

PUBLIC SECURITY SITUATION AND CRIMINAL JUSTICE SYSTEM IN NEPAL

Yubaraj Sangroula¹

¹ . Professor of International Law and Jurisprudence at Kathmandu School of Law Email sangroula195@gmail.com

Abstract:

Functionality and effectiveness of the security system of any country requires consideration of the general political perspective. The security of a country in political transition is bound to be affected by the prevailing political situation. Nepal is typical example of this reality. The transition in Nepal has increasingly been extended mainly due to deteriorating state of consensus among political forces in contrary to Article 43 of the Interim Constitution. It is a universally established experience that divided political forces cannot offer a reliable ground to consolidation of the public security system. This is a widely realized truth in Nepal. A series of incidents of heinous crimes and widening culture impunity have undoubtedly raised a question of effectiveness and any reliability of the public security system in Nepal. The criminals and underworld, national and international, mafias have taken a stringent strategy of (a) silencing the media by threatening and killing them; (b) penetrating the security agencies and widening the distrust of people on them; (c) terrorizing the people thus creating a state of lawlessness.

1. CURRENT SCENARIO OF PUBLIC SECURITY IN NEPAL

First of all, we need to be clear on ‘whether we are talking about ‘problems of insecurity’ or ‘problems related to security system’². The problems related to security system may not always be related with the ‘problem of insecurity’. As ordinary citizens, what we are afraid about is the ‘problems of insecurity’. This can be better expressed by a generalized: ‘crimes are politicized and politics is criminalized’. The culture of violence is erupted, and the lives of everybody are seriously endangered. The response of security apparatus to the ‘problems of insecurity’ is very weak and not trustworthy. The response of the security agency to the security concern of the citizens is less humanly sensitive, thus distancing the gape of confidence between public and security agency increasingly wider. The general public is not only less confident to the security agency’s efficiency to protect life, but also skeptical of taking help of security agency due to its increasing nexus with criminals and anti-social element. The general public is thus gradually reluctant to approach the police to report crime; there are evidences that people are compelled to negotiate with offenders through some kind agents or by using other means.³ The public views that such legitimate or illegitimate informal systems are comparatively trustworthy or dependable.

The scenario can be elaborated or encapsulated as follows:

- a. The confidence of the general public to the security system is seriously deteriorated and degraded. This deterioration is mainly caused by (i) political-partisan interference of the institutional autonomy of the security agency (ii) increasing tendency of overlooking the ‘institutional chain of command-based discipline (iii) increasing tolerance of the practice

². Term security here excludes ‘national military defense system’

³. As reported by **Samacharpatra**, a Nepali Daily from Kathmandu, on 2066/05/29 (14th Sept 2009), CPN (Maoists) reactivated People’s Court in Sankhuwasava, and it is handling 7 to 10 complaints daily. News about persons, threatened by offenders, negotiating secretly with them instead of reporting to police is now not uncommon. The general people are forced to pay ransom to save their lives. A report to the police may jeopardize the life.

of corruption, and (iv) increasing political-backed impunity for corruption and illegal activities of police personnel.

- b. The linkage between the police and criminals is no longer a hidden fact. Individual victims of crimes think that the police will eventually come out nothing from the investigation.⁴ The skepticism to the police does not end at that point. The public think that the police can divulge the information to the criminals, and their reprisals would be unthinkably painful.⁵
- c. The police may not help those who do not belong to other party than that of the Home Minister. The control by, and nexus between, the local political cadres and the police is another phenomenon which makes ordinary people scary of getting help from the police. It is beneficial for both. The police personnel get rid of the danger of negative reporting by the local cadres to the Minister. The political cadres, on the other hand, can get financial support from the police.⁶

In this backdrop, the crimes are dangerously increasing. Reportedly, organized crimes are sharply increased over the last few months. The Government's security scheme has yielded no desired

