

Getting Smart and Scaling Up :
*The Impact of Organized Crime on Governance in
Developing Countries*

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A Case Study of Nepal

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ANNEX I - THE IMPACT OF ORGANIZED CRIME ON GOVERNANCE: A CASE STUDY OF NEPAL¹

About the Author

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1. Ed. Camino Kavanagh (2013), *Getting Smart and Shaping Up: Responding to the Impact of Drug Trafficking in Developing Countries*, NYU Center on International Cooperation

Introduction

Since May 2012, Nepal has been enmeshed in a political morass. Constitutional and governance questions have remained unresolved, and inter-party and intra-party political squabbling has persisted, with the ruling Maoist government lacking legitimacy outside of party ranks. At least two deadlines for holding new elections have been missed. Having failed to find other ways out of the impasse, the dominant political parties finally agreed in March 2013 to appoint the chief justice of the Supreme Court, Khil Raj Regmi, as prime minister to lead a technocratic government and hold elections by June 21, 2013. The legitimacy and legality of the appointment have been criticized within Nepal, especially on the grounds that it violates the separation of powers principle, including because the chief justice is to return to his justice role after the vote. Whether elections will in fact take place in May or June 2013 as was stipulated under the March deal remains to be seen. If not, yet another political crisis, possibly violent, will likely beset Nepal, with deeper questions of governance, a legal constitutional framework, and a lasting and legitimate political settlement continually pushed into the background in order to deal with the immediate imperative of determining who should hold power and how.

On May 27, 2012, Nepal's politicians missed the fourth deadline since 2008 to adopt a new constitution and determine what the new political rules of the game and basic state institutions of the country would look like. At stake is: whether Nepal will be principally a parliamentary, presidential, or mixed political system; whether it will continue to be a unitary state or a federal one and, if the latter, on what basis – such as ethnicity, caste, or geographic boundaries – states would be formed and what powers and revenue responsibilities they could have vis-à-vis the central government; also how previously marginalized social groups would be incorporated into the country's formal political processes, such as which groups would have reserved seats in the parliament and other institutions. Activated by a spirit of empowerment, many previously marginalized groups are now calling

for the new constitution to guarantee them preferential access to bureaucratic and political leadership positions and resources – demands that are alienating other groups, including the traditional elites who are afraid of losing out, and other minority ethnic groups and castes.

Hours before the deadline for promulgating the new constitution, the Maoist Prime Minister Baburam Bhattarai aborted the tense, months-long deliberations of the Constituent Assembly and scheduled nationwide elections for 22 November, 2012. (The elections were ultimately not held in November, nor by a new deadline of March 2013.) From one perspective, Bhattarai averted an immediate political disaster and further chaos after several weeks of violent strikes and increasing communal attacks during the run-up to the deadline to pass a new constitution. From another perspective, he sacrificed what looked like a political consensus that had finally been hammered out among party leaders after years of deadlock in order to maximize the gains for his Unified Communist Party of Nepal-Maoist [UCPN(M)].² Adopting a new constitution, undertaking a legitimate transitional justice process, and integrating former Maoist combatants into the state security services were the three major tasks of the post-civil war 2006 peace process. Only the process of integrating the Maoist combatants has been completed, though some serious deficiencies and questionable developments have surrounded that process as well.³

Rather than focusing on adopting lasting governance procedures to advance the national interest and well-being of all Nepalis, political competition in Nepal has centered on narrow, parochial competition between a variety of powerbrokers seeking to leverage their control of specific communities, voting blocs, resources and patronage networks. Criminal activity appears to offer an important source of financing and localized political support for such competition; and with the state undergoing transition and lacking independently functioning institutions not captured by political interests, there is little to stop it.

2. Author's interviews with party representatives of the UCPN(Maoist), the Communist Party of Nepal (Unified Marxist Leninist), and the Nepali Congress, and also with Nepali and Western NGOs representatives in Kathmandu, May 28 and 29, 2012.

3. Sagar Prasai. "Is Nepali Political Transition Getting Back on Track?" *The Asia Foundation*, February 23, 2013. Available at: <http://asiafoundation.org/in-asia/2013/02/20/is-nepali-political-transition-getting-back-on-track/>.

New Political Contestation amidst Widespread Corruption and Poverty

The elections now expected in May or June 2013 promise little chance of greater political consensus among the self-interested and fractious political leaders. Just like in the weeks before the May 2012 deadline for passing the constitution, the election contestation can once again feature debilitating and violent strikes (*bandhs*). The election itself can easily produce an even more divided constitution-drafting body than the Constituent Assembly that was disbanded after May 2012. The May 2012 fiasco weakened the legitimacy of political leaderships of several parties, including the Maoists, with ethnic and party fragmentation intensifying. At the same time, fear of further defections and uncertainty about political allies' loyalties have encouraged the leaderships of political parties to harden positions and reject compromises, lest they face further internal splits and defections.⁴

Since 2006, Nepali politics has overall been characterized by close-to-the-vest, non-transparent bargaining among deeply divided and resentful old and new political elites, with little expectation that, even when a political agreement is actually reached, it will in fact be carried out.⁵

On the one hand, the elections offer a way out of the inherited political paralysis: A constitution and legal framework are lacking. Appointments to key governance bodies either could not be made or required consensus among the parties that was frequently not forthcoming. The national executive, even the current interim technocratic government, lacks legitimacy. Local elections have not been held since 1997. No legislative body exists. The justice system and bureaucracy are widely believed to be beholden to old political elites and upper castes, rather than being truly independent.⁶

The absence of a functioning legislature also resulted in the president having to fund government and implement policies by decree. Consequently the position of the

president, until then largely ceremonial, has become more salient, activist, and controversial – all the more so that it has been held by Ram Baran Yadav, a member of the Nepali Congress, a traditional power-elite party in opposition to the Maoist prime minister.⁷ Controversy surrounding the president, further intensifying political polarization in Nepal, peaked in November 2012. With the prime minister's failure to hold the promised November elections, the president apparently sounded out the army chief as well as the Indian ambassador about toppling the government of Nepal on November 22, but the responses he received changed his plans.⁸

On the other hand, however, the elections will be a de facto referendum on federalism and the role of identity in the new state. So far, castes and ethnic groups have mostly seen issues of state creation, quotas, and reserved seats in a zero-sum (you gain, we lose) way. Major issues regarding enfranchisement threaten the legitimacy of the elections, with at least four million voters lacking citizenship cards and hence not being able to register.⁹

Moreover, ethnic minorities and women's groups fear that the resulting parliament-cum-new Constituent Assembly will disadvantage them. The dissolved Constituent Assembly reserved more seats for women and ethnic minorities than they would have acquired in open, first-past-the-post elections. Yet it appears that the new parliament-Constituent Assembly will have at least 20 percent fewer seats than the previous one, and cuts will come primarily from reserved seats. These groups worry that their ability to have a strong voice in a new state will be compromised, and even if the new state system is indeed a federal one as they desire, their historic underrepresentation in, and alienation from, the Nepali state will not be redressed.¹⁰

Since Nepal's parties attract membership and votes to a great extent on the basis of the party's ability to dispense handouts, the parties do not hesitate to acquire and deliver such handouts through illegal means, such as the usurpation of public funds or the direct hire of criminal

4. International Crisis Group (2012a). *Nepal's Constitution (I): Evolution, Not Revolution*. Asia Report No. 233. August 27, 2012.

5. For the lack of widespread consultation between political leaders and their constituencies and the fear-mongering that has surrounded political bargaining, see, for example, Leena Rikkila Tamang, "Nepal: Constitution Building Hijacked by the Need for Consensus," Institute for Democratic Electoral Assistance (IDEA). December 1, 2012. Available at: http://www.idea.int/asia_pacific/nepal/nepal-constitution-building-hijacked-by-the-need-for-consensus.cfm.

6. Ibid.

7. Pramod Kantha. "Nepal and Bhutan in 2012: Uncertain Democratic Consolidation." *Asian Survey*, 53(1), February 2013. (pp. 84-92.)

8. "Constitutional Crisis in Nepal." *The Economist*. November 17, 2012.

9. Prasai (2013).

10. *Ibid.*

gangs to extort businesses and communities. Maintaining large memberships and muscling political opponents out of one's turf is important not only for obtaining votes, but also for demonstrating street power. Thus, the role of criminal groups, often fronting as party youth organizations, will intensify in the run up to the elections. Given that the upcoming elections (if they are in fact held) are seen not only as an ordinary process of government formation, but also, and far more importantly, as a vote on key unresolved issues about the constitution and the character of the state, such as federalism and identity politics, in which the political stakes and the temptation to rely on criminal actors to manipulate the elections are high. Thus the political IOUs and power that the criminal groups may obtain from their political employers can dangerously affect the functioning of the subsequent government.

Yet this deeply impoverished but resource-rich country can ill afford further political paralysis. Although the Nepali standard of living has been steadily improving over the past several decades, the progress is to a large extent due to a very low baseline. Nepal remains in the bottom twenty percent of the Human Development Index rankings. 78.1 percent of the population lives on less than \$1.25 per day, income inequality is among the highest in Asia, and per capita gross domestic product stands at a meager US\$ 490.¹¹ Unemployment runs at 45 percent, with the outflow of Nepali workers to uncertain employment with often abusive condition in India, the Middle East, and East Asia as the only release valve.¹² With job creation as a persistent struggle, unemployed young men become easily susceptible to recruitment by armed "youth wings" of political parties and outright criminal groups. Adult literacy rate runs just under 60 percent, and the labor force continues to be largely unskilled and increasingly militant and prone to paralyzing strikes.¹³ In one of the latest examples, politically-affiliated student unions were threatening to mount disruptive strikes in reaction to the decision of the Nepal Oil Corporation (NOC) to increase the price of liquefied petroleum gas, widely used as cooking fuel. Without consulting NOC officials, the prime minister

reversed the price hike and announced the decision on Twitter, leaving the state-owned monopoly importer and supplier of petroleum products scrambling to figure out how to cope with its mounting financial losses.¹⁴

Compounded by fast-paced urbanization, infrastructure is woefully inadequate; energy shortages in this hydropower-rich country are acute (with blackouts often running sixteen to eighteen hours a day even in the capital), making Nepal dependent on energy imports, particularly from India.¹⁵

Remittances in particular have helped decrease some of the most severe poverty over the past decade, in 2010 amounting to 23 percent of the GDP, having grown from just 1.9 percent in 2000.¹⁶ Positively, remittances have increased domestic consumption (and hence demand for imports since Nepal manufactures very little and is frequently insufficient even in food production) as well as access to schooling and health care for poor Nepalis. But in the absence of an effective macroeconomic policy, remittances have also increased inflationary and real estate speculation pressures, likely contributing to a possible real estate bubble. With inflation running over ten percent, vast lower-class segments of Nepali society have thus continued to face difficult economic hardship.¹⁷ The political paralysis, as well as relatively poor monsoons in 2012, was expected to suppress economic growth to 3.8 percent in 2012-13, from 4.5 percent the previous year, according to the International Monetary Fund.¹⁸

Behind much of the political contestation in Nepal is the desire by politicians and political groups to control the state in order to capture resources from foreign aid, tourism, and existing hydropower. This includes being able to issue exceptions from law enforcement and tender procedures to supporters. The Maoists too, even while promising redistribution, have become active participants in this system.

14. "Nepal Economy: Quick View –Nepal Oil Corporation Withdraws Fuel Price Increase," The Economist Intelligence Unit, February 20, 2013.

15. The energy dependence on India in turn increases India's power over Nepal. For details on the energy situation in Nepal and its regional context, see: Charles Ebinger (2011). *Energy and Security in South Asia*. Washington, DC: Brookings Institution Press.

16. World Bank, *Migration and Remittances Factbook* 2011, <http://data.worldbank.org/data-catalog/migration-and-remittances>; and International Monetary Fund, *World Outlook Economic Database*, <http://www.imf.org/external/pubs/ft/weo/2012/01/weodata/index.aspx>.

17. Kantha: 90.

18. Maha Mosain Aziz. "Can Nepal's Republic Be Saved?" *Bloomberg Businessweek*. December 21, 2012.

11. World Bank, *Worldwide Governance Indicators*. Available at: http://info.worldbank.org/governance/wgi/sc_chart.asp.

12. *Ibid.*

13. *Ibid.*

Many in Nepal see the eventual adoption of a new constitution as a deliverance from most of Nepal's challenges and an end to instability. Although a constitutional framework is critical for the development of effective institutions and policies to address Nepal's many deep-seated political, economic, and social problems, it is hardly a magic formula. Much will depend on implementation of both the constitutional rules and problem-specific policies that yet need to be developed. Consumed by debates over the new constitution, political leaders from across the political spectrum have paid little attention to the details of policy development and implementation. Instead, they issue vague promises of redistribution to marginalized groups, or promise society-wide progress without the need for any redistribution, catering not just to the mobilized streets but also to the ears of Western donors. Nepal's politics over the past few years could thus be characterized as 'protest without prescription.'

Such a political *modus operandi* is symptomatic of both the infancy of Nepal's democratization processes and its deeply-rooted culture of impunity, patronage, and clientelism. Corruption is endemic and increasing. All official institutions and bureaucratic structures are also becoming politicized and increasingly dysfunctional. Whichever political party comes to power tries to control civil service appointments and promotions – a process that leads to a severe degradation in administrative capacity, a pervasive lack of a merit-based personnel system, and poor service delivery. Formal public safety and justice mechanisms are inaccessible to most citizens, particularly the marginalized groups, and are widely regarded as increasingly politicized and corrupt.

In some areas, armed violence during the civil war has created enclaves controlled not by the state but by political parties, local armed groups, or criminal gangs. Leaders of these groups now seem to be taking on a brokering role. They serve as patrons and gatekeepers, controlling state actors' access to marginalized communities and peripheral and cross-border resources (including trafficking revenues), while also controlling those communities' access to state services and institutions. While much

criminal organization in Nepal remains fairly rudimentary, as these armed actors interface with and begin to consolidate under political leaders in Kathmandu, Nepal's political transition could give rise to structured political-criminal mafias, much as has occurred in other countries emerging from conflict, such as the former Yugoslavia, Afghanistan, Sierra Leone, and Myanmar.

Political and Economic Crime in Nepal

In many ways, organized crime in Nepal, encompassing both politically-motivated and economically-driven crime, is still in its initial developmental stages. In this case, politically-motivated crime refers to crime in which the primary function is to support political objectives of an actor, while economically-motivated crime is used in reference to crime in which the primary purpose is to generate economic profits. Nonetheless, the boundaries between the two are often slippery and difficult to distinguish in practice. As discussed below, the distinctions are often exaggerated since even criminal groups can acquire political capital and have political effects and since one of the most potent political tools is financial resources and territorial influence via non-state actors. In Nepal, the nexus between crime and political parties has been thickening and few political parties are immune from using criminal groups for political purposes, including demonstrating street power, raising money for the party, and securing contracts for clients. Usurpation of public funds, including funds from international donors, is prevalent. The All-Party Mechanism has become a favorite vehicle of public funds theft, but other local governance structures are also easily turned into tools for personal profit and political patronage. Criminal groups in turn seek to cultivate politicians to escape prosecution and obtain immunity for their nefarious actions. They have been highly successful in doing so, and impunity prevails.

Nepal's criminal landscape is still at a rather primitive stage in organized crime formation. The criminal groups tend to be mostly small, territorially limited organizations, and their operations are not highly complex. They have nowhere near the level of sophistication and organizational complexity of the criminal groups operating in India's or Pakistan's slums, for example. The level of violence the

Nepali criminal groups perpetrate in support of their profit-seeking activities is also fairly limited when compared with criminal organizations in other parts of the world, such as Colombia or Mexico. Nor do they yet systematically deliver “public” goods to local populations to cultivate support independent of the state, as other criminal groups – from India to Japan, Italy, and Colombia – have learned to do.

Nonetheless, across a range of *illicit economies – including extortion, tax evasion, drug smuggling, illegal logging, illegal trade in wildlife, and human trafficking* – law enforcement efforts are sporadic, inadequate, and often selective. This selectivity, however, is not the result of careful and systematic evaluations of which illicit economies pose the most severe threats, but is rather the product of corrupt law enforcement. Many of these illicit economies present threats to the state and society by intensifying an already prevalent culture of impunity and absence of rule of law, as well as by contributing to the usurpation of public and local community funds. Meanwhile, these illicit economies have been providing employment for some of the most marginalized segments of Nepal’s population, who have not been helped much by existing livelihood programs.

Case Study Methodology

To operationalize the overall objective of the study, analyzing the extent of organized crime in Nepal and its impact on governance, an extensive review of relevant literature on Nepal was first undertaken. This included literature on new political processes in Nepal, root causes of conflict, and existing political arrangements, including formal institutions and informal power processes. Extant studies of specific illicit economies present in Nepal were also mined. This preliminary research served to guide the fieldwork.

Fieldwork took place over the course of three weeks between May 10 and 30, 2012. During those three weeks, Dr. Vanda Felbab-Brown conducted interviews with some 57 interlocutors on the basis of strict confidentiality. Interviewees included representatives of Nepal’s main political parties, government officials at both the national ministry level and local district and village level, officers of the Nepali police and army, retired

justice ministry officials, NGO representatives, business community representatives, and ordinary Nepalis. Research was conducted in Kathmandu and in both rural and urban areas of the following districts: Solukhumbu, Kavrepalanchok, Chitwan, Kaske, Bardia, and Banke. Research in Kavrechhapanchok district was among the least productive because intense *bandhs* at the time of the research significantly disrupted both the interviewer’s and interviewees’ ability to travel.

The locations for the research were selected on the basis of the following considerations. Kathmandu is the seat of political and economic power in Nepal, and Pokhara is the second most important business center in Nepal, thus comparing the levels and type of extortion and tax evasion between the two mid-hill Pahari cities would be instructive. Interviews in the Kavrepalanchok district focused on local governance mechanisms and crime dynamics in a rural Pahari area. Sitting on the border with India, Terai’s city of Nepalganj and the Banke district more broadly are one of the two top smuggling hubs in Nepal (Birgunj and its surrounding Parsa district are the other). The presence of sizable Muslim and Tharu populations also allowed for the exploration of the extent to which crime in Nepal has become “ethnicized” and supports political mobilization and international terrorism. The inclusion of the Chitwan and Bardia districts permitted not only further exploration of the crime-politics dynamics in the Terai, but also a comparative analysis of illegal logging and trade in wildlife. Finally, the Solukhumbu district dominated by the Sherpa was included both as a control case and an area for studying smuggling into China across the high mountains. Unlike in the other selected areas, the presence of organized crime in Solukhumbu was expected to be low. Nonetheless, financial revenue flows from tourism to the area are comparatively high, and so Solukhumbu also represented an interesting opportunity to study local governance and resource diversion for private gain.

