

# Nepal Peace and Development Strategy 2010–2015



A contribution to development planning from  
Nepal's international development partners



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# **Nepal Peace and Development Strategy**

## **2010-2015**

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**January 2011**



# FOREWORD



While we all speak of peace and development as two sides of the proverbial coin, it is often hard to translate this idea into concrete activities. This Peace and Development Strategy, prepared by Nepal's principal development partners in consultation with a cross-section of government officials, non-governmental organizations, academics and others, valuably unpacks this truism and breaks it down to specific actions and potential areas of development support. Working backwards from the clauses contained in the Comprehensive Peace Agreement, the agenda laid out in this strategy is true to the undertakings signed by our leaders in November 2006. Contained in these pages is a highly valued 'offer of support' in specific areas that will help Nepal build the kind of peace that will be irreversible.

In the same spirit, the Government of Nepal recognizes that our development planning and investments need to find their place in the historic transition process underway in Nepal. That it is not enough to do just 'regular' development and hope all boats will rise equally and all grievances be addressed in due course. Rather, that our citizens expect government policies that are tailored to some of the challenges particular to our current situation—for example, a closer attention to equity and inclusion, special efforts to strengthen the rule of law, and satisfactory responses to address the expectations of the many war-affected. Our new Three Year Plan (2010/11–2012/13) makes a concerted effort towards this end and, as a result, there is, by design, good alignment between this Peace and Development Strategy and the government's planning framework for the coming three years.

This Peace and Development Strategy equally recognizes the complexity of the task ahead of us. Recent good news on Nepal's progress towards the Millennium Development Goals as well as its extraordinary progress against the Human Development Index over the last 30 years naturally have to be tempered with deeper questioning about the quality of this progress and the extent to which it has been shared. Some of the undertakings in the Comprehensive Peace Agreement also require considerable negotiation, much of which still lies ahead of us. The contours of a new federal state structure, for example, or how the Truth and Reconciliation Commission will be conducted, are still unclear. With time, answers to these questions will become available. And as we turn our hand to implementing such far-reaching decisions, we know that we can continue to rely on our development partners to support us when called upon. This Peace and Development Strategy provides an invaluable framework for this ongoing collaboration.

Jagdish Chandra Pokharel, Ph.D.  
Vice Chair,  
National Planning Commission



# PREFACE

Nepal's development partners are acutely conscious of the need for Nepal to chart its own course. To allow the necessary time for local solutions to intractable social, political and economic issues to be properly negotiated and internalized. To maintain a sense of realism about how long such a complex and multi-layered process will take. Development partners are willing the country to succeed with an intensity that comes from six decades of close friendship, respect and shared successes and disappointments around Nepal's development trajectory.

It is also probably accurate to say that development partners are watching Nepal's unfolding transition at this time with both anxiety and excitement. The anxiety stems from a sense of the sheer complexity of the peace agenda Nepal has set for itself, worries about the challenges for Nepali leaders of managing public expectations as we enter the fifth year since the Comprehensive Peace Agreement (CPA) was signed, and concerns about the pressure on everyone—local and international alike—to demonstrate 'results' in a world of competing priorities and pressure on aid resources. At the same time, and in greater measure, is a palpable sense of excitement amongst development partners about the development opportunities ahead, as Nepal embarks on a transformative agenda that promises to unlock the country's full development potential and to firmly close the door on a dark period of social and political upheaval.

These forces have fundamentally shaped this peace and development strategy. The strategy has emerged from a growing sense amongst development partners of the importance of articulating how development partners could assist Nepal in the years ahead, to realize the agenda laid out in the CPA. Of the need not to lose sight of the development agenda embedded in the CPA. And, of the need to ensure development resources are aligned with the priority of peace. That development investments are ready, when called upon, to assist with some of the short-term challenges as well as getting started on the long-term agenda articulated therein. In the pages that follow is a commitment by development partners to respond, when called upon, on a complex agenda that will require perseverance, flexibility and openness on all sides.

The strategy has been developed by a wide cross-section of local and international organizations and local and international subject experts, from UN agencies, bilateral aid agencies, international financial institutions, non-governmental organizations, think tanks and others. It has benefited greatly from inputs from, and discussions with, different parts of government during its formulation. We thank, particularly, the Vice-Chair and members of the National Planning Commission for their valuable insights.

It is our sincere hope that this Peace and Development Strategy will go some way to ensuring Nepal's development partners play their part in the exciting peace-building tasks ahead.

Robert Piper  
UN Resident & Humanitarian Coordinator  
On behalf of Nepal's development partners



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**NOTE: An Action Plan has been developed to accompany this strategy. The Action Plan will be reviewed and updated periodically and is therefore published as a companion document.**

# ACRONYMS

ADB	Asian Development Bank
AMMAA	Agreement on Monitoring of the Management of Arms and Armies
AusAID	Australian Agency for International Development
BOGs	Basic Operating Guidelines
CA	Constituent Assembly
CIAA	Commission for the Investigation of Abuse of Authority
CIDA	Canadian International Development Agency
COID	Commission of Inquiry on conflict-related Disappearances
CPA	Comprehensive Peace Agreement
CSO	civil society organization
CWIN	Child Workers of Nepal Concerned Centre
DAC	Development Assistance Committee [of the OECD]
DANIDA	Danish International Development Agency
DDC	District Development Committee
DFID	Department for International Development [UK]
EPSP	Emergency Peace Support Project
FAO	Food and Agriculture Organization
GoN	Government of Nepal
GoN-DAG	Government of Nepal–Donor Advisory Group [for the NPTF]
GTZ	German Technical Cooperation
IDP	internally displaced person
IED	improvised explosive device
ILO	International Labour Organization
INGO	international non-governmental organization
IOM	International Organization for Migration
JBIC	Japan Bank for International Cooperation
JICA	Japan International Cooperation Agency
JMCC	Joint Monitoring Coordination Committee
LPC	Local Peace Committee
MoPR	Ministry of Peace and Reconstruction
MTEF	Medium-Term Expenditure Framework
NDF	Nepal Development Forum
NGO	non-governmental organization

NHRC	National Human Rights Commission
NLSS	National Living Standards Survey
NMRS	Nepal Migration and Remittances Survey
NPPR	Nepal Portfolio Performance Review
NPRC	National Peace and Rehabilitation Commission
NPTF	Nepal Peace Trust Fund
OCHA	Office for the Coordination of Humanitarian Affairs
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
SDC	Swiss Agency for Development and Cooperation
SIAG	Social Inclusion Action Group
SNV	Netherlands Development Agency
SSRP	School Sector Reform Plan
SWAp	sector-wide approach
TRC	Truth and Reconciliation Commission
UCPN-M	Unified Communist Party of Nepal (Maoist)
UK	United Kingdom
UML	[Communist Party of Nepal] Unified Marxist–Leninist
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNIFEM	United Nations Development Fund for Women
UNMIN	United Nations Mission in Nepal
UNODC	United Nations Office on Drugs and Crime
UNPFN	United Nations Peace Fund for Nepal
UNSCR	UN Security Council Resolution
USA	United States of America
USAID	United States Agency for International Development
VDC	Village Development Committee
WFP	World Food Programme
WHO	World Health Organization
YCL	Young Communist League

# EXECUTIVE SUMMARY

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Nepal's Comprehensive Peace Agreement (CPA) sets out a peace-building framework for Nepal's development partners through its ambitious, transformational agenda on equity, inclusion, accountability, good governance and a restructuring of the state. While elaborated in a political agreement, these 'root causes' need to be concretely addressed through long-term development processes and interventions. In recognition of this reality, Nepal's development partners have developed this Peace and Development Strategy. The strategy aims to provide a framework for how Nepal's development partners can work together to support implementation of the CPA. It seeks to improve impact and avoid the duplication, gaps and missed opportunities that the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD) identifies as common risks to peace-building efforts in fragile contexts. It articulates where 'development' and 'peace' intersect, so that development partners include peace-building priorities in their strategic plans and set aside the necessary resources, if and when called upon to assist. The strategy also enables partners to review their coordination arrangements and look critically at where they can adapt their working methods to some of the specific challenges of peace-building. Most importantly, the strategy aims to ensure that the important, longer-term peace-building agenda is not lost sight of, with attention more naturally drawn to the more visible, urgent political priorities of the short term.

The strategy does not attempt to define the entirety of development partners' support to development in Nepal. Rather, it attempts to focus on the peace dimensions of development, and how to ensure these are incorporated in the overall development agenda. Rather than attempting to address the full spectrum of development issues therefore, this strategy needs to be read as an attempt to narrow in on the specific peace-building priorities of Nepal's transition.

The strategy is divided into four sections. Chapter 2 provides an analysis of the CPA and the conceptual underpinning of the strategy, identifying progress, challenges and implications for development partners. The strong developmental dimensions of this landmark agreement are highlighted. Chapter 3 identifies short-term peace priorities, with an eye to the coming 12–24 months. Chapter 4 looks at the long-term, transition

issues articulated in the CPA, and how these issues can and should be advanced over the next five years. Finally, Chapter 5 looks at how development partners can increase their contribution to peace and development in Nepal by working more effectively, through improved coordination, alignment and partnership. An Action Plan will accompany the strategy as a companion document and indicate where specific development partners have identified their engagement against specific actions required to deliver on the strategy.

### **The CPA and the challenges ahead**

There have clearly been important achievements in the peace process to date, including a ceasefire that has held firmly, the discharge of 4,008 verified minors and late recruits from the Maoist army, and the election of a Constituent Assembly (CA) in a generally peaceful and orderly process. Components of the CPA 'in progress' at the time of preparing this strategy include negotiations around the integration and rehabilitation of the 19,602 verified Maoist army personnel, the drafting of the new constitution and the shape of federalism, the development of new measures to end discrimination and exclusion, and the delivery of interim relief payments to the conflict-affected. At the same time, crucial components of the CPA have yet to receive significant attention. This includes such key issues as the prosecution of conflict-related crimes, progress on land reform and property return, and the restoration of accountable local government.

Implementing the agenda laid out in the CPA presents many challenges. Ongoing tensions among parties have drawn energy towards issues related to the immediate peace process at the expense of the longer-term transition questions. Gaining public support and confidence in the security sector has been difficult in the absence of fundamental security and justice sector reforms. The path towards federalism remains contentious and potentially destabilizing, with an increase in identity-based political movements. Development partners must respond to these kinds of challenges by ensuring they keep in mind the long-term nature of the transformation process underway in Nepal and work from a shared analysis and set of priorities. Great flexibility will also be required in the

years ahead, given the fluid context, the emergence of new political actors, and the importance of investing in confidence-building and dialogue as an integral part of development programming.

### **Priorities for short-term peace support**

The strategy identifies a significant number of short-term priorities over the next 12-24 months where development investments can have an immediate impact on the peace process.

The first set of priorities is already actively supported by development partners through various interventions. This support will need to be sustained. These include support to the clearance of the remaining minefields and ongoing assistance for the rehabilitation of discharged minors and late recruits, as well as the ongoing monitoring of this group in line with UN Security Council Resolution (UNSCR) 1612. Some 1.5 million jobs need to be created for young people over the next three years to prevent unemployed and disaffected youth from becoming vulnerable to mobilization by peace spoilers. The successful delivery of Nepal's new constitution is another vital component of the peace process and will continue to need support, with increased attention to the constitution's early implementation arrangements. Given the importance of elections as a crucial instrument to ensure social inclusion, political participation and accountable democracy, ongoing support to the voter registration process is also critical. Direct and indirect support by development partners to the conflict-affected is also expected to remain important for the coming two years, through scholarships, vocational training, psychosocial counselling, rehabilitation, and in some cases direct payments. Local conflict transformation, political dialogue and mediation mechanisms will play an important role in the months ahead, and will need sustained assistance. Support to the implementation of the National Plan of Action on UNSCRs 1325 and 1820 is also considered a high priority. The work of reconstructing infrastructure destroyed or damaged during the conflict remains incomplete and will require ongoing attention. More widely, development partners could scale up existing efforts to more explicitly assist the government in delivering concrete

peace dividends to citizens, and the strategy identifies potential interventions around: school building and financing; mobile health camps and health supplies; targeted water and sanitation programmes; food security; programmes for out-of-school adolescents; and emergency centres for victims of gender-based violence.

The second set of anticipated short-term priorities is heavily contingent on progress in the political negotiations. The widely anticipated Truth and Reconciliation Commission and Commission of Inquiry on conflict-related Disappearances will need development support, once they have been enacted by the CA. Ongoing requirements can be anticipated for the cantonments, both while they continue to house the remaining 19,602 verified members of the Maoist army and, once agreement has been reached on their future, for their rehabilitation and/or integration. Property remains a lightning-rod issue, and partners could potentially assist the government to develop comprehensive records of the property seized during the conflict as well as the policies and mechanisms required to ensure the fair and transparent restitution or return of this property, as agreed in the CPA. Improving the law-and-order situation also remains a shared priority of government and development partners: assistance for more inclusive and effective human-rights-focused law-and-order institutions, an independent Police Commission and institutional reforms in the justice sector more widely are examples of the potential areas of expanded support in this field identified in the strategy.

Lastly, there are a number of short-term actions that could help mitigate risks of reversal in the hard-fought-for gains in the peace process to date. Widening and deepening citizens' engagement in the peace process generally would help ensure potential spoilers are well outnumbered by 'defenders of the peace'. To this end, a National Peace Communication Strategy and other efforts to build confidence in and manage expectations of what is happening in the peace process could be helpful. An early warning mechanism of some kind is also identified as a potentially valuable preventive investment.

### **Priorities for long-term peace-building**

Nepal's experience to date cautions against any simple analysis in which the CPA equals an end to conflict, elections equal democracy, or where political inclusion on its own will address 'root causes'. The strategy recognizes that development support has to start now on the long-term structural reforms at the heart of the peace-building agenda in Nepal, particularly given the long-term nature of these undertakings. In identifying medium- to long-term priorities for peace-building, the strategy articulates how development partners can help catalyse the broader transformative agenda outlined in the CPA, whilst supporting the delicate political peace environment and not overstepping what must be a locally driven agenda. In this respect, the Peace and Development Strategy focuses on the CPA's long-term agendas of social inclusion, rule of law, security sector transformation, land reform, good governance, inequality and inclusive growth, state restructuring, and employment acceleration.

Social inclusion lies at the heart of the CPA. While progress in the political representation of women and traditionally excluded groups has been achieved, there are many issues still to be addressed. How will inclusion be dealt with in the constitution? What will be the checks and balances for inclusion in the likely new federal governance structure, particularly for traditionally marginalized groups and peoples? What is still required to eradicate discriminatory practices? Areas for potential development support include: better capture of sex and social group data; improved use of gender and social inclusion information in ongoing sector-wide approaches (SWAPs); support for affirmative action efforts in the civil service and for the elimination of discriminatory laws; expansion of inclusive scholarships; and outreach on International Labour Organization Convention 169. Overall, the strategy argues for better targeting of funds and implementation of programmes based on thorough needs analyses and greater sensitivity to inclusion at all levels of intervention.

Rule of law is an essential prerequisite for implementing almost every provision within the CPA. Where rule of law is weak, public trust in government is undermined.

Despite some modest achievements in this area, corruption, political interference and impunity remain issues. Assisting the government to address a highly integrated sector that is subject to political and resource constraints will be challenging. However, development partners recognize the central importance of assisting the government to increase access to justice and of providing coordinated sectoral assistance in this field. Potential areas of expanded support identified in the strategy include: support to implementation of new legislative codes; assistance on effective prosecutions and the enforcement of judgements; scale-up of access to justice efforts; efforts to make the judiciary and security services more inclusive; support for vital events registration/verification and assistance in the area of citizenship; and support to develop a needs assessment and strategy for the rule-of-law sector.

Transforming the security sector so that it earns the full confidence of the public and enhances public security is an integral part of a successful peace process in Nepal. Nepal needs an integrated security sector that is effective, appropriate, affordable, inclusive and accountable to the democratically elected government. The CPA calls for ‘democratization’ of the Nepal Army, and policing needs to be generally strengthened and better integrated. A political consensus in support of such activities is not yet in place. Subject to this consensus emerging, development partners could potentially assist the government in areas such as: development of a National Security Strategy and a comprehensive legal and policy framework; measures to improve police performance; and development of effective civilian oversight mechanisms.

Land reform is a central component of the CPA, and landlessness and insecurity of tenure are major drivers of rural poverty, social injustice and food insecurity. Pressure on land is increasing with almost half of the 3.4 million households involved in agriculture having insufficient land to meet subsistence needs. Expectations of reforms in this area are high amongst the landless, poor and socially disadvantaged as well as amongst landowners who seek stronger property rights. The highly political and sovereign nature of land reform processes, further complicated by the destruction of many land records and maps during the conflict,

will require a highly participatory and negotiated approach to finding solutions. Development partners could support this complex process by promoting an enabling environment in which to implement reform, once political decisions have been made. Potential areas of support could include: providing assistance to bonded labourers; increasing women’s access to land and property; helping restore and replace destroyed cadastral maps and land records; supporting implementation of a national land policy and land-use policy; supporting the administration, data collection and management of land records; and assisting in institutional capacity-building for land management.

Good governance has been shown to be a prerequisite for building public trust in the state and strengthening its legitimacy—both of which are critical aspects of peace efforts. The CPA reaffirms Nepal’s commitment to representative, accountable, transparent and participatory democracy. However, delivering good governance is a long-term, complex and multidimensional project. There are a number of governance challenges in Nepal that need attention, particularly around political stability, accountability, government effectiveness, regulatory quality and control over corruption. These shortfalls have affected public confidence in politicians and the executive and in the state’s ability to delivery services in an efficient, effective, equitable and accountable manner. In this domain, development partners could potentially assist the government in such areas as: strengthening the demand side of local governance to improve the accountability, transparency and effectiveness of service provision; improving the government’s regulatory framework; and strengthening oversight and support to specific initiatives to combat corruption.

Inequality can contribute to a growing sense of grievance that can be capitalized upon to fuel political instability. With one of the highest levels in Asia, inequality in Nepal has serious implications for peace and development as well as making economic growth less effective in reducing poverty. Formal and informal rules and structures also disadvantage certain groups in their access to economic opportunities, on the basis of caste, ethnicity, religion and gender. Inclusive economic growth also remains compromised by

inequality in levels of education, differential access to services for different segments of the population, high levels of underemployment in rural areas, and a sluggish agricultural sector that limits opportunities. The challenges for government are to promote economic, social and gender inclusion by: providing access to employment opportunities; providing expanded and more equitable access to education and training; improving access and entitlement to productive assets; and instituting more effective social protection. Development partners could assist in these areas and, as a priority, support the government to: provide more targeted scholarships and more effective social protection measures and cash transfers; collect improved data on inequality; accelerate infrastructure delivery; and improve regulation of labour migration.

Restructuring the state to implement federalism is inextricably linked with the social inclusion agenda and has potentially far-reaching provisions covering non-discrimination, proportional representation, quotas, affirmative action and fundamental rights. There remains uncertainty and lack of political consensus on many issues around state restructuring. There will be many challenges at the implementation stage as well that could potentially leave many Nepalis feeling disenfranchised or hostile to poorly managed processes and models that do not meet their expectations. Although sufficient democratic empowerment of new units of government will be essential, federalism and the devolution of power will present new challenges for development partners in terms of resources, coordination and restructuring programmes. State restructuring will need to be supported by commitments from partners and both national and sub-national government to establish transition and restructuring coordination mechanisms; this will require significant resources and planning. Development partners could also help build the capacity of government bodies involved in transition and strengthen their ability to deliver gender-sensitive, human-rights-based and inclusive services.

Employment acceleration is required to satisfy the demand for work. Only one sixth of Nepal's workforce is in paid employment, with many more men than women. Broad-based employment-generation

schemes can make a tangible contribution to peace and development. However, increased jobs, incomes and measures to empower young people are needed to provide a tangible peace dividend for this age group that is particularly vulnerable to mobilization by potential spoilers of the peace process. Development partners are willing to help accelerate employment efforts through such measures as: supporting the government to develop a national action plan for employment; supporting inclusive government employment schemes; helping create favourable conditions for investment and sustainable enterprises; expanding technical and vocational training; supporting targeted microfinance schemes; and supporting measures to ameliorate the consequences of the enormous Nepali population living overseas as international labour migrants.

### **New approaches to support peace-building**

Beyond increasing their contribution to peace and development in Nepal, development partners recognize they can improve the way in which their support is delivered. State-building and peace-building are integrally related and are long-term, highly complex political processes. Development partners appreciate the need to understand the complex political and social processes at work in order to share relevant lessons from international experience. This strategy outlines ways in which to operationalize international agreements on development effectiveness, coordination and operations in fragile states. The OECD/DAC Principles for Good International Engagement in Fragile States and Situations should be applied by all development partners in Nepal—in particular, with regard to the call for monitoring contextual analysis and reflecting findings of this analysis in programmes. The DAC principles also emphasize the importance of predictability of funds, realistic planning timeframes, and the need for flexibility in order to be able to capitalize on opportunities.

Partners recognize the need to work more closely with government and the Peace and Development Strategy is intended to complement the government's Foreign Aid Policy and Action Plan on Effectiveness. There is a strong expectation from the Government of Nepal

that development partners will work more in line with the international coordination and alignment agenda outlined in the Paris Declaration on Aid Effectiveness and other documents. In Nepal, some progress has been made by development partners in meeting the commitments outlined in the Paris Declaration, using a range of coordinated and harmonized modalities, including two SWAps. However, harmonization and mutual accountability between government and development partners are the Paris principles that were most weakly observed and implemented at the macro level. Partners have also raised concerns regarding fungibility of funds, as well as weaknesses in government systems and procedures. Future efforts should focus on systems-strengthening and fiscal management to ensure the mutual commitments outlined in the Paris Declaration can be met by both government and development partners.

For their part, Nepal's development partners are committed to remaining impartial, rewarding measurable results, and being accountable for their performance to the people of Nepal. In improving their approaches to peace-building in Nepal, they are committed to delivering a more coordinated division of labour and geographic focus amongst themselves, working with government as a group to plan and coordinate support to federalism, providing greater transparency on their spending and results, mainstreaming conflict-sensitive development approaches in all new programmes, and increasing their impact on traditionally excluded communities.

More concretely, key instruments and mechanisms can be better coordinated and aligned to promote greater

cohesion on development contributions to peace-building in Nepal. To further enhance effective foreign aid coordination in peace-building, consideration should be given to a more consistent use of the Government of Nepal–Donor Advisory Group coordinating mechanism for the Nepal Peace Trust Fund (NPTF), chaired by the Secretary of the Ministry of Peace and Reconstruction. This mechanism should allow for the: consolidation and review of peace-building programmes and resources; provision of advice, if requested, on issues and challenges in peace-building programmes; provision of feedback on development partner programmes; coordination of support provision through the NPTF, the UN Peace Fund for Nepal, and the Emergency Peace Support Project funded by the World Bank; and distribution of tasks among government and development partners in relation to future peace-building challenges. The expansion of donor participation in the Ministry of Finance's Nepal Portfolio Performance Review process is also recognized as an effective means of resolving systemic issues related to project implementation and portfolio management. Finally, the strategy argues for a more regular cycle of the Nepal Development Forum (NDF) given its importance in bringing together all of Nepal's partners, OECD/DAC donors, multilaterals, and partners such as India and China, with the aim of increasing donor harmonization and alignment with government development priorities. Given the most recent NDF meeting was held in 2004, there is a strong sense amongst development partners that the next one should be held soon, which could be focused on development results, aid performance and peace-building.

## INTRODUCTION

“Declaring the beginning of a new chapter of peaceful collaboration by ending the armed conflict plaguing the country since 1996 on the basis of political consensus reached between the two parties to ensure the sovereignty of the Nepali people, forward looking political resolution, democratic restructuring of the state and economic-social and cultural transformation through the Constituent Assembly...

“The Government of Nepal and CPN (Maoist) hereby conclude this Comprehensive Peace Agreement with commitments to convert the present ceasefire into lasting peace.”

**Comprehensive Peace Agreement, 2006**

Although the conflict in Nepal was fundamentally political, it was based on, and mobilized, a range of socio-economic grievances. The peace process itself was founded on public support for peace as well as a fairer and more equal social order. The Comprehensive Peace Agreement (CPA) itself thus sets out an ambitious socio-economic transformation agenda, addressing equity, inclusion, good governance, impunity, gender equality and a restructuring of the state, to name just a few of its key features. Following the signing of the CPA in 2006, the dramatic changes seen in Nepal reflect the growing aspirations of the people for a democratic political order with more equitable social and economic development. In few countries does the oft-quoted phrase ‘peace and development are two sides of the same coin’ have such resonance.

Like it or not, development partners are implicated in this historic agenda. Sixty years of development cooperation have contributed to some of the progress and setbacks witnessed over recent decades. More than one quarter of annual public expenditure remains aid-financed.<sup>1</sup> The CPA contains specific milestones that will need external financing. The nature of Nepal’s new post-conflict social contract will likely touch every corner of Nepal’s development landscape, and will require a sustained effort. For the ambitious vision contained in the CPA to be achieved, education workers, health officers, agricultural extension officials and citizens from all walks of life will need to become ‘peace builders’. And progress on peace

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<sup>1</sup> Nepal Budget 2009/10 estimates.

will need to be felt not only in cantonments and the Constituent Assembly (CA) but in classrooms and health clinics as well.

How can peace support be differentiated from ‘regular’ development? How should Nepal’s development partners organize themselves best to respond to these challenges? What are the priorities? What issues may be overlooked today? How can development partners improve the way they work to ensure they maximize their impact on the peace process? The Organization for Economic Cooperation and Development (OECD) has long-recommended that Development Assistance Committee (DAC) members operating in post-conflict environments ensure they are working with a shared strategy that addresses these kinds of questions.<sup>2</sup> Without a shared strategy around peace-building, the risks are high of duplication, gaps and missed opportunities in maximizing the impact of aid. In late 2009, Nepal’s development partners<sup>3</sup> came together to address this lacuna by launching a process to develop this Peace and Development Strategy.

This strategy does not propose solutions to Nepal’s peace-building challenges. That responsibility rests with Nepali actors. And crucially, ‘what needs to be done’ can already be found in the CPA and related documents. Instead, using the CPA as the framework, the strategy seeks to articulate concretely where ‘development’ and ‘peace’ intersect—both in the short and medium term—so that the individual strategies of development partners can have peace-building priorities built into them, the development investments that may be needed to consolidate peace are set aside, and the longer-term peace-building agenda is not crowded out by short-term political considerations.<sup>4</sup> In so doing, the strategy also enables Nepal’s development partners to review their division of labour and coordination systems, and critically look at whether they can adapt their methods of working to increase their impact on peace support.

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## LINKS BETWEEN PEACE AND DEVELOPMENT

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The links between peace and development are close, but not always well understood (see Figure 1 below). Some believe that development *per se* is peace-building, others that peace-building is only that which delivers direct support to the implementation of the peace agreement. Views are also shaped by whether observers apply the more narrow interpretation of ‘negative peace’ (i.e., measures intended to ensure the absence of war) versus the more expansive concept of ‘positive peace’ (i.e., redressing root causes and broader, more long-term issues such as justice and reconciliation).<sup>5</sup> Applying Nepal’s CPA

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2 See for example, OECD, *Denmark: Development Assistance Committee (DAC) Peer Review*, 2007.

3 ADB, Australia/AusAID, Canada/CIDA, Denmark/DANIDA, DFID, European Union, FAO, Finland, Germany/GTZ, ILO, IOM, JICA, Norway, OCHA, OHCHR, SNV, Switzerland/SDC, UNAIDS, UNDP, UNESCO, UNFPA, UN-HABITAT, UNHCR, UNICEF, UNIFEM, UNMIN, UNODC, USAID, WFP, WHO, World Bank.

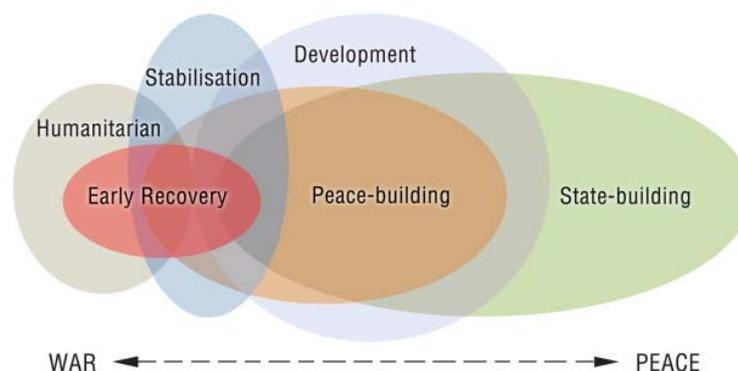
4 In adopting the CPA as the framework for this analysis, development partners should not be interpreted as taking a ‘position’ on the wisdom or otherwise of any particular elements of the CPA. Although other important Nepali stakeholders have since emerged and are not signatories to the CPA, the CPA is still considered to reflect the political consensus on the best way forward to successfully transition Nepal to sustained peace. Unless or until this agreement is renegotiated, development partners consider it the only agreed-upon framework from which they can understand and prioritize Nepal’s peace-building needs as defined by Nepali leaders.

5 International Peace Institute, *Peacebuilding*, IPI Blue Paper No. 10, Task Forces on Strengthening Multilateral Security Capacity, New York, 2009 (p. 4). For an excellent discussion around definitional issues, see also, Call, Charles T. and Elizabeth M. Cousens, *Ending Wars and Building Peace*, Coping with Crisis Working Paper Series, International Peace Institute, 2007.

as the framework for this agenda, this strategy finds itself more towards the ‘positive peace’ end of this definitional continuum. Early work on peace-building by the Utstein Group<sup>6</sup> at the global level seems to reflect this agenda well in the Nepal context. The Group’s 2004 report *Towards a Strategic Framework for Peacebuilding* explained that development cooperation’s ability to contribute to sustainable peace depends upon the extent to which it:

- promotes security;
- assists to establish the political and socio-economic foundations of long-term peace; and
- generates reconciliation, a healing of the wounds of war and justice; while it also
- helps to deliver the goods and services, jobs and the income growth required to pay for the first three.<sup>7</sup>

The greater the extent to which development promotes the fundamental values of the CPA—equity, security, rights and justice—the more likely it is to build sustainable peace in Nepal. Development support to school education could also help to build peace if it were to, for example, provide educational opportunities to excluded communities, deliberately develop curricula that recognize cultural and language diversity and integrate peace education, rebuild schools destroyed during the conflict, or increase the whole of community representation in the management of schools. Traditional development approaches would not necessarily aim to prioritize these aspects, nor would they have peace-building as an objective. There is abundant scope in Nepal to refocus development efforts more effectively towards peace.