4. **Kantipur** (daily) in 2066/03/11 (25th June 2009) reported that it has now become disclosed that parents of Khyati Shrestha did not inform the police immediately after her kidnap. They were afraid to report the crime to the police. They informed the police only upon failure of her return even after payment of the ransom. **Nepal Samacharpatra** (daily) on 2066/07/05 (22nd Oct 2009): reported that offenders were being protected by police. **Annapurna Post** (daily) on 2066/10/19 (2nd Feb 2010) reported that the police personnel were engaged in helping offenders of crimes of kidnapping and for this they obtained financial benefits from offenders. **Kantipur** (daily) on 2066/08/11 (26th Nov 2009) reported that the police personnel were helping the offenders to abscond from prisons. **Himal Khabarpatrika** (1-15) Chaitra, 2066 (14th-28th March 2010) reported involvement of some police officers' in assassination of Jamim Shah, a media entrepreneur. It also reported an incident in which a police officer from Thamal area, who arrested a heinous criminal, released him after sometime taking eight hundred thousand rupees as bribe. **Nepal Samacharpatra**, 2066/05/29(14th Sept 2009) reported that a group of police personnel in Dharan committed a gang rape of a 16 years girl. In a speech in a program in Kathmandu, Home Minister Rawal said "By our mistake, the former DSP Jagadhish Chand, involved in killing of Mr. Jamim Shah, had been able to abscond". See, **Kantipur**, dated 2066/11/21 (5th March 2010), Home Minister Bhim Rawal said.

5. In kidnapping and murder of Khaytai Shrestha', the parents of deceased did not inform to the police until the ransom was paid and still she did not return. See Ibid.

6. "Crimes are sharply increasing. There are police personnel involved in helping criminals. There is no system or practice for differentiating a genuine and corrupt police personnel or officers. At least, ten percent of the total police force is engaged in protecting criminals. The political leaders interfere in affairs of promotion and transfer of police personnel. The political leaders are engaged in collecting financial benefits by helping police personnel to obtain placement where the prospect of illegal financial gains is higher. One of the reasons for increased criminal phenomenon is the practice of political leaders' involvement of promotion and transfer of police personnel for financial gains". Interview of Rijban Ansari, the former State Minister for Home Affairs, in **Himal Khabarpatrika** (1-15) Chaitra, 2066 (14th-28th March 2010). **Similarly**, Mr. Rajandra Bahadur Singh, former AIGP, reflecting on the reason of deplorable public security situation, says "While no all police personnel are corrupt and criminal minded, the danger of good officers losing morale and tainted by corruption is obviously increased. This is mainly due to political leaders, who, for their vested financial interest, are contaminating the police institution". He adds, it is bound to happen so when the practice of promotion and transfer by paying bribes to political leaders is now institutionalized". **Himal Khabarpatrika** (1-15) Chaitra, 2066 (14th-28th March 2010). "Most of the heinous criminals engaged in proliferating crimes today are the gangsters (cadres) used by political leaders during the elections". **Himal Khabarpatrika**, (1-15) Chaitra, 2066 (14th-28th March 2010)

results. ⁷Reportedly, the Kathmandu Valley, the perch of the National Capital, is too not a safe place to live. The crime statistics of the Metro Police show that in the last six months, Kathmandu was hit by 57 heinous crimes, murder, looting, kidnapping and extortion. From August/September to as of now, Kathmandu has been hit by average 9 heinous crimes a month. It implies that there are at least two serious crimes in a week. The government response is however bleak.

The culture of violence is incessantly swelling on. The deterrence is a factor which pushes prospective offenders back from committing crimes. The inefficiency on the part of security system boosts up the morale of offenders. The deterrence destroys the psyche of easy preparedness of prospective offenders to commit crimes. The incessant growth of the crimes thus implies that the 'the security system's deterrence is rapidly weakening'. The security policy makers have, however, failed to comprehend this negative development as an indicator of the failure of the security system.

Effectiveness of a security system is in fact contingent upon positive attitude of the public to the security system. The Government's Security Scheme has, however, failed to draw attention of the general public. The general public views it is nothing but a political stunt or a hoax.⁸ The security scheme thus failed to achieve a positive response from the people. The common people are the best source of information about crimes and criminals. However, the public does not collect such information until it believes that his/her information will be acted on by the authorities. Even if public happen to know information of crime and criminal, they do not transform it to the security agencies due to loss of faith to them. This situation is considered a grim situation in terms of security analysis.