Based on a subsequent extensive perusal of news coverage from Nepal, a supplemental review of scholarly literature on Nepal since August 2012, and additional interviews in Washington, DC, with prominent Nepali NGO

representatives and journalists visiting the United States between August 2012 and February 2013, sections in this chapter on political processes and crime developments in Nepal since the period of fieldwork have been kept up-to-date.

The structure of the case study is as follows. *Section I* discusses the political, institutional, social, and regional context. It elaborates the current political contestation in Nepal, new processes of inclusion and caste and ethnic mobilization, as well as deeply-entrenched norms of patronage, clientelism, and corruption. It also provides an overview and assessment of key justice and law enforcement institutions, which have a particularly important bearing on crime. Finally, it situates domestic political processes within the context of the geostrategic contestation in which Nepal finds itself. In the first part of *Section II*, the chapter analyzes crime in support of political objectives. The areas covered include the role of crime and illicit economic activities in *bandhs*, party fundraising (with a focus on the Maoist and Madhesi groups), tender acquisition, and the usurpation of public funds. The second part of this section reviews the role of crime in Nepal in support of international terrorism and geostrategic competition. In the third part, Section II discusses economically-motivated crime in Nepal, including tax evasion and extortion, drug production and trafficking, illegal logging, illegal trade in wildlife, and human trafficking. *Section III* discusses the donor context and the effectiveness of various donor initiatives to reduce corruption and promote good governance. After the conclusions presented in *Section IV*, *Section V* offers recommendations.

I. The Political, Institutional, Social and Regional Context

Political Contestation, Social Exclusion, and Corruption

For several years, Nepal has teetered between upheaval and stagnation. Over the past two decades, its people have witnessed the transition from an authoritarian Hindu kingdom to a constitutional monarchy in 1991; the incomplete democratization of the 1990s; the massacre of members of the royal family in 2001 by the heir to the throne; a decade-long civil war between Maoist insurgents and the government that ended in a faltering peace agreement in 2006; and the removal of the monarchy altogether in 2008. Particularly since 2008, when for the first time in centuries many marginalized groups acquired a voice in the political sphere, the country has oscillated between increasingly violent, politically-orchestrated chaos and paralysis. At the core of the political upheaval is the fundamental transformation of a deeply-rooted feudal system to a more inclusive one, albeit one whose level of openness and accessibility still continues to be contested.

The fitful struggle since 2006 to develop a new constitution is both a symptom and driver of the country's multiple ethnic, religious, geographic, caste, and class divisions. More than 90 languages are spoken in Nepal, and Buddhists and Muslims are sizable minorities among the largely Hindu population. Many of these cleavages have been suppressed for centuries, particularly during the 20th century when the ruling royal family squashed all but the caste divisions. However, recent political liberalization and democratization have strongly intensified communal self-identification and self-determination processes. Political competition has played a central role in playing up and exploiting such cleavages and "democratic" politics by catering to the interests of ethnic, class, or caste-based groups. Despite the political empowerment of many previously voiceless groups, the post-2006 constitution drafting process has become a frenzied contest to secure special privileges for one's own parochial group, rather than a process to redress long-standing grievances while unifying the country.

No doubt, the marginalization of many groups, including women, and of rural areas is severe. Caste inequality is particularly deeply embedded within the country's social mores as well as in its political and economic structures and processes. Twenty years ago, lower castes did not dare address or sit next to the upper castes, and even as late as 2000 certain groups were still de facto slaves, deprived of rights and property and existing in bonded labor. Rectifying such marginalization and putting an end to the highly authoritarian and exclusionary monarchy plagued by royal coups and violence were key activating appeals of the democratization movement of the 1990s and the subsequent Maoist insurgency that led to a civil war lasting from 1996-2006, and the death of between 13,000 and 17,000 people (the number is disputed) and a further 1,300 disappeared.

The Brahmin, Thapa, and Chhetri castes close to the royal family and residing mainly in the Kathmandu valley and surrounding hills, have traditionally dominated key bureaucracies and institutions such as the army, police, economic institutions, media, and judiciary. They also continue to dominate the leadership of Nepal's political parties, including the Maoist and *janajati* groups.¹⁹ While not all Brahmins or Chhetris are rich or powerful, other groups have had far less access to economic and political power and, as in the case of the *dalits* (untouchables), often no meaningful access at all. Regional groups, such as the Madhesis in the Terai plains bordering India, have not only been traditionally excluded but are also perceived as India's fifth column, given their cultural affinity to their southern neighbor. The Madhesi groups, who the Maoists actively mobilized with anti-exclusionist rhetoric during the civil war,²⁰ have become particularly powerful. A (fragmented) coalition of Madhesi political parties (Madhesi Morcha) participated in the Maoist-led coalition government between 2008 and 2013. The Madhesis have strongly embraced political mobilization based on self-identification and self-determination (while

19. For background on caste and ethnic mobilization in Nepal, see: Malagodi, Mara (2011). "The End of a National Monarchy: Nepal's Recent Constitutional Transition from Hindu Kingdom to Secular Federal Republic." *Studies in Ethnicity and Nationalism*, 11(2). (pp. 234-251); and Middleton, Townsend and Shneiderman, Sara (2008). "Reservations, Federalism and the Politics of Recognition in Nepal." *Economic and Political Weekly*, May 10, 2008.

20. See, for example, Mahendra Lawoti (2003). "The Maoists and Minorities: Overlap of Interest or a Case of Exploitation?" *Studies in Nepali History and Society*, 8(1). (pp. 67-97); and Dheepak Thapa (2012). "The Making of the Maoist Insurgency," in Sebastian von Einsiedel et al., eds., *Nepal in Transition*. Cambridge: Cambridge University Press. (pp. 37-57)

themselves often adopting discriminatory policies toward other minorities in their areas, such as the Tharu).²¹ Since the end of the civil war, many indigenous (*janajati*) groups have also adopted such ethnicity-based mobilization. Political entrepreneurs have been highly successful in exploiting identity-based politics for the acquisition of political power, if not for actually redressing grievances. The tendency of political leaders has been to shun equitable decision-making and to overpromise without the ability to deliver, progressively embracing more radical demands to satisfy their energized constituencies. New political groups and the political entrepreneurs who represent them have thus acquired the power to frustrate and obfuscate political processes and bargaining, but not the power to accomplish meaningful reforms.

These various political actors operate today primarily through political parties or ethnically-based interest groups. The Maoists, via their political party – the UCPN(M) – were democratically elected to power for the first time in 2008, winning a plurality of seats in the national parliament and heading a coalition government primarily with regional Madhesi parties. The Maoists have been struggling to balance the requirements of transforming themselves into a political party while acting as a revolutionary movement, while simultaneously expanding their financial and patronages enterprises.²² Despite their revolutionary credentials and agenda, the Maoists too, are deeply enmeshed in traditional structures of patronage and competition for resources. Although the Maoists profess support of federalism, having mobilized on the promises of regional autonomy and ethnic recognition issues during the civil war even as they proclaimed doctrinaire allegiance to Maoism, they want a federal system with a strong centralized state.

In the wake of the May 2012 constitution debacle, the Maoist party experienced a key defection. A segment of war-era hardliners, militants, and ideologues, numbering perhaps as much as thirty percent of the original Maoist party, broke away. Calling itself the Communist Party of Nepal-Maoist and under the leadership of Mohan Bairya

21. For the rise of identity-based politics in the Terai and its potential for violence, see, for example: Miklian, Jason (2009b). "Nepal's Terai: Constructing an Ethnic Conflict," *PRIO South Asia Briefing Paper #1*.

22. For details see: International Crisis Group (2011b). *Nepal's Fitful Peace Process*, *Asia Briefing No. 120*, April 7, 2011. (pp. 17).

(also known as Comrade Kiran), the splinter faction accused the mother Maoist party of being too soft and compromising and that it was engineering a “revisionist dissolution of the revolution” and “embracing capitalist democracy.”²³ So far, the new Marxist radicals appear to be rejecting the upcoming elections and their Declaration opposes parliamentarianism. They have become locked in an intense turf war with the UCPN(M), which is likely to intensify as the UCPN(M) mobilizes voters and resources for the elections and Comrade Kiran’s faction seeks to subvert these efforts. The Baidya faction is also accused of orchestrating the theft of weapons and ammunition from cantonments populated by Baidya loyalists. (The Maoists had handed over some of their weapons, but not all, claiming that the rest was washed off in flooded rivers.)²⁴

Along with the Maoists, the Madhesi political parties, despite their fragmentation, are the primary drivers of a new distribution of power within the Nepali political system and a restructuring of the Nepali polity itself. They are among the strongest champions of a loose kind of federalism with considerable regional autonomy, decrying what they characterize as centuries-long subjugation of and discrimination against the Terai region. Having strong street power in the Terai, they portray themselves as leaders of state restructuring and greater social inclusion (for their own constituencies, anyway). Although having shared power with the UCPN(M), unlike the Maoists, they want a federal system with a weak central state and extensive devolution of the power to tax and control local resources and police forces. Like the Maoist party, the Madhesi Morcha has struggled with increasing fragmentation and disobedience vis-à-vis the front’s leadership, with a new Madhesi front – the Brihat Madhesi Morcha (BMM or Broader Madhesi Morcha) – presenting itself as truer to the cause and mobilizing independently and also against the traditional Madhesi coalition.²⁵ The Madhesi political parties are also far more closely aligned with India than are the Maoists, who have made an effort to cultivate China over the past several years and to induce China and India to bid against each other to curry their favor.

23. Prasai, and Jan Sharma. “A Bad Break-up.” *South Asia*, August 2012. (pp. 40-41).

24. Sharma.

25. For details on the BMM and other new political forces and party splinter groups, see International Crisis Group (2012b). *Nepal’s Constitution (III): The Expanding Political Matrix*. Asia Report No. 24, August 27, 2012.

The loose *janajati* coalition is yet another newcomer to and challenger of the political system in Nepal. Its political agenda demands the social inclusion of various marginalized groups in Nepal, based on quotas at the national and subnational levels and, as in the case of the Madhesi parties, federalism with an extensive devolution of power. Although its various caste, ethnic, and region-based member groups are frequently at odds with each other – the *dalits* (the untouchables caste), for example, are not always favorably disposed to hill ethnic minorities or southern Muslims – and their narrow communal demands often clash, they all want reserved seats in government and state institutions and a degree of regional autonomy. The *janajatis* are among the key proponents of ethnically-based states, with various of the groups calling for autonomy of ever smaller and more narrowly-defined ethnicities and territories. Yet several times since 2008, including during the last hours before the May 2012 constitutional deadline, the *janajati* groups have backed off of their maximalist demands and showed a much greater willingness to compromise than have the Maoists or the Nepali Congress.

Both the Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist-Leninist or UML) feel deeply threatened by federalism and by many other constitutional redesign proposals put forth by the Maoists, the Madhesi parties, and other ethnically-based interest groups. The NC is the second largest party and for decades has been a major political player. It now faces a likely prospect of significantly diminished political and economic power, with the traditional dominant classes represented by NC finding themselves for the first time a political minority. It has deep roots in the pre-civil war monarchical order, tends to draw heavily for support on the Brahmin, Chhetri, and Thapa castes and conservatives and outright royalists, often acting in defense of many *ancien régime* institutional arrangements. Using a fear tactic to mobilize support, it has exaggeratedly defined federalism as a division of the country into mono-ethnic states where minorities would not be welcome.²⁶ Yet it presents itself as the true defender of democracy in Nepal and the last bastion of resistance against the entrenchment of the Maoists and leftwing and

26. International Crisis Group, (August 2012a).

ethnically-based polarization.²⁷ Although the NC nowhere matches the street power of the Maoists, it organized its own *bandhs* in May 2012 and is likely to continue resorting to this strategy. Rather than generating new ideas, the NC has primarily functioned to oppose and boycott activities and proposals of the Maoists and the Madhesi parties.²⁸ Thus it has challenged the credibility of the federalist promises of Maoist, Madhesi, and *janajati* politicians that in almost none of the proposed states would a single communal group be able to lord it over the others.

The UML has traditionally played a central role, having been the main opposition party during the monarchy, but an opposition against whose “failures” the Maoists rebelled. Even more than the NC, the UML has struggled to articulate a new agenda and a “progressive” vision of a new political settlement in Nepal, the result, however, also being mainly opposition to the initiatives and proposals of the Maoists and Madhesi parties. Although professedly communist, it struggles to differentiate itself from the Maoists.²⁹ Both the NC and UML have done little to rebuild their political organizations after 2008. A combination of weak structures, endless internal disputes, and poorly articulated policies has diminished their clout and mobilization capacity beyond their narrow cadres and loyal interest group supporters. UML’s mobilization efforts have centered primarily on opposing federalism and the role of identity in institutional arrangements. Like the Nepali Congress, the UML is deeply afraid of the creation of federal ethnicity-based states. Particularly if the hill states where both parties dominate ended up not having direct access to India, they could become economically dependent on lengthy inconvenient travel through the Terai and, hence potentially, in the context of frequent political road shutdowns, on the benevolence of Madhesi politicians whom they deeply distrust.

Overall, the formal political system in Nepal is deeply fractured and intensely polarized. Top political leaders hold on closely to decision-making and bargaining responsibilities, allowing little transparency and

27. Author's interviews with Nepali Congress party leaders, Kathmandu, May 10 and 12, 2012.

28. For further details on the evolution of the Nepali Congress role in the contestation over the new political system, see: International Crisis Group (2011c). *Nepal's Peace Process: The Endgame Nears*, Asia Briefing No. 131, December 13, 2011.

29. Based on author's interviews with Maoist and UML district and national-level leaders, Pokhara, Nepalganj, and Kathmandu, May 22, 26, and 27-28, 2012.

democratic discussion even within their own political parties. This “consensus” approach to politics – defined as narrow bargaining among political party elites – has not only resulted in political deadlock the country, but may also be creating incentives for political actors to find informal, entrepreneurial solutions to their organizational challenges, thus creating multiple opportunities for criminal organizations to enter or influence politics.

The political transitions that have simultaneously taken place in Nepal over the past two decades include the change from an absolute monarchy to a democracy; from a Hindu state to a secular one, but where communal self-identification is increasing; from a state-sponsored “one-language, one-culture” policy to increasing demands for the acceptance of different ethnic and linguistic groups; and from an urban, Kathmandu-centered political and economic system to one where the rural periphery is explicitly recognized by political actors.³⁰ None of these profound social, political, and institutional transformations has been settled. Rather, the social, political, and institutional context is characterized by extreme instability and uncertainty. This latter may act as something of a brake on criminal organization since it is difficult to organize enduring criminal networks under conditions of such uncertainty.

Nonetheless, the one constant amidst these volatile political and social transformations is endemic corruption. Transparency International ranks Nepal the 28th most corrupt country in the world.³¹ People often have to pay bribes to receive many basic services. According to a 2011 Transparency International survey, almost a quarter of those who had to deal with the police or permit and registry institutions had to pay a bribe, as did just under twenty percent of those who came in contact with the judiciary.³² Public goods are selectively distributed to friends of those who pay a bribe. If another person outbids the original bribe, the service may not be delivered to the first person even after his payment has been made.³³ And while many

30. For a further elaboration, see: Sarah Dix (2011). *Corruption and Anti-Corruption in Nepal: Lessons Learned and Possible Future Initiatives*, Norad, June 2011.

31. Transparency International, *Corruption Perceptions Index 2011*, <http://cpi.transparency.org/cpi2011/results/>

32. Deborah Hardoon with Finn Heinrich, (2011). *Daily Lives and Corruption: Public Opinion in South Asia*, Transparency International. (pp. 24-30)

33. Author's interviews with businessmen and members of lower castes and classes in Pokhara, Bharatpur, Nepalganj, and the rural areas of the Banke district.

Nepalis continue to be marginalized in their access to public goods, foreigners, such as Indians, Bangladeshis, and Tibetans, can easily buy citizenship through bribery. Such uncertain and unequal access to the distribution of public goods gives rise to conflict among different social groups.³⁴ Moreover, political parties are generally seen as the most corrupt institution, followed closely by public officials.³⁵

Indeed, the *usurpation of public funds* by corrupt government officials has become prevalent and institutionalized. As a former police superintendent contended, “[n]ow every bureaucrat and government official wants a piece of the action, and wants it quickly before he gets fired and another political appointee replaces him.”³⁶ Aid and development money, such as for infrastructure projects, is regularly diverted for personal gain without any delivery of the promised project.³⁷

The so-called *all-party mechanism* that (in the absence of local elections since 1997) is supposed to provide local administration has become a vehicle of choice for the theft of public funds. Each year districts receive development-designated funds that equal ten percent of the government’s total budget. A group of fourteen foreign donors chaired by the Asian Development Bank and DFID is contributing US\$ 200 million under a scheme called the Local Government and Community Development Program. Many interviewees shared the conviction that much of the local funding was being diverted for party or personal enrichment.³⁸ An article by *The Economist* estimated that as much as 60 to 90 percent of all funds in the Terai were misused, while 25 to 50 percent of all development funds were misused in the mid-hill areas.³⁹ There is little effective monitoring of the budget of local governments. Auditing procedures are easily circumvented, especially as many district governments tend to pass their annual budgets in the last two weeks of the fiscal year to avoid scrutiny. The tender process is

pervaded by corruption and violence, and project delivery is hindered by scams. These include merely repainting, instead of repairing, disintegrating buildings and failing to construct budgeted roads. Local NGOs applying for grants hardly remain immune to the corruption pressures and are said to pay commissions of up to 50 percent.⁴⁰

Other *local governance structures* can equally represent important tools of both personal profit and political patronage power. Although nominally representing an entire village community, village committee and development council members often direct development money to their friends and clients. They also use their position on such local governance structures as a mechanism for acquiring political power.⁴¹ Since cumulatively some of these local governance structures can number hundreds of thousands of members on the national level, the political power of their representatives can be substantial.

As particularly underprivileged segments of Nepali society are systematically unable to hold their leaders accountable – both at the national and at the local level – political leaders tend to over-promise and under-deliver, and they exhibit little restraint in appropriating and diverting public funds. Instead of demanding more realistic political agendas and punishing leaders who fail to carry out their pledges, many underprivileged Nepalis try to maximize their patronage access by having different family members support different political parties.⁴²

Occasionally, some communities exhibit greater capacity for better local governance and for more effectively demanding better service delivery from government representatives. Among the areas where fieldwork was conducted, one community where such improved governance was identified was the village of Namche Bazaar, Solukhumbu district. The Sherpa community of these areas has been able to profit robustly from mountaineering and trekking related tourism, and its economic well-being has substantially improved over the past several decades. Even though some Sherpa politicians have increasingly

34. Dix (2011). (pp.9)

35. Hardoon (2011). (pp. 8) It is important to note that such corruption perception findings are the same for India, which considers itself South Asia’s longest and most established democracy.

