

THE MISSING PIECE OF THE PUZZLE

Caste Discrimination and the Conflict in Nepal



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Tila village, Rolpa district, March 14, 2005: Hundreds watch a traditional dance performance during a Maoist “cultural program.” Maoists hold programs several times a month, gathering villagers from miles around to educate them about the “People’s War.” Maoist campaigns also include public humiliation and punishment schemes against those who practice caste and gender discrimination. The Maoists particularly target Dalits (so-called untouchables) and women for indoctrination and recruitment.

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I. SUMMARY

On February 1, 2005 King Gyanendra declared a state of emergency in Nepal and vested all executive authority in the monarchy. In a televised address the King cited the former government's poor handling of the Maoist insurgency as an impetus for the takeover. Hundreds of journalists, students, and activists have since been detained. Though the state of emergency has been formally lifted, severe restrictions on the media and civil society remain in place. The royal takeover has ushered in unprecedented international attention to the conflict in Nepal. Through the ongoing efforts of international human rights non-governmental organizations (NGOs), the United Nations (U.N.), and the European Union (EU), Nepal is increasingly under scrutiny for egregious human rights violations committed by state security forces and Maoist insurgents. The international community's response, however, has failed to address caste discrimination as both a root cause and an insidious consequence of the conflict. The caste-based dimension of the conflict is the missing piece of the puzzle. This report highlights the victimization of Dalits or so-called untouchables by the State and by Maoist insurgents in Nepal's decade-old civil war. This focus on caste is not intended to detract from the human rights violations committed against ethnic groups who have been disproportionately impacted by the conflict¹ due to entrenched ethnic discrimination in Nepal.²

¹ See INTERNATIONAL CRISIS GROUP, NEPAL'S MAOISTS: THEIR AIMS, STRUCTURE AND STRATEGY 15 (2005) available at <http://www.crisisgroup.org> (noting that despite the Maoist platform of addressing caste and ethnic discrimination, members of these groups are not involved in high-level decision making processes; and recording accusations that young minority persons are being "used as little more than cannon-fodder") and *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal, Note by the Secretary General*, United Nations General Assembly, 60th session, Agenda Item 73(c), at 14, U.N. Doc. A/60/359 (2005) [hereinafter *Report of the United Nations High Commissioner for Human Rights*] (observing that "In the context of long-standing caste and ethnic discrimination..., Dalits and members of indigenous nationalities experience disproportionately victimization and harassment by State authorities and CPN (Maoist), with the former suspecting the groups to be sympathetic to the insurgency and the latter trying to coerce members of the groups to join or support them. As a result, those who have no such affiliation fall under the suspicion of the security forces and are liable to be particular targets of conflict-related human rights violations"). For information on the role of ethnic discrimination in the causes of the conflict, see JAN HOLLANTS VAN LOOCK & LIZ PHILIPSON, NEPAL: REPORT OF THE EC CONFLICT PREVENTION ASSESSMENT MISSION 4 (2002) (identifying ethnic and caste inequalities as one of a series of "complex interactions" lying at the root of the conflict) available at http://europa.eu.int/comm/external_relations/cpcm/mission/nepal02.htm; INTERNATIONAL CRISIS GROUP, TOWARDS A LASTING PEACE IN NEPAL: THE CONSTITUTIONAL ISSUES 5, 12, 15, 25 (2005) [hereinafter TOWARDS A LASTING PEACE IN NEPAL] available at <http://www.crisisgroup.org> (identifying the challenging of exclusion on the basis of gender, ethnicity and caste as one of three "mutually reinforcing" "interlocking elements" that explains the conflict; and outlining the means by which Maoists have mobilized support through a platform to address grievances of ethnic and caste groups, including through demands for regional autonomy for the former); S. MANSOOB MURSHED & SCOTT GATES, SPATIAL-HORIZONTAL INEQUALITY AND THE MAOIST INSURGENCY IN NEPAL 3,6,8,10 (2003) (describing the ethnic and caste elements of "horizontal inequality" and arguing that there is a key link between inequality and the conflict) available at <http://www.wider.unu.edu/conference/conference-2003-1/conference-2003-1-papers/s%20mansoob%20murshed%20-%20scott%20gates.pdf>.

² See INTERNATIONAL CRISIS GROUP, TOWARDS A LASTING PEACE IN NEPAL, *supra* note 1, at 13 (outlining the general nature of political and social marginalization of low caste and ethnic groups). See also *Report of the United Nations High Commissioner for Human Rights*, *supra* note 1, at 65 (noting the exclusion of these groups from decision-making processes). This inequality derives from several factors, including constitutional arrangements: see INTERNATIONAL CRISIS GROUP, TOWARDS A LASTING PEACE IN NEPAL *supra* note 1, at 14, 18 (discussing the lack of constitutional recognition of inequality and the

The Maoist Insurgency

The civil war in Nepal is marked by widespread insecurity, overt forms of violence and repression, and a systematic curtailment of fundamental liberties. The conflict began as a popular, armed movement amongst CPN-Maoist rebels in the country's western region. The Maoists formally declared the beginning of their "People's War" on February 13, 1996, and formulated their initial goals around moving Nepal away from a Hindu kingdom and towards a more secular republic that committed itself to the principles of gender and caste equality and to addressing centuries-old exploitation of Dalits.

With a population of 4.5 million people, Dalits comprise over 20 percent of Nepal's population. Collectively, Dalits represent 80 percent of the "ultra poor" in Nepal, dramatically increasing their vulnerability to bonded labor, slavery, trafficking, and other forms of extreme exploitation. "Upper-caste" community members force Dalits to live in segregated communities, prevent them from entering public spaces, deny them access to food, water, and land, and relegate Dalits into caste-based occupations considered too "ritually impure" for "higher castes." Dalit women and girls endure the double burden of caste and gender discrimination. They bear the brunt of exploitation and violence and are routinely forced into sex work. Defiance of the proscribed social order is consistently met with punitive violence and social ostracism.

The unchanging plight of Dalits in Nepal is in part a consequence of their lack of representation in Nepal's political landscape. Though they comprise over one-fifth of the population, Dalits are extremely underrepresented in local and national government bodies. In occupying this position of marginalization and disempowerment, Dalits were quickly identified as a base of ready support for the Maoist insurgency; Maoist insurgents have capitalized on caste and gender discrimination in Nepal as a means of legitimizing their armed "revolution."

Early Maoist campaigns included public humiliation and punishment schemes against those who practiced caste and gender discrimination. Maoists punished "upper-caste" community members who prevented Dalits from entering temples, selling their goods, drawing water from public wells, or otherwise subjected them to humiliation or abuse. As one Dalit put it, "They will not allow us to be humiliated. If a [upper-caste] Brahmin abuses us, the Maoists will beat him... The Maoists speak to equality between men. We can go to temple." The insurgency also thrived on government failures. Rampant sexual abuse and exploitation of women by the police, and the subsequent mistrust and distaste for the government amongst rural communities, fueled early support for the Maoist movement in far- and mid-western Nepal.

Armed with the popular support of rural and underrepresented communities, the Maoists began targeting police installations in guerilla-style attacks in order to dismantle the existing, albeit weak, police force and amass a supply of weapons and ammunition. With armed control of the region came extensive political power. In Maoist-controlled districts local government structures were replaced with "people's governments" that assumed state functions. In response to the government's refusal to yield to their demands for a secular government, Maoists dismantled educational and business facilities throughout Nepal. They imposed *bandhs*, or strikes, forcing the closure of schools, roads and businesses; and used homemade socket and

"disfavor[ing]" of ethnic identity via Article 113(3) which bans the registration of parties organized "on the basis of religion, caste, tribe, language or sex").

“pressure cooker” bombs to ravage basic infrastructure, including roads, transmission towers, government offices, power plants, and bridges.

As the Maoists expanded their territorial reach, they were also able to realize the most important component of their insurgency: a “People’s Militia” comprised of thousands of armed fighters. The Maoists once again capitalized on caste and gender discrimination in Nepal by heavily recruiting Dalits and women for their militia. Reports indicate that Maoist indoctrination often included a special emphasis on societal discrimination and oppression of the “lower castes,” as well as the Maoists’ alleged role in liberating them. By some estimates, Dalit women make up 50 percent of the Maoist cadres’ lower ranks. The dismantling of the educational system also has fed large numbers of children into the militia. The mere promise of food is sometimes enough to attract a young Dalit child to join the Maoist army.

