

IFP SECURITY CLUSTER

COUNTRY CASE STUDY: NEPAL

PARTICIPATION AND OBSTRUCTION: Justice and Security Sector Reform in Nepal

Rebecca Crozier and Zuleika Candan

November 2010

International Alert.



INITIATIVE FOR  PEACEBUILDING



THIS INITIATIVE IS FUNDED
BY THE EUROPEAN UNION

ABOUT IFP

The Initiative for Peacebuilding (IfP) is a consortium led by International Alert and funded by the European Commission. IfP draws together the complementary geographic and thematic expertise of 10 civil society organisations (and their networks) with offices across the EU and in conflict-affected countries. Its aim is to develop and harness international knowledge and expertise in the field of conflict prevention and peacebuilding to ensure that all stakeholders, including EU institutions, can access strong independent analysis in order to facilitate better informed and more evidence-based policy decisions.

This document has been produced with the financial assistance of the EU. The contents of this document are the sole responsibility of IfP/International Alert and can under no circumstances be regarded as reflecting the position of the EU. To learn more, visit <http://www.initiativeforpeacebuilding.eu>.

ABOUT INTERNATIONAL ALERT

International Alert is an independent peacebuilding organisation that has worked for over 20 years to lay the foundations for lasting peace and security in communities affected by violent conflict. Our multifaceted approach focuses both in and across various regions; aiming to shape policies and practices that affect peacebuilding; and helping build skills and capacity through training.

Our field work is based in Africa, South Asia, the South Caucasus, Latin America, Lebanon and the Philippines. Our thematic projects work at local, regional and international levels, focusing on cross-cutting issues critical to building sustainable peace. These include business and economy, gender, governance, aid, security and justice. We are one of the world's leading peacebuilding NGOs with more than 125 staff based in London and our 13 field offices. To learn more, visit www.international-alert.org.

Cover image: © Rebecca Crozier

© Initiative for Peacebuilding 2010

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without full attribution.

PARTICIPATION AND OBSTRUCTION:

Justice and Security Sector Reform in Nepal

AUTHOR PROFILES

Rebecca Crozier

Rebecca Crozier is Country Manager for International Alert's Nepal Programme, based in Kathmandu. International Alert in Nepal seeks to ensure that national and international discussions related to justice and security sector reform (JSSR) are informed by local-level needs and realities. Rebecca has been working with civil society and government stakeholders in Nepal since 2007, building capacities to inform and influence JSSR debates. Rebecca holds a degree in Political Science and International Studies from Birmingham University.

Zuleika Candan

Zuleika Candan is a Senior Security Programme Officer for International Alert's Peacebuilding Issues Programme. With a focus on gender, her work seeks to ensure that gender becomes an integral part of security issues, particularly related to security sector reform (SSR). Zuleika holds an MA in Peace and Conflict Studies from the Centre for Peace and Conflict Studies, University of Sydney, and a PG-Dip in Women and Child Abuse from London Metropolitan University.

ACKNOWLEDGMENTS

The authors would like to thank the many people in Kathmandu and the field research locations who gave us their time and shared their knowledge and experiences. Thanks also go to Youth Action Nepal and Shanti Malika for supporting the field research. We would like to thank Lindsay Alexander and Richard Reeve for their invaluable editing support, and Cynthia Gaigals and Sadhana Ghimire Bhetuwal from International Alert for their contributions to this publication.

CONTENTS

Acronyms	6
Executive Summary	7
International Engagement with Security and Justice Provision	7
Participation and Cohesion in JSSR	8
Recommendations	8
Introduction	10
Current Security Situation	12
Background	12
Key Security Issues in 2010	13
Escalating insecurity fuelled by identity politics	13
Armed groups in the Terai	13
Gender-based violence	14
Youth and insecurity	14
Rehabilitation of ex-combatants	15
Economic dimensions of insecurity	16
Security Trends	16
Security and Justice Provision	18
Agents of Security and Justice	18
State provision	18
Non-state provision: The growth of the informal justice sector	18
Security and Justice Challenges	19
Lack of public trust in the police and judiciary	19
Criminalisation of politics and politicisation of crime	19
Poor state response to GBV	20
Weak oversight of the informal justice sector	20
International Engagement with JSSR	21
Donor Coordination	21
Security Sector	22
Justice Sector	23
Oversight and Accountability	23
Participatory Approaches	24
Conclusion and Recommendations	25

ACRONYMS

AFN	Antenna Foundation Nepal
APF	Armed Police Force
CA	Constituent Assembly
CPA	Comprehensive Peace Accord
CPN-M	Communist Party of Nepal (Maoist)
CPN-UML	Communist Party of Nepal (Unified Marxist Leninist)
DANIDA	Danish International Development Agency
DDC	District Development Committee
DDR	Disarmament, Demobilisation and Reintegration
DED	German Development Service
DfID	Department for International Development
DVA	Domestic Violence Act 2009
EC	European Commission
GBV	Gender-based violence
IDPs	Internally displaced persons
IfP	Initiative for Peacebuilding
JICA	Japan International Cooperation Agency
JSSR	Justice and security sector reform
MJF	Madhesi Janaadhikar Forum
MoPR	Ministry of Peace and Reconstruction
NGOs	Non-governmental organisations
NPTF	Nepal Peace Trust Fund
OECD	Organisation for Economic Co-operation and Development
PLA	People's Liberation Army
SSR	Security sector reform
UCPN (Maoist)	United Communist Party of Nepal (Maoist)
UNDP	UN Development Programme
UNICEF	UN Children's Fund
UNMIN	UN Mission in Nepal
UNRCO	UN Resident Coordinator's Office
USAID	US Agency for International Development
VDC	Village Development Committee
YCL	Young Communist League
WPC	Women's Police Cell

EXECUTIVE SUMMARY

This report aims to outline priorities for international community support for the effective and accountable provision of security and justice in Nepal. In doing so, it aims to highlight the need for utilising a participatory approach in the promotion of people-centred reform of the security and justice system in Nepal. The report is a follow-up to 'Security for Whom? Security Sector Reform and Public Security in Nepal', a report published by Alert in February 2009.¹

The worsening public security situation in many parts of Nepal threatens the faltering peace process that began in 2006. Many people do not perceive themselves as being safe, particularly women, business people and communities in the eastern and central Terai. The private sector has been badly hit by insecurity and particularly by the activities of armed and criminal groups, resulting in a slowing of economic growth with some businesses deciding to close down altogether.

The security sector – comprising the Nepal Army, Nepal Police and Armed Police Force (APF) – is poorly equipped to deal with the current levels of insecurity. The Nepal Police, in particular, as the frontline in security provision, lack the personnel, infrastructure and equipment needed to be effective. In addition, the perceived politicisation of security and justice providers means that there is limited trust in local police and the judiciary, particularly among women and marginalised groups. As a result, gender-based violence (GBV) is widespread and occurs with impunity. Armed groups proliferate and youth continue to be co-opted by political parties and other groups to participate in violence.

However, there is increasing political recognition that insecurity is a key problem and a growing political appetite to address its causes through policy reform and capacity-building measures. The EU and several of its Member States are committed to supporting the improved provision of security and justice in Nepal as part of ensuring the continuation of the peace process and to ensure the transition to sustainable peace and economic development.

INTERNATIONAL ENGAGEMENT WITH SECURITY AND JUSTICE PROVISION

According to current information,² the international community is investing in the following priorities in support of security and justice in Nepal:

- 56 percent of security and justice sector projects are focusing on state and civilian oversight;
- 40 percent of projects are supporting the justice sector, with a heavy focus on the informal justice sector; and
- the remaining 4 percent of projects relate to reform of the security sector (though these efforts have been stalled due to a lack of political consensus on the level of reform that is required, and the level of international community support that is needed to make this happen).

¹ C. Watson and R. Crozier (2009). 'Security for whom? Security sector reform and public security in Nepal'. International Alert. Available at http://www.international-alert.org/pdf/IfP_Security_Sector_Reform_and_Public_Security_in_Nepal.pdf

² This refers to a mapping of international community support to the security and justice sector, undertaken by Alert in 2010. The mapping is a living document, and does not claim to cover every single intervention supported by the international community. However, it is currently the most comprehensive mapping of its kind and covers the interventions implemented and supported by most of the major bilateral and multilateral partners, including the Department for International Development (DfID), the EU and the UN family.