**Figure 1: The continuum between war and peace<sup>8</sup>**

6 Originally composed of Germany, the Netherlands, the UK and Norway, but since joined by Canada and Sweden, the Utstein Group is a group of ministers responsible for development cooperation. It has become an important forum for coordinating development cooperation and has assumed a proactive role in the international donor community, with particular emphasis on poverty reduction, anti-corruption, donor coherence and untying aid.

7 Dan Smith, *Towards a Strategic Framework for Peacebuilding: Getting their Act Together, Overview Report of the Joint Utstein Study of Peacebuilding*, Royal Norwegian Ministry of Foreign Affairs, Oslo, 2004.

8 Adapted from: Bailey and Pavanello, “Untangling Early Recovery”. *HPG Policy Brief*, No. 38, Humanitarian Policy Group, Overseas Development Institute, London, 2009, also used in OECD, *Transition Financing: Building a Better Response*, Conflict and Fragility Series, Paris, 2010.

The role of development partners in the peace process, therefore, is to help sustain the process by supporting the government to deliver development benefits in ways that reflect the new aspirations of the Nepali people. Because the peace process involves new costs for development, development cooperation also needs to be sustained through the transition. In so doing, development partners will also face regular challenges and must make well-informed decisions in a sensitive transitional environment, where trust between parties can be tenuous, stakeholders have divergent perspectives, and there will inevitably be obstacles to finalizing the political settlement.

People's disenchantment with development focuses in particular on poor delivery at the local level. While the political processes will affect development possibilities, as in other peace processes, there is a need to strike a balance between development 'software' and 'hardware' in order to accelerate the delivery of tangible benefits that will make a real difference in the lives of ordinary citizens and reduce the risks of instability. For this to be effective, engagement and support will need to be sustained at multiple levels.

The experience from other countries is that development support for peace has often been poorly coordinated and 'strategy resistant'—as if this support needed no strategic justification. This, in turn, has reduced its effectiveness. Compared to the other challenges currently facing the government, the mobilization of international support for peace-building should be relatively straightforward, as development partners are ready to follow the government's lead. They are, however, also obliged to have a strategy for their engagement so as to maximize their collective impact. In so doing, they must also be prepared to look critically at their own role in the past and draw lessons for their future support.

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## NEED AND ROLE OF THE STRATEGY

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As in other countries, the threats to peace are greatest during the early post-peace-agreement phase; however, so are the opportunities to improve on the past. This strategy focuses on the challenges faced by Nepal and its development partners over the next five years. For the purposes of the strategy, peace and development have two key dimensions: (i) actions to build on the framework of the CPA in order to help build a more inclusive, equitable and prosperous Nepal; and (ii) development actions designed to deliver basic goods and services in ways that help to prevent the re-emergence of tensions that might lead to conflict. The subject matter is the overlap between peace and development. This strategy is therefore intended as a contribution from development partners to sustainable peace, and not as an alternative development strategy.

The government's next Three Year Plan for 2010/11–2012/13 is nearing completion; this provides development partners with a window to offer their thoughts on peace and development. This strategy is designed as an input and complementary document that helps to ensure focus on peace-building within this broader development framework. In many ways, the issues identified in this strategy find some reflection already in the Approach Paper for the next Three Year Plan, which dedicates Chapter 10 to

‘Peace, Rehabilitation and Inclusive Development’, identifying key issues such as equality and inclusion, and Chapter 11 to ‘Good Governance and Human Rights’. However, there are many development issues that the strategy does not deal with directly, as these are covered in the wider framework of the next Three Year Plan and multiple other development programming and strategic frameworks, such as sector-wide approaches (SWAs) in education, health and local governance. This strategy should help to inform these other development strategies as well, although they are not addressed directly in this document. What this strategy does do is to focus specifically on the nexus between peace and development. Fortunately, in Nepal, development and peace are shared objectives of political leaders and development partners, providing a foundation for the formulation of this strategy.

Evidence now suggests that for most people in Nepal, peace means much more than just the absence of war. People want to see an end to violence and increased access to justice. People also want to see action to address the risks and vulnerabilities faced by households, which may be political, social or economic. For peace to be sustainable, it has to deliver greater physical and human security and provide more equitable access to services. While authority and responsibility for peace progress lies with Nepali actors, development partners are also stakeholders in this process and they too can help to support peace.

Although state delivery of basic services continues throughout the country, the gap between public priorities and concerns and the political discourse remains wide. It is clear that the public wants to see urgent action from the state to address basic needs, including security, education and health, and to promote employment. Sustainable peace also involves reconciliation and addressing outstanding commitments to the conflict-affected, improved human rights and the ending of discrimination, and support to rule of law and public security.

After setting the stage on both the content and current status of implementation of the CPA (Chapter 2), the strategy attempts to identify how development partners can support Nepal to implement the CPA (and related agreements) over the short (Chapter 3) and medium term (Chapter 4). The strategy also suggests how development cooperation support to peace could be made more effective through improvements in the way in which such support is delivered (Chapter 5). Proposed ‘priority actions’, where development partners are working or are willing to provide specific assistance should the Government of Nepal (GoN) request so, are highlighted in each section. These have been translated into an Action Plan that will serve as a mechanism for tracking progress on the implementation of identified peace-building priorities.

International experience—reflected also in Nepal—confirms that peace agreements, particularly in the early stages, can be fragile and vulnerable. Like most other post-peace-agreement countries, progress in Nepal is uneven. The peace process here has very challenging objectives, namely to sustain peace, restructure the state, and create a more equitable society. This is a demanding long-term agenda for any state, no matter how capable or united. It also has major resource implications. If Nepal is to sustain the costs of its peace agenda over time, without also increasing its aid dependence, then it will also

have to tap the country's potential for higher economic growth, for example, by increasing its potential future earnings from agriculture, water resources and tourism. The full recovery from conflict and the realization of the CPA's vision will undoubtedly take time. Four years after the CPA was signed, it is more than time enough to implement a strategy to guide development partners' coordinated support to peace and development.

## THE COMPREHENSIVE PEACE AGREEMENT AND THE PEACE-BUILDING CHALLENGE AHEAD

“Beginning today, the politics of killing, violence and terror will be replaced by the politics of reconciliation... We all are entering into a new era from today. All of us Nepalis must come together to build a new Nepal. Nepal will, henceforth, be regarded as a model in conflict resolution by other conflict-torn countries around the world.”

**Late Prime Minister Girija Prasad Koirala, 21 November 2006**

“With the signing of the Comprehensive Peace Agreement, the people of Nepal were in a position to give a message to the entire world. The continuity of 238-year-old tradition has been broken now. This is the victory of Nepalese people and the loss of regressive elements. Like in the war, our party would work with equal zeal to implement the peace accord. We want to make it clear to everyone that we are neither conservative nor dogmatic in our thinking. The people of Nepal will ‘perform another miracle’ by working on a war-footing to develop their nation after the elections of the Constituent Assembly.”

**Pushpa Kamal Dahal ‘Prachanda’, 21 November 2006**

### 2A. Introduction

The CPA was signed on 21 November 2006, following the Jana Andolan [People’s Movement] of April 2006, which led to the reinstatement of Parliament. Signed by the government of the Seven-Party Alliance (composed of the Nepali Congress, Nepali Congress (Democratic), Communist Party of Nepal (Unified Marxist–Leninist (UML)), Nepal Workers’ and Peasants’ Party, Nepal Sadbhawana Party (Anandi Devi), United Left Front, and People’s Front Nepal) and the then Communist Party of Nepal (Maoist), the CPA remains the fundamental document of the current peace process, accepted as a legitimate basis for progress and from which all other agreements flow and depend.<sup>9</sup>

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<sup>9</sup> While the CPA is the foundation document, it is important to recognize that it is not the only reference document for the peace process. A number of new actors emerged in the months following the CPA, who were not signatories of the November agreement, and who subsequently negotiated peace-related multipoint agreements with the government. The Madhesi movement, in particular, falls into this category.

Through the CPA, all parties to the conflict agreed on the broad principles of nationality, democracy, human rights, secularism, social and political inclusion, and fundamental socio-economic transformation. Its scope is broad and ambitious, containing as it does—in addition to agreed measures for concluding the conflict and managing the transition to a new order—both an implicit analysis of the root causes of the conflict and a vision for a transformed Nepal. Although the CPA does not explicitly identify short-, medium- and long-term measures, the analysis of this strategy has categorized CPA components into three broad thematic areas: short-term political and security measures to immediately end the conflict; transitional measures; and medium- to long-term measures that would deliver broader socio-economic transformation.

Short-term political and security measures that are to ensure immediate cessation of violence include agreement to the cantoning of Maoist army personnel while also confining the Nepal Army to barracks, arrangements for the storage of arms and ammunitions, the declaration of a ceasefire and ending of military action and mobilization of armed personnel by both sides, and the rehabilitation of Maoist army personnel along with the implementation of an action plan for the democratization of the Nepal Army.

Transitional measures as defined by the CPA include: the holding of elections for a CA and the subsequent declaration to abolish the monarchy at the first meeting of the CA; preparation of a new constitution; establishment of transitional justice mechanisms including a Truth and Reconciliation Commission (TRC) and a Commission of Inquiry on conflict-related Disappearances (COID); formation of additional CPA implementation mechanisms such as a National Peace and Rehabilitation Commission (NPRC) and a State Restructuring Commission; arrangements for human rights monitoring by local and international actors; ongoing monitoring of the management of arms and armies to be carried out by the United Nations Mission in Nepal (UNMIN); return and rehabilitation of internally displaced persons (IDPs); and return of seized property.

Medium- and long-term measures<sup>10</sup> contained in the CPA include commitments to:

- end discrimination based on class, ethnicity, language, gender, culture, religion and region;
- recognize the problems faced by Dalit<sup>11</sup> groups, indigenous people, ethnic minorities and Madhesi peoples<sup>12</sup>, and ensure their representation in state structures and public services;
- carry out state restructuring combined with social and political inclusion;
- ensure rights to education, basic health, shelter, employment and food security;
- ensure law and order and the rule of law, and end impunity (including the adoption of policies to take action against corruption);
- ensure the right to property and the end of feudalism through a ‘scientific land reform’ policy;
- provide social protection for squatters and bonded labourers;

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10 Again, the CPA does not explicitly identify short-, medium- and long-term measures; these categorizations have been developed by the authors for the purpose of this strategy.

11 Dalit refers to a caste group who are religiously, culturally, socially and economically oppressed and perceived as ‘untouchable’. They belong to different language and ethnic groups. Dalits per se are not homogeneous.

12 The Madhesi are the native residents of the southern plains or Terai region of Nepal, which they refer to as the ‘Madhesh’.



*Photo Credit: UNMIN/Sagar Shrestha*

- provide special protection for the rights of women and children; and
- promote a market economy with the rights of workers protected and promoted.

The signatories to the CPA declared that this marked the beginning of a new era of peaceful collaboration on the basis of political consensus. Such an era would involve forward-looking political resolution of the challenges that had confronted the country, democratic restructuring of the state, and socio-economic and cultural transformation through a CA.

The accomplishments of the peace process up to the time of preparation of this strategy (four years after the signing of the CPA) have been historic. They include the maintenance of the ceasefire, the successful holding of CA elections in 2008, the subsequent peaceful declaration of Nepal as a federal, democratic republic, and significant preparatory work on the drafting of a new constitution.

Notwithstanding these momentous landmarks, many critical commitments are still awaiting full implementation. The underlying power-sharing arrangements foreseen in the CPA were short-lived, with one or other major party in opposition at any given time almost constantly since the CPA's signing. There have been deficits of trust and a variety of contradictory views among the parties, resulting in challenges to realizing the full implementation of their respective CPA commitments and to achieving cooperation across political lines. This has been further complicated by the absence of an overall mechanism for CPA implementation or review. Without an authoritative and independent national monitoring and dialogue mechanism, there has been no regular and institutionalized approach to resolving key political roadblocks that have emerged throughout the course of CPA implementation.

This section of the Peace and Development Strategy reviews the status of the CPA at the time of the strategy's formulation. It also flags up the key challenges ahead, looks at the lessons that have emerged over the difficult period to date, and attempts to draw implications from this analysis for the role of development partners and development assistance in supporting the advancement of the CPA in the years to come.

## 2B. Highlights of CPA progress to date



Photo Credit: UNMAT

The signing of the CPA enabled the cantoning of Maoist army personnel to seven main cantonments and 21 satellite cantonments around the country and the storage of Maoist army weapons in UN-monitored containers. The government is providing the means of support to the Maoist army personnel in the cantonments. Development partners have made important contributions to the functioning of cantonments through direct funding and contributions to the Nepal Peace Trust Fund (NPTF).

The 2006 ceasefire, and the general stability that it has enabled, has been one of the most significant and important accomplishments of the CPA to date. It is based on the effective separation of forces and the management of arms and armies. Although some breaches have occurred, most have been of a limited nature and not sufficient to derail the peace process as a whole.

The success of the ceasefire agreement is linked directly to the success of the Joint Monitoring Coordination Committee (JMCC), created under the Agreement on Monitoring of the Management of Arms and Armies (AMMAA) of 8 December 2006.

The JMCC, chaired by UNMIN and consisting of the

Nepal Army and the Maoist army, has served with great effect as a forum for airing, containing and resolving disputes before they escalate.

Despite a significant delay, the discharge of the 4,008 personnel from the Maoist army verified by UNMIN in 2007 as minors and late recruits<sup>13</sup> was completed in March 2010 and marks a significant step forward.<sup>14</sup> At the time of preparation of this strategy, over 2,300 of the discharged verified minors and late recruits have approached the UN to access rehabilitation packages.

13 Late recruits are defined as those personnel who joined the Maoist army after 25 May 2006, as per the AMMAA, Section 4.1.3: 'only those individuals who were members of the Maoist army before 25 May 2006 will be eligible for cantonment'. Minors are defined as those 'found to be born after 25 May 1988', as per Section 4.1.3. Verified minors and late recruits are not eligible for inclusion in the Maoist army or the eventual integration and rehabilitation processes.

14 The discharge process within the actual Maoist cantonments ended on 8 February 2010 in Rolpa, but only 2,394 individuals out of all the 4,008 to be discharged were present at the time and participated. The remaining 1,614 individuals who had not been present at the official discharge were unilaterally discharged through a declaration signed by the Maoist army and witnessed by the UN and the government on 23 March 2010.



*Photo Credit: UNMIN/Sagar Shrestha*

The CA election, originally scheduled for June 2007, was held in a generally orderly and peaceful atmosphere on 10 April 2008. For the first time in Nepali history, over 30 percent of those elected to a legislative body were women, creating space for a new generation of female leaders. Subsequent legislation has made it mandatory to have female representation of 33 percent in public service bodies, including, for example, Local Peace Committees. The CA reflects the ethnic and caste diversity of the nation more adequately than earlier parliaments. In particular, it has enabled political legitimization of the new Madhesi parties. This in itself represents a significant success. The first sitting of the CA also saw the country's transition to a republic and the peaceful exit of the King from the palace. The CA has also seen some promising alliances of women and traditionally excluded groups across party lines.

The CA was created in accordance with the provisions of the CPA. Work on the constitution has continued since the CA's inception and has been extended for an additional year until 28 May 2011. The first phase of consultations saw all CA members engage in consultations around the country. The public turnout for these consultations was encouraging. However, owing to slippage in the timetable of the CA, there are concerns about a shrinking space for the second round of consultations.

## **2C. CPA issues currently in process**

The CPA commits the government, through a committee, to 'carry out monitoring, adjustment and rehabilitation of the Maoist combatants' (Article 4.4). A Special Committee for the supervision, integration, and rehabilitation of the Maoist army has been formed. The committee is charged with delivering a timetable within which the future of the former combatants is to be resolved. The parties still need to reach agreement on the modalities of integration into the security forces and on rehabilitation for the remainder, which is one of the issues at the core of ongoing high-level political dialogue between the major parties.

Nepal was declared a federal state on 28 May 2008, and work is ongoing in the CA to reach agreement on the form of federalism to be applied. The forthcoming constitution may provide for a major transfer of powers from the centre to lower levels and a restructuring of the state. After considerable debate, many areas of common ground exist, as do significant differences of vision. The CPA directs that the 'state shall be restructured in an inclusive, democratic and forward looking manner' to address the grievances of all excluded groups and cease all forms of discrimination (Article 3.5).

Some initial progress has been recorded with regard to ending discrimination/exclusion. This includes,

most notably, the proportional representation and diversity of the CA and the distribution of citizenship papers to nearly 2.6 million people in 2007, although a substantial number of people entitled to citizenship may still not have it.<sup>15</sup> Through the People's Residences Programme, announced in the 2009/10 budget, the government provided 3,000 houses for members of excluded groups. In September 2007, the interim government ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples' Convention 169 (ILO 169), one of only 20 countries in the world to do so. However, there is a pronounced lack of consensus on how this document could be applied in practice in Nepal, and the slow progress on moving from ratification to implementation results in the document being a focus of dispute and potential conflict. Other efforts are at early stages, including the adoption of legislation on inclusiveness in the civil

service and several agreements between the government and excluded groups such as on greater inclusion in the security sector.

The CPA also pledges to end discriminatory practices based on gender. It made a commitment towards providing 'special protection of the rights of women and children' and prohibited 'all types of violence against women and children' (Article 7.6.1)—commitments that were subsequently incorporated into the Interim Constitution. The CPA also introduced women's rights as a fundamental right, pledged non-discrimination based on gender, made violence against



Photo Credit: Good Governance Project/SDC

women a punishable crime, granted women the right to reproductive health care, and gave women equal right to ancestral property. Despite these official commitments to end gender discrimination and uplift the status of women in Nepal, policies and legislation are yet to be translated into action.

With the support of the World Bank, interim relief payments have been made to some 17,000 families of those who died or disappeared during the conflict. No accurate data exist on the number of IDPs resulting from the conflict. UN estimates have varied between 100,000 and 250,000, of whom perhaps 50,000 are thought to remain displaced. This does not include those displaced in the Terai<sup>16</sup> in 2007–08 who have never been registered. Most of those recorded as IDPs on the government's list have returned and/or been compensated with support from the authorities. Victims of sexual violence or torture have

15 ADB, *Proposed Grant Assistance Nepal: Capacity Building for the Promotion of Legal Identity among the Poor in Nepal*, 2009.

16 The Terai is a geographical belt of flat marshy grasslands, savannahs and forests at the base of the Himalayan range that extends across the entire southern part of Nepal.

not been included within the government's definition of 'conflict-affected' and have consequently not received any government assistance.

Although the budgets for the last two fiscal years provide for compensation to 'martyrs' and other groups, the system of defining payments and amounts remains *ad hoc*. There is no single reparation policy, nor an agreed database of the conflict-affected. Indeed, successive Cabinets have periodically announced additional lists of 'martyrs'.

The architecture for multiparty dialogue envisioned by the CPA has not emerged as originally anticipated. Various forums for dialogue and consensual decision-making have been established. However, tensions and mistrust among the parties have taken a toll on the mechanisms themselves, including on their frequency of occurrence. More recently, there has been disarray over the scope and remit of some of these structures and this in turn has further delayed the process. Although Article 5.2.4 of the CPA called for an NPRC, this has not yet been established. In 2007, the Ministry of Peace and Reconstruction (MoPR) was created, and has received significant international support. The ministry, whose leadership has changed hands with each change of government, does not have the same mandate as a non-partisan secretariat to an apex mechanism, precluding important opportunities for confidence-building and peace process monitoring that a multiparty forum such as a commission could have enabled.

While the CPA left many details for determination through further negotiation among the parties, appropriate all-party negotiating mechanisms dedicated to each of the issues outlined in the CPA were never established. The post-CPA negotiations have remained high level, *ad hoc*, centralized and often informal in nature, and have not tackled the many details of the various commitments that need to be negotiated and agreed upon. These discussions often involve only two or three of the key leaders and, when major political differences over issues such as power-sharing in the interim government or the electoral system have created a stalemate, all other issues are held up because of the absence of subsidiary negotiating teams working on other aspects of the CPA. A High-Level Political Mechanism was established in early 2010 as a forum dedicated to multiparty dialogue on peace-process-related issues. It too has been affected by the political vicissitudes of relations between the parties and has achieved little progress.

There have been important attempts to initiate other mechanisms provided for in the CPA. Considerable consultation has occurred around the CPA-mandated TRC and the COID. Current and former governments established Land Commissions but their results remain pending. The 2008/09 budget included provisions for several commissions, including the NPRC called for by the CPA, a National Inclusion Commission, and a State Restructuring Commission in line with the spirit of the CPA. Local Peace Committees, intended to serve as local autonomous bodies assisting the implementation of CPA and promoting post-conflict transformation, were formed in almost all districts but few are fully functional. In part as a result, there are continuing concerns over the levels of violence still found in parts of Nepal.

No equivalent forum or mechanism to the JMCC was created for the non-military elements of the CPA, nor did the CPA reference the activities of the youth groups of political parties, an issue that has risen in prominence since the end of the conflict. Armed violence and intimidation and clashes between youth groups of various parties are periodically reported across the country. Other than in the AMMAA, the peace agreement makes no reference to 'confidence-building'.

## 2D. CPA issues yet to receive significant attention



Photo Credit: GTZ

In addition to provisions on Maoist army personnel, the CPA also commits the government to 'prepare and implement the detailed action plan for the democratization of the Nepal Army on the basis of political consensus and the suggestions of the committee concerned of the Interim Legislature' (Article 4.7). Although a plan has been prepared and is with the Cabinet, it has not been implemented. The National Defence Council has lead responsibility in formulating security policies. The draft concept paper from the related CA thematic committee outlines the role and structure of the National Defence Council and states that the Nepal Army 'shall be constituted in accordance with the proportional, inclusive, and democratic principles and following the rehabilitation,

management and integration of the combatants living in cantonments [...] and Nepal Army on the basis of the 12-point agreement and the Comprehensive Peace Agreement'.<sup>17</sup>

To date, no person has been prosecuted in civilian courts for serious abuses, including those relating to sexual violence, committed during or after the conflict, despite in-depth monitoring and reporting provided by the Office of the High Commissioner for Human Rights (OHCHR), the National Human Rights Commission (NHRC) and other national human rights organizations. Many in the human rights community have expressed concern that pending legislation for the TRC and the COID has been used as a justification for not prosecuting conflict-related crimes through the regular judicial system. By January 2010, the police had registered at least 65 formal complaints related to killings or disappearances of civilians during the conflict.<sup>18</sup> Analysts have noted that these cases were registered only after great pressure from the victims and human rights organizations, and often under court order. Well-researched emblematic cases include the torture and killing of Maina Sunuwar, the abduction and murder of Arjun Lama, disappearances by the Bhairabnath Battalion, and the Madi bus bombing in Chitwan district. In spite of having received significant attention from the international community, these cases have yet to be addressed by Nepali civilian mechanisms of justice.

The preamble to the CPA sets out a clear commitment to the Universal Declaration of Human Rights and international humanitarian laws and basic principles and values relating to human rights. The rule of law is a necessary platform for democratic participation in governance and for promoting equal opportunities to participate in development. Yet, four years on from the signing of the CPA, respect for the rule of law remains weak. In the Terai, over 100 armed groups are estimated to be active and

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17 See Article 24.2 in, Constituent Assembly Committee for Preserving the National Interests, *Preliminary draft Concept Paper*, 2010.

18 Human Rights Watch and Advocacy Forum, *Still Waiting for Justice: No End to Impunity in Nepal*, 2009.

violent deaths are currently estimated to total nearly 250 per annum. Identity- and ethnically based movements and others continue to use violence, or the threat of violence, to promote their cause, and have succeeded in negotiating agreements that are then rarely implemented in full. *Bandh*<sup>19</sup> and other forms of intimidation and violence are routine. In addition, there have been several occasions when the Cabinet has ordered the withdrawal of criminal cases (including for the most serious crimes) from the courts.

The independence, transparency, gender sensitivity and accountability of the police services are yet to be strengthened. There is well-documented evidence of excessive and illegal use of force by the Nepal Police and Armed Police Force.<sup>20</sup> The Armed Police Force, established during the conflict, continues to grow in strength, but without the institutionalization of human-rights-compliant law enforcement. At the village level, informal conflict-and-dispute-settlement mechanisms, working through existing patronage systems, are often preferred. Concerns have also been raised about apparent extrajudicial executions in the Terai.<sup>21</sup> Human rights actors remain active, but feel isolated and vulnerable, pitted against political actors and institutions who defy accountability. Journalists are routinely intimidated and some have been murdered.

The centrality of the issue of land is indicated by the fact that the drafters of the CPA dedicated three specific articles to it: there are commitments to implementing ‘scientific land reform’ and ending ‘feudal landownership’ (Article 3.7), providing land and resources to landless and bonded labourers (Article 3.10), and inventorying and returning all property and land seized during the conflict (Article 5.1.8). Two Land Commissions have been established since 2008, but were not able to make progress on commitments. The lack of attention to this issue played out in the September 2007 violence in Kapilvastu district and the December 2009 clashes in Kailali district. In many cases, land remains at the root of the cycle of violence in the Terai, as it relates to ethnic tensions and class divisions. Lack of progress on reform and return of land has caused some to doubt stakeholders’ commitment to the spirit of the CPA. This has led to political friction at the national level and tensions at the local level.

A transparent and consensual land returns and reform programme, properly managed, could reduce local conflicts and significantly build confidence. This issue is clearly at the intersection of development work and peace-building. It is one of the few items in the CPA to feature a reciprocal commitment, with one party agreeing to return land confiscated during the war and to carry out no further confiscations, and the other party agreeing to implement a form of land reform. Unless the return and reform processes are carried out concurrently as part of a coherent overall process, it seems politically very difficult for either to advance. In the absence of reliable data, it is difficult to say how much land is currently confiscated and, similarly, how much potentially ‘reform-able’ land is available.

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19 *Bandh* (also meaning ‘closed’) is a form of protest intended to disrupt social and economic life by imposing a general strike in a community or even at the national level.

20 See, OHCHR, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal*, A/HRC/10/53, 3 March 2009 (pp. 12–17) and OHCHR Nepal, *Summary of human rights concerns arising from the Terai protests of 13–29 February 2008*, March 2008.

21 See, OHCHR, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal*, A/HRC/13/73, 5 February 2010 (p. 9) and OHCHR Nepal, *Investigating Allegations of Extra-Judicial Killings in the Terai*, OHCHR-Nepal Summary of Concerns (July 2010), July 2010.

The CPA commitment to ‘end discriminations’ through restructuring the state ‘in an inclusive, democratic and forward looking manner’ (Article 3.5)—i.e., recognition of grievances related to the structural causes of exclusion—has yet to be implemented; this continues to impede development, although expectations amongst a number of groups are high that federalization will help to address these grievances. It is important that the new constitution is promulgated in a timely fashion with broad buy-in and that transition arrangements are handled smoothly in order to prevent public discontent that could lead to disruption and other forms of protest, which, in turn, could impact both service delivery and development work. The enabling statements of the CPA have paved the way for a marked rise in ethnic awareness.

Although results in ending discrimination are uneven, groups such as the Nepal Federation of Indigenous Nationalities (NEFIN) have considerably strengthened their capacity to influence national policy debates, and there has been a reaffirmation of the diversity of identity and cultural rights which in turn has enriched CA debates. Madhesi protests have changed the tone of national politics, and other groups have now emerged, notably Limbu, Rai, Magar and Tharu. Examples of these new groups include the Federal Democratic National Forum (FDNF), an umbrella organization representing ethnic organizations that have representation in the CA, and the United Democratic Madhesi Front (UDMF), which promotes the agenda of several Madhesi groups. Some ethnic minority and Dalit groups have expressed concern that they do not feel genuinely represented by ‘their’ CA members because they are under undue party influence. At present, the more militant, ethnic agitating groups appear to have limited active support. However, it is possible that widespread latent support could be mobilized if the constitutional process is delayed without adequate consultation and communication.

Restoring legitimate and accountable representation at the local level remains a serious lacuna in CPA implementation. In Village Development Committees (VDCs) and District Development Committees (DDCs), corruption can compound inefficiency, as can a lack of transparency and public accountability including, but not limited to, tendering and implementation processes. Following the peace agreement, the government of the Seven-Party Alliance established consensus-based, all-party VDCs at the local level and also DDCs. In mid-2006, soon after the ceasefire, 68 percent of VDC Secretaries were absent from villages. Two years later, 49 percent of VDCs did not have a fulltime VDC Secretary present in the duty station. At the start of 2010, this number had risen to 58 percent.<sup>22</sup> The absence of VDC Secretaries gravely reduces the efficacy of the basic governance building block in Nepal, which is further compounded by the ongoing lack of security for VDC Secretaries and civil servants at the local level (particularly in the Terai region), and by corruption and lack of transparency.

The CPA outlines ‘special protection of the rights of women and children, to immediately stop all types of violence against women and children [...] as well as sexual exploitation and abuse’ (Article 7.6.1). However, little progress has been made to achieve this. The Prime Minister declared 2010 to be the year against gender-based violence, and a National Plan of Action on the prevention of gender-based violence was launched in 2009; however, this has not yet been fully costed or fully implemented.

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22 OCHA, *Nepal: Presence of Village Development Committee (VDC) Secretaries – Comparative Result of 2008 and 2009 Survey*, 3 March 2010. The Ministry of Local Development has advised that over 500 of the more than 900 vacant VDC Secretary positions will be filled by October 2010.

## 2E. Future challenges and obstacles for CPA implementation

Although critical CPA components and commitments remain to be addressed, it should be recognized that there is a set of major issues under serious discussion and some of the achievements to date—in particular, the peaceful transition to a republic and the formation of an inclusive CA—are highly significant. Beyond the individual CPA undertakings that can be found in the clauses of the document, progress on peace will depend on overcoming a number of serious obstacles that are flagged below.

Four years on, the CPA continues to serve as the primary framework document for the peace process. However, political tensions among and within parties and a heightened sense of mistrust have compounded the challenges that have to be faced. These tensions have also taken a toll on the effectiveness of the consensus-building mechanisms designed to extricate the parties from these very situations. Nonetheless, some progress on key areas has been achieved. At the grassroots level, there is still a critical mass in favour of the process, although constituents have yet to enjoy the full and overdue dividends of peace. Popular frustration is growing at the delays to the constitutional timetable. None of the parties to the CPA discount the possibility that a serious political deterioration, radicalization or even potential street-level mobilization will occur in the event of further delays.

In the Nepali political discourse, the ‘logical conclusion’ of the peace process is often associated with particular issues such as finalizing the reintegration and rehabilitation of the Maoist army and drafting of the constitution. However, the completion of these tasks should not be equated with the full realization of the aspirations of the CPA. The CPA prescribes both transitional short-term measures as well as long-term measures. Achievement of the transitional short-term measures will not mean that the peace process has actually come to an end. A situation where political arrangements of the CPA (constitution-writing, reintegration and rehabilitation of the Maoist army) have been completed will still leave broader peace-building efforts such as reconciliation and transitional justice to be addressed. The challenge is for development partners to understand the transition from a peace process to peace-building and development, and how to best provide support at the various stages.

