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## **USIPeace Briefing**

### **Nepal in Transition: Developing Security and Rule of Law Strategies**

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In February 2007, the U.S. Institute of Peace (USIP) facilitated a series of dialogues in Kathmandu, Nepal between civil society, the Nepal police, and representatives of political parties. The aim was to identify those areas of mutual concern related to security and the rule of law in Nepal. Civil society representatives from development organizations, media, human rights groups, the legal community, and Dalit and Janajati rights groups participated. The representatives from the Nepal police included deputy inspector generals, senior superintendents, superintendents, and deputy superintendents of police. The dialogue sessions were conducted over the course of four days. On day one, civil society representatives met to discuss the challenges and possible solutions to security and the rule of law. The next day, the police discussed the same issues. On day three, the two groups came together to develop a joint list of high-priority issues. On the final day, the police and civil society representatives presented this joint [list](#) to political party representatives.

This initiative presented a unique opportunity for civil society and the police to discuss ideas, share concerns, and establish links between them as a basis for future cooperation on security and rule of law issues. They demonstrated a high degree of commitment to engaging with each other and sharing viewpoints with the goal of developing strategies to build a peaceful and democratic Nepal.

The USIP team that organized and facilitated the program was comprised of Shobhakar Budhathoki, a human rights defender and conflict resolution practitioner based in Nepal; Karon Cochran-Budhathoki, a conflict resolution specialist also based in Nepal; Richard Monk, former senior police adviser to the Secretary General of the Organisation for Security and Co-operation in Europe (OSCE); Vivienne O'Connor, Rule of Law project officer from the Irish Centre for Human Rights; and [Colette Rausch](#), deputy director of USIP's [Rule of Law](#) program.

This USIPeace Briefing was written by Karon Cochran-Budhathoki and [Colette Rausch](#). The first section contains a brief background discussion of Nepal and its current situation. The second section summarizes the points made by the USIP team during the sessions. The final section was developed by the USIP team and expands further on the joint list developed by civil society and police. It also incorporates information developed by the USIP team following numerous discussions with individuals and organizations in Nepal and Washington, D.C., over the past six months.

#### **Nepal in Transition**

##### *Moving Toward a Post-Conflict and Democratic State*

The pace of change in Nepal has quickened, and recently culminated in the signing of a peace agreement that officially ended a 10-year armed conflict. There are high expectations by many in Nepal that their country is on the path to a lasting peace and will be a model for other countries emerging from conflict. How Nepal manages people's high expectations, and the manner in which it handles the challenges it faces, will dictate the success of its transition to a peaceful and democratic state.

After more than 200 years of monarchical and autocratic rule in Nepal, the people launched a movement in 1990 that resulted in a constitutional monarchy and a multi-party democracy. While the country experienced its first democratic elections in 1991, there was only frail stability as corruption and social and economic inequities continued to plague the nation. In 1996, the Communist Party of Nepal—Maoists (CPN-M) launched a "people's war" that resulted in more than a decade of armed conflict and some 13,000 deaths.

Citing the ongoing conflict and the government's inability to end it, King Gyanendra seized absolute power in February 2005, resulting in a state of

emergency and the suppression of civil and political rights. Civil society and the political parties organized opposition to the monarchy's total rule, which led to the people's movement, "Jana Andolan II," in April 2006. This eventually resulted in the king losing power, and led to the restoration of the House of Representatives (HoR). During the king's rule, the CPN-M and the seven main political parties, with the support of civil society, began a dialogue that led to the signing of a ceasefire code of conduct, several "understandings," and the eventual signing of a Comprehensive Peace Agreement in November 2006.

As part of the peace process, the HoR stripped the monarchy of all powers and adopted an interim constitution, which led to an interim parliament in January 2007 that included the CPN-M. Additionally, Maoists have been sworn in as ministers in Nepal's interim government. The country is also preparing to hold constituent assembly elections to elect the body that will prepare a new constitution. While the past year has resulted in many positive changes, Nepal continues to face significant challenges as it works toward a peaceful democracy.

#### *The State of Security and the Rule of Law in Nepal*

While the United Nations Mission in Nepal (UNMIN) has completed registration of arms and armed personnel in several districts within the country, there are concerns over the continuing CPN-M possession of weapons and the seemingly small number of weapons being registered. There are additional concerns that the reportedly poor conditions of the cantonments could lead to former combatants leaving those areas. Despite the CPN-M joining the interim parliament and government, there are reports of ongoing intimidation by CPN-M cadres.

