

## FIELD BULLETIN

### 2013: Potential risks to peace and development

#### Overview

The RCHCO produces monthly updates that consider emerging issues which could have an impact on peace and development in Nepal. Though examining many dynamics linked to the implementation of the Comprehensive Peace Agreement (CPA), these updates are not about 'tracking the peace process' as such. Rather, they are an attempt to ensure that development partners keep abreast of the changing context of Nepal's transition and those dynamics that present potential risks on the wider peace and development horizon, as well as contributing to a broader understanding of the general context in which development partners are working.

Based on this ongoing analysis, this Field Bulletin explores two issues that present immediate potential risks on the peace and development horizon in the coming year:

- **identity polarization in the context of protracted political deadlock; and**
- **new national elections.**

This Bulletin also explores two additional issues from the field that present a moderate risk to peace and development over the coming 12 to 24 months:

- **popular movements against impunity; and**
- **deterioration of governance and democratic institutions.**

#### Developments in the peace process in 2012

Nepal saw mixed progress in the peace process in 2012. By the sixth anniversary of the signing of the CPA on 21 November, the peace had not yet reached—in the words of many political leaders—it's so-called 'logical conclusion'.

The most important achievement during the year was the completion of the 'integration and rehabilitation' process and the emptying of the Maoist army cantonments. By the end of the year, over 15,000 former Maoist army combatants had opted for voluntarily retirement and received their final cash payments.<sup>1</sup> Only six former combatants opted for more comprehensive rehabilitation packages supported by the Ministry of Peace and the Nepal Peace Trust Fund (NPTF). The NPTF also began a number of projects to assist disabled former combatants with additional assistance. Over 1,400 former combatants were integrated into the Nepal Army, reporting for duty and basic training in November. These personnel are expected to form part of a new Directorate in the Nepal Army (Office of the Director General of Security and National Development) that has yet to be formed.

Many other CPA commitments remain incomplete however. The 'democratic restructuring' of the Nepal Army<sup>2</sup> has taken a backseat to the integration and rehabilitation of former Maoist combatants. The Constituent Assembly (CA) did not succeed in drafting a new constitution<sup>3</sup> by the deadline of 27 May, largely due to contention over the terms of federal state restructuring (though other issues of contention also remained). Many parts of the nation experienced turmoil during April and May in the lead up to the constitution deadline as political parties, activist groups and civil society organizations with opposing stances on federal restructuring launched protests; normal life in many districts was paralysed through successive waves of *bandhs* and other activities. Particularly in the Far Western Region (and to a lesser degree in other

<sup>1</sup> Based on briefings by various different government officials, the estimated overall cost of the retirement payment packages is nearly Rs. 8 billion (an average of just over Rs. 500,000 per retiree).

<sup>2</sup> CPA Article 4.7.

<sup>3</sup> CPA Article 2.b.

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regions), the nation witnessed a number of clashes between groups promoting so called ‘ethnic federalism’ (establishing provinces predominantly along ethnic identity lines), groups ostensibly promoting geographic-based federalism or groups entirely opposed to federalism (among these were some groups advocating for the re-establishment of a Hindu monarchy and centralized state).

It is difficult to determine the deeper impact of the disruptions at present, but there are indications that what began as a political conflict over identity and federal state restructuring has catalysed or deepened identity-based fault lines in many parts of the country; some of these cleavages had previously been latent or perhaps hitherto unappreciated.

The disruptions also caused major economic and development losses for the country, as district development projects and funding were halted in many places, economic activity was shut down and schools and other public services were severely interrupted. Not adopting a new constitution and the subsequent dissolution of the CA meant no progress on CPA commitments for progressive restructuring of the state<sup>4</sup> (whether through a federal system or not). Although in and out of the political spotlight during the past year, there has not been any significant progress in implementing CPA commitments for transitional justice either.<sup>5</sup> Bills prepared to establish the Truth and Reconciliation Commission and the Commission of Enforced Disappearances were never passed before the dissolution of the CA. The government has sent an ordinance to the President to establish just one overarching commission, the terms of which do not meet international standards.<sup>6</sup> Still, no prosecution has taken place for any major human rights violations from the conflict period. In light of the stalled transitional justice process, no reparations system has been put in place for conflict victims.