A security sector with public support and confidence is a vital element for the success of the peace process, with a direct impact on Nepal’s development. One component necessary to accomplish this objective is to create security services that are effective, appropriate, affordable, inclusive and accountable to the democratically elected government. This will be dependent on a workable solution regarding the future of the Nepal Army and the Maoist army in the short term, and the democratization of the Nepal Army (interpreted as improving its representativeness of the wider Nepali population and subjecting it to strengthened democratic control) over the longer term.

Addressing impunity and improving accountability will have a direct impact on Nepal’s successful transition to peace, as failure to address past violations and improve the rule of law will leave grievances to fester. Conflict victims have expressed increasing frustration and betrayal. If rule of law is not strengthened, insecurity and violence can be expected to increase, particularly in terms of local and ethnic struggles during the expected state restructuring period. Fundamental elements of the new constitution continue to be debated regarding the independence of the judiciary, particularly in the context of the recent proposal to shift the authority for determining the constitutionality of laws from the Supreme Court to a parliamentary committee.

Despite mixed views on the merits of federalism, the Interim Constitution and the ongoing CA process to develop a new constitution are currently moving Nepal towards an eventual federal state structure. While federalization will necessarily be undertaken in phases, evolving over many years, the prospects for its success, and its chances for making a positive contribution to peace-building, can easily be undermined. There are concerns that, if poorly implemented, the move to establish a federal state could provoke further conflict. In the short term, there is a need for provisions dealing directly with the modalities of the transition to the newly structured state. These will need to address, among other things, the commencement date for federalization as well as arrangements for managing and financing the transition process. Successful drafting of these provisions will require high-level planning on at least those parts of the transition that must be addressed in the constitution itself. Taking too long to implement this transition could potentially provoke reactions from Madhesi, Tharu, Limbu and other historically excluded groups who expect to benefit from federalization.

While the assertion of long-dominated identities is a positive phenomenon in Nepal—in the context of a political culture that has tended to be exclusive rather than inclusive—it also raises a number of risks for the peace process. One is the hardening of identities where, as one community advances its cause, another feels threatened and proposes its own cause more stridently. This pressure can intimidate and become violent. If identity movements were to be exploited by peace-process spoilers, it could also complicate and vitiate the peace process still further. Where governance is weak, e.g., as is presently the case in the Terai, identity groups can also become deeply involved in corruption and criminality. All these risks further increase in the context of a transition to federalism, where competition between states over resources may well intensify tensions.

Looking further ahead, all development actors need to prepare for the complex and multidimensional challenges that even a well-designed transition to federalism will face. Administratively, much will depend on the arrangements for residual powers in the central government. The new federal units could be unevenly equipped to deal with the very different challenges that each will face. Similarly, the political impact will vary, in part due to the varied administrative responses to the new federal dispensation, but also due to the different forms that the grievances of excluded groups have taken historically. Management and ownership of resources is also expected to create new challenges. Moreover, while the transition to a federal arrangement presents new opportunities to support development in remote areas, it also represents a challenge for donors and all development partners.

Elections are a vital instrument to ensure the social inclusion and political participation of as wide a spectrum of society as possible, and are thus part of addressing the issues of exclusion of marginalized groups and women prevalent in Nepali society. Elections are also competitive and increase political party divisions. Once the new constitution is promulgated, a variety of electoral scenarios could be possible within 12 months, including presidential, local, federal and national elections.<sup>23</sup> Efforts are underway to assist Nepal's Election Commission in the implementation of a nationwide Voter Registration Project, important for the social inclusion of excluded groups, as the current voter lists opened the doors to fraudulent voting and the exclusion of minorities and were not able to address the problem of widespread

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23 Technically, local elections could take place even before the new constitution is promulgated.

migration of voters to different constituencies in the 2008 CA election.<sup>24</sup> During the next electoral period, there is a risk that, because attention has been focused at the central/political level for the last two years, with little strengthening of local governance, rule of law, and reconciliation, the pre-electoral period could be affected by greater violence and instability, particularly in light of the proliferation of political youth wings, armed groups and criminality.

## 2F. Implications for development partners

Much of Nepal's peace process still lies ahead, suggesting continued uncertainty and a fluid political environment. This will demand considerable flexibility by development partners. The long-term nature of the transformation agenda embedded in the CPA also implies that effective peace-building entails a long-term commitment.

Mechanisms that provide confidence-building measures—such as an inclusive NPTF Board—are critical to avoid party political pressures on the use of resources and access to them. Politicization of partners—civil servants, youth groups and civil society generally—will inevitably be high. Development partners can easily, even if inadvertently, affect the balance.

The Nepal peace process, like all peace processes for that matter, is not proceeding in a neat, linear fashion. A shared set of priorities amongst national and international stakeholders is critical in such an environment, balancing short-term, transitional and long-term gains. The first goal of this Peace and Development Strategy is to begin to elaborate such a set of priorities. Beyond this shared list is a requirement for ongoing effective coordination so that the different efforts reinforce each other. The importance of establishing a mechanism for regular dialogue between national and international stakeholders, including parties that may be outside the government at the time, cannot be overestimated.

While the CPA outlines some endpoints (e.g., 'democratization of the army', 'scientific land reform', etc.), it does not provide a detailed roadmap on many of the issues, and a great deal of simultaneous negotiation is required among national actors around each of the pieces of this complex process. Development partners need to recognize that this may involve support for processes even when results remain elusive. In addition, with the dissolution of the National Monitoring Ceasefire Committee and in the absence of an NPRC as prescribed by the CPA: (i) the CPA has not been monitored in an official or systematic fashion; (ii) parties have not had a confidence-building and dispute-resolution mechanism to deal with non-military aspects of the CPA; and (iii) stakeholders have been left with no objective, consensual evaluation of the CPA progress. If requested by the parties to the peace process, development partners may therefore consider supporting the establishment of an independent peace process monitoring mechanism.

Owing to the nature of the CPA and the changing political environment, several gaps need to be taken into consideration as the international community seeks to formulate its development and peace-building assistance to Nepal. New political actors have entered the landscape, most notably the Madhesi parties, and the CPA omits some actors that have a continuous impact on peace and development, including the youth wings of political parties (the Maoists' Young Communist League (YCL) and the UML's Youth

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24 Election Commission of Nepal and UNDP, *Action Plan Implementation of the ECN's Strategic Plan Electoral Cycle 2009–2013*, 2009, and Election Commission of Nepal and UNDP, *Preparation of Voter List with Photograph*, 2009.

Force) and the Armed Police Force, which was established during the conflict.

The new constitution is expected to spell out and supersede many of the commitments in the CPA. The timing and details of the final text, particularly on federal arrangements, could have a significant impact on the peace and development landscape. Early consultation and a thorough public information campaign will be vital to the successful implementation of the new constitution. Consensus within the CA and the leadership of political parties is essential, as is acceptance in the districts. The parties and CA members need to ensure buy-in to the new constitution and lay the groundwork for its implementation. All this will require support. More fundamentally, and this is discussed at greater length in Chapter 5, if the new constitution delivers a fundamentally new state structure, this may have widespread ramifications for the way in which development partners operate in Nepal. A natural preference to adapt existing practices through incremental changes may or may not be in step with the rhythm and mood of the political process. Development partners will need to understand the nature of devolution of service delivery and governance to the new federal units, and the residual powers remaining with central government, including natural resource management. This is likely to require extensive consultation with central government and sub-national governments over aid delivery methods.

Finally, successful development assistance through the new federal units will require democratic, accountable and effective local governments. Four years on from the signing of the CPA, a governance vacuum remains evident, compounded by political influence in decision-making at the sub-national level, including in the misuse of development funds and interference in tendering processes. The VDC Secretaries' organization has consistently complained of intimidation of their members and political interference in their work.

## PRIORITIES FOR SHORT-TERM PEACE SUPPORT

“The immediate post-conflict period offers a window of opportunity to provide basic security, deliver peace dividends, shore up and build confidence in the political process, and strengthen core national capacity to lead peace-building efforts thereby beginning to lay the foundations for sustainable development. If countries develop a vision and strategy that succeeds in addressing these objectives early on, it substantially increases the chances for sustainable peace—and reduces the risk of relapse into conflict... Seizing the window of opportunity requires that international actors are, at a minimum, capable of responding coherently, rapidly and effectively to support these recurring priorities.”

**Report of the UN Secretary-General on peace-building in the immediate aftermath of conflict, 11 June 2009**

### 3A. Introduction

Successful implementation of Nepal’s peace process requires a ‘twin-track’ approach by development partners; on the one hand, they need to provide development support that will help deliver the immediate peace priorities of the coming 12–24 months, while on the other hand, doing so without losing sight of the essential long-term agenda spelled out in the CPA. This section of the strategy identifies the development-related priorities for support to the peace process in the short term. These priorities should ideally be reviewed annually. The second part of this section also looks at some potential risks for the peace process over the short term and identifies measures development partners could support to mitigate them.

In addition to moving forward specific elements of the peace agreement, the short-term objectives for international support should focus on delivering tangible peace dividends, i.e., improvements in people’s lives and achievements that also build confidence in the peace process. These tangible peace dividends must also address the gender, human rights and social inclusion needs of all segments of the Nepali population, with a special emphasis on the most marginalized.

Over the next 12–24 months, work on the new constitution is a vital component of the peace process, as a means of delivering ‘the progressive restructuring of



*Photo Credit: IOM/Jitendra Bohara*

the state in order to resolve the existing problems of the country relating to class, caste, region and gender'.<sup>25</sup> The establishment of effective transitional justice systems would signal the move to a culture of accountability and respect for the rule of law. In addition, the integration and rehabilitation of Maoist army personnel together with the initiation of work to 'democratize' the Nepal Army are required to resolve the status of the two armies. Reconstruction of damaged infrastructure as well as a series of early recovery initiatives are also required to convince ordinary Nepalis that the future will look different to the past.

Justice, development and employment creation figure as common themes. These are also the issues that matter to most Nepalis. These priorities remain relevant, even as conflict risks evolve from those associated with a return to Maoist insurgency to those associated with new tensions between the rising aspirations of young and ethnically diverse Nepalis and the old constitutional order.

The short-term priorities identified in this section cover: (i) justice, in particular, law and order, transitional justice, and interim support to the conflict-affected; (ii) recovery, including reconstruction of damaged infrastructure, access to basic services, the issues of land and property restitution and security of tenure, and mine action; and (iii) consolidating peace, including dealing with the discharged from the Maoist army, managing the verified Maoist army, supporting key institutions and mechanisms for peace, supporting the constitution-writing process, and ensuring elections. Together these provide tangible support to those affected by the conflict and, for the wider population, they signal that things have fundamentally changed.

The above priorities match well with the areas supported so far through the NPTF (i.e., support to cantonments, elections, IDPs, and the reconstruction of police posts), the United Nations Peace Fund for Nepal (UNPFN) (i.e., discharge and reintegration, elections, mine action, reparations, transitional justice, jobs for peace, and support to women and children affected by conflict) and the World Bank's Emergency Peace Support Project (EPSP). Combined commitments to date through these peace funds amount to US\$ 195 million. The absence of an overall strategic framework for using these funds means, however, that it is difficult to make an overall assessment of progress and/or to prioritize gaps.

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<sup>25</sup> From the Preamble to the Interim Constitution of Nepal.

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## JUSTICE

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### 3B. Law and order

An improved sense of personal security is part of the peace dividend expected by any citizen in a post-conflict environment. In Nepal, the general sense of safety and security has improved since the end of the armed conflict, but significant problems and perceptions of insecurity persist in many areas of the country, particularly in clusters of the Terai, the Central Development Region and the Eastern Development Region. Surveys in 2009 found that while people in some parts of the country were increasingly prepared to go to the police and believed that the security services were making efforts to improve the country's situation, an equal number would not turn first to the police for protection from violence.<sup>26</sup>

The total number of reported abductions and murders (the majority being politically motivated) has decreased from 798 in 2007 and 752 in 2008 to 539 in 2009.<sup>27</sup> Most police posts at the VDC level are now fully staffed (although nearly 700 posts remain destroyed or inoperable following the conflict). Importantly however, during 2009 and 2010, trends towards increasing pessimism have emerged amongst Nepalis regarding justice and the rule of law. Perceived improvements in security are seen as fragile and not universally enjoyed; abductions, forced donations, threats, political violence, impunity, corruption and armed groups all undermine the daily sense of safety and security felt by many Nepali citizens. The enduring political deadlock is also seen as directly contributing to anxiety over insecurity and deterioration of the rule of law.<sup>28</sup>

In particular, armed groups, ethnic autonomy movements, ethnic militias and youth wings of political parties (including the Maoist YCL and the UML Youth Force) have increased their activities, including extortion, abduction and killing. The government estimates that over 100 armed groups are currently active, many of which are criminal gangs operating behind a veneer of politics. Children are often lured, bribed or forced by both armed groups and political parties to participate in activities that put them at risk. A government-led process of negotiation with armed groups has had limited success. The situation is most fragile in the Terai, where Madhesi representation in security forces remains low and in many places local government administrators, fearing intimidation, have moved to district headquarters, affecting service delivery.



Photo Credit: UNIFEM

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26 Saferworld and Interdisciplinary Analysts, *Treading Water? Security and Justice in Nepal, 2009*; and, Antenna Foundation Nepal, Equal Access Nepal, Forum for Women, Law, Development, Institute for Human Rights and Communication Nepal, International Alert and Saferworld, *Security and Justice in Nepal: District assessment findings, 2010*.

27 See, OCHA, *Nepal: Report of Security Incidents, Security Incidents Maps, 2007–2010*.

28 Based on Saferworld and Interdisciplinary Analysts, *Treading water? Security and justice in Nepal, 2009*; and, Antenna Foundation Nepal, Equal Access Nepal, Forum for Women, Law, Development, Institute for Human Rights and Communication Nepal, International Alert and Saferworld, *Security and Justice in Nepal: District assessment findings, 2010*.

Nationwide street demonstrations and *bandh*, enforced by explicit threats of violence, often with the forced or manipulated participation of children, continue to be a major form of protest<sup>29</sup>, whether motivated by a political agenda or by a demand for compensation of some kind. These *bandh* have a severe impact on the social and economic life of the country. For example, some districts have lost 50–150 school days out of a total of 220 school days per year due to *bandh*.<sup>30</sup> Furthermore, *bandh* cost the Nepali economy millions of dollars in lost output each day they occur.<sup>31</sup> There is also a widespread perception that policing remains vulnerable to political interference<sup>32</sup> and that corruption in the criminal justice and district administration systems is endemic. The linked problems of political interference, corruption and lack of accountability for violations of the law add to the overall environment of insecurity and also constitute a serious obstacle to the effective delivery of development assistance. Gender-based violence has also not been reflected in police reports, owing to the culture of silence on this issue and lack of an appropriate response mechanism, and women and girls remain particularly vulnerable in Nepal’s fragile security environment.

#### Potential development support

1. Supporting the establishment of an independent Police Service Commission (or equivalent body) as recommended by the High-Level Police Reforms Recommendations Task Force.
2. Supporting the establishment of an independent police complaints-handling mechanism.
3. Supporting the development and implementation of the government’s affirmative action policies to increase the representation of women and traditionally excluded communities in the security forces.
4. Supporting training on gender, children, human rights and social inclusion for police, prosecutors, paralegals, courts, and community mediation centres.
5. Supporting the upgrade of facilities in courts and prisons, linked to longer-term institutional reforms.
6. Supporting the implementation of the National Plan of Action against Gender-Based Violence.

### 3C. Transitional justice

Transitional justice mechanisms, together with the prosecution of emblematic cases of conflict-related human rights and international humanitarian law violations, are intended to signal a broader transformation in Nepal from a culture of impunity to a culture of accountability and respect for the rule of law. These are part of the measures necessary to stop further erosion of the rule of law. They also provide an opportunity to give recognition to the violence that took place during the conflict.

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29 See, OCHA, *Nepal: Report of Bandhs and Blockades*, Protests, Rallies, Bandhs and Blockade Maps, 2006–2010.

30 UNICEF, *Assessment of Child Protection Concerns of Children in Terai Districts*, 2009, and UNICEF, *Education in Conflict and Transition Contexts: Case Studies from the DRC, Nepal and Southern Sudan*, Field Notes: UNICEF Policy and Programming in Practice, 2010.

31 ‘A day’s *bandh* has commonly been estimated to cost the economy around NRs 630 million (which represents close to one day’s GDP) in direct industrial loss alone. More detailed economic evaluations of particular *bandh* have supported this figure. For instance, the Federation of Nepalese Chambers of Commerce and Industries estimated a 20-day Terai *bandh* in 2007 to have caused economic losses of around NRs 28.74 billion’, from WFP, *Struck Out: The Everyday Economic and Livelihood Impact of Bandhs & Strikes in Nepal*, Food For Thought Series, Issue 1, March 2009.

32 See, OHCHR, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal*, A/HRC/13/73, 5 February 2010 (p. 9).

Bills to establish the COID and the TRC have been drafted and submitted to the Legislature-Parliament. When established, these commissions will require substantial material and technical assistance. The relationship between the two commissions requires early clarification. Based on international experience, the work of these commissions can be expected to take anything between three and five years to complete. Commissions are not expected to deliver any referrals in the first year. This provides a critical window of opportunity to review reparations policies generally, and to ensure there is consistency between the different kinds of claims/payments made in the past (e.g., to children of martyrs, IDPs, etc.) and the likely new reparations recommended by these commissions. The absence of a transparent and fair reparations policy that recognizes all victims of the conflict, including survivors of torture and sexual and gender-based violence, risks generating new grievances and contributing to future instability.

Both commissions will have an investigative and reconciliation purview only, i.e., cases will have to be referred to the prosecutor's office and then enter the court system. It is thus not possible to separate the work of these transitional justice mechanisms from the larger question of the rule of law and, in particular, the ability or willingness of the conflict parties and the government to follow through on outstanding cases of serious human rights violations. A demonstrated willingness to prosecute cases where there is sufficient evidence to do so is a prerequisite for the two transitional justice commissions to be credible and effective. Including representatives of women and victims' groups on the commissions could further bolster their credibility.

Nepal's civil society and development partners have advocated for reform in the security sector to ensure that human rights and international humanitarian law violations committed during the conflict are properly investigated. With a view to making continued progress on the issue of impunity, development partners are encouraged to remain engaged with security forces through the provision of technical assistance and resources. To maximize the effectiveness of these efforts, however, investments should be made strategically so as to incentivize compliance with human rights principles and the rule of law. Similarly, greater efforts should be undertaken in the background vetting of security personnel with credible allegations of human rights violations against them, prior to their selection for visas and overseas study opportunities.

#### **Potential development support**

1. Supporting the establishment and functioning of a Commission of Inquiry on Disappearances and a Truth and Reconciliation Commission, in accordance with international standards and ensuring the safe participation of marginalized and socially excluded groups, children and women.
2. Supporting victims' groups and other concerned organizations to ensure that conflict victims can participate in the work of the commissions in a safe and meaningful way.
3. Supporting the drafting and implementation of a comprehensive policy on reparations.
4. Supporting the establishment of vetting mechanisms to evaluate the human rights record of members of security forces and other combatants.
5. Continuing advocacy for progress in prosecutions of emblematic cases of serious human rights violations.



Photo Credit: UNICEF/NEP/3152/Sagar Shrestha

### 3D. Interim support to the conflict-affected

In the absence of a countrywide mapping of the conflict-affected and their needs, it is difficult to give an accurate estimate of the scale of the needed response to this problem. The MoPR has registered a total of 16,719 persons killed and 1,327 disappeared, 5,600 cases of destroyed infrastructure and 11,775 cases of personal property loss/damaged as a result of the conflict. For the purpose of the interim relief programme, the government has provided assistance to conflict-affected persons through two separate programmes: (i) National Policy on Internally Displaced Persons, 2006; and (ii) Procedures Regarding Relief, Compensation and Financial Support to Citizens, 2009. Categories of victims eligible for interim relief under these programmes include IDPs, the families of those killed or disappeared, those who were abducted, disabled, injured and/or widowed, children/orphans, and those whose property was lost or destroyed during the conflict. Victims of torture or sexual violence have not been included in government categories of the conflict-affected.

Men, women, boys and girls were affected differently by the conflict, and their different needs must be taken into consideration. As most of the killed and disappeared were men, many young women have been left as widows and the heads of households. Given the current social prejudices against widows, support to this group is essential. The number of children directly affected by the conflict is estimated at between 52,000 and 57,000, including more than 8,000 orphans<sup>33</sup>, and perhaps an estimated 50,000 people remain displaced. There is a sense amongst some of the key political parties that IDPs and those who have lost property (see Section 3F) have not received sufficient attention.

Assistance to the conflict-affected is currently being provided by a wide range of actors including the government and development partners. Through the interim relief programmes, the MoPR has supported to date around 14,000 families of deceased persons, 1,200 families of the disappeared, 3,700 widows, 221

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33 The total number of affected children is based on current estimations by UNICEF. The figure for orphans is from, Child Workers in Nepal Concerned Centre, *Annual Report 2006*, Kathmandu, 2006, page. 9.

abducted persons, 4,238 cases of property loss, and has provided 49 pensions to the families of martyrs and individuals disabled in the 2006 Jana Andolan. Capacity constraints in local administrations, lack of comprehensive data on conflict-affected persons and a lack of local participation in identification of potential beneficiaries constrain the effectiveness of these programmes and risk contributing to their politicization. The UN is supporting victims of sexual and gender-based violence from the conflict in 14 districts and the reintegration of 7,500 children formerly associated with armed forces and armed groups. The largest single development contribution in this field is the World Bank's EPSP that has provided US\$ 50 million for interim cash transfers and services to eligible conflict-affected groups through the MoPR.



*Photo Credit: IOM/Jitendra Bohara*

In the short term, it is important that there is a mapping of target populations as well as of the various programmes currently available. In addition, there is an urgent need to collect reliable information on the incidence of sexual violence during the conflict, as well as to conduct a review of the implementation of IDP directives. This would contribute to the modification of existing programmes in preparation for the development of a wider reparations policy, including the expansion of categories and benefits. This could result in some modification of existing programmes, linked to a review of reparations policy, including a possible shift away from cash-based transfers and towards skills training, micro-loans and psychosocial support. These and other modalities are necessary to put in place measures to protect those who are particularly vulnerable to theft of their cash-based benefits, such as conflict-affected widows, but also to encourage a more objective and neutral process with clear criteria regarding eligibility for different benefits and to remove some of the possibilities for third-party manipulation. The process for conflict victims to obtain interim relief support should be simplified to ensure accessibility for vulnerable groups. For example, victims of sexual violence often do not have access to the justice system, psychosocial counselling support or skills training, and are currently not eligible for interim relief assistance under existing policy guidelines. The relationships between interim relief programmes, the national IDP policy and any future comprehensive reparations programme developed by the MoPR, sectoral and social protection programmes, and the TRC should also be mapped and defined. This would better allow linkages between the government's existing social protection schemes (old-age and widows' allowances, the child grant, scholarships, maternity grants, etc.) and reparations and other MoPR programmes to be explored and established.

### Potential development support

1. Supporting the comprehensive mapping of target populations and existing programmes, leading to modifications of existing assistance programmes based on the findings. This would also be linked to the review of reparations policy, including complementing cash transfers of lump sums with support for pensions, skills training, micro-loans and psychosocial support.
2. Continuing support for temporary relief payments to families by the MoPR and the provision of education support to boys and girls affected by armed conflict.
3. Providing scholarships to children, with an emphasis on marginalized girls.
4. Supporting employment and skills/vocational training for conflict-affected families and widows.
5. Supporting psychosocial counselling for conflict-affected persons.
6. Supporting the development and implementation of a comprehensive outreach strategy and implementation plan to ensure all victims can access their entitlements.
7. Providing rehabilitation support for victims of conflict-related sexual violence.
8. Supporting implementation of IDP directives and ongoing return assistance benefits to IDPs.
9. Supporting the disaggregation of data on the conflict-affected by gender, age, caste and ethnicity for more effective programmatic support.

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## RECOVERY

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### 3E. Reconstruction of conflict-damaged infrastructure

The repair of damaged infrastructure was included in the action plan of the NPTF for the first time in 2009. The MoPR estimates that only about 38 percent of some 3,647 units of destroyed or damaged local infrastructure initially identified have been reconstructed so far, with another 19 percent expected to be completed by the end of the current fiscal year, some with support from development partners. It is not clear to what extent these estimates take into account contributions to the repair of damaged infrastructure provided through other development programmes, including SWAs. The NPTF has also allocated US\$ 11 million toward the reconstruction of 100 damaged or destroyed police posts, although a further US\$ 73 million is estimated as being required for the remaining nearly 700 posts still to be repaired or rebuilt.

Despite the high priority accorded by local communities and the actions by government and development partners, reconstruction and development have not progressed as expected, in terms of pace, quality or sustainability. Destroyed and damaged local infrastructure continues to be an immediate reminder of the impact of the conflict to communities and signals that they are yet to see a tangible peace dividend. It will be crucial to review reconstruction plans and not unquestioningly replace what was destroyed and damaged in the conflict. Ensuring that the reconstruction and repair of infrastructure is responsive to changed contexts and needs since the end of the conflict will improve its effectiveness. However, it is also important to ensure that reconstruction can be designed to bring the state closer to communities, be sensitive to the experiences of the conflict and bridge fault lines in society so as to optimize its impact on peace-building.

### Potential development support

1. Ensuring sufficient priority is given within SWApS and other line ministries to immediately address infrastructure reconstruction and repair priorities within communities.
2. Supplying technical assistance to implementing ministries for the delivery of this infrastructure through local labour-based employment-generation programmes.

## 3F. Property

Signatories to the CPA have agreed, on the one hand, to maintain records of property seized during the conflict and start the process of immediate return, while on the other, to the formulation of a land reform policy to end 'feudalistic landownership practice' (Article 3.7). Return of property also takes centre stage in the nine-point agreement of November 2008 between the Nepali Congress and the Unified Communist Party of Nepal (Maoist) (UCPN-M). Despite these agreements and public commitments to property returns, seizures continue and have often been used as a bargaining tool to gain political leverage in political negotiations. The fact that influential members of political parties have been affected has the potential to stall political negotiations. In many cases, property seized during the conflict has already been 'redistributed' to the 'landless' or sold to third parties. Any forceful eviction also has the potential to erupt in violence that could easily escalate and destabilize the peace process, as happened in Kailali district in late 2009.

While there are clear links between restitution/return of property and progress on key peace process negotiations, there has been little systematic engagement by the international community in this area. The High-Level Scientific Land Reform Commission set up during the UCPN-M government in early 2009 to address land issues within the peace agreement process became non-functional owing to lack of resources and political commitment to tackle the issue of restitution and wider land reform. This was replaced by a UML-led commission, supported in part by the Department for International Development (DFID), which did complete a report; however, its current status and ownership is uncertain.



*Photo Credit: UNICEF/NEP/3386/ Kiran Panday*

Following a political agreement on this issue, Nepal could consider, for example, action by the Ministry of Home Affairs, MoPR and the Ministry of Law Reform for establishing a neutral and independent database/inventory of property seized; developing a complaints-handling mechanism; establishing a compensation mechanism and policy for affected persons linked with a wider reparation policy; and strengthening

public security to ensure that property seizure is controlled and property owners feel secure enough to return. This exercise could also be used to trial community-based land dispute resolution processes and other progressive land reform approaches, and could be supported by development partners.

While the international community understands the importance of the issue and its links with the peace process, there is little that can be achieved without a number of obstacles being overcome. The most important of these are political willingness and commitment to action on land issues. Law enforcement would also have to be strengthened in order to slow the ongoing incidence of property seizures. Coordination between the various ministries and the Ministry of Home Affairs would also need to be strengthened to ensure the issue is consistently and coherently addressed across government bodies.

#### **Potential development support**

1. Supporting action on property return and land reform.
2. Supporting the development and maintenance of an independent inventory of property seized during and after the conflict, ensuring that the needs of widows and households headed by single female are given adequate attention.
3. Supplying access to international experience on the preparation of a property restitution/returns policy and strategy.
4. Supporting an independent and impartial property dispute arbitration mechanism that is sensitive to social inclusion and gender considerations.

### **3G. Mine action**

The clearance and destruction of mines and other explosive remnants of war are specifically mentioned in the CPA. The destruction of these remnants of war allows for the development of the cleared areas, the removal of potential weapons, and confidence-building between the signatory parties to the CPA. The Nepal Army, as well as the Armed Police Force and Nepal Police, have explosive ordinance device teams conducting the disposal of explosive ordnance and improvised explosive devices (IEDs). The level of training and equipment available to these teams is variable.

There is a strong mine risk-education system based in schools through a cooperative initiative between the United Nations Children's Fund (UNICEF) and the Ministry of Education. There is also an efficient and strong system for emergency mine risk education that can be deployed when there is an incident involving a victim-activated explosive device. There is a fledgling mine action coordination office within the MoPR and some victim assistance programmes in place. The ongoing use of IEDs will continue to cause victim-activated casualties. The new MoPR mine action office should allow for greater coordination between the ministries, and the implementation of a national mine action strategy.

The Nepal Army has currently deployed three demining platoons to clear minefields left from the conflict; to date, 33 of 53 minefields have been cleared. The Nepal Army is committed to clearing all minefields by mid-2011. The UN plans to support these operations until this date. The Nepal Army is also clearing 'IED fields' (areas where booby traps were laid in defence of a position); currently 130 of 275 have been cleared. The UN has destroyed 52,617 dangerous items previously held in Maoist army cantonment sites.



Photo Credit: UNMAT

Outstanding priorities for the coming 12 months include: the clearance of the remaining 20 minefields; the start of UN assistance to IED-field clearance; expansion of mine risk education into community-based activities utilizing NGOs; new media campaigns for risk education particularly targeted at women and children; technical advice to the Maoist army and security forces to conduct the reporting and removal of IED components from homes where they were stored during the conflict; streamlining of the security forces' response to IEDs; and implementation of the government's Victim Assistance Strategy developed in 2009.

Nepal is not yet a signatory to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines (the 'Ottawa Mine Ban Treaty'), one of 37 countries still to sign. This is despite the fact that accession to the treaty would increase international recognition of the mine action work that Nepal is already doing and Nepal has the capacity to easily meet treaty obligations within the timeframe stipulated. If the Ottawa Treaty were to be signed, it would increase the profile of, as well as support to, mine action, most critically in relation to victim assistance and mine risk education. It should also prevent the use of mines in any future conflicts.

#### Potential development support

1. Supporting the clearance of remaining minefields by the end of 2011 and reducing the threat of remaining IEDs.
2. Assisting the MoPR to implement a national mine action strategy.