Although the Maoists claim political empowerment of Dalits and women as a central tenet of their agenda, their leadership is dominated by upper-caste men; Dalits are relegated to the lower ranks. In effect, Dalits are literally taking the bullets for the Maoist insurgency. The absence of Dalit leaders has also fostered the belief that the Maoist leadership is adopting the same upper-caste dominated leadership model used by mainstream political parties. Coupled with reports that the practice of “untouchability” and sexual abuse against Dalit women persists even within the ranks of the Maoist movement, some speculate that Dalits have begun to feel extremely alienated and underserved by the very movement that purports to liberate them. Dalit civilians also face discrimination and egregious abuses at the hands of Maoists. Maoists openly murder and publicly torture those individuals they have deemed to be adversaries of the “People’s War,” and have ravaged the civilian population throughout the countryside with tactics that include sexual assault and forced overnight stays in Dalit homes.

“War on Terror”

On November 26, 2001, the Nepalese government declared its first state of emergency. Following the announcement, the government deployed 54,000 soldiers from the Royal Nepalese Army (RNA) throughout the country and began to characterize its intensified struggle against the Maoist insurgency as part of the “global war on terror.” Armed with sophisticated weapons acquired through military aid from the U.S., U.K., India, and other countries, and equipped with new antiterrorism legislation that gave them extraordinary powers of arrest and detention, security forces began operating under an unofficial policy of killing all individuals suspected of taking part in the Maoist insurgency. According to Nepal’s National Human Rights Commission, government security forces have engineered more than 2,000 extrajudicial killings since 2001. According to the U.N., Nepal also had the highest number of reported new “disappearances” in the world in both 2003 and 2004.

The militarization of the conflict has exacerbated caste dynamics and the resulting abuses against Dalits in Nepal. The overwhelming majority of senior officers in the RNA continue to hail from “upper-caste” communities. While individual Dalit men and women have actively joined Maoist forces, Dalit communities as a whole are collectively and summarily punished by State agents, even when there is no evidence of their involvement in the insurgency. Caste-based profiling is also a common occurrence at security check posts and during village interrogation round-ups. The burgeoning presence of the police and army in the villages has led to even greater sexual abuse and exploitation of Dalit women. The State has also armed upper-caste village militias—or village defense committees—whose members abuse their power to settle personal scores and target Dalits and religious minorities.

Ultimately, and tragically, the “People’s War” has turned on the very people it purported to empower; Dalits have been victimized by both State forces and Maoists. As a result, the conflict in Nepal has crippled Dalit communities into a state of constant fear and economic deterioration. Already living on the brink of starvation and destitution, Dalit community members have been pushed further into grinding poverty.

In the face of a spiraling human rights crisis in Nepal, international human rights NGOs and the U.N. Commission on Human Rights have issued numerous recommendations addressed to the government of Nepal and the CPN-Maoist leadership to observe and uphold international human rights and humanitarian law. These recommendations must be heeded by all parties to the conflict. In addition, it is imperative that the Nepalese government fulfill its human rights obligations to end caste-based discrimination. The CPN-Maoist must also undertake to respect applicable international standards regarding protection of Dalit human rights. In the absence of such commitments, the conflict will remain unresolved. Meaningful and lasting reform cannot be sustained in the absence of the rule of law and real democratic governance. The Nepalese government must also move quickly to restore all fundamental rights.

Note on Methodology

This report is based on primary research conducted in Nepal over a cumulative period of two-and-a-half years between July 2001 and May 2005. While in Nepal, the researcher visited nearly thirty districts, including those parts of the country most affected by the conflict.³ Through interviews conducted during these visits, as well as informal conversations and observations, the researcher was able to gather information on daily caste-based abuses and on the unique experience of the Dalit community in the conflict in Nepal. The researcher’s findings have been substantiated and corroborated by NGO and media reports, secondary resources, and by reputable human rights activists and experts in Nepal who have been documenting and investigating caste-based abuses in the country for a number of years.

³ Districts visited include Baitadi, Dadeldhura, Kanchanpur, Doti, Kailali, Bardia, Banke, Dang, Kapilvastu, Rupandehi, Palpa, Syangja, Kaski, Nawalparasi, Chitwan, Parsa, Bara, Rautahat, Sarlahi, Mohattari, Dhanusha, Siraha, Saptari, Sunsari, Dhankuta, Morang, Jhapa, and Ilam, as well as the capital city, Kathmandu.

II. CASTE-BASED DISCRIMINATION IN NEPAL

Over 2,000 years old, the caste system is perhaps the oldest surviving social hierarchy in the world.⁴ Though most closely associated with India and with Hinduism, the caste system permeates, to varying degrees, all major religions in the Indian subcontinent and orders persons into caste categories or *varnas* on the basis of ritual purity.⁵ The traditional hierarchy places *Brahmins* (priests and teachers) at the top, followed by *Chetris* (rulers and soldiers) and *Vaisyas* (merchants and traders). *Dalits* or “untouchables” (laborers, cobblers, and manual scavengers) occupy the lowest position within the caste hierarchy.⁶ One’s caste is determined by one’s birth into a particular social group. It is therefore not possible to change one’s caste or move between caste categories.⁷ Caste divisions prevail in housing, employment, marriage, and general social interaction. These divisions are preserved and reinforced through the practice and threat of social ostracism or physical violence.⁸

Because one’s caste can be determinative of one’s occupation, caste discrimination is also referred to as discrimination on the basis of “work and descent.”⁹ Dalits are typically restricted to tasks and occupations that are deemed too “filthy” or “polluting” for “upper-caste” communities. Unlike discrimination on the basis of ethnicity or race, there are almost no physical characteristics that distinguish one caste from another.¹⁰ One’s surname may however give away his or her caste status.¹¹ Where a person presents an unfamiliar last name, he or she may be questioned about his or her caste before further social interaction is possible. Misrepresenting one’s caste may also subject an individual to reprisals.¹²

“Untouchability” and Segregation

The hallmark of the caste system and discrimination against Dalits is the practice of “untouchability.” Based on the belief that Dalits are “polluted,” Dalits are segregated from

⁴ For an overview of caste discrimination in the Indian context, see HUMAN RIGHTS WATCH, *BROKEN PEOPLE: CASTE VIOLENCE AGAINST INDIA’S ‘UNTOUCHABLES’* 23-41 (1999).

⁵ See generally HUMAN RIGHTS WATCH, *CASTE DISCRIMINATION: A GLOBAL CONCERN* 22-24 (2001) [hereinafter HRW, *CASTE DISCRIMINATION*], available at <http://www.hrw.org/reports/2001/globalcaste/index.htm#TopOfPage>.

⁶ In the Indian context, Dalits occupy the “fifth” category, falling outside of the four *varnas*. *Id.* at 5-6. In Nepal, there are only four broad categories, with the fourth category being Dalit or “untouchable.” RUDRA GAUTAM & UMESH UPADHYAYA, *GARBAGE CLEANING COMMUNITY AND CHILD LABOUR IN NEPAL* (2001), available at <http://www.gefont.org/research/sweeper/html/chapter1.htm>. Within the major caste categories there are 25 identified sub-caste groups. HRW, *CASTE DISCRIMINATION*, *supra* note 5, at 7 (2001).

⁷ HRW, *CASTE DISCRIMINATION*, *supra* note 5, at 2 (2001).

⁸ *Id.* at 2.

⁹ See *infra* note 385 and accompanying text.

¹⁰ Although caste discrimination in Nepal resembles caste discrimination in India, the prevalence of northern tribes or “janjatis” is unique to Nepal. Janjatis, who tend to have more Tibetan or Chinese features are considered *Vaisya*, the third *varna* category. While they face discrimination, unlike Dalits they are not considered “untouchable.” RAJENDRA PRADHAN & AVA SHRESTHA, *ETHNIC AND CASTE DIVERSITY: IMPLICATIONS FOR DEVELOPMENT* 3 (Asian Development Bank, Nepal Resident Mission Working Paper No. 4, 2005), available at <http://www.adb.org/Documents/Papers/NRM/wp4.pdf>.

¹¹ Occasionally, upper-caste and Dalit last names overlap. SHADOW REPORT ON FIFTEENTH AND SIXTEENTH PERIODIC REPORT OF GOVERNMENT ON ICERD 10-11 (Bal Krishna Kattel & Kamdev Khanal, eds., 2004), available at <http://www.idsn.org/HRTMCC.doc>.

