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# THE NEPAL DEMOCRACY STRATEGY

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FINAL REPORT

*Bureau for Asia and Private Enterprise  
Office of Development Resources  
Division of Technical Resources*

*Prepared for: USAID/Nepal  
and  
Bureau for Asia and Private Enterprise  
Division of Technical Resources*

*Prepared by: Harry Blair  
Raymond Gastil (Team leader)  
Michael Gill  
Purma Man Shakya  
Kapil Shrestha  
Richard Whitaker*

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## TABLE OF CONTENTS

	Page
Acknowledgements	
Executive Summary . . . . .	i
Outline of the Nepal Democracy Strategy . . . . .	iii
Chart: Nepal Democracy Strategy . . . . .	v
Preface . . . . .	vi
I. Political History . . . . .	1
I. The Context: Prospects for Democratic Development . . . . .	5
III. The Strategic Objective . . . . .	8
IV. The Program Concept . . . . .	10
V. Program Suggestions by Subobjectives . . . . .	12
A. Voice . . . . .	12
The NGO Sector . . . . .	12
- General	
- Labor	
The Media Sector . . . . .	15
- General	
- Public Opinion Polling	
- English Language/Adult Training	
B. Choice . . . . .	19
C. Governance . . . . .	21
- National Level	
- Local Level	
D. Redress . . . . .	26

E.	Accountability . . . . .	30
VI.	Economic Development . . . . .	32
	Appendix 1 -- Improving Local Governance (Harry Blair) . . . . .	33
	Appendix 2 -- Enhancing Village Level Dispute Resolution Capacity (Michael Gill) . . . . .	49
	Appendix 3 -- Persons Consulted . . . . .	52
	Appendix 4 -- Bibliography . . . . .	56

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## EXECUTIVE SUMMARY

Nepal's democratic opening has led to the introduction of the institutions of a multiparty state. Nepal's political history and the political culture it has left as a legacy, however, suggest that exploiting this opening to create a sustainable democratic system will require creative and steady effort on the part of Nepal's leaders and citizens as well as its international supporters.

In this context, the primary strategic objective of the Nepal Democracy Strategy is to maintain the democratic opening provided by the creation of democratic institutions during 1990-1991. Subobjectives to support this goal, especially over the longer term are characterized as:

- Voice: Improvement in the number and quality of channels for popular influence on government, and improvement in the channels for free dissemination of information and opinion;
- Choice: Free, fair, and meaningful elections;
- Governance: Effective, open, and democratic administration;
- Redress: Full protection for individual and group rights; and
- Accountability: Government unencumbered by pervasive corruption.

These interrelated subobjectives must be pursued on both national and local levels.

To serve its strategic objectives, the Nepal Democracy Strategy is conceived as a mission-wide demonstration program. Only a consistent commitment at all levels to Nepal's emerging democratic institutions will effectively sustain them over both the short- and long-term. As a demonstration program in the uncharted area of democratic development assistance, the program should be both exploratory and comprehensive.

In order to successfully develop and monitor a program of this kind, and to take full advantage of the opportunities inherent in the situation, it is suggested that a Nepal Democracy Strategy Analytical Unit be established. This unit could serve not only the interests of Nepal, but also those of USAID's Bureau for Asia and Private Enterprise (APRE) democratic development effort as a whole.

Under each subobjective, needs have been specified and current responses briefly noted. Where the needs have not been addressed, or not addressed adequately,

recommendations have been made for new or evolving activities that should be supported or developed.

Under **Voice**, the principal recommendations are for continued support of the NGO sector, support for journalism training, and explorations of ways in which broadcasting services might be diversified and removed from direct government control. It is also suggested that the development of a public opinion survey capability be explored.

Under **Choice**, it is recommended that the work of the Election Commission be supported not only for the May 1991 elections, but for subsequent elections below the national level. Consideration should also be given to supporting the extension of Nepal's largely urban-based political party organizations into the country as a whole -- but only if this can be done in a manner that will be perceived as strictly nonpartisan.

Under **Governance** on the national level, it is recommended that extensive support be given to strengthening the parliamentary secretariat to serve what will be a new and untried legislative system. Under **Governance** on the local level, several recommendations have been developed for strengthening local political and other institutional structures. It is recommended that consideration be given to ways in which the reconstitution of local government could be assisted, traditional self-governmental institutions be better linked to governmental structures at higher levels, the tax base at local levels be increased, and local managerial capacity enhanced.

Under **Redress**, it is recommended that efforts to strengthen the national judiciary continue to be supported or expanded, and that village/hamlet level dispute resolution be supported in a manner that makes possible the acceptance of local decisions by the more formal legal system. Continued support to legal aid is recommended, as is improvement in legal training.

Under **Accountability**, it was felt that the activities recommended under **Voice** and **Redress** would be likely to be more effective than those directly targeted on this area. Since problems of corruption were seen as primarily cultural and structural, it was also noted that economic initiative such as the new Economic Liberalization Project would make a major contribution.

Ultimately, democratic development is a part of the overall development process. Unless Nepal makes sure and steady progress in meeting the desires and needs of the people for education and a higher standard of living, the democratic experiment is likely to be short-lived.

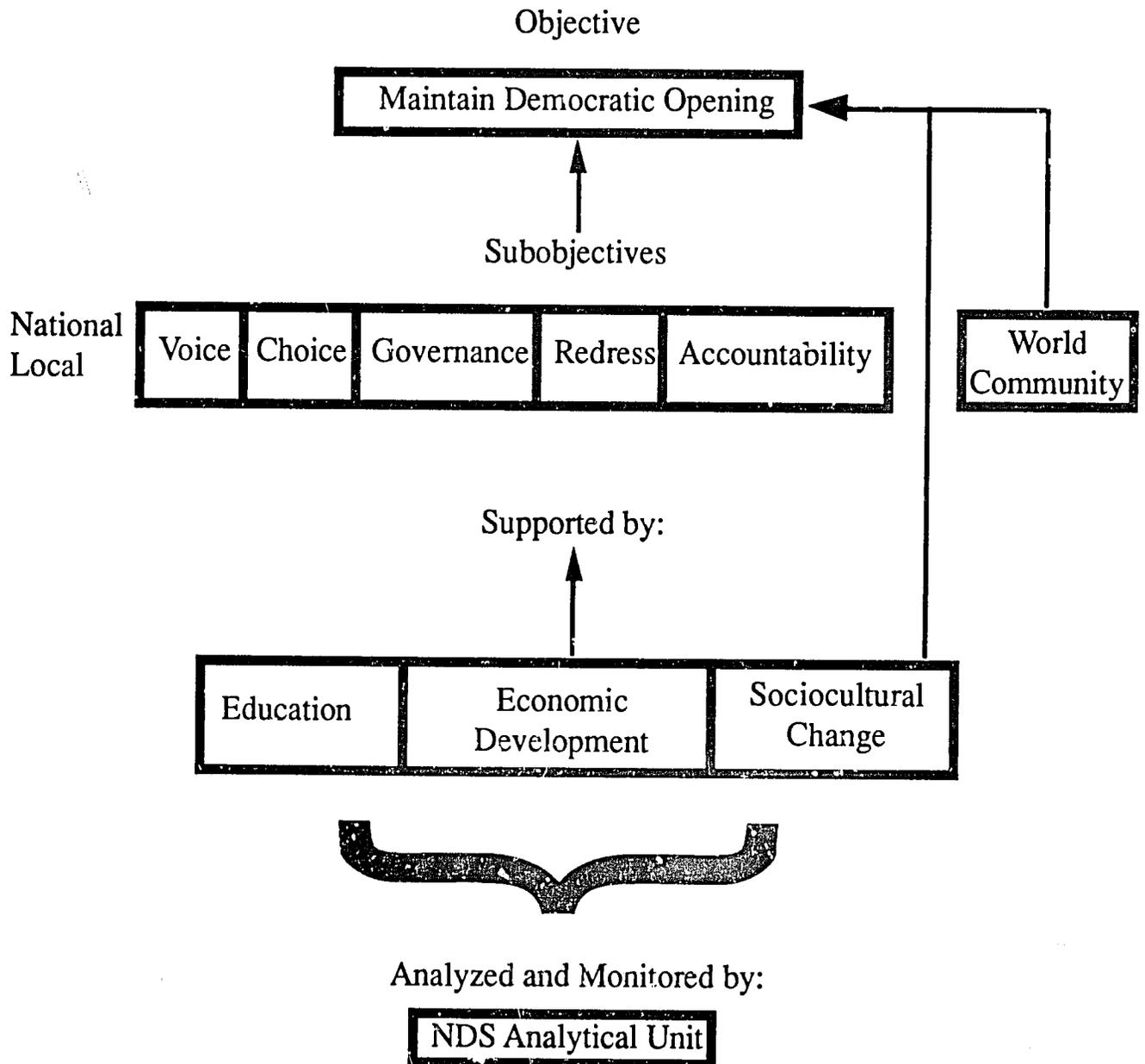
OUTLINE OF THE NEPAL DEMOCRACY STRATEGY

Program Objective: Maintain Democratic Opening

<u>Subobjective</u>	<u>Need</u>	<u>Response</u>	<u>Recommendations</u>
A. VOICE			
Influence channels on government	Alternative centers of power	NGO funding	NGO institutional strengthening/apex organizations  Labor-management relations
Information and opinion	Alternative sources of information	Journalism training	Expanded support of press  Pluralistic broadcast media development  Public opinion polling  English language training
B. CHOICE	Free, meaningful elections	Election commission assistance, observer mission	Election Commission Support  NGO civic education
C. GOVERNANCE			Political party development
National level	Parliamentary development	Preliminary assistance to parliament	Comprehensive parliamentary assist. (Secretariat)

<u>Objectives</u>	<u>Need</u>	<u>Response</u>	<u>Recommendations</u>
Local level	Effective local government structure	--	Assistance to local government reconstitution
	Popular control of local institutions	Irrigation management project	Enhanced local pluralism support
	Local resource mobilization	Rapti & irrigation management project	Enhanced local res. mobilization
	Effective local government operation	--	Local government management capacity strengthening
D. REDRESS	Effective, fair legal system	Judicial services training	Continued training support
		Law school assistance	Expanded assistance
		Human rights NGO's	Village level dispute resolution
		Preliminary legal aid assistance	HR NGOs support
E. ACCOUNTABILITY	Efficient, honest government	Structural change, Economic liberalization project	Continued assistance
		Investigative Commission	Public interest litigation
			Project implementation
			Commission support (Voice and Redress)

# NEPAL DEMOCRACY STRATEGY (NDS)



## PREFACE

Recognizing the relationship between economic and democratic development, A.I.D. Administrator Ronald Roskens in December 1990 announced A.I.D.'s Democracy Initiative. The Initiative contains four elements for promoting democracy: strengthening democratic institutions; integrating democracy into the A.I.D. program; rewarding progress in democratization; and establishing rapid-response mechanisms.

Adhering to the conceptual framework of the A.I.D. Democracy Initiative and targeting opportunities in Asia, the Bureau for Asia and Private Enterprise (APRE) recently approved the APRE Asia Democracy Program (ADP) Strategy. With the purpose of promoting sustainable democratic societies, the ADP strategy has five program elements:

- Voice: the development of: (a) channels for popular influence on government; and (b) channels for the free dissemination of information and opinion.
- Choice: free, fair and meaningful elections.
- Governance: effective, democratic and open administration.
- Redress: full protection for individual and group rights.
- Accountability: government without corruption.

Working within the strategic framework of the ADP Strategy, the Nepal Democracy Strategy identifies key program elements for both promoting and sustaining progress toward democracy. This strategy is presented as a USG-wide effort, which we believe is essential to the overall success of the program. Individual efforts by USAID, USIS, the Embassy, and other USG units must be coordinated within a comprehensive program framework in order to achieve progress.

While Nepal's movement toward democracy presents both USAID/Nepal and the USG with a substantial opportunity, the difficulty of the task at hand must not be underestimated. Nepal's progress toward the establishment of a democratic society that assures its people the right to direct their own destiny both economically and politically may be slow and difficult. It is possible that there will be periods of stagnation, minimal progress, and even reversal. This is demonstrated only too clearly by transitions to democracy in other developing countries throughout the world.

Nonetheless, the opportunity to assist the Nepali people in their dream of establishing a society that guarantees civil rights and political liberties, promotes ethnic understanding and tolerance, and places government in the hands of the governed is a challenge that A.I.D. and the USG cannot ignore. The stakes are too high and the Nepali people deserve no less.

## I. POLITICAL HISTORY

As the oldest independent state in South Asia, Nepal's location between the world's two most populous nations -- China to its north and India to its south -- has played a major part in the Kingdom's periods of self-imposed isolation from the world. The first Shah King's advice to his heirs in the 1780s was that Nepal must always steer a middle path between the two giant powers to the north and south. King Prithvi Narayan Shah called Nepal "a yam caught between two giant stones." The King's advice defines the parameters of Nepal's foreign policy to this day.

One of the most remote countries in the world, the evolution of modern Nepal dates back to the mid-18th century when Prithvi Narayan Shah unified the country and established the Shah Dynasty that has lasted to this day, with King Birendra as the current hereditary monarch. Effective rule by the Shah kings was interrupted, however, from 1846 until 1951. During this period, the hereditary Rana Prime Ministers, who had seized power from the Shah Kings (in the manner of the Shoguns of Japan) shut the kingdom off from the rest of the world to avoid the onslaught of colonialism.

