



Forced donation, political funding and public security in Nepal

The private sector's perspective and responses

A Policy Briefing Paper

DB Subedi

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KATHMANDU

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Acronyms

BS	Bikram Sambat
CA	Constituent Assembly
CoC	Code of Conduct
CoCI	Chamber of Commerce and Industries
CPA	Comprehensive Peace Agreement
CPNM	Community Party of Nepal Maoist
ECN	Election Commission of Nepal
FCAN	Federation of Contractor's Association Nepal
FDI	Foreign Direct Investment
FNCCI	Federation of Chamber of Commerce and Industries
FNCSI	Federation of Nepalese Cottage and Small Industries
GDP	Gross Domestic Product
IC	Interim Constitution
JSSR	Justice and Security Sector Reform
GoN	Government of Nepal
MoHA	Ministry of Home Affairs
MNCs	Multinational Companies
NADA	Nepal Automobile Dealers' Association
NBI	National Business Initiatives
NCC	Nepal Chamber of Commerce
NRs	Nepali Rupees
PABSON	Private and Boarding School Organisation Nepal
PR	Proportional Representation
UCPNM	Unified Communist Party of Nepal, Maoist
USD	United States Dollar
YCL	Young Communist League
YF	Youth Force

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Acknowledgement

Public security has been a major concern of all Nepali citizens in recent times due to weak responses from the state to protect the fundamental rights of its citizens, their lives and property. With an understanding of the various challenges faced by the government, the private sector has taken initiatives to advocate for, and assist, the government to improve the provision of public security, recognizing that this will also support the security of businesses and economic growth. One of the critical security concerns of the business community, and a relatively new dynamic of insecurity, is the issue of ‘forced donation’, which NBI has been raising awareness of for some time now. Unfortunately, many issues of forced donation inevitably link to the nature of political funding in Nepal.

I am pleased that this paper written by DB Subedi, in collaboration with Prakash Rimal, is finally out. NBI would like to thank representatives from the Federation of Nepalese Chambers of Commerce and Industries, Federation of Nepalese Small and Cottage Industries and district level Chambers of Commerce and Industries from Kailali, Bara, Parsa, Makwanpur, Sunsari and Morang for their valuable contributions. Further thanks go to Bhim Pariyar, Ratna Shrestha and Dominic de Ville from International Alert for their comments and input.

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Padma Jyoti
President
National Business Initiative

1. Introduction: war to peace transition and public security concerns

Eight years on from the signing of the Comprehensive Peace Agreement (CPA) between the Government of Nepal (GoN) and the Communist Party of Nepal, Maoist (CPNM), Nepal remains in a transition from war to peace. Despite many improvements in public security¹, many of the causes of the 10 year conflict in Nepal, such as calls for equal rights for all social and caste-based identity groups, decentralised development of infrastructure, improved market access and employment creation, are yet to be addressed; as a result the country remains susceptible to conflict, particularly related to weak rule of law and governance, land issues, political and identity-based tensions surrounding federalism and caste-based discrimination. Several conditions for peace, including the drafting and promulgation of a new constitution and the restructuring of the state, as stipulated in the CPA, are yet to be fulfilled.

In the face of this ongoing fragility, new dimensions of public insecurity have emerged and for the private sector one of the biggest concerns are forced donations for political funding.² The issue of forced donations has been of particular recent concern to the private sector because of the elections to a second Constituent Assembly (CA) held in November 2013. In Nepal, political violence, including forced donations to fund electoral campaigning, increases before or during election campaigns.³

This briefing paper raises critical concerns around the issue of forced donations and political funding from perspectives of public security, post-conflict economic recovery and private sector development. An in-depth analysis of political funding and forced donation systems in a nascent democratic country like Nepal is beyond the scope of this study, but it is expected that this paper will be useful in stimulating further discussion on this issue, taking into account its potential implications for public security and private sector development in post-conflict Nepal. This paper is an output of the project 'Enabling Civil Society to contribute to more effective, inclusive and accountable public security policy and programming in Nepal', implemented by National Business Initiative (NBI), in partnership with the Federation of Nepalese Chambers of Commerce and Industry (FNCCI), and supported by International Alert (hereafter Alert).⁴

¹ For instance, a recent study by Interdisciplinary Analysts et al. shows that the number of armed groups operating in the Terai region has declined, political interference in the security sector has decreased, and public trust in police has increased. See Interdisciplinary Analysts, Nepal Madhesh Foundation, Small Arms Survey, & Saferworld. (2011). *Armed Violence in the Terai*. Kathmandu <http://www.smallarmssurvey.org/fileadmin/docs/E-Co-Publications/SAS-Saferworld-2011-armed-violence-in-the-Terai.pdf>.

² 'Forced Donation' is commonly used in Nepal to describe a situation where businesses or individuals are forced, through intimidation, threats or physical violence, to give up money or goods. This can be to political parties or other political groups, armed groups or criminals. This is different to requests for voluntary donations by individuals or groups collecting funds to support political or social activities. Whilst the practice is also carried out by criminals and armed groups, for the purpose of this report, Forced Donations is used in the context of political parties forcibly demanding money or goods from individuals or businesses to support their political activities.