Despite these blockages, it is important to recognize that Nepal stayed at peace during 2012. Despite the intensity of disruption leading up to the dissolution of the CA and deep political contention between different actors, there were no instances or indications of a return to armed conflict. Though some voices on all sides of the political debate espoused violence, these voices went largely unheeded. Equally, while much of the political conflict centred on identity cleavages, there was no outright communal violence. This is a major accomplishment for Nepal’s peace process particularly given that roughly half of all post-conflict countries relapse into conflict within a decade.

2013 is more uncertain however. Nepal goes into a new year operating under the aegis of a caretaker government and ceremonial president with no parliament, no locally elected bodies, no permanent constitutional framework and a swathe of vacancies in crucial constitutional posts. As noted by a visiting senior representative of an international organisation, “Nepal cannot defy gravity forever.”

## Identity polarization in the context of protracted political deadlock

Discussions surrounding the terms of Nepal’s federal state restructuring were severely contested in the lead-up to the May deadline for a new constitution. Disruptions, protests and *bandhs* occurred in many parts of the country, as did some clashes between the cadres of different identity-based and political groups (as well as between some of these groups and the security services). The strength and severity of these disruptions, particularly in the Far Western Region, took many actors by surprise.<sup>7</sup> Though the situation has remained largely ‘quiet’ since, the underling dynamics remain very strong and it is clear that the interests, positions and grievances related to identity and federal state restructuring have not gone away – they may have even become more entrenched amongst some actors and more polarized across wider society. These issues will remain fundamental points of contention and will resurface in reaction to any process that re-opens negotiation or approval of a new constitution. Any attempt to resurrect the CA or finalise a new constitution will necessarily have to tackle the deep rooted and intense fault lines in Nepal over this issue.

### **Principle fault lines over identity and federal state restructuring**

Some groups remain vehemently opposed to any form of federalism. However, the most significant fault line is between different groups that have fundamentally opposed objectives about the shape of, and terms for, any eventual federal restructuring. Some argue that federalism should be based upon geographic, economic

<sup>4</sup> Interim Constitution Article 33(d), but originating from CPA Preamble and Article 3.5.

<sup>5</sup> CPA Article 5.2.5.

<sup>6</sup> For more information, see: <http://ictj.org/sites/default/files/Briefing%20Note%20to%20the%20SR%20on%20TJ%2023%2008%202012.pdf>.

<sup>7</sup> For an overview of these disruptions, see RCHCO Field Bulletin Issue #41 – available at: <http://un.org.np/headlines/rchco-field-bulletin-issue-41>.

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sustainability or other 'scientific' criteria, while others demand that federalism should be based on ethnicity or other identity-based criteria. For instance, the Far Western Unity activist groups that emerged in 2011 demand a united Far Western Province in direct opposition to demands by Tharu and Madheshi communities that the Far Western *Tarai* districts of Kailali and Kanchanpur become part of their own proposed identity-based provinces. However, some 'regional-based' movements are perceived by some *Janajati* and Madheshi groups as less about regional issues and more about promoting the interests so-called 'high-caste' communities. More generally across all of Nepal, a number of Brahmin and Chhetri activist groups have also emerged.<sup>8</sup> While some are directly opposed to the federalist agenda and others strongly support some form of federalism or decentralization, almost all are opposed to ethnic federalism as demanded by *Janajati* groups. In the lead-up to May 2012, the Brahmin Samaj and Chhetri Samaj Nepal formed the 'National Integrity and Ethnic Goodwill Society'<sup>9</sup> as an alliance to mount protest actions and *bandhs* against so-called ethnic federalism.

Significant fault lines also exist between *Janajati* and other identity groups as many have opposing objectives and overlapping geographic claims, such as those between the Tharu, Madheshi, Limbu and Khambu/Rai<sup>10</sup> communities. The main areas of potential contestation are in the East (in Jhapa, Sunsari and Morang districts, which are claimed by Madheshis, Limbus and Tharuwan-Kochila), Mid-West (between competing Tharu and Madheshi claims) and in the Far West (between competing Tharu and Madheshi claims).

