



Issues Paper 4

Human Rights in the Nepali Law Enforcement and Security Sector

This document was authored in 2015 by Dr Kiran Grewal and Professor Danielle Celermajer, University of Sydney for the project Enhancing Human Rights Protections in the Security Sector in the Asia Pacific. This project was run in partnership with the Centre for the Study of Human Rights at the University of Colombo and the Kathmandu School of Law. It may not be produced, in whole or part, without the explicit permission of the author. Aastha Dahal, Rohit Karki and Pradeep Pathak are acknowledged for their contribution to the research that forms the content of this Issues Paper.

sydney.edu.au/arts/research/ehrp

ISSUES PAPER 4: HUMAN RIGHTS IN THE NEPALI LAW ENFORCEMENT & SECURITY SECTOR

INTRODUCTION

As we noted in the previous *Issues Paper*, one of the key findings of this project has been the importance of context. In this paper we will highlight what we see to be some of the key factors that create risks of the use of torture amongst Nepali security personnel. We will start with a short discussion of the recent political history of Nepal, which is relevant to situating the Nepal Police and Armed Police Force within a broader social and political context. We will then go on to explore some of the key external and internal factors that our research indicated may lead to torture by these organisations. As with Sri Lanka (discussed in *Issues Paper 3*), these findings are based on interviews conducted with both police/armed police personnel and a range of external stakeholders (government representatives, judges, lawyers, doctors, human rights advocates and academics) as well as a thorough review of existing literature, laws and policy documents. We were also fortunate enough to be granted access to police stations in a number of districts across the country to conduct observations, which greatly enriched the research process.

HISTORICAL CONTEXT

Nepal has experienced a turbulent modern history. Following centuries of autocratic rule, the country began its transition to democracy in the 1990s but the process has been fraught as a result of great diversity, widespread inequality and deep social divisions. As a result Nepal has experienced waves of political violence in the past and continues to face an uncertain future: both of which have had significant impacts on the security sector.

In 1990, following a swathe of protests and the establishment of a pro-democracy movement (the ‘Jana Andolan’ or ‘People’s Movement’) the country moved from an autocratic state to a multi-party democracy. For many this event marked an important turning point and sparked hope that the social inequality and poverty experienced by much of the population would finally be addressed. However, while the early 1990s created a wave of optimism, the reforms made at this time were insufficient to address the deep socio-cultural inequality and economic disparity. Meanwhile, there continued to be discontent regarding the extent to which the new Constitution truly marked a shift towards more popular sovereignty.¹ As a result a Maoist insurgency movement emerged in the west of the country and a brutal armed conflict was fought from 1996 until 2006 between the Maoists and Nepal’s security forces. The armed conflict affected all but two districts of the country and is estimated to have resulted in the loss of more than 13,000 lives and the internal displacement of up to 200,000 people.²

With peace finally re-established in 2006, Nepal has once again begun the long process of creating a democratic, representative and stable government, working on economic development to reduce the extreme poverty experienced by many sections of the population and responding to the social divisions along ethnic and caste lines. In 2007 and 2008 an interim constitution and Constituent Assembly were established, to be followed by permanent democratic structures that would – it was hoped – provide redress and better representation to the various different marginalised groups across the country. Again, this process stalled and in May 2012, following months of intense protests and political negotiations the Constituent Assembly was dissolved without a final constitution being agreed upon, the parties deadlocked. Fresh elections were held in late 2013 and a new coalition government was formed between the major political parties. The re-elected Constituent Assembly is now in the process of finalising the new Constitution.

In all of this turmoil, state institutions have clearly suffered. Politicisation, corruption and under-utilisation of resources plague all aspects of the administration and the law enforcement agencies are no exception. While the Nepal Army has managed to maintain its independence and has largely stayed out of state affairs since the end of the armed conflict, the two organisations we have been working with in this project – the Nepal Police and Armed Police Force – have inevitably been impacted by this political context. There are also a range of socio-cultural norms and specific organisational factors that have contributed to undermining the ability or willingness of these forces to uphold and promote human rights. In the next section we will highlight a few of the key issues.

¹ Deepak Thapa and Bandita Sijapati, *A Kingdom Under Siege: Nepal’s Maoist Insurgency, 1996–2003*, (Kathmandu: The Printhouse, 2003), 50-53.

² OHCHR, *Nepal Conflict Report: an analysis of conflict-related violations of international human rights law and international humanitarian law between February 1996 and 21 November 2006* (Geneva: United Nations Office of the High Commissioner for Human Rights, 2012), accessed 25 June 2014, <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/NepalConflictReport.aspx>; DFID, DanidaHUGOU and UN, “Access to Security, Justice and Rule of Law in Nepal: an assessment report,” (2012), 3, accessed 20 June 2014, <http://www.un.org.np/reports/access-security-justice-rule-law-nepal>.

LEGAL FRAMEWORK

Nepal is party to all the major international human rights conventions. Domestically both the 1990 Constitution and the 2007 Interim Constitution contained chapters on fundamental rights which include anti-discrimination provisions, basic fair trial rights (Article 14 in the 1990 constitution and Article 24 in the 2007 interim constitution) and a prohibition on preventative detention (Article 15 of the 1990 constitution and Article 25 of the 2007 Interim Constitution) and against torture (Article 14(4) of the 1990 constitution and Article 26 of the 2007 Interim Constitution).³ Moreover the *Nepal Treaty Act 2047 (1990)*, stipulates that any law of Nepal that is inconsistent with a treaty ratified by Nepal is void.⁴ However, certain legal reforms remain necessary, in particular (for the purposes of this project), legislation criminalising torture and CIDT. There are also a number of (albeit inadequate) protections contained within criminal procedure laws. For example, Section 9, *Evidence Act 2031(1974)* renders confessions obtained as a result of torture, coercion, undue pressure, threats or promises inadmissible in court. Section 9(1), *Government Cases Act 2049 (1992)* also requires that a lawyer from the Attorney-General's department be present during the interrogation by police of suspects: a provision designed to prevent torture occurring. These procedural safeguards will also be potentially strengthened with the passing of the *Draft Criminal Code Bill and the Draft Criminal Procedural Code Bill 2068 (2011)*, which includes additional provisions requiring judicial and prosecutorial oversight of the criminal investigation process.

