

Policing in Nepal: *A collection of essays*



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Saferworld

September, 2007

Editor's note

This collection of essays was written exclusively by Nepali experts and reflects their personal opinions on policing, community safety and justice provision in Nepal. While Saferworld has been actively involved in supporting, editing and translating this publication, it has not sought to change or influence the arguments contained within the text. It should be noted that the views expressed by the authors do not necessarily reflect the position of Saferworld.

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Introduction

Policing in post-conflict societies

Following periods of conflict, people's efforts to rebuild their livelihoods and communities are often frustrated by insecurity. Providing safety, security and access to justice, particularly for the poor and vulnerable must be considered a priority for any society striving to build a positive and lasting peace. This will often entail reforming and developing public security institutions such as the police and army since in many countries they do not meet the needs of citizens. Exposure to violent conflict may also have shaped security institutions in counter-productive ways. Common trends include a militarisation of policing services, increased acceptance of the use of force and a tendency to use security bodies to protect the interests of a particular regime or the state rather than the wider population.

As the most visible arm of the state and the primary civil agency for law enforcement and the maintenance of public order police services are key actors in post-conflict environments. Their conduct, role, composition and the type of service they provide is often crucial both for the implementation of peace agreements and for wider peace-building efforts. Should the state fail to reconcile law enforcement priorities with the aspirations of local communities, violent conflict may even be re-kindled through instances of malpractice or heightened perceptions of insecurity.

Policing in Nepal – a recent history

During the initial phase of the conflict with the Communist Party of Nepal (Maoist) (CPN-Maoist), the Nepalese Government adopted a purely law-and-order strategy to deal with the insurgency, relying on the Nepal Police Force (NPF) to restore order. As a consequence, NPF personnel were amongst the first casualties of the war, as police posts were identified as important symbols of government authority in areas where the Maoists sought control. In the face of these hostilities, the under-equipped

police force gradually withdrew from areas of Maoist influence, leaving just under 600 out of nearly 2,000 police posts functioning at the cessation of conflict in November 2006. Although bolstered in their efforts from 2001 onwards by the paramilitary Armed Police Force (APF) and Royal Nepalese Army (RNA) under a unified command structure, the NPF took the bulk of Government casualties over the entire conflict period. From 1996 until the present day, Maoist attacks and public criticism of the NPF's war-time human rights record have together taken a heavy toll on the organisation's morale and on its ability to carry out even rudimentary duties across the country.

Although the recent conflict period represents an all-time low for the NPF, police and judicial services in Nepal have long varied in nature and quality across this diverse country. In nineteenth Century Nepal, local princes and governors were delegated authority to rule in the name of the central government. For the most part they relied on village heads and councils to dispense order and justice in line with local traditions and capacities. Well into the twentieth century only small contingents of the central police were available in most of the country. Only in the 1950's following the anti-Rana revolt did central government begin to modernise the police, starting by amalgamating ex-combatant and militia groups into a single structure. The 1955 Nepal Police Act – the founding document for the modern NPF – restructured the force along contemporary lines taking India as its inspiration. In today's Nepal the NPF remains under the strict control of civil authorities, i.e. the Ministry of Home Affairs at the central level, and its local-level representatives, the powerful Chief District Officers (CDOs). Both local police officers, *chowki hawalदार*, and the *thana* (station inspector) report to the CDO.

Over time, the NPF has dabbled with different approaches to policing, but the 'law and order' model has been dominant. Up until the restoration of multi-party democracy in 1990 the NPF, along with other security institutions, clearly and unambiguously served the interests of the King and ruling classes. Repression of civil and political rights was widespread and blatant. Moves towards more democratic forms of policing have been halting since then. They do not appear to have weathered the pressures of violent conflict, elite-driven party politics or to have secured adequate support within the police service. The introduction of the *chhimeki*

prahari system of policing, for example, in early 1982 (essentially an adoption of Singapore's Neighbourhood Police Post model) was patchy and found varying degrees of support in police headquarters. Similarly, the introduction of nearly 200 Community Service Centres focused on Police Posts, which nominally embrace a Community-based Policing model, have often been devalued by detractors within the service and government. No national policy has been developed around these initiatives or any lessons derived from them. More broadly, the NPF has yet to define for itself a plan for organisational development or up-to-date statements of its mission, vision and management philosophy.

Although Nepal's Interim Government has recently established a committee to look at questions of security sector reform, the focus has so far been on the question of army downsizing and the possible incorporation of Maoist ex-combatants into the military. There has been almost no open discussion of how this may affect the country's two police structures, the NPF and APF. In the present context, with the army confined to barracks under the terms of the peace accord, planned elections and growing crime rates, this looks increasingly like an oversight. In particular, the role of the NPF in coming years will be crucial. Its wide-ranging mandate includes the maintenance of public order, crime prevention, protection of life and property, criminal investigation, intelligence and arrest, traffic control, community mediation and even emergency relief. The majority of NPF posts have now been re-established and a new metropolitan police service introduced in Kathmandu; 8,000 new recruits are sought and there are plans to introduce around 70,000 'bonded police' to provide security during the coming Constituent Assembly elections. Nevertheless, these measures do not tackle the underlying problems which NPF officers, many of them dedicated professionals, face day-to-day. These include public distrust, poor training and resources, low morale and psychological trauma, varying degrees of corruption and impunity, politicisation and the lack of an overall vision for the organisation's development. Important questions therefore arise about the future role of the organisation and how it is to develop over time.

Police reform: key issues

This collection of articles on the state of policing in Nepal was commissioned by Saferworld in early 2007 following the November 2006 Comprehensive Peace Agreement (CPA) between the Communist Party of Nepal (Maoist) and the Seven Party Alliance Government. Written entirely by Nepali authors with varied backgrounds and perspectives, including academics, former police officers and human rights and peace activists, it surveys the current state of policing in Nepal and looks forward to the future. Collectively, the articles consider the role the police can and should play to support broader efforts towards peacebuilding and national reconciliation. As the NPF is the primary public security agency entrusted with protecting the safety and security of Nepali, the articles focus strongly on it.

Given the different views of the contributing authors and the diverse topics which they have tackled, no overall conclusions or recommendations are offered in this collection. Rather, it is intended as a contribution to a debate which is only just beginning on the reform and development of Nepal's justice and security institutions and on the means by which Nepalese citizens can equitably access them. Debate, awareness raising and the development of indigenous capacities to address these questions are critical at this stage in Nepal since the country's security institutions have not traditionally been subject to close public scrutiny or effective democratic oversight.

Working in the context outlined above, the following authors have contributed their thoughts on the neglected topic of police reform and development in post-conflict Nepal:

In an article on 'Peacebuilding and policing', Chandra Dev Bhatta looks at the overall connection between police reform and the implementation of Nepal's CPA. In the most general sense he asks what contributions the police can make to the peace process and how can the opportunities for a positive contribution be safeguarded and developed?

The links between the reform of the police and the reform of the Nepal Army are examined by Dhruba Kumar, Centre for Nepal and Asian Studies, Tribhuvan University. He considers whether the

anticipated downsizing of the Nepalese Army presents opportunities to further enhance police capacities and what concerns there might be in relation to this.

The implications for policing, of the ongoing Agreement on the management of arms and Armies by Nepal's former warring factions is considered by Bishnu Raj Upreti of the Swiss National Centre of Competence in Research, South Asia Coordination Office. He explores the possible roles for ex-combatants within the police, how their inclusion would affect the accountability of the police and their acceptance within communities and what costs might be associated with this.

Sapana Pradhan Malla, the President of the Forum for Women, Law and Development, looks at policing and the rule of law, examining the challenges of implementing the rule of law as well as exploring measures that could be taken to ensure it is applied.

The links between the policing and Nepal's judicial systems are reviewed by Yubaraj Sangraula of the Kathmandu School of Law. Areas of successful and unsuccessful interaction between these two different elements of the criminal justice system are covered and priorities for reform outlined.

Shiva K.Dhungana, a researcher for Friends for Peace, explores patterns of corruption in the NPF and suggests ways to introduce accountability and transparency mechanisms.

Chuda Bahadur Shrestha, is a former police officer and writes about the role of the Armed Police Force in Nepal. In his essay, Chuda Bahadur Shrestha analyses the present structure and function of Nepal's Armed Police as providers of law and order, and peace and security. The essay also explores the future development of the Armed Police Force and the need to reassure the public of its neutrality in the post-conflict environment.

Hari Phuyal, LL.M is an advocate with degrees from the University of Essex, UK and National Law School of India University, Bangalore, India. He looks at the issue of transitional justice and what is achievable in Nepal.

Rajendra Bdr Singh, Former Additional Inspector General Police, looks at the apparent tensions between enforcing the law and serving the community in Nepal. He asks whether this tension is apparent or real, which model of policing is most appropriate for Nepal at this time and how a suitable vision can be developed to help usher in such changes.

Govinda Thapa, Chairperson of the Centre for Security and Justice Studies and retired Additional Inspector General of Police offers lessons from Nepal's experience in community policing. He charts the progress of past initiatives in this area, the challenges they have faced and considers the potential for reinvigorating community policing in Nepal.

Durga Sob president of the Feminist Dalit Organisation (FEDO) focuses on the lower castes and policing, asking questions such as: What are mechanisms would make for more equal treatment of Dalits before the law? How do bureaucratic and recruitment procedures discriminate against the Dalit community and how can the unequal Dalit representation within the police be addressed?

Bandana Rana, Vice President of Saathi, considers the role of women in the police and the role of the police in addressing the needs and protecting the interests of women and children. She looks at the nature of gender-specific crime in Nepal, the gender sensitivity of the NPF and its prioritisation of such crime, and looks at a number of possible reforms to ensure both that women are adequately represented within the police and that policing better addresses the needs of women in Nepal.

Shobha Gautam, President of the Institute of Human Rights Communication Nepal reviews the options for pursuing a social inclusion agenda in relation to policing. The current social make-up of the police and the variations across the country are surveyed. She considers the disparities in education and experience between different social groups, the likely challenges and benefits of inclusion programmes for the NPF and makes recommendations for taking this issue up within the institution.

Subodh Raj Pyakurel, Chairperson of Informal Sector Service Centre, reviews the context of human rights and policing in Nepal and the concerns and opportunities currently on offer to further the

human rights agenda. Recent initiatives to promote human rights standards within the police are examined as are their prospects for success. Due consideration is also given to the importance of protecting the rights of individual police officers.

– *Simon Rynn, Saferworld, July 2007*

About Saferworld:

This collection of essays was produced and published with support from Saferworld. Saferworld is an independent non-governmental organisation that works to prevent armed violence and create safer communities in which people can lead peaceful and rewarding lives. By supporting research, capacity building and stimulating awareness raising and debate the organisation looks to support sustainable and locally appropriate solutions to the challenges Nepal faces in providing access to security and justice services.

Saferworld

The Grayston Centre
28 Charles Square
London N1 6HT
UK
Phone: +44 (0)20 7324 4646
Fax: +44(0)20 7324 4647
Web: www.saferworld.org.uk
Email: general@saferworld.org.uk

Peacebuilding and policing in the context of Nepal

– *Chandra D. Bhatta*

It is widely recognised that post-conflict settings require security provision for the maintenance of order and justice, yet war termination often results in the dissolution of the very institutions that previously provided these services. The development of *internal* security capabilities in countries emerging from armed conflict has thus acquired increasing importance and has resulted in policymakers paying greater attention to security sector reform (SSR), in particular how police reform can be fostered.¹ One might think that ‘peacebuilding’ is a broad (or amorphous) enough term to encapsulate police reform; however, this paper seeks to clarify the concepts surrounding ‘police reform’ within the context of peacebuilding.

The context

Peacebuilding consists of a wide range of activities associated with peacekeeping and peacemaking. Peacebuilding can be defined as a long-term process that occurs after violent conflict has slowed down or come to a halt and incorporates multiple activities such as capacity-building, reconciliation, reintegration, rehabilitation, societal transformation and many more.² The central task of peacebuilding is to create positive peace – a “stable social equilibrium in which new disputes [do] not escalate into violence and war” and which prevents the re-emergence of old conflicts.³ Post-conflict peacebuilding, therefore, goes beyond a problem-solving or a conflict management approach. It involves building or reforming institutions that provide procedures for the effective

¹ Call C, ‘Competing Donor Approaches to Post-conflict Police Reform’, *Conflict, Security and Development* 2:1, 2002.

² Boutros-Ghali B, *An Agenda for Peace*, (United Nations, 1995).

³ Haugerudbraaten H, ‘Peacebuilding: Six Dimensions and Two Concepts’, *African Security Review* 7:6, 1998.

handling of the causes of conflict,⁴ and generates a sense of security in a society.

Peacebuilding and policing: a paradox

Post-conflict states typically confront a complex array of challenges in maintaining peace in society. This is because no specific 'security actors' (police or armed forces) enjoy absolute authority to establish and implement comprehensive security. This is largely due to crisis over legitimacy. The crisis of legitimacy arises from the security actors' overt or covert involvement in suppressing political movements and because they are not representative of the emerging political environment.

Following civil conflict it is possible that the police may be perceived as biased towards one faction or another because of their past actions. They are seen instead as agents of a particular regime and as supporting the vested interests of certain groups within society⁵

As a consequence of the limitations in the capacity or legitimacy of security providers in post-conflict societies, it is important that during the course of supporting peace processes emphasis is placed on the rule of law. This is because just policing is a precondition both for consolidating the peace process and redressing social imbalances, particularly as the police are the most visible manifestation of domestic security.⁶

Accordingly, the empowerment of a representative police force is crucial for sustainable peacebuilding. This is because when police operate under the rule of law they protect democracy both by respecting the laws and by preventing and reducing crime.

⁴ Maiese M, Conflict Research Consortium, University of Colorado, Boulder, 'What it Means to Build a Lasting Peace', September 2003, www.beyondintractability.org/essay/peacebuilding/.

⁵ Marx G, 'Police and Democracy', in Amir M and Einstein S (eds), *Policing, Security and Democracy*.

⁶ See Bayley D, *Democratizing the Police Abroad*, (Washington, 2001), p 13; and Travis J, *Policing in Transition*, (Budapest, 1998), p 2.

What type of policing?

Having settled the context of peacebuilding and policing, the first question is what type of policing is good for peacebuilding. In this regard two schools of thought come to mind. The first is based on the conventional opinion that most police work should be confined to fighting crime (detecting and preventing crime and apprehending criminals).⁷ The second is driven by the concept of police as 'service providers' to society. This notion is driven by the concept of 'our police' operating with the consent of the public as opposed to the 'government's police' or 'their police'.

For the purpose of this paper we shall focus only on the second school of thought, which is more relevant in the context of peacebuilding because this approach gives the police, and by extension the state, greater legitimacy through continuous engagement. It increases confidence between society and the police and enhances the peacebuilding process, by upholding the rights and responsibilities of citizens, rather than serving the partisan interests of an elite group.

Policing in the Nepali context

The Nepal police force is the main organisation entrusted with protecting the safety and security of the people. However, over the years there has been a crisis of confidence in the police. This is partly because many have suffered from police brutality, have been the victims of police corruption or have experienced inefficient policing practices. Moreover, the police force has been overtly misused by ruling elites for their own interests.

During the Panchayat period (from 1960 to 1990) for example, the police were used to stifle opposition to the ruling authority. At the dawn of democracy in 1990 the police force was one of the most hated institutions in the country. It was held responsible for brutalities inflicted on the people and the inhumane treatment of opposition political leaders. During the 1990s, in spite of the return of multi-party politics and the endorsement of a new constitution

⁷ Shrestha, Chuda Bdr., *Coping With Maoist Insurgency: Conflict Analysis and Resolutions*, (Chetana Lokshum, 2004).

based upon democratic values, the police failed to respond to the change.⁸

The political changes brought about by the restoration of democracy therefore did not change the image, attitude and functioning of the police force. This in part, was due to the continued politicisation of policing. This failure to reform is viewed by critics as being a significant factor that led to the growth of the Maoist insurgency.⁹

Policing in the context of peacebuilding

Nepal is once again in a transitional phase¹⁰ and as in the past there have been frequent breakdowns in law and order across the country. With growing instability and domestic violence, police reform has been identified as a key area for SSR.

Following the start of formal negotiations between the government and the Maoists in 2006, organised criminal groups, splinter groups of the Maoist, interests groups, extra-state actors and non-state actors (including vigilantes and armed groups like the Madhesi Forum) have begun to operate freely. This situation has arisen because the police have failed to deal with the exigency of the post-conflict security realities due to certain obvious 'political' deficiencies¹¹ including a lack of expertise to operate in, and manage a complex post-conflict environment.

As a consequence, the Nepal Police are struggling to address all of the daunting issues threatening peace and security in Nepal. A problem that has been complicated by the continued institutional endorsement of an authoritarian model of policing, at the expense of reformatory practices of providing crime prevention and service-oriented community policing.

⁸ Proposal submitted to Enabling State Programme (supported by the UK Department for International Development) for police reform by the Police Headquarters in Kathmandu in 2003.

⁹ *Jane's Defence Weekly*, 27 March 2002.

¹⁰ Nepal has witnessed a series of political upheavals over the last half century and has gone through a number of political transitions. The current transition is not yet complete.

¹¹ For example, a lack of genuine political will to address the grievances of various groups and to strictly control extra-state groups. Perhaps the post-conflict government is too busy distributing the peace dividend among itself rather than integrating society by addressing diverse social issues.