In 1951 a popular revolution with support from newly-independent India overthrew the Ranas, restored the power of the monarchy and began a 10-year experiment with multiparty democracy. That experiment lasted until 1960 when King Mahendra, father of the present king, overthrew the elected government headed by the Nepali Congress Party (NCP). In place of parliamentary democracy, King Mahendra devised the partyless panchayat system, under which political parties were banned, all organizations had to be registered with the government and the palace both ruled and reigned -- a situation that continued until April 1990.

The 1962 constitution promulgated by the late King Mahendra defined Nepal as a Hindu Kingdom and was purportedly based on Nepal's indigenous institutions (notably the panchayat system). Direct elections were held at the lowest level, the village panchayats, but members of each level then chose members of the panchayat at the next higher level, so that members of the National Panchayat were twice removed from the electorate.

King Mahendra had created a powerful system of governance that, despite its faults, lasted for almost 30 years. Many politicians left democratic parties to join the partyless panchayat camp. At the same time, however, the outlawed opposition parties came to be gradually allowed to operate as long as they maintained a low profile.

In 1972, at 27 years of age, King Birendra succeeded to the throne after the death of his father, King Mahendra. During the middle and late 1970s, opposition to the partyless panchayat system increased and in 1980, following widespread student demonstrations, a national referendum was held. Voters were asked: "Should the

existing panchayat system be retained and gradually reformed or should it be replaced by a multiparty system of government?" By 55% to 45%, the status quo was maintained. Subsequently, the King promulgated a third amendment to the 1962 constitution that allowed for the direct election of 112 of the 140 members of the National Panchayat, with 28 appointed by the King. Partylessness, however, was maintained: all National Panchayat (NP) candidates competed as individuals.

The first direct election of the NP was held in May 1981. Despite boycotts by the Nepali Congress and other outlawed parties, the election proceedings were relatively calm, and a turnout of over 60% was reported. Five years later, in May 1986, Nepal's second nationwide elections were held. Despite protests against the panchayat system, terrorist bombings in 1985, allegations of intimidation and some vote stealing, the process was generally well run and over 60% of the eligible voters participated. However, dissatisfaction with the exclusion of political parties continued to mount.

In 1987 local elections were held throughout the country. This time, rather than boycotting the elections, members of the outlawed parties participated, ostensibly as individuals. With their party affiliations widely known, however, members of the Nepali Congress and various Communist parties were elected to office in significant numbers.

In 1988, despite a 1965 agreement to purchase arms exclusively from India, the U.S. or Britain, Nepal decided to buy arms from China. This led to deteriorating relations with India and the breaking off of trade and transit negotiations in March 1989. As a result, India blockaded Nepal, and 13 of 15 border crossings were closed. The government was forced to rely on emergency airlifts from Bangladesh and China for fuel and medicines. By the beginning of 1990, the examples of democratization throughout Eastern Europe added to the pressures for change caused by Nepal's economic difficulties, coalescing into a broad based popular movement that came to be known as the Movement for the Restoration of Democracy (MRD). The reestablishment of multiparty democracy and free elections were the MRD's major rallying cries.

Although the MRD enjoyed nationwide support, the organized movement was largely confined to Kathmandu, and it was there, beginning with a massive counter demonstration to the official Democracy Day celebrations on February 18th, that the movement gathered strength. The demonstrations were supported by an unprecedented coalition of the Nepali Congress Party and seven Communist factions linked together in the United Left Front.

The government initially attempted to intimidate and punish those taking part in the MRD. Repressive measures included the preventive detention of hundreds of intellectuals and political activists and brutal treatment of demonstrators. The government also used press precensorship and the seizure of published newspapers to stifle public

debate, arresting at least 40 journalists nationwide. Repression, however, failed to halt the popular movement.

On April 6, the King partially yielded to public pressure by dismissing the panchayat government of Prime Minister Man Mohan Singh Shrestha. He appointed an interim government headed by a former prime minister known as a moderate supporter of the panchayat system, but this offering was immediately rejected by the MRD. Later that day, the army opened fire on a demonstration of more than 200,000 people as it approached the royal palace, resulting in an unknown number of deaths and hundreds of casualties.

On April 8, King Birendra dismissed the panchayat government and invited the MRD to form an interim government. The new administration abolished the panchayat system and its associated organizations and set two primary goals for itself -- the writing and promulgation of a new constitution and the holding of elections to the national legislature before the 1991 rainy season. The first of these was met with the promulgation of the new constitution on November 9, 1990. The second goal was fulfilled on May 12, 1991, when nationwide parliamentary elections were held.

The new constitution provides that sovereignty resides in the people, guarantees fundamental human rights, establishes the independence of the judiciary, and defines Nepal as a "multiethnic, multilingual, democratic, independent, indivisible, sovereign Hindu and constitutional monarchical kingdom." It also explicitly forbids the passage of any law banning or in any way restricting political parties, thus enshrining multiparty democracy, a fundamental demand of the MRD.

The national legislature provided for in the new constitution is bicameral, with a directly-elected 205-seat lower House of Representatives and an indirectly-elected and appointed 60-seat upper house to be known as the National Council. With provisions stating that the Prime Minister will be the leader of the political party commanding a majority in the lower house, and that other cabinet members will be appointed by the King on the recommendation of the Prime Minister, it is clear that, as in other Westminster-inspired models, political power is intended to reside in the popularly-elected House of Representatives.

# NEPAL'S MODERN POLITICAL HISTORY

<u>POLITICAL SYSTEM</u>	<u>OUTPUTS</u>	<u>OUTSIDE INPUTS</u>
House of Gorkha rules and reigns  1770-1846	<ul style="list-style-type: none"> <li>• Creation of modern Nepal</li> <li>• Unification and Centralization</li> <li>• Pervasive instability</li> <li>• Violent elite infighting</li> </ul>	<ul style="list-style-type: none"> <li>• None: isolated</li> <li>• Britain attempts to conquer</li> </ul>
Rana Family Rule: House of Gorkha reigns  1846-1950	<ul style="list-style-type: none"> <li>• Violent repression</li> <li>• Centralization and admin. reform continue</li> <li>• Beginning of a modern middle class</li> <li>• Increasing acquaintance with British and Indian political ideas</li> </ul>	<ul style="list-style-type: none"> <li>• Truce with British India</li> <li>• Independent, but increasingly fits Indian system as princely state</li> </ul>
Democratic Opening I Parliamentary government  1950-1960	<ul style="list-style-type: none"> <li>• Continual political struggle: within Congress party and between Congress and monarch</li> <li>• Power shift to middle class and new elites threaten traditional elite and monarchical power</li> </ul>	<ul style="list-style-type: none"> <li>• Independent India moves against princely states; undermines Ranas</li> <li>• India supports democratic change</li> </ul>
Gorkha Rule Reestablished Rule augmented by panchayat system  1960-1990	<ul style="list-style-type: none"> <li>• Power shifts back to traditional elites and monarch</li> <li>• Further centralization and administrative rationalization</li> <li>• Further growth of modern middle class with modern ideas</li> <li>• Beginning of popular political activity and consciousness</li> <li>• Ineffective government</li> </ul>	<ul style="list-style-type: none"> <li>• India supports stability</li> <li>• World supports stability and economic development</li> <li>• India and world support econ. and democratic change</li> </ul>
Democratic Opening II Parliamentary multi-party government  1990-	<ul style="list-style-type: none"> <li>• Power shifts to modern middle class and new elites</li> <li>• Substantial broadening of political activity and consciousness</li> <li>• ?</li> </ul>	

## II. THE CONTEXT: PROSPECTS FOR DEMOCRATIC DEVELOPMENT

In developing the Nepal Democracy Strategy, it is important to be conscious of the negative and positive factors that will affect the effort in the long term. These may be grouped under the following eight headings: historical experience, political culture, ethnic and religious cleavages, the legitimacy of the state's borders, institutional factors, class structure, attitudinal factors and support for Nepal's democracy by other states.

### A. Historical Experience

Modern political, legal, and social institutions have only very recently been experienced by the Nepalese people. Until the 1950s, the people had known little beyond arbitrary authoritarian rule exercised through a centralized feudal and bureaucratic structure. Democratic institutions were not recognized, even on the local level. However, many Nepalese had long been acquainted with the British-style national institutions of India. As early as the 1940s, attempts were made to introduce some of these institutions into the country. As a result, by the time of the success of the democratic movement in 1990, Nepal had years of experience with the operation of political parties, although it was necessarily covert, since they had been outlawed since 1960. Under the panchayat system, it has also successfully held several national and local elections.

### B. Political Culture

Although most Nepalese now appear committed to modern democracy, the extent to which they will remain committed is yet to be demonstrated. Experience with other transitions to democracy in the developing world suggests that a firm commitment will be achieved only after many years of democratic government. Until this time has passed, economic or other crises may well lead to further interruptions of democratic growth.

Three antidemocratic aspects of the political culture should be given particular attention. First is a strong emphasis on the inequality of hierarchical relationships, whether those of father-son, teacher-student, official-villager, or higher caste-lower caste. Second is the related tendency of those who have achieved power to adopt a "winner-take-all" attitude. In the transition period before the May elections, events have forced a spirit of compromise on the main parties, but there are disquieting hints that this spirit may not be maintained if any one party emerges with a clear majority. Third is a tendency to be intolerant of those whose political positions and views differ. All three tendencies can be addressed through educational programs, but will change fundamentally only after years of living in a more democratic environment.

Finally, centuries of governmental exploitation and inattention to the problems of the bulk of the citizenry has led to a low level of expectations of government. Citizens have come to expect governments and officials to distribute favors and punishments, but not to be fundamentally interested in their welfare.

C. Ethnic and Religious Cleavages

Although Nepal has many religious groups, Hindus form the great majority. Because of this and the syncretizing intermingling of the country's many religious traditions, religious differences do not seem to be a major problem for the new democracy. Ethnic relationships, however, show signs of increasing in intensity, a trend found in nearly all modernizing societies, and one that unfortunately is sometimes heightened by the operation of new democratic systems.

D. Legitimacy of the State's Borders

Nepal has long been a single political unit, a unit generally accepted by elites throughout the country. However, the extremely difficult topography has caused large numbers of Nepalese to relate exclusively to their local areas, or to develop their primary trading and other relationships with cross-border areas. This is now particularly true of the Terai region on the country's southern edge. Whether the fissiparous tendencies inherent in the situation become a serious danger remains to be seen.

E. Institutional Factors

The governmental institutions that must bear the weight of the democratic transition are not highly developed or effective. Experience with the panchayat institutions of the recent past provides a weak basis on which to build new institutions. Favoritism and connections rather than effectiveness were the standards at all levels, and it is unrealistic to expect that this situation will be quickly remedied by the use of new labels. The public's low interest in performance (especially in rural areas) reflects the political culture in which little is expected of government.

The major political parties or coalitions seem relatively well organized and effective, considering the short periods in which they have been allowed to operate openly at the national level. The development of minority parties in the last year suggests that political parties may be a major means of organizing group interests that have until now been largely ignored.

Outside government and politics, institutional development has also been weak. There are few private institutions of great stature; national-level nongovernmental organizations exist primarily through the support of foreign donors. Nonetheless, some primary-level rural institutions for communal self-help persist in spite of

centuries in which hamlet/village autonomy and local initiatives have been discouraged. In addition, the recent proliferation of labor unions in the developed sector, often under party labels, suggests a growing interest in the general population in the organization of interest groups.

#### F. Class Structure

Caste and class play a vitally important role in Nepalese social and political life. Traditionally, leaders have come almost exclusively from the Brahmin and Chhetri castes, or the Newar ethnic group. Today, the great majority of political leaders, no matter what their party affiliation come from these groups. This concentration of power extends throughout the country, the bureaucracy, and the army. One cannot expect Nepalis outside these groups to become deeply committed to the new system, no matter how formally democratic, as long as it excludes them.

Historically, the growth of a strong, self-assertive modern middle class has been associated with democratic development. It was the growth of this class in Nepal that led eventually to the overthrowing of the panchayat system. However, Nepal's small new middle class is largely formed from the same caste and ethnic groups as previous ruling groups. The experience of other countries suggests that once it attains power, a small middle class may be unwilling to extend full democracy to the population as a whole.

#### G. Attitudinal Factors

In the short-term, popular attitudes toward the new democratic system remain relatively positive. The election period in May 1991 is likely to generate additional short-term support as long as it does not lead to new violence. However, the inherited patterns of ineffective government will not be quickly overcome no matter which party is successful. Without satisfactory performance, the hopes that have been raised in 1990-91 could turn to bitterness and widespread support for any change that might offer yet another "way out."

#### H. Support for Democracy by Other States

Nepal is fortunate to begin its new democratic experiment with the good wishes and the unusual attention of much of the world. Its new system is modeled in many ways on India's, and seems to be fully supported by India. Among major or neighboring states, only China is likely to be troubled by the creation of a new outpost of democracy, but it is unlikely that it will oppose the transition. Continued international support is essential for the success of democracy in Nepal.

### III. STRATEGIC OBJECTIVE

In light of the difficulties suggested by the foregoing review of the context, the primary strategic objective of the Nepal Democracy Strategy should be maintaining the democratic opening provided by the creation of transitional democratic institutions during 1990-1991. Every year these institutions can be maintained will provide experience essential to the eventual achievement of sustainable democracy. If interruptions of the democratic system occur, they will be shorter and less intense the longer the democratic opening has been maintained.

