



The Political Economy of Social Accountability in Nepal

By Seira Tamang and Carmen Malena

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List of Acronyms

ACORAB	Association of Community Radio Broadcasters
ADB	Asian Development Bank
APM	All-Party Mechanism
BASE	Backward Society Education
CA	Constituent Assembly
CBO	Community Based Organizations
CFUGs	Community Forest User Groups
CIAA	Commission for the Investigation of Abuse of Authority
CIDA	Canadian International Development Agency
CPN-Maoist	Communist Party of Nepal - Maoist
CPN-UML	Communist Party of Nepal – United Marxist Leninist
CSOs	Civil Society Organizations
DAO	District Administration Office
DDC	District Development Committee
DEO	District Education Office
ESP	Enabling State Program
FACT	Forum Against Corruption and Turmoil
FECOFUN	Federation of Community Forest Users
FEDWASUN	Federation of Water and Sanitation Users in Nepal
GoN	Government of Nepal
ICG	International Crisis Group
INGOs	International Non-Governmental Organizations
JICA	Japan International Cooperation Agency
LDO	Local Development Officer
LGCDP	Local Governance and Community Development Program
MIREST	Media Initiative for Rights, Equity and Social Transformation

MLD	Ministry of Local Development
MPPW	Ministry of Physical Planning and Works
MTEF	Medium Term Expenditure Framework
MuAN	Municipal Association of Nepal
NC	Nepali Congress
NEFEJ	Nepal Forum of Environmental Journalists
NEFIN	Nepal Federation of Indigenous Nationalities
NGOs	Non-Governmental Organizations
NPPR	Nepal Portfolio Performance Review
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PEFA	Public Expenditure and Financial Accountability Assessment
PFM	Public Financial Management
PRAN	Program for Accountability in Nepal
RDIF	Rights, Democracy and Inclusion Fund
RTI	Right to Information
SIP	School Implementation Plan
SWC	Social Welfare Council
TDF	Town Development Fund
TLOs	Tole Lane Organizations
UCPN-Maoist	Unified Communist Party of Nepal - Maoist
UNDP	United Nation Development Program
USAID	United States Agency for International Development
VDC	Village Development Committee

Acknowledgements

This report would not have been possible without the invaluable research assistance of Ramesh Rai and Poonam Sharma, members of the study team. As a team, we would also like to particularly thank the civil society leaders, program/project staff of donor organizations, international and national NGOs and government officials who took time from their busy schedules to share documents, experiences and valuable insights. We are especially grateful to members of civil society and government in the districts, municipalities and VDCs for sharing their time and analyses with us. We are thankful to Hiramani Ghimire, Senior Governance Specialist in World Bank Nepal Country Office, for sharing his valuable comments and advice. We sincerely appreciate the assistance given by Pramod Poudel and Sailja Shrestha of the World Bank in facilitating our work. We are also grateful for all the guidance, support and inputs provided by Jeff Thindwa and Richard Holloway of the World Bank's Program for Accountability in Nepal.

The Political Economy of Social Accountability in Nepal

Executive Summary

I. Introduction

The World Bank has introduced a new Program for Accountability in Nepal (PRAN) to enhance the capacities of civil society and government actors to utilize social accountability approaches and tools.¹ This political economy study seeks to inform the PRAN by identifying the strengths and opportunities as well as risks and obstacles for social accountability initiatives in Nepal. The study is based on primary and secondary research conducted from September 2010 to February 2011.

II. Historical Legacies

The Nepali state has historically been exclusionary and unaccountable. Until 1990, Nepal was ruled by Hindu, high-caste, autocratic rulers. Following the first Peoples' Movement and the formal introduction of multi-party democracy in 1990, formerly banned and underground political parties leaders emerged to take control of state power with the monarchy sidelined. However, just as the new democratic institutions were being put into place, they began to be actively weakened by emerging political party dynamics. In all, the first decade of multi-party democracy was marked by high levels of corruption and weakened formal control institutions. This impacted the credibility of rule of law and the regulatory functions of the state. There remains a serious gap between the ruling elites and the population at large. Problems of social and economic inequality are compounded by impunity and weak rule of law. The legacy of Panchayat nationalism continues to contour identities, economic and social relations and access to political space, even as historically excluded groups begin to find their voice and advocate for change.

III. Legislative Framework For Social Accountability In Nepal

Nepal's Interim Constitution guarantees various levels of citizen and civil society participation and establishes a number of institutions for public accountability and oversight. The 2007 Right to Information Act grants citizens broad access to public information and is very progressive compared to the rest of South Asia. The 2008 Good Governance Act stresses the need for a public administration that is "pro-people, accountable, transparent, inclusive and participatory". Elected local bodies of self-governance are acknowledged as essential to "ensuring peoples' participation in the country's governance" and the government's Three Year Interim Plan (2007/08 to 2009/10) specified decentralization as the key strategy for enhancing good governance and people's empowerment. The new 2010/11 to 2012/13 Three Year Interim Plan continues to emphasize good governance, inclusion, and balanced and decentralized development planned around probable federal governance structures. A range of constitutional and legal provisions are also in place to: regulate public financial management and to ensure oversight and accountability mechanisms for political parties and civil society organizations. Several ministries have guidelines on the implementation of social accountability mechanisms including: citizens' charters, social audits, public audits and public hearings. While there are important discrepancies between legal provisions and actual practice, the existence of these various constitutional and legal provisions nevertheless provides an enabling regulatory framework for social accountability in Nepal.

¹ *Social accountability* refers to the broad range of actions and mechanisms (beyond voting) that citizens can use to hold the state to account, as well as, (ii) actions on the part of government, civil society, media and other societal actors that promote or facilitate these efforts.

IV. Contextual Factors Influencing Social Accountability in Nepal

Civic engagement and social accountability in Nepal are framed and influenced by a number of underlying contextual factors including: the effects of the recent conflict, political transformation, governance issues, the nature and history of relationships between citizens and the state, the specific characteristics of Nepali civil society and the media.

a. Post-conflict context

The fragile and uncertain nature of Nepal's peace process has made more difficult the challenges of rebuilding the country's economy, physical infrastructure and political institutions. The current prolonged political deadlock is tied to lack of progress in implementing the broader peace process. The rise of identity politics, especially following the Madhes Movement of 2007, has further complicated the rebuilding of social cohesion and trust following the conflict. A key risk during this period is that the Constitution will not be written by the 28 May 2011 deadline, turning a potentially progressive historical moment into one of deep fracture.

b. Political transformation

Multi-party democracy is quite new in Nepal. Political parties continue to operate in a highly centralized manner and the predominance of the older generation in top positions of power limits the potential for change. Informal mechanisms continue to play prominent roles in the making of public policy. Sources of political power remain personalized rather than institutionalized and patrimonial traditions and patron-client relations dominate all political institutions. The absence of elected officials at the local level and the consequent introduction of the All-Party Mechanism (APM) has facilitated the spread of patronage systems. Current levels of political violence, insecurity and impunity are the result of competition over state and criminal resources which drive the patronage networks. The interim post-conflict period with the focus on "consensus" among the leaders of the major political parties and the absence of locally elected bodies, has allowed the political parties to capture much of the political space. Problems of corruption and lack of accountability of political parties are recognized as a key concern and, for now, 'buy in' from within the political parties for enhanced financial transparency and downward accountability is low.

c. Governance issues

Global indicators on the status of governance in Nepal reveal several issues of concern. In 2009, Nepal rated below the 50th percentile in all six dimensions of the World Bank's World Wide Governance indicators (i.e. political stability, the absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption). The 2009 Global Integrity Report gave Nepal an overall rating of "weak" (67/100). Despite policy commitments to decentralization, meaningful devolution of power and authority to local bodies has yet to occur. Incentives for effective, accountable and responsive service delivery and for active citizen-state engagement are absent. Analysts point out that the politicization of the civil service, a non-transparent evaluation system and, rewards and punishment unlinked to performance result in little incentive to bring about behavior change. Governance problems in today's context are exacerbated by insecurity. Post-conflict restoration of security has been hampered by the lack of central political will and strategy to address the overall weak rule of law.

d. *Citizen-state relations*

Nepal has a long history of feudalism and monarchy. Neo-patrimonial relationships continue to structure the manner in which citizens relate to the state. A culture of hierarchy and deference to authority exists which makes citizens reluctant to question those in power. The deliberate withholding of information, unnecessary delays and inaction are seen as ways in which to make ordinary citizens “bow down” to the bureaucrats. This post-conflict transitional period is one in which citizens feel further distanced from the state. Unsurprising, this exclusion is especially felt by traditionally marginalized groups. The transition to the often quoted “new Nepal” offers a key opportunity for restructuring state-citizen relations. Social accountability tools can help to reframe more productive citizen-state relations as well as enable transparency and accountability. Social accountability interventions must aim, however, to both affirm the rights of citizens and, at the same time, strengthen the state’s capacity to respond to citizen demands.

e. *Civil society*

Nepal has a long and rich experience of community level associational life. Importantly, the 1990 democratic freedoms enabled the rapid growth of non-governmental organizations (NGOs) in Nepal, funded by international donors seeking to build “civil society”. A key constraint to the ability of civil society organizations (CSOs) to seek government accountability is the fact that their own credibility in the public eye has become suspect. NGOs are criticized for being elitist, for lacking transparency and accountability and for reporting only to donors. The fact that most NGOs tend to be politically aligned further constrains their credibility and legitimacy. Important steps have been taken to improve NGOs’ internal governance, accountability and social inclusion but significant challenges remain.

Other civil society players in Nepal also need to be situated in the larger dynamics of politicization. For example, national trade unions (and their federations) are, in practice, wings of the major political parties. More “modern” community based organizations (CBOs) such as user groups, mother groups, self-helps groups, Tole Lane Organizations, small farmer cooperatives and saving and credit organizations face fewer allegations of partisan alignment, though in the current political climate, political party pressures on these groups is increasing. Many of these groups are also increasingly dependent on donor support and face problems such as limited capacity, elite capture and exclusion of the very poor and socially marginalized. Independent research centers and think tanks are another important category of CSOs. These groups seek to make a public impact by publishing reports and books and convening meetings between policy makers, academics, activists and political actors, but the extent to which such research and policy institutes actually succeed in impacting policy-making is unclear. There is no doubt that CSOs in Nepal have made important contributions to the emergence of a democratic culture in Nepal. There is a real need, however, to assist and support CSOs to become models of transparent, responsive and accountable governance.

f. *Media*

Independent media, another important dimension of civil society in Nepal, has played a critical role post-1990. Weaknesses in the media sector as it relates to civic engagement and social accountability include issues of political bias and lack of autonomy. In the current context, the media has become a target of criminal gangs. Self-censoring by journalists, due to security threats or a reluctance to offend local power-holders, has been identified as a constraint, as has the lack of representation of women and excluded groups in the media. Since Nepal’s first radio broadcasting license was issued in 1997, there has been a rapid growth in both private and not-for-profit radio. Community radio, which has played and continues to play key roles with regard to promoting democracy and social accountability nevertheless faces a number of important challenges including: inconsistent application of community radio principles, domination by elite groups, increased

politicization and loss of local control and content (as a result of networking and syndicated programming).

V. Analysis of Key Elements of Social Accountability In Nepal

a. Citizen access to information

A fundamental element of social accountability is citizen access to information. There are no legal barriers to the obtaining of information for citizens in Nepal. However, there has been little progress in the implementation of the Right to Information (RTI) Act. Contrary to the experiences of many other countries in the early implementation period of such acts, CSOs have not been important drivers of “demand” for information in Nepal (in part due to the current overall attention given to post-conflict and constitution writing imperatives). Recommendations to overcome current obstacles include: establishing a central nodal agency within the government responsible for the implementation of the RTI Act; training and supporting public information officers (throughout the public service); creating a dedicated parliamentary committee on RTI, and; supporting and working with the media and NGO networks to make use of the RTI Act and to educate the public about its existence.

Unsurprisingly, current levels of knowledge about governance processes and key public issues on the part of the general public remain low. Research found that media, especially FM and community radio (and television in urban areas), is the main source of public information for citizens. Research has revealed a number of examples of CSOs and NGOs collaborating with radio stations in the context of specific development or governance-oriented programs but, overall, civil society efforts to disseminate relevant public information and educate citizens about issues of key public concern in Nepal are lacking - a reflection of the current inaccessibility of information, the complex and non-user-friendly nature of data and limited CSO capacity for research and analysis. Despite these weaknesses, citizens’ growing thirst for information offers an important current opportunity.

b. Citizen voice

A second key element of social accountability is citizen voice. Democratization and the growth of the media in Nepal (including television, print and radio) has created spaces where citizens feel safe and empowered to voice their views. Locally based media serve as a particularly important platform for people to share information, opinions and concerns. Community radio has played a key role in giving voice to citizens. Of the many media-oriented donor interventions, a particularly important one is that of the BBC World Trust Service that works in partnership with a network of 2,500 community-based organisations, more than 50 Nepali radio stations and the BBC Nepali Service to produce development, peace and governance-oriented drama and discussion programs. A persistent obstacle to the expression of citizen voice is elite capture. Other obstacles, as discussed above, are increasing pressures on community radio including political influence and the growing need for community stations to compete for sources of revenue with commercial broadcasters.

c. Citizen association and collective action

Another key element of social accountability is citizen association and collective action. Nepal has a long history of collective action which serves as a strong foundation. Over the past 25 years, Nepal has developed a vibrant practice of social mobilization for group-based action. However, the manner in which state-citizen relations have evolved in Nepal – including the period of conflict and autocratic rule post-1990 – has resulted in an emphasis on unilateral strategies of criticism and protest. There is much less history of citizens and civil society organizations engaging in constructive dialogue or “critical collaboration” with state actors.

d. Donor support for social accountability in Nepal

While state building is a central objective both for multilaterals and bilateral donors, NGOs continue to receive large amounts of funds from international donors. Many donor initiatives support democratic governance (including elections) and citizen participation, but few of these go beyond advocacy to support specific mechanisms for strengthening relations of accountability between state and citizens. Most current initiatives have focused on awareness building and strengthening citizens' voice (i.e. promoting the expression of citizen's views, opinions and preferences) as opposed to actively promoting accountability (i.e. actions aimed at enhancing the transparency, responsiveness and answerability of the government and their exposure to sanctions). There has also been relatively less attention paid by donors to the "supply" side of the social accountability equation – enhancing the will and capacity of government actors to be responsive to citizen demands and building constructive state-citizen relations especially at the district and local levels.

There have been some important initiatives by CSOs to directly help the government be more effective and accountable by engaging in policy dialogue, monitoring and evaluating government actions, and providing feedback and "constructive criticism". One example is the activities of FECOFUN in advocating for participatory forest management, securing and defending the rights of Community Forest User Groups and contributing to the development of forest sector policy. Among donor-supported social accountability initiatives in Nepal, it is probably the larger international NGOs - such as ActionAid, CARE Nepal and Save the Children - that have gone furthest in integrating social accountability tools into their work. These organizations have sought both to amplify citizen voice and to work with government agencies to respond in a responsible and transparent manner. Overall, public hearings appear to be the most widespread social accountability method used in Nepal, followed by public audits. There is, however, a high level of variation and inconsistency in the definition and use of such methods by donors and NGOs. Donors and NGOs tend to use their own tools and processes – each of which are defined and applied in different ways. Furthermore, while many donor agencies require social accountability practices in the projects they support, these are not always applied to their own activities nor to those of their partner organizations.

VI. Analysis of Conditions for Social Accountability in PRAN's Three Focal Areas

a. Public financial management

The 2009-2011 Nepal Interim Strategy of the World Bank notes a number of weaknesses in the field of public financial management (PFM) in Nepal. Key issues include the lack of effectiveness of both internal and external audits and the need to accelerate the adoption of internationally accepted accounting and auditing standards. Identified shortcomings with regard to the budget process include: the absence of sectoral targets and indicators; a disconnect between budget allocations and sectoral priorities, and; weak monitoring and evaluation. At the national level, the absence of an Auditor General for almost four years (due to the inability of political parties to agree on a candidate) has affected already weak oversight mechanisms. Lack of public access to information about national and local-level government accounts and contracts further reduces the potential for external scrutiny and audit. Overall, public demand for information on public finances is weak, linked to a lack of "budget literacy" on the part of citizens and limited expertise on financial and budgetary analysis among CSOs.

At the local level, effective PFM is constrained by the government's failure to operationalize fiscal decentralization policy. Additional PFM challenges at the local level include: lack of transparency; excessive involvement of political parties in the selection and implementation of projects, and; a general lack of capacity to manage PFM protocols. Local bodies lack proper procurement plans,

manuals and trained procurement officers. Structural weaknesses are exacerbated by transitional political instabilities - for example, the absence of elected local authorities and the appointment of local bureaucrats assisted by the All Party Mechanism (APM), has rendered ineffective existing accountability mechanisms at the local level.

At the community level, much more emphasis has been given to participatory planning than to participatory budget monitoring and oversight. Obstacles to such initiatives stem from the general reluctance of state actors to divulge financial information, the consequent basic lack of knowledge of government budgetary allocations, the absence of demand for such information and the low capacity of organizations to analyze budgets and accounts.

b. Municipal governance

Participatory governance at the local level is circumscribed by the unfinished process of decentralization. Consequently, the governance of municipalities, as with other local bodies, is complicated by the dominance of central bodies and their line agencies, as well as overall financial dependence on central transfers. The institutional framework for urban planning and management is unclear and complex. Although the Local Self-Governance Act empowers municipalities to prepare their own plans and programs, in practice a multitude of other actors intervene. The Ministry of Local Development, as the central oversight ministry for local bodies, has long been critiqued for its weak capacity.

Presently, in the absence of local elected bodies, all executive and decision-making responsibilities are in the hands of the centrally appointed Executive Officer, assisted by the APM in an advisory role. Research has found that, in general, the APM plays a powerful and interventionist role at the municipal level, and that neither the Executive Officer nor the unelected members of the APM are accountable to citizens. There is a widespread perception of lack of accountability in the current municipality arrangements, with little recourse for citizens. As a result of the interim governing arrangements, current political instability and lack of information, mechanisms intended to promote transparency and citizen participation (such as government websites, suggestion boxes, citizen charters and public audits) have had little impact.

Despite current weaknesses and challenges, the fact that CSOs and municipal authorities continue to engage with each other in various capacities, including in the context of compulsory participatory planning processes, represents an important opportunity. Notwithstanding problems of limited capacity and politicization, the roles that User Groups and Tole Lane Organizations (TLOs) play in promoting citizen participation and social accountability are particularly important.

c. Community-based monitoring and evaluation of public services

Established provisions for decentralization and participatory development planning provide an important opportunity for citizen engagement in decision-making and enhanced social accountability at local level. The implementation of the Local Self-Governance Act was initiated in 2001 with decentralization of certain public services, including basic health care, primary education and agricultural extension. In practice, however, the central government has not yet handed over sector line agencies to DDCs and it retains strong control over the decentralized sectors. In addition, the absence of elected local authorities, the “upwards” accountability of government staff to their line agencies and the lack of “downwards” accountability mechanisms are current obstacles to meaningful participatory governance.

While local bodies and public service providers are legally required to implement a range of social accountability practices (such as citizen charters, social audits and public hearings), very often these mechanisms are not effectively applied in practice. The failure to effectively implement these practices is linked to a number of factors including: lack of understanding on the part of public

officials and bureaucrats of the purpose and utility of these mechanisms; limited technical knowledge, capacity and skills to implement them; lack of clear guidelines; inadequate training/technical support, and; lack of dedicated resources. The current lack of incentives, rewards and enforcement mechanisms also serve to diminish both the will and capacity of authorities to implement these processes.

There are, however, successful examples of CSOs facilitating community-based monitoring and evaluation of public services and working directly with local authorities to reinforce and complement the implementation of existing governmental mechanisms (such as the participatory planning process, citizen charters and public audit requirements). Such initiatives have achieved important results and have succeeded in simultaneously: enhancing social accountability, improving public service delivery, empowering citizens and strengthening citizen-state relations.

VII. Conclusions and Recommendations

At this current critical juncture in Nepal's political development, there is both clear opportunity and urgent need for enhanced citizen empowerment and social accountability. Although the Nepali state has historically been exclusionary and unaccountable and even though the country still faces enormous governance challenges linked to recent conflict, ongoing political instability, underdevelopment, insecurity and corruption, the current transition towards peace and democracy offers great opportunity for positive change. Paradoxically, the current lack of accountability and high levels of dissatisfaction and frustration among citizens offer important entry points for social accountability initiatives.

Recommendations include:

- 1) *Take practical steps to enhance citizens' demand for and access to relevant public information.*
 - a) At local level, give priority to ensuring that access to information directly relevant to citizens' immediate well-being is enhanced. This includes, for example, making publicly available information on local-level planning, budgets and expenditures, as well as details on decentralized services (including entitlements and fees).
 - b) At both national and local levels, conduct campaigns to raise awareness of information rights, and educate citizens about how and where to access public information.
 - c) Undertake similar information campaigns to educate government officials, bureaucrats and NGOs about their obligations and responsibilities under the Right to Information Act.
 - d) Support joint learning and skills-building events for key actors (such as the National Information Commission, public information officers, the media, research organizations, NGOs and CSOs) in order to enhance both "supply" and "demand-side" capacity for public information dissemination while, at the same time, strengthening working relationships between these different actors.
 - e) In collaboration with these same actors, support the identification and introduction of (both formal and informal) incentives and sanctions to promote enhanced transparency and public information sharing.
- 2) *Develop the capacities of CSOs, at all levels, to empower citizens, facilitate more productive citizen-state relationships and promote social accountability approaches.*
 - a) At the local level, train and support CBOs and CSOs to help ordinary citizens to: advocate on their own behalf, apply social accountability approaches and tools at the community

level, and establish working relationships with local bodies in order to help the state to become more effective and accountable. Pay special attention to enhancing the capacity of civil society organizations to function as facilitators between citizens and government authorities, to nurture emerging community leaders to become drivers of change for state-citizen relations and to empower excluded groups.

- b) At the national level, enhance the capacity of CSOs to understand public/government issues, undertake independent research and analysis, and implement social accountability approaches that are people-centered, evidence-based and solution-oriented.
- c) Encourage and support collaboration and alliance building among different types of CSOs (e.g. community groups, advocacy NGOs, research organizations and media) for social accountability purposes. Place special emphasis on those organizations and networks that have the capacity to establish linkages between local and national level actors and reach out to marginalized groups.
- d) Invest in enhanced budget literacy among ordinary citizens and CSOs and support skills building for budget analysis, advocacy and tracking at local and national levels.

3) *Encourage and support CSOs and donor organizations, to become models of social accountability.*

- a) In order for CSOs to play an effective role in holding the government accountable, they must themselves become transparent, accountable and legitimate actors. Support expanded efforts by the CSO community to enhance transparency and accountability across the sector. Encourage CSOs to systematically make their financial information publicly available and to standardize the use of social accountability tools such as social audits. All donors should encourage and require transparent reporting procedures and make readily available in various formats (not just websites) the funds they give to their CSO partners.
- b) Encourage and offer support and technical assistance to CSOs to enhance their internal democratic governance, participatory decision-making and “downwards reporting” to their members, targeted beneficiaries and the public at large.
- c) Encourage and assist donor organizations to set an example by applying social accountability principles and practices in the context of their own operations.

4) *Work with civil society and state actors to expand and enhance existing government-mandated social accountability requirements and practices.*

- a) Work together to develop common definitions, standards and guidelines for social accountability practices already mandated by the state (such as participatory planning processes, citizen charters, public audits and social audits).
- b) Organize campaigns to ensure that relevant state actors at local and national level, and the public at large, are aware of their rights and responsibilities with regard to these practices and understand their purpose and expected outcomes.
- c) Document and disseminate examples of successful social accountability initiatives, in order to build confidence and demonstrate the benefits of such approaches.
- d) Advocate for the provision of adequate resources, training, technical assistance and follow-up to ensure that mandated social accountability practices are implemented in a meaningful and effective manner.

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INTRODUCTION

1. The World Bank has introduced a three-year Program for Accountability in Nepal (PRAN) in Nepal. The program will support capacity development of civil society and government actors and the development and piloting of innovative tools of social accountability². Particular emphasis will be placed on three priority thematic areas: public financial management, municipal governance and community-based monitoring and evaluation of basic public services.
2. It has now become widely accepted that politics and the political economy³ influence the attitudes and behaviors of state and non-state actors and whether and how reforms happen, impacting development interventions in intended and unintended ways. This political economy paper seeks to identify the strengths and opportunities as well as risks and obstacles for social accountability initiatives in Nepal. It also includes recommendations for managing and addressing these issues.

a) Research Methodology

3. The research methodology utilized for this study was three-fold. First, a literature review was undertaken including in-country laws, policies and regulations, as well as a range of studies and articles on issues of relevance to social accountability in Nepal. A bibliography of these materials is attached as Annex I. Second, semi-structured interviews were conducted with key civil society leaders, NGO staff, journalists, academics, government officials and citizens. A list of people interviewed and guiding questions are attached as Annex 2. Third, the research team made field visits to the eastern and western regions of the country to observe social accountability initiatives and interview local stakeholders. In total 75 people were interviewed, including 12 civil society leaders. Focus group discussions with citizens were also conducted in Ilam, Dhankuta, Itahari and Palpa.

² *Social accountability* refers to the broad range of actions and mechanisms (beyond voting) that citizens can use to hold the state to account, as well as actions on the part of government, civil society, media and other societal actors that promote or facilitate these efforts.