Given a lack of clarity at the political level as to the level of justice and security sector reform (JSSR) that is needed, it is commendable that state and civilian oversight mechanisms have been prioritised in preparation for any future JSSR process. This is particularly pertinent given the levels of political interference and patronage that pervade the system. Building public trust in these systems is critical for inclusive security and justice provision.

Similarly, donor investment in the informal justice sector as a “quick fix” to plug capacity gaps in the formal sector is responding to a real need and has been well received by users. While this investment is an important first step, much needs to be done to build on this foundation. Thus far, the focus has been on implementation without sufficient concern for accountability or sustainability of such informal mechanisms.

Meanwhile, the allocation by donors of more strategically significant resources for the provision of security and justice in Nepal has been held back and time has been lost due to a lack of political stability or a common cross-party vision for strengthening the provision of security and justice. While there remains a need for donors to align with government priorities, there is a concurrent need to invest in broader processes that build the capacity of local actors and communities to decide on their security priorities and to advocate for reforms that would lead to genuine change on the ground.

PARTICIPATION AND COHESION IN JSSR

Although there is much rhetoric around adopting “participatory approaches” in donor planning and interventions at a programming level, the visibility and prioritisation of inclusionary practices at the strategic level remains limited. Approaches such as promoting local-level engagement in information-sharing, consultation, decision-making and initiation of action appear to be confined to non-state or informal mechanisms and actors, and do not appear to be integrated into system-wide or state-led programming. A provisional mapping of current internationally funded programmes engaging with the Nepali security and justice sectors demonstrates that only around one-quarter can credibly be described as participatory, while only around one-third use gender-sensitive methodologies.

Finally, while over one-third of international interventions in JSSR have been in the field of justice provision, programming has not always been sustainable; coordination has been weak, and informal mechanisms appear to have been strengthened at the expense of formal institutions. Despite significant investment, there is limited attention paid to monitoring mechanisms that support informal justice-sector growth. This has resulted in informal structures exceeding their mandate and in their taking a role in the arbitration of criminal cases, such as rape. This asymmetric approach to formal and informal justice-sector support could potentially result in a two-tier or parallel system that in turn could further exclude marginalised groups and individuals. A “value chain approach” that links formal and informal oversight systems can be seen as an important step in addressing this asymmetric approach.

RECOMMENDATIONS

While no formal system-wide JSSR processes are taking place in Nepal, or are likely to take place ahead of agreement on a new constitution and integration of former combatants, there are many ways in which the international community can support policy reform and implementation so as to improve public security in the short term and contribute to broader JSSR in the longer term if coordinated effectively.

To improve the provision of, and access to, security and justice in Nepal, the EU, Member States and the wider international community should work to:

- Ensure that there is adequate and equal attention paid to both informal and formal security- and justice-sector structures and policies. A “value chain approach” that follows the “client” from beginning to end of the security and justice process could re-establish confidence in the security sector;
- Ensure local-level consultation and participation in JSSR programming across Nepal, particularly for formal sector policy, planning and implementation processes. This needs to include placing gender as a primary consideration in security and justice interventions and in ensuring adequate gender analysis in the consultation and design phases;

- Continue to seek entry points for engaging with the security sector on community-level policing initiatives. Such entry points could include supporting a more effective response to GBV through increasing the recruitment, training and deployment of women police;
- Engage with youth as key stakeholders in the construction of a durable post-conflict settlement. This engagement should begin with developing a solid understanding of differential security and safety needs (based on age and gender) rather than treating youth as a homogenous target group;
- Support the development of a rehabilitation model that has the potential to extend beyond the rehabilitation of Maoist ex-combatants to other armed groups, and which is based on the principles of analysis, ownership and participation;
- Work to develop monitoring mechanisms for the informal sector, in line with formal sector arrangements. This should include strengthening the role of civil society, and women and youth in particular, in oversight and accountability mechanisms;
- Take a system-wide approach in identifying and supporting mechanisms that have the potential to reduce political interference in policing and justice. For example, support for the establishment of a Police Service Commission should go hand-in-hand with support for public oversight of the security and justice sectors; and
- Support public demand for better security and justice by ensuring that initiatives aiming to strengthen public oversight and advocacy capacity are explicitly linked and communicated effectively to their potential beneficiaries at all levels of Nepali society. The media should be supported to stimulate debate and to close the information gap between Kathmandu and the districts.

INTRODUCTION

The accessible and accountable provision of security and justice is one of the main requirements for a peaceful society and for sustained social and economic development. Security provision and access to justice are regarded as essential public services, are fundamental building blocks in promoting good governance and are critical for the creation of a secure environment at both the local and national levels.

In the wake of the November 2006 Comprehensive Peace Accord (CPA) and the Constituent Assembly (CA) elections in April 2008, there have been ongoing discussions in Kathmandu on security and justice issues (sometimes termed justice and security sector reform (JSSR)).³ These discussions have covered issues such as police effectiveness, civilian oversight of the army and the legal framework of the security sector as a whole. More contentious questions have concerned the “right” size of the Nepal Army, the integration of the People’s Liberation Army (PLA) into the Nepal Army, and how to engage with the proliferation of militant youth groups.

Although not yet formally invited by the government of Nepal to support JSSR processes, international community interventions aimed at strengthening access to justice, security provision and rule of law have grown significantly over the past two years. This is in recognition of the fact that a lack of rule of law and growing insecurity in some parts of the country are two of the largest blockages to the consolidation of peace and sustainable development in Nepal. There is also increasing political recognition of insecurity as a key problem and a growing political appetite to address its root causes through policy reform and police capacity-building measures.

The challenge now for international actors working in this area will be to ensure a balance between capacity-building support to security and justice institutions – including the informal sector where it complements and adds value to the formal sector – and support to oversight bodies and mechanisms that engage local communities, civil society and political parties in stemming the current trend towards worsening insecurity.

This report is a follow-up to ‘Security for Whom? Security Sector Reform and Public Security in Nepal’, a report published by Alert in February 2009 under the EU-funded Initiative for Peacebuilding (IfP). It provides an update on security challenges and international partner responses in Nepal in 2009–10, and expands the scope of the previous briefing to include the justice sector to allow for a more holistic assessment of the security system challenges and needs. Thus, it aims to outline priorities and opportunities for international community support for the effective and accountable provision of security and justice in Nepal.

In doing so, it aims to inform ongoing discussions among donors and implementers, including the EU. As a major actor in the security and justice sphere internationally, the EU has competencies and funding instruments that can be used to implement security, development, and governance and justice activities. Combined effectively, and reinforced through political dialogue, these can play a fundamental role in driving and sustaining the kind of JSSR programmes that will facilitate accessible and accountable justice and security provision.

This report also aims to highlight the need for utilising a participatory approach when planning, researching and implementing interventions into the security and justice system in order to promote a people-centred reform. Participatory approaches encompass all practices promoting the incorporation of a community-based perspective into a decision-making process in so far as it affects that community. Such an approach can be applied during the elaboration, planning and/or management of a strategy, a programme or a project. This

3 Organisation for Economic Co-operation and Development (OECD) (2007). *OECD DAC Handbook on security system reform: Supporting security and justice*. Paris, France: OECD. p.5.

necessarily entails working with civil society and groups marginalised by ethnic, linguistic, caste, gender and age criteria in order to understand their perceptions of security challenges and preferred recourses to justice. Participatory approaches gauge local needs, capacities and solutions and aim to identify sustainable and locally owned reforms by locating JSSR in its wider social, economic, political and cultural context. In recent years Alert and a number of other funding and implementing partners have prioritised participatory approaches to JSSR in Nepal's very fragile context; however, a mapping of international interventions has shown them to be in the minority in most sectors.