Subobjectives have been selected to both directly support achievement of the primary objective and to build a stronger context for democracy over the long term. Those subobjectives, which correspond to the five program elements of the APRE Bureau's ADP Strategy are: (1) **Voice** -- Improvement in the number and quality of channels for popular influence on government, and improvement in the channels for the free dissemination of information and opinion; (2) **Choice** -- Free, fair and meaningful elections; (3) **Governance** -- Effective, open, and democratic administration; (4) **Redress** -- Full protection for individual and group rights; and (5) -- **Accountability**: Government unencumbered by pervasive corruption.

In working to improve these five aspects of democratic structure through educational and other efforts, the Nepal Democracy Strategy will help develop the democratic political culture necessary to sustain a fully functioning democratic system.

These aspects of the APRE strategic approach are necessarily interrelated. Effective channels for popular influence include, on the one hand, free and independent media and, on the other, a network of interest groups and other organizations that can mediate between individuals or groups and governmental structures. Neither of these channels of popular influence function effectively unless individual human rights are fully guaranteed. In a modern democracy, individuals and groups express their opinions or advance their causes without fear of false imprisonment or assassination. Elections will not be meaningful unless these guarantees are present, and government cannot be open and democratic without them. The guarantees cannot exist without an effective fair, and accessible judicial system.

A democratic political culture places individual rights to free expression above group interests and opposes arbitrary state or private violence against citizens. From the democratic cultural perspective, politics is considered to be a means to adjust individual and group interests rather than a means for one or a few individuals to achieve dominance over others. In a culturally democratic polity, government responds in a balanced manner to group interests through an open and democratic process under law.

A major and cross-cutting subobjective of Nepal Democracy Strategy will be the democratization of political and developmental institutions at the village/hamlet level. In the long-term, democracy that does not become effective at this level cannot survive in Nepal.

#### IV. THE PROGRAM CONCEPT

The Nepal Democracy Strategy should be a USG mission-wide, demonstration program. Only a consistent commitment at all levels to the emerging democratic institutions will effectively support them over both the short- and long-term.

Nepal offers an excellent opportunity to demonstrate what can be done to strengthen democracy in the developing world. Its democratic system is still in a state of formation. The constitution has been written, and multiparty elections have brought in a newly legitimated government. But many institutions, particularly at local and regional levels, have still to be created. The ways in which the new system will actually function at both national and local levels remains unknown.

In developing its democracy program, USAID/Nepal finds a public and government unusually receptive to outside help in creating and maintaining democracy. As a result, the American Mission in Nepal feels confident that it will be able, within broad constraints, to develop an effective program fully attuned to Nepali interests and sensibilities.

The Nepal Democracy Strategy should be a demonstration program in that it should be developed as a model for missions that find themselves in a less favorable environment for comprehensive and experimental initiatives. As a demonstration program, it should be both comprehensive and experimental. It should be comprehensive in that projects should be considered that will meet the full range of requirements for sustainable democracy. It should be experimental in that initiatives should be undertaken in many areas where the eventual payoffs are unknown. Only experience will demonstrate the priorities that should be given to many activities.

This demonstration program would require the development of a Nepal Democracy Strategy Analytical Unit. Responsible to USAID/Nepal, this unit could function within the mission itself, or operate through a PVO/NGO or an American research institution able to place someone in Nepal for extended periods. The unit would carefully track projects under the democracy program and would go beyond normal project implementation by considering project augmentation or phasing out. The analytical unit would also be responsible for developing, with the help of Nepali study groups and the growing body of worldwide experience with democracy programs, new activities that seem warranted in light of in-country experience. The unit could also play a major role in the testing and development of indicators of progress for democratic development.

The analytical unit is proposed for several reasons. Whatever is recommended in this report, or by those that come after it, is necessarily tentative and poorly tested. As far as we know, no country has ever successfully been helped to move from the stage of

incipient democracy to full-fledged democracy by the programs generally proposed under the APRE Bureau's ADP. We do not know the limits of what is feasible for a USG Mission attentive to the sensibilities of a developing nation to undertake. We do not know which programs will appear over the next few years to have been cost-effective and which not. We do not know what new and possibly superior projects might be developed by U.S.-Nepali study teams, were they to have the opportunity to work together over time. With this in mind, we have in the body of this report recommended consideration of activities in several sensitive areas, such as strengthening political parties or developing a more robust and pluralistic broadcasting system. However, pursuing and developing such recommendations may not be possible without the proposed unit, however it may be formed.

## V. PROGRAM SUGGESTIONS BY SUBOBJECTIVES

### A. VOICE

#### **The Nongovernmental Organizations (NGO) Sector: The Development and Strengthening of Channels for popular influence on Government**

**NEED:** In a democracy, governmental power is balanced and informed by the existence of alternative centers of social, economic and political power. In the broadest sense, nongovernmental organizations (NGOs) may be defined to include citizen groups of any sort -- from mothers' clubs and women's groups to professional, trade and advocacy organizations.

Whatever the area of interest, NGOs play a vital role in democratic societies by serving to check the unbridled power of government and giving interested citizens a more direct role in the political system. Sustainable democracy requires a thick network of associational structures, so that power cannot fall into the hands of the few.

Public advocacy NGOs include "good government," educational, consumer and environmental groups. Constituent advocacy NGOs include professional, worker, farmer, business and caste groups. At different times, both types of advocacy groups may play either an advocacy role or a service role. In the former role, advocacy groups channel the concerns of a specific constituency up into government forums. In the latter role, NGOs offer services such as training or technical assistance down to their constituencies. (While important to USAID/Nepal's overall program, the service role of NGOs is not a primary concern of this strategy document.)

Nepal's previous constitution severely restricted the open existence of NGOs of all kinds. The constitution prohibited the formation of any organization "motivated by party politics." To fill this void it set up "class organizations" to represent the interests of women, peasants, youth, elders, labor and ex-servicemen.

In addition to these constitutional restrictions, the Association Registration Act and the Social Services National Coordination Council (SSNCC) Act established additional barriers. The end result was that it was virtually impossible for many NGOs to come into open existence, particularly if they questioned the panchayat system.

Under the new constitution, the barriers to freedom of association have been removed. The Association Registration Act apparently still provides that no NGO may be formed without the approval of the Chief District Officer (CDO) (the administrative official in charge of law and order at the district level), but CDOs are reportedly no longer denying registration to NGOs arbitrarily. Likewise, the SSNCC

has been moribund since the revolutionary changes of April 1990 and may be disbanded.

Despite the fact that hundreds of indigenous NGOs have sprung up in the last year, by and large, they remain institutionally weak. Student organizations and labor organizations tend to be allied with one of the political parties. Even those NGOs established to serve the interests of the poor and disadvantaged seldom give decision-making or leadership roles to members of these groups. Many group interests are left entirely unarticulated, especially outside Kathmandu.

Although many new NGOs may prove ineffective (or possibly counterproductive), fade from existence or be consolidated with other similar efforts, the sector as a whole will continue to provide a valuable "accountability and responsiveness" check on the government.

**RESPONSE:** As USAID/Nepal began its initiative in democratic pluralism in 1990, it greatly increased its contacts with the new set of local NGOs. New "democracy advocacy NGOs" -- such as the Nepal Law Society, LEADERS, SEARCH, and the National Women's Association -- presented the mission with opportunities to further the democratization process. Many activities were "time sensitive" with regard to the writing of the new constitution and the May 1990 parliamentary elections. The individual activities ultimately selected for mission funding appropriately represented key interventions that had potential for substantial impact.

**RECOMMENDATIONS:**

1. USAID/Nepal should maximize both its program coverage and its resource base by providing institutional development support to the NGO sector. The implementation mechanism for carrying out this activity would be a grant to an umbrella PVO/NGO that would provide services in project design and implementation, program management, accounting, fundraising, proposal development and other essential administrative functions. There could also be a "special issues training component" that would bring Nepali NGO leaders in contact with experts in corresponding fields, particularly within the region. This umbrella PVO/NGO would also serve to carry out functions that the mission has previously deemed critical to the democracy program but has managed separately. A good example is the two-day working conference by the local NGO SEARCH called "Identifying the Role of NGOs in the Changed Political Context," which brought together over 100 key representatives and was partially funded by USAID/Nepal.

2. USAID/Nepal should support the development of various NGO sectoral apex organizations. Divided along sectoral lines such as agriculture, forestry/environment, literacy and women's rights, these apex organizations would serve to coordinate and channel the operations of local NGOs. However, great care should be exercised to

avoid the pitfalls of the past. Any apex organization for NGOs should be formed by and for the NGOs themselves, in order to meet their technical assistance, lobbying, training and coordination needs.

3. Another possible area of strengthening NGOs is encouraging the establishment of national or regional level Nepali foundations modeled along the lines, for example, of the Ford Foundation. USAID/Nepal should take steps to gradually reduce the dependency relationship between Nepali NGOs and foreign donors and could use its growing contacts between the private sector and USAID to explore such possibilities.

(See also the discussion of local level governance below and Appendix 1)

## **LABOR**

**NEED:** Labor and professional associations are a critical component of the NGO sector. These associations make possible the integration of the interests of the productive sector into the political and economic system. In the Nepali context, however, this issue has taken on both added significance and complexity. With the recent Nepalese political liberalization, small, inexperienced trade unions have proliferated. Beyond Kathmandu, however, there has been little development of rural or peasant associations. While labor union development, in and of itself, contributes to greater "associational" life, it can also disrupt the economy. In some cases, labor disputes have resulted in work stoppages that might have been avoided if labor-management relations had been more effective. With a fragile economy adjusting to a changing political environment, the possible consequences to Nepal's economic productivity and development are serious.

**RESPONSE:** The institutional development of trade unions -- as a way of promoting greater pluralism and participation in society -- has been an important component of the APRE Bureau's Asia Democracy Program. USAID/Nepal has studied the growth of this sector and identified the institutional weakness of the trade unions (which the young leaders readily acknowledge) as a problem. Acting on this information, the mission has already initiated several activities to address this issue. Also, a labor-focused International Visitors (IV) Program with USIS has been planned for 1991.

## **RECOMMENDATION:**

1. Efforts to promote improved labor-management relations and to avoid unwanted politicization or fragmentation should be continued and expanded.

## **The Media Sector: The Development and Strengthening of Channels for the Free Dissemination of Information and Opinion.**

**NEED:** Without a variety of uncensored news and opinion sources regularly available to general and elite publics, the meaningful functioning of a democratic system is impossible. Although Nepal now has uncensored print media, they remain clearly inadequate. The largest circulation newspapers in English and Nepali are owned by the government and directly under the control of the Communications Ministry. Outside Kathmandu a press capable of informing the local public about local issues is practically nonexistent.

Because of high illiteracy rates, however, the lack of sufficient and varied sources of information and opinion through broadcasting outlets is a still more serious deficiency in the present media system. At present, all broadcasting is under the direct control of the Communications Ministry, and all broadcasts originate in Kathmandu. This means that only one purpose can be served at a time by radio and television and this purpose is defined by the government in power. Alternative international and Indian broadcasting sources greatly improve the situation in regard to international news and opinion, but do little to ameliorate the situation in regard to internal issues. Both print and broadcast media suffer from a lack of reportorial skill and initiative.

**RESPONSE:** The new constitution and changes in government press policy have gone a long way toward removing many of the external constraints faced by the press. Since April 8, 1990, the quality and quantity of coverage in both the official and unofficial press had undergone marked improvement. Nonetheless, much remains to be done to create and strengthen an independent, pluralistic and free press in Nepal.

American support for strengthening the press is currently being given in the form of aid by The Asia Foundation (TAF) to the Nepal Press Institute (NPI) and to the Nepal Forum of Environmental Journalists, and through a variety of USIS activities. TAF's assistance to NPI helps support publication of training materials and long-term training for working and prospective print journalists. This assistance is also used to fund a full-time program officer, quarterly forums on the role of the press in a democratic society, for fellowships for reporting on rural development issues and a pilot project to establish a regional newspaper in Tansen, a market town and district center west of Kathmandu.

### **RECOMMENDATIONS:**

1. Continued and expanded support for the NPI should be provided. In particular, USAID/Nepal should carefully review the progress and success of NPI's efforts to establish district-level newspapers, with an eye to the possibility of increasing the number of such papers. In addition, USIS should expand the programs that provide Nepali journalists exposure to American journalists and the U.S. press.

2. USAID/Nepal should support development of more independent and pluralistic broadcast media. Changing the present monopoly of broadcasting outlets will be very difficult. In developing its institutions, Nepal often closely follows the example of India, and India's broadcasting system is government owned and controlled -- although much more regionally diversified. Issues of national sovereignty, national cohesion, and potential cost also concern many Nepalis. This suggests that whatever is done be developed carefully and in consultation with interested Nepalis.

With this in mind we suggest that explorations of one or more of the following possibilities be undertaken:

- (a) The establishment of a small, demonstration FM station at the national University to provide a low-cost alternative outlet for the Kathmandu Valley.
- (b) The reorganization of Radio Nepal and Nepal TV as a government corporation on the British (BBC) model. While such a corporation would remain governmental, it would operate more independently of the government than is now the case.
- (c) The establishment of small "development stations" that would broadcast local news in local languages or simple Nepali and provide location-specific educational programming not available through a single national service.
- (d) The encouragement, both through changes in current regulations and the awareness of the entrepreneurial community, of inexpensive profit-making radio stations to serve limited areas of the country. For this purpose, visits to countries with extensive and varied broadcast media, such as the Philippines, are suggested.

### **PUBLIC OPINION POLLING**

**NEED:** In a modern democracy, a major means for governments to know the will of the people and for the people to come to see themselves as important to policy makers is the public opinion poll or survey. The creation and publication of opinion polls both encourages people to form opinions on public issues and makes politicians more attentive to the wishes of their constituents. As the capability develops, significant civic educational benefits accrue from the process and the publicity attendant on the publication of results. As an added benefit, opinion surveys provide a basis for judging the political culture of the country and the progress of its democratization. In this way, an opinion survey capability can serve the democratic development effort from both American and Nepali perspectives.