While the legislation criminalising torture remains in draft form, there is the *Compensation relating to Torture Act 2053 (1996)* (more commonly referred to as the *Torture Compensation Act*) which prohibits torture (Section 3) and enables courts to award compensation to victims of torture provided they file a complaint within 35 days of either being tortured or being released from detention (Section 5). The Act also provides that courts may order that disciplinary action be taken against the accused perpetrator, although this is a discretionary power (Section 7). The Supreme Court of Nepal has also on occasion acted as a strong proponent of human rights, even though its efforts have been blocked or undermined by a lack of political will.⁵

The scale and severity of human rights violations has indisputably declined since the end of the armed conflict. Out of 222 sample cases studied in a baseline survey of the criminal justice system in 1999, 69% of detainees reported experiencing inhumane treatment and being tortured during police detention,⁶ while the legal aid and advocacy organisation Advocacy Forum report in 2014 reveals 16.7% of detainees complained of incidents of torture or other cruel, inhuman or degrading treatment during their detention, a reduction from 22.3% in 2012.⁷ This clearly shows that there is a gradual reduction of incidents of torture in Nepal. Nevertheless, the overall consensus is that significant work remains to be done. A recent report on the justice sector noted, 'the state of security, justice and rule of law continue to remain primary challenges in Nepal'.⁸ Meanwhile in 2011 the World Bank noted that while the 2007 Comprehensive Peace Agreement had achieved an end to the armed conflict, 'violence between political rivals, quasi-political extortion, and criminal gang activity have increased markedly since the civil war'.⁹ The report went on to identify the following as the key security issues in Nepal:

- Mistrust of security forces;
- Cultures of impunity;
- Legacy of violence and trauma;
- Lack of legitimate security presence.¹⁰

³ For a full version of the 2007 interim constitution in English see http://www.wipo.int/wipolex/en/text.jsp?file_id=189180, accessed 30 June 2014. For a full version of the 1990 Constitution see <http://www.supremecourt.gov.np/pages.php?d=lawmaterial&f=constdef2047>, accessed 30 June 2014.

⁴ Redress and the Asian Legal Resource Centre, "Torture in Asia: The law and practice," *Special edition of Article 2 12*, no. 2 (2013): 9, accessed 3 July, 2014, http://www.redress.org/downloads/publications/A2_V12%20N3_online.pdf; Asian Human Rights Commission, "The State of Human Rights in Nepal in 2012," *AHRC-SPR-007-2012* (2012), accessed 2 July 2014, <http://www.humanrights.asia/resources/hrreport/2012/AHRC-SPR-007-2012.PDF/view>; Advocacy Forum, "Held to Account. Making the Law work to fight Impunity in Nepal," (2011), accessed 3 July 2014, <http://www.redress.org/downloads/publications/Nepal%20Impunity%20Report%20-%20English.pdf>; American Bar Association, "Human Trafficking Assessment Tool Report for Nepal," (2011), accessed 3 July 2014, http://www.americanbar.org/content/dam/aba/directories/roli/nepal/nepal_human_trafficking_assessment_report_2011_authcheckdam.pdf.

⁵ For example, in 2011 the Supreme Court issued a stay on the promotion of Colonel Raju Basnet following its request to the government to investigate allegations of serious human rights violations including torture and enforced disappearances against Colonel Basnet in 2007.

⁶ Center for Legal Research and Resource Development (CeLRRd), *Analysis and Reform of the Criminal Justice System in Nepal* (Kathmandu:CeLRRd, 1999), 106.

⁷ Advocacy Forum-Nepal, "Promising Developments Persistent Problems: Trends and Patterns in Torture in Nepal during 2013", 2014, 1, accessed 02 August 2014, <http://advocacyforum.org/downloads/pdf/publications/torture/promising-development-persistent-problems.pdf>.

⁸ DFID, DanidaHUGOU and UN, "Access to Security," 3.

⁹ The World Bank, "Conflict, Security and Development," *World Development Report 2011* (Washington DC: The World Bank, 2011), 55, accessed 1 July 2014,

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/0,,contentMDK:23256432~pagePK:478093~piPK:477627~theSitePK:477624,00.html>.

¹⁰ *Ibid.*, 135.

Another evaluation concludes:

“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.”¹¹

These problems are exacerbated by a number of other socio-cultural factors that impede the protection and promotion of human rights.

NORMALISATION OF VIOLENCE

Nepal retains the legacies of having been a militocracy until 1951¹² and an authoritarian state until 1990. The routine use of violence and humiliation against suspected and actual criminals has a longstanding history and, according to some commentators continues to be widely viewed as a legitimate form of punishment.¹³ Added to this, the widespread brutality of both the insurgency and counter-insurgency¹⁴ has led to a certain normalisation of violence in ordinary peoples' lives.

According to the UN Office on Drugs and Crime (UNODC), Kathmandu recorded the highest murder rate relative to its population in Asia in 2005 and 2006.¹⁵ While this has declined since the end of the armed conflict, the Terai region of the country (bordering India) remains a site of intense social and political unrest.

Madhesi movements have continued to use both political and violent means to protest the traditional exclusion and disadvantage of this ethnic group (most notably in the form of the '*TeraiAndolan*' which made the demand for an ethnic-federal structure with the right to self determination for the states in 2007), while cross-border smuggling and other illegal activities mean levels of crime remain high. In identifying a shift in sites of violence from the 1990s (when it was concentrated in the middle hills) to the mid-2000s (when it has been focused in the southern Terai), the World Bank reports: “insecurity in Nepal has evolved from a Maoist insurgency to opportunistic violence and criminality. This sense of lawlessness is most clearly manifest in the southern Terai region, where the government has identified more than 100 violent groups and criminal gangs.”¹⁶ This makes the job of policing in these regions extremely difficult.

The World Bank also identifies a variety of forms of violence that persist in Nepali society ranging from localised violence around land and ethnic separatism to party-related extortion and organised crime, human and drug trafficking.¹⁷ Patterns of violence are also intimately connected with corruption. In 2011 Nepal was ranked 146th out of 178 countries by international anti-corruption organisation Transparency International and an article in the *Economist* in the same year identified, “[r]ampant corruption, at all levels of government, [...] becoming the definitive characteristic of the country's rocky transition to peace, after a decade long civil war.”¹⁸ Corruption reinforces most people's lack of faith in state institutions and contributes to unethical practices by state actors. Internationally, the relationship between corruption and torture has been identified by a number of observers¹⁹ and this argument has also been made by expert commentators with specific reference to Nepal.²⁰

¹¹ DFID Danida HUGOU and UN, “Access to Security,” 44.

¹² Dhruva Kumar, “Civil-Military Relations in a Democratic Constitution: Legacy and Lessons” (paper presented at the UNDP national conference on ‘Systems of Government’, Lalitpur, December 18-19, 2007).

¹³ American Bar Association Rule of Law Initiative, *Assessment report on National Forensic Practices to govern the Forensic Investigations in Nepal* (Kathmandu: American Bar Association, 2012), para. 4.1.2.

¹⁴ For a detailed account of the alleged violations of human rights and international humanitarian law committed by the various parties to the conflict during the war see OHCHR, ‘Nepal Conflict Report: an analysis of conflict-related violations of international human rights law and international humanitarian law between February 1996 and 21 November 2006’, October 2012, accessed 20 June 2014, <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/NepalConflictReport.aspx>.

¹⁵ UNODC, *2011 Global Study on Homicide: Trends, Context, Data* (Vienna: United Nations Office on Drugs and Crime, 2011), accessed 20 June 2014, http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf.

¹⁶ World Bank, “Report on Conflict,” 91.

¹⁷ World Bank, “Report on Conflict,” 92.

¹⁸ Cited in DFID, Danida HUGOU and UN. “Access to Security,” 44.

