

POLITICAL ECONOMY ANALYSIS OF  
**LOCAL GOVERNANCE IN NEPAL**  
WITH SPECIAL REFERENCE TO EDUCATION AND HEALTH SECTORS

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## **EXECUTIVE SUMMARY**

### **Political Economy Analysis of Local Governance in Nepal**

The enactment of the Local Self-Governance Act (LSGA) in 1999 expanded the mandates of local bodies, devolving the powers, responsibilities and resources required to allow local governments to meet the basic infrastructure needs of the locality. It also called for a greater role for civil society in the everyday functions of local bodies, emphasizing transparency, public accountability and popular participation. However, the LSGA unleashed unprecedented expectations and quickly faced difficulties in implementation, particularly due to the capacity crunch at the local level, disjointed planning, and the onset of conflict. As a result, the LSGA became a repository of unfunded mandates rather than an enabling instrument for local bodies to take control of their affairs.

When the tenure of the locally elected representatives expired in 2002, the government authorized its civil servants to assume all functions of the local bodies, who, for lack of capacity and ability to command local legitimacy, had to rely almost entirely on relationships rather than procedures to perform their duties. By 2009, this coping strategy was adopted as the preferred political framework and acquired formal legitimacy with the formation of All Party Mechanisms (APMs). This directive officially endorsed and promoted the informal deliberative space at the local level, which is likely to be, not a temporary deviation from intended practice, but rather an evolving culture in local governance.

The agenda of APMs, and the politics of consensus, was espoused to protect peace and promote reconciliation, and it was adopted as a template for transitional political representation and decision-making at all levels of government. It was perhaps assumed that, because the APM members represented different parties on a one-party-one-representative basis, they would articulate competing needs and priorities, making resource allocation decisions more open and equitable. However, the gradual unfolding of collusive tendencies in local politics began under the legal cover of this consensus politics and the general pretext of post-conflict conditions, with the lack of opposition politics, increase in size of grant monies to local bodies, and the lack of direct accountability serving as primary drivers of collusion.

The local governance practices that have emerged in the last 10 years appear to have detrimental effects on local-level democracy and state efficiency. Certainly these practices have evolved in the context of conflict and transition, and in some ways as reverberations of historical problems in Nepali society, politics and the state. But if their existence and evolution are understandable, their longer-term implications are less understood. Thus a key objective of this report has been to reveal how deeply rooted this political malpractice has become in local governance in Nepal, with special reference to education and health sectors, and to recommend both practical and policy interventions to counter its ability to sustain and endure.

### **Political Economy of Transitional Arrangements in Local Governance**

The *de facto* space where competition for local resources takes place is the APM. Under the APMs, no party is uniquely positioned to monopolize public funds and resources for patronage purposes. Each is keen to increase its share of the treasury, and there is no agreed upon formula to allocate “patronage rights” among political actors. As a result, two types of ad hoc arrangements have emerged: (1) in almost all APMs, a pecking order has been negotiated based on the results of the national election of 2008, with some reference to the local performance of the parties, and (2) with no opposition bench left, the parties have found

it more profitable to collude with strategic partners in the pecking order to increase their share of the public resources.

Local-level corruption in Nepal is generally not a onetime event, but rather an ongoing practice involving a multitude of stakeholders each playing their part. In other words, it is not a complete absence of the rule of law in local governance, but rather an ethical degeneracy in local politics that seeks short-term individual benefits at the cost of longer-term public welfare, and deeply undermines formal procedures of governance. Collusive schemes employed at the local level included a tactical mixing of private and public interests in resource allocation decisions, practice of nepotism, lack of transparency, informal decision-making, among others.

The Ministry of Local Development (MLD) has undertaken several initiatives to improve representation and accountability in local governance, with the introduction of the fourteen-step budgeting process and the setting up of Ward Citizen Forums. However, the processes and motivations that have fostered the culture of collusion in local governance will not be easy to reverse. We have chosen the term “culture” to refer to an enduring practice, which is categorically different from the opportunistic corruption that one observes in other sectors of government. This is deeply worrisome, and calls for an urgent policy response.

### **The Education Sector**

Despite the intent of the LSGA to enhance educational performance by devolving relevant authority, the performance of the education sector faces major challenges, including the politicization of faculty through labor unions, hijacking of SMCs agenda by local elites, and in the absence of local elections, the exercise of political power in communities moved from the conventional spheres of political contestation through elections to local bodies to other community-based organizations such as SMCs.

The education sector in Nepal is extremely politicized, more so perhaps than any other service sector. Collusion manifests primarily through political interference in areas involving significant funds, such as construction of school buildings or other large procurements, or where they can gain politically by engaging in patronage politics, as in teacher recruitment and disbursing locally administered scholarships.

The intent of devolving the education sector was to improve academic standards in the nation’s public schools, but the rampant diversion of resources has produced the opposite result. As a result of all this, despite the nation’s huge investment in educating its citizens, parents across the country who can bear the cost prefer to send their children to private “boarding” schools.

### **The Health Sector**

The health sector was devolved through the LSGA in order to promote a more efficient and effective delivery system. Yet this sector remains highly centralized, such that the local units remain little more than “simple aggregations of centrally sanctioned budgets.” One challenge to implementing the LSGA in this sector is the failure to adequately define the new roles and responsibilities of local agencies, resulting in a state of confusion and a lack of intra-agency coordination. This problem is exacerbated by the absence of elected leadership in local bodies.

Despite the limited devolution in the health sector, and the central authorities’ control over most of the resources, local level actors get involved for a quick financial gain through local collusion. On the other hand, national level actors seem interested in areas with significantly

more resources, such as construction of health related infrastructure and large procurements of medical supplies. The opportunity to expand the political base by influencing the hiring of local staff and appointing people based on nepotism or political affiliation also served as an incentive for many elites.

The informal arrangements to siphon off resources intended for the delivery of health services have a deleterious effect on the quality of the services provided. This is compounded by disjointed planning in the sector that does not truly reflect the needs of the people. The consequence is a growing level of distrust of the state to provide this basic human right. As a result, we found many locals skipping the public health services altogether, and choosing instead the more expensive private clinics.

## **Conclusion and Recommendations**

Severe lack of capacity to implement the ambitions of the LSGA, the onset of conflict, impractical design of local-level planning processes and, most of all, the reckless decision to dissolve the elected bodies in 2002 have all contributed to the informalization of local governance in Nepal. Similarly, the inability to conduct elections since 2002, and the succession of different ad hoc arrangements that filled the void—handing all authority first to bureaucrats, then to an unelected guild of political elites, and finally to the All Party Mechanism in 2009—have contributed to political collusion, increased corruption, and bolder forms of patronage politics at the local level.

Although the APMs were formally dissolved in January 2012, their presence and influence in one form or another continues unabated. The inability of the central government to employ formal means and directives to effectively curb and control distortions in governance procedures may be indications that these developments are becoming a part of local governance culture rather than a transitional practice. Based on our findings, we make the following recommendations:

### **Local Governance**

Improve transparency. There do exist tools to ensure greater transparency in public institutions, but they are rarely used at the local level. For example, the Right to Information Act (RTI) has been used with a fair bit of success to force greater transparency at the central level. Similar use of RTI at the district level would help promote transparency in local governance from both the supply and the demand side.

Strengthen open deliberative platforms such as the Ward Citizens Forum (WCF) as an interim strategy. The initial success, noted by some of the participants in the study, of the WCF and other public platforms in promoting transparency and accountability, particularly in resource allocation decisions, looks encouraging. While it may be costly to establish and train over 36,000 WCFs across the country, careful targeting in areas where the problem is most acute can help to improve the situation.

Bring local governance to the front burner of national politics. The country is fixated on the agenda of federalism, while completely ignoring the pressing task of improving local governance through the new constitution, and the public losses generated by dysfunctional local bodies. The failure to make any noise about the state of local governance, and the lack of accountability, has stifled the emergence of any meaningful response to the problem.

Hold local elections, along with the national election, as soon as possible. The accepted logic of promulgating the constitution first, holding national elections second and then holding sub-national elections, including for the newly formed federal states, is no longer practical now

that the promulgation of the constitution has no formal timeline. This should be taken as an opportunity to push for local elections, along with the national election, at the earliest date. A concerted mobilization of local body associations, local civil servants unions, the media and other stakeholders, including international agencies investing in local governance, can help raise the profile of this issue and bring it to the notice of political leaders in Kathmandu.

## **Education**

Promote collective decision-making and due process in SMCs. More rigorous audits of SMC management can control the tendency to monopolize SMC authority, but promotion of collective decision-making practices will require comprehensive introductory training for SMC members in order to cultivate a sustainable practice of better school governance.

Enforce parents-only SMC membership rules. One reason SMCs have become so partisan is the overwhelming presence of non-parent political activists. This distortion defeats the original premise of SMCs—that parents will make decisions in the best interests of the school because they have a personal interest in the education of their children.

Ensure integrity and fairness in teacher recruitment. While there is competition for control over recruitments in most other government offices, the case of teachers is far more serious, as it stands to produce long-term effects on the quality of education. Ensuring fairness and due process in teacher recruitment, in fact, will have equally valuable effects in other areas of SMC governance, because recruitment remains the most contested function of the SMC.

## **Health**

Deepen devolution in health. While there is a need to consolidate resources and pursue national targets through a centralized plan to stay efficient, the intended effects at the local level are less likely to materialize if local health facilities fail to tailor services to local needs, and the community is unreceptive or unsupportive, particularly toward public health services.

Mainstream the responsibilities of devolved governance in the MLD. The problem of dual loyalties that exists in the local bodies has created a culture where the VDC secretaries do not feel sectoral services are their concern. The LDOs, in turn, do not act in accordance with the spirit of devolution policy, because the internal incentives for them to extend their offices' responsibilities to sectoral integration are minimal. This needs to change, and the MLD should begin to mainstream this message through directives and trainings.

Integrate planning processes. While the decision to devolve the health sector came in 2005, neither the MoHP nor the MLD has seriously pursued the key objective of integrating the planning process at the local level. This defeats the purpose of devolving the health sector, as gains in resource mobilization, participatory planning and monitoring, and targeting of services have yet to be realized. There is an immediate need to provide joint trainings on integrated planning to the local-level staff, develop guidelines on integrated planning, and enforce the provisions of devolution policy in earnest.

Besides these specific recommendations, we would like to draw the attention of relevant policy makers to two additional issues. (1) Since the constitution has yet to be drafted, and our findings, as well as observations made by others, have clearly revealed the weaknesses of the LSGA, LSGA implementation and devolution policy, the time to correct the problems of local governance is now. (2) A key mandate of the new constitution is to federalize the country and the insertion of an intermediate layer of government between the central and the local is going to disrupt the system for some time. Any reforms of local government that are needed or contemplated should be implemented before the new tier of government enters the

structure, not after. That way, the investments made and lessons learned over three decades of experimentation in local self-governance can be protected and utilized.

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# Political Economy Analysis of Local Governance in Nepal

The relationship between the Nepali state and its citizens has undergone significant transformation in the past 50-plus years. Beginning in 1951 with the political changes that followed the end of the Rana regime, the government of Nepal for the first time expanded its role to include the delivery of public goods and services to its citizens. Previous state systems, going far as back as the beginning of modern Nepal, had established various institutions to reach its citizens, particularly for collecting taxes and maintaining law and order. Successive governments began modernizing these administrative units through various legislative and administrative efforts such as the *Gram Panchayat Act* (1949), the *Nepal State Nagar Panchayat Act* (1953), the *Decentralization Act* (1982) and others, to foster a more direct relationship between the state and its citizens, and to engage citizens with issues of everyday governance at the local level.

The nineties further raised hopes for a decentralized, democratic state willing to devolve authority to the local level. Democratic governments of the nineties showed increased commitment to deepening grassroots democracy and expanding access to local services. This resulted in the enactment of the *Local Self-Governance Act* (LSGA) in 1999. The act expanded the mandates of local bodies, devolving the powers, responsibilities and resources required to allow local governments to manage health, education and quasi-judicial services and to meet the basic infrastructure needs of the locality. This gave greater voice and authority to the 220,000 elected representatives, including approximately 40,000 women, who managed local governments across the country.