36. Author’s interview with a former Nepal police superintendent, Kathmandu, May 10, 2012.

37. See, for example: “Low Road through the Himalayas,” *The Economist*, May 31, 2011.

38. Author’s interviews with politicians, NGO representatives, and businessmen, Kavrepalanchok, Chitwan, Kaske, Banke, and Bardia districts, May 17-28, 2012.

39. “Low Road through the Himalayas,” *Economist*, May 31, 2011.

40. *Ibid.*

41. Author’s interviews with village committee members and non-elite village community members in Banke, Bardia, Kavrepalanchok, and Chitwan, May 17-20, and 22-28, 2012.

42. Author’s interviews with politicians, NGO representatives, and ordinary Nepalis, Kavrepalanchok, Chitwan, Kaske, Banke, and Bardia districts, May 17-28, 2012.

played a prominent role in *janajati* mobilization in Kathmandu, the Sherpa community continues to perceive the central government as failing to deliver services and as being profoundly corrupt. As a result of its access to substantial financial flows going directly to the Sherpa businessmen and bypassing Kathmandu, the community has chosen to keep Kathmandu at arms' length as much as possible, increasingly relying on local funding (or seeking contributions from abroad) for schools, clinics, and infrastructure development projects in its area. Key Sherpa business and community leaders admitted in interviews that one consequence of "giving up on Kathmandu" is that they pay only minimal taxes, substantially lower than they could afford to pay.⁴³

Nonetheless, even while governance and accountability mechanisms within the Sherpa community in these localities appear substantially better and more robust than in the researched Pahari and Terai rural areas, similar accountability mechanisms in Solukhumbu do not extend to members of non-Sherpa communities who have moved to the district. The vast majority of porters in the area, for example, are no longer the Sherpas, but instead poor Paharis whom the Sherpa businessmen pay only poverty-level wages and who barely eke out a living for themselves, let alone for their families. Resentment among those poor migrant Paharis toward the locally-dominant Sherpa community is growing.⁴⁴

Yet it is important to recognize that even as it is bemoaned, corruption is also widely tolerated. Many view patronage and clientelism as normal behavior, believing that when persons are temporarily in positions of power they need to use such access to provide for their extended family and secure income and employment.⁴⁵ Nepalis are alienated from today's politicians not merely through the existence of corruption, but primarily because of the ongoing paralysis of everyday life caused by the politically-motivated *bandhs*, the lack of a constitution, and standardized established governance processes. In other words, Nepalis would be willing to continue paying

43. Author's interviews with Sherpa businessmen, Solukhumbu district, May 13-16, 2012.

44. Author's interviews with Padhesi porters and Sherpa businessmen, Solukhumbu district, May 13-16 2012.

45. See, for example: Rory Truex (2010). "Corruption, Attitudes, and Education: Survey Evidence from Nepal," *World Development*, 39(7). (pp.1133-1142)

bribes if the politicians and bureaucrats were actually capable of delivering effective services in return for such informal "taxation."⁴⁶

Formal and Informal Institutions and Prevalent Norms of Behavior⁴⁷

The culture of impunity is as pervasive as corruption, and growing. Formal justice mechanisms are either inaccessible to most, particularly for marginalized groups,⁴⁸ or seen as increasingly politicized and corrupt. According to an estimate by a former Supreme Court justice and prosecutor, the effective prosecution rate is around 20 percent, hardly enough to deter law-breaking.⁴⁹ Worse yet, *the judiciary* has become increasingly susceptible to political pressures to dismiss cases for a purported lack of evidence or to release convicted criminals. The March 2012 decision by the Maoist-Madhesi coalition government to withdraw criminal charges against 349 individuals, mostly Maoist and Madhesi party cadres, for example, drew strong criticism from human rights groups and political opposition, but was not reversed.

A robust judicial framework is also yet to emerge. Even when somehow immune from political pressures and corruption, prosecutors frequently lack the necessary skills to meaningfully coordinate with the police, seek robust evidence, understand legal precedents, and employ established prosecutorial standard operating procedures. Along with political pressures, intimidation of justice officials by criminal groups (often in cahoots with political actors) is also growing. On May 31, just a few days after the dissolution of the Constituent Assembly and the parliament, Supreme Court Justice Rana Bahadur Bam was shot dead in his car in Kathmandu by masked men in broad daylight. In October 2012, the investigation was terminated inconclusively, hinting only at the involvement of an "organized group."⁵⁰

46. Author's interviews with businessmen and members of lower castes and classes in Pokhara, Bharatpur, Nepalgunj, and the rural areas of the Banke district.

47. Because the study focuses on crime and governance, the discussion of formal institutions centers on rule of law and law enforcement institutions – the judiciary, police, and the army.

48. Antenna Foundations Nepal (2010). *Security and Justice in Nepal: District Assessment Findings*, March 2010.

49. Author's interview, Kathmandu, May 12th, 2012.

50. "Probe Fails to Find Bam Murder Motive," *Kathmandu Post*, October 31, 2012. Available at: <http://www.ekantipur.com/the-kathmandu-post/2012/10/31/top-story/probe-fails-to-find-bam-murder-motive/ 241233.html>.

Although informal justice mechanisms, such as paralegal committees and NGOs, provide access to justice for some at the community level, their reach remains limited and does not sufficiently offset the deficiencies of the formal justice system.

The peace process aspiration of Nepal undertaking widely-accepted transitional justice processes with the country's bloody civil war also remains elusive. In March 2013, the interim government enacted the Investigation of Disappeared Persons, Truth, and Reconciliation Ordinance. The measure created a commission to investigate human rights violations committed during the civil war. Controversially, the body will have wide discretion to recommend amnesty for those charged with human rights violations. Serious crimes, which with the exception of rape remain unspecified, will be referred to the attorney-general to initiate prosecution.⁵¹ The vagueness of the language seems to be in contradiction with previous statements by the government of Nepal that war crimes, crimes against humanity, and intentional killing will not be pardonable. Human Rights Watch (and several other human rights NGOs) also expressed concerns about the emphasis in the new ordinance on reconciliation between victims and perpetrators, fearing that victims might be put under pressure to withdraw charges.⁵²

A myriad of *anti-corruption bodies* have been established over the past several years, including the Commission for the Investigation of the Abuse of Authority (CIAA). In 2009, Nepal also adopted a national anti-corruption strategy. However, while on paper the mandate of the anti-corruption bodies is rather comprehensive, in practice, many of the bodies, including the CIAA, have not been able to investigate and prosecute effectively. The CIAA has been without a Chief Commissioner for years, with political parties unable to agree to any appointment due to concerns about privileging their rivals and exposing their own malfeasance. Yet when they occasionally do convict public officials, they do appear to have a positive, even if temporary, deterrent effect on crime and corruption.

51. "Nepal Politics: Quick View – War Crimes to Be Investigated by Truth Commission," *The Economist Intelligence Unit*, March 28, 2013.

52. Human Rights Watch, "Nepal: Truth and Reconciliation Law Betrays Victims," March 22, 2013. Available at: <http://hrw.org/node/114432>

Indeed, one of the few positive developments in Nepal during 2012 was the conviction of three prominent politicians on corruption charges. These were not only two former Nepali Congress ministers Govinda Raj Joshi and Khum Bahadur Khadka, vulnerable in their new opposition role, but also Madhesi leader Jay Prakash Gupta, who was the standing minister for information and communications in the cabinet of the Maoist Prime Minister Baburam Bhattarai.

Other institutions and bureaucratic structures are also becoming politicized and increasingly less effective. Whichever political party comes to power tries to influence appointments and promotions, a process leading to a severe degradation in administrative capacity and a pervasive lack of merit-based personnel selection. Nepotism leads to mediocre appointments and poor-service quality. Many jobs in the public sector, such as police chiefs, are sold to the highest bidder, who expects to recoup most of his investment by demanding bribes from or defrauding the public.

The civil war left *the police* deeply demoralized and struggling to deliver basic law enforcement, especially in contested rural areas. Always exclusionary and dominated by privileged groups, and never accountable to the wider public, the police became particularly prone to political manipulation after the end of the civil war. The police are controlled by the top police commissioner in a personalized hierarchical scheme that is more centralized and tightly controlled than the Nepal military or many police forces elsewhere in the world. Top-level police officials are thus very powerful and can set up a clientelist pyramid, setting bribery targets for lower level officials. At the same time, under the current setup, the district police chief works under the chief district administrator, a political appointee essentially unaccountable to local communities. This system consequently requires district police chiefs to negotiate their anti-crime efforts with local politicians. If local populations were able to effectively hold the chief district administrator accountable, the police too would be at least indirectly accountable to local publics. But the current scheme only intensifies corruption and politicization of the police, strengthening links between crime and political parties and powerbrokers. On occasion,

politicization also has been disguised as an increased recruitment of marginalized groups into the police ranks.⁵³

The reputation of the police for brutality, torture, and extrajudicial killings decreased after the end of the civil war. In 2012, however, the Terai Human Rights Alliance alleged that extrajudicial killings by the police in the region had again been increasing, citing at least four incidents.⁵⁴ Modeled on the British colonial police system in India, Nepal's police officers are frequently deployed in areas where they lack knowledge of local communities and then are rotated out quickly, never getting to know the local community. Officers are also frequently reshuffled for nepotistic or otherwise corrupt reasons. The concept of community policing, featuring positive interaction with the ordinary citizens, and good relations with the public more broadly tend to be elusive.⁵⁵ The majority of Nepalis, even when victims of crime, try to avoid or minimize interactions with the police.

Through its involvement in international peacekeeping, Nepal does have some highly qualified upper-level and mid-rank police officers; however, the quality of training for lower officers is severely inadequate. Worse yet, as in other sectors, appointments and promotions are becoming deeply politicized. Nepotism rules the appointment of police chiefs and often even low-level officers. Just like the judiciary, the police face severe pressures to release criminals linked to influential politicians and political parties. At the same time, however, there are substantial limits to the capacity of politicians to reform law enforcement institutions. For example, political leaders have not dared shut down the Armed Police Force (APF) created during the insurgency to combat the Maoists and notorious for human rights abuses. Instead, the APF has quadrupled in size since 2006, now numbering slightly under 40,000 members (with regular police numbering around 47,000).⁵⁶ Serving more as a

53. Author's interviews with police officials in Kathmandu, Pokhara, Solukhumbu, Bardia, Banke, and Chitwan districts.

54. "Extrajudicial Killings in Madhes," *The Himalayan*, July 6, 2012. Available at: <http://thehimalayantimes.com/fullNews.php?headline%ExtrajudicialkillingsinMadhes&NewsID%338658>.

55. For background on Nepal's police and military and efforts at their reform, see: Thapa, Rabi Raj (2010). "Security Sector Reform and Development," in Sharma and Adhikari, eds., *Conflict, Peace, and Development: Theory and Practice in Nepal*. Kathmandu: Sangam Institute. (pp. 1-38)

56. Author's interviews with a former high-level Armed Police Force official, Kathmandu, May 12, 2012.

public-sector employment opportunity to secure votes for governing parties than as an effective law enforcement body, it has been an institution looking for a mission. Its tasks today focus primarily on border control, placing it in direct contact with smugglers and providing ample opportunities for corruption.

The investigative capacity of the police is limited. Although each district has a crime-scene team, the team usually numbers only three or four officers. Only one forensic lab operates in the entire country, requiring that all forensic evidence be sent to Kathmandu for analysis. DNA testing capacity is particularly lacking, as are resources and skills for combating specialized crimes, such as money laundering and cybercrime.⁵⁷ Along with impunity for abuses, the lack of investigative capacities also encourages the use of torture to extract confessions from suspects – a police practice typical of South Asia, including India.

Police penetration by criminal groups is increasing. So far, it does not appear that criminal groups control entire police departments, as in Mexico, for example.⁵⁸ Rather, they cultivate relations with and bribe particular police officials. While not under the thumb of criminal groups, such corruption networks within the police can run deep and wide and allow smugglers to avoid police interference in their trafficking activities anywhere in Nepal, from the borders to Kathmandu and beyond. The many police checkpoints that dot the main roads in Nepal are common *loci* not just of bribery by criminals, but also of extortion by the police.

Nonetheless, since the end of the civil war, the police are becoming more assertive and are growing in capacity. In some areas, such as in central and western Terai, the resurrected capacity of the police has had a positive effect in diminishing crime as well as improving relations with the community. In interviews with a wide set of civil society actors in both rural and urban areas of the Banke district, the district police chief, for example, was widely praised for cracking down on corruption and crime and increasing the

57. Most police departments have only one computer, for the district police chief, and most district officers are computer illiterate, with databases and evidence kept in piles of dusty and often-misplaced papers.

58. For an overview of Mexico's crime and its impact on governance, see, for example: Felbab-Brown, Vanda (2009 b). "The Violent Drug Market in Mexico and Lessons from Colombia," Foreign Policy at Brookings, Policy Paper No. 12, March 2009.

accessibility of law enforcement to the public, including with respect to crimes traditionally neglected by Nepal's law enforcement, such as domestic violence.

The United Kingdom has supported several police and law enforcement reform projects in Nepal since the mid-1990s, but the 2005 royal coup led to the cancellation of these projects, including a prison management program. Overall, the focus has been predominantly on increasing police capacities by providing better training. Between 2007 and 2008, the United Kingdom also contemplated a pilot project in four or five districts to strengthen community policing and criminal investigations, but Nepal's police rejected the program on the basis that the approach was too "piecemeal" and because it also included the training of chief district administrators, an idea that was resented by Nepal police.⁵⁹ In the second half of 2012, the United Kingdom was planning to initiate a new police reform program.

Numbering around 95,000 and accounting for 12 percent of GDP,⁶⁰ the Nepal Army has nominally not been involved in domestic public order and law enforcement – at least since the end of the civil war. Although officially outside of domestic politics and law enforcement, the *Nepal Army* remains a powerful player dominated by the privileged castes and with close links to members of the former monarchy. After the collapse of the Constituent Assembly in May 2012, the Nepal Army issued a declaration that it would follow orders from any "legitimate government," without specifying what legitimacy in its eyes means.⁶¹ The army too is increasingly subject to political pressures and patronage, and identity-based factionalization is also beginning to affect this institution.⁶² It has avoided accountability for the many serious human rights abuses it perpetrated during the civil war, including extrajudicial killings, forced disappearances, massacres, and torture.⁶³

59. Author's interviews with former top-level police and Home Ministry officials, Kathmandu, May 10, 12, 16, and 29, 2012.

60. Trading Economics, *Nepal*. Available at: <http://www.tradingeconomics.com/nepal/military-expenditure-percent-of-central-government-expenditure-wb-data.html>.

61. International Crisis Group (2012a). (p. 25).

62. International Crisis Group (2011b). *Nepal's Fitful Peace Process*, Asia Briefing No. 120. (pp. 17)

63. The Maoists were, of course, also very guilty of such abuses and other intimidation and coercion against civilians. For details, see International Crisis Group (2010a). *Nepal: Peace and Justice*, Asia Report No. 184, January 14, 2010.

The October 2012 decision to promote Colonel Raju Basnet to brigadier general, despite the fact that he had supervised the notorious Bhairavnet Battalion during its involvement in torture and disappearances of detained Maoists, generated widespread criticism from the United Nations and human rights groups.

Efforts to make the Army more representative of the wider population through efforts such as incorporating former Maoist combatants have faltered.⁶⁴ Having long opposed integration, the Nepal Army finally conceding to accepting Maoists into its ranks in 2011. But far fewer than the expected 6,500 Maoist fighters have joined the Nepal Army, and most ex-combatants have opted for payout packages. Well over 14,000 out of the estimated 19,000 Maoist combatants who had entered the post-civil war cantonments have preferred to retire after accepting a one-time compensation of \$10,000.⁶⁵ A large amount of that money is alleged to have been diverted by the Maoist party leadership away from the combatants to party pockets. Another 3,000 have disappeared from the camps.⁶⁶

Unlike in Indonesia, Burma, or Pakistan, the army does not have economic power *per se* or control over large sectors of the national economy. Nonetheless, its welfare fund, generated by member contributions and dividends from its participation in U.N. peacekeeping operations, now amounts to over US\$ 220 million, and is meant to support about 700,000 current and retired army personnel and dependents. Although the use of the fund is somewhat unclear,⁶⁷ it appears to be primarily invested in Nepal's banking sector. The fund also operates schools, hospitals, and even gasoline stations.⁶⁸ Overall, just like many

64. For details on the process of incorporating the Maoists into the Nepal Army and the choices offered to the ex-combatants, see: International Crisis Group (2011c). *Nepal: From Two Armies to One*, Asia Report No. 211, August 18, 2011.

65. The number is disputed, and some put it as low as 13,000. United Nations verification teams originally identified 19,602 at seven cantonments in 2007. See: Shneiderman, Sara and Turin, Mark (2012). "Nepal and Bhutan in 2011: Cautious Optimism," *Asian Survey*, 52(1). (pp. 139) But that number was later challenged, and no formal count was conducted after that as a result of a headcount boycott by the Maoists and before the combatants started being processed out of the cantonments. Many Nepali officials, especially those with links to the Nepal Army and former elites, believe that the Maoists both inflated the numbers of the ex-combatants and hired civilians to impersonate combatants in order to qualify for a greater total payoff (calculated on the basis of the total number of ex-combatants).

66. Author's interview with a high-level Nepali official in charge of the cantonments and Maoist combatant integration into the Nepal Army, Kathmandu, May 12, 2012.

67. Bikash K.C. (2011a). "Irregularities Dog NA Welfare Fund," *República*, January 19, 2011; and Bikash K.C. (2011b). "NA Millions Caught in BFI Cleft Stick," *Kathmandu Post*, January 29, 2011.

68. Author's interviews with security-sector NGOs, Kathmandu, May 17 and 30, 2012. See also: Dix (2011). (pp. 28).

other loci of power in Nepal, the Army has yet to face accountability for its past crimes and current conduct.

Hand in hand with the fundamental rewriting of the official rules of the political system and the entrance of many new political actors into the formal political sphere, Nepal's social mores have also been undergoing a change. However, that change has been slow and far less dramatic than the visible political rearrangements. Caste membership still often dictates social interactions, and despite formal empowerment, lower-caste members still frequently cower in front of "important men." In the context of deep-seated patronage and clientelism, cultivating such powerful men, through gifts or merely by spending time around the patron – a practice known as *chakari* – is seen as essential.⁶⁹ Currying favor of the notables, in turn, is regarded as critical for the success of even everyday transactions. By and large, people are not used to demanding accountability from their leaders.