¹⁹ Jacqueline Baker, “The Rise of Polri: Democratisation and the Political Economy of Security in Indonesia” (Ph.D. diss., London School of Economics and Political Science, 2012), 298-313. Basil Fernando of the Asian Human Rights Commission made a similar observation in relation to the Hong Kong experience: Telephone interview with Basil Fernando, Asian Human Rights Commission, 28 February 2014.

²⁰ Dhungana identifies a number of examples of how corruption fuels police torture, such as the involvement of police in extortion and the use of violence against members of the public, street vendors and street children in exchange for money and goods: Saferworld, *Policing in Nepal: A collection of essays* (London: Saferworld, 2007), 2 and 36, accessed 3 July 2014, <http://www.saferworld.org.uk/resources/view-resource/286-policing-in-nepal>. The 2010 International Alert report on Bara District also included civil society allegations of the police extorting money from cannabis growers: *International Alert, Security and Justice from a District Perspective: Bara (International Alert: 2010)*, accessed 30 June 2013, <http://www.international-alert.org/ourwork/themes/security>.

Furthermore, the continued resort to violence by different factions in Nepali society both contributes to and further exacerbates punitive community norms around discipline and justice.

SOCIETAL EXPECTATIONS

It was widely reported to us by both police personnel and members of civil society that there is a social expectation that the police will use force against 'criminals' and 'bad people'. We also had occasion to observe this during our visits to police stations. For example, on one occasion a civilian in a police station stated: 'For these types of thieves, legal action is not appropriate. You have to hit them on the hands'. On another occasion we witnessed two thieves being brought into the police station. They had been badly beaten by members of the general public and rescued by the police. We were told by Police officers that this is not an infrequent occurrence.

In her study of police encounters²¹ in India, Julia Eckert made two interesting findings:

"That the general public both expected and justified 'encounter killings' on occasions where they saw them as a tactic "to make up for the deficiencies of law and legal procedures"; and That it was an, "open secret that encounter killings do not just occur out of an immediate need for self-defense [by Police], but also in the context of a larger conception of social (self-) defense."²²

A similar sentiment exists in Nepal and indeed we have been told of particular 'hero' police officers who have been implicated in encounter killings and who have been celebrated by the community as a result. While from an external perspective such attitudes may seem highly problematic, it is important to recognise how they make sense within the context of a criminal justice system which is widely viewed as inadequate at best and unjust at worst. Indeed, one of the key arguments that this project makes is that those seeking to address human rights violations need to understand the context in which such actions make sense to those who commit them, or the way in which they are correlated with other aspects of individual perpetrators' social and political worlds.

Aside from this public endorsement of vigilante style justice, we have also found a certain ambivalence amongst judicial and government officials towards the use of violence by members of the police. It seems that for many this is simply an inevitable part of the job of police officers. For example, one retired senior bureaucrat expressed concern about the implications of prohibiting torture for the police 'doing their job' because, unlike in 'Scandinavian countries' people in Nepal did not have full trust in the government and the system and would therefore not freely admit when they had done the wrong thing. This made it necessary to use other means to make them talk:

"In developing countries, a thief is detained, everyone knows he did it but he won't admit it unless he is beaten. If we say torture or beating shouldn't happen he wouldn't say he did it. It is required but to a lesser extent. But Police can abuse this power. If a DSP doesn't like me he can arrest and torture me. This is the negative aspect. If we follow Scandinavian countries we cannot manage our law and order, Rule of Law. There people feel proud to pay tax to the government. But here people feel proud not to pay tax! How can we then get by without torture?"²³

The fact that victims of torture are so infrequently granted compensation by the courts and when they are, receive very small amounts²⁴ and that courts have very infrequently used their power under S7, *Torture Compensation Act* to order departmental disciplinary action,²⁵ may suggest that a similar view is held by judges. Further evidencing this, Redress and Advocacy Forum have reported one case where an Appeal Court upheld a finding of torture under the *Torture Compensation Act* and the award of compensation, but overturned an order for departmental action against the perpetrators on the grounds that to do so would 'hamper the work of police'.²⁶

²¹ This is the rather euphemistic name used in South Asia to describe extrajudicial killings committed by the police of criminal suspects.

²² Julia Eckert, "The Trimurti of the State", Working Paper No. 80 (Halle/Saale: Max Planck Institute for Social Anthropology, 2005), 188.

²³ Interview with retired senior bureaucrat, Kathmandu, 7 November 2012.

²⁴ Non-governmental legal aid organisation Advocacy Forum reports that of the 96 cases they have filed under the Torture Compensation Act, only 17.7% have been successful: Mandira Sharma, Ingrid Massagé, and Kathryn McDonald, "Lawyer's Intervention at Pretrial Stage Helps to Prevent Torture, Illegal Detention and Other Human Rights Violations: Experiences of Advocacy Forum – Nepal," *Journal of Human Rights Practice* 4, no. 2 (2012): 253-272, 261. The maximum awardable amount of 100,000NPR has been reserved for deaths in custody.

²⁵ Advocacy Forum reports that courts have only ordered departmental action against officers found to have committed torture in 3.7% of cases: Sharma, Massagé and McDonald, "Lawyer's Intervention," 261. Torture victim support organisation CVICT similarly told us that in many cases, even though judges rule that victims have been tortured they do not make any order requiring departmental action: interview with Tika Pokharel, Kathmandu, 29 May 2011.

²⁶ *Judgment of the Appellate Court, Biratnagar, 2 June 2011*, on appeal from the order of the District Court, Morang, 29 March 2010: see Redress et al., "Torture in Asia," fn. 669.

Torture victims' rights association Centre for Victims of Torture (CVICT) also told us that they saw the reluctance on the part of judges to ask whether juvenile detainees in particular had been tortured as a major obstacle to prevention.²⁷ Meanwhile, in the districts in Nepal - as with provincial postings in Sri Lanka – the close relationships between the Chief District Officer, senior police officers, medical professionals and lawyers mean that there is a common interest to support each other. This makes it very unlikely that anyone will be openly critical of the other.

Alongside these socio-cultural attitudes to 'justice' and 'discipline', broader social inequality can also have a significant impact on both the actions and perceptions of security sector personnel. This is exacerbated by the persistence of a very explicit and firmly entrenched adherence to the caste system in Nepal. It is therefore unsurprising that the deep social divisions in Nepali society are identified by many as increasing the risk that certain sections of the community face of experiencing violence at the hands of the police.

THE PROBLEM WITH 'DIGNITY'

At the core of much human rights discourse is an appeal to the notions of 'inherent human dignity', 'equality' and 'justice'. Such appeals are made in part because it is believed that these concepts are not only desirable but have a universal appeal and relevance. Our research in Nepal and Sri Lanka has shown that while there is broad endorsement of these concepts in the abstract, the specific ways in which they are understood and applied can vary greatly.