³ *Political economy* refers to interdisciplinary studies that draw upon economics, law, political science and social studies in explaining how political institutions, the political environment, the economic system and society, influence each other.

b) Overview

4. The first section of the paper provides a brief historical overview of political development in Nepal, and highlights how these historical legacies influence current day citizen-state relations and accountability relationships. Section two analyzes the legislative and institutional framework for social accountability in Nepal. It concludes that while an enabling legal and policy framework does exist in Nepal, non-observance of laws and non-implementation of policies remains a key obstacle. The third section of the paper analyzes a range of contextual factors influencing social accountability in Nepal. These include the effects of recent conflict, political transformation, governance issues, socio-cultural factors, the nature and history of relationships between citizens and the state, and the specific characteristics of Nepali civil society and the media. Section four identifies citizen information, citizen voice and collective action as three key elements of social accountability in Nepal, and discusses current strengths and weaknesses with regard to each of them. This section also includes an overview of donor support to social accountability in Nepal. Section five of the paper looks at each one of the PRAN's three focal areas - public financial management, municipal governance and community-based monitoring and evaluation of public services – in each case, discussing opportunities and challenges and providing examples of current social accountability initiatives. Finally, section six of the paper outlines conclusions and recommendations for promoting social accountability in Nepal.

SECTION I - HISTORICAL LEGACIES

5. **The Nepali state has historically been exclusionary and unaccountable.** Until 1990, Nepal was ruled by Hindu, high-caste, autocratic rulers in the form of Rana rulers (up until 1950) and then Shah kings during what is known as the Panchayat period (1960 to 1990). The Panchayat period is important in that it was during this time that a nation-building process was started in which the triumvirate of Hinduism, the monarchy and the Nepali language were central. While officially defunct, a 1854 Country Code which ranked all inhabitants – including Dalits and non-Hindu indigenous groups (now self-identified as Adivasi Janajatis⁴) – into a caste system, served to structure social, political and economic relations. In addition to caste discrimination faced by Dalits, homogenizing Panchayat nationalism saw the repression of the linguistic, cultural and religious diversity of Janajatis. For women in an officially defined Hindu nation-state, unequal gender relations had multiple consequences. Constitutionally and legally mandated inequality impacted all spheres of women's lives, including opportunities, decision making and access to, and control over, resources. Furthermore, as the Panchayat construction of “the Nepali” was centered on the hills, this had several exclusionary consequences for the Madhesi population living in the south eastern part of the Tarai. With language, customs and cultures similar to that of north India, despite having a long history of origin and habitat within Nepal, the Madhesi community was viewed by the state as not being “real Nepalis,” if not “Indian.” Consequently, for the historically marginalized, the Nepali state

⁴ For ease of reference, in the rest of the paper Adivasi Janajatis will be referred to as Janajatis.

has either been seen as predatory, or a distant governing institute for the elites. (Lawoti 2007)

6. Following the first Peoples' Movement and the formal introduction of multi-party democracy in 1990, formerly banned and underground political parties leaders emerged to take control of state power with the monarchy sidelined. However, **just as the new democratic institutions were being put into place, they began to be actively weakened by emerging political party dynamics.** Starting with the first post-1990 elected Nepali Congress (NC) led government, parties sought to expand their influence through the distribution of patronage. Party members tended to see power, position, and privileges as their right given the struggles and sacrifices of the past (Hachhethu 2008: 155). Increasing election costs and unstable governments - from 1990 to 2002 there were twelve governments - resulted in parties in power accelerating accumulation, less certain of their tenure in government. **In all, the first decade of multi-party democracy was marked by high levels of corruption and weakened formal control institutions. This impacted the credibility of rule of law and the regulatory functions of the state.**
7. The failure of the new Constitution and the governments of the 1990s to bring development, good governance and remedy structured inequalities, including regional economic disparities, provided fertile ground for the "People's Movement" started by Communist Party of Nepal – Maoist (CPN-Maoist)⁵ in 1996. The inability of political parties to initially garner public support for its rallies against the king's takeover of power in 2002 and more overt coup in 2005, was indicative of the loss of faith in political parties by citizens. It was only after the signing of the November 2005 agreement with the CPN-Maoist in Delhi that general citizens, hitherto only attending civil society rallies in large numbers, came to the streets at the call of political parties. This resulted in the April 2006 Peoples' Movement.
8. **Importantly, relations between citizens and the state in Nepal have also historically centered around the role of international donors and Nepal's geo-political location.** Since the fall of the Rana regime in 1950 and Nepal's official "opening up" to the rest of the world, Nepal has been dependent on aid for its development. From initial bilateral aid, especially during the Cold War period, to the multilateral aid of the later periods, many have argued that state accountability mechanisms are oriented to donors more than citizens (Panday 2000; Mahat 2005). In the context of a historical lack of relations of accountability with the state, there is a widespread public perception that Nepali state elites focus on accountability only to foreign donors.
9. This brief history of political development has been presented to provide a context for the present challenges of accountability in Nepal. While historical developments have not been linear, a number of current day issues and challenges can be traced to the country's historical legacy. For example:

⁵ Since early 2009 smaller parties have now combined with the CPN-Maoist to form the Unified CPN-Maoist – UCPN-Maoist. We have used both CPN-Maoist and UCPN-Maoist according to pre-and post unification periods.

- **There remains a serious gap between the ruling elites and the population at large.** The state is seen as distant if not predatory and historical grievances around inequalities and perceived wrongdoings have not been addressed.
 - **Problems of social and economic inequality are compounded by impunity.** Although official reports and public investigations commissioned by the Government of the day have found evidence of corruption and violence against Nepali citizens by senior leaders, there have been very few trials, and even fewer convictions.
 - **The legacy of Panchayat nationalism continues to contour identities, economic and social relations and access to political space,** even as historically excluded groups begin to find their voice and advocate for change.
10. Taken together, these characteristics of Nepali political life have impacted the ability and capacity of the state to manage its resources in an efficient and responsible manner and to deliver quality services to the public. It has also resulted in the undermining of the legitimacy of the state. The oft-cited strengths of Nepal's vibrant civil society, independent media and competitive, multi-party politics, have to date not been able to impact these larger dynamics. **The current challenge in Nepal is therefore to build on these important strengths while working to address the state's systemic weaknesses in governance and accountability.**

SECTION II - LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR SOCIAL ACCOUNTABILITY IN NEPAL

11. **The following section provides a brief overview of laws and policies in support of social accountability in Nepal.** This includes an analysis of the current legal framework related to: public access to information, decentralization, citizen participation, accountability and anti-corruption. **While an enabling legislative and institutional framework for social accountability does exist in Nepal, many of these laws and policies are not adhered to in practice.** The numerous challenges related to operationalizing and enforcing existing laws and policies are discussed throughout the remainder of the paper.
- a. Access to Information*
12. **At the most basic level, the 2007 Interim Constitution of Nepal has guaranteed Nepalis' fundamental rights including the freedoms of opinion, expression, assembly and to form political parties, organizations and unions.** The Interim Constitution has specified anti-censoring stipulations in the Right regarding Publication, Broadcasting and Press. The Right to Information has been constitutionally guaranteed, as has been the Right to Religion and Right to Privacy. Other relevant statutes and acts include: the Citizens' Rights Act (1955); Press and Publication Act 1991; National Broadcast Act 1993; Working Journalists Acts 1995; The Press Council Act 1991; the Defamation Act 1959; National News Service Act 1962; Radio Act 1958 and the Gorkhapatra Corporation Act.⁶

⁶ For important critiques of the manner in which the IC introduces caveats against the freedom to speech, in contradiction with international laws, see Freedom Forum and Article 19, February 17, 2007.

Protections for journalists exist via the 2007 Working Journalist Act and the Right to Information (RTI) Act. Mandatory registration of the media (via the Company Act 2006 and the Institution Registration 1977) ensures that information on the ownership of media houses is public. Furthermore, legal access to information has been formulated by the Right to Information Act 2007, supported by a Regulation on the Right to Information 2009 and the creation of a Nepal National Information Commission.

13. **Nepal's constitutional and legal guarantees for the right to information are very progressive compared to the rest of South Asia and given Nepal's short history of democracy. The 2007 Right to Information Act grants citizens broad access to public information.** While not made explicit under sui moto terminology, proactive disclosure requirements also exist. Public bodies must respect and protect the right of information of citizens and make public simple, accessible and updated information. Time frames within which citizens must be given requested information – special instances exempted – are included, as are complaint mechanisms and clearly stated protection and other provisions for whistleblowers. The Act also stipulates the establishment of the National Information Commission that gives further institutional backing to citizen's rights to information. While the both the Act and Commission are relatively new and not yet fully operationalized, given the historically secretive nature of Nepali governments, these provisions provide a critically important opportunity for citizens to access information and work with the government to make it more accountable.

14. **The enabling environment created by the Right to Information Act is particularly important given the current overall lack of access to financial information.** The Open Budget Survey [2010](#) gave Nepal an overall score of 45 out of 100; indicating that the government provides some information to the public on the central government's budget and financial activities but that there is considerable room for improvement. The budget information made public is incomplete - for example, it does not include the year-end report, making it very difficult to assess what was budgeted compared to what was actually collected and spent. Compared to the Open Budget Survey of 2008, which gave Nepal a rating of 43, there has been slight improvement. With regard to the effectiveness of oversight mechanisms, however, the 2010 report noted that the role of the legislature in providing oversight had weakened since the previous period, a reflection of the political tumult.

b. Decentralization and Citizen Participation

15. **The Interim Constitution guarantees various levels of citizen participation.** Citizens aged 18 and above have the right to vote and all citizens have the right to form political parties. For the Constituent Assembly (CA) elections, parties were instructed to ensure the proportional representation of women, Janajatis, Dalits, Madhesis, people from backward regions and others in the Proportional Representation election list. Furthermore, the Directive Principles of the Interim Constitution (34:2) specifies that the state will “create opportunities for maximum participation of the people through self-governance, while maintaining a system where people can reap the benefits of democracy.”

16. **The preamble to the 2008 Good Governance Act 2008 stresses the need to make public administration “pro-people, accountable, transparent, inclusive and participatory”**

and to transform “the administrative mechanism into a service delivery mechanism and facilitator”. Strategies include the empowerment of women and promotion of gender justice and the upliftment of ethnic, Dalit and economically and socially backward classes.

17. **The participatory framework also importantly includes civil society and non-governmental organizations (NGOs).** The Interim Constitution guarantees the freedom of association and assembly⁷ and numerous government plans and statutes provide a legislative framework for the work of civil society and NGOs in local self-government as well as the broader development process. These include the 1992 Social Welfare Act, the Ninth (1997-2002), Tenth (2002-2007) and Interim (2007-2010) Plans as well as the 1998 Local Self Governance Act and the 2008 Good Governance Act.
18. The 2007 Interim Constitution is the first Nepali constitution to have a separate section for local government.⁸ **Provisions for elected local bodies of self-governance are clearly stated “thereby ensuring maximum peoples’ participation in the country’s governance, to provide services to the people at the local level and for the institutional development of democracy” (139:1).** Article 140 emphasizes the sharing of accountability and resources between the centre and the local self-governing bodies “in an equitable and judicious” manner. The 1999 Local Self-Governance Act and the 2000 Local Self-Governance Regulation specify the powers, responsibilities and structures of local bodies. These are backed by various policy initiatives, including the creation of the Local Bodies Fiscal Commission that is responsible for the fiscal aspects of decentralization.
19. **Beyond the Interim Constitution, the government’s Three Year Interim Plan (2007/08 to 2009/10) specified decentralization as the main means for enhancing good governance, development, people’s participation and people’s empowerment.**⁹ The focus was on strengthening the local self-governance system and ensuring specific, demand driven, results-oriented programs. Chapter 8 of the Plan focused on women and marginalized groups and included objectives such as ensuring at least 33% representation of women in policy and decision-making processes at all levels; eliminating constraints to Dalit upliftment; increasing access of Janajatis, Madhesis and Muslims to administrative, social and economic resources and ensuring a disability-friendly environment. The new 2010/11 to 2012/13 Three Year Interim Plan continues emphasis on good governance, inclusion, and balanced and decentralized development planned around probable federal governance structures. Strategy 1 under Chapter 8 for decentralization, autonomous governance and local development is to “Establish and operate autonomous, responsive and accountable local body [sic] by carrying out devolution of political and administrative

⁷ The Interim Constitution 2007 has for the first time stated the right of Nepalis to organize labor unions.

⁸ There are two levels of local government with 75 District Development Committees (DDCs), in addition to 58 Municipalities and 3915 Village Development Committees (VDCs) (also known as local bodies) at the grassroots level.

⁹ With decentralization as key to good governance, a Decentralization Implementation and Monitoring Committee has been set up under the chair of the Prime Minister and other high-level representatives. A previous committee (under the Chair of the Ministry of Local Development) already prepared and started to implement in 2000 a Decentralization Implementation Plan.

rights to local bodies, on the basis of federal structure and in accordance to the principle of inclusive democracy.”

c. Accountability and Anti-Corruption

20. **The Interim Constitution has specified the establishment of a number of institutions for public accountability and oversight.** These include: the Commission for the Investigation of Abuse of Authority (CIAA), the Auditor General, Public Service Commission, Election Commission and the National Human Rights Commission. Other institutions include the National Vigilance Center, a statutory body established in 2003 under the Prime Minister’s Office to monitor asset declaration of officials and conduct audits of projects and operations for service delivery weaknesses. A Special Court also exists, as a separate bench of the judiciary to deal with corruption cases. The CIAA uses this court to prosecute corruption cases, but it also hears appeals against the rulings of the CIAA. Within the Legislature-Constituent Assembly, the Finance Committee and, more importantly, the Public Accounts Committee provide oversight of public funds.

Table 1: List of state anti-corruption agencies in Nepal

	Anti-Corruption Agencies	Type	Major Focus
1	Commission for the Investigation of Abuse of Authority (CIAA)	Constitutional body	Investigation and prosecution of cases of corruption and improper conduct
2	National Vigilance Centre	Prime Minister’s Office	Awareness raising and corruption prevention
3	Special Court	Judiciary	Adjudication of corruption cases
4	Office of Attorney General	Constitutional	Public prosecutor
5	Judicial Council	Constitutional	Combating corruption in judiciary
6	Revenue Investigation Department	Ministry of Finance	Detection of revenue leakage
7	Independent Review Committee	Committee under Public Procurement Act	Corruption related to public procurement over Rs. 30 million.
8	Central Arrear Collection Office	Financial Comptroller/M	Collection of government dues and arrears

	Anti-Corruption Agencies	Type	Major Focus
		Ministry of Finance	
9	Parliamentary Committees including Public Accounts Committee and State Affairs Committee	Parliament	Parliament oversight agencies
10	Office of Auditor General	Constitutional	Auditing of books of accounts
11	Offices of Regional Administrators (5 offices) and Chief District Officers (75)	Ministry of Home	Handling regional and district-level corruption cases remaining within the authorities delegated by CIAA
12	Office of Financial Comptroller	Ministry of Finance	Government budgetary control

Source: Dhakal and Nirola 2008: [1](#)

21. The legal framework on accountability and anti-corruption centers on the **2002 Corruption Control Act**, which criminalizes corruption, bribery, extortion¹⁰ and fraud, and the **2008 Good Governance Act**, which stresses the need to be corruption-free. The **2008 Strategy and Action Plan Against Corruption** is the most recent anti-corruption initiative. It includes important goals such as reforming existing laws on corruption and supporting capacity building and public awareness strategies.
22. **Specific regulations relating to Public Financial Management (PFM) include: the 2007 Public Procurement Act and Public Procurement Regulations** (under which the Public Procurement Monitoring Office was established under the direct supervision of the PM); the **2007 Banking Offence Act**, the **2008 Anti-Money Laundering Act**, and the **1993 Revenue Leakage (Investigating and Control) Act**.¹¹ While the Corruption Control Act includes a provision (section 56) that appears to provide for the protection of whistle-blowers, the 2010 Global Integrity Report argues that no specific provisions actually exist in the Act and that the section is “largely confined to breaches of secrecy, and is basically meant for discouraging false reporting rather than encouraging accurate

¹⁰ The actual term extortion is not used; the clause reads “punishment for exerting illegal pressures” (2:18). According to the 2010 Global Integrity Report for Nepal, prosecutions are currently under the Public Offense Act.

¹¹ Other relevant acts include: the 2008 Customs Acts, the 2002 Excise Duty Act, the 1966 Value Added Tax Act and the 1963 Foreign Exchange Regulating Act.

disclosure.”However, the Right to Information Act Section 29: 4, 5 offers protection and compensation for any recriminatory action that may take place for whistleblowers. Furthermore, a permanent **Gender Responsive Budgeting Committee** has been established within the Ministry of Finance to undertake gender audits regarding budget allocations above 50 million rupees in select pilot ministries (Sharpe et al 2009: 3-4)

23. **Political parties and their finances are regulated by the Interim Constitution and five other acts, including the 2002 Act Related to Political Parties.** In terms of institutions, the Interim Constitution has delegated the Election Commission to register, regularize and monitor the activities of political parties as well as to ensure free and fair elections. The Act Related to Political Parties requires parties to report all forms of income and sanctions exist for non-conformity. Political parties must also conform to the 2007 Political Party Registration Rules in order to be registered with the Election Commission. The rules include: adherence with the democratic provisions outlined in the Interim Constitution; provisions in the party statute for the election of office bearers at all levels at least every five years; the inclusion of women, Dalit and deprived and oppressed people in executive committees and provisions in the party statute for the discipline of members.

24. **Oversight and accountability mechanisms for civil society organizations (CSOs) and NGOs also exist.** All NGOs and INGOs must register with the Social Welfare Council (SWC) in order to receive funds and/or technical expertise from the Government of Nepal or foreign donors. The SWC requires that all registered NGOs undertake annual audits. Furthermore, NGOs are registered under the Institution Registration Act of 1977, and must also submit their audit reports to the District Administration Office (DAO). Subject to DAO monitoring, annual financial disclosures are necessary in order to renew their registration. The Chief District Officer is authorized to delegate officers to inspect NGOs and legal actions against financial misappropriation and abuse of authority can be initiated under the Institution Registration Act.

25. **There are, importantly, various ministerial level guidelines on the implementation of social accountability mechanisms including: citizens’ charters, social audits, public audits and public hearings.** The Policy and Program of the Nepal Government 2006/7 made public auditing mandatory in public works carried out by communities and stated that public hearings and citizen charters would be made more effective. The three-year Interim Plan 2007/8 – 2009/10 and policies stated that citizen charters and public hearings would be extended to other NGOs, the private sector and consumer goods involved in public services. The Local Authority Financial Administration Regulation 2007 states that that public audits should be carried out in all types of programs conducted by local authorities after the completion of the project and before final clearance. It also stipulates that local authorities conduct social audits of all their programs, and that these be completed within four months of the completion of the fiscal year. The Good Governance Act 2008 requires that citizens’ charters be put in every office (with stipulations on the information to be provided); the holding of public hearings with local stakeholders, civil society and local body officials and the placement of complaint boxes. The Strategy and Action Plan Against Corruption 2008 has, among other things, provisions for citizen charters and monthly public hearings to be held by service providers for public complaints. It also

suggests legal provisions for the monitoring of construction works by local consumers or residents. The Ministry of Education regulatory framework provides for social audits and has a separate committee chaired by the Director of Administration and Physical Service Division to oversee social and financial audits of schools. The Ministry of Health and Population has included social audits in its 2007 Policy on quality of health care services. The Ministry of Local Development has directives for social and public audits and citizen charters as well as a manual on public hearings, review and auditing. All local bodies have to keep public boards with prescribed minimum information at project sites with cost estimates. The Minimum Conditions and Performance Measure which measures the performance of local bodies includes indicators for the regular conducting of public hearings and social audits and the provision of a citizen charter. Importantly, the MLD has recently finalized an implementation strategy for accountability procedures covering public audits, social audits and public hearings (GoN/MLD 2067vs).

26. **Of course, having the relevant laws, rules, and regulations in place, does not guarantee that they are observed or implemented.** The current discrepancy between legal provisions and actual practice, as evidenced for example in the 2010 Nepal Global Integrity Report, is discussed in the following section. **While implementation practices vary greatly, the existence of these various constitutional and legal provisions nevertheless provide an enabling regulatory framework for social accountability in Nepal.**

SECTION III – CONTEXTUAL FACTORS INFLUENCING SOCIAL ACCOUNTABILITY IN NEPAL

27. **Civic engagement and social accountability in Nepal are framed and influenced by a number of underlying contextual factors. These include the effects of the recent conflict, political transformation, governance issues, the nature and history of relationships between citizens and the state, the specific characteristics of Nepali civil society and the media.** The following is an overview of each of these factors as they relate to the themes of civic engagement and social accountability. It is important to note that Nepal is in a very fluid political, economic and social situation, and as such these factors are also in a state of flux.
 - a. *Post-conflict Context*
28. **The fragile and uncertain nature of Nepal’s peace process has made more difficult the challenges of re-building the country’s economy, physical infrastructure and political institutions.** There has been a move away from political consensus to confrontation among the main signatories to the 2006 Comprehensive Peace Agreement following the unforeseen level of success of the CPN-Maoist and the Madhesi People’s Rights Forum in the Constituent Assembly elections of April 2008. After the resignation of the UCPN-Maoist Prime Minister Pushpa Kamlal Dahal and his successor, Communist Party of Nepal – United-Marxist-Leninist Leader (CPN-UML) Madhav Kumar Nepal in June, 2010, the country faced over seven months without a new Prime Minister until the February 2011 election of CPN-UML leader Jhala Nath Khanal. **With little investment in trust-building**

mechanisms and a climate of confrontational politics, the formation of a new government has been difficult.

29. **The prolonged political deadlock is tied to lack of progress in implementing the broader peace process.** Limited progress has been made in key issues of integration of the armed forces, security sector reform and the return of land seized during the conflict. Peace support institutions specified in the Comprehensive Peace Agreement, such as the Truth and Reconciliation Commission and the High Level Commission on Disappearances, which would help reconciliation and rebuild social trust as well as bring justice to victims, have yet to be established. Apart from the general lack of consensus, political parties have shown little interest in dealing with past crimes; there has not been a single prosecution for abuses in the civilian courts. Neither the recommendations of the Malik Commission of 1990 (formed to investigate excesses of the Panchayat regime), nor the recommendations of the Rayamajhi Commission (established to investigate human rights violations during the April 2006 movement) have been implemented.
30. The failure of the CA to complete the constitution writing process by the initial deadline (of May 2010) has led to a further decrease in faith in the political leadership (Dixit [2010](#)). While the CA has been extended for another year (until May 2011), key issues such as the naming and numbering of boundaries and provinces, structure of government and the forms of election to central and provincial institutions remain unresolved (Martin Chautari 2010). Much has been made of the “betrayal” by political leaders of the “People’s Mandate” of the April 2006 democracy movement. (Republica 2010)
31. **The rise of identity politics, especially following the Madhes Movement of 2007, has further complicated the rebuilding of social cohesion and trust following the conflict.** The new forms of identity politics see a hardening of previously more flexible identities. While the impact of such politics varies considerably across the country, it is generally recognized as being more prevalent in the Central Eastern Tarai and Eastern hill regions.
32. **Overall, the lack of political leadership at the center has resulted in weak governance and low government capacity on the ground.** The focus on “consensus” in the post-conflict period has shifted power from the elected CA to the leaders of the main political parties. The limited progress on forming a new government, writing the Constitution, and advancing the overall peace process is widely seen as a result of “politics as usual” – the struggle over control of the government by unaccountable party leaders – at the expense of the needs and demands of citizens.
33. **A key risk during this period is that the Constitution will not be written by the 28 May 2011 deadline, turning a potentially progressive historical moment into one of deep fracture.** The current political stalemate is linked to the high political stakes of contouring the Constitution and heading government and key ministries when the extended mandate of the CA expires. Even if another extension to the CA is agreed upon, which analysts have pointed to as a possibility (Jha 2011), increased frustration among citizens in general and marginalized communities in particular, will pose risks to political stability
34. However, the International Crisis Group (ICG) September [2010](#) report states that neither the army nor UCPN-Maoist are likely to go back to war easily and the desire for peace and

stability is strong in the general public (ICG 2010). It is clear, however, that delays in the formation of a new government will impact political and legislative initiatives and implementation efforts. An important challenge in planning for accountability initiatives at various levels is the overall lack of clarity on the forms of state to come, and more specifically, the fact that the current drafts do not envisage districts. To add to this, the current draft of the Constitution contains many stipulations that appear to be more regressive than progressive.¹²

b. Political Transformation

35. **Multi-party democracy is quite new in Nepal.** Officially a multi-party democracy since 1990, factoring in the former king Gyanendra's takeover from 2002 to early 2006, this democracy has only really been functional for a total of 16 years, four of which have been in the post-2006 period of transition and flux. For fear of being too "political," political party reform has not historically figured prominently in the landscape of donor funding. However, the problems of Nepal's political transformation is clearly linked to the evolving nature of Nepal's political parties.