**RESPONSE:** At present, there are no scientific surveys providing insight into the opinions of the general public on public issues. However, focus-group surveys have been held on a limited basis, and scientific surveys have been carried out on issues such as family planning and agricultural practices. Market research capabilities exist, and some Nepali intellectuals are aware of the developed opinion survey capacity in India.

**RECOMMENDATION:**

The physical isolation of most Nepalis and their pervasive distrust of outside investigators will initially inhibit the development of survey capabilities outside urbanized areas. Although such obstacles can be identified, work should be undertaken with one or more groups that appear capable of developing a credible opinion survey capability over the long term. Beginning in urban centers, the capability should be extended to district towns. Those charged with development of the capability should devise sampling techniques and questionnaires able to provide much greater insight into the thinking of both urban and rural publics than is available today.

**ENGLISH LANGUAGE STUDY/ADULT LITERACY PROGRAMS**

**NEED:** One aspect of "Voice" is the development of channels for the free dissemination of information and opinion. This includes not only the development of the media, but also the ability of Nepalis to take advantage of the wealth of written and spoken information in South Asia that is available only in the English language. In addition, Nepal's economic development will depend in large part on its integration into the world economic system. This integration will in turn depend on the development of a substantial middle class that has mastered one of the languages of world trade, among which English is foremost.

**RESPONSE:** Until recently, USIS operated the English Language Institute (ELI) in Kathmandu that offered instruction in English to hundreds of students. However, ELI has been closed, partly in response to student disturbances. USIS is now offering English instruction to smaller numbers of Nepali students preparing for the TOEFL exam. In addition, a small number of Peace Corps Volunteers teach English in Nepali primary and secondary schools.

Recognizing the importance of improving Nepal's literacy rate for the country's overall development, USAID/Nepal has supported several literacy activities over the years, working with both the government's literacy program (run from the Ministry of Education) and through, World Education, Inc. (WEI), with local NGOs that have adult literacy programs. The ministry's adult literacy program is currently being implemented in selected areas. WEI efforts have included the printing and delivery of literacy primers, the implementation of a field evaluation program and development of

a trainers' training manual. USAID/Nepal has recently awarded a new, five-year grant to WEI to continue its efforts to improve the literacy program.

**RECOMMENDATIONS:**

1. Consideration should be given to once again expanding the teaching of English in Nepal, either through USIS, the Peace Corps or both.
2. USAID should continue its support for general adult literacy.

## B. CHOICE

**NEED:** Politically, democracy is a system in which the people act as the supreme legislator or elect representatives to legislate for them. The elections must occur at prescribed times, as defined in the constitution. Democratic elections must be preceded by opportunities to organize around support for, or opposition to, particular laws, policies, or ruling groups. They must be carried out in a fair and free manner, and the people must have an adequate understanding of both the election process and the issues at stake. Finally, those elected must be able to govern the country as servants of the electors if the elections are to be judged fully democratic.

Nepal has demonstrated in several recent instances that it can successfully manage elections. However, it has had only one previous multiparty election (thirty years ago), and registration and other procedures in recent elections have been open to criticism. The extent to which the average Nepali voter understands the system sufficiently well to vote his or her own interest is unclear. The choices afforded by the election must be meaningful in the voter's terms. Aside from poor communications and widespread illiteracy, this suspected deficiency is primarily due to the inability of the political parties to organize effectively in terms of programs rather than personalities. This inability casts doubt on the subsequent relationship of election outcomes and government policies.

The national parliamentary elections held on May 12, 1991 have been widely acclaimed as free, fair, and well-run. There were occasional outbreaks of violence, but these were quickly controlled by vigilant security forces. While there were a number of instances of vote buying, there is little evidence that the outcome was directly affected in any constituency. There is broad agreement that voter lists need to be updated, voters need to provide formal identification (e.g. a voter registration card) at future elections, and provisions are needed for absentee voting.

The importance of assuring free and fair elections cannot be overestimated. It would be tragic if some future technical incompetence by the Election Commission, either by itself or in conjunction with other facets of the Nepalese government and military structure charged with ensuring the efficiency and effectiveness of the electoral process, were to result in an election was not generally accepted by Nepalis as being free and fair.

**RESPONSE:** Recognizing the importance of the May 1991 nationwide parliamentary elections, a team of consultants from the International Foundation for Electoral Assistance (IFES) was engaged to conduct a pre-election survey in Nepal. Accompanying the team was a representative of the National Democratic Institute for International Affairs (NDI). The team was charged with: analyzing the current Nepalese political scene; consulting with local officials and leaders; reaching conclusions about preparations for Nepal's planned national election; and identifying

areas for possible pre-election technical assistance or observer participation in the elections. IFES fielded a six member team of U.S. observers that participated in a larger, 65 member, international observer group. This group affirmed that elections were free and fair.

A number of civic education activities are under way. While further assistance in this area through IFES is under active consideration, the USAID/Nepal funded 30-district voter education campaign by the local NGO SEARCH and the Election Commission's development of a 30-minute film to be shown in movie houses throughout the country are nearing completion. These "time sensitive" activities that targeted the May 1991 elections represent contributions that are likely to have lasting effects when coupled with ongoing civic education activities that explain the workings of democracy, the rights and privileges the system incorporates, and the commitment to democracy required of its citizens.

#### **RECOMMENDATIONS:**

1. Although the immediate importance of providing assistance to the Election Commission was lessened following the May 1991 elections, ongoing institutional development assistance to the Election Commission should be employed. Local elections will further the democratization process, and as a result the Election Commission will continue to be an important democratic institution for Nepal.
2. Ongoing NGO civic education programs that focus on democracy and its institutional structures should be supported.
3. Investigate the possibility of developing political party training and policy development programs open to all democratically-oriented parties (or all parties receiving more than a specified percentage of the vote). However, USAID/Nepal must move into this area with full realization of Nepali sensitivities and a demonstrable willingness to work with all democratically-oriented groups. It is suggested that mission activity in this area will be particularly necessary if other non-Nepali organizations outside USAID/Nepal begin to support, or are perceived to support, the development of particular political parties.

## C. GOVERNANCE

### NATIONAL LEVEL GOVERNANCE

**NEED:** Democracy requires the expression of the desires of the people through effective and transparent administrative and legislative structures. Either legislative or executive incapacity makes the functioning of a democratic system impossible. Nepal begins its democratic transition with a developed cadre of administrators, but little or no experience of how a legislature functions effectively and autonomously. Experiments in parliamentary democracy such as Nepal's can only be successful where the members of parliament enjoy both the constitutional power to deliberate and legislate and the human and material resources to effectively exercise that authority.

The previous parliament, the Rastriya Panchayat, exercised little or no independence and was constitutionally forbidden to discuss "anything against the principles underlying the Partyless Democratic Panchayat system." Obviously, the needs of the new Parliament elected in May will be vastly different and greater than those of the old body, and the Parliamentary Secretariat created to serve the now abolished Rastriya Panchayat must undergo correspondingly great changes in order to serve them.

**RESPONSE:** An initiative to strengthen the Parliamentary Secretariat is under consideration by USAID/Nepal. It includes components for MP orientation and education, Secretariat staff training and development, floor and committee work, legislative drafting, legislative research and documentation, library operations and services, a legislative information management system and modernization of the Secretariat's printing and publishing section. This work is to be closely coordinated with other potential donors to the Secretariat (the British Council, DANIDA, and FINNIDA).

### **RECOMMENDATION:**

The proposal for assisting the Secretariat should be carefully considered. Further activities should be considered for improving the links between parliamentarians and their constituents, for example, through improvements in communications facilities. We believe that early and generous American support for Parliament could be an extremely effective way to further both Nepali and American interests.

## **LOCAL LEVEL GOVERNANCE**

(For a fuller examination of the ideas in this section, see Appendix 1).

**NEED:** At least four distinct needs in the area of local government can be identified:

- (a) Establishing an effective local government structure under the new constitution;
- (b) Bringing local institutions under the control of those whom they are supposed to serve;
- (c) Raising and allocating limited resources most effectively to local areas; and
- (d) Making local government work more effectively.

**RESPONSE:** Most if not all of the ongoing projects in USAID/Nepal's Agriculture and Rural Development (ARD) portfolio relate either directly or indirectly to democratic decentralization. The best example is the Rapti Zone Project, with its focus on user groups and local programming, planning, resource mobilization, budgeting and project management. Although the Irrigation Management Project and Agroenterprise and Technology Systems Project are national rather than zonal/regional in scope, both are directed in large part toward local level initiatives (irrigation user groups and agro-oriented producer groups respectively). In addition, the Private Rural Electrification Project is aimed at small scale (and thus local level) hydro-power generation.

Several other ARD projects contain an indirect local component. The Institute of Forestry and Forestry Development Projects will help direct both training and regulation toward a greater focus on community forestry activities, and Winrock's human resources development work could provide high quality policy analyses focusing on enhancing the abilities of local communities to manage their own enterprises.

In addition to USAID/Nepal's activities (and those of other international donor organizations), there has been considerable indigenous response to these needs at the local level, in the form of institutions for managing common property resources (CPR). Here Nepal possesses a impressive legacy that in many ways can serve as a model for other countries. Its thousands of irrigation user groups (many of which date back a century and more) have combined group managerial skills with technical capacity to solve CPR problems in innovative ways. User groups concentrating on forestry, trail maintenance and suspension bridges have also shown an effective capacity to manage local resources. USAID/Nepal funded activities have drawn on this Nepalese capacity to great advantage in several of the ARD programs in the

mission's portfolio, as is evident in the paragraphs describing the mission activities just above.

### **RECOMMENDATIONS:**

1. Encourage the reconstitution of local government institutions. The precise form of local government in Nepal is not spelled out in its new constitution. Accordingly, much thought will have to be given to the many issues that will be involved in creating a new arrangement. USAID/Nepal should consider offering advice and guidance on formulating this new local government structure in Nepal.

2. Support the further development of local pluralism. If local government is to be responsive, a pluralistic political universe will be needed, just as at the national level. Specifically, USAID should consider efforts to:

- (a) Encourage the formation of new local NGOs. The Rapti Project, for example, could fund a district-level group organizer whose major responsibility would be to assist and advise in the formation of such new groups.
- (b) Facilitate development of local/national NGO linkages. As discussed under "Voice" above, an NGO apex organization could act as an advocate for its constituents vis-a-vis the central government.
- (c) Assist self-initiated technical assistance for local NGOs. In many cases, a given local NGO knows what kind of TA it needs, but lacks the knowledge and financial resources to obtain it.
- (d) Sponsor a series of user group case studies that could be used in training and extension activities.

3. Enhance local resource mobilization. More democracy in Nepal will surely lead to more demand for government performance at all levels. This in turn will place growing strains on resources available for public purposes. In such an atmosphere, it is unlikely that grants from central to local level government will grow; if anything they may well begin to shrink at the same time as demands on local institutions are increasing. Effort will therefore have to be devoted to mobilizing resources at the local level, along three dimensions: taxes, public income or revenue generation, and contributions in kind. It is recommended that USAID support efforts to:

- (a) Increase the tax base. Both rates and variety of local taxes can be enhanced considerably.

- (b) Raise shared tax income. The major shared levy is the land tax, which has remained essentially unchanged over the 1980s and thus has eroded greatly with inflation. A fourfold increase would do no more than put the land tax back at its 1980 levels in real terms, and that rate was not excessive to begin with.
- (c) Experiment with matching schemes. More activities could be undertaken involving community labor contributions, and policy experiments could be conducted in which sliding matching scales would reward efforts involving women in development, for example.
- (d) Develop income generating structures. Contracts, leases, franchises and rentals are all ways in which localities can produce public income.
- (e) Sponsor a comparative analysis of local resource mobilization systems now in place in rural Nepal. Some districts and villages have been considerably more successful than others in raising local income, and valuable lessons can be drawn from their experience that could be generalized and passed on to other localities.

4. Build local government management capacity. In addition to having to raise more revenue, local governments will need to improve their performance in order to meet the public demands that democracy will place upon them. Local officials will have to become better managers. USAID should consider efforts to:

- (a) Support the Local Development Training Institute in providing practical training and conduct applied research.
- (b) Sponsor training for local development officers, who will be shouldering the major share of the developmental burden at district level.
- (c) Build a monitoring system that maintains the delicate equilibrium between excessive central control (as with the previous regime) and undue autonomy (leading to local elite dominance and corruption).

5. Develop local civic competence. Citizens should become competent at exercising both political and legal rights. Political competence will develop over time, it is hoped, through experience with an open local government and a pluralistic universe at the local level. Developing legal competence is taken up below under the fourth subobjective of Redress.

**PITFALLS IN DECENTRALIZATION:** Strategies for decentralization hold forth much promise, but the approach is not risk-free. A number of dangers lurk on the way to success.

First, decentralization can merely mask top-down central control. Rigid monitoring, review, standard-setting, audit, etc., can torpedo any decentralization initiative, no matter how well-meaning. Second, decentralization can become a recipe for funneling patronage (especially the foreign-funded variety) to local elites in exchange for their support of the regime at the center. A third danger is that authoritarian control and patronage can combine to subvert local institutions. This is essentially what happened in Nepal previous to the 1990 Democracy Movement. Finally, even when the problems of authoritarian control and patronage/elite control are overcome, local governments are just as eager for secrecy as central governments, and for equally suspect motives. Transparency is crucial.