Apart from the elected actors, the LSGA called for a greater role for civil society in the everyday functions of local bodies, emphasizing transparency, public accountability and popular participation. Perhaps more significantly, the LSGA sought to expand the scope of local governments by devolving the authority of four vertically organized service sectors—infrastructure, agriculture, health, and education—to the local level. As a result, the mandate for local development and service delivery now fell mainly on the local bodies, which were further required to work with community-based entities such as user groups, management committees and other local, grassroots constituencies. In principle, as a commitment to political decentralization, the *Local Self-Governance Act* must be considered a significant step towards establishing local authority over governance in Nepal.

## The LSGA in Practice

Not all well-intended policies, however, produce the desired results. The LSGA unleashed unprecedented expectations on the local bodies from both the demand and the supply sides. On the supply side, local bodies often lacked the capacity to carry out the mandates of the LSGA for planning, budgeting, accounting, providing technical inputs to sectoral programs and competently overseeing implementation. On the demand side, the gap between expectations and results was even wider in the areas of participation, accountability, transparency and delivery. As we dig deeper into these problems, we can identify three key areas where implementation of the LSGA ran into difficulties.

**Capacity crunch.** It was not that the Ministry of Local Development (MLD) had not anticipated these problems. There had been an ongoing debate over “capacity first or authority first” since the *Decentralization Act* of 1982, whose modest proposals for devolution had run into capacity impediments right from the outset. The adoption of the LSGA was a decisive verdict in favor of “authority first.” It called for a significant escalation of governance functions at the local level and a concurrent increase in funds, both changes

that urgently required enhancing the capacity of local bodies. In response, the MLD started allocating about 30 percent of the block grant funds going to the local bodies for capacity development. A slew of co-implemented programs were initiated through donor assistance, such as the Participatory District Development Program (PDDP), the Decentralized Financing and Development Program (DFDP), the Local Governance Program, Decentralized Action for Children and Women (DACAW), and others. However, these efforts were limited in scope or coverage, and did not reach all levels of local government across the country. This was exacerbated by the inadequate resources available for building needed capacity locally. For example, municipalities were put in charge of overseeing large road projects without a single road engineer on their staff. Despite the expanded mandate to manage a variety of services at the local level, Village Development Committees (VDCs) continued to be staffed by a single “secretary” and an untrained assistant who was to be paid by the VDC from its own resources. As a result, the LSGA became a repository of unfunded mandates rather than an enabling instrument for local bodies to take control of their affairs.

***Disjointed planning.*** The LSGA came into being as a line ministry statute sponsored by the MLD. At the local level, however, it sought to integrate the planning processes of all major sectoral ministries of the government. A proposal for integration from one ministry never became binding on other ministries legally or practically. At the center, the sectoral ministries successfully resisted the planning practices mandated by the act. They continued to ignore the procedural changes demanded by the LSGA,<sup>1</sup> and held onto the tradition of departmental planning with their own district-level units. This led to the production of disjointed plans, one produced by the local bodies and the other produced by the sectoral ministries. The National Planning Commission (NPC), whose job it was to integrate the plans at the central level, also remained ineffective in integrating the planning process, and continued to work from the sectoral plans rather than the integrated plans coming from the DDCs. This practice was partly justified, as the sectoral plans coming from the ministries were more technically and fiscally sound than the plans from the districts, where planning capacity is very low. But the privileging of ministerial plans made the local level planning process redundant and the experiment in devolution hollow.

***Onset of conflict.*** The LSGA was enacted in 1999, when the Maoist insurgency was spreading rather quickly in the rural areas of Nepal, particularly in the mid-western region. By the year 2000, about half of the 75 districts in Nepal were reporting increased insurgent activities in the rural areas. In affected districts, the Maoists had a publicly stated policy of displacing the “old state.” VDC offices were bombed or padlocked, elected functionaries were forced to flee the villages, and VDC secretaries were driven back to their bases in the district headquarters. By 2002, this process had intensified to the point that a majority of the VDC offices in the country were effectively empty. In 2002, the government dissolved the elected bodies to conduct fresh elections, but the insurgency was now strong enough to block the conduct of credible elections across the country. The result was the formal and complete “emptying” of local bodies. Most everyday functions of the VDCs, including vital registration, land revenue collection and even grant-making, were conducted from the district headquarters. It was also during this period that the MLD developed and approved the Local Self-Governance Regulations (LSGR) and subsequent directives to manage local governance under the LSGA. The rationale behind the local governance procedures established under the LSGA, therefore, often reflects the coping strategies required by the conflict, rather than the broader objectives of deepening democracy and improving governance. In addition, the normal process of refining policy through practice and evaluations was never available to the

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<sup>1</sup> While subsequent amendments in the sectoral statutes included alignment provisions, in some instances the regulations ignored the changes, and in most instances the directives were never revised.

LSGA in the formative years. Since the formal end of conflict in 2006, the MLD has been trying to redeem the missed opportunities of the early implementation years, but the fact that the local bodies have remained without elected representatives continues to impede any real progress in institutionalizing the LSGA.

#### **The fourteen-step planning process**

The planning process begins with the (1) directives on the budget ceiling for the coming year sent by the NPC and the ministries. DDC officials (2) review the ceilings and organize (3) plan formulation workshops in the local bodies. These workshops discuss the policies, goals and resource availability, including estimates for each VDC. VDCs then convene (4) meetings on programs to be implemented at the ward/settlement level. The selection of programs occurs at settlement level (5) involving the villagers, user committees and other community level organizations. The Ward Committees meet (6) to discuss local grant requests. VDCs then meet (7) to prioritize programs, prepare resource estimates and select programs that can be funded with the VDC budget, those that would need external support are separated for further referral.

The next step involves the Village Council (8). The Council approves the programs and submits them to the Ilaka (an Ilaka generally consists of 5-8 VDCs) level planning workshop (9). These workshops prioritize sectoral programs requested by VDCs and municipalities and are forwarded to DDCs. The sectoral committees at DDCs review the recommendations of the Ilakas (10), identify those that can be funded at the district level and those that would need central support and send their recommendations to the Integrated Plan Formulation Committee. This committee reviews the recommendation, prioritizes and submits a draft district development plan to DDC (11). DDC meeting discusses the draft plan along with the guidelines from NPC and other government agencies and identifies programs that can be implemented with local resources and those that need central government support. This draft plan is sent to DDC Council (12). DDC Council approves the final document (13). The plan and programs approved by the Council are sent to the NPC, MLD and sectoral ministries. (14) The approved programs are included in the Red Book, the official allocation register.

*A Guide to Government in Nepal: Structures, Functions, and Practices*  
—The Asia Foundation (2012)

In the post-conflict years, MLD and other line ministries have introduced several initiatives to enhance safeguards and accountability in the operation of local governments. The performance-based grant allocation system introduced in 2004, for instance, measures indicators of procedural compliance and performance (MC/PM) in local bodies.<sup>2</sup> Guidelines for the fourteen-step planning process have been circulated to ensure participatory budgeting. More recently, efforts have been made to form citizens' forums at the ward level. Such measures by MLD reflect their intention to repair the system. But these measures have not had the desired effects at the local level, largely because they have tended to emphasize the formal and procedural and ignore the informal and political aspects of governance. While this report deals with this dichotomy in much greater detail in the coming sections, at the outset we would like to emphasize the two transformative processes that have shaped Nepal's local governance since the enactment of the LSGA.

### **From Formal to Informal Governance**

In general, the Nepali state has yet to evolve into a rules-based system with fully functioning checks and balances and adequate disincentives for transgressions of formal procedures, and adherence to formal rules and procedures diminishes as one moves down the hierarchy from central to local government bodies. This general characteristic of the state predates the LSGA and has survived it, with conflict and electoral dysfunction driving citizen-state interactions

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<sup>2</sup> Both minimum conditions (MC) and performance measures (PM) were implemented for DDCs and municipalities, while MCs are used for VDCs. The MLD is currently considering extending PMs to all VDCs.

and political transactions further into the informal space, particularly at the local level. There are a number of factors that are driving this process, but four stand out:

***Erosion of government legitimacy.*** When the tenure of the locally elected representatives expired in 2002, the government authorized its civil servants to assume all functions of the local bodies. This decision, taken at the height of the conflict, introduced several new problems into local governance. In most VDCs, the VDC secretaries had already been displaced, and were operating from distant district headquarters.<sup>3</sup> These “governors *in absentia*” could command very little legitimacy locally and therefore had to rely almost entirely on relationships rather than procedures to perform their duties and keep the local bodies functional. Even those VDC secretaries who managed to stay in their VDC offices lacked the public authority and legitimacy of the elected representatives. As non-gazetted<sup>4</sup> (clerical) officials, the VDC secretaries were assigned clerical duties up until 2002. They reported to the Local Development Officer (LDO), who in turn reported to the MLD. Almost overnight, the VDC secretaries found themselves in charge of all VDC functions, without any local supervision or political legitimacy. As a coping strategy, the VDC secretaries resorted to informal consultations with key local elites on almost all major decisions to be taken at the local level. This opened an entirely new political space, outside of formal procedures, where government decisions were made. In the absence of elected representatives, that informal space in the last ten years has become the predominant locus of deliberations by local bodies across the country, in flagrant violation of formal procedures.

***Out-of-control emphasis on the formal.*** Just a glance at the fourteen-step planning process (see box above) shows the kind of formal and procedural complexities that have emerged from the imaginations of policymakers in Kathmandu. A typical VDC with two clerical staff, no planning budget, lacking basic office equipment to acquire and organize information, and with no local political legitimacy is expected to manage layers of planning consultations in order to rationally allocate resources that are vastly exceeded by local needs. Under such circumstances, it should only be expected that informal shortcuts would quickly replace the wildly impractical formal procedures and norms. As a result, local bodies across Nepal have sidestepped the formal planning process, and conduct allocation consultations only *after* the approved budget arrives. In some instances, “priority” projects informally agreed upon between key political elites may take precedence in the funding pipeline, but in most cases, “planning” starts only when the funds arrive. The LSGR is full of such unfunded mandates, which fail to take account of the limits of local capacity and available resources, and so inadvertently promote the tendency to routinely ignore procedural requirements. Over the last 15 years since the enactment of the LSGA, the informal procedural shortcuts invented and practiced locally have become the norm rather than an exception.

***Entrenchment of the informal deliberative space.*** What started in 2002 as a coping strategy by officials in the local bodies acquired formal legitimacy with the formation of All Party Mechanisms (APMs), established by a 2009 cabinet decision as a temporary remedy for the political vacuum at the local level. The APMs would have an exclusive mandate to serve as a consultative apparatus for local government officials. It was perhaps assumed that, because

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<sup>3</sup> Of the 12 semi-urban and remote VDCs in the study, only 3 VDC secretaries were found to be working from their designated VDC offices. Three secretaries were working from an adjoining VDC. Their main reason for working *in absentia* was that a single secretary is often assigned to two or three VDCs. Six secretaries were working from the district headquarters. Their main reason for working *in absentia* was the security threats in their remote locations—a position supported by their union.

<sup>4</sup> Notice of the appointment of civil service officers is published in the Nepal Gazette (a government publication that notifies the public of government decisions and is the authoritative text of laws), and they are thus called gazetted officers.

the APM members represented different parties on a one-party-one-representative basis, they would articulate competing needs and priorities, making resource allocation decisions more open and equitable. Subsequently, the grant management guidelines instructed officials in the local bodies to consult the APMs when making decisions on resource allocation and other local-level development activities. This directive officially endorsed and indeed promoted the informal deliberative space at the local level. The shortcuts and deviations invented to circumvent onerous formal procedures were now legitimized and openly practiced, so much so that the formal dissolution of APMs in 2012 (as elaborated in the coming sections) has not been able to even nominally curb or control the entrenched practices of informal decision-making. The same corps of actors continues to shape key local decisions; they merely refrain from using the APM banner in their deliberations.