36. As with the UCPN-Maoist today, the two largest parties that dominated the first decade of democratic politics, the NC and the CPN-UML, were historically trained in anti-establishment movements and operated in a **highly centralized manner** (Haccheteu 2002). This continues today; lower units of the parties continue to function to relay messages and party commands to the people, as opposed to articulating and championing their needs. Reflecting the hierarchal nature of Nepali society, the political parties are dominated by older, high caste men and are personality-driven. Excluded groups figure in lower echelons of power and political parties are not held accountable to implement the inclusive provisions in their manifestos (GSEA 2005: 31). **The continuing predominance of the older generation in top positions of power limits the potential for change.** For example, the recently held Nepali Congress 12th General Assembly saw the election of the older familiar faces into the central committee – with only five members under the age of 40¹³ – an improvement however from the preceding committee that had no members under 40 (Adhikari 2007 v.s). The prolonged age of "youth" in political parties furthermore increases resistance to change: having waited and worked up the political hierarchy for years to reap the benefits of power, new leaders are unlikely to institute democratic reforms

¹² The drafts appear to have incorporated many of the problematic clauses of the IC and included other restrictions on such fundamental rights as free expression, assembly, and association with caveats that allow the government to define vaguely defined notions of threats to "harmony," "the interest of the general public," "law and order" "public purpose" etc. International law applicable to Nepal requires that any such restrictions be precisely prescribed for reasons accepted under international law and strictly and demonstrably necessary in a democratic society. Further, the current drafts of "the local" appear weaker than the standing Local Self Governance Act stipulations and the "local" level of government appears as a clear subsidiary to the province, as opposed to a constitutionally mandated level of government in a federal system (Martin Chautari 2010).

¹³ Efforts to decrease the age of 'youth' in Nepal preceding International Youth Year 2010, were thwarted by the dominance of political parties representatives in the planning committee. Despite efforts by non-party members of the committee, the age of youth in Nepal has been defined as up to 40 – a decrease from 45 – but still much broader than the UN definition that identifies youths as people from 15 to 24 years (Personal communication with a committee member, 23 September, 2010).

within the party that may hinder their new found power. In all, the dependency of local leadership on the center cements and polices hierarchy and loyalty (Kumar 2008). Backing from top leaders and the support from factions of the party - all of the major parties are divided into personality driven factions - are key to the political success of individuals. These intra-party dynamics, have had and continue to have, important consequences for inter-party and thus national level politics.¹⁴ **Informal mechanisms continue to play prominent roles in the making of public policy.** Political scientist Dr. Dhruva Kumar has long argued that backstage negotiations are more important than legislative debates in policy-making, with active political interests undermining and manipulating the role of the parliament (Kumar 2009).

37. **Further, patrimonial traditions and patron-client relations dominate all political institutions, a legacy of long feudal rule and the inability and unwillingness to institutionalize sources of power.** From the first post-1990 government, inter-personal relations between ministers and party leaders were largely dominated by a tendency of the party leaders to insist on using government resources for their personal and political interests and more so in the distribution of patronage, i.e. for appointments, transfers, and promotions, and for granting *thekka* (contracts) to persons they wished to favor (Hachhethu 2008: 155). This became a deliberate strategy. The CPN-UML tried to institutionalize the government's patronage distribution functions; it had formed a State Affairs Department within the party at both central and district level "to prepare a profile of civil servants and to control the appointment, transfer, and promotion in bureaucracy and corporations from the lowest to the highest posts" (Hachhethu 2008: 156). The transitional period has seen the UCPN-Maoist seeking to "mainstream" into this political culture, attempting to achieve in the immediate post-conflict period what the other parties had had over a decade to do. For all political parties, the expansion of party building has been achieved through the distribution of patronage.
38. **The absence of elected officials at the local level and the consequent creation of the All-Party Mechanism (APM)¹⁵ to assist bureaucrats at the Village Development Committee (VDC), municipality and District Development Committee (DDC) level, has facilitated the spread of the patronage system.** At the local level, varying degrees of misappropriation of resources occurs with connivance: there is no functioning opposition party. However, the politics of patronage has also increased conflict over resources at the local level. VDC and DDC budgets, public contracts, humanitarian relief payments and local appointments (for example school management and forest user committees) have become central for patronage purposes.
39. **Current levels of political violence, insecurity, impunity are the result of competition over state and criminal resources which drive the patronage networks.** A network of

¹⁴ For example, the dissolution of parliament in 2002 (which led to the then king's covert coup in October 2002) by then Prime Minister Sher Bahadur Deuba was inextricably linked to the factional politics within his own NC party. The current political stalemate is also linked to the differences within the factions of the various political parties.

¹⁵ The APM is based on one party one representative of political parties as mentioned in the Interim Constitution, and other political parties who have obtained more than 10 percent of votes (either in proportional or first-past-the-post election of the CA election) at the district level (MLD/GON 2008: 8-9).

ties exists: armed groups and gangs responsible for extortion depend on politicians and police to operate under protection with near impunity; politicians need gangs for election and they in turn help protect gangs from the law; and increasing competition over local power and resources results in the expansion of ties to criminal elements and an increase in political violence (ICG 2010). Unsurprisingly, in Transparency International's 2010 Corruption Perceptions Index, Nepal's ranks 146th out of 178 countries surveyed. Slipping down three positions from the previous year, Nepal, as in the year before, is perceived as the most corrupt country in South Asia.

40. **The interim “post-conflict” period with the focus on “consensus” among the leaders of the major political parties and the absence of locally elected bodies, has allowed the political parties to capture much of the political space.** For the reasons noted above, and due to the fact that elections (and thus increased need for resources) are to directly follow the promulgation of the new Constitution, **the likelihood of ‘buy in’ from within the political parties for principles of financial transparency and downward accountability and general reform of political parties will be low.**

41. **Problems of corruption and lack of accountability of political parties are explicitly acknowledged in the 2008 Strategy Action Plan against Corruption** The proposed provisions to make the financial activities of political parties transparent, including expanding oversight into “sister organizations” are positive. The plan, however, is unclear on monitoring and sanctions; and the general failure of political actors to abide by existing policies and plan does not bode well for the implementation of the strategy. The 2002 Act Related to Political Parties already requires parties to report all forms of income, but neither donor names nor amounts have ever been fully disclosed. Annual income and expenditure statements and electoral expenditure reports are not sent by the parties to the Electoral Commission (Transparency International 2010). Consequently, the government and the Election Commission remain unclear about sources of political party funding. However, sanctions have never been applied and neither the existing laws nor the proposed Strategy Action Plan against Corruption have provisions obliging legislative candidates to report on the sources of income for election expenses.

c. Governance issues

42. **Despite decades of international aid, Nepal remains one of the poorest countries in the world** with a GDP per capita average of US\$ 470 and adverse, but improving, social indicators (World Bank 2009). The promotion of capable state structures and systems, accountable institutions as well as sustainable, inclusive and equitable economic growth continues to be challenging. Building the new state in Nepal involves attending to the broader governance and anti-corruption agenda (World Bank 2009: 47).
43. **Global indicators on the status of governance in Nepal reveal several issues of concern.** In 2009, Nepal rated below the 50th percentile in all six dimensions of the World Bank's World Wide Governance indicators (i.e. political stability, the absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption). Lack of political stability was clearly reflected, as were declining rates of government effectiveness, regulatory quality, rule of law and control of corruption as compared to 2004 ratings. Apart from an incremental improvement in political stability (from 3.4 to 5.2),

only voice and accountability showed improvement in the indicators – from 18.3 to 30.8. However this increase is relative to 2004 when the king had taken over power (behind appointed governments). The current 30.8 is still below the 1998 figure of 42.3, although the increase is encouraging.

44. **According to the Global Integrity Report that assesses strengths and weakness of national level anti-corruption systems, in 2009 Nepal had an overall rating of “weak” (67/100).** Notably, while the legal framework scored 84/100, actual implementation scored only 50/100, resulting in a “very large” implementation gap of 34. The report stated that, “While many corruption-related legal reforms were adopted in 2007, their implementation has been stalled as the government’s focus shifted to peace building, conflict resolution, social inclusion and elections.” While all such ratings are subject to methodological debate, they highlight clear concerns relating to governance and accountability in Nepal. A summary of the 2010 Global Integrity Report for Nepal is attached as Annex III.
45. Legal frameworks and past and current policy initiatives stress commitments to decentralization for good governance and meaningful state-citizen interactions. However, **despite the attention garnered by the decentralization process, meaningful devolution of power and authority to local bodies has yet to occur. Furthermore, no serious attempt has been made to implement real decentralization.**

Central ministries continue to play a major role in determining the type and level of public goods provided to citizens. The local authorities suffer from weak capacity, both in terms of human resources and systems. The local officials in most cases are not trained in local level service planning, resource allocation or revenue generation. The reluctance of the government to decentralize more roles to the local level has resulted in a weak demand for skills from local officials. The unclear assignment of functions and the consequent weaknesses in local accountability further dampens it. Revenue mobilization systems are weak and undeveloped. In most cases the potential remains untapped. The intergovernmental transfers due to their sporadic nature have created incentives for negotiated increases diminishing reliance on own source revenue. Due to such reasons, local government has yet to emerge as a major player in providing public goods to citizens in accordance with their preferences determined through an electoral mechanism (ADB 2009a: 20-21).

46. **In all of this, incentives for effective, accountable and responsive service delivery and for active citizen-state engagement are absent.** The MLD developed a concept paper on local development and self-governance in July 2007 that called for “awareness raising to transform state machinery to become more participatory, responsive, accountable, inclusive and transparent to serve the people,” and prioritized a “change in mindset/thinking through awareness raising campaigns and structural policy reform” and the development of a code of conduct for both political representatives and bureaucrats (MLD/GoN 2008: 13-14).
47. **Many analysts have highlighted that the politicization of the civil service, a non-transparent evaluation system and rewards and punishment unlinked to performance, have resulted in little incentive to bring about behavior change.** Civil servants state that “...while at work if you take special care of the powerful clients, your performance in terms of quality of service, non-delivery of services and non-responsive behavior to the clients – common people – does not matter, it is excused. It will not meet any punitive action” (Tiwari 2009: 22). A former civil servant has made clear that there are no

incentives for civil servants to shoulder additional responsibilities or take initiatives to start innovative ways of doing things (Shakya 2009: 45). Ultimately “no amount of efforts [and] reforms will improve the efficiency, competency and productivity of the civil service unless appointments, transfers and promotions are completely delinked with the practice of political patronage and are made entirely based on merit” (Shakya 2009: 45).¹⁶ A recent article on government bureaucracy in Nepal has highlighted the high-caste, male, Hindu composition of most of the bureaucracy and the over-representation (more than 95%) of bureaucrats whose parents were from agricultural backgrounds. It argued that this may mean that traditional norms and values are likely to be strong in the bureaucracy, with an emphasis on hierarchy, ascription, rank and status (Jamil and Dangal 2009: 198-199). This does not easily lend itself to service-oriented values and norms.

48. Beyond the structural problems highlighted above, the absence of local elected bodies have posed further challenges to making local level governance participatory and transparent. Currently, in the absence of elected officials, government employees have been in charge, assisted by the APM at the district and village level.¹⁷ All executive authority granted to elected representatives by the 1999 Local Self-Governance Act are now invested in civil servants from the Ministry of Local Development (MLD). At the district level, the local development officer (LDO) holds office in lieu of the District Development Committee (DDC) chairperson; at the municipality level, it is the executive officer of the municipality who holds office in lieu of the mayor; and at the village level it is the VDC secretary who holds power in lieu of the VDC chairperson. In this situation, neither the political parties, nor the civil servants directly appointed by the MLD need to hold themselves accountable to local citizens.¹⁸ While the arrangement has facilitated the continuation of some development and state functioning, the unaccountable nature of this governing arrangement has widely been seen by the public as unsatisfactory. For example, according to the head of the Mechi Federation of Nepalese Chambers of Commerce and Industry, there is mistrust towards the party coordination mechanism and “everyone was dissatisfied with their working style.” In the words of the General Secretary of the Municipal Association of Nepal, citizens are “absolutely not happy.” Interviewees stated that there was a clear felt difference between having and not having elected officials in the local governments.

49. Governance problems in today’s context are further inextricably tied to issues of security. Post-conflict restoration of security has been hampered by the lack of central political will and strategy to address the overall weak rule of law. The ICG September 2010 notes the variations in levels and types of insecurity in different regions of

¹⁶ In a positive step, the Nepal Portfolio Performance Review 2009 calls for the establishment of a Performance Incentive System for government staff.

¹⁷ As noted above, in many instances, the All Party Mechanism serves to distribute funds among the political parties themselves.

¹⁸ Relative to political parties, civil servants appear to be more accountable. For example, in a case in Bara in which large amounts of money were distributed to party organizations, the LDO was held responsible by the MLD and suspended, despite his protestations that he was unable to escape political party pressure. Adhikari writes “[a]s there is currently no rule or law with which to take action against representatives of political parties, who serve formally in an advisory capacity, it was the civil servant who got the rap” (Adhikari 2010).

Nepal: for example, with violence by armed groups and mafia (including killings, abductions and extortions) more prevalent in the eastern and central Tarai, and the western Tarai and eastern hills more affected by disruptive ethnic activism, more frequent bandas and clashes over tenders and other resources. The special security initiatives initiated by the state have had varying degrees of success, some of which has come at the cost of human rights violations in the form of extra-judicial killings. This is especially so in the Tarai (OHCHR 2010).

50. **The security situation is exacerbated by longstanding problems of political interference in the police¹⁹ and an under-resourced, poorly paid and demoralized police force.** Combined with the current overt impunity of state officials (Carter Center 2009), these factors serve to further undermine the rule of law.

Current insecurity is structured by informal relations between political parties, security forces, armed groups, criminals and youth wings. The result is impunity. The close connection of violence with established political forces makes a short-term escalation of violence unlikely. But the institutionalization of the criminal-political nexus bears significant mid-term risks and makes the patterns that are being consolidated much harder to uproot (ICG 2010: 24).

51. **Security risks have directly impacted governance at the local level.** Extortion cases and abductions have centered around local administrators in charge of government funds at the local level in the absence of elected officials (Carter Center Nepal 2009: 3).²⁰ To recall, VDC Secretaries are government civil servants and serve as the local interface and primary contact between the state and the citizens of Nepal. According to a late 2009 OCHA survey, only 42% of VDC Secretaries were present as required; a 9% decrease compared to early 2008. “An additional 25% of the Secretaries provide services from District Headquarters and 14% are only partially present. The number of vacant posts and absent Secretaries has more than doubled from 8% in 2008 to 19% in 2009. Many of these absent or vacant VDCs (91%) are receiving services from secretaries covering up to five VDCs.” While a Carter Center November 2009 report stated that the number of incidents has decreased due in part to increased security measures, there have been periodic increases. For example, mid-2010 saw the mass resignation of VDC secretaries from districts such as

¹⁹ The recent recruitment into the Nepal Police was no exemption. Newspaper reports quoted an official at the Nepal Police headquarters stated that there was pressure from Ministers, CA members, government secretaries and political parties to recruit their candidates (Himalayan Times 2010a). An interview with an editor of a left-leaning magazine revealed that ultimately 110 police were recruited from the home district of the home minister while, overall, powerful leaders of the parties in government were able to get recruits from their home districts.

²⁰ Newspaper reports make clear that VDC secretaries face extortion, harassment and threats from various armed and unarmed groups because they now make political and financial decisions. <http://www.nepalnews.com/main/index.php/news-archive/2-political/7851-vdc-secretaries-ask-govt-to-relieve-them-from-duty-of-vdc-chair.html> Accessed 12 October, 2010.

Dhading, Rautahat, Bhojpur, Udayapur, and Sunsari,²¹ citing security threats and pressures from various quarters. Interviews with members of the VDC Secretaries Rights Protection Forum, Ilam, revealed similar reasons for the 15 day strike held by all VDC secretaries in Ilam - demands for large donations by underground groups and political parties, with accompanying death threats. Assurance of special security measures for VDC secretaries by the government in all these cases resulted in their return to work. However, media reports abound of VDC secretaries remaining in district headquarters and/or with cell phones always switched off.²² VDC secretaries have long asked for the burden of responsibilities to be taken from them, given the security risks involved²³ – especially since these interim measures were initially conceptualized as short-term.²⁴

- 52. The absence of these VDC secretaries and/or the need for one VDC secretary to cover numerous VDCs, has impacted the ability of citizens to access local government.** The consequent need to travel to district headquarters to get documentation and other work is an additional burden, especially given Nepal's difficult terrain – accessing the district headquarters can take days of walking and entails economic costs (including days of work lost). There are clear accountability issues as well; respondents noted that the need to cover more than one VDC meant that VDC secretaries had a ready-made excuse for not being present and/or not fulfilling duties. The security issues also impact national planning, performance and accountability measures. For example, according to an under secretary at the fiscal commission secretariat of MLD, Mahottari district was unable to undertake Minimum Conditions reporting for the last two fiscal years, and problems remain in some other eastern Tarai districts, because of the activities of the underground armed groups.
- 53. There is a risk that the prolonged absence of elected representation may undermine the spirit of decentralized governance and give continuation to the patronage systems currently undermining participation and accountability.** A 2009 review of the Local

²¹ A July 2010 newspaper report estimated that more than 1500 VDC secretaries from over 20 districts have resigned en masse following threats from an ethnic outfit Samyukta Jatiya Mukti Morcha (SJMM) in recent months. Assurances from the state for added security as well as provisions for working outside the VDC resulted in the return to work. Government to provide special security to VDC secretaries. 31 July 2010. <http://www.nepalnews.com/main/index.php/news-archive/19-general/7982-govt-to-provide-special-security-to-vdc-secretaries.html>

²² The run-up to the important Dasain holidays results in an increase in demands for “donations” and threats if they are not met. An October 2010 newspaper report noted the executive officer of the Itahari municipality telling a journalist that he had been staying away from the office because of the donation demands (Bastola 2010: 5).

²³ VDC secretaries ask government to relieve them from duty of VDC chair. 26 July 2010. <http://www.nepalnews.com/main/index.php/news-archive/2-political/7851-vdc-secretaries-ask-govt-to-relieve-them-from-duty-of-vdc-chair.html> accessed 5 September 2010.

²⁴ According to the CA drafts, “given that local governments are to be formed via the establishment of commissions by the provincial government within a year of its own formation, it may take up to five years to establish local governments. This is a result of the fact that first the federal government will have to be formed, the provincial governments will have to be elected (for which no timeline is given), then a commission will have to be formed after only which preparations for elections can take place” (Martin Chautari 2010: 9).

Governance and Community Development Project (LGCDP) noted that “without elected representatives, it may not be appropriate to sharpen focus on the capacity building of the local bodies to enable them to assume responsibilities of sectoral functions” (Meier et al 2009: 23). There are growing voices for the need to hold local elections as the only way to ensure proper local governance and accountability.²⁵ Further, it is clear that the overall security situation in certain parts of the country continues to detrimentally affect governance institutions and poses significant obstacles for social accountability – especially as it applies to the role of the media (as discussed below) and civic engagement.

d. Citizen-state Relations

54. **Nepal has a long history of feudalism and monarchy.** Although 1990 saw the re-establishment of democracy, the neo-patrimonial relationships mentioned above have structured the manner in which citizens relate to the state precisely during the period when “citizens”, as opposed to “subjects” of the king, were to establish relations with the state. Media and public references to leaders of political parties as the “new little Gyanendras” (referencing the deposed king) highlight perceptions of the autocratic nature of the leaders and their distance from citizens. In the words of one focus group member in Dhankuta, relations between party members and citizens are “seasonal” – i.e. limited to election periods. There is a widespread feeling among citizens of being “used” via elections by politicians in order to access the state, and then being ignored by what one civil society leader termed the new “feudals”.
55. **Citizen-state relations at the level of the bureaucracy are equally problematic.** For example, the 1998 UNDP Nepal Human Development Report stated that “government offices, even in Kathmandu, are generally a nightmare except for those that profit from them” (UNDP 1998: 154). Twelve years later, little appears to have changed despite the introduction of various social accountability mechanisms. A popular journalist and political analyst commented on the unnecessarily time-consuming and bureaucratic processes involved in getting simple papers even for someone as famous as himself. The lengthy processes, lack of full information as to what is required, which office to go to, what person to contact etc. were seen as bureaucratic hassles by respondents. As the journalist noted, “ordinary citizens wish they need not have work to do with bureaucrats”. Research conducted in 2006 on citizens interacting with the bureaucracy noted that the highest number of respondents agreed with the statement “Citizens often try to use personal connections and other sources before approaching public organizations for service” followed by “Personal connections, bribery, and political influence are major sources for getting things done in public organizations” (Jamil and Dangal 2009: 207). Respondents in a focus group discussion in Ilam stressed that while Citizen Charters were visible in many offices, work does not proceed accordingly. Comments included that “it is more effective to have the recommendation of a person or party in order to get work done” and that “access to government services is dependent on a person’s personal power or personal relations

²⁵ For example, the ex-Mayor of Tansen municipality objected to the “unlimited” authority given to civil servants at the municipality and the consequent lack of a “bridge” to hear the voices of citizens. Stating that there is no transparency in the municipality, he stressed that “it is necessary that elected officials must run the offices related to citizens” and local elections must take place.

with the bureaucrats”. Furthermore, national government offices – such as those in Singh Durbar – are seen as highly inaccessible. One internationally and nationally renowned female social activist remarked that she had made a journalist’s pass in order to access those offices.

56. **Interviewees expressed the sense that the current bureaucracy has inherited the legacy of the previous feudal order. The deliberate withholding of information, unnecessary delays and inaction are seen as ways in which to “make ordinary citizens bow down” to the bureaucrats.**²⁶ It is then not surprising, as a Dalit activist succinctly stated that “ordinary citizens take civil servants more as rulers than servants”. **A culture of hierarchy and deference to authority exists which makes citizens reluctant to question those in power.** The impact of “tulo manche”²⁷ culture in which the powerful are able to do what they want has, on its flip side, the reluctance of ordinary citizens to call state and other power holders to account. **In today’s political context, the alienation of citizens from state structures combines with the historical power relations between state officials and the general public, to contribute to a reluctance of citizens to engage with the state and a sense of increased helplessness and frustration.**
57. **This post-conflict transitional period is one in which citizens feel further distanced from the state, with the term “cooling” of relations between the state and citizen used often by respondents.** As one Janajati civil society leader put it, “Truthfully speaking, those in the state are walking in one direction and citizens are walking in another direction... The relationship between the state and citizens is disrupted; it is cold”. Much of this has been linked with what is seen as a misuse of the “People’s Mandate” of April 2006 - state power-holders have followed either their own selfish interests, or the goals of the party or their own group, and not the interests of the public at large. A member of the Women’s Commission stated, “The distance between citizens and leaders have increased. Mistrust towards leaders has increased”. Others refer to an overall lack of felt state presence – in terms of rule of law, delivery of goods and services and the normal functioning of government. A CA member stated that “there is a feeling that citizens have no access to goods and services... the relation of state to citizen is not good”. Apart from stressing that services were only for the well-connected, interviewees noted that the quality of services has decreased. For example, a Madhesi civil society leader stated, “There is a feeling, especially in the Madhes, that the state is an mechanism for oppression and it is neither capable of ruling nor delivering services but its capacity for oppression remains intact”.
58. **It is unsurprising that this exclusion is especially felt by traditionally marginalized groups.** A recent study on citizens’ trust in local government which took Lalitpur municipality as a case study revealed that Janajatis were significantly less likely (50% less) to trust the municipality than the non-Janajati population (Pande 2010: 46). A member of the Women’s Commission expressed frustration, in both her personal and institutional capacity, with the lack of interactions between women and the state bureaucracy; “you can

²⁶ Again, this links to the earlier argument that members of the bureaucracy are likely to hold to norms of hierarchy, ascription, rank and status (Jamil and Dangal 2009: 198-199).

²⁷ “Tulo Manche” means “big person” relating to the power and authority held by certain individuals.

say that they ignore us”. If the bureaucracy is difficult to negotiate for ordinary citizens, issues of language for the citizens of the Madhes, where most bureaucrats are hill people, only serve to exacerbate the problem. Furthermore, while the Madhe Andolan resulted in more Madhesi bureaucrats, a Madhesi civil society leader stated that their behavior was no different from the Hill bureaucrats – ordinary citizens are treated as subjects.