The Regional Context

Comprehending Nepal's geostrategic context also is important for understanding governance and criminality in the country. Increasingly, Nepal is the subject of geostrategic competition between India and China.⁷⁰ For decades, India's role has been dominant, and India still adopts the attitude of a rather heavy-handed big brother toward Nepal with a strong say in Nepal's internal and external policies. For the past two decades and especially after the end of the civil war, however, China's presence in Nepal has been growing steadily, and so has its leverage. With the exception of the Tibet issue, China still mostly chooses to exercise its influence in Nepal, in 2012 underpinned by a three-year US\$ 1.18 billion aid package, in more subtle ways than India.⁷¹

Previously, all of Nepal's externally-executed construction projects went to Indian firms, but China recently has been

69. For details, including about other informal processes perpetuating clientelism and inequality, see: Dor Bahadur Bista (1991). *Fatalism and Development: Nepal's Struggle for Modernization*. Orient Blackswan.

70. See, for example, Rajeev Ranjan Chaturvedy and David Malone (2012). "A Yam between Two Boulders: Nepal's Foreign Policy Caught between India and China," in von Einsiedel and Malone, eds., *Nepal in Transition*. Cambridge: Cambridge University Press. (pp. 287-312) and Jha, Prashant (2012). "A Nepali Perspective on International Involvement in Nepal," in von Einsiedel and Malone, eds., *Nepal in Transition*. Cambridge: Cambridge University Press. (pp. 332-360)

71. See, for example: "Calling the Shots: Chinese Influence in Nepal's Grows," *The Economist*, March 17, 2012; and Edward Wong, "China Makes Inroads in Nepal, Stemming Tibetan Presence," *New York Times*, April 14, 2013.

able to win an increasing number of tenders. China has also provided money to the Nepali Army, the police, and various political parties – like India, seeking to cultivate friends among a spectrum of Nepal's internal actors. It has even declared that it would consider any violation of Nepal's sovereignty as a violation of its own.⁷² That statement was directed as much at India as at the West, and particularly the United States, which, Beijing fears, regards Nepal as another bulwark against the growth and projection of China's power.

China is also strongly focused on the situation of Tibetan refugees in Nepal, resents Nepali support for them, and worries that Western countries could try to mobilize the Tibetan exiles in Nepal as a fifth column against China. Under Nepal's laws, Tibetan refugees cannot obtain citizenship in Nepal, and their access to jobs and education, as well as government services, is restricted; but widespread corruption within Nepal's police allows at least some Tibetans to evade the restrictions and illegally procure citizenship documents.⁷³ This corruption, as well as pressure on local law enforcement officials exerted by the Sherpa and other Buddhist communities in the areas bordering China, allows Tibetan expatriates to circumvent their lack of refugee-status papers and avoid deportation.⁷⁴ Over the past year, however, China has become more effective at exerting political pressure on the Nepali state and local institutions to restrict activities of the Tibetan community in Nepal— influencing the Nepalese police to more frequently detain Tibetans during anti-China protests in Kathmandu, imposing limits on pro-Tibetan celebration, tightening the border to reduce the flow of Tibetan refugees to China (indirectly pushing smugglers' fees to US\$ 5,000 per person, and preventing some 5,000 Tibetan refugees in Nepal to leave for the United States where they would have been granted asylum).⁷⁵ China has also been uncomfortable with the creation of strong, autonomous states within Nepal, particularly along ethnic

72. Chitra Bahadur K. C., "Nepal: China stands in favor of our national independence, sovereignty," *Telegraph Nepal*, August 28, 2012

73. Author's interviews with businessmen, Buddhist monks, and community leaders, Solukhumbu district, May 14, 2012, and with members of the Sherpa and Tibetan communities, Solukhumbu district, May 14 and 15, 2012.

74. Author's interviews with Nepal Army and police officials, Solukhumbu district, May 14, 2012, and with members of the Sherpa and Tibetan communities, Solukhumbu district, May 14 and 15, 2012.

75. Wong (2013).

lines, believing such an institutional structure would undermine its control of “anti-China” activity in Nepal.⁷⁶

Nonetheless, despite the growing role of China in Nepal and despite vociferous and widespread resentment against India’s intrusion into its affairs, Nepal’s cultural affinity to India is thick and the historic connections between the two countries are deep. Religiously, culturally, and linguistically, its bonds with India are far stronger than those with China. In the border areas of the Terai, complex familial links span the border and Nepali patronage networks extend into the Bihar and Uttar Pradesh state governments. Geography – namely, an easily-crossed open border with India, but a difficult mountainous barrier separating Nepal from China – also privileges Nepal’s interactions with India. Although it originally supported the emergence of an identity-based form of federalism in Nepal, India has apparently become less enthusiastic about it, viewing the polarized political competition, government paralysis and paucity of good governance in Nepal as potentially generating negative spillovers, including violence, into India.⁷⁷

Being the principal exporter of goods to Nepal, India also maintains strong economic relations with the country. Some Nepali politicians have come to see the highly asymmetrical economic relationship as problematic dominance by India. The Bilateral Investment Protection and Promotion Agreement (BIPPA) which the Nepali Maoist government signed with India in 2011 was widely criticized within Nepal as ceding too much of Nepal’s national interest to India, giving India unrestricted access to Nepal’s airspace, for example, and by failing to restrict the practice of Indian investors in Nepal to bring over their own skilled workers instead of hiring Nepalis.⁷⁸

All that said, various Nepali political actors, including the Maoists, have grown rather skillful in playing China against India and extracting aid and rents from both countries. In fact, Nepal’s political leaders tend to be highly focused on, and often exaggerate, the importance of Nepal to the outcome of the geostrategic competition among India, China, and the West. At the same time, they often consider

Nepal a victim of a difficult regional neighborhood and use that analysis as an excuse for their inability to deliver better governance.⁷⁹ This combination of a sense of both impotence and importance also leads them to believe that they do not need to yield to external – principally Western – pressures to improve governance. Thus despite the political stalemate in the country, relations between the United States and the Maoist government improved in 2012: in September, the United States revoked its designation of the Maoist UCNP(M) as a terrorist organization and removed it from the Terrorism Exclusion List.⁸⁰ The Peace Corps also resumed its presence and activities in Nepal.

79. Author’s interviews with leaders of all four main political parties in Nepal as well as members of the bureaucratic establishment, Kathmandu, May 14, 17, 29, and 30, 2012.

80. Jo Biddle, “US Strikes Nepal Maoists from Terror Blacklist,” *Agence France-Presse*, September 6, 2012.

76. International Crisis Group (August 2012a). (p.27).

77. *Ibid.*

78. For some of the criticism, see, for example, “BIPPA Should Be Corrected as It Is Not in National Interest: Narayan Kaji,” *NepalNews.com*, July 23, 2012. Available at: <http://www.nepalnews.com/archive/2012/jul/jul23/news10.php>.

II. The Nature and Scope of Organized Crime in Nepal

Crime in Support of Domestic Political Contestation

The nexus between crime and political parties in Nepal has been thickening and few political parties in Nepal are immune to using criminal groups for political purposes. In order to demonstrate street power via *bandhs*, political parties hire criminal groups to recruit young men to staff the barricades. Many of those recruited demonstrate at the *bandhs* as much for immediate material payoffs, such as a few hundred rupees or meat meal, as for their political beliefs and aspirations. The squatter and urban slum communities, in particular, represent prime targets for such *bandh* recruitment by criminal groups, but in exchange for such handouts political parties also bus rural residents to strike areas. Some political actors, such as *janajati* groups and youth wings of political parties, have openly called for violence and attacked journalists.

Youth wings of political parties, such as the Young Communist League (YCL) of the UCPN(Maoist), often engage in a variety of criminal activities. They extort businesses for “contributions” to the political parties, secure public tenders (such as construction projects) for their network of clients and party-supported contractors, and create an atmosphere of threat and insecurity to obtain votes and decision-making outcomes favorable to their interests.⁸¹ For many poor, these armed youth wings are a form of employment as well as a mechanism of patronage access.

Increasingly, however, the parties’ control over violence and the threat of violence, such as at the *bandhs*, has been weakening. The higher emotions and expectations among mobilized populations run, the more politicians risk losing control of the streets – even while utilizing criminal groups to mobilize the street. As a Nepal academic put it, “[a]ll political parties now have muscle power for threat, but

81. Author’s interviews with businessmen in Kathmandu, Bharatpur, Nepalganj, and Pokhara, May 2012. See also: Carter Center (2011). *Clashes between Political Party Youth Wings Have Decreased but YCL and UML Youth Force Continue to Seek Financial Gain*, February 28, 2011. Available at: http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf.

the Maoists have coordination and discipline.”⁸² But even discipline with the rump Maoist party may be slipping, with protests by the YCL and Nepali Congress and UML supporters repeatedly escalating into violence over recent months, such as in January 2013 in the Kavrepalanchok district.⁸³

Finances of political parties are not transparent. The Maoists were pioneers in Nepal in using criminal activities in support of political objectives, including by augmenting financing. During the civil war, they taxed illegal logging in areas of their operations. After the end of the civil war, they came to directly participate in illegal logging in regions around cantonments that housed their ex-combatants. Large-scale areas near the cantonments were deforested, and the Maoist ex-combatants operated several sawmills within the camps, selling the processed timber to local merchants.⁸⁴ Economic necessity – namely, an alleged usurpation of the combatants’ salaries by the Maoist party headquarters⁸⁵ – may have intensified the scale of the illegal logging, while the broader local community had few means to oppose the deforestation.

During the war, the Maoists also taxed cannabis fields in Nepal.⁸⁶ But because of the small scale of cultivation, their profits from the drug trade were nowhere close to the drug profits of the Taliban in Afghanistan or the Revolutionary Armed Forces (FARC) or the United Self-Defense Forces (AUC) of Colombia. Since cannabis eradication has also been limited, the Maoists were also not able to obtain anywhere near the level of political capital from their sponsorship of the illicit crop cultivation that many other insurgent groups have been able to.⁸⁷

Collection and international trade in *yarchagumba* – a form of caterpillar fungus scientifically known as *ophiocordyceps sinensis* – was also a significant part of fundraising for the Maoist insurgency. Used in Traditional

82. Author’s interview, Kathmandu, May 29, 2012.

83. “Dozens Injured in Clash between Maoists, Anti-government Protesters in Nepal,” BBC, January 30, 2013.

84. Author’s interviews with a high-level Nepal officials in charge of the cantonment oversight and Maoists integration into the Nepal Army, Kathmandu, May 12, 2012.

85. See, for example: International Crisis Group (2011d). *Nepal’s Peace Process: The Endgame Nears*, Asia Briefing No. 131, December 13, 2011.

86. Author’s interviews with former top-level Nepali counter-narcotics official, Kathmandu, May 12, 2012.

87. For details, see: Vanda Felbab-Brown (2009a). *Shooting Up: Counterinsurgency and the War on Drugs*. Washington, DC: The Brookings Institution.

Chinese Medicine (TCM) and traditional Tibetan medicine and viewed as a potent aphrodisiac and cure for a variety of ailments, including cancer, *yarchagumba* was (and continues to be) highly profitable. It constituted such a substantial portion of the Maoist insurgents' funding that the Nepali Army devoted significant resources to push the Maoists out of the subalpine grasslands around Dolpo in Karnali district and Darchula in Mahakali district where the caterpillar fungus is found.⁸⁸ Despite the fact that collection of *yarchagumba* was legalized in Nepal in 2001 (and hence its proceeds were turned from illicit in the first part of the civil war to licit in the second part), the Maoists were not cut out from the now legal trade and continued to derive significant profits from it. (Obviously, they never had a harvesting permit or paid taxes during the civil war).⁸⁹ Even after legalization and the end of the civil war, the price of *yarchagumba* has continued to rise dramatically, increasing from 30,000-60,000 Nepali Rupees (NR) per kilogram in 2004 to 350,000-450,000 NR in 2010.⁹⁰ The increase in the commodity's value has generated new inter-village conflict over access to the grasslands in recent years, with feuding local villagers killed on several occasions.

During the civil war, the Maoists also seized a great deal of land – with the ostensible purpose of redistributing it among the poor. They have since returned some of this land, but still hold or have sold the rest. Land administration is widely perceived as one of the most corrupt institutions in Nepal,⁹¹ and land speculation abounds, with prices of land rapidly increasing in many urban areas as a result of urbanization, decreased violence, and nefarious land sale practices.⁹² At the same time, unlike in many post-conflict and post-authoritarian countries, Nepal's existing land cadaster seems to have a great degree of acceptance among the population and disputes over titles do not appear to be very prevalent at the village level – at least in the districts visited by Dr. Felbab-Brown – in

comparison with places such as Afghanistan, Guatemala, or Colombia.⁹³ At least on the basis of the several dozen interviews the researcher was able to conduct on the issue during her fieldwork, the acceptance of the cadaster and land titles also appears to be greater even than in India. If this finding of the study is indeed robust (and further, more extensive research on the issue needs to be undertaken, as the finding was unexpected), development and governance efforts in Nepal may face lesser difficulties in overcoming what frequently is a key source of criminality and underdevelopment in much of the developing, post-conflict world, i.e., the absence of clear and accepted land titles.

Whatever the extant legitimacy of the land registry, even accepted titles do not solve the problem of landless people, of which there are many in Nepal – in both urban and rural places. Many were displaced by the civil war; some lacked titles even before the war. Others moved to urban slums such as in Kathmandu in search of better economic opportunities. Under Nepal's caste system, which continues to treat certain groups as subservient, many people have been tilling private land for a distant owner and now are now demanding compensation in the form of titles. In other cases, landless people might have been farming and improving public or private lands for years with *de facto* agreement from land owners. In several districts of the Terai, for example, a land use system called *ukhada* ("displaced") was practiced: The tillers would have no formal contact with the owner and could be expelled at any time, but paid rents to the absentee landlord, in addition to providing labor to the landlord when required. Many of such landless people have come to demand a transfer of the land, often through aggressive protests exploited by political parties.⁹⁴

Deep and wide grievances about land distribution in Nepal thus persist. In 2011, the Nepal government established a Squatters Problem Resolution Commission to identify squatters and distribute ID cards and land ownership documents in some 25 districts across Nepal. Given the

88. Nabin Baral and Joel Heinen (2006). "The Maoists People's War and Conservation in Nepal," *Politics and the Life Sciences*, 24. (pp. 2-11)

89. The fact that a commodity is illegal and that law enforcement actions are being taken to stop trade in that commodity artificially inflates the price of the commodity – the so-called crime tax. Legalization eliminates this crime tax.

90. Daniel Winkler (2008). "The Mushrooming Fungi Market in Tibet Exemplified by *Cordyceps Sinensis* and *Tricholoma Matsutake*," *Journal of the International Association of Tibetan Studies*, 4, December 2008. (pp. 1-47)

91. Transparency International, Household Survey on Corruption 1999.

92. Author's interviews with real estate agents and other businessmen in Kathmandu, Pokhara, Nepalganj, and Bharatpur, May 2012.

93. Author's interviews with small and large landowners, businessmen, and real estate agents in urban and village areas of the Chitwan, Banke, Bardia, Kavrepalanchok, Kaski, and Solukhumbu districts.

94. For such protests in the Rupandehi and Nawalparasi districts in 2012, see United Nations Resident and Humanitarian Coordinator's Office Nepal (December 2012). *Monthly Bulletins* – December 2012. Available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal%20Monthly%20Update%20-%20December%202012.pdf>.

land distribution issue is inevitably conflict- and delay-prone even when the national and local governments actually function (which has only sporadically been the case in Nepal since 2011), much of the work of the Commission remains yet to be undertaken.

Madhesi political parties also cultivate particularly strong relations with criminal groups in the troubled and neglected Terai region, where state presence is often minimal and where approximately half of Nepal's population of 26 million live. Between 2005 and 2009, many Madhesi armed groups proliferated in the region, and at their peak in 2008 numbered over one hundred.⁹⁵ (Some of the groups, however, only had membership in single digits).⁹⁶ Drawing clear distinctions between politically-motivated Madhesi armed groups and criminal groups who wrap themselves in the mantle of Madhesi political mobilization is very difficult, as both resort to extortion, cross-border smuggling, and robberies,⁹⁷ and neither is particularly engaged in the delivery of "public" goods or socioeconomic services to the local population.⁹⁸

Over the past two years, many of the Madhesi armed groups disintegrated and much of the violence perpetrated by them fizzled out. Some security experts estimate that only a few groups now remain active in the Terai.⁹⁹ Several factors contributed to this outcome: first, many businessmen have moved out of rural (and in some cases even urban) Terai to Kathmandu to escape extortion, reducing extortion payoffs in the Terai.¹⁰⁰ (Extortion of the business community by political parties in Kathmandu is also highly prevalent.) Second, many of the armed groups were never organizationally strong. Third, according to some experts, the strengthening of the law enforcement presence in the Terai since 2010 helped hamper the

95. For details on their emergence and growth, see: Interdisciplinary Analysts (2011). Nepal Madhes Foundation, Small Arms Survey, and Safer World, *Armed Violence in the Terai*, August 2011.

96. For a background on these armed groups, see: International Crisis Group (2007). *Nepal's Troubled Terai Region*, Asia Report No. 136, July 9, 2007.

97. For the effect of armed groups in the Terai on citizens' security, see: Bharadwaj, Narad; Dhungana, Shiva; and Hicks, Natalie (2012). *Nepal at a Crossroads: The Nexus between Human Security and Renewed Conflict in Rural Nepal*. Available at: <http://ebookbrowse.com/nepal-at-a-crossroads-the-nexus-between-human-security-and-renewed-conflict-in-rural-nepal-pdf-d151400592>.

98. Author's interviews with Nepal Army and police officers, businessmen, NGO representatives, political party representatives, and rural residents in Bardia, Banke, and Chitwan districts, May 17-20 and 24-28, 2012.

99. Author's interviews with NGO, think tanks, and police security experts on the Terai, Kathmandu, May 29 and 30, 2012.

100. Author's interviews with businessmen in Bardia, Banke, and Chitwan districts, May 17-20 and 24-28, 2012.

operations of the Madhesi armed groups.¹⁰¹ Within the framework of a Special Security Plan, Nepal's Armed Police Force has been deployed to eighteen districts along the border, allegedly making it more difficult for Madhesi armed groups to use India's Bihar and Uttar Pradesh states as safe-havens. Yet it would be incorrect, if not contradictory, to draw the conclusion that the approximately 1,800 km-long open border between India and Nepal has come under government control.