³ Kumar, Dhruva (2010), *Electoral Violence and Volatility in Nepal*. Kathmandu: Vajra Publications

⁴ Divided into three project clusters, the project was implemented in Kailali, Bara, Parsa, Makwanpur, Sunsari, Morang and Kathmandu, selected for their significant industry/private sector presence and influence, combined with a diverse range and degree of security concerns. As described above, the project aimed to facilitate and build the capacity of private sector representatives to recognise and understand their role in improving public security provision, promote collaborative initiatives between community, local government and private sector groups to not only advocate for improved security services but also work together to design and implement pilot initiatives aimed at addressing local security concerns and ultimately provide input into Nepal's national security debate.

Most of the concerns, challenges, views and ideas expressed in this paper are based on information gathered by NBI from consultations, workshops and discussions in Bara, Parsa, Makwanpur, Kailali, Sunsari, Morang and Kathmandu districts between January 2012 and December 2013. The paper also draws on previous research conducted by NBI and Alert⁵ as well as other research conducted as part of this project.⁶ Additionally, consultations, discussions and workshops were held with representatives from the private sector, government, political parties, civil society and international community working on the issue of public security, economic development and peacebuilding in Nepal. The study also relies on information collected from relevant publications and newspaper reports.

⁵ Crozier, R., Gunduz, C., & Subedi, D. B. (2010). *Private Sector and Public Security: Perceptions and Responses*. Kathmandu: National Business Initiative (NBI) and International Alert.

⁶ International Alert, Saferworld et al (March 2013): *Snapshot of Local Security and Justice Perceptions in Selected Districts of Nepal, District Assessment Findings*. Kathmandu.

2. Nexus between political funding and public security

Political funding describes the processes and methods that a political party engages in to raise money and resources to cover its election-related expenses as well as expenses generated by regular political activities.⁷ Frequently referred to as “political finance” or “election finance”, the issue of money and its effects on politics has become a phenomenon of global concern, as it can increase the risk of political violence and corruption, and undermine public accountability and the transparency of political parties⁸

In the context of Nepal, the history of multi-party democracy can be traced back to 1990 when a multi-party democratic system, with a constitutional monarchy, replaced the autocratic rule of the Palace (although a very short-lived democratic period existed in the 1950s). Despite a brief period (2004 to 2006) of direct rule by King Gyanendra, 1990 to 2006 was a period of unstable democracy during which political processes were largely controlled by a handful of political parties.⁹ However, the number of political parties active in Nepal has grown significantly over the last 20 years of Nepal’s democratic transition (see Table1 below).¹⁰

Table 1: Number of political parties since 1991

Year of election	Number of parties registered with the Election Commission	Number of parties that contested in the election
1991	44	20
1994	65	24
2008	119	55
2013	140	122

Political parties are, and should be, non-profit organisations. Effective political parties are essential for open, competitive and democratic politics. However, in Nepal, where party funding mechanisms are neither completely transparent nor adequately regulated, concerns have been being raised about how these parties finance their regular political activities and election campaigns. This concern has particularly been raised by the private sector, where it is felt that the ever increasing number of political parties has exacerbated the practice of forcing donations from business people through intimidation, threats and extortion. Furthermore, allegations that political parties distributed money to influence voters in the 2013 CA elections,¹¹ suggests that

⁷ Alexander, H. F. (Ed.). (1989). *Comparative Political Finance in the 1980s*. Cambridge: Cambridge University Press.

⁸ Williams, R. (Ed.). (2000). *Party Finance and Political Corruption*. London and New York: Palgrave Macmillan.

⁹ In the first election for Democratic Parliament in 1990 (2048 BS), a total of 44 political parties took part in the election. Only nine parties, the NC, the CPNUML, the RPP-C, the NSD, the RPP-T, the SJMN, the NWPP, the Communist Party of Nepal - Democratic (CPN-D, also known as Manandhar group) were represented in the parliament.

¹⁰ The table is compiled by the author based on information collected from different sources including the ones from <http://www.satp.org/satporgtp/countries/nepal/database/election2008.htm> <http://www.geocities.ws/gknepaleyn/data/data/election.html>. The official webpage of the ECN mention only 127 political parties registered for CA election in 2013. But new sources report that on the final day, there were 140 parties registered. See <http://www.nepalnews.com/archive/2013/may/may31/news05.php>

¹¹ There is news about political party leaders who allegedly distributed huge amount of money to buy votes are pressing the voters to refund the money after the candidates facing defeat in the election. See <http://www.ekantipur.com/2013/11/25/top-story/candidates-pressing-for-repay-after-losing-elections/381372.html>

political financing has also become entwined with electoral fraud, undermining a culture of free and fair elections.