59. Ironically, for excluded groups, the current alienation from the state is in one sense less problematic. **Janajatis and Madhesis have long viewed the centralized Nepali state as predatory.** For the Janajatis, the Hindu Nepali State has always existed to serve the Bahun and Chhetri elites who dominate the political parties. In the words of a Madhesi analyst, the State has always been the pahadis (hill peoples); the neglect of the Madhes is ‘natural.’ In the same vein he added that given that local VDC budgets never benefitted Madhesi citizens anyway, and now only served as sources of corruption and criminalization, these VDC budgets could actually be removed without causing hardship. For the Madhesi civil society leader, state-citizen relations as a whole are structured on mistrust, especially so in the Madhes – “the state will do nothing for citizens, and nothing can be expected from the state”.
60. **The transition to the often quoted “new Nepal” offers a key opportunity for restructuring state-citizen relations.** This is especially evident among members of excluded groups who see their citizenship status as being more in transition, towards the gaining of more rights. The current interim period is thus seen as a “historic juncture” by a Dalit activist in the re-negotiation between state and citizens. In this sense, it is the socially marginalized and excluded who are key drivers for changing citizen-state relations. Further, social accountability tools are particularly important given current levels of mistrust of the state (especially by marginalized citizens) and emerging forms of identity politics. **Social accountability tools can help reframe citizen-state relations in a more productive manner for both parties, as well as enable transparency and accountability.**
61. **However, social accountability interventions must aim to both affirm the rights of citizens and, at the same time, strengthen the State’s capacity to respond to citizen demands.** A difficult transition period has been made more so with the Interim Parliament’s decision to amend the interim constitution to make Nepal “federal” without consultations. This has meant that unlike other large state-restructuring issues, the topic has been excluded from debates from within the elected CA process. A rising backlash to issues of federalism is evident, resulting in a weak state facing pressure from all sides of the ideological spectrum. The deteriorating public security issues of the interim period combine with the tremendous ideological challenges to the old conceptions of identity, order and worldview, and the entrance of the marginalized into the public sphere, to invoke widespread fears of anarchy. What many excluded groups have seen as a period of transition to a more democratic order where voices are not repressed and new relations can be made, others have seen as a period of negative instability and excessive and anarchic

demands. This has been predominantly expressed²⁸ in the form of calls to counterbalance “rights” with “duties”.²⁹

e. *Civil Society*

62. **Nepal has a long and rich experience of community level associational life** (Bhattachan 2000). Different communities in Nepal have historically had organizations for various purposes. For example, the *Guthi* (religious and social organization) among the Newars, the *Dhikuti* (rotating credit associations) among the Thakalis, *Dhukuti* or *Dhikuti* (self-help saving and credit bank) among Bahuns, Chhetris and Newars, the *Rodi* (socio-cultural associations) among the Gurungs, and the *Bheja* (social, economic and political organizations) among the Magars (Dahal et al 2001: 82). These traditional associations still function to varying degrees. Analyses in the 1980s noted the well-established tradition of small groups of users coming together to collectively undertake productive activities, common property management or public works development in Nepal (Bhattachan 2000: 117).
63. **Importantly, the 1990 democratic freedoms enabled the rapid growth of non-governmental organizations (NGOs) in Nepal, funded by international donors seeking to build “civil society”.** Initially focused on service delivery, NGOs – now predominantly identified and self-identifying as civil society organizations – have also turned to more political endeavors such as awareness-raising, public education and social mobilization. The exact number of NGOs in Nepal is not known. Approximately 30,000 NGOs are registered with the Social Welfare Council³⁰ but it is not clear how many of these are active. The NGO Federation has over 5,000 member organizations³¹, but this represents only a sub-section of the sector.
64. **While the legal framework has not constrained the role of NGOs in undertaking social accountability work, changes are necessary.** The 1977 Institution Registration Act, which empowers Chief District Officers to register, guide, direct, control and supervise associational groups, reflects the Panchayat concern with controlling non-governmental organizations. Although these legal provisions have not been enforced in a repressive manner, that potential remains while the clauses remain in the books. Other issues related to the regulatory framework for NGOs include: vagueness of legal provisions; lack of SWC capacity to regulate the increased number of affiliated NGOs/INGOs and lack of clarity in

²⁸ This is evident in the general public and also among donors. For example, a 2009 ADB governance risk assessment states that, “Finally there is an increasing adherence in Nepal to the rights-based approach to development and political space; while this is necessarily good, it also poses constraints if it is not tempered by application of responsibilities, which does not seem to be the case in Nepal at the present moment” (2009: 8).

³⁰ The SWC website (updated in mid 2010) states that 30, 284 NGOs are registered with the SWC. See http://www.swc.org.np/SWC_NGOs_Total.pdf accessed 12 February 2011. According to a SWC officer interviewed on 18 February 2011, the current number of registered NGOs is 31,706.

³¹ According to the NGO Federation website, there are currently 5227 affiliated NGOs. <http://www.ngofederation.org/> accessed 12 February 2011.

the division of responsibilities between the Ministry of Women, Children and Social Welfare and the SWC for regulating NGOs (Dhakal 2007:70).

65. **A key constraint to the ability of civil society organizations to seek government accountability is the fact that their credibility in the public eye has, over the years, become suspect.** While still recognized as positive alternatives to the state (Tamang and Rademacher 1993; Acharya 1997), more negative images of NGO and civil society culture currently dominate. NGO culture in Nepal have been described as “dollar farming,”³² a “begging and cheating bowl,” “slave of the foreigners,” “preventing revolution” (Bhattachan 2001: 67) and “family entrepreneurial endeavors” (Chintan 2000: 135). Apart from nepotism issues, many NGOs are undemocratically structured and hierarchical with the founders retaining centralized control especially over finances. **Critics have noted the manner in which NGOs are not publicly accountable, transparent or subject to monitoring except to their donors** (Mishra 2001: 5, 7).³³ Much of the emphasis has been on the financial accountability of NGOs and their apparent lack of impact or “bang for buck.” Indeed, interviewees noted that while getting information from the government was a challenge, obtaining information from NGOs and donors was even more difficult. According to the executive director of Transparency International, “compared to donors and NGOs, the state is a little more transparent.” Furthermore, a director of a research center stated “the information that a NGO gives is selective, biased and only that which will bring it benefit. Go and ask the big NGOs of this country about their working styles, their resources, their relations with citizens, financial transparency, you will come back after a beating.” While perhaps exaggerated, the quote highlights the dominant perception of the general inaccessibility of NGOs to the public and the issues that have served to increasingly delegitimize them.
66. **The fact that most NGOs tend to be politically aligned further constrains their credibility and legitimacy.**³⁴ Importantly, this also applies to the NGO Federation, to which not all NGOs are affiliated for numerous reasons. The perception that NGO agendas are driven by donors and are thus not autonomous further hampers their legitimacy. State distrust of NGOs is evident as well, even though the state acknowledges NGOs as important development partners. The MLD’s Program Document on LGCDP notes that “NGOs simply cannot operate to national scale, and are also not subject to local accountability pressure” (MLD/GON 2008: 15).
67. **Of key importance in the current political climate is the elite nature of NGOs.** This includes not only their distance from “reality” and the “grassroots” but also the fact that

³² NGOs are usually accused of “dollar farming” or “dollar kheti” – i.e. of being established solely for the purpose of receiving foreign funding and reaping financial benefit.

³³ A recent editorial in an English daily highlighted public concern with the lack of transparency of NGOs by calling upon CNN person of the year 2010 Anuradha Koirala to now step up on making her NGO more transparent and accountable. See Ms. Koirala, Congratulations. *The Republica* 23 November 2010. http://myrepublica.com/portal/index.php?action=news_details&news_id=25480 accessed 24 November 2010.

³⁴ It is generally acknowledged that the CPN-UML has the greatest influence in the NGO sector. A recent article has stated that the party holds direct or indirect influence in over 70% of Nepali NGOs (Jha 2010).

most NGOs are led by high-caste, Hindu men. The elite nature of those in power in NGOs has long been recognized by donors. A 2002 European Union Conflict Prevention Assessment Mission report made the following assessment:

The problem of politicisation, caste and ethnic inequality are the context of civil society activity. For donors, civil society is a very small group of English speaking elite operating in Kathmandu. There has been little attempt to reach out to the regional partners or capitals to plumb deeper into the social strata of Nepalese society, for partners or informants (Van Loocke and Philipson 2002: 21).

68. In the current political climate, awareness of these dynamics is very important. The fact that in the Madhes a clear distinction is made between Madhesi civil society and Pahadi civil society speaks to the attention given to identity and the consequent perceived legitimacy of civil society based on such factors. In the same vein, the legitimacy of local “branches” of Kathmandu NGOs working in various regions has also been questioned. Beyond issues of elite capture, the tendency of donors to repeatedly seek out the same “good” and “reliable” (mostly Kathmandu-based) NGOs that can deliver quick project results, rather than making longer-term investments in the emergence and capacity development of more locally rooted CSOs, is also a concern.³⁵ **Important steps have been taken to remedy NGO weaknesses by emphasizing social inclusion and diversity in partnership guidelines and donor harmonization on financial monitoring standards and procedures for NGOs (Singh and Ingdal 2007). However, the above mentioned problems remain, especially in the larger and more powerful NGOs.**

69. Independent research centers and think tanks are another important category of CSOs. In Nepal, the notion of “think tanks” and “policy institutes” is recent, indicative of the historical lack of interest of donors in funding such institutions. Some current research institutions, such as New Era and the Institute for Integrated Development Studies, undertake research on development issues, much of it directly commissioned by donors. More academically oriented research organizations do exist, such as the Nepal Center for Contemporary Studies and Martin Chautari. A few organizations have explicitly defined themselves as policy institutes, such as the Nepal Institute for Policy Studies and the Institute for Policy Research and Development. These groups seek to make a public impact by publishing reports and books and convening meetings between policy makers, academics, researchers, activists and political actors. The extent to which such research and policy institutes actually succeed in impacting policy-making is unclear. In a discussion on the role of policy think tanks in Nepal,³⁶ both Meena Acharya, head of the Tanka Prasad Memorial Foundation and Rajan Bhattarai,³⁷ head of the Nepal Institute of Policy Studies admitted that it was their own personal ties and reputations that enable them to both access

³⁵ A recent report on citizens’ voice and accountability in Nepal also raised this issue. “One matter of concern is the extent to which donors coordinate their support to CSOs... in discussions with various donors and in consulting available databases, it was noticeable that the same names of CSOs kept recurring. And it seems that the donors do not have a mechanism for reviewing which CSOs are receiving assistance from whom, for what activities, and to what extent” (Ministry of Foreign Affairs of Denmark 2008:44).

³⁶ Discussion at Martin Chautari, 10 October 2010.

³⁷ Bhattarai was also the political advisor to former Prime Minister Madhav Kumar Nepal.

and influence key policy makers. This is indicative of the current lack of mechanisms for formal and regular exchanges, dialogue and negotiation between state and non-state actors. Policy dialogues tend to be one-off sessions and there is an overall a lack of systematic and regular monitoring and evaluating of government actions.

70. **Other civil society players in Nepal need to be situated in the larger dynamics of politicization. For example, national trade unions (and their federations) are in practice, wings of the major political parties.** The Nepal Trade Union Congress is Nepali Congress; the General Federation of Nepalese Trade Unions is CPN-UML and the All Nepal Trade Union Federation (Revolutionary) is UCPN-Maoist. Smaller parties also have their own trade unions (Dahal 2001). Teachers' and civil servant associations are also similarly divided. Other important categories of CSOs, such as women's groups, anti-trafficking networks (Sherchan 1997) and the Political Science Association of Nepal³⁸ (Hachhethu 2004: 245) are also organized along partisan lines. The widespread politicization of associational groups, serves to weaken their institutional capacity and diminish their legitimacy. Business groups such as the Federation of the Nepalese Chambers of Commerce and Industry and the Nepal Chamber of Commerce have been more resistant to political infiltration and frequently voice opposition to political interventions in the spheres of business and economy (Himalayan Times 2010).³⁹
71. **More "modern" community based organizations (CBOs) such as user groups, mother groups, self-helps groups, small farmer cooperatives and saving and credit organizations (v. the more traditional association mentioned above) also face fewer allegations of partisan alignment.** In dominant Nepali discourse, these organizations are not ordinarily thought of as "civil society". However, they have played and continue to play key roles as associational groups. Over the past two decades, the formation of member groups to support community-led development activities, in a variety of the sectors such as health, non-formal education, savings and credit and forest conservation, has been a favored approach. For example **mothers' groups**, said to be rooted in practices of the Gurung women of western Nepal left behind by their British and Indian army husbands, are one of the most universalized traditional voluntary organizations in Nepal (Bhattachan 2000). They are involved in a range of activities including savings and credit, child nutrition and safe motherhood campaigns. Traditional and informal community forest management groups, long established in Nepal (Adhikari 1990), were formalized via the 1988 Master Plan for Forestry Sector, the 1993 Forest Act and the 1995 Forest Regulations, resulting in **Community Forest User Groups (CFUGs)**. Defined as autonomous, self-governing and legal corporate bodies with perpetual succession, CFUGs have received national and international attention for best practices in local ownership and good governance of local resources. The development of federations of user groups – including those in forests – have further enhanced the networking capabilities and overall strength of these institutions. **Tole Lane Organizations (TLOs)** - consisting of households in contiguous areas that raise funds through member contributions and engage in

³⁸ The Political Science Association of Nepal is now divided into three partisan factions.

³⁹ This is not to say that the business community plays a non-political role. The role of the business community in the non-transparent funding of political leaders and politicians is well known (Bhattarai 2010: 25) as is their influence in the media given the large advertizing revenues they generate.

neighborhood development activities - are another important category of community level association in Nepal. Institutionalized via the UNDP-supported Rural Urban Partnership Programme,⁴⁰ these TLOs are now engaged in the development of Tole Development Plans and Enterprise Development Plans at the grassroots level, and participate as partners in Participatory Municipal Development Planning (Adhikari and Shrestha 2007).

72. **It is important to note that many, if not most of these groups, are funded by various donors, INGOs and NGOs⁴¹ and are not completely independent. Neither are they immune to problems such as elite capture and exclusion of the very poor and socially marginalized** (Biggs et al. 2004, Jha et al. 2009). In the case of CFUGs, for example, factors such as social discrimination, lack of information-sharing, low levels of literacy and accounting skills have been identified as important barriers to participation in the claimed “democratic” functioning of these organizations (Ojha 2009b). The issue of inclusion has now been taken up as a top priority by the Federation of Community Forest Users (FECOFUN) while public audits initiatives by certain CFUGs have resulted in more women in leadership positions, increased accountability of executive committees, and the return of misappropriated funds (Gentle et al 2007). Unofficial political affiliations and leanings are common among these groups as well. For example, it is well known that the FECOFUN has CPN-UML leanings. Furthermore, **in the current political climate, political party pressures on these groups, and other community-level group such and health facility and school management committees, have increased** (Koirala 2010). User groups are increasingly prone to political party capture. One of the key challenges highlighted by Ojha, activist and analyst of community forest user groups, is the ability of FECOFUN to resist the trend of increased political interference (Ojha 2009). Similar challenges appear to be apparent in TLOs (Adhikari and Sijapati 2010: 26).
73. **Overall, there is no doubt that since 1990, civil society organizations in Nepal have contributed positively to the emergence of a democratic culture in Nepal. However, there is a widespread perception that almost all organizations in Nepal, including CSOs, suffer from persistent problems of lack of transparency and accountability.** Initiatives aimed at enhancing the accountability of CBOs and NGOs - such as the NGO Code of Conduct prepared by the NGO Federation and the Right to Information Act – have yet to bear fruit. In the case of the latter, even organizations that actively advocated for the Act have yet to implement its requirements (Mendel 2010). **There is a real need to assist CSOs to become models of transparent, responsive and accountable governance.** In the current political climate and law and order situation, the risk is that greater transparency, especially with regard to finances, could make CSOs more vulnerable to demands for “donations” and other influences and pressures from various groups. Even in Kathmandu, demands for “donations” from “above ground” organizations (such as the UCPN-Maoist Young Communist League) as well as other groups exist. The risks are invariably heightened in other parts of the country, especially the eastern parts of the Tarai.

⁴⁰ The Rural-Urban Partnership Program, started in 1997 under the MLD with technical and financial support from UNDP, marked an important shift from traditional top-down centralized planning to much more participatory forms of urban governance. Conceptualized as an urban-based and urban-led approach to rural development, the focus was on reducing the gaps between cities and rural regions by strengthening links between them and improving the conditions in poor urban communities (Pradhan 2004).

⁴¹ One study identified up to eleven different donors supporting one forest user group (Ojha et al. 2002)

f. Media

74. **Independent media, another important dimension of civil society in Nepal, has played a critical role post-1990.** Much has been made about the strengths of the media in Nepal and its contributions towards strengthening the democratic sphere over the past two decades. This includes for example, revealing and discussing in the public domain the misuse of public funds by state officials, publicizing the actions of democratic movements and actors during the king's takeover and investigating and denouncing human rights violations by both the state and the UCPN-Maoist. Since 1990, there has been a tremendous increase in dailies, weeklies, news analyses and public affairs magazines. There are currently 2038 registered newspapers in Nepal, and 514 that regularly publish.⁴² In addition, there are 25 registered television channels⁴³ and 285⁴⁴ regularly functioning radio stations (out of a 364 licensed⁴⁵). Media analysts have noted an increase in quality as well as quantity.⁴⁶ Analysts have highlighted the impressive growth of community radio in Nepal with "exceptional practices in programming, innovative strategies for sustainability, and sophisticated examples of networking" (Pringle and Subba 2007: 4).
75. **However, weaknesses in the media sector as it relates to civic engagement and social accountability include issues of independence and autonomy.** According to the 1992 National Broadcasting Act, licensing is left to the government and not an independent entity. The 1992 Press and Publications Acts contain problematic provisions that could be enforced in a repressive manner. Members of the Nepal Press Council, established by the Press Council Act of 1992, are nominated and appointed by the Government even though the law states that the Council is to be autonomous (International Press Freedom 2008: 16). Inadequate legislation and non-implementation of existing laws have resulted in the unmanaged development of the sector. For example, the law does not cater to the broadcasting sector; no specific rules apply to the licensing of community broadcasters and there lacks a longer-term frequency allocation plan⁴⁷ (International Press Freedom 2008: 13, 15).
76. In terms of credibility and professionalism, state-owned media has become more independent since 1990. However, state-owned media continues to reflect the priorities of the government, and clear shifts in news coverage (as well as transfers of staff) occur with changes in government. While the private media has achieved much, profit-oriented newspapers have shown a reluctance to offend the government. This was evident in the period following the king's October 2002 takeover when (unlike weeklies and magazines) dominant media houses did not take clear stances for citizen's rights and press freedoms at

⁴² <http://www.presscouncilnepal.org/publishedpapers.php>

⁴³ <http://www.moic.gov.np/pdf/tv-list.pdf>

⁴⁴ <http://www.moic.gov.np/pdf/fm-regular.pdf>

⁴⁵ <http://www.moic.gov.np/pdf/fm-list.pdf>

⁴⁶ This is a result of: overall increase in competition; increase in the capacity of journalists, especially with the availability of journalism classes starting in schools as well as colleges and universities; growth of media studies and analyses and technological advances (Parajuli 2064 vs: 2-5).

⁴⁷ This is important in that, in the absence of such a plan, all frequencies in desirable locations – Kathmandu – may be allocated leaving no room for future developments, "regardless of the overall public interest" (International Press Freedom 2008: 15).

the beginning. The larger press houses only followed suit once a more enabling environment had been created through the early struggles of smaller publications (Parajuli 2064 vs:7).⁴⁸ The absence of critical analysis of the business sector (that provides much advertizing revenue) and the propensity of media owners to directly intervene in news content to suit their purposes have also been highlighted as problematic (Parajuli 2064vs: 8-9).

77. **The biggest obstacle to the role of media in social accountability initiatives is the widely held perception that it is politically biased.** Apart from the fact that there are many clearly political party affiliated newspapers (Onta 2006), the legacy of Panchayat style journalism – “mission journalism” based on party politics – continues even in mainstream publications (Parajuli 2064vs: 10). This complicates, for example, media monitoring of political parties and their financing; the release of such information has hitherto been viewed as information released by political opponents. A recent review of the media in Nepal has reported increased politicized interference in media operations with in-house unions – especially Maoist aligned ones – that appear less interested in representing workers, than intervening in media outputs (International Press Freedom 2008: 23).
78. **The lack of representation of women and excluded groups in the media sector is also of central concern** (Onta 2006; UNDP 2009). The overall low levels of education, skills, trainings, and analytical capacities of journalists, combined with their continuing focus on political leaders and their viewpoints, further serve to limit the quality of their analyses (Onta 2006). Furthermore, apart from in the larger media houses, wages of journalists are relatively low. This had led to journalists taking up other work to make ends meet, and becoming more vulnerable to corruption (Parajuli 2064vs: 12).⁴⁹ **Self-censoring by journalists, due to security threats or a reluctance to offend local power-holders has also been identified as a constraint.** For example, the secretary of the Federation of Nepalese Journalists in Dhankuta acknowledged that issues of corruption in local government were not sufficiently highlighted by journalists as a result of “not wanting to increase enemies.” One journalist in Tansen noted that “this place is small, I have to live here too,” while another in the same city stated that, as his media organization gets funds from the VDC, he is restricted in his ability to criticize local body activities.
79. **In the current context, the media has become a subject of political patronage and a target of criminal gangs.** This is especially true in the Tarai, where journalists work in a climate of fear, resulting in (political and/or criminal) censorship or self-censorship. In the 2009 Impunity Index of the Committee to Protect Journalists, Nepal ranked 9, making it one of the world’s worse for press.⁵⁰

⁴⁸ This media section has borrowed heavily from Parajuli (2064vs) which provides a comprehensive overview of the major debates in the media drawing from numerous authors and studies in Nepali and English.

⁴⁹ For example, an analysis of journalism in the border town of Birgung revealed the manner in which journalists avoided writing about corruption at customs, or wrote in favor of certain businesses in return for monetary rewards (Parajuli 2064vs: 12).

⁵⁰ Committee to Protect Journalists. Attacks on the Press 2009: Nepal. <http://www.cpj.org/2010/02/attacks-on-the-press-2009-nepal.php> accessed October 20, 2010.

80. **In terms of radio, since Nepal's first radio broadcasting license was issued in 1997 to the Nepal Forum of Environmental Journalists and Radio Sagarmatha was established, there has been a rapid growth in both private and not-for-profit radio.** However, overall a few large broadcasters dominate and the process of licensing is prone to bribery and political influence (Pringle and Subba 2007:11). There is no legal definition of "community radio"; this continues to be a self-definition, reinforced by the non-legal institutional affiliation with the Association of Community Radio Broadcasters, Nepal (ACORAB).⁵¹
81. **Apart from the lack of definition around community radio, inconsistent application of community radio principles abound and major policy gaps exist in ensuring the accountability of broadcasters to their public or stated missions** (Pringle and Subba 2007: 15). The application and practice of community radio principles are remarkably inconsistent. Many stations are community radios in name only. Community radio in Nepal is poorly defined and there is no policy framework to guide the development of the sector. Of particular concern are issues of limited ownership, 'capture' by the elite, poor representation of community groups, particular on gender, caste and ethnic lines. There is a risk that community orientation and the focus on public interest programming will be weakened (Pringle and Subba 2007: 4).
82. **Domination by elite groups is especially problematic since community radio is generally understood to have an explicit mandate to empower and enable marginalized groups** (Pringle and Subba 2007: 25). Other challenges to the principles of community radio exist in the rising competition among radio stations which has led to greater market orientation and higher budgets. This acts as a disincentive for truly public programming and challenges public service and community radio principles and practices (International Press Freedom 2008: 18).
83. **Other concerns are linked to networking and syndicated programming.** While the latter has many positive aspects including improved quality, access to knowledge and the diffusion and exchange of information and opinion between local and national perspectives, issues have been raised over the displacement of local content and the fact that its major appeal is as a source of funding (Pringle and Subba 2007: 6). Centrally produced content in local stations varied from 70% to two to three hours a day, often in prime time (Pringle and Subba 2007: 21). In debates over the pros and cons of networking, the founder and former executive director of Nepal's first community radio, Radio Sagarmatha, among others, has stressed that radio networking is overshadowing "the local" and putting the community radio movement at peril (Parajuli 2064vs: 111).
84. **Another rising concern, linked to the advent of "Maoist" stations, is the increased politicization of FM radio** (Pringle and Subba 2007:20). Research has found that most radio station managers are post-holding political party members (Parajuli 2064vs: 12). This is particularly problematic in a context where even self-declared "community radios" are rarely based on democratic ownership or guided by the objectives or needs of local

⁵¹ According to Ashok Tuladhar, Program Director at ACORAB, the association has prepared a draft Law for Community Radio as well as a code of conduct for community radio.

stakeholders. As a result, the discretionary power of the station manager is large. (Pringle and Subba 2007: 19), In the current context of politicization, this works further to the detriment of community radio principles. This is especially so given the rapid multiplication of small FM radios, with newly recruited workers who lack awareness about principles of good journalism and the critical role of independent media in a democratic society (International Press Freedom 2008: 24).

85. Despite these constraints and challenges, community radio has played a key role in increasing the flow of information as a whole and enabling citizens to receive increased and more accurate information about the responsibilities, plans and budgets of national and local governments. For example, Community Radio Madan Pokhara and Radio Lumbini have aired special programs on local governance, produced by ‘radio representatives’ located in the target VDCs. Bheri FM has conducted interactive programs in the target VDCs with the VDC secretaries and the local community regarding available local resources and service delivery.⁵² As well as increasing access to information, community radios have been important in building relations between citizens and the state by facilitating forums for the sharing of views and information. For example, the community radio station Radio Lumbini began producing a program called Hamro Lumbini (‘Our Lumbini’) in 2007 as a means to reduce the conflict between the government-run Lumbini Development Trust and the local communities dissatisfied with the development around the World Heritage Site and its impact on their lives. The program, produced by local people trained by the Lumbini Community Multimedia Centre (supported by UNESCO), included taking microphones to the villages to emphasize the voices of community members as well as listener surveys to contour future episodes of the program. The popularity of the program stemmed from the demand for localized content that gave people a chance to engage in social issues prevalent in their daily lives. The program enabled a new-found respect for local voices and one of the important changes that occurred as a result of the local program was the willingness of official parties to inform local people about the World Heritage Site and how it can contribute to local income generation (Martin and Wilmore 2010).
86. The post-conflict period in Nepal offers both challenges and possibilities for civic engagement and social accountability in Nepal. A difficult political transition period has exacerbated long-standing issues of patronage, governance and rule of law. Structured inequalities and a political culture of hierarchy continue. This has heightened cynicism among citizens at the same time that the promise of a “New Nepal” offers hope for new accountable and democratic modes of citizen-state relations. There is, however, a real demand among citizens for change in the dominant political culture and expectations for a re-structuring of power relations especially among the historically marginalized. Combined with the strengths of associational life, access to information and citizen voice (discussed below), space and opportunities exist for social accountability initiatives to enable productive civic engagement with the state at all levels.

