



NEPAL

CAPITAL: Kathmandu
POPULATION: 27.5 million
GNI PER CAPITA (PPP): \$1,120

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	2.15	3.76
CIVIL LIBERTIES:	2.79	3.69
RULE OF LAW:	2.45	2.85
ANTICORRUPTION AND TRANSPARENCY:	2.44	3.13

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Lok Raj Baral with Raymond Lu

INTRODUCTION

Nepal has undergone dramatic changes in recent years, transitioning from an absolute monarchy to a fledgling democratic republic. A series of events in 2006, including nationwide popular protests, led to the monarchy's abolition, the passage of a democratically oriented interim constitution, elections for a constituent assembly, and an end to a decade-long Maoist insurgency that resulted in the deaths of an estimated 13,000 people. Political parties, journalists, trade unions, and civic groups operate with a degree of freedom nearly unimaginable at the height of King Gyanendra's centralization of power four years ago. Despite such improvements, the future of Nepal's peace process and democracy remains highly uncertain. Polarization and intra-elite conflict, the rise of youth militias affiliated with political parties, and a new violent insurgency by ethnic groups in the south risk unraveling the progress made in recent years.

Though unified since 1769, Nepal's population remains highly diverse along ethnic, religious, and linguistic lines. Political instability has characterized the state since 1959, with alternating periods of parliamentary and repressive monarchical rule. In 1996, the Communist Party of Nepal (Maoist), an extremist left-wing group partly modeled after the Peruvian Shining Path, launched a violent campaign to overthrow the monarchy and establish a people's republic.

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At the height of their power, the Maoists controlled large tracts of the country, particularly in rural areas.

Nepal's ruling monarchs used the specter of the insurgency to tighten control over the political system. Following a bizarre palace incident in 2001 in which the crown prince shot and killed the king and nine other members of the royal family before committing suicide, King Gyanendra acceded to the throne. In 2002, he suspended parliament and began appointing prime ministers by royal decree, while ordering the army to intervene against Maoist forces. The situation further deteriorated in 2005, when Gyanendra imposed a state of emergency, dismissed parliament, closed media outlets, and arrested thousands of political opponents.

Gyanendra's heavy-handed measures and a rising death toll from the civil war prompted an alliance of seven mainstream political parties to sign a 12-point agreement with the Maoists in late 2005. The two sides pledged to collectively oppose the monarchy and, following its abolition, form an assembly to draft a new constitution. A series of nationwide protests and strikes in 2006, some attracting crowds of up to 300,000, ultimately forced the king to reinstate parliament and cede his powers.

In November 2006, the Seven Party Alliance (SPA) and the Maoists signed the Comprehensive Peace Agreement (CPA), formally ending a decade of fighting. The Maoists were awarded positions within the interim parliament and cabinet in exchange for placing their weapons under United Nations supervision and confining their fighters to cantonments across the country. An interim constitution promulgated in January 2007 established a framework for the transition government, while plans were made to hold elections for the Constituent Assembly (CA), which eventually took place in April 2008.

Three successive administrations have governed Nepal since the monarchy ceded its power to parliament in 2006. Shortly after parliament was reinstated that April, the SPA elected Nepali Congress (NC) party president Girija Prasad Koirala as prime minister. Koirala was reelected in April 2007 to head a coalition government that included representatives from both the SPA and the Maoists. An impressive flurry of legislative activity, as well as partisan bickering, occurred under the interim government. Following the April 2008 CA elections, in which they won a plurality of votes, the Maoists formed a coalition government.

In its early months, the Maoist-led government succeeded in passing a budget, holding regular cabinet meetings, and adopting economic policies benefiting poor Nepalese. But it also showed worrisome signs of a lack of commitment to democratic values, demonstrating intolerance to criticism, a tendency to interfere in the judiciary, and a reluctance to punish its cadres for acts of violence. Following a constitutional crisis and conflict with the Nepalese army, Maoist Prime Minister Pushpa Kamal Dahal (better known as Prachanda) resigned, bringing to power a weak coalition of 22 parties headed by Madhav

Kumar Nepal of the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML).

Although the CA has established thematic drafting committees, reaching agreement on a new constitution by the May 2010 deadline appears increasingly unlikely. Since the elections, coalition building, partisan bickering, and stalemate have generally outweighed effective governance. Meanwhile, inflation has grown steadily, while many Nepalese continue to live in desperate poverty: one in four live on less than a dollar a day, and 41 percent of the population is undernourished.¹ With entrenched corruption and ongoing impunity for rights abuses, many in Nepal have grown increasingly disillusioned with its democratic institutions and leading politicians.

ACCOUNTABILITY AND PUBLIC VOICE	3.76
FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	3.50
CIVIC ENGAGEMENT AND CIVIC MONITORING	4.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.29

Since 2005, Nepal has taken important steps toward establishing a government based upon the will of the people, and the space for civic engagement and critical media coverage has expanded dramatically. In a historic vote in May 2008, the newly elected CA voted to abolish the monarchy, ending a centuries-old institution and establishing Nepal as a secular republic. A political culture of exclusionary, back-door decision making among politicians and the trumping of partisan over public interests has changed little, however, while nonstate violence against journalists and activists remains high.