As with 'Security for Whom?', it is beyond the scope of this report to analyse exhaustively all aspects of JSSR in Nepal. Rather, it brings together much existing analysis and provides an overview that informs subsequent recommendations. More detailed information on security and justice conditions in five Nepali districts and on women's access to security and justice can be found in additional IfP publications.

This report has been informed by interviews, meetings, focus-group discussions and workshops held in Kathmandu and in Bara, Dang, Jumla, Kailali, Mahottari, Rasuwa, Rukum and Sunsari districts throughout 2009 and the first half of 2010.⁴

It addresses:

- Key causes of insecurity in Nepal;
- The current security situation in Nepal;
- Security and justice provision in Nepal;
- International engagement in JSSR and participatory approaches.

⁴ See International Alert (2010, forthcoming). 'Security and justice from a district perspective: Bara'; International Alert (2010, forthcoming). 'Security and justice from a district perspective: Dang'; International Alert (2010, forthcoming). 'Security and justice from a district perspective: Mahottari'; International Alert (2010, forthcoming). 'Security and justice from a district perspective: Rukum'; International Alert (2010, forthcoming). 'Security and justice from a district perspective: Rasuwa'.

CURRENT SECURITY SITUATION

BACKGROUND

The CPA signed in November 2006 marked the beginning of a highly fragile political process towards a new constitution and permanent peace. The government of Nepal and the then Communist Party of Nepal (Maoist) (CPN-M)⁵ broadly agreed upon a roadmap which included the cantonment of Maoist PLA combatants in camps and separation of their arms, an interim constitution, formation of an interim parliament, the dissolution of parallel Maoist structures, CA elections and eventually a new government under a new constitution.

Though marred by some violence and coercion by political parties at the district level, elections to the CA held in April 2008 were regarded as a success overall. To the surprise of many, they saw the Maoists sweep to victory as the largest party. Many of the “old school” political elite lost long-standing seats to Maoist newcomers and newer, regional-based parties such as the Madhesi Janaadhikar Forum (MJF) were established as political actors in the mainstream. The 601-seat CA is now Nepal's most inclusive parliament ever, with most marginalised ethnicities represented and 33 percent female representation.

However, the spirit of cooperation between political parties that made the CPA and CA elections possible soon wore thin. The Nepali Congress, following a humiliating election defeat, refused to become a part of the newly formed government and instead remained in opposition. The Maoist-led coalition government then collapsed in May 2009 with the resignation of the prime minister in protest at the intervention of the president to reinstate the chief of army staff sacked by the prime minister.⁶ A Communist Party of Nepal (Unified Marxist Leninist) (CPN-UML)-led coalition – this time including the Nepali Congress but excluding the Maoists – took its place and remains at the time of writing, although the prime minister announced his resignation on 30th June 2010. CPN-UML premier Madhav Kumar Nepal is now leading a caretaker government until a new coalition government is formed. The constitution, due at the end of May 2010, was not completed on time and parties came to a 12th-hour agreement to extend the deadline up to May 2011, during which time the CA would continue to function.

Negotiations regarding the future of the Maoist PLA are at a stalemate, particularly regarding the number of ex-combatants to be integrated into the security forces, and the size and feasibility of cash payouts to those who are not integrated into the Nepal Army. Over 19,000 Maoist ex-combatants remain in cantonments more than three years after the signing of the CPA. The negotiations have become more problematical with the Nepal Army's announcement that it is to open recruitment. This has prompted the UCPN (Maoist) to issue a warning that it too will begin recruitment to the PLA.⁷ Political wrangling over key issues has effectively strangled any lively and inclusive debate, and key decisions continue to be made in Kathmandu, by decision-makers who are not always well informed of the perceptions and needs of the wider population.

5 It should be noted that the CPN-M unified with the Communist Party of Nepal (Unity Center-Masal) in January 2009, forming the Unified Communist Party of Nepal (Maoist) (UCPN (Maoist)).

6 The chief of army staff had publicly opposed the integration of the Maoist PLA into the Nepal Army.

7 A. Shah. 'Army to recruit 3,464 personnel', *Republica*, 2nd August 2010. Available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=21731; and 'Maoist army replicates NA recruitment', *Republica*, 4th August 2010. Available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=21812

KEY SECURITY ISSUES IN 2010

ESCALATING INSECURITY FUELLED BY IDENTITY POLITICS

Most striking perhaps in the years since the CPA was signed have been the “agitations” by groups previously excluded from political processes and now demanding “self-determination” in the form of a secessionist or federal state to be constructed in their interest. Media, the Kathmandu political discourse and international attention have tended to focus on the Madhesi issues in the Terai, but identity groups across Nepal, arranged along ethnic and religious lines, have been raising demands, with varying levels of success.⁸ These groups are by no means monolithic or homogenous within themselves. However, the reality remains that, if the demands and negotiations are not managed appropriately, these tensions risk dividing the country further along ethnic and religious lines and threatening the viability of the component federal regions that may emerge under a new constitution.

Box 1. Ethnicity and Caste in Nepal

Nepal is a country of vast ethnic diversity, with its population of approximately 27 million consisting of over 100 ethnicities, speaking over 90 languages and dialects. Ethnicities that traditionally practise forms of Hinduism are often further divided into caste groups. Historically, belonging to a caste group may dictate a particular occupation, for example, the high-caste Brahmin and Chhettri groups being teachers and warriors, respectively, and the lowest castes performing tasks such as street sweeping or disposal of animal carcasses. Such caste delineation persists in many rural parts of Nepal, and to this date the Brahmin and Chhettri castes, together with the indigenous Newar population in the Kathmandu Valley, make up a large proportion of the bureaucracy.

However, the situation is now changing slowly with the CA seeing some smaller, traditionally marginalised indigenous ethnic groups being represented in parliament for the first time, and “low-caste” dalit groups represented in larger numbers than ever before. Many of these MPs are members of the UCPN (Maoist) and some of the smaller, newer parties. It is the UCPN (Maoist) that has played a key role in broadcasting the call for an end to the caste system and inclusion of marginalised groups in parliament – a policy which brought the party large returns in the form of votes from such groups.

ARMED GROUPS IN THE TERAI

In the Terai, more than a hundred armed groups are active,⁹ seeking control over the region, its resources and associated political and economic power. The activities of these groups are largely funded by extortion (kidnapping for ransom) and power is maintained by spreading fear through indiscriminate killings and bombings. There are allegations that most armed groups are backed by political parties, and that some sister organisations of political parties are involved in criminal activities. There is a worrying trend towards an increased role of children and young people in armed groups.¹⁰ Armed groups are perceived to offer economic security and material incentives such as money, mobile phones and motorbikes.¹¹

The main activity carried out by armed groups appears to be abductions or kidnappings, and there seems to be an evolution towards an “abduction economy”, producing “criminal entrepreneurs”. A survey conducted in 2009 found that fear of being kidnapped is more prevalent in the Terai (57 percent) than in the hills (44 percent) or the mountains (20 percent), and more prevalent in urban areas (60 percent) than in rural areas (49 percent).¹²

8 For example, the Limbuwan Rastriya Mukti Morcha and the Chure Bhawar movement in the eastern hills, the Kirat movement in the eastern mountains, and the Tharuhat Liberation Army movement in the western Terai.

9 A 2009 report by the Ministry of Home Affairs mentions 109 armed groups active in the country. See <http://www.satp.org/satporgtp/countries/nepal/index.html>

10 UN Children's Fund (2009). *Assessment of child protection concerns of children in Terai Districts*. 'Districts'. Available at http://www.unicef.org/nepal/Terai_Assessment_Report_-_Final_edited.pdf

11 International Alert (2007). 'Youth and community security in the eastern Terai'. Available at http://www.international-alert.org/pdf/Youth_Nepal_Community%20Security.pdf

12 Saferworld & IDA (2010). 'Treading water? Security and justice in Nepal in 2009'. p.26. Available at <http://www.saferworld.org.uk/Treading%20water%20reduced.pdf>

Business people and government employees (seen as lucrative targets) have been most at risk of extortion and abduction attempts. Political parties are often involved, and there have been several examples of business people being threatened (and reportedly even abducted) by the UCPN (Maoist) for refusing to pay a “donation” to the party.