***Inherent incentives for informalization of local governance.*** As mentioned above, the informalization of local governance in Nepal is likely to be, not a temporary deviation from intended practice, but rather an evolving culture in local governance. Support for this claim comes from the observation that there are no tangible incentives for political actors or officials in the local bodies to resist this trend. Until a strong state with an enhanced commitment to the rule of law forms in the center, or until electoral competition and the politics of opposition take root in earnest at the local level, the inherent incentives for informalization are unlikely to change. As things exist, the scope of informal influences in decision-making and resource allocation at the local level (1) provides political protection to officials in the local bodies that the formal practices don't; (2) opens more avenues for self-serving access to public funds for both political actors and officials; (3) allows officials to avoid public scrutiny and onerous procedures, and (4) co-opts and placates citizen leaders through collusive practices (elaborated further in the coming sections). These inherent incentives will not disappear without fundamental changes on the ground, particularly in the way politics is conducted and formal governance by rules and procedures is protected and promoted at the local level.

### **From Consensus to Collusion**

In the post-conflict period, the Interim Constitution of Nepal (2007) heralded an era of “political consensus” as a framework for conducting the business of government. The idea of consensus was adopted as the preferred political framework to protect peace and promote reconciliation, and it was used as a template for transitional political representation and decision-making at all levels of government. Accordingly, while the Interim Constitution continued the national commitment to local self-governance, it introduced a particular phrase in Article 139.2: “Interim local bodies shall be constituted at the district, municipal and village levels by the Government of Nepal, *with the consent and participation of the political parties that are actively involved at the local level pending the election of the local authorities*” [emphasis added]. This provision allowed opposing groups to engage with each other without resorting to violence, but it created a new risk of collusion by allowing no scope for political opposition independent of the established parties.

At the local level, the national commitment to consensus politics, combined with the preexisting process of informalization of governance, gave rise to collusive practices that undercut both democratic deliberations and state efficiency in significant ways. In the name of consensus politics, formal avenues to contest the actions and decisions of local bodies became narrower. When questioned, the pretext of “transitional necessity” or “post-conflict

sensitivity” could be invoked to evade accountability.<sup>5</sup> During our research, VDC secretaries who had chosen to work from district headquarters instead of the VDC offices routinely cited “lack of security” as the reason, yet ordinary people in the VDCs were unable to cite any specific instances of threats or violence against VDC secretaries in the previous two years. It is not unusual to get similar responses to questions such as why wasn’t the budget spent on time, or why weren’t VDC council meetings conducted on time. Even LDOs use these excuses as a first line of defense for their incompetence.

The gradual unfolding of collusive tendencies in local politics began under the legal cover of consensus politics and the general pretext of post-conflict conditions, but the most destructive practices have less to do with broad legal and social conditions, and more to do with the narrow self-interest of individual actors. We mention here three of the more salient drivers of collusion in local politics:

***Lack of opposition politics.*** Patronage is a long-established tool for securing political power in Nepal, but under the politics of consensus practiced in the All Party Mechanisms, patronage has assumed a new form in which larger parties patronize smaller parties to secure their collusion. APMs are formed by providing a seat to any political party active in the locality that secured representation in the Constituent Assembly elections of 2008, and this system changes the usual political competition between the ruling and opposition parties. Under usual circumstances, the ruling party would use public funds to consolidate and expand its patronage among particular constituencies in the jurisdiction, and the opposition party would try to control that tendency by invoking notions of fairness, equity, rules and procedures. Under the APMs, no party is uniquely positioned to monopolize public funds and resources for patronage purposes. Each is keen to increase its share of the treasury, and there is no agreed upon formula to allocate “patronage rights” among political actors. As a result, two types of ad hoc arrangements have emerged: (1) in almost all APMs, a pecking order has been negotiated based on the results of the national election of 2008, with some reference to the local performance of the parties, and (2) with no opposition bench left, the parties have found it more profitable to collude with strategic partners in the pecking order to increase their share of the public resources. These arrangements have created a new type of patronage politics, where strategic partnerships among political parties have expanded the grip of patronage and control in the locality to the point that no one can effectively question the decisions of local bodies, thereby providing a sustainable political foundation for collusive practices.

***Increased size of funds, increased incentives.*** As grant monies to local bodies increased significantly over the past one and a half decades, the APMs became attractive targets for political cadres. Individual grants to VDCs, for example, increased from Rs. 300,000 in 1995 to roughly Rs. 2 million by 2011. As these funds grew, the incentive to invest political energy to appropriate them for individual and party purposes grew further. Aided by the scope of collusive appropriations, it was now possible to secure large grants through relatively weak contracts with user committees, making corruption and misappropriation of funds more possible. The practice of user committees subcontracting to commercial contractors is picking up momentum in all local bodies. In the municipalities and the DDCs, where grants can be even larger, subcontracting has become almost a norm. This clearly defeats the purpose of funding beneficiaries directly through user committees, which assumes that with adequate ownership and participation, fiscal malfeasance can be controlled in small-scale projects. As the funds have grown, the amounts skimmed-off have become large enough to

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<sup>5</sup> In a sense, this replicates the culture of Nepal’s administration under monarchy, when all activities undertaken or costs incurred by the King were beyond scrutiny, even by the audit.

promote a collusive bond among the contractor, the user committee and the political representatives. This, in turn, creates a self-propagating incentive for collusive practices in local governance.

***Lack of direct accountability.*** The APM members are shielded from direct accountability at two different levels. First, the APM is by law a consultative body created to “assist the local bodies” in performing their functions, with no direct authority to make or implement decisions. That legal status notwithstanding, the APMs have acquired *de facto* authority to make resource allocations and other decisions in local bodies, for the various reasons discussed above. Yet based on their legal status, APMs are not directly accountable to any authority, be it the government or the people. The individual members of the APM are also shielded from any form of direct accountability. No one is formally in charge of the APM, and no single member is obligated to defend the APM’s decisions. No more perfect arrangement could be devised for collusion to flourish.

### **Longer Term Concerns**

The local governance practices that have emerged in the last 10 years appear to have detrimental effects on local-level democracy and state efficiency. Certainly these practices have evolved in the context of conflict and transition, and in some ways as reverberations of historical problems in Nepali society, politics and the state. But if their existence and evolution are understandable, their longer-term implications are less understood. When political malfeasance is condoned and allowed to fester, it takes root in society in enduring forms and becomes part of the culture of governance.

For instance, the Ministry of Local Development dissolved APMs on January 3, 2012, following a directive issued by the Commission for the Investigation of Abuse of Authority (CIAA). The CIAA was alerted to the rising level of corruption in local bodies, and found the situation serious enough to call for immediate dissolution of the APMs. Yet despite this dissolution, the APM members continue to influence resource allocation decisions in DDCs, municipalities and VDCs. Their activities and influence remain the same; all that has changed is that their formal accountability is even further reduced. In the six districts we visited, we found the APM members attending meetings, brokering deals, helping user committees process grants and project closures, and answering our questions in very authoritative ways several weeks after their official role in local governance had been terminated.

Currently it is quite clear that, in Nepal’s local governance, the informal matters much more than the formal. With a constitution yet to be written, and local elections still years away, any reversal of this situation is unlikely in the short term. The concern is how challenging it will be to eliminate these informal practices even after the structural impediments to formal processes, such as the lack of opposition politics, are removed. Thus a key objective of this report has been to reveal how deeply rooted this political malpractice has become, and to recommend both practical and policy interventions to counter its ability to sustain and endure.

## Political Economy of Transitional Arrangements in Local Governance

This chapter presents the study's detailed findings regarding the transitional political arrangements put in place since 2002 to manage the politics of local governance in Nepal. For the most part, we have looked into the functioning of the All Party Mechanisms, established in 2009 and dissolved in January 2012. We have kept our focus on the APMs, because the culture of collusion mentioned earlier in this report is still the primary factor shaping local political economy, even after the formal dissolution of the APMs. We start with an analysis of the competing interests of local political actors, and identify the strategies they use to navigate their interests to affect particular outcomes in local governance. The first section of this chapter investigates the composition of APMs, how they vary across the country, and the power relationships within which they function. The second section explores how the politics of consensus, intended as a transitional mechanism of representation, has fostered a culture of collusion among local elites, including politicians, the bureaucracy and other interested actors. It describes the various drivers of collusion—the incentives and opportunities for these actors to perpetuate the culture of collusion. The chapter concludes by assessing the effectiveness of some of the accountability measures put in place by the MLD and some community organizations.

### All Party Mechanisms

**Composition of APMs.** The *de facto* space where competition for local resources takes place is the APM, not the council halls of the local bodies. APM members are generally the local head or some other powerful member of their political party.<sup>6</sup> Alternatively, these powerful politicians may delegate a close subordinate to represent them. APM members may be selected by other methods as well, depending on the practices of their party. For instance, in Sankhuwasabha, the Maoist party nominates its APM representative on an annual rotation.

When first established in 2006, APMs were drawn from the Seven Party Alliance and the Maoists,<sup>7</sup> who legitimized their membership on the basis of their involvement in People's Movement II.<sup>8</sup> Soon thereafter, other parties began to claim a stake in these political structures, especially in the Terai following the Madhesi rebellion in 2007. The elections to the Constituent Assembly (CA) in 2008 increased APM membership to 25—the number of political parties that won representation in the CA. Splits in some of the parties after the election led to further increases in the number of parties represented in APMs.

We came across some peculiar instances where political elites have managed to exploit the system and gain admission to the APMs in unorthodox ways. For example, in a VDC in Kavre, an individual of Madheshi origin was able to present himself as the representative of Madhesi Janaadhikar Forum (MJF)<sup>9</sup> for an entire year, despite the lack of any previous presence of MJF in this particular location.<sup>10</sup> In another instance, an individual defected from

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<sup>6</sup> APMs subscribe to the general rule that allows for a one-party-one-member representation at each level. Some smaller parties have the same representatives in the district APM and municipal APMs. For instance, Rastriya Janamukti Party sent the same representative to the Sankhuwasabha district APM and the Khandbari municipal APM.

<sup>7</sup> SPA and the Maoists had led the fight for the end of King Gyanendra's rule.

<sup>8</sup> The April 2006 revolt that toppled the King Gyanendra's rule is commonly referred to as People's Movement II, with the democratic movement of 1990 being People's Movement I.

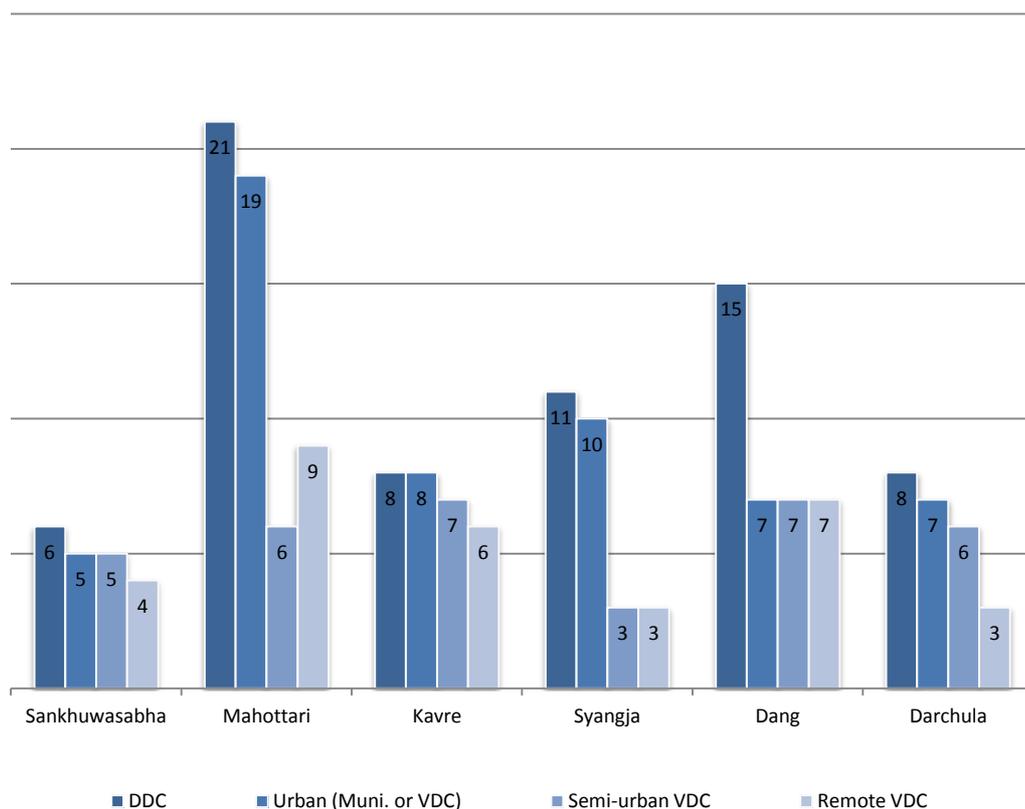
<sup>9</sup> Madheshi Janaadhikar Forum is a national party that had 54 representatives at the Constituent Assembly in 2008. However, it has subsequently gone through several internal party divisions.