Under the interim constitution, the 601-member CA is charged with drafting a new constitution and serving as an interim legislature during its 2-year mandate. Members were elected in April 2008 through a mixture of proportional representation (335 seats) and first-past-the-post systems (240); 26 were appointed by the cabinet after elections. Although campaign finance laws place limits on expenditures, the pre-election code of conduct placed no restrictions on donations and the expenditure regulations were largely disregarded.² International and domestic observers described the election as free and fair, though the European Union noted that the polls fell short of international standards due to restrictions on freedoms of assembly, movement, and expression. The reformed Electoral Commission largely performed its duties with transparency and professionalism.³ Despite polling irregularities that led authorities to shut down 33 voting stations, observers reported that the vast majority of votes were recorded in a credible manner.⁴

Nevertheless, widespread violence and intimidation characterized the pre-election months, as paramilitary groups and armed thugs attacked rival parties

and obstructed rallies. Over 20 people, including three candidates, were killed. While Maoist cadres and Maoist-controlled Young Communist League (YCL) activists were responsible for the bulk of the violence and intimidation, their supporters also fell victim to attacks. On the day before the elections, state paramilitary police killed six Maoist activists in western Nepal after a clash between Maoists and Nepali Congress Party supporters.⁵ In a development that surprised even the Maoists themselves, the party emerged with 230 of 601 seats, 100 more than their closest rival, defeating the previously dominant NC and CPN-UML. Observers attributed the victory to factors including voter disenchantment with the mainstream parties; the Maoists' charismatic, aggressive—and sometimes violent—campaigning; the Maoists' platform of promoting equality for lower castes, ethnic minorities, and other excluded groups that comprise a large percentage of the population; and fears of more violence if the Maoists were marginalized in the CA.

Although a total of 25 parties gained representation, the Maoist, CPN-UML, NC, and Madhesi Janadhikar Forum occupy the vast majority of seats. Quotas requiring parties to include marginalized groups in their candidate lists enabled substantially increased representation of women and minorities—nearly 250 women and Dalits (low-caste Hindus, commonly called “untouchables”) secured seats.⁶

Under the interim constitution, the executive is split between a prime minister, who heads the government, and the president, whose responsibilities are primarily ceremonial. Both are chosen by a majority of the CA. In July 2008, the NC's Ram Baran Yadav was elected president, while a month later Maoist leader Prachanda became prime minister at the head of a coalition government that included the CPN-UML, the Madhesi Janadhikar Forum and Nepal Sadbhawana parties, both representing the Terai region, and two other small parties. The NC chose to sit in opposition, although the interim constitution called for consensus-based governance until a new charter is written.

The interim constitution provides for a system of checks and balances. In practice, the Maoists' commitment to democratic standards remains an open question, with internal debates indicating some continued dedication to establishing a communist “people's republic.” Although they have sometimes shown more responsiveness to public concerns than other parties, the Maoists have also exhibited limited tolerance for political pluralism, retained parallel governance structures, and introduced constitutional proposals that would limit judicial independence, while their affiliates—primarily the YCL and trade unions—have repeatedly used violence against critics. In February 2009, the Maoist-led government bypassed the CA to push through an ordinance criminalizing enforced disappearances and establishing an investigatory body;⁷ opposition parties and international rights groups criticized the undemocratic process, although the action was aimed at fulfilling a 2007 Supreme Court order. Throughout the political landscape, parties have been weakened by internal feuding and allegations of corruption. Several have established their own

militant youth wings and backed the army in its conflict with the administration over civilian control of the military.

The clash between the Maoists and the Nepalese Army (NA) contributed significantly to the dissolution of the Maoist-led government after only nine months in office. The dispute illustrates the weakness of institutional checks and balances relative to longer-term relationships between political actors, in particular, mistrust between the Maoists, other parties, and the increasingly politicized NA. In November 2008, the NA defied orders from the Maoist defense minister and initiated a recruitment drive to add 3,000 troops to its ranks, a move condemned by the UN as a violation of the 2006 peace agreement.⁸ In March 2009, the Supreme Court sought to resolve the dispute by prohibiting the NA from new recruitment, while allowing the 3,000 soldiers to retain their positions. Outraged Maoist cadres organized demonstrations across the country and government ministers condemned the ruling, labeling the judiciary as “reactionary forces” and a “threat to the...republican order.”⁹

In May 2009, Prime Minister Prachanda attempted to dismiss army chief Rookmangud Katawal, who had served under the monarchy, over his opposition to integrating Maoist fighters into the NA.¹⁰ Katawal refused to leave, and the president, overstepping his ostensibly ceremonial role, ordered him to remain in place. Two parties quit the governing coalition to protest the dismissal effort; left with only a thin majority, Prachanda resigned and was replaced as prime minister by the CPN-UML's Madhav Kumar Nepal. However, he headed a weak 22-party coalition and faced continued Maoist-led protests and strikes.

The Public Service Commission has been reconstituted, but Nepal's civil service remains far from politically neutral. Civil service appointments and promotions continue to be dominated by traditional patron-client and bureaucrat-politician relationships. In the current political climate, partisan and ideological considerations often override merit in personnel decisions.¹¹

In sharp contrast to the king's clampdown on civil society in 2005, the space for nongovernmental organizations (NGOs) has expanded rapidly in recent years, with thousands of NGOs operating across the country. Indeed, civil society groups played an instrumental role in both the protests that contributed to Nepal's transition and the battles of procedure and principle that followed. In the postelection period, however, their influence has waned and some groups have been criticized as overly partisan.¹²

The legal environment for NGOs has improved, and in May 2006 the government repealed a restrictive November 2005 code of conduct that had barred NGOs from work that would “disturb social harmony.” Nevertheless, civic leaders continue to press for an overhaul of NGO laws. In particular, the government-run Social Welfare Council has retained the authority to monitor NGO activities and refuse registration or program proposals, although approval is generally granted in practice.