### 3H. Youth employment

The current employment challenge in Nepal relates to both the quantity of jobs required and the quality of livelihood which that employment brings. High youth unemployment (particularly among males) can create problems for peace processes and security, as dissatisfied youth are particularly vulnerable to mobilization by peace spoilers or entrance into the world of violent criminality. The creation of some 1.5 million new jobs for youth is required during the current Three Year Interim Plan 2007/08–2009/10, if the backlog of unemployed as well as new entrants to the labour force are to be provided with jobs.<sup>34</sup> These jobs also need to be productive, generating a decent income under good working conditions. For effective youth employment creation, short-cycle capacity-building of potential implementing partners is needed, including local authorities and line agencies, community infrastructure contractors, business and financial service providers, training service providers, and others, including micro-enterprises.

Between 2006 and 2010, 967,643 people officially left Nepal for employment abroad, not including

34 National Planning Commission, *National Action Plan for Youth Employment – Nepal (2010–2017)*, A report submitted by the Task Force for the Development of the National Action Plan, December 2009 (unpublished).



Photo Credit: GTZ/NP/Gutsche Heidemarie



Photo Credit: SDC

about three million people estimated to be working in India.<sup>35</sup> Including students, estimates for the total number of Nepalis living outside Nepal range from 3 – 5 million. This would imply that between one third and one half of the population aged between 15 and 34 years are currently outside the country. In the absence of men, women have to assume responsibility for taking care of the family and farm work. Meanwhile, many of the most-talented Nepalis are lost to Nepal<sup>36</sup>; without progress on the peace process, they will be reluctant to return

A national employment strategy and action programme is to be developed as part of the government's next Three Year Plan. This will offer a possible framework for prioritizing actions. Meanwhile, the immediate priority in terms of the peace process is the creation of employment opportunities for those discharged from the Maoist army as well as for other high-risk and IDP youth, with special emphasis on women. Quick wins can be achieved through selective labour-based infrastructure investments (in areas such as road maintenance and construction, irrigation, watershed conservation, and urban regeneration), entrepreneurship and vocational skills training, and the use of micro-credit especially in agriculture. A short-term priority programme should be based on an inventory of potential government and donor programmes, and it would need to be targeted geographically, with rapid sensitization and training of implementing partners, and with financing in place.

A National Plan of Action for Youth Employment in Nepal for 2010–2017 has been drafted, but its approval has been pending for over one year. Donors are focusing on the creation of youth employment opportunities through employment-intensive infrastructure, vocational training and enterprise development programmes. To illustrate the likely scale of costs involved, the ILO has developed a programme for the creation of 3,000,000 workdays for 30,000 unemployed young people at US\$ 14 per day, and the provision of 20,000 places for vocational training and enterprise development for employment and self-employment at US\$ 700 per person, i.e., a total cost of US\$ 56 million.

All too often youth are viewed merely as a source of problems; however, if their energy is channelled creatively they can become powerful forces for peace. Efforts to support youth employment must

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35 Data files from 2006 to 2010 of Department of Foreign Employment, Ministry of Labour and Transport Management.

36 The Approach Paper for the next Three Year Plan notes, on page 85, that 'there is a rising trend of highly skilled professionals, produced by the country through huge investment, leaving the country for overseas employment.'

therefore be complemented with activities to promote the development of a culture of peace, based on principles of tolerance, rights, responsibilities, reconciliation and coexistence, and that empowers young people to become agents of peace-building and conflict prevention.

#### Potential development support

1. Supporting the gender-sensitive and socially inclusive implementation of the National Plan of Action for Youth Employment.
2. Providing job creation opportunities for young men and women via cash-for-work and entrepreneurship and vocational training.
3. Supporting skills enhancement programmes for potential job seekers, and for safe labour migration systems that provide protection against trafficking.

### 3I. Economic growth and peace

Peace is an important factor that contributes to economic development and growth. Economic growth was halved during the height of the conflict, with a large cost to the economy. The conflict was driven partly by economic exclusion and inequality; inequalities between social groups can be strong drivers of violent conflict and need to be addressed in post-conflict societies through programming for economic growth. Nepal's domestic economy is characterized by low productivity and investment, a reflection of the poor business environment created by continuing political instability, corruption, poor infrastructure, labour market rigidities and the failure of policy to support structural transformation of the economy.

Achievement of sustained peace through an inclusive political settlement would have a dramatic effect on the overall business environment. It would improve law and order, provide a stable business environment, and encourage private-sector investment and job creation. It would also generate a peace dividend, allowing resources to be reallocated from the security sector to support economic development and address the critical constraints on economic growth.



Photo Credit: UNDP

However, causality also goes in the other direction: broad-based and inclusive economic growth is a critical ingredient for building and sustaining peace. The root causes of the conflict include not only the severity of poverty and inequality but also the sense of entrenchment—that opportunities are limited or non-existent for the poor to climb out of poverty. Addressing constraints on the inclusiveness of economic growth is also critical, and lasting peace is unlikely to be achieved without this.

Economic growth is critical in developing and sustaining peace for three reasons. Firstly, it increases the size of the overall pie and helps most segments of the nation to benefit. Attempting to redistribute income or assets in a stagnant economy could risk damaging peace-building. Where there is growth, there is an opportunity for further distribution to the very poor. Secondly, it creates opportunities. Growth creates investment opportunities for those with entrepreneurial spirit to invest, and hence job opportunities. Jobs thus created differ from jobs created by time-bound public works programmes. Private jobs created in an improved investment climate could give workers expectation of continuous growth and permanently lift people out of poverty. Lastly, economic growth is dynamic and rewards the motivated. In a growing economy, if one works hard, one is likely to be better off. This expectation is critical in significantly reducing the sense of entrenched poverty and inequality.

Addressing constraints on economic growth and its inclusiveness are critical. Although it is difficult in today's political situation, the creation of a better business environment through addressing political instability, corruption, infrastructure shortfalls and policy failures is vital for the peace process to rapidly move forward. The starting point for improving the business environment is for all political leaders to agree on the importance of economic policy that supports growth. In addition, growth favours the highly motivated, those with entrepreneurial skills, and those who have access to opportunities. In this regard, it is essential to address all the factors that perpetuate economic exclusion so that economic growth becomes increasingly inclusive.

#### **Potential development support**

1. Encouraging policy makers to focus on economic issues as a critical foundation for lasting peace and an inclusive political settlement.
2. Supporting actions on the critical or binding constraints to investment and economic growth, and supporting those that would encourage an improved domestic business environment, such as political stability, reduction in corruption, investment in infrastructure, and reduction in formal labour market rigidities.
3. Supporting actions to address the drivers of economic exclusion so that the benefits of economic growth become more evenly distributed (such as improving access to productive assets, education and vocational training).

### **3J. Delivering peace dividends**

The rollout of a small number of concrete programmes on a large scale that provide visible, immediate 'relief' would send a clear message to all that important changes are taking place and that the government is operating with a sense of urgency and responding to the basic needs of its citizens. This is all the more urgent seeing that, four years on from the signing of the CPA, Nepal has emerged from its early recovery



Photo Credit: UNICEF/NEP 2094/ Kiran Panday



Photo Credit: IOM/Jitendra Bohara

phase with an absence of widespread ‘quick wins’ that would reinforce confidence in the peace process. Most of the potential priorities for such an effort are to do with providing services to address urgent gaps. They should all have a powerful impact on the prospects for recovery as well as progress towards the Millennium Development Goals. While such programmes should be approached pragmatically, linkages with longer-term undertakings such as the SWAs in health and education are also highly desirable. The following six areas are suggested as potential candidates for such efforts.

**Schools:** The policy environment for school education in Nepal is well developed. Current policies focus on improving school management and governance, access and quality, including community management, school budgets on the basis of per capita financing principles, School Improvement Plans, social audits, allowing schools to recruit teachers, and opening up the textbook production and distribution system to private competition. Mainstreaming the child-friendly schools concept into the education system represents an opportunity for systemic and sustainable positive change. The Ministry of Education and partners have also made a strong commitment to end corporal punishment and to promote peace education in the curriculum. Educational opportunities for out-of-school children are crucial for their education, development and protection. Strategies such as the provision of free stationery have proven particularly effective in encouraging school attendance; this type of intervention is also straightforward to manage and addresses a key barrier to education. The School Sector Reform Plan (SSRP) 2009/10–2015/16 provides for improving school infrastructure and increasing inclusiveness. Some components for support include: (i) expansion of the School Outreach Programme and Flexible Schooling Programme, and free stationery support to increase school enrolment by excluded groups; (ii) construction and refurbishment of seismically sound schools and classrooms; (iii) construction of sanitation and hygiene facilities at schools; and (iv) support to Community Learning Centres.

**Out-of-school adolescents:** A large proportion of vulnerable adolescents and youths are outside the formal education system; most of these are girls. In addition to strengthening the education system to overcome barriers that prevent children staying in school longer, it is immensely important that programmes target out-of-school adolescents on a massive scale. Potential components could include: (i) scale-up of the Choose Your Future package for adolescent boys and girls that includes life skills, skills development, and seed money (the programme so far plans to cover 96 VDCs in FY2010/11), linking it with 1,410 women’s federations that have been formed with the support of the Department of Women’s Development); and (ii) scale-up of youth-friendly service centres in selected districts.

**Health:** The right to health, including reproductive health, is enshrined in the Interim Constitution (Article 7.5.3). Access to health services especially in remote areas is limited, and there is a need to strengthen the public health system by addressing gaps in skilled staffing in remote areas, developing infrastructure and supplies, and providing immediate health services through mobile camps and clinics. Potential components could include: (i) construction, extension and equipping of maternity rooms, birthing centres, Sub Health Posts, Health Posts, Primary Health Care Centres, District Hospitals and one-stop

crisis centres for survivors of gender-based violence; (ii) surgical treatment of uterine prolapse cases; and (iii) improved management of decentralized health service delivery with participation by women and excluded groups (possibly through extending the role of Female Community Health Volunteers).

**Water and sanitation:** Inadequate access to safe water supplies and poor environmental sanitation and personal hygiene practices account for approximately 13,900 people dying every year in Nepal.<sup>37</sup> To address unhygienic behaviours and the high number of non-functional water supply systems, greater investment in water, sanitation and hygiene is required, particularly among excluded populations. Potential components could include: (i) targeted comprehensive promotion initiatives in diarrhoea-prone districts of the Mid- and Far Western Development Regions and flood-prone districts of the Terai, targeting both behavioural change and investment in facilities; and (ii) support to community drinking water schemes including system rehabilitation and repair.

**Women's empowerment:** The prevalence rate of gender-based violence in Nepal is thought to be some 40–80 percent. Uterine prolapse, which is estimated to affect over ten percent of women, is seen as one of the contributing factors and symptoms of violence.<sup>38</sup> Failure to deal with violence against women and children, including harmful practices, leads to consistently high levels of violence in society. Violence against women creates an atmosphere of fear in society, and it is well documented that a violent upbringing tends to start a cycle of violence for many children, both as victims and perpetrators. A tangible peace dividend can be delivered to women by establishing centres for emergency operations, providing funds for work on gender-based violence that are linked to Female Community Health Volunteers, mothers' groups, paralegal committees and women's federations, and topping up seed funds for functional women's federations.

**Food security:** The importance of basic food security to peace and stability is reflected in the CPA, which specifically articulates respect for the right to food security (Articles 3.9 and 7.5.2), and is also highlighted as a priority in the Approach Paper for the next Three Year Plan (Section 7.19). The total number of moderately to severely food-insecure people in rural Nepal is currently estimated by the World Food Programme (WFP) to be around 3.5 million, or approximately 16.4 percent of the rural population.<sup>39</sup> Ensuring food security is one of the key tangible peace dividends that could be delivered to the Nepali people. This involves a two-fold approach: (i) addressing immediate hunger and undernutrition; and (ii) improving agriculture, livelihoods and market mechanisms for a more food-secure future. Continued up-scaling of cash- and food-for-work programmes will provide an immediate peace dividend to the most vulnerable.<sup>40</sup> Successful school-based midday meal programmes and mother and child health care programmes that incorporate a significant food and nutrition component also present an opportunity for

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37 WHO, *Nepal: Country Profile of Environmental Burden of Disease*, 2009. Moreover: 'Measured by lack of access to a toilet of any kind, over half (55.7 percent or 6.4 million) of Nepal's children defecate in open spaces with obvious implications for the spread of diseases', from NPC, UNICEF and New Era, *Child Poverty and Disparities in Nepal*, 2010 (p. 3).

38 "Its prevalence among women at reproductive age exceeds 10%; and is as high as 24% among women between the ages of 45 and 49", from & Sancharika Samuha, *Booklet on Uterine Prolapse*, UNFPA, Kathmandu, 2007 (as cited from *Reproductive Health Morbidity Needs Assessment in Nepal*, Institute of Medicine, Tribhuvan University Teaching Hospital, 2006). Also see, Payal Shah, *Uterine Prolapse and Maternal Morbidity in Nepal: A Human Rights Imperative*, 2010.

39 See, WFP, *Food Security Bulletin*, Nos. 27, 28 and 29, Nepal Food Security Monitoring and Analysis System, 2010.

40 According to the WFP, over two million people per year are now reached by these projects that provide immediate relief and develop capital works and/or community assets for a more food-secure future.

significant extension. Long-term food security could be addressed through investment in agricultural and rural livelihoods, and significant increases in food production could be achieved through mechanisms such as improving access to recommended varieties of cereal and vegetable crops, supporting poor farmers to purchase fertilizer and farm tools, supporting the construction and repair of irrigation systems, and improving on-farm water management. There is great need for strengthening the agricultural support system through medium- and long-term efforts in order to ensure sustainable food security.

### **Potential development support**

Considering the need for geographic focus to maximize peace dividends in problematic areas, potential examples of initiatives that could have a positive effect on peace-building include:

1. Supporting the education system by strengthening the quality of education, making the school system and teaching–learning process more inclusive, addressing barriers to school access, and ensuring proper governance at all levels, including through the SSRP.
2. Providing programmes for out-of-school adolescents, including skills training linked with employment for young women and men from disadvantaged and conflict-affected groups.
3. Supplying mobile health camps in remote areas, increasing supplies to health clinics, decentralizing management of health facilities, and taking action on uterine prolapse.
4. Supporting centres for emergency operations for women and supporting gender-based violence interventions delivered by women’s groups and local governance mechanisms.
5. Delivering a targeted sanitation promotion campaign and expanding community drinking water schemes.
6. Supporting the delivery of health and nutrition services, and training for mothers, caregivers, government workers and community health volunteers.
7. Supporting cash and/or food assistance for the estimated 2.2 million highly and severely food-insecure people and supplementary foods and/or micronutrient powder for pregnant/lactating women and young children.
8. Delivering support for agricultural development to improve food security.
9. Supporting additional livelihood opportunities for poor rural households, ensuring that women and socially excluded groups are meaningful decision makers and participants.

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## **CONSOLIDATING PEACE**

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### **3K. Dealing with discharged verified minors and late recruits**

A total of 4,008 Maoist army personnel were verified as ‘disqualified’ by the UN-led 2007 verification process by virtue of being assessed as either minors or late recruits at the time of the ceasefire in 2006. As a consequence of the presence of minors within its forces, the UCPN-M has been listed in Annex 1 of the Secretary-General’s annual report on UN Security Council Resolution (UNSCR) 1612, Children and



Photo Credit: GTZ/NP/Gutsche Heidemarie



Photo Credit: UNICEF/NEP/5367/ Sudan Mulmi

Armed Conflict, since 2005. De-listing of the UCPN-M depends on the successful completion of a 12-month UN monitoring and reporting cycle.

By late March 2010, all 4,008 disqualified personnel were discharged. Of these, 1,989 were verified male minors, 984 were verified female minors, 803 were late male recruits and 232 were late female recruits. It is critical that the discharged verified minors and late recruits all have the opportunity to make a successful transition to civilian life. A rehabilitation support programme, sensitive to the different needs of men, women, boys and girls, has been developed that allows those discharged to access an education or training package within 12 months of their discharge date. It provides options in education (formal and non-formal), vocational training, small business start-up and training towards employment opportunities in the health sector. Community support is also provided to communities in which those discharged pursue certain education packages. A monitoring mechanism has been established to confirm that these individuals are no longer part of the chain of command of the Maoist army and are not involved in paramilitary activities of any kind. It is anticipated that this scheme can provide useful lessons for future rehabilitation support to verified Maoist army personnel. Given the high number of women and girls in the Maoist army, special attention has been given to developing appropriate support for this group.

All discharge and rehabilitation activities to date have been undertaken under the political leadership of UNMIN with technical and operational support from the UN Country Team through the UNPFN and UN Peacebuilding Fund<sup>41</sup> with significant support from Norway and the UK, and other donors also supporting the rehabilitation of children associated with armed forces and armed groups. Monitoring and reporting is done by the UN Monitoring Mechanism in coordination with the Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

All discharge activities for the 4,008 verified minors and late recruits have been completed. Entry into

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<sup>41</sup> The UN Peacebuilding Fund, an essential component of the enhanced UN architecture to provide for a more sustained engagement in support of countries emerging from conflict, is a global fund designed to support several country situations simultaneously. For more information, go to: [www.unpbf.org/index.shtml](http://www.unpbf.org/index.shtml).

the rehabilitation programme is due to close on 8 February 2011 and a significant proportion of the rehabilitation activities should be completed by the end of 2011.<sup>42</sup> The immediate priorities for action by the government and the UCPN-M are to ensure that all those discharged from cantonments have unfettered access to support packages.

#### Potential development support

1. Meeting possible funding gaps, depending on the numbers of discharged verified minors and late recruits applying for rehabilitation packages.
2. Monitoring those discharged in line with UNSCRs 1325 and 1612.

### 3L. Managing the Maoist army cantonments and verified personnel

As highlighted in Chapter 2, the future of the 19,602 verified Maoist army personnel (15,756 males and 3,846 females) is critical to making progress on the peace process in the short term. The CPA envisages their 'integration and rehabilitation'; however, their status remains unresolved four years on. Many consider this to be one of the turnkey elements that will help unlock other issues in the peace process. The continued cantoning of trained and verified combatants is not sustainable. Their poorly managed transition to whatever future options are agreed upon could also pose a serious threat to peace.

While these verified combatants remain in 28 cantonment sites around the country, there is an ongoing need for their upkeep, from physical infrastructure to monthly food and living allowances. Nepal urgently needs to find a workable solution regarding the future of the Maoist army. A Special Committee was established to supervise, integrate and rehabilitate verified personnel with support and expert advice from a Technical Committee. Some progress has been made on developing a framework, but a number of key issues still need to be resolved; these include the number of Maoist army personnel to be integrated; the differential needs of former personnel, dependants and supporters of all genders; integration entry criteria; training requirements; and overall modalities for the process.<sup>43</sup> Until the contours of the political decision emerge, it is difficult to calculate the potential costs of the rehabilitation and integration programme, or any external assistance requirements.

To date, UNMIN is supporting the integration and rehabilitation process through monitoring the management of arms and armed personnel of the Nepal Army and the Maoist army, and giving technical support to the Special Committee for integration and rehabilitation and its now constituted Secretariat. The United Nations Development Programme (UNDP) is providing logistical support to the Secretariat.

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42 The length of rehabilitation packages for verified minors and late recruits varies from three months (for vocational skills training/micro-enterprise support) to up to four years for education. Based on current figures, most activities for vocational skills training and micro-enterprise support will be completed in 2011, including up to six months follow-up and job placement support where required. Some health vocational education managed by the United Nations Population Fund (UNFPA) could stretch into 2012, and formal education packages being managed by UNICEF could stretch into 2014.

43 It is important that the design of the eventual rehabilitation programme is guided by the principles of the UN Policy for Post-Conflict Employment Creation, Income Generation and Reintegration. This policy proposes a practical 'three-track' approach: (i) stabilizing income generation and emergency employment; (ii) promoting employment opportunities at the local level, where reintegration ultimately takes place; and (iii) supporting sustainable employment creation and decent work. See, UN, *United Nations Policy for Post-Conflict Employment Creation, Income Generation and Reintegration*, Geneva, 2009.

International support is also being provided to Secretariat activities in collaboration with a local non-governmental organization (NGO). Once political decisions are made, support costs in terms of processing and discharging Maoist army personnel (through support to the Special Committee Secretariat) can be identified.

The immediate prerequisites for progress include: (i) a high-level political agreement on integration and rehabilitation; (ii) effective functioning and regular meetings of the Special Committee and its Secretariat; and (iii) an agreed plan for integration and rehabilitation of verified Maoist army personnel, which includes special attention to the particular situation of female former combatants, ensuring the needs and capacities of all genders are met. Possible priorities for development partner support can only be determined after progress is achieved on these prerequisites and on the basis of requests for assistance from the Special Committee.

#### Potential development support

1. Continuing support to meet the basic needs of the Maoist army in cantonments in line with the CPA and the AMMAA.
2. Supporting the social and economic rehabilitation of Maoist army personnel, ensuring the needs and capacities of all genders are met.

### 3M. Support to key institutions and mechanisms for peace

A number of other mechanisms have emerged that are playing—or have the potential to play—an important role. A significant number of the mechanisms established in the CPA have either not been convened, met only sporadically or are suffering serious capacity shortfalls. Peace institutions serve as important mechanisms for inclusive dialogue, dispute resolution and confidence-building. Development partners can play a critical role in supporting these mechanisms through financial and/or technical support. This section focuses on the ‘peace architecture’ at the national and local levels, and covers mechanisms not already included in other sections.<sup>44</sup>

The MoPR, although not mentioned in the CPA, has been a key institution since its establishment in May 2007. It is mandated with wide-ranging responsibilities including the implementation of the CPA and other agreements. In its original form, the MoPR was intended to serve as a bipartisan Secretariat to a High-Level Monitoring Committee. However, in the absence of a High-Level Monitoring Committee, the ministry has taken on various coordination, policy-making and implementation roles. It has received technical and capacity support from numerous development partners.

The NPRC was intended as the primary body responsible for the monitoring and implementation of the CPA (Article 5.2.4). Alongside the TRC and State Restructuring Commission, it was to form the backbone of CPA implementation. None of these commissions have yet been formed. While every government

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44 This section covers key peace mechanisms and institutions, except those that have already been covered in other sections, such as the CA, TRC, COID, Land Reform Commission, State Restructuring Commission, mechanisms for the AMMAA, and the NPTF. It should be noted that the High-Level Steering Committee on UNSCRs 1325 and 1820 and the National Women’s Commission also have relevant monitoring roles, although they are not official monitoring mechanisms of the peace process.

and political party has expressed support for the formation of the NPRC<sup>45</sup>, it is still to be established. One of the most critical weaknesses in the peace architecture is the lack of an independent and inclusive body entrusted to implement the peace process. The role that the CPA envisioned for the NPRC has effectively been given to the MoPR, which, as a government ministry, does not have the same level of independence and inclusion.



*Photo Credit: UNDP/Kevin Chang*

Local Peace Committees (LPCs) were intended to be local bodies assisting the implementation of the CPA and promoting local conflict resolution. Administered by the MoPR, they took shape during 2008–10 and are currently reconstituted in 71 districts. The terms of reference for LPCs have been designed and redesigned several times, each time requiring political consensus. The establishment and functioning of LPCs across the country has been challenged by political disagreements over their composition, confusion over their mandate, and lack of support and local ownership, although by mid-2010 the overall picture appears to be improving. LPCs have so far received logistical support from the Asian Development Bank (ADB) and United States Agency for International Development (USAID).

The High-Level Steering Committee for Implementation of UNSCRs 1325 and 1820, chaired by the Minister for Foreign Affairs and co-chaired by the Minister for Peace and Reconstruction, is a key instrument for the advancement of women's participation in the peace process. With the involvement of relevant senior government officials and civil society organizations, this body has been leading the development of a National Plan of Action on UNSCRs 1325 and 1820 and on gender mainstreaming in the peace process.

The absence of mechanisms for peaceful resolution of conflict and/or addressing grievances remains a threat to the ongoing stability of Nepal's transition. The LPCs had potential to address this lacuna but have failed to materialize in the way that was anticipated. The absence of such mechanisms is likely to be felt even more seriously as negotiations around the constitution enter their final phase. There is an urgent need, therefore, to launch a broader effort to build up such capacities and mechanisms.

While responsibility for actions in this field rest with Nepali authorities, external development partners could provide support in all of the above areas and specifically to ensure that support to the MoPR, given the absence of the NPRC, is coordinated, strategic, accountable, transparent and results-oriented.

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45 The NPRC is reiterated in the 23-Point Agreement of 23 December 2007, and has also featured in the Common Minimum Programme of each post-CPA government.

### Potential development support

1. Supporting the establishment of a nationally agreed independent monitoring mechanism for the peace process.
2. Supporting inclusive and gender-representative local conflict transformation, political dialogue and mediation capacities, including through LPCs and other local mediation mechanisms.
3. Supporting LPCs and other local mediation mechanisms to strengthen their administration, financing and technical capacity, and make them more gender-responsive and socially inclusive.
4. Supporting the High-Level Steering Committee for the implementation of the National Plan of Action on UNSCRs 1325 and 1820.

## 3N. Support to the constitution-writing process



Photo Credit: CCD/UNDP

The new constitution is a vital component of the peace process. It is the means of delivering the progressive restructuring of the state in order to deconstruct the existing centralized state system and restructure it in an inclusive, democratic and forward looking manner' as promised in the CPA.

Successful state restructuring is also the means of implementing many of the issues central to the CPA—including equity, accountability, governance, law and order, rights, and linguistic diversity. The constitution itself provides a political framework, guarantees fundamental rights, and safeguards minorities. It is not helpful if the constitution-building phase is unnecessarily overburdened. It is the function

of public policies through the legislative process, rather than the constitution, to deliver development and social justice.

Successful completion of the constitution will require the engagement of senior political leaders to bridge differences between the various parties. Following the adoption of the new constitution, there will also be a highly complex implementation phase. While state restructuring will be a phased process, its success could be undermined by lack of planning and early implementation.

Constitution-writing is a profoundly sovereign process, and it is for each state to determine the content and structure of its constitution, while also upholding its obligations under international law. Nepal will need to develop its own formulas for structuring and governing the state and for meeting the diverse aspirations of its citizens. Support by development partners includes sharing the experience of other constitutions around the world and how other countries have attempted to deal with the complex issues currently facing Nepal. Development partners could provide assistance to ensure that the provisions of

the new constitution are in accord with Nepal's international treaty obligations<sup>46</sup> by advising on relevant obligations, helping to ensure that the process of constitution development is inclusive and participatory, and citing promising examples from international practice. Development partners can also support the logistical requirements of the process in order to ensure physical constraints do not impede it, and help with the CA's public consultation plans.

To date, international support has been provided to the constitution-writing process by numerous multilateral and bilateral agencies. Many actors are involved in providing assistance to constitution-writing, including through the Centre for Constitutional Dialogue as well as by other means.

As the process of finalizing the constitution begins, there will be ongoing requests for advice from subject experts. Most importantly, the constitution will also contain a set of transition provisions including provisions to guide the process of state restructuring. Following the promulgation of the constitution, there will also be a need for support to early transition initiatives, including matters of finance, human resources and operational management in the restructured state. It is not too early to begin anticipating possible demand for external support for this transition.

#### Potential development support

1. Responding to demands for expert assistance in completing the constitution.
2. Supporting further public consultations or public awareness campaigns on the draft constitution.
3. Assisting the constitution's early implementation measures.
4. Assisting in ensuring compliance with international human rights standards, especially those enshrined in international treaties to which Nepal is a signatory.

### 30. Elections

Elections are one instrument to ensure social inclusion and political participation across society, but are not in themselves sufficient—as demonstrated, for example, by Nepal's experience in the 1990s. In turn, political inclusion is a necessary condition for addressing the exclusion of marginalized groups and women that is prevalent in Nepali society and for promoting human rights. Elections can also be an important means of ending the exclusionary political, social and economic structures that sustain conflict. Some good progress was achieved in the April 2008 elections, where women candidates were voted into over 30 percent of CA seats. In Nepal, following the promulgation of the constitution scheduled for May 2011, the next parliamentary election will be a milestone in the process of post-conflict recovery, and for beginning the social and economic transformation promised in the CPA.

The future election timetable, including for presidential, federal unit and local elections<sup>47</sup>, will only be entirely clear after the promulgation of the new constitution. A further possible issue in the coming months is the holding of a referendum, as outlined in Article 157 of the Interim Constitution, in order

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46 These include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

47 Technically, though unlikely, local elections could still be held before the promulgation of the new constitution if the local election framework is redrafted by the CA.



Photo Credit: UNMIN



Photo Credit: UNMIN/Agnieszka Mikulska

to make decisions on any matters of national importance on which the CA cannot reach consensus. Capacity and seasonal constraints limit the number of elections that can be held in Nepal in any one year. Owing to capacity constraints, the Election Commission may also request significant technical assistance during elections.

The current voter lists are seriously out of date and inaccurate. Evidence suggests that the current voter registration system allows for both fraudulent voting and some exclusion of minorities, and does not reflect widespread migration of voters to different constituencies in recent years. Data gathered during scheduled voter registration campaigns are expected to also be used to develop a new civil register and issue new national identity cards. Findings could be correlated with the results of the 2011 census.

The government remains the largest source of funding to the Election Commission. Donors have also supported election management capabilities of the Election Commission for some time. UNDP is currently assisting in the design of a new fully digitized voter registration mechanism to be implemented in 2010/11 under the Voter Registration Project supported by the governments of Denmark, Norway, the UK and USA. Several development partners have provided financial support to this initiative through the NPTF. International Foundation for Electoral Systems (through USAID support) and International Institute for Democracy and Electoral Assistance are providing technical assistance to the Election Commission on legal reform for the next election cycle. The Government of Australia is also supporting the establishment of the Electoral Education and Information Centre.

### Potential development support

1. Supporting the voter registration process in a socially inclusive and gender-responsive manner.
2. Supporting the administration and management of referendums/elections, and addressing resource gaps for the successful conduct of the next elections.
3. Strengthening the capacity and protection of the media to enable objective reporting on elections.
4. Analysing new voter registration data to identify populations that have been excluded from the voter list on the basis of lacking documentation.

### 3P. Acting proactively to manage risks

Potential risks to the peace process in Nepal unfortunately remain numerous and varied, for example, the challenges posed by existing lawlessness, impunity, resentments and grievances. Violence and insecurity are also linked to the spread of small arms and threats to businesses from political extortion and politically affiliated union demands. The failure to prosecute conflict-related violations of human rights further undermines the rule of law, again increasing levels of insecurity and violence in society. Risks may also emanate from public dissatisfaction with the political process and the pace of change. Some of those belonging to traditionally excluded communities feel that they remain excluded from decision-making and that the peace process does not address their concerns. Differences over federalism, including the powers and privileges to be enjoyed by sub-national governments and by some ethnic communities, have contributed to the rise of identity politics, communal tensions and distancing from the central government. This may increase even more if these issues are not able to be resolved politically. Related issues include the frustrations of young people with the limited employment opportunities in the country. Ongoing land disputes and the absence of land reform also contribute to grievances, but also food insecurity and hunger among the most vulnerable. In addition, all of the above grievances have political, security and development dimensions, and can be exploited politically. This section outlines two ways to manage risks: by managing expectations through effective communication, and through an early warning system.