In addition to the increase in the number of law enforcement officials deployed to the border areas of the Terai, the government's Special Security Plan also augmented the number of police checkpoints on roads connecting the Terai and India, and intensified the frequency of police searches of cars with Indian license plates, thus at least temporarily complicating smuggling operations and perhaps reducing arms flows from India. At times and in particular areas of the Terai, increased law enforcement has hampered smuggling – often negatively impacting the livelihoods of poor populations in the Terai dependent on smuggling of various licit and illicit goods for subsistence.¹⁰² In other cases, augmented law enforcement has only increased the corruption premium demanded by law enforcement officers from smugglers.

A reduction in violence in the Terai is also believed to stem from the fact that the substantially increased political power and visibility of Madhesi political parties at the national level has reduced their need to resort to the type of violence previously perpetrated by the Madhesi armed groups. (Nonetheless, the Madhesi parties still need muscle power for the organization of *bandhs* and the collection of "contributions.") The government of Nepal has engaged in direct negotiations with some Madhesi armed groups, a development enabled by the presence of the United Democratic Madhesi Front (Madhesi Morcha) in the coalition government.

The overall sense among those interviewed for the study in the Terai and among experts interviewed in Kathmandu is that extortion and abduction rates in the region

101. Author's interviews with NGO, think tanks, and police security experts on the Terai, Kathmandu, May 29 and 30, 2012.

102. Author's interviews with NGO representatives and poor Nepalis in urban and rural areas of Bardia, Banke, and Chitwan districts, May 17-20 and 24-28, 2012.

declined between 2010 and 2012. (The police do not have – or are not willing to release – any actual concrete data, and thus those assessments by both army and police officers and citizens in the Terai are mostly atmospheric.)¹⁰³ These reductions in certain types of political violence and criminal rates in the Terai do not, however, imply that a climate of fear in the Terai, particularly among vulnerable segments of the population, has been eliminated. Many urban and rural residents still believe that in order to assure their safety and secure their everyday transactions, they need to provide payoffs to and engage in complex negotiations with powerful local actors, whether local strongmen or armed criminal gangs. Such a climate of fear, in part the result of the escalating *bandhs*, is increasing in other parts of Nepal, including in the Pahari (Nepal's mid-hill) areas.

Crime linked to political actors also includes various *financial scams*, shell companies, and fake loans that politicians and government officials never intend to repay.¹⁰⁴ Nepal lacks even elementary oversight of its banking sector, with due-diligence, know-your-customer, and disclosure rules nonexistent either on paper or in practice. A law criminalizing money laundering has yet to be adopted.¹⁰⁵ The risk of Ponzi and similar schemes to defraud the population or launder illicit proceeds via the former banking sector remains high. In fact, even the well-known microcredit Grameen Bank judged that it was not able to create a successful program in Nepal due to corruption and pressure from high-level officials to receive kickbacks.¹⁰⁶

External Organized Crime Groups and Terrorist Organizations Impacting Governance in Nepal

The porous border between India and Nepal, the fact that Indian and Nepali nationals do not need a passport to cross the border, and the difficulties in physically distinguishing who is Indian or Nepali not only facilitate smuggling, but

also enable the existence of safe-havens for terrorist and other armed groups on both sides of the demarcation line. The Indian government has long complained that terrorist groups such as Lashkar-e-Taiba, Harakat-ul-Mujahideen and Harakat-ul-Jihad-ul-Islami use the cities of Nepalganj and Birgunj for planning, financing, and recruitment to conduct terrorist operations in India.¹⁰⁷ Interviews among the Muslim community in Nepalganj suggested that radicalization of the Muslim population was taking place to some extent and that at least some mullahs were preaching violent jihad and possibly facilitating recruitment for terrorist groups.¹⁰⁸ Although anti-Indian terrorist activities originating in Nepal do not necessarily directly affect Nepalis, the broader atmosphere of fear and communal tensions that criminal- terrorist networks stir up in border areas have a dramatically negative effect on the human security of the Terai population.

Radicalization in turn increases stigmatization of the Muslim community and intensifies ethnic tensions with the Hindu community. Nepal expert Jason Miklian, for example, argues that a major Terai businessman and smuggler, Hamid Ansari,¹⁰⁹ would regularly play up Hindu-Muslim communal tensions, with major negative impact on local governance and ethnic equality, to cultivate political cover for his criminal enterprises, secure impunity for himself, and mask his turf war against Hindu criminal groups as Hindu-Muslim communal violence.¹¹⁰

Having long defined counterfeit currency rackets with Indian rupees as a national security threat, India regularly accuses Pakistan of being behind or exploiting the extensive counterfeiting networks that span the India-Nepal border. New Delhi alleges that Pakistan's intelligence services use the Indian currency counterfeit networks to fund terrorist groups like Lashkar-e-Taiba and conduct

103. Author's interviews with Nepal Army and police officers, businessmen, NGO representatives, political party representatives, and rural residents in Bardia, Banke, Kavrepalanchok, and Chitwan districts, May 17-20 and 24-28, 2012.

104. For details, see: Jason Miklian (2009a). "Illicit Trading in Nepal: Fueling South Asian Terrorism," *PRO South Asia Briefing Paper #3*. (pp. 8 and 13)

105. Author's interviews with former Nepal Supreme Court justice and former police superintendent, Kathmandu, May 10 and 12, 2012. See also: Asia-Pacific Group on Moneylaundering (2005). *Nepal Mutual Evaluation: Executive Summary*. Available at: <http://www.apgml.org/documents/docs/8/Nepal%20MER%20Executive%20Summary.pdf> (pp. 1-6)

106. Miklian (2009a) (pp. 16)

107. See, for example: Farzand Ahmed (2000). "Wake-Up Call," *India Today*, June 19, 2000; and "Nepal Refuses India Plea to Intercept Calls to Track Pakistan-based Militants," BBC, January 12, 2012. After the 2008 Mumbai attacks, two men implicated in the attacks – Aslam Ansari and Nasim Ansari – were arrested in Birgunj by Nepali police under pressure from Interpol and Indian intelligence services for their role in funding the Mumbai attacks. See: "Terror-Funding Pak Kingpin in Nepal Police Net," Times of India, December 21, 2008; and: "Nepal Nabs Fake Money Kingpin," *Telegraph India*, December 21, 2008. According to author's interviews with police officials in Kathmandu and Nepalganj on May 12 and 28, 2012, Dawood Ibrahim, another Indian criminal don implicated in the Mumbai attacks, is also widely believed to have used Nepal for his criminal and possibly terrorist activities.

108. Author's interviews with Muslim NGO representatives and Muslim community members, Nepalganj, May 25, 2012.

109. Hamid Ansari avoided arrest as a result of his political connections and network of corrupt police officials.

110. Miklian (2009a). (pp. 5)

asymmetric warfare against India.¹¹¹ Two prominent Nepali media magnates, Yunus Ansari and Jamim Shah, were alleged to be part of a currency trafficking network run by Dawood Ibrahim.¹¹² (Shah was murdered in 2010, allegedly by Babloo Shrivastava.) Ansari, the son of a former Nepali minister, was arrested in 2010 after being caught receiving 2.5 million in fake Indian currency from two Pakistani couriers.¹¹³ Former Nepali crown prince Paras Shah was also alleged to be part of the Dawood network, using his connections to assure that currency moved freely within Nepal.¹¹⁴ The counterfeiting of passports appears to be another growing illegal activity in Nepal, though it faces rather steep competition from Indian criminal groups and significant technological challenges, and is still less pervasive than counterfeit currency smuggling.¹¹⁵

India has also complained that Nepal's government has been meek in cracking down against other anti-Indian armed groups, such as the Naxalites who occasionally use the Terai as a safe-haven. In turn, the government of Nepal has periodically accused India of tolerating Madhesi armed and criminal groups using Indian territory as a safe-haven in order to cultivate support among Madhesi political actors for Indian interests. Some former and current Nepali police officials and army intelligence officers also believe that India has used Indian and Nepali criminals operating in Nepal, including big-time gangsters like Chheta Rajan and Babloo Shrivastava, to conduct clandestine operations. Among the most serious accusations is that Indian intelligence services used criminal groups operating in Nepal to carry out the 1989 assassination of Mirza Dilshad Beg, a Nepali Muslim member of parliament and chairman of the Muslim association whom India suspected of anti-Indian terrorist activities.¹¹⁶

Because no extradition treaty exists between India and Nepal, police forces from both countries regularly and

111. Author's interviews with Indian government officials, Washington, DC, June 20, 2012.

112. Baburam Kharal (2010). "Prison Shooting: Yunus Ansari shot at in Central Jail," Kathmandu Post, Match 10, 2010. Available at: <http://www.ekantipur.com/the-kathmandu-post/2011/03/10/top-story/prison-shooting-yunus-ansari-shot-at-in-central-jail/219277.html>.

113. "Dawood's shadow lies over Nepal," *Times of India*, February 9, 2010. Available at: http://articles.timesofindia.indiatimes.com/2010-02-09/south-asia/28138689_1_fake-indian-currency-yunus-ansari-jamim-shah.

114. "Paras 'linked' to Dawood's currency racket," *Hindustan Times*, August 31, 2009. Available at: <http://www.hindustantimes.com/India-news/NewDelhi/Paras-linked-to-Dawood-s-currency-racket/Article1-448892.aspx>.

115. V. Narayan (2012). "Nepal Becoming Hub of Counterfeitors: Police," *The Times of India*, March 26, 2012.

116. Author's interviews with current and former top-level police officials and Nepal Army intelligence officers, Kathmandu, May 10, 12, and 29, 2012 and local police officers, Nepalgunj, May 28th, 2012.

informally cross the border to capture criminals. At times there is tacit cooperation in such raids; at other times the raids can escalate into significant bilateral incidents. Yet it is also important to note that India has provided training for Nepal's police forces, and there are complex networks and complicated relations between the police forces of the two countries. Recently, China too has started providing training for Nepal's police forces, as part of its lobbying to encourage the Nepali police and Home Ministry to crack down on Tibetan expatriates in Nepal.

While Indian criminal groups in Nepal at times behave brazenly, the activities of Chinese criminal groups in the country are more hidden. The presence of Chinese organized crime in Nepal has also been considerably smaller than that of Indian organized crime. Yet Nepali police officers and Army intelligence officers believe that the presence of Chinese criminal activities in Nepal is growing – not just in its traditional activities of wildlife and timber smuggling, but also in human trafficking and mineral smuggling. Border areas such as Dolpo, where Chinese-funded tourism businesses and construction are expanding, are also believed to serve as money-laundering opportunities for Chinese criminal and business networks.¹¹⁷

"Economic" Crimes

Nepal's criminal landscape is fortunately still at a rather primitive stage in organized crime formation. Criminal groups, even notorious ones such as the Milan Gurung and Dinesh Adhikari gangs, tend to be mostly small organizations, rather than highly complex – whether hierarchical or networked – operations. They appear to reach nowhere near the level of sophistication and organizational complexity that criminal groups operating in India or Pakistan, for example, have.

The level of violence the Nepali criminal groups perpetrate in support of their profit-seeking activities is also fairly limited, when compared with criminal organizations in other parts of the world, such as Colombia or Mexico. One reason for the limited level of this type of criminal violence

117. Author's interviews with current and former top-level police officials and Nepal Army intelligence officers, Kathmandu, May 10, 12, and 29, 2012.

may well be that it is easy to exercise corruption in Nepal, and even limited coercive threats achieve their desired effects, including impunity. Nepali criminal groups have been able to cultivate networks of political support at the highest levels of law enforcement institutions and at the top level of political parties. The former Home Minister Bijay Kumar Gacchadar, for example, was accused of protecting the criminal don Ganesh Lama.¹¹⁸ Overall, Nepal's pervasive culture of corruption, nepotism, impunity, and politicization provides an easy operating environment for criminal groups. Paradoxically, more effective law enforcement and prosecution of criminal groups may, at least initially, provide an impetus for criminal groups to resort to intensified violence.

Although Nepal's crime for profit can be characterized as "economic" in order to distinguish it from the previously-discussed crime in support of political objectives, even economic crime can have political effects. Such political effects of "economic" crime can be acutely felt with respect to the allegiance of local populations toward the state and local governance overall.¹¹⁹ Yet one of the most striking characteristics of criminal groups in Nepal is their failure to provide "public" goods and socio-economic services to local populations in their areas of operation. From the urban centers of Sicily and small villages in Ghana to Karachi's slums and Rio de Janeiro's favelas, criminal groups frequently provide a variety of "public" goods and socio-economic service: They regulate the level of criminal violence, provide dispute resolution and informal adjudication mechanisms, and deliver clinics, schools, the pavement of roads, or at minimum distribute small handouts to secure the support of local populations.¹²⁰ Yet during the research conducted in Kathmandu and Kavrepalanchok, Kaski, Bardia, Banke, Chitwan, and Solukhumbu districts, only one criminal group was identified to engage in any kind of public or socio-economic goods distribution or any other efforts to cultivate support among local populations. The one exception was the Lali Guras group in Pokhara, which has distributed some of its profits from local drug sales and extortion of real estate businesses among the poor

118. "Dangerous Hands: Gangsters in Nepal," *Kathmandu Post*, April 04, 2012.

119. For more conceptual background, see: Felbab-Brown, Vanda (2011b). "Human Security and Crime in Latin America: The Political Capital and Political Impact of Criminal Groups and Belligerents Involved in Illicit Economies," FIU/WHEMSAC, September 2011.

120. For details, see: *ibid.*

of the city of Pokhara and the Kaski district. To strengthen its Robin Hood image, Lali Guras also organized a rather popular blood donation. In 2012, the group announced that it would cease its criminal activities and concentrate purely on social work.¹²¹ The growing political capital of Lali Guras has come to be seen as threatening by at least the local Maoist cadres in Pokhara, perhaps because both groups seek to curry favor with the local urban poor.¹²²

One possible reason why criminal groups in Nepal have not yet systematically learned that building political capital among local populations is highly advantageous is that they face little competition in anchoring themselves among the people from other non-state actors. During the civil war, the Maoist insurgents did provide alternative courts, for example, but they have ceased to do so after the civil war ended.¹²³ Apart from being the source of employment and patronage for its members, the youth wings of political parties do not systematically engage in the provision of public goods or even limited socio-economic benefits to local populations, even though they publicly emphasize their community service activities along with party development functions.¹²⁴ On occasion, the UCPN(Maoist)'s Young Communist League has undertaken some activities purported to curb local crime and social "evils" such as gambling and corruption.¹²⁵ Nonetheless, the level of such "public good" activities by the youth wings remains quite limited. Moreover, as in the case of restraining their own use of violence, criminal groups in Nepal perhaps assess that there is little need for costly investment in cultivating political capital among local populations if they already have easy and secure access to key politicians and law enforcement and justice officials.

Nor have criminal groups in Nepal yet congealed into systematically controlling property or providing contract enforcement.¹²⁶ Even as they at times mediate the interface

121. Author's interviews with a prominent Pokhara journalist, May 22, 2012.

122. Author's interviews with a Maoist party leader for the Kaski district, Pokhara, May 23, 2012.

123. For details on Maoist mobilization during the civil war, see Bharadwaj et al (2012).

124. Carter Center (2011). (pp. 8-14)

125. *Ibid.* (pp. 9)

126. For conceptual background, see: Diego Gambetta (1993). *The Sicilian Mafia: The Business of Private Protection* Cambridge: Harvard University Press. See also: Jean-Francois Bayart; Stephen Ellis; and Beatrice Hibou (1999). *Criminalization of the African State*. Oxford: James Currey. See also: Enrique Desmond Arias (2010). "Understanding Criminal Networks, Political Order, and Politics in Latin America," in Clunlan and Trinkunas, eds., *Un governed Spaces: Alternatives to State Authority in an Era of Softened Sovereignty*. Stanford: Stanford University Press.

between local illicit markets and transnational illicit flows, they continue to compete for and intermesh with the armed youth wings of political parties for local control of coercion.

Extortion, Contract Wars, and Tax Evasion

Distinguishing extortion of businesses on behalf of political parties from extortion in which the proceeds are kept by criminal groups is very difficult in Nepal. One reason is that apart from using their youth wings to collect the “contributions,” political parties also use criminal groups for the same purpose. Nonetheless, businessmen interviewed in Kathmandu, Pokhara, Bharatpur, and Nepalganj overwhelmingly claimed that the vast majority of extortion they face was extortion on behalf of political parties.¹²⁷ Most believed that the police were doing little to tackle such extortion, though exceptions were reported in Nepalganj where the district police chief was seen as having reduced the pervasiveness of extortion by cracking down on criminal groups in the city.¹²⁸ The success of the crackdown in Nepalganj was attributed to the fact that the police chief resisted corruption and decided to act on existing intelligence, in contrast to previous Banke police chiefs who allegedly had known who the extortionists were but chose not to close their eyes to the problem.¹²⁹ Similarly in Kathmandu, there was a perception that extortion at least temporarily declined in response to periodic police actions against the extortion rings.¹³⁰

Nonetheless, police actions against extortion in Nepal remain sporadic at best. Nepal still lacks both anti-extortion and anti-kidnapping laws as well as specialized units for responding to such types of crime. Police and prosecutors do not have effective tools to bring extortion cases to successful prosecution in courts. Some businessmen reported having knowledge of other businessmen who had sought to acquire arms or hire private security companies to protect themselves from extortion, but such countermeasures appeared far less common than simply paying up.

127. Author's interviews in the above named cities, May 2012.

128. Author's interviews with businessmen and NGO representatives, Nepalganj, May 24 and 25, 2012.

129. Author's interview with a well-placed source, Nepalganj, May 28, 2012.

130. See also: “Extortion Threat on the Decline,” *Himalayan Times*, February 9, 2011.

Apart from political cronyism that makes operating businesses difficult for those who do not pay their “political” dues, one reason for yielding to extortion may well be that the level of payoffs was not reported to be crippling. Businessmen complained with equal chagrin about the need to pay bribes to government officials to secure permits, licenses, and contracts. Several interviewees also alleged that business rivals were using criminal groups to establish local monopolies and push economic competition out of business. Yet the level and violence of such criminal contract wars did not appear to reach the scale of such nefarious activities in India, Pakistan, or Afghanistan, for example. A more frequent mechanism in Nepal seemed to be reliance on political patronage or on youth wings of political friends to secure monopolistic tenders for business operations.

Tax evasion and under-invoicing were acknowledged to be very common. While the post-2008 Maoist government was perceived to be more effective in collecting taxes than its predecessors,¹³¹ its tax intake also benefited from increased remittances from Nepalis abroad. The remittances in turn boosted taxable purchases in Nepal, including imports. Many interviewed businessmen noted that Kathmandu has little monitoring capacity to effectively assess the revenues of a business and that business owners largely declare what they want and pay an income tax of their choosing. The inability of the state to effectively collect taxes, of course, not only diminishes the state’s resources, but also decreases incentives for the business community to demand greater transparency and accountability, better support for businesses, and lesser red tape from the state.