Violence against political activists and human rights defenders has dropped significantly, from a peak of 3,286 targeted in 2006, but remains high by

international standards.¹³ Most threats and attacks originate from nonstate actors, including armed Madhesi groups in the Terai region and political parties' paramilitary youth wings, particularly the YCL. Civil society groups have also faced occasional harassment from state authorities.¹⁴

Space for free expression in Nepal has also expanded dramatically since the king's departure, and the country is now home to a vibrant press that reports on a wide variety of political and social issues. Nevertheless, violence against journalists, Maoist intolerance of criticism, and the use of public media to disseminate propaganda restrict press freedom.

The legal environment regulating media activity has improved. In 2006, the interim government rescinded a range of repressive laws. These included a restrictive 2005 ordinance that banned private radio news broadcasts, as well as the Terrorist and Disruptive Activities Ordinance, which had been used to imprison journalists. The 2007 interim constitution outlawed prior censorship and guaranteed the rights of publication, broadcasting, and press. That July and August, the government promulgated the Working Journalist Act, which provides reporters with improved conditions and grants them the right to unionize. Nevertheless, criminal defamation laws remain in place and implementation of the new legislation has yet to take full effect.¹⁵

In contrast to the improved legal framework, violence against journalists remains a significant threat to press freedom. Media workers suffer physical attacks, abductions, and assassinations for criticizing politicians and reporting on issues such as the Maoist insurgency, human rights violations, and government corruption. Violence was especially pronounced during the 2008 election campaign and increased further under the Maoist administration as YCL and union militants, and, to a lesser extent, government security agents, targeted journalists critical of the party. In May 2008, Prime Minister Prachanda warned that criticism would no longer be tolerated now that the Maoists had become the ruling party.¹⁶ Leading private media houses, including Kantipur Publications, the APCA House, and the Himal Media House, were subsequently harassed for criticizing the Maoists.¹⁷

The Federation of Nepali Journalists reported 342 press freedom violations in 2008.¹⁸ The gruesome January 2009 murder of radio journalist Uma Singh, the fourth reporter killed since 2006, prompted some to leave the profession, while others reported feeling unsafe displaying press credentials at rallies and mass gatherings. The government's failure to investigate and punish attacks against journalists—largely due to the direct links between politicians and perpetrators—has fostered a culture of impunity, as well as self-censorship among journalists. In February 2009, the International Press Freedom Mission to Nepal reported that authorities had yet to convict a single person for crimes against journalists.¹⁹

The government continues to directly influence media content through ownership of powerful media houses staffed by progovernment journalists.²⁰ These include Radio Nepal and Nepal Television, the *Rashtriya Samachar*

Samiti news agency, the *Gorkhapatra* (Nepali) and *The Rising Nepal* dailies, and other magazines produced by the government-owned publisher Gorkhapatra. In addition to promoting government policies through these outlets, the Maoists also forced private radio stations to broadcast propaganda in 2008 and while holding the Ministry of Information portfolio under the interim government.²¹ Nevertheless, the growing private media sector, particularly the more than 150 independent radio stations, has become more popular and effective in shaping public opinion. Unhindered internet service has further contributed to the free flow of information.

CIVIL LIBERTIES

3.69

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	2.38
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.00
FREEDOM OF CONSCIENCE AND BELIEF	4.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	3.75

With the end of the insurgency and monarchical rule, the number of rights abuses like state abductions and extrajudicial killings has declined dramatically in recent years. The interim constitution and subsequent legislative reforms improved the legal environment protecting civil liberties, women, and minorities. Unfortunately, a lack of political will to prosecute current and past abuses, weak policing, and attacks by paramilitary youth groups and ethnic militias have resulted in a security situation that remains unstable for many Nepalese. Meanwhile, at least 1,300 enforced disappearances from the conflict period remain unresolved.²² Legal protections against torture fall short of international standards, and the government has ignored recommendations by the National Human Rights Commission (NHRC) that torture be criminalized. Torture remains prevalent, particularly as police seek to extract confessions, and civilian oversight of the security forces is weak. According to Amnesty International, over 1,300 new cases of torture were recorded between April 2006 and the end of 2008.²³

Prison conditions have improved in recent years but continue to fall short of international standards. Lack of funding and political will have limited the impact of various jail reform commissions. Under the interim constitution, all individuals detained by police must be presented before a court within 24 hours or be released, though in many cases this does not occur.

Nepalese from all regions report feeling safer today than during the insurgency.²⁴ Nevertheless, weak state authority in maintaining law and order and the proliferation of armed groups, particularly in the Terai region, have contributed to high levels of crime and insecurity. Extrajudicial killings, beatings, abductions, and extortion by criminal gangs and armed groups continue at a

rate of dozens per month. An estimated 23 people died and 239 were injured in 83 bombings across Nepal in 2008, mostly in the Terai region.²⁵ In parts of the Madhesi-dominated region, policing has nearly totally collapsed.²⁶ As a result, public confidence in law enforcement remains low.