⁵² Based on information given by Ramesh Adhikari, ActionAid Nepal.

SECTION IV - ANALYSIS OF KEY ELEMENTS OF SOCIAL ACCOUNTABILITY IN NEPAL

87. Social accountability encompasses a wide array of actions that citizens can take to hold government officials accountable. Underpinning these action, however, are a few key elements. **Access to information** in order to build a evidence base for public engagement is necessary as is the **ability of citizens to voice their opinions and concerns** and to collectively work together to advance their common interests and goals (Malena et al. 2004) The following section analyzes each of these key elements of social accountability in the Nepal context.

a. Citizen Access to Information

88. **A fundamental element of social accountability is citizen access to information.**

Citizens require accurate and relevant public information about government policies, budgets, expenditures, programs and services in order to formulate and voice opinions, contribute to public debates, monitor government actions, and effectively negotiate with public officials.

89. **There are no legal barriers to the obtaining of information for citizens in Nepal.** As discussed above, the Right to Information Act, backed by the National Information Commission (NIC), provides widespread rights to information. **However, there has been limited progress in the implementation of the Right to Information Act** (Mendel 2010). Obstacles to the implementation of the RTI Act include “an entrenched culture of secrecy” that “militates against openness;” (Mendel 2010: 4); as well as the current preoccupation with the preparation of the new Constitution and the current context of lack of rule of law and impunity. Other challenges in implementation have included budget constraints, capacity deficits and problems in staff allocations, including the recruitment and retention of an NIC secretary. The government has not played an active role and few formal steps to implement the law have been taken by public bodies. For example, only 400 public bodies (out of 5 to 6,000) have appointed the required information officers (Mendel 2010: 9).

90. **From the “demand” side, contrary to the experiences of many other countries in the early implementation period of such acts, CSOs have not been important drivers of demand for information in Nepal.** While a recent review found “a natural reluctance on the part of NGOs to press too heavily for recognition of government obligations, since these will also apply to them” (Mendel 2010: 5), the focus by donors and therefore NGOs on post-conflict and transitional issues has also resulted in the relative sidelining of the RTI agenda Few citizens are aware of the existence of the RTI Act⁵³ and, among those who are in the know, there is confusion about how to find information. A CA member frustrated by the lack of transparency in terms of the funding of the CA, had no idea about how to access such information and wondered, “Who to ask?”

⁵³ For example, despite the fact that the Act had already been in existence for two years, an influential Nepali weekly resorted to bribery in order to collect attendance records of the CA. The same information was made available, albeit with some persistence, to a NGO after invoking the Act a few months later. (Personal communication with researcher who interviewed the editor of the weekly.)

91. **A recent status report on the implementation of the Right to Information in Nepal make a number of recommendations to overcome current obstacles** These include: establishing a central nodal agency within the government responsible for the implementation of the Act; training, educating and supporting public information officers (throughout the public service); drafting and implementing communication plans and creating a dedicated parliamentary committee. Working with the media and NGO networks to make use of the Act and to educate the public about its existence is also recommended (Mendel 2010, 18-23).
92. **Some of the most important obstacles to obtaining information in Nepal are socio-cultural.** As noted above, there is no culture of transparency and information-sharing at all levels of the government. Interviewees repeatedly stressed the difficulties they faced in trying to obtain information from ministries and government offices. An interviewed CA member stressed how hard it was for them even in their professional capacities to obtain information from government offices. The CA member stated, “It is not that they don’t know anything, but the truth is that nobody wants to tell you.” In the words of a Dalit woman activist “there is a mindset to obstruct access to information.”
93. **Unsurprisingly, current levels of knowledge about governance processes and key public issues remain low.** An activist noted that in far off villages in Bajura for example, because of the lack of information, citizens had no idea of what local bodies and parties were doing. “Local bodies are miserly at sharing information. There are no mechanisms for sharing information between central and local bodies. People don’t know what initiatives to take against the government because they do not have information.”
94. While word-of-mouth, notice boards outside government offices and traditional messengers in the hill areas (known as Katuwal, mostly from the Dalit community) are used for informing people⁵⁴ **respondents stated that the media is their main source of public information for citizens.** A broadcast audience survey conducted in 2006-7 by Equal Access Nepal revealed that in the rural areas, radio ranked as the most preferred information source (98 percent). In urban areas, radio ranked second (96 percent) after television (99.3 percent) (UNDP 2010: 37). **FM and community radio, in particular, have played a critical role in disseminating information** in a country in which the literacy rate is 57 percent.⁵⁵ For example, Radio Sagarmatha, the first community radio in Nepal, is the largest community radio service in South Asia – available to a network of 10 million people and reaching an estimated 2.5 million regular listeners. It has 18 hours of daily broadcasting, including nine news bulletins every day and 90 programs per week on a range of issues including public health, rule of law, education, environment, sustainable development, gender equality and good governance. Importantly, Radio Sagarmatha also broadcasts in several local languages, such as Newari, Maithali and Tamang

⁵⁴ For example, in Malika VDC in Baglung, the Katuwal informed villagers about the then on-going VDC voter registration process. Personal communication with Shekhar Parajuli, Long Term Observer, Carter Center.

⁵⁵ http://www.unicef.org/infobycountry/nepal_nepal_statistics.html accessed 14 October 2010

95. **Furthermore, many CSOs and NGOs collaborate with radio stations in the context of specific development or governance-oriented programs.** Among others, the National Press Institute and Pro-Public regularly run and/or enable such programs, while other initiatives are more sporadic. For example, the Forum Against Corruption and Turmoil (FACT Nepal) ran a one year informative radio program on anticorruption and good governance with a focus on news, analyses, coverage of efforts by government and non-government institutions to curb corruption, call-in sessions (vox pop) and interviews with prominent personalities. The hour-long program “Hamro Chaso” (Our Concern) covered various topics including a corruption scandal in the Birjunga Municipality, with general citizens and even bureaucrats sharing examples to be aired for public discussion (FACT Nepal 2004). When FEDWASUN undertook budget initiatives in Ilam (as described in Box 4), it worked closely with two radio stations to give live coverage of the public hearings they conducted. This allowed more of the community to be involved in the process as well as reaching a much broader audience.
96. **Overall, however, in Nepal CSO efforts to disseminate relevant public information and educate citizens about issues of key public concern are lacking.** Nepal has a history of institutions generating and disseminating information from independent research. However, as noted above, these have either been academically oriented, or have been focused on generating commissioned research products for individual development organizations.⁵⁶ There have been recent initiatives to inform the public about the constitution-writing process. But **systematic efforts to seek out, analyze and publicly share government information has been lacking - a reflection of the inaccessibility of information, the complicated nature of data and information and limited capacity to research and analyze.**⁵⁷
97. **Despite these weaknesses, citizens’ thirst for information offers an important current opportunity.** In interviews and focus group discussions, citizens stated that it is their “right” to have public information and that it is, “extremely important” that citizens be given information. However, the hierarchical and exclusionary nature of Nepali society, the dominance of personalized power relations, the historical power relations between state officials and the general public has contributed to a reluctance to turn that thirst for information into active demand. This is compounded by low levels of education and widespread illiteracy in the rural areas and the alienation of citizens from the state structures and agents at this political juncture.

⁵⁶ One area where there has been such analyses, expertise and sustained policy research and lobbying has been in the realm of human rights. There have also been a number of new initiatives connected to the Constitution writing process. A number of NGOs have disseminated analyses and updates of the Constitutional drafts, in publications as well as in radio programs.

⁵⁷ While radio programs are sometimes used, information dissemination continues to be mostly centered on print material with written reports, bulletins and website postings available only in Kathmandu or larger urban areas. The fact that many of the publications are also available in English – for example, Pro-Public’s Good Governance Magazine and MIREST Nepal’s information bulletins – has been critiqued as evidence of the continuing priority given by NGOs to donors as opposed to the larger Nepali public. It is argued that resources spent on such publications could have been invested in publishing in other Nepali languages, or even simple basic Nepali to be distributed in rural areas.

b. *Citizen Voice*

98. **A second key element of social accountability is citizen voice.** Citizens should be able to express their opinions, needs and concerns in order to make the government authorities more aware of their priorities and know how to serve citizens better. As noted above, the peoples' movements of April 2006 and January-February 2007 have resulted in people generally feeling free to publicly express criticism of government actions and authorities. **The growth of the media in Nepal, including television, print and radio, has created spaces where citizens feel safe and empowered to voice their views.** Furthermore, while much of the press is Kathmandu-based, many newspapers are available outside of the capital, including in vernacular languages especially in the Tarai region. **These locally based media serve as platforms to share opinions and concerns and also function as important information sources.**
99. **In terms of print media, most newspapers offer readers the opportunity to send in their opinions, criticisms and views.** "Letters to the Editor" are very popular and have enabled very frank and vibrant discussions of topical events including highly critical comments on corruption, misuse of power, nepotism and the general lack of accountability of state officials.⁵⁸ On-line versions of the larger papers include opinion polls as well as comment sections. While these cater more to the elite with access to internet, they provide a further public space for the expression of citizen voices.
100. **Although all FM stations broadcast news and have current affairs programs where expert voices are heard, it is community radios that have been playing key roles in giving voice to citizens** (Pradhan 2006). According to media researcher Devraj Humagain, while there is no comprehensive research on this subject, a large and growing number of stations now engage in public hearings, the collection of opinions from people accessing local government services, public affairs-oriented talk shows and call-in programs. The interactive nature of the programs and the active participation of ordinary citizens, has made these forms of radio programs very popular. For example, MIREST (Media Initiative for Rights, Equity and Social Transformation) conducted a year-long radio program starting from July 2009, which provided an opportunity for citizens to give voice to their priorities and agendas for the constitution. More than a thousand citizens called in and expressed opinions on 200 different constitutional issues, periodically joined by CA members and constitutional and other experts (MIREST Nepal 2010: 1).
101. **Of the many media-oriented donor interventions, an important one is that of the BBC World Trust Service** that works in partnership with a network of 2,500 community-based organizations, more than 50 Nepali radio stations and the BBC Nepali Service to produce drama and discussion programs to support the peace process and the writing of the new constitution. *Sajha Sawal* ('Our Questions'), a weekly political debate program launched in 2007, is one of the most popular. According to the BBC, the program is aimed at creating dialogue between those in power and communities which have traditionally been excluded, including rural communities and women, by encouraging people to share

⁵⁸ The popularity of this format is such that the largest Nepali daily Kantipur, extended its "Letter to the Editor" section to cover a full half page.

view with panelists. Guests have included the then PM GP Koirala (the first guest of the show) as well as other political leaders including PM Madhav Kumar Nepal and Maoist leader Pushpa Kamal Dahal. According to the BBC, “[f]or the overwhelming majority of the invited audience, Sajha Sawal is the first time they have been given the chance to air their views in public and to directly challenge their leaders”. The program is aired nationwide on over 100 FM stations and on national TV and is heard or seen by an estimated 20 percent of Nepalis.⁵⁹

102. A key obstacle to the expression of citizens’ voice is “elite capture.” For example, while the focus on the constitution has increased the number of public forums around the country, thereby allowing a greater number of people to voice their opinions, the great majority of workshops, seminars and other public meetings are centered in Kathmandu and continue to be limited to certain NGO elites. Many programs try to be socially inclusive, for example, by broadcasting in local languages (as does Radio Sagarmatha) or by recording programs across the country to reflect ethnic, cultural and caste differences (as does Sajha Sawal). Furthermore, radio stations run by and for marginalized groups also exist with donor support. However, a recent study has shown that Janajatis have relatively little access, voice and participation in the mainstream media which is owned and controlled by more economically and socially powerful groups or influenced by political parties. Janajatis and excluded groups continue to have low representation in the media as a whole (UNDP 2010).

103. Another obstacle, as highlighted above in the media section, is the need for community stations to compete for sources of revenue with commercial broadcasters for their sustainability. The larger trend towards commercialization for survival comes as a trade-off with providing space for local voices and focusing on issues of grassroots development and social empowerment. The networking trend and the displacement of local programming is also a challenge.

c. Citizen association and collective action

104. Another key element of social accountability is citizen association and collective action. Social accountability approaches are based on the collective efforts of citizens and their ability to work together to advance their common interests and needs. **Nepal has a long history of collective action that serves as a strong foundation. Over the past 25 years Nepal has developed a vibrant practice of social mobilization for group-based action.** In 2004 there were an estimated 400,000 documented community groups in operation in rural Nepal (Jha et al 2009: xv). NGOs have, as mentioned before, become firmly established as important development actors at the national as well as local level. The potential for these groups to function as aggregators of citizen voice and facilitators of relations between citizens and various state institutions at different levels is therefore very strong.

⁵⁹

http://www.bbc.co.uk/worldservice/trust/whatwedo/where/asia/nepal/2009/10/091028_nepal_sajha_sawal_100_episode.shtml accessed 3 September 2010.

105. **One of the most successful recent examples of citizen mobilization and collective action was the passing in 2002 of amendments to the Muluki Ain (the National Country Code) which gave women many more rights** including the right to abortion. **The multi-layered (community and national level) networking and of advocacy involved in this campaign was historic.** It was also greatly assisted by the absence of significant opposition from both inside and outside parliament and by seizing the window of opportunity created by the public sector's reform agenda. Originating in a decades-old struggle, the historic passing of the bill was made possible due to a number of factors including:

...sustained advocacy for reform; the dissemination of knowledge, information and evidence; adoption of the reform agenda by the public sector and its leadership in involving other stakeholders; the existence of work for safe motherhood as the context in which the initiative could gain support; an active women's rights movement and support from international and multilateral organizations; sustained involvement of local NGOs, civil society and professional organizations; the involvement of journalists and the media; the absence of significant opposition; courageous government officials and an enabling democratic political system (Thapa 2004: 85).

106. **The great majority of advocacy work undertaken in Nepal, however, has not benefited from such enabling conditions.** Of the high profile policy debates of the 1990s, **the movement against the so-called "Black Laws" (proposed Anti-terrorist Act) is illustrative.** The Act, initially proposed in 1997 and then again in 1998, met with strong opposition from citizens at a time of Maoist conflict and an increasingly repressive state. The draconian powers of the state and the concomitant severe restrictions of the basic citizen rights proposed in the Act, resulted in broad-based opposition which included donor-funded NGOs such as INHURED International, the Bar Association and two groups that formed as a result of the movement – the Movement to Save Democratic Rights and a coalition of leftist political parties. The massive political pressure generated by the movement (which included a 40 day protest program), resulted in the non-introduction of the bill in parliament (Des Chene 1998).

107. **The movement to free Kamaiyas (bonded laborers) was another high profile case that was based on similar street-based pressure tactics on the government.** The Kamaiya Liberation Movement began on 1 May 2000 and ended on 17 July 2000 when the Government declared the emancipation of up to 200,000 bonded laborers in western Nepal (Fujikura 2001: 31). In this case, sustained collective action at the local level, was complemented by national level lobbying and networking by democratic allies, with overall efforts spear-headed by the local NGO Backward Society Education (BASE).

108. **The manner in which state-citizen relations have evolved in Nepal – including the period of conflict and autocratic rule post-1990 – has resulted in an emphasis on unilateral strategies of criticism and pressure.** There is a continued widespread belief that the state is reluctant to hear the voice of citizens, and act upon their requests, unless people take to the streets. The lack of information, environment of mistrust and the extended post-conflict transitional period has only added to this belief. **There is comparatively much less history of citizens and civil society organizations engaging in constructive dialogue with state actors.** Importantly, while there is a rich history of social mobilization in Nepal, most of this has focused on the economic dimensions of

empowerment and service delivery, as opposed to “empowering citizens to build their voice, claim assets and services and influence decisions, procedures and (eventually) the formal and informal rules of the game” (Jha et al. 2009: 35) Furthermore there have been relatively few programs that have sought to link citizens/CSOs with government actors and processes. Functioning in isolation and parallel to government systems, these mobilizations have not served to support the development of citizen-state relationships (Jha et al. 2009: 134).

d. Donor Support for Social Accountability in Nepal

109. **This current reality of support for social accountability initiatives in Nepal needs to be situated in a larger history of donor action in Nepal.** Since the beginning of the democratic post-1990 period, foreign donors have concentrated on poverty reduction through enhancing sustainable economic growth, social sector development as well as the reform of the state. Decentralization, democratization and inclusion emerged as “cross-cutting themes” during this period. While multilateral organizations such as the World Bank, the Asian Development Bank and UNDP have continuously engaged with the state, the 1990s saw the trend of more aid channeled to NGOs rather than the state. The 1998 Nepal United Nations Human Development Report stated that **the tendency of donors to circumvent the public sector was premised on the assumption that the public sector was corrupt and ineffectual, and alternative channels (such as NGOs and the private sector) would ensure better utilization of resources for beneficiaries** (UNDP 1998: 210).
110. The escalation of the Maoist conflict, especially in 2000, resulted in three main donor initiatives. One was an **emphasis on social inclusion, good governance and marginalized groups**. This stemmed from state and donor analyses that the root causes of the conflict lay in social exclusion, economic and regional inequalities, lack of opportunity, poor governance and the failure of the government to deliver expected development. The second was **conflict sensitive programs**. At this time, donor country assistance and strategy papers highlighted conflict issues and proposed strategies for mitigating the negative impacts of the conflict on their development programs. Thirdly, donors began to channel a larger percentage of **funds to non-state actors**. This occurred largely because the state was restricted to district headquarters in many parts of the country and local NGOs represented key partners for donors to continue development works. Especially for European donors, the shift to funding non-state actors and decreasing government budget support occurred not only due to lack of government effectiveness as a partner, but also the reluctance of the king from 2002 to 2006 to permit more participatory forms of governance and respect human rights.
111. **Donor initiatives on governance since the April 2006 movement and the official end of the conflict has seen the continuation of core themes of social inclusion and good governance as well as a central focus on assisting the peace process** - including the successful realization of the CA elections and the writing of the new constitution. Much attention has returned to the state, although as noted before, multilateral organizations have throughout this period continued to engage with the government in various governance initiatives aimed at improving public resource management and promoting civil service

reform, decentralized governance and people's participation in the development process.⁶⁰ **While state-building now appears to be a central objective both for multilaterals and bilateral donors, such as DFID, NGOs continue to receive large amounts of funds from international donors.**

112. In the area of governance, in addition to a large number of individual donor initiatives, there are currently three large multi-donor programs, The **Nepal Peace Trust Fund** established in 2007 is a government-managed multi-donor trust fund set up to support the peace process including the management of combatant camps and integration, rehabilitation of internally displaced persons and strengthening law and order. To complement the Nepal Peace Trust Fund, the **United Nations Peace Fund** was established to focus on tasks that cannot be funded or implemented via existing government mechanisms. It too is financed by a range of international donors in Nepal including the UK Department for International Development (DFID), the Swiss Development Corporation (SDC), Canadian International Development Agency (CIDA) and the governments of Norway and Denmark. Initiatives undertaken include supporting the Ministry of Peace and Reconstruction to formulate a capacity development strategy, based on the capacity assessment and the Support to Participatory Constitution Building in Nepal project which provides technical assistance to the Constituent Assembly and promotes public involvement in constitution-making, especially via the Centre for Constitutional Dialogue. While the above two programs focus on what can be termed as transitional governance issues, **the Local Governance and Community Development Program (LGCDP)** builds upon the previous Decentralized Local Governance Support Programme and focuses on poverty reduction through inclusive, responsible and accountable local governance and participatory community-led development. Initiated in 2008, this MLD-managed program is supported by the UN system, ADB, CIDA, Danida, DfID, Norway, GTZ, JICA and SDC.

113. Apart from the LGCDP and assistance to election related activities, however, relatively few donor initiatives go beyond advocacy to support specific mechanisms for strengthening relations of accountability between state and citizens.⁶¹ Funding given by the multi-donor **Rights, Democracy and Inclusion Fund (RDIF)** is instructive.⁶² The overwhelming majority of activities supported by the RDIF have focused on advocacy,

⁶⁰ For example, UNDP and the Government of Norway jointly supported the Ministry of Local Development through the Decentralised Local Governance Support Programme started in 2004. The program built upon the experiences of prior initiatives and was designed to contribute to, among other things, decentralized governance with enhanced capacity of local government to plan, finance and implement development programs in an accountable and transparent manner and to enhance the effective participation of people in governance processes with special attention to excluded groups. Importantly, the end-review of the program stated that it primarily supported the demand side through social mobilization at the village level (Meier et. al 2009).

⁶¹ For LGCDP donors, this is logical.

⁶² RDIF was started in 2006 with the goal "to bring about a strengthened and more sustainable system of democratic governance characterized by more respect for rights, democratic norms, and the political inclusion of all groups" (RDIF 2008: 1). It is the first multi-donor mechanism in Nepal for support to democracy, human rights and political inclusion. The original donor partners of DfID, SDC, AusAID and the Norwegian Embassy were joined by DANIDA in the second phase of RDIF launched in June of 2009.

lobbying and public debates. These have included excellent initiatives for example, promoting local-level post-conflict reconciliation structures and supporting the political inclusion of marginalized groups (including Janajati and Dalit women) at different levels. While four of the 24 organizations supported by the Fund used social accountability tools (three used public hearings, and one undertook public audits), these appeared to be ancillary activities to the core methods of advocacy. **Lobbying, awareness-building and training prefigured dominantly with relatively little attention to establishing constructive and regular engagement with state and political actors.**

114. These trends dominate in bilateral aid programs.⁶³ For example, **Norway's** governance and peace-building initiatives center on the CA, election support and media initiatives to promote citizen advocacy. A separate Women's Fund supports women's advocacy in the CA, as well as female ex-combatant work and UNICEF's Decentralized Action for Children and Women (Ingdal and Holter 2010: 15-17). The **European Union's** "Human Rights and Democracy" program focuses on human rights, conflict affected children and advocating for the rights of the marginalized, with links to the constitution-writing process. Among the bilateral donors, **Denmark** has historically emphasized issues of human rights and the development of an inclusive, accountable and democratic political system. DANIDA's Human Rights and Governance Advisory Unit has established strategic partnerships with thirteen Nepali CSOs. As in the case of the RDIF, activities undertaken by these partners have tended to focus on advocacy, although much more attention has been given specifically to justice and the promotion and protection for human rights. The **UK Department for International Development (DFID)**, now Nepal's largest bilateral donor, spent the largest proportion of its budget (28%) in 2009-2010 on governance as well as growth.⁶⁴ Programs funded included the Nepal Peace Trust Fund, the RDIF, the LGDCP, the Community Support Program and the Enabling State Program (ESP) which is self-described as a pro-poor governance program. Of these, the ESP has the largest budget. The second phase of the ESP's program support began in 2009 and saw the continuation of funding to the UNDP-led Support to the Participatory Constitution-building in Nepal program; as well as smaller funds for increasing the participation of Janajati women, Madheshis and Muslims in the constitution-writing process; promoting access to justice for the Madhes via community mediation projects; evidenced-based lobbying by Dalit organizations; a weekly television program (that included televised public interaction forums) and a Public Financial Management Project – that provide technical assistance to the government (ESP 2010). Apart from the latter, **the principal focus has again been on citizen "voice" and advocacy.**⁶⁵

115. There are exceptions to this trend. One of **GTZ's** three priority areas is local governance and civil society, and support is being provided for the enhancement of government, civil

⁶³ Japan is an exception here in that its governance program consists of technical support to the state in monitoring and evaluation, participatory watershed management and local governance, gender mainstreaming and social inclusion and reform of the civil code and related laws.

⁶⁴ <http://www.dfid.gov.uk/where-we-work/asia-south/nepal/?tab=2>

⁶⁵ However, DFID's Livelihoods and Forestry Program, which promotes more equitable, efficient, and sustainable use of forests by rural communities, does utilize public audits.

society, democratic self-administration and the participation of local people in poverty reduction measures. A key intervention is the Urban Development through Local Efforts program which seeks to enhance the capacities of municipalities to plan and control their development through multi-stakeholder cooperation, involving municipal administrations, line ministries and CSOs. Among other ongoing governance programs, The **US Agency for International Development** (USAID) initiated in 2008 the Nepal Government Citizen Partnership Project that aims to promote effective governance in Morang District in the eastern Tarai. The goal is to improve the ability of local officials to work with communities in development planning, including through enhanced transparency and access to information. Ward Citizen Forums have been established to increase citizen participation in the local government planning process and to engage members of marginalized communities in local development.⁶⁶ The **Swiss Development Corporation** (SDC), apart from contributing to the LGCDP, is now supporting Phase Four of a Good Governance Project implemented by Pro-Public to raise citizen's awareness of governance and to increase their capacity to demand more accountable, transparent and participatory government. Importantly, it also works with public authorities to increase their knowledge, capacity and overall effectiveness. The Sahakarya I project funded by CIDA seeks to build self-reliant communities and promotes equitable and representative CBOs capable of managing local resources and interacting with locally elected bodies and government agencies.