Compared to other illegal economies in Nepal, automobile smuggling generates less significant threats to public safety, economic development, human security, and Nepal’s ecosystems than other illicit economies analyzed in this report. Nonetheless, along with the smuggling of many other legal goods, it does reduce state revenues. Thousands of cars and motorcycles are stolen yearly in India and smuggled into Nepal. In one high-profile case, a Nepali film producer Ganga Bahadur Bhandari sold

131. See, for example: Suman Lamichhane (2009). “End the Culture of Impunity: Interview with William S. Martin, Political/Economic Chief of the Embassy of the United States in Nepal,” *The Boss*, July 14-August 14, 2009.

in Nepal up to 4,000 cars stolen from India, mostly New Delhi.¹³² Bhandari functioned as a contact point for several gangs of carjackers.¹³³ Similarly, around 5,000 motorcycles a year are pilfered in India, many of them in Uttar Pradesh, and smuggled into Nepal principally via the Rupaihdiya crossing. Nepali Maoists appear to be a major customer for the stolen vehicles, reportedly paying NR 25,000 for a 150cc motorcycle.¹³⁴ After a deal is struck, the Indian thief changes the license plates and hires others to drive the pilfered conveyance across to Nepal.¹³⁵ The smuggling thus also supports an illegal economy in fake or stolen license plates.

Drug Smuggling

Since the 1960s, when Nepal's supply of hashish attracted droves of Westerners, Nepal has been a transshipment country for narcotic drugs, especially opiates and methamphetamines produced in South and Southeast Asia. Seizures of opiates heading from Afghanistan and India to Europe and of methamphetamines heading from India to China or Europe regularly take place at Kathmandu airport.¹³⁶ Seizures of the illicit substances usually amount to single or double-digit kilograms.¹³⁷ In March 2012, the largest drug bust since 1991 led to the seizure of 105 kg of opium trafficked to Nepal and the arrests of some 630 traffickers.¹³⁸

That success notwithstanding, there are good reasons to doubt the capacity of Nepal's police to run Western-style interdiction operations that collect intelligence on drug networks over many months and that are able to arrest hundreds of operatives of a drug trafficking organization in one sweep. More often than not, counter-narcotics operations undertaken by Nepal's police are

wide-cast dragnets that round up vulnerable members of the population in the hope of obtaining incriminating evidence through interrogation, rather than arrests executed on the basis of preexisting evidence.

Drug trafficking groups in Nepal appear to lack substantial vertical integration. Rather than being dominated by several Mexico-like large-scale franchises, such as the Sinaloa and Juarez cartels, drug smuggling in Nepal appears to be conducted by many small groups whose individual power over Nepal's drug market is limited. One likely implication of such criminal market structure is that if more systematic and enhanced interdiction operations were undertaken in Nepal, they could inadvertently contribute to a substantial vertical integration of drug trafficking there. Such an inadvertent process of law enforcement encouraging vertical integration of smuggling groups is a frequent phenomenon, recently experienced in Afghanistan, for example, since law enforcement actions tend to eliminate first the weakest drug trafficking groups with the least capacity to corrupt and intimidate law enforcement and political actors. Preventing such undesirable outcomes requires that law enforcement agencies adopt a sophisticated interdiction strategy that privileges targeting the most violent groups or those with the greatest capacity to corrupt institutions or greatest proclivity to cooperate with terrorist groups first. In turn, such a targeting strategy requires both an extensive intelligence capacity and the ability to resist political pressures on the part of law enforcement and justice institutions.¹³⁹ Both requirements are likely to remain elusive in Nepal for a long time.

In addition to being a drug transshipment country, Nepal is also a producer of hashish, marijuana, and opium – with the Makwanpur, Bara, and Parsa districts in south-central Terai being important centers of cannabis and opium poppy cultivation. There is a paucity of serious data on the scale of illicit crop cultivation in Nepal: neither the United Nations Office on Drugs and Crime (UNODC) nor the U.S.

132. Dipankar Ghose (2011). "Nepal film producer arrested for running stolen car racket," *Indian Express*, December 3, 2011. Available at: <http://www.indianexpress.com/news/nepal-film-producer-arrested-for-running-stolen-car-racket/883496/>

133. Raj Shekhar (2011). "Cops Arrest thief who built an empire from stolen cars," *Times of India*, December 3, 2011. Available at: http://articles.timesofindia.indiatimes.com/2011-12-03/delhi/30471692_1_auto-lifters-auto-lifters-counterfeit-currency

134. Surendra Phuyal (2010). "Nepal Notebook: When Corruption Is Part of the Culture," February 25, 2010. Available at: <http://blog.com.np/2010/02/25/nepal-notebook-when-corruption-is-part-of-the-culture/>

135. Rajiv Srivastava (2011). "Stolen in UP, sold to Maoists in Nepal," *Times of India*, May 9, 2011. Available at: http://articles.timesofindia.indiatimes.com/2011-05-09/lucknow/29524890_1_maoists-nepalganj-vehicles

136. United Nations Office on Drugs and Crime (2011b) *World Drug Report 2011*. Available at: http://www.unodc.org/documents/data-and-analysis/WDR2011/World_Drug_Report_2011_ebook.pdf. (pp. 59, 189, 196, & 201)

137. See, for example: Ankit Adhikari (2012). "Nepal Could Be Hub for Drug Trafficking, Police Warn," *Kathmandu Post*, March 10, 2012.

138. "Nepal 'Fast Becoming a Hub for Drug Trafficking,'" *Gulf Times*, March 12, 2012.

139. For how such strategies have been operationalized around the world and could be operationalized in Mexico, for example, see: Vanda Felbab-Brown (February 2013a). *Focused Deterrence, Selective Targeting, Drug Trafficking and Organized crime: Concepts and practicalities: Modernizing Drug Law Enforcement Report No. 2*. International Drug Policy Consortium. February 2013. Available at: [http://www.brookings.edu/research/reports/2013/02/deterrence-drugs-crime-felbabbrown;_Mark_Kleiman_\(September/October_2011\).](http://www.brookings.edu/research/reports/2013/02/deterrence-drugs-crime-felbabbrown;_Mark_Kleiman_(September/October_2011).) (pp. 89-101); and Vanda Felbab-Brown, *Peña Nieto's Piñata: The Promise and Pitfalls of Mexico's New Security Policy against Organized Crime*. The Brookings Institution. February 2013(b).

State Department in its Annual Narcotics Control Strategy Report provide estimates of the level of cultivation. While the Nepali, and at times the international, press tend to treat drug production in Nepal with alarmist sensationalism,¹⁴⁰ the level of cultivation appears low both in terms of the overall global drug production and in comparison with levels of cultivation elsewhere in South and Southeast Asia. A former top-level Nepali counter-narcotics official estimated that annual cultivation of cannabis hovered around 1,800 hectares (ha) while annual cultivation of opium poppy, found in 25 villages, came to approximately 1,600 ha.¹⁴¹ Although a 2011 International Narcotics Control Board report stated that Nepal is the biggest producer of cannabis resin in South Asia,¹⁴² such ranking seems hardly justified in light of the fact that India's cannabis cultivation is estimated at 4,265 ha¹⁴³ and Afghanistan's between 9,000 and 29,000 ha.¹⁴⁴

As in the case of drug trafficking, drug production in Nepal still remains at a primitive stage with little processing into high-value products, such as heroin, taking place within Nepal. Indian traders seem to be the primary purchasers of Nepal's opium, paying Nepali farmers between US\$800 and US\$1,000 per kilogram of raw opium.¹⁴⁵

Nepal's cannabis and poppy farmers tend to be poor and struggle to compete in legal agricultural production. A collapse of the sugar cane industry around Birgunj, for example, encouraged farmers to switch to illicit crops. Such a move is facilitated by the presence of Indian opium traders in Nepal who often advance credit and seed to Nepali farmers to cultivate illicit crops.¹⁴⁶ A legal microcredit system is either altogether nonexistent or difficult to access for many rural Nepalis, increasing the likelihood that economic hardship could lead them to cultivate illicit crops.¹⁴⁷

140. Jason Overdorf (2010b). "Is Nepal the Next Afghanistan," Global Post, November 27, 2010; and Overdorf, Jason (2010a) "Four-fifths of Nepal's District's Arable Land Said Used for Marijuana, Opium," BBC Monitoring South Asia, February 17, 2010.

141. Author's interview, Kathmandu, May 12, 2012.

142. International Narcotics Control Board (2011). *Annual Report 2011*. Available at: http://www.incb.org/pdf/annual-report/2011/English/AR_2011_E_Chapter_III_Asia.pdf. (pp. 81).

143. UNODC (2011b). *World Drug Report 2011*. (pp. 189)

144. UNODC (2011a). 2010 *Afghanistan Cannabis Survey*, June 2011. Available at: http://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghanistan_Cannabis_Survey_Report_2010_smallwcover.pdf. (pp. 6-7)

145. See: Sunil Neupane (2011). "Illegal Opium Production in Nepal," *Asia Calling*, July 24, 2011. Available at: <http://asiacalling.kbr68.com/en/news/nepal/2125-illegal-opium-production-in-nepal>. See also: Overdorf (2010a).

146. Neupane (2011).

147. Author's interviews with farmers in Bardia and Banke districts, May 26-28, 2012.

Since the 1980s, when the United States sponsored eradication efforts in Nepal, limited eradication drives periodically take place.¹⁴⁸ The threat of eradication has at times forced farmers to switch to licit crops, such as rice, but as structural drivers of illicit crop cultivation persist, the sustainability of such periodic and localized disruptions of illicit crop cultivation remains minimal. Strikingly, Nepali armed actors – whether the Maoists during the civil war or the Madhesi armed groups after 2006 – have not systematically tried to offer their protection services to the illicit poppy farmers, like the Taliban in Afghanistan, the Shining Path in Peru, or the FARC in Colombia have successfully done. The limited scale of illicit crop cultivation likely is one reason. Another is the ease of corruption that allows farmers to avoid having their fields destroyed for a bribe: Only 35 hectares of opium poppy were eradicated in 2009 and perhaps as many as 270 ha, still a very low number, in 2010, for example.¹⁴⁹ The most vulnerable farmers – often the poorest in a village and hence least able to pay a bribe and those lacking political connections – have born the brunt of eradication.¹⁵⁰

Alternative livelihoods efforts have been minimal and inadequate in both scope and design. They have consisted mainly of information campaigns, failing to meaningfully address structural drivers of illicit crop cultivation, such as the absence of infrastructure and value-added chains for legal crops.¹⁵¹ Prices for rice and other subsistence crops also mostly remain significantly lower than for illicit crops. Development of effective alternative livelihoods strategies is hampered by the fact that Nepal's laws prohibit the export of food and agricultural products.

Illegal Logging and Timber Smuggling

Although illegal logging in Nepal reaches nowhere the level of industrialization and intensity of illegal logging in Indonesia, for example, its scale is nonetheless substantial.¹⁵² By some accounts, 30,000 ha of forest

148. For the evolution of Nepal's counternarcotics policies, see: Prabin Shrestha (2011). "Policy Initiatives for Drug Control in Nepal," *The Health*, 2(2). (pp. 66-68)

149. UNODC (2009). (pp. 59); and Overdorf (2010a).

150. Neupane (2011).

151. Rubeena Mahato (2011). "From Poppies to Paddy," *Nepali Times*, August 19, 2011.

152. For comparisons with Indonesia and other areas of illegal logging in the Asia-Pacific region, see: Vanda Felbab-Brown (2011c). *Not as Easy as Falling off a Log: The Illegal Logging Trade in the Asia-Pacific Region and Possible Mitigation Strategies*, Foreign Policy at Brookings, Working Paper No. 5, March 2011. Available at: <http://www.brookings.edu/~media/research/files/papers/2011/3/illegal%20logging%20>

were destroyed in 2010 alone.¹⁵³ A research survey by the conservation group Resources Himalaya, estimated that four trees were cut in the Terai region every twenty minutes.¹⁵⁴ Saal is the timber species primarily logged in the Terai, while various pine species are illegally cut in the Himalayas. The cut saal and pines are both consumed domestically and exported – in the north to China and in the Terai to India. The endangered and highly-prized sandalwood is also smuggled via Nepal from India to China.¹⁵⁵

Illegal logging in Nepal likely employs greater numbers of people than drug cultivation. The fairly high labor intensiveness of logging in Nepal can be partially explained by the fact that tree-cutting methods in Nepal can be somewhat archaic, with logs cut down by handsaw instead of chainsaw and removed from the forest by bullock carts. Nonetheless, sawmills are emerging in southern Terai near areas of particularly intense illegal logging, and a switch to chainsaw methods and hence rapid expansion of the scale of illegal logging can be expected. Forest communities in particular are often dependent on illegal timber and other non-timber forest-product extraction for basic livelihoods. Barely eking out a subsistence existence and among the poorest in Nepal, they continue to encroach on national park land, often with highly detrimental effects on the ecosystem.¹⁵⁶

The creation of so-called buffer zones around national parks – where local communities can collect thatch grasses and other products – and the policies of involving communities in forest conservation and of transferring some of the park revenues to local communities have had definite positive effects on conservation. Comparative research shows, for example, that the level of illegal resource extraction from protected areas and the intensity

of human encroachment on protected areas is lower in areas with buffer zones than in protected areas without buffer zones.¹⁵⁷ Indeed, forest wardens, community members, and conservationists all prefer the current policy to a previous “fence and fine only” approach of excluding forest communities from protected areas, removing their customary rights, and completely restricting their use of forest resources. Such a policy used to be prevalent when the government was the sole owner of forests.¹⁵⁸

Yet many problems beset current regulatory arrangements. In theory, the local community should receive up to 80 percent of national park revenues. Nonetheless, both in the Terai and the Himalayas, local community representatives reported receiving far less and in some years nothing, with park revenues reportedly diverted for other priorities (and possibly for personal profits).¹⁵⁹ Frequently, neither the resources available from a buffer zone nor alternative livelihoods projects for communities living in or around national parks have been sufficient to assure even subsistence living and prevent continued illegal resource extraction in the national parks.¹⁶⁰ Such problems were particularly intense in protected areas in the Terai. In contrast, mountaineering and tourism in the Himalayas significantly improved the economic status of the Sherpa community. Nonetheless, illegal logging and wildlife poaching were reported even there.¹⁶¹

Local community members frequently complained about a lack of responsiveness from forestry officials and park wardens to their needs and, particularly in the Terai, also about limited horizontal accountability of village development committee (VDC) members. VDC members who interact with park officials are often local elites, with women and disadvantaged groups rarely represented. Since committee members can obtain significant political

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153. Surya Thapa (2011). "Neither Forests Nor Trees," *Nepali Times*, January 7, 2011.

154. Author's interviews with representatives of Resources Himalaya, Kathmandu, May 29, 2012.

155. It is difficult to estimate how much of the sandalwood intended for the Chinese market is diverted for sale in Nepal. Out of eight tourist shops visited in Bhaktapur, only two carried sandalwood statues, ranging between two and ten inches in size. Selling them for hundreds of dollars per statue, both stores claimed to have only five or less such sandalwood figures. Both sellers in both stores also indicated that Chinese customers were the most frequent buyers, followed by buyers from Germany and Europe. Author's interviews conducted with shop owners in Bhaktapur, May 17, 2012.

156. Author's interviews with forestry officials, wardens, officers of army units in charge of national park protection, and members of forest communities living in park buffer zones, Solukhumbu, Chitwan, Bardia, and Solukhumbu districts, May 13-16, 18-20, and 25-27, 2012.

157. Author's interviews with two leading environmental conversation researchers in Nepal, Kathmandu, May 29, 2012. See also: Shova, Thapa and Hubacek, Klaus (2011). "Drivers of Illegal Resource Extraction: An Analysis of Bardia National Park, Nepal," *Journal of Environmental Management*, 92, (pp. 156-164)

158. Joel Heinen and Suresh Shestra (2006). "Evolving Policies for Conservation: An Historical Profile of the Protected Area System of Nepal," *Journal of Environmental Planning and Management*, 49, (pp. 41-58) See also: Nabil Baral and Joel Heinen (2007). "Resources Use, Conservation Attitudes, Management Intervention and Park-People Relations in Western Terai Landscape of Nepal," *Environmental Conversation*, 34, (pp. 64-72)

159. Author's interviews with forestry officials, village committee members, and local community members, Solukhumbu, Chitwan, and Bardia districts, May 13-16, 18-21, and 26-28, 2012.

160. Author's interviews with forestry officials, wardens, officers of army units in charge of national park protection, village development committee members, and other members of forest communities living in park buffer zones, Chitwan and Bardia districts, May 18-20 and 25-27, 2012.

161. Author's interviews with businessmen and law enforcement officials, Solukhumbu district, May 13-16, 2012.

access by virtue of their position on the committee and hence cultivate their own patronage networks by selectively disbursing park revenues and compensation to clients, conflict between VDCs and the broader community they purport to represent is not infrequent. The fact that no local elections have taken place in Nepal since 1997 compounds the lack of accountability at the local level.¹⁶²

Other research has also highlighted that forest and buffer zone communities lack the power to modify existing rules and function under constraint, with delegated responsibilities and strict controls, from the park management.¹⁶³ At the same time, however, enforcement against park encroachment is often unsystematic, with park officials frequently closing their eyes to illegal resource extraction by forest communities. The researcher herself observed members of local communities collecting various forest resources at times rather deep in both Chitwan and Bardia National Parks, with forest officials reacting only with an oral warning, even while the punishment for illegal tree cutting can be up to seven years of imprisonment.

Official complicity in illegal logging and other forest encroachment by local forest communities far exceeds the complicity of local level forestry officials. Forestry officials have been accused of colluding with traders and logging companies and issuing excessive logging permits while engaging in minimal monitoring.¹⁶⁴ The forestry sector lacks transparency, and political parties regularly protect illegal loggers and traders.¹⁶⁵ Political instability, the lack of a land use policy, and poor capacity on the part of stakeholders all limit the effectiveness of efforts to combat illegal logging and timber trafficking.¹⁶⁶ Conservation NGO representatives and high-level law enforcement officials indicated that combating illegal logging is near the bottom of priorities of the Nepal government.¹⁶⁷

162. *Ibid.*

163. Harini Nagendra; Mukunda Karmacharya; and Birendra Karna (2004). "Evaluating Forest Management in Nepal: Views across Space and Time," *Ecology and Society*, 10. (pp. 24)

164. Ramesh Prasad Bhusal (2011). "Deforestation Probe Puts 100 Up a Tree," Himalayan Times, February 24, 2011.

165. Dij Raj Khanal and Ghana Shyam Pandey (2011). *Illegal Logging and the Issue of Transparency in Nepal*, FECOFUND. Available at: <http://www.illegal-logging.info/uploads/Khanal100212.pdf>.