Nepal therefore, faces a significant crisis of having a vacuum in its provision of the 'rule of law'. A genuine peacebuilding process is, as a result, likely to face (where it is not already facing) serious setbacks.

Challenges: what needs to be done?

It is clear from the above discussion that the police force as a whole needs to be strengthened, trained, and provided with adequate resources in order to confront present realities, so as to move towards a society based on the rule of law. The most important point is that public perceptions of the police (and vice-versa) have to be changed. The sense of 'our police' as opposed to 'their police' has to be generated and established among the general public.

Rampant corruption and nepotism in the police force is largely the result of partisan vested interests and needs to be discouraged. The most important point is that the politicisation of the police and their misuse by political parties has to be stopped. Similarly, police ownership, which is exclusively enjoyed by the line ministries (Home Ministry) and more specifically a few influential politicians and bureaucrats, has to be transferred to the public. This would aid in negating the current approach, where political parties, regimes or persons in power are able to influence law enforcement.

Likewise, engagement of police and other stakeholders (civil society, interests groups, splinter groups, non-state actors) in the peace process has to be strengthened. Currently this seems to have been either deliberately missing or overshadowed by the Nepal Army. It is essential that the Nepal Police receive greater attention in the post-conflict SSR debate, as they are the primary institution responsible for confronting the brunt of post-conflict political violence and facilitating order and stability.

Conclusion

The challenge for any new regime in Nepal is how best to reform the police and ensure that they promote democracy, respect the rule of law and cultivate peace; as well as how to increase their capacity to address violence in society.

The following set of recommendations, which are derived both from theory and practice, may be useful in ensuring positive and substantive reform of the Nepal Police, as well as ultimately accelerating the peacebuilding process in the country:

The existing ‘control-oriented’ approach has to be replaced by a ‘service-oriented’ approach where the primary concern of law enforcement is proactive crime prevention.

The police force must be depoliticised (with transparency in recruitment, promotion and placement).

Recruitment must be done through the Public Service Commission (the Police Service Commission has already lost public confidence).

Police officials must be trained to cope with complex political emergencies. Training should focus on upholding basic human rights and democratic values.

Competitive benefits (timely review of salary) for the police force to reduce the likelihood of corruption.

Civil society and other elements of society must be engaged in order to restore lost confidence.

Internal democratisation must be improved, with greater interaction between Gazetted Officers and rank-file staff.

Civic education on rights and responsibilities should be introduced in order to minimise conflict between police and society, and to maximise social harmony.

Police reform and military downsizing

– *Dhruba Kumar*

Policing is an everyday public security need; however, it appears that in Nepal there is a significant gap in service delivery. This is caused not only by increasing levels of crime and simmering sectarian violence but also by deliberate police indifference and inaction.¹ This has resulted in the public perception that the police have lost the capacity to enforce the law through normal methods and instead resort to ‘excessive force’, thereby increasing insecurity.² Hence, the central task of police reform is to close this public security divide. To this end, the government needs to have a clear idea of the type of police force needed for the creation of a free and fair democratic order.

Experience shows that any reform process will not succeed in the absence of commitment. This is illustrated by the failure to implement the Police Reform Recommendation Commission Report (1993). It was proposed that the police service was to be separated into specialised categories; yet, in the absence of any serious commitment the proposed measures faltered at the implementation level.

The officially defined mission of the police service is to function with “impartiality and coherence affirming organisational values functioning under true spirit of multiparty democracy....”³ This mandate has however, failed to be realised due to the eruption of violent insurgency. The police were among the first casualties of the Communist Party of Nepal (Maoist) insurgency, as remote outposts were vulnerable symbols of the government. With increasing attacks, many police units were forced to withdraw from

¹ ‘Bloodbath in Gaur sees 27 dead, 40 injured’, *The Himalayan Times*, 22 March 2007.

² ‘The April Protests: Democratic Rights and Excessive Use of Force’, report presented by the Office of the High Commission for Human Rights, 20 September 2006. The ‘excessive use of force’ resulted in the killings of 37 people during the Madhesi Janadhikar Forum’s agitations in January–February 2007.

³ Mission Statement of the Nepal Police, quoted in *Police Mirror: Annual Publication*, Nepal Police Headquarters, 1997.

areas of Maoist influence. Accordingly, out of the 1,979 functioning police units in the country, 1,271 were withdrawn after 1996.⁴

By the time of the signing of the Comprehensive Peace Agreement on 21 November 2006, only 576 police units were operational. The subsequent decision to re-establish police posts has encountered several difficulties. The decision was made without assessing the reality of the situation in the areas where the police were previously located. Data from Police Headquarters reports suggest that a total of 637 new police posts are to be constructed, 406 are to be reconstructed and 206 police posts need to be repaired with the estimated expenses of nearly NPR 3 billion.⁵

The context and the problem of reform

Security sector reform in Nepal has to take place within a context of a post-conflict state restructuring agenda. The police cannot, therefore, remain immune to the process of structural transformation. Democratic change is, however, yet to be accompanied by commensurate improvement in the organisational structure of the security sector. The government has instead pursued a survivalist agenda.

Political leaders need to engage with the security sector to achieve effective development in the post-conflict environment. Particular attention needs to be placed upon the establishment of an effective policing system. To date, the dislocation caused by the insurgency has caused a security vacuum in which lawlessness continues to devalue stability in Nepal.

The challenge in achieving this end lies in the police system gaining the trust of society. This cannot be achieved simply by relocating or returning officers to outposts or increasing the overall numerical strength of the police force. Confidence-building requires a re-appraisal of police–community relations, and increased awareness of the importance of security as a requisite of

⁴ 'Punarsthapit nahudai Bisthapit [Dislocation before relocation]', *Nepal Weekly*, 18 March 2007, pp 13–15.

⁵ *ibid*; also see 'Makeshift police posts', *Himal Khabarpatrika*, 13–27 February 2007, pp 16–18, and, 'The police chief Rana says 1,271 police units had been restored', *The Himalayan Times*, 12 March 2007.

public good. At the moment, police officers are trained to see virtually all people as potential criminals. Such an idea continues to be reflected in the proposed regulations for the Metropolitan Police (that replaced the Kathmandu Valley Police established in 1997). Proposed regulations include “disbanding the assembly of more than five persons, rights to declare curfew, discretion on registration and circulation of newspapers, issuance of warrant and arrest of a suspect prior to committing crime, and others”.⁶ If accepted, the proposed regulations could have a damaging impact on human rights as the reform model is ensuring authoritative control, rather than promoting community-based crime prevention.

In a post-conflict environment, reform initiatives should begin with developing an efficient criminal justice system, in which the judiciary plays a crucial role. The effectiveness of policing is dependent upon national systems of justice remaining independent from political manipulation. If a criminal is sentenced to prison but is then released for political reasons, strengthening of the police is inconsequential as it cannot preserve public safety and security. Reform, therefore, needs to incorporate the police, justice and penal systems. Experience around the world has shown that the most difficult agency to reform is the police. Transforming a traditionally coercive institution into a service organisation is time consuming and requires a realistic plan to achieve the desired change. Although there are no shortage of regulations and relevant codes of conduct to be utilised in guiding the reform process, these, for all practical purposes, have not been of realistic utility in the evolution of Nepal’s law enforcement systems.

Through the past decade, Nepal has become increasingly dependent on the use of the military as a security provider. However, in the present context, namely the confinement of the armed forces to their barracks, the primarily responsibility for civilian security has returned to the police. The police are accordingly required to guard nearly 4,000 Village Development Committees (VDCs) and 58 municipalities from criminal activity.

In spite of this, the police remains limited in its capacity to provide security, given its being under-equipped and over-stretched. In Kathmandu Valley for example, the 3 million residents had to

⁶ Adhikari S, ‘Surachyama Belayati Model [British model on security]’, *Nepal Weekly*, 12 November 2006, pp 16–17.

share 5,340 police officers in 2006. Thus, there was only one police representative for every 561 local inhabitants, which is more than double the optimum ratio of 1:250 for a metropolitan area. Similarly, 9,345 police personnel were working to ensure the safety and security of some 6.4 million people in the mid-region; giving a police/population ratio of 1:682.⁷ This is again more than that required for low population density areas (1:500). Calculated on the basis of a population of 25 million, the national police to population ratio stands at 1:527.

The present

The Nepal Police are expected to play a key role throughout the political transition, particularly in the process leading to the constituent assembly elections. To face this challenge, reform initiatives need to be taken seriously, and it is necessary for reform to address more than just changing administrative structures. The process needs to induce a sense of ownership on the part of the people.

The government needs to assess the current capacity of the police service and prioritise critical needs and challenges, define constraints and explore avenues for cooperation. A policy framework should be developed comprising the fundamentals of democratic control, police accountability, and community participation in issues of public security. This is of primary importance for ensuring that the police service is socially relevant and capable of performing its responsibility of guarding public security. The efficiency of the penal system and the preservation of constitutional guarantees on protecting human rights will be paramount in empowering the police to fulfil their duties.

The police today are lacking in personnel, training, infrastructure, equipment and morale. Notwithstanding the principle of ‘minimum use of force’, they are poorly armed with obsolete weapons.⁸ However, if one were to look at the budgetary allocations for the military and the police since the beginning of the Maoist insurgency, the differences in total expenditures of the two forces

⁷ *Police Mirror: Annual Publication*, Nepal Police Headquarters, 2006, p 104.

⁸ *Shashtra Prahari Sewa Gathan Sujav Karyadaldwara Tayar Pariyeko Pratibedan*, report of the Task Force for Recommending the Organization of the Armed Police Service, April 2000, pp 7–8.

is not wide.⁹ Thus, the police service has not been neglected; nor are the resources provided inadequate. The problem, as two former Inspector Generals of Police have identified, lies elsewhere. According to one it is the “perception of police among those in government whose blatant intervention in the appointment, transfer, promotion, etc.” has encouraged and protected “groupism, insubordination and inactions within the police, weakening the organisation and forcing [it] to suffer”.¹⁰ The second notes that the police service has suffered from three particular problems: (i) logistical and physical difficulties in providing effective services; (ii) reactionary working style and ineffective management of manpower of police departments; and (iii) negative image and public attitude towards the police service.¹¹

As a consequence, in addition to the apparent quantitative needs for internal security, confidence-building is essential. Given the challenges identified, the following objectives need to be met: increased professional competence and personal integrity; increased organisational capacity and institutional integrity; increased co-operation between the police, the judiciary and the penal system; and, increased public awareness in terms of the role of the Nepal Police.

On the question of expanding the police force to improve its reach and efficacy in the context of peace-building and maintaining a stable order, it has been argued that the ‘excesses’ in military manpower could be redirected to the police, thereby saving the country from the challenges arising out of the decommissioning and demobilising of the armed forces. Some retired military officers supporting the peace process have suggested that the increased number of security forces during conflict “needs to be reduced”,¹² though nobody is explicit on whether it involves only the armed forces.¹³ Some others have however, urged caution

⁹ See *Budget Speeches*, Ministry of Finance.

¹⁰ See the interview given by the former IGP Durlav Kumar Thapa in *Police Mirror: Annual Publication*, Nepal Police Headquarters, 2006, p 124.

¹¹ Former IGP Motilal Bohara, *Police Mirror: Annual Publication*, Nepal Police Headquarters, 1995, p 19.

¹² Gurung C, ‘So far so good’, *Nepali Times*, 1–7 December 2006.

¹³ Brigadier-General Gopal Singh Bohara has however opined that the downsizing of the army should begin with stopping the new recruitment and promotion of military personnel to the higher ranks. See his ‘Loktantra ra Sena [Democracy and the Armed Forces]’, a concept paper presented at a conference on *Discourses on Inclusive Democracy* organised by the Freedom Forum, Kathmandu, 9 May 2006.

before taking any decision regarding the restructuring of forces.¹⁴ The fundamental question of the moment is whether the need is for ‘downsizing’ or ‘rightsizing’ the armed forces. The need to ‘rightsizing’ is particularly raised in the context of the economics of militarisation.

Table 1: Current manpower of security forces, 2007

Category	Prior to November 2001	Current	Remarks
Military	47,411* (2001)	98,000+**	A total of 6 divisions with 2 corps. New recruitment of 4,000 announced on 14 November 2006. Out of a total of 1,158 service women, there are 100 infantry women and 106 women involved in technical fields. Since November 2001, the number of soldiers killed in the counter-insurgency is 905.
Armed Police Force (paramilitary)	15,156 (established 2001)^	25,000	Planned to expand to 35,000.
Civil Police	37,783 (in 1995)^^	47,411***	New recruitment sought for vacant posts. The Cabinet has decided to recruit 8,000 new personnel. There are 1,761 women police personnel throughout the ranks. A total of 1,404 police personnel were killed during the course of counter-insurgency operations between 1996 and 2005.
Metropolitan Police	Established 2006	12,000****	From 17 November 2006. To total 13,752.

Source: Official Data, 2007.

* Then Prime Minister Sher Bdr. Deuba had presented this figure at the 20th Session of the House of Representatives three weeks before the declaration of National Emergency on 26 November 2001. See *Rajdhani Daily*, 2 November 2001.

** According to data presented by Defence Secretary Bishnu Datta Upreti at a briefing to the State Management Committee of the House of Representatives on 20 July 2006, the total number of armed forces is 92,308 (*Kantipur Daily*, 21 July 2006).

^ *Shasstra Prahari Sewa Gathan Sujav Karyadaldwara Tayar Pariyeko Pratibedan*, report of the Task Force for Recommending the Organization of the Armed Police Service, April 2000, p 21.

^^ *Police Mirror: Annual Publication*, (Nepal Police Headquarters, 1995), p 19.

*** The incumbent IGP Om Bikram Rana gave this figure on 11 March 2007. See *The Himalayan Times*, 12 March 2007.

**** *The Himalayan Times*, 18 November 2006.

¹⁴ Mahara G, ‘Senapratiko Avadharana (The Concept on Army)’, *Kantipur Daily*, 11 May 2006.

Military down, police up

The political leadership is perhaps moving cautiously to address the agenda of reform relating to the question of downsizing the armed forces because of the historic legacy of instability in the post-*Jana Andolan II* period. However, in response to the long argued belief that the military has operated as a private army of the king, some legislative action has been approved in de-linking the armed forces from the monarchy (for example, by abolishing the title of the Supreme Commander-in-Chief) and making it responsible to parliament.¹⁵ Change in the ceremonial oath-taking procedure transferring the allegiance of the army from the Crown to parliament, and the appointment of the Chief of Army Staff by the Prime Minister are also significant steps in breaking deeply rooted traditions. Nevertheless, much more needed reform remains.

Political leaders in Nepal are cognizant of the fact that a heightened military posture is detrimental to democratisation and political stability.¹⁶ However, as the political maelstrom of the post-monarchical regime and post-conflict situation is yet to settle, they have left the serious issue of restructuring the armed forces untouched for the fear of alienating the army. Although the Nepal Army continues to be perceived negatively, the political elite are perhaps anticipating a need for their support in case of a total breakdown of the peace process. As a consequence, leaders are yet to act on some controversial agendas, such as the question of integration of the Maoist guerrillas into the armed forces.

The Communist Party of Nepal (Maoist), comprising the Interim Government formed on 1 April 2007, have their own agenda to pursue on the question of 'democratising' the armed forces. They have argued in favour of reducing the size of the military to between 10,000 and 30,000, but require the integration of their guerrillas into this number. In the long-term, the Maoists have advocated the creation of self-defence forces (by providing militia training to common citizens) which would enable the government to abolish the standing army.¹⁷

¹⁵ See 'The Declaration of the House of Representatives – 2063 (2006)', made by Prime Minister Girija P. Koirala on 18 May 2006.

¹⁶ For example, see Koirala B P, *Atma Britanta*, Jagdamba Preashan, 1998.

¹⁷ See, 'Interview with Prachanda,' *Mulyankan* Monthly, April–May 2006, p 27; 'Interview with Ram Bahadur Thapa (Badal),' *Nepal Weekly*, 5 November 2006, p 30; Fudong K,

The past experiences of the Nepal Army and the Nepal Police serving under the UN Peacekeeping operations abroad can be optimally utilised in training, availing the trainees of all existing facilities, training academies, residential and transportation system by evolving a Joint Training Manual. This way, training costs could be minimised and unnecessary expenses cut. By meeting the refurbishing needs of the training centres, the government can raise a disciplined professional police service sensitive to human rights and committed to law enforcing functions of the state.

Nepali people in general have not objected to military personnel being transferred to police. The Armed Police Force, for example, was raised initially by transferring some 6,088 military personnel. The basic training required to be given to the trainees aims at civilianising their role in society with particular concern for civilian security rather than operating as a fighting force. The military personnel transfer to the police force would be most suitable for riot control as well as border security duties. Their military training will enable them to withstand extreme provocation without being nervous and quickly resorting to lethal weapons. Screening and monitoring systems should, however, be coherently maintained to discourage the abuse of authority. The watchword of training should be the enhancing of capacity to act as a law-enforcing agency. Policing is not the demonstration of high frequency in the use of lethal force. Instead, police *service* should be providing security to the people.

Conclusion

Poor training, inadequate equipment, absence of a service orientated mandate, disturbingly lax organisational support and excessive politicisation have hampered the functions of police in the past. The obvious constraint to reform at present is not the dearth of resources internally and assistance from external sources, but rather the mindset of the political leadership whose understanding of political power remains domination and control. Unless this mindset changes, no amount of reform would be feasible for public service – to which the police service cannot be an exception. Thus far police reform is not on the agenda of the post-conflict state.

