and summary executions. There were some attempts by the National Human Rights Commission to tackle these issues which are receiving greater attention now with the inception of the UN High Commissioner for Human Rights (UNHCHR) monitoring mission in Nepal. UNHCHR is starting to work closely with the RNA on issues such as the detention of Maoists, and the RNA appears to be receptive and wanting to improve its public image. UNHCHR is attempting to gain access to Maoists, and hopes to use public disclosure as a means to deter the worst violations which still occur on a regular basis.

2.3 COMPETITION

There is little institutional competition of interests. The king has taken over all executive and legislative functions and, without elections or a sitting parliament, there is no competition of interests in such things as the making of public policy, regulations, or legislation. This is also true at the local level where the terms of office have expired and these offices are now filled by appointees and bureaucrats.

The king announced that municipal elections would be held before April 2006, and the National Election Commission appears to be getting ready to administer them. Although the Commission is rusty and has had some turnover in staff, from previous experience, it can be expected that it will be able to organize and hold reliable elections. However, given the current political crisis and the security situation, the playing field will not be level and participation will be a critical issue. Most political parties claim they will boycott the elections until the issue of national competition (i.e., the restoration of Parliament) is resolved along with



— Cartoon from HIMAL SOUTHASIAN, August 2005

constitutional issues such as the division of powers. Without widespread consensus on the basic form of government, it will be hard to hold a credible election even if they are adequately administered and open to all parties' participation. Additionally, with the uncertain security conditions, marginalized and disaffected citizens are unlikely to turn out and vote in any great number.

If the municipal elections are held, some parties can be expected to compete despite their current rhetoric, especially the loyalist or the never-in-power parties. Municipal elections would only reach about 17 percent of the population, but experts say other local elections (Village Development Committees and District Committees) are not possible because of the security situation. The Maoists have also demanded a constituent assembly before elections are held and currently can be expected to disrupt any electoral

process. There is no competition within Maoist areas as they operate on a top-down hierarchical system¹⁴ and maintain influence over the vast rural areas through the use of force.

The competition of ideas in the media was relatively free until the state of emergency when censorship and intimidation became critical issues. Although things have eased in Kathmandu, and in particular for the English-language media, the press outside of Kathmandu still faces restrictions and pressure from government and army officials. Civil society organizations within Kathmandu have shown a remarkable degree of freedom to criticize the king and the current situation. There is a growing protest movement, spearheaded by civil society and students. Although the scope of these demonstrations is still limited in terms of numbers and geographic locations, they are growing in size and intensity. These demonstrations can be expected to increase as long as the formal competition mechanisms remain closed and could potentially escalate the crisis if demonstrators were injured or killed by security forces (or Maoist infiltrators).

2.4 INCLUSION

Nepal is a multi-cultural and multi-ethnic society with more than 75 ethnic groups and over 50 languages.¹⁵ However, even centuries after unification, Nepal has yet to form a unified state where all groups have equal opportunity and treatment. The 1990 constitution makes Nepal a Hindu state and Nepali the official language, with other indigenous languages classified as “national” languages. It is noteworthy, given the circumstances, that the conflict in Nepal has not escalated into an ethnic conflict and that most Nepalese have a sense of national identity despite serious marginalization.

Although the constitution prohibits caste-based discrimination, disadvantaged groups, such as women, Dalits (low-caste ‘untouchables’), and Janajati (indigenous ethnic groups outside the Hindu caste system) have long been excluded from social, political, and economic life. In general, problems that impact Dalits or Janajati may impact women in these groups more than men, so integrating gender perspectives into DG programming is essential. With the advent of a democratic constitution based on concepts of equality, inclusion has become a political hot topic and one exploited by the Maoists. The current political crisis—the former political elite having been disenfranchised from power—adds a new dimension to the old problem and increases the percentage of population excluded or marginalized from the political processes.

Inclusion problems have their roots in the caste system that still dominates Nepali society. In Nepal’s caste system, Dalits are “untouchables,” which carries a strong social stigma and precludes them from most economic and social activities (including, in many cases, limiting them to certain undesirable jobs). As seen in Table 1, only four Dalits were in the 1999 government—all in nominated positions in the upper house of Parliament. The Janajati are a step above Dalits, but both groups are excluded from political life and have little access to resources. In recent months, preparations for the wave of political party congresses (held on an average of every five years) focused a great deal of the discussion on the internal structure of political parties and the need to provide opportunities for marginalized groups, including youth, within the leadership structure. Although the parties are widely criticized for their lack of inclusion and internal democracy, they are reflective of society as a whole. Changing the ingrained patterns of behavior in Nepali society will require long-term systemic reforms and attitudinal changes among Nepali citizens.

¹⁴ Although the Assessment Team heard of widening rifts between the top leaders within the Maoists.

¹⁵ State Department, *Human Rights Report, Nepal 2004*.

The Maoist platform recognized and integrated these issues of exclusion. While this platform attracted some members of these underprivileged groups, it left them vulnerable and caught in the middle—forced into recruitment by the Maoists on the one side, and attacked by the RNA on the other which perceived them as potential Maoists. One report stated that the RNA targeted Dalits in villages because they were reportedly sympathetic to the Maoists.¹⁷ The Team heard other such stories repeated during interviews.

While awareness has significantly increased, little action has been taken to address the root causes of inequality and exclusion. ***The lack of inclusion and the marginalization and disenfranchisement of large sections of the population is the second critical issue identified during this Democracy and Governance Assessment.*** This issue is more fully discussed in Section 4.0.

TABLE 1. REPRESENTATION IN GOVERNMENT (1999)¹⁶

Institution	Hill High Caste	Newar	Madhesi	Hill Ethnic	Dalit	Total
Constitutional Bodies	14	6	3	2	-	25
Council of Ministers	20	3	5	4	-	32
Judiciary	181	32	18	4	-	235
Legislature	158	20	46	36	4	265
Civil Administration	190	43	9	3	-	245
Political Party Leaders	97	18	26	25	-	166
DDC Chair/Mayors	106	30	31	23	-	190
Civil Society Leaders	41	8	4	1	-	54
Total	808	160	142	98	4	1,212
As percent of total population	32%	6%	31%	22%	9%	100%
Percent of Government positions	67%	13%	12%	8%	.3%	100%

2.5 GOVERNANCE

Nepal has been in a governance crisis for years. Parties elected under the 1990 constitution were unable to govern effectively, and their governments were unstable and brought down by intra-party bickering. Most government line ministries and their subordinate institutions are unable to effectively deliver goods and services to the vast majority of Nepalis. The civil service is seriously outdated and inefficient, although it has been able to provide continuity and some level of services throughout the current governing crisis. Without Parliament, there is little oversight and no national vision. Grand and petty corruption is widespread (Annex 7) and transparency, accountability, and responsiveness are serious governance issues.

The nine year insurgency has created serious problems in terms of access to and disruption of government services. For the most part, the Nepalese government and its services are not present in Maoist-controlled areas, and the Maoists have substituted their own institutions for those of the government.

The governance problems stem from a lack of institutional and human capacity, and a lack of understanding and commitment to the concept of good governance. The exclusionary nature of Nepalese society contributes to the lack of political will for good governance and enables a pervasive system of cronyism and corruption. The lack of good governance helped fuel the conflict which, in turn, exacerbated governance problems, creating a pernicious cycle that perpetuates bad governance and disillusionment among citizens. Nepalis are well aware of the governance problems. More than two-thirds believe political party leaders are more interested in their own personal and party interests than they are in

¹⁶ Table adapted from Gurung, *Affirmative Action in the Nepalese Context*, 2004. Percentages are rounded.

¹⁷ Center for Human Rights and Global Justice, *The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal*, 2005.

the national interest. Forty-three (43) percent think the governance situation has worsened since the king took over in 2002.¹⁸

The inability of the principal actors and institutions to govern effectively was identified as the third critical issue during this Democracy and Governance Assessment, and this issue is more fully discussed in Section 4.0.

¹⁸ An even more worrisome finding in this 2004 State of Democracy in Nepal Survey was the inability of respondents to understand basic questions of democracy and governance. For example, 39 percent of respondents did not understand the question about the King and whether things were better or worse since he took over—and this lack of understanding was endemic through out the survey results. The magnitude of the “could not understand” is among the survey’s most critical findings and illustrates the immediate need for massive civic education and informational campaigns (and for ones with substance, not sound bites).

3.0 ARENAS AND ACTORS

3.1 THE LEGAL ARENA

3.1.1 Constitutional Sphere

Although the **1990 constitution** is considered by legal experts as an adequate document that can protect a democratic system and its values, there has been a decided lack of political will since 2002 to respect its provisions. This situation worsened significantly when the king assumed executive power in 2005.

The constitution calls for a constitutional monarchy with a multiparty democratic system and three branches of government. Among other things, it guarantees a wide range of rights and freedoms. The defender and interpreter of the constitution is the Supreme Court, but the constitution has only been partially respected. Parliament has not been seated since 2002 and only the executive and judicial branches are currently functioning. The lack of an elected government and the king's continuing unilateral actions (justified through the use of Article 127) are raising serious questions within the Nepali political community about the adequacy of the constitution to protect a democratic system of governance.

Many posit that the king has breached the constitution. For example, there is no constitutional provision for a chairman as the executive head of government (which the king assumed in 2005) and the national elections are three years overdue.¹⁹ There is, however, no consensus on how to address this issue. Some groups (such as the Bar Association) talk of amending and strengthening provisions within the existing constitution. Others want an entirely new constitution. Each actor has its own conditions and priorities. For instance, the alliance of seven political parties wants a restoration of the former parliament before any action is taken, while the Maoists want a constituent assembly before a government is elected. The king's continuing actions to consolidate his power have an anti-democratic flavor that is starting to fuel demands for a republican form of government. The longer he continues to operate unilaterally, the more he appears to be undermining popular support for a constitutional monarchy.

The Assessment Team believes that changing the letter of the constitution will not resolve these fundamental issues because the primary problem is the lack of political will to respect the spirit of the constitution (discussed in more depth in Section 4.0). This does not mean that there are not some issues within the constitution that should be revisited when the political crisis has abated—issues such as references to religion and language, the majoritarian vs. proportional type of representation, clarifying the role of the monarchy, and ensuring civilian control over the military.

¹⁹ Since the dissolution of Parliament in 2002.

3.1.2 Judicial Sphere

Despite being adversely affected by the political crisis and the ongoing conflict, the judicial system appears to be functioning and the judiciary has exhibited some signs of independence, using its authority to uphold some basic constitutional rights. Enforcement of decisions is a significant issue as is the backlog of cases.

The constitution provides for an **independent judiciary** that upholds the laws and functions as a check on the other branches of government. The strongest examples of judicial independence have come in the form of decisions that have contradicted or reversed decisions of the executive branch: issuing writs of habeas corpus for citizens arrested following the state of emergency and in preserving the FM stations' right to broadcast news. There have been charges of interference with the judiciary in high-profile cases. Nevertheless, in the past three years, the judiciary has continued to function and dispense justice, at least in urban areas. This has been appreciated by the public, and the judiciary was the institution most often cited during interviews as having the highest degree of public confidence and legitimacy.

The **Judicial Council**, comprised of the Chief Justice of the Supreme Court, the Minister of Justice, the two most senior judges of the Supreme Court, and a judicial scholar, is responsible for appointments, transfers, and promotions of judges as well as other administrative issues. Some have accused the appointments of being a system of patronage. Of over 200 judges in Nepal, only five are women and there are complaints that it is much more difficult for women to advance in the profession.

Enforcement of decisions, particularly in high-profile cases that implicate those in power, is more of a problem—one that is directly related to the issue of political will. In the present environment, however, enforcement of regular cases is also difficult. Due to the security situation, police and court officials have limited access to areas beyond district headquarters. There are communication and coordination problems on handling cases among the police, prosecutors, and courts. There are also serious issues of institutional and human capabilities and capacity. Processes are lengthy and burdensome, and corruption appears to be a problem. For instance, some suspects spend more time in pre-trial detention than if they had been convicted of the crime. Except for a few courts from the mountain districts, all courts have large backlogs—the Supreme Court alone has a backlog of over 17,000 cases.²⁰

The RNA is governed by its own system of **military courts**, and the nature of its proceedings and outcomes are largely unknown to the public. Military personnel are immune from prosecution in civilian courts and civilians cannot be tried in military courts. One issue is the public security laws adopted because of the insurgency. These include the Public Security Act and the Terrorism and Disruptive Act of 2002 (TADA) which was designed to detain suspects for up to six months without charge. TADA expired in 2004 but has been kept in force as an ordinance with the government extending the detention time to one year without trial.²¹

Structure of the Courts. Nepal has a three-tiered court system, with district courts in each of the 75 districts, 16 appellate courts, and one supreme court. Because of the conflict, district courts receive and process fewer cases every year, as court staff are unable to issue summons, and plaintiffs, witnesses, and others find it difficult to reach the courts. These “no shows” have led to long delays and a growing case

²⁰ Assessment Team interview with the Supreme Court.

²¹ Freedom House, *Freedom in the World, Nepal, 2005*.

backlog. In some areas, the Maoists have prevented disputants from coming to the government court system and handle disputes through their own “people’s courts.”²² Even more prevalent are the number of people who use informal or customary mechanisms to settle disputes rather than access the formal justice system.

The lower-level courts are relatively shielded from political influences just by the nature of their cases and their location. However, the Assessment heard reports of interference by local bureaucrats (who report to the central-level executive) and from the RNA if stationed nearby.

In the current political crisis, the **Supreme Court** is the most critical institution. Supreme Court judges (one chief and up to 14 judges) are appointed by the king upon recommendation of the Judicial Council. The court has remained relatively apolitical and is attempting to lead the judicial branch in acting as an important check on the power of the executive. It also sets the tone for lower courts and provides precedents that uphold the constitution. The position of Supreme Court Chief Justice also appears to be critical—the new Chief Justice has been proactive since his recent appointment, promising to hear the politically sensitive case on the restoration of Parliament. The court also has a few strong reformist justices who have been upholding the fundamental rights of citizens, including the FM stations’ right to broadcast news.

Nepal also has a number of **special courts**. One is for cases of official **corruption and treason** which are heard by the special court as the first court of hearing. This special court handles cases referred directly by the Committee to Investigate Abuse of Authority (CIAA). It was established three years ago to tackle the pervasive problem of corruption in Nepal. It is a one-bench court with three sitting judges of indeterminate tenure, all of whom are appointed by the Judicial Council from the appellate courts. It currently has 213 pending cases on corruption—most dealing with “property” issues (bribery). Other cases include fake certificates (for civil service entry/promotion), misappropriations, and bank fraud. The conviction rate is high at 81 percent though enforcement of decisions is a challenge. There have been several convictions of high-profile persons, but there is a visible lack of political will to enforce these decisions. The district courts are responsible for enforcement. Another challenge is resolving the cases within the six-month time limit. To date, only nine cases have been heard on treason.

Five **appellate courts**, one from each of the five development regions, have been assigned to hear the Terrorist (Maoist) cases by empowering them with special provisions. Procedures within these courts are the same as in regular courts, with police responsible for investigation. One of the problems has been the difficulty in accessing the special courts which can be in far-away districts. The government will be increasing the number of courts to 15 to address this issue. The Team also found that these courts are under pressure from the RNA and law enforcement agencies to convict the suspected Maoists. The courts, however, were found to have acquitted almost all of the suspects, citing the absence of adequate evidence and witnesses. Because of this, the RNA has been reluctant to hand over detainees to the police and produce the suspects in court. As a result, large numbers of detainees are believed to be languishing in the army barracks.

Another issue was a pervasive feeling of insecurity surrounding these trials. Witnesses are reluctant to testify and judges are nervous. The courts have asked the Home Ministry to assist with security arrangements. This process could use some technical assistance from those with experience dealing with these types of trials. The Team heard contradictory stories on the security of judges and prosecutors in general. For some, it does not appear to be a major issue, while others thought it was a serious problem in

²² However, there are no structurally established “people’s courts.”

conflict areas.²³ There is no judicial police, and the judiciary is dependent on the national police force for protection and security.

Office of the Attorney General. This is an independent constitutional body with the Attorney General appointed by the king upon recommendation by the Constitutional Council. He is the chief legal advisor responsible for providing advice on legal and constitutional matters to the government and for representing them in suits. The Attorney General's office is made up of about 232 prosecutors, only two of which are women. It has a conviction rate of 50 percent at the district court level, 17 percent at the appeal court level, and 40 percent at the supreme court level.²⁴

There was no indication during interviews that the government prosecutors were particularly politicized. The current Attorney General appears to be a respected technocrat, and issues surrounding this office seem to be more technical than political, such as a general need to provide training for prosecutors and judges, improve the investigative capacity of the police, improve communications with judges, and improve physical infrastructure.