Box 2. Armed Groups in Bara District

While Bara was not significantly affected by the Maoist conflict, it is now categorised by the government as one of eight ‘security-sensitive’ districts in the central and eastern Terai. A report prepared by the Home Ministry during 2009 noted that only 12 out of 109 armed groups active in the country were political, while 70 of them were purely criminal in orientation. The report categorised armed groups as political, religious, political-criminal, religious-criminal and purely criminal. Twelve groups – including the Akhil Terai Mukti Morcha (Jaya Krishna Goit faction), Kirant Janbadi Workers Party and Tharuhat Swayatta Rajya Parishad – were categorised as political. Four groups – including the Cobra (Nagraj) and Nepal Defence Army – were placed in the religious-criminal category, while 11 others were categorised as political-criminal groups. Most of these criminal groups were active in Bara district at the time of research.

(Source: International Alert (2010, forthcoming). ‘Security and justice from a district perspective: Bara’.)

GENDER-BASED VIOLENCE

Gender-based violence (GBV) has also been identified as a growing concern across Nepal. During district assessments undertaken by Alert and partners in 2009 and 2010, GBV was perceived to be the number-one security threat faced by women.¹³ Male respondents, on the other hand, linked feelings of insecurity to a perceived rise in incidences of crime and, in Mahottari, the presence of the open border with India and armed groups that operate in the border region.

The most-cited forms of GBV included domestic violence, rape, trafficking and dowry-related violence. Even where options such as safe-houses or counselling services do exist, many women are not aware of them. According to the Nepal Police Women and Children’s Directorate records, there were 968 cases of domestic violence against women reported nationally in 2009. In 2010 the number of reported domestic-violence cases had already reached 835 by August. GBV is perpetuated by the underrepresentation of women in security agencies.

Female suicide rates in parts of Nepal are also extremely high. One Area Police Post in Kailali reported seeing over 300 cases a year, particularly among the Tharu community, while the district police office in Mahottari reported seeing three to four cases a week.¹⁴ Police and civil society respondents attributed the high rates of suicide among women from historically marginalised and highly patriarchal groups to a lack of options for women who are victims of domestic violence.

YOUTH AND INSECURITY

While many factors are at play, among the key actors that contribute to public insecurity is a growing minority of disillusioned, frustrated youth. Youth make up over 30 percent of the population and the decade-long conflict and continued insecurity in many areas have had a profound effect on their future and their outlook on society. However, young people in particular have historically been marginalised from policy debates and discussions in Nepal, and this exclusion has created a growing pool of angry young people who are easily exploited as “foot-soldiers” in the violent activities of political-party youth wings and criminal gangs.

13 Antenna Foundation Nepal (AFN) et al (2010). *Security and justice in Nepal*. p.8. Available at <http://www.international-alert.org/pdf/Securityand%20justiceinnepal.pdf>; International Alert (forthcoming). ‘Gender and security in Nepal’ (working title).

14 International Alert interviews, Tikapur, November 2009 and Jaleswor, June 2010.

Research undertaken by Alert shows that young people also perceive themselves as being vulnerable to insecurity and political unrest.¹⁵ Armed gangs, other criminal groups and militant political-party youth wings are all seen to target young people, and particularly young men, to swell their ranks.¹⁶ In return for participation, these groups offer security and the possibility of economic gain to their cadre. The research also found that young people – frustrated by lack of access to economic opportunities or prospects for social advancement – were then attracted into armed gangs, criminal groups and political-party youth wings as a means of survival, and one of the only alternatives to migration abroad.

Box 3. Youth and Security in Dang District

One major contributing factor to insecurity in Dang district in the mid-west of Nepal was perceived to be high unemployment, with young people in particular being vulnerable to exploitation as “pawns” of political parties. Supporting this perception, the Young Communist League (YCL) in Dang claims over 30,000 members, and the Youth Force 10,000.¹⁷ Clashes between these groups as well as local gangs, armed with *lathis* and *khukuris*,¹⁸ are reported by the police to be one of the key threats to everyday safety and security in the district.

It was also reported that young people are increasingly being used by local business people to influence local government tendering processes in Dang. This generally involves the contractor or business person hiring a “gang” to threaten other contractors bidding for the tender, and even physically obstruct a competing business from submitting a bid. The result is often violent gang-fights between groups representing different contractors.

REHABILITATION OF EX-COMBATANTS

When the previous briefing was published in early 2009, the fate of the cantoned Maoist ex-combatants was still unresolved. Since then, the most significant change within the security sector has been the first discharge of the 4,008 disqualified,¹⁹ which took place in early 2010.²⁰ The discharge process has been fraught with errors and oversights on all sides. Packages were poorly designed and communicated, and many of the discharged refused to take them.²¹ A lack of market analysis meant that, even where training packages were taken up by ex-combatants, the training offered was poorly matched to market needs and therefore unlikely to be of use to them when seeking employment. There are fears discharged combatants could be attracted to armed gangs and criminal groups in search of protection and economic security following rejection by their communities.²² The UN found itself on the frontline of handing out packages (which should have been the role of the Nepal government) and therefore the target of widespread anger and frustration at the perceived failure of the process.

Regardless of where the blame lies, there is now widespread recognition among both national and international stakeholders of the need to learn lessons from the rehabilitation of the disqualified, and to not repeat the same mistakes in the rehabilitation of those “qualified” ex-combatants still in cantonments. The integration/rehabilitation of the remaining 19,000 “qualified” ex-combatants remains a major sticking point in the progression of the peace process.

15 See International Alert (2010, forthcoming). ‘Public security in Nepal: Building a constructive role for youth, lessons learned’.

16 The formation of several political-party youth wings, including the CPN-UML’s Youth Force, the Nepali Congress’ Tarun Dal and Tarun Dasta, and the Madhesi People’s Rights Forum’s Rakshya Bahini as direct “opponents” to the UCPN (Maoist)’s YCL cadre is an illustration of the problem. Political awareness and the right to affiliation are important elements of a healthy democratic society. The reference to political-party youth wings occurs here in a slightly negative sense due to the damaging role these youth wings have been seen to play in recent times in Nepal (such as engaging in extortion, violent protests, disrupting tendering processes, etc.).

17 The YCL is the youth wing of the UCPN (Maoist); the Youth Force is the youth wing of the CPN-UML.

18 *Lathi*: long wooden or bamboo stick; *khukuri*: long curved knife traditionally carried by Gurkha soldiers.

19 During the verification of ex-combatants by the UN Development Programme (UNDP) and UN Children’s Fund (UNICEF) throughout 2007, 4,008 of those that presented themselves failed the verification process. The majority of the 4,008 were disqualified because they were found to have been underage at the signing of the CPA, or because they were believed to have joined the Maoist Army after the cut-off date of May 2006.

20 Of those 4,008 disqualified ex-combatants, only 2,394 participated in the official discharge ceremonies in the seven cantonments. The remaining 1,614 were thought to have left the cantonments previously. (UN Country Team Rehabilitation Programme Weekly Report # 22, 30th July 2010, 23rd–29th July 2010.)

21 As of 30th July 2010, 1,268 of the disqualified ex-combatants had been referred to training providers by UNDP, and 721 have completed or were currently undertaking training. (UN Country Team Rehabilitation Programme Weekly Report # 22, 30th July 2010, 23rd–29th July 2010.)

22 International Alert interviews, Banke, Chitwan, Dang and Nawalparasi districts, July 2010.

ECONOMIC DIMENSIONS OF INSECURITY²³

Labour problems, strikes and extortion demands have caused many industries in Nepal to close down completely. Private-sector representatives from Biratnagar claim that out of 250 industries on the Morang-Sunsari industrial corridor only 30 are currently in operation. Those that can do so have migrated across the border to India, such as the multinational Colgate-Palmolive which ceased operations in Nepal in 2009, citing chronic labour shortages as the major reason. Others are simply scaling down operations, or not taking on new business, for fear of attracting heightened union demands or the eye of the extortion rackets.