The collection and use of resources in elections, and its potential impacts on democracy, is a complex issue in Nepal, which requires further investigation beyond the scope of this study. However, growing complaints by the private sector related to threats and intimidation by political parties to force donations means that it is not just an issue relating to political corruption and free and fair elections, but also one of the major public security issues for business people in recent times.¹²

2.1 Role of youth wings of political parties and trade unions

The role of youth wings of political parties in forced donation drives is significant. Almost every political party has established a youth wing, which is generally seen as a base of “muscle power” for the mother party. In Nepal, there is a culture of mobilising youth in various forms of protests, and movements, ranging from armed conflict to violent street protests and movements, organised by political parties, by ethno-political and identity groups. This forms part of political life in the country.¹³

There is a perception among those business people who participated in consultations and workshops as part of this project and study, that it is the youth wings of political parties who are often mobilised to carry out threats, intimidation and donation drives. This assertion can be further corroborated by several other studies. For instance, a Carter Centre report asserts that the youth wings of political parties, particularly the Young Communist League (YCL)¹⁴ and, to a lesser extent, the Community Party of Nepal United Marxist and Leninist’s (CPNUML) Youth Force (YF) have been involved in forced donation drives for financial gains.¹⁵ Youth are also perceived to be making personal financial gains from these activities, potentially worsening a situation whereby donation drives by political party youth wings are moving beyond the control of their mother parties. These groups may be linked to non-political gangs of youth, perceived to have proliferated in recent times, the leaders of which are reportedly often protected by political leaders,¹⁶ revealing a nexus between criminal groups/gangs and political parties.¹⁷ This political protection of gangs has emerged as a new source of insecurity in Nepal, particularly for the private sector in relation to their forced payment of donations.

According to many of the private sector respondents to this study, trade unions have also emerged as a major actor engaged in forced donation drives. Trade union membership has increased significantly in Nepal since the 1980s, particularly in manufacturing, transport, tourism and teaching professions. Whilst this indicates a positive expansion of civil society in Nepal, working towards improving the healthy and democratic collective bargaining capacity of workers, at the

¹² These complaints were expressed by private sector representatives during consultations as part of the JSSR project in several districts in the Terai as well as Kathmandu valley.

¹³ Tiwari, C. K. (2001). Nepal’s Maoist Insurgency. South Asian Monitor No. 31. Washington DC: Center for Strategic and International Studies. Subedi, D. B. (2014). Ex-Combatants, Security and Post-Conflict Violence: Unpacking the Experience from Nepal. *Millennial Asia: An International Journal of Asian Studies*, 5(1).

¹⁴ After the armed conflict, YCL was formed by the UCPNM though at present it is officially dissolved.

¹⁵ Carter Centre (2011). Political Party Youth Wings in Nepal. Atlanta/Kathmandu: The Carter Centre. Also see Ghimire, L. B. (2013, 10 March). Entrepreneurs harassed by donation seekers, *The Kathmandu Post*. Retrieved from <http://www.ekantipur.com/the-kathmandu-post/2013/03/10/money/entrepreneurs-harassed-by-donation-seekers/246251.html>

¹⁶ Saferworld (2012). Perception of public security and crime in Kathmandu valley. Retrieved from <http://www.saferworld.org.uk/downloads/pubdocs/Public%20Perceptions%20of%20Security%20and%20Crime%20in%20the%20Kathmandu%20Valley%20English.pdf>

¹⁷ For instance, in January 2012, police arrested Constituent Assembly member, Shayam Sundar Gupta for his involvement in the abduction of a business man in Kathmandu. See, Himalayan Times (2012, 17 January). “Crime and Politics”. Editorial. Available from: <http://www.thehimalayantimes.com/fullNews.php?headline=Crime+and+Politics+%26amp;NewsID=317056>

same time unions have also become highly politicised. Workers are often exploited by political parties for political ends, rather than for genuine improvements in working conditions and pay, significantly increasing the prevalence of strikes and protests over politically motivated issues.¹⁸ Whilst strikes and protests, which can turn violent, continue to have negative effects on the private sector's economic performance by increasing the costs of doing business, many business people interviewed expressed that leaders of trade unions, often affiliated to different political parties, have also been increasingly demanding donations from the private sector. These donation drives by trade unions are used to fund activities and events organised by trade unions, to provide funding for the political parties they are affiliated to in return for political support or even to fund personal gains under the guise of trade union interests. As trade unions have emerged as a new actor in the drive for forced donations, their role requires further scrutiny, especially from the point of view of the safety and security of business people, as well as the overall negative impacts on the business environment and private sector development.

2.2 The question of accountability and transparency in political parties

An intra-party democratic culture is yet to fully mature in Nepal. Even political parties with a long history dating back to the 1950s, have centralised power structures and display a lack of transparency and accountability in their financial transactions. It is the responsibility of each political party to declare an annually audited report of its financial transactions. However, by January 2013, of the 80 parties registered with the Election Commission Nepal (ECN), 31 had not submitted their financial details, while 11 of those either submitted incomplete statements or did not include audit reports.¹⁹ Such non-compliance further supports the perception that political parties in Nepal need to improve transparency and accountability.²⁰ With the staggering growth of the number of political parties in Nepal, ensuring transparency and accountability can often take a back seat and many of the new political parties are not sufficiently institutionalised or regulated. Furthermore, many parties are personality driven meaning they are run and controlled more like a business of a closed group with a virtual lack of intra-party democratisation and transparency. The problem of forced donation and political funding is, therefore, also related to the problem of the lack of institutionalisation of an intra-party democratic culture and sense of public accountability.