Bar Association. The Nepal Bar Association is an active professional association that has been a civil society leader pushing the democracy movement in Kathmandu. It has criticized the king for his use of Article 127 and seizing of power, and is searching for the middle ground between the king and the parties. The Bar Association president may have personal political ambitions following the resolution of the crisis, however the Bar appears to see itself as a democratic force that either supports the judiciary in its work or acts as a check on it depending upon the nature of the case. The relationship between the Bar and the judiciary at the national level seems dependent upon individual appointments.

3.2 COMPETITIVE ARENA

There is little institutional competition of interests in Nepal. Power is concentrated in the king who has assumed both legislative and executive functions and who is currently extending his control into local government. The only check and balance mechanisms are the courts, aided by civil society and the media. Parties have proven to be ineffectual at getting back into the formal competitive arena, and Parliament remains dissolved.

The basic rights needed to compete freely and fairly in a democratic political system are protected in the constitution, such as the right to association, freedom of movement, and right to form a political party as well as universal suffrage. The electoral system is based on a multiparty parliamentary system with an elected national lower house (House of Representatives) using a first-past-the-post system. This system has resulted in only a few parties dominating the elections (Table 2). One of the constitutional questions currently being discussed is whether a proportional system of representation (PR) or a mixture of the PR and majoritarian systems would be more fair. Exclusion is a critical issue within Nepal and some variation of a proportional system might be an effective means to help develop a more inclusive political system. (Annex 5).

²³ The Supreme Court told the Assessment Team that 13 district courts had been destroyed in the insurgency.

²⁴ Interview with the Attorney General.

3.2.1 Electoral Sphere

The electoral administration appears capable of administering a relatively acceptable election. The primary challenge facing the electoral process is developing a political consensus between the parties and the palace on the conditions under which the elections should be held (i.e., whether it is dependent on the restoration of the 1999 parliament or on the resolution of certain constitutional issues raised by the parties).

The **Election Commission** administers the elections, and is made up of a policy body of four commissioners headed by a Chief Election Commissioner and a secretariat headed by a Secretary that administers the elections. The commissioners are appointed by the king upon recommendation of the Constitutional Council. The Election Commission has District Election Offices in all 75 district capitals²⁵ and a total staff of 474. These are career civil servants who are augmented by other public servants during elections. Rotation of civil servants into and out of the Election Commission can be an issue (loss of expertise and institutional memory between elections), although it appears that some of the core technical staff (such as IT personnel) remain within the system and provide some continuity.

The Commission maintains a permanent voter role which they update annually. They attempted a pilot computerized voter registration/card system but it suffered from many logistical difficulties. Given the magnitude of Nepal's DG problems, the Assessment Team recommends support to the Election Commission Secretariat (once political consensus has been reached on the timing and nature of the elections) to help ensure that those elections meet basic international standards. However, technical support to complete such things as computerized registration is not among Nepal's most immediate needs.

National elections are on a five-year cycle with elections held in 1991, 1994,²⁶ and 1999. When the House was again dissolved in 2002, mid-term elections were supposed to have been held, but this has not yet occurred. Nepal has over 12 million registered voters and voter turnout has remained steady at around 60 percent (Annex 5). The elections in 1999 were widely perceived as fair by the voters (59 percent fair as opposed to 24 percent unfair).²⁷ The number of parties contesting the elections has continued to grow as the number of registered parties has grown (from 44 in 1991 to 100 in 1999), but the number of parties that win the elections continued to decline (Table 2).

There is a legal requirement that 5 percent of party candidates be women, but only a fraction of these (10 percent) actually win—the 1999 House of Representatives was 95 percent male. Some discussion was heard during the Assessment on the need to increase women's representation. One of the most often-heard remedies was increasing the quota or setting a reservation for women and other disadvantaged groups. Elected parliamentarians have also not been representative in terms of caste or ethnicity. High-caste Hindus from the hills held more than 60 percent of the seats (but make up only about 30 percent of the population).²⁸ Some groups, such as the Tarai Dalit, have never had a seat in the House (Table 3).

²⁵ Although perhaps only 30 are currently operating. For the remainder, the Chief District Officer is appointed by the Commission as the Chief Voters Registration Office and the VDC/Municipal Ward Secretaries update the voter lists in their areas.

²⁶ Midterm elections were held in 1994 after the dissolution of Parliament by the incumbent government.

²⁷ Hachhethu, *Op. cit.*

²⁸ Both houses.

Local elections are held every five years for 58 municipalities (with a total of 4,146 elected members), 3,913 Village Development Committees (total of 183,911 elected members), and 75 District Development Committees (1,077 elected members). The first elections were held in 1992 and then again in 1997. The elections scheduled for 2002 have not yet been held leaving these elected offices vacant.

In addition to the critical need to develop political consensus on the nature and timing of the next elections, there are several systemic issues that will affect the **freeness and fairness** of the electoral competition, including:

- *Neutrality election administration.* The king appointed the members of the Election Commission in 2002 after rejecting the first round of nominees from the Constitutional Council.²⁹ In 2005, the king changed many top civil service and political appointees, including the Election Commission Secretary. There is a historical perception that those who control the electoral apparatus do so for their own benefit and, as a result, even if these were routine transfers, their timing makes this an issue for the next elections.
- *Use of state machinery for electoral purposes.* The state apparatus has a national reach (although currently limited due to the conflict) and includes all of the items needed for effective campaigning— personnel, transport, communications, media outlets, and funding. This has been an issue in the past, and takes on new dimensions in a future election given the increased visibility and activity of the RNA and armed police which can also be perceived as intimidating.
- *Citizenship and who is eligible to vote* along with the massive disenfranchisement of voters created by large-scale displacements. By law, only a Nepali whose father is a Nepali citizen is entitled to citizenship and voters can only register at their permanent residential district (traditionally a hometown). They can re-register, but they must initiate this, which will require a permanent residence that includes land entitlement plus a house (and a good public information campaign).
- *Campaign finance* and the need for its reform and enforcement (Section 3.2.2)
- *Monitoring.* It was difficult to get a sense of the parties' ability to effectively protect their interests through monitoring as interviews provided conflicting stories but, in all probability, capability is low. Ensuring parties are able to effectively monitor the process is critical to ensuring its freeness and fairness as the self-interested monitoring of each party helps ensure the integrity of the process as a whole.
- *Election security.* Free and fair competition is difficult in an environment of insecurity and intimidation. With the conflict and the increasing polarization of citizens, security and intimidation are issues. Although violence was limited in previous elections, there were inter-party clashes that led to deaths and Maoist violence postponed polling in many districts. Citizens overwhelmingly identified the security situation as the reason they would be unlikely to vote in the next elections (Annex 5).

²⁹ And after having dismissed the elected prime minister.

3.2.2 Parties

Only a fraction of the 100 registered political parties are viable and even fewer have had any success at the polls (Table 2). Most successful parties had their roots in the 1950s and were active players in the struggle for democracy. The Nepali Congress won a two-thirds majority in Nepal's first elections held in 1959 and then went underground when the king banned parties in 1960. The Nepali Congress again won the multiparty elections in 1991, but its intra-party problems led to the House's dissolution and the mid-term election win by the Communist Party of Nepal/United Marxist-Leninist (CPN-UML) in 1994.

As in so many countries passing the initial transition out of authoritarianism to democracy, the parties (and hence the Parliament) could not move from an opposition mode to one of governing. Matured by decades of unrewarded efforts to challenge the palace's domination of the political scene, the parties proved unable to take charge once they found themselves the governors rather than the opposition. Crafting policy agendas and translating such plans into policies and implementation proved beyond them. These shortcomings were compounded by the sense of entitlement characterizing party leaders after their three decades in the political wilderness during the Panchayat era, when they languished either in Nepali jails or in Indian exile. They assumed that their credentials earned by struggle entitled them to rule as de facto (or even de jure) sultans, once they had garnered the votes, and to enjoy sultanic privileges and patronage.

These counterproductive characteristics not surprisingly led the parties to competition for the spoils of office and corruption, instead of competition in terms of agendas and programmatic priorities. The consequences were all distinctly unhappy. First, there were the rapid changes in governments in the mid-to later 1990s, as parliamentarians shifted from one coalition to another—altogether the country had over a dozen governments between 1991 and the king's takeover in 2005. Second, the Maoists, who had participated in electoral politics, grew increasingly disaffected with the extant system and abandoned it in favor of armed insurrection (though their turn to violence cannot be explained totally in terms of parliamentary incompetence). Finally, the public became alienated, to the extent that a 2004 opinion survey showed the parties ranking last among institutions in which citizens reported “a great deal of trust”—even the police scored higher, probably a landmark in South Asia.³⁰

TABLE 2: SEATS IN HOUSE OF REPRESENTATIVE

Party	1991	1994	1999
Nepali Congress	110	83	111
Nepal Communist Party (UML)	69	88	71
Rastriya Prajatantra Party (Chand)	2	-	
Rastriya Prajantra Party (Thapa)	1	20	
Rastriya Prajantra Party			11
Nepal Sadbhawan Party	6	3	5
Nepal Majdoor Kisan Party	2	4	1
Samyukta Janamorcha Nepal	9	-	1
Communist Party of Nepal (Democratic)	2	-	-
Rastriya Janamorcha	-	-	5
Independent	3	7	-
Total	205	205	205

Today, most party leaders continue to maintain autocratic control over their parties and policies. Many of the next generation leaders are now late middle-aged and resentful of their inability to move into top leadership or to have a substantive voice within their party. Although they are disaffected and resentful, very few leave the parties. When the Team asked about

³⁰ Only 13.7 percent of respondents reported “a great deal of trust” in parties, with Parliament scoring second lowest at 17.4 percent, followed by the police at 21.0 percent. Highest was the court system at 29.8 percent. Hachhethu, *Op. cit.*

this, they said they had joined the parties as youths, indicating that being a party member had become part of their identity. Ethnic groups are also underrepresented, especially when it comes to candidates and party leadership positions. There is no alternative to these catch-all parties—the constitution bans parties based along religious, caste, ethnic, tribal, or regional lines.

Parties are not responsive to their constituents and have credibility problems with the voters. Only 2.3 percent of voters regularly participate in parties and only 3.2 percent participate occasionally.³¹ Corruption within parties is another serious concern. One of the issues heard repeatedly was the need for party reform and clean-up, but that this needed to wait until the parties were back in power—the fear being that, if parties were scrutinized for their corruption or undemocratic leadership now, it would damage their credibility and ability to restore democracy.

According to NDI survey research, if elections were held today, UML would be in the lead, with or without the Maoists participating, NC and RPP would come in second and third respectively, and the Maoists would get 5 percent of the vote.

CHART 2: PERCENTAGE OF POTENTIAL VOTES WITH/WITHOUT MAOISTS PARTICIPATING³²

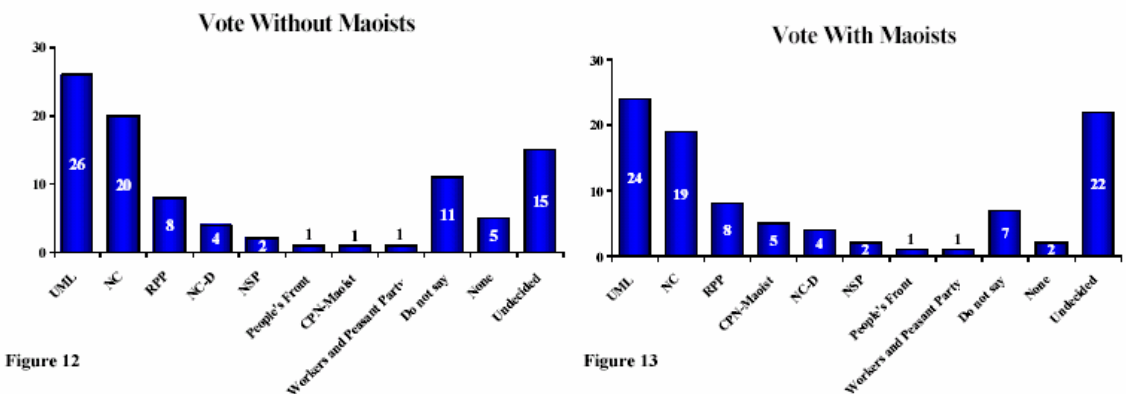


Figure 12

Figure 13

Party Structures and Vision. Parties have some ideological identity and can be placed along the political spectrum. However, the vision for most parties appears to be that of their principal party leader. For the most part, party charters and procedures are democratically conceived and written, and parties have organizational structures and governing bodies in place. In practice, however, the democratic substance is ignored. The parties are opportunistic and their current alliance has a single goal: getting back in power by restoring the 1999 parliament. This was their focus in all of their Assessment interviews. Constitutional change, peace, and other social-economic issues took a distant second seat. None discussed ideology or its vision for the future of Nepal.

Since the Maoist conflict took hold, it has been difficult for parties to do any grassroots work. Their district-level cadre have been attacked and harassed, and party activities have been limited to the district capitals and Kathmandu Valley. Disadvantaged groups face structural disincentives to participating in parties. Using the example of party dues, the CPN/UML charges NPR 2, or US\$ 0.03, a month for a regular member. For the bottom 20 percent of Nepalese society, this works out to a hefty 23 percent of their daily income (Annex 5).

³¹ Ibid.

³² NDI, *Report on the Second Wave of Research*, 2005.

Political **party financing** and campaign finance regulations need a serious overhaul to make them more comprehensive, enforceable, and transparent. Parties said they earned the bulk of their normal operating funding through membership dues, which are applied on a sliding scale. Regular members pay the lowest fees, active members pay slightly more, and elected members more depending on their office. Members of Parliament can pay as much as NPR 5,000 a month in party dues. Parties were reluctant to discuss other sources or methods of financing, but analysts noted that competition among political parties was new to Nepal and that, in 1991, the parties entered into serious competition with each other to raise funds from business people who naturally wanted something back in return, thus opening the door to corruption.³³

Seven Party Alliance. The king's actions since February 2005 have served to unite most parties and hardened their positions against him. In May 2005, seven parties entered into an alliance to work for the “*restoration of democracy and lasting peace.*”³⁴ Seeing Nepal as the victim of right extremists “*born of the direct rule of the king*” and the “*ultra-left extremism of the CPN-Maoists, the alliance seeks to restore the path of constitutional and representative democratic governance.*”³⁵ In the absence of an elected government, the alliance sees the political parties as the people's representative. In particular, the alliance seeks to:

- End the authoritarian rule of the king, and restore all fundamental rights and freedoms and the representative system of government;
- Restore the House of Representatives, which is essential to restore constitutional propriety and develop a lasting peace;
- Form an all-party government from within the parties in the House which would work on the resolution of conflict and the promotion of political stability;
- Commit to move forward on democratization and conflict resolution issues in the constitution, such as ensuring security forces are accountable to an elected government, restructuring of the state for more inclusiveness, increased transparency, and resolution of issues of citizenship; and
- Organize a national election within a “fixed” timeframe after the resolution of constitutional issues.

During Assessment interviews, it was clear that this is a tactical alliance designed to get the parties back into Parliament and that, once this objective is met, the alliance will in all probability disintegrate. The parties lack consensus on the nature of government reforms, their longer-term objectives, and their relationships with the king and others. Very few of the parties recognized their own ineffectiveness and inability to govern while in power or that this was a contributing factor to the current political crisis (which they place squarely on the king).

3.3 GOVERNANCE ARENA

Before 2002, Nepal's governance problems were characterized by self-interested politicians and governments and their inability to stay in power or to develop a national vision that translated into public policy. Accountability, transparency, and corruption were all systemic and serious issues. According to the study *Impunity in Nepal*, between 1991 and 1997 the government withdrew charges against 1,450 persons being tried for different crimes, including murder charges against a Member of Parliament and a government Minister. The study refers to the “criminalization of politics” and its two forms: criminal

³³ Panday, Devendra Raj, *Democracy and Corruption*, 2005, p. 4.

³⁴ Nepal Congress, Communist Party of Nepal-UML, Nepali Congress-Democratic, Janamorcha Nepal, Nepal Workers and Peasants Party, Nepal Sadbhavan Party, and Sanyukta Janamorcha Nepal.

³⁵ Seven Party Alliance Statement, May 9, 2005.

activities sponsored by political activists to gain control of power and political protection to hide the crime or escape legal punishment.³⁶

Since 2002, these problems have been compounded by the authoritarian moves by the king who has taken over effective control of both the executive and legislative branches. The king remains in a position of dominance through the implicit backing of a loyal military and the continuing provision of a minimum level of state services by an increasingly politicized civil service. Even further complicating the governance arena is the Maoist insurgency which makes state access, control, and service delivery over large parts of the countryside problematic.

