

### Corruption Perceptions Index 2007: 2.5 (131st out of 180 countries)

#### Conventions

ADB–OECD Anti-Corruption Action Plan for Asia-Pacific (endorsed November 2001)

UN Convention against Corruption (signed December 2003; not yet ratified)

UN Convention against Transnational Organized Crime (signed December 2002; not yet ratified)

### Legal and institutional changes

- An **interim parliament** of 330 MPs, created on 15 January 2007, included 209 members from the previous assembly, eighty-three Maoists and forty-eight representatives from CSOs, demonstrating the shift of power to the people. It has abandoned the principle of constitutional monarchy, a notion inscribed in the 1990 constitution. The interim parliament focused on creating an anti-corruption framework, passing an amendment to the Special Court Bill in June 2007 increasing the number of judges in order to speed up hearings on corruption charges (see *Global Corruption Report 2007*). The Constituent Assembly Election Bill, which was passed in August 2007, debars members of the royal government, wilful bank defaulters and people indicted on corruption charges from contesting election. New proposals, in the form of the Good Governance and Operations Bill, were introduced to make the government more transparent and accountable. Under a bill dealing with the right to information, approved on 18 July 2007, a

Nepali is entitled to receive information within fifteen days of applying to any government body or public enterprise.

- The interim parliament promulgated an **interim constitution** on 15 January 2007 that bestowed on citizens the rights to health and education, and legal entitlement to their enforcement.
- A **Commission to Investigate the Wrongdoings of the Royal Government** was formed on 5 May 2007 under a retired Supreme Court judge, K. J. Rayamajhi. It heard testimony from 200 ministers, senior civil servants, and army and police officers, including former vice-chairs and members of the royal Cabinet. Cases involving financial irregularities and corruption are being investigated by the statutorily mandated Commission for the Investigation of Abuse of Authority (CIAA). The commission's report charged the royal Council of Ministers with using excessive force in suppressing the popular uprising.<sup>1</sup>

<sup>1</sup> *Nepal News.com*, 4 August 2007.

## New hope, but impunity prevails

Nepal is passing through an uneasy transition as a result of a tripolar power struggle between the king, the political parties and Maoist rebels. Autocratic measures, such as the dissolution of parliament, the formation of a royal government and the exclusion of political parties from governance, resulted in a 'twelve-point' agreement between the seven official parties and the Maoists. Three weeks of popular protest, known as the April Movement, forced the king in 2006 to dismiss his government, reinstate parliament and invite the eight political groupings to form a new government.

Changes to the structure of power altered the institutional landscape. The adoption of an interim constitution set in motion radical changes, such as the suspension of the monarchy, the secularisation of the state and the election of a Constituent Assembly charged with framing a new constitution. These changes paved the way for the Maoists to join the government on 1 April 2007.

The interim constitution became effective on 15 January 2007 and will remain in force until the Constituent Assembly adopts a new constitution. Transparency and accountability are promised in a subsection dealing with 'directives of state policy'.<sup>2</sup> Judging from the past, however, it is difficult to conceive how the commitment to eliminate corruption will be realised. The 1990 constitution had similar provisions but was no more effective in improving political integrity.

At present the main transition actors – the political parties, the coalition government, parliament and civil society – have not accorded

priority to corruption control. The strong current of transitional politics has made leaders myopic to such issues, and the interim government's failure to punish a single corrupt person among the many identified by the common people, Special Court and the 2007 Rayamajhi inquiry has convinced many observers that the guilty will continue in power. Impunity is both the legacy and the rule of the game in Nepal. Short-term commissions are short-term ploys to assuage public anger.<sup>3</sup>

Ex-ministers, such as Chrinjibi Wagle and Govinda Raj Joshi, who both have cases pending in the courts, have nonetheless been inducted into the legislature as parliamentarians. Serial bank defaulters who wilfully fail to pay back loans face no punitive action, although the Amatya Group was forced to pay back more than US\$44 million.<sup>4</sup> Warrants to arrest embezzlers and fraudsters are not acted upon. Allegedly corrupt influential people are freed by the Special Court on flimsy pretexts. It is a situation in which the rule of law has been compromised and impunity prevails.

## Disappointment with the Special Court

The Special Court traditionally deals with corruption, and this is where the corruption watchdog, the Commission for the Investigation of Abuse of Authority, files its cases. The court has cleared several ministers accused of graft in the past year. For example, the CIAA filed a case against the former information minister, Jaya Prakash Gupta, in March 2002, accusing him of accumulating around US\$300,000. He was cleared of all charges on 11 June 2007.<sup>5</sup> Other senior politicians, similarly accused but later freed, include ex-ministers Khum Bahadur

<sup>2</sup> See 'Part 4, Responsibilities, Directive Principles and Policies of the State' of the *Interim Constitution of Nepal 2007* (Kathmandu: Parliament Secretariat, 2007).

<sup>3</sup> *NepalNews.com*, 4 August 2007.

<sup>4</sup> *Tribune Online* (India), 5 May 2007.

<sup>5</sup> *Himalayan Times* (Nepal), 13 June 2007.

Khadka, Govinda Raj Joshi and Rabindra Nath Sharma and former heads of police Motilal Bohara and Achyut Krishna Kharel.<sup>6</sup>

Though CIAA cases are certainly not perfect, its investigations are generally painstaking and founded on a decade of experience. The Special Court's recent acquittals have undercut the CIAA's efforts to punish corrupt officials, however, and transformed anti-corruption laws into a code of 'victor's justice'. The efficacy of these laws can be improved only if the Supreme Court of Nepal decides to intervene in Special Court rulings.