2. GENERAL PROBLEMS OF THE PUBLIC SECURITY SYSTEM OF NEPAL

7. See Human Rights Annual Report 2009: INSEC and Report entitled "Security Scheme is Meaningless" by **Kantipur** dated 2066/07/09. A group of business persons and entrepreneurs in a meeting with the Prime Minister expressed their concern deteriorating security situation nationwide. They urged to allow carrying weapons for protection of their lives. They also reported the problem of extortion by different criminal gangs in different parts of the country and expressed concerns over government's failure to round up Mr. Arun Sihania's assailants in Janakpu. For detail See, a report in **Nagarik (daily)** 2066/11/19 (3rd March 2010). Also see a comprehensive report on worsening security situation in **Kantipur**, 2066/11/19 (3rd March 2010).

8. "The Security Scheme is Meaningless": **Kantipur**, 2066/07/09 (26th Oct 2009): The report quotes Home Minister saying that "Instructions to arrest any leaders or cadres of any political parties involved in crimes are issued". No one involved in such crimes are, however, arrested yet (**Nagarik**, 2066/05/09) (25th Aug 2009) A criminal has been arrested after 17 years of the Court passed the verdict (**Kantipur**, 2066/05/10) (26th Aug 2009) "Terror Everywhere": a report of worsening security situation in **Naya Patrika**, 2066/11/18 (2nd March 2010). "Increasing Incidents of Kidnapping and Murder- The Security Scheme Impactless in Tera": There were 15 incidents of kidnapping and murder reported in eight days from 27th Poush to 4 Magh, 2066 (11th -18th Jan 2010). Even a CDO of Bara was fired at (See Annapurna Post, 2066/11/15) (27th Feb 2010). "Special Security Scheme Unsuccessful (**Naya Patrika**, 2066/11/15) (27th Feb 2010)." In this report, Advocate Sambhu Thapa said "How weak is the security situation is evidently clear by confession of the same by Prime Minister himself".

In order to comprehend the existing situation of security and its characteristic features, one has to start looking analytically into negative perspectives posed by the lack of (a) clearly thought about and devised security policy and (b) unsystematically organized apex institution that is responsible for designing security policies and monitoring thereof. It means that any failure of the security system should not be viewed only as a failure or inefficiency of a particular security agency, official or circumstance. The failure of the security system is a result of several cross-related factors, the underlying lack in or lapses of the policy designing and monitoring agency being the crucial one.⁹ Categorically speaking, the following lack of or lapses in the system should be seriously kept in mind while making a realistic enquiry or evaluation of the security system of Nepal:

- a. Nepal has not yet adopted a precise and adequate security legislative measure which is necessary for streamlining the system of “chain of command” from the ministerial level to the grassroots security personnel. Of course, this lack of legislation is primarily responsible for a nasty flourishing condition in which whimsical policies and programs often introduced by change of the minister and chief of the security agency occur. The Local Administration Act, 2028 (1971/72), is neither a law for mobilization of security apparatus nor governance of the security institutions. Broadly speaking, this Act is nothing but a compilation of set of provisions regulating procedures to contain ‘riots’ or similar volatile situation. Obviously, what can reasonably be concluded is that ‘the security system and mechanisms’ in Nepal are operated by the whims of the Minister of Home Affairs. The personal dictations of the minister are largely carried out by the security agencies ‘in the name of law and order’.
- b. Even trivial affairs, like promotion and transfer of the security personnel, are directly controlled by the minister. An understanding that they belong to a special type of professional apparatus and thus should be controlled by a defined system of “chain of command” does not generally make sense to the MoHA officials and minister. Generally, neither the minister nor officials of the ministry have specialized professional knowledge and skills of mobilizing the security agencies.¹⁰ The situation is like that “professionals are capped by non-professionals”. MoHA have not been managed by permanent ‘core

⁹. In Nepal, Ministry of Home Affairs is the apex body to design, implement and monitor security policies. The Ministry, generally headed by a senior politician in policy matters and operating in administrative leadership of by the secretary, holds direct control of all security agencies, i.e. Nepal Police, Armed Police Force and National Intelligence Department. The financial resources earmarked for the security system’s operation flows from the Ministry. The national security committee, headed by the minister, comprises of the secretary, chiefs of the security agencies and relevant joint secretaries from MoHA and other concerned ministries. Within MoHA, the division of “Peace and Security” headed by a joint secretary is a responsible unit in the ministry to monitor law and order situation. The frequency of change of the chief of this division is a factor hindering institutional memory of the system. The minister’s personal command counts a lot. The minister on regular basis is involved even in ‘passing an order for arresting or releasing a particular individual’.