2.3 The private sector and forced donations

Business people, including big industrialists and small and medium sized entrepreneurs, have reported in consultations that the practice of extortion and the idea of extracting money, goods or resources from business people, gathered ground during the decade-long Maoist insurgency. During the insurgency, businesses were directly targeted by Maoist cadres for unlawful taxation to finance conflict-related activities. War is a costly enterprise and Maoist insurgents were reportedly spending up to 10 million Nepali Rupees (NRs) (over \$100,000 USD) a month at the height of the insurgency in 2002 to support political and military activities, which required significant resource mobilisation.²¹

¹⁸ Subedi, DB (2012). "Spaces for Private Sector in Post-Conflict Economic Recovery in Nepal". *Readings on Governance and Development, XIV* (May), 90-109.

¹⁹ Sharma, B. (2012, 29 January). Party finances: 42 political parties to face EC action, The Kathmandu Post. Retrieved from <http://www.ekantipur.com/the-kathmandu-post/2012/01/28/top-story/party-finances-42-political-parties-to-face-ec-action/230926.html>

²⁰ See Transparency International (2011). *Daily Lives and Corruption: Public Opinion in South Asia*. Berlin: Transparency International

²¹ International Crisis Group (2005): *Nepal's Maoists: their Aims, Structure and Strategy*. Asia Report No. 104. Kathmandu/Brussels: ICG.

Following the end of the Maoist conflict, what had started as a financing tactic for the armed insurgency, became increasingly used by other political parties to finance political activities and campaigns.²² Respondents reported that the practice of forcing donations remains a highly pervasive and underreported practice in all industries and industrial corridors, especially the banking and education sector. Between December 2012 and March 2013, an estimated NRs 15 million was reportedly collected in donation drives carried out by different political groups, their youth wings, identity groups and other association groups such as trade unions, from the Sunsari-Morang industrial corridor alone.²³ According to a survey conducted by Interdisciplinary Analyst, in the year 2010, business people paid on average more than NRs 50,000 each per annum to the groups affiliated to political parties.²⁴ With 2013 being an election year, there were fears among the business community that donation drives would increase in the run up to elections.

However despite these alarming figures, it should also be recognised that the business community is not exempt from its complicity in a culture of illegal political donations, whether given voluntarily or involuntarily. Some business people reportedly provide “interest based”²⁵ donations to influential political parties or their leaders, although the secret nature of these donations means they are hard to confirm or quantify. Co-optation between political actors and business people is not a new phenomenon in the Nepali private sector, although caution should be taken to generalise this statement.²⁶ Political actors need financial support and business people, especially those engaged in black-marketing and “shadow economic”²⁷ activities, require political protection. Therefore, a mutually beneficial relationship can arise where voluntary donations to influential political parties help business people gain access to political power and protection.²⁸ Co-optation and collusion between political actors and the private sector received high public attention in Nepal recently after the national media revealed that some political parties had sold their Proportional Representation (PR) seats to the private sector, disregarding the contribution of committed party workers and cadres.²⁹

The dynamic of ‘interest based’ donations is not essentially illegal, but raises questions about ethical practice, both on the part of donors (the private sector) and receivers (political parties/leaders), especially when these donations are unaccounted for in the records of the parties, the donors and receivers. There is, therefore, an important need for the private sector to reflect on its own business practice and work towards promoting more ethically and socially responsible business practices.³⁰

²² Rawal, R.B., Acharya, P. and Sapkota, J. R. (2014). *Kaidako Dhanda*. Cover story. Nepal Weekly, No. 581, 2 February. Retrieved from <http://www.ekantipur.com/nepal/article/?id=3342>

²³ Ghimire, L. B. (2013, 10 March). Entrepreneurs harassed by donation seekers, The Kathmandu Post. Retrieved from <http://www.ekantipur.com/the-kathmandu-post/2013/03/10/money/entrepreneurs-harassed-by-donation-seekers/246251.html>

²⁴ Sharma, S. and Khadka, B. K (2011). *Nepal Business Climate Survey*. Kathmandu: Interdisciplinary Analysts, p. XV. They also report that in average, business people paid NRs 24,070 and NRs 53,138 to police, and local gangs or criminal groups respectively.

²⁵ The term “interest based” donations is used here to describe voluntary corporate donations provided with an embedded interest, such as building relationships with key law makers or leaders of major political parties.

²⁶ Subedi, D. B. (2013). ‘Pro-peace Entrepreneur’ or ‘Conflict Profiteer’? Critical perspective on the private sector and peacebuilding in Nepal. *Peace and Change: A Journal of Peace Research*, 38(2), 181-206.

²⁷ “Shadow economy” is also referred to as *hidden, clandestine, black, underground, or grey economy*. It refers to economic activities which escape government regulations and are unaccounted for in the formal economy. See Thomas, J. J. (1992). *Informal Economic Activity*. New York/London: Harvester Wheatsheaf; Fleming, M. M., Roman, J. and Farrell, G. (2000) “The Shadow Economy,” *Journal of International Affairs* Vol. 53, no. 2

²⁸ Subedi, D. B. (2013). ‘Pro-peace Entrepreneur’ or ‘Conflict Profiteer’? Critical perspective on the private sector and peacebuilding in Nepal. *Peace and Change: A Journal of Peace Research*, 38(2), 181-206.