3.3.1 Legislative Branch

Parliament has not met since it was dissolved in 2002. When it was in session, it suffered from a significant lack of capacity, lack of leadership, and an inability to govern responsibly. Patronage, cronyism, and a lack of representation of constituents were significant issues. Even more serious was the inability of parties and governments to stay in power. No elected government was able to complete its term. In fact, the longest any government lasted was the first Nepali Congress government which lasted three years. Even with its majority wins in 1991 and 1999, it was unable to complete either of its terms in office.

TABLE 3. REPRESENTATION IN THE HOUSE³⁷

Caste/Ethnicity	percent of Population	1991	1994	1999
Hill high caste	30.9	114 55.6%	129 62.9%	122 59.9%
Hill Dalit	7.1	1 0.5%	-	-
Hill Ethnic	22	34 16.6 %	24 11.7%	28 13.7%
Newar	5.5	14 6.8%	12 5.8%	14 6.8%
Inner-Tarai Ethnic	1.1	1 0.5%	-	-
Tarai caste	14.9	18 8.8%	22 10.7%	29 14.2%
Tarai Dalit	4.5	-	-	-
Tarai ethnic	8.0	18 8.8%	14 6.8%	10 4.9%
Muslim	4.3	5 2.4%	4 1.95%	2 1%
Women	50.04	7 3.4%	7 3.4%	12 5.8%
Men	49.96	198 96.6%	198 96.6%	193 94.2%

Parliament is bi-cameral, with an upper and lower house. The upper house or **National Assembly** has 60 members: 10 nominated by the king, 35 elected by the lower house based on the proportion of seats held by the parties, and 15 elected by the heads of local government bodies. They are elected for six-year terms, with one-third of the upper house elected every two years. One-third of the upper house is still in office,³⁸ but is unable to meet in the absence of the lower house.

The lower house, or **House of Representatives**, has 205 members elected from single member constituencies for a five-year term. This first-past-the-post system has resulted in a few political parties dominating the House—most notably the Nepali Congress and the CPN-UML. Representation in the House is also predominately Hill high-caste which had about 60 percent of the seats, followed by the Tarai caste and Hill ethnic

groups which had less than 15 percent of the seats each. Women filled 5 percent of the posts.

³⁶ Bhattari, Binod, Mohan Mainali, Jogendra Ghimere, Akhlesh Upadhyay, *Impunity in Nepal, An Exploratory Study*, Kathmandu, 1999.

³⁷ Khanal, Krishna, *A Model of Proportional Representation for Nepal*, 2004.

³⁸ Until 2007.

Although Parliament is not in session, the **parliamentary secretariat**, with more than 200 staff, is still in place and working. The Secretary General of Parliament is a constitutional position appointed by the king for five years along with Secretaries of the House of Representatives and the National Assembly.

One of the substantive issues mentioned by parties during interviews was who called the shots after they came into power. Was it the leadership in the elected government, or was it the party of that elected leadership? The parties were said to act in a “communist” way—dictating policies and providing personnel to the elected government—making their own party the biggest obstacle to working effectively in Parliament.

The parties’ inability to govern (to formulate policy strategies, to aggregate priorities into programs, to implement these programs and to monitor them) everything that a ruling party is supposed to do was among the most serious governance issues found during the Assessment. They were even used by the king to justify his takeover of power in 2005.³⁹ Addressing these problems is the Assessment Team’s highest priority for assistance over the next several years.

3.3.2 Executive Branch

The executive branch is normally headed by a **prime minister** and cabinet selected on the basis of a lower house majority. Prime ministers changed frequently from 1991-2002 as governments were unable to stay in power (Annex 3). The power of the prime minister was also tempered by the presence of the king who has little substantive power under the constitution, but who is mentioned in both its legislative and executive sections. Several of the constitutional articles are ambiguous, and the king has been able to use this ambiguity and his powers to dismiss the elected prime minister in 2002 and take over all power in 2005.

In 2003, the Cabinet Secretariat and the Office of the Prime Minister were fused into an **Office of the Prime Minister and Council of Ministers** (OPMCM). Its function is to monitor and coordinate activities of the various ministries as well as to facilitate work of the Council of Ministers. Allegedly, these two organizations were merged to improve performance and efficiency as the OPMCM is “*paving the way for good governance by speeding up the socio-economic development of the country.*”⁴⁰

All work related to the palace, the Council of Ministers, the ministries, the allocation of business of the Government of Nepal, as well as approving bills, ordinances, and regulations, and formulating national policy is centralized in this office. With four Divisions and eleven Sections, it is staffed by 174 civil servants and headed by the Chief Secretary, which is the highest position in the Civil Service. In February 2005, the king fired (but did not replace) the prime minister and installed an administration that reports directly to him, acting as the **Chairman of the Council of Ministers**. Although the king claims to have taken power to save democracy (see box), he is acting in a decidedly anti-democratic way and, so far, has shown an almost total unwillingness for compromise or dialogue.

³⁹ “Parliament witnessed many aberrations in the name of retaining and ousting governments [and] continuous confusion and disorder resulted in the obstruction of the democratic process... After being incapable of holding elections, there were conspiracies to form undemocratic governments, which would be responsible to no one.... Multiparty democrats could not sincerely unite, with national interest as the focal point, to forever end the cycle of devastation being lashed out against the nation and people.” Royal Address to the Nation, 2005.

⁴⁰ OPMCM website.

Nepal's independence, national unity and sovereignty are best safeguarded by the intimate relationship between the King and people. An Institution of Monarchy ever devoted to the country and people and a people with an innate love for their land is the glorious history of the Kingdom of Nepal, its present and also its future. ... We are convinced ... that the Nepalese people have deep faith in and are firmly committed to Constitutional Monarchy and multiparty democracy. We believe that centralization of authority is against democratic norms. We feel that a meaningful exercise in democracy can take place only when elected representatives at all levels are given their share in the governance of the country in accordance with the principles of separation of powers.

Address to the Nation, February 1, 2005

The king has constitutional immunity: the constitution provides that “no question shall be raised in any court about any act performed by His Majesty” and “no discussion shall be held in either House of Parliament on the conduct of His Majesty, Her Majesty the Queen and the heir apparent to His Majesty.”⁴¹

In April 2005, the king created new **zonal administrator** positions and appointed his loyalists similar to those of the Panchayat system. He also replaced the regional administrators with his appointees, who used to be bureaucrats. These administrators report back through the chain of Ministries, increasing the central reach of the government. As they were appointed by the king, they claim their position to be equal to that of the members of the constitutional bodies, as such, they would be accountable only to the king.

Within the executive branch are the various **ministries** and departments that provide services to citizens. One of the first directives of the king was “*Directives for Effective Delivery of Public Services, 2005.*” This program was to “*sweep away difficulties, hardships and harassment faced by the people while receiving public services and win the trust and confidence of the people by providing services effectively.*” Public agencies were to be more people-oriented, more accessible, and more accountable. Each had to develop a Citizen Charter to post out front with information on its services, procedures, fees, requirements, processing time, and the names of those responsible for providing the services as well as where to go for complaints. The Assessment heard positive reactions to these directives although their efficacy was said to be extremely limited in areas with an active Maoist presence.

Public Administration and Civil Service. Citizens have long considered the bureaucracy as inefficient, corrupt, and ineffective. The conflict has further limited its efficacy, as civil servants are unable and unwilling to serve in conflict-affected areas, severely limiting the state’s ability to deliver services.⁴² However, the bureaucracy—along with the judiciary—has played an important role during the current political crisis by the continuation of some services and modest governmental presence in the Kathmandu Valley and district capitals. Without this, the current system would likely collapse.

The civil service system is large and opaque, with regular and mandatory transfers that appear to have little to do with merit or making the best use of expertise. This issue was cited by the Asian Development Bank as one of the major constraints to developing a responsive civil service system.⁴³ The Assessment Team heard allegations of corruption and patronage, inefficiency, and cumbersome procedures. Analysts say the civil service evolved with the advent of multiparty politics in 1991. The new inter-party competition led to favoritism and nepotism in recruitment, placement, and the promotion of the civil

⁴¹ Articles 31 and 56(1) of the Constitution.

⁴² In conflict-affected areas, public services are restricted to district capitals. To service rural areas, individual offices or bureaucrats need to cut deals with the Maoists or these areas are not able to be served. According to USAID grantees, the Maoists allowed government officials to work as long as they did so in a transparent manner; however, after February 2005, none are allowed to work.

⁴³ ADB, *Governance Dimension of ADB Operations*.

servants, politicizing the civil service.⁴⁴ With parties no longer in power, the civil service has to look towards the palace where loyalty is replacing whatever merit had been left in the system.

The public administration has little incentive to change, although the Assessment heard that services had improved since the king's Directives and that local government offices were now sharing public information that was once held close. However, procedures are cumbersome, pay is low, and working conditions are poor. A new code of conduct recently put into effect is reportedly interpreted by many civil servants as a demand for loyalty to the palace with the implication that such loyalty will become the main criteria for promotions and postings, rather than any sort of merit. The king's addition of new institutions that compete with existing ones also affects their deployment, morale, and sense of purpose.

3.3.3 Constitutional Commissions

The constitutional commissions have proven to be a critical element in maintaining checks and balances and strengthening the rule of law and governance in Nepal. There are six commissions: **Commission for the Investigation of Abuse of Authority (CIAA), Public Service Commission, Office of the Attorney General, Supreme Court, Election Commission, and Auditor General.** Several have already been discussed under their different sectoral arenas. All are independent and accountable to Parliament. The heads and members of these bodies are appointed by the king on the recommendation of the Constitutional Council, which is composed of Prime Minister, Chief Justice, Speaker of the House of Representatives, Chairman of the National Assembly, and Leader of the Opposition Party. Except for the Election Commission, all prepare annual reports for submission to Parliament through the king. The commissions still do their annual reports, but without Parliament, they are not being made public.

Commission for the Investigation of Abuse of Authority. The CIAA is an independent governmental anticorruption agency with a broad mandate to initiate, investigate, and prosecute cases of official corruption. It has had some success and has investigated a number of high-profile corruption cases that have led to prosecutions. The CIAA believes that it has had a deterrent effect and an impact on reducing corruption. They are considered relatively independent, and the chief commissioner is perceived as being a person of integrity. The public has confidence in the body and rated the CIAA as the most credible public institution among 27 public institutions in a national survey by NDI in 2004.

The CIAA has the authority to investigate corruption charges for all public position holders and parastatals except the RNA⁴⁵ and members of other constitutional commissions. It has the power to issue warrants and detain suspects for a period of up to six months in the case of special investigations. Investigations also have wide access to bank statements, government documents, and other information relevant to the case.

There are five commissioners, all of whom have immunity while in office and can only be removed by a two-thirds majority of Parliament. The CIAA is supposed to report annually to Parliament, but since Parliament is not currently sitting, the CIAA is not accountable to anyone but the king. The CIAA has approximately 100 investigators, some of whom are police and lawyers from other parts of the government. The total staff (including administrative) consists of approximately 300 people, all of whom are part of the civil service. They believe the number of staff is insufficient for the number of cases they handle (200-300 ongoing). The CIAA does not have a staff based outside of Kathmandu and must rely on

⁴⁴ Panday, *Op. cit.*

⁴⁵ Which has its own military justice system.

Chief District Officers (CDOs), who have the delegated authority of CIAA at the district level. The CIAA would like to expand and set up offices at the district level and is studying the feasibility of this.

A large number of CIAA cases involve bank fraud; other types of cases include misappropriation of funds, fake certificates, and bribery. These cases are tried in the Special Court. Another CIAA function is to investigate misconduct or improper use of resources of the government that may not be criminal. In such instances, the CIAA can make recommendations to government offices regarding ways to improve systems.

The king created a parallel anticorruption body, the **Royal Commission on Corruption Control (RCCC)** in February 2005 by emergency order (subsequently extending its time under Article 127). It has the power of an investigator, prosecutor, and judge, raising concerns regarding its constitutionality. It is also authorized to investigate heads of the constitutional agencies and to recommend necessary action to the king. The creation of this body is a matter of some concern to the political elite, most of whom believe it is an unconstitutional body with a politically motivated agenda. The recent high-profile conviction of political rival and former Prime Minister Sher Bahadur Deuba seems to confirm this fear and resulted in public statements of condemnation by the international community.⁴⁶ Though a few people may believe the king's statement that the creation of this body was designed to address corruption, most feel that, at worst, it is a blatant power grab and, at best, a diversion from the real anticorruption work of the CIAA. The CIAA, however, insists that their work has not been impacted by the RCCC.

3.3.4 Local Governance

The history of local governance in Nepal has been a tangled tale, one that for the most part evokes unpleasant memories of royal attempts to control and manipulate. The **Panchayat system** amounted to a structure carefully calibrated to maintain palace control down to the village level under the guise of a people's democracy originating at the grassroots and informing policy at the top through an upward percolation of the public will. A large portion of today's citizenry, particularly among the intelligentsia, see the king's present political strategy as centering around an effort to restore the Panchayat system.

The 1991 Local Self-Governance Act ushered in a new local government structure based on **Village Development Committees (VDCs)** in the countryside and **municipal governments** in the towns. Citizens directly elected members of the 3,913 VDCs and the 58 municipalities on the basis of wards. Each VDC also directly elected a chairman, while each municipality elected a mayor. These officials, along with their directly elected deputies, then elected the Chairman and 9-17 members (depending on the district's population) to the **District Development Committees (DDC)** of which there were 75 throughout Nepal. Yet another element in all three bodies (VDC, municipality, and DDC) comprised several nominated members—one of whom had to be a woman. Finally, all Members of Parliament (MPs) elected within a district were included as ex-officio members of the DDC.

These units were the primary policy-making organs for delivering state services to the public, with the various line ministries (health, education, agriculture, etc.) responsible for the actual delivery itself under the aegis of the relevant elected body. There were many inefficiencies in this system, with local councils and line ministry personnel contending for control in delivering services, and MPs interfering with what should have been the prerogatives of the local bodies. Nonetheless, services were delivered on a more or less regular basis, at least up to the point where the Maoist insurgency constrained such efforts toward the

⁴⁶ U.S. Embassy, Nepal, Press statement, July 28, 2005.

end of the decade. These services were instrumental in raising the country's Human Development Index from .418 in 1990 to .488 in 2000, and to .504 in 2004. This was a significant achievement.

Elections were conducted for all these local bodies in 1992 and again in 1997, with the Nepali Congress winning an absolute majority of votes (and most of the seats) in 1992, followed by UML majorities at all levels in 1997. The year 2002 should have seen the third local election, but local polls were suspended and all elected office-holders left office at the end of their terms. Since then, these bodies have been functioning under state control, basically managed by the Home Ministry in Kathmandu. What had been a reasonably serious effort at actual devolution⁴⁷ of power was reversed in favor of renewed control from the center.

In April 2005, the king announced a plan to gradually restore democracy by beginning with elections to the 58 municipal councils to be followed by VDC elections and eventually a national election. Few outside the palace and some segments of the RPP appear to take this idea seriously. Virtually everyone who was not a government employee posited that the move was part of an effort to maintain royal control. Further fueling such suspicions was the palace's imposition of two additional layers to the local governance system—15 **zonal administrators** supervising the districts and five **regional officials** overseeing the zones—a move which seemed more like establishing a tight military-style chain of command than part of a design for devolution.

3.3.5 Security Sector

The security forces in Nepal have been dogged by the publicity surrounding widely documented human rights abuses. Documented human rights violations include summary executions, disappearances, and torture. While they appear to be responsive to pressure, especially from the international community, the security services lack resources and political support to defeat the insurgency and have yet to address human rights issues effectively.

Traditionally Nepal had a relatively small security sector, with a police force responsible for maintaining law and order, and a largely ceremonial army devoted to the king. During the first five years of the Maoist insurgency, the police were largely responsible for responding to incidents. Over the last five years, the RNA has taken over and been substantially scaled up to support a national response to the insurgency. As the government's response has increased, so have reports of human rights violations.⁴⁸ Recently the press has been reporting a rise in vigilante groups in villages, with allegations of training and support provided by the RNA.

The National Police and the Armed Police Force. The police are seen as highly politicized and serving the party. Outside of urban areas, police presence and performance is inadequate to maintain law and order, and widespread human rights abuses have been documented including illegal detention and torture.⁴⁹

⁴⁷ "Devolution" is generally taken to mean a transfer of real power and responsibility to the local level, as opposed to "deconcentration" which denotes posting state personnel locally, who often can exercise considerable discretion but are responsible to central authorities, not to local masters.

