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## Getting the peace process right

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## Chapter

# Getting the peace process right

**P**ace-building in Nepal requires both political and socioeconomic transformation. Rarely do countries have the opportunity to change their most basic principles, structures, symbols, and laws. To some Nepalis, what is now taking place represents the achievement of long-held dreams. Others regard these events and trends as dangerous moves towards anarchy and national disintegration. The degree to which the peace process itself is inclusive, transparent, and responsive to the needs of the Nepali people will in a large part determine its ultimate success and, as a direct consequence, the pace of human development in Nepal. Some of the recommendations put forward by this Report can be realized in the short term. Others will require far more time. We aim here to highlight areas for further attention and renewed effort, and to suggest useful practices and lessons.

### **Dealing with the past**

In fragile post-conflict environments, peace and justice often seem at odds with one another. To end violence, governments and other involved parties may wish to declare amnesties so as to ensure that all interest groups participate willingly in the peace process. By contrast, advocates of justice often demand punishment for perpetrators, even at the possible cost of endangering the peace; they maintain that one cannot have genuine peace without justice.

The case of Uganda and the International Criminal Court provides a recent example of this tension. In March 2008, the peace process between the Ugandan Government and the Lord's Resistance Army stalled in its final stages when the latter's representatives refused to sign the agreement painfully reached by both sides unless the International Criminal Court dropped charges against their leader, Joseph Kony.<sup>1</sup> This case exemplifies a basic problem for Nepal: to keep the peace process intact, sacrifices must sometimes be made to ensure that all parties remain at the table. However, if justice is compromised, the peace process becomes shallow and unstable; it loses public credibility. Consequently, justice and peace must work hand in hand.

Nepal suffers from a long and entrenched history of impunity. In the aftermath of 1990 and 2006 Janandolans, the commissions created to investigate human rights abuses—the Mallik Commission in 1990 and the Rayamajhi Commission in 2006—both produced detailed reports that were shelved without action.

Little progress on transitional justice has taken place since hostilities ceased. The families of the 1,027 disappeared persons remain ignorant of the fate or whereabouts of their relatives.<sup>2</sup> Compensation has not yet been received by all the wounded or all the families of those killed. In many instances, properties seized have not yet been returned.<sup>3</sup> A

*Little progress on transitional justice has taken place since hostilities ceased*

number of displaced persons remain unable to return to their homes. To date, no individuals on either side of the conflict have been held accountable for their roles in gross violations of human rights. In his 2 January 2009 report presented to the Security Council UN Secretary-General Ban Ki-moon expressed this concern as follows, “Many peace process commitments have still not been implemented. Despite repeated commitments to return property seized by Maoists, none of the agreements reached with the interim government or the current government to establish a mechanism to monitor such return has been implemented....”<sup>4</sup>

*Reconciliation, a fundamental component of transitional justice, has many meanings*

Past studies and reports, including those of Annan (2005) and Collier and Hoeffler (2004), reveal the high risk of peace processes relapsing to conflict. In a report entitled *In Larger Freedom*, the former Secretary-General of the United Nations, Kofi Annan, notes, “Roughly half of all countries that emerge from war lapse back into violence within five years.”<sup>5</sup> To prevent a resurgence of hostilities in Nepal, the root causes of the conflict must be addressed, and open

wounds healed through reconciliation, justice, and reparations. The recent rise of protests among marginalized groups and increasing lawlessness in the Tarai already signal the risk of outbreaks of new form of hostilities if these root causes are not addressed.<sup>6</sup>

**Reconciliation and transitional justice**

Reconciliation, a fundamental component of transitional justice, has many meanings.<sup>7</sup> Here, it is defined as the process by which a society acknowledges its past and comes to terms with its shortcomings and wrongdoings; rebuilds the relationships among its citizens and between its citizens and the state; and attempts to create a shared vision for the future.<sup>8</sup>

Historically, reconciliation is also embedded in Nepali practices such as Kshama (forgive and forget) and Mel Milap (reconciliation). Though reconciliation is often misconstrued as simple forgiveness, its social and political intent is broader: a process for rebuilding a peaceful society. It does not mean impunity for perpetrators, but a continuous and explicit pursuit of truth and justice.

Collecting the views and perceptions of 811 victims of 17 districts of Nepal in 2007, the International Centre for Transitional Justice (ICTJ) and the Advocacy Forum (AF) concluded that ensuring peace and justice in Nepal requires a comprehensive approach to transitional justice, rather than ad hoc interventions. These organizations support the creation of a commission to determine the truth and to find the whereabouts of disappeared persons. Participants in several focus group discussions demanded an inclusive commission, as indicated in Box 3.1.<sup>9</sup>

**A truth and reconciliation commission**

Nepal’s CPA calls for the creation of a Truth and Reconciliation Commission (TRC) for transitional justice. TRCs have been used in a number of post-conflict countries to promote reconciliation, justice, healing, and repa-

BOX 3.1

The demand for an inclusive truth and reconciliation commission, Nepal

ICTJ and AF organized focus group discussions for collecting Nepalis’ perceptions on transitional justice in 2007. Upon the appointment of Commissioners of TRC in the future, a Dalit woman in Baglung made a powerful statement that underlined the need for genuine consultation: “It should include both men and women equally. It should be someone who is selected by the people. The process should be people-oriented and not centre-oriented, and must include victims of the conflict, excluded castes, ethnic groups, etc.”