¹⁰. MoHA, as security monitoring institution, needs to be specialized institution. The officials of MoHA are supposed to possess a specialized knowledge about planning, implementation and monitoring of nationwide security activities. From the point of view of maintaining need of confidentiality and secrecy of the information, the ministry is supposed to be very sensitive institution. Concerning precise security planning, implementation and monitoring, MoHA must staff professional security experts. The Government does not have a system recruiting specialized human resource in MoHA. The Chief District Officers (CDOs) in the districts are also required to have special knowledge and skills of handling public security system. Reportedly, CDOs have been appointed in 21 districts from other ministers, with no experience of security job in the past.

officials' with security expertise, who are fully aware of essential or fundamental features of a system of "chain of command". Nevertheless, the bureaucrats could learn by experiences while working with the security professionals provided that the 'minister had been prevented from unlimited daily business of the security affairs'. Indeed, the bureaucrats have no voice at all.

- c. The security agencies, on the other hand, do not work in coordination among themselves. Even within the same agency, no culture of coordinating among different functionaries exists. Status egos, unfair competition, secret political connection and most importantly the inherited legacy of the colonial policing are serious hindrances for intra-agency coordination. Consequently, the information gap between varying functionaries constitutes a stumbling block for desired result of the security operation. For an instance, the training is designed by the concerned department without a feasibility study and consultation with the recipient department; the instructors conduct training without being fully informed about the objective of training; the participants are hardly concerned with the methods and objectives; and the impact of training is never evaluated.
- d. Inter-agency coordination is a serious problem too. The National Intelligence Department's information is never known by other agencies. It does not think it useful or necessary to let other agencies know about its intelligence information. No institutional system of informing other agencies of intelligence information exists either. Other agencies have their intelligence departments, but they do not collect information holistically. Consequently, security endeavors are conducted without help of information; the culture of operation conducted on random conjecture is a general practice.

These lapses in the system obviously constitute a cause for host problems facing the security system of Nepal. However, the analytical approach of investigating the problems is generally discarded in Nepal, even by I/NGOs. A deeply rooted culture of seeing all security failures as a failure of the police institution alone is widespread in Nepal. An approach of analyzing the policy lapses and defects is fully overlooked. Moreover, the indicators adopted for enquiry or evaluation of the security lapses or weaknesses are merely confined to the issues of 'compliance of human rights standards, the degree of the use of force, the promptness of the action and the general impact created'. These indicators may be helpful to judge the 'fairness and impartiality' of the given actions, but they cannot answer questions as to why 'security failed to achieve the desired results'.

3. CONCEPTUAL PROBLEMS OF PUBLIC SECURITY SYSTEM IN NEPAL

The security system of any country or society has at least four major functions to effectively carry out: (i) prevention of crime; (ii) detection of crime; (iii) providing emergency assistance to the public when necessary; and (iv) maintaining- and, when necessary, restoring- order. These functions also constitute indicators to form an opinion on effectiveness of the security system. The role of police in prevention of crimes is very limited. The empirical studies in USA and many other developed countries demonstrate lack of correlation between increase in the strength