¹² Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

members of other castes¹³ and are prohibited from touching non-Dalits and their possessions.¹⁴ Dalits are also denied entry into public places, such as hotels, shops, and restaurants.¹⁵ When they are able to enter public restaurants, they are made to drink water from separate glasses, tea from separate tumblers, and eat *daal bhat*¹⁶ from separate plates.¹⁷

The exclusion of Dalits extends to the religious sphere; they are routinely denied entry into “upper-caste” temples.¹⁸ On December 5, 2004, for example, Dalits were beaten by police officers with *lathis*¹⁹ for entering the “upper-caste” Laxmi Banketesh Temple in Bharatpur.²⁰ The Nepalese Constitution, while purporting to abolish caste discrimination, explicitly permits discrimination against Dalits in religious contexts.²¹ The non-discrimination provisions of the Nepal Civil Code also contain an exemption for places of religious practice.²²

Defiance of the proscribed social order is consistently met with punitive violence and social ostracism. In Sindhupalchowk District on May 29, 1999, two Dalits were beaten and forced to pay a total of NRs. 40,000 (\$569.23) in damages after refusing to wash their own dishes at a local tea stall.²³ Strict prohibition on inter-caste marriage, particularly between Dalits and non-Dalits, also helps preserve caste hierarchies.²⁴ These prohibitions are sometimes enforced by punishing entire communities. On January 27, 2004, for example, a young inter-caste married couple was kidnapped by the wife’s “upper-caste” relatives. A mob of 200 “upper-caste” persons then attacked the husband’s Dalit village, destroying all property and forcing all 80 members of

¹³ JANA UTTHAN PRATISTHAN (JUP), DALIT IN NEPAL AND ALTERNATIVE REPORT FOR WCAR 1-2 (2001).

¹⁴ In Nepal’s rural areas, upper-caste individuals may engage in ritual bathing in order to purify themselves following contact with a Dalit or a Dalit’s belongings. The sprinkling of drops of water on impure objects or individuals is also practiced. Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

¹⁵ HRW, CASTE DISCRIMINATION, *supra* note 5, at 12 (2001). Dalits are even excluded from cowsheds and face obstacles selling milk from cows they raise based on a belief that they will pollute the milk. *Id.* at 12 (citing D.B. “SAGAR” BISHWAKARMA, GENERAL COMMENTS OF COUNTRY REPORT FOR THE UNITED NATIONS CONVENTION FOR ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (Paper prepared by the Academy for Public Upliftment for the Ad Hoc Working Group on the Preparation of NGO Country Report Under the U.N. International Convention on the Elimination of All Forms of Racial Discrimination)).

¹⁶ Rice and lentils, a staple of the Nepalese diet.

¹⁷ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

¹⁸ Laurie Ann Vasily, *Dalits not Allowed*, NEPALI TIMES No. 255, Dec. 10-16, 2004, available at http://www.nepalitimes.com/issue225/nation_2.htm.

¹⁹ Batons.

²⁰ Vasily, *supra* note 18.

²¹ Article 19 of the Constitution provides that “Every person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices.” CONST. OF THE KINGDOM OF NEPAL 2047 (1990) art. 19(1).

²² HUMAN RIGHTS WATCH, DISCRIMINATION AGAINST DALITS IN NEPAL 1 (2004) [hereinafter HRW, DISCRIMINATION AGAINST DALITS], available at <http://hrw.org/english/docs/2004/02/09/nepal7322.htm>.

²³ JANA UTTHAN PRATISTHAN, *supra* note 13, at 27.

²⁴ Dalits who marry outside their caste have reportedly been imprisoned by local authorities after members of the upper-caste families filed false cases against them. HRW, CASTE DISCRIMINATION, *supra* note 5, at 11 (2001) (citing D.B. “SAGAR” BISHWAKARMA, GENERAL COMMENTS OF COUNTRY REPORT FOR THE UNITED NATIONS CONVENTION FOR ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (Paper prepared by the Academy for Public Upliftment for the Ad Hoc Working Group on the Preparation of NGO Country Report Under the U.N. International Convention on the Elimination of All Forms of Racial Discrimination)).

the community to leave the village.²⁵ Such reprisals against Dalit community members are not uncommon, and perpetrators often operate with total impunity. Politicians too have been implicated in violence against Dalits. On October 21, 2003, a member of parliament from Saptari District, along with other “upper-caste” individuals, allegedly beat an 11-year-old Dalit youth and his mother, claiming that their animals were eating his crops.²⁶

Economic Marginalization

Though they comprise over twenty percent of Nepal’s population,²⁷ Dalits possess only one percent of the nation’s wealth.²⁸ Collectively, Dalits represent 80 percent of the “ultra poor” in Nepal, dramatically increasing their vulnerability to bonded labor, slavery, trafficking, and other forms of extreme exploitation. The practice of “untouchability” relegates Dalits into work considered to be “ritually impure,” such as manual scavenging or leather work. Because these professions require the handling of dead animals or human waste, often with one’s bare hands, they further exacerbate restrictions on Dalits’ ability to enter public spaces. Chamar Dalits who live in the Terai region²⁹ of Nepal, for example, are predominantly manual scavengers.³⁰ They are excluded from entry into temples, restaurants, hostels, and milk cooperatives because they are considered impure from handling animal remains. Dalits are also denied adequate compensation for this work, resulting in severe and disproportionate economic vulnerability.³¹

Landlessness and Bonded Labor

Caste discrimination has denied Dalits land ownership and usage. While a great number of Nepal’s agricultural laborers are Dalit, very few of them can claim ownership of land. Together, Dalits own just one percent of Nepal’s arable land, while only three percent of Dalits own more than a hectare of land.³² As a result, squatter colony inhabitants and landless bonded laborers are overwhelmingly Dalit. In the mid-western and far western hills, bonded agricultural laborers, or *Haliyas*, hail mainly from “untouchable” castes. Dalits are charged much higher interest rates on loans from landlords than are their “upper-caste” counterparts. Such discrimination is intentionally designed to keep alive a system of debt bondage and free farmhands for cultivation of “upper-caste” lands.³³

²⁵ Press Release (Urgent Appeal), Asian Human Rights Commission, The Dalit Community in Saptari District was Attacked Due to an Inter-caste Marriage and the Couple was Kidnapped (Feb. 13, 2004), at <http://www.ahrchk.net/ua/mainfile.php/2004/613/>.

²⁶ HRW, DISCRIMINATION AGAINST DALITS, *supra* note 22, at 6.

²⁷ The list of Dalit groups is still provisional as there remains some controversy over whether to include some groups into the Dalit category. Dalit NGOs have claimed that the Dalits comprise between 20 and 25 percent of the population. The government census of 2001, in contrast, has estimated the Dalit population at 13 percent—an inaccuracy cited by Dalit activists as a further example of the government’s discrimination against the Dalit community. Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

²⁸ JANA UTTHAN PRATISTHAN, *supra* note 13, at 8.

²⁹ The Terai refers to Nepal’s lush flatlands which comprise approximately 17 percent of the total surface area of the country. King Mahendra Trust for Nature Conservation, *About Us*, at <http://www.kmtnc.org.np/aboutus.htm> (last visited July 31, 2005).

³⁰ Manvi Shrivastav & Keshav Gautam, *Reflect: A Forum for Dalits to Organize for their Rights in Nepal*, EDUCATION ACTION No. 14, April 2001, available at <http://217.206.205.24/resources/publications/EA14Eng/dalit.htm>.

³¹ HRW, CASTE DISCRIMINATION, *supra* note 5, at 16-17 (2001).

³² *Id.* at 18.

³³ *Id.* at 15.

While the Land Reform Act of 1964 sought to curb excessive landholdings by conferring tenancy rights upon landless individuals, in a bid to avoid conferring these rights onto Dalit community members, powerful landlords dislodged Dalit tenants, compelling them to work as agricultural laborers if they wanted to remain on the land. As a result, a large number of Dalits became landless.³⁴ This mass expulsion from their land, when combined with Nepal's repressive citizenship laws, placed evicted Dalits in a double bind. As ownership of property was a precondition for Nepali citizenship, Dalits who lost their land were also forced to forfeit their citizenship papers.³⁵ As possession of citizenship papers is a precondition for purchasing land,³⁶ evicted Dalits were unable to acquire new land.