116. Apart from assistance to the CA and larger government institutions associated with the peace process (such as the Ministry of Peace and Reconstruction) and now the LGCDP, **there has been relatively less attention paid by donors to the “supply” side of the equation – enhancing the will and capacity of government actors to be responsive to citizen demands and building constructive state-citizen relations especially at the district and local levels.** A 2008 evaluation of citizens' voice and accountability in Nepal by seven donor partners⁶⁷ noted that **most interventions have focused on strengthening citizens' voice (i.e. promoting the expression of citizen's views, opinions and preferences) as opposed to actively promoting accountability (i.e. actions aimed at enhancing the transparency, responsiveness and answerability of the government and their exposure to sanctions)** (Ministry of Foreign Affairs, Denmark: 2008.)⁶⁸

117. **There have, however, been some important initiatives by CSOs to directly help the government be more effective and accountable** by engaging in policy dialogue, monitoring and evaluating government actions, and providing feedback and “constructive criticism.” One notable example is the important role that has been played by FECOFUN in advocating for participatory forest management, securing and defending the rights of CFUGs and contributing to the development of forest sector policy. Box 1 describes some of the important activities of FECOFUN and also discusses the obstacles and constraints

⁶⁶ For a review of the program, see <http://nepal.usaid.gov/our-work/program-area/democracy-and-governance/334-nepal-government-citizen-partnership-project-ngcpp.html>

⁶⁷ The evaluation was one of five such evaluations being carried out by the Evaluation Core Group established by seven donor partners from Belgium, Denmark, Germany, Norway, Sweden, Switzerland and the UK.

⁶⁸ It is interesting to note here that a review of citizen mobilizations in Nepal stated that most group mobilization programs and projects do not link with local body processes (Jha et al. 2009: xvii).

that they have faced in promoting citizen participation and social accountability in the forest sector.

Box 1 - Promoting citizen participation and social accountability in the forest sector

Consistently pushing for participatory forest management, FECOFUN has engaged at various levels (from local to national) and utilized the judiciary (they have filed many cases against the state) as well as engaging in policy discussions and feedback. They have, however, also faced a number of important obstacles and constraints. Despite the rhetoric of participatory development, a review of forest policy decisions from 1998 to 2004 found that, apart from two cases, actual policy decisions were made by forest officials on the basis of their claimed advantages of bureaucratic and scientific knowledge. Agendas forwarded by forest bureaucrats were less likely to be opened up for policy debates and there was a tendency to exclude citizens from policy deliberations. Citizens were allowed to voice issues in consultative events, but not allowed to participate in defining agendas and the process of consultation (Ohja et al. 2007). The review also noted that progressive laws prepared by parliament were “consistently distorted by the subsequent decisions on local forestry governance” (Ojha et al. 2007: 15). For example, the landmark Forest Act of 1993 recognizes forest user groups as perpetually self-governed institutions to claim 100 percent of the benefits from the management of forest handed over to them. However, the actual contract between local forest official and the CFUG includes the following provision “notwithstanding whatever is written in the previous clauses, the CFUG will follow written and verbal orders of forest officials and staff” (Ojha et al. 2007: 11).⁶⁹

In the current context of structural inequalities, institutional weaknesses and personalized power relations, formal mechanisms and laws are often sidelined. For example, existing hierarchal and unequal power relations between CFUGs and forest officials allow District Forest Officers to take unnecessary and extra legal control (Ojha 2009) and contribute to the overall fear and reluctance of ordinary CFUGs members to deal with the warden and national park rangers. According to one analysis, “Since the Warden is a one-person judge, people are indeed scared for he can do anything at any time” (Timsina and Paudel 2003: 12). Overall, not only do villagers perceive forest officials as personally possessing the power and services attached to their offices, officials see their services to villages as personal favors rather than as their duty (Thoms 2004: 153). The situation lends itself to elite capture, as only the more educated and powerful are willing and able to negotiate with forest officials.

Source: Ojha et al 2007; Ojha 2009; Timsina and Paudel 2003; Thoms 2004

- 118. Among donor-supported social accountability initiatives in Nepal, it is probably the larger INGOs - such as ActionAid, CARE Nepal and Save the Children that have gone furthest in integrating social accountability tools into their work.** These organizations have sought both to amplify citizen voice and to work with government agencies to respond in a responsible and transparent manner. **Overall, public hearings appear to be the most widespread social accountability method used in Nepal, followed by public audits.** Boxes 2 and 3 describe two examples of how public hearings and public audits have been used to enhance the performance of VDCs and to enhance governance in the forestry sector achieve results Other social accountability tools used or

⁶⁹ This provision, contrary to the spirit of the law, was made possible by clauses inserted in the Forest Rules 1995, ostensibly according to the Forest Act 1993. As the DFO will not hand over the forest without the signing of the contract, local CFUGs are forced to comply (Ohja et al 2007: 11).

supported by these organizations include: social audits, community scorecards and citizen report cards,

Box 2 - Public hearings make an impact at the VDC level

The community radio station Radio Madan Pokhara in Palpa regularly conducts public hearings. Success stories from such endeavors include one VDC secretary repaying Rs 53,000 that he had taken and another who initiated public hearings in three election areas after being impressed by the community radio's work. Furthermore, according to Programme Manager Ramesh Aryal, while VDC secretaries are initially reluctant to undertake such public hearings, they often become positive after the experience. One secretary, after undergoing the hearing and understanding the benefits, even apologized for consistently attempting to avoid holding the hearing and committed to initiating the hearing next year himself. Furthermore, a public hearing on the fluctuating rates of jeep fares conducted last year resulted in a public commitment from jeep syndicates to maintain standardized prices. This, according to the Aryal, was a very popular intervention as it directly impacted the daily lives of locals and demonstrated the effectiveness of such activities.

Source: Madan Pokhara VDC, Palpa Field Notes, 2010

Box 3 – Public audits bring results in Bardia District

In the forest sector, CARE has implemented two USAID-funded projects with five Community Forest Users' Groups in Bardia district aimed at ensuring good governance in the management and especially equitable distribution of natural resources. Through the use of public audits of plans, progress and financial transactions, the CFUGS have been able to: recover misappropriated or misused funds reverse decisions made by the Executive Committees that were not in favor of general users; promote pro-poor activities; increase networking activities (through affiliation with FECOFUN) and; increase the number of women in key positions (Gentle et al 2007: 64-65). Furthermore, there has been a multiplier effect. CFUGS who began conducting public audits on a regular basis, have also demanded that VDC, school road work budgets and expenditures be made public (Gentle et al. 2007: 64).

Source: Gentle et al 2007

119. The stock-taking exercise, however, revealed a high level of variation and inconsistency in the definition and use of such tools by donors and NGOs. The MLD has developed Public Audit and Public Hearing guidelines and has now finalized an implementation strategy for accountability procedures (GoN/MLD 2067vs). However, only a few organizations were found to utilize them. The Association for International NGOs has developed social audit guidelines, but has not made them mandatory for its members.⁷⁰ Donors and INGOs tend to use their own tools and processes – each of which are defined and applied in different ways. For example, Helvetas, uses the term *public hearing* to refer to multi-stakeholder discussions about community needs and priorities conducted during project planning phase. A *public review* is a participatory method of

⁷⁰ In an interview, Ramesh Adhikari of ActionAid stated that there were various definitional and conceptual problems with the guidelines prepared by AIN, and that ActionAid had submitted inputs, hoping that they would revise the drafts that had been circulated.

monitoring progress during the implementation of the project and *public audit* is the participatory method of evaluating project commitments after its completion. These definitions and understandings vary considerably from the way that the government and/or other NGOs use the same terms.

120. **Furthermore, while many donor agencies require the implementation of social accountability approaches in the projects they support, these are not always applied to their own activities or extended to their partner organizations.** For example, ActionAid systematically conducts social audits of its own organization and requires its local NGO partners to do likewise. Save the Children Nepal requires its partners to conduct social audits while Helvetas Nepal applies social accountability tools at the project level, but does not make such requirements of its partners. While numerous bilateral and multilateral donors support and require social accountability practices at the project level, they seldom apply principles of downwards accountability in the context of their own budgets and programs.
121. Key elements for social accountability do exist in Nepal– including citizens’ legal access to information, opportunities to voice opinions, needs and concerns and a history of strong associational practices. Donor attention to date has focused mostly on raising awareness of citizen rights and supporting advocacy. It is now important to expand support to operationalizing the Right to Information Act, developing accountability-oriented research capacities, strengthening and channeling of citizens’ voices and establishing mechanisms for constructive dialogue with state actors. Despite the long-standing problem of donor coordination – evident in the multiple definitions of terminologies used – there have been successful initiatives to help the government become more affective and accountable. They demonstrate the potential for the success of social accountability interventions, despite socio-cultural obstacles and the difficult political transition period.

SECTION V - AN ANALYSIS OF CONDITIONS FOR SOCIAL ACCOUNTABILITY IN THE PRAN’S THREE FOCAL AREAS

122. While the PRAN will support strategies for the general promotion of social accountability across all sectors there are three priority thematic areas: public financial management, municipal governance and community-based monitoring and evaluation of basic public services. An analysis of the conditions of social accountability in these three areas follows.

a. Public Financial Management

123. **The institutional basis of public financial management (PFM) in Nepal is centered around the Ministry of Finance, its Budget Division, and the Financial Comptroller General’s Office.** A Taxpayer Office, the spending units of central ministries and other agencies are also a part of the system. At the local level, line agency offices, the District Development Fund, Village Development Fund, and the District Treasury Control Office play central roles in the PFM system. Accounting and auditing of local bodies are maintained as per the Local Self-Governance Act and the Local Bodies Financial

Administration Regulation, and central-level audits are carried out by the Office of the Auditor General.

124. **The 2009-2011 Nepal Interim Strategy of the World Bank noted a number of weaknesses in the field of PFM.** Prominent issues included: lagging payment arrears, limited tax collections, lack of effectiveness of both internal and external audits and the need to accelerate movement towards internationally accepted accounting and auditing standards. Assessments have revealed that while an advanced set of laws, regulations and processes exist, actual PFM practices indicate “gaps in the control framework, constraints on implementation and large fiscal activities outside the scope of the central government budget” (World Bank 2007b:15). The government’s own 2008 Public Expenditure and Financial Accountability Assessment (PEFA) noted that fiduciary risk was “high.” Proposed steps to address this risk included: the establishment of a PEFA steering committee and a PEFA Secretariat for the implementation of the PEFA Action Plan; continued strengthening of the Public Procurement Monitoring Office; capacity building of the Office of the Auditor General and the establishment of PEFA implementation units in fifteen ministries (NPPR 2009).
125. **Identified shortcomings with regard to the budget include an expansionary budget, very low capital formation, increasing recurrent expenditures and weaknesses in implementation capacity due to the deteriorating law and order situation and the late approval of plans** (World Bank 2010: 19). More specific concerns include: no advance preparation of sectoral target/indicators; budget allocation not linked with sectoral targets and priorities; specific projects included in the budget without a detailed study, and a concentration of capital expenditure at the last trimester of the budget year (NPPR 2009: 23). Monitoring and evaluations are seen to be particularly weak. This stems from low commitment to monitoring and evaluation, the absence of a monitoring and evaluation policy, lack of budgeting for such activities (across government operations), insufficient capacity building efforts and a lack of integrated information systems established at the center to link with line agencies and districts (NPPR 2009: 24). On the positive side, a Medium Term Expenditure Framework (MTEF) has been introduced in order to promote sound, policy-based budgets.
126. **At the national level, the absence of an Auditor General (due to the inability of political parties to agree on a candidate) for almost four years has affected already weak oversight mechanisms.** Years of political instability have resulted in feeble external oversight on budget preparation, especially between 2002 and 2006 when there was no parliament. While the Public Accounts Committee of the CA/legislature has resumed work, the last-minute passing of this year’s budget via an ordinance (therefore allowing for no real inquiry or debate on the budget or the MTEF in Parliament) again accentuates the difficulties of enforcing external scrutiny in the prolonged period of political uncertainty. Both annual audit reports and scrutiny have historically focused on “irregularities” rather than the identifying and correcting of systemic issues. Furthermore, there is little evidence of follow-up on the irregularities identified by the Auditor General (World Bank 2007b: 16).

127. **The lack of public access to information about national and local-level government accounts and contracts further reduces the potential for external scrutiny and audit.** What information is made public is incomplete and lacks user-friendliness (World Bank 2007b: 88). **Overall, public demand for information on public finances is weak, linked to a lack of expertise on financial and budgetary analysis among CSOs.** As a result, independent monitoring of the budget at the national level is extremely limited. The announcement of the budget is usually given front page coverage alongside interviews with individual economists and experts on the ramifications of the budget. However, there are no sustained analyses of the budget through its cycles. Relatively little attention has been given to building the capacity of civil society to monitor public budgets. Some initiatives have included: a review of the national budget by the Society for Economic Journalists – Nepal in 2006⁷¹, a training program for CSOs on budget issues by the Citizens' Poverty Watch Forum in the same year⁷² and recent calls in the media for enhanced independent budget analysis as a key component of good governance (Bhurtel 2010). These have all been sporadic interventions. More comprehensive analyses have been undertaken by Freedom Forum in the preparation of the Nepal report for the international Open Budget Initiative. However, according to Krishna Sapkota, Program Coordinator at Freedom Forum, in 2006 and 2008 the country reports were not made public and the planned second stage of advocacy based on the analyses were not undertaken for various reasons. This resulted in a lost opportunity to increase public debates on these issues.
128. **At the local level, effective PFM, participatory governance and accountability are constrained from the outset by the lack of meaningful decentralization** – especially fiscal decentralization – that has actually taken place, despite public commitments.⁷³ In 2005-2006, 92 percent of total public expenditures took place at the central government level, with only eight percent transferred to local authorities. Furthermore, the central government collected 95 percent of all national revenue, with only five percent collected at the local level (ADB 2009a: 13). While local bodies do have the authority to tax, the major taxes such as VAT, income tax and excise duties are under the jurisdiction of the central government (World Bank 2007b: 91). According to a 2009 ADB assessment, the central government retains a “very high” decision-making role with regard to public sector

⁷¹ http://www.sejon.com.np/?page_id=6 accessed October 22, 2010

⁷² <http://www.internationalbudget.org/pdf/newsletter10.pdf> accessed October 22, 2010

⁷³ Fiscal transfers from the center are the principal source of revenue of all local bodies in Nepal. They are divided into conditional grants and unconditional grants. Unconditional grants to local bodies are given according to a Minimum Conditions/Performance Measures (MC/PM) system. The system seeks to reward local bodies that have performed well on select indicators with greater resources. The basic pre-condition to receive funds is compliance with the minimum conditions. Once these are met, allocation under the MC/PM system is formula-based. In terms of “Minimum Conditions” – there are 15 indicators in four working areas, while for “Performance Measures” there are 40 indicators (Local Body Fiscal Commission 2009). Importantly, the minimum conditions include social accountability indicators. For example, they stipulate that a social audit and public hearing must be undertaken within four months of the completion of projects. Other frameworks for budgeting include Expanded Block Guidelines DDC (2065) which earmark 30% of the total DDC budget for projects to benefit women and disadvantaged groups, of which at least half is to be spent on women and children. The DDC is responsible for planning, implementing and monitoring participatory development programs in the district, based on VDC plans and development programs. The DDC holds monthly meetings with all VDCs and annual meetings with district line offices.

spending, with expenditure shares in poorer regions depending on personal influence (ADB 2009a Annex II: 26). Among local bodies, Kathmandu and other larger municipalities have strong institutional bases; but this is not true across the board. Two-thirds of all municipalities would not be able to survive without central grants and programs (ADB 2009a Appendix II: 31). Furthermore, the nature of budget implementation mechanisms at the district level is complex, with the funds and goods passing through many layers and different paths before they reach service delivery units.⁷⁴ While district approval of all budgets of development-related line agencies in the district is required, districts authorities have no say in the choice of programs or allocations that are driven by the central line agencies (ADB 2009a Annex II: 43). Under the current system, therefore, the DDCs are not made more autonomous, but function as a “financial intermediary” with no authority, merely serving to make the disbursement process more complicated (World Bank 2007: 95).

129. According to a governance risk assessment (ADB 2009b)⁷⁵, **PFM issues in local bodies are characterized by: excessive involvement of political parties in the selection and implementation of projects; increasing levels of mismanagement and a lack of capacity to manage PFM protocols including revenue generation.** Budgets were found not to be in line with actual revenue generation, with programs selected according to the support of political leaders and pressure groups despite revenue constraints. The link between annual budgets and annual plans was not clear. Furthermore, many budgets were not passed on time. Weak financial management systems were evident in most local bodies, hindering their ability to link capital budgets to a multi-year perspective of project financing in line with periodic plans. The lack of predictability of government grants (despite the Minimum Conditions/Performance Measures system) has resulted in an overall inability to engage in multi-year financial planning. The assessment found that financial plans were not in line with overall development goals and that the budget monitoring as a measure of financial performance did not take place. Auditing weaknesses were evident, with stocks of unsettled accounts dating back several years in a number of locations. **A lack of transparency in local level financial management was also evident.** While budgets were published on municipal boards, “key fiscal aspects such as documented annual budget reports, in-year budget execution reports, year-end financial statements and external audit reports are not generally publicized by most municipalities” (ADB 2009b: 21).

130. **Local bodies appear to follow the Public Procurement Act but weaknesses were evident.** These included: general lack of a proper procurement plan and specific procurement manuals; a lack of awareness of the new amendments and no separate procurement units with trained procurement officers (ADB 2009b:27). The limited degree of integration of procurement plans into financial management systems at the local level was also evident. Many problems related to transparency and corruption in procurement

⁷⁴ For example, funds are transferred to the respective district agencies for primary schoolteachers, agriculture extension workers and livestock personnel. In terms of basic health services, most districts the DDC sends funds to the District Health office, but in some, funds are released from the DDF to the VDF who then makes them available to local institutions (World Bank 2007: 94).

⁷⁵ The following borrows from the finding of the ADB 2009 assessment: 21-30.

are apparent: (i) the ratio of bids submitted to documents distributed is very low, usually with submissions just meeting mandatory requirements; (ii) collusion is rampant with successful bids very close to the budgetary provisions; (iii) the practice of technical audits is nominal and there is low level of monitoring of procurement works; (iv) threats, intimidation, and extortion are common practices; and (v) bribes and corruption are accepted and taken for granted (ADB 2009b: 27). The Public Procurement Act of 2007 provides for a blacklisting of violators, but enforcement is weak.

131. **The weaknesses apparent in terms of PFM at the local level need to be situated within the larger context of structural weaknesses now exacerbated by transitional political instabilities. One obstacle is the limited institutional capacity of the MLD,** responsible for the oversight of the local bodies. MLD lacks staff, skills, mandates and capacity to both monitor local bodies and implement a rapidly expanding program of activities. For example, even when districts have undertaken internal audits, those reports are rarely reviewed (ADB 2009b: 20). PFM reviews have highlighted the continuing need for better support from the center – including more budget predictability in budget preparation and implementation, simpler guidelines delivered on time from the center, greater clarity in sectoral responsibilities and the formalization of the budget formulation cycle specifying timing and responsibilities for all actors involved in the process (World Bank 2007: 94).

132. **Lack of capacity is also a key issue at local levels.** For example, VDC and municipal secretaries have almost identical financial management responsibilities, regardless of size and capacity. These include maintaining up-to-date accounts, records of income, expenditure, projects and properties; managing expenditures; arranging for audits of accounts and clearance of audit queries; and managing staff (ADB 2010 Annex II: 31). Over the last decade, the workload of VDCs has increased four or five-fold (ADB 2010 Annex II: 54). Originally designed (as a one-person office) to manage small expenditures, most VDC offices now lack the capacity to effectively manage increased government transfers and grants to the local level (ADB 2010 Annex II: 35). The Local Development Officer (LDO) office which is supposed to work as the secretary of the whole DDC (planning, coordinating and monitoring all programs and activities of the district) is usually only able to monitor the inputs and outputs of DDC activities because of capacity constraints (ADB 2010 Annex II: 54).

133. **In addition to these structural weaknesses, the lack of local level elections and the appointment of local bureaucrats assisted by the APM, has rendered ineffective existing accountability mechanisms at the local level.** Accountability mechanisms include: a committee (under the chairpersonship of the member of Parliament for the district, with the DDC chairperson, DDC member and other relevant employees) to supervise and monitor the implementation of DDC plans; external audits (VDC auditors are appointed by the DDCs, the municipal council appoints a registered auditor on the recommendation of the Accounts Committee and the DDC uses the services of the Auditor General) and Accounts Committees (which review financial reports and give directions for the settlement of irregularities and the organization of social audits for all community-managed local development activities) (World Bank 2007b: 98). As noted before, in the absence of elected officials, it is the civil servants of the MLD, assisted by the All-Party

Mechanism, who are invested with the authority of elected officials according to MLD provisions for monitoring and reviewing in the interim period. With local authorities accountable to their central line agencies, and politicians accountable to their parties, neither of these two groups have an incentive to adopt good governance practices or to respond to citizens needs.

- 134. At the community level, much more emphasis has been given to participatory planning than to budget monitoring.** However, some initiatives have been undertaken. Box 4 describes the example of the Citizens' Action Program (Nagarik Aawaz) implemented by the **Federation of Water and Sanitation Users in Nepal (FEDWASUN)** in coordination with **WaterAid Nepal**, that aims to improve governance in the water and sanitation sector by means of citizens' action and budget tracking.

Box 4 – Promoting accountable public financial management in the water and sanitation sector

Since 2005, the Federation of Water and Sanitation Users in Nepal (FEDWASUN) in coordination with WaterAid Nepal, has been implementing a Citizens' Action Program (Nagarik Aawaz) in Ilam, Makawanpur, Dhading, Baglung Pyuthan and Baitadi districts of Nepal, with plans to expand to other districts in 2011. The focus is on helping to make service providers accountable, responsive and provide services in sustainable and equitable manner. In Ilam, the project analyzed the budgets and implementation status of state and non-state actors working in the district within the drinking water and sanitation sector. Findings were made public by means of a radio program as well as community discussions and public hearings. Positive results included citizen's becoming aware that government rules require that 20 percent of the government budget be allocated to water and sanitation which led to the consequent raising of the district's budget for the sector from three to twelve percent. Furthermore 17 case studies were undertaken, focusing on questions of financial transparency raised by the community.. This revealed various ongoing irregularities, such as state officials asking for percentage cuts from budgets. Achievements included public commitments from relevant offices on the implementation of rules and economic transparency. For both the public hearings and the stakeholder discussions, a wide-range of stakeholders were invited, including the drinking water office, VDC, DDC administrative offices, education, municipality, NGOs in the sector, excluded groups etc.⁷⁶ This enabled meaningful participation as well building constructive relations with local body authorities.

- 135. Obstacles to such initiatives stem from the general reluctance of state actors to divulge information, the consequent basic lack of knowledge of government budgetary allocations, the absence of demand for such information and the low capacity of organizations to analyze the budget. Given the donor-dependent nature of NGOs and civil society, the lack of historical attention given by donors to civil society oversight of budgetary concerns is both an obstacle and an opportunity.** Some initiatives have recently started. For example, WaterAid Nepal, based on its experience with budget advocacy, has recently produced a "budget primer" to equip civil society advocates with basic practical tools for analyzing the budget analysis and engaging in the four phases of the budget cycle. While intended for those working in the water and sanitation sector, the primer is relevant to the larger audience of civil society advocates working with communities (WaterAid 2010).

⁷⁶ Ilam Field Notes 2010.

b. *Municipal Governance*

136. **Seventeen percent of the population of Nepal live in urban areas.**⁷⁷ These include: one metropolis (Kathmandu), four sub-metropolises (Biratnagar, Lalitpur, Pokhara, and Birganj), and 53 municipalities.⁷⁸ As at the district level and VDC level, municipalities have the power to collect taxes (including: land, property and house taxes; taxes on certain natural resources and commodities; tolls, and; various user chargers) and pass local budgets.⁷⁹ They have been assigned expenditure responsibilities including education, sub-health posts, agriculture extension and small roads.

137. **Participatory governance at the local level is circumscribed by the unfinished process of decentralization. Consequently, the governance of municipalities, as with other local bodies, is complicated by the dominance of central bodies and their line agencies, as well as the overall economic dependence on central transfers as noted in the previous section. The institutional framework for urban planning and management is unclear and complex.**⁸⁰ The National Planning Commission the Ministry of Physical Planning and Works (MPPW) and the MLD are all directly involved in the urban sector. Under the MPPW, the Department of Urban Development and Building Construction and the Department of Water Supply and Sewerage are implementing agencies and the Town Development Fund (TDF) has been set up as an autonomous agency. The TDF provides financial (grants and loans) and technical support for infrastructure (water, drainage, sewerage, solid waste management etc) as well as revenue

⁷⁷ The current rate of urbanization is 4.9%, which is four times the population growth rate (1.28%) (ADB 2010: 5). Urbanization is unevenly distributed; 52% of the total urban population is in nine of the largest urban areas (ADB 2010 : 6).

⁷⁸ A metropolis (*Mahanagarpalika*) is defined as a municipality with a minimum population of 300,000, annual revenue of at least NRs400 million, and facilities including electricity, drinking water, communications, paved roads, specialized health services, at least one university and other higher educational institutions in different fields, and international sporting events. Similarly, a sub-metropolis (*upa-mahanagarpalika*) is a municipality with a minimum population of 100,000, annual revenue of NRs100 million, electricity, drinking water, communications, paved roads, education and health services of a high standard, general infrastructure for national and international sporting events, public parks, and a city hall. Municipalities (*nagarpalika*) are defined as having annual revenue of NRs5 million for the Tarai and NRs 0.5 million for the hill and/or mountain region together with minimum urban facilities such as electricity, drinking water, roads, and communications. Criteria such as population density, occupational structure and nodal function as to relates to urban-led rural regional development, has never been used in designating urban areas (ADB 2010: 5).