Tendering processes, including those of the District Development Committee (DDC) and other government line agencies are seen as a key trigger of localised violence, particularly between youth wings of political parties. Business people believe that they cannot compete in tender processes unless they engage in underhand practices such as colluding with political or criminal groups to win contracts. The use of Village Development Committee (VDC) budgets by political parties and other powerful groups was also seen as a source of conflict. Business people in Sunsari in particular also reported that development activities by government and non-government agencies had almost ceased in VDCs south of the highway. Non-governmental organisations (NGOs) working with Koshi flood victims in the district are reportedly not able to operate unless they coordinate with armed groups.

General shutdowns (or *bandhs*) are frequent, and are usually called by political groups to protest against political decisions or put pressure on the government to address a particular issue. Young people are often engaged to enforce the *bandh*, with some parties or groups offering remuneration for those providing their support. *Bandhs* can often turn violent, with aggression particularly targeted at government institutions and property, such as police posts, university campuses and government vehicles. *Bandhs* are a particular security concern for business people, who risk attacks to their person and property if they open their business on a *bandh* day.

Box 4. Safety and Security Concerns Halt Rs 1 billion Investment

In November 2009 Varun Beverages Nepal Limited, bottlers of PepsiCo in Nepal, announced plans for establishment of a state-of-the-art bottling plant in the Terai, an investment worth NRs 1 billion. By December 2009 the company announced it had cancelled plans for the new plant, citing impunity and militant unionism. As a senior representative of RJ Corp, promoters of Varun Beverages, explained in a statement, 'safety and security of senior officials made me take this decision'. In addition to the loss of a potential NRs 1 billion investment, the cost to Nepal of this decision was also the loss of many potential jobs for people around the proposed site of the plant.

(Source: *Himalayan Times*, 'Pepsi bottler new bid put on hold', 4th December 2009.)

SECURITY TRENDS

If the above section paints a rather negative picture, it must be noted that, in many parts of the country, and with the notable exception of cases of GBV, the security situation has improved vastly since the end of the conflict. The Special Security Plan introduced by the government in 2009 also appears to have had some success in curbing the frequency of *bandhs* and the activity of armed groups by giving more power to the Nepal Police and Armed Police Force (APF). However, local civil society and human rights organisations have expressed concern over police heavy-handedness in dealing with those suspected of involvement in armed groups, including a number of "encounters" between police and suspects that have resulted in the death of the suspect.²⁴

What is clear from research carried out by Alert and its partners since 2008 is that many people – particularly women, youth, business people and marginalised groups – have felt little or no improvement in their day-to-day

²³ International Alert (2010, forthcoming). 'The private sector and public security in Nepal'.

²⁴ See also Carter Center (2009). First Interim Report, p.9, accessed on 26th August 2009. Available at [http://www.reliefweb.int/rw/RWFFiles2009.nsf/FilesByRWDUnidFilename/MYAI-7VB5GP-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFFiles2009.nsf/FilesByRWDUnidFilename/MYAI-7VB5GP-full_report.pdf/$File/full_report.pdf)

personal safety. Those living in the central and eastern Terai region continue to feel insecure, a major concern when over half of the country's manufacturing industry is located there. Unless the needs of these groups are understood and addressed in reform processes and service delivery-improvement programmes, overall improvements in security risk being undermined by localised deterioration and resulting public frustrations.

SECURITY AND JUSTICE PROVISION

AGENTS OF SECURITY AND JUSTICE

STATE PROVISION

Security in Nepal is formally provided by the Nepal Army, the Nepal Police and the APF. The Nepal Army is overseen by the president and the Ministry of Defence; the Nepal Police and the APF fall under the command of the Ministry of Home Affairs.²⁵

The Nepal Police, with 56,000 personnel across the country, are the first point of contact for providing security to the general population, with the APF providing back-up support when *bandhs* or riots threaten widespread unrest. The Nepal Army is responsible for protecting strategic and military installations, support to border security and disaster relief.

The Interim Constitution of 2007 grants all powers relating to justice to the courts and other judicial institutions, to be exercised in accordance with the constitution, laws and recognised principles of justice. The constitution provides three tiers of courts in Nepal:

- Supreme Court
- Court of Appeal
- District court

All courts and judicial institutions except the Constitutional Assembly Court come under the Supreme Court, which in turn is overseen by the Ministry of Law and Justice. The District court is the first court in which a case will be heard and tried.

Box 5. The Vision of the Nepali Judiciary

'The vision of the Nepali judiciary is "to establish a system of justice which is independent, competent, inexpensive, speedy, accessible and worthy of public trust and thereby to transform the concept of the rule of law and human rights into a living reality, and thus, ensure justice to all" and the mission is "to impart fair and impartial justice in accordance with the provisions of the Constitution, the laws and the recognized principles of justice".'

(Source: Supreme Court, 2008: Strategic Plan of the Nepali Judiciary, p.1. Available at <http://www.supremecourt.gov.np/mid-report.pdf>)

NON-STATE PROVISION: THE GROWTH OF THE INFORMAL JUSTICE SECTOR

Due to a continued lack of public trust in a formal security and justice system, an overwhelming majority of civil and small to medium criminal cases in Nepal are reported to informal justice mechanisms rather than to the formal sector bodies. These mechanisms consist of traditional or indigenous provisions, such as traditional village courts (*Kachahari*), mechanisms that are donor funded and implemented through NGOs (such as paralegal committees),

25 For more information about formal and informal security agents in Nepal, see C. Watson and R. Crozier (2009). *Op. cit.*

as well as political parties and their youth or women's wings, which are increasingly being approached to resolve disputes and mete out justice.²⁶ In recognition of the lack of state capacity to respond to the justice needs of marginalised groups and women in particular, increasing donor funding is spent on supporting the informal justice sector to facilitate access to justice in the short term, as well as longer-term capacity-strengthening support to the formal security and justice sector.²⁷

SECURITY AND JUSTICE CHALLENGES

LACK OF PUBLIC TRUST IN THE POLICE AND JUDICIARY

A recent public perceptions survey claims that 82 percent of those surveyed said 'yes' to the direct question 'do you trust the Nepal Police?'.²⁸ However, continued district-level engagement by Alert and partners and more qualitative, in-depth research show that public trust in the ability of the Nepal Police to provide security and justice is limited. Reasons for this include a lack of resources (such as vehicles, infrastructure and personnel) and widespread political interference as key factors contributing to a weak and ineffective force.

Trust is particularly low among women and marginalised groups, who are often reluctant to approach formal security and justice providers. Lack of female police (female officers comprise 5.28 percent of the total force) and appropriate training for personnel means that police response to GBV cases is particularly weak and female victims of GBV are reluctant to approach the Nepal Police as a first point of contact. The Nepal Police, for their part, recognise the need to build trust between the police and the population, and, on the whole, are outspoken about the need for autonomy from political interference.

The judiciary is similarly lacking in resources and personnel. Many members of the public – in particular the poor and those belonging to excluded socio-economic groups – do not use the formal justice sector due to the time, cost and perception that justice can be bought or influenced if the defendant is someone richer or more powerful. In many areas, the lack of female personnel within the judiciary and lack of female lawyers prevents women from approaching the justice services. In Mahottari district, for example, the Bar Association had no female members at the time of research,²⁹ and in the entire country there are only seven female judges.³⁰ Like the police, the judiciary is also believed to be easily influenced by political parties and the economically powerful.

CRIMINALISATION OF POLITICS AND POLITICISATION OF CRIME

Political interference in the security and justice sectors is, in most districts, the number-one blockage to the effective and accountable provision of security and justice. During Alert research, numerous senior police officers and administration officials across districts have described how they would be forced to release suspects without further investigation after receiving phone calls from political leaders. Failure to do so would result in transfer to a remote "hardship" posting or being passed over for promotion opportunities. This means that politically affiliated individuals now enjoy considerable impunity, with corresponding negative impacts upon security and public trust in security providers.