²⁹ See Dawadi, Madhusudhan (2013) “Samanupatik Pranali Mathi Prasna Chinna” *Rajdhani Daily*. <http://trn.gorkhapatraonline.com/index.php/op-ed/6506-pr-seats-breed-problem-bg.html>

³⁰ Also referred to as “corporate social responsibility” (CSR) the idea of socially responsible business practice refers to doing businesses taking into accounts the needs and possibilities that a business organisation can contribute to the society and community where they operate. The idea of business preventing and mitigating harms on the existing social, economic, environmental, conflict, and cultural dynamics underlines the principle of socially responsible business practice. CSR or socially responsible business practice also reflects business’s ethnic and integrity, and is considered to be a tool to improve business-local community relationships. Also see FNCCI and Action Aid (2003). *A study of corporate social responsibility in Nepal*. Kathmandu.

3. Impacts on post-conflict economic recovery and private sector development

Nearly eight years after the signing of the Comprehensive Peace Agreement (CPA) in 2006, Nepal appears to be taking large strides towards increased economic growth and renewed investment. GDP increased by 4.6 per cent in 2011-2012 compared to 3.9 per cent in the previous year,³¹ Foreign Direct Investment (FDI) has risen from 38,176,181 USD in 2009 to 94,022,275 USD in 2011³² and poverty rates have declined progressively over the last decade, from around 40 per cent of the population living in poverty in 1995-96 to 25 per cent in 2011.³³

Despite these improvements, significant challenges remain to ensure equitable economic recovery and private sector development. The 2014 Index of Economic Freedom, jointly published by the Wall Street Journal and the Heritage Foundation, ranked Nepal the least economically free country in South Asia, in terms of indicators such as freedom from corruption, having effective property rights, fiscal freedom, investment freedom and labour freedom, creating a significant drag on the economy and economic growth. Growth is also hampered by structural challenges, such as war-damaged and otherwise poor quality infrastructure (roads, telecommunications, electricity supplies), which cripple industrial production, restrict the movement of goods and access to raw materials, reduce access to markets and undermine investor confidence. Insecurity also plays a role in affecting the local economy. For example, property worth NRs.136.3 million, including personal, governmental and non-governmental property, was destroyed in the Madheshi uprising between 2007 and 2010.³⁴

Amidst these challenges, strengthening the domestic private sector and creating an enabling business environment is vital to post-conflict recovery. However, ongoing public security issues and associated business risks, such as being forced by political parties or trade unions to donate valuable profits to their activities, undermines the sector's willingness to invest, which is essential for revenue generation, employment creation and economic growth. Extorting money and other resources from business people and businesses increases the cost of business, hampering profitability and stifling investment. Similarly, respondents from the private sector reported that business people who are forced to donate high amounts of money are likely to seek alternative ways to recover those funds, potentially leading to unethical business practices such as black marketeering, food adulteration³⁵ and tax evasion.³⁶ Such practices may ultimately produce a 'crony' private sector, not conducive to equitable and inclusive post-conflict economic recovery.

Equally important is the fact that the nexus between forced donations and political funding fuels the business community's negative perception towards political parties. Such perceptions, in

³¹ UKTI (United Kingdom Trade and Investment) 2012. 'Overseas Business Risk: Nepal.' December <http://www.ukti.gov.uk/uktihome/premiumcontent/115547.html>

³² World Bank 'Data: Nepal.' <http://data.worldbank.org/country/nepal>

³³ Central Bureau of Statistics of Nepal, 2011a. Poverty in Nepal, 2010-2011, Kathmandu

³⁴ Alexander, L., Gunduz, C., & Subedi, D. B. (2009). *What Roles for Business in Post-Conflict Economic Recovery? Perspectives from Nepal*. London: International Alert, p. 15.

³⁵ Food adulteration by business people have raised the contention of the Consumer Forum which has been vocal against unethical business practices across the country.

³⁶ Subedi, D. B. (2013). 'Pro-peace Entrepreneur' or 'Conflict Profiteer'? Critical perspective on the private sector and peacebuilding in Nepal. *Peace and Change: A Journal of Peace Research*, 38(2), 181-206.

turn, can be detrimental to much needed cooperation, dialogue and interaction between business people and political actors who represent the law-making bodies. Such cooperation is necessary to promote equitable economic growth, as effective policy development requires private sector input. Likewise, improved cooperation, dialogue and interaction between the government (including security providers) and the private sector can be vital in addressing public security threats faced by business people.³⁷

³⁷ Public security, which is also often referred to as community Security, has emerged as a new paradigm in addressing violence. This emerging paradigm holds that effective collaboration and cooperation between the government, civil society, political actors and the privates sector can be instrumental in addressing public security challenges at the community level. From this point of view, cooperation between the private sector and government is vital to address the insecurity challenges and threats facing the private sector. See UNDP (2009). *Community Security and Social Cohesion: Towards a UNDP approach*. Geneva: Bureau for Crisis Prevention and Recovery, UNDP.

4. Response by the state: Legal and policy instruments

The state has adopted several legal and policy measures to deal with the issue of forced donations and illegal political funding. These include: the Interim Constitution (IC) 2007, Donation Act (1973), Political Parties Act (2002), Election (Crime and Punishment) Act (2007) and the Constituent Assembly Member Election Code of Conduct (2070 B.S)

The Interim Constitution of Nepal, in article 34 under the directive principles of the state, stipulates that the main objective of the state shall be to promote the welfare of its citizens based on the principles of an open society, by establishing a just system in all aspects of national life including social, economic and political life, while at the same time protecting the lives, property, equality and liberty of all. This provision provides the basis for the state to take any legal and policy measures against illegal acts such as forced donations.