Although exact figures are unavailable, an estimated 50,000-70,000 Nepalese were considered internally displaced peoples (IDPs) as of mid-2009. While most were forced to leave their homes during the Maoist insurgency, some were dislocated by ethnic tension and violence in the Terai region since 2007. Care for the former has fallen under the authority of the Ministry of Peace and Reconstruction, while the latter have received little government assistance. Many IDPs complained of difficulties registering with the authorities, inadequate property restitution, and an official policy focusing on those returning to their place of origin versus those wishing to settle in their current place of residence or elsewhere in Nepal.²⁷

Avenues of effective redress for victims of current and past abuses have expanded, but impunity remains the norm. In a positive development, the NHRC was reconstituted in August 2007, after the king had curtailed its independence. The interim constitution increased the commission's authority, including granting it subpoena-equivalent powers and the right to enter any government office or detention facility without prior notice. The NHRC, whose members include former senior judges and prominent activists from a range of backgrounds, has emerged as an important investigatory body and advocate for victims. In 2008, it received over 1,200 complaints, investigated over 700 incidents of alleged abuse, and sought compensation or disciplinary action from the government on behalf of at least 110 victims.²⁸ Its impact has been limited, however, as few of its recommendations for prosecutions have been followed up by the government, police, and courts.

The courts, conversely, have provided little recourse for redress. Petitioners are often ignored and suffer intimidation. In other instances, police refuse to file complaints, fearing reprisals. Members of the NA and police have enjoyed near total impunity for abuses committed during the insurgency, when the army was responsible for an estimated 8,377 deaths and 1,234 disappearances.²⁹ Military officials claim that 175 personnel have been sanctioned for human rights abuses, but details about such internal investigations or the penalties imposed have not been published.³⁰ For its part, the government has actively sought to shield state security forces from prosecution. Those responsible for carrying out atrocities have generally retained their positions, while some senior officers have been promoted despite having overseen human rights violations.³¹ A 2008 study by Human Rights Watch found that "not one member of the security forces or of the CPN-M has been held criminally accountable and convicted for killings, 'disappearances,' torture or other abuses by civilian courts."³²

Human trafficking continues on a massive scale, at times with complicity from state authorities. Experts estimate that nearly 400,000 women and girls have been trafficked to India since 2005.³³ In 2007, the CA passed a bill

criminalizing prostitution and trafficking that established a system to rehabilitate and compensate victims. Enforcement has been weak, however, with state agencies citing limited capacity.

The 2007 interim constitution prohibits discrimination “on grounds of religion, race, caste, tribe, gender, origin, language, or ideological conviction.” Other recent legislation, along with partial proportional representation in elections and party list quotas for women and minorities, has made the new political order significantly more inclusive. Women secured 197 seats, nearly one-third of the CA, a dramatic increase from the 12 women in the interim parliament.³⁴ Minorities were elected in similarly unprecedented numbers, including 51 Dalits and 77 Madhesis, as well as 22 representatives of economically underdeveloped regions. Still, Dalits remain underrepresented relative to their size, holding 7 percent of seats but comprising an estimated 20 percent of the population; they remain largely excluded from party leadership positions.³⁵

Gender equity is enshrined in the interim constitution and specific provisions address domestic violence, reproductive health, and parental inheritance. Nonetheless, women continue to suffer from systematic discrimination in Nepal’s patriarchal society, lacking access to education, healthcare, and property ownership. In rural areas, discrimination is further heightened by religious customs, rigid caste divisions, and the common practice of child marriage.

Domestic violence remains prevalent—80 percent of interviewees in a recent survey reported being abused by their husbands.³⁶ Police investigation and prosecution of such cases is rare, and women are instead encouraged to accept resolution via informal community justice mechanisms in which bribes and dismissive attitudes toward rape and other violence limit the punishment of perpetrators. Civic groups have lobbied for passage of a draft 2002 bill imposing harsher penalties for domestic violence, but have yet to meet with success.³⁷ In July 2008, the government created a task force to issue recommendations on criminalizing domestic violence. Violence against women by state officials also continues to be reported.³⁸ Meanwhile, women’s rights activists have themselves faced violence for advocacy work—according to Amnesty International, since 2006 at least two female activists were murdered, and 17 women were reportedly threatened with death, rape, or beating if they continued their work.³⁹

Discrimination based on ethnicity, caste, and region of origin has been a feature of Nepali society for centuries. The country remains dominated by male, upper-caste Hindu elites. Dalits face ostracism on a daily basis and are systematically denied opportunities to education, healthcare, employment, and property ownership.⁴⁰ Ethnic minorities have been similarly marginalized, such as the Madhesis in the south, who comprise an estimated 40 percent of the population. Linguistic tensions also exist as Nepali remains the official language, though only 47 percent of Nepalese are native speakers.⁴¹

The end of the Maoist insurgency and opening of the political system has generated an unprecedented degree of political representation for these long-excluded groups. Prior to the 2008 elections, several measures were taken to

ensure the rights of Madhesis. Millions were issued citizenship certificates and quotas were instituted on party lists.⁴² In February 2008, in an effort to stem violence and paralyzing strikes by Madhesi groups, the government negotiated an agreement with an ethnic alliance guaranteeing a higher level of proportional representation.