The few Dalits fortunate enough to have evaded such restrictions and retained or acquired land are often isolated into one section of a community. The segregation of Dalit land puts Dalits at a significant disadvantage, as does the lack of adequate facilities and resources. In contrast, non-Dalits, who are not subject to this type of segregation, can purchase various plots of land in different parts of the community.³⁷ Erosion, arsenic poisoning, soil quality depletion, and deforestation also disproportionately impact segregated Dalit communities. Non-Dalits, who have diverse landholdings, are not as seriously affected. Additionally, most Dalit families live without toilets and running water.³⁸ As a result, human waste pollutes Dalit land to an extent not experienced by non-Dalits.

³⁴ Vidya Bir Singh Kansakar, *Nepal-India Open Border: Prospects, Problems and Challenges*, ¶ 21, at http://www.nepaldemocracy.org/documents/treaties_agreements/nep_india_open_border.htm (last visited July 31, 2005).

³⁵ *Id.* at ¶ 21. The government changed its policy in 1996 to make it easier for Dalits to acquire citizenship papers without owning land, but many Dalits still lack a certificate. Tek Tamrakar, *Existing Pro-Dalit Policies in Nepal*, WEEKLY TELEGRAPH, Nov. 17, 2004, available at <http://www.nepalnews.com.np/contents/englishweekly/telegraph/2004/nov/nov17/national.htm>. Land ownership also continues to be a pre-requisite for access to basic services, including water, electricity, bank loans, school admission and birth registration. Jagat Basnet, *Land First to Fight Poverty*, KATHMANDU POST, June 9, 2004 (stating that poor people cannot get citizenship certificates), available at <http://www.kantipuronline.com/kolnews.php?&nid=12795>; *Valley's Slum Dwellers in Vicious Trap*, KATHMANDU POST, July 11, 2005, available at <http://www.kantipuronline.com/kolnews.php?&nid=45481>. The government has also proposed a "Land Bank" to assist Dalits and others who are landless. The proposal has yet to be implemented. *Land Bank: Good Concept Awaiting Implementation*, THE RISING NEPAL, Apr. 17, 2005, available at <http://www.gorkhapatra.org.np/pageloader.php?file=2005/04/18/topstories/main12>.

³⁶ Friedrich-Ebert-Stiftung (FES)-Nepal, *Report on Gender Experience Idea-Exchange Programme* (Sept. 26, 2003) (reporting Dr. Krishna Bahadur Bhattachan's explanation that "[o]ne has to have [a] citizenship certificate to own land and vice versa"), at http://www.fesnepal.org/reports/2003/seminar_reports/fes_gender_report.htm; see also CONST. OF THE KINGDOM OF NEPAL 2047 (1990) art. 17(1); Pawan Kumar Ojha, *A Bird's Eye View on the Status of Nepalese Law for Non Resident Nepalese and Their Right to Property Holding in Nepal*, at <http://www.nrn.org.np/speeches/pkojha.html> (last visited July 29, 2005).

³⁷ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

³⁸ Jit B. Gurung, Jit B., *Institutional Contexts of Sustainable Agriculture in Three Agro-Ecological Zones in a District in West-Central Nepal: A Sociological Analysis* 379-80 (unpublished Ph.D. dissertation, University of the Philippines, Quezon City, Manila); TEAM CONSULT, *THE CONDITIONS OF DALITS (UNTOUCHABLES) IN NEPAL: ASSESSMENT OF THE IMPACT OF VARIOUS DEVELOPMENT INTERVENTIONS* 173, 197, 237-238 (1999) (research report submitted to the UNDP in Nepal).

Employment Discrimination

Rampant employment discrimination makes it difficult for Dalits to enter into, much less excel in, non-caste-based occupations. Because Nepal's government is the country's largest employer,³⁹ discrimination in the workplace directly implicates the government. In an International Labor Organization (ILO) study on Nepal, approximately 48 percent of the surveyed Dalits claimed that they would be denied employment due to their caste status even if job openings were available. Twenty-one percent of the respondents reported that they had been refused jobs based on their caste status.⁴⁰ In addition, approximately 71 percent of individuals reported that they are paid lower wages and salaries in both the private and informal sectors.⁴¹ At the time of the study, Dalits received an average of NRs. 96 (about US \$1.23) for a day's work. The mean wage for a female worker was approximately NRs. 78 (about US \$1) while the mean wage for a male worker was approximately NRs. 99.⁴² By contrast, the mean market wage rate for the same kind of job in the general population was around NRs. 105, with women receiving an average of NRs. 88 and men receiving NRs. 111.⁴³

Without viable economic options at home, many Dalits migrate to other countries, particularly India, in search of better employment.⁴⁴ While some are able to send money to their families back home, many Dalits return with even more debt, handicapped by the high interest loans obtained from non-Dalit lenders in the community to fund the overhead expenses of foreign employment. Meanwhile, Dalit women experience aggravated caste discrimination, enslavement and sexual exploitation when Dalit men go abroad,⁴⁵ and Dalits working overseas may continue to experience economic and social discrimination even in the diaspora.⁴⁶

Educational Impediments

Segregation by caste has also compromised the quality and availability of education for Dalit children. In rural areas, Dalits are often made to sit in the back of the classroom and are treated as "untouchable" even by their teachers. Dalit teachers are themselves socially segregated from their non-Dalit colleagues.⁴⁷ While the average literacy rate for Nepal's general population

³⁹ INTERNATIONAL LABOR ORGANIZATION, DISCRIMINATION AND FORCED LABOUR OF OCCUPATIONAL CASTES IN NEPAL 72 (undated) [hereinafter ILO, DISCRIMINATION AND FORCED LABOUR], available at <http://www.idsn.org/ILONepal.doc> (last visited July 31, 2005).

⁴⁰ *Id.* at 72.

⁴¹ *Id.* at 72.

⁴² *Id.* at 73.

⁴³ *Id.* at 73.

⁴⁴ Berit Madsen, *The Life of the Lower Castes in the Western Part of Nepal*, MS NEPAL (undated), at http://www.msnepal.org/stories_articles/dalits/berit_stories/story_2.htm (last visited July 23, 2005); see also DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, IMPLEMENTING THE RURAL ACCESS PROGRAMME NEPAL, LOCAL COMMUNITY PROFILE IN THE RAJPUR-CHAWARACHAUTARA DISTRICT ROAD CORRIDOR, DOTI 4 (May 2003); GERARD J. GILL, SEASONAL LABOUR MIGRATION IN RURAL NEPAL: A PRELIMINARY OVERVIEW 26 (Overseas Development Institute Working Paper 218, May 2003).

⁴⁵ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

⁴⁶ For information on caste discrimination within the Indian diaspora community, see HRW, CASTE DISCRIMINATION, *supra* note 5, at 22-24 (2001).

⁴⁷ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

is estimated to be approximately fifty percent,⁴⁸ only 24.2 percent of all Dalits were literate as of 2001.⁴⁹ According to a 1997 report, there were only two Dalit medical doctors and fifteen Dalit engineers in Nepal, all of whom were male.⁵⁰ As of 2002, not a single Dalit held a leadership position in the Royal Nepal Academy of Science and Technology, an independent institution charged with promoting science and technology in the country.⁵¹ Nor do any Dalits hold an academic or administrative leadership position at Tribhuvan University (one of the country's premier universities).⁵²

Lack of Access to Water, Food, and Healthcare

A lack of access to adequate water supplies is a common casualty of the caste system. Though water scarcity affects many parts of the country, Dalit communities suffer disproportionately because they are denied access to communal water sources for fear that they will "pollute" the water supply. Dalit women and girls are often forced to fetch water from springs located hours away.⁵³ Attempts by Dalits to access non-Dalit natural springs, wells, and hand-pumps are met with ostracism and punitive violence. According to a 2000 report on Dalit children in Nepal, a three-year-old Dalit girl was bitten and thrown into a well for drinking from an "upper-caste" community's water supply in Sindupalchowk district.⁵⁴ In September 2003, a Dalit was attacked and severely beaten by members of an "upper-caste" family for taking water from a community spring.⁵⁵

Schools, particularly in western Nepal, maintain separate wells for Dalit and non-Dalit children. Dalit students found drinking from non-Dalit water taps may face disciplinary sanctions, including corporal punishment, by their teachers, particularly in rural areas.⁵⁶ Development projects may also reinforce caste hierarchies. Drinking water projects often serve non-Dalit communities before reaching the Dalit community, and development plans to increase water access for Dalits are rarely realized.⁵⁷ In part, this is due to a lack of Dalit representation in Village Development Committees.⁵⁸ In 2005 the Supreme Court of Nepal found that the State was promoting the distribution of separate taps for Dalits and non-Dalits and ordered the

⁴⁸ UNESCO INSTITUTE OF STATISTICS, YOUTH (15-24) AND ADULT (15+) LITERACY RATES BY COUNTRY AND BY GENDER FOR 2000-2004," (Sept. 2004), *available at* http://www.uis.unesco.org/TEMPLATE/html/Exceltables/education/Literacy_National_Sept04.xls.