<sup>10</sup> This person was removed by other APM members within a year.

one party to another for the sole purpose of entering the APM, but somehow was still able to maintain allegiance to his previous party, highlighting the strategic separation of interests and ideologies as a political craft. At the VDC level, caste and ethnic representation tends to be broadly inclusive, because most VDCs represent ethnically mixed settlements. In higher bodies—DDCs and Municipalities—the general dominance of upper-caste and janajati groups follows the pattern of national institutions. Women’s representation is a rarity but not completely absent.

**Variation in APMs.** APMs varied in their composition across the country. In the six districts covered in this study, Mahottari had the highest number of parties, 21, represented in their district-level APM. Sankhuwasabha had the lowest number of parties represented, just six (see Figure 1). Regionally, the number of members in APMs was highest in the Terai, followed by the hills and then the mountain districts. In all the study districts, urban locations generally had more APM members than non-urban locations. Field observation indicates that larger APMs often tend to be hijacked by a few powerful political figures through their unscrupulous relations with government officials, whereas smaller APMs provided a forum where members could participate more equally in the decision-making.

**Figure 1: Number of members in district, municipality and VDC-level APMs**



Note: In this study, Khalanga VDC of Darchula district, within which the district headquarters lie, is considered urban. Thus urban locations in this study comprise five municipalities and Khalanga VDC.

***Not all APMs are created equal.*** Field observation shows that APMs in the hill districts, with the exception of Dang in Terai, engage in more collusion with the bureaucracy than their APM counterparts in Terai. This stems from the fact that hill caste groups have traditionally dominated the Nepali bureaucracy,<sup>11</sup> making them better able to identify and engage with local politicians who share a common cultural and ethnic background. As a result, their day-to-day exchanges often override their party-based ideological differences. As a corollary, bureaucrats in the Terai districts have a more formal working relationship with local elites than those in the hills. Additionally, there appears to be less party loyalty among political representatives in the APMs in Terai than among their counterparts in the hills and mountains. For example, while APMs in the Sankhuwasabha, Kavre and Dang were often asked to report their decisions back to their party, APMs in Mahottari had greater autonomy to seek personal gain from participation in the APMs.

***Not all members within APMs are equal.*** While many factors influence power relations among APM members, their standing among local bureaucrats and their influence over decision-making were based primarily on a few key criteria. (1) Due to the electoral success of the Maoists, who won a plurality in the CA election of 2008, the Maoist party representative is generally considered the top of the political pecking order<sup>12</sup> among APM members. (2) The partisan affiliation of the local bureaucracy affects the power of APM members, because local staffs often share inside information and give priority to members with similar party allegiances. (3) APM members who are former elected officials receive a certain degree of deference from the bureaucracy. (4) APM members drawn from either the ruling party or the faction that leads the MLD are often offered extra privileges by those in the bureaucracy. (5) Members of high social status due to their level of education, economic prowess or political roots in the local community also exercise disproportionate influence on the APMs.

Because APM members are selected by the political parties, there is no guarantee that their geographic distribution will be equitable. We have found instances where all APM members came from neighborhoods within the city area and none from the hinterlands. Because the party leadership structure itself is urban centered and elitist, the underrepresented areas are often those inhabited by disadvantaged groups. Given the tendency of members to draw resources to their own localities, the distribution of public resources also gets skewed. In this regard as well, the APM model of representation is inherently biased and helps to perpetuate existing social and geographic inequities.

***Local APMs and central politics.*** The three major political parties—Maoists, Nepali Congress, and CPN-UML—are the predominant presence in APMs across the country. Other parties then add to the overall size of APMs based on their local electoral strength in the 2008 elections, with Madhesi parties having more influence in Terai, and smaller, “left” and/or ethnic parties in the hills. Interestingly, one finds these regional parties in APMs even in places where they lacked any pre-existing political presence, showing their desire to claim a stake in local resources wherever possible. The dominance of the three major parties in the APMs holds true even in the Terai, partly because of their connections to national politics, and partly because of their ability to engage with the hill-*bahun* dominated bureaucracy.

In some instances, APM members have been recalled by their party and replaced, due either to intra-party challenges to the member’s performance, or to “instructions from above,”

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<sup>11</sup> During the Panchayat years, this was reinforced by the decision of the state to make Nepali the only official language and *daura-surwal*, a traditional hill attire, the official attire for all government bureaucrats.

<sup>12</sup> A particular manifestation of this hierarchy of power is who speaks toward the concluding moments of DDC council meetings, for example.

implying that party leaders control the APMs closely. Indeed, the nomination of party cadres to APMs is largely based on their ability to consolidate the local power base of senior leaders. In most instances, party leaders in Kathmandu were found to have a strong grip on the nomination process. Senior party leaders across the major political parties in Nepal are disinclined to hold local elections, primarily because the current arrangement provides a convenient way to conduct patronage politics at the local level. Political leaders avoid being tested by popular vote, while retaining their influence over decisions that use or abuse public resources.

**“Governors in absentia.”** Many public officials were concerned with security, particularly those stationed in the Terai districts. We heard of several instances where local politicians, including those in APMs, had threatened to mobilize their cadres against officials that disagreed with them. A few officials were even convinced that some APM members were connected to “armed groups” from which they reported receiving threats, particularly during resource allocation deliberations.

On the other hand, even APM members cite security threats as a reason for their absence from the locality. A significant number of APM members, particularly from the remote areas, prefer to stay away from their local community and reside in areas with better services and infrastructure. This may or may not be due to security threats, but when confronted with the question they routinely cite security. For example, we found APM members from Kavre residing in Kathmandu, from Mahottari in Janakpur, and from Syangja in Pokhara. These absent decision-makers do not directly interact with the people they are supposed to represent.

## Drivers of Collusion

***Incentives to collude.*** Collusion in local governance involves a tacit understanding between three primary actors: bureaucrats, politicians, and community elites. Here we outline some of the salient incentives that drive these actors to collude.

**Bureaucrats.** Bureaucrats at all levels of local bodies engage in collusive acts for several reasons. (1) *Direct financial gain.* The remuneration of government employees is significantly low, especially when compared to the potential kickbacks they can receive from collusion. As a result, many bureaucrats are easily co-opted. (2) *Culture of corruption.* Once a couple of episodes pass without apparent repercussions, these bureaucrats grow emboldened by the culture of impunity and become further entrenched in corruption. Corruption in the system is so entrenched that bureaucrats who do not submit to the established practices often find themselves subject to political pressures such as threats of transfer or political non-cooperation. (3) *Rewards and reprimands.* Rewards for professional excellence in the bureaucracy are rarely based on performance, but rather on how well one can appease one’s superiors. Conversely, the inability of the state to reprimand corrupt actors contributes to the culture of corruption.

**Politicians.** Politicians at both the local and national levels have vested interests in local development for several reasons. (1) *Direct financial gain.* Funds allocated for local development, which exceed half of the total MLD budget annually,<sup>13</sup> are routed through local bodies as block grants, and the local bodies are allowed to select the local beneficiaries. Most politicians see the funds as a source of income for themselves and the

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<sup>13</sup> In Fiscal Year 2011/12, out of a total MLD budget of Rs. 44.5 billion, 53 percent (23.41 billion) was earmarked as capital expenditure grants to local bodies. Of this, 48 percent were conditional grants and 52 percent were unconditional. The total of all grants, both capital and recurrent, is Rs. 31.4 billion, comprising 71 percent of the total MLD budget.

party, and try to influence allocation decisions in favor of “their” beneficiaries, from whom funds can then be skimmed for personal and party use. This is exacerbated by the lack of other economic opportunities. With hundreds of party cadres that rely solely on politics to support themselves financially, corruption appears to be the only viable way to manage local party units. (2) *Preserving patronage*. Politics in Nepal is essentially clientistic, where politicians keep voting constituencies on a tight leash by brokering their relationship with the state, enabling the constituency to access resources and services in a preferential manner. Collusion rather than competition with other political actors allows politicians to maintain their patronage relationship with particular voting constituencies.<sup>14</sup> (3) *Pork barrel politics*.<sup>15</sup> In Nepali politics, to the extent that political representatives compete, they compete to create the appearance of being a better provider or a more generous patron. APM members in all the study districts were deeply interested in exhibiting their political prowess and touting their influence on local resource allocation decisions. Particular areas (particular wards within municipalities, for instance) that received disproportionate shares of public funds tended to have the most influential member of the APM as a patron. That influence comes from the politician’s ability to collude with competing actors, and there is constant strategizing over how to pacify dissenting voices so that the largest allocation can be directed towards the constituency of the politician’s choice.

Community elites. The nexus of collusion is completed by the involvement of community elites, who have the following incentives to collude. (1) *Direct financial gain*. As with bureaucrats and politicians, the community elites who lead user groups and manage contractors<sup>16</sup> routinely use collusive corruption as a means to extract personal profit from public transactions. (2) *Culture of corruption*. Corrupt financial gains are easily realized because of the prevailing culture of corruption discussed above. According to The Asia Foundation/Interdisciplinary Analysts *Business Climate Survey 2010*, 88 percent of the public believes the public procurement process is unfair. A large majority believes that the most important factor in winning procurement contracts is a personal connection with either government officials (88 percent) or political parties (87 percent). This is indicative of the necessity for implementing agencies and even community groups to collude with their equally corrupt bureaucratic and political counterparts.

**Methods of collusion.** The focus on formal procedures in local governance creates vast opportunities for the local nexus to collude. The following points are field observations of the collusive schemes employed at the local level:

Conflict-of-interest. The most pervasive manner in which local elites make a mockery of formal systems in local governance is through tactical mixing of private and public interests in resource allocation decisions. For example, we found many instances in every location sampled in this study (i.e., at the district, municipal and village levels) where APM members and government staff were awarding contracts that directly benefited themselves or their private enterprise. No one questioned these decisions, and the decisions themselves appear tactically sound enough not to surface in audit examinations.

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<sup>14</sup> These could be ethnic blocks, or geographic units such as settlements or wards.

<sup>15</sup> “Pork barrel” refers to the appropriation of public funds for the benefit of a particular constituency lobbied for by their representative during budget allocation.

<sup>16</sup> The LSGA mandates all projects under Rs. 40,000 to be implemented by user groups; projects over this threshold are to be awarded to contractors through a public procurement policy. User groups are not allowed to hire contractors on projects awarded to them. They are also required to have their share of the counter-fund, a percentage of the total cost, in a bank account before work can begin. The municipality pays its share once the work is completed to its satisfaction.

Nepotism. Nepotism and the practice of *afno manchhe*<sup>17</sup> have long been identified as systemic drivers of corruption in Nepal, especially in recruitment and allocation of resources. In more rural areas, local decision-making processes, including those of the APMs, were often found to be dominated by a particular kinship group. For instance, in the Barsing Deurali and Bhula Salle VDCs that we visited, the APM members were all related to each other.

Lack of transparency. In *Nepal Business Climate Survey 2010*, 75 percent of respondents believed that informal relationships with government officials are important in accessing public documents and information. The prevalence of this view suggests that relationship-based transactions are pervasive at the local level. This creates an uneven playing field, where those with privileged access to public officials have an unfair advantage over the general public, and it opens an important avenue for collusive practices beyond public scrutiny.