or modernization of security institutions and decrease in crime rates.¹¹ Crimes in any society originate owing to many factors, the socio-economic and political transition being only one important factor. Undoubtedly, the transformation of transition is a political function; no security system alone and effectively address 'insecurity problems' arisen due to transition. Though effectiveness of deterrence is important to prevent crime, its impact is limited. In USA and many other western developed countries, for instance, the problem increase in crimes continued to rise despite increase in police human resource and installation of sophisticated equipments. The simple answer is that the crime is caused and affected by a number of social factors other than those related to police presence and performance.¹² It implies that the prevention of crime is not exclusively a function of police. In the present scenario of Nepal, the police institutions are criticized particularly for failure of this function. Needless to say, however, the fingers should not forget to point out to the political agencies, the political parties in general and the Home Ministry in particular. The information dissemination system too has a serious failure in this regard. The media has failed to point out to the mischievous roles of political actors in promoting crimes. As we all aware, no political party has adopted a policy of discarding violence and unconditionally extend support to the security agencies to prevent crimes. The youth wings of political parties in greater or smaller degree have taken laws in hands and used illegal arms in the pretext of security. None of the parties, however, investigated and taken action against a cadre allegedly involved in possessing arms and engaged in committing crimes.

The second and third functions, detection of crimes and criminals and provision of emergency assistance to the public, are indisputably exclusive, with some exceptions, functions of security agencies. The failures in these functions should definitely render them accountable, without any excuse. Yet, they also involve other professional groups, the private security guards, neighborhood security committees, local people's groups, and so on. No security agency can alone work in detection of crimes without help of such stakeholders. The fourth-the maintenance of order- is typically a security function, which needs a high level of intelligence, caliber to analyze facts and situations and dependence on a perfect system of command. The perfection of equipments, adequate operation support and facilities and accurate information are also important factors for success of this function.¹³

As we are aware, all these sectors of security functions are facing problems in Nepal. Institutionally, the security agencies' functional autonomy is seriously jeopardized by an unlimited political interference. Structurally, the security apparatus are plagued by inefficiency, corruption, nepotism and partisan interests. In terms of policy, the security agencies have been dangerously confused about their vision, mission, objectives and operation. A psyche that they are accountable to take any orders of the minister- and to do nothing against the 'interest of Minister's party- has indirectly but virtually crippled all spectrums of security functions in Nepal. This is true in all governments in the past. The present scenario is thus a 'holistic outcome' failure of those four functions. The tendency of looking for solutions only to the police

¹¹ . Klockaras, C.B. 1985. "The Idea of Police". A. James, Series Editor Inciardi, *Law and Criminal Justice*, Series Volume 3: Sage Publications; London.

¹² . See for more detail about the study in Bayley, D.H., 1994. *Police for the future*: oxford University Press; England.

¹³ . The weapons provided to the security personnel are older and inappropriate. Police personnel have not possibility of chasing a criminal with 5 kg heavy rifle. No enough vehicles are provided. The fuel supplied to a patrolling vehicle is '5 liters' a day, which is hardly enough for 20 k.m. No other facilities are provided for personnel engaged for overnight duty. Why and how they should devote in works then? The State has very little information about it.

institutions is a serious mistake committed by the civil society too. Even donor agencies are confined to 'police institutions' in matters of security analysis reforms. One should not forget that the role of manufacturing company is essentially important for a 'clean bottle of water'- clean bottle itself is not a guarantee of clean water.

The change in the attitude of political parties, civil society and the community at large should be a primary matter of concern in any endeavor devised to strengthen the security system. The increasing violent attitude of the population in Nepal is a serious problem at present. No security system would be effective neglecting this aspect of problem. A few findings of a limited survey conducted by KSL students in Thimi neighborhood are worth mentioning here. (a) Almost over 95% people say that police is ineffective in controlling violence and crimes. (b) Almost same percentage of respondents says, 'They are not responsible for deteriorating situation of security'. However, this was where a crowd of two thousands lynched three youths suspecting that they were kidnappers- in fact they were hooligans. None of these people thought that such violence is a crime in itself. None of them also viewed that there was problem in their behaviors of taking laws in hands. The meaning of democracy is understood by the public a freedom to break the laws. The problem of insecurity thus does not only come from criminals, it comes equally from the non-criminals, the civic population.