In Nepal everyone we interviewed was in agreement that torture was wrong and amongst the key reasons was that it is a violation of human 'dignity'. However it became clear that the concept of 'dignity' itself needed to be further explored to understand how such sentiments could co-exist with violent practices. First, as in Sri Lanka, we found that a belief in the importance of 'dignity' was often accompanied by distinctions between 'respectable' society and 'criminals': a factor which explains why the homeless, drug addicts and juvenile delinquents are often the targets of police violence. This is also mirrored in Rachel Wahl's research on Indian police officers' attitudes to human rights:

"The Police officers interviewed for this study believe that what matters is bodily harm, to whom and for what reason, rather than preventing bodily harm per se. In contrast to the universal conception of the human embodied in the human rights movement, officers believe that there are different types of people who deserve and require different treatment, represented by distinctions such as between "hardened" and "regular" criminals. As such they draw from a conception of justice based on each person getting what they "deserve" rather than on the equal protection of inalienable rights to be free from harm."²⁸

This is further compounded in the South Asian context by the persistence of caste ideology, which continues to assign individuals to different positions in the social hierarchy based purely on their birth. In Nepal, the assertion within human rights approaches of the fundamental equality of all human beings must contend with the fact that in parts of the country those belonging to the *dalit* community continue to face restrictions on their access to public space. Similarly, women who are menstruating are relegated to sleeping in cowsheds. This is because both groups are seen as 'contaminated'. These social and cultural norms inevitably undermine human rights messages about the inherent equality and dignity of all, or perhaps more accurately, they refract them through a set of understandings so that they mean something very different to what an outsider takes them to mean.

It is therefore unsurprising that public perceptions studies done with members of the Nepali community have repeatedly found that poor, low-caste and female members of society have the most negative experience of dealing with the police.²⁹ Furthermore, human rights organisations have recorded higher rates of torture where accused persons are from a low-caste or ethnic minority.³⁰ The lack of representation of many ethnic and lower caste groups in senior positions in the government and security sector works to further alienate many members of the community.³¹

²⁷ In an effort to shift this attitude, Advocacy Forum has been lobbying for the establishment of a practice among judges of asking suspects whether they have been tortured. However, as we have learnt in Sri Lanka, this is still unlikely to be effective given the fear detainees have about being returned to police custody.

²⁸ Rachel Wahl, "Learning Norms or Changing Them? State Violence, State Actors, and Human Rights Education in India", *Comparative and International Education Society Annual Meeting Paper*. New Orleans: March 19, 2013, 14-15.

²⁹ Karon Cochran-Budhathoki, US Institute of Peace, *Calling for Security and Justice in Nepal: Citizens' Perspectives on the Rule of Law and the Role of the Nepal Police* (Kathmandu: Shabdagar Offset Press, 2011), 65, accessed 30 June 2014, www.usip.org/files/resources/Security_and_Justice_in_Nepal.pdf.

³⁰ Sharma, Massagé and McDonald, "Lawyer's Intervention," 255.

³¹ World Bank, "Report on Conflict," 91.

The persistence of deep social inequality also increases the risk of social conflict,³² which in turn makes policing more difficult. As mentioned above, this was a root cause of the armed conflict and remains unaddressed. This has been witnessed most obviously in the ongoing problem of *bandh* or strikes which frequently cripple parts of the country and sometimes Kathmandu city and place great pressure on both the police and armed police (discussed further below).

In the next section we will examine how these external factors have impacted on the particular organisations with whom we have been working. As the history, role and responsibilities of the Nepal Police and Armed Police Force³³ overlap to an extent they will be treated together here. However, where appropriate organisation-specific observations will be made. Also, given the Nepal Police's more extensive range of duties and more direct relationship with the general public more discussion is dedicated to this organisation.

ORGANISATIONAL FACTORS

Both Nepal's political history and the ongoing transition the country is facing have been identified as having a significant impact on the occupational culture of the Nepal Police (and by extension, the APF). In particular, in the context of the transition of Nepal from a unitary, constitutional monarchy country to a federal republic, it has become imperative for the security and law enforcement organisations to make a substantial leap from being agents of the Monarch to being agents of the State.³⁴ It has been long understood that these forces are there to serve the interests of those in power rather than the community as a whole. Structurally, there has never been a culture of civilian oversight over security forces.³⁵ This history has impacted on public responses to the police: on the one hand the population see them as an institution to be respected and obeyed. On the other, there is a certain mistrust because the police are assumed to serve the authorities rather than the general public. As described in *Issues Paper 3* in relation to Sri Lanka, this lack of trust becomes a vicious cycle whereby police are frustrated by the lack of cooperation by the general public and use coercive means to elicit information which in turn further builds distrust; we will return to this issue shortly.

The Nepal Police's experience during the armed conflict – when they were often targets for Maoist attacks – has also left an impression of the police being weak and incapable of ensuring their own or the community's security. Due to incidents involving the abuse of police by political party members going unpunished, this view persists.³⁶ Meanwhile those at the lower ranks of the organisation may also be subject to the caste, class and ethnic discrimination described above as a widespread through Nepali society. In many ways these factors reinforce Beatrice Jauregui's argument in relation to the Uttar Pradesh police in India: that they occupy a contradictory place of being on the one hand empowered through their legitimate right to use force and on the other remaining disempowered in relation to other political and social actors. It seems from our research that this contradiction is perceived to contribute to stress-related violence committed by individual officers who feel helpless and disrespected in many situations and seek to over-compensate when they are able to exert authority over others through violence.

Commentators have argued that key changes to the organisational culture of the Nepal Police will only be possible if and when those within the organisation:

- Shift the role that the organisation plays, away from serving the interests of the State toward a public service ethos;
- Reframe the goals of the organisation, toward meeting citizens' needs through providing a capable, accountable and responsive service;
- Rethink 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.³⁷

³² 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: DFID, DanidaHUGOU and UN, "Access to Security," 43.

³³ The Armed Police Force was established in 2001 as a direct result of the pressure that had been placed on the Nepal Police by the Maoist insurgency. Its personnel were recruited from the army and, to a lesser extent the police, and its primary role was counter-terrorism and combatting organised crime. Since the end of the armed conflict the APF's role has been primarily border and VIP security, riot control and disaster management.

³⁴ DFID, DanidaHUGOU and UN, "Access to Security," 29; Saferworld, *Policing in Nepal*, 2 and 36.

³⁵ Kumar, "Civil-Military Relations," 1.

³⁶ See for example an incident involving the assault of an ASI by a Maoist in Rusawa: International Alert, *Security and Justice from a District Perspective: Rusawa (International Alert, 2012)*, 9 accessed 30 June 2013, <http://www.international-alert.org/ourwork/themes/security>.

³⁷ DFID, DanidaHUGOU and UN, "Access to Security", 29.

Many of these issues are recognised by police authorities in Nepal and they have been admirably open to engagement. There have also been a number of preliminary steps taken to addressing some of the problems from within the organisations. For example in October 2012 the then newly appointed IGP issued a one year action plan based on ten institutional priorities which, among others, included:

- Transparency and accountability in service delivery;
- Reforming police conduct, behaviour and professionalism;
- Promoting police public partnership for maintaining peace and security;
- Applying evidence-based decision system;
- Addressing internal grievances;
- Systematising promotion and transfer by applying a transparent, scientific methodology based on an evaluation of work performance;
- Encouraging public-police partnership for peace and security;
- Effective protection and promotion of human rights; and
- Institutional and legal reforms in the police force.