Informal decision-making. The deliberations of APMs are conducted in informal settings, as was the case in Salle VDC in Kavre, where APM meetings often took place in the residence of one of the APM members. The decisions reached during these informal gatherings were formalized in the following days at the VDC office, with no one dissenting or opposing the decisions. The absence of public deliberation allows local elites to hijack the formal processes that were meant to ensure better allocation of resources.

Misappropriation of grants. Collusion is facilitated by allocating the “main share” and the “pacifying share” of available resources. This is made possible by expanding the available resources through use of restricted (pre-allocated) funds in regular grant making. Whatever the purpose of pre-allocation, these grants were generally spent for other purposes but documented as per the formal requirements. For example, the budget for school infrastructure was spent employing a new teacher; the allocation for marginalized communities was spent on road construction, and so on.

Ghost projects. We also found many instances of “ghost projects” at the local level, where a project existed on paper and funds had been disbursed (at least the first installment), but no such project actually existed in the field. These tended to be small projects, usually worth Rs.10-15 thousand (although larger ghost projects were also observed), and often represented the “pacifying share” for the less influential APM members.

***Process of collusion.*** Local-level corruption in Nepal is generally not a onetime event, but rather an ongoing practice involving a multitude of stakeholders each playing their part. Such practices do not evolve overnight, and the kind of corrupt practices that the APMs have encouraged have been around for some time. But the current scale of collusion in public transactions is new, and has spread across the country like a contagion in just the last couple of years. What we describe below is not a complete absence of the rule of law in local governance, but rather an ethical degeneracy in local politics that seeks short-term individual benefits at the cost of longer-term public welfare, and deeply undermines formal procedures of governance.

The initial opportunity to collude in local development occurs early in the planning phase. While MLD has established numerous guidelines to ensure public participation, these formal

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<sup>17</sup> Literally, “own person,” meaning a close patron or confidant with clan or political affinity.

procedures are regularly subverted by influential actors. For example, APMs are formally included in the Integrated Plan Formulation Committee<sup>18</sup> only as facilitators, but are in fact consistently found to be involved in the selection of development plans, lobbying for direct budget allocations to their own projects, handpicking members of the committee, and so on. Additionally, other elites who were not members of the APM were also heavily involved in lobbying for their own projects at this stage.

The next point of collusion is the allocation of resources, and APM members in most cases have significant influence on this process.<sup>19</sup> The locals interviewed during our research frequently described this phase of the planning process as the time to “distribute resources among APM members.” While there is no single method that APM members use across the country, there are some common strategies. For example, APMs are most active during the council period so that they can align the budget with their interests. They prefer project selection to start with a clean slate in order to insert those that directly benefit them. APM members often promote particular user groups and contractors during project selection, with the tacit understanding that the latter will either provide direct kickbacks, or procure from businesses owned by the APM members (for example, hiring excavators or bulldozers for road construction) during implementation. They also hold concurrent positions in other local bodies, such as the School Management Committee (see Chapter 3), and often take advantage of these connections to ensure that the vendors live up to their side of the bargain. There were instances where APM members refused to sign council minutes that were not to their liking. Smaller political parties have a proportionately smaller influence in local decision-making, and generally seek mutual tradeoffs in the process. This could mean being rewarded with smaller projects in exchange for supporting the claim of a more influential party, or inserting their own vendors into a larger project. APM members who argue vehemently over their ideologies in other forums easily come to a common understanding during this phase of resource allocation.

Next, the contractors routinely subvert the prescribed standards during the implementation phase of projects. The practice of sub-contracting to smaller contractors for a profit is fairly prevalent, even in community projects run by user groups. There were also frequent complaints of contractors underbidding to win projects, and then leaving them incomplete after skimming off significant funds. User groups as well were found colluding with contractors, who would deposit an agreed kickback amount in exchange for loose oversight of the contract. Government officials are required to confirm the progress of these development works prior to disbursing the interim payments, but in most instances it was obvious that they were providing lax oversight of projects from which they were personally benefitting.

The final step necessary in this loop is the evaluation of completed projects, where bureaucrats play a key role in ensuring that the project safely meets the standards established by the guidelines. Except those who have performed similar functions in the past, most local politicians (including APM members), are largely unaware of the detailed procedures for grant closing. The bureaucrats often use their knowledge of the various guidelines and regulations to navigate the formalities of the grant closing process. Technical personnel in public offices were also found to be using their official authority to endorse proposals and approve the quality of construction in exchange for a bribe. A general consensus seems to

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<sup>18</sup> An inclusive group that consists of the VDC secretary, the health post in-charge, the public school headmaster, members from excluded groups and representatives of local NGOs, among others.

<sup>19</sup> But not in all cases: government officials in Sankhuwasabha were found to be consciously bypassing their district-level APM.

have been reached in the study districts for a “commission” of 10 percent of project cost. To avoid public exposure of such collusions, these technical personnel prefer to work with contractors rather than user groups.

Installing additional checks and balances in the system may not be able to change the situation, given that the existing checks and balances are cunningly circumvented on a routine basis. Since the formal procedures are routinely flouted by informal subversions, the practices of collusion described here can only be countered through an informal, political intervention. Imagining a counter-politics to the politics of collusion thus appears as an important challenge in reforming local governance in Nepal.

### **Accountability in Practice**

Elected officials are considered to be generally accountable to the people who vote them into office. APMs were intended to represent local interests while avoiding communal conflict, but the failure to establish appropriate accountability measures has created significant opportunities for local political elites to distort formal procedures and pursue their own interests.

**Formal initiatives.** MLD has undertaken several initiatives to improve representation and accountability in local governance. For example, the fourteen-step budgeting process was meant to ensure participatory planning. During field visits, however, we found in all our study districts that community meetings were rarely held on time. Even worse, public officials in Mahottari had faked documents by forging signatures on meeting minutes without the actual participation of the community.

MLD also set up Ward Citizen Forums and Citizen Awareness Centers in select locations under the Local Governance and Community Development Program (LGCDP) to ensure citizen participation. In the absence of formal deliberative forums, the existence of these citizen-based organizations to increase social mobilization has helped improve transparency and accountability. For example, there was more local-level awareness of the planning and budgeting process in the VDCs in Darchula, and APMs are generally thought to get more public scrutiny in that locality. But even these forums were co-opted in some locations. Furthermore, given their short lifespan, these forums have not been sophisticated enough to understand and expose all the corrupt practices of the powerful local elites.

**Social accountability.** Several transparency and accountability tools have been introduced at the local level, either at the initiative of MLD or through civil society organizations. These tools, however, were found to have had limited impact, as local actors have devised various ways to thwart their intended effect on local bodies. For example, field research shows that the citizen charters in public offices were so poorly maintained that the required information was rarely legible; hoarding boards (showing total budget, name of contractor, date of start and end of project) required at construction sites were nowhere to be seen, and many locals, including some public officials, were unaware of the various public audits in their communities.

APM members and their free rein over local development have come under intense criticism over the past few years, particularly in the media. In our study districts as well, local media were often assuming a watchdog role over the misappropriation of public funds. For example, local newspapers in Darchula had brought to light several cases of embezzlements at VDCs and public schools. However, the concerned agencies had yet to take any substantive action against the exposed perpetrators, indicating another level of collusion among local elites.

***Role of civil society.*** We found that in locations with a vigorous civil society, APMs had relatively little influence over development projects. For example, in Kolma Barahachaur VDC of Syangja District, none of the three APM members appeared to play any significant role in decision-making. When asked about their relevance, most people mentioned that these APM members were inexperienced, with very little political knowledge, and that their presence was nothing more than a political gesture. The authority and legitimacy of the APMs relative to civil society and citizen groups tends to vary with the level of political control, patronage and collusion the political parties are able to employ in the locality. On the other hand, the level of knowledge and commitment in these civic groups also tends to affect their relative power. Many of the community organizations were led by individuals who already had significant influence in local decision-making, making them better able to maintain a check on the APMs. At the same time, there is a downside risk to the informal power of these citizen groups, the risk that they may themselves become a part of the self-serving collusion that political actors engage in. The complex web of social networks in these localities often makes it difficult to ensure the ideal separation of powers and implement social accountability tools, but it also holds significant potential for establishing an effective mechanism of collective action and open deliberations at the local level.

While we will discuss the implications of these findings in the Conclusion and Recommendations section of this report, the processes and motivations that have fostered the culture of collusion in local governance will not be easy to reverse. We have chosen the term “culture” to refer to an enduring practice, which is categorically different from the opportunistic corruption that one observes in other sectors of government. This is deeply worrisome, and calls for an urgent policy response.

## The Education Sector

The recently published School Leaving Certificate (SLC) results for the 2010/2011 school year, showing a passing rate of 47 percent, are one important indicator of the bleak condition of the education sector in Nepal. Historically, the formal education system that serves the Nepali general public is only approximately 75 years old.<sup>20</sup> Over the years, the Nepali state has invested significant resources to improve the institutional capacity of public schools and to ensure quality education and social inclusion. In fiscal year 2011/12, it allocated Rs. 57.65 billion—17.1 percent of the total national budget, or 4.87 percent of GDP.

The LSGA and the subsequent realignment of other laws introduced a major attempt to overhaul the education sector in Nepal. It reversed the New Education Policy of 1972, a Panchayat era law that had sought to provide a uniform formal education through the nationalization of all academic institutions.<sup>21</sup> But failure to ensure proper representation and accountability mechanisms at the local level has allowed local elites to subvert formal procedures and divert resources. This chapter provides a brief political economy analysis of local interests in the education sector of Nepal and the opportunities available to local elites to arrange political settlements to their benefit.

### LSGA and the Education Sector

In 2003/04, as required by the LSGA, district education offices (DEOs) began handing over the management of public schools to local communities in 15 districts, and they have since expanded this process to all 75 districts of Nepal. As of 2012, 25 percent of public schools—29,063 in total—are managed by communities.

**Local level arrangement.** The LSGA authorizes DDCs, municipalities and VDCs to supervise and manage schools, formulate education plans and make necessary arrangements to support educational activities within their jurisdictions. Additionally, the Education Act (1971) and Rules (2002) provide for an education committee at each level of local administration. These committees are to be inclusive, and chaired by the respective elected official.<sup>22</sup> These committees serve as advisory bodies, and they have the authority, among other things, to develop education plans, monitor and supervise education programs, manage financial resources, and forward required instructions to School Management Committees (see below). However, our researchers found most educational committees at the village level to be non-functional, while those at the municipal and district levels were either non-functional or non-existent.

While these local education committees are in charge of overall education plans and programs, the Education Act entrusts the management of schools to a community-based counterpart, the School Management Committee (SMC). The SMC is a nine-member committee comprising parents (including a female representative), teachers, local intellectuals, and a representative of the relevant local body. The SMC serves a term of two years, and is headed by a chairperson elected from among the parents. The SMC's responsibilities include mobilizing resources, sanctioning and monitoring the school budget,

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<sup>20</sup> The Durbar High School in Rani Pokhari, Kathmandu, the first modern school in Nepal, catered solely to the children of ruling political elites.

<sup>21</sup> Prior to this, formal education in Nepal was mostly community driven: each community took the lead in resource generation, operation, and overall management of its schools.

<sup>22</sup> As with other local bodies that require an elected official, given the absence of local elections, these committees are being headed by bureaucratic appointees.

maintaining school records, complying with instructions from education committees and the DEO, and forming a parent-teacher association (PTA).<sup>23</sup>

***Challenges to the LSGA in the education sector.*** Despite the intent of the LSGA to enhance educational performance by devolving relevant authority, the performance of the education sector faces major challenges, mostly reflecting local realities. We describe below some of the more salient observations from our research.

**Political interference:** Politics and education do not generally mix well, nor in a manner that benefits the latter. To ensure separation between the two, the Education Act and Rules bar teachers from becoming directly involved in politics.<sup>24</sup> This is meant to encourage a better teaching/learning environment in academic institutions. Nevertheless, teachers quite commonly exhibit a considerable degree of allegiance to some political party, particularly through their membership in politically affiliated labor unions,<sup>25</sup> but at times even by openly flouting the rules and serving as party functionaries.