With the signing of the CPA, expectations for tangible peace dividends increased; however, after four years of mixed results, there is a risk of increasing disengagement with the political processes by the general population. There is no organized communication on CPA implementation, or on the progress being made on development. Despite the enactment of the Right to Information Act, access to information about the peace process by the Nepali people is limited, and areas of progress are not always recognized. The absence of elected local governments and the high number of VDC Secretaries absent from their duty stations also limits the reach of the state.

The importance of an effective communications strategy for managing risk should not be underestimated. Information vacuums are quickly filled, but not always by accurate information from well-intentioned sources. The government needs to be transparent about progress and setbacks, as part of the process of managing expectations. Unrealistic or unrealized expectations are potential threats to peace. When there is progress, clear communication can help to maintain momentum, build confidence and highlight successes that can be expanded and built upon. In light of this, it is critical for the general public to know the broad contours of 'The Plan' for peace in Nepal. Therefore, improving transparent communications by the government is an important part of creating an accountable and responsive state. It is also an important step in strengthening citizen–state relations. The role of a free and independent media, providing high-quality reporting, is also important, not just as a check on the state but also in contributing to an effective state by strengthening democracy, human rights, good governance and citizen engagement.

Well-placed strategic and coordinated communication activities can help to manage expectations, alter perceptions, build public trust, and rebuild citizen–state relations; these will avoid the risk of citizens having little understanding of what is happening around the peace process and of the commitments made to them. Development partners also have a role to play. Their communications tend to be around *ad hoc* project announcements. Citizens often have little understanding of the wider role of development partners.

Priorities for action include, firstly, the development and implementation of an inclusive National Peace Communication Strategy that informs the general public on peace-building gains, the peace process, and other developmental issues that impact men's and women's lives. This would allow for a robust, inclusive public debate that would feed into policy-making and help counter the ability of extreme groups or spoilers to undermine the transition process. It could also help to build a sense of national purpose and common goals. Given its profile, the strategy could be managed by the Prime Minister's Office in close consultation with the MoPR and disseminated by the Ministry of Information and Communication, building on the efforts of other government ministries and existing peace support mechanisms (e.g., NPTF, UNPFN and the World Bank's EPSP). Secondly, a strategy for communication by development partners, couched around support to government delivery, is needed. Communications should be delivered jointly with the government where possible. Thirdly, the media's capacity to report accurately and in a non-partisan manner on peace measures requires strengthening.

A failure to protect the development space also increases risks to the peace process by weakening public trust and confidence in the state. The role of early warning systems during this transition period is to keep development actors apprised of the situation across the country, and to enable them to base their programming on an understanding of changing field conditions, whilst ensuring that development activities and obstacles do not themselves become a threat to peace. The Basic Operating Guidelines (BOGs) have successfully provided a framework to both protect and ensure the impartiality of development and humanitarian assistance since their initial signing in 2003 and continue to be relevant today.

A range of development actors collect information on different aspects of the conditions for development in Nepal, including the Carter Centre, Saferworld, the BOGs Group, the Office for the Coordination of Humanitarian Affairs (OCHA), OHCHR, UN Field Coordination Offices in Nepal, and the DFID/GTZ Risk Management Office. The key weakness of the present system is that information on changes to operational space is not systematically collected nor assessed for the benefit of all development actors, both government and non-government.

Coordination activities *per se* are no substitutes in themselves for a joint understanding of the operational space. Deeper understanding will only be attained with regular and relevant inputs from all agencies sourced from their own programmes' knowledge, and the regular use of different key indices for measuring the development space such as various methods of conflict mapping and analysis, Human Development Index, Gini Index, and various measures of poverty and vulnerability. Responses to this understanding then need to occur in a consistent and coherent manner.

#### **Potential development support**

1. Supporting the development and implementation of an inclusive National Peace Communication Strategy.
2. Developing and implementing a development partners' communication strategy to complement a National Peace Communications Strategy.
3. Establishing sub-national forums for development partners to encourage information-sharing, coordination of response, and awareness of operational space issues.
4. Developing an active communication and response strategy to operational space issues, allowing issues to be addressed more coherently and promptly.
5. Increasing the sharing of information (including with the government) on potential risks to the development space.

## ACTIONS FOR MEDIUM- TO LONG-TERM PEACE-BUILDING

“Experience had shown that peace-building involved more than just preventing renewed fighting and securing physical reconstruction... A core task was building effective public institutions within constitutional frameworks and the rule of law. All too often, war-affected populations raised their hopes for new, more equitable governance arrangements, only to see exclusionary social, economic and political structures left untouched, perpetuated, or inadvertently strengthened.”

**UN Secretary-General Kofi Annan, UN Press Release on the inauguration of the UN Peace-building Commission, 23 June 2006**

### 4A. Introduction

The focus of the peace process so far has been largely on reaching agreements between parties and building trust. As a result, finding specific ways forward on the structural reforms and economic growth and development necessary to transform Nepali society in the ways anticipated in the CPA has been given less attention. This reflects a widely held view that realizing a political settlement is a prior condition for turning attention to development. However, as time passes and development issues remain unaddressed, there is a real risk of increasing disillusionment with the process despite the overwhelming public support for peace. At the same time, commitment to and views on reforms vary widely between political leaders. Not all political forces in Nepal have a shared understanding of social transformation and further agreements will be required to overcome these differences.

Nepal's experience to date cautions against any simple analysis of the peace process in which the CPA equals an end to conflict, elections equal democracy, or where social and political inclusion on its own will address 'root causes'. Rather, the CPA provides for a range of tasks, some short-term and some medium-term, as well as long-term structural changes. These reflect the aspirations of achieving sustained peace through reformulation of national values in terms of rights, equality, inclusion and socio-economic transformation. The short-term actions are seeds for developing longer-term capacities for conflict resolution and structural transformation. It is these latter that will deliver sustainable peace.

Thus if development cooperation can help Nepal make a start on structural reforms, it may also help to influence the overall environment in which peace negotiations occur. Making a start on structural reforms is therefore no less urgent than delivering on short-term priorities. These reforms will of course take longer than 36 months to be realized, but this does not imply that getting started can wait. The purpose of this chapter is to identify areas where support from development partners could help to catalyse such changes.

In this chapter, structural issues have been organized thematically under gender and social inclusion, rule of law, security sector transformation, land reform, good governance, inequality and inclusive growth, state restructuring, and employment acceleration. They are all highly interconnected. Many of these issues have complex historical roots and have been the subject of previous reform efforts. How progress is achieved is above all the responsibility of Nepali actors and their view of how the country should evolve. Nonetheless, if the peace process is to change the ambitions of young people from seeking migration to seeking jobs in Nepal, to reverse top-down development and rising inequality, to improve the implementation of government programmes and strengthen government leadership of the development process, and to reduce the wide disparities between Kathmandu and the rest of the country and between different identities and castes, then a start has to be made on the longer-term reform and growth agenda set out in the CPA.

For its part, state restructuring will have major implications for the way that development support is delivered in Nepal. While the federal government is expected to retain overall responsibility for the negotiation and approval of loans and grants associated with overseas development assistance to Nepal, new federal sub-units are expected to have responsibility for legislation and policy formulation in many of the sectors in which development partners work. This chapter includes suggestions for ways in which development partners could assist if requested by the government. In order to ensure that levels and standards of service provision within and between federal sub-units are maintained within acceptable limits, very close coordination in terms of support to the transition will be required, both between development partners and with the government.

## 4B. Social inclusion

The CPA identifies exclusion based on class, ethnicity, language, gender, culture, religion and region, and explicitly recognizes the discrimination against Dalit groups, indigenous peoples, ethnic minorities and Madhesi peoples. It also cites discrimination against 'ethnic minorities', linguistic groups, women, and 'backward areas'. The Approach Paper for the next Three Year Plan makes a strong commitment to inclusion and highlights Nepal's commitments to human rights.<sup>48</sup> The issue of social inclusion in Nepal is complex as certain groups and individuals may experience more than one form of discrimination and because various forms of discrimination do not exist independently from each other but intersect to create systemic patterns of exclusion and vulnerability. In practice, social discrimination can lead to serious human rights violations including, for example, when its victims are subject to serious criminal offences, gender-based violence, trafficking, hunger, and deprivation of shelter and/or the means to a livelihood.

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48 See, the *Approach Paper for the next Three Year Plan*, page 133: 'This plan will focus on establishing the society based on equality and justice by performing the responsibilities created by the commitments Nepal has made for human rights in front of the international community and by equally respecting, protecting and promoting the human rights of the citizens belonging to all castes, ethnic groups, languages, religion, culture, race, gender, community and region.'

Following the 2006 Jana Andolan, the principle of proportional representation and inclusion now has much greater acceptance, even amongst dominant groups. The political representation of traditionally excluded groups is also much greater than ever before. However, a sustainable solution to social exclusion requires a constitutional foundation of substantive equality for all and a set of robust governance institutions that provide checks and balances to prevent undue concentration of power. Transforming its diversity into a positive asset will be an ongoing challenge for Nepal. What is essential at this juncture is that the new governance structure to be enshrined in the new constitution be sufficiently flexible to absorb and integrate the interests of different groups and to avoid domination by any single group.

As federalism, depending on how it is implemented, may not offer relief to, for instance, the most marginalized women or Dalits, these groups have the most to gain from a strong common constitutional framework that guarantees substantive equality to all citizens. Therefore, marginalized and excluded groups would benefit more from a constitutional approach to inclusion that relies on establishing and enforcing rules for equitable coexistence within the Nepali state than from one that focuses on separation or new hierarchies that would once again leave them at the bottom.

Identity assertion is not necessarily inconsistent with loyalty to the Nepali nation. There is a risk in the current context of the peace process and during eventual federal state restructuring that political discourse could foster ‘zero-sum’ thinking in which benefits for one group somehow take away from another. This might not only thwart efforts for consensus and coalition-building, but undermine the aspirations of the CPA in relation to the economic and social rights of all Nepalis. Going further, such discourse especially has the potential for triggering disruption and violence from ethnic or regional identity groups and militia who feel excluded from decision-making.

The wide acceptance of the principle of proportional representation and inclusion is strongly reflected in CA debates and official government documents including the Interim Constitution, the 2006 Gender Equality Act, and the Three Year Interim Plan. The one-third female representation in the CA and the act making it mandatory for one third of civil service positions be occupied by women also represent progress. However, until policy and legislation is translated into concrete action that results in direct tangible improvements in the daily lives of people from excluded groups, they will have little reason to believe that anything has substantially changed.

Better targeting, monitoring and evaluation of funds and programmes would improve clarity and understanding about whether there has been some tangible progress on gender and social inclusion. However, improving action on gender and social inclusion is complex, and it is important to take particular care in how it is targeted. For example, it is important for inclusion work to address the economic needs of poor groups but also poor households within ‘privileged’ groups. Similarly, affirmative action based solely on identity may also benefit elites within traditionally excluded groups rather than those most in need, and can create resentment. Therefore, the adoption of an intersectional approach that enables the identification of the most marginalized categories within the different social or economic groups is essential. For livelihood programmes especially, there is a need to develop an effective means of delivering assistance that can encompass various dimensions of deprivation—the economic as well as the social. This would help to build the capacity, dignity and self-respect of members of the most disadvantaged groups, and facilitate any medium-term strategy to deal with attitudinal changes and structures at district and community levels in order to eradicate discriminatory practices and enable equal access to fundamental rights and basic needs. At the same time, information within excluded communities on programmes available to them is often seriously lacking. Information dissemination

would better enable excluded groups to access these services. There is also a need for provisions to help excluded communities to become more competitive in the labour market.

Cross-party CA caucuses have developed among women, Janajati<sup>49</sup>, Muslim and Dalit members. Members of these caucuses have, however, indicated that mainstream parties often only pay cursory attention to their concerns and they have challenged their parties to do better. Lack of communication and effective engagement of CA members with their electorate also risks weakening potential links with disadvantaged groups.

Over the last decade, almost all donors have become aware of the need to be sensitive about social inclusion in programmes and projects. Many agencies have provided livelihood, education and health services targeted towards poor and socially excluded groups and have sought to promote greater diversity in their own operations. In addition to many innovative smaller programmes, DFID's Community Support Programme, UNICEF and the Ministry of Local Development's Decentralized Action for Children and Women, and the Poverty Alleviation Fund (supported by the World Bank, International Fund for Agricultural Development and the government) have all documented high outreach to women and Dalit groups.

There are a number of opportunities, both political and developmental, that Nepali stakeholders could consider for long-term change on gender and social inclusion. The former include: a greater focus on defining the rights and obligations associated with Nepali citizenship; greater recognition of excluded groups' parliamentary caucuses; and support for the principle of proportionate representation in local government elections and structures, including School Management Committees. The latter include: use of schools as a vehicle for producing a new generation of citizens better informed about their rights; use of a gender equality and social inclusion lens in the design, implementation and monitoring of all public policies and programmes; collection of data disaggregated by sex, caste, ethnicity, religion, and region at all levels of the government's Poverty Monitoring and Analysis System; greater use of participatory monitoring and social accountability tools for more equitable coverage across groups and income levels; implementation of affirmative action in the civil service and publicizing of these efforts; and finally, the training of women and members of disadvantaged groups as policy analysts. Special efforts must also be made to include and ensure participation of children and youth in these activities.

Development partners are a resource for social inclusion, as supporters, advocates, and information sources. Programmes in this area can also help to build confidence across groups and trial new approaches. In this area, development partners also have the potential to set an example when it comes to affirmative action and staff development policies. Specifically they can scale up and assist existing efforts to sustain areas where some progress has been made for inclusive growth, e.g., government social protection measures such as social transfers, microfinance and food- and cash-for-work; and lead by example by ensuring that their own recruitment policies are representative of Nepal's diverse society and that they offer internships to provide greater opportunities to build careers in development for members of excluded groups. Given low turnover rates in development partner organizations, progress in this area is likely to take time.

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49 Janajati refers to the indigenous nationalities of Nepal (those communities that have their own mother tongue and traditional culture and do not fall within the Hindu hierarchical caste structure).

### Potential development support

1. Supporting the elimination of discriminatory laws and the strengthening of the criminal justice system to address caste-based offences.
2. Helping ensure that the census, the Poverty Monitoring and Analysis System and all data, monitoring and evaluation systems collect and analyse data disaggregated by gender, caste, ethnicity, religion and region to track progress on the government's inclusion commitments and service delivery.
3. Agreeing, through the Social Inclusion Action Group, on a formalized positive discrimination methodology to prioritize access to scholarships for women and marginalized groups supported by development partners and offering workplace training for more women and minority scholars in policy analysis.
4. Continuing and extending the use of the gender equity and social inclusion framework in SWAPs to other sectors to improve inclusive access to services, support its use by the National Planning Commission in the preparation and monitoring of the next periodic plan, and assist in a gender and social inclusion budget analysis on the degree to which resources have reached women and traditionally marginalized groups in Nepal during the post-conflict period.
5. Supporting dialogue and community outreach to ensure a common understanding of ILO 169 and its implications for communities and programme implementation.
6. Providing technical support to implement affirmative action in the civil service, beginning with the key step of data collection on all civil servants.
7. Increasing support for proportionally representative structures and for the greater formal involvement of representatives of community groups in locally elected governments, if these measures are adopted in the new constitution.
8. Supporting relevant existing (and proposed) commissions and other bodies, e.g., National Dalit Commission, National Women's Commission, Social Inclusion Committee, Remote Area Development Committee, the Backward Community Upliftment Development Committee, etc.
9. Supporting gender mainstreaming in government services and a gender audit of government programmes.

## 4C. Rule of law

Rule of law<sup>50</sup> is an essential prerequisite for implementation of nearly all CPA provisions. At present, many Nepalis lack confidence that legislation and justice are applied equally to all citizens, that crime leads to punishment or that human rights abuses will be dealt with by the formal justice system. As a result, public trust in government is undermined. Since the signing of the CPA, there have been clear instances of political interference in the application of justice. Reversing this erosion in state authority is a necessary condition to raise public trust in security and justice agencies. In addition, confidence in the rule of law, including as it relates to enforcement of contract and commercial law and employment legislation, will affect the private sector's willingness to spend and invest in Nepal and, therefore, impact on the long-term economic growth of the country. The reverse also applies: increased growth and

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50 The concept of 'rule of law' includes the principles: that all people be treated equally under the law; that state institutions be impartial and independent in their determinations; and that state actors and institutions themselves be held accountable. 'Principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.' Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, S/2004/616, 23 August 2004.

employment will also strengthen the rule of law. Both are also required to tackle the causes of violence and insecurity in Nepali society.

Article 7.1.3 of the CPA includes a 'guarantee not to encourage impunity' and a commitment to impartial investigations. Despite this, Nepal has seen near total impunity for human rights violations, with not a single person having been held accountable for conflict-related violence and a lack of political will to pursue investigations. Besides the lack of implementation of existing laws, another factor that contributes to impunity is the lack of a coherent legal framework of criminal law that addresses longstanding issues such as caste-based discrimination, sexual and gender-based violence, and 'witch-hunting' in accordance with international standards. With respect to impunity and the rule of law, it is also observed that many domestic laws lead to indirect discrimination of women and marginalized groups such as disabled persons and lesbian, gay, bisexual, transgender or intersex individuals. In addition, space for political participation and freedom of expression is seriously impeded through threats from non-state actors, including political parties and their youth wings and members of armed/criminal groups.

A political consensus in support of reform of the security sector and governance institutions has not yet developed. There is little enforcement of accountability standards on political appointees or political party cadres. Despite some progress made by the Commission for the Investigation of Abuse of Authority (CIAA) in investigating allegations of corruption, the abuse of state resources is widely believed to be still common. This is compounded by the absence of public prosecutors who have experience or skills to deal with 'white-collar crime', i.e., fraud and corruption. Local contract tender processes are vulnerable and often come under direct threat from politically affiliated and criminal groups. The practice of withdrawing serious criminal cases against politically connected persons (including for rape and murder) also continues.

The Five-Year Strategic Plan for the Nepali Judiciary is in place and being implemented; however, there are still a number of challenges to the formal judicial sector, for example, due process and witness protection in the judicial process are weak; judges and prosecutors are subject to threats and inducements; long periods of pre-trial detention are common; access to legal counsel and legal aid is limited; court administration processes are outdated; continued legal education to keep lawyers and judges up to date is limited; there is no easy access to legislative and judicial information; and court rulings, including Supreme Court decisions, remain unenforced. As formal judicial challenges are addressed, review and reforms of quasi-judicial authorities are also needed. Because of the shortcomings in the formal judicial sector, non-state dispute resolution mechanisms (including local tribunals and mediation) are often the only options available to community members, leading to these mechanisms becoming overburdened and less effective. The use of illegitimate means to remedy perceived injustices, e.g., vigilante justice and armed gangs, is also common.

Although the government has increased budget provision for some security agencies in response to recent concerns (e.g., through the Special Security Plan), this funding has primarily been directed at increasing the number of personnel or the amount of material resources. The focus on increasing public security (including through some development cooperation projects) has produced some short-term improvements, but has not been accompanied by investment in long-term institutional reform. Moreover, not all violence can be addressed through a law-and-order response.

A further and distinct dimension of the rule of law in Nepal concerns citizenship. Ensuring full and equal access to citizenship is instrumental for long-term peace, as it offers various segments of society—and disadvantaged groups, in particular—the opportunity to resolve grievances through democratic processes as opposed to political violence. The existence of sizeable ‘stateless’ populations is likely to amplify social alienation and political tensions, particularly amongst groups that have endured historic discrimination. Nepalis without formal proof of their status as citizens face myriad barriers to legal rights and full participation in the formal economy. Proof of citizenship is required, *inter alia*, to open bank accounts, sit for exams, own and transfer property, acquire travel documents (critical for migrant workers), and also access social protection benefits, e.g., widow and senior citizen allowances, IDP benefits and compensation for the conflict-affected. Nepalis without citizenship certificates are considered to be *de facto* stateless. Recent research suggests that there could still be substantial numbers of people aged 16 years and above who are entitled to citizenship certificates but do not have them.<sup>51</sup> Access remains particularly difficult for certain groups (e.g., women, certain minorities, those living in remote areas, and the very poor) who cannot provide the supporting documentation required or do not have the personal resources to pay fees or to access often very distant administrative offices. The situation could be addressed, and Nepal’s international obligations on statelessness and the rights of the child fulfilled, through a process that would include: (i) a mapping exercise to quantify the scale of the problem and its distribution across Nepal; (ii) removal of administrative obstacles to issuing certificates, e.g., variations in the required standards of proof, scarcity of required forms, etc.; (iii) increased access to birth registration and documentation (only 35 percent of births are registered at present<sup>52</sup>); and (iv) a campaign to comprehensively issue citizenship certificates. Development partners could support government action in all of these areas.

Overall priorities for long-term solutions include the following.

- Implementing constitutional provisions on fundamental rights, and ensuring the independence of the judiciary and other oversight bodies including the NHRC.
- Building the capacity and credibility of the NHRC, including targeted assistance to strengthen its investigative capacity.
- Continuing to build the capacity of civil society, especially human rights defenders (including journalists), and transitional justice organizations to promote and uphold international standards.

In addressing what is a complex and highly integrated sector that is subject to serious political and resource constraints, openings for development cooperation assistance to help improve the critical peace-related dimensions of the rule of law (i.e., public security, access to justice, and respect for human rights) depend on where support is requested by the government.

Although conditions for a SWAp are some way off, more could be done to improve linkages and synergies across these critical areas. It also remains important that the international community continues to advocate for rule of law, specifically for an end of political interference in investigations and prosecutions, and to support the operational independence of the police once political commitments

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51 ADB, *Proposed Grant Assistance Nepal: Capacity Building for the Promotion of Legal Identity among the Poor in Nepal*, 2009.

52 Ministry of Health and Population, New Era and Macro International, *Nepal Demographic and Health Survey 2006*, 2006 (pp. 32–33).

are in place, such as through support to a new Police Act or the introduction of an independent Police Service Commission (or equivalent body). Development partners can also provide support if asked by the government to strengthen internal accountability mechanisms within the Nepal Police and external oversight institutions such as the NHRC, the CIAA and the Supreme Court. Direct support could also be provided to the government to develop and implement a vetting process that ensures public officials, including members of the security forces against whom there are allegations of corruption or human rights abuses, are not promoted or nominated for international training or service.

In terms of increasing access to justice, it will be important to ensure that international assistance to local mediation and alternative dispute resolution mechanisms (which are the main mechanisms used by communities at present to resolve land and family disputes) promotes a 'victim-centred' approach and is not used in ways that undermine the rule of law (for example, by discouraging the criminal prosecution of serious crimes such as sexual violence and human rights violations). Development partners could also support the government to mainstream community and democratic policing approaches throughout the police as one possible approach to improving public security and building trust between communities and security agencies.

Attention must also be paid to a number of quasi-judicial authorities, such as the Chief District Officer who, despite being the civil servant responsible for police operations in each district, has the power to try, convict and imprison offenders for up to five years without adequate provisions for ensuring a fair trial. There is much scope for these quasi-judicial mechanisms to better conform to Nepal's international human rights obligations.

#### **Potential development support**

1. Supporting the revision and implementation of a new Civil Code, Civil Procedures Code and Penal Code, as well as legislative initiatives required to implement the new constitution.
2. Supporting the establishment and capacity enhancement of mechanisms to enforce court judgements.
3. Supporting measures to ensure the independence and capacity of the judiciary, NHRC and other oversight mechanisms.
4. Supporting the Attorney General's Office to prosecute cases, including white-collar and politically motivated crimes.
5. Supporting increased public access, especially for women and socially excluded groups, to formal justice mechanisms or to alternative dispute mechanisms.
6. Supporting the traditional justice systems of indigenous communities within a broader human rights framework.
7. Facilitating measures to ensure all security and judicial services are more inclusive.
8. Supporting increased access to vital events registration and certification.
9. Supporting increased access to certification for those who are entitled to Nepali citizenship through the improvement of government processes, and supporting the government to conduct a national campaign to ensure comprehensive issuance of citizenship certificates.
10. Supporting a needs assessment of the rule-of-law sector and the development of a strategy.
11. Supporting the implementation of reforms related to justice for children.



Photo Credit: UNIFEM

#### 4D. Security sector transformation

Transforming the security sector<sup>53</sup> so that it earns the confidence of the public and enhances public security is an integral part of a successful peace process, and one that will have a direct impact on Nepal's ability to develop in years to come. To create an integrated security sector that is effective, appropriate, affordable, inclusive and accountable to the democratically elected government, Nepal will need to 'democratize' the Nepal Army, as called for in the CPA (Article 4.7), strengthen policing, and ensure that all security forces are working together in a coordinated and effective manner. However, political consensus in support of such activities and wider security-sector transformation is not yet in place.

In July 2010, the Committee for the Democratization of the Nepal Army submitted a plan to the Prime Minister proposing that democratization be anchored upon: civilian supremacy and control of the government; restructuring of the Nepal Army; consolidation of the civilian–military relationship; the drafting of new acts and laws and timely amendment to existing ones; a transparent and accountable working culture; the promotion and protection of human rights; inclusiveness; and improved coordination and relationship between the Ministry of Defence and the Nepal Army. As of November 2010, the plan has not been made public or approved by the Council of Ministers or Parliament, and the precise timeline remains unknown. It also remains unclear whether this plan for democratization will satisfy all political stakeholders.

In the longer term, improved civilian oversight of the entire security sector will depend on strengthened oversight bodies. These include such bodies as the parliamentary State Affairs Committee, the NHRC and, potentially, new entities such as an independent Police Service Commission. The strengthening of key ministries, such as the Ministry of Defence and Ministry of Home Affairs, will also be vital. Strengthened

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53 The formal security sector in Nepal includes the Nepal Army, Armed Police Force, Nepal Police, National Investigation Department, and the judiciary, along with civil oversight, governance and management mechanisms.

oversight will also depend on adequate representation of women in all of these institutions.

Because of the short-term emphasis on the provisions of the peace agreement that concern the two armies, police reform has not been at the forefront of the national dialogue on security. Although there have been some improvements in security since the end of the armed conflict, Nepal will need to address a number of challenges that are hindering the effectiveness of its policing in the medium to long term. These challenges include: political interference; limited capacity; lack of inclusive recruitment; lack of gender-, child- and socially-sensitive human-rights-based policing; and questionable accountability and transparency within its law enforcement institutions. Moreover, with federalism looking like the preferred solution for state restructuring, the Nepal Police in particular will face a major task to reconfigure its institution and adapt to a decentralized and federalist approach.

Although federalism would probably have less of an impact on the Armed Police Force, there is a lack of clarity concerning its long-term role and how this will be distinct and complementary to the other security forces. The conflict that brought the Armed Police Force into existence is no more and, with the democratization of the Nepal Army and potential restructuring of the Nepal Police on the horizon, all three major security forces (Nepal Army, Nepal Police, and Armed Police Force) will soon be in transition. Their different mandates and areas of responsibility need to be clarified, and this clarification needs to be realized on the ground. A national security strategy can help address this at the policy level, but further guidance, operating procedures, and training will also be required, along with effective coordinating mechanisms at all levels. Throughout this process, it will be important for the government to consider elements of UNSCRs 1325 and 1820.

#### **Potential development support**

1. Supporting the drafting of a National Security Strategy, ensuring a gender-balanced composition of the drafting team, and with particular focus on encouraging engagement and consultation between security providers, politicians, civil servants and civil society, and on encouraging a gender- and socially-inclusive citizen perspective, including relevant aspects of the National Plan of Action for UNSCRs 1325 and 1820.
2. Assisting Nepal Police initiatives designed to strengthen aspects of police performance in Nepal and improve sensitivity to gender, children and human rights and social inclusion issues (e.g., community policing).
3. Supporting the development of a comprehensive legal and policy framework, including adherence to international instruments and obligations in accordance with the UN Secretary-General's Report on 'Securing Peace and Development: the Role of the United Nations in Supporting Security Sector Reform', to ensure that the security forces operate within clear parameters and in a coordinated fashion.
4. Supporting civilian oversight of the security sector, e.g., through a strengthened State Affairs Committee, NHRC, Ministry of Defence, and Ministry of Home Affairs.
5. Supporting an effective and inclusive National Defence Council.
6. Supporting measures to reduce political interference in the police and judiciary, including strengthened civil society oversight, updated legislation and the establishment of a Police Service Commission (or equivalent body).

## 4E. Land reform

Landlessness and insecurity of tenure in Nepal are major causes of rural poverty, social injustice and conflict. They are also a cause of food insecurity. Land reform is also intrinsically linked to social inclusion, employment creation and inclusive growth. 'Revolutionary land reform' was one of the Maoist's original 40-point demands in 1996 and the CPA commits the signatories to implement a 'scientific land reform' programme (Article 3.7). The Interim Constitution aims to end the 'feudal landownership' system, and places redistributive land reform as a priority in the government agenda. Despite this, little has happened so far. Pressure on land is increasing encroachment on public land as a result of migration from the mountains to the hills and from rural to urban areas, and also because of displacement due to the conflict and political opportunism. Furthermore, the destruction of cadastral maps and land records during the conflict is a major unresolved issue that leads to new conflicts over landownership and land rights. Land disputes are currently the subject of 40 percent of court cases in Nepal.<sup>54</sup>

Over time, the intergenerational division of land (and imposition of land ceilings) has reduced the average farm size<sup>55</sup> and, in turn, lowered agricultural productivity. Land and agrarian reform are both required, as almost half of the 3.4 million households involved in agriculture have insufficient land (less than half a hectare) to meet subsistence needs.<sup>56</sup> At the same time, there is cultivable land lying idle. As agriculture is still the mainstay for the majority of people, the lack of secure access to land has badly affected the livelihoods of many poor families. Tenancy restrictions, land fragmentation, absentee landlordism, unequal distribution and land seizures have also discouraged private investment in both land and agriculture. The country needs both judicious distribution of land to protect the interests of landless and poor people, including former bonded labourers, and greater investment for more production, including the guarantee of rights for landowners and tenants.