The Donation Act of 1973 was enacted to regulate the proper utilization and management of donations received from the general public for education, social institutions and other development works, as well as to maintain and protect the economic rights of the public. It has been clearly disclosed in the Act that one can accept and give donations voluntarily for religious, charitable and public works without mentioning the amount, only after taking consent from the Government of Nepal. Other than the purpose mentioned above, government and non-governmental organisations and institutions are not allowed to collect and give donations to anyone.

The preamble to the Political Party Act (2002, Amendment 2010) strongly emphasises the need for the internal democratisation of political parties and the need to ensure they are responsible institutions with transparent funding. The Act also stipulates that the accounts of a political party should be audited by an auditor recognised by the Auditor General, and that all election expenses incurred by the party shall be mentioned in its account. Any contribution exceeding NRs 25,000 must have the name, address, the amount provided, and the profession of the donor. In the case of non-compliance, the ECN may impose a fine up to one hundred rupees.³⁸ The ECN is also authorised to cancel the registration of a political party which fails to submit their audited report for three consecutive years.

The Election (Crime and Punishment) Act 2007 prohibits political party members from receiving or giving gifts during the election period, and non-compliance can result in a penalty of NRs 10,000 to 50,000 or imprisonment of up to two years.³⁹ However, in practical terms, the definition of a 'gift' is often ambiguous. Similarly, the Constituent Assembly Member Election Code of Conduct (2070 B.S) has set election campaign expense limits: a candidate contesting in the direct voting system is allowed to spend a maximum of one million Nepali Rupees whereas candidates contesting for the Proportional Representation (PR) system is allowed to spend up to NRS 75,000.⁴⁰ Details of their expenses should be submitted to the ECN within 35 days from the date of the election. The Code of Conduct also stipulates that donations given to any political party should receive an official receipt.

³⁸ See <http://www.right2info.org/resources/publications/politicalpartiesact20582002e.pdf>

³⁹ Martin Chautari (2012). Political Finance and the Public Right. Briefing Paper no. 6. Kathmandu: Martin Chautari.

⁴⁰ Election Commission Nepal (2013). *Sambidhan Sabha Nirwahan Achar Samhita, 2070*. Kathmandu: Election Commission.

As shown in this section, different legislation to regulate political funding and election campaign expenses exist in Nepal. In most cases, the authority is provided to the ECN to implement and monitor adherence with the legislation, which is mostly designed to take measures to impose contribution limits and spending limits and ensure public disclosure of contributions. However, despite these efforts, forced donations remains a significant risk and burden, especially for the private sector. Institutional weaknesses and a lack of effective implementation and regulation mechanisms limits progress in curbing forced donations and illegal political funding.⁴¹ Despite this challenge, the private sector has recently shown willingness and interest to collaborate with political actors and the government to find ways of addressing this issue. The following section highlights some of the initiatives taken.

⁴¹ For detail analysis on lack or limitation of policy implementation, see Martin Chautari (2012). Political Finance and the Public Right. Briefing Paper no. 6. Kathmandu.

5. Response and initiatives by the private sector

Public security is a fundamental prerequisite for economic growth and development. As a driver of economic growth, the private sector has a vested interest in addressing public insecurity issues and supporting initiatives that contribute to a more peaceful society. Although there are examples where the private sector, especially Multinational Companies (MNCs) and extractive industries, can exacerbate conflict dynamics in so-called resource wars,⁴² there are also numerous cases where the domestic private sector and local business people have contributed to conflict transformation and peacebuilding.⁴³

There is a growing understanding among business people, both in Kathmandu and at the district level, that weak law and order and a lack of public security pose one of the biggest challenges to economic recovery, investment, growth and private sector development in Nepal. Criminality, forced donations, militant labour unions, smuggling, labour unrest, strikes and shutdowns can all increase the costs of doing business, stifle investment and production, limit access to raw materials, prevent goods going to market and undermine investor confidence.⁴⁴ However, in the context of Nepal, case studies have shown that the private sector does not only have to be a victim of public insecurity, but it can also play a meaningful and significant role in addressing local public security issues.⁴⁵ Building on this experience and learning, between January 2012 and December 2013, NBI organized a series of events – meetings, consultations, workshops, trainings and interactions – at the district, regional and national level with community leaders, civil society leaders, private sector representatives and state security providers to identify key public security challenges faced by local communities in general and the private sector in particular. With forced donations being a common issue raised in nearly all events, NBI and Alert delivered a series of trainings for business leaders and representatives of district level Chambers of Commerce and Industries on advocacy, and advocacy strategy planning and development, to support activities to raise national awareness of the issue in the run up to the CA elections in November 2013.

As a result of these efforts, and with continuing support from Alert, NBI, district level Chambers of Commerce and Industry and private sector leaders, both at the local and national level, came together for the first time to advocate jointly around a single issue. Private sector leaders met with the Prime Minister, Election Commission and security providers to discuss the impact of forced donations on the private sector and economic growth, held press conferences to demand an end to the practise of forced donations, released statements and letters in the press, conducted meetings and consultations with political party leaders and held interviews on local and national radio, television and in the newspapers. In addition, NBI, together with the district Chambers of Commerce and Industry, played a leading role in disseminating advocacy materials. Business respondents interviewed for this study in Morang, Sunsari, Parsa and Kalali

⁴² For more on resource conflict and the role of the private sector, see Bannon, I. and Collier, P. (2003). *Natural Resources and Violent Conflict: Options and Actions*, Washington D.C.: The World Bank.

