

# Access to Security, Justice & Rule of Law in Nepal

An assessment report





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**Danida**HUGOU

This assessment was carried out by six consultants engaged by GRM International Ltd., the managing agency of the Enabling State Programme on behalf of DFID. The consultants were selected jointly by the donors, i.e., DFID, DanidaHUGOU and UN Resident and Humanitarian Coordination Office on behalf of the United Nations Country Team (UNCT). GRM/ESP Team have also made contribution to the production of this Report. The views expressed in the report are those of the consultants and not of the funding partners.

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# ACRONYM

ADR	Alternative Dispute Resolution
AG/OAG	Attorney General (Office of the Attorney General)
CA	Constituent Assembly
CDO	Chief District Officer
CIAA	Commission for the Investigation of Abuse of Authority
CPA	Comprehensive Peace Agreement
CSO	Civil Society Organisation
DANIDA	Danish International Development Agency
DIG	Deputy Inspector General of Police
GBV	Gender Based Violence
LPC	Local Peace Committee
NGO	Non-governmental Organisation
NHRC	National Human Rights Commission
NKP	Nepal Kanoon Patrika (Nepal Law Reporter)
NP	Nepal Police
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
SC	Supreme Court
SWOT	Strengths, Weaknesses, Opportunities and Threats
UNDP	United Nations Development Programme
USAID	United States Agency for International Development





# EXECUTIVE SUMMARY

The overriding objective of this review was: to develop an assessment of the challenges and opportunities faced in citizens' access to security and justice and the strength of the rule of law in Nepal, and options for improving the impact of international support over the coming three-to-five years; in particular for poor and excluded groups.

Within the context of citizens' access to security, justice, and rule of law consideration was given to four Sub-Sectors:

- Criminal Justice System
- Non-Criminal Justice System
- Non-State/Informal Justice and Community Security
- Legislative Framework, Oversight and Accountability

The approach to this review was modelled substantially on Rapid Appraisal principles (USAID 1996). Given the constraints of time and resource, this was seen as an appropriate means in seeking answers to the significant questions associated with the key elements in this assignment.

The data gathering process drew on published and unpublished documentation, individual and group interviews with key informants drawn from across the spectrum of stakeholder interests. Interviews were conducted with a total of 299 informants: individual citizens, civil society groups, junior, mid-ranking and senior officials at central and district level, representatives of statutory bodies, parliamentarians, representatives of international organisations and NGOs.

The Summary Overview, which addresses political economy, institutional capacity, cross-sub-sector relations, social, economic and gender issues, provides the contextual background for consideration of options and presentation of recommendations. This Summary arrives at several challenging conclusions.

It identifies the criminality that is being fuelled by political parties and the impunity that accompanies political actors' leverage over the law enforcement and justice institutions as being undermining, not just of these institutions, but also of the democratic foundations of the State and ultimately depriving it of legitimacy in the eyes of many citizens. While acknowledging that the concept of nexus between criminality, police and politics is by no means applicable to every political actor or all political interests, it concludes that political party sponsorship of criminally inclined elements in their own ranks and their failure or inability to rein them in does create an air of general lawlessness, with consequent impact on citizens' sense of security.

In its critique of the Sector's institutional capacity, the Summary Overview reiterates an earlier introductory comment to the effect that the sub-sectors are inexorably linked one to the other and are best understood in the context of the interactive complexities of the entire Sector. The Sector institutions are burdened with the consequences of patronage, corruption and political interference. All are to a greater or lesser degree under-resourced, lacking in professional capacity and are facing an

uncertain future with respect to pending constitutional reforms.

Poverty, unemployment, rapidly rising inflation, corruption and discrimination have fuelled the divisions among citizens and undermined their confidence in the Security, Justice and Rule of Law Sector.

While there are numerous national reform efforts in respect of the Sector, many supported by donors, there is no overarching Sector strategy. This lack of direction and the implications of the constitutional transition towards a federal form of government in Nepal add to the already abundant uncertainties confronting the Sector.

Although the current scenario is overall bleak, there are undoubtedly committed and honourable officials at all levels through whose efforts and tenacity progress, albeit limited and halting, is being made in some key areas. While the Supreme Court is at the forefront in driving change, there are other positive dynamics at play in the Nepal Police and within the legal profession.

Given the contextual scenario as presented above, realistically, donor support to the Sector needs to be considered in terms of not less than a five-year planning frame, and for that to be seen as a beginning step, not an end point.

The current coordination arrangements within the international community are insufficiently robust for the purpose of framing and implementing an intervention strategy for this Sector. An important beginning point, therefore, is the creation of a coordination mechanism that provides a foundation on which to construct interventions in support of Sector development and reform. The arrangements for international community coordination need not be elaborated. Bringing more structure and a greater clarity of purpose to the Security and Justice Coordination Group would represent a major advance in this direction.

The level of partnership with Government counterparts that is possible will vary.

Beyond the bilateral arrangements that donors might have with Government counterparts, efforts should be made to engage as a representative group with inter-ministerial coordinating arrangements in the form of the Government of Nepal's Security and Justice Committees. Since the donors already have a donor-to-donor mechanism in the Utstein Group the formation of a Sector sub-group for donor coordination and dialogue with Government should be relatively straightforward.

With regard to securing short-, medium- and long-term impact, this report firstly recommends that donors enter into a strategic partnership that provides a jointly funded, jointly managed "umbrella" programme which systematically addresses all priorities within a single programme framework.

This initiative, alongside measures towards more effective international community coordination and a greater sense of partnership with government, will provide a platform for planning, implementation, monitoring and evaluation of donor supported interventions in the Sector.




There is a recommendation for the establishment of a multi-donor trust fund as a medium for making a systematic contribution to Sector reform. Within clearly defined parameters, this would support activities that are substantially demand driven as opposed to supply driven, ensure targeting of resources as well as providing a Sector-wide oversight and evaluative framework for such undertakings. It could be drawn on by government institutions seeking to develop capacity or explore innovative solutions, national and international NGOs and community-level citizens' groups.

Across the Sector sixteen priorities have been identified as being amenable to donor supported interventions. These are Drawing on the political, social and institutional backdrop as presented in this report and contained in the annexed documentary and qualitative evidence, and in acknowledgement of the systemic

complexities of the Security, Justice and Rule of Law Sector; it is recommended that, within the proposed umbrella framework, donors have as a first priority the establishment of two major strands of activity:

- Nepal Police Reform Programme
- Courts Reform Programme

NEPAL POLICE REFORM PROGRAMME	COURTS REFORM PROGRAMME
Improving confidence in Criminal Justice Institutions	
Developing Gender Justice Strategy	
Crimes against women and children to be dealt with by statutory authorities	
More realistic expectations about legal aid and compensation	
Adherence to Convention on the Rights of the Child	
Care of victims and witnesses	
Implementation of anti-discriminatory laws and procedures	
Develop pro-citizen laws, procedures and institutional reform	
Improve access to and effectiveness of the courts	
Reduce the costs of litigation	
Improve arbitration and mediation services	
Improve and expand JSCC	
Early commencement of the Mediation Act	
Transforming informal justice mechanisms to community based Mediation Organisation	
Effective supervision and oversight of informal justice mechanisms	
Challenge inappropriate mind-sets through education and anti-discriminatory	

COLOUR CODE	
	HIGH PROBABLE IMPACT
	MEDIUM PROBABLE IMPACT
	LOW or NO PROBABLE IMPACT

The table below illustrates how these, in parallel, can address the sixteen identified key priorities and their anticipated probable impact on each.

There are four major reasons for this proposal:

- Both institutions are reasonably well-disposed to receiving external assistance
- Both institutions have reform processes already underway; albeit the Supreme Court is more advanced in its thinking, it has made more progress and is less encumbered by political agendas; but there are also progressive drivers of change within the Nepal Police

- More than any other aspects of the Sector, improving policing and the operation of the courts would have a major positive effect on citizens' security and wellbeing.
- From a systemic perspective, both can potentially influence aspects of the Security, Justice and Rule of Law Sector well beyond their specific mandates.

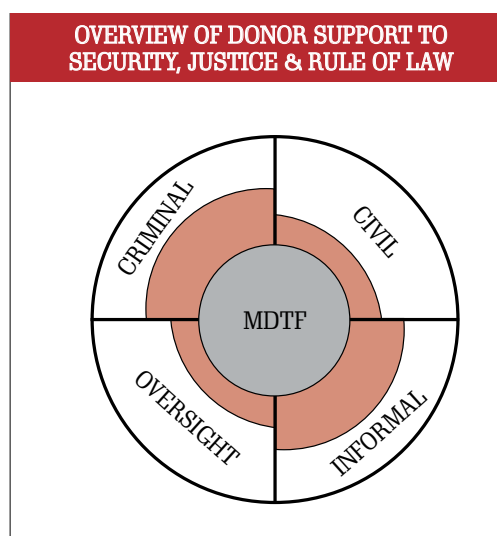
In the area of Legislative Framework, Oversight and Accountability, the report identifies six priorities; all of which are essential elements in progressing reform in the Security, Justice and Rule of Law Sector. The dilemma for donors is that they also represent essential laments across

the spectrum of governance and public administration. There is a question as to whether donor support in this area should be provided under the auspices of support to the Security, Justice and Rule of Law Sector, or be considered in the context of a wider support agenda to state building and good governance. On balance, the recommendation is that they should be pursued as an element of donor engagement with the wider governance environment.

Bringing together the themes of coordination and impact: the following figure provides an illustration of how an integrated umbrella framework, that encompasses the operation of the MDTF, would hypothetically operate. It should be noted that the distribution of emphasis across the sub-sectors is for illustrative purposes only and should not be seen as indicative of how donor interventions might ultimately be distributed.

(MDTF = Multi-Donor Trust Fund)

More so than would be the case in some other development environments, supporting the Nepal Security, Justice and Rule of Law Sector is very much an exercise in managing uncertainty. The months and years ahead that will see major upheavals



across the governance, social and economic environments will call for a continuous monitoring of the risks that these will pose to donor interventions and a preparedness to adopt a flexible approach to the realities, without being deflected from or losing sight of the long-term goals.

The following is a short overview of the current risk environment: of course as donor planning progresses this would be developed to a much higher degree of sophistication.

RISK MATRIX			
Risk	Impact	Probability	Mitigation
Political discussions break down leading to widespread disorder	High	Medium	Focus on activities, counterparts and locations where impact is least
Some counterparts do not engage with donors	Medium	High	Initial focus on the institutions that do engage
Change resistance from within institutions	Medium	High	Engage with champions for change to secure leverage for reform initiatives
Reform is stalled awaiting new Constitution and transition to federalism	High	High	Provide support to change processes that can proceed regardless of constitutional and federal outcomes
Reputational risk arising from excesses of donor supported informal mechanisms	High	Low	Provide more effective review and oversight of funded informal mechanisms
Fiduciary risk in respect of trust fund initiative	Medium	Medium	Build in oversight measures that mitigate against inappropriate use of
Fiduciary risk in respect of technical assistance	Low	Low	Ensure that interventions are feasible and well monitored

## SUMMARY OF RECOMMENDATIONS

It is recommended that the international community:

- Continues supporting the Security, Justice and Rule of Law Sector, but does so with caution and with the expectation that progress might be slow and subject to setbacks.
- Establishes a more effective mechanism for International Community Coordination, including development of an information strategy which incorporates a continuously updated database of donor-supported activities
- Establishes a formal and regular point of dialogue, negotiation and partnership with the relevant stakeholders in the Government of Nepal
- Establishes a multi-donor “umbrella” programme for the delivery of support to the Security, Justice and Rule of Law Sector
- While retaining an aspiration for a Sector-wide strategy in the longer term, adopt a pragmatic approach to the support of Sector reform, engaging with those settings where success is more likely to be found.
- Should establish a multi-donor trust fund that will provide demand-driven support to the Sector’s institutional and civil society stakeholders.
- It is recommended that, within the proposed umbrella framework, donors have as a first priority the establishment of two major strands of activity:
  - Nepal Police Reform Programme
  - Courts Reform Programme
- Address the priorities relating to Legislative Framework, Oversight and Accountability within the context of a wider governance programme.



# 1

# INTRODUCTION

The field work for this review took place during June and July 2011. The overriding objective was: to develop an assessment of the challenges and opportunities faced in citizen access to security and justice and the strength of the rule of law in Nepal, and options for improving the impact of international support over the coming three-to-five years; in particular for poor and excluded groups.

Within the context of citizens' access to security, justice, and rule of law consideration was given to four Sub-Sectors:

- Criminal Justice System
- Non-Criminal Justice System
- Non-State/Informal Justice and Community Security
- Legislative Framework, Oversight and Accountability

Interwoven with these were six cross-cutting issues:

- Gender
- Social and Economic Dimension
- Human Rights
- Peace-building
- Transitional Justice
- Federalism

Throughout the review, responding to the security and access to justice needs, aspirations and priorities of citizens, particularly those who are poor or socially excluded, was the central consideration in investigative processes, data analysis and recommendations. Key priorities within this were issues of gender, marginalised peoples and human rights.

While the four Sub-Sectors and the associated cross-cutting issues have distinctive characteristics, they are inexorably linked one with the other. A full understanding of this complex weave is therefore best secured through a systemic rather than any linear or compartmentalised analysis. A systems approach views challenges and opportunities in the context of an overall system, rather than relating to a specific part and assists in identifying points of leverage, where intervention can have greatest effect (Walker 2001). The conclusions and recommendations arising from this review therefore seek to reflect, in so far as practicable, the systemic complexities and dynamics within the security and justice milieu in Nepal.

The recommendations made in this report are rooted in the distilled analysis of stakeholder provided information and opinion and the relevant available policy and research documentation. Conclusions are expressed in the context of sustainable inferences based on the available evidence.

## Approach

The approach to this review was modelled substantially on Rapid Appraisal principles (USAID 1996). Given the constraints of time and resource, this was seen as an appropriate means in seeking answers to the significant questions associated with the key elements in this assignment.

Rapid appraisal methods fall on a continuum between very informal methods, such as casual conversations or short site

visits, and highly formal methods, such as censuses, surveys, or experiments. Rapid Appraisal is an effective compromise with more elaborate methods of enquiry and has proven benefit in enabling decision making at policy and programme levels. As well as facilitating institutional review it offers context and interpretation of the available data and can provide accessible understanding of complex environments, illustrating people's experiences, attitudes and aspirations.

In-built into the Rapid Appraisal approach is the flexibility to explore emerging issues and trends. Within the context of this review, it can facilitate the analysis of current institutional structures, dynamics, processes and activities and their impact: these combining to assist in the identification of effective ways forward for improving the impact of international support.

The data gathering process drew on published and unpublished documentation, individual and group interviews with key informants drawn from across the spectrum of stakeholder interests. A list of the documentary material consulted is attached in Annex B of this report.

Interviews were conducted with a total of 299 informants: individual citizens, civil society groups, junior, mid-ranking and senior officials at central and district level, representatives of statutory bodies, parliamentarians, representatives of international organisations and NGOs. With citizens there were 160 individual and seven group interviews conducted; with group interviewee attendance totalling 51. In respect of officials there were 37 participants in two groups. There were three focus group discussions held with parliamentarians, with a total attendance

of 15. A total of 12 interviews were held with central government officials and 24 with representatives of international organisations and NGOs.

In keeping with the citizen as the central focus, the first round of interviews and group discussions were held with citizens. The questions, opinions and hypotheses generated in this process were incorporated into the agendas for the next stage interviews with civil society organisations and institutional actors: and so on through each stakeholder group, with each step generating further lines of data exploration and each respondent being asked to share their reactions to citizens' perspectives.

**The accumulated evidence, from which this report identifies the challenges and priorities for the Security, Justice and Rule of Law Sector and in which are based the conclusions and recommendations in respect of the International Community's support, is set out in detail in the attached Annex A to this document.**

The report that follows is presented in five sections.

1. Introduction
2. Summary Overview
  - Political Economy
  - Institutional Capacity Assessment
  - Inter-Sub-Sector Relations
  - Social, Economic and Gender Dimensions
  - National Reform Efforts and International Support
3. Challenges and Priorities: Including SWOT overview
4. Options & Recommendations
  - Joint Aid & Coordination
  - Short, Medium & Long Term Impacts
  - Priorities & Sequencing
5. Risks and Mitigation Strategies



# 2

## SUMMARY OVERVIEW

The OECD (2007) urges donors to take context as their starting point for any intervention. It is essential for international actors to understand the specific context in each country, and develop a shared view of the strategic response that is required. It is particularly important to recognise the different constraints of capacity, political will and legitimacy.

The following paragraphs follow this principle, providing an overall political perspective and a more detailed focus on the political and institutional factors at play in respect of the Security, Justice and Rule of Law Sector.

### Political Economy

Nepal is currently recovering from a decade of conflict and experiencing profound changes in all areas of its social, economic and political life. A fragile peace process is underway but far from complete. The conflict that was rooted in the social, political and economic exclusion of marginalised groups notably the ethnic minorities, Dalits, Caste groups, Madhesis and women took the lives of about 13,000 people and nearly 200,000 were internally displaced. During the conflict much of the state's reach was limited to Kathmandu and selected district headquarters and it had lost much of its legitimacy and capability to govern.

The Comprehensive Peace Agreement (CPA) signed in 2006 to end the conflict and the election to a Constituent Assembly (CA) in 2008 have provided new opportunities and aspirations for the Nepalese to transform

their state through the writing of a new constitution. These processes have also offered possibilities for major reforms in the governing structures including in the security, justice and the rule of law sectors.

While completing the peace process, writing of a new constitution and managing a transition have taken priority over all the important national issues improvement in the state of security, justice and rule of law continue to remain primary challenges in Nepal.

The following features of political economy context are presented to indicate the prevailing challenges and constraints for reforms in the security, justice and rule of law sectors.

In respect of the **historical context:** modern frameworks of governance were introduced only in the 1950s after a major political change with provisions of an interim constitution, judiciary, Auditor General, Election Commission and Advisory Assembly as the oversight, accountability and representative mechanisms. The Constitution of 1959 provided continuity to these institutions and further consolidated principles of fundamental rights including the right to criminal justice.

Similarly the Panchayat Constitution of 1962 revised the national code of 1854 with provisions of civil and criminal court procedures. A more progressive constitution with some basic features of universal rights was introduced in 1990. However, due to multiple governance crises, a violent conflict and incessant political

instability access to security, justice and the rule of law remained far from the reach of general public. Since 1948 Nepal has had six constitutions and a popularly elected CA is in the process of drafting yet another constitution for a "New Nepal".

As for the **reach and legitimacy of state:** since the beginning of its unification in 1768-69 Nepal has always been a unitary and highly centralised state. State reach was extended to the district headquarters mainly to collect revenue and to restore order. State services and administration have always been concentrated in the capital. As the key institutions such as police, local government, health and postal services were merely beginning to extend beyond the district headquarters they became primary targets of Maoists attack during the conflict and forced their withdrawal from the rural community. Very little progress has been made to re-establish these services back. Since 2002 Village Development Committees, the lowest strata of government structure are run by centrally appointed civil servants with the help of political party arranged all party mechanisms which have been effectively preventing accountability, promoting patron-clientelistic system and extending the reach of party sister organisations at all level of formal and informal institutions primarily to share the spoils. Capacity of the state to deliver services to its public is extremely weak and its key institutions command very little legitimacy. The state is seen as distant and unresponsive by most of the Nepalese outside the capital.

With regard to **transition:** in early 2006-07, there appeared a loose "national consensus" to take the country forward from a centralized unitary system of governance and initiate major reforms to address issues of exclusion and under-representation. Since then, Nepal's power elites are trying to simultaneously manage three principal tasks -negotiate a peace settlement, draft a new constitution and share power during the transition. As they moved from a consensual arrangement to a majoritarian system for power sharing they have miserably failed to provide a stable government hampering progress on the first two areas as well as

eroding their legitimacy and credibility. There is a deep crisis of confidence amongst the major political forces. A handful of political elites continue to have control and total monopoly over the politics and almost all the key negotiations and decisions are made outside of the CA process. The CA reflects representation of a diverse outlook of Nepal and has the mandate for reform but increasing resistance from some elites and interest groups is becoming apparent. All of these developments indicate that Nepal's transition is likely last several years if not decades.

The Home Ministry which is responsible for public security and order operates with its 5 Regional Administration, 75 District Administration and 75 District Police offices with a police force of 60,000 personnel (July 2010) is the principal body responsible for providing public security and maintain law and order. The prevalent legal framework seems to be adequate to ensure access to security. However, due to lack of adequate resources, institutional weaknesses and political interferences these laws are rarely enforced effectively. The existing force of Nepal Police to provide security to a population of approximately thirty million is challenging in view of poor infrastructure and equipment.

The Nepal Police was mobilised at the frontline to fight against the Maoist insurgency even though they lack resource and means of defence. As a result they suffered losses of highest number of government manpower and was reduced to a defeated force. By the time of CPA in 2006 only about 550 out of approximately 2000 police posts nationally were functional. Since then the government has made little progress to re-enforce police presence to the rural areas.

Increasing political interference, widespread impunity, and a lack of resources are blamed for the inability of police and administration officials to guarantee public security. The Nepal police is one of the most politicized institutions and it has been used extensively by the party in power to protect their vested interest. The institution has no autonomy

and independent leadership to lead any reform. There are credible reports of links between the police, political parties and armed groups to protect organised crimes. The Ministry of Home to which the police force is accountable indicates no incentive or interest to reduce its control and interference in the police affairs.

Despite the political uncertainty and the above weaknesses of security environment according to a recent Carter Center observation finding (August 2011) political space is improving in the country. Similarly, according to a recent poll (Himalmedia, May 2011) about 52 percent population feels that compared to previous year overall security and law and order situation in the country has improved.

**Access to justice** is a major issue for the poorest and marginalised groups. Patriarchal family values and caste based social orders are deeply entrenched in the Nepali society and represent formidable informal barriers to accessing justice. Poverty, discriminatory legal provisions, under-representation of women and marginalised caste and social groups in judicial service, physical distance of court houses and poor legal education represent a few of the numerous other barriers.

There are still a number of discriminatory provisions in the existing legal system that inhibit women, Dalit and marginalised groups from approaching legal recourse. Recent initiatives to revise the Civil Code and its procedures offer some opportunities for reform. Legal information and enforcement of existing legal provisions continue to face challenges. A mediation bill to promote alternative dispute resolution has been enacted recently but yet is to come into effect.

Caste based discrimination has been outlawed for years and a new Act has been passed to deal with caste based offences. However, it does not cover offenses prevalent in the private sphere. Without strong state policies and legal education individual discriminatory behaviour is unlikely to change easily for decades.

Incidents of domestic violence are treated as a personal criminal case. There is no specific institution to handle cases of domestic violence and the state generally is unable to provide adequate protection for those who need it the most. The existing legal, procedural and informal barriers benefit the male dominated elite groups that have strong hold on judicial and quasi-judicial institutions.

With regard to the **Rule of Law**: the judiciary is generally perceived to be relatively independent. The Supreme Court and its leadership have often shown courage to reassert its constitutional role and independence. At the moment it is the only institutional check on the powers of the executive. Impunity, inefficiency, case backlogs, and enforcement of court decisions, however, remain critical issues. There are no political or civil society allies outside of the judiciary to defend its independence and promote respect for the rule of law. Though political leadership would often turn to the courts to seek protection to their rights from state or executive authority, there seems very little interest to promote the judicial integrity and respect to judicial orders.

Though Supreme Court and its lower courts are functioning and the legal framework seems adequate, the term "rule of law" has become almost meaningless for the governing elites and a distant dream for the vast majority of citizens. The judiciary has been a low priority for state funding, considered it as non productive sector and many of its court houses destroyed during the conflict are yet to be re-built.

There exist a limited number of **civil society organisations (CSO)** active in the security, justice and rule of law sectors. Nepal Bar Association and its network and few other CSOs are providing legal education, information and legal aid to the poor and women. However, they remain mostly urban-based, donor dependent and partisan to one or the other political organisations and unable make strong alliance for reform. As a result civil society organisations including media continue face difficulties and lack credibility. Though there exists adequate

legal framework, regulations and statutory guarantee for freedom of movement and expression due to government inability to act against the perpetrators and enforce law and order media operates under a strict self-censorship in reporting violence and security related issues. According to the Federation of Nepali Journalists one journalist was killed, 20 were physically assaulted, 42 received threats from various gangs and criminal groups and 33 were manhandled in 2010.

The aftermath of conflict in Nepal, as is the case in many countries which have experienced similar turmoil, has witnessed a residual continuation of a general disregard for law and order on the part of some elements of society, politically motivated criminality, ineffectiveness of state institutions, the impunity of powerful actors and insecurity for large sections of the citizenry. Regardless of how well-intentioned the political parties might be, responses to the final draft of the Constitution, federal elections and the establishment of federal institutions will all put further pressure on the Security, Justice and Rule of Law Sector.

In **Summary:** these paragraphs have been crafted to provide a political economy overview of recent social and political turmoil that the country has come through, and the implications of this for international support to the Security, Justice and Rule of Law Sector. While it is clear that the Sector has not been immune to the repercussions of years of conflict, the evidence points to an in-built resilience that has ensured its survival, more or less intact.

The criminality that is being fuelled by political parties and the impunity that accompanies political actors' leverage over the law enforcement and justice institutions is undermining, not just of these institutions, but also of the democratic foundations of the State and ultimately depriving it of legitimacy in the eyes of many citizens.

While the concept of nexus between criminality, police and politics is by no means applicable to every political actor or all political interests; political party

sponsorship of criminally inclined elements in their own ranks and their failure or inability to rein them in does create an air of general lawlessness, with consequent impact on citizens' sense of security.

## Institutional Capacity

The key statutory institutions associated with the Security, Justice and Rule of Law Sector are:

- Nepal Police
- Attorney General & Prosecutors
- Chief District Officer
- Judiciary, Courts Quasi-Judicial Institutions
- Lawyers in Criminal and Civil Proceedings
- Parliamentary, Constitutional Oversight & Accountability Institutions

As identified in the notes on Political Economy, the **Nepal Police** are under-strength for a population of the size and demographic distribution of Nepal. They lack professional capacity, as well as physical infrastructure, IT, communications and equipment. While the establishment of specialist units has brought a concentration of resources in respect of some crime categories, these have yet to have a significant impact on the number of offences in these areas or of increased levels of detection. Some community policing initiatives are underway, but a community focus is not in any way embedded within the policing ethos of the Nepal Police.

Along with every other public institution, the police are concerned about the operational and institutional implications of the move to a federal form of government. While citizens express ambivalent attitudes toward the police, they nonetheless believe that their presence does, in the main, contribute to a sense of community security. Perhaps more than any other institution in the Sector, the police are the most susceptible to political interference and most likely to be undermined by criminal elements; either coercively or collusively.

The **Attorney General** of Nepal is the chief legal advisor to the government.

Since the position is political appointed, occupancy of the Office of Attorney General is currently highly transitory, because Prime Ministers have become highly transitory: there has consequently been little consistency in practice or policy in relation to prosecutions. While subordinate Prosecutors are routinely involved in criminal prosecutions, the Attorney has the right to make the final decision to initiate proceedings in any case on behalf of the government in any court or judicial authority: and just as proceedings can be initiated, the Attorney can likewise decide that they not be initiated at all. A joint legal opinion by NHRC and OHCHR (2011), commenting on the consequence of the practice of politically motivated case withdrawals concluded that they have effectively served to protect politically connected individuals from criminal accountability, promoting a policy of de facto impunity for the perpetrators of hundreds of serious crimes. This trend has undermined the rights of alleged victims to an effective remedy in those cases, and has impeded efforts to transit for the existing culture of impunity to a stronger judicial system based on impartiality and the rule of law (p2). There are no figures available on the number of police reports that are not referred to prosecutors or the cases prosecutors receive that are not proceeded with. However, it is clear from what evidence is available that the vast majority of criminal complaints are settled privately or in police stations and go no further. It is also evident that normally high volumes of small criminal cases, such as traffic infringements, are not prosecuted at all in either the courts or the district offices.

While the Attorney General's Office has started on a strategic planning process and there are clearly expressed standards that prosecutors must adhere to, the preponderance of confession based convictions and generally poor quality of police investigations; make it difficult to establish an accurate assessment of the specifics of institutional capacity within the prosecutorial service.

For such powerful individuals, there has been surprisingly little research or other documentary material on the role of

**Chief District Officers (CDO).** The CDO is accountable to the Ministry of Home Affairs and has a wide range of responsibilities and powers. One of the major responsibilities of the CDO is to maintain peace, order and security in the district, for which they have authority to direct and mobilize the security forces, initiate the preventive detention of individuals, issue curfew orders and order security forces to open fire on crowds. The District Police Office is under the direct supervision and direction of the CDO. In their quasi-judicial role CDOs, mediate or adjudicate disputes and under twenty separate statutes can, without due process, summarily sentence individuals to terms of imprisonment for such offences as making a public nuisance (up to two years) and unlawful possession of fire arms (up to five years). While some of these powers are the subject of applications by district courts under the Bill on Criminal Procedure Code pending in the Legislature-Parliament, for the time being they remain in place.

Recently, through an amendment in the statute court of appeals have been empowered with jurisdiction of writs similar to the Supreme Court. District courts have also been given jurisdiction to issue habeas corpus writs which is expected to have a big impact on human rights situation.

It is certain that one of the consequences of the introduction of a federal form of government will be major changes in the roles and authority of Chief District Officers.

Since there is no systematic evaluation of the capacity of Chief District Officers available, and, in any event, given the wide variations in influencing factors across districts; it is not possible at this juncture to provide a critique of the capacity of this group.

With regard to the **Courts' System:** there is no separate operational system for civil and criminal cases, although experimentally there are separate benches in pilot district courts. Even in these settings, **judges** are not assigned according to their civil or criminal expertise but according to

seniority in their career. Seniors occupy the criminal bench and the more junior serve on the civil bench.

The shortcomings of the courts' system were readily admitted in the **Supreme Court's** second Strategic Plan (2009), which stated that "Justice is not only slow and cumbersome, it is also expensive. The court has failed to earn public trust and easy access to justice by the general public has not been maintained. Public cannot experience reform through the reforms being made on the physical aspect of the courts. It is imperative that reforms should immediately be made from the initial stage of registration of case to the execution of judgments" (p 64).

Given that the nature of the phenomenon is such that it eludes systematic review or measurement there is nonetheless evidence to support the view that elements in the Judiciary are subject to influences of coercion or corruption to produce perverse verdicts in cases involving the powerful or well-connected. There is also a widespread belief that judges have little enthusiasm to settle cases of common citizens that have been awaiting settlement for a long time, in some instances for several years, thus contributing to court backlogs.

However, even against this background, the judiciary has earned a reputation for acknowledging international human rights law in its judgments and has declared many laws *ultra vires* to bring them into line with the principles of human rights. As was noted in the Political Economy review, with all their lack of capacity and shortcomings, represent the only substantial defence of the citizen against criminality and the excesses of state power.

The Judges Society however, in its report to the Constituent Assembly, 2008 made recommendations for an integrated judiciary in the new constitution. They believe that federalism could provide momentum for fresh reforms in the civil justice system by reforming land/property related laws and family related disputes. The Supreme Court does not have jurisdiction to start the initiatives,

but is keen to collaborate with the Law Commission, Ministry of Law and Justice and other related ministries or stakeholders in the transition to federalism.

The judiciary is a low priority for funding, but in recent years the government has allocated money for the construction of court buildings and has supported programmes such as electronic case management. However, institutions such as the Judicial Council, National Judicial Academy, Judicial Service Commission and Judicial Service Training Centre are not well funded.

According to the Annual Report of the Supreme Court 2010, the court has made progress on implementation of strategic interventions with reforms in case management, execution of judgments through the establishment of the Execution Directorate, providing training to its staff, developing the infrastructure of the courts, applying information technology and media strategy, strengthening inspection and supervision systems, reforming the security management of the courts, institutional research, institutionalising relations with other stakeholders through JSCC, increasing access to justice and public trust and strengthening the institutional capacity of courts and tribunals.

While it still lacks capacity and there are undoubtedly issues of integrity in respect of some of the judiciary, the Supreme Court is evidently committed to a continuous improvement in the performance of the courts system.

**Quasi-judicial bodies**, such as land revenue office, land reform office and land measurement office function under various ministries, but render services as part of the civil justice system. In its second Strategic Plan, the Supreme Court states that it is not their jurisdiction to help such stakeholders to initiate reform. In this context, the government has not initiated any substantial initiatives such as reform of the law, procedure, management, capacity development of the human resources nor has it upgraded services. Some discussions on data management are underway, but

without systematic reform. The general perception of these bodies is that they are slow and inefficient and display an absence of any sense of commitment to service quality.

With regard to the role of Lawyers who represent citizens in Criminal and Civil proceedings: their oversight is the responsibility of the Bar Council which is established under statute to license, regulate and promote the legal profession. The Judicial Mapping and Judicial Assessment, March 2010, conducted by the World Bank, recommends that the legal profession introduce greater transparency and regulation with annual licensing renewal, mandatory continuing legal education and legal services complaint offices. Being a rule of law institution, the members of the legal profession are criticized for failure to register their offices, keep accounting systems and pay taxes to the government. The National Judicial Academy and Bar Council are statutorily mandated to provide training to lawyers, but due to low priority accorded to the training of lawyers, the Nepal Bar Association has proposed its own Lawyers Academy.

Issues relating to legal representation are inexorably linked with citizens' access to Legal Aid services. The Bar Association maintains that the international support to various legal aid initiatives has derailed progress toward a one door system of international support through the Central Legal Aid Committee. However, the Committee itself suffers from a lack of capacity to deliver and supervise any national service.

With regard to the capacity of **Parliamentary, Constitutional Oversight & Accountability Institutions**: the job of constitution making has put stress everywhere in the parliamentary institutions. There have been problems of manpower and resources, and many of the routine works that used to be done efficiently in the past (for example, policy debates in the House, or clause-wise discussion of the bills before the parliament) cannot be done now because of the poor political leadership, frequent

change in the government, increase in the number of legislators, and the number of parliamentary parties. On top of this the Legislative Parliament Secretariat is without any long term plans for the future. This has affected all institutions, legislative framework, oversight and accountability institutions and procedures based in the parliament. This is the situation of the committee system as well.

Not only do they have to meet the challenges of constitutional reform, parliamentarians and officials are confronted by limited budgets and resources, lack of education and training opportunities, low salaries and resulting poor motivation; all contributing to poor institutional performance. What limited training there is by way of overseas study visits or in-country training opportunities tend to focus on current technical problems and past perspectives, rather than providing higher level capacity building. One consequence of the institutional shortcomings is that the more able officials have a tendency to move to more lucrative institutions and others had a limited commitment to their employers.

As far as strengthening legislative framework is concerned, the parliament secretariat does not have a modern and functional capacity building division that could focus on consolidating and modernizing oversight and accountability functions. There is a committee on capacity development at CA which has virtually no programme calendar. After the election of 2008, the members of the constituent assembly (or legislative parliament) have been given the opportunity to take part in different orientation programmes abroad and are taken on overseas field visits. Many of them were able to further focus on the technical aspects of constitution making. However, these trainings were sporadic, decided in most of the cases by donors with little or no consultation with the constituent assembly secretariat. Some prominent members had more opportunities in this regard than others.