This political interference in the security and justice sector has undermined state capacities to respond to GBV in particular. During Alert research in Mahottari, a senior government official described how, 'if a man is politically connected, it is extremely difficult to get him to appear in court'.³¹ In another research study undertaken in the Terai region, survivors of sexual violence repeatedly claimed during interviews that members of all main political parties had made interventions to get alleged perpetrators released.³²

26 Carter Center (2009). Op. cit. p.9.

27 For example, DfID has recently allocated a further £6.5 million to expand the coverage of paralegal committees to all 75 districts. Funders currently supporting interventions in the informal justice sector are DfID, German Development Service (DED), Japan International Cooperation Agency (JICA) and US Agency for International Development (USAID).

28 Saferworld & IDA (2010). Op. cit.

29 See International Alert (2010, forthcoming). 'Security and justice from a district perspective: Mahottari'.

30 There are seven female judges in Nepal: one in the Supreme Court, five in the appellate courts and one in a district court.

31 International Alert and Shanti Malika interview, Jaleswor, May 2009.

32 Advocacy Forum (2010). *Torture and extra-judicial executions amid widespread violence in the Terai*. Available at http://www.advocacyforum.org/TeraiReport_English_English.pdf

In the central and eastern Terai, there is growing concern among civil society organisations regarding a perceived nexus of cooperation between political parties, the police and criminal gangs, particularly around the cultivation and transportation of illegal narcotics. Local business people, human rights activists and local journalists in Bara district reported that, while the farming of cannabis in the district has been increasing over the years since the signing of the CPA, a growing number of local farmers are now turning to the cultivation of opium – a far more lucrative cash crop. It is reported by local civil society representatives that police and political parties are working together to provide protection to farmers, who sell their harvests on to drug cartels in India.

Box 6. Opium Cultivation in Bara District

According to a national weekly newspaper, police estimate that up to 2500 bighas (4175 acres) of farms in Bara and Parsa are growing poppies – enough to produce 30,000 kg of opium, which can be refined into 3.5 tons of heroin. According to the same source, Nepal is now exporting nearly NRs 3 billion worth of opium. Attracted by the promise of large profits (Indian buyers purchase the crop before it is harvested), many farmers in Bara are now switching from cannabis farming to the production of opium. The widespread perception in the district is that the open production of narcotics would not be possible without police and political protection.

(Source: 'Opiate of the Masses', *Nepali Times*, issue #496, April 2010. Available at <http://www.nepalitimes.com.np/issue/2010/04/2/Nation/16953>)

POOR STATE RESPONSE TO GBV

The way in which men and women experience the formal provision of security and justice is very different. In all districts, it was reported that the acute lack of female police and judicial staff was a key obstacle to women using these services. In most of the districts in which Alert has undertaken security and justice assessments over the past year,³³ the Women's Police Cell (WPC) of the Nepal Police was found to be functioning at the district-headquarters level at least, but was considered extremely limited in its effectiveness. Reasons for this were cited as lack of personnel, lack of outreach capacity and the fact that the WPC was usually headed by a fairly junior-ranking officer (head constable) in each district. Male police officers in Rukum reported asking their wives to support and counsel rape victims, because of a lack of female officers.

In particular, the police do not have the capacity, infrastructure and skills to deal with cases of domestic violence. In Mahottari, the Women's Development Office and a local NGO were sheltering victims of domestic violence in their offices due to a lack of safe-houses. Attitudes within the police force are also a significant obstacle. Senior police officers in Area Police Posts report negative reactions from seniors in the District Police Office if they refer domestic-violence cases to the district headquarters for further action. Women's rights activists estimate that over 95 percent of domestic-violence cases reported to police stations are either 'mediated' by the police and those involved sent home or referred to informal mechanisms for further action.³⁴

WEAK OVERSIGHT OF THE INFORMAL JUSTICE SECTOR

Informal justice mechanisms, such as paralegal committees and community mediation committees, have had much success in addressing local-level disputes and supporting better access to justice for women and marginalised groups in particular, relieving much of the burden from the state in the process. However, those working closely with these donor-funded informal mechanisms have raised concerns regarding the lack of monitoring and oversight. There are growing numbers of incidents whereby informal mechanisms have mediated criminal cases, such as rape and severe cases of domestic violence, rather than referring them on to the formal system. With the international community investing heavily in this area as a "quick fix" to the problem of widespread lack of access to justice, the need to strengthen the monitoring mechanisms that oversee the activities of these committees must be stressed.

33 These are Bara, Dang, Jumla, Kailali, Mahottari, Rasuwa, Rukum and Sunsari.

34 International Alert and Shanti Malika, 'Gender and Security' advocacy workshop, Kathmandu, July 2010.

INTERNATIONAL ENGAGEMENT WITH JSSR

Four years on from the CPA, specific support for JSSR continues to be held up while donors across the board await political agreement at the national level. In the interim, numerous donor-financed initiatives have sought to address public concerns over security and justice provision. These could pave the way for sustainable longer-term JSSR, but only if the donor community engages in a coordinated fashion and consults effectively with stakeholders to understand their perceptions of security challenges and effective responses. Much progress has been made in information-sharing and coordination since the publication of 'Security for Whom?', but there remain key challenges around integrating short-term solutions into longer-term strategies. Moreover, mapping of contemporary donor programmes in the field of justice and security provision demonstrates that adoption of participatory or gender-sensitive approaches remains the exception in most areas of programming.

DONOR COORDINATION

Nepal has a relatively small community of donors and partner organisations currently engaged in JSSR.³⁵ The main donors are Denmark, the EU, Japan, Finland, Norway, the UK and the US. The bulk of bilateral aid from international donors, including EU Member States, is funnelled through the Nepal Peace Trust Fund (NPTF), which is coordinated through the Ministry of Peace and Reconstruction (MoPR). The NPTF supports initiatives relating to the management of cantonments and the reintegration of ex-combatants, support to internally displaced persons (IDPs), CA elections, strengthening justice and security sectors, and support to the peace process.³⁶

Since 2009, and following a recommendation in 'Security for Whom?', these partners have met regularly through the European Commission (EC)-funded Security and Justice Coordination Group, led by Alert. The aim is to exchange information and create a common mapping of the security situation and current interventions. A smaller working group made up of members of the coordination group is in the process of designing terms of reference for an external review of the international community's support to the security and justice sectors.³⁷ The process is expected to lead to the design of a roadmap for international support to JSSR in Nepal, identifying gaps and needs for current and future coordination.

As of July 2010 the ongoing mapping had identified some 45 projects and programmes involved with JSSR in six sectors:³⁸

- **Security sector:** includes interventions which work with/on the police services, intelligence services, border control, customs, immigration, private security companies, neighbourhood-watch initiatives, community safety/security groups, youth wings/militia;
- **Justice sector – criminal law:** includes interventions which work with/on the prosecution service, criminal courts, prison service, lawyers' associations, victim-support units;
- **Justice sector – formal institutions:** includes interventions which work with/on the judiciary, civil courts, mediation/arbitration, human rights commission, relevant parliamentary committees, Bar Association;

³⁵ For a list of donors and their cooperation through the Nepal Peace Trust Fund, see C. Watson and R. Crozier (2009). Op. cit.

³⁶ For additional information on the NPTF, see C. Watson and R. Crozier (2009). Op. cit.