Underlying much of the tension over federalism and identity demands is a fundamental struggle about status, protection of rights and economic assets and access to resources. The terms of federal state restructuring are contested because the process poses both a threat and an opportunity to the social, economic, political and cultural status of many communities and groups; many groups will take action to maintain their existing status and access to resources, while others seek to increase their status and maximize their access to new resources. Some groups would argue that the debate goes beyond state restructuring and in essence is a debate about the *nature* of a future Nepal and whether previous structural discriminations and exclusions will be permitted to continue. In this sense, many commentators consider the debate about federalism to simply be a vehicle or catalyst of a much deeper and broader discussion.

### **Looking into 2013 and beyond**

Since May 2012, overt public protests and actions by identity groups on all sides have been relatively limited in comparison to the intensity that was seen in April and May. However, what on the surface appears to be a dramatic 'cooling off' since May should be seen as mainly a result of the dissolution of the CA and collapse of the formal constitution negotiation process; the principle focus of political actors since May has been how to find a mechanism to get the peace and constitution process back on track. For the most part, central political leaders have largely dropped negotiating the terms of federalism and are now concentrated on trying to establish a national unity government, as well agreeing to terms for holding new elections or reviving the CA as a way forward. Nevertheless, the underlying political conflicts remain entirely unresolved and actors remain steadfast in their positions. There continues to be significant potential for future disruption and conflict once the constitution and state restructuring re-appear on the political agenda for negotiation.

In this context, it is important for development partners to consider a number of dynamics:

- **Organisational development:** Many actors involved in the May disruptions have turned their focus towards establishing themselves as political parties, as well as expanding and strengthening their own internal cohesion and organizational capacities. For example, two new so-called '*Janajati* political parties' were formed. The Federal Socialist Party was launched in August 2012 backed by a number of identity-based groups (including NEFIN) and gained further momentum with the joining of senior CPN-UML leaders (including Ashok Rai, who is now the Chairman of the Federal Socialist Party). Likewise,

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<sup>8</sup> The Khas Chhetri Ekta Samaj and Chhetri Samaj Nepal are demanding Chhetri development and rights (all three groups are opposed to identity-based federalism) and the Hindu Suraska Bahini is demanding the re-instatement of Nepal as a Hindu nation.

<sup>9</sup> The is a national alliance of Chhetri Samaj Nepal, Brahmin Samaj, Thakuri Samaj, Nepal Dasnami Society, Dalit Janajagaran Committee and others demanding their indigenous status and protesting against so-called 'ethnic federalism'.

<sup>10</sup> Key Khambu groups include the Khambuwan State Council (affiliated with the Federal Democratic National Party), Khambuwan National Party and Khambuwan Mukti Morcha-United (which has claimed responsibility for a number of bombs in Itahari and Damak districts). Their demands for a separate Khambuwan state (including part of eastern hills and *Tarai* and parts of central hills and *Tarai*) overlap with Madheshi and Limbu claims.

other *Janajati* activists, including intellectuals such as Dr KB Bhattachan, formed the Social Democratic Plurinational Party. The Brahmin Samaj and Chhetri Samaj Nepal have also at times in 2012 aired the possibility of forming political parties to promote their positions, which is against identity-based federalism on the basis that it will destroy the social and political cohesion of Nepal. The Rastriya Swabhiman Party was launched on 8 January 2013 with the key demands that Nepal is reinstated as a Hindu state and that federal restructuring should be demarcated in line with the existing five development regions. Laxmi Prasad Shangraula, who is central vice president of Brahmin Samaj, is the Chairperson of the new party. Hindu parties, such as the Nepal Shiv Sena (a new faction of the Shiv Sena) have registered at the Election Commission, while 'national unity' parties such as the Himal Pahad Tarai Unity Party and the Shahi Nepali Rastravadi Party have also emerged.