Land reform is not new to Nepal. There is a history of attempts at land reform since the 1950s. A Land and Cultivation Record Compilation Act was introduced in 1956 to support protection of rights to land. In 1957, the Lands Act was introduced as a contribution to the compilation of tenant records. This was followed by the formulation of the Agricultural Reorganization Act 1963 and the Land Reform Act 1964, which emphasized security of the rights of tenant farmers. They also introduced ceilings on landholdings. Later, the Land Act 1964 and the Land Reform Programme 2001 were introduced to facilitate distribution of selected state land to poor families, especially for the protection of tenant farmers. A portion of land found to be above prescribed ceilings of ownership has been redistributed and earmarked for partition to registered tenants. In addition, 22,663 freed Kamaiya<sup>57</sup> households have received small parcels of land as part of rehabilitation assistance (as of December 2010<sup>58</sup>). Thus while there have been some successes, including land allocations to the ultra-poor and registration of land

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54 Central Bureau of Statistics, *Statistical Year Book of Nepal 2007*, Kathmandu, 2008.

55 The average size of a rural landholding in 2001/02 was 0.80 ha, down from 1.11 ha in 1961/62; see, Central Bureau of Statistics, *Statistical Pocketbook Nepal 2006*, 2006 (Table 2.14). A World Bank report indicates that by 2003/04, the average had fallen further to 0.66 ha; see, World Bank, *Nepal: Resilience Amidst Conflict – An Assessment of Poverty in Nepal, 1995–96 and 2003–04*, Report No. 34834-NP, World Bank, DFID and ADB, 2006.

56 Central Bureau of Statistics, *National Sample Census of Agriculture 2001/02*, Kathmandu, 2002.

57 A system of bonded labour abolished in 2000.

58 Ministry of Land Reforms and Management, *Problems of the Freed Kamaiyas* (yet to be published).

by women, there has not yet been any substantial change in the social order in rural areas. Most rural land remains in the control of larger holdings and the scope for improving implementation of tenants' existing rights to ownership of a portion of land they have been cultivating in the event of its sale by landlords is still very high.

A High-Level Land Reform Commission was appointed by the government in December 2008 to examine agrarian reform and the various issues related to land, but the commission was not able to report. The commission was reconstituted in October 2009, and submitted a report in May 2010. At the time of writing, the report was under consideration by the government. The Approach Paper for the next Three Year Plan also specifically highlights land reform and management as a priority (Section 7.20).

Land reform is an area of competing political interests as well as competing alternative uses for available land resources. A land reform policy designed to reduce poverty and promote social justice might differ in practice from one designed to increase investment in land and agricultural production, or one designed to conserve natural resources. In practice, promoting a structural change in an area like this needs an approach that goes beyond what any government is able to deliver on its own. A negotiated approach from the outset is required. Addressing issues related to land access and insecure tenure in particular, there is a need to build consensus among national stakeholders, particularly political parties. Such consensus could then pave the way for the design of a new land policy. So far, it has not been possible to reach agreement on this in Nepal.

Land reform has several components. The first consists of providing more equitable access to land and dealing with issues such as employment creation, inclusive growth, housing rights, tenancy reform, women's rights to land, protection of farm labourers, and land ceilings. The second includes measures to increase agricultural production, and deals with issues such as land productivity, land utilization, agricultural production and livelihoods improvement, with a special emphasis on women who do the majority of agricultural work in Nepal. The third covers land conservation and development, including issues such as absentee landowners, forestry (e.g. community rights), foreign investment in land, land markets, and land-use policy. The final component is land administration, dealing with issues such as land law, decentralization of land administration, land records, cadastral mapping, land tribunals, policies on land, land use and land tax, and so on. The draft Land Reform Commission report is expected to address these issues. However, it is yet to be seen whether the commission's report is able to generate party political consensus on land reform.

Anything agreed at the national policy level will have to be applied at the local level where implementation will be tested. The principle should be that the more that plans on accessing/using or managing resources are owned locally, the easier it will be for them to be respected and implemented while also safeguarding the rights of indigenous groups. Devolving decisions on land use, management and administration to communities offers the possibility of moving forward on what has so far been an intractable set of issues at the national level. It could open up the possibility of flexibility as well as lasting change rather than the slippage that centrally driven reforms have experienced up to now. Devolving decision-making on land use/administration to communities would of course also require that decisions are subject to some overriding principles, as well as to inspection and oversight arrangements to ensure that decisions taken at the VDC or community level are genuinely consensual and that property rights for both men and women are respected.

Pending decisions on how land reform will proceed in Nepal, there is an urgent requirement to modernize the system of land records/administration, which is still paper-based. Given the poor state of storage facilities in most district offices, the risk of documents being misplaced or lost remains real. Petty corruption is also widespread. Land records have also been lost due to the conflict, which further increases the number of land disputes. There is an urgent need to replace lost records and, where possible, adjudicate competing claims where necessary, and digitize record-keeping.

#### **Potential development support**

1. Supporting the design and implementation of national packages for bonded labourers (e.g., Haliya, Haruwa, Charuwa and similar groups) in the agricultural sector and supporting their access to basic services, by learning lessons from similar packages provided to former Kamaiya and giving due consideration to the needs of women and girls. Support could also be provided to their families, such as free health services and education for their children.
2. Assisting the restoration/replacement of cadastral maps and land records destroyed during the conflict, checking against local knowledge and practice in the process.
3. Supporting the survey, analysis, mapping and protection of public and government land.
4. Supporting the piloting of new approaches to decentralize land management systems to VDC level, and supporting the stocktaking of land disputes and the extension of alternative dispute resolution systems to resolve them.
5. Supporting measures to increase women's access to land and to secure property and tenancy rights, including inheritance legislation and law reform.
6. Supporting the development and implementation of a national land policy and a national land-use and planning policy and associated legislation, including programmatic support for land-use maps and national land-use zoning.
7. Supporting institutional land management capacity-building, focusing on cadastre, land administration and land management needs.
8. Support the development of a computer-based land information system.

### **4F. Good governance**

The CPA reaffirms Nepal's commitment to the importance of representative democracy with an accountable and transparent legislature and executive. It points to the importance of inclusive, representative and participatory democracy practiced through national and local government authorities, and it identifies the need for the rule of law to ensure human rights are enjoyed by all. In effect, the CPA establishes a new social contract between the state and Nepali citizens. During the conflict, the state was largely absent from many rural areas in Nepal. Re-establishing an effective state presence, including the delivery of basic services, in rural and municipal areas would represent for many people the surest sign of lasting peace.

In other countries also, good governance has been shown to be a prerequisite for building public trust in

the state and strengthening its legitimacy—both critical aspects of successful peace efforts elsewhere. Good governance is a complex and multidimensional agenda in any country. Addressing the present shortfalls in relation to political stability, voice and accountability, law and order, government effectiveness, regulatory quality, and control over corruption is inevitably a long-term challenge. Concerns relating to government legitimacy, competence and accountability are also, by definition, sovereign national issues. Technical interventions of the kind that development partners can support may be necessary, but these are usually not sufficient conditions for progress. Good governance remains critical to sustainable peace. If there are problems in this, then it is very hard to get right anything else that the government needs to deal with.

Shortcomings in all of the above components of good governance in one way or another contribute to a low level of public confidence in politicians and bureaucrats and the state's inability to deliver services in an efficient, effective, equitable and accountable manner. Existing representation in state institutions tends to reinforce gender, ethnic, caste, regional and urban–rural inequalities in the way that resources are allocated. Clientelistic politics and a focus on securing party political advantage have also contributed to the erosion of public service behaviour standards as well as faith in state institutions. The actions of youth groups of political parties have disrupted local administrations. Civil servants remain within highly centralized ministries, with a focus on the work of central government rather than the needs of the citizen. Perceptions of political (including political party influence) and bureaucratic rent-seeking also persist. Despite legislation calling for one-third representation of women, female civil servants feel that their concerns, ideas and needs are not adequately heard or addressed. Similar concerns have been voiced by members of marginalized ethnic and caste groups. Governance problems also apply to civil society in terms of its donor dependence and lack of local accountability. Shifting political and bureaucratic attitudes and practices in both government and civil society towards a more accountable and transparent engagement with Nepal's citizens will continue to be a major challenge, requiring institutional reform efforts over a number of years.

Corruption in Nepal remains a serious problem and no segment of society is free from its grip.<sup>59</sup> It is a major obstacle to economic and political reforms, accountability, transparency and good governance. There is a well-established nexus between politicians, bureaucrats and business elites, and enduring practices of harnessing the state to service the needs of patronage networks. This deteriorating situation is illustrated by Nepal's slip down the global Corruption Perception Index from a ranking of 138 in 2008 to 147 out of 178 countries in 2010.<sup>60</sup> Nepal has signed but has not ratified the UN Convention against Corruption (UNCAC). Nepal has also passed the Anti Money Laundering Act, Procurement Act, Right to Information Act and Good Governance Act in order to fulfil the legislative prerequisites of the UNCAC, although further efforts are needed to translate these into action. Ultimately, corruption reduces the peace dividend while perpetuating a sense of exclusion; it is a major issue of concern that can affect the peace process.

In line with public expectations of the government over the transition, evidence suggests that for most people an effective state presence requires improved public security and effective service delivery. The

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59 See, International Crisis Group, *Nepal's Political Rites Of Passage*, Asia Report No. 194, 2010.

60 Corruption Perception Indices 2008 and 2010, Transparency International, available at: [www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/in\\_detail](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail).

physical absence of staff (e.g., VDC Secretaries) in many parts of the country, often for security reasons, impacts negatively on the ability to deliver services. The delivery of security and justice services are dealt with in other sections of this strategy. In relation to service delivery, the following areas offer possible entry points for addressing the longer-term challenges identified above: securing greater accountability and transparency in service delivery by the state; reforming the civil service to meet the needs of federal and decentralized government in Nepal; and strengthening democratic representation to make it inclusive for all at each level of the government and ensure that politicians are more accountable. The aim is that a federal model will: (i) focus on fighting corruption and misappropriation, and removing the traditional bias against specific localities or social groups; (ii) seek to strengthen the capacity and capability of the bureaucracy to help devolve decision-making to sub-national government (or alternatively to act as duty-bearers in the provision of services to citizens as rights-holders); and (iii) help to counter the institutional and structural causes of marginalization and exclusion of the past as well as strengthen the core democratic role of representation to prevent exclusion in the future.

In relation to strengthening the efficiency, effectiveness, equitability and accountability of service provision, it would be helpful to:

- disseminate information on citizens' rights, particularly targeting women and traditionally marginalized groups, in relation to local services and their right to information;
- develop the capability for regular independent auditing of government programmes at all levels—focusing on tax collection and budget management, with public disclosure of financial information and audit reports;
- facilitate the improvement of civil society's watchdog function over the state at national and local levels, using media and community radio in particular; and
- promote public disclosure of budgets, spending and social auditing by communities.

In relation to civil service reform, it would be helpful to:

- develop mechanisms (rules, regulations, codes, etc.) to strengthen the use of hiring, firing, promotion and transfer in the management of the civil service, including performance incentives, location allowances, pension security, etc.;
- reduce the frequency of staff transfers in the central civil service and absenteeism amongst public officials in rural areas;
- train and develop the capacity of civil servants in sub-national government (including in relation to legislatures); and
- mainstream gender and social inclusion concerns in civil service recruitment and promotion.

To strengthen democratic representation, it would be helpful to:

- train elected representatives in roles, duties and responsibilities together with planning, budgeting, programme monitoring and related activities;

- ensure an effective electoral system for provincial and local government bodies;
- ensure socially inclusive school and health management committees; and
- strengthen the bottom-up planning process.

#### Potential development support

1. Helping address critical implementation challenges affecting service delivery through strengthening the demand side of local governance (e.g., strengthening accountable and inclusive representation, social audits, and participatory budgeting and planning in local communities).
2. Supporting the establishment of a strong regulatory framework for the management of government finances, including regular independent auditing, public disclosure of government financial information, grievance mechanisms, and the use of performance incentives.
3. Supporting the development of new incentives/recruitment policies to reduce absenteeism amongst public officials in rural areas.
4. Supporting the restructuring and reorganization of civil service training in the country to meet the needs of an inclusive bureaucracy in a federal state system.
5. Supporting the strengthening of institutions designed to protect the public service from inappropriate party political interference, and the strengthening of oversight functions, e.g., by parliamentary committees.
6. Identifying the scope for civil society monitoring of government service delivery.
7. Providing capacity-building support for local administrations.
8. Supporting a government/development partner taskforce to examine ways of increasing transparency, impartiality and accountability in programmes implemented through the government.
9. Supporting specific initiatives to combat corruption through key national institutions and civil society.

## 4G. Inequality and inclusive growth

With a Gini Index of 47.3<sup>61</sup>, Nepal already has one of the highest levels of inequality in South Asia, and it is increasing. Relatively high and rising levels of inequality in Nepal have important implications for peace and development. Higher levels of inequality tend to make economic growth less effective in reducing poverty, because poor people are not able to sufficiently invest in economic activities, education, health, water, sanitation or food, and so get left behind by the rest of the economy. Gender, caste, ethnicity, religion and geographic remoteness can result in unequal access to basic services and erode the quality of life. Those with better education and access to services are able to realize disproportionately larger income gains. This leads to higher levels of inequality over time, which in turn increases the sense of grievance among the poor and disadvantaged. High levels of inequality, especially when they overlap with ethnic or religious divisions, can also be a source of political instability. Evidence in Nepal suggests

61 UNDP, *Human Development Report 2010*, New York, 2010 (p. 154).



Photo Credit: GTZ

that poverty and lack of economic opportunity are significant predictors of conflict. Widening gaps in income and consumption between the poor and the rich are triggers for social and political tensions. The Approach Paper for the next Three Year Plan also prioritizes inclusive growth as an important element in Nepal's peace and development agenda for the transitional period and beyond.<sup>62</sup>

In essence, this challenges the previous development model in Nepal, which was based on equal treatment for the unequal. In the post-conflict phase, equality also has to explicitly, and simultaneously, consider issues of equity if it is to address concerns around social justice.

Addressing inequality was identified in the CPA, and is one of the four strategic thrusts of the government's poverty reduction strategy (the Tenth Five-Year Plan) and the recent Three Year Interim Plan. Efforts at implementing gender, social and economic inclusion programmes have increased in recent years through prioritization of public expenditure, with some encouraging results. There have been notable improvements in human development in the past decade, through better access by excluded groups to education, health care, water supply and sanitation facilities, and by bringing economic opportunities closer to the people, with improvements in the road network and greater access to the electricity network. However, poverty and disparity continue to be disproportionately borne by socially excluded groups.

Two challenges have stood out for inclusive growth and equality in Nepal—first, the underlying inequality in the levels of education and, second, the differential access to services for different segments of the population. These two factors together accounted for about 40 percent of overall inequality when last measured by the National Living Standards Survey (NLSS) II.<sup>63</sup> The increase in inequality during 1995/96–2003/04 is largely due to the fact that over this period those with better education and access to services were able to realize disproportionately larger income and consumption benefits. The key challenge now is to develop a set of policies and implementation mechanisms that influence the income-

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62 The Approach Paper for the next Three Year Plan (p. 22) goes as far as making this the third of its six sub-strategies: 'To emphasize on inclusive and equitable development to achieve sustainable peace.'

63 Based on analysis of data from the NLSS II from 2003-04. More updated information is expected when the NLSS III surveying is completed in February 2011.

generation process and make it more equitable. Lack of inclusiveness in Nepal's economic growth is strongly associated with inequalities in access to economic opportunities.

Lack of access to health services is also a contributory factor to families either remaining in poverty or falling back into poverty as a result of serious illness. Access to health services in rural areas is significantly worse than in urban areas, with a lack of facilities and materials and high levels of absenteeism among health workers. Inability to access sufficient or sufficiently nutritious foods also contributes to poor health and developmental outcomes, and has a longer-term negative human capital impact on labour productivity. These factors contribute to income inequality.

In the face of high rates of underemployment in rural areas and compounded by a sluggish agricultural sector, providing employment opportunities to youth, IDPs and those discharged from the Maoist army remains a challenge. Opportunities to improve agricultural productivity are unequally distributed, owing to the absence of sectoral investments as well as the slow progress of land reform. Furthermore, non-agricultural employment opportunities are mainly concentrated in urban areas; access to education and vocational training remains inequitable; and improved infrastructure development (e.g., roads and electricity) have mostly benefited relatively well-off households.

Social protection mitigates growing inequalities in wealth and can help address these social exclusion challenges. In Asia, Nepal scores 0.19 (the highest is 0.96 and the lowest is 0.01) on a social protection index developed by the ADB.<sup>64</sup> ADB further notes the failure to recognize the positive economic effects of social protection, the loss of human capital when social protection is inadequately supported and that children should receive more attention.<sup>65</sup>

Social security expenditure in Nepal's budget is indicative of the need for attention to social protection. With five percent of the 2008/09 budget allocated to social security schemes for public and formal sector workers and three percent for non-formal-sector social protection schemes (such as the old-age allowance), a majority of the population is excluded, particularly the poor.<sup>66</sup> Less than 10 percent of the labour force has formal old-age protection.<sup>67</sup>

According to the ADB Social Protection Index, coverage rates for Nepal of seven key social protection target groups (the unemployed, the underemployed, the elderly, the sick, the poor, the disabled, and children with special needs) vary markedly—from over one third of the eligible elderly population to under 10 per cent for the disabled, the sick and the poor. The same index estimates that 2.3 million people are beneficiaries of some form of social assistance, but this is less than a quarter of the total poor population.<sup>68</sup> Some of Nepal's core social protection measures for key vulnerable groups—old-age allowance<sup>69</sup> and the new child grant—have seen recent expansions; however, further system- and

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64 ADB, *Annual Report*, 2000.

65 Baulch, Bob, Joe Wood and Axel Weber, *Developing a Social Protection Index for Asia*, *Development Policy Review*, 24(1): 5–29, 2006.

66 NPC, New Era and UNICEF, *Child Poverty and Disparities in Nepal*, 2009, 2009 (p. 54).

67 ILO, *Affordable and not an Illusion: Costing of Basic Social Protection Benefits for Nepal 2007–2034*, Technical Note, 2007.

68 ADB, *Social Protection Index for Committed Poverty Reduction*, 2008 (p. 216).

69 A research paper calculated that the programme coverage of the old-age allowance was 83–86 percent; see, Rajan, S Irudaya, *Old Age Allowance in Nepal*, Centre for Development Studies, India, undated (but using 2001 census data).

capacity-building is needed. Social protection is currently fragmented in Nepal, although the National Steering Committee on Social Protection is making good progress in developing a national framework. Formal and informal rules and structures that consistently disadvantage particular populations on the grounds of gender, caste, ethnicity or religion also contribute to the above constraints. Accelerating economic growth and making it more inclusive remains a key challenge, and improvements in social protection can make important contributions to meeting this challenge.

There is currently limited scope through the tax system in regards to generating available revenue to address growth inequality owing to Nepal's relatively small tax base (currently, as few as 350,000 Nepalis are believed to be paying income tax). Nonetheless, the top rates of taxation of income in Nepal at 25 percent are still relatively low by international standards, and there seems to be room for exploring expanding tax revenues in the future, as one possible measure to reduce inequalities.<sup>70</sup>

Land redistribution, although unlikely to be a major instrument for reduction of income inequality, has been agreed upon in the CPA and the Interim Constitution. There is an opportunity for pushing a land reform agenda with three elements: (i) at least limited redistribution of public land targeted at the poorest tillers; (ii) regulation of rents under tenancy arrangements; and (iii) ensuring security of tenure.

Interventions to widen the access to basic services (schools, health posts, hospitals, clean water, good sanitation, roads, bus services, banks and post offices) are also important. Future expansion of these services should be guided by the principles of geographic targeting to expand access in underserved areas, with a particular emphasis on excluded communities and the conflict-affected. While there have been significant improvements in education outcomes in Nepal over the last decade, there are still large disparities in educational attainments. Poor children tend not to complete primary education and completion rates are not improving. Support designed to increase outcomes can build on the SSRP study on the scholarship system and other priority investments.

The scale of migration for work, both within and outside Nepal, has increased enormously over the last decade, and now about one third of households receive remittances. However, while migration has been significant in reducing poverty, it has not reduced inequality because richer migrants are better able to access relatively high-paying jobs overseas. For migration to start making a dent in inequality, two things are required: (i) raising the education and skills base of potential migrant workers from poor households; and (ii) improving their access to better-paying migrant jobs through better public information and regulation of opportunities.

In summary, the challenge for government is to promote economic, social and gender inclusion by providing access to employment opportunities, ensuring expanded and more equitable access to education and training, improving access and entitlement to productive assets, and instituting system improvements for more effective social protection.

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70 The Approach Paper for the next Three Year Plan, on page 31, also identifies tax collection and reform as a key priority: 'The major challenges in the revenue mobilization are [...] small contribution of direct tax in revenue [...], lack of desired amount of revenue collection [...], lack of adequate enquiring and actions taken against not coming under tax net or showing less participation not complying with tax liability, and also not providing effective encouragement to the people to participate in the tax net.'

### Potential development support

1. Supporting improved social protection systems and cash transfers for those living in the poorest geographic areas; which, in combination with supply-side interventions in health, nutrition and education as well as income-generating opportunities, will ensure key actions to reduce poverty and improve inclusive growth.
2. Generating and analysing updated and disaggregated data on inequality, e.g., through the third Nepal Living Standards Survey 2010 and the census planned for 2011.
3. Supporting accelerated infrastructure development—particularly, power, road, transport and irrigation—by formulating and updating sectoral strategies, and identifying and prioritizing investments for the medium term.
4. Supporting improved regulation of recruitment agencies for overseas workers, and establishing social protection or insurance schemes for migrant workers.
5. Supporting the strengthening of social protection systems in Nepal by providing capacity-and systems-building support and strengthening the social transfer system.
6. Supporting the universalization of the child grant as a new social protection measure to address malnutrition and child development.

## 4H. State restructuring

The state restructuring and social inclusion agendas have been inextricably linked since the signing of the CPA. At that time, the parties to the CPA agreed to restructure the state to eliminate its then unitary form and to make it inclusive and democratic (Article 3.5). The Interim Constitution in its preamble states that the people of Nepal have decided ‘upon the progressive restructuring of the state in order to resolve the existing problems of the country relating to class, caste, region and gender.’ In an amendment to the Interim Constitution, the CA took this one step further by providing that ‘Nepal shall be a federal democratic republic’ (Article 138, as amended) in order to accept the aspirations of historically excluded groups. The Approach Paper for the next Three Year Plan also recognizes that the future federal state restructuring needs to ensure enhanced local participation in development decision-making.<sup>71</sup> In this phase of political transition, there are three major concerns regarding state sovereignty: development implementation; law and order/rule of law; and the acceptance of the state by different ethnic groups.

Various CA committee reports address the inclusion-oriented state restructuring agenda. They contain far-reaching provisions on non-discrimination, proportional representation, quotas, affirmative action and fundamental rights. While there are currently open questions in the concept paper of the CA Committee on State Restructuring, there is a general agreement within major parties that the devolution of state power through federalism is the way forward.

Under state restructuring, it is likely that each level of government will have its own constitutionally mandated powers with its own legislative, judicial and executive institutions. The regional and autonomous structures will be entirely new, and the national and local ones will need to be substantially reformed. In each case, there will be a need for provisional and long-term infrastructure, and human and financial resources and systems.

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<sup>71</sup> See, Approach Paper for the next Three Year Plan, page 79: ‘As federal structure has been declared for the new constitution, there is a need to outline clear base for the selection of development programmes with the direct participation of local people.’

There are few recent examples of restructuring on the scale contemplated by Nepal (Indonesia would be one). However, recent experience in regionalization, as states around the world pursue the goals of subsidiarity, could offer useful lessons for Nepal. Whatever form devolution may take, it will not be a panacea. It also comes with some major challenges. Implementation will likely be phased in, with fully functioning sub-national institutions several years and several election cycles away. Capable institutions are even further in the future. As state restructuring can never meet the needs of all parties, even orderly restructuring carries some risk of instability. Weak implementation could also lead to disruption of government services across the country. International experience has shown that power-sharing arrangements such as federalism will not in themselves blunt ethnic or regionalist dissatisfaction and perceptions of a lack of democratic voice. For sub-national units to work effectively, there must be sufficient democratic empowerment of these units within an environment of 'give and take' with the national government, otherwise federalism can lay the groundwork for greater ethnic and regional tensions and possible conflict.

There remains some uncertainty around the basic issues. How will the national government be restructured? Who will manage the creation and capacity development of sub-national units? How many units will there be? Over what period will they be functional? Will there be interim structures? This present uncertainty is holding back national and international actors from launching even a provisional planning process.

Following the CPA, all political parties now support the inclusion agenda. Inclusion will need to be delivered through a restructured state. If federalism were to fail, so will a principal mechanism expected to address the demands of traditionally excluded groups for a greater say in political decision-making and for representation in state structures.

The prospect of federalization also presents new challenges in the design and delivery of development assistance for Nepal and its development partners. New sub-national units hold the promise of government that is closer to the people and of advancing the social inclusion agenda. With this could come economic and social benefits, if provinces, reorganized local governments and autonomous regions were to become more responsive to local priorities and more accountable to local communities. However this, in turn, depends on a strong and determined central government to drive through reform, investing sufficient resources in the transition process and ensuring safeguards against misrule.

For development partners, federalism presents new challenges in terms of resourcing and restructuring programmes. It also requires an investment in donor coordination in support of it. While development partner efforts have always required some coordination, the coordination that will be required to support state restructuring will be more demanding because of the scope of the enterprise, its political sensitivity and the importance of consistency in practice across sub-national governments.

The concept paper of the CA Committee on State Restructuring proposes, for the exercise of powers in matters of development cooperation, a lead role for the national government in agreeing foreign grant assistance and loans. At the same time, all levels of government (national, provincial, local and autonomous regions) have responsibilities for development matters. The concept paper provides for devolution of some or all state power from the national government to new sub-national governments in many of the sectors where development partners are active. These include health, education, roads, agriculture, water and banking.

It is not yet clear how all of this will work in practice. Eventually, development assistance may require some new arrangements for its management and delivery. Nepal's development partners will be challenged

to respect a constitutionally mandated process, the very essence of which is to devolve responsibility from the centre to the regions. At the same time, it will be important to bear in mind that successful state restructuring will depend in part on initiatives that must be taken at the centre to support the restructuring process or, in some cases, to remove barriers to restructuring in areas such as financial and human resource management. Its success will depend on facilitating meaningful participation and addressing the needs of the most marginalized and socially excluded groups, including women. As with decentralization programmes, it may emerge that the strongest drivers of change are at the sub-national level. The challenge for development partners will be to work with a newly restructured state to improve governance and advance Nepal's inclusion agenda at all levels—national, regional and local.

Donor assistance to the current constitution-building process has focused on the CA process and public consultations. There has also been some support with intergovernmental issues (such as fiscal federalism). Some donors are now starting to look at the implications of federalization in the sectors in which they are active. However, there has been virtually no work to date to assess or plan for the possible demands on development partners over the 36 months following proclamation of the new constitution.

At present, no specific state restructuring support programmes are planned or funded. However, it is critical that work to plan the development partner response to state restructuring begins. Building the institutions of the restructured state cannot be done through small-scale development projects. State restructuring will need to be addressed by coordinated commitments from development partners paired with commitments from national and sub-national governments, if it is to lead to real changes in the degree to which government serves all the different communities in Nepal.

#### **Potential development support**

1. Developing mechanisms for coordinating development partner plans for support to state restructuring in order to enable a coordinated response to requests for assistance.
2. Jointly considering the implications in terms of resource mobilization, including required initiatives, staff support, timing and likely costs.
3. Working in partnership with national bodies on the development of early plans to support the transition process, including financial and technical assistance to a State Restructuring Commission, if formed. Mechanisms to promote effective coordination and information-sharing between governments and their development partners should also be developed.
4. Supporting the government to examine the cost and administrative implications of state restructuring.
5. Supporting restructured government bodies to build their capacity on gender, human rights and social inclusion.
6. Building technical capacity in government bodies involved in transition, including in sector mechanisms.
7. Training new local political leaders and civil servants in public administration skills and 'public expenditure and financial accountability'.
8. Supporting development of new legislation or review of existing legislation necessary for the implementation of the new state structure.



Photo Credit: GTZ

#### 4I. Employment acceleration

The CPA contains a commitment to respect and protect an individual's right to employment, and recognizes international labour standards to promote workers' rights and industrial peace. To protect the most vulnerable groups of workers, the CPA also commits to ensuring the protection and eradication of bonded labour and child labour.<sup>72</sup> Making an early start on this agenda could help to reverse the otherwise deteriorating environment in Nepal for investment and employment.

Owing to insufficient economic growth and a poor business environment and the absence of a national employment framework, Nepal is not generating sufficient employment opportunities to satisfy the demand for work. It is estimated that Nepal currently has in excess of 400,000 new jobseekers annually, mostly rural young women and men. While the overall unemployment rate remains low, youth unemployment remains a challenge. Young people aged 15–24 years are approximately 2.2 times more likely than adults to be without work. In particular, unemployment for urban youth is acute and the situation has changed for the worse over the past decade. In 2008, the youth unemployment rate in urban areas stood at 13.0 percent, having nearly doubled from 7.6 percent in 1998/99. The lack of decent and productive employment results in various forms of labour underutilization, and 46.0 percent

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72 See the CPA, Section 7: 'Compliance to Human Rights, Fundamental Rights and Humanitarian Laws'.

of young people aged 20–24 years are estimated to be underutilized—the highest rate amongst all age groups.<sup>73</sup> This includes large numbers of women as well as men from excluded ethnic groups and castes, who have traditionally had minimal access to opportunities as a result of low levels of education and literacy. Ensuring that employment generation is gender and socially inclusive will maximize its impact on peace.

In this context, it is also critical to consider the scale of migration and remittances in Nepal. More than a third of the male population—and a significant number of women—are estimated to be working outside the country. According to the Nepal Migration and Remittances Survey (NMRS) conducted by the World Bank in 2009, almost half of all households had exposure to migration abroad.<sup>74</sup> The number of Nepali workers leaving the country (for destinations other than India) has increased rapidly from around 100,000 per year during the first half of the 2000s to nearly 300,000 in the 2009/10 fiscal year, resulting in large inflows of remittances. According to balance-of-payments data from the Nepal Rastra Bank, remittances (excluding those from India and informal flows) amounted to US\$ 3.1 billion or 21 percent of Nepal's GDP. The NMRS found that foreign remittances are now a quarter of income for all households and two thirds of income for remittance-receiving households. While greatly increasing remittances have been regarded by some as one of the major factors contributing to poverty reduction in Nepal, the large-scale international migration of Nepali labour is also causing severe labour shortages in many parts of the country. In some rural areas, male workers have become very scarce. In some semi-urban areas, industrialists are finding it difficult to recruit the workers they need. A number of public works programmes funded by development partners are also finding it hard to attract workers. Implicit real wages appear to be rising in areas where workers have become scarce—affecting the competitiveness of Nepali exports. The current labour market situation and this dilemma call for further detailed assessment.