⁴³ See International Alert. (2006). *Local Business Local Peace: The Peacebuilding Potential of the Domestic Private Sector*. London: International Alert.

⁴⁴ Crozier, R., Gunduz, C., & Subedi, D. B. (2010). *Private Sector and Public Security: Perceptions and Responses*. Kathmandu: National Business Initiative (NBI) and International Alert.

⁴⁵ Gunduz, C., Alexander, L., & Subedi, D. B. (2009). *Opportunities for linking economic recovery and peacebuilding: Business perceptions from eastern and central terai*. London: International Alert. Crozier, R., Gunduz, C., & Subedi, D. B. (2010). *Private Sector and Public Security: Perceptions and Responses*. Kathmandu: National Business Initiative (NBI) and International Alert.

districts, felt that such targeted advocacy activities played a vital role in bringing the issue of forced donations into the public arena for the first time and had a positive effect in discouraging political parties and their affiliates from engaging in this practice.

Similarly, in early 2013, following a number of threats and retaliatory attacks against businesses who refused to make donations to various groups, FNCCI and NBI engaged in a series of dialogues with the Nepal Government to discuss a potential solution that could begin to address the issue.⁴⁶ The business community shared their idea for a Basket Fund for elections. Under this concept, private companies and business people would voluntarily contribute to a fund opened at NBI or one of its member business organisations. This contribution would be officially recorded and a receipt would be given to the contributing business that they could show any group trying to force donations from them and prove they have already contributed. Money collected through this basket fund would then be distributed to political parties on the basis of a formula, according to the percentage of their votes in the previous election and the percentage of seats contested in the current election. Although this concept received a positive response from the Election Commission and the media, due to a lack of time NBI was not able to initiate it for the 2013 CA elections. Nonetheless, through this action the business community has shown a willingness to discuss sensible solutions with political parties and the Government to problematise issues around political party funding. Furthermore, the idea of a basket fund has gathered ground with political parties and could be implemented in time for local elections planned in the near future.

NBI has also developed a Code of Conduct (CoC) for Ethical Business,⁴⁷ which outlines principles the business community should follow to reduce their responsibility in encouraging the practice of forced donations. Two of the principles in the CoC related to forced donations are:

- Business activities will neither support nor oppose any political parties or groups indiscriminately,
- The business community will “uphold the principle that (we) will not bribe, give gifts, donations, presents directly or indirectly for our business and financial advantage... [and]...” will ensure transparency when giving donations and support to any philanthropic organizations or causes, institutions or individuals affected by disaster, helpless individuals or families and the communities”.

By signing the CoC, businesses demonstrate their commitment to business ethics and integrity, political neutrality and transparency in giving donations to political parties. This is an innovative idea aimed at improving relationships between the business community, political parties, civil society and citizens, however, it must also be recognised that getting the wider business community to adopt the CoC principles will be challenging. A Code of Conduct for businesses is a new idea in Nepal and most business people are unaware of the need for, or value of, adopting a CoC in everyday business practice. As it is an entirely voluntary idea, it requires advocacy by NBI and buy-in from business people at all levels, who must also be able to see the value of such a code for their businesses and financial bottom line. Despite these limitations, business people interviewed as part of this study were confident that continued leadership and awareness-raising by business associations such as NBI and FNCCI will, over time, be able to address some of these limitations.

In addition to making efforts to address the problem of forced donations, the Nepali private sector has also shown a commitment to supporting the free and fair elections necessary for

⁴⁶ According to business people interviewed in Kathmandu as well as Morang, Parsa and Kailali districts, some business people had been asked for heavy forced donations by youth wings of political parties as well as Trade Unions. Business people, who refused to pay the donation, were threatened physically as well as mentally.

⁴⁷ NBI (2013, 28 July). Business Code of Conduct - Concepts. Kathmandu: National Business Initiatives

consolidating peace in the country. NBI, representing the private sector, was accepted as an official election observer by the Election Commission for the 2013 CA elections. A team of 215 NBI members observed the election in 21 districts, covering 76 constituencies and 360 polling booths. The observers were drawn from business federations, associations and district chambers such as FNCCI, Federation of Nepalese Cottage and Small Industries (FNCSI), the Private and Boarding School Organisation Nepal (PABSON), the Federation of Contractor's Association Nepal (FCAN), Nepal Automobile Dealers' Association (NADA), district chapters of the Chambers of Commerce and Industry from Birgunj, Makwanpur, Morang, Butwal and Nepalgunj. This has shown the private sector's shared sense of responsibility for supporting democracy and peace in Nepal.