- Increasing regional 'autonomy of action': Though regional actors and groups are still linked to the directives of leaders in Kathmandu and react to national political events, Kathmandu leaders cannot expect to fully 'control' what happens in the regions. As evidenced during May, a number of high-level mainstream political party leaders directly countered central party positions on federalism in order to maintain regional and identity power-bases or undermine their competitors. Relying upon regional power bases and possibly keeping in mind their future in a potentially federal Nepal, some first looked to consolidate their regional support rather than support their party's public position. District and local leaders of political parties also have their own perspectives and local interests regarding federalism that often contravene official party positions. Leaders of emerging identity-based groups are also less invested in centrally controlled mainstream political parties. Moreover, it should be recognised that regional events and actors may potentially have increasing impact on the national political scene. The May disruptions in the Far Western Region, for example, highlighted to Kathmandu leaders the risk of a national crisis if a decision on federalism was approved in the new constitution. In many ways, there is more and more of a 'double-feedback' interplay between the centre and periphery.
- Potentially decreasing relevance of mainstream political parties: As identity-based activist groups and parties (whether defined by ethnicity, caste or other basis) work to increase their power bases and influence, they are directly competing with the mainstream political parties for membership, influence and resources. In many cases (such as CPN-UML) *Janajati* leaders have left their original parties, or others continue to challenge party positions from within their parties. In many instances during the May 2012 disruptions, mainstream political parties were often sidelined from much of the dialogue on the ground and identity-based groups held the initiative. As above, many high level political leaders in May acted in contravention to their party policies in order to promote their interests.
- Escalating competition for resources: The profusion of new groups and political parties all require resources in order to build their organizational capacities; therefore, increasing numbers of donation seekers are creating pressure on limited numbers of funding sources and competition between groups is increasing. This competition is often seen at times of appointments to positions which control resources (such as School Management Committees, Forestry User Groups, etc.) or when there are tender processes for government work. For example, cadres from different factions of the UCPN-M clashed in Kathmandu in December 2012 over a government tender, whilst UCPN-M and CPN-M cadres clashed in Chitwan over control of party logistical resources in June 2012. Seeing that most new groups and opposition political parties do not have access to the same resources as those in government and do not enjoy easy access to funds, civil society, business, local government systems and development partners should expect to be increasingly targeted for funds. For example, in December 2012, the FNCCI publicly complained about donation drives among the business community by the CPN-M and in January 2013 by the UCPN-M. Competition over financial resources between groups could increase inter-group tensions and result in clashes. Once elections are announced and political parties need much more significant resources, these risks will become heightened.
- Increasing relevance and severity of localized grievances and conflicts: While national political processes remain deadlocked, this vacuum may result in more 'localised' conflicts coming to the fore or intensifying. For example, the Federation of National Haliya Liberation Societies has been conducting a consistent protest programme in the Far Western Region since August 2012 demanding the instigation

of the freed Haliya<sup>11</sup> rehabilitation programme that was agreed with government in 2008. A Badi Rights Struggle Committee has also been active in the region with similar demands that government commences the Badi rehabilitation programme agreed in 2007. During 2012, there were a number of significant caste-based discrimination incidents in the Mid Western and Far Western regions<sup>12</sup> and also instances of landless people in various parts of the country mobilizing to make their grievances known.<sup>13</sup> Linked to wider political contention, the politicization of key public services, such as hospitals and school management committees, also looks to be a continuing dynamic. Aggrieved so-called 'former Maoist combatants' and 'verified minors and late recruits' also have the potential to cause significant disruption. Though many of the conflicts may seem to be at the 'micro-level', in many ways such grievances and conflicts have much more immediate impact on the daily lives of Nepali people and the achievement of concrete development results. They also create opportunities for political actors to capture grievances, intensify local conflicts, create additional spaces for political competition and to mobilize the aggrieved for their own political ends.

Most importantly, all stakeholders need to be on guard to prevent the risk of creating enduring communal conflicts. Though mobilized on the basis of identity, most of the violence in May 2012 was perpetrated at the political level by activists engaged in political activities; there were no reported outbreaks of 'communal violence' *per se*. However, there are signs that protracted conflict over federalism and identity at the political level is beginning to permeate the social fabric in some areas. As an example, interlocutors have remarked that the management of many civil society, local governance and community-level systems is beginning to polarize along Pahadi and Tharu identity lines in the Far Western Region. Previously, contests over control of these mechanisms were between political parties at the local level. Now (particularly in the Far West) the contest seems to be more and more between communities and parties may become less relevant. For example, in November 2012, an election to a Junior Red Cross Circle in Kailali District resulted in a small clash between Tharus and Pahadis; the interventions of civil society actors and police prevented escalation. Likewise, the government decision in August 2012 to provide land to Tharus squatting on the site of the old airport in Kailali resulted in strong protests from United Far Western groups supporting Pahadi communities and, again, violence was averted only because of police intervention. During early 2012 in the Central Region, a Cabinet decision to relocate a government Internal Revenue Office (IRO) from Janakpur (Dhanusha District) to Bardibas (Mahottari District) sparked major local protests along Pahadi and Madheshi identity-lines. An alleged rape and murder of a woman from the Rajbanshi community in Biratnagar (Morang District in Eastern Region) during October also raised identity-based tensions. Protests on opposite sides of the case pitted activists from Khas Chhetri Ekta Samaj (Adibasi Janajati) and cadres associated with Youth Force against activists from NEFIN and *Janajati* organizations. Around 200 police were deployed to control encounters between the two sides.