The action plan specified that every police office with an officer in charge of DSP rank or above in charge will have a public relations officer and the concept of 'Service With Smile' and 'equal respect and honour to all' would be enforced. Likewise, Internal Recommendation Committees were to be formed to make various policy and administrative decisions of departments fair and transparent. The plan also envisaged a victim-friendly police service, the expansion of the Human Right Cell and aimed to redefine personnel attitudes while dealing with the public as well as applying a 'zero tolerance' policy against unlawful conduct of police employees. Senior police personnel from both the Nepal Police and the Armed Police Force have also been extremely supportive of our project and many of the Nepali HRPFs are conducting projects aimed at directly addressing the specific issues identified above.

We asked an array of actors in Nepal including members of the Nepal Police and Armed Police Force themselves what they thought were the main causes for the use of torture by security personnel. They identified the following factors as primary contributors:

- Lack of resources to conduct effective investigations;
- Stress and job dissatisfaction;
- Inadequacies in the justice system;
- Political interference.

LACK OF RESOURCES

It was overwhelmingly reported by our own interviewees that a lack of basic resources increases the risk of police and armed police personnel using violence as a means of maintaining order and/or investigating crime.

One of our police interviewees explained the problem very clearly:

“The problem is with the equipment we have for evidence collection. When the British trained us back then they gave us fingerprinting powder. When it ran out, the government did not fund us to purchase more powder. The Danish then gave us funding for this powder. Now the Chinese have given us fingerprinting powder. The problem is our labs cannot test this powder. It is sitting in that suitcase there. In terms of collection of blood samples for example, we were taught using special tubes. Now we no longer have these tubes so we collect samples with cotton. We have to improvise.”³⁸

Nepal currently has only two forensic laboratories, both located in Kathmandu.³⁹ These laboratories are under constant strain due to a lack of resources and there are significant problems associated with transporting forensic evidence collected outside of Kathmandu Valley due to both Nepal's mountainous geography and poor roads.⁴⁰ This lack of the most basic equipment, we were told, means police often feel they have no choice but to return to traditional methods of criminal investigation, namely obtaining confessions through the use of force.

³⁸ Mid-rank officer, Nepal Police, Chitwan, February 2013.

³⁹ The Central Police Forensic Science Laboratory in Maharajgunj, operated under the Criminal Investigation Department (CID) of the Home Ministry and the National Forensic Science Laboratory at Khumaltar, operated under the Ministry of Science and Technology: American Bar Association, "Assessment report".

⁴⁰ American Bar Association, "Assessment report".

Surveys of the criminal justice system done over a decade ago remain sadly accurate reflections of the current situation where police remain under-skilled and under-equipped to conduct crime pattern analysis and assessment, lack specialist skills in criminal investigation and the ability to securely manage evidence. Thus investigation remains focused on obtaining confessions.⁴¹

Aside from physical resources, there also remains a shortage of human resources. Experts have identified insufficient numbers of police and police posts in rural areas as undermining law enforcement and justice efforts.⁴² As a result of this, police expressed frustration about the impossible situation they felt they were in, on the one hand being inadequately supported to do their job well and at the same time having to face community anger as a result:

“We lack infrastructure. There is even a lack of human resources. Two people have to attend eight phones. There are so many case sites we have to reach but enough vehicles are not provided. When we reach the crime scene late, we have to face public scolding while the reason for delay is lack of resource.”⁴³

Aside from the lack of resources affecting the police’s ability to do their duty, it also means they experience their work as extremely stressful. Aside from extremely difficult working conditions (which often include a lack of basic facilities such as toilets), all police reported being required to work seven days a week. They told us that there is no certainty of their shift hours and they have to make arrangements with each other to cover shifts if they want to take time off. This makes them resentful towards what they perceive as the human rights community’s bias:

“We are on duty 24 hours a day by law, where is our human rights? ...I was watching a news clip of a riot. They showed how protestors got injured but nobody shows the injuries the police sustained. One police had his teeth broken, the other the arm, another had injuries to the head.”⁴⁴

Indeed many of our interviewees from both the Nepal Police and the Armed Police Force identified situations such as protests and *bandhas* creating a high risk for violence: partly because personnel are provoked by aggression from the crowd and partly because they feel stressed and ill-equipped to handle the situation without resorting to violence. Even in normal, day-to-day policing the stress of the working environment has negative impacts on police morale and can lead them to taking out their aggression and frustration on members of the public. A Nepali member of civil society reported similar conclusions based on his visits to police stations:

“The reasons for occasional physical torture also include their [police] living conditions: their rations, working hours, their barracks, offices, and kitchen... it [torture] is no more institutional policy, but could happen due to an individual’s arrogance or frustration from their job. There is a limited environment for generating new ideas and thoughts in policing job [sic]. The physical condition of their facilities are worse and does not meet minimum standards for living. I have seen the sleeping quarters and kitchens of police officials, including senior officers. One of the senior officer’s residence when you look at the ceiling and it can cave in anytime. Just imagine then the conditions that the junior ranks and constables live. They sleep in spaces that resemble fallen bunkers. In few years back, I had opportunity to visit a police facilities in Kailali. The barracks were located inside the District Police Office, and the floors of rooms were wiped with mud.⁴⁵ When it rain it would be a disaster there. Even the safe path of SP’s (Superintendent of Police) office room was built by piling up three bricks on either side to prevent from falling their staffs and visitors. When I decided to visit SP’s office through his ‘safe path’ and I was told by SP to be “careful when entering. Sir, this is our living condition here.” Even the SP’s room is very small and there was a tiny window, but very hard to open for fresh air. If he is success [sic] to open the window, there would have been so many visitors of mosquitoes. In the case of failure to open, the room would have been simply too hot. How can we expect him or her to work under such harsh conditions with full of professionalism? After all this frustration and irritation will eventually burst, and there is possibility of ventilating irritation and frustration over detainees or their junior ranks.”⁴⁶

⁴¹ DFID, DanidaHUGOU and UN, “Access to Security,” 45; AHRC, “Nepal: The State of Human Rights in 2012” *AHRC-SPR-007-2012*, 2012, accessed 2 July 2014, <http://www.humanrights.asia/resources/hrreport/2012/AHRC-SPR-007-2012.PDF>.

⁴² The current police strength according to the Nepal Police website is 67,287 (accessed 10 August 2014, <http://www.nepalpolice.gov.np/organization-structure.html>) for a population of 27.47 million according to the 2012 national census. Moreover, due to the targeting of police by the Maoists only 550 of the 2000 police posts nation-wide were functional at the end of the armed conflict in 2006: a figure which has not improved greatly in the post-conflict period although there were plans to open a further 270 police stations in June 2014 (we have not been able to confirm whether this has in fact happened).

⁴³ Interview with mid-rank officer, Nepal Police, Chitwan, February 2013.

⁴⁴ Interview with mid-rank officer, APF, December 2012.