This view is fully backed by United Nations Resolution 1325, which among other things, states that women need to be fully represented at all levels of peace processes and that their role in conflict resolution and peace-building should be enhanced (see Box 3.2).

Source: ICTJ and AF 2008, p. 37; and UN Security Council 2000.

rations on a nation-wide level. Perhaps the best-known TRC is that of South Africa, which was formed in 1995 following the end of apartheid. Other countries that have employed the TRC model include Chile, East Timor, El Salvador, Peru, and Sierra Leone. Worldwide, the form of TRCs has varied with national circumstances and the needs of the communities involved. From this broad spectrum, a number of clear principles and promising practices have emerged to guide the creation and work of these bodies:<sup>10</sup>

- ▶ a need for broad public awareness, understanding, and support for the goals, mandate, and working methodology of the TRC;
- ▶ the participation of all interested groups, including those of victims, civil society organizations, human rights associations, government representatives, political activists and mental health care professionals;
- ▶ gender balance, especially given the increasing use of sex crimes as weapons of war;
- ▶ an open, transparent and inclusive selection process;
- ▶ sufficient independence from the government to ensure credibility and impartiality;
- ▶ a secure enough environment to permit both victims and alleged perpetrators to testify without fear of violent consequences; and
- ▶ strong connections with other transitional justice mechanisms, including other investigative commissions, such as the Commission on the Disappeared, and clear procedures for criminal prosecution.

The fact that more than three-fourths of Nepali women and more than two-fifths of illiterate citizens have not yet heard of the TRC points to the need for a mass campaign to raise awareness of the reconciliation processes and of the Commission itself.<sup>11</sup>

## BOX 3.2

## Protection of the interests of women: United Nations Resolution 1325

UN Resolution 1325, adopted by the Security Council at its 4213<sup>th</sup> meeting, on 31 October 2000, concerns the protection of women and girls during armed conflict; and the promotion of a gender perspective during peace processes. Among other things, it states that:

- ▶ women and girls must be protected from gender-based violence and have their rights recognized both during and after conflict;
- ▶ a gender perspective should inform peacekeeping operations and peace agreements; and
- ▶ women should be fully represented at all levels of peace processes and their role in conflict resolution and peace building enhanced.

Source: UN Security Council 2000.

In July 2007, the Ministry of Peace and Reconstruction released a draft TRC bill for circulation and comment to both domestic and international human rights groups, including the Advocacy Forum, the Office of the United Nations Office of High Commissioner for Human Rights (UN/OHCHR), Amnesty International, Human Rights Watch, and the International Center for Transitional Justice. While these groups congratulated the government for its proactive stance, they also expressed reservations about key provisions of the draft. The National Human Rights Commission of Nepal insisted that the government maintain international standards of human rights in formulating the TRC bill.

The main concern, raised in an August 2007 report by OHCHR and echoed by other groups, involved the provisions that would grant amnesty to perpetrators of gross human rights violations and violations of international humanitarian law; those crimes cited included extrajudicial execution, torture, and the disappearance of numerous persons. OHCHR noted that “Amnesty provisions [in the draft TRC bill] which prevent prosecu-

*Restorative justice is increasingly used as a major instrument of reconciliation, since it is more concerned with restitution to the victim and the victimized community than with punishing the offender*

tion for these offences are inconsistent with Nepal's obligations under international law."<sup>12</sup> Like other commentators, the High Commissioner's Office drew attention to the following issues:

- ▶ the bill's general emphasis on promoting compromise and settlement over prosecution;
- ▶ the dangers of coercive reconciliation;
- ▶ the potential for government over-involvement in TRC proceedings; and
- ▶ the need for public hearings and a final report.

The differences between the government and civil society organizations grow out of implicit fears on each side. The government may be concerned that:

- ▶ too inclusive a process will result in a lack of control; and
- ▶ an overemphasis on criminal prosecution could harm the fragile balance reached by the peace and upset key constituencies.

By contrast, civil society groups may fear that:

- ▶ the government intends to marginalise them in the TRC process, perhaps even exclude them from it; and
- ▶ the government will emphasize amnesty and thus impunity over justice.

Later, between December 2007 and December 2008, the Ministry of Peace and Reconstruction organized four regional consultations on the draft TRC bill, which were welcomed despite some reservations about their inclusiveness. The revised draft bill presented at these consultations included improvements on the mid-2007 version, but requires further revision to ensure compliance with international human rights standards, including the independence of the Commission, amnesties, and increased witness protection.<sup>13</sup>

But there is no need to rush the TRC process as a whole. A thoughtful, transparent

and wide consultation will best serve both international standards and the requirements of Nepal. In addition, consultations at all levels should take into account the history of impunity in Nepal, so as to ensure that the TRC report will not be shelved as were those of the Mallik and Rayamajhi Commissions. This will require a broader representation than that of the prior peace efforts.

### **Restorative justice**

Justice has many faces: it can be retributive justice based on criminal prosecution or restorative justice based on mediation. Restorative justice is increasingly used as a major instrument of reconciliation, since it is more concerned with restitution to the victim and the victimized community than with punishing the offender. Because victims are central to restorative justice, the process makes offenders directly accountable to the person or community they have victimised.<sup>14</sup>

Restorative justice concentrates on repairing relationships rather than on retribution. It is "concerned with healing victims' wounds, restoring offenders to law-abiding lives, and repairing the harm done to interpersonal relationships and the community."<sup>15</sup> It attempts to provide a healing process for the victims, perpetrators, their families and friends, and the community because all these entities are intimately involved in rebuilding relationships and together repairing the harm done. In the words of those who champion this view, "restorative justice...advocates restitution to the victim by the offender rather than retribution by the state against the offender. Instead of continuing and escalating the cycle of violence, it tries to restore relationships and stop the violence."<sup>16</sup> In so doing, it asks "Who has been hurt? What are their needs? Whose obligations are these?"