Unions promote solidarity through shared concerns, and teachers unions in Nepal have raised genuine concerns of their members, such as wages, tenure and job security. But the extreme partisanship of many of their activities is often dictated by political agendas higher in the union organization, resulting in industrial actions on issues that have little relevance to them and that hinder the educational mission of their schools.

**Local politics:** The responsibility of SMCs to oversee teacher performance often puts them at odds with the opinions of teachers, who consider themselves more literate, qualified, and experienced than their SMC counterparts. For example, when SMCs in Syangja attempted to enforce regular and timely teacher attendance, the teachers saw this as a challenge to their long-held influence over the school. Many teachers in our field research opined that the selection of SMC members should ensure representation by “qualified” people only.

In appreciation of the role of parents as key stakeholders in education, the Education Act required members of SMCs to have a direct stake in the school, either as a parent or a guardian of an enrolled student. But SMCs, particularly in places with high rates of illiteracy, are frequently hijacked by other local elites. For example, an SMC chairperson of a school in Syangja did not even reside in the same village.<sup>26</sup> Other dubious ways to get involved in SMCs included assuming guardianship of a student enrolled in the community school while enrolling one’s own child in a private school. Recognizing this blatant abuse, the seventh amendment of the Education Act requires the involvement of parents, not guardians, in SMCs.

**Lack of elected representatives:** The interim arrangement whereby the responsibility to manage local community structures such as education committees was handed over to seconded bureaucratic staff from MLD goes against the democratic spirit and accomplishments of the LSGA in two respects: these politically appointed staff are not accountable to the public they are meant to serve, but to politicians who determine their position and tenure; and the postings of these seconded staff are all short-term,

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<sup>23</sup> The PTA is a maximum-eleven-member committee comprising the SMC chairperson, the school headmaster, at least one teacher, and parents (at least one female representative).

<sup>24</sup> According to the Education Act, teachers cannot participate in any kind of election held for any political party, they should not serve in any post of any political party, nor should they represent any political party.

<sup>25</sup> There are over nine political unions set up by the larger political parties. In the study districts, Sankhuwasabha had the least number of unions (3) while Mahottari had the highest number of unions (9).

<sup>26</sup> It was argued that his linkages at the district-level would bring programs from the DDC and DEC to the village.

discouraging the formation of long-term relationships with the locals, and possibly increasing the incentive for short-term collusion with local elites who have significant political clout.

Most interestingly, our researchers consistently found that, in the absence of local elections, the exercise of political power in communities moved from the conventional spheres of political contestation through elections to local bodies to other community-based organizations. This phenomenon is most evident in the education sector,<sup>27</sup> where SMCs are seen as a proxy to local political authority of central political parties. As a result, even national-level political leaders were found to be intervening to elect their preferred SMC candidates. The level of seriousness in these elections is so extreme that, for example, campaigning in Bara took place over a month in advance, with each side spending over Rs. 1,000,000 for the entire election; schools in Mahottari were closed for over 10 days to conduct an election, and election-day politicking in Sarlahi resulted in violence and vandalism that required police intervention.

### **Collusion in the Education Sector**

The education sector in Nepal is extremely politicized, more so perhaps than any other service sector. However, given the limited resources available to local authorities for discretionary use,<sup>28</sup> the opportunities for corrupt local actors, and their intentions, differ from richer sectors such as local development.

**Political interference.** APM members and other local elites are more interested in areas that have greater financial resources and less interested in delivering efficient and equitable public service. As a result, they seem disinclined to be directly involved in the education sector, except in areas involving significant funds, such as construction of school buildings or other large procurements, or where they can gain politically by engaging in patronage politics, as in teacher recruitment and disbursing locally administered scholarships. For example, the personal driver of a national-level politician was able to add—and personally select—“*rahat* teachers”<sup>29</sup> for a school in Kavre by influencing the DEO and SMC members. Such political interference in teacher recruitment was routinely observed in all of the study districts.

However, as *de facto* decision-makers for local development resource allocation, APM members garner considerable influence routing budgets to schools in locations of their preference. Thus, it is critical for school authorities to maintain strong relationships with their local APM members, as the access that affluent communities have to a network of influential decision-makers often results in disproportionate and inequitable allocations of resources.

**Mutual cooperation.** It is evident that the headmaster and SMC chairperson have significant influence in matters relating to their respective school, including teacher recruitment, disbursement of scholarships and procurement of goods and services, among others things. Their influence is even stronger when the two share other associations—if they are affiliated with the same political party, for example. One headmaster was quoted as saying, “Even when there are large differences between us, the SMC chairperson and I have found ways to amicably reconcile all issues. But it probably would not have been this easy if we represented different parties.”

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<sup>27</sup> With its thousands of teachers and students as potential party cadres, political parties are most keen to have significant influence in the education sector.

<sup>28</sup> Approximately 80% of the funds allocated to the education sector are expended directly on teacher salaries.

<sup>29</sup> The provision of “*rahat* teachers”—literally “relief teachers”—requires the agreement of the DEO to pay for recruitment of new teachers when schools face a teacher shortage.

***Paper-fixing.*** The misappropriation of resources through collusion among local elites in this sector requires significant paper-fixing to meet the accountability standards established by the law. Procurement and construction also require paper-fixing among politicians, bureaucrats and contractors, but other methods have been devised in the education sector to subvert the formal guidelines. For example, in Bahakot VDC, Syangja, the meeting minutes showed the formation of an SMC and a PTA in the presence of parents and civil society members, but in reality, as our field researchers were informed, these were formed without any consultation with the public.

***Conflict of interest.*** The code of conduct for teachers contained in the Education Rules specifies that teachers working in a community school shall not work outside their appointed school without the permission of their respective SMC and DEO. But many teachers acknowledged working part time in other private schools as well as offering private tutoring to their own students. In some localities, teachers and SMC members even ran their own private schools. This clearly represents a potential conflict of interest, as teachers and SMC members may be less inclined to provide quality instruction in the public schools than in their own private schools.

## **Impact on Education**

The intent of devolving the education sector was to improve academic standards in the nation's public schools, but the rampant diversion of resources to the personal projects and pockets of petty politicians, rent-seeking bureaucrats and self-centered elites has produced the opposite result.

***Politicized schools.*** Schools have essentially become playing fields for local political actors. Politicians use them for direct political campaigns, and politically affiliated teachers hold them hostage to their demands, sometimes shutting down schools or vandalizing school property. Our researchers even came across situations, in Mahottari for example, where students were being used in a tussle between teachers and the headmaster. When academia is so politicized, when teachers spend more energy politicking than teaching, the quality of education can only be dismal at best.

***Lack of representative planning.*** The LSGA sought to involve local communities, but the real stakeholders in these communities were rarely successful in articulating their educational needs. Though some communities were able to formulate their own education plans, lack of local capacity often produced plans of mediocre quality, particularly compared to plans developed by the ministry, and the higher authorities seldom considered them seriously.

***Low quality of education.*** The poor SLC results are one indicator of the failure to provide quality public education in Nepal. In addition to the extreme politicization of the schools and the failure to represent the true interests of stakeholders, two other factors play an important role in this failure. The political corruption of teacher recruitment results in poorly qualified faculty and politically appointed teachers who are focused on politics instead of pedagogy. The corruption in school construction and other procurement processes means that students are forced to study in a compromised environment, negatively affecting their capacity to learn. As a result of all this, despite the nation's huge investment in educating its citizens, parents across the country who can bear the cost prefer to send their children to private "boarding" schools.

## The Health Sector

Over 300 people from 20 districts in the mid- and far-western regions of Nepal died in 2009 in a cholera epidemic. The outbreak of the disease was exacerbated by lack of access to medicine and doctors, a common phenomenon in rural Nepal,<sup>30</sup> due partly to the difficult terrain, but also to the poor management of the already inadequate infrastructure in this sector. The story of the cholera epidemic made national headlines, but it represents just the tip of the iceberg of dismal health service delivery in Nepal.

In the recent past, there has been a systemic change in how the Nepali state views the delivery of health services to its citizens. In 1991/92, public spending for health services was about 3.5 percent of total spending, with user fees regarded as an important component of health service financing. By 2007, access to health services was considered a basic human right, and public spending on health services reached 7.2 percent of total spending, with user fees progressively removed as a financing mechanism.<sup>31</sup>

The health sector was one of the four vertically organized service sectors that were devolved through the LSGA in order to promote a more efficient and effective delivery system. Yet this sector remains highly centralized, with very few resources actually channeled through the devolved mechanisms. We noticed as a result that local and national actors show limited interest in becoming heavily involved in this sector. This chapter provides a brief political economy analysis of the health sector of Nepal, and the incentives and opportunities, albeit limited, for political settlements that benefit the local elites.

### LSGA and the Health Sector

The process of devolving authority in the health sector from central level institutions to the local level, as required by the LSGA, began in 2002. Since then, over 1,400 local health facilities in 28 districts have been handed over to local communities.<sup>32</sup>

**Local-level arrangement.** Located at the VDC level, health posts and sub-health posts are the primary units of the health care system in Nepal, with health care centers and primary health care centers in the next tier. These are followed by four additional tiers of hospitals—district, zonal, regional and central—with increasing levels of specialization. Units at every level serve as referral points to the next upward level of health service delivery.

The LSGA mandates that relevant local bodies oversee the delivery of health services within their jurisdictions. For example, VDC councils in the study areas had allocated a minimum of five percent of their total funds for local health services, which they used primarily to provide meeting allowances to Female County Health Volunteers (FCHVs), purchase out-of-stock essential medicines, and conduct health education and awareness programs. The management of devolved local health facilities is the responsibility of the Health Facility Operation and Management Committee (HFOMC). HFOMCs are community based structures that serve as linkages between the government bureaucracy and local communities, with numerous responsibilities including budget allocation, monitoring quality of service delivery, sharing information and raising awareness, and consulting with the community, local health facilities and relevant local bodies. They are led by the head of the relevant local public body, with representation from local health facilities, women's groups, FCHVs and members of

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<sup>30</sup> Zimmerman, M. et al. "Medical students' characteristics as predictors of career practice location: retrospective cohort study tracking graduates of Nepal's first medical college." *BMJ* 2012, 345: e4826.

<sup>31</sup> Oxford Policy Management, 2010. "Institutional and political economy analysis of the health sector in Nepal."

<sup>32</sup> Karki, K.B. (2012) "Human resources for health management from central to district level in Nepal." p12

disadvantaged and minority groups. HFOMCs are also expected to identify and prioritize local health problems, develop and implement action plans, and mobilize local resources with technical backup from the District Public Health Office.<sup>33</sup>

***Challenges to implementing the LSGA in the health sector.*** There have been varying degrees of success in handing over health facilities to local communities, but the failure to ensure proper devolution has meant that structures established at the local level have not been able to perform at their full potential. We describe below some of the challenges to implementing the LSGA in this sector.

Lack of strategy: The LSGA seeks to expand the purview of local governments in the health sector by devolving authority to local-level institutions, but there is an apparent lack of strategy to achieve this ambitious goal. This can be seen in the failure to adequately define the new roles and responsibilities of local agencies, resulting in a state of confusion and a lack of coordination. For example, the role of VDCs and DDCs in supporting the health posts is not clearly defined. HFOMCs are responsible for the performance of the local health staff, but the responsibility for hiring and firing remains with the regional and central authorities, creating a staff with divided loyalties. The attempt to devolve authority without a strategy to develop local capacity to meet the new mandates has only exacerbated the problem. While there have been some efforts to build capacity, most local bodies seem to lack capacity and resources to oversee the performance of health workers and the management of local facilities.

Failure to devolve: It is evident that the effort to devolve the health sector in Nepal has fallen short of its target.<sup>34</sup> A decade after the implementation of the LSGA, the health service sector remains effectively centralized, with virtually all important decisions in planning and budgeting still made at the Department of Health Services or the Ministry of Health and Population. Decentralized health sector units remain little more than “simple aggregations of centrally sanctioned budgets.”<sup>35</sup> While this failure to devolve is partly due to the lack of capacity of local bodies, it is also because of the failure to provide them with the necessary financial and human resources to meet the additional responsibilities. The consequence is a series of unfunded mandates that result in disjointed planning, that do not respond to local realities, and that fail to meet the needs of the population.<sup>36</sup>

Lack of elected representatives: As in sectors discussed earlier, the absence of elected leadership in local public bodies results in an accountability vacuum. For example, VDC secretaries, who currently head HFOMCs, have very little incentive to be present at HFOMC management meetings and respond to concerns of the community. Elected representatives would have more incentive than these bureaucrats to listen to their voting constituency.