In short, the signals are that identity has become a powerful vehicle for mobilizing grievance (which can also be taken advantage of) and there is potential for political confrontations along identity lines to transform into communal confrontations. These dynamics should be of particular concern during the prelude to elections. The expected release of the district-level Census results should be another upcoming moment of concern as identity groups contest results they perceive as undermining their objectives. The results may also add fuel to the fire regarding state restructuring as actors from all sides use the data to formulate provinces and units that fit with their contesting visions of federalism. Although Nepal has shown remarkable resilience to communal conflict in comparison to many of its regional neighbours, it is important for all stakeholders to remain vigilant for evidence of emerging communal tensions or instances of violence between 'opposing' communities.

## New national elections

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While revival of the erstwhile CA to adopt a new constitution is one option to overcome the current political deadlock, conducting fresh national elections appears to be the parties' favoured option at the outset of 2013. Elections are seen as taking contentious issues directly to the people and giving newly elected

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<sup>11</sup> The *Haliya* system is a banned exploitative system of agrarian bonded labour.

<sup>12</sup> For example, the threatening of *Dalit* families by non-*Dalits* in Surkhet District – see RCHCO November 2012 Monthly Update – available at: <http://un.org.np/headlines/nepal-monthly-updates-covering-period-1-30-november>.

<sup>13</sup> For example, see sections on landless in Surkhet, Rupandehi and Nawalparasi districts in the RCHCO December 2012 Monthly Update – available at: <http://un.org.np/headlines/nepal-monthly-updates-covering-period-1-31-december>.

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representatives a fresh mandate to re-start the political and constitutional process. However, under current conditions, there is significant potential for elections to be a flashpoint of contention, national disruption and violence, whether they are held in 2013 or later.

Though it may be too early to rule out elections by May 2013<sup>14</sup>, it is becoming an unlikely prospect. The Elections Commission has indicated that it requires at least 120 days to administratively and logistically to prepare, so the window for May elections is closing quickly. The next earliest window for elections would be October/November 2013 (though, Nepal has not had a November election since 1994). The next option after that would be April/May 2014.

Before elections can occur, a wide array of ‘bottlenecks’ will need to be resolved. Foremost is for parties to agree on the formation of a national unity government as the basis for holding elections. The President has indicated that he will only approve election ordinances and constitutional amendments if the parties come to a consensus and form a national unity government. Agreement on who leads such a government (as well as its composition) is the most problematic issue confronting the parties.

Secondly, mainstream political parties and leaders will need to have a genuine appetite for elections. This will be determined partly by whether they have adequate resources to contest elections. But it will also be determined by parties resolving intra-party leadership divisions.

Thirdly, negotiating the ‘terms and conditions’ of a new election will provide significant scope for contention and the parties will need to agree on a multitude of issues, including:

- an election date;
- whether the elections are for a parliament and/or CA;
- revision of the Interim Constitution to update the minimum voting age (amongst other legislative and procedural revisions required);
- possibly re-delineating constituent boundaries and numbers of seats;
- negotiation of a code of conduct;
- a ‘first past the post’ or ‘proportional representation’ system (or combination, with an agreed ratio); and
- appointment of new Election Commissioners.<sup>15</sup>

It is unlikely that an all-in-one package agreement resolving all of these issues will be forthcoming in the coming weeks. The release of the district-level 2011 Census results in the coming months may particularly provide a lightning rod for contention over the delineation of constituency boundaries, as the results will be used (or criticized) by identity-based actors to bolster claims for ensuring their representation in any future legislature. A number of observers believe that a re-delineation exercise may therefore not be attempted before the next election. Any agreement on all of the above issues would likely require a lengthy and iterative process, with decisions on these and other issues being heavily inter-dependent and there is no guarantee that such agreements will be accomplished in time to hold elections during 2013.