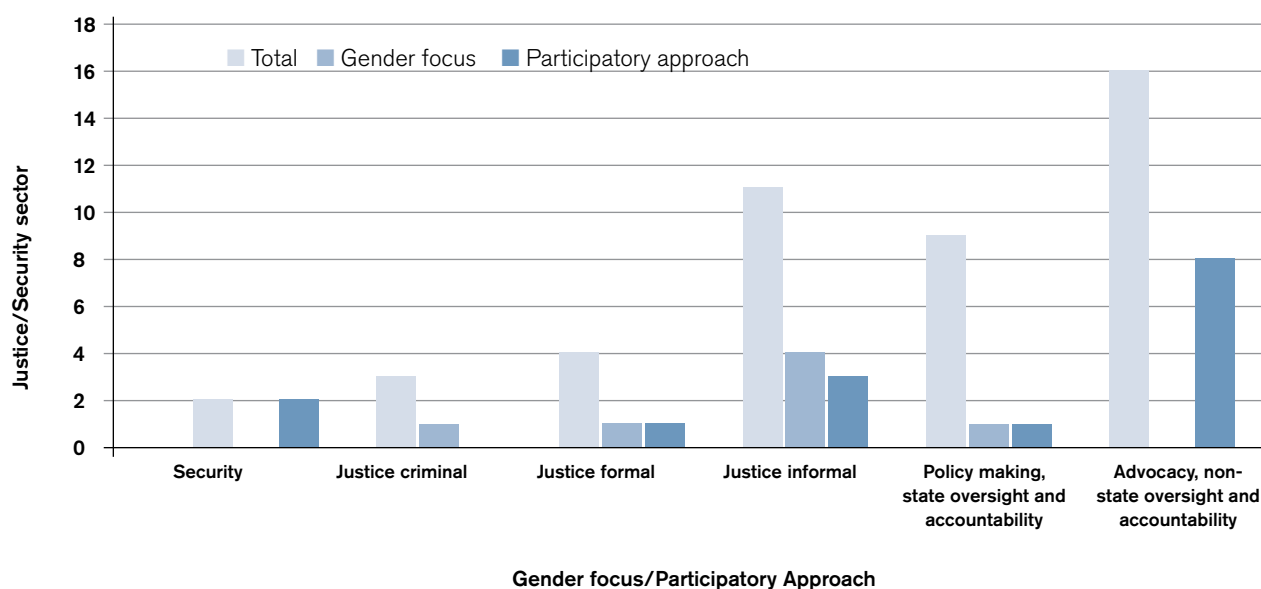
³⁷ This working group consists of International Alert, DfID, Danish International Development Agency (DANIDA), UN Resident Coordinator's Office (UNRCO), USAID and Saferworld.

³⁸ The mapping by the Security and Justice Coordination Group is funded by the EC as part of its IfP (<http://www.initiativeforpeacebuilding.eu/>). The information used in this publication originates from the mapping, a living document which is continuously being updated.

- **Justice sector – informal institutions:** includes interventions which work with victim-support units, mediation/arbitration, legal-aid bodies, court users' committees, paralegal committees, traditional/indigenous justice mechanisms, religious leaders;
- **Advocacy and non-state oversight and accountability:** includes interventions which work with/on National Security Policy, relevant Ministries (Finance, Justice, Home Affairs, Defence, Women, Children and Social Welfare, etc.), parliamentary committees, constitution-making and legal frameworks; and
- **Policymaking, state oversight and accountability:** includes interventions which work with civil society, academia, think tanks, media, etc., for advocacy, non-state oversight and accountability.

Figure 1 illustrates the number and type of donor-funded interventions by sector currently being implemented in Nepal in July 2010. It also delineates the percentage of interventions within each sector that appear to have prioritised gender and participatory approaches in their design (see section entitled “Participatory Approaches” below for an explanation of how this was assessed).

Figure 1: Number and Type of Donor-funded Interventions by Sector



SECURITY SECTOR

Considering its importance and potential for reform, the security sector has thus far attracted very little assistance from the donor community. To the knowledge of the Security and Justice Coordination Group, there are two small-scale projects targeting the Nepal Police, one funded by the JICA and implemented by the Asian Development Bank to support WPCs, and a USAID-funded project working with the Nepal Police primarily to develop infrastructure and technical capacity. The major reasons for the lack of interventions are the ongoing deadlock between the political factions over plans to integrate or demobilise the Maoist Army, and a lack of common political vision regarding the extent to which JSSR is needed and the role of the international community in supporting it. Without agreement or movements on these two fronts, there can be little progress towards JSSR. Lack of current donor activity in this sector should therefore not be confused with a lack of engagement or a lack of will to fund programmes once political agreement is reached between the Nepali parties.

Demobilisation and reintegration of combatants remains the key challenge for donor interventions. Thousands of ex-combatants are expecting to be eligible for integration into the state security forces, and the lack of employment and sense of rejection among this group is likely to exacerbate insecurity and the rise of parallel armed groups, such as the various party youth wings or criminal groups. While a number of donor states and the

EC have considerable experience and expertise in financing and providing technical support to Disarmament, Demobilisation and Reintegration (DDR) and security sector reform (SSR) programmes, Nepal's main recent experience of international engagement with the security sector – the UN Mission in Nepal (UNMIN) and rehabilitation of the disqualified ex-combatants – has been widely criticised³⁹ and has probably served to undermine domestic confidence in future interventions.

Nevertheless, there are signs that the Nepal government has begun to show openness to international engagement with projects that might pilot future SSR. For example, there are ongoing discussions between DfID and DANIDA and the Ministry of Home Affairs for a possible police reform programme, although this has been postponed for three years running due to the prevailing deadlock between the political parties and changes of focal points at the government (Home Ministry) level.

JUSTICE SECTOR

About 40 percent of internationally funded JSSR programmes in Nepal are targeted at the justice sector, with 26 percent focusing on informal mechanisms and institutions. Often working at the community level, such programmes typically aim to help relieve the burden of the oversubscribed formal courts by developing the capacity of traditional justice providers, paralegals and alternative dispute-resolution fora.

The risk is that there is no formal oversight system in place and therefore little or no accountability. At worst, strengthening some existing structures can mean that marginalised groups, including women, lower castes and minority ethnic or religious groups are further marginalised by traditional practices or that serious crimes that should be referred to the formal sector are not dealt with in the appropriate courts. In strengthening informal-sector capacities, there is no common framework for donors and partners to ensure that such mechanisms adhere to common legal standards or a harmonised oversight system. A “value chain approach” to justice delivery is required for more cohesive justice sector reform, strengthening traditional and alternative resolution mechanisms as a supplement to the statutory system.⁴⁰ The difficulty in applying such an approach is that there is insufficient information about the informal sector and its importance for various segments of the population.

Responses to GBV are illustrative of the need for closer cooperation between interventions in the formal and informal sectors. One example of the state's weak response to GBV is the lack of implementation of the Domestic Violence Act 2009 (DVA)⁴¹ due to lack of knowledge among practitioners as well as a shortage of service provision capacity. Based on the mapping of the security sector, currently one project and one planned initiative are working to operationalise the DVA within the formal justice system. The planned initiative will work with gender mainstreaming in the judiciary through sensitisation trainings for judiciary personnel. Raising awareness of the DVA through the informal sector is also crucial if some of the gender disparities and hierarchies entrenched in traditional justice institutions – and to some extent driving factors of the war – are to be addressed. Such work necessitates a participatory approach to sharing perceptions of gendered security and justice issues, including the challenges to implementation in diverse and often remote areas.

OVERSIGHT AND ACCOUNTABILITY

Over half of currently mapped international interventions in Nepali JSSR relate to the strengthening of capacity for overseeing and holding accountable the security and justice system. Indeed, much of this engagement is explicitly envisaged as *a priori* to the initiation of mainstream JSSR, strengthening both the government sector – policymakers, financial bodies and JSSR management bodies – and civil society to understand and input into future reforms.

39 A. L. Strachan. 'Peacekeeping and peacebuilding in post-conflict environments: A critical analysis of the UN approach in Timor-Leste, Liberia and Nepal'. IPCS Research Papers. December 2009. Available at http://www.operationspaix.net/IMG/pdf/IPCS_CriticalAnalysisUNApproach_TimorLeste_Liberia_Nepal.pdf

40 A “value chain approach” is one that follows the “client” or user from beginning to end of the security and justice process and ensures an integrated approach throughout.