The democratization of the security system and building civic awareness of population towards respect of laws are parallelly important programs for preventing crimes and violence. However, none of them are in right position and priority of anyone. The first program is a 'responsibility' of the Government, whereas the second is the responsibility of political parties. The political parties in order to prevent violence have to (a) disarm their youths, (b) develop a culture of negotiation to address the problems, (c) flourish a culture of cooperating with the security personnel in detection of crimes, and (d) educate their supporters to be civically cultured in behaviors. The intervention in the political parties is thus a crucial issue to be addressed by any security program. The democratization of the security system, on the other hand, has to address three essential components:¹⁴ (a) representativeness- the police institution as a service institution must be representative of the community that it serves; (b) responsiveness- the security personnel must be aware and responsive to public needs and expectations; and (c) accountability- the police must be accountable legally, politically and economically, e.g. the police must be accountable to the law, to democratic institutions of governance, and to the taxpayers. These three components are, however, being rapidly destroyed by the unlimited political interference. No security mechanism and performance would be enhanced until and unless the problem of political interference in police activities of crime prevention, detection of crimes, maintenance of law and order and social support to people is stopped.

The interference takes place in the form of (a) transferring a police personnel in his/her place of choice as dictated by a political leader, (b) promotion of the police officer by taking undue advantage- the bribe, (c) using police officer to protect the partisan interest of a political party in power, (d) giving instruction to an police investigator to come to a designed result, in favor or against the person under arrest, and (e) humiliating the officer who does not take illegal command of the leader or minister. Any program about security reform has, therefore, to address these perception problems.

¹⁴. Code of Conduct for Law Enforcement Officials, UN General Assembly resolution 34/169, 17 December 1979, the Preamble.

4. PERFORMANCE EVALUATION GUIDE:

The performance of a security agency is guided by seven vital components.¹⁵ They are: (i) basic values, i.e. the security agency must work on the basis of a service ethic promoting rule of law, be limited by legislation, and involve in negotiation with stakeholders and partners; (ii) staffs, the security force must represent a broad segment of the society; (iii) training, helping officers to provide an efficient, effective, ethical and economic service to their communities; (iv) management, embodying awareness of as well as reflecting human rights practices; (v) operations, which comply with the basis values of the service; (vi) structure, which supports the objectives in the fields of management and support good police practices; and (vii) accountability, transparency and openness to review of practices. These components demand a holistic approach to analysis of the security problems and reforms of the security agencies.

5. CHALLENGES

The planning of any security scheme is dependent on specific analysis of the gape between the ‘dimension of the given insecurity problem and the security strength’. The dimension of the insecurity problem has to be first established in concrete terms. And then the dimension of the problem should be compared with the ‘existing strength of the security apparatus’. This has been a fundamental problem and challenge in the ‘security governance’ of Nepal. Neither there is a culture of analyzing the security threats nor a practice of checking the strength of ‘mechanisms and institutions to face those threats’. In this broader perspective, the following security challenges can be considered as serious ones:

- a. Transition and security systems are mutually affecting factors. The transition may weaken the strength of security apparatus, and the ill-management of the security system may worsen the effect of transition. A badly functioning security system, especially in transition period, functions in a way that it instead of reducing criminality and disorder adds to it.¹⁶ What are the factors that make police apparatus work in that way? There are several factors; the most important one is the failure of police to internalize the need of working democratically and with sense of accountability, responsiveness and being a service rather than a force. This failure is serious challenge for ‘boosting up of the security system in Nepal’. A tendency within the security agencies to appease the leaders is a cancerous culture. To obtain a favor of the leaders, the officials are prepared to do anything, though against the law and moral. A security system built on the values of democracy, accountability, responsiveness and the sense of service rather than force is the only instrument to defy ‘partisan interference’ against institutional autonomy. In informal talks, the higher officials of police often argue that it is simply not possible for police institutions to improve and flourish without change in the mentality of political

¹⁵ . Informal Working Group on Police and Human Rights, paper, presented at the Second Working Conference “Human Rights and Police”-Empowering by Co-operation and Exchange”. Council of Europe, Strasbourg, 8 September 1999.

¹⁶ . Lindholt Lone, 2003. “The Police and Human Rights Transitional Countries: A Legal Analysis” in Lindholt Lone et .al. *Human Rights and the Police in Transitional Countries*: Danish Institute for Human Rights, Kluwer Law International; The Hague.

leaders. This pessimistic notion of outlook can be taken as the biggest challenge facing the security system of Nepal.