⁴⁹ SUSHAN ACHARYA, DEMOCRACY, GENDER EQUALITY AND WOMEN'S LITERACY: EXPERIENCE FROM NEPAL 12, tbl.1 (UNESCO Kathmandu Series of Monographs and Working Papers No. 1, 2004), *available at* <http://unesdoc.unesco.org/images/0013/001386/138638e.pdf>.

⁵⁰ Hira Vishwakarma, *Reservations for Nepal's Dalits*, KATHMANDU POST REV. OF BOOKS, July 27, 1997, *available at* <http://www.asianstudies.emory.edu/sinhas/kprb0207.html>.

⁵¹ ILO, DISCRIMINATION AND FORCED LABOUR, *supra* note 39, at 55.

⁵² As of 1999, only one Dalit held a leadership position in the Nepal's Teachers' Association and none held such positions in the Nepal College Teachers' Association, the Nepal National Teachers' Organization, or in any civil society organizations including the Nepal Bar Association or the Nepal Federation of Journalists. As of 2002, no Dalit held a leadership position in the Nepal Medical Association, Nepal Engineering Association, Nepal Nursing Association, or the Society of Nepalese Architects. *Id.* at 55.

⁵³ See JANA UTTHAN PRATISTHAN, *supra* note 13, at 24.

⁵⁴ Padma Lal Bishwakarma, Concern Nepal, Bal Adhikar ra Dalit Balbalika [Child Rights and the Rights of the Dalit Children] (2000), *cited in* JANA UTTHAN PRATISTHAN, *supra* note 13, at 25.

⁵⁵ HRW, DISCRIMINATION AGAINST DALITS, *supra* note 22, at 3.

⁵⁶ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

⁵⁷ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

⁵⁸ See *infra* notes 87-94 and accompanying text.

defendants “not to discriminate in distribution of drinking water and to increase awareness against caste discrimination.”⁵⁹

Dalits in Nepal are disproportionately malnourished as compared to the rest of the population. As a consequence of being denied water and land, they are unable to produce sufficient or nutritious food. In rural areas in particular, even those with adequate purchasing power often encounter problems buying higher quality foods from “upper-caste” community members who practice caste discrimination at vegetable markets, meat shops, and dairy cooperatives. Shopkeepers may even refuse to handle money from Dalits or force Dalits to cup their hands in a deferential posture to receive their change without being touched.⁶⁰

The health of Dalits is also consistently compromised by a lack of access to healthcare and by the relegation of Dalits into professions that involve handling human excrement and animal flesh, resulting in greater exposure to disease-causing agents. In addition to occupational hazards, sexual violence against Dalit women⁶¹ and punitive social rituals seeking to “pollute” Dalits also have detrimental consequences on Dalits’ mental and physical health. In some villages, Dalits have been forced to eat human excrement as a form of punishment and humiliation. On April 8, 2003, in Dhanghadi, western Nepal, an upper-caste couple attacked a Dalit neighbor who they claimed was a witch. They held her down, beat her, and force-fed her a paste made of human excrement and chili powder while her children watched. With the assistance of a Dalit NGO, she was later taken to a local hospital where she remained for ten days.⁶²

Dalit Women and Girls: The Double Burden of Caste and Gender Discrimination

Dalit women and girls in Nepal endure the double burden of caste and gender discrimination.⁶³ Dalit women lag far behind Dalit men and “upper-caste” women in terms of healthcare, education, and remuneration for their labor. Dalit women also bear the brunt of exploitation and violence in the country and are largely perceived as being “sexually available” to “upper-caste” men. As a means of crushing political dissent, Dalit women are targeted with impunity by landlords, the police and the army.

According to Durga Sob, President of the Feminist Dalit Organization, Nepal, “Dalit women’s disproportionate and extreme poverty stems from illiteracy, untouchability, physical violence and lack of empowerment. The social scenario has confined them to the lowest paid jobs. Since Dalit women have no economic power in the family, they end up working as labourers but barely earn enough to feed themselves or their families.”⁶⁴ Economic vulnerability,

⁵⁹ Ratna Bahadur Bagchand, *Important Non-discrimination Case Won*, International Nepal Solidarity Network, at <http://insn.org/?p=1097> (May 17, 2005). The case was filed by the Lawyers’ Campaign Against Untouchability (LANCAU-Nepal) against a number of state entities at the national and local level. *Id.*

⁶⁰ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

⁶¹ See *infra* notes 63-86 and accompanying text.

⁶² Dalit Feminist Organization, *Story of Caste Discrimination: Forced to Eat Human Feces*, MANAV ASTITWA Vol. 1, No. 2, Oct. 23, 2003, available at <http://www.ahrchk.net/ma/mainfile.php/0102/36/>.

⁶³ See generally DURGA SOB, FEMINIST DALIT ORGANIZATION (FEDO), DALIT WOMEN IN NEPAL: ISSUES AND CHALLENGES 3 (Working Paper Presented at International Consultation on Caste based Discrimination, Nov. 29-Dec. 1, 2004) [hereinafter DURGA SOB, DALIT WOMEN], at www.idsn.org/c_Sob.pdf.

⁶⁴ *Id.* at 3.

including widespread debt bondage, has also forced Dalit women into prostitution, exposing them to sexual violence and the ensuing health risks.⁶⁵ According to a 1999 Human Rights Watch report:

In *Nepal*, Dalit women are economically marginalized and exploited, both within and outside their families. As the largest group of those engaged in manual labor and agricultural production, their jobs often include waste disposal, clearing carcasses, and doing leatherwork. Despite their grueling tasks and long hours, exploitative wages ensure that Dalit women are unable to earn a subsistence living. In some rural areas Dalit women scarcely earn ten to twenty kilograms of food grain a year, barely enough to sustain a family. Many have been driven to prostitution. One caste in particular, known as *[B]adis*, is viewed as a prostitution caste. Many Dalit women and girls, including those from the *[B]adi* caste, are trafficked into sex work in Indian brothels.⁶⁶

Dalit women are often forced into sex work with truckers, policemen, members of the army, and the general public. As a result, they are particularly vulnerable to contracting HIV/AIDS and other sexually transmitted diseases. The marginalization of Badi women into prostitution was also self-perpetuating due to Nepali laws that until recently⁶⁷ conferred citizenship solely through a father. As Badi-Dalit girls are often born as a result of prostitution, they are unable to identify their fathers and were effectively rendered stateless under these laws. Without citizenship, these girls were neither able participate in the School Leaving Certificate (SLC) exam required for high school graduation nor pursue formal employment.⁶⁸

Dalit women also lag far behind in socio-economic indicators. Literacy rates for Dalit women are substantially below the national literacy rates for women in Nepal. According to a UNESCO report, in 2001, the overall literacy rate for Nepalese women was estimated at 42.5 percent, and only 24.2 percent for Dalit women.⁶⁹ In the Mushahar community, one of the poorest Dalit communities in Nepal, only nine percent of Dalit women were literate.⁷⁰ The

⁶⁵ HRW, CASTE DISCRIMINATION, *supra* note 5, at 21 (2001).

⁶⁶ *Id.* at 21.