What has been observed is that the capacity development under this type

of intervention no longer focuses on all the areas where capacity is needed. The constituent assembly secretariat, or the parliament secretariat of the past, has its own bureaucracy which includes not just administrators, but also thematic experts like lawyers, reporters, marshals, and parliamentary committee level staffs. Some of them are pulled from government services. Newly elected legislators need such support more than others. Focus of legislatures means improved capacity at one level, but focus on the capacity of the members of bureaucracy means improved capacity at all levels. This reality has not been well recognized.

**In summary:** as was stated in the Introduction to this report; the Security, Justice and Rule of Law sub-sectors are inexorably linked one to the other and are best understood in the context of the interactive complexities of the entire Sector: and as was noted in the Political Economy review, the institutions within the Sector are burdened with the consequences of patronage, corruption and political interference. All are to a greater or lesser degree under-resourced, lacking in professional capacity and are facing an uncertain future in respect of the pending constitutional reforms.

## Inter- Sub-Sector Relations

There is a complex web of relationships within each sub-sector and across sub-sectors: some are cooperative and collaborative and some display the tensions of differing or conflicting agendas.

Within the criminal justice system there should be a cooperative, but not collusive, relationship between investigating police officers and prosecutors. However, the evidence points to the reality as being one where often poorly prepared crime files are submitted to prosecutors by the police at, or close to, the twenty-five day deadline for completing investigations; thus removing the possibility of prosecutors referring cases back for further investigation.

Whether this is due to work overload, poor case management, incompetence or subversive motivation, or any mixture of these, is an unknown at this stage.

In so far as it is known, a small percentage of criminal offences are actually prosecuted: of those that are, the success (conviction) rates in the cases prosecuted by district attorneys before the Courts is 72 percent (3696 in 5119 cases) whereas it is 95.25 percent (2926 in 3072) in cases brought directly before the Chief District Officer (CDO) by the police (OAG Annual Report 2009). This implies that when there are options for overlapping of jurisdiction, the incentive for the police is to take cases to the CDO rather than to the Courts.

As has already been mentioned, within the courts system, outside of the pilot districts, there is no degree of specialisation across the benches, with individual judges hearing both criminal and legal cases. There are arguments for and against judges specialising in one aspect of judicial practice, but one of the strengths of the current arrangements is that the judiciary, in engaging with both, are well placed to influence professional practice and courts' administration in both. In addition to the judiciary and the courts' administration, lawyers in private practice represent the other major link across the criminal and civil justice systems. Beyond these, at time tenuous and tangential, associations there is little interaction between the criminal and civil systems.

While it is a speculative assumption, it is nonetheless reasonable to infer that the role that Chief District Officers play in respect of adjudicating on both criminal and civil cases is perceived by at least some of the other Sector stakeholders as infringing on and undermining of their professional and institutional territory.

In a similar vein, the absence of a formal bridging mechanism between the statutory and informal systems represents an inter-sub-sector challenge, particularly in respect of the role played by the informal justice mechanisms in adjudicating on rather than mediating both civil and criminal cases.



The various parliamentary, accountability and oversight bodies have multi-layered interactions with each of the other sub-sectors; ranging from policy and legislative level consultations to detailed case level investigations.

With regard to the formal arrangements for managing inter-sub-sector relations, there are two bodies established by the Council of Ministers: committees for Security and Justice which exist at district, regional and central levels. There has been no systematic evaluation of the effectiveness of either of these mechanisms in the development and planning, coordination or problem solving across the Security, Justice and Rule of Law Sector.

## Social, Economic and Gender Dimensions

With regard to socio-economic factors: the 2011 USIP study concludes that: while violence and illegal activities appear to be increasing, socioeconomic challenges continue to affect security and the rule of law across the country. Women, children and marginalised groups continue to suffer from discrimination and rights abuses. Many of these abuses are rooted in societal norms, with individuals from nearly every section of society committing various levels of abuse or discrimination (p44).

Poverty, unemployment, rapidly rising inflation, corruption and discrimination have fuelled the divisions among citizens. According to Saferworld and IDA (2009), core areas for improvements are re-defining crimes and addressing their causes, fighting corruptions in justice and security agencies, putting an end to political interference in justice and security agencies, promoting transparency and disciplines, promoting community security and policing, specifying the clear mandates of agencies and ensuring equal access in justice.

The Interim Constitution for first time in the history of Nepal explicitly recognized Dalits, Adivasi Janajatis and Madhesis as historically marginalised groups and

specified them as beneficiaries of special treatment by the state. A few of these new provisions enshrined in the constitution include: right against untouchability and racial discrimination (Article 14), the provision of positive discrimination for Dalit, women, indigenous/ethnic groups, Madhesis, farmers, and other socially and economically marginalised communities (Article 13(3)), women's reproductive and ancestral property rights (Article 20), right to social justice on the basis of proportional representation of women, Dalits, Madhesis, indigenous/ethnic communities and other oppressed groups in the state structures (Article 21).

With regard to Gender issues; the Asia Foundation's Preliminary Mapping of Gender Based Violence (2010) reported that a considerable body of Nepal-based research on the subject points to gender based violence, particularly domestic violence, goes unreported in many cases as it is considered to be a 'family affair'.

For victims this is compounded by many women's financial dependency, lack of education and fear of social exclusion: many women preferred social pressure to stop violence and improve marital relationships rather than taking any legal recourse. The Asia Foundation report continues to map the institutional response to gender based violence as follows. Most of the cases reported to the police are settled through reconciliation and negotiation and only a negligible number of cases are referred for prosecution. Thus, the role of the law enforcement agency in cases of gender based violence is more like that of a mediating body (p14).

With regard to the prosecution of gender based violence; beyond it being seen as a "family affair", even if the case is reported to the police, priority is given for settling it within the family or community before taking it further. According to the Asia Foundation report: this contributes to the chances of compromise by the victim/survivor and in most cases, women fear to go to courts due to social pressure and agree for such mediation (p14). Added to all the other challenges are the financial

costs, potentiality of social isolation and vulnerability to future violence that any victim of gender based violence must take into consideration if they are to pursue formal justice remedies.

In respect of issues associated with gender and marginalised groups being represented within the Sector professions, according to the Supreme Court they have recruited more women and members of marginalised groups, but progress is yet to be made on recruitment from the Dalit community. It is considering running a capacity building programme for its women staff and establishing a special scheme targeting fresh recruitments. According to court officials, it will take ten years to see the results. It is understood that the general mood of the judiciary on inclusion, is to start entrants from the beginning of their careers: on the basis that bringing women, Dalit and marginalised community into the institution at the higher level may have negative impacts on the views others have of them and their future career development.

A survey of the licensed lawyers conducted by the Nepal Bar Council reveals that there are approximately 1000 women, 100 Dalit, 700 Janajati and 200 indigenous lawyers (from Terai like Tharu, Rajbansi, Ganagai etc.) out of 12000 lawyers practising across the country. The judiciary considers these lawyers as being 'not being at par on the merit list', but accepts that it is the State's responsibility to make them 'qualified' by adopting an inclusive approach.

## National Reform Efforts and International Support

### National Reform

The human rights plan of action, adopted by the government in 2010, has attempted to cover most of the issues in relation to access to justice within the agencies under the Executive. Under law reform, administration of justice and management issues such as legislation and amendment

of laws based on human rights, improved legal aid, enactment and enforcement of Mediation Law are highlighted.

Other significant issues associated with the Criminal Justice system include arrangements for speedy and effective child-friendly justice delivery, and protection of human rights in terms of maintaining law and order and law enforcement. The plans include improving detention centres, review of laws related to prisoners, medical and legal counselling service to prisoners, introduction of community service orders, open prisons and reintegration of the prisoners in community, legislation on re-integration, skill development training, capacity building of the child correction home in Kathmandu and establishment of correction homes in four other regions. Additional measures include capacity building of police in crime investigation and zero tolerance of human rights violations in the administration of justice.

The Government has submitted bills to the Legislature-Parliament on the Criminal Code, Criminal Procedure Code, and Sentencing. The draft bills, though they have many weaknesses, have at least attempted to address such issues as greater use of fines as opposed to custody, clarifying the distinction between the categorisations of serious and non-serious crimes and provision for ordinary offences to be resolved by mediation. Within the draft bills also, victims may receive interim relief, there shall be separate hearings for conviction and sentencing, and defendants may opt for instalment based payment of fines and may alternatively receive community service orders in place of imprisonment for ordinary cases. If this initiative crosses the political thresholds in the legislature, the withdrawal of criminal cases and the giving amnesties to the criminals by political nexus would be, to some degree, curtailed.

The Office of the Attorney General adopted and began implementing a Strategic Plan in 2006. However, the Strategic Plan of the OAG (2006 - 11) has had implementation problems and the envisaged annual rolling

out has not been achieved. Poorly conducted investigations, scattered and fragmented criminal legislation, insufficient support from other agencies, unstable leadership, overwhelming caseloads, and the presence of numerous de-motivating factors have all contributed to the strategy's undermining.

However, some initiatives are underway: government attorneys will be monitoring the human rights situation of the detainee in detention centres and will ensure access to legal counsel. The Office of the Attorney General collaborating with an NGO and with financial support from DANIDA is engaged in developing investigation and prosecution standard operation procedures, stemming from which it is anticipated that the quality of investigation and prosecution will improve.

Induction programmes for prosecutors and others in relation to the new Criminal Code and Criminal Procedure Code are at the planning stage. There is a proposal to outsource some public prosecution work to increase the effectiveness of the prosecutorial service.

Although the National Plan of Action on Human Rights has sought the support of NGOs as implementing partners, a paradoxical situation has arisen whereby the Ministry of Home Affairs has decided not to collaborate with NGOs and has banned its officials from participating in any programmes organized by NGOs.

The taskforce that drafted the Criminal Codes and Sentencing Bill has recommended that the prisons should be put under the jurisdiction of Ministry of Law and Justice instead of Ministry of Home Affairs. In principle, this proposal is appropriate: prisons considered to be a part of the jurisdiction of the department relating to the court worldwide. It is evident that prisons will not be reformed unless they are put under the jurisdiction of Ministry of Law and Justice. However, changing responsibilities alone cannot be a measure of reform unless there is specific programming and allocation of the resources.

The Ministry of Women, Children and Social Welfare are sponsoring a new

Children Bill and they are in process of finalizing the bill for submission to the legislature. This legislative reform initiative addresses some of the issues surrounding the juvenile justice system and represents an improvement in the existing system, embodying as it does some of the best practice juvenile justice principles.

The Central Child Welfare Board and Juvenile Justice Coordination Committees are implementing some projects funded by the Government and other agencies to build the capacity of officials involved in justice delivery for children in conflict with law.

Initiatives taken by the National Human Rights Commission in respect of the investigation of allegations of human rights violations and abuses by members of political parties or the holders of public appointments have created a degree of pressure on the Executive to pursue solutions to address the issue of wholesale impunity. In addition to this the Commission's regular prison inspections and operation of Juvenile Desk to oversee juvenile justice are in place, promoting a sense of accountability within the Criminal Justice System.

With regard to victims and witnesses, the only concrete initiative is an instruction from the Office of the Attorney General to the effect that witnesses should be provided with transport to enable them to attend court. On a policy level, the Law Commission has prepared a paper outlining a "model" witness protection scheme, but to date there has been no move toward its implementation.

Using regulatory powers, the government has taken steps to restructure the Nepal Police and with support from the government of India it is receiving buildings and equipment support along with vehicles and weapons. Through regulatory changes the Metropolitan City Police has been brought into being and a new Criminal Investigation Bureau has also been established to combat organised and complex crimes.

Taken together, and if fully implemented, the above initiatives could have a potentially positive and far reaching impact on the Criminal Justice system.

With regard to **Civil Justice**: the government has tabled a bill on the Civil Code and its Procedures to the parliament and if this bill is passed, it will significantly change the landscape of the civil litigation. However, despite the Supreme Court's order to promulgate compensation and tort law (NKP, 1972, p240) not a single step has been taken to introduce these laws into the legal system.

The consecutive strategic plans of the Supreme Court have consolidated the reform in the courts system and case management.

The Ministry of Women, Children and Social Welfare, in the support of Access to Justice Project of the UNDP, has formed a Task Force to expedite the establishment of Fast Track Court as ordered by the Supreme Court on women related cases. This Task Force has conducted research, which is yet to be made public. However, a domestic violence Act has been promulgated, but due to the constraints in the Act itself, implementation is yet to be seen.

Although it cites the administrative nature of such mechanisms and lack of judicial expertise in such bodies, resulting in unjust infringements on individual liberty; the report of the Judicial System Committee of the Constituent Assembly recognised quasi-judicial bodies as specialised courts permitted to hear cases with penalties of less than six months of imprisonment. The draft Civil Code proposes to bring the jurisdiction of such bodies under the regular courts. In the meantime, research conducted by the National Judicial Academy identifies a number of problems, including the lack of procedure, denial of natural justice and other problems caused by such bodies. In response, the Ministry of Law and Justice has prepared a draft bill to consolidate the procedures for the quasi-judicial bodies, but this has neither been made public nor been tabled before the parliament.

In addition to enacting District Court Rules, Appellate Court Rules and Supreme Court Rules to support mediation process the First Strategic Plan of the Supreme Court indicated need of mediation as ADR in court cases. (P.55 Nepali Version). In the second

Strategic Plan, the Supreme Court has given significance to mediation and includes establishment of mediation centres within each court premises.

A government initiative that might have an impact on informal justice mechanisms is the Mediation Act, 2011 that has recently been passed by the Legislature Parliament. The Act contains provisions of pre-court mediation, court annexed/referred mediation and community based mediation. The Act, however, has not yet been enforced.

With regard to Community Security: the Ministry of Home Affairs has introduced some two dozen new initiatives related to security sector reforms in order to strengthen people-oriented services. Among them, it has formed a Security Sector Reform Task-Force at national level: this task force is under the leadership of a former DIG along with representatives from Nepal Police, Ministry of Home Affairs, Nepal Army, Armed Police Force and National Investigation Department. It has two broader mandates: a) Policy recommendation for long-term security sector reform and b) provide recommendations for immediate intervention in order to address the immediate security issues in the country including border security.

The Ministry of Home Affairs has recently decided to establish help desks in District Administration Offices in all 75 districts. The major objective of the desk is to facilitate the poor and marginalised groups, that is, women, Dalits and disadvantaged groups; to increase their access to justice and security. Additionally, the Ministry is drafting a manual on community policing.

The situation with regard to **Legislative Framework, Oversight and Accountability** is that some organisations such as the CIAA, National Human Rights Commission, Supreme Court, Judicial Council, the Office of Auditor General, National Dalit Commission, National Women Commission, etc have their strategic plan on the basis of which they are developing their services. Many of these strategic plans are scant and superficial. As an example, the recent

Three Year Strategic Plan (2011 -2013) of CIAA, which has been introduced without SWOT analysis, and assessment of the present performance including the institution in relation to the conviction rate of prosecutions it initiated under the Prevention of Corruption Act.

## International Support

The Nepal Peace and Development Strategy (2011) emphasises that; the role of development partners in the peace process, therefore, is to help sustain the process by supporting the government to deliver development benefits in ways that reflect the new aspirations of the Nepali people (p3). However, it also acknowledges that: harmonization and mutual accountability between government and development partners are the Paris principles that were most weakly observed and implemented at the macro level (pxvi).

The Preface to the Strategy states that it: has been developed by a wide cross- section of local and international organisations and local and international subject experts, from UN agencies, bilateral aid agencies, international financial institutions, non-governmental organisations, think tanks and others. It has benefited greatly from inputs from, and discussions with, different parts of government during its formulation. What is not immediately apparent is the degree to which it is formally and jointly owned by the donors and the Government of Nepal, as partners in development.

Unless there is a well-documented record of donor activity in the Sector that has not been accessed in the course of this assignment; the available evidence points to our knowledge of the nature and extent of support by the international community, including financial commitment, being fragmented and incomplete.

In the preparation of this report, four sources of information on the current contributions of the International Community to the Sector were consulted: lists prepared by the Ministry of Finance, a tabulated list prepared by International-

Alert which is slightly out-of-date, the report Preliminary Mapping: Rule of Law, Security and Access to Justice in Nepal (2010) and the Action Plan for the Nepal Peace and Development Strategy (2011).

The content of each of these differs substantially, one from the other. Although the Peace and Development Strategy action plan is the most recent and, having been prepared by the donors themselves, likely to be the most accurate, there are details to be found in the other documents that also shed light on donor support to the Sector.

With regard to donors' financial commitment to the Sector, because this is expressed in different timeline terms; (and in the case of the Peace and Development Strategy not mentioned at all) it is difficult to estimate what the expenditure is year by year.

The table below sets out Ministry of Finance's estimate of support for 2010 -2011, but conspicuously leaves out some key government actors, such as the courts.

Min. of Finance: Donor Support to Sector 2010 -2011	
Ministry/Agency	\$
National Human Rights Commission	2,560,000
Min. Peace & Reconstruction	1,152,000
Min. Women, Children & Social Welfare	2,505,000
Min of Home Affairs (excluding buildings)	900,000
Total	7,117,000

The June 2010 International Alert tables document forty six donor funded programmes and projects; but only sixteen of these provide any financial details. Because the programme and project budgets are expressed in terms of amounts committed, but not broken down further, it is not possible to determine what the annual spend rate is. Converting the financial commitment recorded by International Alert in three currencies to US Dollars, the total comes to US \$ 25,787,000 (at the exchange rate on 16th July 2011).

Twenty two of the one hundred and seventy eight priority actions listed in the Peace and Development Plan relate directly to

the Security, Access to Justice and Rule of Law Sector, but no budgetary or timeline information is provided.

In the absence of any more complete or up-to-date information, the Peace and Development Plan has been used throughout this report as the reference point for donor activity.

According to the Action Plan for the Nepal Peace and Development Strategy, the following internationally funded initiatives relating to the Security, Justice and Rule of Law Sector are either underway, or are at the planning stage, providing support to:

- the establishment of an independent Police Service Commission
- the establishment of an independent police complaints-handling mechanism
- training on gender, children, human rights and social inclusion for police, prosecutors, paralegals, courts and community mediation centres
- the elimination of discriminatory laws and the strengthening of the criminal justice system to address caste-based offences
- the revision and implementation of a new Penal Code
- the Attorney General's Office to prosecute cases, including white collar and politically motivated crimes
- Nepal Police initiatives designed to strengthen aspects of police performance in Nepal and improves sensitivity to gender, children and human rights and social inclusion issues (for example, community policing)
- Measures to reduce political interference in the police and judiciary
- Training on gender, children, human rights and social inclusion for police, prosecutors, paralegals, courts and community mediation centres
- The upgrade facilities in courts
- The revision and implementation of the new Civil Code
- The establishment and capacity enhancement mechanisms to enforce court judgements
- Measures to ensure the independence and capacity of the judiciary
- Increased public access, especially for women and socially exclude groups,

to formal justice mechanisms or to alternative dispute mechanisms

- Measures to ensure that all security and judicial services are more inclusive
- LPCs and other local mediation mechanisms to strengthen their administration , financing and technical capacity and make them more gender-responsive and socially inclusive
- The traditional justice system of indigenous communities within a broader human rights framework
- Conducting an assessment of GBV cases and the development and implementation of the Domestic Violence Law, and the National Plan of Action.
- Support for understanding the role of the informal sector in providing security and justice.
- Enabling the development of evidence-based policies and programmes on security and justice through the provision of detailed analysis reports of people's perceptions of security, justice and justice and security sector reform issues in Nepal.
- Developing consensus through dialogue: a high-level dialogue process on national security policy in Nepal
- Supporting a more effective private sector role in advocating for and supporting better public security (pilot).
- Completing the drafting of the constitution
- Relevant existing and proposed commissions and other bodies
- Addressing critical implementation challenges
- Establishing a strong regulatory framework
- Institutions designed to protect the public from inappropriate party political interference, and the strengthening of oversight functions

It should be noted that there are some significant donors that notably do not contribute to, or contribute fully to, efforts to map current and planned programmes. This can be because of procurement protocols around such issues as commercial confidentiality or because of the political sensitivities associated with the nature and source of donor support: China and India's contributions to policing serve as illustrative examples of the later.

With regard to specific programmes, the major donors active in the Security, Justice and Rule of Law Sector in Nepal include DFID, DANIDA, USAID including US Embassy, UNDP, JICA and EU. The following paragraphs provide brief descriptions of some of these interventions.

DFID through ESP has been supporting community mediation programmes in six eastern terai region districts to successfully establish community mediation forum for easy access to justice by the poor and excluded groups. DFID is also supporting UNICEF for Women's Empowerment and the Promotion of Rights through capacity building of Paralegal committees. The programme will provide capacity building support to 1,300 VDC-level paralegal committees and 75 District Resource Groups.

A pipeline joint DFID-DANIDA support to Nepal Police Reform Programme aims to improve public trust in Nepal Police, especially among the poor and excluded. DFID through ESP and Saferworld are supporting interim activities with Nepal Police which will eventually be incorporated into the larger project.

DANIDA has an ongoing programme on community mediation in 11 districts implemented by national partner organisation.

USAID through its Anti-trafficking programme plans to support the Office of Attorney General, Judicial Academy and Judiciary to improve prosecution of people trafficking cases through training and technical assistance. The US Department of State has an ongoing programme to support Nepal Police on building capacity in Human Rights, democratic policing, infrastructure, communication, surveillance and disaster preparedness with an average annual budget of US \$850,000.

UNDP's US\$ 2.8 million existing programme on enhancing access to justice supports transitional justice, gender justice and access to justice at the local level areas. The programme aims to build national

capacity to carry out transitional justice processes, support awareness-raising on legal recourse to domestic violence and issues of gender base violence. At the local level the programme supports a comprehensive set of services for access to justice to the most vulnerable population including women and socially excluded communities. It also assists local and grassroots level free legal aid in seven districts and mediation services in 36 VDCs of four districts, strengthening local paralegal capacities in seven districts and engaging with traditional justice mechanisms.

JICA is supporting the community mediation in two districts and supporting civil code and civil procedures. JICA is also assisting in writing the explanatory note of the civil code and supports NP officers to participate in policing related training programme in Japan. The EU is planning a multi-year programme to support in the rule of law sector but support areas are not determined yet.

With regard to donor coordination: there is an informal Security and Justice Coordination Group for international actors engaged in this area that meets informally. There are two distinct elements within this grouping: donors who fund activities and those of the 197 International NGOs operating in Nepal who have programmes and projects in this area, or who are aspiring to do so. While there is no formal membership register, there is a mailing list of some seventy individuals from forty organisations who are regularly invited to the periodic meetings. While these meetings provide a forum for discussion and the sharing of information, there is no evidence that the group, of itself, actually facilitates coordination of efforts.

It would, in fact, be unrealistic to expect it to do so: it cannot be assumed that the participants have a unanimity of purpose or priority; there is not an equal relationship between the funder and funded and the extent and informality of the membership lacks the cohesion and structures necessary for it to be an effective medium for international coordination in the Sector.

It has not been feasible to conduct a systematic evaluation of the impact of donor funded programmes and projects in the course of this assignment: nonetheless, some reasonable inferences can be drawn from the documentary review and interview data secured in the course of the team's fieldwork.

Firstly, there appears to be a large number of small-to-micro projects supported by donors, which by virtue of their very limited budgets and short duration, are unlikely to have any significant or sustainable impact: in fact, if citizens' expectations are raised and not realised, the impact might prove to be negative.

Secondly, the International Community has an evident high investment in the support of informal justice mechanisms. Two evaluations of programmes in this area have been reviewed in the course of this assignment. One of these was thorough and expressed serious reservations in respect of the appropriateness of the conduct of many of the community based initiatives; particularly in respect of groups exceeding their mandates and concerns relating to human rights violations. The other review was superficial and concluded that the programme in question was performing to a high standard, although no evidence was presented for this finding.

As can be seen in the reports of the fieldwork for this assignment, and in the reviews of relevant documentation, there

are grounds for a fundamental rethink of donor support to informal justice mechanisms.

Beyond the operational performance of these mechanisms, there were concerns expressed by some key institutional stakeholders and international organisation representatives to the effect that support to informal mechanisms was undermining of the statutory sector, contributed to a further erosion of confidence in the courts and at times challenged the whole concept of the rule of law; that, regardless of perceived benefits, in the longer term this would be detrimental to citizens' interests overall.

Thirdly, Legal Aid represents another example of how a more strategic approach on the part of donors would serve citizens better than the support currently provided in this area. At present there are three systems of Legal Aid in operation: one which is run by the Government, one by the Bar Association and a third composed of several donor funded NGO initiatives: all of these suffer from uncertainties in respect of funding and sustainability. The point at issue here is that, if the principle that every accused person who is in danger of losing their liberty is entitled to legal representation, then there needs to be a single, permanent, country-wide Legal Aid service. The evidence is that donors' piecemeal support of time-bound, often geographically focused initiatives are not contributing to the development of such a provision.



# 3

## CHALLENGES & PRIORITIES

Based on the documentary and qualitative interview data collected in the course of this assignment, as set out in detail in Annex A, the following challenges and priorities have been identified in respect of each sub-sector.

Criminal Justice Challenges	Criminal Justice Priorities
<ol style="list-style-type: none"> <li>1. Citizens' serious lack of confidence in the integrity, capacity and commitment on the part of Criminal Justice officials, especially the police; they also being the officials with whom citizens have the most contact. This lack of confidence is evidently more acute for victims and defendants.</li> <li>2. A general disregard for gender justice</li> <li>3. A high prevalence of violent crimes against women and children and how these are dealt with.</li> <li>4. Uneven availability and quality of legal aid services and also high expectations in respect of entitlement to compensation</li> <li>5. Institutional and community failure to address juvenile justice shortcomings.</li> <li>6. Lack of support and protection for victims of crime and witnesses.</li> <li>7. Active discrimination against Dalits across the Criminal Justice system, in spite of formal legal protections being in place</li> </ol>	<ol style="list-style-type: none"> <li>1. To improve citizens' confidence in the Criminal Justice institutions, particularly the police through their becoming more capable, accountable and responsive</li> <li>2. To develop and implement a comprehensive gender justice strategy, embracing the entire Criminal Justice process</li> <li>3. To reinforce the fact that crimes of violence against women and children are to be dealt with by the statutory authorities</li> <li>4. To promote a more realistic set of legal aid and compensation expectations on the part of citizens</li> <li>5. To promote full adherence to the Convention on the Rights of the Child in respect of juvenile justice</li> <li>6. To develop and expend current initiatives in respect of the care of victims and the protection of witnesses.</li> <li>7. To ensure effective implementation of anti-discriminatory laws and procedures.</li> </ol>
Civil Justice Challenges	Civil Justice Priorities
<ol style="list-style-type: none"> <li>1. Absence of a pro-public service ethos within justice institutions; leading to a lack of pro-citizen attitudes, procedures and laws in justice administration</li> <li>2. Courts, particularly through delays, and failure to enforce judgements have failed to provide satisfactory results, especially for women and marginalised groups</li> <li>3. Inconvenience, cost (including payments to officials) and risk to personal safety for those involved in litigation</li> <li>4. Lack of effective and affordable representation</li> <li>5. Quasi-judicial institutions have low capacity and are lacking in fairness, promptness and procedural compliance</li> <li>6. Lack of legislative base for compensation in civil law and tort liability</li> <li>7. Poor coordination between justice sector institutions</li> <li>8. Substantial lack of awareness of legal rights on the part of citizens</li> </ol>	<ol style="list-style-type: none"> <li>1. Design and orient pro-citizen law, procedures and institutional reform initiatives to serve the people</li> <li>2. Improving access to and effectiveness of civil courts, including enforcement of judgements, so that they instil greater confidence on the part of citizens, particularly women and marginalised groups</li> <li>3. Improving access while reducing cost of litigation, improving compliance with the code of conduct, strengthening complaints' mechanisms and improving security for litigants.</li> <li>4. Improving the accessibility, affordability and quality of arbitration and mediation services as alternatives to the informal mechanisms that citizens might otherwise resort to</li> <li>5. Strengthen the legal aid system and quality of legal representation</li> <li>6. Improving the quality and integrity of service provided by quasi-legal institutions</li> <li>7. Develop and implement an effective and affordable civil legal regime on compensation and tort liability</li> </ol>

	<ol style="list-style-type: none"> <li>8. Improve capacity and expand the membership of JSCC to enhance its effectiveness in justice sector coordination</li> <li>9. Developing a communication strategy in respect of citizen's legal rights.</li> </ol>
<b>Informal Justice and Community Security Challenges</b>	<b>Informal Justice and Community Security Priorities</b>
<ol style="list-style-type: none"> <li>1. Mediation Act, 2011 is not commenced yet. Despite of enactment of Mediation Act it is not a priority for government to roll out the Act in districts.</li> <li>2. Capable, community based mediation organisations are not emerging in communities.</li> <li>3. Much of the operation of informal justice mechanisms undermines or interferes with the formal justice system</li> <li>4. Citizens' have limited confidence and trust on Police and its institution basically functioning style of police which lead to lack of pro-citizen attitude along with lack of accountability and lack of presence of police/security units in the community</li> <li>5. In prospective constitution lowest level of formal justice providing organisation in State/Province level judicial structure is local/ Mediation Court. There is not any clear vision of jurisdiction and functioning of such mediation Court.</li> <li>6. A traditional mindset on the part of both men and women along with the personnel of security institutions that hinders gender justice and security in the community</li> <li>7. Citizens' have grave concerns about the current vacuum in local government, as well as concerning the next stages in the political process and its impact on local level security and peace.</li> <li>8. Lack of comprehensive national strategy, adequate legislation, and policy guidelines on strengthen community security</li> <li>9. Limited investment made for developing community infrastructure technical knowledge &amp; skill, weak communication mechanism and resources by state</li> <li>10. Citizens fear the proliferation of small arms, increasing number of criminal groups active in kidnapping for ransom, looting and killing people for monetary benefits, and increasing tendency of political parties' and their sister organisations to interfere in security institutions both formal and informal.</li> </ol>	<ol style="list-style-type: none"> <li>1. Earliest commencement of Mediation Act and incremental roll out in districts.</li> <li>2. Creating new and transforming traditional mechanism as permanent Community Based Mediation Organisation</li> <li>3. Effective supervision and oversight of the operation of informal justice mechanisms</li> <li>4. Establishment of a bridging mechanism between the informal and formal justice systems</li> <li>5. Improvement in citizens' confidence in the statutory institutions, particularly the police becoming more capable, accountable and responsive.</li> <li>6. Challenge inappropriate mindsets through education and anti- discriminatory measures and build equality mechanisms into donor support to community security initiatives</li> <li>7. Civil society, political party representatives and district level justice coordination committee members coordinate to promote non-violent political alternatives</li> <li>8. Improvement in citizens' confidence in the statutory institutions, particularly the police becoming more capable, accountable and responsive</li> <li>9. Improved and coordinated policing to reduce small arms smuggling and commission of crimes.</li> <li>10. Improved interaction of police with local community.</li> <li>11. Transformation of wings of political parties to limit their work within the law.</li> </ol>
<b>Legislative Framework, Oversight and Accountability Challenges</b>	<b>Legislative Framework, Oversight and Accountability Priorities</b>
<ol style="list-style-type: none"> <li>1. Prospect of unplanned constitutional implementation and federalization following the promulgation of the new constitution</li> <li>2. Inconclusiveness of parliamentarian political forces on the proposal of constitutional provisions in security and justice sector at federal and provincial levels</li> <li>3. Limited effectiveness of parliamentary oversight</li> <li>4. Low public confidence in parliamentary oversight</li> <li>5. Ineffective constitutional oversight bodies.</li> </ol>	<ol style="list-style-type: none"> <li>1. Development of a national transition plan based on the new constitutional requirements</li> <li>2. Consensus on the of security and justice power structures at federal and province levels</li> <li>3. Strengthening of parliament and its thematic committees with security, justice and RoL responsibilities</li> <li>4. Emphasis on improvement of public confidence in parliamentary oversight.</li> <li>5. Increase independence, professional competence and integrity of relevant constitutional oversight bodies</li> </ol>

The following SWOT analysis provides a tabulated synopsis of aspects of institutional capacity, political economy, challenges and priorities across the Security, Justice and Rule of Law Sector.

<b>SWOT SUMMARY SECURITY, JUSTICE and RULE of LAW SECTOR</b>	
<b>Strengths</b>	<b>Weaknesses</b>
<ul style="list-style-type: none"> <li>▪ Reformers working in the system</li> <li>▪ Supreme court leading on important court reforms</li> <li>▪ Greater awareness of citizens rights</li> <li>▪ Presence of police generally welcomed in communities</li> <li>▪ Specialist commissions having a positive impact</li> <li>▪ Pipeline Reforms</li> <li>▪ Civil court verdicts generally seen to be fair</li> <li>▪ Speedy delivery of informal decisions</li> <li>▪ Many have a high degree of faith and acceptance in informal mechanisms</li> <li>▪ Effective implementation of decisions</li> <li>▪ Community organisations instil sense of security</li> <li>▪ Communities generally more secure than in the past</li> </ul>	<ul style="list-style-type: none"> <li>▪ Attorney General highly transitory</li> <li>▪ Ineffective and weak policing</li> <li>▪ Poor investigative skills</li> <li>▪ Poor legal representation and verification of evidence</li> <li>▪ Prison regime solely punitive</li> <li>▪ Political interference</li> <li>▪ Poor oversight mechanisms</li> <li>▪ Criminal justice institutions poorly resourced</li> <li>▪ Delays in Civil proceedings</li> <li>▪ Problems with enforcements of judgements</li> <li>▪ Legal aid provision uneven in distribution and quality</li> <li>▪ Lack of public confidence in Civil process even if they have faith in the judgements</li> <li>▪ Quasi-judicial bodies perform poorly and lack accountability</li> <li>▪ Evidence of disregard for human rights and natural justice</li> <li>▪ Domination of traditional values that are discriminatory</li> <li>▪ State institutions pay insufficient regard to community security</li> <li>▪ Informal mechanisms undermining of formal system</li> <li>▪ Many donor supported initiatives are unsustainable</li> <li>▪ Politically motivated criminality is widespread</li> <li>▪ Some community justice and security groups have been "high jacked" by political parties</li> <li>▪ Structural violence, based on domination of traditional values that are discriminatory, prejudiced and reinforced inequality and exclusion, is rampant.</li> </ul>
<b>Opportunities</b>	<b>Threats</b>
<ul style="list-style-type: none"> <li>▪ Delegation of writ jurisdiction to lower courts leading to more protection</li> <li>▪ Donor interest in supporting system's reform</li> <li>▪ Putting pipeline reforms into action</li> <li>▪ Provisions of alternatives to custodial measures in draft bills</li> <li>▪ Civil society can be useful ally for reformers</li> <li>▪ Federalism represents an opportunity for new beginning</li> <li>▪ Moves toward building links between formal and informal mechanisms be delayed through community policing Police reform will bring greater security to communities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Political discussions breakdown, leading to civil disorder</li> <li>▪ Badly managed transition to federalism could compound rather than relieve problems</li> <li>▪ Poor penal regime will prompt greater recidivism</li> <li>▪ Political interference will increase</li> <li>▪ Public confidence will deteriorate even further</li> <li>▪ Police reforms are thwarted</li> <li>▪ New constitution writing process may be delayed through community policing Police reform will bring greater security to communities</li> <li>▪ Delays and poor enforcement of judgements prompt recourse to informal mechanisms and citizens taking matters into their own hands</li> </ul>



# 4

## OPTIONS & RECOMMENDATIONS

A fundamental challenge that the international community needs to address, in advance of any other, concerns the advisability of any engagement on their part with the Security, Justice and Rule of Law Sector in Nepal.