Further threats to security include armed groups that have either splintered from the CPN-M or have organized in the name of retaining the monarchy, preserving Nepal as a Hindu kingdom, or in the name of protecting and promoting the rights of various ethnic groups. Of particular concern has been the growing Madhesi movement in the Terai (lowlands) of the country. The Madhesi people are culturally and ethnically close to the northern groups of India and have been historically discriminated against in Nepal. However, the movement has quickly turned into communal violence with rallies of people armed with spears and khukuris (traditional knives) attacking police, government offices and homes, CPN-M groups, businesses, and the Pahadia (hill people). With so much emphasis on the political affairs of the country, support for the police to address these crimes and take appropriate action has been insufficient. Similarly, the government and the eight political parties making decisions for the country hesitate to take any action against armed groups with political agendas for fear of destabilizing the country's political future.

Other post-conflict crimes are on the rise, including organized crime, burglary and theft, cross-border looting and banditry, smuggling and human trafficking, and gun crimes. The legal framework is inadequate to deal with these crimes. Additionally, institutions that support the rule of law, such as the judiciary and the Home Ministry, do not have the capacity to address the crime problems. Also posing a threat to security is the ongoing poverty, economic inequity, and social exclusion, which have served as a platform for both peaceful and armed groups. Challenges exist within the security sector in terms of identifying roles and responsibilities between the Nepal Police, the Armed Police Force (which was designed originally to fight the Maoist insurgency and operates as a paramilitary group) and the Nepal Army, which is now confined to its barracks according to the peace agreement.

#### *Shifting Roles and Responsibilities of Police and Civil Society*

During the sessions, the USIP team discussed general themes regarding the changes in roles of civil society and the police during the transition from conflict to peace. While in the past the police may have been used to protect the state, they must take on a new role as protector of the individual and upholder of rights as democratic principles are implemented. Transparency, coordination, and communication, as well as operating guidelines that are indicative of the role police play as public servants, are all imperatives for the police in a democratic state. The police are citizens and part of society, and therefore should not be viewed as apart from it. Tools such as an internal review, and mechanisms for internal investigation whereby grievances can be filed by the public, can strengthen the police and increase transparency, thereby increasing public trust in the police. The transitional phase can provide opportunities for institutional change as well. This can include identifying or updating goals, updating policies, strategies, procedures, and timelines, in order for the institution to increase its effectiveness and capacity.

There are many roles that civil society can take, in addition to that of a "watchdog," to assist in developing a democratic and secure society that operates by the rule of law. Civil society can continue to be vigilant not only in pressing for police to respect people's civil

#### **Policing in a Democracy**

- Protect the individual and his or her rights
- Transparency and communication are essential
- Internal reviews and other mechanisms of accountability can increase public confidence
- Reform and transition provide opportunity for institutional change and institutional enhancement

and political rights but also in pressing for police to protect people's rights by maintaining public order and preventing crime. Civil society can also engage with police in a constructive manner designed to identify and resolve issues of common concern.

As advocates, civil society could continue to push for inclusion of disenfranchised groups in decision-making processes and for the development of strategies and mechanisms that strengthen the rule of law. They can work with government officials in strengthening the police as protectors of the people, and push for law reform and for the equal enforcement of the law, regardless of political affiliation. They can also advocate for accountability within the government and security agencies, and jointly undertake activities with these agencies to formulate mechanisms to combat impunity.

#### Civil Society

- Maintain accountability and oversight role
- Constructively engage the institution of police
- Identify areas of needed reform for security and the rule of law
- Advocate for strengthening institutions that protect rights
- Develop an agenda and long-term strategy
- Public education on rule of law and security
- Advocate for law reform
- Engage government and security institutions to strengthen human rights culture
- Advise and advocate for mechanisms that combat impunity

It is important to build a human rights culture within the government and the security agencies during transition. Civil society has the capacity to support and conduct some of these activities, including training in the area of human rights, democratization, accountability, and the rule of law. They can advocate for legislation that protects and promotes human security. Educating the public on security, the rule of law, legal frameworks, and the role of the police and government is important so the public can understand the roles of security institutions (the police, judiciary, penal system, and so on,) and more fully participate in reforming and strengthening police and other security mechanisms. Public education on alternatives to violence is crucial to reducing risks to human security.