⁶⁷ On September 15, 2005, the Supreme Court ordered the government to provide citizenship to children whose fathers are unknown. The Court held that under the Nepalese Constitution, citizenship must be guaranteed to all children in the country, even if he or she was born as a result of rape: see Bhagirath Yogi, *Court ruling for Nepal children*, BBC NEWS, Sept. 16, 2005, at http://news.bbc.co.uk/2/hi/south_asia/4251674.stm. To that end, the Court ordered the government to delete a provision from the Birth and Death Certificate Act that only permitted male guardians to register the birth or death of their children and found that this provision violated Article 11 of the Nepalese Constitution providing for a right to equality: *SC order on citizenship*, THE RISING NEPAL, Sept. 15, 2005, at <http://www.gorkhapatra.org.np/pageloader.php?file=2005/09/16//topstories/main12>. The Supreme Court also instructed the government to: guarantee the rights (including the rights to health and education) of Badi women and their children; and implement the report of a government committee that was formed (on previous court order) to investigate the situation of Badi women and their children: see *SC order on citizenship*, THE RISING NEPAL, Sept. 15, 2005, at <http://www.gorkhapatra.org.np/pageloader.php?file=2005/09/16//topstories/main12>.

⁶⁸ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005). Also known as the “iron gate”, the SLC is an exam taken at the end of 10th grade to move on to higher education. AfterSLC.com, *What After SLC?*, at <http://www.afterslc.com/whatafterslc.htm> (last viewed Aug. 2, 2005).

⁶⁹ ACHARYA, *supra* note 49, at 12, tbl. 1.

⁷⁰ DURGA SOB, DALIT WOMEN, *supra* note 63, at 4.

growth in literacy rates has also been much slower for Dalit women. From 1991 to 2001, literacy among “upper-caste” women increased by 19.2 percent, from 36.7 percent to 55.9 percent. During the same time period, Dalit women experienced only a 12.2 percent increase, from 12 percent to 24.2 percent. Literacy among the Terai Dalit women increased by an even smaller margin of 7.5 percent, rising from four percent to 11.5 percent.⁷¹ According to one estimate, out of a total population of two million Dalit women, only ten to fifteen have a graduate or postgraduate degree.⁷²

Dalit women’s health is considerably compromised by high maternal mortality rates, malnutrition, and poor healthcare associated with extreme poverty.⁷³ The average life expectancy for a Dalit woman is five years lower than the corresponding average for a non-Dalit woman,⁷⁴ and Dalit women are at significantly increased risk of suffering from prolapsed uteruses because of a lack of clean drinking water or toilet facilities in their communities.⁷⁵

Gender development programs and positive discrimination policies rarely work to enhance Dalit women’s opportunities. Section Four of the Constitution provides for directive policies that promote women’s education and socio-economic standing, while Nepal’s Tenth Five-Year Plan includes several policies specifically designed for the economic upliftment of Dalit women. In practice, Dalit women are regularly denied the benefits of these incentives. No Dalit women were represented in the House of Representatives or in the National Assembly, despite constitutional requirements that women constitute a minimum of five percent of all political party candidates⁷⁶ and that three seats on the National Assembly be reserved for women.⁷⁷ Similar levels of exclusion are observed in the education sector: the Ninth Five-Year Plan made it mandatory for each school to have one female teacher,⁷⁸ but Dalit women have not benefited from this requirement.⁷⁹

Discriminatory Laws

Although Nepal ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1991 without reservation,⁸⁰ a study conducted in the year 2000 by the Forum for Women, Law and Development (a Kathmandu-based NGO) identified a total of 118 provisions in Nepalese laws, regulations, and its Constitution that

⁷¹ ACHARYA, *supra* note, 49 at 12, tbl. 1.

⁷² Durga Sob, *Caste and Gender Discrimination against Dalit women in Nepal*, in JANA UTTHAN PRATISTHAN, *supra* note 13, at 54.

⁷³ DURGA SOB, DALIT WOMEN, *supra* note 63, at 7.

⁷⁴ *Id.* at 7.

⁷⁵ *Id.* at 7.

⁷⁶ CONST. OF THE KINGDOM OF NEPAL 2047 (1990) art. 114.

⁷⁷ CONST. OF THE KINGDOM OF NEPAL 2047 (1990) art. 46(1)(b).

⁷⁸ MINISTRY OF EDUCATION (NEPAL), EDUCATION FOR ALL YEAR 2000 ASSESSMENT: NEPAL COUNTRY REPORT (2000), available at http://www2.unesco.org/wef/countryreports/nepal/rapport_1_1.htm.

⁷⁹ DURGA SOB, DALIT WOMEN, *supra* note 63, at 3. Only “high-caste” women have benefited from measures intended to advance the status of women in Nepal. *Id.* According to the ILO, upper-caste parents often refuse to send their children to schools with Dalit teachers. As a result, Dalits face enormous obstacles in obtaining teaching positions. ILO, DISCRIMINATION AND FORCED LABOUR, *supra* note 39, at 106.

⁸⁰ Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 14 (ratified by Nepal May 22, 1991).

discriminate against women in the areas of social, economic, political and family life, including citizenship, inheritance, marriage, adoption, and domestic and foreign employment.⁸¹

Until the Eleventh Amendment of Nepal's Country Code⁸² became law after receiving royal assent on September 26, 2002, parents only had a legal duty to care for their sons.⁸³ The Eleventh Amendment also granted conditional abortion rights and repealed a number of provisions in Nepalese law that discriminated against women, particularly with regard to inheritance and property rights.⁸⁴ Most other discriminatory provisions remain on the books. For instance, the Country Code does not criminalize marital rape⁸⁵ and limits property inheritance to women who are unmarried and over the age of thirty-five. Men have unconditional inheritance rights.⁸⁶ Article 5 of the Constitution allows for a father to vest citizenship onto his children, but does not confer similar rights to a mother.

Even where the law otherwise protects women from discrimination and abuse, women are rarely able to secure adequate legal redress. Women who experience sexual and physical abuse are hobbled by the social stigma associated with bringing cases against family or community members, and as a consequence do not report such incidents or bring them to court. Perpetrators of abuse are seldom punished.

A Lack of Political Representation

The unchanging plight of Dalits in Nepal is in part a consequence of their lack of representation in Nepal's political landscape. Though they comprise over one-fifth of the

⁸¹ FORUM FOR WOMEN, LAW AND DEVELOPMENT, *DISCRIMINATORY LAWS IN NEPAL AND THEIR IMPACT ON WOMEN: A REVIEW OF THE CURRENT SITUATION AND PROPOSALS FOR CHANGE* (2000), available at <http://www.fwld.org.np/dl.html>.

⁸² The Country Code (known as Muluki Ain) contains chapters on substantive criminal and civil law in Nepal.

⁸³ Forum for Women, Law and Development, *Reforms incorporated in the Country Code (Eleventh Amendment) Law* (2002), available at <http://www.fwld.org.np/11amend.html> (last visited July 20, 2005); see also Sanjaya Dhakal, *New Beginning*, NEPALNEWS.COM, Mar. 22-28, 2002, at <http://www.nepalnews.com.np/contents/englishweekly/spotlight/2002/mar/mar22/national3.htm>.

⁸⁴ Women Living Under Muslim Laws, *Nepal: Country Code (eleventh amendment) bill and women's rights* (Mar. 20, 2002), at <http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-3355>. For more information on efforts to pass the Eleventh Amendment to the Country Code, see Legal Aid and Consultancy Center, *Eleventh Amendment of Country Code (Muluki Ain) on Women's Rights* (2002), available at http://www.laccnepal.com/eleventh_amendment.html (last viewed July 20, 2005). The amendment was in response to a 1995 Supreme Court ruling directing the government to amend property laws that discriminated against women. *Id.*

⁸⁵ According to the Supreme Court of Nepal, Provision No. 1 of the Chapter on Rape in the Country Code 1963 defines rape as "the act of having sexual intercourse with a girl, widow or other's wife not attaining the age of sixteen years with or without her consent in whatsoever manner or attaining the age of sixteen years without her consent in whatsoever manner either exerting threat, pressure or coercion or with undue influence." *Forum for Women, Law and Development v. His Majesty's Government*, Writ No. 55 of the year 2058 BS (Supreme Court of Nepal 2002), available at <http://www.fwld.org.np/marrape.html>. While the Supreme Court declared this provision unconstitutional in May 2002 and ordered Parliament to change the provision, the law cannot be changed until the Nepalese Parliament is reinstated. See Rajeev Goyal, *The Landmark Struggle to End Marital Rape in Nepal*, FORUM FOR WOMEN, LAW AND DEVELOPMENT, 2004. See also Ramyata Limbu, *Marital Rape Outlawed by Nepal's Supreme Court*, PANOS-NEPAL, Oct. 1, 2002, available at <http://www.panos.org.uk/newsfeatures/featuredetails.asp?id=1062>.