## **Collusion in the Health Sector**

The discretion to allocate resources locally introduces opportunities for local elites to seek settlements that directly benefit themselves. However, given the limited devolution in the

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<sup>33</sup> Gurung, G. “Nepal health sector decentralization in limbo? What are the bottlenecks?” Nepal Medical College Journal, 13(2): 137-139

<sup>34</sup> Dhakal, R, et al. (2009) “Addressing the challenges to health sector decentralization in Nepal: An inquiry into the policy and implementation process.” Nepal Medical College Journal, 11(3): p152-157

<sup>35</sup> Karki, K.B. (2012) p13

<sup>36</sup> *Ibid.*

health sector, and the central authorities' control over most of the resources, we found significantly little space for local players to interfere in this sector.<sup>37</sup>

**Political interference.** One of the reasons to get involved in this sector is the potential for a quick financial gain through local collusion. For example, in Dhari VDC of Darchula, the health post recently purchased a refrigerator for the price of Rs. 100,000. The villagers seemed aware that this was double the market price for such a refrigerator, but were powerless to do anything, because apparently all procurement papers had been fixed. Even national level actors seem interested in areas with significantly more resources, such as construction of health related infrastructure and large procurements of medical supplies. For example, district level politicians successfully lobbied the DDC to award the Rs. 2.2 million project to extend the sub-health post in Kolma Barahachaur VDC of Syangja to a particular contractor, despite the interest from local user groups in building it themselves. In Sankhuwasabha, local respondents pointed to a Rs. 2.1 million procurement of medicine for the district hospital that was rife with corruption.

Another incentive to get involved is the opportunity for patronage politics. We found this trend wherever HFOMC members were both generally prominent in their communities and members of other community structures, including APMs and SMCs. These multiple connections allow local elites to expand their political base by influencing the hiring of local staff and appointing people based on nepotism or political affiliation. Even APM members were reported by some respondents to be keen to engage for this purpose; however, local health officials also had an incentive to maintain good relationships with them because of their influence over the allocation of local, albeit limited, resources. Only through them could they hope to succeed in channeling more funds into their health related programs.

**Conflict of interest.** In most of the locations surveyed, public health workers and HFOMC members either owned private clinics or medical stores, or worked part-time at other, for-profit institutions. For example, the medical superintendent of the district hospital in Syangja provided services in a private clinic. As in education, this clearly represents a potential conflict of interest, since public health officials may be less inclined to provide quality health services in a public institution than in their own for-profit ventures. Local respondents expressed reasonable fears that some of the medicine meant for free distribution from the public health facilities may have been smuggled out to the private shops for sale. And one journalist told us that doctors in public health facilities, incentivized by the commission they receive, often prescribe specific medicines, or those that are only available in particular stores, instead of the generic or freely available ones.

## **Impact on Health**

The informal arrangements to siphon off resources intended for the delivery of health services have a deleterious effect on the quality of the services provided. This is compounded by the failure to adequately devolve the health sector, resulting in disjointed planning that does not truly reflect the needs of the people.

**Lack of integrated planning.** A successful effort to devolve a vertically organized, referral-based system such as the health sector in Nepal requires that higher authorities let go of their desire to preserve their dominions, and that local counterparts own up to their newly devolved responsibilities. This allows for a mechanism whereby local officials can articulate the needs of their communities to competent higher authorities who are willing to understand

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<sup>37</sup> Some respondents also mentioned that the “technical” nature of health services prevents people from being involved in this sector.

the realities on the ground, and who have the capacity, intention, and legitimacy to redistribute resources as required. The failure to devolve sufficient authority, exacerbated by local collusion to benefit private interests, has prevented the development of participatory and integrated planning in the health sector.

***Poor delivery of health services.*** The failure to ensure integrated planning or establish a mechanism to monitor the performance of local health facilities has resulted in the poor delivery of health services in Nepal. This is aggravated by the lack of medical supplies, limited local capacity, local collusion, and a politically appointed bureaucracy whose accountability is not to the citizens it is meant to serve. The consequence is a growing level of distrust of the state to provide this basic human right. As a result, we found many locals skipping the public health services altogether, and choosing instead the more expensive private clinics.

## Conclusion and Recommendations

Nepal's local governance suffers from two mutually reinforcing challenges. First, the degree of devolution and the development of capacity at the local level have barely improved after 13 years of LSGA implementation. This lack of capacity or practical devolution has deprived the people of such dividends of democracy as improved participation, accountability, responsiveness and state efficiency. Second, the failure to reap these democratic dividends, the decade-and-a-half-long derailment of the electoral process, and the rapidly increasing size of the budget flowing to local bodies have opened broad new avenues for local-level political actors to co-opt state-citizen relationships. This, in turn, has abetted corruption, political collusion and ineffective service delivery.

This study has identified and elaborated several processes that have exacerbated these problems in local governance in Nepal. Severe lack of capacity to implement the ambitions of the LSGA in 1999, the onset of conflict, impractical design of local-level planning processes and, most of all, the reckless decision to dissolve the elected bodies in 2002 have all contributed to the informalization of local governance in Nepal. Similarly, the inability to conduct elections since 2002, and the succession of different ad hoc arrangements that filled the void—handing all authority first to bureaucrats, then to an unelected guild of political elites, and finally to the All Party Mechanism in 2009—have contributed to political collusion, increased corruption, and bolder forms of patronage politics at the local level.

Of these elements, we looked at the unfolding and less documented issue of collusion in local political decision-making in greater depth. In doing so, we examined the everyday functioning of the APM through a political economy lens, which revealed a number of incentive-driven processes that have entrenched malpractices further into the system, particularly in the last three years. Although the APMs were formally dissolved in January 2012, their presence and influence in one form or another continues unabated. The inability of the central government to employ formal means and directives to effectively curb and control distortions in governance procedures introduced by transitional arrangements such as the APMs, and the helplessness observed in their inability to stop the entrenchment of unfolding as well as well honed *modi operandi* of corruption, may be indications that these developments are becoming a part of local governance culture rather than a transitional practice. The fact that some of these distortions have developed over 15 years or more, with no sign of early local elections on the political timeline, lends credence to the conclusion that these malpractices are indeed becoming an entrenched culture in local governance. Recognizing the implications of these developments, we would like to draw the attention of policymakers and stakeholders to the following four arguments.

***Politics matters more.*** A core contributor to the degeneration of governance practices and the increased corruption at the local level is the manner in which politics is conducted in Nepal. The organizational basis of political parties, particularly at the local level, is not ideology, but political economy. Patronage networks and constituencies must be constantly serviced to maintain the size and influence of political parties. This requires money, strong-arming abilities and the ability to project power and influence. As long as these requirements remain the mainstay of local politics, political actors will find a way to abuse the system and survive. While reforming local governance matters, reforming political parties should get greater policy attention in order to improve local governance.

***Informal matters more.*** Adding layers of procedures that seek to improve participation and transparency will be ineffective if the procedures cannot be properly followed due to lack of funds, capacity or citizens' willingness to engage. This applies as well to other institutions in

Nepal, whether national or local, where there is little history of rules-based governance. In addition, having passed through the chaos of conflict, and now functioning in a state of transition, local bodies cannot suddenly become rules-based institutions; they will continue to find more convenient and informal ways to plan, budget and deliver services in a manner that keeps the local politics settled, while serving the interest of the political elites and the bureaucracy. The informal is convenient and beneficial to those who control the system. The only way to reverse this trend is by making the informal less convenient and less beneficial, and that cannot be accomplished solely by strengthening the formal. Strategies to contain the abuse of informal transactions should be built around the informal domain itself. This might include, for instance, more effective counter-politics on transparency, the right to information and social accountability.

***Despite political problems, more devolution will actually help.*** A common thread in our findings has been that most local-level actors, when confronted with the question of corruption and collusion, tended to point to the lack of downward accountability in local bodies, where government officials who report to a distant LDO, and are protected by politicians there, are often simply absent from the VDCs, citing “security” and other “risks.” Since planning, budgeting and grant-making are managed and administered from above, local actors consider the resources that come to the VDCs as “given to them” by the central government, conferring almost a moral right to grab whatever comes their way for public or private gains. The long-standing problem of dual loyalties of local-level bureaucrats—functionally to the MLD and operationally to the local body—must end before both the appearance and the fact of self-governance will register in the psyche of ordinary citizens. Without a change in these relationships of loyalty and accountability, the response to formal accountability tools and incentives for public participation will be insignificant.

***Meaningful politics requires a strong opposition.*** While patronage politics is a key driver of governance malpractices and graft at the local level, the environment for these thriving practices is provided by the lack of opposition politics. The self-serving collusion that protects all political parties from accountability must end, and elections must take place at the earliest possible time. That said, even prior to an election there is a need to promote opposition politics. The dissolution of the APMs represents a window of opportunity to construct and legitimize counter-politics to collusion. Perhaps a new consultative body could be established, similar to the APMs, but with membership limited to ruling parties and a weighted representation of opposition parties. Or perhaps chiefs of local bodies could be appointed on the basis of votes received by political parties in the local jurisdictions. Whether these propositions will be agreeable to the political parties at the national level is difficult to predict, but some relief from the collusive practices that have evolved in the name of consensus politics is urgently needed.

Based on the above arguments, we make the following recommendations, which are limited to governance issues, but represent the most urgent and practical actions that are necessary.

## **Local Governance**

***Expand the scope of formal checks and balances within the system.*** The design of local governance in Nepal relies overwhelmingly on the scope and quality of citizens’ oversight of the functions of local bodies. This faith in democracy and participation is a good thing, but it has not functioned well, because of the factors discussed in earlier sections of this report. What is needed is an expansion and invigoration of the formal checks and balances already provided for the central government. In the districts, for instance, the CDO is the representative of the CIAA. In a horizontally integrated delivery mechanism where all the line agency chiefs actually report to the CDO, the CDO herself should not be given the

responsibility of vigilance against graft. It is difficult to imagine that the CDO would be unaware of the corruption and leakage perpetrated by the government officials, but her incentive to penalize them pales beside her incentive to demand a share of the graft. This form of conflict of interest can be removed from the district-level activities of the National Vigilance Center as well.

***Improve transparency.*** There do exist tools to ensure greater transparency in public institutions, but they are rarely used at the local level. For example, the Right to Information Act (RTI) has been used with a fair bit of success to force greater transparency at the central level. Similar use of RTI at the district level would help promote transparency in local governance from both the supply and the demand side. In neighboring India, it may be noted, this tool is used extensively to force improvements in transparency at the local level.

***Bring local governance to the front burner of national politics.*** The country is fixated on the agenda of federalism, while completely ignoring the pressing task of improving local governance through the new constitution, and the public losses generated by dysfunctional local bodies. The past four years of deliberations in the CA have barely touched the subject of local governance, and despite occasional media reports, neither the cabinet nor the former parliament have addressed the flourishing corruption at the local level. The State Restructuring Committee of the CA, and the State Restructuring Commission left most of the details of local governance to the provincial governments. For most people in Kathmandu, including those at the center of power, the issues and challenges of local governance are too remote. The failure to make any noise about the state of local governance, and the lack of accountability for roughly \$250 million poured into capital grants to the local bodies, has stifled the emergence of any meaningful response to the problem, including urgently needed local elections.

***Strengthen open deliberative platforms such as the Ward Citizens Forum (WCF) as an interim strategy.*** The initial success, noted by some of the participants in the study, of the WCF and other public platforms in promoting transparency and accountability, particularly in resource allocation decisions, looks encouraging. Behind this initial success there may be two factors at work. (1) The risks associated with openly contesting and opposing the decisions of government staff and political party cadres are gradually diminishing in the districts. (2) Active mobilization of community based organizations, including local clubs, women's groups, faith-based organizations and user groups has resolved the problems associated with "(un)willingness to participate" that commonly plague such programs. While it may be costly to establish and train over 36,000 WCFs across the country, careful targeting in areas where the problem is most acute can help to improve the situation.