Restorative justice allows communities to consider the broad context in which violations took place in order to understand these

wrongs better and thereby decide how they can best be corrected. It also focuses on reparations, expanding the concept beyond financial compensation to consider medium- and long-term measures that improve health, education, and employment. The long tradition of “Kshama” (forget and forgive rather than revenge), inherent in Nepali culture, gives restorative justice considerable scope in consolidating the peace process.

An increasing number of experts are promoting the benefits of restorative justice in post-conflict environments. The Truth and Reconciliation Commission of South Africa posited restorative justice as one of its foundational principles. So did the *gacaca* courts of Rwanda, created after that country’s 1994 genocide.

Let us bear in mind, too, that because Nepal is a collection of so many diverse cultures, local indigenous practices already exist for community reconciliation in particular areas. Consequently, local community leaders should be involved in designing and conducting reconciliation efforts where they live. But one must bear in mind that indigenous practices often reinforce historical hierarchies and biases that often exclude women, Dalits, and religious minorities.<sup>17</sup> Many people in these categories may in fact have borne the brunt of the conflict’s violence. In such cases, development partners can help build capacity by providing trained mediators, together with the logistic and financial support such experts may need. These specialists can work under the oversight of local peace committees in districts.

### ***Beyond retributive and restorative approaches***

Because economic and social injustice has been both a root cause and a result of Nepal’s conflict, the country’s peace agreement reflects a deep commitment to redressing these inequi-

ties. Given the strong links that exist between transitional justice and development, attention to the inclusion of women and hitherto neglected caste and ethnic groups in legal and institutional reforms can contribute significantly to preventing future conflict.<sup>18</sup> Future government efforts should therefore revise legislation that does not meet international human rights standards, especially discriminatory laws.<sup>19</sup> Even as late as 2005, as many as 32 provisions perpetuated discrimination on the basis of religion, caste and ethnicity, while 176 provisions in 83 pieces of legislation discriminated against women in Nepal.<sup>20</sup> Fortunately, the April 2006 movement took important steps towards eliminating legal exclusion by gender, caste, ethnicity and religion. The Gender Equality Act (2006) adopted by the Interim Legislature-Parliament called for an end to all discriminatory laws and regulations against women, required 33 percent of those in government and government-appointed institutions to be women, and strengthened laws against domestic and other kinds of violence against women.

### ***Social Reintegration and Rehabilitation of Internally Displaced Persons (IDPs)***

At the height of the conflict, as many as 200,000 people were estimated to be internally displaced in Nepal.<sup>21</sup> Because of insecure conditions, people fled their villages for district headquarters—some even beyond to Kathmandu or across the open border into India. The CPA guarantees IDPs the right to return, along with the return of their property. However, because no reliable comprehensive data exists as yet, it is still difficult to determine the number of IDPs who have successfully exercised their rights and returned home.<sup>22</sup>

As of June 2008, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) stated that between 50,000 and

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70,000 people remain displaced in Nepal.<sup>23</sup> Its report asserts that “people are not likely to register unless there are clear and tangible benefits” and that “the most vulnerable IDPs are still not registered and remain invisible” because they lack information about the registration process and may fear its consequences. A disproportionate number of registered IDPs are landowners, who have completed the process so as to seek compensation for lands seized during the conflict.<sup>24</sup> The majority of IDPs who intend to return to their original homes have already done so, the report concludes.<sup>25</sup>

The reasons for non-return among IDPs involve both “push” and “pull” factors. The “push” factors, those that continue to keep people away from their homes, include continued harassment by Maoist/Young Communist League cadres, violence by armed Tarai groups and poor security and rule of law. Moreover, because their lands have been seized by one or another faction, some families have nothing to which they can return. The “pull” factors, which keep people in the cities to which they had fled, encompass better access to services and quality of life, greater job opportunities, job choice, higher salaries, and greater access to government officials. Many therefore prefer their new lives in the cities. But such preferences should not preclude reparations, especially because many recent migrants belong to vulnerable groups whose members are least likely to be included on government registration lists—among these, women in general and hitherto neglected marginalized groups.

### **Reparations**

Reparations constitute one of the most tangible instruments of reconciliation. In the context of the peace process in Nepal, it is limited so far to providing financial compensation to the conflict victims so that they can develop or redevelop sustainable liveli-

hoods. The Ministry of Peace and Reconstruction has been offering financial relief and assistance following the Norms and Guidelines approved by cabinet in 2007, to the following persons of the conflict victims:

- ▶ Financial Assistance to the family of dead persons:
  - Assistance of one hundred thousand rupees to close relative;
  - Provision of scholarships to at most three children until the age of 18 years; and
  - Financial assistance of twenty five thousand rupees to widows.
- ▶ Provision of financial assistance to wounded persons for treatment.
- ▶ Financial assistance for the loss or damage of properties.
- ▶ Financial assistance for the damage of vehicles.
- ▶ Financial assistance of twenty five thousand rupees to persons disappeared more than 30 days.
- ▶ Provision of skill training and foreign employment to conflict affected persons and their families.<sup>26</sup>