Beyond the above political decisions, implementation of any new national elections will need to overcome technical challenges that could provoke contention. The absence of the leadership and authority of sitting ECN Commissioners is likely to affect election preparations and any electoral reform processes, including new electoral legislation. Although significant gains have been made in re-constituting the voters list since successive voter registration campaigns started in 2010 and nearly 11 million people have been registered, perhaps as many as five million eligible Nepali voters have not yet registered—many of these are abroad working, but many are also in Nepal.<sup>16</sup> Although impetus for the public to register may increase once a timetable for elections has been agreed, voter registration still needs to overcome outstanding grievances over the requirement to possess a citizenship certificate to register for voting. This has been a particularly acute political grievance amongst Madheshis in the *Tarai* and could very well become a major cause of disruption as it has in the past (such as voter registration blockages in Banke, Kapilvastu, Nawalparasi, Rupandehi and Parsa districts during 2011). Pushing ahead with elections without resolving the issue of citizenship risks inciting protests by Madheshi political groups that feel they have been excluded from voter

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<sup>14</sup> It is generally necessary to hold election before the end of May in order to avoid having elections during the monsoon and agricultural season.

<sup>15</sup> The ECN is currently without commissioners following the retirement of incumbent commissioners in January 2013. The holding of elections without Commissioners could hamper the credibility of the process and would be against international standards.

<sup>16</sup> Though exact figures vary by source, this a rough estimation triangulated through briefings from electoral officials and civil society actors observing electoral processes. Currently, only about 50% of all potentially eligible voters in Kathmandu are registered for example.

registration and the electoral process.<sup>17</sup> In reaction, further protests could emerge from non-Madheshi citizens in *Tarai* districts who feel they were themselves denied opportunities to register as voters due to Madheshi obstruction.<sup>18</sup> Though citizenship is a complex political issue, it would still be opportune now (well in advance of any new elections) to put in place a 'citizenship certificate registration surge' alongside ongoing voter registration.

Assuming that all of the above issues are addressed and elections do proceed, it is reasonable to expect that the election itself will be highly contested with a moderate potential for violence.<sup>19</sup> Now that post-CPA euphoria has evaporated and there is widespread frustration with mainstream political actors for not delivering a new constitution, this election will perhaps be even more unpredictable than the last. As noted above, identity and federalism remain the principle contested issues of the constitution process; any new elections are bound to be a 'referendum' on federalism, thereby dragging all of the conflicts over identity and federalism into the election process. It is also apparent that the political space across the country is more open for competition when compared to the context of the 2008 elections, during which time it is widely considered that UCPN-M had the most dominant presence in rural and remote areas. Parties will compete in areas once dominated by other parties, creating greater opportunities for opposing cadres and youth wings to physically contest one another. The pre-election phase may also be characterized by intense intra-party confrontations between nominees and their supporters contesting for coveted party nominations. Many more scenarios for potential electoral violence are plausible in the current context. The Election Commission cannot alone be responsible for mitigating disruptions and preventing any potential violence; all key national authorities (Ministry of Home Affairs, Nepal Police, the justice system, NHRC and others) and political actors will need to work together closely and constructively well in advance of elections to put in place the necessary agreements, measures and resources.

The above considerations are offered to highlight some of the major risks and implications of carrying out elections in the current environment. The potential negative consequences of a prolonged delay before new elections are also significant. An extended delay may provide political actors the time and space to build greater trust and find solutions. However, it could alternatively harden positions and undermine chances to reach agreement. Giving actors greater time for organisational development and election preparation may just increase their capacities for a 'fight' when the elections come—alternatively, greater time may enable actors to become organized so they can compete fairly in democratic processes. It is likely that general agitation and frustration will increase if political deadlock drags on indeterminably with no elections in sight. As the process drags, more and more opportunity is created for radical actors to fill the political vacuum or take unconstitutional steps that could derail the overall peace process.