¹Rastriya Surachyama Sena [Military in National Security], *Nepal Weekly*, 19 November 2006, p 20.

Transition from war to peace: DDR and policing in Nepal

– *Bishnu Raj Upreti*

Disarmament, demobilisation and reintegration (DDR) is of fundamental importance for the sustainability of peace in Nepal. This is because it is crucial to facilitate the incorporation of qualified combatants from the People's Liberation Army (PLA) into national security forces (police and army) and reintegrate ex-combatants from both sides into society. However, within Nepal, knowledge of DDR is generally limited to a small number of interested groups, namely: the security forces, academics, researchers and practitioners. Given this limited knowledge base, political debate on DDR has generally been confused and at times contradictory.¹

The Maoists, for example, argue that DDR cannot be applied to Nepal as they understand it as being applicable only to those rebel forces that have been defeated. Thus, given that the People's Liberation Army was never beaten, the Maoists have resisted use of the term. The Nepal Army, is similarly resisting any radical reform, and instead advocating the implementation of internal initiatives. In contrast, the police force of Nepal appears to be ready to embrace DDR or military downsizing, but this is may be largely due to the expectation that they will receive favourable treatment.

Despite differing interpretations, by signing the 'Agreement on Monitoring of the Management of Arms and Armies' on 28 November 2006, and the involvement of the UN Mission in Nepal (UNMIN), both parties (the government and the Maoists) have largely accepted the principles and elements of DDR.²

¹ This observation is based on a series of discussions by the author with senior political leaders of the major political parties.

² The UN Security Council passed a resolution on 23 January 2007 to operate the UN Mission in Nepal for a year where more than 186 arms monitors and around 600 persons in total will work in different parts of the country.

Nevertheless, the agreement focuses mainly on the respective armies and their arms management; consequently very little attention has been given to the management, modernisation and professional development of the police force. Regardless of this marginalisation, under article 10, 'Redeployment and Concentration of Forces', the expectations placed upon the police have increased. This is because the agreement states that "the Nepal Police and Armed Police Force shall continue the task of maintaining law and order and conduct criminal investigations as per the spirit and sentiment of the Jana Andolan and peace accord as well as the prevailing law"

Potential options for the demobilised ex-combatants

Sooner or later, there will be decisions made on reducing the size of the security forces (particularly the Nepal Army), the integration of the PLA into the security forces, both police and army, and revising and refining the existing functions of the security forces. In this process, large numbers of serving personnel from the Nepal Army and PLA will have to be demobilised and reintegrated using a variety of different options.

Despite the potential for integrating into the security forces, before any successful integration programme can be undertaken, unqualified ex-combatants need to be incorporated back into society and encouraged to become economically independent. This will necessitate the Government of Nepal to provide special provisions that are not discussed in this paper. Nonetheless, the following are potential options for the demobilised ex-combatants:

- engage in skill-based occupations;
- mobilise as a special force for post-conflict reconstruction and development;
- integrate into the government's civilian structures (ministries, departments and local government) where appropriate; and
- engage in the private security sector, for example industrial security, security of public institutions, etc.

Integration of PLA ex-combatants into police structure

The police force of Nepal has been severely undermined during the last ten years, and in the later stage of the armed conflict was effectively marginalised by the Unified Command arrangement. It has resultantly lost confidence and identity, and lacks required

resources. Consequently, it has not been able to function as a professional police force. The size of the existing police force is also inadequate, thus preventing the police from being able to meet their social duties. As a consequence, traffic violations, violence, and crime are increasing.

Therefore, expanding the size of the police force is essential. In this expansion process, those members of the PLA that are able (giving up party membership to maintain neutrality, physical fitness, meeting a standard age requirement and other selection criteria applicable to police force, no record of human rights abuses, and allowing for inclusiveness and greater representation in terms of caste, geographical regions and sex) can be (re-)integrated into the police force. This is a pragmatic option and it is unlikely that there will be resistance from the police force to this arrangement if a proper and transparent process is followed.

Social acceptability of PLA in a new police structure

Occasionally, the question of acceptability and appropriateness of integration of the PLA into state security forces (police and army) has been raised, particularly concerning their ideological orientation. This anxiety, however, does not reflect the political reality of the country. Moreover, Nepal has a history of integration of similar rebel fighters into national security forces. Such integration was undertaken in 1951, when the Rana Oligarchy was overthrown. However, there is a need to create an environment that ensures that the PLA shifts from an army of a particular political party fighting against the ruling regime to that of a representative state police force.

The following areas of action can help to create such an environment and increase social acceptability of the PLA within police structures:

- the giving up of party membership;
- assigning them to community policing activities;
- professional training and reorientation;
- assigning special responsibilities that ensure public trust;
- improving civil-police relationships; and
- improving the performance of the police force (controlling corruption, addressing the culture of human rights abuses, maintaining neutrality and impartiality, effectively enforcing law and order, making the police structure more inclusive, ending impunity, etc.).

At present the PLA can already bring some much needed qualities to the police that will greatly aid in strengthening its position within communities. One of their strengths, for example, is their commitment to helping weaker sections of society.

Nepal is a very tolerant society which has enabled the PLA and the Nepal Army to work together within the same structures, and for opposing political forces to establish an Interim Parliament and Interim Government. Citizens have appreciated the Maoists' re-entry into mainstream politics and even anticipate broader social and economic changes from them. In this situation, the acceptability of police reform to include ex-combatant will not be a problem.

However, there are myriad challenges and enormous opportunities in making the policing structure more professional and acceptable to the people.

Challenges:

- changing the mindset of key actors (both police and political);
- tackling the vested interests of certain groups and individuals;
- unnecessary international dominance and influence;
- applying the correct process of reintegration; and
- effective implementation of security sector reform.

Opportunities:

- people's aspiration and pressure to modernise the police force;
- commitment made in the Interim Constitution and Comprehensive Peace Accord;
- international support in modernising security forces and stabilising the political process;
- commitment from political parties including Maoists; and
- tremendous potential existing within the police.

Resources required for DDR

At present, it is extremely difficult to workout financial costs and other resources required for the DDR process because:

- It is not currently known how many persons from the PLA will be qualified to join the state security force, and from among

them how many will be absorbed into the army and how many into the police.

- A proper assessment of the strengths and weaknesses of the police force is yet to be undertaken. This is a fundamental precondition for determining cost.
- The size of the total police force required for this country is not yet determined. Rather, police recruitment is guided by the personal interests of politicians and senior police officers. The size of the police force needs to be determined by standard security criteria which should be largely dependent upon the security situation of the country, the redefined role of the military and armed police force and innovative security arrangements such as community policing and community security.

However, financial and other resources will be required in great amounts over the coming five years. This is because police posts and other necessary infrastructure were destroyed during the conflict and need to be restored; likewise, equipment, tools, arms and other physical materials have to be replaced.

Role of the international community in DDR

In Nepal, support from the international community is essential for the successful facilitation of a home-grown security sector transformation process, assisting in national capability-building and providing required financial and technical resources. However, the role of the international community needs to be tempered so that it does not dominate DDR, interfere with the political transformation process and impose restrictive conditions or template approaches. Therefore, international approaches to DDR in Nepal need to be sensitive to the environment and objectives of target groups. This requires coordination among the donor community, capacity-building of national organisations, sharing experiences and forming a small DDR coordination and monitoring group.³ This will go some way to ensuring meaningful management and oversight of the process by Nepalis.

³ Upreti, B R and Nepali R K (eds), *Nepal at Barrel of Gun: Proliferation of Small Arms and Light Weapons and their Impacts*, (South Asia Small Arms Network-Nepal, 2006).

Conclusions

The present situation of Nepal has provided a great opportunity for modernisation and restoring professionalism to the police force, and DDR is one of the best entry points to achieve these results. The changing political context is an excellent basis, and the ongoing state restructuring process is a favourable framework for achieving transformation of the police force. The relevance of DDR has been accepted by political groups of this country and was included in the Comprehensive Peace Agreement and tripartite agreement on Monitoring of the Management of Arms and Armies by the Seven Party Alliance, Maoists and UNMIN. Therefore translating these provisions into action is the main priority, as well as the challenge, at present.

Rule of law and policing in Nepal

– *Sapana Pradhan Malla*

The primary objective of a modern government is to guarantee justice – namely the equitable adjudication of disputes between parties and the protection of the rights and interests of all people. In the case of Nepal, the Interim Constitution (1963) legislates on all aspects relating to domestic law. The constitution is based on the principle of separating power and authority among several different organs of the state, such as parliament, the executive and the judiciary. Parliament is presently entrusted with all legislative and constitutive power, the executive is empowered to implement all laws enacted by parliament, and the judiciary adjudicates on disputes. The judiciary is also entrusted with the power of review for all legislative and executive actions. If gaps appear in the legal system, they are filled by way of judicial interpretations. Rule of law in Nepal is therefore founded upon a system of Constitutional Supremacy.

The constitution establishes principles of procedural fairness and legal certainty. Accordingly, it guarantees the foundation and preservation of an independent and competent judicial body. So as to be able to preserve consistency within the judicial system, the constitution is not easily amended.¹ The courts play an important role in protecting the supremacy and integrity of the constitution by ensuring that laws are uniformly administered.

The rule of law is afforded absolute supremacy; thus the influence of arbitrary power, of undue prerogative and of excessively wide discretionary authority on the part of the government and state institutions is eliminated. This means that equality before the law is guaranteed, so all persons, regardless of their social position, are subjected to the same laws and judicial procedures. Consequently, policing organisations form an important part of the state

¹ Nepal has already constructed six constitutions, and now through the Constituent Assembly process will be drafting its seventh. The Interim Constitution has already received its first amendment and now parties are working on a second amendment.

mechanism for ensuring the administration of law and order in Nepal.

It is essential that peace and order in society be maintained only by the rule of law. Peace and order exist when there is general conformity to *a priori* rules, breaches of which result in penalty as imposed by the state. If crime is not punished by the state, affected people will eventually undertake independent retaliatory or pre-emptive action to preserve their security. Furthermore, institutions responsible for the maintenance of the rule of law will feel that they are above the law, arbitrarily administering their own initiatives. To achieve peace and order, governments must therefore provide laws that facilitate the application of the rule of law, diminish injustice and establish mechanisms to redress injustice.

In Nepal, the responsibility of criminal investigation and prosecution is divided between the police and the government attorney. Through the State Cases Act 2049 (1992) the police are entrusted with investigating a crime, and article 135 of the Interim Constitution of Nepal provides the Attorney General with the power to adjudicate on whether to prosecute those thought to be guilty.

If policing organisations are seen to be fairly and effectively fulfilling their roles as keepers of the peace then they will be considered to be champions of the rule of law; however, if they fail in their mandate they can be equally seen as an agent of 'tyranny and oppression'. Unlawful and arbitrary policing undermines rule of law and as a result can result in social disorder. At present, given the general marginalisation of law by combatant groups and the lack of capacity of the police, problems relating to impunity pose a serious threat to the maintenance of the rule of law.²

² 'Pro Poor Governance – Assessment Nepal', A study conducted by the Enabling State Programme in 2001, found restrictions by police on peaceful meetings and demonstrations, including mistreatment of Maoist suspects and extra-judicial killing and high numbers of illegal detentions. The excessive use of power during the *Janandolan 2* by police is still an issue to be resolved.

Monitoring and implementation of the rule of law and policing

The police department is organised under the Home Ministry, and government attorneys are overseen by the Attorney General, as an independent constitutional body. The police department is expected to independently supervise its functioning and performance, as well as maintain regular communications among different police stations. It prepares an annual report that is submitted to the government informing it of statistics relating to crime. The Attorney General provides an additional report to the Prime Minister, which is then tabled before the House of Parliament.³ The Attorney General is expected to produce an annual survey of criminal prosecutions, with a ratio of successes to failures in judicial decisions. This report, however, does not provide any account of the actual occurrence of the crime in society. Instead, it generally covers cases which have been registered and ruled upon.

In monitoring police actions, all superior police officers are responsible for maintaining oversight. If, for example, a complaint from a victim of a crime is not recognised by the police, or improperly investigated, the relevant superior police officer or Chief District Officer must intervene and record the details and ensure that an appropriate investigation be undertaken.

Should they also fail to register or act on the complaint, then the victim (or those concerned) may petition for a writ of *mandamus* through the Court of Appeals. Though these are the general remedial and supervisory mechanisms, they seldom result in any meaningful outcome and rarely address the concerns of the victims. The police department and the office of the government attorney have to undertake regular performance evaluations.

The reasons for the low level of prosecution or conviction may be explained by a lack of commitment, professionalism or accountability. In addition to these institutional weaknesses, the Nepalese people are not aware of their rights and their responsibility to report a crime to the police. This failure to report may in part be explained by the lack of faith held by many of the likelihood of the police producing a fair investigation which will

³ Article 136 of the Interim Constitution.

lead to a prosecution. Of those crimes that are reported, few cases are properly investigated, or end in failure to prosecute. However, massive failures in criminal cases are rarely examined which ultimately frustrates and erodes faith in the rule of law.

Impediments for the implementation of rule of law and policing

Many factors contribute to the failed implementation of the rule of law in Nepal. These include low reporting of incidences, a lack of confidence in the system, misunderstandings (by both the public and police investigators), insufficient capacity, the lack of accountability, weak monitoring mechanisms, and the low quality of work. The apparent lack of incentives and the lack of vertical and horizontal mechanisms among the police stations, police and government attorneys, and police, civil society and the media further impede implementation of the rule of law.

Lack of cooperation in the presentation of evidence before court, insufficient record-keeping, poor management and communication, poor laboratory services and the cultural lack of compliance with judicial orders have likewise limited the capacity of the police and the judiciary to maintain and preserve law and order.

Furthermore, the prevalence of corruption limits all forms of implementation. This is because corrupt law enforcement officials generally deny access to justice and obstruct investigations. Within the police, it is often reported that corruption is rampant, for example in recruitment, endorsement of transfers and the provision of opportunities to travel. Outside of the internal workings of the police there is evidence of corruption in regard to case registration, the collection of evidence, interrogation, arrest and in the presentation of cases to court. The politicising of police institutions has also undermined the capacity of the police to operate effectively or within the limits of the law and has contributed to the emergence of institutionalised impunity. This political interference can also result in offenders being granted amnesty.⁴

⁴ Eleven Prisoners are released from the Prison on May 17, 2007 with list from the packet of Prime Minister, Kantipur Daily, page 1

Concerns related to maintaining rule of law

Uncertainty exists among law enforcement officials due to social and political instability. This has resulted in the development of a culture of impunity and the decline of national security. Impunity is mainly attributed to the practice of misusing power during the *janandolan* (the People's Movement). In light of this abuse, current debate concerning police reform focuses on whether the police are capable of being responsible and monitoring their activities, or whether higher authorities should be responsible.

The inherent weaknesses possessed by the police, combined with the loss of trust, have resulted in many political parties employing their cadre to take the law into their own hands. As a result of this, organisations such as the Young Communist League (YCL) are increasingly superseding state actors. This, in turn, further devalues security and results in the increased loss of faith in the state's ability to maintain the rule of law. Moreover, despite the Maoists joining mainstream politics and participating in government, in many places they continue to operate a parallel judicial system

Though the constitution provides the fundamental law of the land, it was created through the compromise of eight political parties. As a result, the agreement utilises loose language, like *janandolan ko bhabhana*, which, when literally interpreted, results in absurd and imprecise outcomes that cannot be properly implemented.

How can rule of law be maintained to prevent corruption?

The weakening of the rule of law is directly linked to the institutional prevalence of corruption in law enforcement. Measures are therefore necessary to ensure greater transparency, understanding, and implementation of all applicable legislation. In order for this to be achieved, an independent and efficient supervisory mechanism needs to be established, and those found to be abusing or interfering with the law punished. The capacity of organisations responsible for taking action against corruption should also be strengthened, so that they have the capacity to investigate incidents. This requires a systematic approach and guideline development.

Corruption perpetrated by outside actors should be addressed through a variety of means, including effective implementation of anti-corruption law,⁵ with strong monitoring of police by the Commission on the Investigation of the Abuse of Authority (CIAA) and tracking by civil society. These measures are essential as the law authorises legal action against public officials.⁶

What measures should be taken to uphold rule of law in post-conflict Nepal?

As a country emerging from conflict, Nepal is suffering from a legacy of weak implementation of the rule of law. This is evidenced by the disruption of access to justice, the limited capacity of law enforcement providers and the increased number of reported human rights violations.

Consequently, the Peace Accord needs to identify the responsibilities of government and political parties, and cement a strong commitment to ensure criminal accountability. Reforming public institutions, particularly those engaged in human rights abuses, is essential. Such institutions, which include the police, need to be reformed so that they are efficient, fair and enjoy civic trust. Accordingly, any political resolution must be backed by a sound legal regime, otherwise the political resolution will not endure and the culture of abuse will continue.

Reform should include the empowering of an independent and easily accessible judiciary. It should also incorporate capacity-building for all law enforcement agencies. Moreover, guidelines should be created and issued for the benefit of maintaining the rule of law.

There is also a need to increase community policing endeavours, as they will engender greater unity and access to justice. Within this, discriminatory practices, currently found in the recruitment of officers, need to be stopped so that women and other minorities can be incorporated into the police.

⁵ The Corruption Prevention Act 2017 is applicable to all government offices, including the police.

⁶ The Commission for Investigation on Abuse of Power and Authority Act, 2048.