- b. No workable security system can be developed unless a theoretical analysis founded on principles and definitions of the role of the police in society, and, to the extent that these ideals are valid, to outline the particular challenges confronting their implementation in societies under transition is fully done. In 2006, Nepal made an advent of drastically changed perspective. The Government of Nepal, however, failed to initiate actions of reforms or changes in the security agencies. An action plan was prepared by the High Level Taskforce in 2065 (2008), and submitted to Government. It, however, never came into consideration of the Government. The security agencies also did not show up interests to get the action plan adopted and implemented. They continued their structure, values and operation styles. What roles they are supposed to play in a transition and to flourish democratic values in society? Neither Home Ministry nor the Police Institutions thought it necessary to answer these questions. They did not think it necessary to bring about changes in institutional mechanism, structural bodies and operating policies of the security agencies. Thus, the stereotyped notion of thinking, planning and operation constitute equally serious challenge to the security system.
- c. The regime of transition needs to be precisely defined for making the security system effectively work. A regime of transition may be defined as “a shift from one set of political procedures from an old pattern of rule to a new one. It is an interval of intense political uncertainty—a struggle between competing political forces over the rules of the political game and for the resources with which the game is played”.¹⁷ Attempt to set up sub or parallel system by competing forces is a major challenge in transition. The legitimate security system of the nation has to be ‘conscious’ and alert to empirically face this situation. It is simply not possible for it to work in the previously existing stereotyped approach, i.e. a system insulated from people and engaged to fulfill interest of the political regime. It must be able to demonstrate that its values and institutions are changed; the accountability to the people and transparency in works are two major indicators as well as instruments to prove the change. The security agencies could succeed to prove to the people that they have changed. The gape between the public confidence and working pattern of the security agencies needs to be pragmatically addressed. The Government could not address this need, and now the same has emerged as a serious challenge.
- d. The transition appears with severe breakdown of the rules established by the previous regime. The new rules are not promptly established. The gape created by such a situation often invites anarchy in certain quarters of the public. The failure to address this situation with prudence and using a reasonable mind makes the security system far behind the groups trying to create anarchy and crimes. The security system in Nepal has not been able to demonstrate that it has vast wealth of institutional prudence and reasonability. Failure in this point aggravates the ‘opportunism’ and ‘corruption’. The functionaries in the institutions in such a situation tend to survive by bribing or influencing political forces. This challenge is indirect but cancerous in nature.

¹⁷ . Bratton M., Walle, N. van de, 1997. *Democratic Experiments in Africa Regime Transition in Comparative Perspective*: Cambridge University Press, England.

Frankly speaking, the security system and agencies of Nepal have been seen abjectly weaker in addressing these challenges. The High Level Task Force, constituted by the previous Council of Ministers, has adequately reflected on these challenges and has also drawn up schemes to clear these inroads. However, the security agencies could not demonstrate a will and strength to get the schemes implemented.¹⁸

6. CONSEQUENCES

The failure in achieving desired public security has been resulted in:

- a. The sophistication in crime patterns and failure in crime investigation and detection of criminals has been increased. The problem of insecurity has thus sharply increased. The confidence of security among the people has deteriorated. The report of the High Level Taskforce for Reforms of Security Agencies, 2065 (2008) and the public security perception of survey of the Saferworld and other organizations have largely indicated to this situation.
- b. The problem corruption and inefficiency along with increasing nexus between criminals and police personnel has become further worse. The widespread coverage of media over the last some years has widely exposed this situation.
- c. The decreasing level of security deterrence and increasing prospect of the induction of new generation of the prospective offenders in crimes is obvious. The constant increase in rise of the crimes is an indicator of decreasing deterrence.
- d. Deepening culture of impunity and criminalization of politics has also become a serious problem too. The criminal justice system has been largely jeopardized.¹⁹
- e. Implausibly big proliferation of weapons has endangered the lives and liberty of common people. Reports of several researches have widely exposed this fact.