The details of such support and other relief appear elsewhere.<sup>27</sup>

### **Integration of the armies and social rehabilitation of discharged combatants**

#### **Integration and rehabilitation of the Maoist army combatants**

The United Nations Mission in Nepal (UNMIN) began the process of registration and verification of combatants and arms in 2007 following the agreement between the political parties of Nepal. The parties have agreed to verify the combatants on the basis of two bench marks. The agreement stated that those who: (i) were recruited in the Maoist army before the ceasefire, 25 May 2006, and (ii) were

18 years old prior to the ceasefire would be considered Maoist army combatants.<sup>28</sup>

In the initial round, a total of 32,250 Maoist army combatants were registered. Additionally, a total of 3,475 weapons of the Maoist army combatants were registered and stored. An equivalent number of weapons of the Nepal Army was collected and stored under similar conditions. During the second round, only 23,610 Maoist army combatants participated, meaning that 8,640 had left the cantonments and were thus automatically disqualified. Of those, 19,602 were verified, comprising 15,756 men and 3,846 women, and 4008 were minors or late recruits. Thus far, the Joint Monitoring Coordination Committee has provided a successful example of collaboration between the two forces and the United Nations.

Article 146 of the Interim Constitution reads: “The Council of Ministers shall form a Special Committee to supervise, integrate and rehabilitate the combatants of the Maoist army...”<sup>29</sup> Now a Special committee has been formed, which has also constituted a eight-member Army Integration Technical Committee.

The CPA also makes a commitment to the “democratization” and “right-sizing” of the Nepal Army. However, it does not provide clear guidance about how these processes should take place. In view of the lack of clear guidance, this requires a decision from the highest political level. The Special Committee and Army Integration Technical Committee do not have a clear political mandate of taking such decision. Delaying this difficult decision could further result in leaving the Maoist army combatants in the cantonments for a longer time than what is expected.<sup>30</sup>

Even more critical are the mechanisms for civilian control of the army, especially the

National Security Council and the Ministry of Defense. Now that the monarchy has been abolished, it is essential to establish trusted, transparent, and accountable institutions to oversee the military structure and prevent corruption by monitoring its finances and system of promotions.<sup>31,32</sup> Those charged with these duties may well wish to examine the experience of other countries that have dealt with similar issues. Recent examples, such as Burundi and Sierra Leone, may prove useful. But the eventual solutions must be uniquely Nepali and tailored specifically to local context.

#### ***Rehabilitation of disqualified Maoist army personnel***

The rehabilitation or social reintegration of 4,008 members of the Maoist army who were identified either as minors (2,973), or as recruited after 25 May 2006 (1035) during the UN-supported verification process, requires particular care. Like young people who fought in areas as different from Nepal as the former Yugoslavia and Rwanda, the minors amongst these Maoist army combatants should be included in the planning of their return to civilian life for successful reintegration into civil society.

UNMIN and the United Nations Children’s Fund have continuously insisted upon the urgency of fulfilling the commitment to discharge from the cantonments those who were minors on 25 May 2006, along with other personnel disqualified by UN verification. To support the discharge process, UNICEF, UNDP and UNFPA have developed social reintegration programmes in consultation with the Ministry of Peace and Reconstruction to address the special needs of young people who were qualified as minors.

The army integration Special Committee requested the Government to proceed with the discharge of disqualified Maoist army

*Discharged combatants can play an important role in restorative justice efforts at the local and community levels*

personnel from the cantonments on 11 February 2009. However, the process has not yet been started. On 5 May 2009 the Security Council called upon the government to implement its commitment to discharge minors in accordance with the international law.

Discharged Maoist army combatants can play an important role in restorative justice efforts at the local and community levels; they must become part of community healing and transformation. Because it is often difficult for individuals who have devoted so much time to fighting to move easily into the economic and social activities of peace, this element of reintegration requires particular attention and support. The case of Burundi provides an example of such a process. There, former combatants were provided with a “reinsertion package” that had five thrusts:

- ▶ targeted community-based assistance;
- ▶ training and self-employment;
- ▶ continued education;
- ▶ entrepreneurship support; and
- ▶ employment by existing enterprises and by the government itself.

Other United Nations experience dealing with former combatants in both peacekeeping and non-peacekeeping operations, including Cote d’Ivoire, Indonesia (Aceh), Liberia, and Sudan, can furnish other insights.<sup>33</sup> Among others, UN organizations in Nepal have developed such reintegration packages (Box 3.3).

### **Managing expectations in the present**

#### ***Restoring the rule of law and improving justice***

Throughout Nepal, citizens have called for the restoration of the rule of law as one of their primary concerns. They want the law administered impartially by all actors in the system—from law enforcement personnel (the police) through the judiciary (judges and courts) to those charged with this mandate in the Ministry of Home Affairs. Civil society also plays a critical role in this process, acting as an intermediary between the public and law enforcement authorities by promoting knowledge and awareness and by

#### **BOX 3.3 Social reintegration package for the disqualified Maoist army personnel, Nepal**

UNDP Nepal, working in collaboration with UNMIN, UNICEF and UNFPA, and in close consultation with the Ministry of Peace and Reconstruction, developed a strategy in 2008 to provide social reintegration assistance packages. These consist of (1) vocational training/apprenticeship, (2) agriculture and livestock training, (3) micro-enterprise development, and (4) non-formal education—each with various options. These training and educational services will be available in all five development regions and will range from several weeks to one year. Special arrangements can be made to facilitate participation of groups with special needs, such as lactating mothers and disabled youths.