The resulting increased representation in the CA has given minority groups a greater voice in mainstream politics. During a period of weak coalitions, Madhesi groups have used these circumstances to leverage promises for autonomy, particularly in the Terai region, from the government. After the Maoists left the government in May 2009, leaders from the CPN-UML and NC brokered a deal with Madhesi parties, promising to renew their commitment to greater autonomy in the Terai region in exchange for political support.⁴³

In the meantime, modest steps have been taken to reverse years of discrimination in public sector employment, where Madhesis occupy only 5 percent of jobs. In August 2007, the government promised to incorporate more Madhesis and members of other minorities into the police force. To counter traditional Brahmin dominance of the bureaucracy, legislation was passed in August 2007 reserving 45 percent of civil service positions for women and ethnically distinct groups, though the political parties representing these groups criticized the percentage as insufficient. Implementation of these new policies has been slow.

Overall, however, the period of national solidarity around efforts to remove the king from power has been followed by increased ethnic tensions and violence. Public perceptions that violence proved an effective channel for Maoists in gaining power have led to a proliferation of armed groups asserting the interests of various communities and demanding regional autonomy. As a result, following the signing of the 2006 peace accord, ethnic strife, strikes, and bombings became a regular occurrence in the southern Terai region, with hundreds killed or injured. Tensions have been further exacerbated when security forces have responded to peaceful demonstrations with excessive force.

The parliament officially declared Nepal secular in May 2006, ending centuries of identity as a Hindu state.⁴⁴ In 2007, freedom of religion was further guaranteed in the interim constitution. Hindus constitute approximately 80 percent of Nepalese, with the remainder of the population practicing Buddhism, Islam, Christianity, or indigenous religions. For the most part, authorities allow religious minorities to practice their faith freely. The state rarely interferes in religious appointments or the internal activities of religious organizations. However, restrictions on Tibetan Buddhists, including activities of a purely religious nature, have increased recently, a move widely interpreted as an effort to curry favor with the Chinese government.

The primary threat to religious minorities has come from extremist Hindu groups. In March 2008, a bombing at a mosque in the southern city of Biratnagar killed two people.⁴⁵ Also in 2008, armed men attacked a Protestant church and shot dead a Catholic priest inside his home in eastern Nepal. The National Defense Army, a militant organization dedicated to restoring Nepal

as a Hindu monarchy, claimed responsibility for several attacks. In September 2009, police succeeded in tracking down and arresting the group's leader, Ram Prasad Mainali.

In December 2007 and November 2008, the Supreme Court issued decisions favoring equality—including the right to marry—for lesbian, gay, bisexual, transsexual, and intersex persons.⁴⁶ The ruling called on the government to form a committee to examine passing relevant legislation. Although the committee has been formed and the government has reportedly issued identity cards denoting a third gender for sexual minorities, full legislation has yet to be enacted.⁴⁷

A large number of trade unions—many with affiliations to political parties—operate in Nepal, play an important role in the political landscape, and are generally allowed to function freely. The interim constitution guarantees the right to strike and bargain collectively, though other labor laws partially restrict strike activity. In 2007, the right of civil servants to join unions and bargain collectively was restored; it had been suspended in 2005. Inter-union rivalry and violence has increased as Maoist-affiliated unions have carried out multiple attacks against workers from other organizations, business owners, and media outlets.⁴⁸

Freedoms of association and assembly have expanded following the April 2006 demonstrations that removed the king. Demonstrations and strikes have become a regular feature of the political landscape, sometimes bringing the country to a standstill. Beginning in May 2009, Maoists organized a nationwide protest movement over the failed sacking of army chief Katawal. The demonstrations lasted through the year, included blockades of roads and government buildings, and sometimes ended in violence by both protesters and police.

The authorities generally respect the right to peaceful assembly, but have violently suppressed Madhesi and Tibetan protests in recent years. In the aftermath of March 2008 protests in Tibet, Tibetans staged large-scale demonstrations denouncing human rights abuses by the Chinese authorities. The Nepali government responded with a crackdown, arresting at least 8,350 Tibetan demonstrators between March and July 2008, though most were released within 24 hours.⁴⁹ Tibetan detainees were reportedly subjected to beatings, torture, and sexual assault in custody, and many were threatened with deportation to China.

RULE OF LAW

2.85

INDEPENDENT JUDICIARY	3.00
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	2.00
PROTECTION OF PROPERTY RIGHTS	4.00

The judicial system's structure largely mirrors the British legal system and consists of 75 district courts, 16 appellate courts, and the Supreme Court, which serves as both a final court of appeal and venue for judicial and constitutional

review. The interim constitution also established a Constituent Assembly Court with jurisdiction over electoral disputes arising from the CA elections. Judges, rather than juries, preside over all proceedings.

Judicial independence has increased compared to the years when the king regularly used the courts to silence critics and cement his authority. Although the chief justice acknowledged occasional political pressure in July 2008, the Supreme Court has asserted its independence in notable ways, taking bold stances on controversial disputes in opposition to both the government and opposition parties. Since 2006, the court has ordered the investigation of enforced disappearances from the insurgency period, required the release of Tibetan protesters, repealed laws enabling oppressive religious customs, and expanded the rights of women and sexual minorities. By contrast, lower level tribunals remain poorly resourced and vulnerable to corruption and intimidation, weakening the consistent and impartial application of the law.