6. Conclusion and recommendations

6.1 Conclusion

This briefing paper has discussed the issue of forced donation and political funding in a challenging climate of post-conflict economic recovery and public insecurity. Since 1990 the number of political parties in Nepal has increased significantly. An immediate consequence of this phenomenon has been questions about the way these political parties, their youth wings, and groups associated with them, use force or other means of intimidation to raise money to fund election campaigns and other political activities. Besides factors of transparency and accountability to the general public and government bodies, forced donations by political parties remains a key public security concern, with the private sector bearing the brunt of such resource drives. While there is a need for the private sector to improve its own conduct and complicity in its dealings with political actors, there is also an urgent need to tackle this issue in order to improve personal safety, reduce costs to businesses, create an enabling business environment and confidence in the private sector. This paper has stressed that if the problem of forced donations and political funding is not addressed in the long run, it will not only undermine public security, especially physical security for business people, but also threaten positive economic growth and development.

Despite there being laws and policies in place to tackle the issue of forced donations and safeguard businesses, implementation has not been as effective as many business representatives would like. Tackling the negative impact arising from the nexus between forced donations and political funding requires joint initiatives by the Government, political parties and the private sector to find sensible solutions and ensure compliance and cooperation.

This paper has highlighted several initiatives taken by the private sector, especially by NBI, FNCCI and district level Chambers of Commerce and Industry. There is a growing interest as well as commitment by the private sector to support democratisation, peace and, above all, inclusive economic growth, which is a fundamental requirement for Nepal to recover from the effects of its decade-long armed conflict. Such interest and commitment is a valuable resource that should be utilised by the Government and the peacebuilding community in Nepal to improve public security, democracy, economic growth and peace in the country.

6.2 Recommendations

This briefing paper makes the following recommendations:

To the private sector

- Seek out ways to collaborate with other stakeholders including the Government, political parties and civil society to address the root causes of insecurities faced by business people.
- Raise awareness, within the business community and beyond, about long term social and political effects of forced donations and illegal political funding. It is important to increase understanding among business actors that forced donations can have detrimental effects on society at large and not just the private sector.

- Focus on improving ethical and socially responsible business practices amongst the private sector; continue to send the message that the private sector has a responsibility to society at large, and not just to the business community or its individual business interests. Ethical and socially responsible business practices can improve business-community relationships, which helps garner community support when economic activities are affected by public insecurity, and can contribute to more consumer and public trust in business and ultimately support economic growth.
- Reflect on and review the business-politics relationship and work to end the practice of providing ‘interest-based’ donations and favours to powerful leaders. Raise awareness that such donations can increase insecurity and risks for the private sector.
- Co-ordinate and collaborate with business associations and organisations to effectively implement the business Code of Conduct developed by NBI.
- Engage with political parties and the Election Commission to find workable transparent mechanisms for political funding. Pursue the idea of a basket fund.
- Lobby political parties to comply with donation and political funding related policies and regulations implemented by the Government and the Election Commission.

To the Government of Nepal

- Recognise the negative impact of illegal political funding mechanisms including forced donation, its link to public insecurity and negative impacts on economic recovery and development.
- Engage with political parties and the businesses community and facilitate regular dialogues to overcome mistrust arising from the issue of forced donations by political parties and their associated youth groups.
- Create or strengthen public and constitutional oversight mechanisms to address the problem arising from forced donations and other illegal political funding practices.
- Empower and strengthen the Election Commission to implement, monitor and regulate insecurity and violence emerging from forced donation demands by political parties, their youth wings and other associated groups.
- Identify and learn from good practices from other countries in the region about how to address the issue of political parties, and affiliated political and non-political groups, forcing donations for their political activities.
- Recognise the important role of the private sector in post-conflict recovery and work towards enabling a more conducive investment environment by ensuring the physical safety and security of business people and the community at large. In this regard, improving security in Nepal’s industrial corridors is also highly recommended.

To the political parties

- Comply with rules, policies, laws and regulations pertaining to political and election funding to reduce negative public attitudes towards political parties.
- Promote transparency and accountability within political parties relating to income and expenditure. Make information about donations received available to the public, preferably through regulated institutions such as the Election Commission.

- Engage in dialogue and interaction with the business community to overcome and redress the mistrust induced by forced donations.
- Make sure that youth wings and associated groups of political parties are under the control of their mother parties so that the growing culture of obtaining financial gains under a political identity is strongly discouraged.
- Engage in dialogue and interactions with the private sector to discuss how political parties and the private sector can work together to enable better economic development in Nepal.
- Do not provide protection to gangs and groups which have criminal orientations as these groups are largely seen as actors of insecurity.

To the international community in Nepal

- Support the Government in efforts to strengthen institutional mechanisms and oversight bodies to effectively implement laws and politics related to transparent political funding.
- Play the role of facilitator and mediator of dialogues and interactions between the private sector and political parties to improve their relationships and mutual understanding.
- Support the private sector and Government to create an enabling environment for post-conflict economic recovery and development.
- Extend support to the private sector to improve the ethical and socially responsible behaviour of businesses and business associations.

About National Business Initiative (NBI)

National Business Initiative (NBI) was founded by fourteen major Nepalese business associations, federations, and individual companies in 2005 with the objective to strengthen the role and capacity of the Nepalese private sector to contribute to sustainable peace in Nepal. NBI currently has a total of 27 members and is working under four thematic areas; Peace Building and Conflict Mitigation, Economic Opportunities, Sustainable Business Practices and, Enabling Business environment.



National Business Initiative

PO Box 24247, Kathmandu, Nepal

Tel +977 1 423 0947

Fax +977 1 422 9998

Email info@nbinepal.org.np

Web www.nbinepal.org.np