To ensure the livelihoods of disqualified Maoist army personnel, support and follow-up is planned after the completion of training. This includes issuing tool kits and employ-

ment-related information, along with facilitating access to micro-credit for those who choose vocational skill training; providing agricultural inputs and basic equipment, furnishing small livestock, such as poultry and beehives, and the linkage of this assistance with potential markets for those who choose the agriculture and livestock training package. Similarly, for those involved in micro-enterprise training, the package provides grants of small-scale equipment, along with linkages to credit and output markets.

To support the effectiveness of the training and the sustainability of livelihood opportunities, the social reintegration strategy also features suggestions for several follow-up activities to be undertaken by the government.

Source: UNDP records.

facilitating access to justice. All societies governed by the rule of law strive to give citizens access both to the law and to legal assistance (whether certified lawyers or other knowledgeable authorities), paid for by public funds if necessary. In this connection, we should recall that the smooth functioning of rule of law plays a key role in economic development, investment, and growth—and therefore in human development.

The CPA clearly assigns the primary responsibility for creating a secure environment to the Nepal Police and the Armed Police Force, under the direction of the Ministry of Home Affairs. Weakened by the conflict, the Nepal Police and the Armed Police Force are now working to regain the trust of the public; they are frequently criticized for not having adequate capacity, technical skills and equipment, and training. Additionally, many Nepali believe that police morale is low because of insufficient political backing from the central government, along with political interference from high-ranking officers and politicians. Such interference not only results in impunity for perpetrators, but undermines the will of the rank and file patrolmen to maintain the fundamentals of law and order. Why take action if one's work will ultimately be undone?

Further, weakness in the rule of law encourages the emergence of parallel structures, among these the Unified CPN (Maoist)-affiliated Young Communist League and the CPN (Unified Marxist-Leninist - UML)-affiliated Youth Force. Such groups dole out extrajudicial punishment to alleged lawbreakers. In addition, the political parties themselves are also acting as surrogates for the state, operating on a “consensus” basis to resolve all kinds of problems, whether political or criminal.

To return the rule of law to its fundamental place in Nepal, the government must take several steps, among them the following:

- ▶ visible political backing at the highest levels for the Nepal Police, the Armed Police Force, Chief District Officers, and all who are legally responsible for impartial law enforcement to carry out their work in a manner that is respectful of human rights;
- ▶ the equal dispensation of justice, regardless of the alleged perpetrator's membership in any group;
- ▶ a campaign that publicizes concrete examples of effective law enforcement;
- ▶ further capacity-building for the Nepal Police and Armed Police Force, especially in community relations-building efforts; many people are still traumatized by the police and do not see them a force for their individual protection; and
- ▶ Recruiting local police officers. This practice may also help to improve access to justice in communities.

Additionally, both the state and local civil society must work to reduce impediments to accessing the justice system. These include:

- ▶ the high costs imposed by the legal system;
- ▶ the backlog of cases that severely slows down the judicial process; justice deferred can well become justice denied;
- ▶ lengthy and cumbersome court procedures;
- ▶ unfamiliarity or misunderstanding of legal terms and legal rules; and
- ▶ the absence of key laws required for prosecution.

There can be no peace without justice, and there can be no justice without the rule of law. As is often the case, the poor and the excluded who need critical legal services

*Weakness in the rule of law encourages the emergence of parallel structures*

*There can be no peace without justice, and there can be no justice without the rule of law*

lack access to them. There are at least four fundamental barriers to this access: a lack of legal identity, ignorance of legal rights, inadequate availability of legal services, and unjust and unaccountable legal institutions. Even in today's Nepal, there remain individuals deprived of legal identity either because they lack formal citizenship registration or because they are landless. They are therefore barred from benefiting from the law of land, especially if they seek redress from exploitation by the powerful. Many ordinary Nepalis have little or no knowledge of their legal rights despite various programmes aimed at fostering awareness.

Moreover, the formal court system in Nepal extends only to district headquarters and is encumbered by potential interventions from political leaders. This is yet another manifestation of the tendency of the justice authorities to intervene in the better off-regions and on behalf of the upper and middle classes. Even those citizens who know their rights cannot undertake legal action because they cannot afford legal fees. Rising awareness, coupled with an inability to pay for legal services, leads to increasing frustration among Nepalis. Despite efforts by the government and Non-Government Organisations to correct these shortcomings, improvements are scattered, little-known, and lacking in the rural areas where the need is the greatest. To enhance access to justice, therefore, yet another significant step could be an increased emphasis on community mediation efforts (see Box 3.4). These not only cost far less in both time and money, but often meet local needs more effectively than government action at higher levels. Hardly least, such local mediation efforts provide an opportunity to cultivate peace-building skills at the community level. Where communities choose to apply indigenous practices to current cases, these traditional local modes need to be examined,

adapted to contemporary needs and laws, and publicly promoted.

Corruption has also played a major role in discouraging people from using the legal procedures available to them. Those who seek justice through official channels pay higher costs in time as well as money. Many find themselves forced to sell whatever they can, including land. In addition, procedural delays tie up cases for years and years. Hence the classic Nepali aphorism "Law for the poor, immunity for the rich".

### **Improving service delivery**

In addition to restoring the rule of law, improving service delivery enhances human development in post-conflict situations, especially in terms of health care, education and local security. Indeed, many Nepalis question how far the political transition can succeed without the restitution of such services.