⁷⁹ Resource-sharing mechanisms are in place at the local level. DDC levies and taxes on minor natural resources are to be shared with municipalities and VDCs; while the VDCs and municipalities levy and collect *malpot* (land tax) that is to be shared with their respective DDC. However, this does not function in practice. In 2007-2008, only a few VDCs were found to have transferred revenue to the DDC and none of the municipalities had given the required 25 percent of the *malpot* collection to the DDC (ADB 2010a: v). Municipalities as a whole enjoy comparatively better financial and administrative autonomy compared to DDCs and VDCs and are less likely to coordinate their activities with these other local bodies (Brownell and Rai 2002: 44).

⁸⁰ In terms of the future federal structure and the complications it will bring into governing dynamics, it is important to note that the municipalities are unevenly distributed among the proposed provinces in the current CA drafts. Jadan and Sherpa provinces do not have a single municipality, while Limbuwan has one and Tamuwan, Tamsaling, Sunkoshi, Karnali and Magarat have two each (Martin Chautari 2010: 10).

generating activities in municipalities (ADB 2010b: 37). The MLD has a Municipal Management division with its own secretary and three sections – Municipal Management, Municipal Planning and Environment Management.⁸¹ Different line agencies of other ministries also implement their own work. **Thus, although the Local Self-Governance Act empowers municipalities to prepare their own plans and programs, in practice a multitude of other actors intervene.** For example, the MPPW is responsible for the policy measures, projects and programs related to urban infrastructure development. Among other institutions, both the DWSS, and the Department of Local Infrastructure Development and Agricultural Roads of the MLD are involved in the provision of water supply and sanitation services. The multiplicity of agencies involved, different implementation modalities and the absence of a central coordination mechanism has made overall municipal planning and programming challenging. According to an ADB report, coordination between the MLD and MPPW as well as other ministries providing urban utility services, is one of the three main challenges within the urban sector.⁸² This challenge is also highlighted in the draft National Urban Policy recently approved by the cabinet (ADB 2009b: 39).

138. **As noted above, the MLD as the central oversight ministry for local bodies, has long been critiqued for its weak capacity.** The MLD's own evaluation of its role in the context of Managing for Development Results identifies its own capacity issues as: weak linkages between periodic and annual plans; weak monitoring and reporting systems, and the non-utilization of feedback into planning and other aspects of decision-making.⁸³ The MLD's growing responsibilities and workload have exacerbated these issues and have also impacted delivery.⁸⁴
139. Officially, municipalities are divided into wards. Each ward elects a five member Ward Committee consisting of one ward chairperson, one woman member, and three ward members. The Municipal council is composed of these elected Ward Committees and (6 to 20) additional members nominated by the council, representing disadvantaged groups and women. However, these elected bodies with their inclusive provisions, functioned for only three years. **Presently, in the absence of local elected bodies, all executive and decision-making responsibilities are in the hands of the centrally appointed Executive Officer, assisted by the APM in an advisory role. A recent World Bank study found that, in general, the APM plays a powerful and interventionist role at the municipal level, and that neither the Executive Officer nor the un-elected members of the APM (who answer to their parties) are accountable to citizens** (Adhikari and Sijapati 2010: 19, 22). Unsurprisingly, the absence of elective representatives, who would be accountable

⁸¹ Within the MLD itself, it has been argued that rural policies and programs overshadow urban issues within MLD (Brownell and Rai 2002:35).

⁸² The other two challenges are unplanned urban growth and the lack of manpower and infrastructure.

⁸³ Ministry of Local Development. Managing for development results.
http://www.npc.gov.np/mfdr/?tour=m_ld accessed November 25, 2010.

⁸⁴ For example, the Department of Local Infrastructure Development and Agricultural Roads was originally meant to construct roads according to the Agriculture Perspective Plan. However, it is now to provide technical support and monitor and evaluate infrastructure projects development projects of the local bodies.

to citizens, has resulted in a high level of corruption (especially in terms of contractors and tenders), the spread of clientelism and nepotism, the overall capture of the planning process by political parties, and the distribution of projects according to political party patronage purposes. (Adhikari and Sijapati 2010: 23-28). More specifically, as noted above, the accountability mechanisms provided for by the Local Self-Governance Act rely upon the village, municipal and district level councils, committee system and audit committees which currently do not function as intended.

140. **There is widespread perception of lack of accountability in the current municipality arrangements, with little recourse for citizens.** Reviews have found that planning and monitoring, especially in smaller municipalities, are weak due to a lack of qualified staff. While quarterly progress reporting and public audits are common practice in all municipalities, these are limited only to projects funded from central resources and non-devolved sectors. Municipalities do not initiate independent evaluations of their own performance (ADB 2010a appendix II: 35). Respondents noted a clear deterioration in the provision of services without elected officials. For example, field research found that while residents Mechinagar municipality had given up land for the building of a road (thereby holding up the 25-30% cost input from residents), the municipality had yet to allocate budget for the road, despite prior commitments. A member of the Nawadip Tole Development Committee noted, “What the municipality gives is not known, only what the municipality should give is known,” highlighting the lack of information and transparency.
141. **The interim governing mechanism has also affected social accountability initiatives.** Although citizen charters are required as part of the Minimum Conditions and Performance Measure, and were said to be “strictly implemented” by interviewed municipality department officers in the MLD, findings and reports from the field reveal different scenarios.⁸⁵ A study of the Kathmandu municipality office in 2007 revealed that only 50% of those seeking municipal services knew of Citizen Charters and only 40% knew a help desk existed (INLOGOS 2064vs). As a result of the interim governing arrangements and current political instability, mechanisms intended to promote transparency and citizen participation (such as ministerial websites, suggestion boxes and citizen charters) have had little impact (Adhikari and Sijapati 2010: 23-24).
142. **A key obstacle, related to all of the above, is the lack of information.** While the MLD has introduced the Participatory Municipal Planning process - building upon the successful experiences of the UNDP funded Rural Urban Partnership Programme - there are clear information gaps enabling political party capture of processes. For example, in Leknath municipality, the municipality staff claimed that all information about ward and municipality plans was disseminated through the media, with the budget published in council booklets. However, in the course of focus group discussions, members of community associations (that were able to provide detailed breakdowns for the six lakhs they were allocated) were surprised to hear that the total budget of the municipality was 11 crore. The head of the Nepal Federation of Indigenous Nationalities (NEFIN) and member

⁸⁵ Citizen charters were first introduced by the government in 1998 via the “Guideline for making Effective the Governmental Services (Acharya 2010: 16). After being piloted in twelve municipalities in 2005 (under the RUPP), it is now mandatory for all government offices to have Citizen Charters.

of the Mechinagar municipality periodic planning committee claimed that it was only after he became a member of the committee that he found out the municipality had various amounts of resource allocations for Janajatis.

143. **The fact that civil society organizations and municipal authorities continue to engage with each other in various capacities represents an important opportunity.** Of CSOs working in the urban sector, **User Groups and Tole Lane Organizations (TLOs) are particularly important.** User groups are official actors in the local governance; the LGSA and the Local Government Financial Administration Regulations 1999 require that all local bodies give priority to User Groups in projects that cost less than Rs. 6.5 million. Generally consisting of members from the locality where the project is being implemented, the User Groups take responsibility for project implementation and management (Adhikari and Sijapati 2010: 12). The Local Self-Governance Act stipulates that User Groups include at least 30 percent women, with one in a leading position, and that the participation of Janajatis and Dalits be encouraged (Adhikari and Sijapati 2010: 13). The municipality is geographically divided into community organizations – the Tole-Lane Level Organizations (TLO) - with membership of each TLO comprising the households falling within the assigned boundaries. TLOs were conceptualized as part of the key civil society mobilization process aimed at facilitating decentralized urban planning and management as well as improving rural-urban linkages, local resource mobilization, poverty alleviation and empowerment of women and community at large. Affirmative action policies exist to ensure a significant representation of disadvantaged groups in TLO leadership (Adhikari and Shrestha 2007: 4).
144. **It is mandatory under the Local Self-Governance Act for local bodies to prepare periodic plans⁸⁶ according to a participatory planning process.** The Act calls for a multi-stakeholder Steering Committee made up of: representatives from local bodies, ward offices, government agencies, political parties/leaders, marginalized groups, civil society, the private sector, NGOs, TLOs, intellectuals, prominent citizens, professional bodies and the planning team. This provision has allowed the Federation of Nepalese Chambers of Commerce and Industry, and a range of other CBOs and CSOs, to contribute to the planning processes of municipalities. In terms of process, each municipal ward office convenes an annual meeting to formulate a ward development plan based on the needs and priorities identified and presented by TLOs. Each ward has a budget from the municipality of Rs1 lakh, sufficient for small infrastructure projects and maintenance, and priority is given to the demands of poor and excluded households. TLO Coordination Committees exist to strengthen and unify TLOs (Adhikari and Shrestha 2007:9). According to the UNDP, the TLOs now function as decentralized structures of the municipality - undertaking planning, the prioritization of development activities and the delivery certain services for the municipality. A recent study of six municipalities revealed that the majority of projects were done by User Groups – which served to foster community participation, improve monitoring, reduce corruption and enhance quality (Adhikari and Sijapati 2010: 25-26).

⁸⁶ The MLD has prepared a “Municipal periodic plan preparation manual,” approved by the National Planning Commission, with technical and financial support of GTZ and its Urban Development through Local Efforts program.

145. **There are challenges to these forms of participatory governance activities and civic engagement.** The provision of the Local Government Financial Administration Regulation that projects less than Rs 6.5 million be given to User Groups is not always respected. The **limited capacity of User Groups**, has resulted in an increasing trend of User Groups sub-contracting work in contravention of rules (Adhikari and Sijapati 2010: 26). Furthermore, the **politicization of User Groups and TLOs** (i.e. political parties installing members into these groups) is on the rise (Adhikari and Sijapati 2010: 26). According to one civil society member in Jhapa, while all toles have TLOs, they have become increasingly politicized and “one has to look to see who is in the committee, to see how much it can be trusted”.
146. **Of the organizations working with municipalities, the Municipal Association of Nepal (MuAN) is key.** Established in 1992 and officially constituted in 1994, all 58 municipalities in Nepal are members of MuAN and represented in its General Assembly.⁸⁷ The stated main aim of MuAN is “to work for overall development and common interest of municipal governments in the spirit of decentralization and good governance.” With their national and local level networks, history of policy level engagements and membership of past and present officials in their organization, MuAN is an important stakeholder and key partner for social accountability initiatives. Further information about the MuAN is provided in Box 5.

Box 5 – The Municipal Association of Nepal

The MuAN works at different levels and has a three-fold strategy which includes: empowering municipalities at the local level; creating an enabling legal and regulatory framework for local self-governance and good urban governance the national level; and networking with other municipal associations and networks at the international level.⁸⁸ The fact that MuAN has been recognized by the government and included in several policy and steering committees - including the Local Bodies Fiscal Commission; the Decentralization Implementation and Monitoring Committee; in the Metropolitan Act Preparation committee and the National Development Council - is a testament to its capacity effectiveness (GTZ/UDLE 2006: 121). In the absence of local elected officials, MuAN is currently working with the Association of District Development Committees in Nepal and the National Association of Village Development Committees in Nepal to empower local governments. Of their current undertakings, their national level study on local government structures in the new federal Nepal is key. According to MuAN Executive Secretary Kalandhi Devkota, until elections at the local level take place, their strategy will focus on studying the new forms of municipalities, increasing the capacities of municipalities (via orientations, trainings, study visits, etc.) and documenting and disseminating the good practices of municipalities.

*Source: Interview with Kalandhi Devkota; MuAN website:
http://www.muannepal.org.np/muan_introduction.php*

c. Community-based Monitoring and Evaluation of Public Services

⁸⁷ According to MuAN’s constitution, all municipal mayors, deputy mayors and ward chairpersons are eligible to join the General Assembly. A 21 member Working Committee is elected for two and a half years, and a seven member Secretariat, formed from the Working Committee, runs the office full time.

⁸⁸ http://www.muannepal.org.np/muan_introduction.php accessed 30 September 2010

147. **The implementation of the Local Self-Governance Act was initiated in 2001 with the decentralization of: basic health care (up to the level of sub-health posts), primary education, agricultural extension and postal services.** In 2003-2004, the last was abandoned and small rural infrastructure (including drinking water and rural roads) was decentralized through the Local Infrastructure Development policy (2061bs) by shifting the District Technical Office to the DDC. Like municipalities, DDC and VDCs have the power to approve taxes and pass local budgets.
148. As noted above in the case of the municipalities, there is duplication and ambiguity in the division of responsibilities between local bodies and the central government. Twenty-three Acts that predate and contradict the Local Self-Governance Act have as yet to be corrected (ADB 2009a Annex II: 45). **The central government has not yet handed over district level development sector line agencies to DDCs and, in practice, retains strong control over the decentralized sectors.** For example, most health posts have not been decentralized. Only 14 out of 75 districts have handed over health posts to local management, leaving 61 still controlled by the center (ADB 2009a: 14). In terms of local infrastructure, the project mode of financing has meant that planning and decision-making continue to reside with project approval committees in Kathmandu (ADB 2009a: 14). Agricultural extension budgets are prepared at the local level, but the department's regional office continues to determine content due to the lack of local technical competence (ADB 2009a: 14). The Ministry of Education, which is a policy-making body, is still involved in school administration, and the Department of Education continues to play an implementing role via District Education Offices, which are supposed to provide technical support for effective implementation but are engaged in administrative work. In the education sector, therefore, a management structure has been built which ensures central control over decentralized provisions (UNESCO n.d.: 28).⁸⁹ Lack of clarity also results in frequent interventions into the jurisdiction of the lower level bodies –for example, DDC interference into VDC and municipal affairs - thus creating tensions and affecting working relationships among local bodies (ADB 2009a Annex II: 55).
149. **Despite the absence of elected local authorities, established processes for participatory development planning provide an important opportunity for citizen engagement in decision-making and enhanced social accountability at local level.** As described above, the Local Self-Governance Act requires local bodies to employ a participatory, bottom-up planning process. The detailed 14-step process (designed with support from UNDP) starts at grassroots community level and includes: participatory needs identification, prioritization, resources estimation, feasibility study, etc. Participatory planning begins at the level of the village council (or at the ward level in the case of municipalities). The participation of women, Dalits and Janajatis is mandatory. At district level, there are provisions for varying degrees of involvement of associational

⁸⁹ There was no available date on the report which is currently available on the web. However, the UNDP Asia Pacific Regional centre website notes that in 2007, the UNDP Asia-Pacific Regional Center, United Nations Capital Development Fund, UNICEF and UNESCO undertook a joint initiative on "Improving Local Service Delivery for the MDGs." The website notes that the Nepal report has been completed, but provides no links or dates. Of the two Nepal based centers which undertook the study – the Foundation for Human Development (FHD) and Research Inputs Development Action (RIDA) - the latter has stated on its website that it undertook the study from the period October 2008 to March 2009.

groups in the various committees convened by the DDC to scrutinize sectoral proposals and in the Integrated Planning Committee.⁹⁰

- 150. While the participatory development planning process is an important platform for citizen engagement, it is limited by a number of important constraints and obstacles.** Principal obstacles to meaningful participatory governance include: the control extended by line ministries, the detailed guidelines imposed by the center, **the “upwards” accountability of government staff to their line agencies and the lack of “downwards” accountability mechanisms.** A recent review of social mobilization processes in Nepal found that “line agencies were not interested in the [participatory] plans or guided by it in terms of their activities” (Jha et al. 2009: 90). While VDC plans presume that there will be coordination with line agencies, the same review found that there is significant resistance to being ‘told what to do’ by a village level plan and incentives for line agencies are not bottom up or oriented to people using their services⁹¹ (Jha et al 2009: 91). The different planning and budget cycles for line agencies and local bodies result in line agencies having sent in their programs and budgets while local body planning processes are still underway. There is thus no integrated planning process and DDC councils rubber-stamp line-agency programs and projects. The result is often not an articulated local development vision, but “a compilation of micro-projects, with little coordination and integration between DDC/VDC projects and line ministry programs” (World Bank 2007b: 94). Local-level participatory planning is further undermined by resource constraints, the weak use of the plans by the central government, and in the current absence of elected officials, by the major roles taken by bureaucrats and political and local elite. A situation where citizen engagement in the planning processes leads to no discernable influence or outcomes runs the risk of resulting in “increased frustration with government on the part of ordinary citizens and greater likelihood of violent conflict over perceived injustice in the allocation of public resources and lack of transparency and effectiveness in their use” (Jha 2009: 108, 111).
- 151. Similarly, while local bodies and public service providers are legally required to implement social accountability practices (such as posting Citizen Charters and conducting social audits), very often these mechanisms are not effectively applied in practice.** For example, VDCs have been criticized for not holding public audits on time, or not at all, or conducting them only in a perfunctory manner – for example, inviting only friends and allies to hearings and distorting public audits with false information. Similarly,

⁹⁰ The VDC Grant Operational Manual of 2065 (2008) require that a multi-stakeholder Integrated Planning Committee (IPC) be formed. A limitation is that civil society members of the committee (representing local NGOs, community organizations, indigenous people’s organizations, school management committees, etc.) are nominated by the VDC, rather than selected by their constituent groups (Jha et al 2009: 127).

⁹¹ In the education sector, for example, while a bottom-up planning process has been conceptualized through the participatory formulation and implementation of school implementation plans (SIPs), the SIPs are not consolidated in village and district level plans and the contribution of DDC and VDCs to the school level is low and often unaccounted for (UNESCO n.d. 51). Similarly in the forestry sector, bottom-up planning involving CFUGS conflict with the centralized nature of the forest bureaucracy regimented with set activities and targets. This leaves little room for customization according to local realities. Further, the focus of DFOs, due to accountability lines, is on meeting set targets from the center and not responding to the plans made at the local level (Thoms 2004: 155-156).

it has been argued that Citizen Charters have become “toothless” and distorted in practice as VDC secretaries are absent and there are no enforcement mechanisms to hold service providers accountable (Jha et al 2009: 93). Social audits have reportedly been conducted in around 70% of community schools, but did not function as expected, possibly due to the poor quality questionnaire and lack of adequate preparation and facilitation (World Bank 2010b: 16).

152. **As discussed above, the failure to effectively implement these mechanisms is linked to a number of factors** including: lack of clear guidelines, dearth of dedicated resources, limited capacity and inadequate training provisions and lack of relevant technical support. In many cases, government officials and bureaucrats do not have an understanding of the purpose and utility of these mechanisms as well as the technical knowledge and skills to implement them in a meaningful way. The current dearth of incentives, rewards and enforcement mechanisms also serve to diminish both the will and capacity of authorities to implement these processes,
153. **There are, however, successful examples of CSOs working directly with local authorities to reinforce and complement the implementation of existing governmental mechanisms (such as the participatory planning process, Citizen Charters and public audit requirements).** Such initiatives have achieved important results and have succeeded in simultaneously: enhancing social accountability, improving public service delivery, empowering citizens and strengthening citizen-state relations. For example, as described in Box 6, the Womens’ Welfare Association in Palpa, has used social accountability tools (such as civic education, public audits and public hearings) to complement and reinforce government participatory planning processes and the use of Citizen Charters. Similarly, as described in Box 7, the NGO Lumanti has worked closely with both municipal officials and citizen user groups to improve accountability, governance and service delivery in the water sector.

Box 6 - Enhancing accountability while strengthening citizen-state relations in Palpa

The Womens’ Welfare Association in Palpa places emphasis on building an understanding of the basics of democracy and raising awareness of both the rights and duties of citizens. The Association stresses the importance of information-sharing and communication in strengthening citizen-state relations. Close collaboration from the outset with the government and political parties has been a crucial aspect of their strategy. For example, before their work on the public audit of a health post, they approached the District Health Officer to discuss the initiative with him and seek guidance on which health post to work with. Their advocacy on Citizen Charters, has allowed citizens to come prepared with the relevant papers to the VDC office and has empowered villagers to refuse to pay additional fees, by referring to the Citizen Charter and the costs it makes public. Their social audit of a sub-health post has helped citizens to understand which medicines are available free of cost and has led to public commitments by health post staff to keep to office hours. In terms of working with VDC secretaries in public hearings, as one facilitator explained, “once one secretary undertook the process, it was hard for others to say no”. This highlights the importance of successful examples serving as catalysts for change, as well as building the confidence of concerned stakeholders that change can take place.

Source: Tansen field notes, 2010

Box 7 - Community-based monitoring and evaluation of drinking water services

Lumanti is a NGO working to alleviate urban poverty, working closely especially in squatter settlements. In Itahari Municipality, with the support of Water Aid, Lumanti initiated an Integrated Drinking Water, Health and Environmental Sanitation Promotion Program. The program works closely with municipal officials and focuses on community-based monitoring and evaluation to strengthen meaningful citizen participation and empowerment at the local level. Work is undertaken at three levels – by the User Committee (at community level), the Implementation Committee (which includes the municipality, the Line Ministry Drinking Water Division Office, Lumanti and the TLO development committee) and the Coordination Committee (functioning as a board for the specific program). The user committee begins by identifying the community's drinking water and sanitation needs and submitting a proposal to Lumanti. Once the proposal is approved, a bank account is opened in the name of the User Committee which has primary responsibility for execution. The Implementation Committee monitors progress, helps to find solutions for any problems that arise and ensures effective coordination between the User Committee and local officials. As part of the program, there is a Health Volunteer in every community and a Health Advocate on every board. The program also enables the primary stakeholders' to get actively involved in interventions by taking the lead in tracking and analyzing progress towards jointly agreed results and deciding on necessary action during implementation. At the end of the project, the User Committee gives an account of the activities, budgets and resources utilized and once a social audit is completed, all the information is made available on a public hoarding board erected in a public place.

Source: Itahari field notes, 2010

154. Long-standing systemic issues of PFM at all levels, the unfinished process of decentralization as well as the lack of elected bodies at the local level contour conditions for social accountability in PRAN's three focal areas of public financial management, municipal governance and the community-based monitoring and evaluation of public services. The retention of centralized control limits the extent to which participatory governance can actually function at the local level, and there is a risk that that increased citizen engagement with no discernable impact on outcome will lead to frustration and conflict in the long-run. However, the historical weaknesses of monitoring and evaluation mechanisms and the dearth of initiatives in engaging citizens in budget monitoring, however, offers an opportunity for citizens long concerned with issues of corruption. Community based monitoring initiatives, while limited, have been productive although their effectiveness has been circumscribed by the lack of elected officials and currently functioning non-citizen centered lines of accountability.

SECTION VI – CONCLUSIONS AND RECOMMENDATIONS

a. Conclusions

155. **State institutions in Nepal at all levels have not viewed their responsibilities to citizens as central and, to date, social accountability remains limited.** Networks of patronage have served to undermine efforts to restructure state and citizen relations, with the transitional period further strengthening the power of political party elites at the

expense of institutional structures. It is clear that, without attention to political party reform and the institutionalization of a bureaucracy that has in place performance based incentives, rewards and punishments, efforts at strengthening accountability institutions such as the Office of the Auditor General and the Parliamentary Accounts Committee will be only partially successful. Government capacity to respond to social accountability initiatives is hampered by basic staffing issues (including the lack of VDC secretaries to fulfill all posts), lack of requisite skills and capacities as well as lack of political will. The climate of impunity and weak rule of law, and the resulting lack of sanctions, make it difficult to enforce social accountability

156. In order to address current structural weaknesses, short term priorities include: clarifying the division of labor between political parties and civil servants; operationalizing the Right to Information Act; and, appointing necessary VDC secretaries. Interim accounts committees for local bodies should also be created (for example, with former members of these committee). Medium and long term priorities include: implementing decentralization provisions; strengthening national oversight institutions; and, introducing performance-based evaluation in all ministries.

157. Although the Nepali state has historically been exclusionary and unaccountable and even though the country still faces enormous governance challenges linked to recent conflict, ongoing political instability, underdevelopment, insecurity and corruption, the current transition towards peace and democracy offers great opportunity for positive change. The promise of a New Nepal, commitments from all the major political parties to deepen democracy, and voices for change from the population as a whole serve as a foundation for the restructuring of state-citizen relations. A progressive framework of laws and policies, a rich history of associational life and a vibrant media sector further provide an enabling environment for social accountability in Nepal.

158. The concentration of political power in the hands of political party leaders, their current inability to provide strong cohesive leadership as well as heightened unaccountability at the national and local levels paradoxically offer entry points. Levels of dissatisfaction and frustration are high and with judicious guidance can be channeled towards the creation of new forms of productive, participatory and accountable relations between citizens and the state. Networks of corruption, patronage and criminality have heightened awareness of the fundamental unaccountability of both political parties and civil servants. There is an opportunity here to transform newfound citizen awareness and voice into active demand for the implementation and monitoring of laws and reforms in these two sectors. While there is no culture of transparency in the government, nor has there ever been systematic or regular attempts to access information. The overall lack of initiatives in the past to demand relevant public information and to inform and educate citizens about issues of key public concern is both an obstacle and an opportunity.