## Popular movements against impunity

As noted above, there has been virtually no movement on instituting the transitional justice process agreed in the CPA. While government programmes to provide interim relief to conflict-affected people<sup>20</sup> have been operating for several years (and are expanding beyond cash payments to also include psycho-social and other support), no truth, reconciliation or disappearances commissions have been established, no reparations system has been established and no prosecutions of grave human rights violations have been carried out. Hundreds of criminal cases have been withdrawn from the courts by the Cabinet decisions of successive governments on the grounds that they were of a political nature involving political party cadres during political movements or will be taken up once the transitional justice mechanisms are established. These cases include murder, arson, robbery and abduction. Many observers note that, despite their public positions, most mainstream political parties have a common interest to not pursue transitional justice measures with strong prosecution power as almost all parties are to some degree compromised by their own human rights record from the conflict period.

<sup>17</sup> The Karnali Struggle Committee has also voiced grievances over the lack of access to citizenship certificates for severely isolated Karnali communities.

<sup>18</sup> For more reference on grievances regarding citizenship, see UN RCHCO Field Bulletins 'Issue #15 – People without citizenship certificates in Central Tarai: the unregistered next generation' (<http://un.org.np/headlines/rchco-field-bulletin-issue-15>) and 'Issue #14 - Citizenship in Nepal: Historical evolution and the current situation in a typical Tarai District, Banke' (<http://un.org.np/headlines/rchco-field-bulletin-issue-14>).

<sup>19</sup> Reflecting concerns over potential electoral violence, the ECN commissioned an 'Electoral Violence and Mitigation Assessment' in late 2012.

<sup>20</sup> It is important to note that these do not include victims of torture or sexual violence.

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However, 2013 began with significant new popular protests on human rights and an upsurge in action against impunity. On 5 January 2013 police arrested four cadres of CPN-M and one cadre of UCPN-M as suspects in the killing of a journalist, Dekendra Raj Thapa, in Dailekh District during the armed conflict. One of the alleged perpetrators has reportedly confessed to his involvement in the crime of torturing and burying the journalist alive in a statement to the police.<sup>21</sup> The government and the Attorney General attempted to suspend the investigations on the justification that it could jeopardize the ongoing peace process, until the Supreme Court ordered it not to do so in the second week of January. The arrest of the alleged perpetrators was welcomed by the local population, national and international human rights community, parts of the media and opposition political parties. It has led to a series of protests and demonstrations that have significantly raised tensions locally, but also between the UCPN-M and the opposition parties that have locked-onto the issue as part of their protest campaign to unseat the government. The worst of these so far occurred in Dailekh District on 23 January 2013, with scores of political party activists injured and multiple tear gas and live rounds being fired by security services. In the aftermath, many media personnel have reportedly been threatened with violence and have 'fled' the district.<sup>22</sup> Importantly, this is the first instance of central-level political conflict resulting in violence at the district-level during the current deadlock (though there have also been clashes between opposition and UCPN-M cadres in Bhaktapur, Rautahat, Mahottari and Kavre districts).

Contention over impunity was further catalysed by the arrest on 3 January of a Nepal Army colonel by police in the United Kingdom upon a complaint filed by a torture victim from Nepal. While the arrest was welcomed by the human rights community as a major step against impunity, the Government and many major political parties denounced the arrest as encroaching upon national sovereignty. New activism against impunity has not been isolated to conflict-era issues; major protests for justice against gender based violence have also been launched outside the Prime Minister's residence. The 'Occupy Baluwatar' protest began when a female migrant worker was reportedly robbed and raped in the Tribhuvan International Airport in November 2012. Due to pressure from civil society, the government formed a high level 'violence against women' (VAW) monitoring committee to look into the cases of violence against women, including deaths of Saraswati Subedi (allegedly murdered, though requiring two postmortems to ascertain) and Shiva Hasmi (who was burnt to death by an unidentified man in Bardiya District), and the disappearance of Chhorimaya Maharjan among others.<sup>23</sup>

This wave of activism has catalysed public opinion and anger, as well as counter-reactions from political actors. The key question is where this momentum will go. Will it phase out in the face of political inaction and will the situation return to the status quo ante? Or is this the start of a tipping point that forces political actors into substantive movement on transitional justice and impunity? While movement towards improving the human rights situation in Nepal is an important CPA and peace-building objective, development actors also need to be mindful that there could be strong reactions by those implicated in violations and that the issues can be captured by political interests. In a worst case scenario, the response to such pressure may be to rush through transitional justice legislation for political expediency without adhering to international standards and without satisfying the need for genuine truth seeking and reconciliation, thereby potentially creating greater cleavages.