166. Kiran Dongol (Undersecretary of the Ministry of Forests and Soil Conservation). *Nepal's Initiatives to Reduce Illegal Logging*, <http://www.illegal-logging.info/uploads/Dongol100212.pdf>.

167. Author's interviews with police and forestry officials and conservation NGO representatives, Kathmandu, May 12 and 30, 2012.

Nonetheless, differences in the level of law enforcement against illegal logging could be registered, with somewhat greater crackdown palpable in the Himalayan areas than in the Terai.¹⁶⁸

Political parties further compound the problem of deforestation and illegal squatting in national parks by luring landless communities into protected areas with promises of future titles in order to expand party support base. Months or years later, the parties will of course fail to deliver the titles, and the communities, having meanwhile disturbed and damaged the protected ecosystems, will be forcefully evicted without being granted land elsewhere. Some local administrations also engage in similar violations of environmental regulations by frequently settling those affected by floods and other natural disasters in the protected areas, again subjecting them to future evictions without compensation. Such evictions by forest protection authorities often trigger *bandhs* and violent protests and conflict.¹⁶⁹

Deforestation further compounds the global warming effect of reducing water availability in Nepal.¹⁷⁰ The intensifying water scarcity already encourages local communities to adopt previously unprecedented measures, such as padlocking water holes. Theft of water has emerged in villages. Water scarcity has the potential to trigger both localized conflict and the emergence of an illegal water market in Nepal.

Illegal Trade in Wildlife

Poaching and illegal trade in wildlife are also serious problems in Nepal, irretrievably threatening some of the world's most endangered species. Although spotted deer and wild boar are frequently poached for local community consumption, the most serious poaching targets highly endangered or desirable species such as rhinoceros, tiger, red panda, pangolins, and snow leopard. Nepal also serves

168. Author's interviews with police and forestry officials, army officials, local conservation representatives, and community members, Solukhumbu, Chitwan, and Bardia districts, May 13-16, 18-21, and 26-28, 2012.

169. For specific instances of such problematic party practices, forced evictions, and protests in the Surkhet and Rupandehi districts in 2012, see United Nations Resident and Humanitarian Coordinator's Office Nepal (December 2012).

170. Research in Nepal indicates that while overall no less water is available as a result of global warming, oscillations between droughts and floods are intensifying. Author's interviews with a leading Nepali conservation biologist, Kathmandu, May 29, 2012.

as a transshipment country between India and China. Interestingly, elephant poaching is very limited, despite the fact that wild elephants often cause substantial damage to local communities and frequently kill villagers,¹⁷¹ and despite the fact that ivory markets in China have been growing rapidly and elephant poaching in Africa has once again exploded. Nepal's illegal wildlife commodities predominantly feed the burgeoning market in wildlife products in China and offer high profits with little risk since enforcement tends to be meager and punishment minimal. After the end of the civil war, poaching levels decreased to less than five tigers and five rhinos killed per year,¹⁷² considerable reduction from the height of the civil war when, as a result of a substantially weakened presence of law enforcement in the national parks, fifteen rhinoceros were killed in the Bardia National Park in one year alone.¹⁷³ Nonetheless, for extremely endangered species such as tigers and rhinos, the current poaching levels are deeply threatening.

Wildlife trafficking groups are as complex and organized as drug smuggling networks.¹⁷⁴ Chinese and Indian high-level brokers often sit at the apex and work via Kathmandu and district-level middlemen. Nonetheless, outside brokers cannot operate without the cooperation of locals whom they hire to work as spotters and hunters. Middlemen also often hire women and children to carry body parts of slaughtered animals, on the premise that they will receive less scrutiny from law enforcement officials. Wildlife law enforcement officials frequently identify members of the Chepang and Tharu community as local level-poachers, but wildlife poaching and trafficking in Nepal rarely entails the participation or cooptation of an entire community. Nor are local-level poachers politically organized or aligned with a particular political party. Instead,

poaching appears to operate at an individual level with middlemen cultivating political protection simply on the basis of convenience or preexisting patronage networks. Prominent political leaders have thus exerted pressure on park management and courts to release apprehended poachers and traffickers.¹⁷⁵

An important smuggling network operates within the Tibetan refugee community. Lhasa is a major wildlife smuggling hub, and big cat furs and ivory are highly prized among the Tibetan, including lama, community.¹⁷⁶ Nepali conservation researchers who have studied smuggling of wildlife into China reported that Nepal's border officials tend not to diligently search "men in red clothes" (i.e., Buddhist monks), who as a result can easily hide illegal wildlife body parts in their robes.¹⁷⁷

Although making only a fraction of the ultimate profits illegal wildlife trade generates, local poachers nonetheless earn far more from one killing – easily in the low hundreds of dollars – than from participating in available legal economies, which are mostly subsistence agriculture. Alternative livelihood initiatives have by and large failed to offset the losses individual poachers and connected communities from foregoing participation in wildlife trafficking. Profits from ecotourism, such as those earned by lodges near national parks in the Terai, tend to be predominantly captured by rich businessmen who often reside in Kathmandu. While lodges do employ local community members as guides, cooks, and cleaning staff, the number of jobs thus generated is not sufficient and earnings still leave most families barely coping.¹⁷⁸

The porous border, extensive corruption, and the fact that combating wildlife trafficking mostly lacks urgency for Nepal's law enforcement agencies, all facilitate wildlife smuggling. Army battalions are deployed to national

171. Author's interviews with two leading Nepali conservationists, Chitwan National Park, May 20, 2012 and Kathmandu, May 29, 2012. One anecdotal piece of data confirming the limited illegal ivory market in Nepal is that the author's research in major tourist markets of Patan and Bhaktapur did not find any story with ivory statues, for example. The author's previous research in India in June-August 2007, on the other hand, easily located such illegal items in the country's major tourist and wildlife trading hubs.

172. Based on the author's interviews with conservationists, villagers, officers of army units in charge of forest protection, and forest wardens, Solukhumbu, Chitwan, and Bardia districts and Kathmandu, May 13-16, 18-21, and 26-28, and 29, 2012. Estimating the level of tiger poaching can be particularly difficult since unlike in the case of rhinoceros poaching, sought for its horn solely, poachers do not leave the carcass of a tiger behind since its skin, bones, and other body parts are all prized.

173. Baral and Heinen (2006).

174. For more background, see: Vanda Felbab-Brown (2011a). "The Disappearing Act: Species Conservation and the Illicit Trade in Wildlife in Asia," *Brookings Foreign Policy Working Paper No. 6*, Brookings Institution, June 2011. Available at: http://www.brookings.edu/papers/2011/06_illegal_wildlife_trade_felabbrown.aspx.

175. Ukes Raj Bhuju, Ravi Sharma Aryal; and Parakash Aryal (2009). *Report on the Facts and Issues on Poaching of Mega Species and Illegal Trade in Their Parts in Nepal*, Transparency International Nepal, October 2009. Available at: http://www.tinepal.org/WWF_Oct_29_final_ukbrbt_Revised.pdf.

176. See, for example: Environmental Investigation Agency, *The Tiger Skin Trail*, <http://www.eia-international.org/wp-content/uploads/TheTigerSkinTrail-Low-Res.pdf>. See also: Gavin Rabinowitz (2006). "Tiger-Skin Market in Tibet Flourishing," Washington Post, September 27, 2006.

177. Author's interviews with border patrol and national park law enforcement officials and local community members, Solukhumbu district, May 13-16 and with a leading conservationist, Kathmandu, May 30, 2012.

178. Author's interviews with lodge management, staff, national park law enforcement officials, and local community members in the Chitwan and Bardia districts in the Terai, May 18-21 and 26-28, 2012.

parks to prevent poaching, leading to more efficient and stringent law enforcement in protected areas than along the border and in non-protected areas. After the end of the civil war, a significant rebuilding of law enforcement capacity in protected areas has taken place, and wildlife populations of rhinoceros in particular have rebounded, likely as a result of reduced poaching.¹⁷⁹ One Nepali colonel, Babukrishna Karki, has been recognized internationally for his anti-poaching efforts. Still, the military units deployed to national parks are handicapped in their anti-poaching operations by lacking sufficient intelligence, mobility, and rapid-reaction assets. Most patrolling takes place on foot, with often only one car – for the commanding officer – available for the entire battalion deployed to a national park.

Illegal wildlife traders arrested in or near national parks tend to be low-level poachers. The police mostly lack intelligence collection, analysis, and special anti-wildlife trafficking units. Only occasionally do raids on middle-level traders in district hubs and Kathmandu take place. In the spring of 2013, a major month-long operation in the Dhading and Gorkha districts adjoining Tibet seized 580 kg of Tibetan antelope wool worth US\$ 59 million, suggesting that at least 10,000 antelopes have been poached. Like in Kashmir in India and Pakistan, the highly threatened species is poached for the production of shahtoosh shawls. The police also seized 200 kg of tiger skins and 125 kg of tiger teeth from Nuwakot and Gorkha districts.¹⁸⁰ Yet despite the apparent success, the operation resulted in the arrests of only seven poachers and smugglers, likely only a fraction of the smuggling ring.

Reinforcing both law-enforcement efforts against wildlife poaching and providing better-designed alternative livelihood efforts for forest communities promises to provide high payoffs. Neither illegal logging nor wildlife poaching in Nepal has yet reached its potential crisis-level intensity, but international market pressures and the local conditions of widespread poverty, porous borders, corruption linked to the highest political levels, and meager enforcement capacities all push toward a significant

expansion in both of these illegal markets in Nepal. Nepal will continue to suffer from being wedged between India and China, two of the world's largest markets for illegal timber and wildlife products and two loci of highly developed organized crime structures specializing in these illegal commodities. As poaching in India continues to decimate its tiger and other wildlife populations, Nepal will increasingly provide tempting and prime targets of opportunity for international poaching syndicates. A focused and determined effort to act now before illegal logging and poaching in Nepal escalate further can make a critical difference. Otherwise, it will only be a matter of time before Nepal becomes the next frontier of massive forest destruction and wildlife slaughter. This would be especially tragic as Nepal is still a significant repository of biodiversity and of species already decimated elsewhere in the world.

Human Trafficking

The prevalence of human trafficking in Nepal, dating back to the 1970s, attracts extensive international attention. The United Nations Office on Drugs and Crime estimates that between 10,000 and 15,000 women are trafficked from Nepal for forced labor or prostitution every year.¹⁸¹ Anti-trafficking organizations in Nepal claim that as many as 5,000 to 7,000 Nepali girls and women enter prostitution in Nepal and India each year. Nepal's police provide far lower numbers, claiming that only 1,116 cases of women trafficking were registered in Nepal over the past decade (along with an increasing number of rapes, totaling 3,123 over the past ten years, and even more rapidly growing incidence of domestic violence, totaling 10,697 cases over the past ten years. Those numbers, however, are likely significant underestimates, with frequent underreporting a major problem.)¹⁸²

Some NGOs view all of entry of women into prostitution, particularly in India, as forced trafficking, while others argue that sex work happens by choice.¹⁸³ Indeed, the paucity of labor opportunities encourages many Nepali women (as well as men) to seek labor opportunities

179. "Nepal Winning Battle against One-horned Rhino Poachers," *New York Daily News*, May 11, 2012.

180. "Police Suspects Killing of 10,000 Tibetan Antelopes," *Xinhua-English*, February 21, 2013.

181. UNODC (2009). "Nepal: Trafficked Women Make a Difference." Available at: <http://www.unodc.org/southasia/frontpage/2009/November/trafficked-women-make-a-difference.html>.

182. "Violence Against Women Increasing in Nepal: Police," *Xinhua*, January 10, 2013.

183. Renu Rajbandari and Binayak Rajbandari (1997). *Girl Trafficking: The Hidden Grief in Kathmandu*, Women's Rehabilitation Center, Kathmandu. (pp. 15)

abroad. At times, they may be tricked into prostitution or forced labor, at other times, their choices, including of being a sex worker, may well be voluntary.¹⁸⁴

The Kathmandu valley is one main hub for internal trafficking from rural Nepal for labor and sexual exploitation, with young women and children trafficked to private households, hotels, bars, restaurants, the carpet and garment industries, and brick kilns.¹⁸⁵ Hetauda in central Terai is another important trafficking hub for smuggling into India. Sindhupalchok near the border with China has long been identified as a center of prostitution and trafficking, with its Tamang community suffering stigmatization as a result.¹⁸⁶ However, women repatriated from Indian brothels appear to come from all regions and ethnic groups, vulnerable perhaps because they are poor, uneducated, and have suffered domestic abuse more than anything else.¹⁸⁷

Although human trafficking from Nepal, particularly into India, has been conducted for several decades, many of the trafficking and prostitution rings do not appear to have become highly vertically integrated cartels. Even though some networks have a deep reach into India and are headed by high-level Indian crime capos, many human trafficking operations in Nepal appear to be less sophisticated enterprises. Indeed, the selling of girls into prostitution or forced labor is not infrequently perpetrated by relatives, with girls, especially among lower castes, often perceived as having lesser value than cows.¹⁸⁸ Gender inequality, while increasingly criticized in post-2006 Nepal, is still deeply entrenched, socially and institutionally.¹⁸⁹ Forced labor conditions also increasingly affect many migrants who leave to work in the Gulf countries.

Since rural Nepali girls in particular are often viewed by Nepali men as easily duped and tricked into forced prostitution or labor by promises of good jobs, the government of Nepal has at times tried to restrict labor migration by women and even banned female migration to Gulf countries.¹⁹⁰ Similarly, Nepali women were forcibly prevented at border checkpoints from crossing into India with the justification that they were being preventively rescued from “slipping” into prostitution there.

Other anti-trafficking efforts have focused on the “three Rs”: rescue, repatriation, and rehabilitation.¹⁹¹ Rescue and repatriation involve brothel raids and the return of women to their areas of origin, where they often face severe ostracism and lack job opportunities. Efforts at “rehabilitation,” a term seen by some trafficked women and NGOs as loaded and implying both complicity and stigmatization, have focused on job training in marketable skills, such as carpet weaving, sewing, and cooking. Such jobs nonetheless seldom generate enough income for sustainable livelihoods for many former sex workers, and many choose to return to prostitution for good, or at least until they accumulate enough savings to sustain themselves in other employment.¹⁹² Rather than merely throwing money at such rehabilitation programs, it is necessary to undertake systematic studies of the efficacy of such alternative livelihoods efforts and ways to address other structural conditions that drive forced prostitution and labor in Nepal.

190. Worthen (2011). (pp. 15)

191. Poudel, Richardson, and Townsend (2011). (pp. 9)

192. *Ibid.* (pp. 13); Worthen (2011). (pp. 18); and Brown, Louise (2000). *Sex Slave: The Trafficking of Women in Asia*. London: Virago.

184. For an excellent discussion of the two different analytical frameworks, see: Miranda Worthen (2011). “Sex Trafficking or Sex Work? Conceptions of Trafficking among Anti-Trafficking Organizations in Nepal,” *Refugee Survey Quarterly*, 30(3). (pp. 1-20)

185. Nina Laurie; Meena Poudel; Diane Richardson; and Janet Townsend, (2011). “Crossing Back over the Open Border: Geographies of Post Trafficking Citizenship in Nepal,” Post Trafficking In Nepal Sexuality and Citizenship in Livelihood Strategies Working Paper, ESRC Project Res-062-23-1490, Available at: <http://www.postraffickingnepal.co.uk/#/publications/4538205925>.

186. S. Joshi, (2001). “Cheti-Beti” Discourses of Trafficking and Constructions of Gender, Citizenship, and Nation in Modern Nepal,” *Journal of South Asian Studies*, 24(1). (pp. 157-175)

187. Rajbhandari and Rajbhandari (1997). (pp. 32)

188. For more gender-issues background, see: Vidiyamali Samarasinghe (2008). *Female Sex Trafficking in Asia: The Resilience of Patriarchy in a Changing World*. London: Routledge.

189. See, for example: DFID and World Bank (2006). *Unequal Citizens: Gender, Caste, and Ethnic Exclusion in Nepal*, Kathmandu, Nepal.

III. The Donor Context

Since 2005, foreign donors have flocked to Nepal. The main donors operating in Nepal include the World Bank, the Asian Development Bank, the United Nations Development Program, the Department for International Development (DFID), the Norwegian Agency for Development Cooperation (Norad), the Danish International Development Agency (Danida), the United States Development Agency (USAID), the Swiss Agency for Development and Cooperation, and the German Society for International Cooperation (GIZ). As discussed before, the governments of India and China have also provided large sums in development assistance. Foreign aid currently accounts for 22 percent of the Nepali government's budget and half of its capital expenditures. When aid that is not routed through government accounts is included (though this is difficult to calculate reliably), total foreign support is estimated at US\$1 billion and increasing.¹⁹³

Many of these donors emphasize zero tolerance for corruption, and their projects have often sponsored various good governance and anti-corruption initiatives. Yet there was a pervasive sense among the author's interlocutors that a large portion of foreign aid is diverted through corruption, without real obstacles or effective safeguards. Some analysts even wonder whether the vast augmentation of insufficiently monitored foreign aid has been significantly intensified corruption,¹⁹⁴ a phenomenon registered in other countries, most prominently Afghanistan.¹⁹⁵ Certainly, corruption in Nepal is mushrooming.

No doubt, actually implementing zero tolerance for corruption and aid diversion would significantly hurt many of Nepal's poor and would likely be counterproductive. Nonetheless, it is important to recognize that significant portions of foreign aid already fail to reach them and, yes, likely do augment corruption, clientelism, patronage, and a culture of impunity, all of which seriously worsen the

193. "Low Road through the Himalayas," *The Economist*, May 31, 2011.

194. Other studies have also reached a similar conclusion, such as that donor-sponsored interventions appear to have minimal impact on reducing corruption. See: Dix (2011).

195. Much of Afghanistan's pervasive corruption is indigenous and deeply rooted. See: Felbab-Brown, Vanda. *Aspiration and Ambivalence: Strategies and Realities of Counterinsurgency and State-building in Afghanistan* (Washington, DC: The Brookings Institution Press, 2012).

conditions of poor and marginalized communities. Several interlocutors also warned that Nepali government officials have learned to enthusiastically agree to foreigners' recommendations on how to improve governance, while having no intention of actually implementing any of the recommendations.¹⁹⁶ Apart from having sufficient experience with successfully manipulating and blindsiding Western donors, Nepali government officials and political leaders also assume that India and China are highly insistent on "good governance" practices from Kathmandu and are willing to disburse aid merely to pursue their geostrategic and security interests. Accordingly, the Indian and Chinese courtship of Nepal is perceived to provide Kathmandu with leverage and an ability to deflect uncomfortable demands from Western donors, such as on reducing corruption.¹⁹⁷

Despite the pervasive corruption, some donor programs have had a positive impact on empowering citizens. These include projects aimed at developing the capacity of citizens to demand services from district authorities or lobby the national government for their long-neglected rights. Indeed, the focus on demand-based and rights-based aid and development for several years drove much of the development-assistance approach in Nepal since 2005.