⁴⁸ For example, in the past two years, the armed forces have been responsible for the highest number of disappearances according to the UN Working Group on Enforced or Involuntary Disappearances.

⁴⁹ Human Rights Watch and Amnesty International.

Police in Nepal have the mandate to maintain law and order and fight crime in the communities they serve. There are approximately 48,000 police officers. About 6,000 of these are under a unified military command structure along with an additional 15,000 armed police officers. These police officers focus on counterinsurgency activities while the remaining 42,000 police officers retain a law and order mandate under the civilian control of the Home Ministry.

There are three tiers of entry into the police force: constable level, which requires primary education; deputy sub-inspector level, which requires secondary education; and officer level, which requires higher education. The three tiers tend to fill out along caste lines, and there is little promotion between tiers. Only 500 police officers are women. Morale among police officers is reportedly low.

They suffer from low institutional capacity for the collection and preservation of evidence, chain of custody, and other investigation techniques. The police force is also charged with allegations of corruption and human rights abuses, including illegal detention and torture. The UNHCHR sees good commitment at the top, but little follow-through and wide-scale unprofessionalism in the prison system. The police seem cooperative with the international community and are somewhat responsive to pressure on human rights abuses; however, serious abuses still occur. This is a problem of political will, lack of professionalism, and a lack of resources to effectively monitor and discipline human rights offenses.

The police seem to have made some progress and appear proud of the work they have done on anti-trafficking in cooperation with local and international NGOs. These efforts provide a relatively non-political topic (trafficking) around which diverse actors can rally to promote change in the police force. Police have been proactive in this area, setting up 18 pilot centers for women and children, mainly concentrated in border areas and out of their own budget.

The law and order mandate, as opposed to a protect and serve mandate, has resulted in mixed relationships with communities. This problem has been compounded by the fact that civilian police presence does not reach most communities; they are generally restricted to district centers and their periphery because of the ongoing conflict.

The Royal Nepalese Army. The RNA is widely viewed as an organization loyal to the king and sees its mandate as forcing the Maoists to the negotiating table so that a political solution can be found. At the same time, it needs to address the accusations of human rights abuses that continue to come in from conflict-affected areas. The RNA has also contributed a substantial number of troops to UN peacekeeping missions worldwide.⁵⁰

Until it was ordered to fight the Maoists in the first state of emergency (2001), the RNA was not a battle-hardened corps of soldiers. Its refusal to obey the order of Prime Minister Koirala to move on Maoists in the Rolpa districts in 2001 reportedly led to his resignation,⁵¹ even though operational control of the RNA is vested in the National Defense Council of which the prime minister is a member.⁵² The king is its supreme commander and appoints its commander in chief. The RNA has beefed up since 2001, from 48,000 to 93,000. Officers are reportedly recruited primarily from upper-caste families in the Kathmandu Valley, who are provided with minimum training before being put in command of lower-caste or hill tribe troops in combat situations. There is little supervision or mentoring for young officers, and informed

⁵⁰ 45,000 peacekeepers to 28 UN peacekeeping missions, including ones now in Sierra Leone, Democratic Republic of Congo, and Haiti. Approximately 3,400 Nepalese Gurkhas serve in the British Army and 40,000 are in the Indian Army. (U.S. State Department).

⁵¹ International Crisis Group, *Towards a Lasting Peace in Nepal*, p. 18.

⁵² It also includes the Defense Minister and the RNA Commander in Chief.

analysts estimate that 60-70 percent of the officer corps has less than four years of experience. Morale among the lower ranks in the RNA is allegedly an issue from combat and low pay, with over 600-800 leaving every year. It is still an all-volunteer force, but they are having difficulty finding volunteers even though it is seen as an employment opportunity in a country with a high rate of unemployment.

The role of the RNA is to ensure stability so that a civilian government can work. They see the lack of national consensus and political will as the primary constraints to stability. They say they want to remain neutral and unpoliticized and will stay out of politics as long as there is a monarchy. They are frustrated with the lack of support from political parties and civil society for their efforts to bring the Maoists to the table. At the same time, political parties and civil society actors reported little interaction with the RNA and demonstrated little understanding of its structures and mandate.

Human rights organizations have documented serious and widespread abuse by RNA officers and soldiers. Many reports indicate that rural Nepali citizens are more intimidated by and fearful of the RNA than the Maoists.⁵³ The Assessment Team also heard of local RNA units appropriating supplies meant for local development projects. According to the UNHCHR, most human rights violations in Nepal are directly related to the conflict. Eighty percent of the violations are related to arrest and detention (including torture). Another problem is summary executions, with the scale of the problem unknown. The RNA told the Assessment Team they had zero tolerance for human rights violations, and the UN confirmed that the RNA leadership is being responsive to their monitoring. Local organizations report a good relationship with the human rights cells and the beginning of the institutionalization of human rights training within the RNA. At the same time, the RNA's Human Rights Unit is understaffed and is being overwhelmed by UN requests for information.

The scope of village militias or vigilantism is unknown, but has risen to an issue of concern for the UNHCHR monitoring mission. RNA and government support for these informal groups has been documented by the BBC⁵⁴ and others. In our interview, the RNA defended the rights of villagers to defend themselves as did the Home Affairs Minister after a vigilante mob beat 12 suspected Maoists to death in Krishnanagar in March 2005.⁵⁵ According to UNHCHR, this is primarily a problem in the terai border lands with India, which is a long, open border plagued by cross-border smuggling and banditry.

3.4 CIVIL SOCIETY

3.4.1 Citizenry

The conflict in Nepal has significantly impacted the lives of its citizens. It has affected their physical and mental health, security, education, and employment, degrading their already poor standard of living. Outside of urban and RNA-protected areas, access to state services is almost nonexistent and many health posts, drinking water systems, and communication facilities have been destroyed. These Nepalis live in an atmosphere of fear, tension, and insecurity. Many have fled, looking for security and employment in the Kathmandu Valley, other urban areas, and abroad.

⁵³ Among others: Human Rights Watch, *Clear Culpability and Between a Rock and a Hard Place*; and Center for Human Rights and Global Justice, "Missing Piece of the Puzzle."

⁵⁴ Haviland, Charles, "Nepal's rising vigilante violence." BBC News, March 14, 2005.

⁵⁵ Ibid.

When citizens were asked in an NDI survey for their major concerns (Annex 6), more than half cited the lack of employment. A third cited Maoist violence followed by education—in Nepal, the literacy rate is only 44 percent.⁵⁶

Volatile groups are potentially the unemployed, youths, and students. They have already been at the heart of a number of demonstrations that involve rock throwing and other disturbances. As they congregate in urban areas, they could form a critical mass which could be destabilizing and trigger a violent police reaction.

3.4.2 Civil Society Organizations

Though the government generally allows nongovernmental organizations (NGOs)—particularly service delivery organizations—to function freely, there have been recent attempts to curb the activities of human rights and other “political” NGOs. The introduction of the “Social Welfare Ordinance” in July has raised serious concerns as it gives power to the state to control and regulate the activities of NGOs. International rights groups and local NGOs view this as a move by the king to tighten control and curb civil rights. Others say this is a way to address charges of corruption within the largely unaccountable NGO community. While many believe that it is necessary to institute a better system for NGO accountability, many NGOs told the Assessment Team that they feel the government move is heavy-handed and a politically motivated attempt to muzzle pro-democracy groups critical of the government.

Nepal has a full range of NGOs, running from human rights advocacy groups to service delivery entities. Altogether some 2,500 NGOs are formally registered. In addition, over the last 15 years “user groups” have come into being as recognized bodies. Some user groups constitute legal entities able to make contracts with the state for long-term usufructuary rights over forest land or operational control of surface water irrigation facilities, while others more resemble informal community interest groups, such as a neighborhood mothers’ group or a parents’ association connected to a primary school.⁵⁷

Despite the number of groups, survey data indicate that only a fraction of Nepalese society participates in them. For example, almost 79 percent of the population surveyed for the *State of Democracy in Nepal Survey* said they rarely or never participated in community-based organizations, and 86 percent said they never or rarely participated in NGOs. Participation was worse in reference to women’s organizations, where almost 88 percent of the respondents had never or rarely participated.

So far, several segments of organized civil society have become active in the current democracy movement. First are the most likely groups—those focusing on human rights and the peace process, accompanied by many youth organizations (which, in the past, have furnished the human resource power to fuel pro-democracy movements). A good number of professional organizations, however, have also joined in, notably the Bar Association, journalist groups, and academics. CSOs representing women have stepped into the picture as well, although minority group organizations and service delivery groups have not yet been drawn in, nor the user groups.

⁵⁶ World Bank: Nepal, Data-at-a-Glance.

⁵⁷ This usage represents a definitional expansion of the term from its more traditional use in the international development community, where it usually refers to a group of persons using and managing a territorial natural resource, such as a forest area, a fishery, or a grazing commons. The formal user groups form the main focus of the USAID-supported CARE initiative, but the informal groups can also receive donor assistance, as in the DFID-NORAD decentralization initiative.

At the time of the Assessment, this core of pro-democracy, youth, and professional groups were the principal bodies pressing for a resolution to Nepal's national crisis. Collectively (as the **Civic Movement for Democracy and Peace**⁵⁸) they were pressing the political parties to formulate a united negotiating strategy to deal with the king and a peace strategy to deal with the Maoists. It is worth noting that this CSO alliance is self-consciously pushing the parties to become the lead pro-democratic actor, rather than taking on such a role itself, as if to say that while civil society can advocate and agitate for a policy, it cannot substitute for them; in the end, the parties have to deliver the goods in attaining a political settlement to the current crisis. Such directed activism may not be unique in recent history, but it is certainly unusual.⁵⁹ One reason may be the political affiliation of these CSO leaders. Most are allegedly not independents, but active members of political parties.

In addition to publicly exhorting the parties, the civil society community has organized a series of public rallies in Kathmandu to demonstrate popular demand for a return to democracy.⁶⁰ While still on a relatively small scale, the crowds of perhaps 8,000 to 10,000 drawn to these demonstrations have dwarfed the much smaller assemblies attracted by the political parties to highlight their own democracy agendas. There have been other rallies in some of the smaller towns like Pokhara, Nepalganj, and Bharatpur, but civil society activism thus far has been principally focused on the Kathmandu Valley. It should be noted that historically, the great progressive transformations that have changed the course of the polity have all taken place in the Kathmandu Valley, specifically the democracy movements of the late 1950s and 1990.⁶¹

3.4.3 Media

For an authoritarian state, the media is relatively free. However for a democracy, the restrictions imposed after the 2005 state of emergency severely constrained media freedoms. Although these have eased somewhat since, the media is considerably less free now than it was a year ago.

The constitution guarantees freedom of expression and prohibits censorship. The Press and Publications Act requires the licensing of publications and credentials for journalists, and prohibits coverage that disrespects the monarchy, undermines security, or creates animosity among different castes. Although no one has been recently prosecuted under this Act, journalists have been arrested under anti-terrorism legislation and accused of supporting Maoists. Along with self-censorship and growing Maoist pressure on journalists, this earned Nepal the status of "Not Free" and ranked at 152 out of 194 countries in Freedom House's *Freedom of the Press 2005*.

⁵⁸ Leading professional associations (lawyers, doctors, engineers, journalists, and teachers at all levels) have formed the Professional Alliance for Peace and Democracy, which has been working with the Civic Movement, and may likely be a constituent in it, though the exact connection appears to be somewhat fluid.

⁵⁹ This restrained civil society activism can be contrasted with what occurred in many Eastern European countries toward the end of the Cold War, when CSOs took on the role of working directly for a democratic transition.

⁶⁰ The Assessment Team was able to attend such a rally in Durbar Square on 16 August. One of the things noted was that the press sensationalized the rally and the police's "intervention" in it—none of which was witnessed by the Team.

⁶¹ As in so many countries, it is the metropolitan center and, within it, civic elites that have served as the seat of regime change, not the countryside. This pattern cannot be expected to change in the near future. These elites will have to mobilize and inspire wider circles extending well beyond their own small numbers, in terms of both class strata and geography, if they are to succeed in restoring democracy to Nepal. These people, however, are the ones who will have to initiate and assume the leadership role, and that process appears already to be under way.

Conditions worsened following the 2005 declaration of emergency. Journalists were arrested and news broadcasts banned. Over 3,000 journalists were directly affected, of which approximately 1,500 reportedly lost their jobs as outlets were unable to pay salaries because of lost revenue.⁶² Since the lifting of the state of emergency, the media around Kathmandu has been tentatively regaining its freedom. English language newspapers regularly print stories critical of the king and the government; they advocate editorially for a return to democracy and debate the merits of a constituent assembly called to create a new constitution versus a reconstituted parliament operating under the 1990 constitution. They report on the rising demands for a republic to replace the monarchy. Magazines exercise the same freedoms. The state continues to exercise indirect efforts at control, most notably in the form of withholding government advertisements and by sending circulars to private industry telling them not to advertise in the private media. The papers, however, continue to publish despite the lost revenue.⁶³

The Broadcast Act regulates TV and FM radio broadcasts and the allocation of frequencies. Journalists claim most licenses have been given out in the past three years on “vague” criteria, with some analysts seeing this as a corruption gravy train for whatever government is in power. There are several private TV stations currently providing news programming but, as yet, it is fairly rudimentary in both quality and coverage, and is largely confined to the Kathmandu Valley. The state owns Radio Nepal and Nepal’s main TV stations (Nepal TV and Nepal TV Metro), whose political coverage favors the state. Although Internet access is generally unrestricted, Internet Service Providers have blocked access to Maoist websites since 2004 at government request.

Media outside the Kathmandu Valley reportedly enjoys considerably less freedom. Newspapers complain of pressure from the RNA that amounts to a degree of censorship, while finding themselves under even more severe pressure to print verbatim proclamations from the Maoists. Some towns offer cable television, including news programs, but the viewing audience is confined to those able to afford access.

Radio is an important source of information in a country with high poverty and illiteracy rates—about 36 percent of the population listens every day.⁶⁴ Radio, which had been a government monopoly along the pattern in effect in most South Asian countries, was deregulated under the Broadcast Act in the mid-1990s allowing small FM community radio-type stations to broadcast. These stations, most low-wattage operations with a restricted line-of-sight transmission radius, proliferated and, by 2005, there were 47 independent FM radio stations, 42 of which carried news. They were banned from news broadcasting with the state of emergency, but the ban stayed in place when the emergency was lifted.⁶⁵ In August 2005, the Supreme Court ordered a stay of the ban in the case of one station that had sought a writ petition in that regard, and a large proportion of the other FM stations took the decision as authorization to start broadcasting news. At the time of writing this report, the government was contesting the Court’s order, but it appeared to be firmly in place, at least for the time being.

⁶² Journalists estimate FM radio stations lost 40 percent of their revenue from the reduction of audience share from not broadcasting the news.

⁶³ Media advertising is worth 2b R a year. Half of that is from government advertisements. In addition, the government gave 2.5m R as a type of social welfare grant to “underpaid journalists”—these grants ended February 2005. As with most papers, the lion’s share of income derives from advertisements, whether governmental or commercial, with sales and subscriptions providing only a small portion of the total, thus giving the state a powerful weapon to induce docility in the press. In contrast with other countries in the region, the state evidently has not tried to discipline the press by adjusting allocations of newsprint, perhaps because in such a timber-rich country, pulp for newsprint is so plentiful.

⁶⁴ Hachhethu, *Op. cit.* This can be compared to newspapers (32 percent) and TV (23 percent).

⁶⁵ Meanwhile, the Maoists claim to have five operating FM stations which are providing news to the areas cut off from the independent FM broadcasts.

3.5 MAOISTS

The Maoists have been committed to an armed struggle since the inception of their insurgency raising serious doubts about their recent pronouncements of commitment to a multiparty democracy. However, they will need to be integrated into peaceful political participation and are showing a recent, though as yet unproven, willingness to negotiate with their September 2005 announcement of a unilateral cease-fire.

The Maoist insurgency has been going on for almost 10 years and has increased in intensity and in atrocities. In the tough geographic terrain, the 1,000-2,000 strong force has been able to retain a military edge that belied its small numbers and lack of military sophistication. They attack RNA soft targets and re-arm from collected RNA weapons. They maintain influence over the rural areas through fear and terrorism. Military experts say it is highly unlikely that the insurgency will be ended through a decisive military victory. Yet, as long as the Maoists believe they cannot be defeated and are able to maintain the status quo with hopes for an ultimate military victory, they have little incentive to negotiate.

Fissures are allegedly appearing within the Maoist leadership which may facilitate eventual negotiations. The Assessment Team heard from many sides that a minority (thought to be a substantial minority by some) within the leadership would prefer to take the Maoist struggle to the political field and abandon the armed fight. The political parties seem prepared to negotiate with the Maoists if they renounce violence, and some spoke sympathetically of them during Assessment interviews.