## Deterioration of democratic institutions and effective governance

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The most serious long-term risk of the ongoing political deadlock is a slow but persistent deterioration of democratic institutions and effective governance, at both the national and local levels.

At the national level, the basic checks and balances between the branches of a democratic state are deteriorating with the absence of a legislature and key constitutional posts vacant, including all Election Commissioners, the head of the Commission for the Investigation of Abuse of Authority and the Auditor General. The Supreme Court bench has 'shrunk' to only six judges (out of 22 posts) with a backlog of over 14,000 cases. If the current deadlock continues into the medium-term, more of the existing Supreme Court

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<sup>21</sup> In response, the UN issued a press release calling for greater efforts to protect journalists in Nepal – available at: <http://un.org.np/headlines/press-release-un-calls-greater-efforts-protect-journalists-nepal>.

<sup>22</sup> All media personnel that had 'fled' the district earlier returned on January 29.

<sup>23</sup> The UN in Nepal also issued a 'Statement on Violence Against Women and Girls in Nepal' – available at: <http://un.org.np/headlines/un-nepal-statement-violence-against-women-and-girls-nepal>.

## 2013: Potential risks to peace and development

positions will elapse without replacement, as will existing Commissioner posts at the National Human Rights Commission. The President has stated he will only sign emergency ordinances or those backed by a request from the parties with a broad-based consensus. There may, therefore, be challenges again in passing a full budget next fiscal year and there are diminished possibilities of passing any transitional justice or elections laws. In the most extreme, Nepal will effectively be left with a caretaker executive after the legislative and judicial branches of state have dissolved. At the local government level, any delay in approving next year's budget could halt implementation of District Development Plans and the delivery of public services, such as health, education and subsidized food delivery. No budget would also mean that political actors could no longer pressure government sources for funding, forcing political actors to further squeeze business and development actors for donations. Political disruptions of local governance could be expected as protests against the government and governing parties would intensify. It is likely that criminal groups and actors could take advantage of such a situation. The worst case scenario is that a protracted deadlock provokes unconstitutional interventions and the radicalization of political actors, or the general public, towards violence.

Such scenarios will not materialize immediately, but could result from a cumulative erosion over a protracted period. For Nepal's national and international development partners, though, such scenarios would entail severe development losses. Of course, these would entail significant missed opportunities. But they would also mean that previous development investments in capacity development will be lost as those capacities erode. Once eventual political resolutions are achieved, development partners would then have to re-invest to re-build those lost capacities. Development partners should formulate strategies to constructively engage government and political actors to prevent any further deterioration of governance and democratic institutions.

### Support to preventative measures

There is a high risk that Nepal's situation will not improve in the year to come and it appears very unlikely that political leaders will achieve a 'package' agreement that will enable immediate progress on the peace and constitution making process with so many issues on the table at once. It is increasingly evident that the implementation of Nepal's peace process will simply be more drawn out than originally expected. Even though a peace agreement has been signed, political confrontation is not over; Nepal's political leaders will need to negotiate and re-negotiate what it means to operationalise that agreement.

While development partners have little influence on higher-level political processes, development partners could consider **supporting prevention measures** in their development strategies for the coming years. Alongside investments towards the structural issues related to peace-building and the transformational development priorities of the CPA, development partners also need to promote strategies for protecting development gains and mitigating risks emanating from Nepal's transition. Although there have been challenging times under the previous six years of CPA implementation, political actors are now confronting some of the most difficult issues yet in the peace process. It is still not time for 'business as usual' for development partners.

Development partners also need to enhance their strategies to prevent their being implicated in ongoing political contention and conflicts (i.e. avoid 'doing harm'). This means greater investment in their transparency, accountability and **conflict sensitivity measures** and increased attention to promoting an **open operational space** for development through a greater field presence. Development partners might also look to support '**local capacities for peace**'—the people, institutions and practices that are already promoting dialogue, shared agendas, collaboration, violence prevention and other 'connectors'—that are best placed to prevent and mitigate crises and violence.

**Disclaimer:** This Field Bulletin was prepared following a review of existing situational reporting by the RCHCO and other actors, external consultations and drawing upon feedback from RCHCO field staff. The information presented in this Field Bulletin does not imply official endorsement or acceptance by the United Nations. Although the RCHCO aims to confirm all information independently, occasional factual inaccuracies can occur.

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