⁸⁶ *Challenging Nepal's Inheritance Law*, WPRN NEWSLETTER, Jul.-Oct. 1997, available at http://www.aworc.org/bpfa/pub/sec_f/eco00001.html.

population, Dalits are extremely underrepresented in government. Since 1958, only fourteen Dalits in Nepal have become members of parliament (upper house), all of them men. Only one Dalit has been elected to the House of Representatives.⁸⁷ At the time of its dissolution in May 2002, not a single member of the House of Representatives was a Dalit.⁸⁸ Dalits are also absent from Nepal's administrative and judicial system. An 1854 survey revealed that 98 percent of all civil service posts were held by "upper-caste" *Brahmins* and *Chetris*. Not much has changed well over a century later. A 1991 survey indicates that 93 percent of these posts are still held by upper-caste *Brahmins* and *Chetris*.⁸⁹ Over a 137-year period, there was only a five percent increase in Nepal's political diversity.

According to a 2001 study, while *Brahmins* constitute only 16 percent of the population, they represent 57 percent of parliament and 89 percent of the judiciary.⁹⁰ Discrimination also persists in the RNA.⁹¹ This pattern of exclusion is repeated at the local government level, where Dalits are severely underrepresented in the administrative system:⁹² of the more than 3,000 Village Development Committee chairmen, only a handful are Dalits.⁹³

Pervasive control of local and national leadership posts by "upper-caste" members has resulted in wholesale disregard for Dalit issues, while attempts at building effective Dalit political movements are met with punitive violence.⁹⁴ In occupying this position of marginalization and disempowerment, Dalits were quickly identified as a base of ready support for the Maoist insurgency. As detailed in the section below, Maoist insurgents have capitalized on caste and gender discrimination in Nepal as a means of legitimizing and recruiting for their armed revolution.

III. ANATOMY OF THE CONFLICT: 1996-2005

Nepal's civil war began as a grassroots, armed movement amongst CPN-Maoist rebels in the country's western region. The Maoists formally declared the beginning of their "People's

⁸⁷ Padmalal Bishwakarma, Society for the Liberation of Oppressed Dalit Castes, Caste Discrimination and Untouchability Against Dalits in Nepal (2001) (paper prepared for the Global Conference on Caste Discrimination, New Delhi, Mar. 1-4, 2001) (on file with author). More recently, a Dalit was appointed as Zonal Administrator, and three Dalits were appointed to various Assistant Minister posts—two by the former government and one by the present government. Center for Human Rights and Global Justice e-mail communication with Rikke Nohrlind, Coordinator, International Dalit Solidarity Network (August 2005).

⁸⁸ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

⁸⁹ JANA UTTHAN PRATISTHAN, *supra* note 13, at 48.

⁹⁰ Dalit NGO Federation (Nepal), Nepal Alternative Country Report 2001 (paper submitted to United Nations Committee for the Elimination of Racial Discrimination for Asian Regional Preparatory Meetings on the Occasion of the World Conference Against Racial Discrimination 2001, Teheran, Iran, Feb. 17-21, 2001) (on file with author).

⁹¹ See *infra* notes 255-257 and accompanying text.

⁹² HRW, CASTE DISCRIMINATION, *supra* note 5, at 19 (2001).

⁹³ JANA UTTHAN PRATISTHAN, *supra* note 13, at 36. According to an ILO study, an analysis of the 1997 election results from 735 village development committees revealed that "54.42%, 39.86% of the VDC Chairpersons were from the *Bahun/Chhetri* and *Janajati* categories respectively. The Dalits constituted only 1.63% of the 735 VDC Chairpersons. The caste/ethnic composition of the VDC Vice-Chairpersons followed similar proportions (*Bahun/Chhetri*: 52.11%; *Janajati*:37.82%) except that the proportion of the Dalit Vice Chairpersons constitutes 3.95% of the 735 Vice Chairpersons." ILO, DISCRIMINATION AND FORCED LABOUR, *supra* note 39, at 53.

⁹⁴ JANA UTTHAN PRATISTHAN, *supra* note 13, at 27.

War” on February 13, 1996,⁹⁵ and centered their initial vision around moving Nepal away from a Hindu kingdom and towards a more secular republic that committed itself to the principles of gender and caste equality. Their formal agenda was articulated in a “Forty Point Plan.”⁹⁶ Many of the demands, including greater inheritance rights for women,⁹⁷ ending racial and caste discrimination,⁹⁸ and allowing for local autonomy where indigenous groups predominate,⁹⁹ echo the unfulfilled promises set out by the 1990 Nepal Constitution.¹⁰⁰ Other demands, however, far exceed constitutional pronouncements and would, if implemented, fully abolish Nepal’s more than 200-year-old monarchy.¹⁰¹

Building a Base: Early Support for the Maoist Movement

With their promise to bring autonomous rule for tribal groups,¹⁰² the rebels were initially able to garner political and popular support amongst villagers in the rural hillside in mid-western Nepal—specifically amongst the *Magar* tribal group¹⁰³ in Rolpa district.¹⁰⁴ They also built considerable support amongst Dalits and women, as their campaign included public humiliation and punishment schemes against those who practiced caste and gender discrimination. Men who committed sexual abuses against women, squandered money in card games, or behaved like drunkards were humiliated in public view.¹⁰⁵ Similarly, the Maoists punished “upper-caste” community members who prevented Dalits from entering temples, selling their goods, drawing

⁹⁵ DEEPAK THAPA, KINGDOM UNDER SIEGE: NEPAL’S MAOIST INSURGENCY 1996-2003, at 43 (2003).

⁹⁶ The Forty-Point Plan contains the Maoists’ initial core demands. The first nine points demand an end to foreign economic exploitation, depletion of water resources by India, and unregulated movement across the porous India-Nepal border. Points 10 through 26 relate to ending the monarchy and establishing a secular republic in the country, free from social, religious, political, and economic exploitation. The last fourteen points concern livelihood issues, including corruption, debt bondage, and agricultural support for farmers in the country. The Forty-Point Demand of the United People’s Front (Feb. 1996), *reprinted in HIMALAYAN PEOPLE’S WAR: NEPAL’S MAOIST REBELLION* app. A, at 285-87 (Michael Hutt ed., 2004) [hereinafter *HIMALAYAN PEOPLE’S WAR*].

⁹⁷ Point 19: “Patriarchal exploitation and discrimination against women should be stopped. Daughters should be allowed access to paternal property.” The Forty-Point Demand of the United People’s Front pnt. 19 (Feb. 1996), *reprinted in HIMALAYAN PEOPLE’S WAR, supra* note 96, at 286, App. A.

⁹⁸ Point 21: “Discrimination against backward and downtrodden people should be stopped. The system of Untouchability should be eliminated.” The Forty-Point Demand of the United People’s Front pnt. 21 (Feb. 1996), *reprinted in HIMALAYAN PEOPLE’S WAR, supra* note 96, at 286, App. A.

⁹⁹ Point 20: “All racial exploitation and suppression should be stopped. Where ethnic communities are in the majority, they should be allowed to form their own autonomous governments.” The Forty-Point Demand of the United People’s Front pnt. 20 (Feb. 1996), *reprinted in HIMALAYAN PEOPLE’S WAR, supra* note 96, at 286, App. A.

¹⁰⁰ HUMAN RIGHTS WATCH, BETWEEN A ROCK AND A HARD PLACE: CIVILIANS STRUGGLE TO SURVIVE IN NEPAL’S CIVIL WAR 11 n.18 (2004) [hereinafter *BETWEEN A ROCK AND A HARD PLACE*], available at <http://www.hrw.org/reports/2004/nepal1004/index.htm>.

¹⁰¹ *Id.* at 9 (citing *The Historic Initiation and After*, THE WORKER, No. 2 (June 1996)).

¹⁰² Marie Lecomte-Tilouine, *Ethnic Demands within Maoism: Questions of Magar Territorial Autonomy, Nationality, and Class*, in *HIMALAYAN PEOPLE’S WAR, supra* note 96, at 116.

¹⁰³ Though Magars also belong to a traditionally disadvantaged group in Nepal, they are not considered “untouchable.” Magars are one of 59 *janjati* (tribal minority) groups. Like Dalits, they lag behind politically, socially, and economically.

¹⁰⁴ Marie Lecomte-Tilouine, *Ethnic Demands within Maoism: Questions of Magar Territorial Autonomy, Nationality, and Class*, in *HIMALAYAN PEOPLE’S WAR, supra* note 96, at 116.