More jobs and incomes, and measures to empower young people, should be a tangible peace dividend, particularly targeting the most insecure and problematic regions of Nepal. The current Three Year Interim Plan and Approach Paper for the next Three Year Plan both have a strong focus on youth employment, but there have been shortfalls in implementation in the past. The importance of promoting sustainable employment and decent work to contribute to peace-building in post-conflict situations is critical. Underemployment, exclusion and poverty are some of the drivers of the recent civil conflict that still have to be addressed.

Where sufficient labour supply exists, broad-based employment-generation schemes can make a substantial contribution to peace and development. For example, over 90 percent of local households benefited from the recent Ministry of Local Development employment-generation scheme piloted in the Karnali Zone.<sup>75</sup> While spending on infrastructure has the potential to create large numbers of immediate and longer-term jobs, a major challenge that remains is to significantly increase the use of labour-

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73 Central Bureau of Statistics, *Report on the Nepal Labour Force Survey 1998/99*, Kathmandu, 1999, and Central Bureau of Statistics, *Report on the Nepal Labour Force Survey 2008*, Kathmandu, 2009.

74 A third of households had at least one member abroad and one in seven households had a returnee. One third of households in Nepal are receiving remittances from abroad. About 40 percent of foreign migrants go to India. The Persian Gulf countries are the next most popular destination, amounting to 38 percent, while a slightly over 10 percent of migrants go to Malaysia. The remainder go to various countries including US, UK, Japan and Korea.

75 Vaidya, K., *Appraisal of the Karnali Employment Programme as a Regional Social Protection Scheme*, a study commissioned by the Ministry of Local Development and ILO Nepal, 2010 (unpublished).

based technologies for appropriate infrastructure projects, e.g., rural roads, trail and trail bridges, and schools and health posts (the current emphasis in Nepal is still largely on mechanical technology). The government endorsed the UN Policy for Post-Conflict Employment Creation, Income Generation and Reintegration in May 2008, which stresses the importance of employment and self-employment for stability, reintegration, economic growth and sustainable peace in post-conflict situations.

While there are several development partner initiatives targeting employment creation, these have had limited impact at the national level. There is progress in support designed to increase vocational training opportunities, and prepare for better labour market governance. However, there is still scope for development partners to improve coordination and coherence through more joint work with the government, especially in the field of job creation through employment-intensive infrastructure programmes, enterprise development, demand-driven vocational training, enhanced access to credit through microfinance, and so forth. There also exists a significant gap in development partners' employment creation activities that are gender and socially inclusive.

In order to generate more opportunities for unemployed young people, Nepal could consider further implementing its strategy on employment-centred growth complemented by a policy on employment-generation schemes. This would include a diagnostic of employment constraints and a review of macroeconomic and sectoral policies, public expenditure and domestic resource mobilization. At the same time, this should be complemented by improved labour market governance, focusing on labour law reform, social security law reform, a new industrial relations system, and labour administration reform. These policy and governance reforms should ensure that the different needs of men and women, especially the most marginalized, are adequately considered.

This could be supplemented by improving conditions for growth through sustainable private enterprises, wealth creation and employment, focusing on increased incomes for producers and micro-, small and medium-sized enterprises. In addition, measures to promote rural employment opportunities through agricultural development, for example, through the development of a SWAp for the agriculture sector or through improved extension services designed to boost smallholder productivity and labour absorption, could be supported. There should also be a strong emphasis on value-chain upgrading and market-led enterprise start-up through training and advisory services and expansion. This should also enable and facilitate access to business and financial services. Impacts on employment could also be reinforced through improved productivity and competitiveness by means of skills development, enhancing youth employability and increasing access to better employment for those who are disadvantaged in the labour market, especially women and excluded groups.

In the medium term, these efforts could be supported through the promotion of comprehensive rural and urban employment through local economic recovery and development processes. These processes should build competitive and employment-centric urban centres, districts and regions by strengthening engagement with civil society; upgrading the value chain; strengthening local factor deficiencies for employment-centred growth (e.g., infrastructure and skills); focusing on sustainable development; and linking social policy with central economic and business growth anchors.

In the short to medium term, it is also essential to improve labour migration management by better regulating private recruitment agencies and improving job-matching through public employment services and skills qualifications.

### Potential development support

1. Supporting an employment-centred growth strategy by assisting the government to develop its national action plan for employment creation by: (i) providing consultancy support to help review the scope for making existing government policies more employment-centred; and (ii) establishing credible employment targets for Nepal, disaggregated by gender, caste, religion, region and ethnicity.
2. Supporting inclusive government employment-generation schemes, including in: agricultural road construction; irrigation and water-harvesting schemes and micro-storage; inter-district watershed conservation; landslide prevention; land reclamation; urban development; and construction/repair/upgrading of schools, health facilities, marketplaces, etc.
3. Providing assistance, in consultation with the private sector, to create favourable conditions for investment and sustainable enterprises, through: entrepreneurship training and promotion; business advisory services; cooperative- and group-building; technical skills training; value-chain finance; agricultural finance, microfinance, micro-insurance and other related services; and improved labour market governance.
4. Expanding technical and vocational training opportunities to excluded groups and women.
5. Supporting microfinance schemes for the self-employed that meet the needs of women and traditionally marginalized groups.
6. Supporting the government to improve existing labour market information systems, focusing on matching demand and supply for the labour force.
7. Strengthening the capacity of the Department of Foreign Employment and private recruitment agencies to promote and manage safe migration, including training programmes on basic information, language, and financial literacy, awareness-raising on recruitment process, and monitoring systems.
8. Assisting the government in entering into bilateral agreements with more countries regarding labour migration.
9. Assisting the government in improving remittances services, including the development of an efficient electronic transfer mechanism, introduction of mobile-phone banking, and improvement of legal regulatory frameworks for remittance service providers.

## NEW/ENHANCED APPROACHES BY DEVELOPMENT PARTNERS TO SUPPORT PEACE-BUILDING

“The long-term vision for international engagement in fragile states is to help national reformers to build effective, legitimate, and resilient state institutions, capable of engaging productively with their people to promote sustained development.”

OECD/DAC, *Principles for Good International Engagement in Fragile States and Situations*, 2007

### 5A. Introduction

This chapter identifies ways in which development partners can increase their contribution to peace and development in Nepal by changing the way that support is delivered. These ways are designed to complement the government’s Foreign Aid Policy and Action Plan on Aid Effectiveness.

Given its own commitments to the future and its position between two major centres of economic growth, Nepal is ready to move on from the traditional donor-recipient relationship. New rules of engagement are required. The government wants development cooperation to reflect its own priorities and to be routed through its own systems in line with the Paris Declaration on Aid Effectiveness. The Paris Declaration calls for donor alignment with partner government systems and policies, and improved donor harmonization to reduce government transaction costs. It is not, however, designed for the challenges of recovery settings. The Accra Agenda for Action, on the other hand, does specifically call for adapting aid policies in fragile states and points to the OECD/DAC *Principles for Good International Engagement in Fragile States and Situations* as the agreed standard to ensure this. This Peace and Development Strategy has been designed to comply with these principles. Many Nepalis also expect development support to be a channel for new ideas and the better implementation of programmes and services.

Development partners also recognize the need for change in the traditional ways of delivering support. Although this document is not a substitute for an evaluation



Photo Credit: UNIFEM

of development strategies and structural practices in the past, the changes outlined below are designed as a contribution to reframing the development relationship. For its part, development support has to remain impartial, reward measurable results, and be accountable for its performance to the people of Nepal.

The proposals made here are intended to deliver new results in five areas.

- A clearer and more coordinated division of labour and geographic focus for development partners, determined through a mapping exercise and a code of conduct.
- A commitment to working with the government as a group to plan and coordinate support to federalism.
- Greater transparency on development partners' spending and results.
- A commitment to mainstreaming conflict-sensitive development approaches in all new programmes.
- A commitment to assess all new programmes in terms of their impact on traditionally excluded communities, to achieve greater workforce diversity, and to increase opportunities for members of disadvantaged communities to build careers in development.

In more detail, the proposals that follow could lead to development support becoming more targeted on excluded areas and communities—that would also have greater control over the use of development resources—and being better coordinated with local authorities. Development partner coordination and transparency would also be improved at the local level. Support would be more accountable to local communities, who would also have a role in the auditing of expenditure in their community. Programmes and projects would create more jobs and be delivered more transparently and in line with conflict-sensitive approaches. Support would also become more responsive to local conditions and risks to the development space. At the central level, donors would seek to reduce gaps and overlaps in their support to peace, and commit to diversifying their workforces. Development partners would also support more evidence-based analysis of development impact as well as expenditure-tracking exercises to show where development funds are spent and who benefits.

The following sections outline the case for change in the areas described above, and specific proposals for action by Nepal's development partners.

## 5B. State-building approaches

State-building is fundamentally about strengthening the relations between state and society and developing effective ways to mediate that relationship without resorting to violence. It is integrally related to peace-building. Indeed, the OECD/DAC principles emphasize that state-building should be central to development partners' objectives in countries undergoing peace processes. International evidence suggests that effective states are also the most peaceful and stable.

In all countries, state-building and peace-building are long-term, highly complex, political processes involving continual negotiation between state and society. Typically, they are also messy and non-linear. Importantly, state-building is a sovereign internal process rather than something that development partners 'do'.

The role of development partners in this context is firstly to try to understand the complex political and social processes at work within which they must operate and then seek to apply relevant lessons from international experience. Secondly, they should try to provide assistance so that inclusive political processes are more likely to be stable—so that any state can demonstrate its control over its core functions such as security, rule of law and managing resources. Demonstration of these functions is necessary for a state to survive; it also needs to meet citizens' expectations in terms of equity, regulation and services, if it is to prosper over time. Therefore, development partners need to be careful in their ambitions and to provide targeted support for state-building and peace-building processes that are carefully designed with and agreed on by government.

The state-building process in Nepal since the 1950s has been a highly contested one, in part because of the incomplete separation of the state from dominant interests in society. However, both the 2006 Jana Andolan and the CPA attracted overwhelming public support, offering a window to develop a new constitutional order defined in terms of an inclusive federal democratic republic through which the state can be seen to be more legitimate, responsive and accountable. The fact that the new constitution still has to be agreed on, and the transition to federalism and post-CA elections is yet to be defined, means that there is no roadmap for state-building in Nepal.

The central challenge for development partners is then to help support, where appropriate, the shift of the current state-building dynamic to a more legitimate, responsive and accountable path. This implies, *inter alia*, support for effective checks and balances to state power—for more representative governance, including a more programmatic and accountable form of politics, where parties compete for power through their abilities to meet the expectations of the people, rather than through, for example, patronage, corruption and/or coercion. Support may also be required for impartial law and judicial systems that increase security and access to justice. International experience suggests the above would offer a reliable framework for sustainable peace.

Some elements of existing assistance programmes supported by development partners already qualify as contributions to state-building because they contribute to legitimate and accountable politics or assist the state to function more effectively and transparently or help the state to meet people's expectations of it. For example, support to free and fair elections, the constitution-building process, increased women's participation, more transparent public financial management, and the expansion of basic services and infrastructure to underserved communities all have important state-building impacts.

In this area, by definition, it is not possible to make specific recommendations with regard to priorities for external development support in the future because these will be defined by the country's prevailing context and government priorities.

The strategy already contains recommendations for external support to interventions designed to contribute to both state-building and peace-building. Examples are illustrated below in three groups.

First are interventions that contribute to a sustainable political settlement following the conflict. These include possible support: to help manage the transition to federalism; to build capacity in sub-national governments once the contours of federalism have been defined; to update the voter register or provide voter education; to strengthen legislatures and fiscal federalism; and so on. Recommendations designed to strengthen checks and balances in the system are also relevant here, e.g., support to parliamentary oversight committees, to independent public service regulatory bodies including an Independent Police Commission, and to the judiciary and/or constitutional bodies.

Second is support designed to assist in the delivery of core state functions. Examples include financial and technical assistance with the census; support for public financial management systems and for revenue generation; support to independent external auditing; support to transitional justice; and support for policing. In addition, support is required for: the use of a gender equality and social inclusion lens in the design, implementation and monitoring of public policies and programmes; the collection of data disaggregated by gender, caste, ethnicity, religion, and region at all levels of the government's Poverty Monitoring and Analysis System; the implementation of affirmative action in the civil service; and the publicizing of these efforts.

Finally, there is support to help deliver state services that are more in line with public expectations. Examples include support designed: to reduce implementation constraints affecting the delivery of government services (e.g., to find solutions to the problem of absentee officials in remote areas); to independently evaluate the impact of programmes on target communities; to tackle impunity; to deliver services to poor and excluded groups including women; to initiate land reform; to generate employment for young people; and to implement the use of participatory monitoring and social accountability tools to deliver more equitable coverage across groups and income levels.

## **5C. The Paris Declaration and the coordination and alignment agenda**

In the context of a complex political transition process, the government understandably expects a substantial contribution from development partners and a more coordinated approach to peace support in order to help deliver Nepal's development goals. The government, supported by development partners, is in the process of finalizing a National Plan of Action on Aid Effectiveness to help implement the Paris themes of aid harmonization, ownership, alignment, managing for development results, and mutual accountability. This action plan is urgently required and must be widely 'owned' and realistic in order to assure its success.

The Paris Declaration on Aid Effectiveness is an international undertaking between donors and partner countries, highlighting mutual accountability. Donors undertake to support national ownership, alignment with government systems, and improved harmonization and results measurement, while

partner governments must undertake assessments of country systems and reform public management systems, institutions and procedures. The declaration also notes that in fragile states, harmonization and alignment need to be adapted to environments of weak governance and capacity, and that ‘where corruption exists, it inhibits donors from relying on partner country systems’.

In Nepal, some progress has been made by development partners in meeting the commitments outlined in the Paris Declaration. According to the preliminary findings of the draft *Joint Evaluation of the Paris Declaration Phase II 2010 — Nepal Country Evaluation*<sup>76</sup>, the principles of country ownership and alignment have been moderately well observed and implemented at the macro level, particularly within the health and education sectors.<sup>77</sup> However, alignment at the strategic level is stronger than institutional alignment, which still needs more attention. Harmonization and mutual accountability are the principles that were most weakly observed and implemented at the macro level. This is where the Paris Declaration has yet to break through in Nepal. However, at the sector level, the picture is much more positive with clear evidence of effective harmonization in both education and health. Importantly though, the report highlighted that Nepali politicians need to take stronger ownership of the Paris Declaration and thus lead the development process.

SWAps have demonstrated the usefulness and effectiveness of donor harmonization in Nepal, and how greater reliance on country systems can reduce transaction costs and strengthen in-country capacity. However, they have also raised concerns regarding the fungibility of funds, and the rigour and transparency of government systems and procedures. The significant funds involved and the reliance on government systems provide opportunities for misappropriation of funds, if sufficient checks and balances are not in place. Support for coordinated and aligned mechanisms should focus on system strengthening and fiscal management to ensure that the mutual commitments outlined in the Paris Declaration can be met.

The misuse of development funds is a particularly serious issue during a peace process because of the risk that these funds can be used to strengthen the capacities and structures of conflict. This risk has to be actively managed by both government and development partners. If SWAps and other coordinated mechanisms are to realize their full potential to contribute to a peace dividend, it is imperative that all development partners in a sector, even if they are unable to formally join the coordination mechanism, should closely coordinate their assistance to support the agreed results framework.

It should be noted, however, that the Paris Declaration was not designed to meet the challenges of recovery settings. For this, the Accra Agenda for Action specifically calls for adapting aid policies in fragile state situations and points to the OECD/DAC *Principles for Good International Engagement in Fragile States and Situations* as the agreed standard and as a complement to the Paris Declaration. This Peace and Development Strategy has been developed with these principles in mind. In line with the OECD/DAC principles, there are a range of instruments to coordinate and align development partner support to the peace process (see Section 5J).

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76 Ministry of Finance, *Joint Evaluation of the Paris Declaration Phase II 2010 — Nepal Country Evaluation*, Draft Final Report, October 2010.

77 Coordinated and harmonized assistance has been provided through SWAps in health and education and a pre-SWAp for coordinating local governance support. The SWAps feature agreement on donor rules and procedures and alignment with government rules to provide common procedures for disbursing, monitoring and reporting programme expenditures. Coordinated mechanisms include pooled funders, non-pooled funders and technical assistance under Joint Financing Agreements.

It is particularly important that coordinated mechanisms, especially SWAps, respond to contextual issues and make evidence-based decisions as much as is possible. Recognizing the importance of understanding local contexts is essential to building the capacity of state structures to deliver basic functions and services in a legitimate and accountable way to all members of society. For coordinated mechanisms to reflect an accurate analysis of the political, security and development issues at the local level, they can draw upon analysis by the government, local think-tanks and research organizations as well as those actors with a local presence in the field, including the Carter Centre, GTZ/DFID Risk Management Office, UN Field Coordination Offices, and BOGs Group. Contextual analysis must be considered in all programmes and should be built upon and strengthened to help design context-sensitive approaches to address conflict, gender and social inclusion needs.

There is also a need for more systematic, overall, national monitoring of the peace process as well as of development partners' contributions to peace. So far there has been no common agenda or comprehensive implementable framework through which development partners can work together and support government priorities and objectives. Development partners are particularly constrained by the absence of political commitment to ownership on improved peace-building cohesion. This strategy can hopefully make a contribution to such a framework. In turn, this would enable the impact and outcome assessment of all instruments to be enhanced. The Action Plan that has been developed from this strategy can also help to provide the government and development partners with an agreed mechanism to identify key indicators, measure progress, and agree where renewed efforts may be required. In turn, this would also help ensure that development partners' support is better coordinated. Ultimately, however, much will depend on the extent to which national leadership on these issues emerges.

#### **Potential development support**

1. Implementing support through a more integrated coordination architecture (see Section 5J).
2. Ensuring consistent approaches to peace-building and development, including:
  - ensuring that spending imperatives do not compromise 'do no harm' approaches;
  - providing the government with a consolidated commitment of minimum funding for the next two years at the start of the government's budget planning cycle;
  - strengthening contextual analysis supporting peace and development activities;
  - ensuring that all donors in a sector align technical assistance with the government's priorities as well as Nepal's obligations based on international instruments that Nepal has signed; and
  - reducing transaction costs through coordinated donor responses and joint programming.
3. Working with government in anticipation of federalism to strengthen country systems, particularly in light of the future state restructuring.
4. Supporting vigilance on corruption, including by improving accounting systems, increasing budget transparency and participation, strengthening oversight mechanisms, and tracking expenditures.
5. Ensuring SWAps work in a conflict-sensitive manner that includes a voice for all parties, particularly women and marginalized groups.
6. Supporting existing plans for joint assessments, monitoring implementation of the OECD/DAC *Principles for Good International Engagement in Fragile States and Situations*, and sharing results as part of progress reports on implementing the Paris Declaration.
7. Supporting the government to finalize a National Plan of Action on Aid Effectiveness that is acceptable to all.

## 5D. Division of labour and geographic targeting

In April 2009, there were 26 official development partners in Nepal<sup>78</sup>, with between one and 13 donors active in each of 27 sectors<sup>79</sup>, whose assistance is geographically spread across the country sometimes without clear overall coordination or overarching common rationale. There are a wide range of contributions, but on average they each amount to US\$ 15 million. Ideally, the partner and donor communities work together with the government to assess each other's comparative advantages and areas of work for meeting the country's peace and development goals, and determine who does what in order to minimize duplication and maximize impact.

The 'comparative advantage' of where development partners work is usually based on: technical expertise; geographic concentration; historical ties and relationships; nature of interventions; choice of instruments; specific sector needs; and implementing modalities. However, these assessments are often carried out by individual agencies without either formal or informal agreement between all parties. Development partner programmes are also sometimes driven by political or development objectives (sometimes shared by several donors) from headquarters. The challenge is to find a win-win situation where development partners' strategic interests coincide with the Nepal government's priorities and needs for support in areas where other development partners are not working. Open dialogue between international development partners and government counterparts on the division of labour and geographic targeting is the first step to responding better to both country and donor interests. Full development of the next development plan with a robust and transparent results framework is also needed for systematic programme design and implementation. Current informal systems have resulted in some overlap and duplication.

For example, many perceive that Nepal's politics and government remains overly Kathmandu-focused, influencing how and where development partners work. According to a recent mapping of the presence of donors and UN agencies in districts<sup>80</sup>, development partners have selected districts rather than development regions to be the basic unit for targeting their efforts. Weakness in local governance and linkages between district offices and central ministries makes coordination of this support from the districts very difficult. Federalism will create a new environment for the planning and implementation of development programmes.

The Human Development Index and the Gender Development Index indicate that the Mid- and Far Western Development Regions currently lag behind the other development regions, despite the fact that between 2001 and 2006 development in these regions was faster than in the rest of the country. At the same time, 'conflict-mapping' approaches should also be utilized as a means for directing and prioritizing development interventions. These would enable targeted investments to deliver peace dividends and resolve root causes in the more violence- and conflict-affected areas of Nepal.

While individual development partners may utilize their own specific criteria for the selection of target

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78 Based on World Bank donor mapping for Nepal in September 2009 (unpublished).

79 Donor mapping exercise by the Ministry of Finance in May 2009.

80 OCHA, *Nepal: Presence of Donors and UN Agencies in Districts*, 2009.

locations, there is a lack of an overall plan to promote an equitable distribution of development support across the country. There is thus scope for a clearer division of labour and greater geographic targeting of development support in order to improve the impact on poverty and social inclusion. Once development partner support across Nepal has been mapped through the Aid Management Platform and the Donor Transparency Initiative, this opens up the possibility of discussions with the government on a geographic as well as sectoral division of labour among donors.

#### Potential development support

1. Conducting, with the government (utilizing the analysis collected from the Aid Management Platform and the Donor Transparency Initiative), an exercise to map existing development partner programmes by geographic area, sector and/or target group.
2. Reaching an agreement with the government on the division of labour to ensure that development partner support is rationalized across sectors and geographic locations, and that duplication and gaps are reduced.
3. Identifying which actors will lead on different sections of the Peace and Development Action Plan to operationalize this strategy and enhance coordination and alignment.

### 5E. Employment-intensive methods

With 30 percent of the total economically active population classified as underutilized (49.9 percent in urban areas and 26.9 percent in rural areas)<sup>81</sup> and high levels of rural poverty in Nepal, employment creation is critical to the reconciliation process and to conflict prevention. Labour-intensive projects combined with other economic development activities can provide families with immediate income, support excluded communities and extremely poor households, and help to rehabilitate conflict-affected adolescents, male and female ex-combatants, and others most seriously affected by the conflict, including women and youth. They can also improve access to basic local infrastructure as well as repair that destroyed in the conflict, thus laying the ground for long-term local development. They can also provide a forum for local activity and community-building. In addition, they reduce the 'distance' between the centre and the periphery and, as they usually lead to visible and quick results, can help the government to regain legitimacy.

As construction phases rarely exceed one or two years, public works programmes provide only temporary benefits. Long-term employment opportunities can, however, be created through infrastructure plus economic development activities. The experience of 30 years of labour-intensive methods in Nepal shows that, in order to achieve sustainable results and provide long-term benefits, it is important to carry out projects in close cooperation with the local government, and in ways that empower the local community, promote income generation, develop skills, and reduce potential capture of local resources by vested interests. However, to date in Nepal only limited resources have been provisioned to ensure these longer-term gains.

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<sup>81</sup> This finding resulted from using labour underutilization for the first time in the second National Labour Force Survey in 2008. The survey also found that the time-related underemployment rate for the population aged 15 years and above was 6.7 percent in 2008 compared to 4.1 percent in 1998/99. See, Central Bureau of Statistics, *Report on the Nepal Labour Force Survey 1998/99*, Kathmandu, 1999, and Central Bureau of Statistics, *Report on the Nepal Labour Force Survey 2008*, Kathmandu, 2009.



Photo Credit: SDC

Maintenance has also been a concern. Infrastructure, including that initiated by development partners, has sometimes lacked the ownership of local government and, therefore, the support and resources required to maintain these assets. Maintenance committees play a vital role, but often need capacity development right from the beginning. Addressing these gaps would help improve the contribution of employment-creation activities to sustainable peace.

Since labour-intensive construction is already a government priority, international development partners should increase their support to this modality where appropriate. Increased consistency by development partners in applying labour-intensive construction techniques could be developed by:

- requesting development partners with relevant experience (WFP, DFID, GTZ, ILO, World Bank, ADB) to identify additional opportunities for integrating this approach into the portfolio of donor projects;
- supporting the use of the gender equality and social inclusion framework in labour-intensive public works programmes;
- consistently safeguarding against the misappropriation of funds;
- establishing micro savings and credit schemes to promote income-generating activities in tandem with labour-based infrastructure efforts;
- using community-driven innovative follow-up projects (e.g., urban infrastructure maintenance and upgrading, drainage systems for roads, fibre-optic cables, etc.) to increase employment intensity and participatory planning and monitoring;
- targeting marginalized or socially excluded groups in jointly funded and jointly planned projects where construction groups work on labour-intensive projects as well as on the maintenance of constructed infrastructure;
- implementing labour-intensive pilot activities in urban and rural social inclusion and poverty reduction programmes, to be carried out with the broad participation of men and women; and
- building capacity of women to enable them to participate effectively in community consultation on the nature and ownership of these projects and to access micro savings and credit schemes.

Opportunities for the delivery of employment-intensive infrastructure include construction of rural roads (4,250 km), main trails and access trails to trail bridges (4,000 km), rehabilitation of existing non-motorable rural roads (4,180 km), and schools and health posts.<sup>82</sup> The roads alone would create demand for more than 60 million person days of work. Investments should be combined with others, such as enterprise and market development, to ensure long-term gains.

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82 Based on a recent government study of needs (unpublished).

### Potential development support

1. Ensuring that infrastructure projects funded by development partners maximize employment-intensive methods.
2. Working with central and local government to build capacity and manage more labour-intensive programmes.

## 5F. Conflict-sensitive programme management

Conflict sensitivity describes the different efforts, methods and tools for working in conflict-prone and conflict-affected areas, with the aim of reducing the risk that aid unintentionally contributes to the escalation or sustaining of violent conflict ('do no harm'), as well as directly contributing to peace-building. It involves a thorough analysis of the context and an understanding of the difference in the impact of the context on women, men, girls and boys from different social groups in which an intervention takes place as well as a greater understanding of the linkages between the context, the intervention and conflict/peace dynamics. Programming should be based closely on this analysis, and should adapt in response to changes in the context identified through ongoing monitoring.

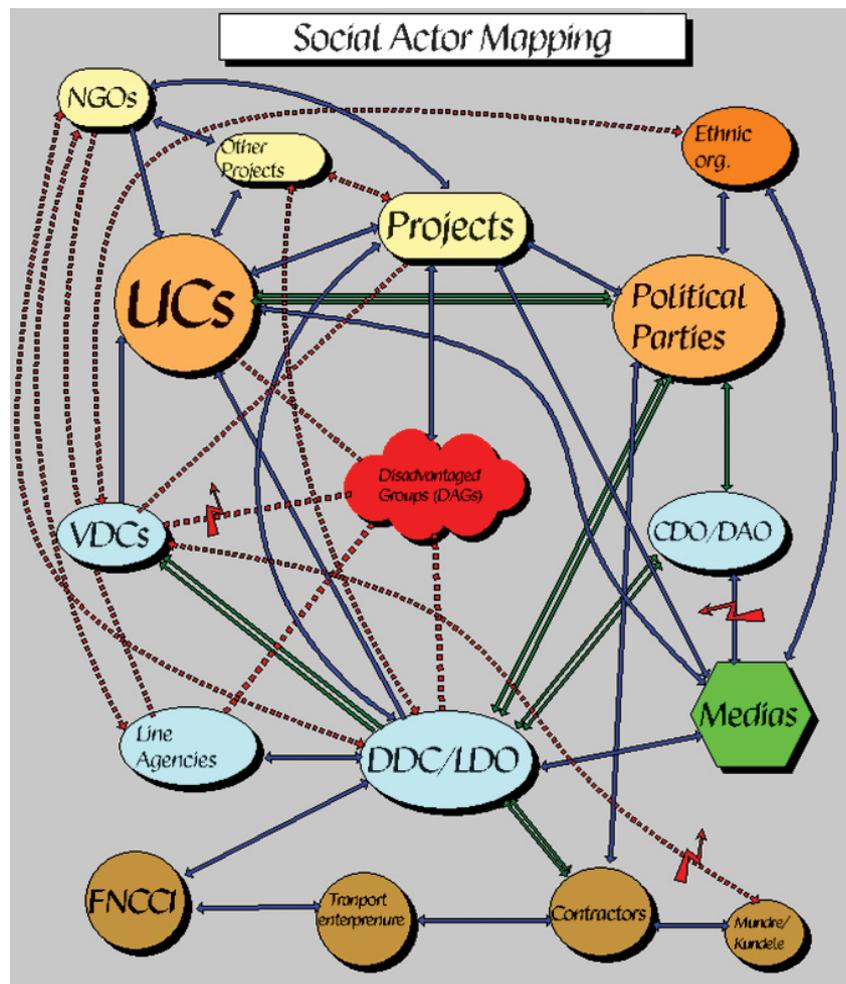


Photo Credit: SDC

Development support should not fuel conflict by unintentionally supporting one or other party to the conflict and/or reinforcing exclusion. Ensuring the inclusion of disadvantaged groups and of workforce diversity is vital. As part of conflict-sensitive programming in Nepal, development partners should ideally conduct regular context assessments at district and central levels. In some cases, maintaining a field presence and strengthening coordination and the use of shared analysis could help decision-making to be more consistent. Undergoing regular 'do no harm' exercises, applying the BOGs, adhering

to the principles of UNSCRs 1325 and 1820, and ensuring the safety and security of staff are also key components. The use of public hearings and public auditing increases downward transparency and accountability, and thus can help to enable poor people and excluded groups to benefit from development interventions.

The changes in the political landscape since the signing of the CPA has also introduced more political actors and stakeholders, and development programmes must be sensitive to these needs and this changing context. At the same time, the limited field presence of development partners, particularly in the central and eastern Terai, currently limits the analysis and information coming from the field. Sub-national political dynamics are fluid and often fast changing and, in the past, programmes have not always been able to adequately respond to this shifting context. For example, many programmes have yet to reflect issues arising from identity-based politics and the activities of armed groups in their programming. Corruption and fund diversions also remain a significant challenge. The coming years will involve a more difficult transition period that will challenge programme implementation. The need to show tangible development benefits during this period will remain of paramount importance.