Addressing corruption in police reform

– *Shiva K. Dhungana*

As revealed by the Transparency International Household Survey on Corruption in 2002, the Nepal Police are considered the third most corrupt public institution after land administration and customs. However, it was perceived by respondents to be the most corrupt sector.⁷ Looking at the nature of the Nepal Police and its functional proximity with the everyday lives of people, the prevalence of corruption has been one of the most serious and foremost matters of concern for reform in Nepal.⁸

Usually cleaning up a police force is believed to be the starting point for any anti-corruption campaign. This is because the police are at the forefront of law enforcement. They are, therefore, expected to uphold the law. It is also necessary given that their actions are highly visible and have an enduring impact on building trust in the integrity of a government. When law enforcement agencies are a law unto themselves, people lose faith in the system.⁹

Police corruption: a conceptual basis

Police corruption is generally defined as the abuse of police authority for personal or organisational gain.¹⁰ According to Holloway, police corruption can be broken into two sections – internal and external corruption. Internal corruption is the illegal acts and agreements within a police department by more than one

⁷ Transparency International, *Corruption in South Asia: Insights and Benchmarks from Citizen Feedback Surveys in Five Countries*, Transparency International, 2002.

⁸ Corruption has been a chronic and extremely serious practice imbedded in all public institutions in Nepal and the Nepal Police are no exception. However, many insiders also agree that the corruption within the police system has already overtaken the general meaning of corruption understood by the general public and has taken the form of an organised crime business.

⁹ Manandhar N, 'Corruption in police', <<http://www.eKantipur.com>>, 29 December 2005.

¹⁰ Sayed T and Bruce D, 'Police Corruption: Towards a Working Definition', *African Security Review*, 7:1 1998. Holloway B, 'Police Corruption', *International Encyclopedia of Justice Studies*, <www.iejs.com/Policing/police_corruption.htm>.

of the officers. External corruption is the illegal acts and agreements with the public by one or more officers in a department. Accordingly, internal corruption involves the misuse of power to carry out illegal and immoral acts within a department; thus it does not directly impact the general public. External corruption, however, has direct and severe implications, especially for the poor and the powerless in the social hierarchy.

There have been several analyses as to what acts as a catalyst for corruption. Hubert Williams, President of the Police Foundation of Washington DC, gives four primary factors that contribute to corruption in a police force. They are: deficiency in recruitment, training and promotion; lack of resources such as poor pay and equipment; lack of accountability systems within the departments, courts and the law; and a unique 'police culture' that inhibits the development of professional police standards.¹¹ In contrast Newburn lists nine different pathways of police corruption.¹² They are corruption of authority, kick backs, opportunistic theft, shakedowns, protection of illegal activities, the fixing of cases, direct criminal activities, internal payoffs and flaking or padding.¹³

The context

Contemporary patterns of corruption in the Nepal Police can be traced from the organisation's formative years. The Nepal Police was instituted in 1952 primarily consisting of the *Mukti Sena* – freedom fighters; with a basic motto of 'truth, service and security'.¹⁴ In the beginning, the Nepal Police acted as a security service rather than as a security force. For this reason it was considered to be comparatively systematic, modern and citizen-friendly despite the many deficiencies prevailing within the system.¹⁵ However, following the royal coup of 1960, the Nepal Police began to serve the interests of zonal commissioners.¹⁶

¹¹ Cited in Manandhar, *op cit.*

¹² Newburn T, 'Understanding and Preventing Police Corruption. Lessons from the Literature', *Police Research Series Paper 110*, UK Home Office, 1999, p 4.

¹³ That is, the planting of or adding to evidence.

¹⁴ Lal C K, 'Jal Nepal Sa'b', *Himal Khabarpatrika*, 31 July – 16 August 2004, pp 44–5.

¹⁵ *ibid.*

¹⁶ There used to be Zonal Commissioners in each of the 14 Zones, directly appointed by the King under the autocratic and party-less Panchayat System. Their major responsibility was to ensure that all those opposing the regime would be brought to detention. They would do anything to please the royal family and safeguard the regime.

Accordingly, the Nepal Police evolved into a repressive institution that enforced the authority of the executives of the day.

This development resulted in police personnel, at all levels, perceiving that, as long as they pleased their seniors or political patrons, they were free to do whatever they wanted, regardless of whether it was illegal or immoral. The resulting institutionalisation of corruption and misuse of power resulted in many police becoming virtual dictators in their villages. Furthermore, the high-level involvement of the police in protecting and facilitating illegal activities on behalf of the royal family also encouraged the police department to be corrupt from top to bottom. This erosion of police integrity continued even after the restoration of democracy in 1990. This was because the police department remained a tool for the fulfilment of the interests of each new government.

Corruption in the Nepal Police

Police corruption starts from the very first day an individual enters into the force as a trainee – for recruitment officials demand substantial bribes from a candidate before they will allow them to pass their examination to enter into the police force. ‘Insiders’ note that the amount of money necessary for a bribe for the post of Assistant Sub-Inspector ranges from NPR 300,000 to 500,000 (approximately US\$ 4,600 to 7,700), and NPR 500,000 to 700,000 (approximately US\$ 7,700 to 10,800) for the post of Inspector.¹⁷ Similarly, substantial bribes are paid by police personnel to their seniors for getting transfer approval or promotion.¹⁸

Moreover, when a new Inspector General of Police is appointed or local police chiefs are posted to new districts, they immediately reshuffle all those in lucrative departments or sections, so as to be able to use their patronage to ensure the swift and secret flow of illegal income to their pockets.¹⁹

Police offices, from the centre to the districts, are also engaged in external corruption. Ration contractors for example, accept large

¹⁷ The interview was conducted with ‘insiders’ on condition that their names would not be disclosed in the paper.

¹⁸ This is based on an interview conducted with a Sub-Inspector, who was associated with the police recruitment system at one point of his service period.

¹⁹ From an interview with an ex-police person.

kickbacks from a contractor in return for allowing them to supply low-quality food. Such practice not only costs the national treasury, but also has a detrimental impact on the health and morale of the servicemen.

Many political leaders and business people have their ‘agents’ or ‘brokers’ in close contact with police officers to arrange for the release of their criminal associates in return for favours in cash or kind. These agents are often able to gain access to valuable information from inside a police office and often have the capacity to interfere with evidence,²⁰ which can weaken or complicate a criminal case.²¹

Other examples of police corruption include:

- protection of smugglers, criminals, and persons engaged in illegal activities; helping criminals escape conviction in court by deflecting investigation or by accusing innocent people and falsifying evidence against them;²²
- allowing or escorting trucks loaded with smuggled materials through check points and customs;²³
- intentionally avoiding the arrest of criminals;
- threatening people with wrongful arrest, or implication in a serious crime that they did not commit;²⁴
- receiving monthly or periodic pay from persons engaged in illegal activities;²⁵
- providing driving licenses to those that have failed to pass the necessary test and preventing those that do from acquiring one;²⁶
- interpreting traffic laws, in addition to other laws, in an inconsistent manner, thus allowing those that have broken the law to avoid paying a fine;
- beating members of the public, and then threatening them with the charge of manhandling an officer in uniform;
- arresting innocent people and torturing them for money or other belongings;

²⁰ From an interview with an ex-police person.

²¹ The cost of exchanging a medical certificate, which reports that the driver of a vehicle in a fatal road accident had been drunk, with another that indicates the opposite is NPR 10,000. This is from the personal experience of a vehicle owner, whose bus had killed a 10-year-old boy in a road accident in Kathmandu.

²² Regmee R K, *Firing Corruption*, Transparency International Nepal, 2001.

²³ Kunwar S, ‘Sandalwood smuggling under police escorting’, *Kantipur Daily*, 13 April 2007.

²⁴ *op cit* Regmee.

²⁵ Interviews with ex-policemen, worker in Kathmandu District Police Office and other police posts in bordering towns in South Nepal.

²⁶ *op cit* Regmee.

- in exchange for money or sexual favours, protecting brothel owners, dance restaurants and unorganised prostitutes;²⁷
- stealing earnings off street children and local vendors either by force or threat;²⁸ and
- cheating junior officers out of the travel allowance allocated to them.

Concern around corruption in the police

The major problem lies in the fact that the entire recruitment and promotion process is the sole responsibility of police headquarters, as instructed by the Ministry of Home Affairs. The Public Service Commission – responsible for recruiting all other public servants – has no role in any part of the process. Hence, corrupt examiners are able to solicit bribes.²⁹ Those that have to repay money borrowed, for this purpose, have a tendency to try and earn money as soon as possible, and by any means.³⁰

Subsequent to the examination, many new recruits are further abused and humiliated during training. This process appears to be part of the process that indoctrinates officers into showing absolute loyalty towards their senior officers. Moreover, this introduction into policing can also lead some police officers to replicate the behaviour of their colleagues and engage in abusive and derogatory acts towards others (including the public).³¹

Given the prevalence of corruption in Nepal it is ironic that the existing Anti-Corruption Act (1961) does not provide a proper definition of ‘corruption’, and that in spite of this the Commission on Investigation of Abuse of Authority (CIAA) Act refers to this law as its source for a definition of corruption. This limitation in the capacity of the state to address corruption is intensified by there being no independent authority to report the abuses of the police. Even if complaints are made to senior officials, the investigation ultimately ends with the section that should be under investigation.

²⁷ Cited in Manandhar, *op cit*. Some consider police involvement in prostitution as misconduct and some consider it as corruption.

²⁸ Interview with street children by the author while carrying out research on National Child Labour Policy Study in Nepal in 2003, IIDS/ILO Geneva.

²⁹ From an interview with ex-police person.

³⁰ The interest rates charged by rural money lenders range from 24 to 60%.

³¹ Revealed by police personnel while asking about such abusive behaviour of many police constables and officers against the public.

Therefore, there is only a limited chance that they will recommend any censure.

The corrupt actions of political leaders combined with the apparent criminalisation of politics – especially in the post-1990 era – have exacerbated the growth of corruption in the police. This is because ruling political parties have misused the police as a tool for their own ends. Thus the political elite rapidly turned the National Investigation Department (NID) into a convenient institution for recruiting their supporters and cadres/youths from their constituencies.³² The use of security forces as a means of sustaining an autocratic regime has degraded the morale of police forces over the past ten years.

Mechanism required for transparency and accountability

The past decade of conflict and politicisation of security in Nepal has contributed to the evolution of the police as a suppressive force, which through association has enjoyed what is in effect blanket impunity. This is because the concentration of power has allowed for the police to increasingly become a service provider for ruling political parties. Given this, there needs to be a concrete effort to create democracy within the police force through the deconstruction of its present destructive hierarchical system. Amendments to the police recruiting and promotion systems may help to achieve this end. One way of ensuring increased impartiality is to empower the Public Service Commission to oversee these actions.

The development of transparency and a sense of accountability in the police should be guided by political will, civic activism and strong and effective legislation. There is an urgent need for new legislation to curb corruption among all civil servants. The law should provide comprehensive definitions on corruption, for the benefit of every public institution. The new legal provision should also make a clear provision for the establishment of an independent anti-corruption agency with the enough resources and powers to investigate anyone and ensure justice. The CIAA is not capable of

³² Kumar D and Sharma H, *Security Sector Reform in Nepal: Challenges and Opportunities*, Friends for Peace, 2005. Adhikary D, 'Nepal's spies come in from the cold', *Asian Times Online*, 12 June 2002, <<http://www.atimes.com/ind-pak/DF12Df02.html>>.

fulfilling this need, given that it is a political mechanism, and therefore not able to function independently.

Similarly there should be legal provision for the monitoring of all police activities by civilian authorities. Such a process would make the police more transparent. To this end, parliament and local government authorities need to be able to question the activities of the police. This can be achieved through the provision of vertical and horizontal accountability. Vertical accountability occurs when the electorate, through representatives, monitors the government. Horizontal accountability ensures the government has to report to a watch-dog agency, which has the power to investigate corrupt practices.³³

Another strategy could involve actively encouraging civil society at the local level to campaign against corruption. The 'broken window theory' applies in a society like Nepal, where communal ignorance encourages the police to abuse their legal authority. Therefore, the non-governmental organisation (NGO) sector should increase awareness among local populations and form inclusive committees capable of working as a civil watch-dog. Such a committee should include at least one local journalist, so that knowledge of corruption can be effectively disseminated. This promotion of civil-police relations at the village level would further improve the image of the police.

Prospects for the future

The 'bad apple theory' of corruption is not applicable in regard to the Nepal police. It is not an individual or an isolated case that has generated problems; rather it is the institutionalising of corrupt practices – an outcome that has to a large extent been made possible by the criminalisation of politics in the post-1990 era. As Manandhar points out, as a result of the unique 'police culture' developed within the police system, no police officer wants to betray their colleagues even when they have knowledge of another's wrongdoing.³⁴ Thus, a blind sense of camaraderie within the police force has bred a culture of silence. This value system is likely to be the most difficult aspect to fighting corruption within the police force.

³³ Transparency International, 'Developing Responses' in *Sourcebook 2000*, Transparency International, 2000, chapter 3.

³⁴ *op cit* Manandhar.

Moreover, given the close police and politics nexus, promoted by respective ruling authorities – be they monarchy/*Panchas*³⁵ or the parliamentary political parties – police department have become orientated towards fulfilling the political and personal interests of patrons. Accordingly, political commitment and administrative willingness are a must for reform.

In addition to the need to address the culture of corruption in the orientation of the police, reform is also required to prevent the continued misconduct of police officers as they carry out their duties. To this end, there needs to be a genuine effort to develop cooperation and mutual understanding among the people and the police. The media could play a crucial role in this fight against corruption. A free and fair media could expose abuses and wrongdoings within the force. To date, the media has not given much attention to this issue – in large part due to state suppression. However, if media can be integrated into an anti-corruption campaign, it will greatly aid in motivating the general public and politicians to actively engage on the fight against corruption.

³⁵ *Panchas* are the political leaders of the autocratic, party-less Panchayat System that existed from 1960–1990.

Police investigation: Interrogation methods and their impacts

– *Yubaraj Sangraula*

The organisation and attitude of the Nepal Police is largely inherited from that of the British Colonial police force in India. Its main purpose is to 'prevent or control' crime, rather than deliver service to the people. To date this mentality persists, and the police continue to promote a culture of force to the detriment of potential collaboration with civil society. The combative nature of law enforcement limits the capacity of the police to effectively ensure the respect of human rights during the investigation of crime.

Police investigators in Nepal are often alleged to indulge in the use of violent and psychological methods of interrogation. The objective of such interrogation is either to obtain information or to extract a confession. The nature of policing is, therefore, focused more on the suspect and less on the crime. This predisposition is thus one of the major causes of torture in police custody.

The abuse of power practised by some police investigators undermines the possibility of a fair trial. The discussion hereafter will focus on the impacts of coercive interrogation on the rights of suspects to a fair trial.

Interrogation

The principal purpose of interrogation is to extract information relating to a crime. The information derived from this process supposedly will enable the police to further their investigations. Interrogation as a tool, however, may often be coercive and stressful in nature. As such, it may be in direct contravention of the rights of the suspect. The use of intimidation may largely be due to the inability or incapacity of some investigators to discover evidence using a more sophisticated approach. This problem is thought to be endemic in the criminal justice system of Nepal.

Interrogation as a means of extracting a confession has been widely used in every part of the world; however, criminal justice systems in many countries have devised instruments to protect suspects from this practice. In India, for example, under Section 164 of the Code of Criminal Procedure, police investigators are prohibited from presenting a confession as evidence. Thus this provision fully rules out the legality or admissibility as well of the extra-judicial confession. The rules of cautioning the suspects of their rights and excluding involuntary confessions from trial are two important devices that have been developed to protect the judicial system from abuse. However, no such procedural privileges exist in Nepal, thus suspects lack the means to protect themselves during a police interrogation.

The legal framework and prevailing practice of police interrogation of suspects in Nepal

According to article 24 (7) of the Interim Constitution, in continuation of article 14(3) of the 1990 Constitution of Nepal, no person charged with any offence can be compelled to be a witness against himself. The spirit of the Constitution, however, is severely diluted by section 9(1) and (2) of the State Cases Act, as it implicitly compels suspects to waive the right to remain silent. In the context of widespread abuse of power by police, along with the said provision of the State Cases Act, article 24(7) of the Constitution is fully nullified in practice.

Section 9(1) of the State Cases Act provides for unqualified power to be given to the police with regard to interrogation and the recording of statements. While this section does legislate that the admissibility of a statement is dependent upon it being provided voluntarily and without any kind of coercion, deception or fraudulent inducement, section 26 of the Evidence Act, on the other hand, requires persons to carry the burden of proof if and when a statement is challenged as being taken illegally.¹

Moreover, section 9(2) of the Act empowers the police to stop and arrest any person if they consider them to have been involved in the commission of crime. The same section also enables the

¹ Section 26 reads, "Unless it is specifically provided that the onus of proof to prove something lies on some specific person, the person who wants to prove the existence of something in court shall have to discharge the burden of proof to that effect".

investigating officer to record statements of such persons in writing. Together, these two provisions widely empower investigating officers to interrogate and extract confession without any limitations.

As revealed by the findings of a 2002 study by the Centre for Legal Research and Resource Development (CeLRRd), extrajudicial confessions appear to be valuable means of ensuring conviction.² A successful conviction rate appears to provide an incentive for police investigators to engage in extracting confessions. The objectivity of investigations is therefore seriously undermined.