In this area, the most important factor is the reconstitution of local governance bodies. This entails functional devolution down to the community level with appropriate checks and balances. To make service delivery more effective, a new Good Governance (Operation and Management) Act of 2007 and its regulation of 2008 have been adopted, along with provisions for integrated service delivery centres to meet the needs of people below the district level. Donors can play an important role in such efforts.

Despite earlier shortcomings in similar endeavors, the end of the conflict presents a unique opportunity to transform the way in which government reaches out to citizens. The following general strategies may help:

- ▶ Making service providers directly accountable to the community via local elections and frequent regular consultations between the providers and those they serve;

UNICEF supports an extensive network of Para-legal Committees (PLCs) in Nepal. A total of 482 PLCs operating at the VDC level are functional in 23 districts where the Decentralised Action for Women and Children is implemented by the Ministry of Local Development with the support of UNICEF. Para-legal Committees are comprised of women from different cultural, socio-economic and religious backgrounds.

Formed as early as in 1999 as part of an anti-trafficking intervention, PLCs initiated their interventions against all forms of violence, exploitation and abuse of women and children in 2002. They are supported by District Resource Groups (DRGs), which are district-based groups of 10-12 lawyers and social activists who provide training, technical support, and monitoring to all the PLC groups in their district.

PLCs deal with a broad range of cases, particularly those involving domestic violence, trafficking, early marriage, witchcraft, property disputes and polygamy. They mediate cases or refer them as needed to a range of local service providers, including the courts. They also follow up cases which they have referred as well as those they have mediated successfully, to ensure an ongoing fair outcome. In 2008, out of 5,696 reported cases, 4,698 (84%) were resolved by PLCs while 898 (16%) were referred.

The community-based justice and mediation offered by PLCs is recognized as an extremely effective, holistic

and inexpensive means of attaining justice for women, children and other excluded groups even in places where the formal justice system is accessible. PLCs also play an extremely important role in prevention, promoting gender equity and women's rights through social mobilisation and awareness-raising in their communities. Through constant advocacy, they have created space for women to share 'private' abuses, as well as gradually changing the social context which allows such abuses to occur.

The PLCs were able to operate even during the conflict, when many communities suffered from a vacuum of law enforcement. This was due to their engagement in promoting the rights of women and children, and their neutrality, transparency, and impartial justice for the vulnerable groups who are in the serious need of such support.

Because of the growing achievements of PLCs, the government and other UN agencies have begun including PLCs in their programmes and projects. The Local Governance and Community Development Programme (LGCDP) of the Ministry of Local Development has used PLCs to mobilise community participation in local planning. Similarly, UNDP under its Access to Justice Programme is planning to expand the PLCs; and UNICEF, UNFPA and UNIFEM will expand PLCs in 60 VDCs in four districts where their joint programme on gender-based violence will be implemented.

Source: UNICEF Nepal.

- ▶ Reducing corruption by increasing the use of open book-keeping, social audits, and methods such as public hearings, radio broadcasts and non-verbal posters that allow people who are not literate to also monitor project implementation and spending;<sup>34</sup>
- ▶ Increasing capacity-building, particularly for local user groups in rural areas so that they can participate in planning project budgets, monitoring project operations and conducting evaluations of public service; and
- ▶ Allocating adequate funds to projects that affect marginalized groups.

***Widening representation and participation***

As this Report has earlier pointed out, human development concerns enlarging options—of which income is only one. People also want to take part in the decisions that directly effect their lives—the key principle of democracy. The disconnect between Kathmandu and the rest of the country—mirrored by the disconnect between dis-

*Implementing the peace process demands that all Nepalis feel vested in the country's development opportunities*

trict headquarters and rural settlements—has concentrated power in the hands of an elite. Fully implementing the peace process demands that all Nepalis feel vested in the country's development opportunities. This means enlisting local people, as far as possible, in peace-building activities that include:

- ▶ Local Peace Committees (LPCs) and other peace-building efforts;
- ▶ The TRC and other transitional justice mechanisms;
- ▶ The constitutional process; and
- ▶ The state restructuring debate.

This is all the more important because local initiatives thus far have received relatively little attention. While problems at the local level often cannot be resolved before the conclusion of a detailed agreement at the centre, local efforts can certainly have effects far above their level, even in connection with security and land return.

**Local peace committees**

Provision for LPCs has been made under article 8.3 and 8.4 of the CPA. Article 8.3 provides that both sides [SPA and Maoist] are committed to resolve all types of common differences or problems through mutual dialogue, agreement and understandings. Article 8.4 states that both sides express their commitment to the fact that the Interim Council of Ministers shall, in order to implement this Accord, ..., constitute the National Peace and Rehabilitation Commission, the truth and Reconciliation Commission, and other mechanisms as per necessity, and may determine their working procedure.

Since the CPA provides only broad guidelines on many topics, LPCs could become important fora for discussion, implementation, and peace-building at the grassroots level. Unfortunately, the Committees have

faced problems in the districts in which they have been piloted in 2006. Initially, their affiliation only with the Ministry of Peace and Reconstruction has generated mistrust. Although their official Terms of Reference call for an inclusive approach, they so far seem to have little involvement of women and other interested groups. This has led to their being perceived as “top-down” bodies controlled by the major parties, rather than “bottom-up” representatives of their respective districts. Box 3.5 sums up the findings of an assessment of 28 LPCs commissioned by the Ministry itself.<sup>35</sup>

The assessment culminated in a range of proposals specific to individual LPCs, as well as recommendations for the MOPR at the national level. These included:

- ▶ amending the LPC's Terms of Reference so as to make them more inclusive;
- ▶ preparing and circulating operational guidelines and an Implementation Manual for the establishment and maintenance of the LPCs;
- ▶ re-issuing instructions to the officials responsible for organizing LPCs in districts where they had not yet been formed; and
- ▶ launching a capacity development programme for government officials and relevant stakeholders so as to enhance the functioning of the Committees.