What is notable is that the Special Court has cleared accused ex-ministers who are all members of the political parties that participated in the April Movement in 2006 and who are now in government. With the exception of Rabindra Nath Sharma, all the aforementioned individuals are members of the interim parliament. Despite the Corruption Control Act 2002, which bars leaders involved in corruption from parliament, they have faced no restrictions so far.

Against this background of possible impunity, journalist Kiran Chapagain published a revealing article about Chief Justice Dilip Kumar Paudel in June 2007.<sup>7</sup> According to Chapagain, Chief Justice Paudel had met ex-ministers Rabindra Nath Sharma and Khum Bahadur Khadka, and other accused individuals at his home before the final hearing. Subash Nembang, the speaker of parliament, called this a violation of the national code of conduct and the Bangalore Principles, which govern judicial integrity.<sup>8</sup> Chief Justice

Paudel denied the meetings and, in any case, violating the code of conduct is more a moral than a criminal issue. Nonetheless, people look at the Special Court with dismay, and their faith in the judiciary has been shaken.

## Defaulters enjoy impunity

Two government-owned commercial banks, Nepal Bank and Rastriya Banijya Bank, came under scrutiny as the number of defaulters continued to grow and the prospects for loan recovery became bleaker. The banks hired foreign firms to manage their business, streamline their organisation and realise bad and non-performing loans. Losses for Rastriya Banijya Bank and Nepal Bank amount to a staggering US\$315 million and US\$154.8 million, respectively.<sup>9</sup> Most were due to the non-payment of loans and interest, mostly by big business houses.

Nepal Rastra Bank, the central bank of Nepal, issued a blacklist of fifty-three defaulters owing more than US\$770,000 each. Efforts to recover the loans have been fruitless.<sup>10</sup> The budget for fiscal year 2006/7 also included a special timeline to encourage defaulters to clear their debts. No action has been taken to recover the bad loans, however, and the blacklisted companies organised a strike protesting even against the measures that Nepal Rastra Bank has taken.<sup>11</sup>

Business houses have undoubtedly taken advantage of the limited liability provisions for companies regarding loans. There is a strong Nepali tradition of inflating project costs and the valuations of securities. Loans of extraordinary

<sup>6</sup> See [nepallaw.blogspot.com/2007\\_06\\_01\\_archive.html](http://nepallaw.blogspot.com/2007_06_01_archive.html); [www.blog.com.np/united-we-blog/2006/11/26/corrupts-get-clean-chit-in-nepal-even-in-democracy](http://www.blog.com.np/united-we-blog/2006/11/26/corrupts-get-clean-chit-in-nepal-even-in-democracy). See also Conflict Study Centre (CS Centre), 'Situation Update XVII: Nepal's Culture of Impunity' (Kathmandu: CS Centre, 2006).

<sup>7</sup> *Kathmandu Post* (Nepal), 21 June 2007.

<sup>8</sup> *Ibid.*

<sup>9</sup> TI Nepal, *Paradarshi* (newsletter), no. 6 (Kathmandu: TI Nepal, 2007).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

size are taken out with such tweaking, but businessmen rarely face legal and financial repercussions. The complexity of the situation is further deepened by the links between defaulters and politicians.

On the supply side, bank owners and loan evaluators systematically siphon off public money for their own benefit. In 2006 the then chair of the Cottage and Small Industries Development Bank was accused of embezzling US\$4.3 million from his own bank and extending loans on inadequate securities. To the police he was 'untraceable' for a year, although a number of leading politicians were spotted at his son's extravagant wedding. After his 'controversial' arrest and handover by the Young Communist League, an offshoot of the Nepal Maoists, charges were filed against some fifty people, including promoters of the bank, loan evaluators and officials in the district court.<sup>12</sup>

Bank defaults, financial frauds and other irregularities strangle economic growth, discouraging savings and entrepreneurialism. The small number of defaulters responsible for such large amounts of debt signals entrenched economic inequality.

### **Will Melamchi ever quench Kathmandu's thirst?**

The 4 million people of the Kathmandu Valley have suffered from acute water shortage for almost two decades. The valley's daily water need is around 250 million litres, while supply is less than a half of that amount. The Melamchi Drinking Water Project was conceived more than seventeen years ago to address this shortfall. The government attempted to divert water from the river Melamchi and bring it to Kathmandu through a 27-kilometre tunnel. This

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<sup>12</sup> *Nepal News.com*, 21 June 2007.

<sup>13</sup> *Indo Asian News Services* (India), 15 July 2006.

would have augmented the existing supply by 170 million litres per day. The project became bogged down by vested interests, however.

In the past, different phases of the project were funded by the World Bank and the ADB. The sheer size of the project, the related environmental issues and the parties generated considerable controversy. In spite of the vast amount of money already spent, there has been no tangible progress.

Controversy flared during the direct rule of King Gyanendra, when the former prime minister, Sher Bahadur Deuba, and his Cabinet colleague, Prakash Man Singh, were imprisoned for corruption in awarding a contract. The case was terminated when the Supreme Court designated as unconstitutional the agency responsible for the verdict, the Royal Commission for Corruption Control (see *Global Corruption Report 2006*).

The Melamchi project again dominated the media when the incumbent Maoist minister for physical planning, Hishia Yami, cancelled the contract awarded to UK company Severn Trent, in August 2007. (Under a US\$120 million loan, the outgoing government and the ADB had awarded the contract to Severn Trent.) Yami claimed that Severn Trent did not have a sufficiently strong international track record. After renewed negotiations the ADB agreed to re-advertise the project.<sup>13</sup>

Incoming governments appear to cancel previous commitments and award contracts to their supporters. It is still to be seen what the effects of the decision to cancel the contract will be, but it is likely to delay the Melamchi project further, by at least a year.

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