Most actors interviewed were skeptical of recent Maoist pronouncements that they would be willing to accept a bourgeois democracy and a multiparty system if they were brought into the political fold and given an appropriate negotiating partner. The Maoists have entered into two cease-fire agreements and negotiations with Parliament (2001, 2003), all of which they broke. After the Assessment fieldwork, the Maoists announced a unilateral cease-fire for three months and said they were willing to negotiate. This situation has yet to play out and, if they are sincere, it is unclear who their negotiating partner might be—the king, a coalition of political leaders, or some other actor who has yet to emerge. As of this writing, the Maoists have also committed to national political protests in favor of “*interim government, election to a constituent assembly and democratic republic.*”⁶⁶ During the Assessment fieldwork in Nepal in August, none of these actors had appeared ready for negotiations, and most experts were expecting a continuation of the status quo for years, not months.

The Maoists are allowing limited access to some local human rights NGOs for training of their cadre, and the UNHCHR thinks they might respond to a bright international light shown on their human rights violations. The Maoists appear to be interested in gaining international legitimacy, and have advocated for UN mediation in a peace process, something the government and the majority of Nepalis seem reluctant to accept.⁶⁷

While the Maoists have a psychological hold on large portions of the countryside, their actual physical presence is limited to a few districts. Despite widespread fear, the Assessment heard reports of some local organizations standing up to Maoists and negotiating with their commanders for access to NGO services—in particular, CARE’s local partners who had received CARE’s conflict management training. The Association of District Development Committees of Nepal also commented that the Maoists could be easier to work with than some local RNA commanders, as local Maoists would negotiate, while RNA appropriated.

⁶⁶ KOL Report, “Maoists announce nationwide protests.” *Kantipur Online*, September 7, 2005.

⁶⁷ NDI, *Op. cit.*

3.6 INTERNATIONAL COMMUNITY

The international community has been very active in both the diplomatic and development side of the democracy and governance problems in Nepal. Diplomatically, the international community is focused on the restoration of an elected government and restoring the democratic multiparty system. Considerable pressure has been placed upon the king to reconcile with the political parties.

Among the main international actors are the U.S., the UK, China, and India. Both India and China share a common border with Nepal. India, in particular, has strong interest in Nepal's political situation and can exercise perhaps the greatest influence. India, the U.S., and the UK have provided military assistance to the RNA, seeing the Maoist threat as a regional security issue. However, most of this assistance, including the U.S. provision of lethal military assistance, was suspended after the royal takeover in February 2005.

The U.S. has a position of influence within Nepal. Many Nepalis spoke of U.S. Ambassador Moriarty's speech of August 9, 2005, where the Ambassador urged the government to restore civil liberties and to reach out to political parties with sincere proposals for a multiparty democracy and constitutional monarchy, as well as for the parties to address the shortcomings that plagued them while they were in power so as to earn back the trust of the nation.⁶⁸

On the development side, the main international actors are USAID, DFID, the EU, UNDP, and the international NGOs funded by these agencies. Their activities and areas of focus are listed in Annex 8. Many of these donors have scaled back their DG activities since the events of 2002 and 2005, believing conditions are unfavorable for large-scale programs with the police, Parliament, decentralization, judiciary, and anticorruption. Unity among international actors is an important element in achieving peace and stability, and restoring democracy to Nepal. Coordination between DG donors and their grantees/contractors seems to be good, with sector and subsector meetings held regularly. Some of the primary USAID/Nepal DG grantees/contractors include The Asia Foundation, CARE, National Democratic Institute, International Foundation for Electoral Systems, ARD, Inc., and Transparency International Nepal.

⁶⁸ Ambassador Moriarty Remarks to the Nepal Council of World Affairs, August 9, 2005.

4.0 CRITICAL ISSUES

Though Nepal is faced with many serious democracy and governance issues, the Assessment identified three critical issues that comprise the greatest obstacles to the restoration of democracy and the development of better governance. These are the lack of commitment for a democratic system, a lack of good governance, and a lack of inclusion.

4.1 LACK OF COMMITMENT TO DEMOCRATIC VALUES AND SYSTEMS

All of the main actors have a demonstrated lack of commitment for a representative and inclusive system of democratic governance despite their rhetorical support. The insurgency has been feeding off of this lack of commitment and has been empowering the undemocratic tendencies of all actors. As discussed in Consensus (Section 2.1), the three main actors may have differing agendas, but all focus almost exclusively on increasing their own power and self-interest.

The political, economic, and social environment has not been conducive to developing a political will and a commitment for a pluralistic, competitive, and accountable democracy. Nepal has a tradition of autocratic leadership led by a monarch. Power-sharing and compromise are alien concepts. Its brief experience with democratic governance was cut off abruptly by the palace before any real democratic roots could take hold. Among other things, sustaining a democracy requires popular support, and the 1991-2002 governments did not provide enough results to have built up needed levels of support or trust. The lack of information about and understanding of democracy is also a critical factor in its lack of demand—when the NDI survey asked “what is democracy,” more than half the respondents did not know.⁶⁹

Politics in Nepal has not surpassed its zero-sum game stage. Power means access to resources and jobs. Aligning with the actor in power becomes a political survival mechanism as well as the means for professional and economic advancement. There is no incentive to act in a democratic or inclusive manner as this is not rewarded by the system.

4.2 INABILITY OF PRINCIPAL ACTORS AND INSTITUTIONS TO GOVERN EFFECTIVELY

A lack of good governance has been a systemic problem. As discussed in Governance (Section 2.5) these problems include an inability to form stable governments, and deliver goods and services to the vast majority of Nepalis; a lack of accountability and responsiveness; corruption; and a lack of security. It is an issue of political will for good governance as well as a lack of human and institutional capacity for better governance.

Nepal’s governing problems are compounded by three different sets of DG problems, any one of which would be difficult to overcome. The first set is related to the conflict and the difficulties of governing

⁶⁹ Hachhethu, *Op. cit.*

during an ongoing insurgency that has affected most of the national territory. The second set comprises problems related to the current political crisis where some of the most critical democratic institutions have been marginalized or suspended, and where an authoritarian rule is being instituted by the king. The last set of problems relates to the democratic multiparty system that was in effect from 1991-2002 and its inability to govern effectively or equitably.

The ability of the government to deal with these three sets of problems will determine its fate. It will determine its legitimacy, authority, and ability to remain in power. Assisting Nepal to develop its capabilities so it can govern more effectively, be accountable, and make policy choices in the public interest is an urgent challenge that must be addressed—both to ensure a near-term end to the conflict, as well as to find long-term solutions to its governance needs.

4.3 MARGINALIZATION AND DISENFRANCHISEMENT OF POPULATION

Exclusion is another systemic problem that underlies and aggravates the governance problems in Nepal. Although the constitution is based on a concept of equality, citizens within Nepal are hardly equal. Nepalese society is hierarchical and highly inequitable. Rural and marginalized groups are denied equal access to social, economic, and political resources. Wealth and power are disproportionately distributed to higher castes, and the remainder are disproportionately affected by the chronic problems of poverty, illiteracy, and exploitation. Among these is human trafficking, which is estimated at around 12,000 victims per year, with the marginalized groups at highest risk.

Large population groups (such as the Dalits, Janajatis, and women) had little to no representation when there was an elected government, and the male elites had no incentive to undercut their own power or reduce their own benefits by either changing the system or ensuring a more equitable distribution of resources. These inequities fed the insurgency and were successfully co-opted by it as part of its own agenda. This raised the profile of these problems, but also effectively prevented action to address them. Nothing has changed in this regard since the palace took power.

As with the problems in the governance arena, the current political crisis has compounded the problems of exclusion. The king's 2002 and 2005 actions marginalized and disenfranchised many of the political actors of the past 10 years. Elected offices are not being competed, so parties are out of office and voters have no elected representatives. Restoring the ability of citizens to select the government of their choice is the essential first step towards addressing the issues of exclusion, marginalization, and inequality. A longer-term vision is needed to address the issues of social and political exclusion, as changing engrained attitudes can take generational change.

5.0 RECOMMENDATIONS

5.1 STRATEGIC FOCUS

Nepal is a fragile state in crisis. The legitimacy of its government is in serious question. The state does not exert effective control over its own territory and it is unable to ensure the provision of vital services to significant parts of its territory.⁷⁰ It has been partially successful at maintaining a minimum level of effectiveness, which coupled with the king's control over the military, the people's traditional respect for the monarchy, and the general resourcefulness and survival skills of the citizens, has probably kept Nepal from state failure. Thus the regime is reasonably secure in the Kathmandu Valley and urban areas, but its control in the countryside has become extremely tenuous, confined largely to the district headquarter towns.

Strengthening fragile states is one of USAID's five core operational goals for its foreign assistance.⁷¹ USAID has identified four strategic priorities in strengthening fragile states:

- enhance stability;
- improve security;
- encourage reform; and
- develop institutional capacity for institutions that are fundamental to lasting recovery and transformational development.⁷²

These priorities fit the critical needs in Nepal found during the Assessment. U.S. foreign policy in Nepal is aimed at both ending the Maoist insurgency and restoring democracy. These two efforts are interrelated and essential for resolving Nepal's crisis and putting it on the road to transformational development.

The purpose of a DG Assessment is to obtain a clear understanding of the democracy and governance problems and their contextual factors. This is described in Sections 1-3, which identified the three critical issues facing Nepal's democracy and governance:

- political will and the need for consensus;
- good governance; and
- inclusion.

The programs recommended below are designed to directly address these three critical areas and their root causes and are governed by the four principles of the fragile state strategy: engage strategically, focus on the sources of fragility, seek short-term impact linked to longer-term structural reform, and establish

⁷⁰ USAID definition of a fragile state in crisis, *Fragile State Strategy*, 2005, p. 1.

⁷¹ USAID, *U.S. Foreign Aid, Meeting the Challenges of the Twenty-first Century*, 2004. The other core goals are: promoting transformational development, providing humanitarian relief, supporting U.S. geostrategic interests, and mitigating global and transnational ills.

⁷² USAID, *Fragile State Strategy*, p. 5.

appropriate measurement systems. In addition, legitimacy and effectiveness serve as integrating themes around which programmatic interventions could be structured. For example:

Legitimacy

- Work with political parties to make them more internally democratic and representative;
- Reduce corruption within government institutions;
- Advocate for elections to restore legitimate government to power; and
- Target marginalized populations to increase their participation in political processes and advocate for the rights of discriminated groups.

Effectiveness

- Strengthen the capacity of parties to become governing institutions once elected to Parliament; and
- Strengthen the ability of justice sector institutions to dispense justice in an efficient manner and increase access to justice.

5.2 PROGRAMMATIC PRIORITIES

5.2.1 Building Commitment to a Representative Multiparty Democracy

These activities address the issue of political will and commitment, and the need to develop democratic leadership, consensus, and vision. There is no agreement among the major players, or of the greater public, for the rules of the game—they all have their own interpretations of a “democratic” system and these do not necessarily match citizen expectations. There is even a lack of fundamental agreement on their basic governing document—the constitution—and of the role that key players like the Maoists and king have in governance in the future. There must be an inclusive and meaningful national dialogue that builds a consensus for the peace process and how the democratic political process should work.

Changing entrenched attitudes and autocratic habits and breaking the cycle of self-serving politicians is not an easy one, but change can happen. Some of the means are building public demand, having a competitive political system (where politicians have to regularly answer to the people), visible monitoring, and changed incentive structures. Building consensus among a fractious group of actors, each with their own incentives and objectives, is also an extraordinary difficult task. However, without this unity of vision regarding fundamental issues of peace and democracy, it is not possible to move forward. Programs that build public demand and foster leadership, in addition to those that focus on consensus building, can help achieve this goal.

Programmatic priorities to address these issues would include:

- **Restructuring incentive structures** through structural reforms that reward participation through the democratic systems and structures and adherence to the rule of law. These activities can be done through strengthening political party-government civil society collaboration and with technical support. Creating win-win situations can help decrease resistance among those with vested interests in maintaining the status quo as can creating deterrents to the use of violence or nonconstitutional means as a political tool.

Developing new leadership opportunities can open the door for change—for example, senior party leaders are entrenched and resistant to ideas of change. Providing opportunities for younger leaders to

forge careers within the parties would allow practical planning for a party's future electoral hopes and indirectly provide a substitute for internal party democracy in setting up structures within the party in which would-be leaders compete for the right to move into higher positions. A party genuinely open to talent is not quite the same as a party with internal democracy, but its impact on the larger political arena should be much the same.

- **Building leadership** through leadership training for mid-level party members, government officials, CSOs, and federations (such as the Dalit Federation) and developing opportunities for new leadership within parties and civil society. Leadership also needs to be built among youth and women, and within marginalized and regional groups.⁷³ Leadership training should incorporate strategies to reduce the levels of conflict and strengthening the negotiation and conflict resolution skills. Informed people can make better choices, and widespread (civic) education should be widely integrated into programming—not only for the citizens but for the CSOs, the security sector, political leaders, civil service, the judiciary, and others.
- **Increasing the demand for democracy** through broad-scale civic education and information programs. These can be done through activities by parties, civil society organizations, and the government. Advocacy by CSO and the private sector can also increase demand for democracy and accountability by those in office. A part of this is managing citizens' expectations. A key national event, such as peace negotiations or the restoration of democracy, can generate unrealistic expectations for what peace and democracy can deliver. Programming should include informational components to manage change and expectations.
- **Building consensus on genuine democratic processes and peace** through the building of a national consensus on how to initiate a peace process. The Maoists' unilateral cease-fire may offer a window of opportunity that could form the basis for national discussion. If not, discussion needs to be initiated by government, parties, and civil society, with a firm commitment to engaging marginalized and disenfranchised groups. A national consensus is also needed on the basis of democratic structures for Nepal and how these should be adopted—Is it through constitutional amendment? A constituent assembly? National legislation? Constituencies for reform need to be built and mobilized in all sectors through dialogue, information, and networking. Increasing the channels of communications between and within actors and institutions need to be opened as well as building local and national ownership for the processes.

5.2.2 Strengthening Institutional and Human Capacity for Good Governance

Nepal has critical good governance problems created by the lack of will and inability to govern. These have resulted in an ineffective and eventually forced absence of the legislative branch and the dominance of the executive (king). Even without the conflict, the state had difficulty governing and providing services effectively and evenly throughout Nepal. With the conflict, it now reaches only a small percentage of the country and its population.

Democracy and governance are mutually reinforcing when developed together and when resources are used for the public good. Rebuilding state capacity is essential for a fragile state, but this must be accompanied by political accountability, participation, consultation, and power-sharing.⁷⁴ Within Nepal,

⁷³ The Office of Conflict Management and Mitigation's Youth and Conflict Toolkit has examples of programs for engaging youth in constructive political participation that could prove useful in developing specific programs and activities.

⁷⁴ USAID. *Foreign Aid in the National Interest, Promoting Freedom, Security and Opportunity*, 2002.

the critical institutions that require strengthening are the political parties, Parliament,⁷⁵ judicial system, and other institutions related to checks and balances and enforcement of the rule of law.

Programmatic priorities to address these issues would include:

- **Institutional Strengthening** of the ability of key governance institutions—particularly parties—to govern. As noted above, a critical priority is to strengthen parties so they can transform from opportunistic, patronage-driven organizations to institutions capable of effectively governing. First steps would be increasing their ability to negotiate and compromise, especially with the king, and to build consensus and momentum towards the reinstatement of a representative democracy. Parties themselves must be internally democratic, and building the demand for broader representation within the parties should be supported along with encouraging its outreach to youth, women, and those who are traditionally marginalized.

One of the key tasks of a party is to govern. Parties failed at governing effectively, and Parliament and good governance must be strengthened. Parliament must be able to competently represent constituent interests and deliver the governmental stability needed for the development of rational policies in the national interest. In addition, assistance can help explain and promote the good governance practices, such as public hearings and other fora, that encourage private sector, CSO, and citizen participation. Key bodies, such as the Supreme Court and CIAA, should be strengthened so they can effectively implement their checks and balances functions. Other areas that require strengthening are line ministries to deliver services and security forces to provide appropriate security and protection for Nepali citizens. This framework is based on the interconnected development imperatives of increasing state legitimacy and state effectiveness. Recent research demonstrated in the fragile state strategy shows that instability is a result of ineffective and illegitimate governance. Programming strategies must ensure that critical issues such as legitimacy and effectiveness are addressed in all democratization and governance assistance efforts.