The analysis provided by the Political Economy review and the critiques of the sub-sectors that appear throughout this report point to a profoundly weak state that is at present incapable or unwilling, to embrace the change processes necessary to ensure the Sector's viability, credibility and independence from corrupt interference. A general lack of institutional and professional capacity, the apparent absence of any Sector-wide strategic direction and the perceptions as well as the realities of officials' susceptibility to corruption and coercion, combine to fuel citizens' lack of confidence in the Rule of Law institutions.

Regardless of the "new dawn" aspirations that are held for the introduction of the new Constitution and the transition to a federal form of government, there are powerful vested interests within the political-criminal-police nexus that will seek to retain their toxic influence on the Sector. The current "dysfunctional enough" social-political-security equilibrium is essential for their continuing influence and prosperity: if the situation in the country either improves or deteriorates significantly such equilibrium would be disturbed.

Outside of the institutional milieu, many of the civil society organisations associated with the Sector, which are often in receipt of donor support, reinforce rather than

challenge the denial of justice to vulnerable groups and still others have been subject to "capture" by party political interests.

The above circumstances and dynamics, and the prospect that there is little likelihood of them changing for the better in the foreseeable future, constitute a strong argument for donor disengagement from supporting the Security, Justice and Rule of Law Sector and directing future contributions toward less bleak and more fruitful environments.

There are four major counterbalancing arguments to the above scenario and conclusions.

Firstly, if one of the primary reasons for donor support to the Sector is to improve the wellbeing and protect the rights of ordinary people, particularly the poor and marginalised, engagement with the institutional environment, either directly or indirectly by means of supporting civil society, is an essential element in this.

Secondly, although the current scenario is overall bleak, there are undoubtedly committed and honourable officials at all levels through whose efforts and tenacity progress, albeit limited and halting, is being made in some key areas. While the Supreme Court is to the forefront in driving change, there are other positive dynamics at play in the Nepal Police and within the legal profession. It would be ethically and pragmatically inappropriate for the international community to fail to support these positive endeavours.

Thirdly, while present circumstances appear inauspicious, it would be wrong to underestimate the influence that is brought to bear by the international community's engagement with the Security, Justice and Rule of Law Sector. It is not being overly speculative to suggest that without donor support in key areas, the situation would be measurably more pessimistic than is currently the case.

Finally, although there is a danger of over-investing in the promises offered by the transition to a federal form of government, it does nonetheless hold out the potential for positive, if not profound, change within the Sector; and the international community should be engaged to assist reform champions take advantage of the possibilities offered.

#### RECOMMENDATION

It is therefore recommended that the international community continues supporting the Security, Justice and Rule of Law Sector: but does so with caution and with the expectation that progress might be slow and subject to setbacks.

The time that countries need to recover from conflict generally far exceeds the time horizons of donor agency plans. According to the World Bank's review of post-conflict countries, it took the 20 fastest-moving countries an average of 20 years to achieve functioning bureaucratic quality, and 27 years to bring corruption under reasonable control. This did not mean perfection, but rather adequacy (P108). Assistance to fragile states must be flexible enough to take advantage of windows of opportunity and respond to changing conditions on the ground. At the same time, given low capacity and the extent of the challenges facing fragile states, international engagement may need to be of longer-duration than in other low-income countries. Capacity development in core institutions will normally require an engagement of at least ten years (OECD 2007).

It therefore follows that, if the above recommendation is accepted, realistically, donor support to the Sector needs to be considered in terms of not less than a five

year planning frame; and for that to be seen as a beginning step, not an end point.

## Joint Aid and Coordination

Assuming acceptance of the recommendation to continue international community support for the Sector, there are three key strategic challenges confronting the international community in their efforts to do so:

1. The first of these, the challenge of securing effective partnerships with Government actors, has been well documented throughout this report. The response to this has to include incentives that secure the commitment of the current actors and which will also endure their predictable replacement by others in an almost continuous cycle of political and public administrative change.
2. The second significant challenge for donors working is how exactly to balance short-term needs to provide services quickly and efficiently to poor and marginalised groups, with longer-term aims to reform local public institutions so that they are capable of effectively delivering basic services (OECD 2006). Within the short-term, long-term continuum there needs to be space for the experimental, the prompt response to sudden need, the time-bound research and evaluation and the provision of seed-corn funds for start-up initiatives. Therefore, there have to be mechanisms that respond to these circumstances, but which simultaneously adhere to a sense of shared direction toward a common strategic goal.
3. The third strategic challenge for donors is to establish mechanisms that facilitate effective collaboration among them, that, in the absence of a sector-wide strategy, nurture a more strategic approach on the part of key Government actors, and that are targeted in a manner that has systemic impact.

An important beginning point is the creation of a coordination mechanism that provides a foundation on which to

construct interventions in support of Sector development and reform.

As has already been noted in this report, the current coordination arrangements within the international community are clearly insufficiently robust for the purpose of framing and implementing an intervention strategy for this Sector. This being the case, donors and NGOs need to enter into a dialogue to come to coordination arrangements that are concrete, structured, have a specific mandate and effectively achieve their purpose. There needs to be a set of arrangements that reflect the diversity of interests and responsibilities, that make available a platform for discussion, debate and lesson learning and which provide a representational voice in dealings with the Government of Nepal.

The arrangements for international community coordination need not be elaborate. Bringing more structure and a greater clarity of purpose to the Security and Justice Coordination Group would represent a major advance in this direction. Without being in any way "exclusive" there should be a greater sense of criteria for membership, clarity concerning what that represents, the development and operation of an information sharing strategy and an element of secretariat support to service the membership and facilitate their coordinating activities. The information strategy should include the development and maintenance of a data base of donor supported activities and publication of reports and programme evaluations.

Beyond the bilateral arrangements that donors might have with Government counterparts, efforts should be made to engage as a representative group with inter-ministerial coordinating arrangements in the form of the Government of Nepal's Security and Justice Committees. Since the donors already have a donor to donor mechanism in the Utstein Group the formation of a Sector sub-group for donor coordination and dialogue with Government should be relatively straightforward.

The level of partnership with Government counterparts that is possible will vary. For

example, the Supreme Court prioritises assistance with its strategic plan over any donor initiated proposals and the other end of the spectrum the Secretary to the CIAA has made it abundantly clear that, in his opinion, donor assistance to his organisation is neither needed nor wanted.

In terms of how donor support to the Sector can be effectively delivered there are three distinct options.

A straightforward way for donors to divide up the responsibilities, based on their strengths and interests in a particular area. From this they would develop new programmes, or re-focus existing ones: and perhaps share monitoring and evaluation reports with the International Community, by way of making lessons learned contributions to the work of others. This option is not a proposal for "business as before": rather, it is a call for a more consciously planned and coordinated approach to individually funded and managed initiatives than has been the case to date.

The major downside of this approach is that it effectively leaves aside the inexorable interlinking of the sub-sectors and as a consequence the impacts of the various interventions are unlikely to meet their full potential. It is also rather loosely structured and as a consequence there is a substantial risk of drift toward ad hoc decisions and arrangements.

A second option goes one step further: in this approach individual donors, or donor partnerships, agree on which area or areas they will take responsibility for supporting and, in the spirit of cooperation, identify points of synergy across the portfolio. On the basis of this they would seek out and act on opportunities for common outputs and shared activities. Such an approach would aim to render results consistent with the interlinked nature of the priorities and minimise the administrative burdens inherent in multi-donor programme management.

The down side of this approach would be the challenges of sequencing and timing of collaboration: the reality that cross-programme outputs and activities can

be difficult to synchronise can become a disincentive, particularly if programmes are targeted in different geographical areas or different central institutions.

A third option would be for donors to enter into a strategic partnership that provided a jointly funded, jointly managed “umbrella” programme which systematically addressed all priorities within a single programme framework. This might entail making an entirely new beginning, but it would also be feasible to bring existing activities within the umbrella framework.

While an immediate impression might be that this represents an elaborate construction, the complexities could potentially be far outweighed by the benefits. An umbrella programme would ensure that all priorities were given due consideration, and, if well managed, prove to be not only effective, but also better value for money than the operation of separately focused projects.

One of the strengths of an umbrella framework is that it allows for a more

flexible use of resources than would be the case in other, more compartmentalised, approaches. For example if there was unexpected progress toward a Government strategy for the Sector, it would be relatively straightforward to respond to this within the framework. On the other hand, if an aspect of the programme was falling short of its objectives, the option would exist for either bolstering resources for its improvement or diverting resources away toward more productive interventions.

Taking into account the need to address all of the Sector's priority elements, the benefits for citizens in having a wide spectrum of needs addressed within a single initiative and the programme management flexibilities and economies that are available, an umbrella programme approach is the one most likely to meet these aspirations.

The work plan outlined below sets out the key tasks and sequencing for the implementation of the strategic foundation recommendations.

### STRATEGIC FOUNDATION RECOMMENDATIONS

1. Establish a more effective mechanism for International Community coordination, including the development of an information strategy which incorporates a continuously updated database of donor supported activities
2. Establish a formal and regular point of dialogue, negotiation and partnership with the relevant stakeholders in the Government of Nepal
3. Establish a multi-donor “umbrella” programme for the delivery of support to the Security, Justice and Rule of Law Sector

Activities	Months											
	1	2	3	4	5	6	7	8	9	10	11	12
Agreement within international community on improved coordination arrangements and putting these into place												
Agreement on, and establishment of, umbrella framework for delivery of donors' support to the Sector												
Establishment of a framework for working partnership with Government counterparts												
Audit of existing programmes and the identification of baselines for future interventions												
Preparation of business case for short, medium and long term interventions within the umbrella framework												



## Short, Medium & Long Term Impacts

Given that the ultimate objective is to benefit citizens throughout the country, the international community's interventions need to focus on enabling the Government of Nepal to deliver sustainable, effective and affordable improvements in service delivery nationwide, either through direct assistance to statutory institutions or through the support of citizens' advocacy, self-help and service delivery organisations.

This will require partnership arrangements with civil society and Government at both policy and operational levels and support to reform initiatives at central and sub-national levels. If there is not a strong link between the policy and operational levels, then any initiative that confines itself to either sphere will predictably fail to have significant or enduring impact. This being the case, in planning any intervention donors need to ensure that there is a bridge between the central policy level institutions and the provision of services in the field.

In an ideal situation, the Government of Nepal would have a well prepared Security, Justice and Rule of Law Sector strategy that donor agencies could support with resources and technical assistance. A Sector-wide strategy would represent recognition of the complex symbiotic relationships within and between sub-sectors and facilitate engagement with all the interwoven cross-Sector priorities simultaneously, from a systemic rather than linear perspective. While this is evidently not currently the case, and unlikely to come about in the immediate future, a Sector-wide programme in support of a national strategy for Security, Justice and Rule of Law should nonetheless be pursued as a long term aspiration.

Given that the challenges and uncertainties facing the Government of Nepal are unlikely to abate anytime soon, donors need to adopt a pragmatic approach to interaction with the key ministries and other statutory institutions: thus support to some elements of the Sector will inevitably be more intensive than that provided to others.

In a more ideal setting, and in the spirit of donor aid effectiveness, there would

usually be an argument for on budget direct transfers, with the Government of Nepal deciding by itself on how best to put these resources to work; however, it is improbable that this is appropriate at this stage. The reasons for this are that there is currently an issue of absorptive capacity and as mentioned earlier the lack, for the immediate and medium-term future, of an integrated strategy for the Sector: taken in combination these would probably substantially undermine the effectiveness of any such transfers, or see them diverted to other areas of government budgets.

Added to this is the fact that on budget support has a tendency to be used by governments conservatively rather than innovatively: and finally, it is worth noting that the members of the Parliamentary Women's Caucus whom we met in the course of this assignment were vociferously opposed to any suggestion of on budget support from donors; this stemming from a belief that it would be either wasted or embezzled.

Finally, from the perspective of donor nations, on budget support prompts: an acute sensitivity to the risks of domestic criticism of waste, abuse, corruption, and a lack of results in donor programmes. International actors need to be accountable to their citizens and taxpayers as well as to partner country needs, and these expectations can be at odds (OECD 2006).

A more feasible option for donors is directing resources for the Sector through the establishment of a multi-donor trust fund. It is widely accepted that such initiatives: as post-crisis funding mechanisms, represent "best practice," in line with the Paris Agenda for Aid Effectiveness and have served as important instruments for resource mobilization, policy dialogue, and risk and information management (Scanteam 2007).

A multi-donor trust fund would make a systematic and useful contribution to the furtherance of Sector reform. Within clearly defined parameters it would support

activities that are substantially demand driven, ensure targeting of resources as well as providing a Sector-wide oversight and evaluative framework for such undertakings. It could be drawn on by government institutions seeking to develop capacity or explore innovative solutions, national and international NGOs and community level citizens' groups. With the active participation of Government actors in the design and management of a multi-donor fund would come some degree

of incentive for statutory institutions to engage with donors more enthusiastically than they might have done in the past; thus enhancing donor influence on policy and strategy.

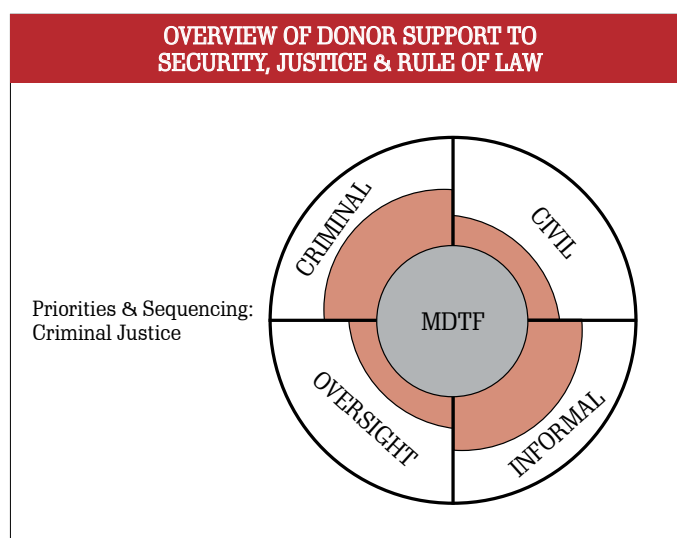
A multi-donor fund for the Security, Justice and Rule of Law Sector would address all three of the strategic challenges identified earlier in this section of the report and would provide short (quick win), medium and long term support.

### SHORT, MEDIUM & LONG TERM IMPACT RECOMMENDATIONS

1. While retaining an aspiration for a Sector-wide strategy in the longer term, donors should adopt a pragmatic approach to the support of Sector reform, engaging with those settings where success is more likely to be found.
2. Donors should establish a multi-donor trust fund that will provide demand driven support to the Sector's institutional and civil society stakeholders.

Activities	Months												
	1	2	3	4	5	6	7	8	9	10	11	12	
Agreement in principle between international, government and civil society stakeholders on the goal and scope of the MDTF's activities	█	█											
Formal establishment of the Fund and commitment of donor funds		█	█	█									
Promotion of the Fund with stakeholder interests and potential applicants			█	█									
Commencement of allocation of funds to successful applicants					█	█							
Fund fully operational						█	█	█	█	█	█	█	█

Bringing together the themes of coordination and impact: the following figure provides an illustration of how an integrated umbrella framework, that encompasses the operation of the MDTF, would hypothetically operate. It should be noted that the distribution of emphasis across the sub-sectors is for illustrative purposes only and should not be seen as indicative of how donor interventions might ultimately be distributed.



As is the case in other countries in a comparable position, during the conflict years in Nepal, extreme armed violence dominated the political environment and criminality became almost the norm in the many places where the rule of law could not adequately be enforced. Although the country is now in recovery from the conflict, some of the criminal habits of the past still linger on, as do some of the conflict generated activities and attitudes of state actors. The fundamental challenge for the Criminal Justice system, therefore, is to erode steadily the causes and consequences of both, rather than aspire to their rapid elimination.

The evidence secured in the course of this assignment points to the entire Criminal Justice system being besieged with multiple problems, but nonetheless it manages to operate, albeit in what is generally perceived to be a dysfunctional manner. Notwithstanding the fact that to achieve any degree of sustainable reform, the system needs to be viewed and engaged with as a systemic whole, rather than as a collection of disparate institutional roles and functions; there are points of potential systemic leverage within key institutional environments. Without implying that other aspects of the Criminal Justice system should in any way be ignored: two of the pivotal institutional leverage points are within the Nepal Police; and lawyers as prosecutors and defence attorneys.

Any effort to reform the **Nepal Police** needs to take account of the historic and contemporary dynamics that drive its occupational culture. The NP has gone in one move from being an agent of the Monarch to being an agent of the State and, especially in the light of the inheritance from its situation in many locations of virtual siege during the conflict; there has been little evidence of a “peace dividend” that would propel its transformation toward a public service ethos. A key element in the evident shortcomings of the Nepal Police, as in any dysfunctional setting, is the fact that there are powerful actors who benefit from the current arrangements, both inside and outside the organisation. Positive change will only come about when these are either

“won over” or marginalised or removed from positions of influence.

Without a fundamental change in the occupational culture of the police, all the planning, community policing initiatives, anti-discriminatory and other reform measures will have minimal impact on the delivery of policing services to the community. By its nature, the culture in any organisation, particularly policing, is deep seated and difficult to change; but change drivers can influence or manage an organisation's culture: it is not easy, and it cannot be done rapidly, but it can be done.

The necessary changes will only come about when the Nepal Police reframe:

- The role that the organisation plays, away from serving the interests of the State toward a public service ethos
- The goals of their organisation, toward meeting citizens' needs through providing a capable, accountable and responsive service
- How people in the organisation will work together to achieve these goals, including having a workforce that is representative of the community that it serves and that is appointed and promoted on merit.

The drivers of change who will ultimately bring about the necessary cultural shift in policing are to be found in the institutional leadership, within the ranks of the organisation itself and through leverage exerted by civil society. Between them they need to create the means and the opportunities to infuse the organisational actors with new ways of looking at themselves and their capabilities. Public service values need to be communicated effectively, internalised by police personnel, and then translated into productive methods of thinking and working. Only when these circumstances prevail will reform and innovation be guaranteed enduring success.

The *Basic Principles on the Role of Lawyers* establish universal standards of conduct and are a good place to start in considering the role of **defence**

**lawyers.** These principles include the provision that “all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.” As has been identified in the documentary and respondent evidence, there are concerns about both the availability and quality of legal services provided for defendants, especially those reliant on legal aid. Given the preponderance of confession-based convictions, concerns about the ill-treatment of persons held in custody and the alleged denial of due process in some judicial proceedings, there is a pressing need, not only for legal representation, but for higher calibre legal representation.

Beyond this, the seemingly widespread, but objectively unnecessary, practice of victims of crime feeling the need to have professional legal assistance to register a crime report with the police acts as a further disincentive to using the formal criminal justice system. Legal assistance should not be necessary in order to report a crime and where advice or support is required, this should generally be the role of civil society advice or advocacy groups.

With regard to the role of **prosecutors:** in Nepal, unlike in many other jurisdictions, they have the dual role of prosecuting cases and protecting the rights of persons held in custody. In respect of the first of these responsibilities, they are often hampered by poor police investigation; a circumstance frequently compounded by the, contrived or neglectful, delivery of police crime files right up on the statutory time limit, and their own lack of capacity and motivation. There is a degree of ambiguity about their powers should they detect the ill-treatment of detained persons and, at a purely speculative level, their degree of commitment to the discharge of this responsibility might be open to doubt.

The drivers for change who need to coalesce in order to improve the quality of service and the confidence of the population in the role of lawyers and their interaction with the policing service are: champions of change within the legal profession and

within the police service, civil society and judges.

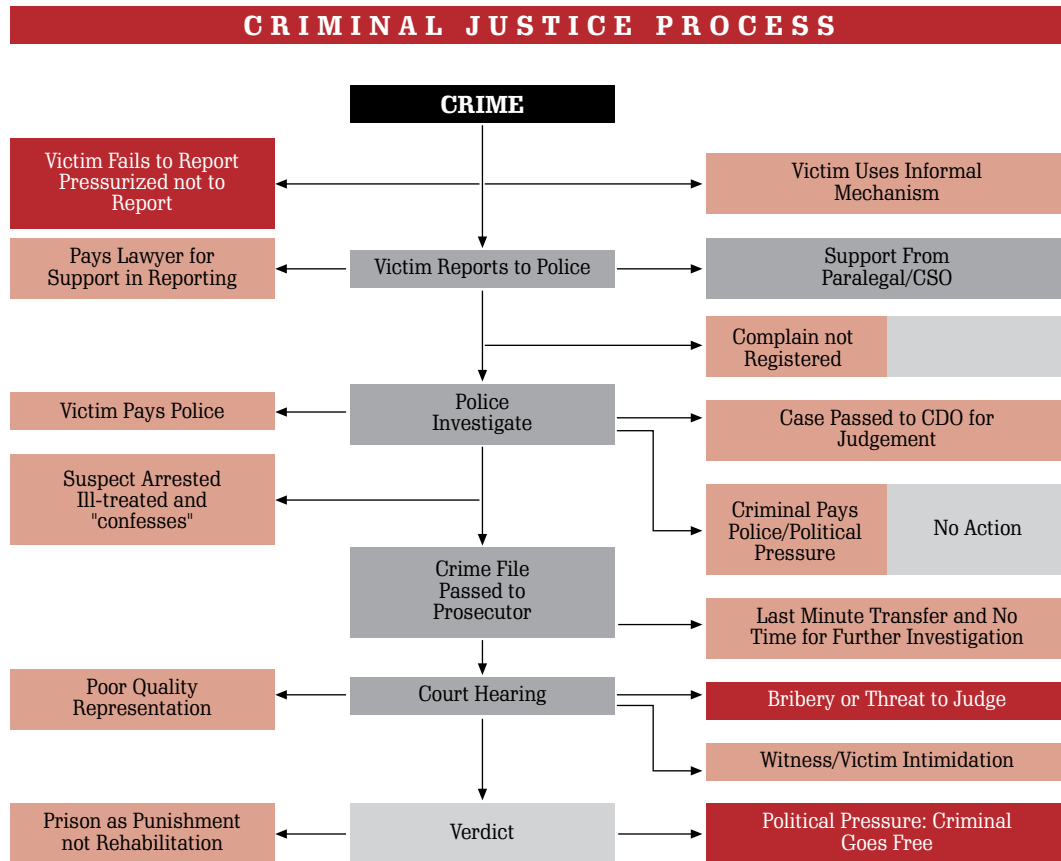
While the relationship between prosecutors and police should never be collusive it should always be co-operative: such professional cooperation should be characterised by sharing information and advice as a crime investigation progresses, so that prosecutors are not “landed” with poor quality crime files at the last possible moment. Indications are that defence lawyers need to be more assertive in their representation of their clients. The Bar Association at national and local levels has an obligation to assert their authority in terms of setting and maintaining standards of professional practice. Judges have a key role to play in expecting and enforcing minimal standards of professional performance in their courts. They should be more sceptical of prosecutions that are based solely on the confession made by an arrested person, without the presence of a legal representative: they should demand that cases brought before them are adequately prepared, presented and defended.

There is also an important role for a lay element in respect of support to victims and protection of the rights of arrested persons. While paralegal groups, when they act in this capacity, already provide advice and support to victims in reporting crime; the procedure of itself should be neither complicated nor arduous and only rarely should the services of a lawyer be considered necessary. With regard to persons held in custody, either by statute or voluntary agreement, suitably trained citizens should have the right to visit the locations where people are detained to ensure that their rights are being protected. Such an arrangement exists by law in several countries, including Britain and Ireland.

To emphasise the point made earlier in respect of policing in general; modest as these improvements appear, there would undoubtedly be a considerable degree of change resistance from vested interests, which is why a coalition of committed and tenacious professionals and citizens would be necessary to drive them through: and as with policing progress would be predictably slow, but it would be possible.

# Sequencing and Priorities – Criminal Justice

The road to fundamental reform in the Criminal Justice system will be lengthy and challenging. Against the above backdrop it is therefore important to consider where the potential points of initial intervention might be found. To this end the following paragraphs will explore the operational processes of the Criminal Justice system alongside the higher level sub-sector priorities as outlined earlier in this report.



**CRIMINAL JUSTICE PRIORITIES**

	<p><i>To improve citizens' confidence in the Criminal Justice institutions, particularly the police through their becoming more capable, accountable and responsive.</i></p> <p>Regardless of the Nepal Police's shortcomings, there are internal and external drivers for change that predispose progress toward reform: and there is similar potential within the judiciary and prosecutorial service. Donors should give these their wholehearted support.</p>
	<p><i>To develop and implement a comprehensive gender justice strategy, embracing the entire Criminal Justice process.</i></p> <p>While the possibility of the relevant legislation, policies and procedures being put into place is relatively good; the reality is that institutional inertia and deep seated social prejudices will provide considerable resistance. Donors should support initiatives in this area, from policy development through to implementation, but their expectations for success should be limited by the social realities and the expectation that reform will come slowly.</p>

	<p><i>To reinforce the fact that crimes of violence against women and children are to be dealt with by the statutory authorities.</i></p> <p>Supporting this should be a high priority for donors, but as with a gender based justice strategy, resistance to reform will be formidable and long lasting.</p>
	<p><i>To promote a more realistic set of legal aid and compensation expectations on the part of citizens.</i></p> <p>Given the various government pledges and constitutional provisions in respect of these, it will be very difficult to persuade citizens to have a more realistic attitude to the above. However, there is considerable potential for the rationalisation of legal aid services and donors can make a significant contribution to this process.</p>
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	<p><i>To promote full adherence to the Convention on the Rights of the Child in respect of juvenile justice.</i></p> <p>There are various statutory, national and international stakeholders involved in promoting the implementation of the Convention, but traditional conservative attitudes to children will have to be confronted if they are to secure tangible success. Donors should support these efforts.</p>
	<p><i>To develop and expand current initiatives in respect of the care of victims and the protection of witnesses.</i></p> <p>This covers a wide spectrum of need from victims of domestic violence to informants in respect of organised crime, and current provision is patchwork. Donors should provide targeted support to efforts to support women, children, marginalised and vulnerable groups, but there is no perceptible benefit from supporting high tariff witness protection schemes in the foreseeable future.</p>
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	<p><i>To ensure effective implementation of anti-discriminatory laws and procedures.</i></p> <p>For these to be effectively implemented will require considerable changes of behaviour and attitude on the part of Nepali society in general and on those responsible for their enforcement. Donors should support this because it is the right thing to do, but should not expect early results.</p>

With regard to the sequencing of donor support to the Criminal Justice system, the evidence points to early pursuit of the first priority: To improve citizens' confidence in the Criminal Justice institutions, particularly the police through their becoming more capable, accountable and responsive. Apart from the fact that the documentary and qualitative data point to this as a high priority for citizens, there are two other factors that predispose this option:

It entails engagement with three key institutions, police, judiciary and Attorney General's Office that within which there are substantial drivers for reform

- As capacity builds within these organisations they can become catalysts for change in respect of other reform agendas; for example in respect of improving juvenile justice or access to justice on the part of women and marginalised groups.

# Sequencing and Priorities: Civil Justice

While there are undoubtedly corrupt practices across the Civil Justice sector, and the low level graft on the part of court and quasi-judicial institutions administrators are particularly irritating for service users, the impression provided by the documentary review and by respondents is that, once a case goes up before a judge, the ruling is generally accepted to be fair.

The problems arise before, in respect of access, adequate representation and delays: and after in respect of the enforcement of judgements. It is against this backdrop that citizens understandably resort to the speedier and more enforceable informal sector, even if the results are often questionable in respect of human rights and natural justice.

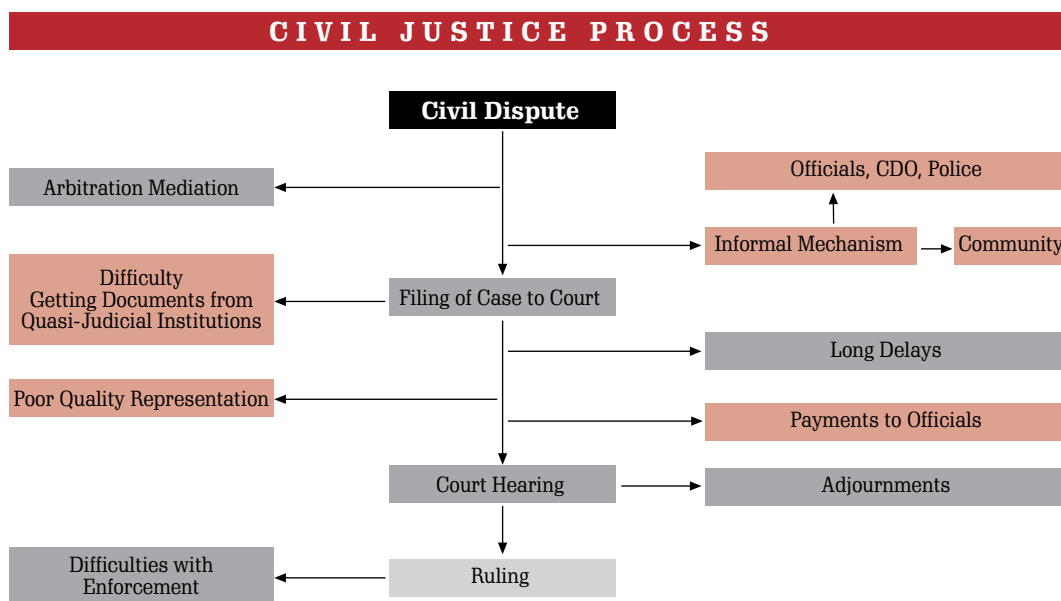
The leadership already being provided by the Supreme Court is a major strength in the reform process. However, progress on the ground will also require an alliance of citizens, officials and judges committed to improving the service, is the case with the Criminal Justice sector, with which Civil Justice has much in common by virtue of shared challenges and shared institutional and community actors. In fact, the overlapping contexts are such that

the alliances for change that have been described in the commentary on Criminal Justice, and the strategies that need to be adopted, are substantially the same.

Quasi-Judicial bodies, acting in this role or as administrative authorities, are the subject of much criticism from service users, the Supreme Court and members of the Constituent Assembly: this criticism stemming from their highhandedness, corruption and inefficiency. Yet, despite this, they continue to appear to be a "law unto themselves".

Although citizen pressure at the local level is an essential element in the change process to making these bodies more service oriented and accountable, fundamental improvements will only come about when the government rises to the challenge to reform the quasi-judicial institutions, introduce service delivery standards, confront the pervasive low-level corruption and implement an effective oversight mechanism that has service user involvement.

The following paragraphs will explore the operational processes of the Civil Justice system alongside the higher level sub-sector priorities as outlined earlier in this report.



## CIVIL JUSTICE PRIORITIES

	<p><i>Design and orient pro-citizen law, procedures and institutional reform initiatives to serve the people.</i></p> <p>This would require a lengthy process and would fall victim to the assertion that existing provision is there to serve the people. At the heart of this priority is a desire to see a greater sense of public service ethos within the Civil Justice system.</p> <p>However, the same could be said for many other aspects of the public sector. While the aspiration is laudable, the capacity of the donor community to make a substantial contribution to achieving it over a five year period is very limited.</p>
	<p><i>Improving access to and effectiveness of civil courts, including enforcement of judgements, so that they instil greater confidence on the part of citizens, particularly women and marginalised groups.</i></p> <p>This is in keeping with the Supreme Court strategic plan, has a good chance of making a substantial contribution to access to justice and as such should be supported by the donor community.</p>
	<p><i>Improving access while reducing cost of litigation, improving compliance with the code of conduct, strengthening complaints' mechanisms and improving security for litigants.</i></p> <p>Again, this is in keeping with the Supreme Court strategy and should be supported.</p>
	<p><i>Improving the accessibility, affordability and quality of arbitration and mediation services as alternatives to the informal mechanisms that citizens might otherwise resort to.</i></p> <p>This is an important measure that is currently the subject of reform initiatives. While enticing citizens away from less appropriate informal measures will take considerable time, donors should nonetheless provide support to this initiative.</p>
	<p><i>Strengthen the legal aid system and quality of legal representation</i></p> <p>This is also on the agenda for the Criminal Justice system and should likewise be supported by the donors, in expectation of positive results.</p>
	<p><i>Improving the quality and integrity of service provided by quasi-legal institutions.</i></p> <p>The poor quality service provided by these institutions is a source of considerable irritation to citizens. Donors should support efforts in this direction, but they should not expect quick results.</p>
	<p><i>Develop and implement an effective and affordable civil legal regime on compensation and tort liability.</i></p> <p>This is a complex and possibly contentious initiative which has previously met with little success. Donors should leave the resolution of this to the political, professional and judicial stakeholders.</p>
	<p><i>Improve capacity and expand the membership of JSCC to enhance its effectiveness in justice sector coordination.</i></p> <p>This is an important initiative that is likely to have positive impacts and as such should be supported by the donors.</p>
	<p><i>Developing a communication strategy in respect of citizen's legal rights.</i></p> <p>While the aspiration is laudable the impact at this stage is likely to be negligible. Also, in respect of access to civil justice, given that the system is already labouring under the burden of current workloads, so increasing demand is at this stage is unlikely to be helpful. Public information initiatives as a component part of a measured increase in capacity are to be preferred. In this context, donors should not support a free-standing communication strategy.</p>



With regard to the sequencing of donor engagement with the Civil Justice system, the evidence points to prioritising support the Supreme Court in its efforts to reform

and build capacity in respect of the courts and the judiciary; which in turn has an influence on and a knock-on impact on other aspects of the system.

## Sequencing & Priorities: Non-State/Informal Justice and Community Security

The 2008 Geneva Declaration on Armed Violence and Development states that living free from the threat of armed violence is a basic human need. A more encompassing definition of security is provided by the World Bank Development Report (2011) which embraces the term Citizen Security meaning: both freedom from physical violence and freedom from fear of violence. Applied to the lives of all members of a society (whether nationals of the country or otherwise), it encompasses security at home, in the workplace, and in political, social, and economic interactions with the state and other members of society. Citizen Security places people at the centre of efforts to prevent and recover from violence (p xvi).