There is not just 'one way' to adapt development practices to an unstable context. However, better geographic targeting and a stronger field presence of development partners will help to provide the analytical underpinnings required for programming, and also increase preparedness through enabling an early warning system. Experience from other regions of the world has shown that women can have a critical role in early warning systems, especially at community levels. An effective early warning system must therefore be based on a strategy that enables women to participate in the functioning and monitoring of the system.

#### **Potential development support**

1. Ensuring all development partner staff members have undertaken conflict sensitivity training, in regards to programming and communications, within two years.
2. Providing training to all relevant staff members of implementing agencies (including INGOs) on conflict-sensitive approaches to development.
3. Conducting conflict sensitivity audits of existing development programmes (achieving this for at least one quarter of programmes within two years) and making adjustments to programmes in line with the findings.
4. Increasing transparency and accountability in development partner programmes by committing to the use of public hearings, social audits and/or public auditing (or other social accountability mechanisms) that enable the participation of women and those from excluded groups for three quarters of all projects annually, with one quarter of projects audited in the first year.
5. Ensuring gender is adequately considered by vetting all new projects against the guidelines developed by the UNSCRs 1325 and 1820 Peace Support Working Group.

## 5G. Cooperation with civil society and others



Photo Credit: UNIFEM

Civil society<sup>83</sup> has played a prominent role in the struggle for peace and democracy in Nepal since 1990, culminating in the reintroduction of parliamentary democracy following the 2006 Jana Andolan. During this period, civil society organizations (CSOs) did important work as rights advocates/defenders, social mobilizers, bridge builders and facilitators of dialogue between the population and decision makers.

However, many now perceive that, since 2006, CSOs have become less effective as advocates and drivers of change. This may be due to a number of factors including the transition from a single agenda (democracy) to the multiple agendas surrounding constitution-making and state-building. This has made CSO efforts less visible and has increased divisions, often along political party lines.

At the same time, many Nepali CSOs are not well-grounded organizations with a broad popular support base, but are built around one or a few strong individuals who may or may not be able to channel the voice of the groups they are representing. This has reduced the influence of CSOs, as Nepali society has become more politicized and divided. At the same time, development partner support to CSOs is often fragmented and uncoordinated. While development partner support to civil society increased during the conflict, primarily as service providers, since the CPA, their focus has now reverted back to government partners. There is, nonetheless, still significant support to CSOs on demand and empowerment activities.

In some cases, resources allocated to NGOs have been moved to meet the changing requirements of individual development partners, resulting in higher transaction costs, delays and confusion for implementers. Short-term *ad hoc* project support tends to hamper the development of civil society approaches to consolidating peace. At present, there is no coherent development partner approach to help build the civil society space that would foster the dialogue between citizen and state that is crucial for nation-building.

Development partners continue to fund international non-governmental organizations (INGOs), including for humanitarian purposes, largely because they are seen to be good implementation partners and also because of concerns over absorption and implementation capacity in the government. At the same time, the government has voiced concerns over some aspects of INGO performance in Nepal. These include issues of transparency and accountability, geographic targeting, coordination, use of expatriate staff, partnerships with Nepali NGOs, and in relation to some aspects of the draft new Foreign Aid Policy. The issues involved are complex and a detailed analysis is outside the scope of this document.

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83 'Civil society' is understood as groups of citizens working together on a non-profit basis for the benefit of their constituents, such as non-governmental development organizations, user groups, and special interest groups and associations. 'Others' is understood as comprising entities that exist in a grey area between civil society, the state and the private sector, such as political parties, commercial media and business organizations.

However, to address government concerns, the following is suggested: centralizing responsibility for registration and approval of INGO projects in one government agency, with sufficient capacity to process applications transparently and quickly and compile updated information on INGO spending and results, including through the new Aid Management Platform; and encouraging the use of social auditing in INGO projects.

In relation to peace support, the objectives and modalities of development partners' engagement with civil society need to be reconsidered. However, it is also recognized that while so doing, development partners will remain mindful of the role of the state. Some of the most important elements could include the following.

- Providing support for genuine CSOs to carry out key roles in the peace process, including:
  - reviewing and monitoring progress in the peace process;
  - promoting ethnic and religious tolerance and democratic values;
  - advocating for fulfilment of commitments, including the CPA; and
  - delivering a peace dividend in the form of better services and sustainable economic growth and employment generation.
- Strengthening the ability of CSOs to influence the peace process and foster dialogue between citizen and state through support to the development of more coherent, long-term programmes and assistance to strengthen CSOs' capacity and outreach.
- Drawing upon CSO expertise in peace support and the promotion of increased gender and social inclusion, e.g., regular consultation with CSOs, seeking advice from CSOs, etc.
- Strengthening synergies and cooperation between government partners, CSOs and development partners.
- Working with emerging CSOs to advocate and work constructively on issues of inclusion and governance, including civil society oversight functions.
- Working with the government to strengthen relationships with INGOs and build stronger linkages between NGOs and INGOs.

#### **Potential development support**

1. Consulting civil society representatives on the elements of a possible strategy for civil society support to the peace process through the creation of a Joint Consultative Group.
2. Creating a pooled funding mechanism to build the capacity of and support for civil society engagement in the peace process.
3. Building the capacity of media organizations and the private sector as well as NGOs in order to strengthen their contribution to the peace process.
4. Together with the government, examining ways of developing a greater role for civil society oversight in programmes.
5. Promoting dialogue on political, transitional or federal issues at the local or provincial level with key civil society leaders and organizations.
6. Ensuring access and communication between regional and local civil society leaders with donors, UN agencies and the international community based in Kathmandu.

## 5H. Donor transparency

Development partners in Nepal are committed to donor harmonization and improved effectiveness as part of a country context in which overseas development assistance remains a significant component of development expenditure involving substantial fund flows to different sectors and regions, and a transition process in which some communities feel ignored and excluded from the development process. In these circumstances, making aid flows more equitable and efficient through improved donor coherence and transparency is important.

Development partners are responsible for contributing to aid transparency by being transparent and accountable themselves. At the same time, steps to improve aid transparency must be taken in partnership with the government in order not to undermine the long-term objective of building national ownership of development policies and processes. The aim is thus not just to ensure the transparency of donor actions but to support the development of national transparency practices and accountability mechanisms.

In 2009, the UN Resident Coordinator's Office, in collaboration with donor partners, launched the Donor Transparency Initiative in six pilot districts of Nepal to strengthen donor transparency and accountability at central and local levels, and identify areas where development partner intervention is needed or is overlapping. DFID, GTZ, the Swiss Agency for Development and Cooperation (SDC), UNDP and UNICEF agreed to take the lead in the six pilot districts.

The key lessons learnt from this initiative so far are: that information flows between the field and Kathmandu for development partners are weak and the quality of budgetary information is limited; there is limited information on sectoral allocations of aid at DDC/VDC levels and some agencies are reluctant to provide information; DDC budgets and development partner investments are often not coordinated; and the work plans of development partners (including NGO partners) are often not reflected in DDC work plans and budgets. Development partners themselves see political instability and the lack of legitimate local representation as the major obstacles to improving coordination with local bodies. In many cases, there are no discussions between donors and local authorities on aid programmes' work plans and resource allocations.

Most development partners in Nepal who implement programmes outside the government are largely not present at the field level. In most cases, programmes are implemented through partner NGOs or contract staff; yet there appears to be little consistency in terms of these field agencies being registered with the District Administration Office. Although there are some local coordination mechanisms amongst development partners, these are mostly informal, donor-led and inconsistent across districts. Most projects have their individual user groups, social mobilizers and other staff, doing similar work but possibly using different approaches between projects. Poor people thus have to spend appreciable amounts of time participating in various groups in order to access services.

The long-term objective is to expand the improved practices encouraged through the Donor Transparency Initiative across the nation and to map both government budget and donor aid. Recommendations based on the lessons learnt will be disseminated in the form of a draft code of conduct.

### Potential development support

The following measures are proposed to promote improved donor transparency.

1. Analysing and presenting development partner fund flows in more detail at the central level when they are not channelled through government systems.
2. Publishing detailed information about development partner programmes including annual reports on spending and results.
3. Ensuring information flows at the sub-national level are aligned with local bodies planning and reporting cycles.
4. Mapping how resources are allocated across VDCs and across population subgroups in VDCs.
5. Allocating funds at the district level, using disaggregated poverty mapping data (by gender, caste, ethnicity and religion) combined with information on VDC resource allocations.
6. Informing the DDC when funding I/NGOs in a district and requiring implementing partners to inform DDCs/VDCs on how funds are being allocated. In addition, widely disseminating this information to the public and civil society.
7. Improving coordination at the district level through appointed development partner focal persons in each decentralized unit to collect and exchange information and help build the capacity of the DDC.
8. Providing opportunities for those directly affected by development partner programmes to give feedback on the performance of projects.

## 5I. Workforce diversity amongst development partners

Since 1951, the representation in senior political and administrative cadres in Nepal has been dominated by Brahmin and Chhetri (and to a lesser extent Newar) males to the exclusion of women and traditionally excluded castes and ethnic groups. Some progress has been made recently through the CA election in 2008, which increased representation by women and minority groups. Looking ahead, having effective policies to ensure proportionate representation in sub-national governments will also be critical for maintaining social and political harmony within and among the federal states.

The present composition of staff in development agencies mirrors national caste, ethnic, gender and regional disparities. A survey conducted by the Social Inclusion Action Group<sup>84</sup> (SIAG) in 2007 of 30 international agencies working in Nepal (including bilateral agencies, embassies, UN and other multilateral agencies) covering a total of 1,425 local staff found that Brahmin, Chhetri, Newar and Hill communities as well as those from Kathmandu were over-represented whereas Dalit, Janajati, Muslim and those belonging to Madhesi/Terai communities and other regions were severely under-represented. Women comprised only 29.3 percent of the surveyed workforce and their representation was concentrated in administrative and support staff cadres.<sup>85</sup> In order to be seen as credible actors in the peace process and be able to challenge traditional societal values and discrimination within their institutional structures, development partners also must review their own institutional staff recruitment, inclusion and diversity policies, procedures and processes.

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84 SIAG was formed by a group of committed individuals in 2005 with the primary aim of building on each other's experience and positively influencing their own organizations, government, international agencies and civil society. SIAG has expanded and encompasses representatives from most of the major development agencies in Nepal (namely DANIDA, SDC, DFID, ADB, GTZ, SNV, Human Resource Development Centre (HURDEC), UNDP, World Bank, ILO, UNFPA, UNICEF and the UN Resident Coordinator's Office).

85 *Workforce Diversity in International Agencies in Nepal*, Social Inclusion Action Group, Kathmandu, April 2008.

Workforce diversity and inclusion is also required in development agencies if they are to ensure effective national accountability and implement conflict-sensitive approaches effectively, as well as contribute to the elimination of gender, social and regional disparities. Some bilateral agencies have already developed workforce diversity policies and they apply affirmative action to ensure representation of diverse identity groups in their workforce. Recognizing structural discrimination, lack of access to opportunities, the effects of geographical isolation and the effects of inappropriate development interventions, many international agencies also provide internship and scholarship programmes to disadvantaged groups.

Strong leadership commitment will be required to effect change within the government, bureaucracy and international development agencies. Although reservation/affirmative action policies can be one of the first steps towards promoting diversity and inclusion (accompanied by proper sensitization and awareness programmes to mitigate inevitable criticism from traditionally dominant identity groups), development partners also need to contribute to supporting access of the poorest groups—who lack the economic and educational opportunities—to education, training and resources required to remove the disadvantages they face in the labour market.

If development partners in Nepal are to influence not only government priorities and policies but also the state’s behaviour and accountability towards its citizens, they also have to be seen to be practicing good workforce diversity policies themselves. A coordinated international response on workforce diversity (while not encouraging a ‘brain drain’ from Nepali institutions) could provide a useful example for Nepal to work on inclusion and diversity to create a more equitable employment environment.

<b>Potential development support</b>
1. Building on the efforts of SIAG to develop and implement inclusion policies and processes to diversify the workforce of development partners as committed.
2. Supporting existing work to disseminate and institutionalize the new Multi-Dimensional Exclusion Measure amongst development partners and the government.
3. Establishing effective social inclusion monitoring systems (baseline database, yearly staff composition survey, diversity audit, etc.) to measure change and progress achieved over time by development partners.
4. Providing selective inclusion internships with development partners that include sufficient mentoring, support and supervision.
5. Supporting inclusive sectoral policies for ensuring access of the poorest groups to education, training and resources to overcome existing disadvantages in the labour market.

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## **KEY DEVELOPMENT PARTNER INSTRUMENTS AND MECHANISMS**

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### **5J. Coordination mechanisms and peace support**

At the moment, there are four major national-level coordination mechanisms for development partners in Nepal: the Ministry of Finance’s Local Donor Meeting (bi-monthly), donor meetings constituted by the UN Resident Coordinator (on an *ad hoc* basis), Utstein Group (bi-weekly) and BOGs Group Meeting (bi-monthly). Beyond this there are several sector-specific donor coordination mechanisms, a number of

which relate directly to the peace process—such as, the Donor Advisory Group for the NPTF and UNPFN and the UNSCRs 1325 and 1820 Peace Support Working Group. The NPTF Donor Advisory Group is probably the broadest group of development partners meeting around peace issues.

There is a perception amongst the government and development partners that the bi-monthly Local Donor Meetings, convened by the Ministry of Finance, generally do not provide an adequate venue for substantive discussions on aid issues at the sector level (including on peace-building) and that better linkages with sector Coordination Groups is required to address this.

In recognition of the considerable costs related to peace-building and reconstruction, three major instruments were set up following the signing of the CPA. The Government of Nepal established the NPTF in February 2007 as a mechanism for donors to contribute to the peace process through support to the government. In March 2007, to complement the NPTF, the much smaller UNPFN was created to finance and harmonize strategic, short-term UN support to the peace process. In May 2008, the World Bank approved the EPSP (which was restructured in 2010) to assist the government to meet commitments to selected groups affected by the conflict, to ensure transparency in implementation of benefits for conflict-affected groups, and to strengthen key institutions involved in peace-building, reintegration and rehabilitation. At the time of preparing this strategy, these three funding instruments had mobilized the following amounts: NPTF, US\$ 113 million<sup>86</sup>; UNPFN, US\$ 32 million; and EPSP, US\$ 50 million.

While the three instruments have contributed to the coordination and coherence of donors, they still individually and jointly fall far short of what is required to provide effective support to Nepal's peace process. In a rapidly changing transition context, it has been difficult for all three to forecast and implement strategic activities that would have a transformative impact on the peace process. Responding quickly in a joined-up fashion has proved particularly challenging in a rapidly changing transition context. Unresolved political issues have also delayed the mobilisation of resources, as well as affected the ability of all three funding mechanisms to anticipate events. Invariably, their focus and emphasis shifted to those activities for which early political consensus was achieved, such as the elections in 2008, the maintenance of the cantonments, interim payments to the conflict-affected, de-mining and infrastructure reconstruction.

The shifting political climate makes long- and medium-term strategic planning a challenge for all three instruments. Additional challenges to more effective and coherent support by development partners include the wish sometimes to be seen to be individually visible in the peace process, as well as un-harmonized reporting requirements and divergent programmatic priorities. Development partners also have to remain conscious of the nature of peace-building support objectives, and that the formulation and impact of deliverables are often difficult to define, institutions still need to be strengthened, and influence should not be exercised by interrupting programmes. On the government side, there is a requirement to increase peace-building expertise, rotate staff less frequently, establish new incentives to strengthen professionalism and inclusion, and produce a culture of public service, good governance and results orientation.

These instruments can significantly contribute to bridging the funding gap between early recovery and

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86 As of 15 October 2010.

development, to the extent that they: (i) mobilize additional funding for activities that go beyond the regular development cooperation portfolio; (ii) address challenges related to the peace process in a rapid and conflict-sensitive manner; (iii) contribute to the strengthening and sustainability of national implementation and peace-building capacity; (iv) lead to a coordinated approach by donors and a simplified interface between development partners, government and other implementing agencies; and (v) ensure that the recommendations of UNSCR 1325 are mainstreamed.

Weaknesses in fiduciary accountability, programme management capacity and openness to working with civil society have sometimes been constraints. Not all the funding instruments have used the opportunity to support the UNSCRs related to women and conflict (1325/1820). Each instrument also has different project identification and implementation arrangements, and they have made varying contributions to building national management and implementation capacity.

Some progress has been made in the alignment of UNPFN processes with the NPTF, as well as between the EPSP and the NPTF and UNPFN. There are considerable overlaps in terms of development partner support to each instrument, with at one stage a single Joint Secretary at the MoPR responsible for all of their coordination. In their governance, all three look in one way or another to the NPTF Board, an inter-ministerial body that includes a representative of the donors, as well as representatives of UNMIN, the UN Country Team and the World Bank as observers. In October 2010, the NPTF Board decided to expand its membership to include representatives of the five leading parties in the CA. To date, this board only has effective oversight of NPTF activities. The UNPFN responds principally to its Executive Committee (which includes delegated representation from the NPTF) and the World Bank project is negotiated and supervised as an investment project with the government. All three funding instruments have different and disconnected mechanisms to select activities. While in the past, the NPTF and the World Bank both had separate and un-coordinated mechanisms to strengthen the capacity of their main implementing agency, the MoPR, which has to respond to, report to and support each instrument, as well as a range of bilateral donors, coordination between the mechanisms have improved in the last year. Recently, a technical cooperation pool has recently been established and opens the way for better coordination in this area.

Recommended changes in cooperation practice and measures to be taken to further enhance effective foreign aid coordination in peace-building include the following.

- Promote Nepali leadership of the peace process with a strong emphasis on sustainable capacity development.
- Make consistent use of the NPTF Government of Nepal–Donor Advisory Group (GoN-DAG) mechanism, chaired by the Secretary MoPR. This mechanism should be used more strategically for:
  - the consolidation and review of peace-building programmes and resources;
  - the provision of advice, if requested, on issues and challenges in peace-building programmes, as well as feedback on development partner programmes;
  - the coordination of support provision through the NPTF, UNPFN and EPSP; and
  - the distribution of tasks among government and development partners in relation to future peace-building challenges.

- Further adapt the terms of reference for the NPTF Board, the Donor Advisory Group and Technical Clusters in such a way that they can simultaneously become part of the governance of the NPTF, UNPFN, EPSP and relevant bilateral projects.
- Continue ongoing efforts to develop a memorandum of understanding that will enable all relevant non-NPTF donors to align their funding and approaches as much as possible with the NPTF.<sup>87</sup> The efficiency of government and development partner management of the funding instruments can be improved by making further efforts to harmonize and simplify financial reports, audit requirements and other relevant forms and templates. This would also be improved by developing and strengthening coordination relevant to peace-building at the field level as outlined in the priority actions of Section 5H.
- Develop a better political and technical understanding of the impact and the outcome mechanisms of the funding instruments, strengthen evidence-based decision-making, and improve the results focus and monitoring/measurement of outcomes and impact.
- Work towards wider inclusion in decision-making processes related to donor support to the peace process (e.g., civil society, women, disadvantaged groups, etc.).
- Assess impact of projects supported so far, as well as their differential results amongst women and men of different social groups.

The effectiveness of the NPTF GoN-DAG will depend on the extent to which it has the authority to resolve issues within its terms of reference, and has senior, but also well-informed, representation from both government and development partner organizations. This structure would provide a mechanism for government/development partner coordination at technical and policy levels, as well as a clear bridge between the two. Coordination at both levels is essential in order to effectively address the peace-building challenges facing Nepal.

#### Potential development support

1. Supporting and participating in the NPTF GoN-DAG, chaired by the government, as a single coordination mechanism, to bring together government and development partners providing, or interested in providing, support to peace-building.
2. Developing the NPTF GoN-DAG into a wider group that also includes relevant donors who are currently not contributing to the NPTF.
3. Making use of the NPTF Technical Cluster pool as the single mechanism to coordinate capacity-building to the MoPR.
4. Taking further steps for the closer alignment of the UNPFN, NPTF and EPSP, including closer alignment of Expert Groups and Technical Clusters.
5. Ensuring integration of the UNSCRs 1325 and 1820 Peace Support Working Group's guidelines into the vetting processes of all funds to ensure that women are protected and can fully participate in peace-building.

<sup>87</sup> The review of the NPTF Joint Financing Arrangement responded to a number of issues in October 2010, enabling the EU to join the NPTF. While some fundamental differences persist and prevent the World Bank from joining the NPTF, a memorandum of understanding is being developed to enable all relevant non-NPTF donors to align more closely with the NPTF.

## 5K. Nepal Portfolio Performance Review

The government, led by the Ministry of Finance, has worked jointly with the ADB, Japan International Cooperation Agency (JICA)<sup>88</sup> and the World Bank to conduct an annual Nepal Portfolio Performance Review (NPPR) since 2001. The government opened the NPPR to all development partners from 2006, and DFID joined as a core member in 2007. At the September 2010 review, the government again encouraged wider donor participation in this forum. Over the years, the NPPR has evolved into a useful platform for analysing systemic project implementation issues and recommending solutions, with a longer-term objective of enhancing development effectiveness and delivering tangible development results on the ground. In this sense, the NPPR process has the potential to contribute to Nepal's aspirations for lasting peace and stability.

In keeping with the Paris Declaration and Accra Agenda, the NPPR process has focused on strengthening country systems as the approach most likely to succeed in improving project implementation and development effectiveness. NPPR efforts have concentrated on improving public procurement, public financial management, human resource management, and monitoring and evaluation, as these areas are critical for efficiency, transparency and accountability, and development effectiveness. However, the unstable political environment, frequent transfers of project staff combined with vacancies in technical posts, and inadequate enforcement of procurement and financial management regulations pose ongoing constraints for effective portfolio management. Weak monitoring and evaluation systems also make it difficult to measure development effectiveness and value for money. Despite these challenges, the NPPR process has progressively reinforced mutual cooperation and accountability between the government and participating development partners.

While the NPPR mechanism has become increasingly institutionalized within the aid coordination environment in Nepal, its effectiveness has been limited by the restricted development partner participation and by the weak penetration of the meeting's recommendations beyond central agencies, such as the Ministry of Finance, National Planning Commission and Ministry of General Administration. Recognizing these limitations, the government has moved to expand ownership of this process both externally and internally. Externally, all development partners have been asked to join the NPPR; internally, the NPPR action plan has been formally endorsed by Cabinet and a formal monitoring mechanism has been established, with the goal of expanding collective ownership throughout government. The action plan matrix has been circulated to all government agencies for implementation and bi-monthly progress meetings will be chaired by the Finance Secretary and the status reported to the Office of the Prime Minister and the Council of Ministers. This should encourage more effective implementation of the action plan, contributing in turn to better delivery of services and peace dividends to the Nepali people.

### Potential development support

1. Expanding development partners' participation in the NPPR process.
2. Assisting in enhancing the robustness of the government monitoring system (with particular reference to indicator selection, metadata development and setting/monitoring of annual targets).
3. Including the NPPR process in the wider peace and development coordination architecture.

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88 JICA and a part of Japan Bank for International Cooperation (JBIC) merged on 1 October 2008 and, since 2009, JICA has participated in NPPR and related activities, replacing JBIC.

## 5L. Role of the Nepal Development Forum

The Nepal Development Forum (NDF) was launched in 2002, building on the experience of the Consultative Group Meetings that were held previously in Paris. The forum brings together all of Nepal's partners, including OECD/DAC members, multilateral institutions, bilateral funding mechanisms (such as the Islamic funds), and partners such as India and China. The NDF was intended to meet every 18–24 months, with the objective of increasing donor harmonization and alignment with government development priorities. The most recent NDF meeting was in 2004, with donor consultation meetings organized in 2006 and 2008.

Given the gap since the last full NDF meeting was held, it makes sense for the government and development partners to examine this mechanism and make sure that it takes on board the latest thinking from the Paris Declaration and Accra Agenda, as well as the results of the recent *Joint Evaluation of the Paris Declaration Phase II 2010 — Nepal Country Evaluation*<sup>89</sup> on how to enhance aid effectiveness and strengthen mutual accountability. For example, a number of countries have shifted to annual partnership meetings that focus on development results achieved by the country and on aid performance (predictability and alignment) of development partners. Resource mobilization for future years is placed within a Medium-Term Expenditure Framework (MTEF), with specific, time-bound output targets.

The government and development partners might wish to consider changing the frequency of NDF meetings to an annual cycle where discussions would be results-based and focus on mutual accountability. If such an approach were to be adopted, the government, external partners and civil society would meet on an annual basis to review progress achieved on agreed peace and development goals, and agree on new results targets and financing availability for the coming three-year rolling period. Government would come prepared to report on progress against previously agreed milestones, external partners would come prepared to report on actual aid disbursements and results and communicate planned medium-term assistance (2–3-year rolling estimates), and civil society could participate to hold both government and development partners accountable for the aid partnership. During the transition period when peace and development issues are on the agenda, it would also be desirable to include bipartisan political representation, at least for relevant sessions. The timing of the NDF meeting would be set in such a way that information on future aid flows could be captured in a timely manner to establish realistic financing parameters for the next budget cycle. This might argue for a meeting in November/December or possibly February/March.

Each annual meeting could have a key theme in addition to the core NDF business, with a keynote speaker who could attract high-level international representation. With respect to core NDF business, the retrospective sessions would review annual progress against milestones in the peace agreement and in the MTEF, actual expenditure out-turns against approved allocations, and actual development partner disbursements against expressions of intent in the previous year. This would enable participants to evaluate both sides of the aid partnership 'equation': peace and development results would be an important part of the picture, but the NDF would also look at whether resources (both domestic and external) were made available in a timely way. For the forward-looking NDF sessions, the government

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89 Ministry of Finance, *Joint Evaluation of the Paris Declaration Phase II 2010 — Nepal Country Evaluation*, Draft Final Report, October 2010.

would present its three-year rolling peace and development plan including estimated annual results and funding needs (both domestic and external), and external partners would share information on planned aid flows for the same three-year period (to the extent permitted by bilateral foreign aid legislation). This information would not only inform the budget cycle and national planning, but would also contribute the raw data needed to engage in a meaningful discussion of alignment of external assistance against country priorities and the needed evolution in the division of labour.

As in previous meetings, pre-NDF events could be organized with civil society groups to promote open exchange of information and discussion. In keeping with global trends towards enhancing mutual accountability, CSO participation in the actual NDF event would also be encouraged through mechanisms yet to be explored (e.g., speakers from NGO/CSO federations and other groupings to be considered).

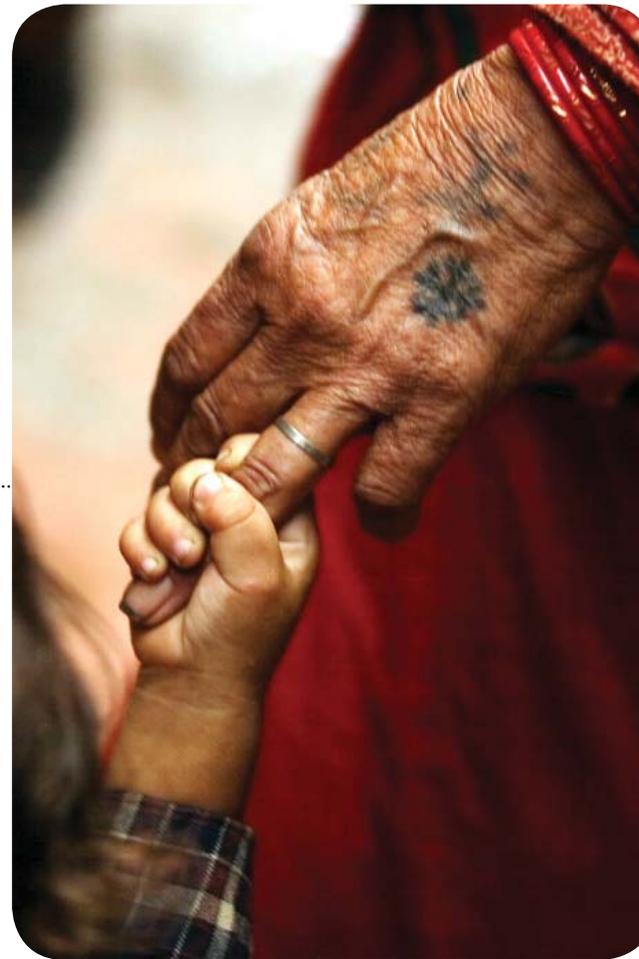
### **Potential development support**

Discussing with the government an annual NDF meeting to reflect a greater focus on development results aid performance and peace-building, including the following.

1. Reporting on expenditure and results achieved in relation to agreed peace and development goals.
2. Agreeing on new results targets and expenditure plans on peace and development.
3. Announcing development partners' planned medium-term aid flows to Nepal.
4. Promoting the better alignment of the timing of future NDF meetings with the annual budget cycle and improved whole-of-government participation at the meeting.

## CONCLUSION

In the preceding pages, an agenda has been laid out for Nepal's development partners to support the country on the road to peace. Using the Comprehensive Peace Agreement as a guidepost, the strategy has identified where in the short term, development partners may be called upon to provide support; issues such as rehabilitation of ex-Maoist army combatants, assistance to transitional justice mechanisms, and support to the next national elections are all examples of critical issues that are expected to emerge in the months ahead, and for which development partners need to be prepared to assist, if called upon. The strategy has also laid out where long-term development and the peace process firmly intersect; issues such as rule of law, good governance, social inclusion and state restructuring are key elements of the CPA and will likewise, require a coordinated and sustained development partner response once the road ahead has been agreed and articulated by Nepali decision and policy makers. An effort has also been made in the strategy, to look critically at how development partners can adjust their methods and systems to better



*Photo Credit: UNICEF/NEP/2318/Rocky Prajapati*

respond to the particular demands of peace-building.

In compiling this strategy, the extraordinary challenges and opportunities in the years ahead have been placed in stark relief. The long-term transformational objectives of the CPA contain issues of great complexity and contention that have been long-standing challenges with no easy solutions. Development partners are committed to continue working on these issues nonetheless, supporting nationally-lead processes. The long-term nature of these issues and the high expectations that surround them having found voice in the CPA, argues for getting started on such long-term undertakings with the minimum of delay.

Development partners are committed to ensuring this strategy does not become just 'another report' long on ideas but short on follow-up. Contained in the strategy are 178 specific areas of ongoing or potential support identified by development partners. These have been extracted into an 'Action Plan' which will be produced as a companion document to the strategy itself. For almost all the actions, development partners have stepped forward to indicate their willingness to assist in advancing the issue. In a few cases, development partners have yet to be identified, indicating a gap which will need to be filled over coming months. The status of the Action Plan will be reviewed and updated periodically, in order to ensure the actions identified are moved along. A significant number of actions, needless to say, are contingent on agreements being reached by Nepali actors first, and requests being made by the Government to relevant development partners. On such issues, the Action Plan will help establish a state of readiness on the development partner side, when/if there is progress on these crucial issues for the long-term peace.

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