#### D. REDRESS

**NEED:** A modern democracy's legal system, including both the judiciary and the bar, provides the pillars upon which the rule of law rests. It sustains internationally recognized individual and group rights. In criminal cases, it protects the accused against torture and the excessive use of force, as well as excessive delays in making known charges against the accused and bringing them to trial. Likewise, in non criminal cases, a modern democracy's legal system ensures access to redress, and impartial decisions, delivered with minimal delay.

In the common law tradition, a tradition to which Nepal partially subscribes, the work of the judicial system is sustained by the separation of judicial, legislative and executive power that prevents interference with judicial processes. It is also sustained by an attentive public, investigative reporters and human rights, or "watch" organizations able to mobilize public opinion (both national and international) against abuses as they occur.

Nepal's judicial corps numbers about 200. In addition, hundreds of administrative officials and village leaders exercise limited judicial authority, sometimes statutory and sometimes traditional. Under panchayat rule, the independence and effectiveness of the judiciary was compromised by constitutional provisions allowing court decisions to be reviewed by higher, nonjudicial authorities and by laws and practices such as the convening of special tribunals and permitting Chief District Officers to exercise judicial authority. In addition, constraints such as poor training and low pay for judges, the absence of supplies and secretarial support, crushing backlogs and seemingly interminable delays in issuing decisions, contributed to making a judiciary that was weak and lacking in respect.

Establishing the independence of the judiciary was one of the rallying points during the debates over the nature of the new constitution. Under the new document, judicial independence has been considerably strengthened. Nevertheless, to make judicial effectiveness and independence a reality, much work will need to be done in areas such as judicial training, both short and long-term.

**RESPONSE:** TAF is just beginning implementation of a project to strengthen the judiciary, using USAID Human Rights [116(e)] funds. Working within the Ministry of Law and Justice, the stated purpose of the Judicial Services Training Center (JSTC) project is to build a stronger judiciary by improving the pre-service and in-service training offered to the nation's judges and other HMG officials, such as forestry officers, whose jobs include the exercise of judicial functions.

## **RECOMMENDATIONS:**

1. The JSTC project should be continued, and, depending on its performance, possibly expanded. Another aspect of the JSTC that may need to be considered is making it independent of the Ministry of Law and Justice, under whose aegis it now operates.
2. With regard to long-term training, USAID/Nepal should consider supporting the university law faculty's efforts to establish a Master of Laws (LLM) program in addition to the existing Intermediate and Bachelors programs. Ultimately, the best way to strengthen the judiciary is to improve the standard of graduates in the pool upon which it draws and the establishment of an LLM program would do that.
3. The mission should consider assisting, separately or in conjunction with other organizations, efforts being made by several law libraries in Nepal, including those at the Law Campus, the Supreme Court and at the Law Reform Commission, to upgrade their library holdings.

## **VILLAGE LEVEL JUDICIAL FUNCTIONS:**

**NEED:** Under the panchayat system, the village panchayat exercised a broad range of judicial functions. Although the jurisdiction of village governments in the new democracy has yet to be spelled out, it is likely that it will resemble the former provisions.

Research has shown that, in addition to deciding cases over which they have statutory jurisdiction, village judicial councils regularly decide -- or mediate and then settle -- disputes in areas over which they may not have jurisdiction, such as land title cases. Moreover, for a variety of reasons, the vast majority of disputes among villagers are resolved at the village or hamlet level.

Village level dispute resolution is a rational response to the formal legal system's problems of delay and expense and should be encouraged. Research also suggests, however, that there are a number of areas in which the village judicial function could be strengthened, particularly at the interface between that system and the formal court system. For example, although the former Village Panchayat Act contained a procedure by which village judicial councils could reach written settlement agreements that could then be "certified" by the district courts, it appears that few villagers know of, or avail themselves of, this procedure, thus reducing the potential effectiveness of village settlements as an alternative to going to district court.

**RESPONSE:** None known.

### **RECOMMENDATION:**

Consideration should be given to a pilot project providing judicial training of village level officials. Ideally, this activity could promote respect for the rule of law at the most local levels, strengthen the traditional system, alleviate court backlogs and assist the decentralization process. A necessary first step in any such program would be further detailed study of village level dispute resolution. Great care needs to be exercised in this area so that the existing mechanism is in fact enhanced, rather than weakened. (For a more detailed discussion of this recommendation, see Appendix 2)

### **PROTECTION OF CIVIL LIBERTIES**

**NEED:** Nepal's basic human rights record has been mixed. Since the opening to multiparty democracy, a number of groups concerned with human rights abuses, such as arbitrary arrest, torture and suppression of free speech, have begun to operate openly, both in Kathmandu and in some district centers. Despite claims of non-partisanship, however, the two major groups are perceived to be associated with different bands of the political spectrum.

### **RECOMMENDATION:**

USAID could play a role in developing human rights groups by providing assistance for institutional and staff development. However, any USAID/Nepal assistance must be given careful consideration to ensure that the aided group's political sympathies, whatever they might be, are not determining the cases and causes they are taking up. This may become clearer in the months following national and local elections.

### **ACCESS OF THE POOR TO THE LEGAL SYSTEM**

**NEED:** In Nepal, as in many other countries, the cost of legal services is too high for a large percentage of the citizenry. In districts outside Kathmandu, there are few lawyers and their services are too expensive for the average villager to afford.

**RESPONSE:** For several years, USAID/Nepal, with 116 (e) human rights funding, has supported the Women's Legal Services Project (WLSP), a program that gives free legal representation to indigent women and conducts a legal literacy campaign designed to make women aware of their legal rights. The WLSP also gets major support from the Ford Foundation and a smaller grant from TAF for staff training. Until 1990, the WLSP was Nepal's only functioning legal aid program. Recently, however, the Norwegian Bar Association has begun supporting a legal aid program for all indigent citizens. Also, the Law Campus of Tribhuvan University has recently begun a clinical legal aid program with support from The Asia Foundation that allows law students to take on cases of indigent clients under the supervision of experienced lawyers.

## **RECOMMENDATIONS:**

1. Continue support for the WLSP and the clinical program, but stress the need for coordination and avoiding duplication as these programs increase in size and open more district level offices. The work of the WLSP is of particular importance in Nepal, given the generally low status of women in the country. Their substantially lesser property rights vis a vis men, for example, are mirrored in such other measures as female law school attendance, literacy and representation in the bureaucracy. The WLSP should also be encouraged to broaden its funding base, including exploring the possibility of some indigenous funding.
2. Consider assisting with the expansion of the university's clinical legal education program to the Law Campuses located in each of the country's five development regions. This project is currently active only at the central Law Campus in Kathmandu. This activity will not only improve individual access to redress in the courts, but will also develop a corps of teachers, students and law graduates committed to expanding such access, a vital development in developing respect for the law in a new democracy.
3. USAID/Nepal should explore the possibility of support for an NGO (or NGOs) that is pursuing public interest litigation. In the late 1980s Nepal's requirements for standing to sue were liberalized, partly influenced by similar developments in India adopted to facilitate public interest environmental litigation. To date, however, there has been little significant response to the liberalized standards in Nepal. Possible areas include not only environmental litigation, but also the enforcement of the strengthened rights against discrimination (for example on grounds of gender or caste) found in the constitution.

## E. ACCOUNTABILITY

**NEED:** Elected representatives and appointed officials in a democracy must be accountable to the electorate. Where this is not the case, where public servants use their positions for private or party gain, this ultimately calls into question the legitimacy of all political institutions. Ineffective, corrupt government cannot sustain democratic development, because it cannot maintain the support of the populace. In Nepal, the perception (and, we assume, the reality) of widespread corruption at all levels of government undermined the credibility of the panchayat system and led to the success of the democratic movement. The problem as we see it is primarily cultural and structural. Democracy will not in itself change centuries-old customs in regard to the rewards of government position. These customs are reinforced by very low government salaries, making corruption seem almost necessary to those who accept government positions. The problem of corruption in Nepal is exacerbated by the heavy involvement of the government in the economy through both government ownership of enterprises and -- in some areas -- excessive regulation of the private sector. To change traditions and conditions sustaining corrupt practices will take a concerted and long-term effort by all those promoting democracy in Nepal.

**RESPONSE:** Structural response is perhaps of highest importance. While many of USAID/Nepal's activities have focused on the development of Nepal through key sectors such as improved agricultural productivity, better natural resource management, improved health services and basic education, these efforts have also served to address many of the key components of "corruption" and transactional inefficiencies. The highly centralized, excessively bureaucratic Nepalese governmental system has both limited individual and group initiative and has extracted "economic rent" from the private sector through a maze of rules and regulations. Beyond the ongoing mission projects and policy dialogues with the government, the mission is set to address these problems through a new Economic Liberalization Project that represents a well-defined intervention designed to take advantage of the current "democracy interest window."

The Liberalization Project is designed to help develop a pro-market, private sector-led economy in Nepal. Using both the ongoing International Executive Service Corps (IESC) and the Institutional Reform and the Informal Sector (IRIS) A.I.D. projects, the new Economic Liberalization Project will serve to define and implement revised government policies that facilitate a private sector-led economy, and assist private organizations and firms in responding to new economic opportunities. A combination of policy dialogue with key decision-making leaders and training in management and technical skills organizations will be used. The project targets major constraints in the regulatory environment, in the foreign exchange and trade rules, and in the management of state-owned enterprises.

In more traditional terms, the new Constitution of Nepal responds to the need to confront corruption in Part 12, "Abuse of Authority Investigation Commission." The Commission is to receive complaints of corrupt practices by any person holding public office. Despite generally negative experience with investigative commissions in South Asia, we believe Part 12 should be seen as an important commitment by Nepal's emerging democratic leadership. With adequate authority and independence, the Commission could provide a valuable service to Nepali society and government. At the same time, a shortcoming of the Commission as described in the Constitution is its inability to monitor and investigate the functioning of government in providing services. This function is often provided, both within the United States and in countries around the world, by ombudsman's offices.

**RECOMMENDATIONS:**

1. USAID/Nepal should explore ways to assist the government of Nepal through educational, visitor and other programs to help develop the Abuse of Authority Investigative Commission as an effective means of reducing corruption. Over the longer term, USAID/Nepal should support the development of a more comprehensive ombudsman's function that would monitor government services and entities in terms of a broader concept of accountability.
2. The recommendations found in the "voice" and "redress" sections -- such as support for media development, NGO activities, and strengthening the judiciary -- will in the short term be the most important means of addressing the needs associated with this subobjective.

## VI. ECONOMIC DEVELOPMENT

While the Nepal Democracy Strategy is not designed to specifically address the promotion of economic development in Nepal, it is understood that the government of Nepal's commitment to, and relative success in, establishing a pro-market, private sector led economy -- one that provides real benefits for its population -- could prove to be a necessary condition for actual progress toward the creation of sustainable democracy in Nepal. It appears likely that the Nepalese people will not be satisfied with a liberalized political system that relies on a highly centralized, excessively bureaucratic government structure, which stifles individual and group initiative, and does not raise the country from its status as one of the poorest in the world.

A major theme of the countrywide democracy movement has been the expressed dissatisfaction with the government's development programs. Nepalese society -- with 95% of its population residing outside Kathmandu -- badly wants and needs to improve its economic standing. For at least a sizeable portion of the population, the democracy movement appears to be viewed as the vehicle for achieving this goal. As a result, USAID/Nepal should continue to play a key role in designing efforts to move the government toward establishing a sustainable free-market economy. The mission's new Economic Liberalization Project, which targets many of the key failings in the governmental structure, represents an important contribution toward this end. Efforts such as this, and ultimately Nepal's success in raising the standard of living of its citizens, should be viewed as a necessary basis for real and sustainable progress toward building democracy in Nepal.

## **APPENDIX 1**

### **LOCAL GOVERNANCE**

By Harry Blair

This appendix fleshes out the ideas presented in skeletal form in the main body of this report. In particular, it attempts to suggest specific USAID initiatives that might be undertaken to improve local level development prospects in rural Nepal. Where appropriate, suggestions are offered as to how such initiatives might fit into the project portfolio presently being managed by the Agricultural and Rural Development office of the USAID mission in Kathmandu.

#### **BACKGROUND AND NEED FOR LOCAL GOVERNANCE**

Despite a theoretical understanding in Nepal that decentralization and local government are important components of rural development, the various decentralization initiatives taken during the three decades of strong monarchical rule (1960-90) are generally depicted as having been devoid of any serious effort or intent to actually decentralize or devolve meaningful control over local affairs to local institutions. Rather the government's thrust has been not only to retain central control but also to strengthen it by nurturing the panchayat system as a mechanism to build local support for the national regime through dispensing patronage and largesse to its supporters at local level.

Today the panchayat system has been suspended; both the general outline and the details of future local governance structure await the attention of whatever national government is formed after the May 1991 elections. Accordingly, the present juncture represents a rare opportunity for USAID to make a significant contribution toward facilitating Nepal's efforts to build a new local governance structure.

Decentralized local democratic institutions are vitally important for several reasons. To begin with, in a country where some 90 percent of the population live in the rural areas, there must be a strong two-way linkage between the countryside and the central government. In the feudal system that characterized Nepal until well into the 20th century, the center's relationship with the periphery constituted essentially of collecting taxes and preserving the status quo; in such a structure rural development in any meaningful sense was basically irrelevant; the main objective was to maximize top-down control from the center. In a nation seeking to promote the economic and social development of all its people, however, the connections between center and countryside have to run in both directions. Local needs and wants must get articulated upward through the system, and central goals and themes must get

disseminated downward. For Third World countries generally, as well as for Nepal in particular, the former has proven much more difficult historically than the latter.