⁴⁵ In Nepal, houses in the villages have mud floors. Everyday they need to be mopped with mud; the barracks had similar floors.

⁴⁶ Interview with Shobhakar Budhathoki, United States Institute for Peace (USIP), Kathmandu, November 23 2012.

The tension between security personnel's own experience of substandard working and living conditions and the message they receive about their responsibility to protect and uphold the living standards of detainees makes it unsurprising that they feel hostile towards human rights messages. In a study of junior prison wardens in Delhi's Tihar Jail, Tomas Martin made similar findings. The contrast between what they perceived as the focus on improving prisoner's living standards and their own poor living and working conditions made junior prison wardens both resentful of human rights and allowed them to justify the use of violence as the only way to cope:

"...When a prisoner is beaten up it is not simply unlawful, *ad hoc* oppression (though it might feel this way for the victim), and it is not just self-defence against the physical threat that prisoners might represent [to prison wardens]. Beating is also a part of warders' coping practices. It is an inherent part of getting the job done and they see no reason to refrain from allowing "a little necessary beating" when the situation demands it."⁴⁷

In recognition of this risk factor, a number of our HRPFs in Nepal have designed projects aimed at alleviating the stress at the level of ordinary police officers and improving the overall working environment (see *Issues Paper 7* for some examples).

DEFECTIVE CRIMINAL JUSTICE SYSTEM

"You cannot expect just the Police to follow code of ethics and human rights standards. All three organs of the state, legislative, judiciary and executive must follow them equally. Reform needs to be made in all fronts and not the Police alone."⁴⁸

It is not only the lack of resources that make it more likely that police will use force to obtain confessions, the legal system within which they are working also conditions such behaviour. Police personnel we spoke with claimed that the judiciary was also still very traditional when it comes to examining and admitting evidence and frequently expected confessions in order to convict. They also complained that prosecutors do not make sufficient efforts to prove a case with newer forms of evidence (like phone records) and still seek physical evidence such as stolen objects retrieved from a crime scene in order to make their case. Legal aid organisation Advocacy Forum reported that out of a sample of 135 cases before Kathmandu courts in the first half of 2011, 98.5% involved detainee confessions,⁴⁹ suggesting that there is certainly a heavy reliance on confession-based evidence if not an active demand for it on the part of judges and prosecutors. And given the infrequency of judicial condemnation (discussed above), this would further support the police view that the judiciary at the very least implicitly condone their obtaining confessions at any cost. There also appears to be a degree of disengagement on the part of the Attorney General's department. While legally required to be present during interrogations, observers note that this rarely happens.⁵⁰

Even the Nepal Supreme Court has admitted that the justice system currently does not operate to inspire confidence nor to provide a sense of justice to most members of the community: "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."⁵¹ This links back to the general community-wide lack of faith in the justice system and reinforces the view that the police are the primary arbiters of justice. A public perceptions study conducted found:

"The NP [Nepal Police], rather than courts, is seen by most respondents as determining innocence and guilt. More than half of respondents stated that the NP is currently responsible for making decisions regarding guilt and innocence, with only 25.4 percent stating that the courts and government-appointed judges do so."⁵²

This feeds a sense among police personnel that they are individually responsible and entitled to ensure justice is done. This in turn impacts on how they understand their responsibilities in relation to human rights.

⁴⁷ Tomas Martin, "Taking the snake out of the basket: Indian prison warders' opposition to human rights reform," in *State Violence and Human Rights: State officials in the South*, eds. Andrew Jefferson and Steffen Jensen. (Abingdon UK and New York: Routledge-Cavendish, 2009), 151.

⁴⁸ Interview with retired senior officer, Nepal Police, Kathmandu, 11 October 2012.

⁴⁹ Sharma, Massagé and McDonald, "Lawyer's Intervention," 267.

⁵⁰ Sharma, Massagé and McDonald, "Lawyer's Intervention," 258; CELRRD 2002 at xvii.

⁵¹ Supreme Court's Second Five Year Strategic Plan 2009/10-2013/14 at 64, accessed 8 August 2014, http://www.supremecourt.gov.np/download/2nd_plan_English.pdf.

⁵² Cochran-Budhathoki, *Security and Justice in Nepal*, 65.

Accessed 30 June 2014, at 65.

Rachel Wahl made very similar findings in her research on attitudes to human rights among Indian Police officers.⁵³ Moreover, like Wahl, we found police personnel often cited human rights as a justification for the violation of certain individuals' human rights:

"Sometimes in the process of investigation violations will happen – innocent people may be called to verify facts and face interrogation. But this is necessary to protect the victim."⁵⁴

"Human rights only relates to the accused, detained person. But the other side is the responsibility to create a feeling of security for the community. We have to broaden the notion of human rights."⁵⁵

Meanwhile the lack of legal mechanisms and social services to address problems like recidivism mean the police feel they have to exercise discretion in order to achieve just outcomes:

"I had to charge a recidivist thief with the offence of drug trafficking because he had already been brought to the station by the police for stealing about 20 times and he was not going to stop."⁵⁶

In light of this admission, it is unsurprising that representatives of civil society and medical professionals identify recidivists as being at higher risk of being subjected to torture:

"We do not have state policy or mechanism to develop a correctional program for people involved in less serious offenses. This compels Police to resort to their own technique to deter such criminals. This results in the Police using harsh methods to control such criminals like beatings, threats, and threatening the possibility of extra judicial killings."⁵⁷

As noted above, the communal support for police using such methods highlights how effective prevention strategies require a broader programme of socio-cultural normative change.

This 'rough justice' attitude also extends to supporting punitive forms of discipline and reform. Although there is a general view that the confession-based system is the primary cause of police violence, our research suggested that there are other dimensions of and motivations for the use of force by the police that cannot be addressed by simply improving interrogation techniques. For example, we heard about young men and on occasion children ('juvenile delinquents') being picked up, scolded and/or beaten and released without charge. In such cases, the use of torture seems to relate to the inadequacies of the justice system in dealing with minor offences. Police thus come to see it as their role to 'discipline' these offenders. We were both told of and observed instances where the Police had picked up petty thieves and brought them to the police station to be punished. No formal complaint was ever registered and the individuals would be released within the 24 hours the police are legally entitled to hold someone in custody. On occasion, where the person was homeless and hungry, the Police might also feed him before releasing them. Given the lack of juvenile justice facilities and dedicated children's homes for young offenders, it seems there may be a certain rationalisation process involved here where police believe that they are making the best of a bad situation and rather than seeing their actions as punitive, believe themselves to be acting out of compassion and a desire to reform.

The following quote, while referring to the situation in India, would seem to apply equally in Nepal:

"[The suspect] would subsequently get entangled in the coils of a system where the delay is notorious. The accused may end up staying in custody much longer than he otherwise would while he waits for his guilt or innocence to be established... [Thus] by using this approach [of unofficial detention, the police] feel that the least amount of harm is done to the suspect in the event that he is innocent, and in the event that he is guilty he will get his just deserts."⁵⁸

⁵³ Rachel Wahl, "Learning Norms or Changing Them? State Violence, State Actors, and Human Rights Norm Diffusion in India" (Ph.D. diss., New York University, 2014).