Although the Supreme Court has established principles by which a confession may be deemed as being inadmissible, there has been much inconsistency in the attitude and approach of individual judges in this regard. Furthermore, the Supreme Court has explicitly supported the admissibility of forced confessions.³

Current situation of police interrogation

Many police investigators question suspects in narrow and congested rooms, along with their colleagues and subordinates.⁴ Interrogations can be long, with none of those arrested being informed of their procedural rights, as is their right, as guaranteed by the Constitution.

The misuse of police authority thus appears to rule out the possibility of fairness and objectivity of the investigation process. The capacity of government officials to prevent unlawful practice

² In 59.6 percent of criminal cases, the accused are found to have made confessions to the police. However, 76.6 percent of accused deny the charges against them in court. From this, one can conclude that the use of coercion to obtain confessions is extensive. See *Analysis and Reforms of Criminal Justice System of Nepal*, (Centre for Legal Research and Resource Development, 2002).

³ In *Padam Bahdur Dhala v. HMG 1960*, the Supreme Court held that in a case where the commission of murder by accused is directly established, in such a condition the claim that the confession was extorted by beating is not sustainable, so that the claim of accused for acquittal cannot be justified. In *Tara Prasad Sapkota v. HMG 1969*, the Supreme Court held that if no form of harassment is seen to have been inflicted, then the confession in police custody must be regarded as a confession made with freely. In *HMG v. Rebatiraman 1978*, the Supreme Court held that if there is no evidence contradicting the confession, it should be taken as admissible evidence.

⁴ For instance, the Hanuman Dhoka police office have no separate interrogation rooms. Interrogations are thus carried out in the office of an inspector. Two inspectors share a room measuring ten feet by ten feet.

is therefore lacking. Trial judges, for example, can play a vital role in stopping police investigators from utilising coerced confessions as a primary piece of evidence during a trial.

In conclusion, a few trends can be identified:

- Extended and protracted interrogation is a normal phenomenon in investigation practice. The interrogation of suspects is carried out independently by the police investigators, without any kind of supervision or monitoring by government attorneys. Thus the potential for misuse of power by police investigators is high.
- Implausibly large numbers of police enquiries end in confession after interrogation.
- Over 90% of confessions are retracted at the trial stage, on the grounds of the statement being the product of coercion or torture. As per section 9(2) of the Evidence Act, the admissibility of the confession is fully dependent on its voluntary nature.

Armed police and policing in Nepal

– *Dr. Chuda Bahadur Shrestha*

Nepal confronted several internal and external conflicts before and after unification under King Prithavi Narayan Shah in the eighteenth century. In the early days, Nepal faced conflict with British India in the southern, western and eastern parts, and with Tibet in the north. Similarly, the internal environment engendered political uncertainties resulting in intra-elite conflict, which has been characteristic of the direct rule of the Rana regime, the monarchy, democracy, the partyless Panchayat system and again in parliamentary democracy since 1990.¹

Traditionally, governance in Nepal has been the responsibility of hereditary elites; from November 1950 rebels began to challenge this system. In January 1951, the pre-eminent Rana regime was forced to devolve power to a tripartite coalition government (consisting of the King, independent political parties and the Rana). In the year after this revolution law and order became increasingly tenuous. This fragility resulted in the creation under the Police Act of 1955 of an independent police force, capable of preventing and detecting crime and maintaining peace, law and order.²

Many high-ranking officials from both the Nepal Army – including the Inspector General of Police and the Mukti Sena (freedom fighters) – were included in the establishment phase of the Nepal Police. Thus, they have inherited a legacy from both the Army and Mukti Sena.

Over subsequent decades, Nepal witnessed several political upheavals and much instability. By the late 1990s the continued incapacity of the state to provide good governance and service resulted in a decade-long insurgency.

¹ Shrestha C B, *Nepal Coping with Maoist Insurgency: Conflict Analysis and Resolution*, (Chetana Lokshum, 2004), pp 110–112.

² See *Prahari Prashasansambandhi Ain Niyam ko Sangalo* [Laws Related to Police Administration], (Sampurna Publication, 2005), pp 213–30.

While effective counter-insurgency requires a holistic approach addressing political, economic, socio-cultural and security concerns, in the early stages of the conflict the government had considered the actions of the Communist Party of Nepal (Maoist) to be ordinary criminal offences.³ As a consequence, for the first six years of the conflict the Nepal Police were the only government organisation tasked with restoring order and security.

Establishment of the Armed Police Force

The Nepal Police proved ill-equipped to subdue the Maoists. Given the reluctance of the government to mobilise the army, various commissions were formed to recommend a solution to the problem. Among them was the Regmi Commission which recommended the establishment of a separate paramilitary policing force. Thus, through the Armed Police Force Ordinance (2001) and the Armed Police Force Act (2002)⁴, the Armed Police Force was established.

The objectives of the Armed Police Force (APF) are the maintenance of peace, law and order, and the preservation of the life, property and independence of citizens.⁵ The APF was initially established by transferring 120 persons from the Nepal Army and nearly 10,000 from the Nepal Police. Since this initial recruitment, the strength of the APF has risen to approximately 25,000.⁶

Structure of the Armed Police Force

The APF is headed by the Inspector General of Police and senior officials including Additional Inspectors General of Police (AIGP) and Deputy Inspectors General of Police, all of whom are situated in Kathmandu Valley. Overall, there are six brigades commanded by Deputy Inspectors General in the Kathmandu Valley and another five in development regions. This means that there are APF battalions in every zone headed by a Superintendent of Police (SP). Beside this, there are permanent and temporary base camps in border areas and near sites of importance.

³ Shrestha *op cit*, pp 249–50, note 1.

⁴ *Sashastra Prahari Ain*, 2058 (Armed Police Act, 2002), f. n. 5, pp. 632-633.

⁵ *ibid*, preamble.

⁶ Interview with AIGP Sanat Kumar Basnet, Chief, Human Resources Department, APF Head Quarters, Kathmandu, Nepal.

Function

Although the APF was initially established for the purpose of achieving short-term political goals, specifically to assist in the fight against Maoist insurgents, its role has subsequently expanded. In accordance with article 6 of the Armed Police Force Act, the government of Nepal can mobilise the APF for a multitude of tasks, including maintaining law and order, peace and security; countering insurgency, separatist activities, terrorism and armed rebellion; enforcing crowd and riot control; assisting in natural disaster management; and border security. The APF, along with the Nepal Police, were mobilised during 2002–2006 under the unified command of the Nepal Army to manage the internal conflict. So far, APF personnel have not been found responsible for serious abuses of human rights,⁷ except for a few cases during the second people's movement in April, 2006.

Need to assure the public

The general public may consider the APF to have been formed solely as a means of controlling the internal conflict; however, it has become an established paramilitary force fulfilling many different government policies. With the transformation of the internal conflict and the expansion of the APF's role, the government needs to ensure that the APF develops as an impartial, neutral and professional organisation.

In Nepal there are several security mechanisms that could aid in controlling the actions of the APF. The National Security Council, for example, has the capacity to plan, organise and control the APF in such a manner that the public could feel confidence in its neutrality as a provider of safety and security. In addition, the APF should adopt a legally binding policy of political neutrality, similar to that of the Japan Police Act of 1954.⁸ Moreover, the APF should introduce an effective monitoring and evaluation mechanism, such

⁷ The Government has suspended some senior officials of the APF charged with human rights violations.

⁸ White Paper on Police 1999 (Excerpt), National Police Agency Government of Japan, Japan Times, pp.105.

as the Independent Inspectorate Commission⁹ found in the United Kingdom. Such an independent committee could evaluate the performance of the APF and the Nepal Police on a yearly basis, and recommend reforms as needed.

APF recruitment, training, posting, promotion and career development should also be transparent, impartial and inclusive. In the same manner, training should not be constricted to only tactics, but should also cover human psychology, human rights and public relations. The APF should utilise a variety of different methods to report on their contributions to society in order to increase public awareness. This activity would enhance public confidence and aid in winning hearts and minds.

Interaction of the APF with the Nepal Army and Police

The APF is in essence a national police organisation having paramilitary characteristics, similar to those found in India (such as the Central Reserve Police).¹⁰ Thus, the APF, despite possessing military capabilities, is a force dedicated to internal security matters.

In accordance with the interim constitution, the National Security Council¹¹ provides overall co-ordination of all security agencies. Additionally, article 7 of the Armed Police Act, empowers the Central Security Committee to co-ordinate actions among organisations at the central level. Articles 4(C) and 6(7) of the Local Administration Act (1971)¹² provide further opportunities for dialogue and co-operation through regional and district security committees.

Future of the APF

In spite of changes in the security environment in Nepal, the APF remains a permanent security organisation because it has become

⁹ The Police Foundation and the Policy Studies Institute, *The Role and Responsibilities of the Police*, (London – Latimer Trend, 1996).

¹⁰ Nirmal A, *Role and Function of Central Police Organizations*, (Uppal Publishing House, 1992), pp 51–202.

¹¹ Shrestha C B *et al*, *Nepal ko Anterim Samwidhan ra Samwidhan Sabha* [Nepalese Interim Constitution and Constituent Assembly], (Sampurna Publication, 2007), pp 306–22.

¹² f. n. 5, *Sthaniya Prashahn Ain* (Local Administration Act), 2028 BS (1971), pp. 713-718.

an integral source of stability within Nepal. As such, the APF will remain an important tool for the government.

Following the success of the Maoists, several armed groups have emerged across Nepal resulting in daily agitations, riots, violence, *bandha* (strikes), kidnappings, extortion and murder. Organised criminal gangs are also increasingly active. Given the provisions of the Peace Accord, the Nepal Army has not been mobilised to address these new threats to stability and so the burden of responsibility has fallen to the Nepal Police as well as the Armed Police Force.

The limited capacity of the Nepal Police to undertake community policing and prevent and detect crime necessitates that the APF be retained as a third armed force to address present and future problems. According to the AIGP Amar Nembang (Subba)¹³, within this environment, the government has entrusted the APF with information-gathering tasks relating to peace and security, patrolling highways, providing security as required by local administrations and the police, supporting the police in controlling violent crowds, providing border security and controls, conducting preliminary investigation in areas of agitation (arresting suspects, protecting scenes of crime, seizing items that have been stolen or looted, facilitating treatment of victims, collecting evidence), providing additional security for prisons, and as necessary supporting election security. Though in the earlier stage the APF seemed to be a temporary body created mainly to quell the Maoist insurgency, its responsibilities have grown and will continue to grow.

¹³ Interview with AIGP Amar Nembang (Subba), Chief, Operations Department, Armed Police Force (APF) Headquarters, Kathmandu, Nepal.

Transitional justice: Question of implementation in Nepal

– *Hari Phuyal*

This article intends to shed light on impunity in Nepal, specifically in the context of transitional justice and global standards, and transitional justice and Nepal. It also highlights the prosecution of suspects, and accountability within the organisations of the security forces. Finally, it concludes with recommendations for transitional justice in Nepal.

Impunity, its meaning and context in Nepal

Generally, the term impunity refers to a situation where a criminal is exempt from punishment. In the context of human rights, impunity applies to a situation where perpetrators of serious human rights abuses or gross violations of international humanitarian law are not prosecuted through judicial measures. In Nepal, impunity has largely become a part of culture. However, one of the contributing elements to such a culture is the understanding of measures to deal with impunity. Therefore, in the context of aftermath of armed conflict, addressing impunity takes specific meaning and measures.

Meaning and international standards

Transitional justice refers to both judicial and non-judicial approaches to address past violations of human rights when a country is passing from armed conflict or autocratic rule to rule that is democratic and governed by the rule of law.¹ While there is no specific international convention that legislates on transitional justice, practice is derived from obligations contained within various international treaties.² In 2004, United Nations Secretary-General Kofi Annan created a policy guide for transitional

¹ For further information refer to the website of the International Centre for Transitional Justice (ICTJ), <<http://www.ictj.org/en/tj/>>.

² For example, Article 2 of the International Covenant on Civil and Political Rights 1966.

initiatives.³ Subsequently, the Commission on Human Rights identified two norms as guiding tools for nations to use in the field.⁴ In addition, a number of comparative illustrations are available to choose as models for transitional justice in Nepal. Examples of transitional justice include referring cases of abuse to the International Criminal Court, establishing national and international tribunals, and prosecuting cases through the national criminal justice system. With regard to non-judicial actions, possible transitional measures may involve commissions of inquiry, truth and reconciliation commissions, vetting, reparations and rehabilitation for victims, and reforming laws and institutions involved in law enforcement, including the police.

Nepal and transitional justice

Following the signing of a Comprehensive Peace Agreement (CPA) on 21 November 2006, the decade-long Maoist insurgency, which resulted in some 15,000 deaths, was brought to a conclusion.⁵

As a response to the voices of civil society calling for past atrocities to be addressed, there is a written commitment by the State to institute a method of transitional justice, for example a Commission of Inquiry on Disappearances;⁶ however, no coherent policy to address transitional justice has yet been decided.

The CPA does include some provisions for the investigation of past atrocities, such as making public within 60 days the details of all those that have disappeared or been killed during the armed conflict, establishing a National Peace and Rehabilitation Commission for the purpose of maintaining peace and providing

³ See United Nations, *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616, 3 August 2004.

⁴ OHCHR, 'Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity', *Addendum to the Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005; and UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 16 December 2005.

⁵ Comprehensive Peace Agreement, 21 November 2006, <http://www.sambidhan.org/peace%20agreement_en/Comprehensive%20Peace%20Agreement%20held%20between%20Government%20of%20Nepal.pdf>.

⁶ See Clause 1 (b) of the Understanding between the Seven Party Alliance and the Communist Party of Nepal (Maoist), 8 November 2006.

relief and rehabilitation, and the creation of an environment conducive for the return of the internally displaced persons.⁷ The Interim Constitution also provides some additional measures, including the provision of appropriate relief, respect and rehabilitation to the families of those killed, disabled or left physically unfit because of the armed conflict and to the families of disappeared persons, and the launch of special programmes to rehabilitate displaced persons, provide relief for damaged public and private property and reconstruct infrastructure⁸.

The responsibility of the State to establish a Truth and Reconciliation Commission so as to investigate grave violations of human rights and crimes against humanity is noted by both the CPA and the Interim Constitution.⁹

The provisions documented are however, not fully comprehensive. Measures, such as the vetting of suspects within the organisations of the security forces, the Peoples' Liberation Army and Maoist cadres are not addressed either in the CPA or in the Interim Constitution. Reform of the rule of law has also been neglected. Therefore, a strong political will to reform the legal framework and institutions of the rule of law, including the Nepal Police, is a necessary initiative to be taken by the ruling eight political parties through the Legislature/Parliament or the Constituent Assembly to be elected.

Prosecution of suspects in Nepal

Neither the CPA nor the Interim Constitution contain provisions for the prosecution of suspects of crime against humanity.¹⁰ Despite this, if the Truth and Reconciliation Commission or an independent commission of inquiry, identify that an international crime has occurred in Nepal, then prosecution cannot be ruled

⁷ Comprehensive Peace Agreement, clause 5.2.3, clause 5.2.4 and clause 5.2.8 respectively.

⁸ Interim Constitution of Nepal 2007, article 33(p), article 33(q) and article 33(r) respectively.

⁹ Comprehensive Peace Agreement, clause 5.2.5 and Interim Constitution of Nepal 2007, article 33(s).

¹⁰ The Draft Interim Constitution prepared by the Interim Constitution Drafting Committee in its article 24 had a provision that retrospective law may be promulgated to prosecute the suspects of crime against humanity and war crimes, but that particular provision was removed by the leaders of the political parties during the political negotiation of the Interim Constitution.

out.¹¹ However, should this outcome occur, given the lack of guidance, the integrity of the prosecution process will be dependent on political will.¹²

Accountability within the security forces and transitional justice

The Nepal Police, the Armed Police and the Nepal Army function independently in accordance with the provisions of their respective legislations,¹³ but the Local Administration Act (1971) is a legal instrument which empowers the Chief District Officer to mobilise these forces in certain circumstances for the maintenance of law and order. None of these Acts define torture, ill treatment, excessive use of force, custodial death, illegal detention or other violations of human rights for the purpose of internal action in their rank and file. Therefore, routinely, human rights violations by security personnel go unpunished.

This, therefore, highlights the need to reform the legal frameworks and institutional mechanisms of the security forces, so as to be able to ensure greater accountability within the respective organisations.¹⁴

Conclusion

The High Commissioner for Human Rights, during her visit to Nepal, emphasised for the need to address the atrocities of the past.¹⁵ However, none of the Government agencies can be evidenced as working in a coherent manner to achieve this end.¹⁶ There must, therefore, be a nation-wide discussion, including within the Legislature/Parliament, concerning a transitional justice

¹¹ See article 15(2) of the International Covenant of Civil and Political Rights, 1966.

¹² The role of the international community is crucial not only to encourage the demands for measures of transitional justice, including prosecution, but equally their commitment of financial and technical contributions would encourage any such measures.

¹³ See the Nepal Police Act, Armed Police Act, Nepal Army Act.

¹⁴ There is no specific study on the issue of accountability within the organisations of the security forces, but some recommendations are made in the OHCHR Report on the Excessive use of Force during the April 2006 People's Movement. See *Findings of OHCHR Nepal's Monitoring and Investigations: The April Protests Democratic Rights and the Excessive Use of Force*, 1 September 2006 at <<http://nepal.ohchr.org/en/index.html>>.

¹⁵ January 2007, see press release at <<http://nepal.ohchr.org/en/index.html>>.