But central/local linkage per se is scarcely enough to bring about significant development in the countryside. Many states have well-developed connections between center and periphery yet have been notably unsuccessful in promoting rural development. Most commonly such failures result from top-down bureaucratic structures designed to bring centrally conceived development programs to the village level without any real inputs from the intended beneficiaries. Command politics do not work any better than do command economies; governments like markets must know what people want if they are to function effectively. And in terms of rural development, citizens at local level must have some way to make their wants known to government. Effective decentralized government is the best mechanism for accomplishing that end, in that it brings the locus of response to popular demands as close as possible to the people making those demands.

A third reason for decentralization is that resources for satisfying people's wants are always scarce. There will never be enough public funds available to meet all public wants, or even all highest priority public needs. Hard choices must continually be made between education and health, between agriculture and transportation, etc. The best way to allocate invariably scanty public funds is to place authority for making budgetary decisions at the local level.

Fourth, if one of the central purposes of democracy at national level is to bring government under the control of the governed, the same is surely true at local level. A democratic and representative local governance structure will help assure that local institutions are responsible to those they are supposed to serve. This fourth need differs somewhat from the first three in that they are essentially instrumental -- democracy is useful to promote some further useful social end -- but here we are saying that it is worthwhile in itself: democracy is an end as well as a means. People should have the right to manage their own affairs at all levels.

For some political systems, it is thought that democracy at national level is sufficient, that a well-tuned structure responsive to popular desires can manage local affairs adequately on a centralized basis. Under some circumstances, such an approach is certainly possible, but the danger is that the system will turn into a plebiscitary democracy, responsive to broad swings of popular mood at more or less regular intervals, perhaps, but quite incapable of responding to differing local needs. In a country like Nepal that has wide variations in ecology, language and culture from one area to the next -- often with sharp changes occurring within the space of only a few miles -- the chance that a centralized and unitary government could satisfactorily deal with differing local needs is at best remote. Only a decentralized democratic structure will be adequate to the task.

## LOCAL INSTITUTIONS AND THE NEPAL DEMOCRACY PROGRAM

Local institutions need to be considered from the standpoint of all five sub-objectives of the Nepal Democracy Program.

(a) Voice. If a society is to nurture effective public and private channels for articulating popular wants and needs at national level, it must also do so at local level. Citizens unable to work together to promote better village schools or sanitation facilities for their villages are not going to be able to press for better national education and health policies. In the absence of citizen input at local level, national associations or apex bodies will most likely be only hollow institutions representing the personal interests of their officials in Kathmandu.

Furthermore, there must be a multiplicity of local voices. Typically Nepali villages, like most of those in South Asia, are dominated by a small elite who manage village affairs to their own betterment, with the result that debilitating inequalities persist over time, sapping the drive and initiative of non-elites who in a more open society could and would better their condition. Revolutions can eliminate village elites, but the track record so far of such radical rural change has been largely to substitute new and equally self-seeking elites in their place. A far better method to assure that the widest range of citizen interests are heard and that a single elite does not dominate is to encourage the growth of many competing citizen interests, a political pluralism at village level. When disparate yet overlapping groups like farmers, parents, traders and women can organize themselves to press local government to meet their needs, the system is most likely to be kept honest and free of domination by any single element.

(b) Choice. Free, fair and meaningful elections are just as important at local level as they are at national level. If local politics remain stifled or become closed, then national politics tend to become at best plebiscitary. An open national electoral system will probably not endure very long if it is mirrored in the countryside by fixed or fraudulent polling for local offices.

(c) Governance. Openness and transparency in government are extremely difficult to maintain in political systems everywhere, for all governments thrive on secrecy and cover. A vigorous free press can help mitigate these tendencies at the national level, but few if any villages can support such an institution.

(d) Redress. Competent and honest mechanisms for settling disputes are essential at all levels of government. In Nepal as elsewhere in the Indian subcontinent, communities have traditionally had mechanisms for settling disputes -- village and caste panchayats, judicial councils such as jirgas, hereditary sardars and matbars, etc. -- and many of them proved highly effective over the centuries.

But in a society now permeated with Western concepts of property rights, contracts, etc., and in which even the more traditional areas like family rights and inheritance have become increasingly standardized and routinized, the customary processes for settling grievances have proven in many ways inadequate. Nepal has tried to cope with this conflict between traditional and modern legal needs and systems by instituting a village judicial structure in the erstwhile panchayat system that would interface with the civil court structure, such that decisions of the former would be valid in the latter.

In criminal law, modern machinery of justice has long been in place, on a theoretical level. But in actuality, the criminal justice system has been continuously plagued with the arbitrary and capricious character that is found in traditional systems based on birth and family status, where those connected with local elites deal with a different (and far more congenial) structure than do those without such linkages.

Establishing and maintaining a civil/criminal justice system in the countryside that is both impartial and credible must be a high priority.

(e) Accountability. Regrettably, corruption and venality have long characterized local government in South Asia, in large part because there has been no established mechanism for keeping local officials honest. Misappropriated public funds, rigged contract tenders, falsified land records, fabricated police charges have all been widespread for many decades, indeed for as long as there has been local government.

The problem here is mainly one of incentive structure: if poorly paid local officials find there are no constraints on corrupt behavior, they will easily become prey to temptation. Nor will episodic anti-corruption drives from above serve to keep them honest, for the central government cannot muster the bureaucratic effort required for more than very brief periods, if at all. Instead, local officials must be made accountable to the people they are supposed to serve, who will have the capability (for they are there on the scene to discover wrongdoing) and the incentive (for it is their services that are not being delivered if corruption becomes rampant) to enforce honest local government.

## RESPONSE TO DATE

a. USAID. Most if not all of the ongoing projects in the ARD portfolio potentially relate either directly or indirectly to decentralized democracy. The largest and best known is the Rapti Development Project (367-0155) with its focus on user groups and local programming, planning, resource mobilization, budgeting and project management in the five districts of the Rapti Zone.

Although the Irrigation Management Project and Agroenterprise and Technology Systems Project are national rather than zonal or regional in scope, both are directed in large part toward local level initiatives (irrigation user groups and agro-oriented producer groups respectively). In addition, the Private Rural Electrification Project is aimed at small scale (and thus local level) hydro-power generation.

Several other ARD projects contain an indirect local component, in that local democratic institution building activities are or could be taken up within their present scope of activities. The Institute of Forestry and Forestry Development Projects will help direct both training and regulation toward a greater focus on community forestry activities. Future career foresters will be trained in social forestry and agroforestry approaches and technologies as well as the more traditional production and conservation areas of study. And the Winrock International Project could provide high quality policy analyses focusing on enhancing the abilities of local communities to manage their own enterprises.

b. Indigenous institutions. In its development of indigenous institutions for managing common property resources (CPR), Nepal possesses an impressive legacy that in many ways can serve as a model for other countries. Its thousands of irrigation user groups (many of which date back a century and more) have combined group managerial skills with technical capacity to solve CPR problems in very innovative ways. In particular, a significant number of these groups have coped successfully over a long period of time with the three major problems that invariably confront any CPR management scheme.

First, they have been able to restrict access to the resource to their members (i.e., only user group members receive water). Second, they have been able to assure that all beneficiaries participate equitably in maintaining the resource (group members must participate in yearly maintenance work that is often time-consuming and inconvenient in terms of opportunity cost, for it takes away time from field work like rice transplanting). In other words, free-riders (who collect benefits without belonging to the group) and shirkers (who belong to the group but avoid being detected in their failure to contribute to it) can both be excluded. And third, they have over long periods convinced their members that the benefit/cost ratio remains sufficiently positive to warrant continued participation in the enterprise. (For a theoretical treatment of general CPR management issues, see Ostrom et al., 1990; more specifically on water, see Ostrom, 1990; and on irrigation user groups in Nepal, see Pradhan, 1989).

Nepal's forest user groups have also shown an effective capacity to manage local resources. The problems of controlling access and confining benefits to contributors are somewhat more difficult in forestry than with irrigation, but many community groups have managed to do so quite successfully over time. (See for example Fisher, 1989; Messerschmidt, 1986; and Molnar, 1981).

USAID funded activities have drawn on this Nepalese capacity to great advantage in several ARD programs in the mission's portfolio, as can be seen by comparing the 'a' and 'b' subsections of this section on Response. The forestry references in the paragraph just above the present one, for instance, are to be found in a publication brought out by USAID's Institute of Forestry Project (see IOF, 1990)

## **RECOMMENDATIONS FOR USAID**

**1. Encourage the reconstitution of local government institutions.** At the present juncture in Nepal's political history, all attention and energy is being focused on the national parliamentary election upcoming in May 1991. Few thoughts are being devoted to what shape local government may take. In the new constitution, for example, sub-national governance is mentioned only in passing or by indirect reference. First things should come first, to be sure, and one cannot argue with the priorities that have been established that put the national political structure and national elections first.

But after the elections have been held and the new parliament begins its business, attention will have to be turned to the local level. At present, previously elected district and village panchayats stand suspended, with only a makeshift structure currently in place. At district level, a "district development committee" consisting of the Local Development Officer (LDO) and the technical line agency officers (e.g., district agricultural officer, forest and soil conservation officer, education officer) are managing a holding operation, awaiting the formation of a new structure. Local tax collection has been suspended for the time being, as have the central government grants that had formed the largest source of revenue for most if not all district panchayats. Only the local share of the land tax remains.

The new government that takes office after the May 1991 elections will thus be faced with the need to construct (or reconstruct) a local governance scheme and to revive its system of financing. Many important issues will have to be decided very soon, such as:

- (a) **The role of political parties at the local level.** Previously they were banned from participation in Nepal at local as well as at national level. Today, of course, they are in full flower on the national scene in Nepal, but what about district and village levels? In many countries with a multiparty system at the national level, governments try to prohibit them at the local level. Others permit parties at all levels. What is the best answer for Nepal?
- (b) **A possible district government cadre.** Should district technical officers continue to belong to national line ministries, or should a district civil service cadre be set up that would provide career paths separate from those at the

national level? If the latter, should there be one national district cadre for the whole country or regional cadres? Should technical officers belong to separate cadres for health, education, agriculture, etc., or should disciplines be clustered together, say for health, sanitation and education, for forestry and agriculture, and so on? A number of thorny issues must be resolved here.

- (c) **Village boundaries.** At various times in the past, official "villages" have been delineated as subdistrict operating units, generally along arbitrary lines that have little relation to natural social or ecological divisions on the ground. In the 1982 decentralization reforms, for instance, the number of official villages was summarily increased by more than a third to the present 4200 or so. What should be done under the new arrangements to come?
- (d) **Status of user groups.** In reorganizing government at village level, attention should be given to the possibility of including within the formal governmental apparatus those traditional, quasi-governmental structures generally now called "user groups," which manage, for example, communal irrigation systems, forests, trails and bridges. Based mainly on topographical divisions, these groups often pre-date the more recently imposed official village boundaries, in many cases having originated decades and even centuries before the GON's local government initiatives of the 1960s and later years. Though they are NGOs in the strict legal sense, they possess many of the qualities of governmental organizations as well. Indeed, at least one proposal has been mooted to include them as a basic element of a future local government structure (Goutam, 1991). What should their status be?
- (e) **Relationships between the elected district head, the LDO and the line agency officers.** How much supervisory authority of what kind should the elected head (or whatever new setup is devised) have over the LDO, and how much should the LDO in turn have over the technical officers? Elected government<sup>1</sup> must be given enough power to implement its programs, which means some kind of authority over the district bureaucracy. But that same district bureaucracy is charged not only with implementing local programs but also with executing national efforts. Thus some balance between national and local direction must be established.

At present a number of ideas have been suggested (e.g., Goutam, 1991; Dhungel and Khadka, 1991), but it appears totally unclear what direction things will take once the new parliament takes up the matter.

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<sup>1</sup> At this writing, not even the nomenclature for local government has been decided, to say nothing of its format. For instance, "samiti," "parishad" and "sabha" are among the many words that may be chosen to label the new councils. To avoid confusion with the erstwhile panchayat system, "elected head" and "district (or village) government" will be the terms employed here.

USAID should consider efforts to:

Offer advice and guidance to GON on reconstituting a new local government structure. Whereas writing the national constitution itself was properly a highly sensitive endeavor in which official foreign assistance would not have been appropriate, the architecture of local governance will presumably be less delicate (although some aspects of local governance such as the political parties question may well attain as much sensitivity as national constitutional issues did earlier). One possible initiative would be to provide short-term technical assistance (for example, from a local government institute in the United States) on setting up the new system. A second would be to assist Nepali officials in conducting comparative analyses on how local governmental structures work in various settings. Three obvious collections of divergent examples are the federal systems of Canada, India and the United States. Each country permits considerable latitude among its states or provinces in constructing local government, so that altogether among the three countries there exists a collection of more than 80 state and province level examples of how local governments might work. A study trip to the National Institute of Local Government in Hyderabad, India, and to similar places in North America might be provided. Such activities might be fitted into USAID's Development Training Project.