Respondents in the USIP 2011 study indicated that the five factors that would do most to improve security were providing skill development, prohibiting the production and consumption of alcohol, ensuring access to secondary education, strengthening the laws and legal framework, and declaring bandhs illegal (p.49).

The World Development Report on Conflict, Security, and Development has pointed out the key security issues in Nepal as being: mistrust of security forces, cultures of impunity, legacy of violence and trauma, and lack of legitimate security presence (The World Bank, 2011)

Citizens rely for their security and sense of well being on formal and informal mechanisms. While the content in this report on the role of the police and the judiciary addresses many of the issues surrounding formal mechanisms, the

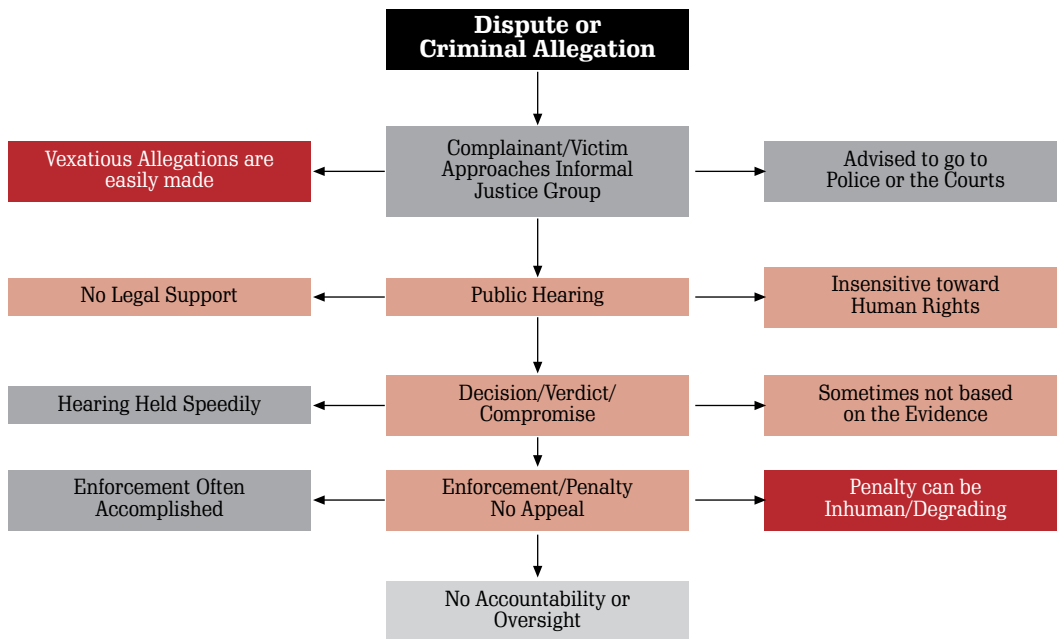
following paragraphs provide some critique of the informal justice mechanisms.

The International community has an evident high investment in the support of informal justice mechanisms. This needs to be tailored in the light of the evidence that the groups involved in these activities often go beyond their agreed boundaries and become involved in "resolving" serious crimes outside of the Criminal Justice system, impose degrading corporal punishment on those found "guilty" and fail generally to adhere to the principles of human rights and natural justice.

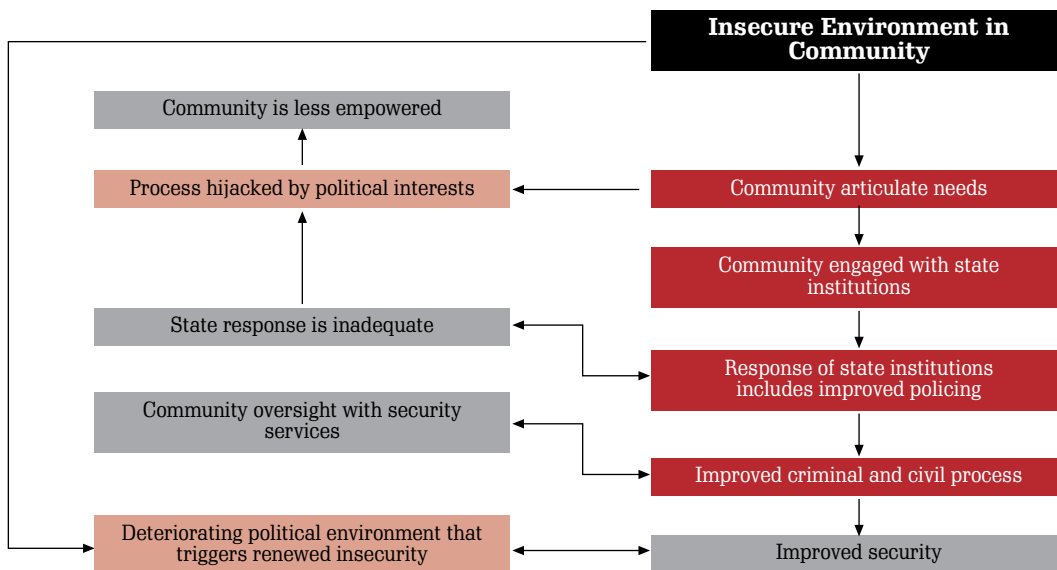
Another factor to take into account is the fact that in the informal justice environment, as is the case elsewhere in civil society, political interests have "captured" these groups and use them for their own political ends.

The informal justice should not be thought as alternative to the formal system rather they should be considered as complementary to each other. However, a large segment of the population still relies somehow on informal system to resolve their disputes. There is therefore, a case for the donor community to support informal justice sector initiatives: but care should be taken that such support be only for mediation and conciliation processes and not for adjudication on guilt or liability. Moreover, support should enable such informal mechanisms to be operated by capable mediators with knowledge of the limitations of their role. Creating a clearly defined route map leading these initiatives to at least the formal system's effective oversight is also important.

## INFORMAL JUSTICE PROCESS



## COMMUNITY SECURITY PROCESS



## NON-STATE/INFORMAL JUSTICE & COMMUNITY SECURITY PRIORITIES

	<p><i>Earliest commencement of Mediation Act and incremental roll out in districts.</i></p> <p>Donor support could make a useful contribution to this process, especially as it interfaces with informal justice mechanisms.</p>
	<p><i>Creating new and transforming traditional mechanism as permanent Community Based Mediation Organisation.</i></p> <p>This is fraught with difficulties and will take time, but it is worthy of donor support.</p>
	<p><i>Effective supervision and oversight of the operation of informal justice mechanisms.</i></p> <p>This is a highly important measure to protect human rights and promote natural justice. Although it will take time to fully implement donors should give it full support.</p>
	<p><i>Establishment of a bridging mechanism between the informal and formal justice systems.</i></p> <p>Regardless of the challenges, this is a high priority that should be fully supported by the donor community.</p>
	<p><i>Challenge inappropriate mindsets through education and anti-discriminatory measures.</i></p> <p>This is a high level aspiration that will take considerable time to have any measurable impact, but it is nonetheless worthy of donor support.</p>
	<p><i>Civil society, political party representatives and district level justice coordination committee members coordinate to promote non-violent political alternatives.</i></p> <p>Donor engagement with this effort is unlikely to be successful.</p>
	<p><i>Transformation of wings of political parties to limit their work within the law.</i></p> <p>Donor engagement with this effort is unlikely to be successful.</p>

With regard to the sequencing of donor engagement with Non-State/Informal Justice and Community Security it should be noted that community security needs as provided by the state are dealt with elsewhere in this report. With regard to

Informal Justice an important beginning point for donors is to provide support to the Supreme Court and others as they attempt to establish oversight arrangements and bridging mechanisms linking the informal with the formal justice system.

## Sequencing and Priorities: Legislative Framework, Oversight & Accountability

Because roles and responsibilities of the institutions involved differ significantly from those in the other three sub-sectors, discussion of priorities and sequencing is also somewhat different.

The existing scenario of legislative framework, oversight and accountability, their political economy and the perception of key informants lead us to the major finding (issues taken up in the other sub-sectors are not repeated here) in this section.

They include un-preparedness in general for transition to federalism, inadequate

legal framework, pending legislative drafting works, existence of oversight and accountability mechanisms, which have not worked to their fullest potential, need for legal reform, and lacklustre ministry level preparedness to deal with the situation are clearly visible. There is huge possibility of improving existing institutional arrangements including CIAA, Judicial Council and human rights commissions and organisations, building civil society linkages, and consolidating relations between key oversight institutions. As institutions responsible for the legislative framework, oversight and accountability

revolve around the parliament, which is the place where all institutions converge, or should converge in a democratic and accountability system; building such linkages is extremely important.

Citizens' insights and opinions also emphasize development of institutional capacity of the relevant institutions, the need of making effective legislative, oversight and accountability mechanisms, building awareness of the citizens on these institutions, and providing opportunity to them to know the process and outcome

of the sub- sector initiatives, provision of consultation with affected interests when making laws and policies, and consolidation of efforts minimizing fragmentation and over departmentalized approach. As these problems are at the heart of any democracy and accountability system in the context of a developing country, the system which works is finally the system which can manage prioritised intervention in time space- context, keeping a long term perspective. A long term perspective allows the feed- back system to operate and deal with the issues that emerge continuously in a living system.

### LEGISLATIVE FRAMEWORK, OVERSIGHT AND ACCOUNTABILITY PRIORITIES

	<p>Development of a national transition plan toward implementation of the new constitution and federalization encompassing new legislation, legal reform and institution building in the area of oversight and accountability based on the new constitutional requirements.</p> <p>This is the key building bloc, and should be done as soon as possible, paving the way for other priorities in this sequence.</p>
	<p>Consensus on the security and justice power structures at federal and provincial levels is crucial for the environment enabling of the security, justice and the rule of law.</p> <p>Once the transition roadmap is clear, the process of implementation of the constitution and federalization will also be clear, giving, among other things, leverage to reform, redesign or maintain security and justice power structures in the changed context. This priority deals with the urgency of development of legal regime in the given area.</p>
	<p>Strengthening of parliament and its thematic committees with security, justice and rule of law responsibilities.</p> <p>This is also a priority for provincial legislatures, and the autonomous regions and local bodies as the third level in a federal set up.</p>
	<p>Emphasize improvement of public confidence in parliamentary/legislative oversight.</p> <p>This should also be the priority for the provincial and third level deliberative bodies.</p>
	<p>Increase independence, professional competence and integrity of relevant constitutional/statutory oversight bodies.</p>
	<p>Improve coordination between parliamentary/legislative bodies and relevant oversight institutions.</p>

All of the above are essential elements in progressing reform in the Security, Justice and Rule of Law Sector. The dilemma for donors is that they also represent essential elements across the spectrum of governance and public administration. While there is a pressing need for donor

support across all the priorities listed above, there is a question as to whether this should be provided under the auspices of support to the Security, Justice and Rule of Law Sector, or be considered in the context of a wider support agenda to state building and good governance.

### RECOMMENDATION

It is recommended that donors address the above priorities within the context of a wider governance programme.

# Sequencing and Priorities: Summary and Recommendations

Drawing on the political, social and institutional backdrop as presented in this report and contained in the annexed documentary and qualitative evidence; and in acknowledgement of the systemic complexities of the Security, Justice and Rule of Law Sector: the following is recommended for consideration by donors.

## RECOMMENDATION

It is recommended that, within the proposed umbrella framework, donors have as a first priority the establishment of two major strands of activity:

- Nepal Police Reform Programme
- Courts Reform Programme

- Both institutions have reform processes already underway; albeit the Supreme Court is more advanced in its thinking, has made more progress and is less encumbered by political agendas: but there are also progressive drivers of change within the Nepal Police.
- More than any other aspects of the Sector, improving policing and the operation of the courts would have a major positive effect on citizens' security and wellbeing.
- From a systemic perspective, both can potentially influence aspects of the Security, Justice and Rule of Law Sector well beyond their specific mandates.

There are four major reasons for this proposal:

- Both institutions are reasonably well-disposed to receiving external

In the table below, those priorities from across the sub-sectors that are considered to be amenable to donor supported initiatives are reviewed in the context of the potential impact of police reform and court reform programmes.

NEPAL POLICE REFORM PROGRAMME	COURTS REFORM PROGRAMME
Improving confidence in Criminal Justice Institutions	
Developing Gender Justice Strategy	
Crimes against women and children to be dealt with by statutory	
More realistic expectations about legal aid and compensation	
Adherence to Convention on the Rights of the Child	
Care of victims and witnesses	
Implementation of anti-discriminatory laws and procedures	
Develop pro-citizen laws, procedures and institutional reform	
Improve access to and effectiveness of the courts	
Reduce the costs of litigation	
Improve arbitration and mediation services	
Improve and expand JSCC	
Early enactment of the Mediation Act	
Transforming informal justice mechanisms to community based Mediation Organisation	
Effective supervision and oversight of informal justice mechanisms	
Challenge inappropriate mind-sets through education and anti-discriminatory measures	

## SECURITY, JUSTICE and RULE of LAW: IMPACT on PRIORITIES

### COLOUR CODE

HIGH PROBABLE IMPACT
  MEDIUM PROBABLE IMPACT
  LOW or NO PROBABLE IMPACT



# 5

## RISKS & MITIGATION STRATEGIES

More so than would be the case in some other development environments, supporting the Nepal Security, Justice and Rule of Law Sector is very much an exercise in managing uncertainty. The months and years ahead that will see major upheavals across the governance, social and economic environments will call for a continuous monitoring of the risks that these will pose

to donor interventions and a preparedness to adopt a flexible approach to the realities, without being deflected from or losing sight of the long-term goals.

The following is a short overview of the current risk environment: of course as donor planning progresses this would be developed to a much higher degree of sophistication.

RISK MATRIX			
Risk	Impact	Probability	Mitigation
Political discussions break down leading to widespread disorder	High	Medium	Focus on activities, counterparts and locations where impact is least
Some counterparts do not engage with donors	Medium	High	Initial focus on the institutions that do engage
Change resistance from within institutions	Medium	High	Engage with champions for change to secure leverage for reform initiatives
Reform is stalled awaiting new Constitution and transition to federalism	High	High	Provide support to change processes that can proceed regardless of constitutional
Reputational risk arising from excesses of donor supported	High	Low	Provide more effective review and oversight of funded informal mechanisms
Fiduciary risk in respect of trust fund initiative	Medium	Medium	Build in oversight measures that mitigate against inappropriate use of
Fiduciary risk in respect of technical assistance	Low	Low	Ensure that interventions are feasible and well monitored





# A

## SUMMARY OVERVIEW SUPPLEMENTARY POLITICAL ECONOMY ASSESSMENT

The OECD (2007) urges donors to take context as their starting point for any intervention. It is essential for international actors to understand the specific context in each country, and develop a shared view of the strategic response that is required. It is particularly important to recognise the different constraints of capacity, political will and legitimacy.

This Annex provides additional political economy commentary as a supplement to Summary Overview section of the report. It elaborates on elements of overall political perspective that are of particular relevance to the Security, Justice and Rule of law Sector and contains, for each sub-sector, a review of key relevant themes that are discussed in already published research and other documentation.

Situated between two leading Asian countries, India and China, both of which have interests in the country; Nepal is recovering from ten years of conflict and in the process experiencing profound changes in all areas of its social, economic and

political life. Since its establishment as a Hindu kingdom in 1768, Nepal has had six constitutions: 1948, 1951, 1959, 1962, and 1990 and the current Interim Constitution of Nepal. During this period, Nepal has gone through periods of hereditary prime ministers, absolute monarchy, constitutional monarchy, democracy and political instability.

While there is a consensus belief that a return to widespread violence and political disorder is highly improbable, the fact remains that many of the drivers of conflict remain unaddressed and unresolved. As the World Development Report (2011) and many other commentaries remind us: one of the key predictors of conflict in a country is a history of previous conflict; especially in circumstances where internal and external stresses are not countered by capable, legitimate institutions.

The following table, which is taken from the 2011 World Development Report, sets out the continuing interplay between interlinked stresses in Nepal.

INTERLINKED STRESSES IN NEPAL		
STRESSES	INTERNAL	EXTERNAL
Security	Mistrust of Security Forces Culture of Impunity Legacy of violence & trauma Lack of legitimate security presence	Cross-border criminality Refugees
Economic	Low income & joblessness Electricity, food & fuel shortages Corruption & extortion	Flood & natural disaster Price shocks Illegal trade in natural resources
Political	Ethnic, gender, caste-based, regional exclusion Discrimination in access to opportunity & in representation in institutions Human rights abuses	Regional involvement in internal affairs.

(Source: World Development Report 2011)

The aftermath of conflict in Nepal, as is the case in many countries which have experienced similar turmoil, has witnessed a residual continuation of a general disregard for law and order on the part of some elements of society, politically motivated criminality, ineffectiveness of state institutions, the impunity of powerful actors and insecurity for large sections of the citizenry.

Many of the respondents interviewed in the course of this review used identical language in describing what they termed the nexus between criminality, corruption and politics, with impunity on the part of powerful actors and their associates being seen as one of the most disturbing manifestations of this.

According to the Transparency International 2011 report, in terms of corruption Nepal ranked 146th out of 178 countries surveyed; a position that it shares with Liberia, Iran and Yemen. An Economist article in May 2011 noted that: the past year marked scores of killings, threats and beatings, linked to control of state resources and carried out by armed groups and political parties of all stripes. To many observers these problems seem to share a common cause: politicians enjoy freedom to plunder with impunity. Rampant corruption, at all levels of government, is becoming the definitive characteristic of the country's rocky transition to peace, after a decade-long civil war between Maoist rebels and the state.

The Commission for the Investigation of Abuse of Authority (CIAA): has the role of an ombudsman, investigator and prosecutor. It carries out inquiries and investigations into corrupt and improper conduct committed by persons holding a public office. It has the authority to investigate all officials from the Prime Minister to low-ranking public servants. However, the position of Chief Commissioner has remained unfilled for over four years; and through membership departures over time, the Commission now has no members left and operates under the leadership of the civil servant Secretary: a set of circumstances that some consider to be unconstitutional. Regardless of the

constitutionality or otherwise of the current situation, it is indicative of Government neglect at best and contrived undermining at worst. Nonetheless, the Commission has had some notable successes in the prosecution of corruption and criminality in the public sector.

Since the Peace Agreement there has been an increasing tendency on the part of political parties and their sister organisations to impose strikes and carry out other types of protest for political and factional interest purposes all of which have profoundly negative impacts on community security.

Some respondents in this review were of the opinion that the political party leaders have full control of their youth wings and could "call them off" at will: others were less certain and speculated that "the genie is out of the bottle" and could not be easily restrained. A study of youth wings conducted by the Carter Center (2011) observed that they engaged in interference with tender processes, taxation and other activities that undermine political space, development and public security. There was evidence that the parties are increasingly using them as what the Carter Centre describes as "muscle power".

Regardless of how well-intentioned the political parties might be, responses to the final draft of the Constitution, federal elections and the establishment of federal institutions will all put further pressure on the Security, Justice and Rule of Law Sector.

For the most part, respondents in this review, who were not directly involved in the process, either ignored federalism in their narratives, or, when prompted on the subject, gave it cursory acknowledgement. There was little evidence that they had any substantial understanding of the significance of the move toward federalism, the seismic political shift that it represents or the complexity of the public financial management and public administration challenges it will present. While there is a Ministry for Federal Affairs in existence, they informed us that they are substantially

inactive: awaiting the final outcome of the Constitutional Assembly.

The consequences of federalism, in whatever formulation it finally emerges, are potentially profound and far reaching for the Security, Justice and Rule of Law Sector. This being the case, it is slightly perplexing that there is not a more energetic debate on the subject, even among the officials most likely to be impacted by it. Much of the comment by respondents in the course of this assignment was along the lines that many of the key stakeholders were opposed to the idea throughout and those who championed it, primarily the Maoists, were now thinking the better of it. However, the problem is that a commitment to federalism is a pivotal component of the peace commitments and it would be politically impossible to attempt to change that at this stage.

The sense that federalism is the key to a greater democratic accountability to the people on the part of the Security, Justice and Rule of Law institutions is countered by a belief that it represents greater opportunity for nepotism, corruption and impunity. Among those public officials whose role and function will be profoundly affected, if their positions survive the institutional reforms are Chief District Officers who currently possess a wide range of responsibilities and powers, including quasi-judicial functions that could well disappear with the advent of federal arrangements.

Whatever the final outcome of the federal debate might be, the fact is that there is no evidence that, at this juncture, the Sector is in any way preparing for it.

## Criminal Justice

Criminal justice operates through engagement of the police, the government attorney, the court, the defence and the prison. These all are regulated by separate legislations and most of them rely heavily on vertical command hierarchies of lines of authority. Though the Ministry of Law is a

crucial agency that might influence criminal justice system, it plays no role in the day to day operation of criminal justice system.

**Nepal Police** are under the supervision and guidance of Ministry of Home Affairs and are responsible for crime control and investigation. While they maintain central criminal records, they have no facility for the analysis of patterns of crime, let alone any more sophisticated criminological assessments. The police have specialist units focusing on criminal investigation and information, organized and economic crimes, narcotic drugs, and crimes against women and children. Despite the existence of these departments and unit, the police lack specialist skills in criminal investigation and the secure management of relevant evidence. Police investigation processes have been described as being "largely confession-centric". (CeLRRd, 1999; CVICT 2004).

According to the United States Institute for Peace (USIP) study Citizens Perspectives on the Rule of Law and Role of the Nepal Police (2014) respondents' experiences of their dealings with the Nepal Police were predictably mixed. Poor people, Dalits, and women were identified as the groups most likely to receive a poor response from the police.

Almost one third of those respondents who had been a victim of crime did not report the matter to the police, believing that the police would not, or could not help them. Of those who did report a crime, their level of satisfaction depended heavily on their perception of the impartiality, or otherwise, of the police investigation. The degree to which victims had trust in the credibility of the criminal investigative process seems to

have a significant influence on citizens' confidence in the police, regardless of whether or not the investigation resulted in charges or convictions.

Victims and witnesses to crime cited political pressure and political interference as one of the most important reasons for poor performance on the part of the police.

This view was somewhat echoed by police officer respondents, who cited lack of accountability, political interference and corruption as key impediments to effective rule of law. Crozier and Candan (2010) conclude that: the perceived politicisation of security and justice providers means that there is limited trust in local police (and judiciary) particularly among women and marginalised groups. As a result, gender-based violence is widespread and occurs with impunity (p7).

Regardless of the numerous perceived shortcomings of the Nepal Police, the USIP study reveals an interaction between the public and the police that is generally positive, but insufficient. The presence of the police in a village was seen as generally positive and there is a clear demand for a continuous police presence in the community. More than any other consideration, citizens attitude to the police was shaped by the behaviour or attitude of police officers toward them: the degree to which police officers showed politeness and respect toward the citizen was a key influencing factor in citizens' perception of policing generally.

Citizens expressed the view that improvements in police performance can be brought about by providing more resources and training, as well as increasing engagement with communities. This is consistent with the view of Crozier and Candan (2010) who hold that the Nepal Police lack the personnel, infrastructure and equipment needed to be effective (p7). While in agreement with the need for enhanced capacity within the police, the 2010 Districts Survey underlined the need for greater representation of women and marginalised groups with the Nepal Police as both a practical and confidence building measure.

**Attorney General** of Nepal is the chief legal advisor to the government. The Attorney General or attorneys subordinate to him (known as government attorneys) also represent the government in suits in which the rights, interests or concerns of the government are involved. He has the right to make the final decision to initiate proceedings in any case on behalf

of the government in any court or judicial authority. All government attorneys, including prosecutors, are either in the Office of the Attorney General or are on long or short term attachment to other state ministries, agencies and special commissions. While Attorney General is a political appointee of the Prime Minister, formalized by the President, other attorneys are judicial cadres of the government. The continuity of prosecution policies has been affected in recent years because the occupant of the Office of Attorney General is highly transitory, because Prime Ministers have become transitory.

It is clear from the figures available that the vast majority of criminal complaints are settled privately or in police stations and go no further. It is also evident that normally high volumes of small criminal cases, such as traffic infringements, are not prosecuted at all in either the courts or the district offices. These results validate the widespread view that the contribution of courts of justice in either deterring or punishing crime in Nepal is almost imperceptible in statistical terms.

The effect of interference in prosecutorial decision making, said to be very common in Nepal, is likely in most cases to result in cases being dropped or not even begun. There are no figures available on the number of police reports that are not referred to prosecutors or the cases prosecutors receive that they decline to prosecute.

On those cases prosecuted, the success (conviction) rates in the criminal cases prosecuted by district attorneys before Courts is 72 percent (3696 in 5119 cases) where it is 95.25 percent (2926 in 3072) cases before Chief District Officer (CDO) (OAG Annual Report 2010). This implies that when there are options for overlapping of the jurisdiction, the temptation would be made to take the case to CDO rather than to Courts.

A joint legal opinion by NHRC and OHCHR (2011), commenting on the consequence of the practice of politically motivated case withdrawals concluded that *they have*

*effectively served to protect politically connected individuals from criminal accountability, promoting a policy of de facto impunity for the perpetrators of hundreds of serious crimes. This trend has undermined the rights of alleged victims to an effective remedy in those cases, and has impeded efforts to transit for the existing culture of impunity to a stronger judicial system based on impartiality and the rule of law (p2).*

Three additional challenges confronting government attorneys are:

- Most of the 25 day period specified for the completion of investigations is, in general, consumed by the police for investigation; with them presenting files to prosecutors in the final days. This has weakened the quality of the prosecution.
- Though they have right to supervise custodial situations and protect the rights of the accused, including ensuring the right of the accused to counsel; in the absence of procedural rules and standards they are not in position to perform this duty.
- Most of the attorneys are of a general law background and in a context of increasing legal complexity, they often lack technical expertise.

**The Courts** of Nepal are organised in three tiers: initial or trial, first appeal and second appeal jurisdictions. District courts have jurisdictions to initiate trial in many criminal cases; however trial jurisdictions for some types of cases are assigned by the law to administrative authorities. Appeal Courts exercise first appeal jurisdiction and Supreme Court exercises second appeal, review and writ jurisdictions largely. There is no separate operational system for civil and criminal cases, though separation of the benches as criminal and civil in pilot district courts. Even in such settings, judges are not assigned according to their civil or criminal expertise but according to seniority in the career. Seniors occupy the criminal bench and the more junior serve on the civil bench.

The chapter in this report that deals with Civil Justice addresses the Courts' issues at greater length.

**Defence lawyers** are usually independent practitioners. The professional governing body is the Nepal Bar Association which was established in 1956 and currently has 9000 plus members and 84 units all over the country. The Bar is a non-profit making organisation registered under the National Guidance Act and it generates its own resources through membership or with the support of the international community. The Bar Council is established under a statute to license, regulate and promote the legal profession. The *Judicial Mapping and Judicial Assessment, March 2010*, conducted by the World Bank, recommends that the legal profession introduce greater transparency and regulation with annual licensing renewal, mandatory continuing legal education and legal services complaint offices. Being a rule of law institution, the members of the legal profession are criticized for failure to register

their offices, keep accounting system and pay taxes to the government. The National Judicial Academy and Bar Council are statutorily mandated to provide training to lawyers, but due to inaction, the NBA has proposed its own Lawyers Academy and also taking initiatives to be a part of the judicial budgeting.

With regard to **Legal Aid** services, the four models in operation are: the Court, Legal Aid Committee, Bar and NGOs. The courts have staff lawyers, one for each court; District Legal Aid Committees operate in thirty three districts and pay low fees to lawyers in private practice. The Bar Association legal aid scheme has a Unit in the Supreme Court and each Unit in all of the Appellate Courts. It has District Units in most of the District Courts as well. It also has a Women's Cell in each of the Unit that provides legal aid to women only. But one of the most acute weaknesses of the Bar is that it does not have its own funding for the legal aid. It depends on various donors for the fund. The various legal aid initiatives provided through the NGO sector are considered to be the most effective, but being time limited with regard to funding from international donors, these programmes lack any sense of sustainability.

Although it was conducted back in 2005, many of the conclusions of the USAID “Study of the Legal Aid System in Nepal” still have currency, especially its comments to the effect that: *in short, the existing legal aid in Nepal has not yet been widely used by the targeted groups, especially by the poor, marginalized, disenfranchised, minors and women. In most of the cases, the targeted groups are not aware or informed about the legal aid in place. On the other hand, who are informed and aware about the legal aid in place have no high confidence to it and therefore do not resort to it. One of the reasons of this is that legal aid in Nepal is not effective. Therefore, in most of the cases, legal aid is not a best choice for justice seekers. Similarly, there is no coordination and mutual support between the legal aid providers. The legal aid providers neither share experiences with each other nor enter into coordinated efforts to make the legal aid more effective rather they consider each other as unhelpful actors. This sense of latent rivalry is especially among the NGOs (P10).*

The Bar Association maintains that the international support to various legal aid initiatives has derailed progress toward a one door system of international support through the Central Legal Aid Committee. However, the Committee itself suffers from a lack of capacity to deliver and supervise any national service.

**Prisons** are managed under Ministry of Home Affairs by civil administrative staffs circumscribed by police security. Prison is not recognized as a part of criminal justice by other agency and it is considered the most subordinated entity for just execution of court judgement.

Under National Human Rights Plan of Action 2004, the Ministry of Home Affairs and the Department of Prison Management undertook to develop a Prison Management Reform Strategic Plan 2004- 2009. The document was developed, recognising all the challenges surrounding resources, personnel change resistance, poor management etc. However, little has improved as a result. A punitive focus remains the main driver within

the system, overcrowding in prisons and lack of alternatives to custody dominate, reinforced by outdated Prison Act and Rules, deficiencies in Children Act and other related legislation. There is minimal access to justice and legal aid especially for the vulnerable and poor group of prisoners including women, children and the mentally ill, a lack of adequate detention facilities for women prisoners and juveniles and very poor physical conditions within prisons. There is no major rehabilitation programme for prisoners in any prison that could set standards for other prisons.

At the latest count there were 11374 prisoners incarcerated while the official capacity of prison buildings across Nepal is for 6416 (DoPM Data of Mid May 2011).

The **Juvenile Justice** system suffers from numerous shortcomings, not least of them being a lack of clarity with regard to the age of criminal responsibility. The system also suffers from poorly drafted legislation and procedures, an absence of diversion schemes and provision for community sentences (CAPCRON 2010). There is also a lack of provision for reintegration and aftercare of children released after serving sentences in correctional home (PPR 2007). Cases being heard in their absence, Justice Sector actors who are insensitive to their need and concerns, correction home serving as mini-prison, with few opportunities for educational and vocational programmes and lack of frequent contact with guardians all add up to major problems for children in conflict with law (AJAR 2009).

The baseline survey on juvenile justice in Nepal that was conducted by the Centre for Legal Research and Resource Development in 2010 provides a useful overview of the some of the issues with regard to juveniles being held in custody. At the time the review took place there were twenty juveniles in police detention in thirteen districts, eighty six in two reform homes and fifty nine in district prisons.

The table below, drawn from another part of the baseline survey provides an indication of how juveniles come to be incarcerated.

Category	Juveniles in jails	Juveniles in one reform home			Total
Total	59	%	40	%	99
CDO	10	16	-	-	
Court	42	71.2	38	98	
Police	4	6.8	1	2.5	
Others such as forest office	1	1.7	1	2.5	
Don't know	2	3.4	-	-	

With regard to **Gender** issues; the Asia Foundation's *Preliminary Mapping of Gender Based Violence* (2010) reported that a considerable body of Nepal-based research on the subject points to gender based violence, particularly domestic violence, goes unreported in many cases as it is considered to be a 'family affair'. For victims this is compounded by many women's financial dependency, lack of education and fear of social exclusion: many women preferred social pressure to stop violence and improve marital relationships rather than taking any legal recourse.

The Asia Foundation report continues to map the institutional response to gender based violence as follows. Most of the cases reported to the police are settled through reconciliation and negotiation and only a negligible number of cases are referred for prosecution. Thus, the role of the law enforcement agency in cases of gender based violence is more like that of a mediating body (p14).

With regard to the prosecution of gender based violence; beyond it being seen as a 'family affair', even if the case is reported to the police, priority is given for settling it within the family or community before taking it further. According to the Asia Foundation report: *this contributes to the chances of compromise by the victim/ survivor and in most cases, women fear to go to courts due to social pressure and agree for such mediation* (p14).

Added to the above are the financial costs, potentiality of social isolation and vulnerability to future violence that any victim of gender based violence must take into consideration if they are to pursue formal justice remedies.

According to research reported by Onslow (2010), female respondents overwhelmingly cited gender based violence as the number-one cause of insecurity for women. In her report, *Breaking Patterns of Sexual and Gender-based Violence*, Onslow records that men and women experience the formal provision of security and justice in markedly different ways in Nepal. She cites: *the pervasive lack of understanding of gendered insecurities and the acute shortage of female police and judicial staff as major obstacles for women approaching and using these services. Men are perceived to be better networked and connected and therefore to have more access and influence when approaching the police or courts* (p13).

Although **Marginalised Groups** are invariably cited alongside women in papers dealing with issues of access to justice, it cannot be assumed that they share identical challenges. Beyond this, there is a dearth of material specifically dealing with the access to justice experiences of marginalised groups.

USIP Study: Respondents Perceptions of Most Discriminated Against (p 51)	
Group	No.
Dalits	6072
Women	4415
Disabled	1727
Lesbian, Gay, Bisexual & Transgendered	932
Ethnic Groups	998
Religious Groups	590
Other	19
No Discrimination	4730
Total	11909

As untouchability is a major social discrimination problem faced by Dalit communities and caste-based discrimination is criminalised by the law since 1992, there has been negligible legal action in respect of caste-based discrimination. There were only 36 cases lodged in this regard during 1992 to 2008 before Courts where Human Rights Year Book 2006 reported 31 cases in 22 districts in a year alone (INSEC 2006). Though the caste discrimination and untouchability is clearly criminalised by a recent Act 2011, there is doubt in its effective implementation as there is lack of sensitivity in this matter among the law enforcers.

With regard to **Socio-Economic** factors: the 2011 USIP study concludes that: *while violence and illegal activities appear to be increasing, socioeconomic challenges continue to affect security and the rule of law across the country. Women, children and marginalised groups continue to suffer from discrimination and rights abuses. Many of these abuses are rooted in societal norms, with individuals from nearly every section of society committing various levels of abuse or discrimination* (p44).

Poverty, unemployment, rapidly rising inflation, corruption and discrimination have fuelled the divisions among citizens. According to Saferworld and IDA (2009), core areas for improvements are re-defining crimes and addressing their causes, fighting corruptions in justice and security agencies, putting an end to political interference in justice and security agencies, promoting transparency and disciplines, promoting community security and policing, specifying the clear mandates of agencies and ensuring equal access in justice.

In **Summary**: the above exists against a backdrop where there is predominance of socially and economically deprived citizens as defendants in criminal cases and in the prison population; there are few challenges to violations of procedural safeguards; trial judges' are often reluctant to ensure legal representation; prisoners lack knowledge of rights to legal representation; there is an insufficient and inefficient legal service; unsatisfactory sentencing; and

unavailability of proper paralegal services to the prisoners are held to be the dominant characteristics of the Criminal Justice system (CAP 2007).