Civil society can play a key role in identifying areas of needed reform, providing ideas and solutions to the state and relevant justice and security institutions and working jointly with those institutions in developing a long-term rule of law strategy. Sustainable institutional changes and reform rely on a long-term strategy developed with the involvement and acceptance of those institutions together with civil society and the public. A long-term strategy can inform the government and donor communities of the needs and areas that require change and support and help alleviate the often-found challenges of insufficient donor coordination and competing political agendas found in countries emerging from conflict. Overall, constructive engagement from civil society on issues of security and the rule of law will protect human security and strengthen institutions that maintain law and order.

### Strengthening the Rule of Law and Security in Nepal: Assessment of Priority Areas

The following is an assessment of some of the priorities set forth above that need to be addressed in order to strengthen the rule of law and security in Nepal, as understood by the USIP team during the sessions between the Nepal Police and civil society and from follow on meetings with numerous individuals.

#### *Political Will, Not Interference*

The police have in some instances been used by political parties in Nepal as tools for achieving political gains or protecting political positions. As the country faces increasing crime and insecurity, democratic policing principles are more important than ever. Such principles require political parties, bureaucratic officials, businesses, and other power-holding sectors to refrain from pressuring or unduly interfering in policing. Failure to transform policing in Nepal could allow criminal elements and social instability to increase and eventually hijack the country's peace process. Similarly, civil society plays an important role as change agents for the country, but civil society organizations risk becoming ineffective if politicization interferes with or dictates their work.

A constructive way forward would be for political leadership, the government, and bureaucratic officials to prioritize security and the rule of law as Nepal transitions out of conflict and into a democratic state. This would require reviewing and analyzing the security sector, including the judiciary, legislation, penal system, relevant ministries, and other supporting institutions for needed reform. Similarly, moral, technical, and financial support for policing and equal and unbiased enforcement of the rule of law, are of highest priority in a state that is experiencing increasing lawlessness and disorder. While the peace agreement and continuing political processes are fragile, it is important that the rule of law not be overlooked or underappreciated. A fundamental principle of the rule of law is that all groups are held to the same legal and judicial standards regardless of their status. This would require directives and public support from the Home Ministry to the police to enable them to uphold or defend the law, regardless of who is violating it, as well as public support from the government to the police for fulfilling their duties.

The process for the police to receive orders, and in particular to respond to crisis or group violence, is often bogged down in bureaucratic “red tape” because the police must consult with the Chief District Officer (CDO) and the Home Ministry prior to taking action. In some instances, the CDO is unavailable to approve action, or the Home Ministry has been occupied with other duties and is unable to rapidly respond. Further, in some situations, there have been mixed messages regarding orders to the police and as a result the police officer in charge was unable to act in time to prevent violence. To help in such situations and allow police to quickly defuse riots or respond to illegal activities, consideration could be given to allowing standing orders, or a change in the process for deciding on action, that would allow the police to act proportionately and immediately according to the assessment of the commander in charge. Similarly, the police are sometimes unable to act due to lack of adequate resources. If the police do not have protective gear or the ability to protect themselves, they are unable to carry out their responsibilities.

#### *Strengthening Support Mechanisms*

As the breakdown of law and order continues, the police play an increasingly important role. However, if there are not mechanisms and institutions that support the process of upholding the rule of law, policing will not be sufficient.

#### **Supporting Security and the Rule of Law**

- Accessible judiciary that is free from corruption and political influence
- Updating laws and new legislation to address crimes not under current laws
- Dismantling parallel governance and judicial institutions
- Strengthening governance and bureaucratic offices that support security and the rule of law
- Accountability mechanisms for state prosecutors
- A responsible and strong penal system
- Ending discrimination and double-standards within the judicial system

Nepal has struggled with addressing impunity. Some institutions that are meant to assist in combating impunity suffer from inadequate capacity, corruption, or lack accountability. An independent, accountable, and accessible judiciary is imperative for the rule of law to be upheld, as is a responsible governance structure and ministries that are meant to support and provide security and law and order. Prosecutors must be free from undue influence and their actions free of political intent or personal financial gain. Also important is a well-managed penal system to uphold court rulings and abide by the rule of law. Equally essential to ensuring security and the rule of law is a clear and strong legal framework. Currently, criminal law and civil law are combined under one umbrella, often resulting in outdated and unclear legislation. The Police Act and penal laws require updating to accommodate the changing context of Nepal, for example to include laws to address hooliganism and kidnapping. Positive steps are being taken to draft and present in parliament new legislation related to these areas.