**2. Enhance local pluralism.** As at the national level, the best strategy for facilitating equity and openness at the local level is a competing multiplicity of groups. The irrigation and forestry users groups are the most obvious examples here, but there is a wide range of other groups that are or can be significant as well. In the CPR sector, there are traditional trail and suspension bridge maintenance groups, and potentially, local hydro-power groups as well. In other areas, local traders' associations, petty hawkers' organizations, mothers' clubs, adult literacy groups, youth groups and the like are among the possible institutions that might be formed. And, if appropriately rehabilitated, the sajhās could play an important role as well. All these local NGOs<sup>2</sup> should be strengthened as part of USAID's democracy initiative. Specifically, USAID should consider efforts to:

- a. **Encourage the formation of new local NGOs.** In many areas, some NGOs are already in place and functioning effectively, such as the user group organizations. As the local political scene comes back to life, these NGOs can be expected to play a large role at local level. Other groups can be expected to form very quickly and make demands on local systems (traders' associations and youth groups would be examples).

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<sup>2</sup> Nongovernmental organizations are here defined as citizen groups of any sort which are not a formal part or appendage of government. They would thus include all the groups mentioned in this paragraph of the text (assuming that the sajhās are reconstituted in some substantial measure).

But these groups do not represent the entire local population by any means. If they become too powerful, they will tend to crowd out other local interests by demanding and getting an overly large share of what are bound to be very limited local resources. Thus if irrigation users' groups are well organized, put together solid proposals and lobby effectively with the district council for funding, there may be no funds left to help other groups that may have good claims but be hobbled by ineffectiveness (e.g., mothers' clubs or petty hawkers).

It cannot be the job of USAID or GON to determine what socioeconomic groupings deserve representation at local level. That process must be sorted out by the people themselves. But USAID could provide advice and guidance to potential or embryonic NGOs trying to enter the local field of play. Analogy could be made here to the kind of small-and-cottage-industries projects that USAID supports in a number of countries, which advise and assist such enterprises in getting started but allow the market to determine which ones succeed or fail. Similarly, here it would be the local "political market" that would determine success or failure.

Specifically, the Rapti Project could fund a district-level group organizer whose major responsibility would be to assist and advise in the formation of such new NGO groups.

- b. **Facilitate development of local/national NGO linkages.** Functional NGO apex organizations are needed to collect, distill and disseminate skill and knowledge within specific types of NGOs (e.g., mothers' clubs, literacy training, user groups) and to act as advocates for their constituencies vis-a-vis the central government. Among the many problems they face are that governments often impose cumbersome regulations for registering and certifying NGOs, restrict their activities in the field, and place constraints on training abroad. Individual NGOs, especially those without strong foreign connections, find it difficult to deal with a national government, but apex NGO organizations might have the stature and "clout" to do so.

Elsewhere in South Asia, India offers examples of these institutions, while in Bangladesh several NGO apex organizations are currently groping to find such a role. Unfortunately, the immediate past legacy of NGO apexes in Nepal is that of the Social Services National Coordination Council (SSNCC), which did not represent NGO interests from the bottom up but rather served as a central government instrument of control. Given this experience, any new NGO apex will find it an uphill struggle to gain credibility even within its own constituency. But NGO representation to GON constitutes an important issue and one that USAID should consider taking up.

- c. **Assist self-initiated technical assistance for local NGOs.** In many cases, a given local NGO knows what kind of technical assistance (TA) it needs, but lacks the knowledge and financial resources to obtain it. For example, if the district agricultural officer cannot provide the appropriate advice and seeds to a group wishing to produce cut flowers for an urban market, then the group should have a way to secure the needed TA on its own. Such advice might be thought of as "intermediate TA" or "topping up TA" in that the NGO concerned has many (or perhaps even almost all) the required pieces of knowledge and capacity in place, but lacks some critical elements to make its efforts successful.

This kind of need exceeds the capacity of locally available TA (for example, from district line agency officers or other development activities in an area such as the Rapti Project), but it is too small to warrant a manageable "unit" of foreign project assistance. In the flower example given above, there is no point in putting a floral expert on a donor project payroll to provide the needed TA. But an embryonic cut flower production group at village level might receive some small guidance and funding assistance to find an expert in Kathmandu (or perhaps from one of the larger Indian cities, where cut flowers have been something of a boom industry in recent years) to spend a week or two on a TA visit. Other examples might be forestry groups wishing to raise and market a new fruit variety or an irrigation group interested in a short-term vegetable crop.

Within the present ARD portfolio, the ATS Project would seem to make a good fit.

- d. **Produce a series of user group case studies that could be used in extension and training activities.** A number of efforts have been undertaken to harvest and synthesize Nepal's rich user group experience in irrigation (e.g., Pradhan, 1989; Hilton, 1990) and forestry (e.g., many of the articles collected in IFP, 1990). But the overall experience in these areas has been so vast and varied that more work could usefully be done in researching case studies and distilling their lessons for wider dissemination at local level. Few case studies have thus far been translated into Nepal's languages. USAID effort could support further analysis, translation and dissemination in this sphere, perhaps through the Winrock project or one of the two USAID-supported forestry projects.

**3. Improve local resource mobilization.** As democracy takes root in Nepal, more and more demands will be made on the central government to provide resources for national development needs. And to the extent that national politics becomes more pluralistic, featuring a wide range of competing groups with each seeking help for its activities, resources at the center will come under increasing strain.

At first glance, there are several reasons why this might not seem to be so. First, aggregate aid from the international donor community may grow somewhat in response to Nepal's democracy initiative. Second, privatization of parastatal enterprises and elimination of public subsidies in various sectors will help reduce unproductive drains on the public treasury. Third, it can be hoped that Nepal will increase its own national revenue generation beyond its customarily low levels (between 10 and 11 percent of GNP in the late 1980s; see World Bank 1990a, 31).

But even when these three factors are combined, the likelihood is that a growing demand for development resources will outstrip what is available at the national level. This means that central funding for local development will in all probability come under severe pressure, and perhaps even decline in real terms as the national government finds itself strapped to meet demand for national development programs. Even as it is, the share of local development spending in the national development budget went down steadily from more than 7 percent of total GON development spending in the early 1980s (at the time of the decentralization reforms) to less than 4 percent at the end of the decade.<sup>3</sup> There is little reason to believe it will increase in the 1990s and, as indicated above, good reason to believe it may well decrease.

The implications for local level development are clear. If district and village level institutions are to enlarge their funding in the coming years, much if not most of that growth will have to come from within. In short, local resource mobilization must increase.

Resources to be mobilized at local level are essentially of three kinds: taxes, public income or revenue generation and contributions in kind. The first two types form the basis of what are called "own-source revenues" for districts and villages, while the last constitutes a significant portion of the resources mustered for local activities like irrigation and forest user groups.

Local "own-source revenues" show an almost astounding variation in rural Nepal. A study done in the mid-1980s on nine districts identified more than 15 separate sources of income, with six of them constituting the major source of income for particular districts (Schroeder and Wozny, 1987: 18). Two districts depended on the house tax for most of their own-source revenue, and one each on road taxes, bridge and ferry taxes, mill fees, rental fees for publicly owned property and sales to the public.<sup>4</sup> Taken all together, however, total own-source revenues amounted at the most to a maximum of Rs 1.9 on a per capita basis (the least effective district of the nine studied by Schroeder and Wozny raised only Rs 0.22 per capita).

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<sup>3</sup> Measured in terms of share of total GON spending, local development decreased from about 5 percent in 1981-82 to about 2.5 percent for 1989-90 (World Bank, 1990a: 120; and 1990b: 42).

<sup>4</sup> Two districts depended mainly on unlisted "other specified revenue."

Clearly all districts could be doing considerably better at revenue mobilization. In fact, there will probably be difficulty initially in the democratic era just in maintaining local taxes at their historic levels, for since the change to democracy in April 1990, locally imposed taxes have not been collected at all. To reimpose them under a new local government structure may well encounter resistance, to say nothing of the opposition that enhanced or new local taxes could arouse.<sup>5</sup>

A second form of tax generating local government income is the land tax, which is collected by the central government's Department of Land Revenue, but which is for the most part turned over to the district. It is thus similar to the sales tax structure used in many American states, whereby the state collects the tax but local municipalities can "piggy-back" a sales surtax that state will collect but then turn over to them. In the 1970s Nepal instituted an experimental Panchayat Development and Land Tax (PDLT) that was to be collected at local level and then shared with the national level, but the tax aroused considerable controversy and was dropped in 1981.

In addition to taxes, there are other local revenue sources, such as fees for radio license, library use and application forms, rental income from guest houses, and contracts for fishing rights or stone collection.<sup>6</sup>

The third type of resource that can be locally mobilized are contributions in kind, primarily the labor that is widely deployed in forestry and water user group activities. As more user groups and other NGOs draw up their plans for development activities in the coming years, district and village level resources will get progressively stretched; consequently local in-kind contributions will probably have to grow as a proportion of total resources generated.<sup>7</sup>

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<sup>5</sup> Such problems with local resource mobilization are scarcely confined to Third World countries; significantly increased local taxpayer resistance in the United States during the 1980s might be noted here. As for hostility to the reimposition of earlier obligations, India offers an unhappy example with its farm credit loans, which political leaders have forgiven in times of hardship (drought, flood or sometimes just for elections), only to find that their constituents then expect forgiveness every year.

<sup>6</sup> Stones from the many rocky riverbeds in Nepal are widely used in small-scale flood control and irrigation activities.

<sup>7</sup> At the beginning of the 1990s, for instance, CARE and the Agricultural Development Bank of Nepal (ADB/N) were supporting upgrading of some 14 irrigation user group projects in Dang district, with CARE contributing 52 percent of the resources required, the ADB/N putting up 23 percent in the form of loans and the farmer beneficiaries contributing 24 percent as labor (data from material supplied by S.K. Gurung of CARE/Nepal). This has worked quite well as a CARE-ADB/N development effort, but if it were to be extended to large numbers of irrigation projects, local contributions would have to be significantly increased as the outside component necessarily diminished, unless it is assumed that the outside support can increase indefinitely, which surely will not be the case.

Given its fifty states and more than 80,000 local governments of various kinds, the United States has vast experience at devising and enhancing local revenues. USAID can draw on this record in considering efforts to help the GON to:

- a. **Increase the tax base.** Both rates and variety of local taxes can be enhanced considerably. Many districts do not exploit potential taxes at all (for instance the house tax, which amounted to more than 60 percent of district own-source revenues in the Schroeder and Wozny local [1987:18] sample, was not levied at all in four of the nine districts they studied), while in general most of the taxes presently in effect could be raised considerably.
- b. **Raise shared tax income by increasing present tax rates and building new mechanisms.** The land revenue tax (which is largely turned over to the districts, as noted above) has remained essentially flat over the 1980s, and as a consequence of inflation has provided a successively smaller proportion of central government revenue. At the beginning of the 1980s, the land tax formed almost 5 percent of total central government collection, but by the decade's end it was less than 1 percent (World Bank, 1990a: 116; and 1990b: 38).<sup>8</sup> Surely this tax could be enhanced -- even a restoration of the 1980 level in real terms would provide more than a four-fold increase, and an even larger increase would not be a great burden, though politically a levy like the land tax could not be raised too much at one stroke. In addition, thought could be given to turning over to district governments that portion of the house and land registration tax that comes from the sale of rural property. And finally, the PDLT could be revived as an experiment.
- c. **Experiment with matching schemes.** Many matching schemes are already in place, most of them funded by various donors.<sup>9</sup> Such approaches offer wide-ranging possibilities for experimentation on a small scale, possibly with the Rapti Project. Policy experiments could be included as well. For instance, an adult literacy project could be funded on a 1-to-1 basis to start the program, 2-to-1 if the cohort in training finishes the course, and 3-to-1 if a certain proportion of those finishing the training are women.

District or village governments could be offered matching schemes that rewarded their own-source revenue collection, such that better local effort would be rewarded by an increased matching grant. Care would of course have to be taken lest such a scheme yield a perverse result whereby areas

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<sup>8</sup> On the other hand, the house and land registration tax (imposed on the sale of both urban and rural property) slowly increased during the 1980s from less than 4 percent to more than 5 percent (World Bank, 1990a: 116; and 1990b:38). This latter tax, however, is apparently not shared with the local level.

<sup>9</sup> See for instance the CARE example noted above in footnote 7.

already best endowed with revenue-producing resources wind up getting all the matching grant funds as well.

- d. **Develop income generating systems.** Some localities receive revenues from contracting or franchising out various activities such as bridge toll collection, ferry operating licenses and stone collection rights. If experience elsewhere in South Asia is a guide, these local governments are not getting more than a small fraction of the potential return on these arrangements (see for instance Blair, 1989). USAID support could probably enhance revenue generating capacity here substantially.
- e. **Sponsor a comparative analysis of local resource mobilization systems now in place.** Even at the present low levels of mobilization, some of Nepal's 75 districts have been doing much better than other at raising various kinds of local revenues. A solid comparative study of how they do so would be exceedingly useful in developing concepts and mechanisms that could be replicated elsewhere in the country. The USAID-sponsored study by Schroeder and Wozny (1987) was a good start in this direction, but much more can and should be done here.

4. Build local government management capacity. Whatever emerges as Nepal's new local government structure in its democracy initiative, it is sure to be subjected to greater demands than its predecessor, as people come to insist on higher standards of governmental performance. Schools will be expected to practice better teaching, clinics will be expected to dispense useful advice and medicines, and agricultural extension officers will be expected to proffer advice that works. USAID should consider efforts to:

- a. **Support the Local Development Training Institute.** The primary functions of such an endeavor would be to furnish practical training for district and village level officials and to conduct applied, action-research-oriented studies on rural development that can be distilled into usable knowledge for such personnel.
- b. **Support the local development officer or LDO, who will be the key official at district level, if new local government looks anything like the present system.** At present he is charged with supervising and coordinating all the important government-sponsored development activity in his district, and this pattern will presumably continue. As public demands for a higher quality of public services increase, the LDO will face ever greater pressure to perform. Some training would certainly be in order to help him cope. A good place would be the Asian Institute of Management in Manila. Refresher training in short courses could then later be provided through the national institute of local government mentioned in the preceding paragraph.