The documentary evidence points to: *support to victims and witness protection, ensuring legal aid and social support to victims of crime and to suspects and accused at time of arrest and detention, the reform of corrective measures by developing and ensuring sentencing options alternative to imprisonment, arrangements of serving women prisoners by women staff and effective reintegration programmes for prisoners are essential to restore public confidence in the Criminal Justice system* (AJAR 2011).

## Civil Justice

The justice system reform initiative started with the formation of the Royal Commission on Judicial Reform, 1971. This made a number of recommendations, including in relation to substantive and procedural reforms in the courts, some of which were implemented in the course of time. After the 1990 political change, the Court Management Committee produced a report with number of recommendations to change the court management. The first Strategic Plan of the Supreme Court, 2004, was a leap forward for the judicial reform and paved the way for many important studies such as the Study on Organization and Management, Research on the Scope of Differentiated Case Management and Research on Court Security. The National Judicial Academy conducted studies on the Execution of Judgments, Case Flow Study in the Supreme Court and Effectiveness of the Quasi-Judicial System of Justice. In the meantime, Transparency International, 2007 reported widespread corruption in the judiciary of Nepal and a Committee formed by the Supreme Court Bar Association in 2008 to assess the corruption in the judiciary and which corroborated the recommendations of the Transparency International. Subsequently, the Supreme Court formed a Committee to study Bikritbihin Judiciary (judiciary without irregularity and corruption), 2009 and this



also arrived at similar conclusions and made a number of recommendations.

According to the Supreme Court first Strategic Plan (2004): 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.

In the preamble to the second Strategic Plan (2009) the Supreme Court sought to place issues of access to the institutions of justice in a wider, development context. It has been presumed that the judiciary did not have any direct contribution to the national productivity and overall economic development and as such it has been deemed that investment in the judiciary pursuant to economic and national development would not be fruitful. The economic activities, investment and overall economic development in countries having independent, competent and effective justice system is far better than countries where judicial independence is not guaranteed and therefore there is a positive co-existence between an independent, competent and effective justice system and overall economic development of a country but such development and co-existence cannot be observed in developing countries (pD).

The review of the UNDP Access to Justice and Human Rights (2010) emphasised the fact that the **administration of justice** cannot avoid being impacted on by post-conflict uncertainties and challenges: nor can it avoid its peace building responsibilities. Rule of Law and Access to Justice—particularly initiatives that empower the poor, women, minorities and most disadvantaged individuals to obtain access justice—are inextricably linked to the peace process in Nepal and its transition to a stable, peaceful democracy (p6).

The UNDP Review also recognises that: *the Nepalese judiciary also struggles with a huge*

*case backlog. Enforcement of judgments, problems of access and translation are other major challenges as Nepal is in the process of constitution making. Furthermore, the Constituent Assembly, the judiciary, lawyers and other stakeholders are currently locked in debate about the structure of the Nepalese judiciary (p9).*

International Alert (2010) describe the situation overall as being one where: 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 (p 19).*

The shortcomings of the **courts system** were readily admitted in the Supreme Court's Strategic Plan (2009). Justice is not only slow and cumbersome, it is also expensive. The court has failed to earn public trust and easy access to justice by the general public has not been maintained. Public cannot experience reform through the reforms being made on the physical aspect of the courts. It is imperative that reforms should immediately be made from the initial stage of registration of case to the execution of judgments (p 64).

The *Judicial Mapping and Judicial Assessment, March 2010*, conducted by the *World Bank* and submitted to the Supreme Court, in the context of reforming commercial benches, evaluated judicial reform and made recommendations for improved court operation, case management, conduct of the judiciary, ADR, trust to the judiciary and trainings. It made sixty nine recommendations, many of which are still to be addressed. These recommendations were broken down into eight categories covering Strategic Planning, Court Transparency and Accountability Improvement, Court System Reform, Court Judgment Enforcement, Court Fees and Legal Aid Reform, Case Processing Improvement, Judicial Integrity Improvement and Human Resources Management.

The *Nepal Rule of Law Assessment, September 2010*, by the USAID recommends international support to challenge impunity and achieve the effective application of the law; expanding inclusive access to justice, equal protection of the law and strengthening the independence and professionalism of the justice sector. This report does not expressly distinguished between the criminal and non-criminal system, but raises the issues of delay, backlog of cases chaotic and poor management of the land offices and need of legal awareness among citizens.

According to the Annual Report of the Supreme Court 2014, it has made progress on implementation of strategic interventions with reforms in case management, execution of judgments through the establishment of the Execution Directorate, providing training to its staff, developing the infrastructure of the courts, applying information technology and media strategy, strengthening inspection and supervision systems, reforming the security management of the courts, institutional research, institutionalising relations with other stakeholders through JSCC, increasing access to justice and public trust and strengthening the institutional capacity of courts and tribunals. The report highlights the work of the different committees and internal researches carried out by them, such as strengthening the JSCC, differentiated case management, law reform and calendar system.

The Supreme Court Annual Report 2014, reports on a study to implement differentiated **case management** that indicated that it may consume more time and resources than was originally expected. They have written to the government seeking more resources in this area. Further, there is a current study on the development of a calendar system on each case. The Supreme Court has also conducted a study on law and procedural reform which it presented to the Ministry of Law and Justice with the request that it be tabled in the parliament.

Because of the Supreme Court's increased emphasis on **monitoring**, each court,

including the Special Court and tribunals, is bound to prepare annual plans, which are subject to evaluation by the Supreme Court. The Supreme Court has used ICT and internet in its management and which helped to network the judges, staff and courts. Anyone can access the cause list, order or important decision of the courts. However, the Supreme Court has not been able to publish its all judgements (printed or electronic) and as a result inconsistency in judgments, especially in civil cases in widespread. On the coordination part, after an internal study on the effectiveness of the Justice Sector Coordination Committee, more emphasis has been given to its institutionalization and coordination.

After the adoption of the second Strategic Plan, the Supreme Court established a Decision Execution Directorate and has provided training to the staff responsible for the implementation of judgments, it has develop software, improved co-ordination with the police and expanded monitoring activities.

On the performance of the **quasi-judicial bodies**, inspection and monitoring has increased, but reforming the relevant legislation, procedures and management is not under the jurisdiction of the Supreme Court.

The Supreme Court has conducted some internal studies in areas like case flow management, effectiveness of the Code of Conduct of the court staff and human resource management. While implementing its second Strategic Plan the Supreme Court in its Annual Report highlights several achievements, but sources in the Court report that they do not have resources and technical expertise to make the progress that they aspire to. Further, sources confirm that so far the Supreme Court has not given priority to the reform of the civil justice system, except for the specialization of

hearing in pilot courts and commercial benches: both initiatives have been reported as either having failed or are not functioning as well as hoped. The important components of the civil justice system like

compensation law and tort law are not consolidated and promulgated yet.

The Supreme Court wants international community support in the areas specified by its Strategic Plan, especially in the court and case management, through the support in providing IT resources, technical assistance, study tours and trainings.

In respect of issues associated with **gender and marginalised groups**, according to the Supreme Court they have recruited more women and members of marginalized groups, but progress is yet to be made on recruitment from Dalit community. It may consider to run a capacity building programme for its women staff and to establish a special scheme targeting fresh recruitments. According to court officials, it will take ten years to see the results.

The Supreme Court initially established a Committee to study judiciary in the **federal context**, but due to some reason it abandoned its work, but the Judges Society in its report to the Constituent Assembly, 2008 made recommendation for an integrated judiciary in the new constitution. But the judiciary has not made any internal study or plan to transit the judiciary in a federal system. However, they are to respond to any fresh initiatives through research and planning on issues arising as a result of new federal arrangements. They think that federalism could provide momentum to begin fresh reforms in the civil justice system by reforming land/property related laws and family related disputes. The Supreme Court does not have jurisdiction to start the initiatives, but is keen to collaborate with the Law Commission, Ministry of Law and Justice and other related ministries or stakeholders.

## Non-State/Informal Justice and Community Security

With regard to Community Security: the 2008 Geneva Declaration on Armed Violence and Development states that living free

from the threat of armed violence is a basic human need. A more encompassing definition of security is provided by the World Bank Development Report (2011) which embraces the term Citizen Security meaning: both freedom from physical violence and freedom from fear of violence. Applied to the lives of all members of a society (whether nationals of the country or otherwise), it encompasses security at home, in the workplace, and in political, social, and economic interactions with the state and other members of society. Citizen Security places people at the centre of efforts to prevent and recover from violence (p xvi).

Perhaps surprisingly, despite the increase in disruptive political activities, political violence, and crime throughout the country, about half of respondents in the United States Institute for Peace (USIP) study Citizens Perspectives on the Rule of Law and Role of the Nepal Police (2011) (p38) reported that, (of the 12,607 respondents) about 50% felt safe always or most of the time, 36.1% felt safe sometimes and 14.5% felt safe rarely or never. While respondents residing in the hill region feel the safest; respondents in the Terai feel the least safe: although at a 5% difference, this is a modest variation in perception.

From a more localised perspective the six-district study conducted by the Enabling Civil Society to Contribute to the Democratic Reform of the Justice and Security Sector in Nepal (2010) [for referencing convenience this study is referred to here as the 2010 Districts Survey] held that: in some areas, profound and sometimes chronic insecurity for ordinary citizens makes it difficult to plan, or even imagine, broader Justice and Security Sector Reform (p39).

International-Apert (2010) reports a worsening public security situation in many parts of Nepal that: *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 (p7). It further comments that: in the Terai, more than a hundred armed groups*

are active, 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 (p13).

According to the USIP study *the factor most likely to engender a sense of safety within one's own community is a low level of criminal activity. The presence of the police also contributes significantly to a sense of security, as does protection afforded by civil society. In areas in which criminal activity is more frequent, or more obvious, the sense of security among the public decreases. The perception of a present but ineffective police, as well as the absence of the police in one's area, plays a significant role in promoting a sense of lack of safety* (p39).

Respondents in the USIP study indicated that the five factors that would do most to improve security *were providing skills development, prohibiting the production and consumption of alcohol, ensuring access to secondary education, strengthening the laws and legal framework, and declaring bandhs illegal* (p49).

This substantially echoes the World Bank's Human Development Report (2011) that places providing jobs as integral to progress toward achieving security and justice in post-conflict environments.

According to the USIP study, citizens view the greatest threat to their security as resting with the political parties who encourage, orchestrate or tolerate bandhs, chakkajams, corruption, theft, robberies, vigilantism and threats of violence: and who parade their impunity from legal sanction with regard to the criminal behaviours of their party members, youth wings and associates.

The USIP results confirm conclusions from the earlier 2010 Districts Survey This study cited a key informant who described the situation as being one where: political

interference is rife, even at this level in Kathmandu. Pressure comes from political parties, who justify everything in the name of transition (p37).

With regard to **Informal Justice**: the Saferworld publication: *Snapshots of informal justice provision in Kaski, Panchthar and Dhanusha Districts, Nepal* (2011) provides a useful definition of the term "informal justice mechanisms" describing it thus: *Informal justice mechanisms (IJMs) are any non-state controlled process through which people provide justice, resolve grievances and disputes and in some cases promote peace. They include community-based informal systems of justice which have their roots in the cultural traditions of Nepal, as well as internationally supported dispute resolution mechanisms that derive their structure and operation from international standards for the provision of informal justice* (p iv) .

What is omitted from this definition is the informal role frequently played by formal actors including the police, political parties and local authorities in resolving disputes through an approach that falls outside state laws, policies and frameworks. According to Saferworld (2011): *political parties and associated youth wings are also playing a significant and semi-structured role as independent justice providers, particularly for youth and political party members in urban areas* (p45)

The UNDP study, *Local Traditional Justice Systems in Nepal* (2010) (p32) specifies the advantages of such systems as being:

- Accessibility
- Affordability
- Speedy
- High level of legitimacy at local level
- Familiarity with the context of disputes
- Often favours reconciliation over punishment
- Simpler procedures
- No language or cultural barriers
- Amicable settlement
- Less nepotism/corruption

In addition to the long-established traditional informal justice systems, there

are a number of donor funded initiatives in this area that either serve as justice mechanisms or as bridges to the formal system; or fulfil both functions. To some degree these form an additional strand of justice provisions, alongside the formal, political party, public official and traditional mechanisms.

At the forefront of these internationally supported initiatives is the DFID/UNICEF paralegals programme, which supports 1,300 village level paralegal committees and 75 district resource groups.

This programme sets out to: ensure that women, children and marginalised groups have increased access to and utilise improved protection systems in order to protect themselves from violence, exploitation, abuse and discrimination, and prevent its occurrence (p4, UNICEF Funding Proposal 2009).

Although not a central element of the paralegal committees' mandate; the Proposal concludes that the paralegal approach has been found to be particularly successful in mediating a wide range of cases on domestic violence. That being said, as Saferworld pointed out: It is however important to recognise that mediation is only a small component of the Paralegal Committees, which focus more broadly on raising awareness on women's and children's rights (p46).

Several reports and reviews have found much to commend the various informal justice mechanisms (with the exception of those operated by political parties, particularly their youth wings). As Saferworld (2011) put it they have: enabled women to voice their opinions and empowered marginalised ethnic groups to discuss issues that affect them with people who enjoy social power. This is a significant achievement given the complexity of the context and the relatively short timeframe during which these programmes have been implemented (p 47).

Nonetheless, there is also a considerable degree of concern expressed in respect of

their operation. Saferworld (2011) reported that in some cases the process bordered on arbitration, where users felt that the mediators "convinced" disputants to arrive at a particular outcome. .... employing approaches that bordered on arbitration, where disputants were "pressured" and "convinced" or shamed socially (p51).

The UNDP review of Local Traditional Justice Systems (2010) found that within these systems there is domination by elite groups little awareness or regard for law or human rights: favouritism is an influencing factor in the settlement process, inhuman and degrading punishment is found to exist in some dispute settlement processes (p33).

The Saferworld (2011) study observed that: most traditional justice mechanisms in all three districts were found to consistently breach international and national human rights norms and standards for justice, particularly the right to a fair trial and the presumption of innocence. Although not widespread within the donor supported projects: Traditional justice mechanisms were found to use physical punishments (p49).

## Legislative Framework, Oversight and Accountability

Nepal is in the process of drafting a new democratic constitution through a sovereign Constituent Assembly. The new constitution is intended to progressively restructure the state in order to resolve existing problems relating to class, caste region and gender. This not only means federalization and devolution of power to the grassroots, but also empowerment of the women, indigenous people, the Dalits, Madhesis, and other marginalized groups and communities. Rights of minorities and indigenous people (social, religious, cultural, lingual), the Dalits and women are at the forefront. This means a guarantee of basic rights to all without discrimination, and protective coverage to others who were discriminated and deprived in the past for a number of reasons.

The term of the House, originally for two years, was extended for the third year, and then again for three months, which is expiring on 31 August, 2011. By the end of this period, the expectation is to finalize the first integrated draft of the constitution, and also settle the issue of the management of Maoist fighters, and get another three month extension by constitutional amendment. The final three month extension is to take the draft constitution for public consultation, receive their feedback, revise the document, and go through the remaining Constituent Assembly process to pass and adopt it.

While the new constitution is being drafted in a very difficult political scenario – ideological differences on the choice as to form of government, federal system and electoral issues and so on, inter-party squabbles, the rows over formation of government, the peace process, especially the unfinished part of the management of Maoist fighters – the Interim Constitution in force in Nepal since 2007 is providing the framework for the government and basic oversight and accountability institutions. Restructuring of Nepal by the new constitution will definitely also involve restructuring of legislative framework, oversight and accountability system based on federalisation of the country.

## Legal Framework

As of today, these institutions, though based on the interim constitutional formulations, are supported by the statutory laws and regulations as necessary. The Constituent Assembly which acts as the Legislative Parliament for the interim period is no doubt the supreme representative and oversight institution. It operates according to the Constituent Assembly (Conduct of Business of Legislative Parliament) Rules, 2008. The Constitution has created three major oversight institutions: the Commission for the Investigation of Abuse

of Authority (CIAA), National Human Rights Commission (NHRC) and Judicial Council.

The legal framework for these three constitutional functionaries has been further institutionalised by statutory laws of different type and year. The principal statute that the CIAA utilizes apart from CIAA Act 1991 is the Prevention of Corruption Act 2002. Nepal unanimously ratified the United Nations Convention Against Corruption, which Nepal had signed way back in 2003 on February 2011. The CIAA has demanded that the government reform the existing laws of Nepal in conformity with this convention.<sup>1</sup> The Human Rights Commission Act 1997 provides legal regime for the operation of National Human Rights Commission is the principal national human rights protection institution (NHRI). Originally established as a statutory body, the Interim Constitution provided it constitutional status, but this new status is yet to be fully reflected in the Act. A bill in this regard is pending in the House.

The Judicial Council provided by the constitution is to work on appointment of judges and disciplinary action against them. It is also statutorily governed. The Judicial Council Act 1991 provides necessary enabling provisions for its oversight and other functions. The Council has made a point in its recent bulletin that it has requested the government to provide necessary budget for its Committee of Inquiry.<sup>2</sup>

These constitutional bodies are being modified for national and provincial requirements. As such, the legislative framework provided to these oversight institutions will have to be revised to meet the demands created by federalizations under the new constitution once it is promulgated. One can see unpreparedness for drafting of model/framework legislation in the sub-sector to cater to the centre and provinces in the changed context.

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<sup>1</sup> Twentieth Annual Report of CIAA Fiscal Year 2066/2067 (2010) at 463.

<sup>2</sup> Judicial Council Bulletin, Poush 2067, Year 7, no 7 (2010) at p. 4

## Oversight and Accountability Mechanism

The Interim constitution is roughly based on parliamentary system that Nepal had before 2007 with almost same institutions and procedures. The significant exception is the lack of upper house – the National Assembly, mostly representing the development regions of Nepal, in the Legislative Parliament.

As stated above, while the job of the Assembly is to draft a new constitution for Nepal, it also serves as the Legislative-Parliament during its term. In this capacity, it performs its legislative and financial role, and also performs as supreme oversight and accountability mechanism. The Constituent Assembly (Conduct of Business of Legislative Parliament) Rules 2008 provides for necessary parliamentary procedures.<sup>3</sup> While these procedures are functional, the parliamentary institutions of the House has been generally affected by its constitution building functions - and politics around constitutional themes. After the dissolution of the house on 22 May 2002, its reinstatement in April 2006, and the subsequent events, there was gradual decline in representation and oversight functions. Absence of elected local bodies throughout the country since a decade further impacted on this environment. The background of the Mass Movement II in 2006 and subsequent promulgation of the Interim constitution and elections to the Constituent Assembly helped secure a truce with the Maoists and liberalisation of polity in some significant sense, but the public institutions gradually became less effective and governance suffered due to ongoing decline of the rule of law and over reliance on the plea of transitional necessity.

Nepal's parliaments have used the committee system as one of the key

oversight and accountability mechanism. Each of the seven committees in the present House is assigned to monitor and evaluate the activities of government, and perform oversight and accountability functions in all policy issues under their terms of reference. The Committee on State Affairs, for example, monitors and evaluates the Council of Ministers, Ministry of Defense, Ministry of Home Affairs, Ministry of General Administration, the Commission for the Investigation of Abuse of Authority, Public Services Commission and Election Commission. The Public Accounts Committee deals with Public Accounts and report of the Auditor General - who provides audit service to the nation for the efficient management of public resources, accountability and transparency. Apart from these seven thematic committees, at present, there is one Legislative Committee exclusively devoted to all legislative works, whatever the thematic area. With the exception of the Committee on State Affairs and Public Accounts Committee, which are on the media throughout the year, the performances of other committees have not been effective. For example, the Legislative Committee, which is a committee of 75 members, has more than four dozen bills in the queue for clause-by-clause discussion. The frequent changes in governments have created a problem of ownership of many of these bills, thus delaying new legislation and reform of the legal system.

The Legislative Parliament, which is not enthusiastically engaged in by most Members, receives annual reports from the CIAA, the Auditor General, Public Service Commission, Election Commission, NHRC and Attorney General through the President, who must through the Prime Minister make arrangements to present the same to the Legislative Parliament. With the exception of the Attorney General, all these functionaries are independent oversight and accountability institutions. Their officials, except in the case of Attorney General, are appointed by the

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<sup>3</sup> There are separate Constituent Assembly Rules 2008 dealing with the House's constitution building procedures.

President on the recommendation of the Constitutional Council (manned by Prime Minister, Chief Justice, speaker, three ministers designated by the prime minister representing three different political parties in the Council of Ministers, and leader of the opposition party in the legislative parliament). The government cannot remove the officials of these independent oversight and accountability institutions. Except in the case of the Attorney General, if they are to be removed, it can be only with an impeachment motion passed by a two third majority of the House. In practice, however, most of these reports are not looked into seriously, and the discussions in the House, or in the respective committee, on these reports are neither adequate nor effective. The feedback system also needs to be consolidated. All committees in the House suffer from inadequate staffing and resources. The support of the experts and policy practitioners to these committees is very limited. Above all, the provisions of appointment through Constitutional Council, which is supposed to be independent and well thought out and balanced, are misused, as the high officials or parties represented in the Council, instead of trying to find best candidates for these constitutional functionaries trade off each others candidates, and send their recommendation. Every party is silent about these compromises because they get their underrate candidates recommended. The impact of this biased procedure on the independence, impartiality and efficiency of these constitutional oversight mechanisms is enormous.

The presence of the CIAA in this sub-sector is significant. It is a constitutional commission that investigates and prosecutes cases against persons holding public offices who abuse their positions corruptly or by improper conduct. The commission undertakes preventative as well as prosecutorial functions that include advising agencies on processes for preventing corruption and publishing associated promotional material. It is yet to establish its presence in the Districts through its own branches. CIAA prosecutions are initiated by filing proceedings in the Special Court

using seconded government attorneys who act on powers delegated by the Attorney General. Yet, the Commission has been without commissioners for about twenty months. This holds not just for the CIAA; it is also true in the case of other chief commissioners of the constitutional bodies like the Election Commission and Public Service Commission, and Auditor General as well. The Constitutional Council is not able to send its recommendations for parliamentary hearing and then to the President because the parties in the Constitutional Council are deeply divided, and the Council has not been able to meet as frequently as required. In the case of CIAA, there are press comments to the effect that it cannot and should not take action through its bureaucracy against anybody in the absence of decisions constitutionally made by the independent Commissioners. Nevertheless the CIAA is doing it.

The performance of the National Vigilance Centre (NVC), which is in operation since 2002 under the direct supervision and control of Prime Minister is very poor. As a government body, which does not have independent constitutional status as that of CIAA and is not directly linked with the parliament, it is to lead the efforts on the government side to effectively control Corruption oriented acts and to promote awareness against corruption. Among other things, it also collects information on whether or not the functions to be carried out by the Ministries, Departments, offices of the government and public institutions are being regularly carried out; to alert them when there are lapses, and make necessary provision for regular surveillance, surprise check and investigation in corruption prone places or works. It also has power to make necessary recommendations to the government with regard to the policies, strategies and reformation on laws to be adopted for corruption control. A very politicized bureaucratic environment, limited governmental support, budget, and the physical infrastructures at the disposal of the NVC are its major fault lines. Suffice it to point out here that the NVC website still posts the photo of late Prime Minister



Madhav Kumar Nepal as the Prime Minister, and there are no updates on the activities and reports of the organisation since almost haf a decade.

On women's issues, the House has its own formal caucus of women parliamentarians: there is also an informal caucus of adivasis janjatis who influence the process and its outcome from the perspective of indigenous people. This exists apart from the parliamentary Committee on Women, Children and Social Welfare. They are active, but under-resourced as oversight structures. While the Legislative Parliament has allocated office space and other supports to the women's caucus, the adivasi janjatis are without these support and official capacity.

## Legislative Drafting

The Interim Constitution of Nepal has invested twenty-one articles to enumerate fundamental rights of the Nepalese people. It includes both civil rights and liberties starting from the right to freedom to equality to the right to constitutional remedy. Right against untouchability and racial discrimination, right to environment and health, education and culture, employment and social security, social justice, labour and right to information put more commitment on the part of the state in the context of women, indigenous people, Dalits, Madhesi and marginalized people. These rights are guaranteed through the Supreme Court and other institutions. But implementation of rights like social security, social justice and labour require making of new laws with precise ways to implement them.

Part IV of the Interim Constitution, which delineates the Responsibilities, Directive Principles and Policies of the State assures of progressive political economic and social change, and provides that the state shall be inclusive for all. These policies are to be given effect by the government creating necessary laws and institutions. These provisions have not been efficiently implemented.

On the top of that the concept note and preliminary draft prepared by the CA Committee on Fundamental Rights and Directive Principles towards the new constitution have increased the numbers of fundamental rights from twenty-one to 31. Similarly, the directive principles have also been expanded creating further obligations of the state in favour of deprived and vulnerable people. This demands of legislative research and reform in the existing legal framework and committed and long term legal drafting process.

There is a provision in the House rules that enables eliciting public opinion on any bill that the Legislative Parliament considers appropriate. But eliciting public opinion on any bill is very rare. There is no functioning mechanism at work in the Legislative Parliament in this regard.

Generally, the Ministry of Law and Justice is the line ministry responsible for drafting and approving bills, ordinances, rules and orders; and monitoring implementation of existing laws and international legal instruments. The monitoring and implementing aspects have backlogs. In fact, many laws need to be reviewed for their implementation and reform. For example, all laws that provide operational regime to CIAA need to be revised in view of the UN Convention against Corruption. All laws dealing with police, prison and local administration will need overhauling in view of the federal project of Nepal. The list will also include judiciary, customary courts, traditional mechanisms, legal profession, etc. Different draft laws on access to security, justice and rule of law for the use of the national parliament and other provincial legislatures will also be necessary. There has not been any focus on these requirements on the part of the government.

## Judicial Council

Seen against the history, the establishment of Judicial Council to make recommendations and give advice concerning the appointment of, transfer of, disciplinary action against, and dismissal of judges, and other matters relating to judicial administration was a

great innovation in Nepal. It was a sincere effort to keep the executive at some length as far as the appointment of judges and disciplinary action against them was concerned. The Council consists of the Chief Justice (Chairperson), the Minister of Justice, a senior most judge of the Supreme Court, a legal expert nominated by the president on the recommendation of the prime minister, a senior advocate, or an advocate who has at least twenty years experience to be appointed by the Chief Justice on the recommendation of the Nepal Bar Association.

The Act lays down the modus operandi of the Council, which are mostly skeletal. The Chairperson and members of the Judicial Council may obtain and study the documents and files of a case related to any complaint lodged against a judge, and may furnish information thereon to the Judicial Council. The Judicial Council may, while carrying out preliminary investigation of a complaint received against a judge, constitute a Committee of Inquiry, if it has determined that a detailed investigation by an expert is required.

As the authority of commission for the investigation of Abuse of Authority is limited to the investigation of public officials and it is not empowered to investigate members of the judiciary, the Judicial Council has important role to perform in this regard. Recently, the image of Judicial Council had opportunity to get a boost, when Justice

Balram KC, who was assigned by the council to investigate some alleged cases of improprieties, recommended serious action against Supreme Court Justice Rana Bahadur Bam and Court of Appeal judges Hari Bahadur Basnet and Tej Bahadur Karki. The Council's recommendation to parliament to initiate impeachment proceedings against Justice Rana Bahadur Bam (being a Supreme Court judge amenable to impeachment proceedings)

nearly six month ago has fallen into limbo due to apathy among major political party leaders to take action. To be entertained, an impeachment motion requires at least 25 percent of House members to formally begin the process and commissioning an inquiry panel to furnish a report. Even if the inquiry finds the official on the wrong side of the law, only a two-third majority of the House can relieve him of his position. According to the source, party leaders, especially those from the western region, have been creating hurdles. Justice Bam hails from the western region. In the case of two other Court of Appeal judges, while Judge Karki was terminated, Judge Basnet resigned.

There is much concern expressed in the media that the Council has been very slow in its oversight activities, and has not been effective in response to frequent allegation of judicial improprieties, especially in the lower courts. The Council has disclosed recently that it has expedited probes against some 125 incumbent judges across the country on the issue of corruption and misconduct.<sup>4</sup> Also the Council is not obliged to submit its annual report directly to the Legislative Parliament, rather than through the Supreme Court.

## Relevant Ministries

In the context of this sub-sector, the role of some Ministries is important in view of the ongoing transition in the country. They include the Ministry of Federal Affairs, Parliamentary Affairs, Constituent Assembly and Culture; Ministry of Peace and Reconstruction; Ministry of Women, Children and Social Welfare; Ministry of Law and Justice, Ministry of Information & Communication, and Ministry of Home Affairs are key to Nepal in the process of transition.

All these Ministries suffer from the instability of changing governments and

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<sup>4</sup> [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=34183](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=34183)

ministerial personalities. In view of the commitment of the country to move toward federalism, the Ministry of Federal Affairs, Parliamentary Affairs, Constituent Assembly and Culture is of utmost importance in channelling efforts to establish a roadmap for federal development and development of the necessary institutional structures. This was the reason why this ministry was renamed to include federal affairs. Similarly, the Ministry of Law and Justice as the line ministry responsible for framing governmental policies concerning matters of law and administration of justice is expected to prepare numerous pieces of legislation and policies especially with respect to the new requirements of law and justice administration. The Home Affairs Ministry's tasks are no less challenging because of the need to maintain law and order and facilitation of planned devolution of power to the provinces (without affecting service delivery, internal security and administration of justice). All these ministries will have to work for a planned process of federalization with a clear cut roadmap over at least a period of five to seven years. It will involve not just the development of framework legislation, but also transfer of governance power and responsibilities to the provinces and the local government units.<sup>5</sup> In fact, there is no transitional chapter in the preliminary drafts of the CA thematic committees as far as federalization is concerned.

There is little federalization consciousness, and therefore almost no coordination between these Ministries in the context of future planning (partly also because of coalition governance and frequent change of ministers). For example, the Ministry of Federal Affairs, Parliamentary Affairs, Constituent Assembly and Culture are all still without any meaningful work except maintaining relations with the legislative parliament. There is a pressing need for greater coordination on state restructuring, early implementation measures, responding to demands for expert assistance, and

capacity building in developing and running democratic institutions in the provinces.

Constitutional functionaries like CIAA have hardly any cooperation with the government ministries unless cases of abuse of authority or other official business are concerned. The efforts of the NHRC to work with the government and its ministries or departments are not easily reciprocated by them. All independent constitutional functionaries are staffed by the government and in principle are under its control as state employees. There is no separate personnel service catering to all these independent functionaries. This somehow limits their potential as oversight and accountability mechanisms.

## Human Rights Commissions and Organisations

In the post armed-conflict perspective, the National Human Rights Commission of Nepal has been changed into a constitutional body by the interim constitution vesting in it the power to ensure the respect, protection and promotion of human rights and their effective implementation. It is largely a recommendatory body. Its functions include investigating complaints, evaluating existing human rights, conducting inquiries and making recommendations on the adoption of measures to end or prevent human rights violations and to take action against those responsible.

There are other institutions established outside the constitutional framework, but serving important constituencies of marginalized people: National Women Commission; National Dalit Commission and National Foundation for Development of Indigenous Nationalities.

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<sup>5</sup> See Bipin Adhikari, Roadmap to Transition to Federalism in Nepal: Lessons from Comparative Transition Experiences (paper presented at international workshop on "Transition to Federalism in Nepal" (jointly organised by Nepal Constitution Foundation and forum of Federations, Kathmandu, 27-28 October 2010)

These are not only catalytic agents for the government, but also the principal watchdogs in their specific areas of interest. All of them are government oversight and accountability mechanisms. There is much willingness on the part of these institutions to help improve oversight functions; however their budgetary constraints are substantial. An organisation such as the National Dalit Commission, which is the key national institution responsible for Dalit related issues, is still after about a decade of its establishment not able to establish its regional offices in five development regions of Nepal, not to mention the offices in the 75 Districts; solely because of the unwillingness on the part of the government to appropriate the necessary funding. This prevents the Commission from working as a watchdog with a broad-based presence throughout the country.

There are two other significant human rights bodies to be created under the interim constitution as part of the peace and justice process: a Commission on Disappearances and a Truth and Reconciliation Commission. Bills providing for these commissions are pending at the Legislative Parliament. But

there is little commitment to get these bills enacted into laws.

## Civil Society

Nepal has a liberal environment for the functioning of civil society and nongovernmental organisations. They have been involved in almost all areas of constitution building, human rights and advocacy. Some nongovernmental organisations in the area of legislative framework, oversight and accountability have contributed to the issues of rule of law, transparency and anti-corruption. The operation of these organisations is largely unconnected with each other, uncoordinated and unmonitored. There is limited willingness on the part of the Government to work with these organisations as development partners; and mutual suspicion plays a significant role. Some constitutional oversight bodies like NHRC have been traditionally working with civil society groups, in both the centre and districts, the partnership between them and the formal institutions of state in the area of oversight and accountability are minimal.

This Annex contains, for each sub-sector, a synopsis of the significant qualitative secured in interviews with citizens and officials conducted in Kathmandu and in the course of two field missions to districts.

## Criminal Justice

The following paragraphs summarise the spectrum of facts, perspectives and opinions provided by the 30 citizens and 19 officials who were interviewed in the course of this assignment, either individually or in groups; on the challenges and priorities relating to the Criminal Justice System.

There was unanimous agreement on the part of all respondents that women and children were the groups most susceptible to being victims of violent crime; the most frequently cited reason for this was the fact that the relative powerlessness of women and children somehow made them more vulnerable than would otherwise be the case.

With regard to victims: respondents who had been victims of crimes of violence highlighted the fact that this created financial problems for them because of loss of earning because of the inability of the victim to work, medical expenses, expenses incurred in engaging in the criminal justice process: and for some who had been bereaved as a result of crime, the loss of the family sole breadwinner.

Some of the victims of violent crime referred to psychological scars and an abiding sense

of the desire for revenge, a circumstance exacerbated by the shoddy criminal investigation and a belief that often cases were derailed by the police coming under pressure from political and other powerful interests.

All victims shared a sense of helplessness, particularly in the immediate aftermath of a crime. Some spoke of a lack of community support and others expressed a fear that somehow or another they would be "entrapped" in a police case: meaning they would get caught up in processes that would be further endangered, becoming more vulnerable to further harm at the hands of their assailant or their assailant's family or associates.

Respondents who were victims spoke of the uncaring attitudes and incivility of the police and were generally suspicious of the sincerity of investigating police officers; and beyond them, prosecutors and the courts. Having to provide details of the crime against them, which sometimes entailed embarrassing or intimate matters, seems to have rested heavily on some victims; especially in the face of unsympathetic responses from investigators. They expressed a belief that this would not have been the case if they had been assisted by a lawyer; but few were able to afford this level of representation.

A factor that caused considerable irritation for some respondents was the strongly held belief that victims of past armed conflict and those who were victims of "usual" crimes were treated differently by the state

agencies. Government had provided some relief to the conflict victims but not to the usual crime victims, a fact perceived as being discrimination by "usual" victims.