- **Promoting integrity and accountability** by supporting the checks and balances systems as well as government integrity and anticorruption activities done through the CIAA and other oversight mechanisms and organizations, such as the Anticorruption Tribunal and National Vigilance Center. Systemic corruption reduces the legitimacy of government, increasing its risk for conflict and instability. Anticorruption efforts should be crosscutting and integrated throughout USAID/Nepal's programming. Corruption in the private sector should also be included in programming and its impact on good governance monitored.

Monitoring, advocacy, and education on government integrity issues by the CSOs and private sector should be strengthened as well as improving the quality of media coverage on integrity and government accountability issues. Emphasis should be placed on making information (e.g., budgets for government-funded initiatives, financial disclosure of high-level public officials) widely available to the public to ensure transparency and accountability. CSOs should also monitor the progress of essential reforms, analyze their content, make recommendations, and advocate for their passage and improvement.

- Increasing transparency within democratic institutions and process is an important integrity component that can be facilitated through the inclusion of private sector associations and civil society organizations in government operations and monitoring. Encouraging the productive use of the media

⁷⁵ The Assessment assumes an elected Parliament will eventually return to Nepal's governing system.

by government operations to ensure citizens are aware of government intent and proposed changes also increases transparency and the reliability of services.

This is also true for integrity and accountability within parties. The watchdog-type civil society organizations assisted should also monitor and report on the activities within parties, such as whether they respect their own internal democratic rules and procedures, and if their actions match their promises and platforms.

- **Strengthen enforcement of the rule of law** through strengthening the enforcement capabilities of relevant institutions within the judiciary and police. An assessment should be conducted to analyze the key obstacle to enforcement and attempts should be made to address the most serious of those obstacles. Activities should be supported to create political will to enforce high-profile political decisions, perhaps through supporting media coverage and publicizing the issues. The needs of the average citizen must also be addressed, such as access to justice, the protection of human rights, and alternative dispute resolution mechanisms.

Another key area of support is through civil society and governmental monitoring and oversight of enforcement. Engagement by civil society and the media—attending key hearings, publicizing decisions, building national constituencies for justice, and monitoring enforcement of decisions—are integral parts of strengthening the judicial branch and rule of law.

5.3 PROMOTING EQUALITY AND INCLUSION

Discrimination and marginalization of women, Dalits, and other severely disadvantaged groups is a serious human rights issue. This is a deep-rooted problem; the conflict has exploited these inequalities and has had the perverse effect of raising these issues, yet at the same time postponing action on them. Most efforts in the human rights sector (by both national and international actors) are justifiably focused on conflict-related abuses at this time. This is an important opportunity for USAID to fill the gap and focus on a widespread human rights problem that affects the majority of Nepalese and has serious implications for the conflict.

Political, social, and economic competition in Nepal has focused around a small group of elites, primarily higher-caste males from Kathmandu, and their interests. The interests of the vast majority of Nepalis have not been taken into consideration, resulting in their marginalization and exclusion. This system did not change with the advent of a democratic constitution as parties were part of the exclusionist system. These systemic inequalities also fueled the ongoing conflict. The parties and their followers are now among the newly disenfranchised as they have lost their access to office and its power and perk, and without the holding of elections for any office, all of the citizens of Nepal have lost their right to vote.

Programming priorities to address these issues would include:

- **Empower marginalized groups** through a variety of mechanisms aimed at protecting rights and increasing participation, inclusion, and joint ownership of the democratic process. The rights of marginalized groups, such as Dalits, could be better protected through supporting civil society organizations, government institutions, and international groups that focus on advocacy on behalf of such groups and monitoring abuses against such groups. Trafficked persons are also victims of social and economic marginalization, and programs to prevent trafficking and support victims should be supported. Activities could focus on building awareness of the problem, protection, and supporting better legislation and enforcement of anti-trafficking laws. Among this is work to eliminate discriminatory clauses in existing legislation towards women and other marginal groups.

Internally displaced persons (IDPs) constitute a growing marginalized population, most of whom have fled their homes due to fighting and the lack of economic opportunities. IDPs should be considered and integrated into program activities. Public awareness and civic education on this important issue should also be supported.

In order to politically empower marginalized groups, the Mission should consider programs that provide leadership training within parties and civil society to build the leadership skills needed to participate and govern. Including youth in activities is essential—statistically, marginalized and unemployed young men are the most vulnerable to violence and 60 percent of Nepal’s population is under 24 years of age⁷⁶ making youth a demographic time bomb. Structural changes should also be considered, such as the possibility of some type of proportional representation system that could provide more voice for marginalized groups and open the political system to more diversity. Other programs could include affirmative action⁷⁷ and developing opportunities for advancement and participation at local levels.

- **Restore disenfranchised groups** through re-engagement. The democratic system must be restored with free and fair elections held for every elected office in the constitution. Activities under Section 2.1 would lead this process, and starting an inclusive national dialogue should be the first priority. Ensuring all actors and the citizenry at large have access to information on the process, problems, and solutions is an integral part of the solution. The Mission could also support key improvements to electoral administration in order to ensure a more level playing field and the impartial administration of elections.

5.4 INSTITUTIONAL PRIORITIES

The Assessment identified a number of institutions that will be essential in addressing the root causes of the three critical issues identified above (commitment and consensus, good governance, and inclusion). These include the following.

5.4.1 Political Parties

Parties were the key factor in the collapse of the democratic system, and parties will be the critical component in making a new democratic enterprise succeed. The parties and Parliament are the primary managers of the polity under the 1990 constitution. Assuming the settlement of the present crisis returns the parties to office, they must become governing parties worthy of public trust. They will be the critical linchpin determining whether democracy can survive in Nepal, for neither the king nor the Maoists (unless they win an election) can take on the role of democratic managers of the state.

Assisting parties to become organizations capable of governing a nation is among the Assessment’s top priorities. USAID as an institution is currently taking a hard look at its track record of party assistance. In the past, political party strengthening programs tended to focus on specific components of party development and was based on assumptions rather than analysis, such as the idea that supporting grassroots development of a party equated to a more democratic party. This approach has provided

⁷⁶ According to The Asia Foundation.

⁷⁷ While quota systems may help increase women’s and other marginalized groups’ participation, they do not guarantee a change of responsibilities within institutions. It is also important to seek a transformation of the power relationships that lead to the discriminatory attitudes and practices.

limited results and did not impact the larger goal of democratic development and better governance.⁷⁸ A major constraint has been the incentive structures within which parties work—unless these structures are changed, political party strengthening programs make little difference.

For a democratic system of government to take root, and to develop the commitment and consensus required to build a democracy, the parties in Nepal require this type of assistance. Assistance must take a holistic vision of political parties and the environment within which they work, and not lose sight of the ultimate objective of having accountable and responsive political parties that are able to govern effectively. This can mean support to such things as crafting strategic agendas, translating strategies into programs, moving programs into laws and laws into bureaucratic directives, implementing policies, and monitoring performance—in addition to ongoing activities such as internal party democratization and efforts at electoral reform.

5.4.2 Parliament

The legislative branch was the weak link in the democratic system and its failure led to the current political crisis. Making Parliament work is another institutional priority. When it is re-established, it must provide better governance and work to ensure the inclusion of marginalized groups into the political and economic realm. Parliament still has a working secretariat which is attempting to put secretariat reforms into place while waiting for the House to resume. Their efforts at institutional strengthening deserve support and could greatly benefit from assistance and direction. As an example, a technical expert, with a little funding to translate his/her recommendations into action, who was placed now within Parliament could provide mentoring and training, and help professionalize that institution, among other things, by helping to change the incentive structures within the secretariat systems so that the members and staff who want to do the right thing are able to do so without structural impediments. This would provide a needed jumpstart for Parliament in terms of effectiveness and better governance for when the elected members finally return.⁷⁹

5.4.3 Other Institutions

In addition to the two critical institutions discussed above, other institutions will play critical roles in building democratic commitment, improving governance, and ensuring inclusion. These include:

- **Judiciary.** The Supreme Court in its role as guardian of the constitution and protector of citizens' rights.
- **CIAA** in its efforts to hold government and its officials accountable for corruption and the **Attorney General** in its efforts to bring wrongdoers to justice.
- **Civil society organizations** and **media** activities as advocates and monitors of government and party commitments to better governance, the protection of human rights, the accountability of public officials, and for widespread education on DG issues of importance, including human rights and democratization training to security forces.
- **Security Forces.** The community policing program being considered by USAID/Nepal appears to be a worthwhile endeavor, especially if it keeps and promotes the long-term focus of upholding and enforcing the rule of law.

⁷⁸ USAID, *Political Party Development*, PowerPoint, 2005.

⁷⁹ No other donor currently supports Parliament. DFID had a large multi-year program planned (focused on improving the research and IT capabilities of the Secretariat) but this has been put on indefinite hold.

5.5 ASSUMPTIONS AND SCENARIOS

The above programmatic recommendations assume that the situation will eventually normalize—that the king will allow for an elected parliament to be seated, and that the insurgency will not worsen. In either event, most of these activities can be undertaken in a worsening case scenario (to mitigate the worst effects) or an improved case scenario (to leverage opportunities). The key is in sequencing and maintaining a long-term vision, regardless of the activity or the timeframe for that activity, of developing a strong national commitment for a democratic system of government; improving the governance capabilities of the state and its actors; and ensuring inclusion in the political, economic, and social realms. The situation in Nepal is uncertain. All DG programs should be flexible enough that they can adapt rapidly to changing circumstances and take advantage of opportunities, or move quickly to deter backsliding.

5.5.1 Possible Scenarios and Their Implications for Programming

Most of the analysts interviewed during the Assessment thought the status quo would drag on for years before resolution. This was before the Maoists' recent announcement of a unilateral cease-fire that may, or may not, change these projections. If the king and parties accept to negotiate with the Maoists, and if the Maoists are serious, this could shorten the timeframe to months (or years) depending on their degree of sincerity for a real solution among all sides.

From information gathered during the interviews, the following are the three most likely scenarios. There are many variations within each scenario, mostly having to do with the wild card Maoists. Most analysts believe the “status quo” is the most likely scenario. The king is seen as holding all the cards and there seems to be little incentive for him to change his actions. However, the recommendations in this Assessment are based on the assumption that democracy can win out in Nepal, and that with sustained international and national pressure and a face-saving mechanism for the king, an elected parliament can be restored and middle ground can be found. This should be the immediate objective for all USAID's programs.

SCENARIO 1: STATUS QUO

In this scenario, the king retains his hold on power and rides out the current political storm for the next two to three years. The RNA scales up its operations and keeps the Maoists at bay, possibly making conditions difficult enough that they are brought to the negotiating table. Negotiations are done by the palace, and political parties remain marginalized and impotent. The king continues his “decentralization” program, deploying line ministry staff to regions. Human rights abuses related to the conflict continue, and some restrictions continue on the civil liberties of CSOs, the media, and opposition politicians. After an initial downturn in levels of corruption, that also returns to the status quo.

Result: An effective return to the authoritarian Panchayat system, with increasing grumblings of political discontent held off by the king's control of force. The underlying problems in Nepal remain relatively unaddressed. The king would have to ensure continued service delivery, at least in the Kathmandu Valley and major urban areas, and he would have to maintain control over the armed forces to remain in power. If the Maoists did not negotiate, they would continue to control most of the countryside and use their independent parallel institutions.

Programming implications: Minimal presence for donors. The Assessment Team believes the Mission should keep a long-term vision for its democracy and governance programs and, in this type of scenario, continue its DG programs. Assisting government institutions, such as the judiciary, that serve as a check

on the power of the executive and maintain the rule of law would be critical. Monitoring and advocacy by CSOs on human rights and the rule of law would also be important as well as building the demand side for a democratic system through the CSOs and media.

SCENARIO 2: CHAOS

Demonstrations grow into larger-scale and more widespread demonstrations of discontent. A triggering event occurs, such as security forces or the Maoists firing into crowds, and street riots explode in urban centers. The army splits when it is sent in to take control of the situation with many enlisted soldiers deserting. The Maoists press their advantage in rural areas while the security forces are preoccupied with civilian unrest. Another trigger for potential violence could be the parties negotiating with the Maoists and coming to a deal with them without the participation of the king (and army).

Result: Continuing instability and violence throughout Nepal, kept only in check in urban areas through force. A lasting state of emergency would be put into effect, with many civil liberties and rights suspended. Large numbers of political detainees could be expected along with an immediate upsurge in human rights violations that would later taper off. The private media would be effectively silenced and many pro-democracy activities banned.

Programming implications: Most donors would suspend regular programming and programs would focus on human rights monitoring and humanitarian assistance. In a situation of chaos, normal DG programming is not possible and DG efforts would focus on human rights monitoring and mitigating the worst effects of crisis. Among these would be the need for a victims of torture program and protection of IDPs.

SCENARIO 3: MIDDLE GROUND

The king responds to increasing international and national pressure by naming a prime minister who would bring back elected government—perhaps through creating a committee to oversee new elections and possibly to open discussions on some constitutional issues. The Maoists would probably not participate and continue their actions.

Result: Until the issue of political will and consensus is resolved, the result would probably be the continuation of the status quo, but with elected leaders in the Parliament and at the local levels. This might stall off the king's efforts to centralize his own power, but it would not resolve the three critical issues identified during the Assessment (commitment, governance, and inclusion). The pre-2002 situation would emerge, with bickering political parties, little voice for the marginalized, and a general neglect of the needs of the vast majority of Nepali citizens.

Programming implications: The programs recommended in Section 5.2.1 are based on the assumption that Scenario 3 will be the outcome of the political crisis in Nepal. All programs should work to address the root causes of Nepal's governance and democracy programs and strengthen the institutional and human capacity of key democratic institutions and processes.

SCENARIO 4: CONFLICT RESOLVED WITH DEMOCRATIC PROGRESS

The three major actors come to terms in strategic settlement—the king and the parties compromise, and the Maoists abandon their armed struggle and return to mainstream politics. Constitutional consensus is achieved and democracy is restored and enhanced beyond the 1990 settlement.

Result: Peace and stability is achieved. Elections are held for all offices and a real devolution of power begins. The state is able to reach all areas of its territory and gradually extends its service delivery out from district capitals into the rural areas. The economy recovers, and investment and tourism rebound.

Implications for programming: As with Scenario 3, the programs recommended in 5.2.1 would be continued with an eye to the longer-term outcomes. To maintain the peace and democratic progress, the root causes of conflict and inequities should be addressed as well as the governance problems. Efforts would continue on institutional and human capacity building, and the reforms needed to turn Nepal towards transformational development.

5.5.2 Preparing for Peace

Consideration needs to be given now to the issue of peace. USAID/Nepal should be in a position that it can help facilitate an eventual peace process through its programmatic activities, including building constituencies for peace, facilitating negotiations and discussions on critical issues such as peacekeeping elections or constitutional re-drafting, supporting demobilization and reintegration of combatants, and channeling former insurgents and their supporters into the democratic political processes. Support will also be needed to re-establish local governance and for the often divisive issues involved in reconciliation and justice.⁸⁰

5.6 ASSESSMENT RECOMMENDATIONS AND USAID/NEPAL'S 2006-2009 STRATEGY

During the Assessment, the Team worked with the USAID/Nepal Mission on its draft 2006-2009 DG Strategy and its proposed areas of activities. All of the activities the Mission had been considering fell within one of the three critical issue areas identified in the DG Assessment, and the Mission was able to use the Assessment's analytical framework and initial findings in the refinement of its strategy.

In setting priorities, the Assessment considered that DFID, DANIDA, and UNDP have large democracy and governance programs and, with the International Finance Institutions, cover the large sectoral areas such as institutional reform and civil service reform. As a result, some of the larger illustrative activities listed in the programmatic priorities (Section 5.2) may be better left to the multilaterals and these donors. USAID's comparative advantage is its long history of assistance in Nepal; its current working relationship with the constitutional commissions, the judiciary, political parties, and civil society; and the trust it has built within those institutions and officials. The level of funding for USAID/Nepal's DG programs is also minimal, which makes it even more important to ensure that its activities are focused and targeted so that they can make a difference.

The Assessment would take this opportunity to plead for more DG funding for USAID/Nepal. Nepal is at a critical time and cross-roads. It is currently a fragile state in crisis. It could easily become a failed state and a destabilizing influence in the region. Stabilizing the political situation and strengthening legitimate democratic governance in Nepal is a U.S. national security priority, which should be reflected in the level of funding for USAID/Nepal's DG programs.

⁸⁰ If it is a full-blown peace effort, it is likely that the UN would take the overall lead and that UNDP would take the lead for activities such as the DD in DDRR. The activities listed in this paragraph are ones the Assessment Team believes USAID could easily fill although as mentioned earlier, large-scale reform efforts including decentralization and security sector reform fall more within other donors' comparative advantage.