159. While the chances of a return to conflict are low, there is a key risk that country will head into further political crisis if the Constitution is not written by May 2011 – a very real likelihood given the delays in the agreement on key remaining constitutional agendas. Even if the deadline is met, the nature of the first draft, the period of time allocated for public consultations and perceptions of how feedback is or is not incorporated, will further

affect the legitimacy of the Constitution that is to be promulgated. Excluded groups have long threatened to reject the Constitution should their demands not be met.

b. Recommendations

160. At this current critical juncture in Nepal's political development, **there is both clear opportunity and urgent need for enhanced citizen empowerment and social accountability. The following are some key recommendations for creating more enabling conditions, institutions, relationships and capacities for enhanced social accountability in Nepal.**

a) Take practical steps to enhance citizens' demand for and access to relevant public information.

- i) At local level, give priority to ensuring that access to information directly relevant to citizens' immediate well-being is enhanced. This includes, for example, making publicly available information on local-level planning, budgets and expenditures, as well as details on decentralized services (including entitlements and fees).
- ii) At both national and local levels, conduct campaigns to raise awareness of information rights, and educate citizens about how and where to access public information. For example, encourage and support all CSOs working at the local level to incorporate "public information" and "citizen rights and responsibilities" components into their current programs, ideally in collaboration with local level state actors.
- iii) Undertake similar information campaigns to educate government officials/bureaucrats and NGOs about their obligations and responsibilities under the Right to Information Act.
- iv) Support joint learning and skills-building events for key actors (such as the National Information Commission, public information officers, the media, research organizations, NGOs and CSOs) in order to enhance both "supply" and "demand-side" capacity for public information dissemination while, at the same time, strengthening working relationships between these different actors.
- v) In collaboration with these same actors, support the identification and introduction of (both formal and informal) incentives and sanctions to promote enhanced transparency and public information sharing.

b) Develop the capacities of CSOs, at all levels, to empower citizens, facilitate more productive citizen-state relationships and promote social accountability approaches.

- i) At the local level, train and support CBOs and CSOs to help ordinary citizens to: speak/advocate on their own behalf, apply social accountability approaches and tools at the community level, and establish working relationships with local bodies in order to help the state become more effective and accountable. Pay special attention to enhancing the capacity of these organizations to function as facilitators between citizens and government authorities, to nurture emerging community leaders to become drivers of change for state-citizen relations and to empower excluded groups.

- ii) At the national level, enhance the capacity of CSOs to understand public/government issues, undertake independent research and analysis, disseminate research findings broadly in the public arena and implement social accountability approaches that are people-centered and evidence-based.
- iii) Encourage and support collaboration and alliance building among different forms of CSOs (e.g. community groups, advocacy NGOs, research organizations and media) for social accountability purposes. Place special emphasis on those organizations and networks that have the capacity to reach out to marginalized groups and to establish linkages between local and national level actors (e.g. federations of user groups such as FECOFUN and NEFIN).
- iv) Invest in enhanced budget literacy among ordinary citizens and CSOs and support skills building for budget analysis, advocacy and tracking at local and national levels.

c) Encourage and support CSOs and donor organizations, to become models of social accountability.

- i) In order for CSOs to play an effective role in holding the government accountable, they must themselves become transparent, accountable and legitimate actors. Support expanded efforts by the CSO community to enhance transparency and accountability across the sector. Encourage CSOs to systematically make their financial information publicly available and easily accessible and to standardize the use of social accountability tools such as social audits. All donors should encourage and require transparent reporting procedures and make readily available in various formats (not just websites) the funds they give to their CSO partners.
- ii) Encourage and offer support and technical assistance CSOs to enhance their internal democratic governance, participatory decision-making and “downwards reporting” to their members, targeted beneficiaries and the public at large.
- iii) Encourage and assist donor organizations to set an example by applying social accountability principles and practices in the context of their own operations.

d) Work with civil society and state actors to expand and enhance existing government-mandated social accountability requirements and practices.

- i) Develop common definitions, standards and guidelines for social accountability practices already mandated by the state (such as participatory planning processes, citizen charters, public audits and social audits).
- ii) Organize campaigns to ensure that relevant state actors at local and national level, and the public at large, are aware of their rights and responsibilities with regard to these practices and understand their purpose and expected outcomes.
- iii) Document and disseminate examples of successful social accountability initiatives, in order to build confidence and demonstrate the benefits of such approaches.

- iv) Advocate for the provision of adequate resources, training, technical assistance and follow-up to ensure that mandated social accountability practices are implemented in a meaningful and effective manner.

Annex I

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Annex 2

List of People Interviewed and Interview Questions

1. Govindra Prasad Acharya, Program Officer, Civic Education Unit, ActionAid Nepal (Palpa)
2. Bindu Acharya, Facilitator, Women's Welfare Association (Palpa)
3. Raju Adhikari, Journalist, Nagarik Daily (Jhapa)
4. Ramesh Adhikari, Policy Unit, ActionAid (Kathmandu)
5. Anuvav Ajit, Long Term Observer, Carter Center Nepal (Kathmandu)
6. Madhav Aryal, Journalist, Kantipur (Palpa)
7. Pramod Aryal, Finance Officer, Municipal Association of Nepal (MuAN) (Kathmandu)
8. Ramesh Kumar Aryal, Program Coordinator, Radio Madan Pokhara, (Palpa)
9. Lok Raj Baral, Executive Chairperson, Nepal Center for Contemporary Studies (Kathmandu)
10. Yub Raj Bashyal, Programme Coordinator, Women's Welfare Association (Palpa)
11. J.P. Bhujel, Solve (Dhankuta)
12. Bhim Bhurtel, Chairperson, Nepal South Asia Center (NESAC) (Kathmandu)
13. Rajesh Bidrohi, Chairperson, Federation of Nepali Journalists (FNJ) (Sunsari)
14. Devendra Bishwakarma, Human Rights Forum Nepal (Ilam)
15. Nona Bishwarkarma, Dalit Ekhta Samaj, Dhankuta
16. Rajendra Bhattarai, Editor, Sundhakpur Dainik (Ilam)
17. Renu Chand, Constituent Assembly member, UCPN-Maoist (Kathmandu)
18. Arjun Kumar Dahal, Engineer, Itahari Municipality (Itahari)
19. Kali Das, Chairperson, Federation of Community Forest Users Nepal (FECOFUN) (Kaski)
20. Kalanidhi Devkota, General Secretary, Municipal Association of Nepal (MuAN) (Kathmandu)
21. Binod Dhakal, OXFAM (Kathmandu)
22. Binod Prasad Dhakal, Secretary and Director, Institute of Local Governance (Kathmandu)
23. Suvash Dharnal, Managing Director, SAMATA (Kathmandu)

24. Pan Bahadur Gharti, Chairperson, Nepal Federation of Indigenous Nationalities (NEFIN) (Kaski)
25. Chop Lal Giri, Social Resources Development Center (SRCD), Palpa
26. Sarita Giri, CA member, Sadbhavana Party - (Ananda-Devi) (Kathmandu)
27. Indira Ghimire, District Secretary, Federation of Drinking Water and Sanitation Users in Nepal (FEDWASUN), Ilam
28. Somat Ghimire, Chair, Community Development Organization (Kathmandu)
29. Henny Hansen, Advisor, Building Local Democracy Advisor, ActionAid/MS Nepal (Palpa)
30. Phulmaya Jawegu, Secretary, National Network of Indigenous Women (Ilam)
31. Dinesh Karki, Chairperson, NGO Federation (Sunsari)
32. Dipendra Karki, Focal Person, Mechinagar Municipality
33. Ganesh Bahadur Karki, General Secretary, Federation of Community Forest Users Nepal (FECOFUN) (Kathmandu)
34. Dalbikram Khadel, Officer, Local Bodies Assistance Section, MLD
35. Gopal Khadka, Vice-Chairperson, NGO Federation (Kaski)
36. Kedar Khadka, Chairperson, ProPublic (Kathmandu)
37. Surya Khadka, Lumanti (Itahari)
38. Indra Kuwar, member, Chettri Society (Kaski)
39. CK Lal, Journalist and Political Analyst
40. Balkrishna Mabhuhan, Chairperson, Center for Ethnic and Alternative Development Studies (CEADs), Kathmandu
41. Basudev Singjali Magar, Chairperson, Nepal Federation of Indigenous Nationalities (NEFIN), Mechinagar Committee
42. Ashish Magar, Nepal Magar Sangh (Palpa)
43. Devendra Magar, Journalist (Palpa)
44. Prasad Mainali, Chairperson, Mechi Bus Business Association (Jhapa)
45. Tulsi Marashini, Officer, Municipality Management Section, MLD
46. Dil Bahadur Nepali, Regional Member, Dalit NGO Federation (DNF) (Kaski)
47. Januka Oli, Secretary, Thople Biran Community Forest (Jhapa)

48. Keshavraj Panday, Federation of Nepalese Chambers of Commerce and Industry (FNCCI) (Jhapa)
49. Shekhar Parajuli, Long Term Observer, Carter Center Nepal (Kathmandu)
50. Durga Pokharel, Informal Sector Service Center (INSEC) representative, Palpa
51. Mithila Pokharel, Paralegal Committee (Sunsari)
52. Kul Prasad Rai, Chairperson, NGO Federation (Dhankuta)
53. Nagendra Rai, Chairperson, Federation of Nepali Journalist (FNJ) (Dhankuta)
54. Parvathi Rai, Chairperson, NEFIN (Dhankuta)
55. Mukti Rijal , Director, Institute of Governance and Development (Kathmandu)
56. Santosh Rijal, INSEC representative (Dhankuta)
57. Krishna Sapkota, Freedom Forum (Kathmandu)
58. Ashok Kumar Shahi, former Mayor (1997-2002), Tansen Municipality (Palpa)
59. Soundaryawati Shakya, Chairperson, National Indigenous Women Federation (Palpa)
60. Yamanath Sharma, Under Secretary, Fiscal Commission Secretariat, MLD (Kathmandu)
61. Rabin Lal Shrestha, Research and Advocacy Manager, WaterAid Nepal (Kathmandu)
62. Kishan Shrestha, Solve (Dhankuta)
63. Durga Sob, President, Feminist Dalit Organization (FEDO) (Kathmandu)
64. Dilip Subba, Natural Resources Protection Society (Jhapa)
65. Shankar Subba, Secretary, Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) (Kathmandu)
66. Jhalak Subedi, editor, Mulyankhan Magazine
67. Dhankumari Sunwar, Member, National Women's Commission (Kathmandu)
68. Kiran Sunwar, Chairperson, Nepal Federation of Indigenous Nationalities (NEFIN) (Ilam)
69. Surendra Goleh Tamang, Chairperson, Nepal Federation of Indigenous Nationalities (NEFIN) (Sunsari)
70. Anjana Thamil, Chairperson, National Indigenous Women Federation (Dhankuta)
71. Arjun Thapa, VDC Secretaries Protection Forum (Ilam)
72. Ashish Thapa, Executive Director, Transparency International Nepal (Kathmandu)

73. Gum Bahadur Thapa, Chairperson , Nepal Federation of Indigenous Nationalities (NEFIN) (Palpa)
74. Lily Thapa, Director, Women for Human Rights (Kathmandu)
75. Radhika Thapa, Member, Nawadip Tol Development Committee (Jhapa)
76. Nadhanath Trithal, Propublic (Dhankuta)
77. Pramod Tuladhar, Program Director, Association of Community Radio Broadcasters (ACCORAB) (Kathmandu)
78. Bishnu Raj Upreti, Conflict Specialist, Regional Coordinator, National Center for Competence in Research (NCCR) North-South
79. Dharma Uprety, Forest Action (Kathmandu)
80. Rajan Wanthwa, Spokesperson, Khumbuwan National Front (Sunsari)
81. Ashok Wanthwa, Representative, Informal Sector Service Center (INSEC) (Ilam)

Key questions for interviewing civil society leaders/intellectuals/focus groups (including NGOs/excluded groups)/general citizens on issues of governance and accountability:

- What is the state of citizen-state relations today and why?
- Is it important for citizens to obtain public information? What types of information and why?
- Do you think citizens can access information from the government/NGOs/ other sources? How and why? What are your main sources of information? What are the main barriers to information?
- How would you describe citizen/civil society relationships with government officials (of varying levels), and why? Please give examples.
- How would you describe citizen/civil society relationships with political party leaders (of varying levels), and why? Please give examples
- Can you voice your priorities and concerns? How and why? Does asking as an individual or group make a difference? Why?
- Does working in groups/associations help to voice priorities and concerns? Which groups have helped you in the past? Why and how? Are you involved in such groups? What percentage of people in this area do you think are involved in such groups?
- How much do you know about the budgets and priorities of local government/NGOs/donors? And why?

- What kind of interventions have been effective in helping you to voice your concerns?
- What kind of development interventions do you think have been effective in getting the government to act on your concerns?
- What do you think needs to change in order for your concerns to be heard and the government to act on them?
- Do you have opportunities to regularly dialogue with government officials? Why and how?
- What do you think being a “good citizen” means?
- In your view, what are the responsibilities and relationships that government officials should have with citizens?

Annex III

Summary of 2010 Global Integrity Report for Nepal

Nepal: Integrity Indicators Scorecard

Overall Score: 67 (+/- 1.77) - Weak

Overall Implementation Gap: 34

Category I	Civil Society, Public Information and Media	80	Strong
I-1	Civil Society Organizations	91	Very Strong
I-2	Media	79	Moderate
I-3	Public Access to Information	71	Moderate
Category II	Elections	58	Very Weak
II-1	Voting & Citizen Participation	78	Moderate
II-2	Election Integrity	79	Moderate
II-3	Political Financing	17	Very Weak
Category III	Government Accountability	57	Very Weak
III-1	Executive Accountability	54	Very Weak
III-2	Legislative Accountability	50	Very Weak
III-3	Judicial Accountability	52	Very Weak
III-4	Budget Processes	73	Moderate
Category IV	Administration and Civil Service	63	Weak
IV-1	Civil Service Regulations	51	Very Weak
IV-2	Whistle-blowing Measures	50	Very Weak
IV-3	Procurement	76	Moderate
IV-4	Privatization	75	Moderate
Category V	Oversight and Regulation	75	Moderate
V-1	National Ombudsman	78	Moderate
V-2	Supreme Audit Institution	80	Strong
V-3	Taxes and Customs	81	Strong
V-4	State-Owned Enterprises	68	Weak
V-5	Business Licensing and Regulation	67	Weak
Category VI	Anti-Corruption and Rule of Law	68	Weak
VI-1	Anti-Corruption Law	67	Weak
VI-2	Anti-Corruption Agency	73	Moderate
VI-3	Rule of Law	69	Weak
VI-4	Law Enforcement	63	Weak

The Global Integrity Report assesses strengths and weaknesses of national-level anti-corruption systems. Using 300 actionable indicators, the report examines the existence, effectiveness, and citizen access to key governance and anti-corruption mechanisms. It can be accessed at www.globalintegrity.org

Civil Society, Public Information and Media

The 2010 Global Integrity Report for Nepal revealed that for the category “Civil Society, Public Information and Media,” indicators were “strong.” CSOs were rated as “very strong”– with anti-corruption/governance CSOs legally protected, free to accept funding and required to disclose sources of funding. Public access to information is rated “moderate.” Citizens have a legal right to access information, although the government has not been forthcoming with information. The media was also rated “moderate”: the freedom of speech and media is guaranteed and citizens can form print and radio and television entities and can freely access the internet. The media is also able to freely report on corruption and print media companies are required to publicly disclose ownership. However, both state and other media forms are not free of political biases and CPN-Maoists were cited as curbing free speech.

Elections

For the category “Elections,” overall indicators were said to be “very weak.” Within this category, “Voting and Citizen Participation” and “Election Integrity” both received “moderate” rating with suffrage and political participation rights for all citizens, legal framework for regular elections, an election monitoring agency and national and international observers able to monitor events. However, the transparency and effectiveness of the election systems (particularly voter registration) has been questioned and the Election Commission suffers from internal weaknesses and reporting deficiencies and has not been very effective in penalizing election malpractices. The third component in this category “Political Financing” was rated as “very weak.” There are no limits to individual or corporate donations to political parties or total political party expenditures. Legal requirements for the disclosure of donations to political parties and for independent auditing of financial irregularities exist and the Election Commission is mandated to monitor the financing of political parties. However, there are no requirements for the disclosure of donations to individual political candidates, or independent auditing of their campaign finances. Internal weaknesses and lack of political will has resulted in the Election Commission unable and unwilling to carry out credible investigations. Political parties do not disclose financial support and expenditure data and there is no system of individual candidates doing so either.

Government Accountability
The “Government Accountability” category has also received a “very weak” rating. Within this grouping, Executive, Legislative and Judicial Accountability is cited as “very weak” with “Budget Processes” stated as being moderate. In terms of the accountability of the Executive, while the chief executive generally has to give reasons for policy decisions, in terms of practice this does not occur. The judiciary can review the executives actions and the executive and minister-level officials can be prosecuted from crimes they commit. However, in the past, prosecuted ministers have all been vindicated, resulting in questions on actual implementation. Furthermore, in practice official government functions are not kept separate and distinct from the functions of the ruling political party. The law requires heads of state and government, and ministerial-level officials and the members of the legislature and judiciary to file regular asset disclosure forms and regulations governing gifts and hospitality. However, implementation of these laws are weak or ineffective. Officials flout these provisions and the National Vigilance Center tasked with monitoring asset disclosure has not been able to be effective due to international institutional weaknesses and a lack of political will. Because by law all asset disclosures are to be kept confidential, there are no laws for the independent auditing of the asset disclosure of any of these three branches and citizens are unable to access such information.

For the accountability of the legislature, the judiciary can review laws passed by the legislature and citizens can access records of legislative processes and documents. Members of the legislature are subject to criminal proceedings, regular asset disclosure is required and regulations governing gifts and hospitality exist. However, as in the executive branch, implementation is weak and no system for the audit of national legislative branch asset disclosures exists. For the judiciary, transparent

and professional processes exist and are followed for the appointment of national-level judges and they can be held accountable for their actions. While there is a Judicial Council to investigate breaches of procedure and abuses of power, political interference and corruption are stated as being prevalent within the judicial system. There are no restrictions on members from the executive, legislature or judiciary entering private sector after leaving the government. In terms of the budget, the legislature can amend the budget, all public expenditures require legislative approval and there is a Public Accounts Committee to provide oversight of public funds. However, the capacity of legislature to monitor the budget process and provide input or changes is questioned as is the non-partisan nature of the committee. Furthermore, the government and political parties seldom act upon the issues and recommendations put forward by the Public Accounts Committee. Lastly, the budget making process does not necessarily ensure the public's participation with limited pre-budget debates

Administration and Civil Service

The category of "Administration and Civil Service" was given a "weak" rating. The sub-categories of "Civil Service Regulations" and "Whistle-blowing Measures" were "very weak" while "Procurement" and "Privatization" were "Moderate." In terms of the civil service, laws and regulations exist for an impartial and independent civil service and the prevention of nepotism, cronyism and patronage. There are also independent redress mechanisms and regulations prohibiting civil servants convicted of corruption from future government employment. In practice, most civil servants are politically influenced and political interests supersede in appointments. All civil servants are required to fill asset disclosure forms and there are rules governing gifts and hospitality. As in the above, monitoring has been weak, and laws prohibit independent auditing and citizens' access to such information. There are no restrictions on civil servants' post-government private sector employment.

For "Whistle-blowing Measures," there are no specific laws, although other laws indirectly deal with the protection of informers, and protection measures exist within the Right to Information Act. The Commission for the Investigation of Abuse of Authority is mandated to act on complaints of public sector corruption and both it and the National Vigilance Center are covered by special provisions in the Appropriations Bill to ensure adequate allocation of funds. They both suffer from institutional weaknesses and investigations are said to be slow. For procurement, there is a Public Procurement Act and a Public Procurement Monitoring office regulating conflict of interest and professional training for public procurement officials and as civil servants, their assets and incomes are monitored. Major procurements require competitive bidding and companies guilty of major violations of procurement regulations are prohibited from participating in future procurement bids. However, implementation remains a large problem. Major public procurements are by law required to be advertized and citizens can access public procurement regulations. In terms of privatization, all businesses are eligible to compete for privatized state assets. There are regulations addressing conflicts of interest for government officials involved in privatization (via the Good Governance Act of 2007 and the Civil Servant Regulations 2009) and citizens can access privatization regulations. The government is not legally bound to announce the results of privatization decisions.

Oversight and Regulation

The category of "Oversight and Regulation" received "moderate" ratings overall. In terms of the sub-categories, the ratings are as follows: "The National Ombudsman" is "moderate," the "Supreme Audit Institution" and "Taxes and Customs" are "Strong" while "State-Owned Enterprises" and "Business Licensing and Regulation" are "weak." Nepal does not have an Ombudsman but does have the Commission for the Investigation of Abuse of Authority and the National Vigilance Center. There are legal protections from political interference for the body, protection for the Chief Commissioner of the Commission for the Investigation of Abuse of Authority from removal without relevant justification and the Commission makes its reports publicly available and

accessible to citizens. However, political influence is said to be factor within the anti-graft body and it cannot impose penalties on offenders, other than for refusal to submit asset disclosures. Furthermore, stringent follow-up mechanisms are absent and impunity of high-profile government officials is rampant. The country's anti-corruption institutions lack consistency in approach and clear areas of jurisdiction, resulting in frequently over-lapping functions.

In terms of auditing, the Office of the Auditor General exists as the national supreme audit institution and it is protected from political interference and the head can only be removed via an impeachment process in Parliament. The Office does make reports public and available to citizens, although this was not practiced from 2002-2006 as there was no parliament. The audit agency is able to initiate its own investigations. However, the audits findings are seldom implemented, partly because of the lack of political will. National agencies exist for taxes (the Internal Revenue Department) and customs (Customs department for customs, Excise Offices under the Internal Revenue Department). While tax laws are generally enforced uniformly and without discrimination, uniform enforcement of customs and excise laws are said to be affected by inadequate rules, procedures and inconsistent practices.

There is no separate agency that oversees state-owned companies as the government itself controls them. There are no legal protections against political interference, and chiefs of these agencies are said to be mostly party-supporters and oversight on state-owned business is limited. Citizens can legally access the information, but the "Yellow Book" published annually by the Ministry of Finance detailing the financial conditions of state-owned companies, is said to contain suspect data. While the auditing is done by according to international accounting standards, the third-party auditor has to rely on information provided by companies, and bribes are said to be generally offered. In terms of "Business Licensing and Regulation," legally business licenses are available to all citizens, and there are complaint mechanisms if requests are denied. There are regulatory requirements to meet public health, environmental and safety standards but inspections and overall enforcement is weak, unless there are specific complaints.

Anti-Corruption and Rule of Law

The last category of the Global Integrity Report is "Anti-Corruption and Rule of Law." It is rated overall as "weak." Of the four internal groupings, only the "Anti-Corruption Agency" is rated as "moderate"; "Anti-Corruption Law," "Rule of Law" and "Law Enforcement" are all "weak." Anti-corruption law criminalizes attempted corruption, the offering and receiving of a bribe, using public resources for private gain, money laundering and conspiracy to commit a crime. There are no specific anti-extortion laws (cases have been filed under the Public Offense Act), or laws against using confidential state information for private gain. Nepal has a number of agencies that deal with anti-corruption, the most important being the Commission for Investigation of Abuse of Authority. There are laws to protect it from political interference, the Chief Commissioner is protected from unjustified removal and staff appointments are considered relatively fair and professional. However, as the absence of a Chief Commissioner for a number of years reveals due to the lack of consensus among political parties, the agency is not free of political influence. The Commission does make regular public reports, but parliamentary issues have resulted in delays in making them public in recent years. Furthermore, while the Commission has sufficient powers in its mandate, the investigation and enforcement of judgments and findings are weak, and while it has the full authority to independently initiate investigations, this depends on the will power of the chief and other commissioners. Internal constraints, as well as political influence result in delayed action on complaints and the lack of whistle-blower protection has resulted in most complaints being filed anonymously.

In terms of “Rule of Law,” citizens have equal access to the justice system, people earning the median yearly income and small retail businesses can afford to bring a legal suit. However, delays in decision-making which raises costs and other “hidden costs” often discourages people from filing lawsuits and appeals. In a country like Nepal, geographical access to courts also imposes constraints. There is a general right of appeal, although as the judicial process in Nepal is lengthy as whole, these take time to be resolved. Judgments in the criminal system follow written laws, although law enforcement is weak and there long-standing issues of non-cooperation of police in the execution of judicial decisions. The independence of the judiciary is guaranteed by law, national-level judges are protected from removal without justification and judges are safe when adjudicating corruption cases. However, the Nepali judiciary has been criticized for increased levels of corruption, inconsistency in interpretation of laws and frequent delays in delivery judgments. While “the Supreme Court is generally seen as being free of government influence,... lower courts are especially vulnerable to political pressure and are widely known to be corrupt.” The effectiveness of law enforcement in Nepal is affected by nepotism, patronage and large political influence which override established professional criteria. Independent mechanisms for citizens to complain about police action exist, including the National Human Rights Commission. However, complaints do not get due response in a timely manner and the Commission’s directives are often ignored by the executive branch. The Commission for the Investigation of Abuse and Authority has the authority to investigate and prosecute corruption by law enforcement officials and law enforcement officials are not immune to criminal proceedings. However, “[i]mmunity from prosecution is so deeply entrenched that it has been virtually institutionalized in Nepal.”