- c. **Build a monitoring system that maintains the delicate equilibrium between excessive central control (after the fashion of the previous regime) and undue autonomy (that leads to local elite dominance and corruption).** Steering the right course between these twin shoals represents one of the most difficult aspects of rural development policy. A certain degree of supervision is required to ensure that local officials meet minimal standards of probity and performance. But too much supervision stifles the initiative and creative management that is crucial to local development, while too little invites laxity, venality and the elite domination that has characterized rural life in South Asia since time immemorial.

The right answer is hard indeed to find, but a good start will lie in a monitoring system that is good enough to detect dereliction and dishonesty, while at the same time is sufficiently flexible and open to encourage dedicated local managers to do their best. In recent years computerized monitoring systems have been developed elsewhere that could be more useful in Nepal.

5. **Develop local civic competence.** Citizenship at the local level can be thought of as comprising two aspects: active participation in the formulation and implementation of public policy; and ability to participate in an equitable system for settling disputes. What has been offered in this appendix on local governance fits into the first aspect, but the second is also vitally important if democracy is to take firm root in rural Nepal over the long term. This theme and recommendations to support it are developed further in Appendix 2 to this report.

## **PITFALLS IN DECENTRALIZATION**

While decentralization as a development policy strategy promises many benefits, it is not without risk. Things can go wrong with decentralization initiatives just as with any other approaches to development. In this section, some of the more serious pitfalls that might threaten decentralization in Nepal are briefly examined.

Historically, most governments have recognized the theoretical importance of decentralization. But often initiatives to decentralize have proven unsuccessful or perverted. In many cases, the effort itself has only been rhetorical, masking an underlying desire to retain as much top-down control as possible from the central level. At times there have been genuine efforts by some at higher levels to devolve real power to the localities, but such initiatives have been sapped by an insistence (often by the same people urging the decentralization) on rigid monitoring, adherence to centrally imposed standards, requirements for vetting all local plans at central level prior to implementation, etc.

In other instances, decentralization has amounted essentially to a patronage scheme to pass on resources (often externally provided) to local elites in return for their political allegiance to the central government. Whether or not any actual development occurs in the countryside is only of secondary importance to those in charge at the center; the important objective for them is to buy the support of local elites, who will in return support the central government and maintain calm in the countryside by continuing to employ their traditional methods of village control, such as money lending, sharecropping, bonded labor or hired thugs ("goondas" in the South Asian context).

A third possibility is that authoritarian control and patronage can combine to severely undermine local institutions. This is in effect what happened in Nepal before the 1990 Democracy Movement. The center exercised enough control to stifle any serious rural development, but at the same time significant resources were funnelling down to buy the allegiance of local elites.

Fourth, even when the problems of authoritarian control from above and patronage/elite domination from below are overcome, local governments are just as eager for secrecy as central governments, and generally for equally suspect motives. By hiding their decision making from public view, local governments seek to evade monitoring from the central level and public scrutiny on the local level. The result is most often corruption, as rigged contract bids, kickbacks, misappropriation and diversion of public resources to a favored few come to dominate the local scene.

There are four possible checks on local corruption: voters can retire corrupt officials at the next election; central monitoring can bring venal public servants to book; aggrieved citizens can sue in court; and the media can subject malpractice to public view. But all these devices evidence serious problems in constraining corruption, in Western as well as in less developed countries. Voters are usually unaware, central monitoring is too often rudimentary at best, citizens lack the resources to bring court cases, and investigative journalism at local level is generally feeble if it exists at all.

Despite these risks, however, decentralization will be essential in Nepal if rural development is to succeed in the coming years and decades. Governments cannot find out what people need and want without being as close to the people as possible, and some kind of decentralized local governance structure is essential in realizing that objective.

## APPENDIX 2

### ENHANCING VILLAGE-LEVEL DISPUTE RESOLUTION CAPACITY

By Michael Gill

A 1988 study of formal and informal dispute resolution in Nepal conducted by New ERA for the Friedrich Naumann Foundation found that the vast majority of intra-village disputes (most of which involved land) were settled at the village level. This preference for village settlement can be clearly traced to several factors, including transportation difficulties, the great expense of taking disputes to the district court, long delays (litigation lasting 10 years and more is common) and distrust of outsiders.

Village-level dispute resolution is both traditional and modern. Anthropological accounts of hill communities in Nepal and the neighboring Indian hills (see, e.g., Lynn Bennett's Dangerous Wives and Sacred Sisters, Gerald Berreman's Hindus of the Himalayas and John Hitchcock's The Magars of Banyan Hill) are full of descriptions of dispute settlement by respected individuals or groups (invariably men) who say such authority has been exercised for generations, since long before the imposition of panchayat rule in Nepal. It is also modern, inasmuch as it was (under the now-abrogated Village Panchayat Act) sanctioned by statute. While it is not yet known what judicial authority will be given to villagers under the new Village Development Committee scheme, it is likely to resemble the old provisions, which are set out in detail below.

Under the former Village Panchayat Act, village judicial councils were given the authority to decide cases in the following areas:

- a) path or easement encroachment;
- b) boundaries;
- c) wages and unpaid labor;
- d) trespass;
- e) access to water sources;
- f) grazing and cutting of firewood;
- g) intra-panchayat borders, boundaries, irrigation channels or easements;
- h) killing of female livestock, except cattle; and
- i) cheating by use of false weights and measures.

Disputes arising in these areas were to be decided by three-member village judicial committees established by the pradhan or upa pradhan panch and, to the extent possible, including village panchayat members from the ward or wards in which both

the plaintiff and the defendant reside. In issue areas within their jurisdiction, the authority of these judicial councils was to be equal to that of the district court. The majority decision was to prevail.

The New ERA study found, however, that most villagers, including elected village panchayat officials, were ignorant of the limits of their statutory jurisdiction, as well as of many details of substantive law and procedure. For example, one section of the former Act allowed village judicial councils (VJCs) to mediate and settle disputes beyond their statutory jurisdiction and then present the settlement to the courts for "certification" if the village level settlement was reduced to writing. This, however, is rarely done. As a result, extra-jurisdictional village level settlements not recorded in writing lack any binding effect, at least outside the village. Dissatisfied disputants with the necessary financial resources may reopen their disputes de novo in the formal court system. It is possible that training efforts to impress upon villagers the importance of written settlements could significantly strengthen the village dispute resolution system.

Another characteristic of VJC deliberations, whether within or beyond the area of their statutory jurisdiction, is a more arbitrational, or compromise oriented approach to the application of substantive laws than found in the courts. While some Nepali lawyers may criticize VJCs for this lack of adherence to formal standards, such "rough justice" decisions have several distinct advantages. They are cheaper and faster than going to court and, in the long run, may promote village harmony. As noted in the New ERA Study, "even though under written law, one might be entitled to a judgement awarding more than was given in a compromise decision, if such a decision leads to everlasting enmity, the victory may turn out to have been a pyrrhic one."

Given the characteristics of the village level dispute resolution system outlined above, we believe that further investigation is warranted to determine whether the system can be in fact be enhanced. Keeping always in mind the American maxim that "if it ain't broke, don't fix it," great care must be taken to avoid introducing detrimental changes into an already functioning system. VJCs should not be encouraged to rigidly apply written laws and abandon their traditional role as arbitrators, mediators and facilitators of compromise. Rather, emphasis should be given to those ways in which VJC decisions can be rendered so that they can be upheld in the courts.

Areas that might be included in work with VJCs might include introductions to the substantive law areas over which VJCs have jurisdiction as well as those in which they customarily exercise jurisdiction. Background information in areas women's rights and common resource property areas such as community forestry and irrigation use would also be useful.

A reason to undertake this activity quickly would be to coordinate with the efforts to draft new legislation regarding village government that are expected to take place following the parliamentary elections. For example, consideration in such efforts might be given to expanding the jurisdiction of village level councils to reflect those cases in which they have traditionally exercised their authority, even though they may not have had jurisdiction to do so under the law.

### **APPENDIX 3**

#### **PERSONS CONSULTED**

Baral, Lok Raj, Professor of Political Science Tribhuvan University

Baral, Sri Prasad, Assistant Forest Officer, HMG Sindhupalchok District

Basnyat, Chuman Singh, Rapti Project Coordinator, HMG Tulsipur, Dang

Bhattarai, Man Mohan, Press Advisor, Nepali Congress Party

Bloch, Julia Chang, American Ambassador to Nepal

Calavan, Michael, Program Officer, USAID, Kathmandu

Chapa, Deepak Raj, Community Resource Advisor, Devres/New Era/Winrock Team, Rapti Development Project, Tulsipur, Dang Dt.

Chaudhari, Prem Narayan Singh, Chairman, Gobardiya Irrigation Users' Group, Dang District

Cohen, Neal, Economic officer, USAID/Nepal

Cole, Janey, Director, USIS, Kathmandu

Crowley, Peter, Regional Head, Save the Children (UK)

Demansky, Stuart, forestry consultant, Devres/New Era/Winrock Team, Rapti Development Project, Tulsipur, Dang Dt.

Dhungana, Daman, Lawyer, Member of the Constitutional Recommendations Commission

Dhunge, Surya, Lawyer, Chairman of LEADERS

Dixit, Kanak, Editor, HIMAL magazine

Gautam, Prem Raj, Additional Secretary, Ministry of Local Development, HMG

Greentree, Todd, First Secretary, U.S. Embassy, Kathmandu

Gurung, B.B., CARE/Nepal, Dang District

Gurung, Harka Bahadur, Researcher and Social Scientist, Former Minister of Tourism

Gurung, Shyam, CARE/Nepal, Dang District

Gurung, Surya Kiran, Lawyer, Teacher T.U. Law Faculty Legal Research and Development Forum

Harris, Timm, Project Development Officer, USAID/Nepal

Joshi, Prakash Chandra, Director, EastConsult (Kathmandu consulting firm)

Kafle, Mukti Prasad, former Secretary, Ministry of Local Government, HMG

Kafle, Prakash, Journalist & Human Rights Activist Forum for the Protection of Human Rights

Kammerer, Kelly, Director, USAID/Nepal

Karki, Bharat Bahadur, Dean, Tribhuvan University Law Campus

Karki, Ram Bahadur, Political Activist, Former Pradhan Panch and District Panchayat Member, Sindhupalchok District

Lundberg, Paul, UNDP Chief Technical Advisor, Kathmandu

Mayo, John, USAID/IEES Contractor, Florida State University (Radio expert)

Mishra, R.C., Forest Ranger, Sindhupalchok District

Pierce, Thomas H., Forestry Officer, USAID/Nepal

Plunkett, Hugh Sheridan, Agriculture and Rural Development Office, USAID/Nepal

Poudyal, Ranjan, Regional Information Officer Save the Children (UK)

Pradhan, Bhakto Dhoj, Former Rastriya Panchayat Member Sindhu-Palchok

Pradhan, Gauri, Left Activist (UM-L), Student Leader

Pradhan, Prachanda, Irrigation Management Consultant

Proksch, Andreas, Team Leader, Nepal-German Cooperation

Ramm, Gabrielle, Nepal Representative, Friedrich Naumann Foundation

Rana, Pashupati Shamshere, Former Panchayat-era Minister, Political Activist  
National Democratic Party (Chand)

Regmi, Rohit Ram, SEARCH Voter Education Team, Dang District

Sangroula, Yuva Raj, Lawyer, Director of Law Campus Clinical Legal Aid Project

Satyal, Jeevan Lal, Secretary, Parliamentary Secretariat

Shaha, Rishikesh, Historian & Human Rights Activist

Sharma, Jainendra Jivan, Manager, Radio Nepal

Shrestha, Bihari Krishna, HMG Additional Secretary, Authority on Local  
Development

Shrestha, Bijaya, SEARCH, Kathmandu

Shrestha, Chij, Regional Representative, World Education

Shrestha, Kusum, Lawyer and Activist, Pres. of Nepal Law Society

Shrestha, Narayan B., Agriculture Development Bank/Nepal Dang District

Shrestha, Ram Prasad, Local Development Officer, HMG, Dang District

Shrestha, Rohini Prasad, Primary School Teacher, Sindhupalchok District

Shrestha, Shyam, Lawyer and Political Activist Sindhupalchok District

Singh, Mangala Devi, Political and Social Activist, Chairperson, Nepali Women's  
Organization

Sinha, Sushil Kumar, President, Supreme Court Bar Association

Strickland, Charles L., Agricultural Development Officer, USAID

Tamang, Deepak, Director, SEARCH

Tamang, Ram Bahadur, Chairman, Gaurati Forest Users Committee, Pipal Danda

Village, Sindhupalchok District

Tamang, Rekha Bahadur, SEARCH Voter Education Team Supervisor, Kavre District

Thibault, Albert, Deputy Chief of Mission, American Embassy, Kathmandu

Upadhaya, Viswanath, Supreme Court Justice, Chief of Law Reform Commission

Uprety, Bharat, Lawyer, Legal Research and Development Forum

Villagers, Anonymous Gaurati, Pipal Danda Village Sindhupalchok District

Walker, David, Literacy and NGO Training Consultant, PACT

Wallen, Suzanne, The Asia Foundation, Kathmandu

Williams, Howard, USAID/Nepal Contractor, IEES Project

Wood-Stervinou, Teddy, Deputy Director, USAID/Nepal

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