As a result, the Terms of Reference of the LPCs were revised and issued in early 2009 with a view to institutionalizing their peace-building activities at the local level. The new mandate stresses responding to the concerns of local stakeholders for the practice of democratic values and beliefs in developing a sustainable peace, as well as in fostering an environment for the emergence of a

just system by resolving the remaining elements of conflict and promoting peace and reconstruction through mutual goodwill and a spirit of unity. Each of the LPCs must now comprise 23 members, at least one third of them women, along with individuals chosen by Dalits, indigenous nationalities, Madhesi, and Muslims; representatives of conflict-affected sectors, as well as spokespersons of civil society and the private sector, including human rights activists and leaders of commerce and industry. However, 12 of the 23 members must represent the district working committees of the political parties present in the CA. The LPC will serve until the new constitution is completed and enacted.

Each Committee will form a nine-member local peace secretariat from its membership to carry out its decisions; this secretariat, which will regularly report to the LPC, must include two women and equitably represent the major political parties.<sup>36</sup> Additionally, the LPC can also form a nine-member VDC or Municipality level Peace Committee. The Secretary of the Village Development Committee or the Executive Officer of the Municipality will act as the Secretary of the Peace Committee.

The resources of local bodies—District Development Committee, Village Development Committee and Municipality—will support the operations of the LPC. The Committee can invite representatives from district line agencies, including the District Administrative Office, the District Development Committee, and the District Police Office, as well as other bodies and individuals working at the local level, to act as observers in the Committee meetings. The LPC agenda will necessarily be more political than technical. However, its activities will help build capacities useful for reconstruction activities.

## BOX 3.5

## Assessment of Local Peace Committees in Nepal: some key findings

During February and June 2008, the MOPR interviewed 250 persons, including Chief District Officers, leaders of political parties, representatives of civil society organizations and business people so as to assess the LPCs. Among the key findings are the following:

- ▶ Most of the respondents welcomed the concept of LPCs warmly and characterized it as very desirable—indeed, necessary—to the transition period. They felt that it gave them a forum for participating and contributing collectively to the peace process at the district level. Some people, however, called the LPCs redundant because the “all-party” mechanisms, together with the existing district administration and the district council, wield all decision-making power—and will continue to do so. They also pointed out that LPCs would work best only when a consensus government took power in Kathmandu.
- ▶ Some of the LPCs were very active, especially during their first few weeks. Many contributed significantly to preventing election-related inter-party violence during the run-up to the CA election, holding all-party meetings with civil society involvement, reinforcing commitment to the electoral code of conduct, mediating political disputes, and preventing minor conflicts from escalating.
- ▶ Although women and Dalits have been grossly under-represented in the existing LPCs, the number of civil society participants has almost doubled that of political party members in most of the Committees.
- ▶ The autonomy of the LPCs make them the only government-mandated bodies that can draw all major political and civil society leaders together at the district level to work for peace.

Source: MOPR 2008A.

Transforming the LPCs into effective bodies will require donor support, including that of the United Nations system. Globally, UNDP has extensive experience in fostering the development of local conflict prevention. UNICEF and other bodies of the international system have also been involved in strengthening similar efforts. Ideally, a joint programme would prevent as well as resolve conflicts at the local level. Eventually, LPCs could become “bottom-up” institutions for preserving peace and fostering democracy nation-wide.

*Two critical challenges now face Nepal: ensuring a participatory constitution-building process, and finding an appropriate balance between the country's political agenda and its development needs*

***Securing the future: a participatory constitution-building process***

Two critical challenges now face Nepal: ensuring a participatory constitution-building process, and finding an appropriate balance between the country's political agenda and its development needs.

Nepal has had six constitutions during in the last 60 years.<sup>37</sup> None except that of 1990 drew upon a participatory process for its drafting and even then the collected information was hardly used. Arguably, even that process seems to have been dominated by a small expert body with close connections to both the political parties and the palace. Indeed, the King proclaimed this constitution's promulgation.

The result of these top-down procedures excluded large numbers of citizens from influencing successive constitutional changes and from exerting significant political or economic power. Consequently, each constitution was challenged as varying groups became able to articulate their grievances and demand justice. The 2006 Janandolan can be read as a direct expression of the Nepali people's desire to be included in their own democratic governance.

***Participation of the CA members***

The Interim Constitution of Nepal contains a provision that a Constituent Assembly (CA) will prepare the new constitution of Nepal. After three postponements, the election of the CA was held on 10 April 2008, following a mixed electoral system discussed in the following chapter.

The 601-member CA is sufficiently representative of different caste and ethnic groups, as well as of women, to give it legitimacy for drafting the constitution. The formation of 14 committees with the delineation of

responsibilities end 2008 was a major step forward (see Box 3.6).<sup>38</sup>

If necessary, minority CA members should be allowed to speak in the language in which they are best able to express their views; a summary could be provided for other members in Nepali.<sup>39</sup> Formal and informal procedures should be utilized to ensure that women and marginalized group representatives are able to participate fully in the proceedings so as to contribute to the credibility of the process—and, more important, to contribute ideas that have not formally been voiced before. Given the history of elite-driven political decision-making in Nepal, this will not be easy. Religion and culture have already led senior male members to try to dominate the proceedings. Others have already protested.