Some respondents explained that they did not report a crime to the police because their community traditions were such that they usually mediate the criminal cases in the community, and going outside of this would be seen as unacceptable.

Those respondents who had been **defendants** in criminal cases claimed that police usually arrested the least powerful people from the community, purely for the sake of saving face. Most of the respondents said that they felt need of legal support immediately after arrest. Every respondent had experience of being hindered by the police when they asked to consult with a lawyer. Many respondents experienced what they called "highhandedness" on the part of the police during the investigation period and prosecution. Respondents also complained that court failed to give sufficient attention to constitutional and legal guarantees. "Legal and constitutional entitlements are decorative in the law book alone" said a respondent who served six months in the name of investigation and trial and was released from the prison after being acquitted.

Some of the defendant respondents believed that the investigating officers knew of their innocence but the police arrested and put them forward for prosecution to show the community that at least police has done some thing. "Failure to identify and arrest the real offenders puts the innocents at risk."

An extreme variant on this was reported by one respondent who gave an account of returning from working overseas to find that not only had his wife started an affair with another man in his absence, she also passed the bulk of her husband's remittances to her paramour. Within days of the husband's return, his wife committed suicide. Although the police had a clear idea that the case was suicide, the lover, not wishing to relinquish the money, much

of which he had spent anyway, arranged to have the husband charged with murder. He spent two and half year in prison before coming to trial and finally the court concluded that it his wife's death was a case of suicide. This man had lost his wife, four hundred thousand rupees and his freedom for over two years. He asked our interviewer whether there was a possibility of legal action to recover the money.

Regarding criminal trials, respondents believed that the court process was an institutional arrangement to affirm accusations created by police and prosecutors. Some expressed their distress that the trial court did not considered their request for release on bail.

In one case a respondent reported that the evidence which the court used as grounds for detaining him in custody and later acquitted him on the grounds of the same evidence. "I experienced that the provisions for test of the legality of arrest and detention is meaningless and verification of accusation by the court is futile" the respondent said.

The defendants who were released service prison terms from two month to years reflected that the **prison conditions** are detrimental to the young people who are kept there as under trial prisoners. As the prison management house together the detainees and convicts, criminality is contaminating the innocent. Present prison environment is inhumane and respondents estimated 60 percent of the prison population is innocent of any crime. One defendant expressed his worry on the misuse of the human resources of the inmates as there is no opportunity for learning livelihood skills that they could use after prison life.

All of the respondents expressed the opinion that right to reparation for victims of crime is urgently needed. Both victims and defendants were strongly in favour of the provision of compensation to victims out of government fund. According to these respondents this is essential to regain people's trust in criminal justice system.

Similarly, respondents expressed need of clear provision for compensation from the state to accused persons acquitted by the courts.

Representatives of the **criminal justice agencies**: the police, government attorneys, judges and court officials all stated that they have been rendering satisfactory services to the victims of crime, in so far as present provisions allow. Although this was the case, in some instances victims and witness become hostile during their deposition in court. Likewise, representatives of criminal justice agencies said that they have tried their best to protect rights of suspects, accused and defendants of criminal charges.

In the group discussion held in headquarters of the both Bara and Dhankuta districts, criminal justice actors expressed their strong preference for maintaining the status quo and were clearly resistant to any changes in the modalities for the delivery of criminal justice services.

Blame was apportioned to non-government organisations for raising the expectations of the people in the name of rights' advocacy. The officials argued that state was not in a position to fulfil all the rights of the parties in criminal cases as the state had priorities other than access to justice.

## Civil Justice

The majority of the interviewees expressed concerns about sharing their experience of the court system; possibly for fear that this might prejudice their case in some way: but in the end citizens were quite forthcoming. Once they engaged, all interviewees were enthusiastic to listen and to tell their stories: when asked challenges and opportunities, many were not able to express their views succinctly, but all of them wanted to see changes in the justice delivery system and the highest priority complaints were on **procedural delay and corruption**. All of those who had land related disputes wanted to settle their cases at the local level.

In their views existing laws and procedures are complex, time consuming and orientated to process rather than results. They believed that such laws of procedure need to be made simple, short and result orientated. Of particular concern was the inefficiency and delay in delivery of subpoena. Most also raised issues of the lack of needed conveniences for the service users: there was no waiting place, drinking water, inquiry desk, toilet, canteen, photocopy/fax/ telephone and other required facilities in the courts and other justice related offices.

The interviewees also expressed their concern about management, capacity and fairness regarding the judicial functions of the quasi-judicial institutions i.e. Land Revenue Office, District Land Survey Office and Land Reform Office. The service users at the district level in Kathmandu, Bara and Dhankuta described how the Land Revenue, Land Reform and Land Measurement Offices do not treat service users with reasonable respect. They have not maintained proper record and document management, which causes delay and lack of coordination with courts and other offices.

Some of the people who had filed and were defending land encroachment cases of the community forest were also interviewed. In their opinion government offices should be able to settle such dispute at district level. Although there was consensus on the inefficiency and low level corruption within local quasi-judicial offices, they were of the opinion that, in the context of the new federal structure such offices should have devolved powers in relation to issues such as land management, land revenue and land measurement. The members of the Judicial Sector Coordination Committee also think that such issues must be settled at the provincial level, but seemed less convinced that the current quasi-judicial jurisdictions were the most appropriate locus for this.

Statutory based **arbitration** was established to serve as an effective and cost-effective half-way measure between unregulated informal mechanisms and the time

consuming costliness of resorting to the courts.

However, all of the five respondents in this area, disputants utilising the arbitration process, expressed their dissatisfaction about delay. In each of their cases one of party was disagreeing to initiate arbitration, therefore the other party had to file petition in the Court of Appeal to appoint arbitrators. In each case a petition seeking writ of Certiorari was filed in the Supreme Court and in every case at least five years period had already elapsed. The other issue raised by the interviewees was about cost. In their experience lawyers ask for more remuneration in arbitration proceeding in comparison to normal court proceedings. Moreover, there is not any specific rule to determine remuneration for arbitrators and tribunal itself has to propose its remuneration. Interviewees also expressed their concern about current provisions of the Arbitration Act which provides an option to file petition against award of the arbitration tribunal, which in turn also creates more delay.

Interviewed arbitrators also accepted that the existence of several options to enter in regular court proceedings in relation to an arbitration process has made it a time consuming affair. However, in their view, in spite of possible delays, it is more efficient than the courts. They also accepted that arbitrated disputes can prove more costly than court action. In their view, the appointment of Government employees as arbitrator by the Government on its behalf, which is common practice in Nepal, raises questions about the impartiality of the process itself.

With regard to **mediation** Bara and *Dhankuta* provide contrasting views. The complaints in Bara were about the procedures and effectiveness of the Court Annexed Mediation, while in there was a more positive perception. In *Dhankuta* the JSCC believes that the use of court annexed mediation has reduced the number of litigations. This view of JSCC corroborates with the statements of the service users in respect of their satisfaction level and preference to use mediation.

According to respondents, **implementation of the court's judgments** is a serious concern for civil litigants. They commented that it is difficult to possess the property even after the court's decisions and wanted some initiatives at the local level to implement the judgments, including increasing the role of the civil society in implementation of judgments.

One of the interviewees in *Dhankuta* was a person who won their case in the Supreme Court, but failed to have it implemented. He was of a view that current laws and structure of the court frustrate the implementation of judgments; therefore, he suggested that denial of implementation must be followed with sanction. Moreover there should be legal procedure and police cooperation for the enforcement of the court decisions.

Regarding level of legal awareness, the members of the civil society and interviewees wanted to know about the law, procedure, court, government offices and their staff beforehand through different sources including by the radio and other means of media. They said we know there are laws, courts and staff, but we do not know their functions, time line and services provided by such offices.

Most of the **women** who were plaintiffs in the cases were left out or ignored by their husbands and they sought partition property. According to them, they faced social stigma, use of force by their husbands, discouragement by the society and even some times harassment by the court staff. However, in *Dhankuta* they were grateful to the women lawyers who provide legal aid service for them.

About trust to the courts and justice related institutions, those who were using court facilities still expressed hope. One respondent who had won their case still maintained that the court is corrupt. Many of them said they had paid small amount of money to the court staff for quicker services. Some of them who had used the facility of the quasi-judicial bodies like land related offices criticized their way of



operation and do not want to go again to such offices.

A respondent in a commercial case in Kathmandu cited the delay in decisions as a problem, but still thought that the court was better than any other place to settle disputes an indication of the belief that cases with civil liability like consumer related cases must be brought under the mainstream court system instead of being dealt with by the CDO office.

Most of the interviewees think that local lawyers' capacity to use the law in litigation must be improved. They hold that lawyers' service must be oriented to solve the problems, rather than to prolong the cases. The JSCC also talk about enhancing the capacity of the local bar units, properly implementing their codes of conduct and strengthening regulatory mechanisms.

Significant numbers of interviewees used the services of *Lekhandas* (paralegals) for preparing documents and facilitating the works in the government offices and courts. Because of ability to speak local vernacular, low cost and easy availability rural people are more comfortable using paralegals services. In fact respondents from rural areas were unable to differentiate between the qualified lawyers and paralegals.

Private practice lawyers including the members of the JSCC had express serious concern about *Lekhandas'* (Paralegal) quality of services and accountability. Only a few interviewees claimed to know about the availability of legal aid, some of them having just heard about it but did not know how and where it is available. Women, Dalits and poor interviewees said that they would be happy to use legal aid.

With regard to the use of statutory institutions outside of the courts: some of the civil issues which do not come within the Jurisdiction of CDO had nonetheless been dealt with by the CDO. Influential people seeking recovery of money tend to go to CDO rather than regular court. This saved their time and also court fees. Such expansion of de-facto jurisdiction

was claimed by the CDO as illustrative of increasing faith and trust on the part of the people in the local administration. In reverse the judges think this is the misunderstanding of jurisdiction by such authorities. On the other hand, most of the interviewees wanted to settle some of the small disputes at the VDC level and they want such jurisdiction to be provided to the local bodies.

On the subject of **legal aid**, the president of the Bar Association in Bara reported that Bar Associations do provide legal aid, but to a very limited degree. The district legal aid committee appears to be lacking in resources. Some of the NGOs are providing legal aid to specific groups or on specialist themes. Officials stated that such NGOs' service is not sustainable. Usually, such service exists till the projects close. There is a paid lawyer appointed by court who provides free legal aid to a party unable to afford lawyer and to whom court agrees to provide such service. Mostly such aid is limited to criminal trials. There is lack of coordination among such legal aid providers and a strongly held belief that often the quality of lawyers operating under the various schemes remains questionable.

With regard to the views expressed by **officials**: most of the allegations on court management made by the interviewees in Bara were not defended by the members of the Justice Sector Coordination Committee (JSCC), rather they tried to justify the situation, citing the insecurity and government's inability to introduce new laws, provide human resources and adequate infrastructure. The interviewees raised questions about the capacity of the court staff, such as officials' inability to understand language in Bara, their lacking in basic skills and their ability to deal with the service users. These issues were also accepted by the members of the JSCC who were looking for a government lead to improve the capacity of staff in the court and other relevant offices.

The members of the JSCC highlighted the importance of their role at the local level and stated that if utilized properly the JSCC could build up synergy to reform the

justice sector, including the civil justice system. According to them the JSCC needs more resources, expansion of membership including the representatives of the users' groups and the provision of more resources to lunch capacity building trainings for the local staff and organize interactions at the local level.

Though no attempt has yet been to organize justice sector **service users** as a group, the JSCC considered that users groups of civil justice system should be involved in their regular meeting to improve management, rectify problems in the Court and other quasi-judicial bodies. Moreover, JSCC also thought such groups could be mobilized to communicate with the common people on the law, procedure, management and service facilities of courts. The members of the JSCC were of the opinion that regulatory and disciplinary mechanisms and code of conducts of the respective sectors need to be established or strengthened. Such mechanisms must be designed and activated at the central and local levels.

The interviewees in Bara and Dhankuta thought that the court's junior staff should receive capacity development trainings and opportunity to exchange their experiences. The discussions with the court staff suggested that they simply do their regular work, by following the orders and conventional practices without appreciation or motivation. The members of the JSCC accepts the overlook on the (junior)staff trainings and said that annual review of the effectiveness of the law, procedure and court staff must be conducted at the central and local level.

The members of the JSCC were of the view that government should initiate reform plans in such offices, with the involvement of local staff. One of members of the JSCC in Dhankuta, who represents civil society, was critical of the service provided by such offices. He emphasized the need the voices of stakeholders to be heard by the justice system. He highlighted the need of civil society's involvement to improve and support the local justice initiatives and to raise their voices for justice at the local level.

## Non-State/Informal Justice and Community Security

With regard to **Community Security**: the majority of the respondents stated that security situation in the community and districts has been improving in comparison to the period of armed conflict, reporting a noticeable decrease in serious violence. In Dhankuta District the CDO reported that the security situation of the district is, in the national context, above average.

However, killing, abduction, quarrels, smuggling, activities of underground armed groups and regular bandhas are still the part of life for the people in Bara as reported by the full spectrum of respondents, including political party members. Moreover, there was considerable disillusionment expressed on account of the lack of convictions for criminals, the ongoing impunity for crimes committed by state actors as well as the armed groups, and the smugglers. Citizens also pointed out the deep-rooted corruption throughout the system and the resulting failure of the government and security institutions.

In Dhankuta, there are no local armed groups but respondents were very concerned at the ongoing closure of political space due to armed groups and an ineffective state justice system, suffering from widespread political interference and corruption at national level.

It is noteworthy that the majority of the women respondents of both districts reported that there was no security at all for women in the community. They pointed out the lack of trust, dowry, and domestic violence, sexual abuses against women including rape, polygamy, child marriage, and ethnic terror including gender, caste and ethnicity-based violence are prevalent in the community. They thought that security mechanism is very weak; indicating a limited police presence and their lack of accountability to the people as major reasons for this.

Moreover, the representatives of women's rights organisations and women paralegal groups in both districts reported that they had to face threats by their male counterparts as well as by the perpetrators while performing their roles as facilitators and mediators. They commented that male members in the community think that the women have taken over their roles and power / authority in the community that they have been exercising since many centuries.

Women from the Dum community (the Madhesi Dalits) also explicitly said that the police do not respond and protect them from caste- based discrimination despite the laws which prohibit the people from practicing such discriminations. They reported that the so-called high caste people do not let them use public water resources and there is always a possibility of tense between so- called high caste people and low-caste people, which is always a cause of insecurity. In addition, the larger volume of alcohol consumption in the community and lacking of saving habits are another causes of insecurity in the community.

There are two major contributors to community security in Nepal: formal and informal actors. The police are the formally designated institution to provide the citizen with protection and promotion of security in the community, safeguarding citizens from violence, threats and crime. However, the majority of respondents perceived Village Development Committees and Municipalities, as well as informal justice mechanisms as more effective guarantors of security.

A considerable diversity of informal groupings is actively engaged in providing security and justice to community members. This includes community level women's groups, mothers' groups, local peace committees, both at district and VDC level in Dhankuta, and paralegal as well as traditional practices like Anjuman in Muslim and Shir Uthaune in Limbu. Additionally, in many instances, various wings of political parties also offer security to their followers and cadres: claiming to

have supported their followers by resolving disputes on various issues.

From the evidence provided by respondents, it is evident that, for them, institutions such as the Nepal Police are not the key players in the provision of justice and security system in their communities. They are secondary players and, if anything, play a role only if a dispute/problem is not solved in the community through other informal means. When people discussed the security and justice mechanism/system in the community, there was a clear impression that there were no presence of national actors such as police, VDC personals and other state institutions in the community, which could play a lead role.

Although the crisis-levels of conflict-related abuse are past, there is still a substantial gap between the prevalence of abuse and the capacity of the national actors to deal with it. While the Peace Committee in Dhankuta district is working effectively this is not the case in Bara. Political parties' wings in Bara district expressed concern that the Maoists continue to be targeted by underground armed groups; composed, they believe, of ex-police officers. As for the future, respondents voiced grave concerns about the considerable uncertainties surrounding the next stages in the political process and the consequent impact on local levels of security and peace.

With regard to **Informal Justice**: traditional tribal, ethnic, cultural dispute resolution mechanisms have existed in Nepal for centuries. Khata Yanzi system in Eastern Sherpa Community, Badhgar System in Tharu community in Bardia, Mukhia System in Upper Mustang, Manyajan System in eastern Yadav Community are still in existence. Most of such systems possess a combination of mediation and arbitration.

Respondents reported that in the past there were many examples of traditional justice practices in the community, but it is a widely held opinion that these are slowly disappearing. For instance a respondent from Bara district commented that Mukhiya, Manjan in the Dum community

and Anjuman in the Muslim community used to practice traditional means of justice in the respective communities, but no longer do so. Similarly, a respondent from Dhankuta stated that the practice of *Shir Uthaune* in Limbu community is fading out.

The evidence is that in Bara all traditional systems of dispute resolution are diminishing. Nomination of traditional positions such as Mukhia (Head of the Community), Manya-Jan (Respected Man) within specific community is no longer practiced. A recent trend has been to organize specific religion or cast groups as NGOs. For example all Muslims of the district has registered a NGO named "Muslim Sewa Samaj" (Muslim Service Society). Similarly, Yadavs have also registered "Gopal Sewa Samaj". Both of the organisations claim to have their presence at village level. Both Samaj also claim that any dispute within the Muslim Community or Yadav Community is resolved by the respective organisation itself. Except for some hypothetical cases any specific example of such resolution was not provided by any organisation. In these organisations there is no participation on the part of women.

Interviewees in Dalit (Dom) dwelling area within Kalaiya Town also said that they have not nominated any community leader (Manya Jan) in the last 20-25 years; indicative of traditional values eroding in such communities: now they rely on other mechanisms for security and justice. None of the respondents in the Dom Community had any experience of court or litigation in Kalaiya. All interviewees were of the view that, in the case of any dispute, they would prefer to go to Thana (Police Office) or local elected member of Town Council (when there was). Paradoxically, all of the interviewees from Dom/Dalit Community complained about discrimination and poor behaviour toward them on the part of the police.

However, against the trend toward other justice mechanisms, still to be found within the Muslim community in Bara is the traditional practice of Anjuman; where decisions are based on the Koran and Islamic principles. These mechanisms deal

with several types of civil cases, family issues, marriages, divorce, and property-related issues and so on. The structure of Anjuman is based on different levels: Madarasa, Masjid and Maptab. But *Shir Uthaune* in Limbu community is confined to a few rural VDCs in Dhankuta and Therthum districts.

Regardless of examples of where they linger on, the distinct impression is that longstanding traditional mechanisms are slowly being taken over by political party leaders, community organisations, influential individuals, paralegal groups, women's groups etc.

An indication of the changing times is to be found in interviews with villagers from outside Kalaiya Town who utilised community based mechanism to resolve dispute in their village. However, whereas traditionally, elderly people of the village were nominated as the decision makers, now school teachers, political leaders and youth wing leaders are nominated.

All respondents reported that, whatever other shortcomings there might be within informal mechanisms, they produced prompt results. Equally, all also accepted that these mechanisms tend to be biased toward rich, socially and politically influential parties. Punishments given by such systems are sometime degrading and humiliating and public hearings detailing the cases of assaulted women is considered normal. Coercion is common and most of the interviewees said that intimidation and "mild torture" against accused is normal practice.

A case that stands out as an example of the inappropriateness of some informal interventions is one where rather than reporting the matter to the police, as they had wanted to; the family of an individual who had been murdered was coerced into accepting the intervention of informal institutions to resolve the matter with award of compensation. The second case is one that illustrates how the informal mechanisms were utilized in order to undermine the criminal justice system.

In contrast to the above example of informal justice mechanisms conspiring to undermine the rule of law, during the field visit the review team met with a 13-year-old girl victim of rape who visited a local women's group seeking justice and security and who was helped in her efforts to do so: as described in the case study below.

In defence of the informal systems engaging with criminal cases, a respondent from Bara said that they have settled in the community cases of sexual abuse, rape, polygamy, and even some murder cases through the traditional mechanism. The argument was that they did not have any choice since even from the formal justice system (court) victim do not get any justice and compensation (the most of the people define justice in terms of monetary value they receive), and even if the court provides justice, it takes too long.

It is too early to say about the performance of the Para-legal groups in both districts. The para-legal groups were recently formed and reformed where the team visited. They have been working in the community but they were not well informed about their roles and responsibilities. Although apparently lacking in the skills and knowledge on mediation but the members were confident about their expertise and effectiveness in mediation work.

A traditional mindset is highly prevalent in both men and women in the community. The members of women groups and paralegals are also not immune from this mindset. Particularly, they seem very judgemental about women's moral character, particularly in relation to sexuality, so there instances reported where they did not provide security to women but, rather, re-victimized those seeking their help.

The following statement made by a member of a woman's group serves to illustrate the point. *The consequences of foreign employment are very huge in our communities. One woman just eloped with other man, leaving two young kids at home. In another instance, one woman recently committed suicide because she became*

*pregnant in relationship with a third person, in the absence of her husband. Women used undue freedom in absence of their husbands, ignoring their responsibilities to family. We tried to convince them to control their feelings. Men work hard to earn money but wives spend the money unnecessarily. In the case of the above mentioned woman, she could not tolerate pressure from society at the end and so one day she committed suicide. We are so sad for her and her family. Women should not forget their limitations. There is a saying that our body is our enemy.*

## Legislative Framework, Oversight and Accountability

The following paragraphs provide an account of the spectrum of insight and opinion provided by wide range of parliamentarians, officials, representatives of international organisations and those International NGOs that are operating primarily at the legislative and policy levels. As with other aspects of this report this does not represent an exhaustive study of the full panorama of interests, but rather seeks to shed light on the major salient issues from the perspective of a select group of diverse informed and influential key informants.

The questions posed to each respondent were:

- What, from your perspective, are the challenges and opportunities faced by citizens, particularly the poor and excluded groups, within the context of the legislative framework, oversight and accountability issues as they relate to Access to Security and Justice and Rule of Law?
- How might the relevant institutions be strengthened?
- What are the options for improving the impact of international support over the coming three to five years?

The following paragraphs provide a summary of the informants' responses to

these questions and some of their opinions on related issues.

## Institutional Capacity

This is a highly emphasized intervention. Parliamentarians and officials saw limited budgets and resources, lack of education and training opportunities, low salaries and resulting poor motivation as contributing to poor institutional performance. What limited training there is like exposure trip abroad on particular training offers available is technocratic basically focusing on current problems and past perspectives, rather than providing higher level capacity building. One consequence of the institutional shortcomings was that the more able officials had a tendency to move to more lucrative institutions and others had a limited commitment to their employers.

As far as strengthening legislative framework is concerned, the parliament secretariat does not have a modern and functional capacity building division that could focus on consolidating and modernizing oversight and accountability functions. There is a committee on capacity development at CA which has virtually no programme calendar. After the election of 2008, the members of the constituent assembly (or legislative parliament) have been given the opportunity to take part in different orientation programmes abroad and are taken on overseas field visits. Many of them were able to further focus on the technical aspects of constitution making. However, these trainings were sporadic, decided in most of the cases by donors with little or no consultation with the constituent assembly secretariat. Some prominent members had more opportunities in this regard than others.

What has been observed is that the capacity development under this type of intervention no longer focuses on all the areas where capacity is needed. The constituent assembly secretariat, or the parliament secretariat of the past, has its own bureaucracy which includes not just administrators, but also thematic

experts like lawyers, reporters, marshals, and parliamentary committee level staffs. Some of them are pulled from government services. While marshals are received from Nepal Police, they are under the functional control of the secretariat. A few marshals are also taken on contract by the secretariat from the ranks of retired Nepal Army officers. Their capacity development is a very important aspect of capacity building initiatives. Newly elected legislators, especially the first timers, need such support more than others. Focus of legislatures means improved capacity at one level, but focus on the capacity of the members of bureaucracy means improved capacity at all levels. This reality has not been well recognized.

## Citizens' Awareness

Citizens are more aware today on what is happening around than ever before. More and more civil society organisations are working as thematic or pressure group organisations. Parliament is now much closer to civil society groups. However, citizens' awareness of legislation policies and institutions is not even across all areas. Several legislations which are vital for the economic and financial health of the nation are not fully or adequately reported. When they are reported, the interpretations given are mostly from politicians and senior leaders.

Analysis of new legislation or discussion on the theme of legislation before they are finally passed is not reported in the newspaper or the electronic media. The capacities of the journalists who report these issues are inadequate in several cases. Sensational issues get priority over issues which are economically important for the country. What is seen almost as a trend is that the news is not well analysed and the message given to the people is politically biased. This has impact on the citizens' awareness of legislation policies and institutions.

It must also be pointed out that Kathmandu is the centre for parliamentary news. It is the people of Kathmandu who are mostly the target of information dissemination. By

and large, the people in the hills and plains, those outside the vicinity of Kathmandu, are hardly considered stake holders by the media. Their stakes and immediate priorities hardly get attention.

Although, the mushrooming of local FM radios and community endeavours have given scope for wide spread reporting and dissemination, free flow of information from Singha Durbar (the government secretariat) to the villages and other rural areas is not ensured from the parliament. There is no feedback system either.

## Consultation with Affected Interests

In principle, the governmental system in general and the sub-system of the parliament mostly recognizes the importance of consultation of affected interest in the oversight and accountability procedures. All those interviewed agreed that citizens should have the full opportunity to comment of new legislative measures and amendment of existing laws of the country. This theoretical understanding, however, needs to be put into practice.

Most of the bills are introduced in the parliament are passed without the necessary discussion in most of the cases. At the committee levels, in-camera proceedings have been opened up in recent years, and it is there that discussions on the oversight and accountability issues are held. It is in the Legislative Committee that clause-wise discussions are held on the bills. While this committee is overwhelmed with its works, the other committees are deprived of holding discussions on the bills that concern their oversight and accountability responsibility. In the past, these procedures used to be applied consistently but in recent years, rules are not uniformly applied. Political decisions are made without giving credence to the procedure of the formalities. In this environment, affected interests have very little time to network with their groups and influence the legislative process.

Policy decisions, which are made at the ministry or departmental level, are generally made without consulting the immediate stakeholders. The drafting of the bills on civil procedure code, criminal procedure code and sentencing statute was a significant exception. Even if some formalities are made, their opinion is not the basis on which policy decisions are made. The empowerment of people at this level requires involvement of effected interest – more so in the case of Dalits, Janjatis, Madhesis, etc at the level of inception of the idea itself. Therefore, when the policy itself comes from the bureaucratic level, the idea of translating these policies into law is also very difficult. This needs to be taken into account in the reform process.

There are, as noted frequently, constitutional bodies like CIAA, Office of Auditor General and the NHRC and others. All these institutions are important in the constitutional scales but they do not regularly sit with the common citizens.

Consultation with affected interests at the level of clause wise discussion in the Legislative Committee is also almost non-existent. Many of the members are ignorant of the importance of this process. Even high profile members hardly take interest in it.

Mostly news in which a particular political party has stake gets to the media. But news without banners does not go well even if many people want it. This limits democratic space for oversight and accountability.

## Effectiveness of Legislative, Oversight and Accountability Institutions

Most of the people interviewed agree that the political environment in the country has been at the low ebb for many years. This has affected the conditions of the rule of law, due process requirement, and recourse to the courts and tribunals. The

effectiveness of legislation has not been much discussed. More or less, the system seems to be stable on this ground. However, there are problems with oversight and accountability.

The operation of any sub-system requires political commitment. Due to instability in the government, the system of political control is ineffective, or straightforwardly does not work. Moreover, politicians have been found to have nexus with senior bureaucrats, leading to abuse of the legal process and corruption. The accountability system in the political parties is very weak: internal procedures and behaviours are not regulated. This is one of the reasons that the call of the Judicial Council to start impeachment proceedings in the case of a Supreme Court Judge is not still taken up. There is no transparency in respect of the income and disbursement system of political parties. Party leaders do not have the tradition of voluntarily disclosing their income; and the ordinary cadres of the party hardly have that power and clout to demand it.

The role of the Public Accounts Committee is very important in any parliament system. This is the committee which ideally looks into the income and expenditure of the estate and how they are spent in regard to the laws of the country. It also makes ministers and the seniors bureaucrats accountable. However, this committee is not as effective as it used to be a few years back. The interaction with the Minister and concerned Secretaries is more confrontational than interactive. The government is quick to make commitment on the demands of the committee members. There is little follow up. Ultimately, very few of the Committee's demands get responded well.

Only a few of the Secretaries of the Government who are called in the committees to respond to the members are efficient. What has been found is that the secretaries coming from the Finance ministry, Law etc are much more efficient than the others. Their cooperation with the Committees where they are asked to come

and maintain accountability is crucial to maintain quality of governance.

Constitutional bodies, right from the Elections Commission, Public Services Commission, or the Commission on the Investigation of Abuse of Authority to the Office of the Auditor General must have greater roles in the parliamentary process. The importance of the National Human Rights commission cannot also be emphasized. At present, whatever the constitutional commissions produce as their annual reports, they are submitted to the head of the state, who in turn requests the prime minister that they be placed in the parliament where discussions are held on these reports, if required. The parliamentary feedback on these reports is generally very limited. Reports of commissions like the Rights to Information Commission hardly get tabled because they are governmental commissions, not constitutional, although very important in the life of common people. These reports hardly make national news. The statutory and government decreed commissions, which are also not sufficiently connected with the parliament, must be connected well through necessary institutions and procedures.

It is rare that the parliament ever has constituted a taskforce on any of these reports to study the document intensively and suggest measures that could be taken to improve their oversight system. This naturally affects accountability towards the citizenry.

In the interaction with the members of parliament and of the staff of the legislature it was emphasized that the internal rules of procedures should be revised and strengthened; the committee system modernized, the library and resources at the legislature upgraded and institutions and procedures must be established to deal with issues surrounding bills in the parliament. They also said that reform of Constituent Assembly (Conduct of Business of Legislative Parliament) Rules and anything that replaces them under the new constitution must be updated (requiring



selection of the chairperson and members of the thematic committees based on their educational background, interest and thematic experience; strict attendance of legislators and their participation in the house proceedings; division of labour, etc).

## Degree to which Responsibilities are Fragmented/Over-Departmentalised

Most of the citizens interviewed held that the system that is in use in Nepal is fragmented and over-departmentalised. Efforts on interdepartmental or inter-ministerial coordination are made in most of the cases. The Nepal Peace Trust Fund at Ministry of Peace and reconstruction is one example. However, they are not quite effective. Although all allocated funds have been disbursed, people (in this respect conflict victims, indigenous and marginalized communities, and fighters who are yet to be rehabilitated) are generally unhappy with it. The coordination at departmental or ministerial levels is mostly at mid-level bureaucrats, and decisions are mostly top down. For example, it is important for the Nepal Peace Trust Fund to deal with youth wings of different parties, including the YCL of the UCPN (Maoist), but has been substantially neglected by the Ministry of Peace and Reconstruction.

Policies are developed within each ministry according to the subject beforehand. These policies are then progressed into legislative measures, which are endorsed by the concerned department or ministry. Once the ministry gives clearance, it is sent to the Ministry of Law and Justice for legal inputs and drafting. This Ministry gives the measures developed by any line ministry the final approval and revises the bill technically. These bills are then sent back to the line minister at the parliament. Many sectors are interrelated and require more coordination and interdisciplinary input. This means delay, but also efficiency in the policy formulation process.

## Impact of the Transition to a Federal System of Government

Nepal has been declared a federal state by the interring constitution. However, except for this declaration there is little in the constitution that shows federalism in action. It is the new constitution which is expected to provide for federal arrangement.

The main stake holders of federalism are Madhesis, janjatis, and the people of deprived or marginalized regions. There is some support of federalization project among the dalits and women as well. However, the latter groups are not much keen on this issue, rather look at more state focus on their plight. The government officials have mixed feelings. Some of them emphasized that in the absence of political stability, federalization initiatives might end up creating a further chaotic situation. They emphasized the need for the political parties to be realistic in espousing federalist concerns.

It is generally expected that federalism will empower the people at the provincial level as well as those in the grass roots within these provinces. Many of the governance issues and grievances of common people might be tacked at grassroots and provincial level.

Federalization will involve closely work with international donors. There is concern at informed level that Nepal Development Forum has not been able to hold its meeting since 2008. So it has not been able to espouse federalization issues at that level. Gender issues have not fared up much in the federal dialogue, nor the issues of Dalits.

## Civil Society

The informal janjati caucus at the legislature was very keen to emphasize that indigenous people's organisations

have received scant attention from the donors. They have not received donations as much as they have share in the population of the country. This has helped perpetuation of existing inequalities in Nepal's development. In order to check it, janjatis must be allowed to lead and manage their development projects themselves; no intermediary is required. They must give opportunity to "good" persons, rather than articulate persons. Vested interests in the top are patronizing injustices. So the projects like JEP (Janjati Empowerment Project) should be a model. This type of project must also be launched for women, Dalits and Madhesis. This is the point of view of all Dalit citizens, which included professionals as well, think. Madhesis and

janjatis are generally firm that identity related issues must be handled by way of federalization. Whatever transitional issues are envisaged, they all should have access to decision making structures. In the absence of this, the deprived people will feel that they are cheated out this time around as well.

Some key informants also highlighted the fact that there has been so much of advocacy and awareness programme by the NGOs with the donors' money. It is high time that the donors now also meet the expectations that they have aroused everywhere. In the area of economic, social and cultural rights, the government cannot escape now, and there is no escape for the donors as well.

# SUMMARY OF SECTOR STRATEGIC PLANS

This Annex provides summaries of the strategic plans for six institutions within the Security, Justice and Rule of Law Sector.

## SUPREME COURT

The first five-year Strategic Plan of the Nepali Judiciary had defined the vision, mission and values of the judiciary. Vision, mission and values do not change constantly and since they are permanent in nature, the spirit of mission, vision and values defined by the first Plan have been incorporated in the second Plan with minor changes. Commitment and ownership regarding implementation of the Plan of the judiciary has been incorporated as a new value.

The Plan recognizes vision as destination,

mission as path to destination and values as guidelines to the proceedings of the judiciary.

### Vision

To establish a system of justice which is independent, competent, inexpensive, speedy, and easily accessible to the public 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.

### Mission

To impart fair and impartial justice in accordance with the provisions of the Constitution, the laws and the recognized principles of justice.

### Values

Allegiance to the Constitution	Judiciary shall remain committed towards the supremacy of the Constitution and shall remain committed towards the realization of economic, social and political justice as enshrined by the Constitution.
Independence and Autonomy	Judiciary believes in independence to perform its duties without any interference and pursues autonomy to deliver its services.
Duty towards Society	Judiciary is mindful of its judicial responsibility to the society and by preserving the values of democracy, multi-party and open society, the judiciary furthers collaboration with other external actors for peaceful settlement of disputes and is committed towards promotion consensus building and spirit of mediation in the society.