¹⁶ The work of the Peace Secretariat is more focused on the Truth and Reconciliation Commission.

policy, so as to expand the provisions of the Interim Constitution. It is also necessary to expand the scope of governmental endeavours to include prosecution, vetting and reform in the criminal justice system, and institutional reforms, including the Nepal Police.

Policing in partnership: A demand for community safety

– *Rajendra Bahadur Singh*

The Nepal Police is the only body specifically mandated with the purpose of preserving internal peace and security inside of Nepal. The history of policing in Nepal dates back to the unification process, when contingents of the army (officially designated as KOTWAL, UMRAO, FAUSDAR and NAIKE) were assigned to internal security duties. The military domination of policing continued up until the advent of democracy following the 1950 revolution. With the enactment of the Police Act in 1955, the foundations for the modern civil police force were created.

While there is a long history of police control, the system in Nepal has come to be identified as serving the interests of specific elite groups. As exemplified in the democratic revolutions of 1950, 1980, 1990 and 2006; the 1992 civil servants' revolt; the 1995 Madan Bhandari's death revolt; and the Jana Yuddha (People's war), the Nepal Police has been continually used as a tool of repression.

After 25 May 2006, and the signing of a ceasefire between the political parties of Nepal (as represented by the Seven Party Alliance) and the Maoists, conflict between the government and insurgents effectively stopped. This has allowed most police posts to be re-established and police strength to increase. The total number of serving police personnel totals approximately 50,000. These officers are divided among five regions, fourteen zones and seventy-five districts. In addition, a Metropolitan Police system has recently been introduced in the Kathmandu Valley to manage law and order in the capital.

In spite of this, law and order has deteriorated. In this initial post-conflict period, crime rates have increased significantly, trafficking of small arms has become a common phenomenon, and extortion, abduction, intimidation, burglary and looting are rampant. Given

the apparent inability of law enforcement agencies to tackle these problems, it is thought that many victims of crime have lost faith in the police and as a result do not report incidents for fear of reprisals.

It is the primary responsibility of government to protect democratic practices and human life. To this end, security providers need to be vigilant in their duties to citizens, in particular those that are most vulnerable. At present, the Nepal Police are demoralised and unable to successfully fulfil their mandate. This is largely due to its historic misuse, the past insurgency, absence of effective leadership, favouritism, political interference, corruption and lack of sufficient infrastructure. As a consequence, general feelings of suspicion, injustice, mistrust and insecurity are often associated with law enforcement in Nepal.

In this context, the law enforcement mechanism has to be divorced from its past traditions and must be seen to have adopted a new philosophy for policing. At the forefront should be the idea of 'policing in partnership', a concept which relies upon the development of a community-safety-oriented style of policing.

The basic aims of this policing model are as follows:

- develop an effective partnership approach to tackling crime and disorder;
- rebuild public confidence and increase the reporting of crime;
- improve the capacity of communities to develop solutions to local problems; and
- create a safer environment for all stakeholders living, working, shopping and investing in Nepal.

Experiences of Nepal

The concept of community policing is not new to Nepal as it was first introduced in 1982. It was not until 1994, however, that a pilot project was launched in Kathmandu Valley.

In general, the policing system in Nepal is dependent on communal support. Most of the land upon which police stations are built is donated by local citizens, and the buildings themselves are constructed with local participation. Moreover, police posts are created in villages and towns upon request.

Overall, despite these examples, the partnership approach to policing has failed. This is largely due to the Maoist insurgency, as police posts and community centres were often targets for attack. These attacks prevented all centres, with the exception of a few in Kathmandu Valley, from operating.

With the restoration of peace, it is appropriate to begin restoring the basic principles of community policing. To date there are more than 24 community police projects running in different parts of the country, including 12 supported by the United Kingdom's Department for International Development (DfID). The restoration of internal stability also allows for the analysis of the weaknesses of past projects so that all future programmes can benefit from lessons learned.

Structure:

The rights and duties of police units are clearly identified in the Police Act of 1955, and similarly the role of the police and communities in crime investigation are clearly mentioned in the Criminal Procedure Act. Therefore, only organisational commitment and desire is required for there to be an effective community policing system.

Policing should be decentralised, so as to enable a participative and consultative style of management. Accordingly, communities and local-level police forces can work in partnership to prepare and execute policy that is relevant. Police Headquarters would then act as a facilitator, by issuing organisational directives, and monitoring norms, values and policies. Moreover, a separate Community Police Department must be established in Police Headquarters so as to provide greater supervision and facilitation of all district community partnership activities.

A review of current recruitment practices, in combination with a broader training focus for middle- and lower-level police personnel, is also essential. Necessary professional subjects need to be complemented by education on community-focused areas, such as social diversity, culture, conflict resolution and mediation. The current reward system is also in need of change, with achievement

of community goals and public safety needing to be utilised as the best indicators of performance.

Working in partnership is not simply a model to be adopted for particular situations, but rather must be at the core of service delivery. District police offices and their subordinate units (Thaana, Ilaka, and Ward police) are solely responsible in developing effective partnership approaches to tackling the safety, crime and disorder within their respective districts. District Police Command also has to perform other various task of policing within their jurisdiction besides crime prevention and control.

For effecting implementation of policing in partnership, a separate body of District Police Partnership should be established under the chairperson of District Development President in every district. The establishment of district policing partnerships within every district command area will significantly impact on legislative responsibility for consultation with the community on policing issues.

District Policing Partnerships (DPPs) will be responsible for obtaining the views of the public regarding the policing of the district, addressing crime prevention issues, monitoring police performance and presenting those views to District Police Commander.

At the local level, the goal will be achieved by working with the community through local officers and community groups. Community consultation and problem-solving will be central features of policing in partnership that will improve the safety and reassurance of the public, especially those at risk of harm.

District police offices must also be more empowered and local-level agencies (Thaana, Ilaka, and Ward Police) must be held increasingly accountable to local communities.

Overall, community policing should be understood as law enforcement in co-operation with local society, thus necessitating the empowerment of the principles of self-policing and decentralisation. This evolution in policing will require positive political discipline, public self-control and a high rate of literacy. These requirements mean that there is only limited opportunity to

facilitate this end in the present context of Nepal. This does not mean, however, that there are no grounds for advocating for the institutionalisation of community policing.

Culture:

The system of autocratic management, as inherited from the military, must be changed to one that is more participatory, open and transparent. Service delivery, partnership, problem-solving, empowerment and accountability are basic keys for successful community policing and must be accepted by all serving police personnel. Consequently, rather than having to follow authoritative dictates, all community police personnel should be empowered to determine their own local priorities and set objectives within the parameters of an overall policing plan.

Strategy:

Community policing is not a soft option; all police officers have a legal and ethical duty to maintain public order and to enforce the law for the protection and security of the public. Community policing achieves this end through the facilitation of partnership between statutory agencies, non-governmental organisations and the local public.

This alliance allows the police to not only draw upon the attributes of others, but also to access resources and information contained within a community. This union is therefore beneficial for all parties as communities want law enforcement when they are affected by crime.

The purpose of community-based policing is to prevent, reduce or contain the social and environmental factors which cause crime and anti-social behaviour. To improve community safety and reassure the public (especially those in particular risk of harm) of the value of this partnership process, three strategies need to be pursued:

- at the national level, the government needs to work with the police to formulate policy that will support and shape operational activity;
- at the district level, it is essential to have a system of policing partnerships with other agencies, so as to develop a local strategy

that is capable of meeting the needs of communities (as previously identified by consultation and participation); and

- at the local or field level, policing activities need to be undertaken through local officers and community groups, with community consultation and problem-solving featuring prominently in activities relating to policing.

Police alone cannot reduce crime. A problem-solving approach with other agencies has to be developed, for example:

- it is necessary to promote awareness of the public's role and responsibility in crime prevention and reduction.
- closer links between the police and local communities would encourage greater reporting of crime and suspicious activities, and negate concerns regarding intimidation.
- patrol strategies should be developed in order to provide public reassurance through highly visible policing.
- local policing plans should address particular local crime trends and issues.
- modern information technology should be employed in crime reduction.

Management:

The success of community policing is dependent upon a dynamic leadership that has the ability to adapt or initiate change on those practices considered to be unsuitable. It is also necessary that they be able to recognise opportunities and manage obstacles effectively.

At present, community policing projects at all levels are lacking dynamic leadership. It is important to remember that "leaders are not born, they are made"; thus, training, experience, opportunity and commitment to develop should be recognised.

Conclusion

Ultimately, all police personnel in Nepal should embrace community policing. While it is impossible to transform a huge organisation overnight, several steps can be implemented towards this end:

- police managers should build a culture of teamwork;
- community officers, and those with specialist training, must be flexible in their deployment;

- the principles of community policing must underpin all policing activity, including public order and criminal investigation;
- a national system of 'policing in partnership' in Nepal has to be agreed, together with an implementation strategy;
- decentralisation and self-governance concepts have to be supported by the government as one of its priorities; and
- the police need to work in partnership with the public so as to encourage independent problem-solving.

Community policing: Lessons from Nepal

– *Dr. Govinda Prasad Thapa*

Crime is a complex issue, of which law making is not the only solution; rather it is the beginning. Real success lies in the proper enforcement of law. The police are the prime agencies tasked with ensuring security and maintaining law and order. To this end the fundamental tasks of police are protection of life and property, prevention and detection of crime, maintenance of public law and order, and provision of assistance to the public.

The objectives of policing are similar throughout the world; however policing styles differ. Several policing philosophies and approaches have been adopted across the world. Some of these include crisis policing, authoritarian policing, community policing, problem-oriented policing and information/intelligence-led policing.¹ None of these approaches are foolproof so there is no room for complacency in any of the systems.

The Nepal Police have a history of employing a regimental (authoritarian) style of policing. The reformation of the present-day police, which took place between 1951 and 1952, was the result of the amalgamation of militias – *Rakshya Dal* and *Janamukti Sena* – and the insurgents who took up arms against the 104 years of the tyrannous Rana regime. Accordingly, the police was established with a revolutionary and military culture, with the primary objective of supporting the political regime or government in power. Service to the people was a secondary concern.

Community policing

Effective law enforcement provision requires the police to operate in partnership with the people. Community-based policing (CBP) allows for greater consultation, the development of unanimous consent for strategies and plans, increased cooperation in

¹ Anneke Osse, *Understanding Policing*, (Amnesty International Nederland, 2006), pp 79–108.

implementation, and proper coordination between partners. It is a strategy designed to strengthen the capacity of the police and the community to jointly combat crime. This philosophy of modern policing calls for client-oriented, community-based and proactive policing.

This method necessitates the development of a community/police partnership, for the purpose of creating ownership among the people and more inclusive problem solving capacity. The benefit of this close relationship, is that the combined will and resources of the police, local government and community members, increases understanding between the partners, provides for more effective law enforcement provision, helps to reduce fear of crime and enhances the quality of life in the community.

Sir Robert Peel, the founder of the Metropolitan Police in London, has best explained the primary aim of community policing, which is "... to maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police. The police being only members of the public that are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."²

What makes community policing different?

Law enforcement has long recognised the need for co-operation with the community it serves. Officers speak to neighbourhood groups, participate in business and civic events, consult with social agencies and take part in education programmes for school children. Foot, bike and horse patrols also aid in bringing the police closer to the community.

This space for dialogue and interaction aids the police in focusing on strategies that help prevent crime, reduce fear of crime and improve the quality of life for communities because it allows the police to gain an intimate knowledge of the communities that they are serving. Traditional policing concepts have tended to isolate

² As quoted in *Philosophy and Principles of Community-Based Policing*, (South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2003), p 2.

officers from the communities in the past, which has hampered crime prevention efforts.

Community policing allows law enforcement to get back to the principles upon which it was founded, to reintegrate itself into the fabric of the community so that the people come to the police for counsel and help before a serious problem arises, not afterwards.

Community policing in Nepal

The *Chhimeki Prahari* system of policing was first established in early 1982. This system was based on Singapore's Neighbourhood Police Post (NPP). A number of police booths were established in the Kathmandu valley. The mandate for the police was to patrol their areas and respond to public grievances and demands of any kind.

I myself remember going around the city from house to house asking questions and taking records of local people's needs and complaints. The responses were wide ranging in nature – from family matters to roads, drinking water, telephones, street lights, sewers, cases of theft, gangsters, and drugs. These records were then reported back to police headquarters. However, only very few complaints could be addressed following this survey. The rest of the complaints were forgotten. So, both the people and the police lost interest in this programme. Thus the police failed to effectively collaborate with others and the project was not sustained

After the peoples' democratic revolution of 14 January 1994, a community police centre was established in Maharajgunj, Kathmandu. Similar types of police centres were also established in Chabahil and Baneswor in Kathmandu district as pilot projects. As of now, there are more than 100 centres in Nepal. These centres have different names: Community Service Forum, Community Service Society, Community Development Centre, Public Service Centre, Community Police Service Centre, Community Police Service Forum, Community Service Committee, Multipurpose Community Service Centre, and Community Development Cooperative Forum.

Through these centres, the police are able to participate in local development, women's literacy, community health, child care,

environmental preservation, health services, youth activities, and many other welfare programmes. This makes Nepal's community police system quite different from that of Singapore's Neighbourhood Police Post and Japan's *Coban* system. However, this approach has not been accepted as a credible style of policing by all. There are doubts among many police officers about its practicability. This is largely because they have failed to realise that it is possible to be community-friendly while simultaneously being an effective police officer.

The involvement of police in community partnership-based projects is a powerful tool for projecting a positive image. The Nepali people have found that when the police work with communities they are generally found to be more approachable, sensitive and friendly than those working exclusively from a station. As a consequence, it is felt that those officers who are responsible for community policing affairs should be based within the community itself.

Post-conflict society and community policing

During the conflict, the Maoists were very suspicious of the involvement of the interaction between community members and community centres. As these centres grew in popularity, the Maoists increasingly perceived them to be a threat to their interests because it was suspected that these centres were being used by the police to gather information. Consequently, the Maoists began to threaten all those associated with community policing and to attack the centres. The Tikhedewal Community Development Centre in Lalitpur, for example, was bombed, killing one Assistant Sub-Inspector. A Sub-Inspector at the Baudha Community Police Centre in Kathmandu was likewise killed. In spite of this, the majority of all local community police centres continued to function.

Since the endorsement of a comprehensive ceasefire agreement between the Maoists and the government, these repressive attacks have stopped. Local communities throughout the country are again allowed to freely join community police programmes.

Community policing in Nepal: The need for reform

In Nepal, the establishment of community service centres or community policing projects usually starts with the identification of a community's security needs. This is done through consultation with members of the applicable community. At this stage the community members list all their needs, including those other than security. The police, in co-operation with the community, then reach an agreement on a business agenda and *modus operandi*. This requires that the police be willing to participate in activities other than those required for the 'business' of law enforcement. Therefore, there are at least four stages in establishing a community police centre – consultation, consent, co-operation and co-ordination.

Accordingly, successful community policing needs an organisational strategy that ensures everyone translates this philosophy into practice. It requires major changes to be incorporated into the policing system, particularly in regard to allowing frontline officers to be provided with greater autonomy, access to resources (which should be mobilised at the point of service), and an ability to focus on local problems. It also requires that the local problems identified are relevant for all groups within society – especially those that are particularly disadvantaged or vulnerable.

The *Police Mirror*, the annual magazine of Nepal police, comments on the need for public service-oriented police services:

It has been our professional belief that the police service may not be considered police service in a real sense in the absence of a proper response to the grievances and problems of the sovereign Nepali people, prompt necessary action and adequate counselling and direction. In the light of this truth it has been highly essential for us to establish ourselves as the public service oriented, capable and efficient police in all respects through our conduct and to follow the working style of democratic police in the existing democratic system in the country.³

The above message is worth highlighting. In the past, the actions of the police have been exploited more for the protection of the government than to serve the interests of the people. To date, all

³ *Police Mirror: Annual Publication*, (Nepal Police Headquarters, 1997), pp 21–4.

that has been done in the sector of community policing is the result of combined efforts by both communities and the police. The state, as of yet, does not recognise CBP as an effective method of enforcing law and order. As a consequence, this method has not been incorporated into the national plan. This shows a lack of long-term vision, and a failure to create a uniform national strategic operational plan, management policy, and direction and co-ordination mechanism for present and future community policing projects.

A 1997 Study Committee of Nepal police, in a review of community policing programmes, documents some of the difficulties in implementing a national plan on CBP. The study noted that CBP projects could not be successful in the long-term as they do not have the support or confidence of high-ranking police officers and are devoid of policy guidelines, clear mandates and plans of operation. Moreover, the police was considered to not have the required level of knowledge and skills to run CBP schemes, or necessary resources, both human and material. The study also concluded that there is the lack of a monitoring and evaluation mechanism that would allow for accountability on the part of police to the community or follow-up programmes.

In order to improve the effectiveness of CBP in Nepal, there are number of steps that need to be taken. Some of them are:

- **Demonstrating effective leadership**
Leadership is required at all levels within different institutions at national, regional, zonal, district and municipality levels, both within police and government structures; and also within communities where CBP is to be implemented.
- **Understanding the local context**
Ensure that the implementation of a community police programme fosters co-operation and harmony in the community by bringing people together from different groups to address local and communal problems of security.
- **Enabling access to justice**
CBP is an integral part of the broader criminal justice and security sectors, necessitating a corporate, coherent and

mutually reinforcing approach to all elements in this sector.