The conflict and democracy and governance problems in Nepal are inextricably intertwined. Conflict is a symptom of the failure of governance as well as an aggravating factor. Among others, addressing the root causes of conflict includes improving the legitimacy and effectiveness of the governing institutions. Conflict resolution in Nepal will involve the short-term processes of negotiating a sustainable peace and stopping the hostilities, as well as finding the longer-term institutional solutions that are required to peacefully resolve the conflict of interests found in any society. Currently USAID/Nepal has its conflict and DG programs divided between a Conflict Office and a General Development Office. Although the teams coordinate activities, the separation of programs is artificial and many of the activities and objectives overlap. USAID/Nepal should consider integrating its conflict and DG activities into one office which could provide for more programmatic coherence and even staffing. The DG office is currently understaffed to manage a DG Strategic Objective (which the 2000-2005 strategy did not have). The addition of a senior position to cover DG at the SO level is also recommended.

ANNEX 1: PRINCIPAL ACTORS IN THE NEPAL POLITICAL SYSTEM

ACTORS	INTERESTS	RESOURCES	STRATEGIES
King	Restore & maintain autocracy	Security forces & state machinery, tradition of monarchy	Consolidate power, marginalize opposition
Military	Serve king, maintain privileged position,	Armed strength, international assistance	Protect & promote king's interests
Political parties	Return to power & patronage	Cadres & constituencies, experience at governing, international support	Marginalize king, mobilize population, court international support, leverage Maoists
Maoists	Seize state power	Armed strength, dedicated leadership, clear agenda, territorial occupation, infrastructure	Armed struggle, leverage parties against king, tactical diplomatic talks
Bureaucracy	Professional autonomy, rent-seeking	Institutional continuity managing government & delivering services, legitimacy	Protect self-interest by standing behind executive
Judiciary	Judicial independence, constitutional order	Legitimacy, institutional authority	Assert constitutional authority
Civil society	Greater policy voice, more scope for activity	Outreach/coverage, moral authority, international support	Mass mobilization, co-existence
Media	Freedom to operate	Voice, infrastructure, some press freedom	Use of legal resources, awareness raising
International community	Stability, peace & democracy	Diplomatic influence, material assistance	Public & private diplomacy, support policy with development assistance
Citizenry	Peace, end to corruption, improved economy	Collective identity; ability to withdraw support, capacity for social coexistence	Endure present crisis

ANNEX 2:

ARENAS AND INSTITUTIONS

ARENA	INSTITUTION	PROBLEM	REMEDY	CONSTRAINT TO REMEDY	DESIRED OUTCOME
Governance	King	Increasing autocracy; unaccountability	Dialogue & compromise; power sharing	Determination to ride out crisis; control of military & state power	Constitutional monarchy
	Military	Accountability; impunity	Elected civilian oversight; monitoring; training	Institutional culture; conflict as justification	Accountable & professional military
	Legislature	Suspended; inability to govern responsibly when working	Restore old or elect new Parliament; change incentive structures; professionalization	King's actions; patronage mentality; ineffective parties	Accountable & transparent governing body
	Administration	Corruption; loyalty replacing merit; limited geographic access; new institutions undermining old; frequent personnel transfers	Transparency; meritocracy; peace; modernization & professionalization	Vested interests, structural disincentives; King's centralization; conflict	Transparent & professional service delivery
	Local governance	Increasing centralization; no elections; conflict disruptions; ineffectiveness; corruption	Devolve power; restore elected bodies; peace; higher professional standard; probity	Political will; conflict; incentive structures	Effective, accountable, legitimate local self-government
Rule of law	Constitution	Adequacy	Consensus to amend or replace	Lack of dialogue between 3 main actors; lack of consensus on outcome	A respected & workable constitution
	Judiciary – Supreme and Special Courts	Partial independence; dependent on executive for budget, enforcement of decisions	Return to constitutional governance; better will & capacity for enforcement; CSO/media monitoring; international pressure	Political situation; lack of commitment by executive (& legislature when sitting)	Empowered & independent judiciary

ARENA	INSTITUTION	PROBLEM	REMEDY	CONSTRAINT TO REMEDY	DESIRED OUTCOME
	Judiciary – lower courts	Access; enforcement of decisions; corruption; interference; poor defense; lack of basics	Peace, better communications; enforcement & monitoring; modernization; legal aid	Conflict; political will; low state priority	Impartial & effective justice system
	Police	Impunity; use by party in power; corruption; skills	Professionalization; monitoring; community policing	Political will to reform; incentive structures	Public trust; citizen protection against crime & violence
Competition	Parties	Individually dominated; autocratic; opportunistic; inability to govern; unresponsive to constituents	Changed incentive systems; leadership development; policy focus	Vested interests & entrenched leadership; lack of elections; lack of access exacerbated by conflict	Responsible and accountable, able to govern effectively, with opportunities for new leadership
	Elections	Conflict; lack of political consensus; uneven playing field & integrity issues	Peace & stability; political resolution; monitoring	Weak commitment to democracy; restricted geographic access; security; spoilers	Credible process with legitimate results
Civil society	NGOs, CSOs	Perception of partisanship in politics/conflict; rural access; donor dependence; shrinking space for operations & independence; accountability	Peace & security; increasing demand for transparency & accountability	Conflict; government policy	Accountable civil society that fulfils its purpose
	Media	State interference; access to information; quality & scope of coverage	Court protection; training; peace	Geography; political will; government policies; conflict	Pluralistic and free media with access to information
Extra-legal	Maoist insurgency	Impunity; terrorism; parallel systems; occupation	Enter political system and negotiations; address root causes; international monitoring; DDR	No incentive to negotiate or disarm; geography; possible outside help; conflict benefits to others	Sustainable peace; constructive participation in democratic system; justice & reconciliation

ANNEX 3: POLITICAL TIMELINE: PARLIAMENT AND PRIME MINISTERS⁸¹

DATE	EVENT	GOVERNMENT	PRIME MINISTER
1991	First Election	Nepalese Congress majority government	
1994	Split of UPF (Bhattarai becomes CPN (Maoist))		G.P. Koirala (NC)
	Dissolution House		
	Bhattarai boycotts by-elections		
	Second Election	UML minority government	
1995	Dissolution House		Man Mohan Adhikari (UML)
	Supreme Court overturns dissolution		
	No confidence motion	Coalition Government (NC, RPP, NSP)	Sher Bahadur Deuba (NC)
1996	<i>Maoist insurgency begins</i>		
1997	No confidence motion	Coalition Government (RP, UML, NSP)	Lokendra Chand (RPP)
	No confidence motion	Coalition Government (RPP, NC, NSP)	S.B. Thapa (
1998	Resignation PM	ML, UML join	G.P. Koirala (NC)
	Elections	Nepalese Congress	K.P. Bhattarai (NC)
2000	Resignation PM		G.P. Koirala (NC)
2001	<i>Murder of King Birendra. Replaced by King Gyanendra</i>		
	Resignation PM		Sher B. Deuba (NC)
	<i>Cease-fire, Government-Maoists talks, Maoists break cease-fire, Declaration of State of Emergency, Decision to use RNA to fight Maoists</i>		
2002	Dissolution House		Lokendra Bahadur Chand (RPP)
	King replaces PM		
2003	<i>Cease-fire, Government-Maoist talks, Maoists break cease-fire</i>		
	Resignation PM		S.B. Thapa
2004	Resignation PM	UM, RPP, NSP join Deuba led govt.	SB Deuba (NC-D)
2005	King fires PM		
	<i>State of Emergency (Feb-April) and King's seizure of power</i>		

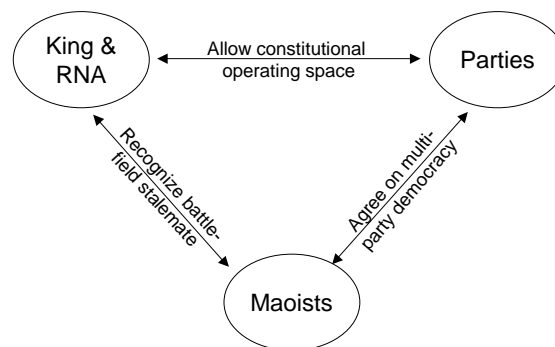
⁸¹ Hachhethu, *Op. cit.*

ANNEX 4: POSSIBILITIES FOR COMPROMISE

During the field work for the Assessment, none of the main actors appeared willing to compromise with the others, although a hopeful sign emerged with the subsequent Maoist announcement of a unilateral cease-fire. However, given their long term intractability, can consensus be obtained among the three main actors?⁸² For it to happen with an acceptable democratic outcome, each of the three pairs of players or “dyads” would probably have to come to terms as follows:

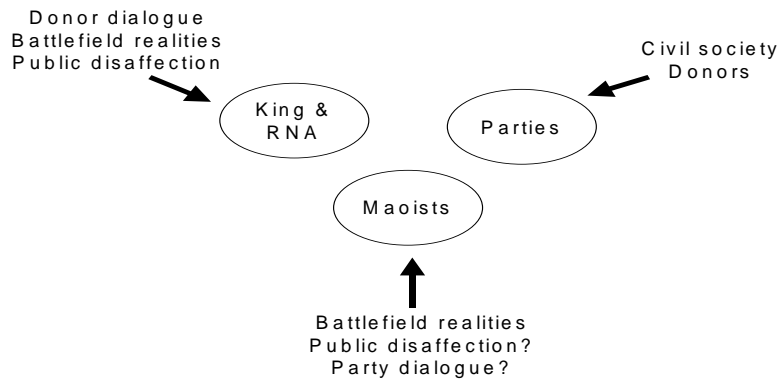
- The king and the parties agree on some kind of constitutional setup that would grant the palace less power than the 1990 dispensation but would still preserve a monarchy;
- The king and the Maoists would each have to conclude that victory on the battlefield was not possible and that accordingly some kind of settlement would have to be agreed upon;
- The Maoists and the parties would have to come to terms by which the former would abandon “armed struggle” in favor of parliamentary participation, while the latter agreed to guarantee free and fair elections in which the Maoists could compete on a level playing field.

What key actor pairs need to do



⁸² Consensus has happened in difficult circumstances in other countries. For example, what once seemed a hopelessly unending conflict in El Salvador eventuated in peace accords in the early 1990s and what appears to be a fairly durable consensus at present. What have long looked like intractable conflicts in Northern Ireland and Bosnia now show real signs leading toward peace. Heavy and sustained diplomatic pressure on the principal actors is required, but these processes are already well under way. Peace and the establishment of a new consensus should be counted as real – if hugely challenging – prospects.

Factors pushing key actors toward compromise



ANNEX 5: ELECTORAL AND PARTY DATA

TABLE 1: ELECTION DATA FOR HOUSE OF REPRESENTATIVES⁸³

Year	Registered Parties	Parties Contesting	Candidates Registered	Voters Registered	Turnout
1991	44	20	1,345	11.1 m	65 percent
1994	65	24	1,442	12.2 m	61 percent
1999	100	41	2,238	13.5 m	67 percent

TABLE 2: HOUSE RESULTS BY GENDER⁸⁴

	M	F	Total
1991			
Candidates	1,265	80	1,345
Elected	198	7	205
1994			
Candidates	1,356	86	1,442
Elected	198	7	205
1999			
Candidates	2,095	143	2,238
Elected	193	12	205

TABLE 3. CPN/UML FEES VS AVERAGE INCOME⁸⁵

CPN/UML Monthly Membership Fee and Nepali Average Monthly Income			
		Top 20 percent	Bottom 20 percent
Total Population (m)	25.2	5.04	5.04
Total GNI (millions)	6,600		
GNI/Capita (\$)	260		
percent GNI	-	50 percent	3.70 percent
GNI (\$ million)	-	3,300	244
Average GNI/capita	-	655	48
Per Month	-	55	4
Per Day	-	1.79	0.13
UML Monthly fee	\$ 0.03	-	-
percent Monthly Income	-	0.05 percent	0.74 percent
percent Daily Income	-	1.67 percent	22.60 percent

⁸³ Data from the Election Commission of the Kingdom of Nepal www.election-commission.org.np.

⁸⁴ Ibid.

⁸⁵ Chart Data Source: Population, GNI and GNI per capita from The World Bank, "Nepal at a Glance," *Human Development Report 2004*; percent GNI from MSNepal, "Nepal at a Glance," available at http://www.msnepal.org/nepal_at_a_glance.htm, last accessed August 31, 2005.

Table 3 illustrates the challenges facing disadvantaged groups' participation within a party. The CPN/UML charges NPR2, or US\$ 0.03, a month for a regular member. Three cents seems a small amount for political representation in a party, until it is broken down against the income of the average Nepali citizen, and then the average poor Nepali citizen.

The top 20 percent of the Nepali population controls 50 percent of the gross national income, while the bottom 20 percent controls only 3.7 percent. This means that while the average income overall in Nepal is \$260/year, the wealthiest 20 percent average nearly 14 times more income per year than the lowest 20 percent. So while party membership only costs a wealthy Nepali .05 percent of their monthly income, and nearly 2 percent of their daily income, it costs a poor Nepali nearly 1 percent of their monthly income, and 23 percent of their daily income.

TABLE 4: COMPARING 1999 ELECTION RESULTS FIRST PAST THE POST VS PROPORTIONAL REPRESENTATION⁸⁶

Political Party	1999 election seats won (FPTP)		1999 seats if election votes proportionally allocated to parties
	Seat	Vote percent	
Nepali Congress	111	36.14	78
CPN (UML)	71	30.74	70
RPP	11	10.14	25
CPN (ML)	0	6.28	16
RPP (C)	0	3.33	5
NSP	5	3.13	5
RJM	5	1.37	2
RJMP	0	1.07	1
SJMN	1	0.84	2
MWPP	1	0.56	1
TOTAL	205		205

⁸⁶ Table from SAGUN, *National Dialogue on Affirmative Action and the Electoral System in Nepal, Annex 5: A Model of Proportional Representation for Nepal*, Krishba Khanal.

ANNEX 6: SURVEY DATA

CHART 1: WHY VOTERS ARE LIKELY NOT TO VOTE⁸⁷

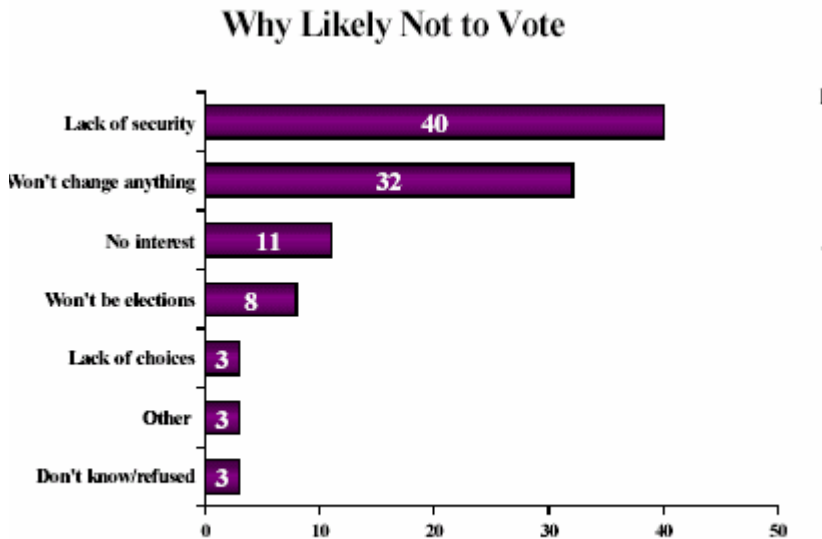


Figure 10

CHART 2: CONCERNS AMONG CITIZENS

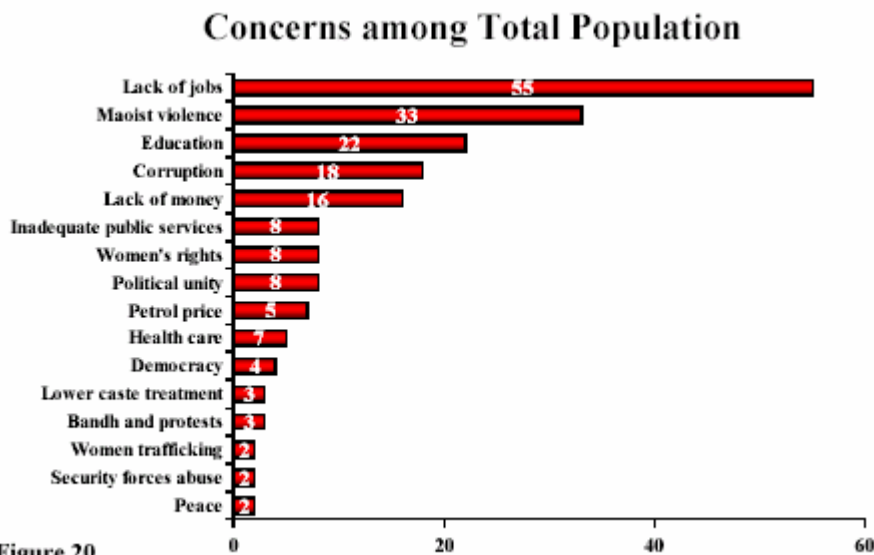


Figure 20

⁸⁷ Charts from NDI's, *Results from Second Wave of Survey Research, 2005*

ANNEX 7: CORRUPTION COMPLAINTS PER MINISTRY

Ministry	93/94	94/95	95/96	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04	Total
Finance	31	41	75	128	80	42	44	43	171	258	215	1128
Industry, Supplies & Commerce	37	35	72	143	84	64	40	26	87	119	123	832
Housing and Physical Planning	25	28	38	80	50	11	18	14	187	119	130	743
Agriculture	37	25	32	95	67	27	20	50	107	141	138	739
Law, Justice and Parliamentary	15	10	6	29	19	9	2	16	18	45	33	202
Home	113	61	96	160	117	49	57	41	241	251	388	1683
Water Resources	43	19	27	60	40	30	3	17	25	151	166	582
Foreign	0	0	0	2	2	1	0	1	5	7	3	23
Land Reform	62	64	94	174	159	57	90	13	200	365	391	1676
Tourism and Civil Aviation	4	1	11	73	42	21	25	36	31	105	139	502
Construction and Transport	10	21	20	66	33	31	0	0	0	0	0	181
Labor	0	6	2	15	15	0	8	13	36	69	58	230
Forest and Soil Conservation	38	36	36	64	62	55	25	119	140	268	168	1011
Local Dev	60	78	80	234	123	46	8	162	262	460	466	2076
Health	32	28	32	83	78	55	17	27	37	216	195	803
Gen Administration	4	3	6	8	11	13	4	4	15	14	10	99