Accessibility of Justice	The judiciary will strive for providing increased accessibility of the people including the disempowered, minorities and indigents to judicial services at the most local level.
Competent Justice	The judiciary underlines the need to continuously improve the capacity of judicial institutions in order to provide quality services to the people in a dedicated and professional manner.
High ethical standard	Morality, ethics, integrity accountability, transparency and honesty will guide the judicial process in order to enhance the public trust.
Representation and Inclusiveness	The judiciary will be guided by the principle of fair demographic representation, promote inclusive institutional culture and carry out its duties without compromising the merit and quality of justice
Ownership	Judges and employees shall remain fully committed in order to maintain the prestige of judicial service and shall be committed to reform of judicial process.

## Projection of Strategic Interventions

### Strategic Intervention 1: To reform case management process so as to make adjudication process effective

- 1.1 To prepare and implement scientific process for case management
- 1.2 To conduct special campaigns in places having many cases and courts considered to be sensitive in terms of security
- 1.3 To make the process of judgment writing speedy and quality
- 1.4 To develop scientific documentation process
- 1.5 Impact evaluation of pilot courts

### Strategic Intervention 2: To make execution of judgment simple, speedy and effective

- 2.1 To establish and strengthen Judgment Execution Directorate
- 2.2 To enhance the capacity of Judgment Execution Unit
- 2.3 To manage records of sentencing and fines to make revenue recovery unit effective
- 2.4 To manage goods of cases
- 2.5 To effectively manage bail and bond
- 2.6 To monitor the execution of directive

orders issued in public interest matters

### Strategic Intervention 3: To develop human resources

- 3.1 To establish and strengthen Human Resource Division
- 3.2 To implement human resource development plan
- 3.3 To motivate human resource
- 3.4 To enhance the capacity of human resource
- 3.5 To coordinate and cooperate for development of human resource

### Strategic Intervention 4: To develop infrastructure of court and manage logistics

- 4.1 To review and implement Plan relating to land and building
- 4.2 To manage vehicles, machinery and furniture
- 4.3 To manage financial resources
- 4.4 To strengthen library system

### Strategic Intervention 5: To institutionalize the application of information and media technology

- 5.1 To establish and strengthen the infrastructure for institutionalization

- of information technology
- 5.2 To develop and implement information and media technology plan

**Strategic Intervention 6: To strengthen inspection and supervision system**

- 6.1 To strengthen inspection and supervision mechanism
- 6.2 To maximize the use of information technology for developing automated monitoring system
- 6.3 To link performance of work observed during inspection and supervision with career development
- 6.4 To maintain an integrated record of cases disposed by each judge

**Strategic Intervention 7: Reform in security management**

- 7.1 To strengthen security management in courts
- 7.2 To strengthen security management of judges, defense lawyers and employees
- 7.3 To manage security for parties to a case, victim, witness and other court users

**Strategic Intervention 8: To preserve the values of judicial independence, accountability and autonomy**

- 8.1 To strengthen judicial independence
- 8.2 To effectively implement code of conduct for judges and employees
- 8.3 To strengthen mechanism for hearing complaints regarding irregularities
- 8.4 To maintain financial discipline and transparency

**Strategic Intervention 9: To institutionalize research regarding adjudication, justice system and judicial reform**

- 9.1 To strengthen research mechanism within the judiciary
- 9.2 To conduct research on precedents, law and justice system and to publish the same
- 9.3 To review, amend and draft new laws related to administration of justice so

as to increase the quality of service provided by the court

**Strategic Intervention 10: To strengthen and institutionalize relation with stakeholders of the justice sector**

- 10.1 To strengthen justice sector coordination committee
- 10.2 To develop coordination and cooperation with stakeholders on the basis of mutuality
- 10.3 To regulate and manage cooperation with donor agencies and non-governmental organisations

**Strategic Intervention 11: Increase access to justice and increase public trust**

- 11.1 To determine stakeholders access to judicial information
- 11.2 To promote legal aid
- 11.3 To promote mediation
- 11.4 To strengthen the service provided to court users

**Strategic Intervention 12: To strengthen institutional capacity of courts and tribunals**

- 12.1 To draft strategic plan and to establish and strengthen the implementation mechanism
- 12.2 Drafting and implementation of implementation plan by all courts and tribunals
- 12.3 Dissemination of current Plan, monitoring, evaluation and drafting for future plan

## OFFICE OF THE ATTORNEY GENERAL:

### Five-Year Strategic Plan 2011/12 – 2016/17

The Strategic Plan of the Office of Attorney General (OAG) has recently been approved by Nepal Government. The Strategic Plan

begins with Vision and Mission and goes on to identify the Goals and Values. The Goals have identified six areas for immediate action.

In addition to the basic elements of a strategic plan, it goes on to identify operational priorities for fulfilling the Vision, Mission and Goals. The detailed action plans or activities are highlighted in the paragraphs below. The detailed activities identified are priority agendas for the OAG. The activities include:

1. Arrangement of human resources for implementation of the responsibilities under the constitution and law of the land.
2. Effective representation of cases where the rights and interests of the State is involved.
3. Raise the level of awareness among the government agencies of the roles and responsibilities of the OAG and offices under it.
4. Develop a system of availing legal opinion of the OAG while giving decision by agencies of the Government.
5. Modernize investigation and prosecution of criminal offence.
6. Strengthening of professional service of government attorneys.
7. Establish a professional relation and monitoring between the OAG and offices under it.
8. Specialization of the service of the attorney.
9. Development of physical infrastructure and modern technology.
10. Management and monitoring of job performance of government attorneys of the OAG and offices under it.
11. Develop a separate legislation for the service of government attorneys.
12. Management of basic necessity like the facility of a library.
13. Allocation of enough budgets for transaction of business.
14. Develop clear and transparent job performance and evaluation standards.

15. Raise legal skills of support level staff.
16. Increase facilities for the staff.
17. Develop appropriate law for reform of criminal justice system.
18. Strengthening of quasi-judicial bodies for fair justice.
19. Develop good coordination among stakeholders.
20. Strengthen security of the OAG and government attorney offices as well as attorneys working under it.

The Strategic Plan has prepared a timeline and budgets required for implementation of activities identified.

## NATIONAL JUDICIAL ACADEMY

### Strategic Plan

2006/07 – 2010/11

#### Vision

The vision of the National Judicial Academy of Nepal is: To become a capable institution for providing required knowledge for the fair and efficient performance of legal and judicial responsibilities commensurate with the efficient and quality needs of the national judicial system which strives for an impartial, competent, inexpensive, speedy, accessible justice.

#### Mission

The mission of the NJA is to: Bring about an established professional system of continuing judicial education through training, professional development, research and publication programmes which address the respective needs of judges, attorneys, judicial officers and others who are involved in the administration of justice to foster desirable traits, values and attitudes for promoting fair, just, and efficient justice system for Nepal.

## Values

We value knowledge and expertise.

We value commitment to the legal and judicial community

We value accountability.

We value professionalism.

We value teamwork.

We value integrity.

**Strategic Goal 1: To develop and offer quality training to enhance professional capacity of judges, legal and judicial professionals. Strategies:** The following strategies will be adopted for achieving above strategic goal:

- Analyze, identify and update training needs of judicial and legal personnel and professional
- Develop appropriate professional training courses
- Develop detailed training plans for different target groups
- Implement standards-based courses
- Ensure that individuals engaging in judicial and legal system affiliated with government get opportunity to participate in continuing legal education programme conducted by NJA

**Strategic Goal 2: To develop NJA as a centre of excellence in the study and research in the field of law and justice Strategies:** The following strategies will be adopted for achieving the above strategic goal:

- Identify contemporary/significant/ambitious legal and judicial issues demanding further study and research
- Explore strategic alliances with other organisations to conduct research activities
- Encourage individuals to involve in research activities
- Explore funding for legal and judicial research
- Consider awarding funds for research grants

**Strategic Goal 3: To establish and strengthen legal information system Strategies:** The following strategies will be adopted for achieving the strategic goal:

- Develop the data base using software
- Explore to create a publication cell
- develop and publish training materials
- Establish a Document Cell

**Operational Goal 1: To strengthen the institutional capacity of the NJA Operational Strategies:** In order to accomplish the strategic goal, following strategies will be adopted:

- Explore resources and options for completing the NJA building
- Develop and implement the best alternative to operate the courses at present
- Develop and implement personnel, financial, operational and general management policies and its associated rules and regulations
- Pursue for NJA course mandatory
- Explore the demand-led training courses and consultancy

**Operational Goal 2: To develop and enhance the capacity of human resources of the NJA Operational Strategies:** In order to accomplish the strategic goal, following strategies will be adopted:

- Develop organisational structure
- Select, recruit and deploy required personnel
- Formulate employee development plan
- Explore employee development programme
- Develop and implement performance-based personnel policies
- Develop and practice organisational culture
- Develop succession plan

**Operational Goal 3: To establish and build up the networking and coordination with various stakeholders Operational Strategies:** In order to accomplish the strategic goal, following strategies will be adopted:

- Explore the organisations involved in training, research and consultancy in national and international level
- Explore the form of relationships with these organisations

# NEPAL BAR ASSOCIATION

## Strategic Plan

2007-2011

### VALUES

1. Commitment to independent judiciary
2. Inclusiveness and participation
3. Equity and equality
4. Mutual respect and solidarity
5. Transparency and accountability
6. Non partisan
7. Empathy towards the people who have no access to justice system

### VISION

A competent, vibrant, decentralised, participatory and inclusive NBA with sound professional ethics and standards committed to rule of law, social justice, human rights, democracy and independent, competent and impartial judicial system

### MISSION

NBA strives for ensuring constitutional supremacy, upholding rule of law, maintaining independent judicial system, promoting human rights and social justice with special emphasis on making justice system accessible to all by maintaining high professional ethics, standards and commitments of our members

### GOALS

1. To contribute towards ensuring the rule of law through independent, competent and impartial judicial system so that the basic rights of the people are protected and promoted.
2. To contribute in establishing and strengthening constitutional supremacy

### STRATEGIES

#### a. ADVOCACY AND LOBBYING

Lobbying and advocacy aims to change written and unwritten policies in order to strengthen the rule of law and justice system. There are numbers of ways where lobbying and advocacy is conducted to achieve policy changes. Advocacy and lobbying has always been the strength of NBA. Some of the opportunities as expressed by the members are as follows:

- Strong solidarity with professional organisations for rule of law
- Show strong commitment on rule of law and stable government
- Capable of generating pressure to the government for laws and by laws formulation on notary public
- Committed to contribute towards the formation of stable government

#### b. PROMOTION OF PROFESSIONAL ACTIVITIES TO THE REACH OF JUDICIAL, QUASI JUDICIAL AND ADMINISTRATIVE BODIES

Professional activities are a key to reach judicial and quasi-judicial bodies which demand high level of competencies and commitments. Professional activities not only ensure the quality of work but are also effective in reaching and influencing policy makers and professionals.

#### c. COLLABORATION AND EXPANSION OF PROFESSIONAL NETWORKS WITH NATIONAL AND INTERNATIONAL PARTNERS/STAKEHOLDERS

Achieving goals and objective of NBA would not be possible alone without networking and collaboration with similar professional organisations within the country and outside. Collaboration with professional organisation while in one hand brings synergy and strength, and on the other minimises the resources by maximising the benefits.

Some of the issues related to collaboration and networking as expressed by the members are as follows

- Manage resources available for research



- Capitalise international recognition and network in resource pooling
- Research on the economic opportunities for NBA
- Equitable distribution of available resources
- Mobilise Bar members and international community to improve the physical resources of NBA
- State to allocate budget for NBA

**d. PROMOTION OF DEMOCRATIC NORMS, VALUES AND CULTURE WITHIN BAR**

Some of the issues as expressed by the participants of various workshop are as follows

- Relevant changes in NBA constitution
- Decentralization of NBA leadership
- Form constitution reform committee
- Formulation of relevant constitution
- Amendment of NBA constitution
- Decentralisation of leadership and effective coordination between central and bar units
- Dynamics and decentralised leadership

**e. PROFESSIONAL AND INSTITUTIONAL CAPACITY BUILDING (Human resources, physical facilities and system) of NBA**

- Explore opportunity of training, workshop and higher education for its members
- Regularity in professional training
- Orient NBA members towards professionalism
- NBA to suggest a framework that guarantees professional security
- Introduce award and punishment to maintain professional ethics
- Black list of violator and make public
- Enforce code of conduct effectively so as to make the Bar members more professional
- Abide by code of conduct

**f. RESEARCH AND PUBLICATIONS**

Research while improves professional qualities of the member it also improves the decision making process as well as policy influencing efforts by producing empirical evidences and actual information. Publication of such

material in one hand improves the credibility of the organisation and at the same time generates some resources by selling the products and services. Many international organisation and research institution always look for quality researches in the field of governance and democracy, NBA can offer the opportunity to fulfil this gap at the national level.

**OBJECTIVES:**

**a. To protect and promote basic human rights and liberties of the Nepalese citizens and individuals.**

**Performance indicators**

1. Significant improvement in situation of Human Rights Index (Benchmarking) in the country.
2. Relationship and networking established with international Bar Association particularly in the countries where Nepali migrate for work.

**b. To protect and promote the independence of judiciary and professional standards, rights and ethics**

**Performance indicators**

1. Area of professional activities expanded
2. Representation of NBA in policy making process increased

**c. To uphold rule of law and supremacy of the Constitution**

**Performance Indicators**

1. Timely enforcement of judicial decision improved
2. Law and order situation monitored and advocated

**d. To play a catalytic role in strengthening and accelerating the justice delivery system**

**Performance indicators**

1. Average time taken to settle the court cases reduced
2. Case registration of deprived groups increased
3. Out of court settlement and mediation increased

4. Number of cases disposed every month increased
- e. **To make law enforcing agencies and state departments responsive towards the enforcement of and abidance by national and international human rights laws**

**Performance indicators**

1. Advocacy conducted based on the monitoring reports produced
2. Domestic laws reviewed and harmonised in line with the international laws and treaties
3. Fair trial system protected and promoted

- f. **To strengthen the physical and intellectual capacity of NBA and its members**

**Performance indicators**

1. At least 70% Bar units shall have their own buildings
2. Efficient communication and IT system between various Bar units established
3. Well equipped resource centre established and maintained at the centre and other Bar units
4. A training center established at the central level
5. Efficiency and effectiveness of NBA members increased
6. Mediation skills of Bar member enhanced

## OUTPUTS

**Outputs for Objective 1:** To protect and promote basic human rights and liberties of the Nepalese citizens and individuals

- a. NBA members, stakeholders and general people are sensitised on human rights and other legal rights
- b. Legal aid provided to individuals whose rights are violated or denied in coordination with relevant stakeholders
- c. Regular report on implementation status of treaties, conventions and commitments produced and disseminated

**Outputs for Objective 2:** To protect and promote the independence of judiciary and

- professional standards, rights and ethics
- d. Code of conduct reviewed, updated, implemented, monitored and implementation status report produced and disseminated periodically.
  - e. Coordination and collaboration maintained between Bar and Bench by establishing formal mechanism at all level of courts
  - f. Disciplinary committee of Nepal Bar Council activated and strengthened

**Outputs for Objective 3:** To uphold rule of law and supremacy of the constitution

- g. Amendment of Acts, rules and regulations made compatible with constitutional standards through advocacy/lobbying
- h. System of judicial review made effective through pro-active court

**Outputs for Objective 4:** To play a catalytic role in strengthening and accelerating the justice delivery system

- i. Speedy justice system maintained
- j. Laws, Rules and regulations amended
- k. Behaviour of justice sector actors improved

**Outputs for Objective 5:** To make law enforcing agencies and state departments responsive towards the enforcement of and abidance by national and international human rights laws

- l. Law enforcement agencies/ authorities sensitized on human rights laws
- m. Campaign on enforcement of human rights laws launched

**Outputs for Objective 6:** To strengthen the physical and intellectual capacity of NBA and its members.

- n. Physical facilities in all BAR units (computer, other equipment ...) improved
- o. NBA structure and system modified and made operational
- p. Knowledge and skills of NBA members enhanced
- q. Secretariat of NBA strengthened

# Nepal Police Interim Strategic Plan, 2011 (Draft)

## 1. Purpose of the Interim Strategic Plan for the Nepal Police

In initial discussions between the IGP and DFID it was agreed that rather than attempt to develop a full blown Strategic Plan for the Nepal Police at this time, it would be more effective to develop an Interim Strategic Plan comprising of tackling three core strategic priorities:

- Developing and implementing a Communication Strategy whereby the Nepal Police can develop more effective two way communication both within the Nepal Police, and externally between the Nepal Police and its key stakeholders and the communities that they serve;
- Developing and implementing a Nepal Police Accountability and Transparency Strategy whereby the Nepal Police can be held accountable to its key stakeholders but especially to the communities they serve at the local level.
- Developing and implementing a Nepal Police Community Relations Strategy whereby the Nepal Police can effectively work in partnership with its key stakeholders but especially those communities they serve.

The core objective of these three strategic priorities is that together, their implementation will led to an effective partnership between the police and their communities that will result in improved service delivery and accountability of policing services that are owned by both the police and the communities they serve.

The development and delivery of the Nepal Police Interim Strategic Plan will also achieve the following objectives:

- The process of formulating and implementing the ISP will start to impact police behaviour in the strategic priorities, leading over time to changes

in police attitudes and ultimately police culture thereby enhancing the chances of long term police reform;

- To highlight to Nepal Police Key Stakeholders, and to communities ,that the Nepal Police is committed to developing a police service in partnership with communities they serve;
- To develop the capacity and experience of key personnel in the Nepal Police in strategic planning and implementation as a effective foundation to build capacity towards the design and delivery of the Nepal Police Strategic Plan under the new DFID Programme;
- To effectively use the lesson learned from the design and delivery of the ISP Strategic Priorities, towards the design and delivery of the full Nepal Police Strategic Plan; and
- To develop an effective programme implementation architecture within the Nepal Police as an effective foundation to build capacity towards the design and delivery of the Nepal Police Strategic Plan under the new DFID Programme.

## 2. SP Strategies

*In this section the strategies identified to deliver the strategic priorities is explained highlighting their purposes, objectives, actions and activities, all of which are contained in three Action Plans. The question of the required budget to deliver is discussed and the identification of relevant 'performance indicators' to be formulated by the Nepal Police in consultation with Saferworld.*

### Strategic Priority 1:

During the detailed planning process, Senior Officers involved were clear that there needed to be a culture of information sharing developed at all levels within Nepal Police, not just "top down", but also "bottom up" with systems and processes put in place to ensure that all Officers "voices" were heard, and that their inputs were valued and responded to. There was also a clear resolve to improve the organisations external communication systems, having

regard to messages, audiences and mediums utilized.

**Purpose:** Developing and implementing a Communication Strategy whereby the Nepal Police can develop more effective two way communication within the Nepal Police and externally between the Nepal Police and its key stakeholders and the communities that they serve.

**Key Objective 1:** To develop effective written and verbal top down and bottom up communication within Nepal Police that is acted upon and properly monitored and evaluated.

**Action 1.** To develop a culture of information sharing within the Nepal Police

**Action 2.** To commence sensitisation of all Nepal Police Staff on the importance of effective two way communication within the organisation

**Action 3.** To develop the effectiveness of Communications at meetings held within the NP

**Action 4.** To develop effective Monitoring and Evaluation of Communications within the N.P.

**Action 5.** To develop communications at roll call and inspections

**Action 6.** To develop the effectiveness of Nepal Police Publications getting key messages to key audiences through the right medium

**Action 7.** To ensure the effectiveness of NP Media Policy in line with the new Communications Plan And Policy

**Key Objective 2:** To develop effective written and verbal two way communication between the Nepal Police and its stakeholders and the communities they serve, that is acted upon and properly monitored and evaluated.

**Action 1.** To develop a culture of information sharing between the Nepal Police and its key stakeholders and communities

**Action 2.** To commence sensitisation of all Nepal Police Staff on the importance of effective two way communication within the organisation

**Action 3.** To develop the effectiveness of

Communications at meetings held between the NP and its key stakeholders and the communities they serve

## Strategic Priority 2:

Officers involved in the planning process recognised the need for NP to become, and to be seen to become, more accountable for their actions, both organisationally and individually, and that this was especially important in relation to citizens making complaints about Police performance, or Officer behaviour.

There was a shared understanding that to achieve this goal, issues related to training, values and police/community consultation processes (especially at the District level) need to be addressed, and that all of this needed to be underpinned by an effective NP Performance Management System.

**Purpose:** Developing and implementing a Nepal Police Accountability and Transparency Strategy whereby the Nepal Police can be held accountability to its key stakeholders but especially to the communities they serve at the local level.

**Key Objective 1:** To improve access for communities, and confidence of people, to make complaints against police officers about their behaviour.

**Action 1.** To develop a revised IGP Policy on Accountability and Transparency

**Action 2.** To design and develop improved police training in dealing with people and communities

**Action 3.** To commence a programme within the NP to re evaluate their current corporate values and their implementation

**Action 4.** To effectively develop reception areas of Police Stations that are customer friendly and safe

**Action 5.** To design and develop a programme of police and community consultation leading to an increased understanding of each other

**Key Objective 2:** To develop a transparent investigation system and procedures of

investigation of complaints against police by the public and by other police.

**Action 1.** To improve the current Complaints against Police Process

**Action 2.** To improve the management of malicious complaints against police

**Action 3.** To develop an independent body to oversee the investigation of complaints against police alleging serious wrongdoing

**Key Objective 3:** To develop effective NP accountability mechanisms to communities they serve.

**Action 1.** To design and develop mandated police and community liaison and consultation meetings at the District level to provide effective two way communication, community input into police planning and provide a local accountability mechanism whereby local communities can question District Commanders on police performance; with effective monitoring and evaluation.

**Action 2.** To design and develop a pilot on the construction of police district planning and the creating of a 1 year Police District Action Plan formulated in consultation with their communities; with effective monitoring and evaluation.

**Key Objective 4:** To develop effective accountability mechanisms for members of the Nepal Police for their Performance.

**Action 1.** To develop an effective NP Performance Management System

**Action 2.** To develop an effective NP Individual Performance System

**Key Objective 5:** To develop effective accountability of NP officers and staff for their decisions

**Action 1.** To ensure that in each rank and position within the NP responsibility and authority is effectively aligned to existing job descriptions.

### Strategic Priority 3:

As with the other two Strategic Priorities Officers involved in the planning process recognised the linkages between all three

Priorities, and were clear that there was a need for the principles of Community policing to be further imbedded throughout NP.

Specifically the current Community Services Division need to be developed, as did mechanisms for improved Police/Community Consultation at the District level, and that the effectiveness of the current Community Service Centres need to be enhanced.

There was a recognition that training in Community Policing needed to be improved and increased within all training curricula, and that Officers so trained should be posted equitably within NP including at Police Posts.

**Purpose:** Developing and implementing a Nepal Police Community Relations Strategy whereby the Nepal Police can effectively work in partnership with its key stakeholders but especially those communities they serve.

**Key Objective 1:** To improve Police and Community consultation and the development of Community Policing throughout Nepal Police.

**Action 1.** To develop the philosophy, and practice of Community Policing with operational strategies throughout Nepal Police to include review of Community Service Division and related structures

**Action 2.** To develop mechanisms at District level to improve Police Accountability to their citizens and the communities they service.

**Action 3.** To improve the effectiveness of Community Service Centres

## 3. Programme Implementation Architecture

In this section the programme management arrangements for the monitoring and evaluation of performance and impact will be described with specific roles and responsibilities.

The IGP's top team for the purposes of the implementation of the ISP will be known as the 'Programme Board' (PB).

The Programme Board will be responsible for the implementation, monitoring and evaluation of the Strategic Priorities. Each Strategic Priority will have an AIG responsible for it and will report progress on implementation to the PB, and should there be any blockages to the achievement of the SP's then this board will take the necessary action to remove them. The Programme Board will be supported by the Strategic Planning Task Force, who will be specifically responsible for the collection of the monitoring and evaluation information and provide direction and assistance to the PAT's who will be charged with the implementation of the SP's.

#### 4. M&E Systems

The Monitoring and Evaluation systems will be set up to collect baseline data, and then monitor the achievement of the Action Plans, and collect evaluation of impact through agreed data collection and analysis routines. The design of these routines will be undertaken in liaison with Saferworld.

## Strategic Plan of Commission for the Investigation of Abuse of Authority

### 1. Background:

The Interim Constitution of Nepal, 2063 has given continuation to the Commission for the Investigation of Abuse of Authority (CIAA) as the agency to investigate and prosecute corruption cases. The CIAA is carrying out its responsibilities as per the Constitution, Abuse of Authority Act, 2048, Corruption Control Act, 2059, and other concerned regulations. Corruption control is a challenging task and is not possible to control it with the effort of a single agency. For this, political commitment, strong and efficient government mechanism, support of private sector and civic society is the must. In the past, CIAA formulated a five year strategic plan (2059/60 - 2063/64) in course of fulfilling the constitutional

responsibilities bestowed upon it. Since the five year period is about to be over, a three year strategic plan has been prepared by the CIAA to make the anti-corruption programme more effective.

### 2. Status review:

Some of the important achievements have been made after the implementation of the five year strategic plan. During this period, working procedures of 49 departments have been prepared and taken into practice. In the context of corruption control, CIAA has delegated its power to the Regional Administrators, Chief District Officers (CDO) and Government Attorneys in order to make the business fast. Pilot programmes have been implemented in 10 districts and local co-ordination committees have been formed in 5 districts to commence the campaign against corruption from the local level. Training programmes have been conducted to enhance the skill and efficiency of the people working in the CIAA and symposiums / interaction programmes have been organized at the district level with the involvement of government officials, civic society, NGO people and representatives of political parties. Construction of office building with good facility is one of the major achievements of this period. Materials related to information, communication and education for public awareness against corruption are produced and distributed. National and international visits by CIAA higher officials has enriched the organisation adopt the anti- corruption measures.

### 3. Vision:

To assist to build a disciplined society in order to build prosperous country by ensuring good governance through state machinery free from corruption in accordance with the rule of law.

### 4. Goal and Objectives:

#### (a) Goal:

Reduce improper conduct and corruption in the state machinery by a perceptible amount within three years.

**(b) Objectives:**

- i) Assist in ensuring good governance by carrying out the punitive measures in a coordinative way.
- ii) Assist in ensuring good governance by carrying out preventive measures through systematic correction and reforms.
- iii) To build social integrity systems; maintaining social discipline through promotional and awareness programme.
- iv) Develop CIAA as an specialized agency in corruption control cases.
- vi. Monitor the implementation of Departmental Procedures;
- vii. To help implement code of conduct in public, commercial and corporate sector;
- viii. Monitor and evaluate the indicators in public service delivery system;
- ix. Help to raise the "Zero Tolerance" state with the help of civic society;
- x. Carry out community education and public awareness campaign against corruption and misappropriation;
- xi. To enhance advocacy to combat corruption;

**5. Strategy:**

Make information collection and its analysis more reliable;

- i To expedite the investigation and prosecution activities related to corruption and misappropriations;
- ii. Implement CIAA decisions in a coordinative way effectively;
- iii. To coordinate in formulation and amendment of the anti-corruption acts concerned;
- iv. Make the anti-corruption campaign effective at the local level;
- v. To build up corruption prone areas as the "Island of Integrity"
- xii. Extend and develop the relation with regional and international anti-corruption agencies;
- xiii. Further extend the anti-corruption programmes through local bodies and communities;
- xiv. Develop the CIAA as an efficient and specialized agency in corruption control;
- xv. To create conducive environment for career development;
- xvi. Appraise the performance of the CIAA personnel on the basis of achievement and develop rewarding system;
- xvii. Logistic support and management to the office;
- xviii. To set up reliable information and data base system.





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## Review of International Community Support to Access to Security and Justice and Rule of Law in Nepal

### Background

In Nepal, the imperative to improve public security and access to justice is compelling. Although reliable statistics are somewhat difficult to ascertain, there is a definite popular perception that security is progressively deteriorating. Improving this situation is a key public demand. Rising crime and insecurity is acting as a brake to business investment and is contributing to the prevention of post-conflict economic growth and development. The government's perceived inability to improve the situation is undermining public confidence in both the rule of law and in the state itself. The lack of equitable access to security and justice was one of many key grievances that led to the 10 year civil conflict. Yet citizens - in particular poor and excluded groups - continue to find it difficult to access personal security and justice. The country's imminent move to federalism is likely to pose additional, highly complex challenges.

Widespread impunity is impeding law enforcement, fuelling a breakdown in law and order, and enabling crime and violence to proliferate. This climate of impunity is manifested most starkly in the criminalization of politics and politicization of crime.

The national level political system has been characterised by a constant changing of coalition governments, with each party protecting its own members from accountability under the law. At the local level, party representatives regularly exert pressure on the police, chief district officers, prosecutors, and courts not to investigate, register or prosecute criminal cases and to release party members who are accused of crimes.

### International engagement

Donors and key multi-laterals support a number of initiatives aimed at improving citizen security and access to justice, and strengthening the rule of law. The need to do more in this sphere is highlighted in the Nepal Peace and Development Strategy launched by international development actors in January 2011. This assessment responds to this demand. Similarly, Nepal has been selected as a pilot country by the UN Rule of Law Coordination and Resource Group which aims to better coordinate RoL initiatives within the UN family.

Currently there is little government coordination leadership in this sector.

In an effort to improve coordination and synergy, an informal Security and Justice Coordination Group<sup>6</sup> for international actors engaged in this area meets periodically. In 2010 this group completed a 'who-what-where' matrix to map out international support more clearly. In addition, a sub group of donors from within the group hired a consultant to conduct a review of international assessments, evaluations and support to the sector, plus existing government strategies and plans.

As a next step, the sub group has agreed on the need for a more in depth 'Review of International Community Support to Access to Security and Justice and Rule of Law in Nepal'. This will develop a shared assessment of the challenges and opportunities faced in this sector and options for improving the impact of international support over the coming 3-5 years (during which time the country will likely move to a federal model). This will include a critical path analysis on key building blocks for medium to long term support as well as a realistic prioritization assessment taking into account Nepal's current political environment.

## Objective

To develop an assessment of the challenges and opportunities faced in citizen access to security and justice and the strengthening of the rule of law in Nepal, and options for improving the impact of international support over the coming 3-5 years (in particular for poor and excluded groups).

## Scope

The assessment will examine the following 'sub sectors'<sup>7</sup>. Note that gender, social and economic dimensions, human rights, peacebuilding, transitional justice and federalism will be considered as cross

cutting issues to be considered within each of these areas.

- i. The **criminal justice system** (includes the work of, and interaction between, the police, prosecution service, courts, prison service, lawyers associations/legal aid for defendants including indigent criminal defense, victim support units, and victim/witness protection).
- ii. The **non-criminal justice system** (includes court handling of civil and commercial law, overall court administration, and other related institutions).
- iii. **Non-state/informal justice and community security** (includes mediation (court-referred, community and commercial mediation), arbitration, paralegal committees, traditional/indigenous justice mechanisms, religious leaders, community safety/security groups and political youth wings/militia. Links between informal and formal security and justice will also be examined, to explore the role of the informal in an overall system of security and justice).
- iv. **Legislative framework, oversight and accountability** (includes legal frameworks and legislative drafting [with emphasis on post constitutional requirements], and oversight and accountability mechanism such as parliamentary committees, judicial council, relevant ministries, human rights commissions and organisations, and civil society).

The assessment will:

- Conduct an overview and political economy analysis of sector, sub sectors (plus relations between sub sectors), and

<sup>6</sup> The group is hosted by International Alert and includes key donors and NGOs working on issues relating to security, justice and rule of law.

<sup>7</sup> For simplicity, we will refer to the entire arena of citizen security and access to justice as 'the sector', and to the component parts listed below as 'sub sectors'.

- key institutions (plus relations between key institutions), identifying major challenges and opportunities for reform;
- Examine social, economic and gender dimensions of access and service delivery; ways in which men/women, youth/non-youth, marginalised/non-marginalised experience insecurity and the provision of security and justice;
  - Examine national reform initiatives, including plans and strategies;
  - Review current international support;
  - Provide recommendations for improving the impact of international support, including a critical path analysis and recommendations on potential joint aid instruments and coordination mechanisms to be adopted; and
  - Identify and examine key risks and mitigation strategies.

## Approach

The assessment approach will include;

- Reviewing existing documents, papers and assessments<sup>8</sup>;
- Interviewing and consulting with key stakeholders in both Kathmandu and a number of districts (providers, users and supporters of security and justice services, including government, security and justice providers, political parties, private sector, civil society and community members [including members of excluded groups], international community, etc);
- Facilitating a number of consultative workshops at the sub sector level (including providers, users and supporters of security and justice services) to inform conclusions; and
- A workshop towards end of process to validate findings and recommendations.

The selection of districts that the assessment will focus on will need to capture the differences between tarai/ hills/ mountains and urban/rural, and different

conflict dynamics. A federalism lens should also be applied, so a potential provincial capital should be visited to examine its preparedness to provide the types of services likely to be required of a provincial capital.

## Outputs and Reporting

The consultancy team will develop a methodology framework of up to 5 pages prior to commencing travel to Nepal for comment and sign-off from the Security and Justice Coordination Group and Enabling States Programme (the contract manager).

A final report of up to 40 pages, plus annexes, including:

- (i) Executive Summary;
- (ii) Summary overview, institutional capacity assessment and political economy analysis of the sector, sub sectors (plus relations between sub sectors), and key institutions (plus relations between key institutions), identifying major challenges and opportunities for reform (if required, additional detail should be included in separate annexes). Social, economic and gender dimensions of access and service delivery should be examined;
- (iii) Overview of ongoing national reform efforts, plans and strategies;
- (iv) Overview of current international support;
- (v) Options and recommendations for improving in the short, medium and long term impact of international support (in particular for poor and excluded groups). Recommendations on priorities, sequencing (critical path), potential joint aid instruments and coordination mechanisms should also be included; and
- (vi) Key risks and mitigation strategies.

<sup>8</sup> The report 'Preliminary Mapping: Rule of Law / Security and Access to Justice in Nepal' (Rima Das Pradhan-Blach, October 2010) provides a synthesis of existing reports and assessments, and references to the full documents. Note that some donor reports will require confidentiality.

A series of workshops will be staged by the consultancy team to inform the conclusions of the assessment, and a further workshop held to validate key findings and recommendations.

The final report will be produced within two weeks of leaving Nepal.

The consultancy team will report contractually to the DFID ESP (Enabling States Programme) Manager. Its working station will be the ESP Office, Sanepa, Lalitpur.

The team will liaise through periodic meetings throughout the process with an 'assessment reference group' (a small group from the Security and Justice Coordination Group) to keep it informed of plans, progress and initial conclusions (frequency to be confirmed).