***Introduce due diligence procedures to qualifying user groups.*** A key intervention in the established pattern of paper-fixing might be the introduction of due diligence procedures to user groups. Currently, user groups are considered "formed" the moment they produce a list of names with a chairperson, a treasurer and five other names (often fictitious) on a piece of paper. This practice is at the core of the failure of community oversight of grant administration, because the supposed beneficiaries—the user groups—remain unaware of the grants issued in their name. Two new practices—cross-examining the formation charter and documentation of user groups, and documenting the cross-examination in annual audits at the DDC—would provide substantial protection against corrupt practices, and significant improvements in grant administration. This may add to the cost of transactions, and it need not become a permanent practice, but for the interim, this reform is likely to help.

***Give greater legitimacy to local-level planning.*** Whether local bodies follow the fourteen-step planning process earnestly or not (in our research we did not encounter any local body

that followed the full process), the legitimacy of the planning process receives little support from the central government. In the previous sections, we have discussed many of the factors that undermine and delegitimize the local planning process, but a core part of the problem is that the National Planning Commission, the MLD and the Finance Ministry routinely meddle in local resource allocation decisions, contending with each other to engineer politically motivated allocations. This is the point where the incompleteness of the devolution process, despite the intentions of the LSGA, is most glaringly revealed. As a result, local bodies do not plan investments; they select locations and beneficiaries to fit the available budget. Herein lies the essential source of corruption. Because the locations and beneficiaries are not selected until the funds arrive (usually towards the end of the second trimester), there is a last-minute scramble for allocations, with scant attention to due process, public discussion or transparency. Until this practice changes and local-level planning informs the national budget *before* the budget is prepared, informal shortcuts will continue to corrupt resource allocation decisions at the local level.

***Ensure the local presence of VDC secretaries.*** Key elements of the peace process, including integration and rehabilitation, now stand more or less complete. In Terai, armed groups are far less active than they were four years ago. Police and security forces have now extended their presence deep into the remote areas, unlike in the conflict years. Yet in spite of these developments, VDC secretaries, citing threats to “security,” continue to serve from distant district offices. This arrangement is convenient for those using prolonged absences of VDC secretaries to their advantage, and perceptions of “threat” are typically concocted locally. Political protection from above and frequent transfers of VDC secretaries further undermine the LDO’s ability to build a stable official presence in the VDCs. This produces a situation in which the only “informed” person who can provide information on the budget, allocation decisions, the status of grants and the names of user committee chairpersons is rarely present in roughly a third of VDCs. Until this problem is resolved, other interventions such as the WCF or more effective planning cannot take root in the VDCs.

***Hold local elections, along with the national election, as soon as possible.*** The accepted logic of promulgating the constitution first, holding national elections second and then holding sub-national elections, including for the newly formed federal states, is no longer practical now that the promulgation of the constitution has no formal timeline. This should be taken as an opportunity to push for local elections, along with the national election, at the earliest date. As things now stand politically, there is little appetite for this idea, but there is nevertheless an urgent need make this part of the agenda for *bringing local governance to the front burner*. A concerted mobilization of local body associations, local civil servants unions, the media and other stakeholders, including international agencies investing in local governance, can help raise the profile of this issue and bring it to the notice of political leaders in Kathmandu. Reestablishing government legitimacy, reinvigorating oppositional politics and stabilizing the local bodies are the most effective ways of reversing the culture of collusion that has consumed local bodies across the country.

## **Education**

***Strengthen the formal linkages between Village Education Committees (VECs), PTAs and SMCs.*** The SMCs have become increasingly political in the last 4-5 years, with partisan interests interfering in the management of schools and the quality of education. It is not uncommon to find influential local political actors occupying official positions on the SMCs. The control of school resources has settled on the SMC, and the VEC has been reduced to a mere router of funds to the SMC. The relative lack of governing authority in the VEC has made most VECs defunct. Similarly, PTAs hold very little influence over the SMCs, and are

often ignored on key decisions that affect the schools. The SMCs, therefore, have begun to operate in isolation, and the intended upward accountability to the VECs and downward accountability to the PTAs remain unrealized. These linkages have to be strengthened to hold the SMCs accountable to the larger constituencies in the locality and improve the governance of the schools.

***Promote collective decision-making and due process in SMCs.*** The decision-making in SMCs remains over-simplified and unconstrained by due process. The collusive tendencies that this report identifies in local bodies exist in the SMCs, where formal decisions and proceedings are rarely recorded. The school headmaster and the SMC chairperson make most key decisions, and an enabling environment for this behavior is generated by conducting SMC elections through “panel” of candidates along partisan lines. More rigorous audits of SMC management can control the tendency to monopolize SMC authority, but promotion of collective decision-making practices will require comprehensive introductory training for SMC members in order to cultivate a sustainable practice of better school governance.

***Enforce parents-only SMC membership rules.*** There is a need to better enforce a parents-only policy on SMC and PTA membership. One reason SMCs have become so partisan is the overwhelming presence of non-parent political activists. This distortion defeats the original premise of SMCs—that parents will make decisions in the best interests of the school because they have a personal interest in the education of their children. Once this essential *raison d’être* is removed, the SMC becomes just another local political body appropriating public resources for personal and partisan gains.

***Ensure integrity and fairness in teacher recruitment.*** The partisan nature of SMCs and the lack of transparency in decision-making become most objectionable when it comes to recruiting teachers. The patronage politics discussed in this report appears prominently in schools during teacher recruitment. While there is competition for control over recruitments in most other government offices, the case of teachers is far more serious, as it stands to produce long-term effects on the quality of education. Ensuring fairness and due process in teacher recruitment, in fact, will have equally valuable effects in other areas of SMC governance, because recruitment remains the most contested function of the SMC.

***Decentralize unions.*** While unions enhance the scope of collective bargaining protect the legitimate rights of workers, the centralized and partisan nature of teachers unions have had a negative impact on the quality of education. Even when teachers are recruited through questionable processes and demonstrate clear lack of aptitude or qualifications, it is virtually impossible to dismiss them. Since the unions are highly centralized organizations, they often resort to district-wide or even nationwide school shutdowns to protect the employment of even the most incompetent teachers. At the school level, this dynamic causes problems of insubordination, absenteeism and even “proxy teachers,” where a teacher will sub-contract the job to someone else at a lower salary and still remain employed by the school.

## **Health**

***Deepen devolution in health.*** Health post/sub-health post management committees at present are either absent or exist only on paper. The VDC provides no substantive input to these management committees, except to release funds as they come in (while sometimes failing to do even this). A key reason for this disengagement is the absence of real decision-making authority either at the management committee level or, to an even greater degree, at the VDC level. While there is a need to consolidate resources and pursue national targets through a centralized plan to stay efficient, the intended effects at the local level are less likely to materialize if (1) local health facilities fail to tailor services to local needs, and (2) the

community is unreceptive or unsupportive, particularly toward public health services. This report has been consistent in arguing for greater devolution as a solution to the coordination, collaboration, management and allocation problems observed in local bodies and sectoral units at the local level. The health sector too needs to pursue greater devolution to become more effective on the ground.

***Activate HFOMC monitoring and link the feedback loop directly to District Public Health Offices (DPHOs).*** The HFOMCs need to be activated, particularly in their monitoring role. Services on the ground stand to immediately improve if HFOMCs can be activated to monitor the management of health post facilities, the storage and availability of medicines and supplies, and service and infrastructure needs on a regular basis. For this arrangement to be more effective, the DPHOs should build a formal link between the monitoring reports, the annual planning process, and performance evaluations of health post managers; and the LDO's office should conduct regular review meetings with VDC secretaries to confirm that the devolved responsibilities are properly executed.

***Mainstream the responsibilities of devolved governance in the MLD.*** Frequently, VDC secretaries become a bottleneck in the implementation of health programs simply because they are required to counter-sign the checks for health-related expenses. Even this basic responsibility is not discharged in a timely manner by most VDC secretaries. The problem of dual loyalties that exists in the local bodies (i.e., MLD-appointed officials reporting to MLD but functioning as head of office in local bodies) has created a culture where the VDC secretaries do not feel sectoral services are their concern. This needs to change, and the role of the LDO is crucial to this much-needed transformation. The LDOs, in turn, do not act in accordance with the spirit of devolution policy, because the internal incentives for them to extend their offices' responsibilities to sectoral integration are minimal. This needs to change, and the MLD should begin to mainstream this message through directives and trainings.

***Integrate planning processes.*** While the decision to devolve the health sector came in 2005, neither the MoHP nor the MLD has seriously pursued the key objective of integrating the planning process at the local level. We were unable to find health post heads or VDC secretaries with a clear understanding of their roles and responsibilities in integrating the planning process in any of the six districts we visited. The possibility of additional VDC funds being allocated in public health programs, for instance, was never contemplated by the VDC officials, health post heads, the management committee or, in general, by the public. This defeats the purpose of devolving the health sector, as gains in resource mobilization, participatory planning and monitoring, and targeting of services have yet to be realized, even after seven years of implementation. There is an immediate need to provide joint trainings on integrated planning to the local-level staff, develop guidelines on integrated planning, and enforce the provisions of devolution policy in earnest.

Besides these specific recommendations, we would like to draw the attention of relevant policy makers to two additional issues. (1) Since the constitution has yet to be drafted, and our findings, as well as observations made by others, have clearly revealed the weaknesses of the LSGA, LSGA implementation and devolution policy, the time to correct the problems of local governance is now. For instance, the essential legal framework of local self-governance should be established by legislation rather than ministerial rule making. In most instances where devolution has failed to have a real impact, the failure is associated with jurisdictional overlaps of ministerial rules. The health ministry makes plans according to its regulations and directives. So does the MLD. The onus of integrating those policies preposterously lies with the local bodies, which have no direct authority to override either ministry, even at the local level. (2) A key mandate of the new constitution is to federalize the country, and the insertion

of an intermediate layer of government between the central and the local is going to disrupt the system for some time. Any reforms of local government that are needed or contemplated should be implemented before the new tier of government enters the structure, not after. That way, the investments made and lessons learned over three decades of experimentation in local self-governance can be protected and utilized.

## Annex I: Methodology

This study presents a political economy analysis of local governance in Nepal and its implications for the delivery of services in the health and education sectors. It includes the identification of local actors, their interests and incentives, the opportunities available to them within the formal and informal structures, and how that is manifested in the allocation of resources.

The study commenced in December 2011 with a literature review of policy documents, research papers and media coverage of the state of local governance in Nepal. Two sectoral experts were also commissioned to provide inputs that helped shape the research outline, including the research protocol, the selection of study locations and respondents, the survey questionnaire, etc. The draft outline was vetted through three consultative meetings—one each on local governance, education, and the health sector—attended by senior government officials, NGO personnel, researchers and experts.

Six districts were selected for this study to achieve a fair representation of the political characteristics of the country and the capacity of districts to govern as indicated by their MC/PM score.<sup>38</sup> Following the feedback from the consultative meetings, the selection criteria also included the selection of a district with a devolved health sector (Dang) and a district with one of highest number of community-managed schools (Kavre). The districts chosen for this study are shown in Table 1.

**Table 1: The districts covered in the field study**

Region	Mountain		Hills		Tarai	
	<i>Above Average</i>	<i>Below Average</i>	<i>Above Average</i>	<i>Below Average</i>	<i>Above Average</i>	<i>Below Average</i>
Eastern		Shankhuwasabha				
Central				Kavre		Mahottari
Western			Syangja			
Mid-western					Dang	
Far-western	Darchula					

Within each district, enumerators surveyed respondents from three localities representing urban, peri-urban, and remote locations. An urban location is either a municipality or a VDC in the district headquarters (Darchula VDC). Peri-urban and remote locations are VDCs identified through consultation with local stakeholders. Overall, field enumerators conducted approximately 500 personal interviews and over 43 focus group discussions in five municipalities and 13 VDCs in six districts.

<sup>38</sup> The MC/PM average score was calculated for the period 2006/07 to 2010/11 and was 61.01.