⁵⁴ Interview with retired senior officer, Nepal Police, Kathmandu, 9 October 2012.

⁵⁵ Interview with retired senior officer, Nepal Police, Kathmandu, 11 October 2012.

⁵⁶ Interview with mid-ranking officer, Nepal Police, Chitwan 2013.

⁵⁷ Interview with Subodh Raj Pyakurel, INSEC, Kathmandu, 19 September 2012.

⁵⁸ Sumit Kumar, *Civil Lines Police Station, Raipur, Chhattisgarh: pages from a diary* (New Delhi: Commonwealth Human Rights Initiative, 2008), 29, accessed 3 July 2014, http://www.humanrightsinitiative.org/publications/police/chhattisgarh_pages_from_a_diary.pdf.

Andrew Jefferson in his study of Nigerian prison officers similarly found that some personnel did not see the use of violence or humiliation as wrong because they did not hold any ill intent towards their victim but rather saw their actions as assisting with the 'correctional' reform process.⁵⁹ Similarly Martin notes the use of parental language by the Indian prison warders he interviewed:

"Fear of a father ensured respect, deference and proper upbringing, and fear in staff-prisoner relations was as obviously legitimate and needed, they claimed. Their preoccupation with control, fear, and corporal punishment was thus also legitimized by common sense ideas of proper sanctioning (and prevention) of deviance through fear and punishment."⁶⁰

As discussed in *Issues Paper 3* on Sri Lanka, the widespread social belief that some physical force is a legitimate and indeed necessary form of discipline within the family and the school here conflicts with the human rights community's condemnation of violence being used by security personnel. This in turn contributes to security personnel feeling unfairly demonised through an inference of malicious intent they may or may not hold. This situation poignantly illustrates the politically charged nature of the language of 'torture' – an issue raised more generally in our project.⁶¹ While human rights lawyers often seek to represent the question of what constitutes 'torture' or 'improper' use of force in black and white terms, in many settings the scope of what types of violence are in fact, 'pain or suffering arising only from, inherent in or incidental to lawful sanctions' (as provided for in the CAT) or indeed morally justifiable remain highly contested. Acknowledging this is not to make excuses for such practices. It does however require us to rethink how we go about building the consensus that will be necessary to ensure all actors actively uphold and promote international human rights standards.

POLITICISATION

"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."⁶²

Perhaps a legacy of the historical patronage relationship that has existed between rulers and security agencies in Nepal, everyone we spoke with both inside and outside of the police identified political interference as a major problem. This has also been widely reported by other observers: "Perhaps more than any other institution in the [Justice] Sector, the police are the most susceptible to political interference and most likely to be undermined by criminal elements; either coercively or collusively."⁶³

In a study conducted in 2011 the US Institute for Peace reported that two thirds of Nepal Police respondents stated that they had observed instances of political interference.⁶⁴ Our own interviews also tend to support this finding. The following comment by one police interviewee captures the dominant sentiment: 'If I knew the Minister of the Ministry of Law and Justice a few years ago, I would have already become a DSP by now.'⁶⁵

As has been observed in other countries,⁶⁶ both political interference in the police's work and the problematic behaviour of political figures were identified by almost all our interviewees as a major obstacle to ethical, professional policing. This is also perceived as a major obstacle to successful reform:

"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."⁶⁷

One of the tasks within our research was to unpack exactly how these processes of politicisation and criminalisation impact on the work of the police.

⁵⁹ Andrew M. Jefferson, "Prison officer training and practice in Nigeria: Contention, contradiction and re-imagining reform strategies," *Punishment and Society* 9, no. 3 (2007): 262-263.

⁶⁰ Martin, "Indian Prison Wardens," 151.

⁶¹ For a discussion on language see *Introduction to the Issues papers series*.

⁶² DFID, DanidaHUGOU and UN, "Access to Security," 4.

⁶³ DFID, DanidaHUGOU and UN, "Access to Security," 6.

⁶⁴ Cochran-Budhathoki, *calling for Security*, 8.

⁶⁵ Interview with police officer, Chitwan, 2013.

⁶⁶ Jauregui identifies a similar sentiment in her in-depth ethnographic study of the Uttar Pradesh Police in India: Beatrice Jauregui, "Shadows of the State, Subalterns of the State: Police and 'Law and Order' in Postcolonial India" (Ph.D. diss., University of Chicago, 2010), 344.

⁶⁷ DFID, DanidaHUGOU and UN, "Access to Security," 29.

In Nepal the main issue seems to be the presence and activities of 'thugs' or political cadres (perhaps the same group) who are supported by local politicians and are therefore perceived as immune from the law and police. As noted above, this can extend to them being allowed to attack police with impunity.⁶⁸

In the districts there is also the relationship between the police and members of the executive arm of government empowered with judicial functions. The Chief District Officer (CDO) has jurisdiction over all public offences, misdemeanours and arms and ammunitions cases and the District Forest Office has jurisdiction over forest-resource related offences⁶⁹ and both have been implicated in sanctioning torture. The role of the CDO in the criminal justice system has been identified as particularly problematic. First, there are no procedural safeguards to regulate trials conducted before CDOs even though they have the power to sentence individuals to up to 7 years in prison. According to human rights lawyers, detainees tried before CDOs are more likely to be tortured and more likely to be found guilty.⁷⁰ Even if there is no direct correlation between individuals being tried before a CDO and the likelihood of torture, the fact that CDOs have control over the police force and prison in their district potentially leads to a greater risk of a conflict of interest which can work to the detriment of human rights protections.

THE IMPORTANCE OF RECOGNISING (AND RESPONDING TO) THE DIFFERENT LEVELS OF THE ORGANISATION

Finally, our field research in the Nepali context would seem to support Beatrice Jauregui's distinction between the experiences of police depending on their place in the organisational hierarchy. Not only did we find this to be an empirically valuable distinction, it was also a useful analytical tool. By recognising these different experiences within the organisation we can see that police may use excessive force or violence for different reasons depending on their place within the organisational hierarchy. This addresses the findings of other researchers that 'police brutality' is not necessarily something naturally built into professional practice, but an overly generalised category that conflates a wide array of individual motivations and behaviours.⁷¹ If this is true within all police organisations, it is even more marked in the context of police operating in a developing, post-conflict state like Nepal where issues of poverty, caste, rural-urban and ethnic divisions and poor citizen-state relations are extremely pronounced.⁷²

By separating the different factors that might lead individuals at different levels of the relevant institution to use violence we are better placed to understand the root causes of human rights violations and in turn identify possible strategies that can practically lead to positive change. This in turn allows us to tailor our efforts at shifting practices and attitudes away from violence and towards the protection and promotion of human rights to the different target groups. For example:

(i) Low-rank personnel:

- Punitive notions of 'discipline' described above need to be understood as not simply something the police enforce but also something to which many low ranking police officers are themselves subjected.⁷³ This can take the form of exploitation, violence and ill-treatment on the part of superiors through forced domestic labour, being spoken to rudely or even subjected to violence.⁷⁴
- The poor working conditions also discussed above, while experienced by all police are particularly acute for those in the lowest ranks.⁷⁵
- A lack of institutional rights, both within the organisation (where they are frequently unable to question or complain to their superiors) and more generally (due to prohibitions on any type of organising or union activity) makes low-ranking personnel particularly antagonistic towards the assertion of the rights of criminal suspects.