While the CPN-M has publicly committed to dismantling its parallel judicial and governance structures, the police and the state judicial offices have not been able to reestablish their presence in many areas throughout the country. In such situations, people’s access to justice has been obstructed and can only be enhanced by establishing police posts that service the public and work with communities. The presence of legal offices and state courts that are free from corruption and discrimination, and that provide services to those seeking justice, would also be helpful.

As Nepal transitions, efforts to strengthen security and the rule of law should be holistic and include not only the police, but also the legal framework and other justice institutions including the attorney general, bar association/defense attorneys, and penal system.

#### *Preventing Violence: Ensuring Inclusiveness*

Addressing the social and economic factors that have historically destabilized the country, such as caste and ethnic discrimination and poverty, will only serve to strengthen security and the rule of law. As Nepal transitions, there is a rare opportunity for the country to include those groups that have traditionally been disenfranchised. For Nepal to secure a peaceful transition, the political process and state institutions would do well to be inclusive of groups that have been marginalized, and provide opportunities to register complaints, objections, and demands. Mechanisms to file grievances with the government and state institutions, such as a government-appointed ombudsman, can be established to provide increased access to decision-makers.

#### Supporting Inclusiveness

- Mechanisms for filing grievances
- Inclusion of marginalized groups in political process
- Increased demographic representation within state institutions
- Development of a national vision and strategy, with public participation

Currently there is lack of trust in systems for redress and justice among some groups that have traditionally been disenfranchised. One possible confidence-building measure is to increase representation within security agencies and the judiciary to better reflect the demographics of the country. Accessing and communicating with the police is sometimes problematic, with some police posts not speaking local languages. While recent recruitment has attempted to increase the ethnic representation of the police, it continues to be necessary for deployment to ensure that police officers are working in locations in which they speak the local language and understand local cultures. This can increase the community's trust of the police post, thereby increasing the reporting of crimes and public cooperation. Another method for increasing trust would be to establish contact points within police posts for victims of gender- or ethnic- based violence to report those crimes to a member of his or her own "group" (i.e. a female police officer would serve as contact for gender-based violence).

As Nepal moves into a post-conflict scenario, a national vision is important and should be developed with the participation of an informed public. Ideally, this vision can address such issues as social exclusion, economic development, the reintegration of ex-combatants, and issues of integration or security sector reform. It is important that a long-term strategy and

vision for the country be developed by leaders, but with the input of all sectors of society. If all sectors and groups are included in this process and mechanisms for access to decision-making are established, there will be less likelihood of public actions that disrupt daily activities or that lead to violence.

#### *Civil Society and Police: Building a Relationship*

It is evident that as Nepal transitions, it will face numerous threats to security and law and order. Civil society and the police can further the peace process by developing a working relationship that includes formulating joint strategies for strengthening the rule of law and security. These strategies can then be taken to policymakers to formalize as tools or mechanisms. Continuing dialogue between the police and civil society in Kathmandu is important to build relations and strengthen communication, but it is equally important to initiate informal dialogues between the police and civil society in rural communities, and particularly in communities that are at high-risk for communal violence and serious crimes.

As these dialogues continue and relations are built, it could be possible to establish joint-working groups or coordination committees to share information, quickly and effectively address concerns or problems, support efforts to combat crimes, and increase the protection of people's rights. These groups or committees could potentially undertake joint investigations so that both the police and civil society have information and a better understanding of the concerns of the other. Similarly, working together to identify needed changes, reforms, or areas of support, such as improved detention facilities, training, or operational support from the government to allow the police to serve the public, will provide a stronger foundation from which to advocate for those changes.

Strengthening security and the rule of law depend upon building trust, communication, and a working relationship between the police and civil society, as well as their combined efforts to inform the government and state security institutions.

#### Building Relationships

- Dialogue at central and rural levels
- Formulate joint strategies
- Establish joint-working groups or coordination committees
- Increase communication and information sharing
- Work together to identify reforms and assess needs for strengthening security and the rule of law

#### **Of Related Interest**

[Download the list of recommendations referred to in this document](#)

[Prospects for a Successful Peace Process in Nepal: Internal and International Perspectives](#)

USIPeace Briefing, April 2007

[Political Parties in South Asia: The Challenge of Change](#)

Event, April 4, 2007 (Audio Available)

[Nepal in Transition: Developing Security and Rule of Law Strategies](#)

News Release, February 24, 2007

[Security Sector Reform in Nepal: The Role of Civil Society](#)

USIPeace Briefing, December 2006

[Nepal: Rule of Law and Human Rights Challenges](#)

USIPeace Briefing, August 2005

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