- **Improving quality of service**
CBP sees policing as a professional service to the public that responds to community needs. Quality of service depends on a number of different issues, but above all an attitude on the part of the service provider that 'quality matters'.
- **Ensuring ownership**
It is crucial to sustain a CBP programme over a long time. The programme must, therefore, be owned by all levels and ranks within the police, and at all levels within a community. The best way to ensure public ownership will be to enrol local people from the target community into the regular police and deploy them in their localities.
- **Recognise it as a national agenda**
It is essential that the national agenda recognise that CBP is an effective means of improving access to justice for underrepresented groups.
- **Institutionalise the programme**
CBP has to be endorsed at the national level. Thus, legislation relevant to policing must be reformed in accordance with the values of community policing.
- **Ensuring police accountability**
Police should be accountable to the community so as to ensure professionalism, respect for human rights and limit police abuses.
- **Enhancing co-ordination and coherence**
Duplication or contradictory reform efforts cause confusion, waste resources and can devalue CBP. Therefore, co-ordination and coherence are important.
- **Capacity-building: training/resources**
It is important that training be provided to the police on the philosophy and practical implementation of CBP.

Moreover, sufficient resources have to be made available to allow for CBP programmes to be promoted as a priority.⁴

Conclusion

Nepal is a multi-ethnic, multi-religious, multi-cultural and multi-lingual nation. Because of this, the social and political justice systems struggle to be equitable. Many of those belonging to socially marginalised groups find it difficult to gain access to justice. The community policing strategy will not only empower local communities, but also address problems of social and political injustice. This will, in turn, promote greater inclusion of local people into the regular police force and foster feelings of ownership. This will help ensure that the CBP system is sustainable in the long run.

Community Based Policing is both a philosophy and strategy that allows the police and a community to work closely together in ways that will best solve problems of crime, insecurity, social disorder, as well as other local problems. CBP achieves this end by empowering communities to solve their own security problems. This scheme breaks the tradition of top-down approaches to management and promotes a bottom-up approach.

Despite the numerous benefits of CBP schemes, it is not being fully utilised in Nepal. The reasons behind this include the continued prominence of more traditional attitudes towards policing. With the passage of time, it is crucial that we review the existing methods of policing and implement a more people-friendly policing system in Nepal.

⁴ Adapted from *Philosophy and Principles of Community-Based Policing*, (South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2003).

Nepal Police and the Dalit community

– *Durga Sob*

Caste-based discrimination has been part of Nepal's history for more than 3,500 years. The general acceptance of this practice enabled feudal Hindus to exploit their social dominance of society, and deprive the Dalit community of opportunities (social, economic and political) and human dignity.

Those defined as being part of the Dalit community encompass a variety of different people living across Nepal. The census report of 2001 documents that the total Dalit population constitutes 13 percent of the overall population; however, research conducted by various Dalit groups and non-governmental organisations places the number at more than 20 percent of the total population.

Dalit access to the police force

When the Nepal Police were first established in 1950, Dalits were still being defined as untouchable and, consequently, were not considered for inclusive employment within a law enforcement body. Even with the introduction of the Civil Code (1963), which forbade the use of this derogatory definition, social prejudices continued.¹ Consequently, discriminatory public perceptions continued to prevent Dalits from integrating fully.

It was not until the political changes of 1990 that a situation arose where marginalised groups, including Dalits, felt empowered enough to exercise their rights and oppose the oppression to which they were being subjected. Notwithstanding the value of this development, the impact of this on society has not been substantial. Dalits remain under-represented in the institutions of governance and law enforcement. Moreover, the social stigma of being from a lower caste has meant that the perception of being 'untouchable' continues. This has great significance as Dalit's are effectively

¹ Article 10(a).

deprived of access to justice, which has implications for the safety and security of their community.

It would, however, be inaccurate to say that no Dalits are currently represented within the police. Statistics reveal that 0.2 percent of the Nepal Police are from the Dalit community.² While this illustrates that some integration has taken place, it also indicates that marginalisation remains a pervasive problem given the proportion of Dalits in the national population.

There is also evidence that even Dalits that have been incorporated into governmental and security organisations continue to be subjected to unfair treatment. In July 2006, for example, Hari Prasad Bagale, Judge of the Dang district court, prohibited two of his office staff from sharing *prasad* on the grounds that they were Dalits. No action has yet been taken against the judge despite growing pressure.

Absence of a clear and enforceable law that protects groups from intolerance and caste-based discrimination means that Dalits will continue to be denied equal justice, integration and representation. To date, inaction and reliance upon rhetorical proclamations has only legitimised the continuation of these discriminatory practices; on the one hand, the Government of Nepal has introduced laws that abolish ‘untouchability’ in public places, but on the other it has strengthened existing social conditions.

Accessing justice: A challenge for Dalit women

Dalit women constitute approximately ten percent of Nepal’s overall population, and some twenty percent of the female population. They are victims of both caste and gender discrimination. As a consequence, many are deprived of education, access to opportunities and virtually all forms of representation. Moreover, rape, sexual assault, human trafficking, and landlessness continue to pose severe threats to their security. Dalit women are particularly vulnerable to abuse, as there is evidence that many have been raped by policemen or have been wrongfully implicated in criminal cases. It is therefore unsurprising that a large proportion

² There are only five Dalits of Inspector rank, whose number is around 800 in the force. There are two Deputy Superintendent of Police. There are no Dalits above that rank.

of Dalit women are more fearful of the police than others in their community.

Police role in abolishing untouchability and discrimination

In order to facilitate the equal application of law, the police need to take greater responsibility for justice provision. Therefore, when cases of 'untouchability' are reported to the police, rather than seeking to preserve Hindu Brahminical feudal values and social norms, the law needs to be enforced.

Case study:

In early April 2006, some Dalit youths went to a restaurant in the Changunarayan area of Bhaktapur district. Despite paying for the tea they had purchased in the restaurant, the owner refused to let them leave. The owner insisted that they clean the glasses that they had been using because they were Dalits. After initial resistance, the youths relented. After completing this task, the Dalit youths were then assaulted by a group of non-Dalit youths and the owner of the restaurant. After a police team arrived from Bhaktapur, despite having received injuries from weapons, the Dalits were arrested, rather than those who had attacked them.

The Dalits were only released and their attackers arrested once Inspector of Police Dharma Vishwakarma (himself a Dalit) was made aware of their plight. In spite of this intervention, the attackers were released without charge. Regardless of the influence of some Dalits within government institutions, caste-based prejudices result in Dalit's still only receiving partial justice.

Feminist Dalit Organisation and other Dalit NGOs, 2006

To date, when the Dalit community makes a complaint, the police have in many cases refused to record details, or have exacerbated problems by harassing the victim. As a result, the development of the Dalit community is devalued by a socially based culture of impunity. When the police do register a complaint, the investigation is often limited, as the police can restrict its scope by taking advantage of a provision that allows for the state to become a party in all cases relating to being untouchable. As such, rather than investigating these types of crime, the police regard the complaint as a 'social problem' and argue that it should be addressed by society, not the police, and that laws would not deal with the problem adequately. As long as the state fails to address intolerance, caste-based discrimination will continue to remain prevalent and the Dalit community will continue not to trust the police.

These examples of prejudice are compounded by the institutional failure of the police to fairly incorporate the Dalit community into its ranks. This has limited the capacity of the police to be sympathetic or sensitive to the needs and concerns of this under-represented group. As long as the police continue to represent the values of a small hierarchical elite, it will prove difficult for the institution to develop trust within the Dalit community.

Essential reforms within the police to ensure the Dalit community's access to justice

Following the success of the People's Movement (2006), Nepal has been able to create the necessary space in which democratic development and institutional reform can be achieved. Among those bodies that can benefit from this new era of opportunity are the police.

If all the organs of the state continue to be dominated by a minority elite that is not representative of all communities and groups within Nepal, many of the factors that contributed to ten years of conflict will remain. The Government of Nepal has been afforded an opportunity to empower under-represented communities, and to integrate them into state institutions and security forces.

Given the benefits of encouraging participation and inclusion in the police, it is necessary that a reform agenda be supported. To this end, the Police Act (as well as other applicable legislation) must be amended so that all castes and communities are represented, and so as to better reflect the Interim Constitution. A special criminal law also needs to be enacted in order to eradicate caste-based discrimination against Dalits. This will also require the police to ensure its implementation. Additionally, police officers need to be made aware of existing domestic and international laws regarding human rights and the protection of the general public. In the short term, a reservation must be introduced, so that Dalits can enjoy greater representation within the police. In addition, provisions should be made to encourage equal gender, geographic and caste representation at all levels. In the long term, any temporary recruitment measures introduced need to be replaced by a more representative recruitment policy.

The police should also ensure that a separate Dalit cell is established within the police to look into cases of caste-based discrimination. This will ensure that complaints made are recorded and dealt with in a sensitive manner. It may also encourage those that had previously been fearful of approaching the police, due to the potential for abuse, to report their victimisation.

In addition, the police should be encouraged to work with government and non-governmental organisations, especially the National Dalit Commission, to coordinate their efforts and ensure that all Dalits feel they are protected by the law and able to seek aid when necessary.

Conclusion

The Nepal Police and the present legal system have contributed to the continued pervasiveness of caste-based discrimination. Despite the clearly defined role of the police as a law enforcement and security provider, the Dalit community has been marginalised and, as a result, not afforded the protection that other groups receive. This is because the police have failed to punish those who have broken the law and have continued to exercise a prejudicial attitude towards Dalits.

The police force therefore needs to be reformed, so that they can be more sympathetic to the security concerns of all groups in Nepal, which can be achieved in part by encouraging proportional representation. Moreover, special laws need to be introduced and implemented, so as to deter future discrimination.

If all the organs of the state are committed to ending caste-based discrimination, and to this end cooperate in implementing laws and declarations, it is possible for this form of prejudice and inequality to be eradicated from Nepal.

Policing in Nepal: Gender concerns

– *Bandana Rana*

The social status of women in Nepal is generally low, a situation attributable both to the general poverty of the country and the gender-biased distribution of power and resources in the family and in society. Strongly influenced by patriarchal norms and values, discrimination against girls begins at birth, giving rise to rampant torture and violence against women and children. Domestic violence is not yet considered to be an offence punishable by law. Therefore, most cases of violence against women and girls go unreported.

The gender-specific violence that was rampant during the 12 years of Maoist insurgency led to immeasurable suffering of Nepali women and girls. Rape, sexual abuse, and torture committed by both warring sides were widespread. The insurgency also exacerbated gender inequalities, deeply rooted in traditional religious and social practices. Due to discriminatory laws related to property and welfare, women became particularly vulnerable when they were driven away from their homes or when a husband or close male relative was killed or injured. Women who were compelled to leave their homes faced tremendous difficulty finding decent employment because of a lack of resources and skills. In order to survive and support their families, displaced women were often forced to work in exploitative conditions, leaving them vulnerable to abuse and trauma.

Nepal does not have any law to promote and protect the rights of women and children who face domestic violence. Therefore the police are limited in their capacity to take any substantive legal action against those that perpetrate these crimes. They mostly try to resolve the conflict through mediation between the partners and in some cases threaten and imprison the perpetrator for a few days; though this is evidently not enough to prevent the continued occurrence of violence.

Nepal Police: capacity to handle women and children issues

Nepal is a signatory to, and has ratified, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), without any reservations. In line with the commitments made in these conventions, and because of the pressure from organisations working on this issue, the Nepal Police have gradually tried to make justice accessible to women and children survivors of different forms of crime. In 1996, the police realised the need for a special investigative team of female police officers, to increase the accessibility of the police to women. Thus the 'Central Women Service Centre' was established at the Police Headquarters at Naxal. In addition to this district, Women Service Centres were established in four other districts. Mostly it is female police officers who are assigned in such centres. According to information issued by the Nepal Police, last year the total number of female officers was 1,662 (3.51 %); of which only a limited number occupy senior positions – three are Senior Superintendents of Police and seven are Deputy Superintendents of Police.

The main task of the Women Service Centre was to investigate crime against women in close co-operation with government units such as the Chief District Officer and local Women and Development Officers, non-governmental organisations (NGOs) working in the area of women's rights, and civil society. At the time of establishment, these centres focused on women's issues, however their services were expanded to include children, as well. Today these centres are known as Women and Children Service Centres. With the increasing demand for such services, the number of centres was gradually expanded in other districts. Today there are 22 Women and Children Service Centres operating throughout Nepal, but due to the armed conflict, these centres have been hard hit both in terms of allocation of resources and the capacity-building of staff.

Prior to the establishment of the centres, all cases related to women and children were heard by a male investigating officer. This made it very difficult for survivors of violence to make complaints on sensitive issues which required the utmost privacy. However, with the establishment of these centres, cases related to violence faced

by women and children are now dealt with by those who work in these units.

According to the Chief of Kalimati Women's Cell, Deputy Superintendent of Police Durga Singh, this has brought about some improvement in addressing women's cases more effectively and sensitively. However, though the centres work in close coordination with cases of violence against women and children, it is difficult to prosecute the perpetrators because there is no law against domestic violence. Therefore when a complaint of domestic violence is registered, very little action can be taken.

Types of cases

According to officials from the centres, the majority of cases that they deal with are related to domestic violence, rape, sexual assault, trafficking and polygamy. They say that due to the conflict the number of cases that are being reported has increased, although the nature of cases more or less remains the same. However in the experience of the staff of the women's shelter run by Saathi (an NGO working on violence against women since 1992) the demographic definition of the victims, and the types of crime have changed since the conflict started. Previously most of the survivors that came to the shelter were above 25-years-old and they were victims of crimes such as domestic violence and polygamy. However in the last five years ninety percent of the survivors who have come to the shelter are young girls between the ages of fourteen and twenty five. They are migrants from areas affected by conflict who have come to the cities in search of employment. In the process they fall easy prey to relationships outside of marriage, become pregnant and are then abandoned by the man. Quite a significant number of these men happen to be married men from the military and the police.

Police handling of cases of violence against women

One of the constant problems in addressing violence against women has been a lack of understanding and sensitivity among police officers. Generally women who try to report any form of sexual assault or domestic violence encounter a police system that is not very competent and sometimes outright abusive. Since the police system is usually the point of first contact with the criminal

justice system, women survivors, in seeking justice for sexual or other assault, encounter obstacles from the very beginning of the process.

As a result of the stigma that is attached to rape and domestic abuse, women survivors of such violence are particularly vulnerable to police misconduct. Several women survivors complain that the police do not want to believe them, and further victimise them by belittling and degrading them. The police are also often reluctant to tackle sexual and domestic violence as full-fledged crimes as there is no legislation in regard to this. The little action that they take is under the Public Offence Act. Hence, in cases of domestic violence, they tend to see their role more as that of a mediator.

Talking to survivors of different forms of sexual and domestic violence has revealed that when they go to the police station on their own, their complaints are not addressed. Only when they go through women's organisations are their cases officially registered. The most common problem encountered by women is that even when their complaints are registered it is never thoroughly investigated. Consequently, many women are deterred from reporting abuses, and consider contacting the police to be a futile endeavour. Of those that have attempted to report a crime, many have subsequently revealed that their experience of confronting insensitive police officers was more traumatic than the assault itself.

In addition to the institutional obstacles that women face with the police, quite a significant number of cases that come to Saathi's shelter are victims of police abuse. The most common police crime is verbal and physical violence in public places, but also in places of work. Moreover, several women that have come to the shelter have been abandoned by police officers who have got them pregnant and then deserted them.

Police and NGO collaboration

The problem of gender discrimination and violence is complex and requires a range of interventions at a variety of levels, from the family through to the state. In this regard, it has become increasingly clear that the police can play a crucial role. Unless the

police force is willing and fully equipped to sensitively deal with women's needs, there will be no relief for the millions who suffer day-to-day violence.

Training:

Over the years many women and children's organisations have been conducting orientation and training programmes among different stakeholders in the effort to combat violence against women and children. The purpose of such training has been to raise awareness on the different dimensions of violence, to analyse the role of different actors, to build the capacity of those who directly or indirectly deal with cases of violence, and to strengthen networking. The representation and participation of the police have been important components of such training. The combination of police personnel and NGO workers at various training sessions has contributed to a fruitful interchange of ideas and experiences and in bridging the gap between NGO activists and police personnel, thus enabling them to address and resolve cases of domestic and other community violence more effectively.

Victim support:

There are many shelters for women and children in Nepal run by NGOs such as Saathi, Maiti Nepal, Women's Rehabilitation Centre (WOREC) and Child Workers in Nepal Concerned Centre (CWIN). These shelters are especially important as the police do not possess the capacity to provide survivors of violence with immediate support, such as shelter, medical attention or counselling. Therefore the police are able to refer most of the survivors who come to them, to NGO shelters. This has helped to build a close rapport between the NGOs and the police. Thus, the police are a crucial partner in running shelters.

Of those women that have not been referred by the police, their cases are registered with the local police station soon after arrival and prior to their departure from the shelter. This collaboration is essential for the security of the survivors. This interaction also aids the majority of the survivors of violence to seek help from the police in bringing the perpetrators of violence to justice.

Trafficking:

The police also appear to be willing to assist NGOs in tackling the problem of trafficking. The police, for example, have worked in partnership with Saathi at the border point of Nepalgunj. This is because the local Women and Children Service Centre has seconded one of its officers to Saathi, to help staff with their activities. The presence of this police officer has made it much easier for the staff of Saathi to carry out their work effectively without being intimidated by the people who are stopped for questioning.