41 SAATHI (2009). *Domestic Violence (Crime and Punishment) Act 2066* (Unofficial translation), accessed on 1st July 2010. Available at <http://saathi.org.np/index.php?page=domestic-violence-crime-and-punishment-act-2066>

Projects promoting non-state advocacy and developing capacity incorporate a wide network of stakeholders from high-level dialogues on security issues in Kathmandu, to work with youth groups, women's organisations and community-based media, to involving the private sector in the economic reintegration of ex-combatants. This multi-sectoral institutional capacity is essential for promoting local ownership of JSSR and providing inputs both top-down and bottom-up.⁴²

PARTICIPATORY APPROACHES

A participatory approach to JSSR helps to ensure that a more accurate picture of local security needs and concerns is taken into consideration when designing, implementing and monitoring an intervention. Providing safe space for different groups to express their security needs and solutions increases the sense of local ownership, especially if coupled with locally owned communication and oversight mechanisms. Failing to adopt a participatory approach may entail further disenfranchisement among different groups in society, or further entrench societal structures that were the root causes of the conflict in the first place. Excluding the views of majority or minority social or identity groups can also mean less support for any reform process, thus making it less sustainable in the long term. A “value chain approach”, which ensures the voice and ownership of communities from inception to evaluation of JSSR programmes, and which places the “end-user” in a position of power is critical to a genuinely participatory approach.

While there is no universally agreed definition of what constitutes a “participatory approach”, the EC’s ‘Aid Delivery Methods: Project Cycle Management Guidelines’ defines objectives as to empower and build capacity and to enable beneficiaries to make their own analysis of their situation to be able to participate in a political or reform process.⁴³ While Alert would also promote a definition based on empowerment and ownership, in the context of this report, the authors have used four proxy elements of participation as defined in the EC document to assess the information in the justice and security intervention mapping, namely, information-sharing; consultation; decision-making; and initiating action. Again, for the purposes of this report, an intervention was considered to be participatory if it had utilised a minimum of two of these four elements.

Of 45 internationally funded projects, only 15 appear to employ an overt participatory approach. A genuinely participatory approach should also be considerate of and responsive to gender perspectives. An additional six interventions were found to have a specific gender focus. This means that one-third of projects can be seen to be explicitly prioritising participatory approaches to justice and security provision and less than one-quarter were explicitly utilising a gender perspective. Thus, if there is a growing trend towards more participatory methodologies in the inception, design, implementation and monitoring of programmes, the approach is not yet the norm for donors and partners engaging in Nepal’s fragile post-conflict context.

Given the current political obstacles to initiatives that seek to support the wider reform of the security and justice sectors, the prioritisation of participatory approaches in the Nepali context seems to be more important than ever. Taking police reform as an example, it is evident that only a small number of donors are alone at the forefront of lobbying the government for change. Without the back-up and support of “conscious constituencies” of local stakeholders, these can easily fall prey to the unrest and uncertainty that pervades the political arena.⁴⁴ Arguably, a more effective *modus operandi* may be to invest time and resources in building the capacity of local stakeholders to identify changes needed, and advocate on this basis with the backstopping support of the international community if and where required.

42 OECD (2005). DAC Guidelines-Security System Reform and Governance. p.23. Available at <http://www.oecd.org/dataoecd/8/39/31785288.pdf>

43 The definition of participatory as stated in EuropeAid Cooperation Office (2004) ‘Project Cycle Management Guidelines’. pp.118–19. Available at http://ec.europa.eu/europeaid/multimedia/publications/documents/tools/europeaid_adm_pcm_guidelines_2004_en.pdf

44 A proposed DfID (and more recently DANIDA) Police Reform Programme, for example, has been postponed for three years in a row, following shifts in government (both Nepal and UK) delaying any formal agreement on the programme.

CONCLUSION AND RECOMMENDATIONS

A worsening public security situation in many parts of the country is a major danger to the ongoing peace process in Nepal. Many people do not consider themselves to be safe, particularly women who perceive GBV to be a major threat. The private sector has been badly hit by insecurity and particularly by the activities of armed and criminal groups, resulting in a slowing of economic growth and some businesses deciding to close down altogether.

The security sector is poorly equipped to deal with the demands placed upon it. The Nepal Police, in particular, as the frontline in security provision, lack the manpower, infrastructure and equipment needed to be able to do their job effectively. Political interference in the workings of the police is a major issue, one which will take a variety of approaches to address effectively.

However, there is increasing political recognition of insecurity as a key problem and a growing political appetite to address its root causes through policy reform and police capacity-building measures. The EU and several of its Member States are committed to supporting the improved provision of security and justice in Nepal as part of ensuring the continuation of the peace process and a transition to sustainable peace and economic development.

While no formal system-wide JSSR processes are taking place in Nepal – or are likely to take place ahead of agreement on a new constitution and integration of former combatants – there are many ways in which the international community could support policy reform and implementation so as to improve public security in the short term and contribute to broader JSSR in the longer term if coordinated effectively.

To improve the provision of, and access to, security and justice in Nepal, the EU, Member States and the wider international community should:

- **Ensure that there is adequate and equal attention paid to both informal and formal security and justice sector structures and policies. A “value chain approach” that follows the “client” from beginning to end of the security and justice process could re-establish confidence in the security sector.**

While over one-third of international interventions in JSSR so far have been in the field of justice provision, and especially informal justice provision, programming has not always been sustainable, coordination has been weak and informal mechanisms appear to have been strengthened often at the expense of formal institutions. A more harmonised “value chain approach” to justice provision is necessary for each sector to reinforce the other.

- **Ensure local-level consultation and participation in JSSR programming across Nepal, particularly for formal sector policy, planning and implementation processes. This needs to include placing gender as a primary consideration in security and justice interventions and in ensuring adequate gender analysis in the consultation and design phases.**

Since the publication of ‘Security for Whom?’, the donor community has demonstrated a commitment to supporting more participatory approaches to security programming. However, mapping of security and justice programming has shown that participatory approaches are still the exception in the field of justice provision.

- **Continue to seek entry points for engaging with the security sector on community-level policing initiatives. Such entry points could include supporting more effective response to GBV through increasing the recruitment, training and deployment of women police.**

While political wrangling and concern around state sovereignty issues prevent the international community from supporting formal SSR processes, entry points to supporting smaller-scale reforms and effectiveness-building measures must be located and maintained.

- **Engage with youth as key stakeholders in the construction of a durable post-conflict settlement. This engagement should begin with developing a solid understanding of differential security and safety needs (based on age and gender) rather than treating youth as a homogenous target group.**

Since the CPA and cantonment, recruitment of young Nepalis into politically or criminally associated youth groups has become a major threat to security but typically according to highly localised dynamics. Meeting this challenge requires not only understanding of the micro-drivers of youth militancy but also a commitment to sustainable employment creation, education and training, and integrating conflict-sensitive development strategies into security programming.

- **Support the development of a rehabilitation model that has the potential to extend beyond the rehabilitation of Maoist ex-combatants to other armed groups and which is based on the principles of analysis, ownership and participation.**

The development of such a model must engage the business sector, the government of Nepal and the international community to work together to design and support realistic and sustainable socio-economic opportunities for ex-combatants and vulnerable youth across Nepal.

- **Work to develop monitoring mechanisms for the informal sector, in line with formal sector arrangements. This should include strengthening the role of civil society and women and youth in particular in oversight and accountability mechanisms.**

Even the donor-supported informal justice sector currently lacks strong external monitoring systems. This has resulted in informal mechanisms exceeding their mandate and attempting to mediate criminal cases, such as rape. There is an urgent need for stronger, more coordinated monitoring of the sector.

- **Take a system-wide approach in identifying and supporting mechanisms that have the potential to reduce political interference in policing and justice.**

For example, support for the establishment of a Police Service Commission should go hand in hand with support for public oversight of the security and justice sectors.

- **Support public demand for better security and justice by ensuring that initiatives aiming to strengthen public oversight and advocacy capacity are explicitly linked and communicated effectively to their potential beneficiaries at all levels of Nepali society.**

The media should be supported to stimulate debate and to close the information gap between Kathmandu and the districts. This would help to increase the role of civil society and local communities in overseeing the implementation of such reforms and to reflect local needs.

INITIATIVE FOR PEACEBUILDING

c/o International Alert

205 Rue Belliard, B-1040 Brussels Tel: +32 (0) 2 234 5792 Fax: +32 (0) 2 234 5799

ifp@international-alert.org www.initiativeforpeacebuilding.eu



THIS INITIATIVE IS FUNDED
BY THE EUROPEAN UNION

PARTNERS



International  Alert.