In response to the Supreme Court's decisions, the Maoist-led government repeatedly sought to assert greater influence over the judiciary, while publicly challenging its authority. In April 2008, Prachanda declared that constitutional measures endorsed by "popular mandate... cannot be the subject of any judicial deliberation." In October 2008, the Maoist-led government decided to expand the Supreme Court by adding two seats.⁵⁰ In December, it attempted to fill over three dozen vacancies in the Supreme Court and appellate courts with pro-Maoist candidates, moves the chief justice criticized as undermining judicial independence.⁵¹

Judicial authority has also been undermined by state agencies delaying or outright refusing to comply with adverse decisions. To date, the government has implemented only a small percentage of Supreme Court policy directives.⁵² Both the Nepalese Army and the People's Liberation Army (PLA) defied a February 2009 interim Supreme Court decision calling for suspension of recruitment of new cadets;⁵³ they have also ignored rulings ordering investigations into past abuses.

Although the current Supreme Court justices, and to a lesser extent lower courts, have been appointed in a largely impartial manner, constitutional experts have criticized current procedures as potentially limiting independence due to the prime minister's influence over the process. The chief justice is appointed by the prime minister on the recommendation of the Constitutional Council, with four of the council's six members also appointed by the prime minister. The chief justice then selects other Supreme Court judges "on the recommendation" of the Judicial Council (JC), terminology that leaves vague how binding the JC's advice is. With three of the JC's members directly appointed by the prime minister and two appointed by the chief justice, direct and indirect executive influence is evident.⁵⁴ The interim constitution protects Supreme Court judges from executive interference and a parliamentary supermajority is required for their removal, though protections for lower-level judges are weaker.

Though the judiciary is widely perceived as more trustworthy than other state institutions, public faith in the impartial administration of justice remains low, and most Nepalese acknowledge the influence of patronage in the court system.⁵⁵ Inadequate salaries and a chronic lack of funding have fueled judicial corruption, particularly in the lower courts. The Supreme Court has not remained untouched. In March 2007, it was rocked by scandal after a compact disk surfaced showing court officials negotiating the terms of a kickback with a plaintiff in a property lawsuit.⁵⁶ Delays also plague the judiciary, with over 50,000 cases reportedly backlogged in 2008 at all levels of the judiciary.⁵⁷ A recent study of judicial rulings cited other shortcomings, including ignored precedents, inadequate legal analysis, and unnecessary orders issued.⁵⁸

Although the interim constitution guarantees the presumption of innocence, in practice, suspects are often presumed guilty and tortured to elicit confessions. Inconsistent sentencing, arbitrary arrest, prolonged detention, and erratic trial proceedings are hallmarks of the criminal justice system. Access to counsel is limited and Maoist cadres have been known to intimidate lawyers and witnesses.⁵⁹ More positively, authorities began outfitting courtrooms in the Kathmandu Valley with closed circuit recording in May 2009 to reduce trial irregularities.⁶⁰ Though officially disbanded following the CPA, Maoist-controlled parallel courts continue to operate in some rural districts. Few due process protections or opportunities to appeal exist in the processes overseen by party cadres, though some experts have remarked on their effectiveness in providing prompt and inexpensive dispute resolution.⁶¹

Perhaps the most serious obstacle to the rule of law remains the culture of impunity for human rights abusers, wealthy Nepalese, and members of the political elite. Prosecutors are vulnerable to political influence, while provisions of the Army Act, Police Act, and Public Security Act explicitly grant immunity to members of the security forces and civil servants. As such, Maoist leaders, military personnel, and government officials who allegedly have been involved in severe abuses continue to evade punishment, as do customs officials and border police complicit in human trafficking.

In some cases in which investigations have been initiated, criminal proceedings have been halted by executive decree. According to the International Crisis Group, "on 23 October 2008 the [Maoist-led] government withdrew 349 criminal cases against political party cadres accused of crimes including rape, robbery and drug smuggling. 53 of these cases had been registered after the signing of the CPA."⁶² In another egregious incident, authorities in 2006 permitted Sitaram Prasain, a businessman accused of embezzling US\$4.3 million from his own bank, to hold a lavish wedding party attended by senior ministers despite an outstanding warrant for his arrest.⁶³ Although the CPA calls for a truth and reconciliation commission, one has yet to be established. Meanwhile, police and judges have used its future creation to justify the lack of prosecutions for abuses from the insurgency period.

Security sector reform remains a serious challenge, with commitments to merge the Maoist PLA with the NA not yet realized. A 2006 amendment to the Army Act formally established civilian control over the armed forces. In practice, however, the NA has retained significant autonomy and resisted submitting to civilian oversight. The military has also injected itself into the political process, submitting proposals to the CA, such as a February 2009 demand for a referendum over the country's status as a secular country and a federal versus centralized state structure. Although human rights abuses have declined since 2006, members of the military continued to harass activists publicizing abuses from the insurgency period: in 2007, NA soldiers reportedly made death threats against Jitman Basnet, a lawyer who published a book detailing his torture in military custody.⁶⁴