Ministry	93/94	94/95	95/96	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04	Total
Information and Communication	18	13	34	52	27	31	10	70	69	149	69	578
Education, Culture, Social Welfare, Youth, Women & Sports	55	37	54	159	134	84	33	237	312	518	547	2224
Defense	4	1	2	9	7	1	0	8	8	34	18	102
Cabinet	0	2	1	10	3	0	0	1	0	19	9	47
Science and Techno				1	1	0	3	1	5	5	1	17
NPC				0	0	0	0	1	2	8	3	14
Population and Environment				0	0	0	0	0	1	2	1	4
Election Commission											1	1
Public Service											3	6
OAG											2	2
Controller General											3	3
Total	588	509	718	1645	1154	627	407	900	1959	3323	3280	24360

— Table from Annex 7 of Narayan Manandhar, *Corruption and Anticorruption, Transparency International Nepal, September 2005*

ANNEX 8: DEMOCRACY AND GOVERNANCE: MATRIX OF DONORS

Donor Activity/Program Title	Rule of Law/Human Rights	Governance (Anticorruption, local governance, legislative strengthening, etc)	Elections/Political Parties	Civil Society
EUROPEAN COMMISSION				
European Initiative for Democracy & Human Rights (EIDHR)				
	<ul style="list-style-type: none"> Nepal Bar Association - Improving free legal aid, human rights and access to justice 			
	<ul style="list-style-type: none"> Centre for Legal Research & Resource Centre (CeLRRD) - Fostering peace through discourse on democratic values, constitutionalism and methods and techniques of conflict transformation 			
Conflict Mitigation Package				
	<ul style="list-style-type: none"> National Human Rights Commission - <i>enhance the capacity and effectiveness of the NHRC to monitor human rights violations across Nepal.</i> 			<ul style="list-style-type: none"> Media support and NGO capacity building

Donor		Governance (Anticorruption, local governance, legislative strengthening, etc)	Elections/Political Parties	Civil Society
Activity/Program Title	Rule of Law/Human Rights			
	<ul style="list-style-type: none"> Supreme Court - <i>enhance the capacity of the Nepalese Judiciary to deliver justice in accordance with international human rights standards.</i> 			
	<ul style="list-style-type: none"> Nepal Bar Association - <i>develop conditions – including comprehensive provision of legal aid – under which access to justice is afforded to all people in Nepal.</i> 			
DFID				
	<ul style="list-style-type: none"> Advocacy Forum – legal aid project; access to justice (community mediation); Planning: Kathmandu School of Law- Access to Justice Program through Legal Aid. 	<ul style="list-style-type: none"> Anticorruption – Support to CIAA to set up 10 local offices; Support to Pro-Public in same districts Decentralization/local governance (grants to MoLD) ESP (Enabling State Program) 	<ul style="list-style-type: none"> Considering political party reform, but not electoral reform Political Party Reform/Consensus Building- support to Ganesh Man Singh Academy 	<ul style="list-style-type: none"> ESP – strengthen “reformers” , incl NGO Federation, Jyanjathi (will increase support to institutional capacity) Support Center for Investigative Journalism
ADB				
	<ul style="list-style-type: none"> Improving Legal Enforcement Mechanisms and Judicial Capacity (Judicial Academy; Establishment of Legal Information Centre; Establishment of secure transactions agency; Establishment of commercial bench) 	<ul style="list-style-type: none"> Civil service reform Anticorruption Decentralization 		
	<ul style="list-style-type: none"> Support to National Vigilance Centre 			

Donor	Rule of Law/Human Rights	Governance (Anticorruption, local governance, legislative strengthening, etc)	Elections/Political Parties	Civil Society
Activity/Program Title				
CANADIAN COOPERATION OFFICE				
	<ul style="list-style-type: none"> • Support International Court of Justice for protection of Human Rights • Support NHRC on Human Rights 	<ul style="list-style-type: none"> • Local governance • Community empowerment 		<ul style="list-style-type: none"> • Peace and conflict resolution through local NGO support
Norwegian Embassy				
	Legal Aid Project with NBA?			
UNDP				
	<ul style="list-style-type: none"> • Strengthening Rule of Law • Reform of Judiciary • Access to Justice. Key activities: Pilot Courts; Supreme Court; management support, community mediation, Law Ministry for legal framework • Support to NHRC 	<ul style="list-style-type: none"> • Decentralized local governance • Decentralized financing and development program • Public Private Partnerships for Urban Environment, • Rural Urban partnership program 	<ul style="list-style-type: none"> • When national elections are held, provide technical and financial support for coordination of international election observers 	<ul style="list-style-type: none"> • Peace and Development Initiative- support NGOs for peace and development activities at the communal level
Danida				
	<ul style="list-style-type: none"> • Human Rights and Good Governance Programme, Justice Sector Component (Support to CeIRRD for Secretariat of the Justice Sector Coordination Committee and Nepal Bar Association's General Assembly) • TA to develop five-year Strategic Plan of the Nepali Judiciary. • Prisoner's Legal Aid (CeIRRD) 	<ul style="list-style-type: none"> • Transparency and accountability • Decentralization and local governance • Anticorruption initiative (support to CIAA) - on hold since 2/1/05 • Anticorruption initiative (support to CIAA) (on hold since 2/1/05) 		<ul style="list-style-type: none"> Support to Dalit Organizations, Independent Media (for free independent, pluralistic and competent media) Support through Media Development Fund and Media Support Fund.

Donor	Rule of Law/Human Rights	Governance (Anticorruption, local governance, legislative strengthening, etc)	Elections/Political Parties	Civil Society
SDC (Swiss)				
	•	<ul style="list-style-type: none"> Local governance and decentralization Anticorruption 		Civil society support
World Bank	•	•		
	•	<ul style="list-style-type: none"> Decentralization Monitoring of public expenditures 		
USAID	•	•		
	•	<ul style="list-style-type: none"> Anticorruption: Support CIAA, National Vigilance Center and Special Court on Corruption, and building CSO coalition for advocacy against corruption 	<ul style="list-style-type: none"> Support to the Election Commission to strengthen its institutional capacity Support to political parties to restore representative democracy and democratization of internal party governing structures and civil society efforts to accompany political electoral reforms. 	

ANNEX 9:

COMMENTS ON USAID'S SAGUN PROJECT

Operating in the midst of the present local governance situation are the **community user groups** supported by USAID's SAGUN (*Strengthened Actions for Governance in Utilization of Natural Resources*) initiative, being implemented by CARE. The "user group" concept had a long gestation in Nepal (much of it supported by USAID), beginning in the 1980s in the forestry sector as a mechanism for linking utilization of a natural resource with control over it and responsibility for it.⁸⁸ For the SAGUN project, water management (through surface irrigation) and hydropower were added, as well as some activities outside the natural resource sector, such as women's groups. In the USAID program, in addition to the technical assistance that has traditionally been the core of natural resource management programs, the user groups elect their own management bodies, which have been supported to take on an advocacy role with the local VDCs and (through user group federations) with the DDCs. These user groups have become vehicles for popular inputs on the demand side of the local governance equation – schools providing a rich experience in the political arena that can encourage and enable new players to enter local (and perhaps higher level) politics in the future.

As with any program there are problems. For one thing, user group advocacy is presently constrained by the fact that such advocacy must be directed at unelected and thus unrepresentative VDCs and DDCs. Second, the program is still a pilot scheme, covering only a few of the country's 75 districts; possibilities for expanding it into a more full-scale operation have yet to be tested.⁸⁹ And third, of course, given the initiative's rural focus, it has run into significant difficulties with Maoist insurgents, though in a number of particular areas, the Maoists appear to appreciate the worth of the program and have restrained themselves from interfering with it.⁹⁰

Altogether, USAID's user group initiative has shown substantial promise as a mechanism to galvanize popular participation in local governance and to provide democratic experience to a large cohort of people

⁸⁸ The key concept of the "user group" was that a specific group of resource users would be given exclusive long-term control over the resource, thus providing incentive to ensure sustainable utilization of it while excluding outsiders from depleting it. (See Blair, 1996). More recently in Nepal, the term "user group" or "community user group" has come to be applied to a wide variety of neighborhood (i.e., smaller than an official village) organizations focusing on a single topic like natural resources, women's groups, school children's parents, even micro-credit. Thus the term is no longer tied to a geographically bound natural resource.

⁸⁹ According to implementing partner CARE, there were some 750 user groups in forestry, 1,080 in water management and 97 in hydropower, as well as smaller numbers in other areas like women's issues. The point about expansion is not a small one; the history of international development is littered with tales of successful pilots that went awry amid efforts to expand them, starting with India's mammoth community development program in the 1950s.

⁹⁰ So far as the Assessment Team could discern, the Maoists tolerate service delivery programs in some rural areas (perhaps as a tactic to avoid alienating the local population) while harassing such activities in other areas. We were unable to get a feel for any patterns here, whether by activity sector or geographical area.

who can draw on it to participate in electoral politics at a higher level if and when democracy returns to rural Nepal.

The SAGUN (*Strengthened Actions for Governance in Utilization of Natural Resources*) initiative is being implemented by CARE.

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Vidyadhar Mallik, Secretary

Police

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Pokhara Chief District Office

Yog Raj Paudel, Chief District Officer

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Public Service Commission

Tirtha Man Shakya, Chairman

Radio Sagarmatha

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Royal Danish Embassy

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Royal Nepal Army

General Rukmand Singh Katwal

MG Gajendra Bahadur Limbu, Military Secretary to the king
BG Dilip Rayamajhi, Director Military Intelligence

Save Independent Radio Movement

Suresh Acharya, Advisor

Special Court

Govinda P. Parajuli, Chairman
Bhoop Dhoj Adhikari, Member
Lalit Chandra Shah, Registrar

Supreme Court

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ATTACHMENT B: STATEMENT OF WORK

INTRODUCTION

This scope of work calls for the completion of two inter-connected tasks: (1) an assessment of political change and democratization in Nepal; and (2) the development of recommendations for a USAID strategy to address major barriers to the transition to and consolidation of democratization in Nepal. The assessment portion of the work will be conducted using a framework or tool developed by USAID's Center for Democracy and Governance. The strategy recommendations will also follow the guidance laid out in the framework as well as other relevant Agency policy guidance. The strategy recommendations will be articulated as results or outcomes with notional ideas of how best to obtain those outcomes. This scope of work does not call for a full and detailed program design.

ASSESSMENT METHODOLOGY

The team will apply the assessment framework attached to this scope of work. The assessment portion of that framework is divided into four steps and is designed to help devise a democracy strategy, make choices for programming, and define results. The four steps are analytical; in actual fact, the team conducts a single series of interviews but considers each of the four steps as it conducts its interviews.

In Step 1, the team analyzes the problems, which need to be tackled using five variables: consensus, rule of law, competition, inclusion, and good governance. The analysis should lead the team to a diagnosis of key problems for democratization and a prioritization of those problems. In addition, the analysis should identify the place of the country on a continuum of democratic change as well as the pace and direction of change. The result of Step 1 should be a priority ranking of the problems for the transition to or consolidation of democracy.

In light of Step 1, Step 2 examines how the game of politics is played in Nepal and defines the particular contextual dynamics which the country-specific strategy needs to address. In particular, it calls for the analysis of the forces which support democratization, those that oppose it, and their respective interests, objectives, resources, strategies, and alliances. It is designed to help programmers envision possible entry points for addressing the problems identified in Step 1. The team also examines historical, geographic, sectarian, and other factors that influence politics and need to be taken into account in developing a strategy. The result of Step 2 should be a reconsideration of the problems identified in Step 1 in light of the domestic allies and opponents of democratic reform; and a winnowing of the possible institutional arenas in which USAID investments might have the greatest impact -- namely, those which address the most important problems adjusted by those in which domestic partners provide at least the prospect of impact.

In light of Step 1 and Step 2 (what are the problems in order of importance and who are the domestic allies and opponents of reforms to resolve those problems), Step 3 examines those institutional arenas in which allies are best placed to push important democratic reforms. It identifies the nature of those institutional arenas, the rules that define them, the way in which those rules establish incentives favoring democracy, and the way in which those rules can be changed to promote more democratic behavior.

On the basis of the analysis, the team will develop recommendations for a strategy. The strategy should in the first instance be an optimal strategy (i.e., what changes should USAID support in this environment to bring about a significant deepening of democratization, regardless of bureaucratic or other constraints). The optimal strategy should be formulated as one or more higher-level results or outcomes, with some notion of the lower-level changes required to reach those outcomes. In articulating this strategy, it is important for the team to explain how the strategy is connected to and does something about the problems defined in the analysis.

STRATEGY DEVELOPMENT

Once the optimal strategy is articulated, it needs to be filtered through Step 4, a series of bureaucratic screens: U.S. Embassy preferences and foreign policy concerns; resource availability (staff and money); USAID policy; the existing USAID portfolio; USAID's comparative advantage and what other donors are doing; etc. These bureaucratic filters will affect the shape of the final strategy and program recommendations, but it is important for the Agency to be clear about the trade-offs between the optimal strategy and the practical strategy. In the end, how much can be done about the primary barriers to democratization, given USAID's limitations and strengths?

Because USAID is in the best position to make these determinations, Step 4 is primarily the responsibility of USAID, not the team. Nevertheless, the mission or bureau may want to discuss these screens or constraints with the team and solicit its advice.

The team is not expected to produce a full blown strategy or USAID results framework detailing a series of interlocking cause-and-effect relationships or formal strategic objectives or intermediate results. The team is expected to recommend higher level outcomes or desired changes, although with some tentative notions of how those outcomes might be achieved. For example, if the desired outcome is enhanced civilian control over the military, whose control needs to be increased and in what specific domains? What are the best ways of increasing civilian control? Does it make more sense to aim for greater professionalization of the military (joining NATO, joining peace-keeping forces, improving training and equipment) or is it better to improve the capacity of the legislature and the media to deal with military and security issues (increased understanding of budgetary issues, opportunities for dialogue, improved knowledge of weapons systems)?

SCHEDULE:

Beginning on or about August 5th, 2005 through on or about September 15, 2005.

DELIVERABLES:

Prior to departure from Nepal, the team will present a draft report that will consist of an outline and summary of recommendations. It will debrief the mission on its findings, conclusions, and recommendations toward the end of the third week. The mission will give oral feedback and may later

send written comments. The team may give debriefings for others (embassy, donor consortia, NGO consortia).

The team will finalize the report, incorporating and responding to comments from the mission and other stakeholders. While the report can be organized in whatever manner best suits Nepal's circumstances, the major questions and concerns laid out in the assessment framework must be addressed. The report should include an executive summary that can be detached and used separately, whenever a briefer document is required. The team leader has responsibility for ensuring that the final report is complete and reads in a holistic manner.

ATTACHMENT C: REFERENCES

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