⁶⁸ A situation that seems to replicate Jauregui's observations in North India: Jauregui "Beatings, Beacons and Big Men: Police Disempowerment and Delegitimation in India", *Law and Social Inquiry*, Vol. 38(3) (Summer 2013): 643-669.

⁶⁹ American Bar Association Rule of Law Initiative, "Assessment Report," para. 3.1.3.

⁷⁰ Sharma, Massagé and McDonald, "Lawyer's Intervention," 267. See also Redress and the Asian Legal Resource Centre, "Torture in Asia", 9.

⁷¹ For a discussion of some of the various theories that have been proposed to explain excessive violence or use of torture by police see Robert E. Worden, "The Causes of Police Brutality: Theory and Evidence on Police Use of Force," in *Police Violence: Understanding and Controlling Police Abuse of Force*, eds. William A. Geller and Hans Toch, (New Haven CT: Yale University Press, 1996).

⁷² For a thoughtful account of some of the specificities of policing and security in the Global South see Andrew M. Jefferson and Steffen Jensen (eds.), *State Violence and Human Rights: State officials in the South*, (Abingdon UK and New York: Routledge, 2009).

⁷³ Jauregui, *Shadows of the State*, 23.

⁷⁴ In one police station we observed a senior officer physically mistreating a junior officer in front of all the station staff for being 15 minutes late in deploying personnel to a required task.

⁷⁵ For example, we were told that the quality and quantity of food differed significantly between officers and low-rank personnel.

In this sense, the use of torture on the part of low-ranking personnel may be the result of frustration and stress; the reproduction of their own experiences of abuse and/or the pressure to follow orders, regardless of their own beliefs. The provision of lectures on legal standards, threats of punishment and appeals to respect for human dignity are therefore unlikely to be the most effective strategy for engaging this group of police officers. Moreover, relying on a 'trickle down' approach through superior officers conveying human rights standards and responsibilities will only work in situations where the low-ranking officers are not already alienated by mistreatment and disrespect at the hands of their superiors. We should also be mindful that this type of approach does not become another tool of punitive discipline that is used against low-ranking personnel, which will most likely produce the opposite outcome: increasing their animosity and resistance to human rights.⁷⁶

(ii) Mid-rank personnel

Meanwhile, for officers at Inspector level and above, some relevant specific considerations may be:

- A greater feeling of responsibility for ensuring justice; and
- A lack of adequate resources or skills to conduct investigations or interrogations.

As it is only at the level of the Officer in Charge of a police station that an individual officer will become responsible and/or empowered to act upon these demands. To again quote Jauregui's observations of Uttar Pradesh police:

"The [officer in charge] often feels that he must work in ways that seem counter-legal, because he experiences subjection by extreme pressure and works under many constraints of both an "official" and "unofficial" character. On the "official" side of things, the [officer in charge] more often than not expresses feeling hampered by the inadequacies and internal contradictions of legal codes and procedures, especially by the rules of evidence and the clogged court system. On the more or less "unofficial" side of things, the [officer in charge] feels constrained in his ability to adequately address any and all cases requiring investigation because of myriad pressures by external sources of a more "political" nature (to say nothing of other more personal pressures, like those coming from family and other associates). Somewhere in the middle of official and unofficial constraints are the ever-present and often overwhelming problems of lack of resources - personnel and equipment - and what police in northern India generally call *bandobast*."⁷⁷

This analysis mirrors our own research findings.

With this in mind, it may be that the development of professional investigative skills and/or strategies for coping with political and social pressure as well as working with the community to shift social and cultural norms may be an appropriate strategy for reducing torture at this level.⁷⁸

(iii) Senior Officers

Finally, in relation to senior officers, these individuals are likely to be most directly affected by political pressures. In situations where political influences are great and sometimes contrary to the Rule of Law, this may place senior officers in a difficult position. They may in certain circumstances feel compelled to act in unlawful or unethical ways in order to maintain their position:

"[In India] even the "top dog" cop in a state, the Director General of Police (DGP), becomes a kind of underdog through the everyday politics and processes of authority in which he is embedded."⁷⁹

Certainly, based on our conversations with senior police officers, both serving and retired, we are inclined to believe that a similar situation affects senior personnel in Nepal. Thus senior officers' implication in excessive use of force or violence may be the result of high-level political factors (much more so than their junior ranks) and/or the failure to demonstrate ethical leadership through allowing impunity and a lack of accountability to persist within their institutions. In this sense an appropriate intervention strategy may well be to target the issue of impunity and domestic and international legal responsibility. It may also be to work on developing ethical leadership skills and strategies for coping with (and resisting) politicisation.

⁷⁶ As Tomas Martin powerfully demonstrates in his discussion of Indian prison wardens: Martin, "Indian Prison Wardens".

⁷⁷ Jauregui, *Shadows of the State*, 278-9.

⁷⁸ And indeed this is precisely the approach we have sought to take in our own project, as outlined in *Issues Paper Six*.

⁷⁹ *Ibid.*, 26. See also Alice Hills, "The dialectic of police reform in Nigeria" *Journal of Modern African Studies*, Vol. 46(2)(2008): 215-243, documenting a similar dynamic in Nigeria.

CONCLUSION

In this *Issues Paper* we have tried to highlight some of the complex range of factors which impact on security and law enforcement personnel in Nepal and their use of torture. As with *Issues Paper 3*, we provide this context neither as a means of justification nor condemnation. Rather, it is hoped that it will stimulate a conversation amongst those working in the field of human rights in the security sector about other possible contextual factors that require consideration (as we do not claim to have provided an exhaustive list). Furthermore, we hope that we can start to work towards building the necessary collaborations and interventions that might help address some of these factors, which might in turn assist with the prevention of torture in the future.

In particular we propose a number of general observations that emerge from our field research:

- The use of excessive force is not simply the result of lack of resources for crime investigations, although this clearly impacts on the morale and ability to work effectively and professionally in some instances;
- The use of force is also not explained purely by reference to the over-reliance on confession by the legal system (although this also plays a significant role in driving the continuation of the practice);
- Impunity also provides only a partial explanation for why security and law enforcement personnel may resort to violence;
- Security personnel do not operate in a vacuum but are influenced by broader societal beliefs and values in relation to notions of discipline, justice, equality, dignity and violence;
- The motivating factors for use of force may vary, depending on the position of the individual within the social and institutional hierarchy;
- For human rights principles to be operationalised, greater attention needs to be paid to their practical application rather than teaching security personnel abstract theoretical or legal concepts. This can be most effectively done when tailored to the specific needs not only of the particular organisation but also the level within that organisation of the target audience.