## Skills/expertise

The consultancy team will require the following mix of expertise and experience. Exact numbers and the mix between international and Nepali members will depend on the expertise and experience of available consultants:

- Team Leader; an expert with significant security and justice and institutional reform expertise (from the perspective of "people's access") and a track record of successfully leading teams to conduct assessments that guide international development engagement;
- Political economy analyst; experience of using political economy analysis to inform recommendations for donor support (ideally including experience of applying this lens to the security and justice 'sector');
- Formal justice expert(s): experience in assessing the judiciary, judicial oversight mechanisms, bar associations, the Attorney General's Office, and the interlinkages between all stakeholders in the chain of criminal justice, including

the police and prisons. (in Nepal, and comparative international experience in fragile environments);

- Informal/non-state justice and community security expert(s): experience with mediation/arbitration, paralegal committees, traditional/indigenous justice mechanisms, semi-formal and quasi-judicial bodies, community safety/security groups and political youth wings/militia (in Nepal, and comparative international experience in fragile environments).
- Legislative framework, oversight and accountability expert(s): experience with legal frameworks, legislative drafting and constitution-making, and oversight and accountability mechanism such as parliamentary committees, judicial councils, relevant ministries and civil society (in Nepal, and comparative international experience in fragile environments).

In addition, the team will collectively have;

- Good knowledge and sound understanding of Nepal's political, social context, with a special focus on issues of security and justice.
- Good networks and contacts with government, representative organisations and development partners working on security and justice (both state and non state), both in Kathmandu and in districts.
- Knowledge and understanding of donor instruments for the delivery of development assistance.
- Knowledge of the approaches and policies of different international assistance providers and institutions, including the United Nations and UN international norms and standards, in particular those international instruments Nepal is a signatory to.

## Timing

Number of days to be confirmed (up to 2 months), starting as soon as possible. While in country, the team will be expected to work a six day week.



# F LIST OF PEOPLE MET AND CONSULTED

## List of Persons Interviewed (Individuals & Group)

### Dhankuta District

Individual Interview			
S.N.	Name	Occupation	Address
1	Kalpana Bk		
2	Mausami Limbu	Labor in local hotel	Bode (now Dhankuta Municipality)
3	Meena BK		
4	Kali Devi Bhujel,		7 Dhankuta Municipality
5	Sumitra Ghle	No profession	
6	Harihar Sharma	Businessmen	Dhankuta Municipality
7	Deepak Budathoki	Former VDC Chair	Canuwa VDC
8	Krishna Rai	Farmer /housewife	Lakure VDC
9	Anita Rai	Farmer/housewife	Lakure VDC
10	Laxmimaya Khadka	Daily Wages	Kachire, Dhankuta Municipality

Group Meeting : Municipality Level Para Legal Committee			
S.N.	Name	Occupation	Address
11	Ramkmari, Rai	Paralegal	Dhankuta Municipality
12	Rubina Sunam	Paralegal	Dhankuta Municipality
13	Shanta Rasaili	Paralegal	Dhankuta Municipality
14	Kalidevi Bhujel	Paralegal	Dhankuta Municipality
15	Kamala Gahatraj	Paralegal	Dhankuta Municipality
16	Dhankumari Rai	Paralegal	Dhankuta Municipality
17	Uma devi Acharya	Paralegal	Dhankuta Municipality
18	Maya Tamang	Paralegal	Dhankuta Municipality
19	Shantila Tamang	Paralegal	Dhankuta Municipality
20	Nirmala Chombang	Paralegal	Dhankuta Municipality
21	Kalidevi Bhujel	Paralegal	Dhankuta Municipality

Group Meeting :Mediation Center, Dhankuta Municipality			
S.N.	Name	Occupation	Address
23	Bhkta Thapa	Mediator	Dhankuta Municipality
24	Dhan Bd. Khadka	Mediator	Dhankuta Municipality
25	Mukunda Bhandari	Mediator	Dhankuta Municipality
26	Radhika Shrestha	Mediator	Dhankuta Municipality
27	Rajan Adhikari	Mediator	Dhankuta Municipality

Group Meeting : Political Party Leaders			
S.N.	Name	Occupation	Address
28	Tilak Rai	Political Leader, UCPN Maoists	Chitang VDC
29	Haribhakta Bantawa Rai	President , District Office , Janamukti Party	7-Dhankuta Municipality
30	Yagya Bd. Karki	President , Municipality Unit, Janamukti Party	2- Dhankuta Municipality
31	Indira Budhathoki	District Under Secretary, CPN (UML)	Dhankuta Municipality
32	ChandraSing Nembang	Central Committee Member, Federal National Lumbuban Forum	7-Dhankuta Municipality
33	Tika Prasad Ghimire	President Rastrya Prajatantra Party (RPP)	7- Dhankuta Municipality
34	Indramani Parajuli	Secretary, CPN (UML)	Dhankuta Municipality
35	Sabita Adhikari	Women Empowerment Team	Sishaniya VDC
36	Manoharnarayan Shrestha	Nepali Congress	Sishaniya VDC

Group Meeting : Women's Rights Organizations			
S.N.	Name	Occupation	Address
37	Hima Basnet	Lawyer& Coordinator Women Security Pressure Group, ,	Dhankuta Municipality
38	Tika Bhandari,	Women Inter Party Network	Dhankuta Municipality
39	Hima Chemjong		Dhankuta Municipality
40	Sukri Rai,	Women Human Rights Defender / WOREC Nepal	Dhankuta Municipality
41	Sita Thapa	Women Rights Activists	Dhankuta Municipality
42	Sabitra Wagle,	Women Security Pressure Group	Dhankuta Municipality
43	Jaya Rai,	Chair person, Single Women's Group	Dhankuta Municipality
44	Parbati Rai,	Women Pressure Group, Chairperson, District NEIFN	Dhankuta Municipality

## District: Bara

S.N.	Name	Occupation	Address
45	Paramhansh Keshari	President , District Bar Association, Bara	Kaliaya Municipality
46	Hiraman Ansari	Member, Distirct Office, UCPN ( Maosits)	6- Uttar Zhitakaya VDC
47	Seuchandra Saha	Social Worker	Kaliaya Municipality
48	Satyanarayan Mahato	Nepali Congress	8- Kaliaya Municipality
49	Muksha Kusaba	Regional President , Nepali Congress	5- Kaliaya Municipality
50	Ramchandra Sahani	Rastrya Prajatantra party	9-Daihiyar VDC

51	Awadhes Prasad Pandit	Social Worker/Farmer	4-Gadhahal VDC
52	Sachindra Kumar Thakur	NGO worker	Kaliaya Municipality
53	Jokhan Prasad Patel	Farmer/NGO Worker	7-Narahi VDC
54	Maksud Miya	Social Worker	7-Narahi VDC
55	Ram Devi Paswan	Member, Women Rights Froum	12 -Kaliaya Municipality
56	Dhurba Yadav	President, Yuwa Sangh, Bara	Kaliaya Municipality
57	Suresh Kumar MModak	CPN ( UML)	Kaliaya Municipality
58	Birodha Sharma	Secretary, UCPN ( Maoists)	Manaharuwa VDC

#### Group Meeting: Dom Community

S.N.	Name	Occupation	Address
59	Sushila Mali	Housewife	9 -Kaliaya Munucipality
60	Bindu Mali	Housewife	9 -Kaliaya
61	Kaushila Mali	Housewife	9 -kaliaya Municipality
62	Binod Paswan	Teacher	9- Kaliaya Municipality

#### Group Meeting: Muslim Sewa Samittee

S.N.	Name	Occupation	Address
63	Maham Isha	Urdu Teacher	7-Shreenager
64	Mukadam Ansari	Secretary Muslim Sewa Samittee	Kaliaya Municipality
65	Mahamad Shaphik	Executive Director, Muslim Sewa Samittee	Kaliaya Municipality

#### Group Meeting : Paralegal Committee, Sishaniya VDC

S.N.	Name	Occupation	Address
66	Pitambar Ram	Advisor, Paralegal	Sishaniya VDC
67	Jayaram Karma	Advisor, Paralegal	Sishaniya VDC
68	Surajkali	M ember, Paralegal	Sishaniya VDC
69	Sunmati Devi	President , Paralegal	Sishaniya VDC
70	Bhagmati	Member, Paralegal	Sishaniya VDC
71	Tetardevi	Vice-President Paralegal	Sishaniya VDC
72	Sarada Devi	Member, Paralegal	Sishaniya VDC
73	Maharani Devi	Member, Paralegal	Sishaniya VDC
74	ReetaDevi	Secretary, Paralegal	Sishaniya VDC
75	ShreekantiDevi	Treasure Paralegal	Sishaniya VDC
76	Imarawatidevi	Member ,Paralegal	Sishaniya VDC
77	Sushiladevi Mahato	Member, Paralegal	Sishaniya VDC

## District: Therhathum

S.N.	Name	Occupation	Address
78	Geeta Siwa	Social Mobilizer, Women Empowerment group	4-Bashantpur, Therhathum

## District :Kathmandu

S.N.	Name	Occupation	Address
79	Suman Khadka	Researcher, Social Policy , Security and Children	Lalitpur
80	Sudeep Gautam	Executive Director, CeLLERD	Kathmandu
81	Sukumaya Pun	Program Manager, Mediation Center Nepal	Kathmandu
82	Retica Rajbhandari	Women Rehabilitation Center	Lalitpur

## Details of Other Interviewees / Kathmandu

S.N.	Name	Gender	Cast / Ethnicity	Remarks
83	Anand Subedi	M	Brahmin	Disputant in Arbitration
84	Padam Gurung	M	Gurung	" "
85	Shiva Sharma	M	Brahmin	" "
86	Purushottam Joshi	M	Brahmin	" "
87	Kumarnath Uprety	M	Brahmin	" "
88	Kanak Thapa	M	Chhetri	Arbitrator
89	Kamala Chhettri	F	Chhetri	Arbitrator

## Details of Other Interviewees / Bara

S.N.	Name	Gender	Cast / Ethnicity	Remarks
90	Sushila Malli	F	Dalit / Dom	Labour
91	Bindu Devi Malli	F	Dalit / Dom	Labour
92	Kaushila Malli	F	Dalit / Dom	Labour
93	Binod Paswan	M	Dalit/ Dusadh	Teacher
94	Birendra Malli	M	Dalit / Dom	Labour
95	Shankar Malli	M	Dalit / Dom	Labour
96	Mod. Hiranman Ansari	M	Muslim	Community Leader
97	Shiva Chandra Saha	M	Teli	Social Worker
98	Satya N. Mahato	M	Teli	NC Politician
99	Mukesh P. Kuswaha	M	Fisherman	NC Politician
100	Ramchandra Sahani	M	Fisherman	
101	Jugga Hajara	M	Dusadh	Ex-VDC Member
102	Ramchandra Yadav	M	Yadav	Community Worker
103	Rajkishor Sarma	M	Carpenter	Dispute Resolver
104	Naginalal Kuswaha	M	Fisherman	" "
105	Jayakaran Paswan	M	Dushadh	Violence Victim
106	Dhruba Yadav	M	Yadav	UML Youth Wing
107	Suresh K. Modak	M	Haluwai	UML Party
106	Birodh Sharma	M	Bramhin	UCPN(M)
109	Mukesh Saha	M	Baniya	UCPN Youth Wing
110	Rajendra Jayashwal	M	Baniya	NC Youth Wing
111	Jagat Narayan Thakur	M	Barber	NC Leader

## Details of Other Interviewees / Kathmandu

S.N.	Name	Gender	Cast / Ethnicity	Remarks
112	Harihar Shrestha	M	Newar	Litigant
113	Deepak Bhudathoki	M	Chhetri	Community Leader
114	Dr. Gopal Bhattarai	M	Chhetri	Mediator
115	Madhav Pd. Dahal	M	Brahmin	Litigant
116	Dev Raj Pokharel	M	Brahmin	Community Leader
117	Roshan Raj Amatya	M	Newar	Litigant
118	Bharat Krishna Joshi	M	Newar	Mediator
119	Rudra B. Tumba	M	Yakhha	Community Leader
120	SharkeeMan Gurung	M	Gurung	Litigant
121	Bhim B. Subedi	M	Chhetri	Litigant
122	Dan Bahadur Khadka	M	Chhetri	Litigant
123	Manohar Shrestha	M	Newar	Litigants
124	Sabita Adhikari	F	Brahmin	Mediator
125	Indramani Parajuli	M	Brahmin	Community Leader

## Interview Summary

### Sub -Sector : Informal Justice (Arbitration )

Individual Interviews Conducted in : Kathmandu			
Category of Respondent	No. Male	No. Female	Total
Disputing Parties	5	None	5
Arbitrator	1	1	2

## Group Interview

### Sub –Sector: Community Security and Informal justice

Group Interview :			
Category of Respondent	No. Male	No. Female	Total
Dom Community	1	3	4
Muslim Sewa Samiti	3	None	3
Paralegal Bara	2	10	12
Paralegal Dhankuta	.....	12	12
Mediation Center, Dhankuta	4	1	5
Political parites, Dhankuta	7	2	9
Women's Rights Organization Dhankuta	.....	8	8
<b>Total</b>	<b>17</b>	<b>36</b>	<b>52</b>

## Individual Interview

Sub –Sector: Community Security and Informal justice			
Sub – Sector: Community Security and Informal justice			
Category of Respondent	No. Male	No. Female	Total
Victim	1	9	8
Political Leaders & Social Workers / Disputants	25	2	27
NGOs	1	3	4
Total	16	12	39

## Interview by Ethnic or Disadvantage group

Sub –Sector: Community Security and Informal justice			
Individual Interview Conducted in Kathmandu, Bara and Dhankuta			
Category of Respondent	No. Male	No. Female	Total
Braham/Chettri	8	12	20
Janajati	4	16	20
Madhesi	10	10	21
Muslim	6	.....	6
Tarai Dalit	2	4	6
Hill Dalit	.....	9	9
Total			81

# SECURITY, ACCESS TO JUSTICE AND RULE OF LAW

## List of Victims and Defendants Interviewed

S.N.	Name	Occupation	Address
BARA			
1	Ramacharya Prasad Yadhav	Farmer	Kalaiya 7, Bara
2	Munna Kumar K.C.	Business	Dharamnagar 5, Bara
3	Phul Kumari Devi	Housewomen	Dahiyar 8, Bara
4	Pramod Jaisawal	Student	Dahiyar 8, Bara
5	Brij Kishor Thakur	Farmer	Utar Jhitkaiya 6, Bara
6	Umrawati Devi Sahani	Farmer	Dahiyar 9, Bara
7	Suresh Prasad Sahani	Farmer	Dahiyar 9, Bara
KATHMANDU VALLEY			
8	Buddhi Chhiring Tamang	Farmer	Thankot 8, Kathmandu
9	Syumaya Tamang	Farmer	Thankot 8, Kathmandu
10	Sambhu Karki	Hotel Business	Gothatar, Kathmandu
11	Basudev Karki	Student	Shailungeshwor 1, Dholakha
12	Amir Pode	Retired Army	Lalitpur SMPC 20, Lalitpur

13	Santa Bahadur Tamang	Officer	Bhumutar 7, Kavre
14	Rajan Dawadi	Student	Gongabu 5, Kathmandu
15	Annapurna Bhandari	Farmer	Sheshnarayan Kathmandu
DHANKUTA TEHRATHUM			
16	Sita Thapa	Paralegal	Muga 8, Dhankuta
17	Puskar Bhattarai	Teacher	Chanuwa 4, Dhankuta
18	Ramesh Rai	Mason	Dhankuta 1, Dhankuta
19	Naina Kala Rai	Shopkeeper	Chungmang 9, Dhankuta
20	Dhan Kumar Rai	Student	Dhankuta 2, Dhankuta
21	Indra Bahadur Rai	Farmer	Dhankuta 2, Dhankuta
22	Addaman Rai	Poultry Farmer	Khoku 9, Dhankutta
23	Dev Raj Pokharel	Social Service	Marek Katahare 9, Dhankuta
24	Gayatri Prasad Luitel	Student	Phakchamara 7, Tehrathum
25	Krishna Bahadur Khabahang	Shopkeeper	Basantapur 4, Tehrathum
26	Narendra Tumba	Social Service	Jitpur Arkhaule 1, Dhankuta
27	Jhadendra Khatiwada	Farmer	Dhankuta 5, Dhankuta
28	Benuraj Parajuli	Driver	Jitpur Arkhaule 1, Dhankuta
29	Deepak Budhthoki	Social Service	Chanuwa 4, Dhankuta

## Justice Sector Stakeholder Workshop Kalaiya, Bara

### List of Participants

#### **Kalaiya, Bara**

Date: June 27, 2011 (Asar 13, 2068)

#### **Name and organisation**

- Hon'ble District Judge Binod Mohan Acharya, Bara District Court
- Mr. Basanta Kumar Upadhyay, Chief District Officer
- Mr. Krishna Kumar Thapa, Superintendent of Police, Armed Police Force
- Mr. Suresh Bikram Shah, S.P., Nepal Police
- Mr. Jaya Kanta Jha, District Revenue Office
- Mr. Ramanada Prasad Keshari, Land Reform Office
- Mr. Madhav Prasad Timilsina, Bara District Court
- Mr. Sanjay Gupta, Bara Federation of Industry and Commerce
- Mr. Bhubaneshwar Paudel, District Government Attorney Office
- Hon'ble Additional District Judge Brajesh Pyakurel, Bara District Court
- Mr. Paramhansa P. Keshari, President, District Bar, Bara
- Mr. Bindu Prasad Guragain, Local Development Officer
- Mr. Nagendra Raut, District Legal Aid Committee
- Mr. Kanhaiya Thakur, Kalaiya
- Mr. Akaramul Haque, Advocate, Kalaiya
- Mr. Satyandra P. Thakur, Kalaiya

# Justice Sector Stakeholder Workshop

## Dhankuta

### List of Participants

#### Dhankuta

Date: July 4, 2011 (Asar 20, 2068)

#### Name and organisation

- |                                                                                  |                                                                           |
|----------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| 1. Hon'ble Chief Judge Govind Kumar Upadhyay, Dhankuta Appellate Court           | Administrator, Regional Administration Office                             |
| 2. Hon'ble Judge Rishi Raj Mishra, Dhankuta Appellate Court                      | 12. Mr. Baburam Gautam, Local Development Officer                         |
| 3. Hon'ble Judge Tek Raj Nepal, Dhankuta Appellate Court                         | 13. Mr. Mahendra Kumar Khamyang, Executive Officer, Dhankuta Municipality |
| 4. Hon'ble Judge Shesh Raj Shiwakoti, Dhankuta Appellate Court                   | 14. Mr. Bhuwan Singh Thapa, Registrar, Dhankuta Appellate Court           |
| 5. Hon'ble Judge Mahendra Bahadur Karki, District Judge, Dhankuta District Court | 15. Mr. Rohitkumar Dangi, Secretary, Appellate Bar Association            |
| 6. Mr. Kumar Shrestha, Chief District Officer                                    | 16. Mr. Krishna Prasad Sedain, representative, Dhankuta District Bar      |
| 7. Mr. Sharad Kumar Tamang, DSP, Nepal Police                                    | 17. Mr. Rajendra Kumar Shrestha, Appellate Government Attorney Office     |
| 8. Mr. Tulsi Ram Karki, DSP, Armed Police Force                                  | 18. Mr. Muktinath Ojha, District Government Attorney Office               |
| 9. Mr. Bindeshwar Nayak, Assistant Officer, District Forest Office               | 19. Mr. Ishwar Onta, Srestedar, Dhankuta District Court                   |
| 10. Mr. Dhana Bahadur Khadka, Civil Society                                      | 20. Ms. Hima Basnet, Dhankuta District Bar                                |
| 11. Mr. Praladh Pokharel, Assistant                                              | 21. Mr. Anirudra Prasad Luintel, District Land Revenue Office             |

## Legislative Framework, Oversight & Accountability

### Group consultation with Women's Caucus at Legislative Parliament

Sub –Sector: Legislative framework, oversight and accountability

Meeting conducted at Women's Caucus,

Respondent	Party	M/F
Hon'ble Neelam Varma	Madhesi Janadhikar Forum	F
Hon'ble Suprabha Ghimire	Nepali Congress	F
Hon'ble Shanti Adhikari	Unified Communist Party of Nepal (Maoist)	F
Hon'ble Kalpana Rana	Communist Party of Nepal (Samyukta)	F
Hon'ble Dana Sharma	Unified Communist Party of Nepal (Maoist)	
Sudarshan Khadka	Caucus Secretary	M
Karuna Shakya	Caucus Office	F



Informal Janajati (indigenous people) Caucus at Constituent Assembly		
Respondent	Party	M/F
Hon'ble Prithvi Subba Gurung	Communist Party of Nepal (UML)	M
Hon'ble Pasang Sherpa	Communist party of Nepal (UML)	M
Dr. Chaitanya Subba	Adviser	M

Public Accounts Committee of Legislative Parliament		
Respondent	Party	M/F
Hon'ble Ram Krishna Yadav, Chairman	Nepali Congress	M
Hon'ble Deep Kumar Upadhyay	Nepali Congress	M
Hon'ble Hridayesh Tripathi	Terai-Madhes Loktantrik Party (TMLP)	M
Hon'ble Rabindra Adhikari	Communist Party of Nepal (UML)	M
Som Bahadur Thapa	Committee Secretary	M

Thematic Commission		
Respondent	Commission	M/F
Bijul Biswakarma, Chairperson	National Dalit Commission	M
Mina Swarna, Member	National Dalit Commission	F
Jeevan pariya, Member –Secretary	National Dalit Commission	M
Sabita Baral, Member	National Information Commission	F
Nainkala Thapa, Chairperson	National Women Commission	F
Amuda Shrestha	Member, National Women Commission	F
Kebal Bhandari,	Secretary, National Women Commission	M
Bhagwati Prasad Kaphley	Secretary, Commission for the Investigation of Abuse of Authority (CIAA)	M
Bishal Khanal	Secretary, National Human Rights Commission	M

Constituent Assembly Secretariat		
Respondent		M/F
Manohar Bhattarai	Secretary General	M
Mukunda Sharma	Joint Secretary	M
Bharat Gautam	Joint Secretary	M

Government of Nepal		
Respondent		M/F
Madhav Poudel	Secretary, Ministry of Law and Justice	M
Rajuman Singh Malla	Joint Secretary, Ministry of Law and Justice	M
Pramod Karki	Secretary, Ministry for Federal Affairs, Constituent Assembly, Parliamentary Affairs and Culture	M
Uendra Prasad Adhikari	Joint Secretary, Ministry of Women, Children and Social Welfare	M
Sherjung Karki	Under Secretary, Ministry of Women, Children and Social Welfare	M
Sadhuram Sapkota	Joint Secretary, Ministry of Peace and Reconstructions	M

## Interview by Ethnic or Disadvantage group (civil society)

### Sub –Sector: Legislative framework, oversight and accountability

#### Individual Interview (direct and telephonic) conducted in Kathmandu with civil society

Category of Respondent	No. Male	No of female	Total
Bahun/Chettri	8	3	11
Janajati	12	12	24
Madhesi	6	6	12
Dalit	3	3	6
Total	29	24	53 <sup>9</sup>

## Legislative Framework, Oversight and Accountability Civil Society Interviews

Daman Nath Dhungana, Former Speaker, House of Representatives & Senior Lawyer

Dr Surya Dhungel, Constitutional Expert, Nepal Consulting Lawyers, Inc

Ganesh Bhurtel, Secretary, Society for Constitutional and Parliamentary Exercises (SCOPE)

Professor Ganesh D. Bhatta, General Secretary, Nepal Constitution Foundation (NCF)

Keshab Poudel, Senior Journalist, Kathmandu

Shobhakar Budhathoki, Human Rights and Peace Expert, Kathmandu

Lav Mainali, Advocate, Supreme Court, Kathmandu

Lalit Bahadur Basnet, Advocate, Kathmandu

Kamala Acharya, Chairperson, Women in Good Governance (WIGG)

Sabita Bhandari Baral, Advocate, Kathmandu

Mandira Sharma, Lawyer, Kathmandu

Phurpa Tamang, Advocate, Kathmandu

Tirtha Man Shakya, Legislative Drafting Expert, former Chief Secretary, Government of Nepal

Dr Shanker Kumar Shrestha, Victimologist, Kathmandu

Ramesh Raj Pradhan, Advocate, Kathmandu  
Santosh Rana Magar, Youth Activist, Kathmandu

Madhusudan Tamang, Kathmandu District Bar Association

Dilendra Shrestha, Rotary Club, Nepal  
Kishore Chaudary, Social Activist, Siraha  
Dan Bahadur Budha, Youth Activist, Kathmandu

Krishna Kumar Angdenbe, Youth Activist, Kathmandu

Milan Shrestha, Lecturer, Tribhuvan University, Kathmandu

Krishna Man Pradhan, General Secretary, Nepal Law Society, Anamnagar, Kathmandu

Dr Rajit Bhakta Pradhananga, Professor of Law, Tribhuvan University Law Faculty

Bal Bahadur Rai, Advocate/ Youth Activist, Kathmandu

Dina Shrestha, Lawyer/ Youth Activist, Kathmandu

Asha Moktan, Youth Activist, Kathmandu

Sanu Laxmi Gasi, Lawyer, Kathmandu

<sup>9</sup> This table does not include approximately 80 participants of the roundtable on 'Enabling Civil Society to Contribute to the Democratic Reform of the Justice and Security Sector in Nepal' organized by Antenna Foundation Nepal, Equal Access Nepal, Forum for Women, Law and Development (FWLD), Institute of Human Rights Communication Nepal (IHRICON), International Alert and Saferworld on 7 July 2011 which some members of the task force participated and exposed themselves with the perspectives of groups coming from six districts from different regions of Nepal. This also gave the opportunity to the taskforce to interact with the justice and security sector professionals coming from the districts.

Susma Chaudhary, Youth Activist, Kathmandu

Neeru Shrestha, Lawyer, Kathmandu

Yogita Rai, Lawyer, Kathmandu

Kaveeta Shrestha, Lawyer, Kathmandu

Rukamanee Maharjan, Lawyer, Kathmandu

Anita Joshi, Nepal Bar Association, Kathmandu

Pancha Kumari Manandhar, President, Society for Essential Natural Resources Protection and Peace, Kathmandu

Dikchhya Pradhananga, Lawyer, Kathmandu

Dhanmaya Rana, Advocate, Kathmandu

Dr B. K. Roy, Professor, Faculty of Law, Tribhuvan University, Exhibition Road, Kathmandu

Umesh P. Saha, Advocate, Kathmandu

Surendra Kumar Mahato, Advocate, Kathmandu

Dinesh Tripathi, Advocate, Kathmandu

Sitaram Agrawal, Advocate, Kathmandu

Vijay Singh, Advocate, Kathmandu

Ranju Thakur, Gender Specialist and Madhesi lawyer, Kathmandu

Manchala Jha, Freelance Columnist, Political Commentator and a Lawyer, Kathmandu

Kiran Gupta, Advocate, Kathmandu

Seema Chaudary (Jaiswal), Accountant, Kathmandu

Vivha Bharati, Housewife, Kathmandu

Poonam Chaudary, GIZ, Kathmandu

Yam Bahadur Kishan, NSR, Kathmandu

Jeevan Pariyar, National Dalit Commission

Shyam Kumar Bishwokarma, Advocate, Kathmandu

Gopi Bishwokarma, Youth Activist, Kathmandu

Bhim Narayan Bishwokarma, National Dalit Commission

Kewal Nepali, National Dalit Commission

Gaura Nepali, ADWAN, Kathmandu

Meena Shornakar, National Dalit Commission

## Subject: FW: Citizen list interviewed

### Name List of the Citizens (Court Users) Interviewed in Civil Justice System (this list is exclusive of the interaction had with the Justice Sector Co-ordination Committee)

SN	Name	Gender/Age	Location	Identity	Kind of Case/Party
1.	Kancha Prajapati	M/65	Kathmandu District Court	Newar	Land ownership and transfer of Name/Plaintiff
2.	Neelam Ojha	F/40	Kathmandu District Court	Brahmin	Partition/ Plaintiff
3.	Bhim Lal Khadgi	M/74	Kathmandu District Court	Newar	Transaction of Cash Amount/Plaintiff
4.	Nava Raj Kalida	M/63	Kathmandu District Court	Newar	Land Ownership/Plaintiff
5.	Aswini Medwa	M/52	Kathmandu District Court	Madhesi	Cash Transaction/Plaintiff
6.	Durga Devi Maharjan	F/32	Kathmandu District Court	Newar	Partition
7	Sita Maya Shrestha	F/62	Bhaktapur District Court	Newar	Partition, Cancellation of Documents and Forgery/Plaintiff
8.	Manoj Kumar Shai	M/56	Supreme Court	Newar	Partition/ Defendant

9.	Rajendra Shrestha	M/48	Court of Appeal, Patan	Newar	House Rent and Claim of Ownership/Defendant
10.	Krishna Bahadur Maharjan	M/57	Court of Appeal, Patan	Newar	Cancellation of Document and claim of ownership/Plaintiff
11.	Raju Shrestha	M/50	Court of Appeal, Patan	Newar	Partition/Plaintiff
12.	Ram Chandra Shrestha	M/68	Land Reform Office	Newar	Expulsion of Tenant/Plaintiff
13.	Om Prakash Narayan Oli	M/30	Company Registrar Office and Kathmandu District Court	Brahmin	Company related dispute (share transfer)
14.	Haku Maharjan	M/50	Kathmandu District Court	Newar	Partition
15.	Dinesh Tiwari	M/58	Bara District Court	Madhesi	Cancellation of Decision and Name Transferred of Land/ Defendant
16.	Mohan Raut	M/40	Bara District Court	Madhesi	Partition/Plaintiff
17.	Rup Narayan Mandal	M/52	Bara District Court	Madhesi	Police atrocity (looking for lawyer to file the case)/Plaintiff
18.	Shiva Shanker Shah	M/53	Bara District Court	Madhesi	Auction claim/Applicant
19.	Chotiya Devi Mahato Kebarand Laxmi Mahato Kebar (daughter in law and Father in Law)	F/35 and M/54	Bara District Court	Madhesi	Encroachment of Public Land/ Defendant
20.	Ram Niber Shah	M/40	Bara District Court	Madhesi	Land Dispute/Plaintiff
21.	Sohan Shah Teli	M/56	Bara District Court	Madhesi	Coercion (forced to sign a document)/Plaintiff
22.	Akshya Lal Prasad Shah	M/62	Bara District Court/ Court of Appeal, Hetauda (used the services)	Madhesi	Partition/Defendant (have own the case and was interviewed at his home in a village called Sisniya, Bara)
23.	Jalil Miya	M/70	Bara District Court	Madhesi/Muslim	Partition/Plaintiff (claim of property of his part from the sons by Father)
24.	Dinesh Prasad Shah	M/46	Bara District Court	Madhesi	Partition/Defendant
25.	Nagendra Kurmi	M/44	Bara District Court	Madhesi	Coercion (document signed with force)/Defendant
26.	Durga Prasad Dahal	M/58	Court of Appeal, Dhankuta and Dhankuta District Court	Brahmin	Land Dispute (Land encroachment by public road) and looting / defendant
27.	Mausami Limbu	F/20	Dhankuta District Court	Janajati	Divorce and Partition
28.	Prem Bahadur Kuwar	M/77	Land Revenue Office/District Court, Dhankuta and Court of Appeal Dhankuta and Supreme Court	Chhetri	Registration of Public Land/Defendant (registration cancelled by the land revenue office, lost the cases from all the courts)

29.	Puskar Prasad Joshi	M/55	Dhankuta District Court, Court of Appeal, Dhankuta and Supreme Court	Newar	Execution of Judgment/Defendant (own the case from all the court and pending execution past four years)
30.	Surendra Rai	M/32	Dhankuta District Court, Court of Appeal, Dhankuta and Supreme Court	Janajati	Execution of Judgment/Plaintiff (lost the case from all the courts, but still feel injustice and does not want to vacant the land and house)
31.	Bhadraman Ghale	M/79	District Court and Court of Appeal, Dhankuta	Dalit	Land dispute/plaintiff (with neighbor) Lost in District Court and case running in Court of Appeal)
32.	Puskar Bhattra	M/50	District Court, Dhankuta	Brahmin	Encroachment of private land by the Public Road/Plaintiff (case running)
33.	Rosan Raj Amayta	M/40	Dhankuta District Court	Newar	Partition and name transfer of land/plaintiff(case running with mother, brother and sister)
34.	Januka Karki	F/46	Dhankuta District Court	Chhetri	Partition, land dispute and looting/Plaintiff (case with husband and neighbor)
35.	Dil Kumari Thapa	F/45	Land Measurement Office and Dhankuta District Court	Chhetri	Land dispute/defendant (running case)
36.	Mina BK	F/55	Dhankuta District Court	Dalit	Partition/plaintiff (with husband) (case is settled in mediation in the district court)
37.	Dik Bahadur Puri	M/46	Dhankuta District Court	Chhetri	Encroachment of private land by the public road/defendant ( case filed by uncle for constructing the road in private land and the case is running)
38.	Punney Kala Bhandari (Budhathoki)	F/62	District Court and Court of Appeal Dhankuta	Chhetri	Partition/ Plaintiff ( filed case with husband, lost in district court, won in court of appeal and now defendant is moving to supreme Court) (was interviewed in village of Therathum, Basantapur)
39.	Khim Kumari Thapa (Gagurel)	F/52	Dhankuta District Court	Chhetri	Partition and claim of relationship (running case in the district court)
40.	Kishor Karki	M/42	Dharan, Sunsari ( editor of Balst daily from Dharan)	Chhetri	Interviewed about the possibility of Provincial Capital in Dharan
41.	Harsa Subba	M/56	Dharan, Sunsari, reporter, Kantipur national daily)	Janajati	Interviewed about the possibility of Provincial Capital in Dharan

## Meetings with International Community

Name	Organization
Leena Rikkilä, Senior Programme Officer	International IDEA
Dr Sagar Prasai, Deputy Country Director, Preeti Thapa	The Asia Foundation (TAF)
Mark Wallem (Country Director) Ram Guragain, Jay Nishant	National Democratic Institute (NDI)
Jorn Sorensen, Deputy Country Director (Programme), Edwin Berry, Sharad Neupane & Tek Tamata	UNDP
Sharada Gyawali	ADB
Hira Mani Ghimire, Senior Governance Specialist	World Bank
Julie Fournier (Head of Mission) & Gopi Parajuli	Lawyers without Borders (ASF Nepal)
Dr Jyoti Singhera, Representative (a.i.), Ranjana Thapa	OHCHR
Sarah Levit-Shore, Country Representative	The Carter Centre
Sangeeta Thapa (Programme Coordinator), Sama Shrestha & Yamun Yadav	UN Women
Rebecca Crozier	International Alert
Adam Forbes	Saferworld
Patrick Burgess, Asia Director	International Centre for Transitional Justice
Kirsten Young	International Centre for Transitional Justice, Nepal



*By:*

**Paul Donnelly, Team Leader**

**Dr. Bipin Adhikari, National Consultant**  
Legislative Framework, Oversight and Accountability

**Mr. Hari Phuyal, National Consultant**  
Civil Justice

**Ms. Indu Tuladhar, National Consultant**  
Informal Justice and Community Security

**Mr. Rabindra Bhattarai, National Consultant**  
Criminal Justice

**Mr. Satish K. Kharel, National Consultant**  
Informal Justice and Community Security

**October 2011**