Not surprisingly, many such rights-based and demand-based efforts have been controversial with Nepal's traditional establishment. Members of upper castes and the Nepali Congress often sharply criticize donor projects aimed at inclusion, federalism, and constitution processes as stoking ethnic hatreds and seeking to carve up or subdue Nepal.¹⁹⁸ The traditionalists disparage and try to discredit *janajati* and other ethnic groups as manipulated by foreign interests, even though identity-based activism has a decades-long history in Nepal.¹⁹⁹ They see funding

196. Author's interviews with NGO representatives, Kathmandu, Bharatpur, Pokhara, and Nepalganj, May 10-12, 18-25, 28-30.

197. Author's interviews with political party representatives, Kathmandu, May 10-12, 16, and 28-30.

198. Author's interviews with representatives of Nepal Congress party and other members of the Brahmin, Chhetri, and Thapa castes, Kathmandu, Bharatpur, and Pokhara, May 10-12, 19, 21-23, and 29-30.

199. See, for example: Mahendra Lawoti (2007). "Contentious Politics in Democratizing Nepal," in Mahendra Lawoti (ed.), *Contentious Politics and Democratization in Nepal* (New Delhi: Sage Publications, 2007), (Chapters 1 and 2). Arun KL Das, and Magnus Hatlebakke (2010). Statistical Evidence on Social and Economic Exclusion in Nepal (Kathmandu, 2010). Available at: <http://www.3577-statistical-evidence-on-social-and-economic-1.pdf>; Höfer, András (2004). *The Caste Hierarchy and the State in Nepal: A Study of the*

for self-determination and rights efforts as a stimulant of ethnic and caste militancy, evident in the *bandhs*, which are presumably tearing the country apart. Interlocutors from these segments of Nepal's society frequently voiced their belief that "there used to be ethnic harmony if not equity before the meddling of foreign donors. Now the foreigners are whipping up ethnic and caste conflict to cultivate their clients, depriving us of power, in order to prosecute their anti-China objectives in Nepal."²⁰⁰ The Scandinavian countries were most frequently selected for such blame, but such complaints against the United Kingdom were not infrequent. (The growing resentment of the traditional establishment in Nepal against Western donors operating in Nepal exploded on June 20, 2012 when the car of the then-German Ambassador Verena Gräfin von Roedern was stoned by supporters of the NC and the UML.)

The implication of this widespread Nepali perception of foreign meddling is not necessarily that foreign donors need to change their funding plans and emphasis. It is quite possible, however, that foreign donors will not be perceived as neutral actors interested in the benefit of all, but instead as being as politicized as most of the domestic actors in Nepal. Indeed, over the past year or so, foreign donors, including the United Nations, have been backing away from funding participatory and inclusion programs, the federalism agenda, and some justice issues.²⁰¹

Quite apart from the self-serving claims of the traditional establishment, many of the rights-based and demand-based efforts have indeed worked very imperfectly. Although local constituencies have developed the capacity to demand goods and projects from local level officials and national parties, they have not equally learned how to hold their leaders accountable if they fail to deliver. Thus, instead of voting for the opposition, for example (at least at the national level, in the absence of local elections), people have adapted by cultivating multiple patronage channels and dividing political allegiance within a family among multiple political parties to maximize the

handouts they can receive. Political parties and local officials have in turn adapted by simply promising more next time, even as they consistently fail to deliver. Citizens may be finding their voice in the political process, but they have not yet acquired the tools to hold their leaders to account. As demands and promises significantly outstrip the government's capacity to deliver, the legitimacy and stability of the government and the new political system will likely be significantly undermined.

Service delivery monitoring by civil society organizations has increased access to information and knowledge on the part of local communities. However, although more than 45,000 NGOs operate in the country, their cumulative effect on reducing corruption, improving good governance, increasing service delivery, and promoting peaceful cooperation has not been strong. Moreover, many NGOs themselves have become highly politicized – along ethnic, regional, and caste lines. As a result, they often operate in a manner as exclusionary as that practiced by other political actors in Nepal.²⁰² And donor activities have at time been opaque and focusing on behind-the-door deals among top leadership of political parties. While such donor engagement may well have been motivated by a desire to provide neutral ground and reduce the politicization of discussions, the lack of transparency has only increased perceptions of nefarious donor interference among segments of Nepal's society.

202. For a further analysis of Nepali civil society, see: International Crisis Group (2010a). (pp. 12)

Muluki Ain of 1954 (Kathmandu, 2004[1979]); and International Crisis Group (2011a). *Nepal: Identity Politics and Federalism*. Asia Report No 199. January 13, 2011.

200. Author's interviews with representatives of Nepal Congress party and other members of the Brahmin, Chhetri, and Thapa castes, Kathmandu, Bharatpur, and Pokhara, May 10-12, 19, 21-23, and 29-30.

201. International Crisis Group (2012a). (pp. 28-9).

IV. The Impact of Organized Crime on Governance

Rather than organized crime itself, which is still at a primitive, not yet highly developed stage in Nepal, it is the pervasive culture of impunity, corruption, nepotism, and clientelism that most negatively impacts the lives of ordinary Nepalis. While organized crime intensifies and exploits this corruption and the lack of rule of law, in Nepal political corruption and a deeply entrenched system of patronage are the primary drivers of the usurpation of public funds and violence at the local level. Politicization of formal institutions deeply compromises bureaucratic and administrative competencies and service delivery, enabling the penetration of organized crime into state institutions. In addition to having profound harmful impact on governance on its own, such culture of corruption and impunity thus provides fertile ground for the formation of organized crime and fosters its impunity from effective prosecution. Corruption, patronage, clientelism, and the overall patrimonial system in Nepal are thus both an element of politics and the enabling environment for organized crime and illicit economies. The danger is that while formal politics remains paralyzed, informal criminal governance mechanisms may grow in power.

Many urban and rural residents still believe that they need to provide payoffs to, and engage in complex negotiations with powerful actors in their locality, whether powerful local politicians or armed and criminal gangs, to assure their safety and secure their elementary and everyday transactions. Although outright militancy has subsided, even in the Terai, a pervasive atmosphere of fear prevails and negatively affects human security in much of Nepal. Both political actors and profit-driven criminal groups benefit from this atmosphere of fear and communal tension.

Although local constituencies have developed the capacity to demand goods and projects from local level officials and national parties, they have not learned or been able to hold their leaders accountable if they fail to deliver. Citizens may be finding voice in the political process, but as promises and demands significantly outstrip

the government capacity to deliver, the legitimacy and stability of the government and the emergent political system will likely be significantly undermined.

The relationship between political parties and criminal groups is robust and perhaps growing, but it is the political actors who take the lead. During the civil war, the Maoist insurgents pioneered the use of profits from illicit economies for effectively challenging the existing political order. After the end of the civil war, all major political parties and actors have been using access to criminal revenues and relationships with criminal groups to influence the shape of the new political settlement. The absence of effective campaign financing and asset declaration regulations does not help. In exchange for providing immunity from criminal prosecution, political parties also use criminal groups for demonstrating street and muscle power, fundraising, obtaining votes, and acquiring contracts for their clients.

Many different illicit economies are present in Nepal – from drug production and smuggling to human trafficking, illegal logging, illegal trade in wildlife, and the smuggling of legal commodities. Extortion, tax evasion, and financial scams are also common. Nonetheless, despite the fact that many of these illicit economies have existed for decades and are linked to the highest political levels, the extent (when compared with the illicit economy's growth potential in Nepal) is rather limited. This underdevelopment of organized crime in Nepal is driven in part by external dynamics. Thus the limited extent of Nepal's illicit crop cultivation (the reality, contrary to many media reports) has less to do with the effectiveness of domestic law enforcement or the lack of interest on the part of the population in participating in such an enterprise, and considerably more to do with the fact that the global international market is (over)supplied by other countries.

As noted, the sophistication of organized crime in Nepal is also still at a rather primitive stage. Criminal groups tend to be mostly small gangs, rather than highly complex organizations. They have nowhere near the level of sophistication and organizational complexity of criminal groups operating in India or Pakistan, for example. Nor

do they yet systematically deliver “public” goods to local populations to acquire political capital.

The level of violence that Nepali criminal groups perpetrate in support of their profit-seeking activities is also fairly limited, when compared with criminal organizations in other parts of the world, such as Colombia or Mexico. One reason for the limited level of this type of criminal violence may well be that corruption in Nepal is easy, and even limited coercive threats achieve their desired corruption and impunity effects, especially as Nepali criminal groups have been able to cultivate networks of political support at the highest levels of both law enforcement institutions and political parties. Paradoxically, an increase in law enforcement and prosecution effectiveness against criminal groups may initially provide an impetus for criminal groups to increase their resort to violence.

This rather primitive stage of organized crime formation and the limited sophistication of illicit economies present important opportunities for policy initiatives. However, in the absence of careful design many anti-crime policies can be counterproductive. Intensified interdiction without careful planning can merely weed out less sophisticated criminal enterprises while the toughest and leanest criminal groups survive law enforcement actions and acquire a greater market share and political and economic power. Law enforcement actions can thus inadvertently encourage the vertical integration of organized crime groups and undermine the constraints preventing criminal groups from resorting to violence.

Countering such inadvertent negative outcomes requires a very sophisticated interdiction strategy that privileges targeting the most violent groups or those with the greatest capacity to corrupt first. The effectiveness of such a strategy in turn depends on the intelligence capacity of law enforcement institutions and their ability to resist corrupting political pressures. Both are likely to remain elusive in Nepal for a long time.

Across the range of illicit economies, including extortion, tax evasion, drug smuggling, illegal logging, illegal trade in wildlife, and human trafficking, law enforcement efforts are sporadic, inadequate, and often selective.

The selectivity, however, is not the result of careful and systematic evaluations of which illicit economies pose most severe threats, but rather of corruption within law enforcement institutions and their lack of resources.

The police and justice sectors are badly in need of reform. Both remain inaccessible and exclusionary. Police and prosecutors lack investigative capacities. The police also lack intelligence and an understanding of local criminal patterns, in part because they remain profoundly unconnected to the local communities in which they are deployed. However, existing and continuing politicization of formal institutions and the endemic corruption make the design and implementation of effective and meaningful policy reform interventions extremely difficult.

Nepal's many illicit economies present multiple threats to the state and society. However, many also provide employment for some of the most marginalized segments of Nepal's population. Often inadequate in both scope and design, alternative livelihoods efforts across the range of illicit economies in Nepal have by and large not been very effective.

Compared with actions against the illicit drug trade, smuggling in legal goods, extortion, and human trafficking, policy interventions against environmental crime promise perhaps the greatest payoffs. They need to include both the reinforcement of existing law-enforcement efforts against wildlife poaching as well as better-designed alternative livelihood programs for forest-dwelling and forest-surrounding communities. Neither illegal logging nor wildlife poaching in Nepal has yet reached crisis levels of intensity, but international market pressures and the local conditions of widespread poverty, porous borders, corruption linked to highest political levels, and meager existing enforcement capacities all push toward a potentially significant increase in environmental crime in Nepal.

In contrast, actions against the drug trade in Nepal offer comparatively lower payoffs. Alternative livelihoods policies will for a long time be held hostage to broader rural under-development and a lack of access to value-added chains. Unless these structural conditions are addressed,

alternative livelihoods efforts have little chance of being effective while eradication of the illicit crops will only further impoverish and alienate rural populations. Unless very carefully designed and implemented, intensified interdiction efforts against drug trafficking will under current conditions likely trigger intensified violence and tighten the crime-politics nexus in Nepal.

Focusing on reducing politicization of formal institutions and the overall culture of impunity, corruption, and clientelism – far more than actions against particular criminal groups or illicit economies – will likely improve the rule of law and good governance in Nepal. That in turn requires efforts to promote ‘civil resistance’ to the rising power of political-criminal mafias: building the capacity of citizens not only how to demand goods from the state and their political and governmental representatives, but also how to hold them accountable if they fail to adhere to their promises. In the absence of depoliticizing and strengthening formal rule of law institutions, policies against organized crime and illicit economies in Nepal will at best be of minimal effectiveness; at worst they will be manipulated by certain criminal groups to gain additional privileges and payoffs and employed as tools of self-serving partisan warfare by the rival political parties.

V. Recommendations

- Donor interventions should be guided by a *do no harm* principle. This includes carefully considering whether foreign aid flows actually increase corruption. The appropriation of any funds should be based on careful assessments of the absorption capacity of the targeted sector in Nepal and should be accompanied by strict monitoring to prevent diversion of funds. At the same time, vague conditionality that can be subverted and will not be followed through should be avoided.
- As long as Nepal’s politicians are focused on *adopting a new constitution and augmenting their immediate power*, they will be unlikely to focus on serious policy development and implementation. Withholding significant portion of funds until a constitution is adopted would serve both to encourage Nepal’s politicians to break out of the current political stalemate and paralysis and to increase the chance that program would be meaningfully implemented. An *all-party agreement to end bandhs*, which foreign donors could encourage, would weaken the usefulness of criminal groups for political parties and the political parties’ tendency to resort to intimidation; ending the *bandhs* would also avoid the economic hardship they impose on Nepal’s population.
- Especially in the run-up to the June 2013 parliamentary and new constituent assembly elections (if they in fact take place), donors should encourage political parties to eschew *bandhs* and other violent forms of mobilization and boycotts. Instead, donors should *support broad-based consultations within political parties and within Nepal’s society overall*. Unfortunately, many foreign donors have become discredited in the eyes of certain segments of Nepal society and are unlikely to be seen as neutral actors providing objective information about possible designs of federalism and identity-based politics. Nonetheless, donors should continue to be advocates of more transparent public debates and objective analyses of the key issues at stake.
- Donors can also *sponsor investigative journalists* in Nepal, such as those exposing the use of criminal groups by political parties or the muscle tactics of the

youth wing of political parties, particularly in the run-up to the elections. But in that case, donors also must accept responsibility for providing assistance and perhaps asylum to journalists who come under physical and political attacks, as has frequently happened in Nepal over the past several years.

- Until a new constitution is adopted – some time in the indefinite future after the parliamentary and new constituent assembly elections will have actually been held – donors could encourage efforts to *reduce politicization of bureaucratic institutions and increase transparency*. These include the right to information, asset declaration, and transparency in public procurement and e-bidding. One such initiative could be to set up secure publicly-available databases of Nepali citizens' reports of having to pay bribes – modeled on similar successful initiatives in India and Africa. Advocacy for integrity and accountability should be adopted in informal settings and interactions as well.
- *Resurrecting moribund accountability and oversight institutions* would help a great deal, as would breaking the current tendency to politicize institutions. Strengthening procedures for merit- and performance-based appointments and promotions should also be encouraged. Corruption is partially driven by the comparatively low-level salaries of government officials; but increasing salaries without reducing politicization and nepotism will accomplish little.
- Critically, efforts to empower Nepali citizens should focus less at this point on encouraging them to make demands to their government officials and political leaders and more on building their capacity to make reasonable demands that can be implemented and teaching them how to punish and *hold accountable their representatives* if they fail to deliver the promised goods. That means encouraging voters to ask for meaningful political agendas rather than vague promises of major economic redistribution and an idealistic future. Strengthening the capacity of local civil society bodies to plan and monitor projects and development-issue agendas for local communities is an important element of such an effort.

- *Increasing accountability at the local level* is especially important; all the more so as the All-Party Mechanism has become a major vehicle for theft of public funds. Although elections are hardly the solution for all of Nepal's multiple and difficult political and governance problems, local elections can help build accountability into the system. Under the current, highly politicized context, however, local elections have a high chance to explode into violence.
- Donors should seek to *identify and privilege working with effective public officials* who stand out as having support and respect of local populations. At the same time, donors need to be mindful of the fact that foreign funds can be a source of political power for local implementers and, unless carefully monitored, will likely be used not only for the advancement of the public good but also for the development of personal patronage networks. Donor programs should seek to adopt designs that minimize such opportunities for local implementers.
- Even in the absence of a constitution, the police and justice sectors offer opportunities for meaningful donor interventions. Some interventions can be very simple. They include, for example, increasing the mobility of local law enforcement, such as by providing money for fuel. Training of police officers – both local beat cops and top-level officials who set policy – and prosecutors would critically help. So would strengthening the investigative capacity of the police, a measure which in addition to its importance for crime reduction should help dissuade police from resorting to torture and other forms of abuse. Improving positive relations between local communities and police – ideally, by institutionalizing community policing – should be a top priority. Reform strategies should thus privilege police assistance in improving local neighborhood conditions, such as by focusing on reducing robberies and extortion. (The latter effort in particular will be challenged as long as political parties remain deeply complicit in extortion).
- *Policies toward particular illicit economies need to be carefully tailored toward each specific illicit economy on the basis of comparative analyses of policy effectiveness.*

Providing a detailed set of recommendations for each illicit economy analyzed in this study is beyond its scope. Nonetheless, several recommendations can be drawn. Alternative livelihood efforts – whether to provide economic alternatives to trafficked women or to wean off local poachers from wildlife hunting – have been largely ineffective. Funding often needs to be augmented; but critically, the design of such alternative livelihoods efforts needs to be more specifically tailored to local drivers and be based on a good understanding of comparative policy effectiveness. Many programs have been cast too narrowly as simply chasing a replacement crop or simply encouraging ecotourism without a detailed analysis of the actual effects.

- *Improving the effectiveness of and beefing up alternative livelihoods efforts to reduce environmental crime in particular promise to have high payoffs.* Illegal logging and illegal trade in wildlife in Nepal should receive prioritized attention from foreign donors. Law enforcement actions against organized crime groups need to be designed in a way that *avoids inadvertently provoking a far greater degree of violence from critical groups than Nepal currently experiences.* Law enforcement efforts also need to avoid giving rise to vertical integration of illicit economies in Nepal, which still remain rather decentralized. Effective law enforcement actions with such considerations in mind require building up the intelligence and analytical capacity of Nepal's police as well as focusing law enforcement efforts against the most dangerous criminal groups – those who are most violent, most likely to provoke ethnic or communal violence, most closely linked to terrorist groups, or those who have the greatest capacity to corrupt entire institutions.
- Policies against organized crime in Nepal will be hampered by the thick and systemic nexus between political parties and criminal groups. Nonetheless, foreign donors *can look for targets of opportunity*, such as by working with political parties that are no longer use criminal groups for funding, votes, and street power.

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