The process of free prior informed consent (FPIC) from different social groups may alleviate this sort of contention. The principle appears in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, as well as in the International Labour Organization Convention 169 concerning Indigenous Peoples in Independent Countries. Following this process, concerned members of the Constituent Assembly might inform previously excluded groups about any discussion that involves them. This would entitle members of such groups to speak in successive meetings of the Assembly on the points that concern their rights and practices.<sup>40</sup>

***Participation of the broader community***

CA Members should not be the only conduit for public input. There are other means of gathering people's views on the content of the future constitution. South Africa's is well known and involved three phases:

- ▶ eliciting public input before the formal drafting;
- ▶ gathering public comments on the draft text; and
- ▶ finalization and adoption by South Africa's constitutional assembly.

In the first phase, a media department was created to publicize the work of the constitution-makers; all thematic committees explicitly sought public input in their areas. Nearly 1.7 million submissions resulted, both written and oral, including suggestions made via the Internet, at public meetings and through telephone calls to a dedicated talk line. Through a face-to-face outreach programme, the members of the country's parliament, assisted by local civil society organizations, targeted communities that could not easily access information through print or electronic media—particularly those in remote areas and those with low literacy rates.

For the first time, many South Africans had active contact with their elected representatives. Over four million copies of the draft constitution were circulated for comment, resulting in approximately 250,000 responses. The CA then held private meetings to negotiate contentious issues—a move that was criticized, but also allowed for freer debate. Finally, seven million copies of the final document were distributed in all 11 official languages, as well as a version with pictures accompanying the text.<sup>41</sup>

This process provides some useful examples for Nepal, including:

- ▶ Dividing the constitutional process into multiple phases, each generating input;
- ▶ Creating a media or public information department that helps inform citizens about the constitutional process, and allows for targeted monitoring to test how

## BOX 3.6

## Process adopted by the Government of Nepal for developing the new constitution

Towards the end of 2008, the government made following provisions for preparing the new constitution:

- ▶ Formation of 14 committees from the 601-member CA: 10 *subject committees*, each preparing the draft on a specific subject/section of the constitution in consultation with experts; three *process committees* to organize consultations with citizen groups during the preparation of the constitution; and one *constitution committee*, responsible for compiling the sectional drafts and providing a legal basis for the constitution. The Constitution Committee will comprise at most 63 members, and the others at most 41.
- ▶ Once the constitution is compiled, it will be submitted to the CA for discussion. The draft will be revised in accordance with the inputs and comments received. This revision will be taken to the districts for consultations facilitated by the three process committees. The text will then be further revised to incorporate the comments and views submitted by citizens of each district.
- ▶ Finally, each and every section/point of the constitution will be discussed and, as far as possible, will be adopted by consensus. If consensus cannot be reached, a vote will be taken.

Source: Government of Nepal records.

well the message is being disseminated among various groups;

- ▶ Establishing a public submission mechanism that can handle vast numbers of submissions, consolidate the information, and ensure that it reaches the appropriate committee;
- ▶ Holding public seminars in which CA committee members themselves interact with citizens particularly interested in their handling of certain issues; and
- ▶ Distributing the draft text in Nepali and other native languages to foster public ownership of the final version.

All these steps point to introducing the idea of a mechanism to further communication for development. It could broaden information flow downward and allow voters, including women and those who belong to marginalized

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groups, to voice their needs and opinions and thus participate in decision-making that affects their lives. Indeed, a lack of voice is an integral element of poverty. Access to information in languages and formats that people can understand and utilize is vital not only for furthering political democracy, but also helping citizens raise their living standards themselves.

Constitution-making can be a very contentious process. It poses serious risks of dividing any nation. Constitution-makers often long for decision-making by consensus. But procedures such as those outlined above are likely to foster a peaceful and constructive atmosphere—which is more likely to lead to a product with broad support. Free prior informed consent can strengthen the process. It translates into making a sovereign people the collective guardian of the law of their land, whatever the differences among them and whatever compromises their elected representatives must make to harmonize those differences. Few peoples in history have had a comparable opportunity.

### **Where we now stand**

Thus far, the peace process has been characterized by a “one issue at a time” approach. This has slowed progress and limited decision-making authority in the hands of an elite few. Practically speaking, it has also meant an almost exclusive focus on politics at the expense of development. Now there is a need for balancing the political and development agendas.

Both public and civil society organizations in Nepal should consider pressing for an increased emphasis on development during this political transition period. A renewed focus on equitable growth and development will not only be the most effective way to provide a “peace dividend” for the people of Nepal. It can also offer another opportunity for community healing, reconciliation, and rebuilding, and as a chance for communities to practice inclusion.

Such a strategy can also bring together Nepali politicians and the international community. Politicians have an incentive to focus on development in order to build up their constituencies and win the “hearts and minds” of voters. The international community can also posit local development as part of its wider goal to support Nepal’s peace process.<sup>42</sup>

There is no one model of peace process, just as there is no single model of development. The “best practices” of one country or society sometimes do not work for any other. While it is easy to criticize the government, political parties, civil society, donors and others for not doing enough to advance the task now under way, it is equally important to recognize its enormity. Most important is continuing to strive for the greatest possible inclusion and participation of the Nepali people throughout this period. Equitable representation and participation must become the core principles for the new Nepal—which forms the subject of the chapters that follow.

**4**  
CHAPTER

Political  
inclusion and  
human  
development