7. OPTIONS FOR IMPROVEMENT

Options and possibility for improvement are not yet fully exhausted. The deeper understanding of the challenges faced by the public security system and the sense of increased accountability by

¹⁸. Some of the recommendation made by the Task Force, inter alia, include (a) decentralization of the police powers and institutionalizations with full autonomy (decentralization is necessary to enable local police institutions to devise plan in accordance with the local needs); (b) specialization of functions, with focus on the need of strengthening the capacity of crime detection and investigation; (c) induction of new values and principles in training package in order to make all employees aware of the changed context and necessity of the transformation of the police institutions and attitudes; (d) change the in the legal framework the police is working with; (e) establishment of a tribunal to investigate the violations of disciplinary rules and human rights. A complete plan of action was prepared and submitted to the Government. The Security Agencies were expected to defend the schemes of changes for their institutional autonomy. They however failed to do the same.

¹⁹. See the Interview of the Chief Justice Anup Raj Sharma in www.ekantipur.com/np/news-detail.php?news_id=303390

the Government and political parties to protect the lives and liberty of people and prevent disorder can divert the wrong direction of development. The improvement in the public security system at this point demands political parties and the civil society to start with a 'genuine realization' that they have had mistakes committed in the past. It is difficult to achieve but not impossible. This move should be started by

- a. Creating a consensus among the political parties to constitute a 'Police Service Commission', which may be independently responsible to recruit, promote, transfer and reward and punish. The police institutional autonomy would then be protected. This will open the way for good people to compete fairly and induct to the position of leadership. The system of fair evaluation of the performance would be secured by such a commission.
- b. Emphasizing the need of democratization of the security system and the security apparatus by making them respect human rights and accountable to any violation of human rights and rule of law. For this purpose, the Government must establish an institution to constantly oversee the operations and performance records of the security agencies.
- c. Setting up of an 'adequately equipped department for crime investigation and detection'. This department must be coordinated with National Intelligence Department.
- d. The community policing concept should be developed as a mainstream policy. The level of education of police personnel engaged at operation level must be raised thus they can be able to negotiate problems of security with people or concerned stakeholders.
- e. Border detections wings of the Armed Police Force need to be fully alerted and must be made able take actions against infiltration of crimes and criminals.
- f. The Ministry of Home Affairs need to be restructured with a separate department established in order to handle the security agencies. Such department needs to be co-manned by security officials.
- g. Formulation of a detail code of conducts reflecting on seven components of performance evaluation as discussed above is vital for implementation of all these suggestions.
- h. The professional expertise developed within the security agencies should properly mapped out and enhanced accordingly.

The service conditions and available benefits must be reviewed considering the statutory provision that they are required to provide service all round the day and night. The police service thus cannot be equated with civil service.

8. CONCLUSIONS

- a. The security threat to the life of people by criminal is immensely dangerous. It is a naked fact. The police offices, even in Kathmandu, are not able to properly address the risks posed by criminals to the lives and liberty of citizens. The investigation capacity of police is very weak. The professional investigators are there but their proper utilization is neglected. The political interference by Minister in matters of promotion and transfer of police personnel has destroyed the professional morale of the genuine police personnel. Those who have had no close contact with leaders have bleak chance of getting promoted and

encouraged for good performance. The problem of corruption is serious. The posts of police are in fact auctioned.

- b. On the other hand, the grassroots police personnel are subjected to inhuman treatment in terms of foods, clothing and other facilities. NRS 1400 is given to a constable and head constable as 'ration' per month. He/she is supposed to work 24 hours with this facility. The corruption in matters of supply tender is beyond imagination. The police post is being an 'office of financial gain'. The security of citizens is secondary thing.
- c. The present scenario of the security is extremely vulnerable. The police personnel work merely on conjecture and assumptions. The system of information is totally destroyed or non-existent. The crime intelligence system is virtually paralyzed. The security operations are thus conducted on the basis of random conjecture or assumption. The arrest of a person involved in a crime is merely a chance. The National Intelligence Department has nothing to do with regard to the crime intelligence. This department in the changed context has no work to do. This department does not think that it has a mandate to collect crime intelligence information.
- d. The coordination between security agencies virtually does not exist-except meeting in ministry, assembly in dinner party and so on. While they occasionally meet to discuss security issues, they have no impacts at all. Even though they strongly react and resent to such comments; the reality is nothing else than this.
- e. The crimes in Kathmandu and all parts of the country are seriously increasing. The organized criminal phenomenon is making its strong ground in Nepal.