An estimated 23,000 PLA fighters remain confined in cantonments throughout the country. The UN has supervised weapons storage and screened the former insurgents for eventual entry into the NA and other security agencies, with approximately 20,000 receiving approval. The process has been marred, however, by disqualified combatants' refusal to leave cantonments, PLA attempts to recruit new soldiers to replace disqualified ones in violation of the CPA, and soldiers' venturing outside cantonments, committing acts of violence and extortion. In one incident that sparked national outrage, in May 2008, PLA soldiers kidnapped, tortured, and then allegedly murdered former Maoist supporter and Kathmandu businessman Ram Hari Shrestha. Though the government vowed to conduct an investigation, no one has yet been prosecuted.⁶⁵

The increased activities of paramilitary youth groups since 2006 have exacerbated security problems. With a reported 50,000 active cadres, the YCL is the largest.⁶⁶ Mostly in response to its actions, other political parties have established militant youth wings, including the CPN-UML affiliated Youth Force, the Terai-based Madhesi Youth Force, and the Nepali Congress's Tarun Dal. In 2008 and 2009, these groups were responsible for numerous violent acts against police, rival party members, and ordinary civilians.⁶⁷ The authorities have made little effort to rein in or punish such violence, though political leaders have rhetorically sought to distance themselves from the thuggish behavior.

In a country in which nearly 80 percent of the rural population cultivates crops, land is a key asset. Despite its importance and the inclusion of the right to property under the interim constitution, protection of property rights remains weak, complicated by a rudimentary administration system, unreliable land records, poor rule of law, and forcible land seizures by militant groups. During the insurgency, Maoists seized thousands of hectares of land, the return of which they have repeatedly pledged since 2006. In February 2009, the government ensured that properties seized from political leaders in three dozen districts were returned to their original owners.⁶⁸ Nonetheless, the majority of seized land remains under Maoist control or in the possession of farmers to whom it was reallocated, further complicating the situation.⁶⁹ A High Level Land Commission has been established but has yet to play a significant role in

settling land disputes. In a positive development, a pilot technical assistance program in Bhaktapur district funded by the Asian Development Bank reportedly improved the speed and quality of deed processing, and plans are in place to expand it to other regions.⁷⁰

ANTICORRUPTION AND TRANSPARENCY 3.13

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.50
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	2.50
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.00
GOVERNMENTAL TRANSPARENCY	3.50

The legal framework for combating corruption has undergone important recent improvements. The 2006 dissolution of the Royal Commission for Corruption Control, an agency created by the king and used to persecute political opponents, was a further step forward. Nevertheless, corruption remains a defining feature of Nepal's social landscape. Weak institutions, political instability, and lack of commitment by key stakeholders hamper effective enforcement of new laws.

As political parties focused on election campaigning, coalition building, and responding to ethnic conflict, anticorruption efforts inevitably slowed in 2008 and 2009. According to some observers, opportunities for corruption may have increased during the transition phase.⁷¹ In 2009, Nepal was ranked 143rd out of 180 nations in Transparency International's Corruption Perceptions Index, a decline from its 2007 ranking of 131.⁷²

Bureaucratic red tape, low salaries, and socioeconomic insecurity contribute to high levels of petty corruption. Cultural norms such as *afno manche* (emphasizing one's inner circle) and *chakari* (the offering of gifts to a patron in exchange for favors) contribute to nepotism and favoritism within the bureaucracy and in the provision of public services. The state maintains several dozen public enterprises, which are prone to graft, mismanagement, and bloated payrolls. No independent agencies regulate these companies and internal auditing procedures are often lax. A Ministry of Finance survey of 36 public enterprises found that in the 2008 fiscal year, 19 had incurred losses, including the Nepali Oil Corporation, a deterioration from the previous year, and only 19 had audited their accounts.⁷³ Adding to the confusion have been management reshuffles amid changing government coalitions. In August 2009, five Maoist-affiliated chairs and general managers resigned, citing the change in government.⁷⁴

The scope and quality of the legal framework tackling corruption in Nepal has improved in recent years, bringing it closer to international standards. The 2002 Prevention of Corruption Act allows potential punishment of up to ten years' imprisonment should civil servants accept gifts or favors in their official capacity. Expanding on this legislation are the 2007 Public Procurement Act

and the Good Governance Act, which established new regulations for transparency in civil service hiring, mandatory public hearings, prevention of conflicts of interest, and the creation of ministerial good governance units.⁷⁵ The 2007 Banking Offence and Punishment Act prescribes harsh penalties for bank-related fraud or large loan defaults. The 2008 Money Laundering Prevention Act requires financial institutions to maintain diligent transaction records and imposes one to four years' imprisonment for money laundering.

Though improved since 2005, enforcement of such laws remains inconsistent at best, and senior officials are rarely convicted for violations. Under the interim constitution, the Commission for the Investigation of Abuse of Authority (CIAA) serves as the nation's chief anticorruption agency, wielding ombudsman, investigative, and prosecutorial powers. Despite the CIAA's power to launch investigations and collect evidence, it turns over its results to the less independent prosecutor's office, which pleads relevant cases before the Special Court, a tribunal created in 2002 to handle corruption cases. In practice, this dependence on government attorneys for convictions has hindered the impact of the CIAA's investigations.