Key issues

- In the absence of a law relating to domestic violence, the police are generally not responsive to cases of domestic violence, such as sexual assault. Moreover the police tend to treat domestic violence as a trivial family matter, and are reluctant to press charges against the perpetrators of violence.
- The establishment of the Women and Children Service Centres in many districts has helped in addressing the cases of different forms of violence faced by women and children. However, the officials at the centres frequently lack the sensitivity, skill and perseverance to deal with these sensitive cases.
- It is also evident that a victim of abuse is treated differently when they approach the police through a social organisation. Those women that seek justice independently often find it difficult to make any progress.
- Given the right scope and environment, and through persistent and frequent interaction, the police force, contrary to general perceptions, is receptive to change and to introducing and implementing policies that address gender-based violence more efficiently and effectively.

Recommendations

- Continuous education programmes, such as gender sensitisation, aimed at police officers responsible for women and children issues, could help to improve access to justice for the survivors of violence.

- Out of the total police force only 3.51 percent are women. Increasing female recruitment and addressing the under-representation of women in decision-making positions within the police force could also help to achieve more gender sensitivity in the police.
- Develop collaborative projects, such as training materials, reports, workshops and assessment tools in order to mainstream gender issues into the police system. The police should also be made aware of the international conventions and commitments. In light of the post-conflict challenges that Nepal is facing now, of particular relevance is UN Resolution 1325 relating to women, peace and security.
- Include the issue of all forms of gender violence in the curriculum of the police cadet academies. All senior cadets should also work with NGOs addressing women's and children's issues as part of their training.
- Women and Children Service Centres should be established in all districts and equipped with adequate resources, authority and capacity to handle cases of gender-based violence.

Social inclusion in police reform

– *Shobha Gautam*

“The real meaning of the police is ‘deputed by the government for the security of general public’. However, if we observe police activities, we find that police is identified synonymously as corrupted, dominating the people by using vulgar words and being involved in sexual assault towards the young girls. So that, I am not so interested to suggest and encourage my children to join the police force. But everybody has rights to involve in any kinds of occupations they like, so I have to agree with my children’s interest to choose occupations.”

A lady from Jhapa district

What is inclusion?

Inclusion means to involve, without discrimination, all castes, classes, genders and linguistic groups into all state structures, and to involve them equally in every kind of decision-making process. According to article 2 of the United Nations (UN) Universal Declaration of Human Rights (1948), “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The UN has therefore laid down clear legal standards that require all Member States to afford equal status and opportunities to all people.

What is police reform?

The general meaning of police reform is the removal of all negative attitudes and behaviours from law enforcement personnel, so as to make them sensitive to the needs of communities and the general public. This will enable the police to increase their ability to mediate social problems and facilitate local problem-solving. The proportional integration of all groups into the police service will aid in achieving this end, for it will ensure that the police are representative of all communities, and therefore sympathetic and

receptive. This in turn, will allow the police to enjoy greater access to society, an outcome that will aid in improving crime investigation and management.

In Nepal, a community-focused policing model was first established in 1984. The mandate for this process was to provide a 'door to door service' to the general public.¹ Initially, this people-orientated approach successfully enabled law enforcement providers and local communities to work together. However, following the escalation of conflict between governmental security forces and the Communist Party of Nepal (Maoists) this system of policing was devalued. This is because greater emphasis was placed upon security. To better enable the return to a service-orientated law enforcement methodology, it is essential that the Nepal Police encourage greater social inclusion, so as to ensure that it is representative of the needs of all groups.

Nepali police force and inclusiveness

Some higher-level personnel argue that the Nepal Police was much more inclusive prior to the democratic regime of 1990. At present, in the higher ranks of the Nepal Police, only a small number of Dalits, women and other minority groups are represented. As an example of the present environment, only two out of the 19 Deputy Inspector Generals (DIGs) are Dalits, and only four are ranked Deputy Superintendent of Police (DSP). All of these officers have been in the police force since the Panchayat system. Moreover, of the 47,349 persons employed in the police force only 3.8 percent are women. To date there is little evidence of gender or ethnic balance in the police.

In addition, it is apparent that the police also suffer from linguistic and regional disparities in its force demographic. During the Panchayat system, with the appointment of Motilal Bohar as Inspector General (IG), it was evident that preferential treatment was given to those that came from his home region. As a consequence, the concerns of many people are not adequately represented, and instead a barrier to the provision of law enforcement has been created.

¹ Chuda Bahadur Shrestha, *Coping with Maoists Insurgency, A Conflict Analysis and Resolution*, 2004, p448.

After the restoration of democracy in 1998, the Nepal Police were increasingly drawn into politics. This resulted in increased division within the police, as many high-ranking officials sought political patronage. This inevitably limited the inclusive nature of the police, for loyalty to party members superseded inclusion.

People's attitude towards the police

The police are commonly thought to be responsible for ensuring communal security; yet, they are generally perceived to be corrupt, sexually abusive and cruel. Over the past couple of decades, some police personnel have tried to alter this negative opinion and initiate plans to increase representativity. From this, the concept of community policing has emerged. These projects proved to be very popular, but have ultimately failed due to financial constraints and the impact of the Maoist insurgency.

Situation of marginalised police in the decision-making process

In May 2007 focus group discussions were held with communities across the five development regions for the purpose of better understanding perceptions of the police. In order to encourage discussion, several questions were posed to the groups. These included:

- Are all castes, groups, genders and language groups incorporated into the police force?
- Are all groups receiving equal opportunities in the police?
- Are sufficient numbers of women employed by the police?
- Would it be easier to complain to the police if the senior officer was a woman?

Many of those interviewed had had some direct experience of discrimination. It was noted that if an opportunity arises in the police, those who are from a higher caste always dominate other castes and groups.

Case Study:

“We are from a poor Dalit community. My brother studied in school and college and had only one interest, and that was to be involved in the police and to serve the people. Last year my brother and his one Brahmin friend filled out an application form, with help from a police sub inspector. When they went for an interview, the behaviour and language exhibited by the police to them as individuals was very different. According to my brother, they asked whether he has any relatives in the police or any other powerful position in politics... At that time he could not get that position because he did not have a relative in the police or in a position of power.”

Young girl (Dalit), Sindhuli District.

In Nepal there is some evidence of inclusiveness in the police at lower levels. However, when there is an opportunity for promotion, lower castes, certain linguistic groups, and women appear to be marginalised. This lack of progress is troubling, as the findings of the focus group discussions indicate that women, for example, feel more confident speaking to female police officers.

How marginalised groups can be included in the police

In order to give equal opportunity to all people living in society, the following behavioural characteristics need to be promoted in the Nepali police system. First of all, the Police Act (1955) needs to be amended to reflect article 21 (the principle of inclusiveness of all castes, class, group, religion and gender) of the Interim Constitution (2006). It is also important to increase transparency and improve governance of the police by developing an independent oversight commission.

It is also essential that a ‘policing in partnership’ model be developed, so that the police can work effectively, both in and with communities. To this end, the police need to be provided with adequate training and should be able to converse in the local language of each community. A greater number of women and under-represented groups need also to be deployed in districts to improve communal relations and empower many more people to make complaints to the police.

Possible challenges

In spite of the benefits of imposing greater inclusion within the police, the positive social benefits need to be placed in context. At present, the level of education enjoyed by some castes and groups is insufficient. While it is essential that all groups be represented for the benefit of a community, to do so at any cost would devalue the capacity of the police to carry out their duties. It is therefore clear that, in general, inclusion and access to opportunities need to be addressed across many different aspects of life in Nepal, which may be difficult to achieve given the present lack of political will to engage on such matters.

Moreover, with the creation of a proportionally representative police system there could be a financial cost, as increasing the number of police officers in the country will require a greater financial commitment from the state. While in the short-term this burden may be supported by donors, in the long run Nepal itself will have to be able to sustain a larger force.

Social inclusion, political and social elites and reform

It is very important that all political groups be aware of the need for inclusion within the police and commit to eliminating discrimination. This could be achieved by passing new legislation on social inclusion, positive discrimination in relation to the police, and incorporation of human rights and humanitarian laws into police basic training. To this end, programmes to raise awareness need to be conducted for the benefit of political parties.

The police should also provide in-service training, placing emphasis on the importance of gender awareness, effective management practices, morale and respect for a community. Additional classes should also be given prior to police officer examinations, so that responsibilities concerning women and under-represented groups are emphasised.

Conclusion

Inclusion within the ranks of the police force is necessary for the promotion of more productive and service-orientated policing. This is because women and under-represented groups increase

confidence in the police and allow for greater service provision. At present, there is some limited representation at all levels of the Nepal Police, but it is not sufficient, and a limited number of higher caste and language groups enjoy preferential opportunities.

In order to aid in the implementation of a more open policing model in Nepal, it is essential that a number of measures be introduced to this end. Among them is the introduction of more inclusive education and training that will enable individuals from all groups to be better prepared should they wish to become a police officer. In addition, awareness-raising programmes should be introduced for the benefit of all political parties and decision-makers so that they are able to better understand the importance of inclusion.

Within the police, a number of measures should be introduced to limit discrimination, and allow for greater representation of groups at all levels. These include introducing in-service capacity-building programmes and reforming the present management system. This would be aided by the creation of an independent oversight mechanism. The police would also benefit from reintroducing and developing a community policing model.

Human rights and policing in Nepal

– *Subodh Raj Pyakurel*

Law enforcement provision is a constitutional obligation on the part of the government, and thus, the Nepal Police is the main administrative body of the government to safeguard people's constitutional rights.

The major functions of the Nepal Police include maintaining public order, ensuring security in the community, reducing opportunities for the commission of crime, protecting life and property, and investigating crimes as well as apprehending offenders. Similarly, the Nepal Police are responsible for facilitating the orderly movement of people and vehicles on the roads, providing services and extending relief to those people who are in distress, and mediating in domestic and other social disputes.

During the autocratic regime of the king (Panchayat rule), the role of the police was focused mainly on safeguarding the interest of the ruling system. It was a mechanism largely mobilised by the state to suppress the civil and political rights of the people and to repress activities of political parties.

After the restoration of multi-party democracy in 1990, the police institution was expected to reform so as to make it complement public aspirations and the norms of democracy. To further this process, the Police Reform Commission was formed in 1992 to modernise the Nepal Police, but few changes evolved. The process of reform within the Nepal Police was badly hindered during and after the king's regressive steps of October 2002 and February 2005. It is yet to be seen whether the establishment of *Loktantra* (democracy) in 2006 will catalyse reform in the future.

Human rights awareness in the Nepal Police

There was very scant awareness about the concept of human rights within the Nepal Police as an institution, and among its individual members, until 1990. Only very few high-level officers had an

educational background in law and thus they had studied only the basic concepts of human rights. What knowledge there was, however, was underutilised, as the police actively served the interests of autocratic regimes.

After the restoration of democracy in 1990, the international community started promoting the democratisation of the police in Nepal. This encouraged several human rights organisations to begin an awareness-raising campaign.

This interaction between stakeholders helped to both raise awareness of human rights and highlight options for prompt reform of the police. From 1991, the Nepal Police has also benefited from participating in United Nations (UN) peacekeeping operations. This has presented opportunities for garnering greater knowledge of human rights. Many police officers, for example, have been attending training sessions, conferences and seminars, through and related to the UN, which has contributed to strengthening human rights aspects within the organisation. These developments have resulted in an incorporation of human rights concepts in the training course for the Nepal Police.

Nepal Police and human rights

In 2002, the Human Rights Cell was established in the Nepal Police with the prime objectives of promoting human rights, constitutionalism and the rule of law at the organisational level. The Human Rights Cell is also a mechanism that is responsible for facilitating training on human rights. Currently, the Human Rights Cell receives a large number of complaints about police abuses from civilians and some from police personnel. Enhancement of the capacity of the Human Rights Cell and mainstreaming human rights components within the organisation are key priorities.

The Nepal Police has been conducting human rights orientation programmes in all five regions of the country. In cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR), they have prepared a human rights handbook for all personnel. Likewise, many organisations, such as Amnesty International and the International Committee of the Red Cross, have been providing training to police personnel on human rights and humanitarian law. The Nepal Army, the Armed Police Force

and the Ministry of Home Affairs have also established Human Rights Cells, which support the promoting of respect for human rights in policing.

In early 1996, the Women and Children Service Centre was established at the Nepal Police Headquarters, mobilising female police officers, with an aim to control and prevent crime against women and children, to investigate and punish the perpetrators of those crimes according to law, and to safeguard the rights of the victims.

The Community Police and the Community Service Centres are other components of the Nepal Police that have been established throughout the country to minimise crimes such as human trafficking, drug abuse, gambling, prostitution, and other social crimes that deeply impact on society. The Community Police also aim to launch a public awareness programme in order to minimise crime.

Key human rights concerns on policing in Nepal

While senior police officers can explain the general concept of human rights as defined in various international treaties and declarations, the institution as a whole is still dominated by an old mindset and value system that do not allow for democratic and human-rights-based functioning. From my interaction with several police officers and some junior police personnel, I can conclude that they still think human rights and the effective maintenance of law and order cannot go hand in hand; for instance, they cannot imagine criminal investigation without torture. Despite national as well as international pressure to make torture a criminal offence by law, successive governments have not been able to do so because of the reluctance of the Nepal Police. However, torture was made a criminal offence by the Interim Constitution of 2007.

Another prime concern is the need to review all applicable laws related to policing. The Police Act of 1955 (amended for the sixth time in 1991), which regulates the functioning of Nepali police forces, does not have a notion of fundamental human rights principles. The Police Act does not, for example, include provisions holding police legally responsible for unlawful detention, mistreatment of detainees, or any other violations of the

rights of people in police custody. It also gives immunity to the Chief District Officer (CDO) or to any police personnel “for action taken by him in good faith while discharging his duties”.¹ Moreover, no reference is given to international human rights treaties, such as the Convention against Torture (CAT), to which Nepal is a party.

Apart from the Human Rights Cell, there is no separate police authority dealing with complaints concerning human rights issues. Strengthening the capacity of the Human Rights Cell, and enhancing the role of the Women and Children Service Centre and the Community Policing, are key ways to improve human rights inclusion in law enforcement in Nepal.

Difficulties facing the Nepal Police

During the armed conflict with the Communist Party of Nepal (Maoist), the police were allegedly involved in numerous arbitrary arrests, torture, extra-judicial killings, disappearances, and other grave violations of human rights. This was the case even before the mobilisation of the army. From 2001 to 2006, the government imposed a state of emergency after the collapse of the ceasefire and peace talks with the Maoists, and mobilised the army and joint police forces to contain the insurgency. This weakened the police in terms of capacity and morale. Since the restoration of peace and democratic governance in November 2006, no specific measures have been taken to reverse the negative practices utilised by the police during the conflict.

Responding to reform in a professional fashion and fostering an institutional culture respecting human rights principles are all major issues that require consideration before the challenge of post-conflict reform can be successful. Furthermore, a concept of ‘zero tolerance’ has to be followed for all those that violate human rights. A human rights approach to policing is essential to ensure courage, respect, integrity, service, professional excellence, and compassion in the police organisation.

¹ Report Submitted to the Special Rapporteur on Torture, Office of High Commissioner for Human Rights, on the Situation of Torture in Nepal Covered Period January 1992-June 2005, Human Rights Treaty Monitoring Coordination Committee (HRTMCC) Secretariat, INSEC.

Human rights and the police: current initiatives

Human rights became a core issue in Nepali politics after the restoration of democracy in 1990 when the then interim government acceded to several major international human rights treaties. At present, Nepal is a party to twenty UN² and six International Labour Organization treaties. Similarly, it is also a party to the four Geneva Conventions of 1949. Fulfilling obligations under these international human rights and humanitarian treaties is a prime concern for the Nepal Police.

Human rights are yet to be established as a driving principle within the Nepal Police in terms of law and procedural mechanisms.

There are some critical concerns regarding policing in the post-*Janandolan-II* period as it seems that the police are not fulfilling their duty. Police–criminal partnerships and the political misuse of police authority are common sources of dissatisfaction and complaint among the people.

A crucial question is how to reform the Nepal Police in order to have better performance and co-ordination with various stakeholders. Co-operation between the police and the populace based on the respect of human rights principles is a functional approach which can address the issues of accountability and transparency on a larger scale. Building a democratic police force is thus a prime concern which would serve the public and protect, rather than impede, human rights and freedom of the people by creating a secure environment, promoting democracy and adopting methods that are in accordance with the rule of law. How the overall state restructuring process deals with these issues is at the forefront of public debate.

A human rights agenda to reform Nepal Police

Human Rights Cells within the Nepal Police, the Nepal Army and the Armed Police Force have not been able to fulfil their prime

² Including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

objectives. Protection and strengthening of human rights should therefore be considered of prime concern to all stakeholders participating in reform processes. This has to be accompanied by greater awareness of the principles of human rights among the rank and file.

The Government of Nepal must also eliminate the practice of politicising law enforcement; this will aid in strengthening Nepal's capacity to implement all of its international commitments, and to also undertake progressive reforms and eliminate nepotism and prejudice. This in turn will better enable the police to contribute to a sustainable peace process through effective law enforcement practices.

The long-term success of police reform will depend on the adoption of a 'serve the people first' approach. Accountability, transparency and efficiency are key elements of this and a lack of these would be detrimental to the establishment of such an institution.

Furthermore, encouraging a culture of 'serve the people first', especially those who are economically and socially disadvantaged, will improve transparency, accountability and efficiency. Similarly, providing training on human rights for low-ranking policemen, incorporating human rights in other courses and winning public confidence through effective performance are important elements that need to be improved.

Policing in Nepal:
A collection of essays

Edited by:
Saferworld