Although the CIAA has aggressively pursued cases against senior politicians without regard to their political affiliation, few such cases have resulted in conviction. According to one estimate, of 63 high-profile cases of possession of disproportionate property, the CIAA had won only seven as of July 2009. By contrast, its success rate in prosecutions of lower officials and administrative irregularities is estimated at 75 to 80 percent. Experts and CIAA commissioners have attributed the discrepancy to a lack of commitment to fighting corruption within the attorney general's office and the Special Court, alleging that the former has been slack in pleading high-level cases before the court, while the latter has tended to acquit senior officials on technicalities.⁷⁶

The CIAA's authority is limited in other ways. Interim constitution provisions calling for an expanded mandate to cover the army and judiciary have yet to be implemented, and the private sector is outside its jurisdiction. Consequently, less than half of all instances of corruption are estimated to fall under the agency's purview. Moreover, a shortage of commissioners since 2006 has further weakened its capacity. Collectively, these factors have contributed to a decline of public trust in the commission.

Other agencies are tasked with combating corruption in specific sectors: the Auditor General and the Public Accounts Committee monitor state spending and financial reports, and the newly created Public Procurement Monitoring Office (PPMO) oversees government purchases and contracts. The National Vigilance Center (NVC) audits income and asset reports for irregularities. Under the Prevention of Corruption Act, public servants are required to declare their property assets and the CIAA has occasionally taken action against those who have not.⁷⁷ As a whole, however, the asset-monitoring system is incomplete, and NVC asset data are not open to public scrutiny or independent

verification. In addition, officials accused of corruption often manage to attain high-level government positions. Although the Prevention of Corruption Act prohibits individuals implicated in corruption from holding office, the Election Commission and Special Court turned a blind eye to nepotism and graft among the main political parties and their candidates.⁷⁸

Tax administration and transparency have improved modestly and in 2009 the government announced a new initiative to promote tax compliance.⁷⁹ Nonetheless, the system remains prone to inefficiency and corruption, with businesses often subject to unpredictable and costly taxes as well as extortion by the YCL and other militia groups. Victims of such corruption have few avenues for effective redress. The NVC has processed hundreds of citizen complaints in recent years.⁸⁰ Its effectiveness is limited, however, as it only possesses the authority to forward nonbinding recommendations to other institutions.

There is wide coverage of corruption in the media, including among 5,500 community radio clubs created as part of a local NGO initiative.⁸¹ Journalists have reported extensively on the CIAA's investigations and allegations of graft, bribery, and embezzlement in government; recent stories include a raid of the police headquarters due to suspicion of financial irregularities in the purchase of jackets⁸² and charges that the Nepali Oil Corporation embezzled US\$4.5 million in a land deal.⁸³ Although anticorruption activists and whistleblowers are freer today than under the royal regime, the authorities rarely take action to protect them, despite threats from political parties and their militant youth wings. Whistleblower provisions in the 2007 Right to Information Act are rarely enforced. The government has taken few steps to combat corruption in the education sector, where irregular fees and payments to teachers or management committees are the most common forms.

The 2007 Right to Information Act grants citizens the right to access the records of government institutions, political parties, and state-funded NGOs. Citizens can access most information concerning investigations by anticorruption agencies, legislative processes, and court decisions. Nevertheless, some international advocacy groups decried exceptions for national security and criminal investigations as overly broad.⁸⁴

The budget-making process has improved in recent years, with Nepal receiving a score of 43 on the 2008 Open Budget Index, compared to 36 in 2006.⁸⁵ It has become more inclusive and open to exhaustive legislative debate. Accounting of expenditures, however, is riddled with irregularities. The Auditor General now publishes annual reports of tax revenue and government accounts, an improvement over the 2002–05 period, when such records were concealed from the public.⁸⁶ However, the reports are often incomplete, making comparisons between what was budgeted and what was spent difficult.⁸⁷

The 2007 Public Procurement Act requires competitive, open bidding for major contracts and empowers the PPMO to oversee the process. Since its inception, the PPMO has taken modest steps to reduce graft. In November 2007,

the Supreme Court also ordered the Nepal Airlines Corporation to cancel a US\$6.3 million contract with a Beijing maintenance company, citing its failure to undergo a competitive bidding process.⁸⁸ Still, enforcement remains irregular.

Service delivery remains poorly monitored and characterized by off-budget allocations and spending. Although foreign aid makes up nearly 70 percent of the development budget, it has yet to translate into improved services for many Nepalis due to corruption, procedural delays and low state capacity.⁸⁹ In one case in 2008, local media reported that of “30 sacks of rice and three sacks of clothes sent for distribution among flood victims in Laukahi and Bhokraha, only 20 containing rice and one with clothes reached the affected spot.”⁹⁰

RECOMMENDATIONS

- Ensure that the constitution drafted by the Constituent Assembly provides for democratic institutions, judicial independence, and the protection of fundamental rights.
- Act on recommendations by the National Human Rights Commission for prosecutions, particularly in cases involving crimes against journalists and human rights defenders.
- End the culture of impunity by passing into legislation draft bills on disappearances and the establishment of a truth and reconciliation commission following consultations with all relevant stakeholders.
- Demilitarize all political parties’ youth wings and hold political leaders accountable for systematic violence committed by affiliated organizations.
- Revitalize implementation of the Comprehensive Peace Agreement such that both the Nepalese Army and Maoist forces adhere to commitments regarding civilian control, demobilization, and integration of forces.
- Expand the authority of the Commission for the Investigation of Abuse of Authority (CIAA) as called for in the interim constitution, appoint a full complement of commissioners, and ensure that prosecutors possess sufficient political autonomy to pursue convictions based on evidence gathered by the CIAA, particularly against senior officials.

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