¹⁰⁵ See Mandira Sharma & Dinesh Prasain, Gender Dimensions of the People’s War: Some Reflections on the Experiences of Rural Women, in *HIMALAYAN PEOPLE’S WAR, supra* note 96, at 156-157.

water from public wells, or otherwise subjected them to humiliation or abuse.¹⁰⁶ As one Dalit put it, “They will not allow us to be humiliated. If a Brahmin abuses us, the Maoists will beat him... The Maoists speak to equality between men. We can go to temple.”¹⁰⁷ The Maoists are also known to give free literacy courses to children and adults, teaching them to read, write and count, so that they are not swindled by merchants.¹⁰⁸

The insurgency has thrived on government failures. As one commentator stated, “The Maoists are the direct result of State corruption and incompetence.”¹⁰⁹ Rampant sexual abuse and exploitation of women by the police, and the subsequent mistrust and distaste for the government amongst rural communities, fueled support for the Maoist movement in far- and mid-western Nepal as well.¹¹⁰ Under the cover of targeting criminal activity, the government launched Operation Romeo in November 1995.¹¹¹ The Operation’s actual agenda, however, was to dislodge the growing foothold of the Maoist movement in the west and resulted in extensive human rights violations against rural populations, including summary executions, forced “disappearances,” and rapes.¹¹² Instead of suppressing the Maoist movement, the Operation’s abusive nature had the opposite effect: it equipped the rebels with a self generating reason for the rural population to disfavor the government and support the insurgency.¹¹³

Taking Control: Maoist Activities in Western Nepal, 1996-2001

Armed with the popular support of rural and underrepresented communities, the Maoists began to exercise political control by targeting police installations and members of the rival Nepali Congress.¹¹⁴ In guerilla-style attacks, the Maoists launched a series of raids on vulnerable police posts in western Nepal in order to dismantle the existing, albeit weak, police force and amass a supply of weapons and ammunition.¹¹⁵ In turn, police officers, who lacked adequate counter-insurgency training, began abandoning their posts at night for fear of further attack.¹¹⁶

External factors also disfavored the police: secluded geographical terrain and a lack of infrastructure for remote communication allowed Maoists to retreat into forests and jungles

¹⁰⁶ Cédric Gouverneur, *Social Inequality, Grinding Poverty, and State Negligence: Nepal, Old-style Maoist Revolution*, THE BLANKET: A JOURNAL OF PROTEST AND DISSENT, Mar. 21, 2004, at <http://lark.phoblacht.net/cgnepal.html>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ ROBERT GERSONY, MERCY CORPS INT’L, SOWING THE WIND: HISTORY AND DYNAMICS OF THE MAOIST REVOLT IN NEPAL’S RAPTI HILLS (Oct. 2003) [hereinafter SOWING THE WIND].

¹¹¹ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 10.

¹¹² *Id.* at 10.

¹¹³ *Id.* at 10-11.

¹¹⁴ Roka, Hari, *The Emergency and Nepal’s Political Future*, in HIMALAYAN PEOPLE’S WAR, *supra* note 96, at 255.

¹¹⁵ For a typical example of attacks and reprisals between the Maoists and security forces, see B. RAMAN, MAOISTS OFFENSIVE IN NEPAL (South Asia Analysis Group Paper No. 274, Jul. 8, 2001), available at <http://www.saag.org/papers3/paper274.html>.

¹¹⁶ Alex Perry, *A Kingdom in Chaos*, TIME ASIA, Jan. 26, 2004, available at http://www.time.com/time/asia/2004/nepal_king/story.html (“police have abandoned 895 stations”); David Rohde, *Youth Ensnared in Nepal’s War With Maoists*, N.Y. TIMES, Dec. 9, 2004, at A1 (observing that Maoists grew by “storming isolated police stations” and seizing abandoned weapons); *Army starts patrolling in Lamjung*, KATHMANDU POST, July 14, 2001 (reporting that all 59 policemen at an isolated post abandoned the station after Maoist threats), available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/jul/jul14/local.htm>.

without police surveillance. In the absence of effective government resistance, and with a growing arsenal of weaponry, the Maoists were quickly able to devastate the government's security system and take control of the western countryside surrounding the district headquarters. It is estimated that between 1996 and 2001, Maoist rebels killed more than five hundred policemen, including a senior superintendent of police (SSP), a district superintendent of police (DSP), and eight inspectors.¹¹⁷

With armed control of the region came extensive political power. A Maoist-imposed boycott of the 1997 elections resulted in a political void in eighty-three Village Development Committees¹¹⁸ in the districts of Rolpa, Rukum, Salyan, and Jajarkot.¹¹⁹ By 2001, the Maoists effectively controlled twenty-two of the seventy-five districts in Nepal.¹²⁰ In Maoist-controlled districts local government structures were replaced with the "people's governments" that assumed State functions.¹²¹ Parallel judicial systems began hearing cases and passing sentences.¹²² At the same time, Maoists took control of existing educational and health facilities and levied "people's taxes."¹²³ As the Maoists built effective government structures, they were also able to realize the most important component of their insurgency: a "People's Militia" comprised of thousands of armed fighters. The Maoists once again capitalized on caste and gender discrimination in Nepal by heavily recruiting Dalits and women for their "People's Militia."¹²⁴

The Conflict Escalates: 2001

The Royal Massacre

In June 2001, Prince Gyanendra Bir Bikram Shah Dev took power, succeeding his brother King Birendra Bikram Shah Dev, under difficult and unusual circumstances. On June 1 Crown Prince Dipendra Bir Bikram Shah Dev, allegedly seized by a drunken rage, massacred most of the royal family, including King Birendra and Queen Aishwarya Rajya Laxmi Devi Shah.¹²⁵ Dipendra then turned the gun on himself¹²⁶ and succumbed to his injuries a few days

¹¹⁷ Sudheer Sharma, *The Maoist Movement: An Evolutionary Perspective*, in HIMALAYAN PEOPLE'S WAR, *supra* note 96, at 50.

¹¹⁸ Nepal is divided into 3,913 Village Development Committees. The Committees are the local arm of the government, responsible for all administrative activity. U.S. DEPT. OF STATE, BUREAU OF SOUTH ASIAN AFFAIRS, BACKGROUND NOTE: NEPAL (2005), available at <http://www.state.gov/r/pa/ei/bgn/5283.htm>.

¹¹⁹ Sudheer Sharma, *The Maoist Movement: An Evolutionary Perspective*, in HIMALAYAN PEOPLE'S WAR, *supra* note 96, at 49.

¹²⁰ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 11-12.

¹²¹ *Id.* at 10-11.

¹²² Sudheer Sharma, *The Maoist Movement: An Evolutionary Perspective*, in HIMALAYAN PEOPLE'S WAR, *supra* note 96, at 47.

¹²³ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 12.

¹²⁴ Rita Manchanda, *Through Maoist Country*, FRONTLINE, Aug. 31-Sept. 13, 2002, available at <http://www.frontlineonnet.com/fl1918/19180640.htm>. See also *infra* notes 2977-301, 335-354 and accompanying text.

¹²⁵ BBC News, Timeline: Nepal, at http://news.bbc.co.uk/1/hi/world/south_asia/1166516.stm (last modified July 26, 2005); *Nepal's Royal Family Slain in Palace 'Massacre'*, CNN.COM, June 2, 2001, at <http://archives.cnn.com/2001/WORLD/asiapcf/south/06/01/nepal.palace.shooting.03/>.

¹²⁶ BBC News, Timeline: Nepal, at http://news.bbc.co.uk/1/hi/world/south_asia/1166516.stm (last modified July 26, 2005); *Nepal's Royal Family Slain in Palace 'Massacre'*, CNN.COM, June 2, 2001, at <http://archives.cnn.com/2001/WORLD/asiapcf/south/06/01/nepal.palace.shooting.03/>.

later.¹²⁷ On June 4 Prince Gyanendra, the sole surviving royal, acceded to throne.¹²⁸ Soon after his accession, rumors began to circulate that Prince Gyanendra engineered the mass murders in a bid to grab power.¹²⁹

The Maoist Offensive

The Maoists capitalized on the increasingly fragile political situation in Kathmandu and the public's shaken confidence in the government.¹³⁰ As their hold and popularity extended throughout the west, the Maoists began strategizing to gain control in the more developed eastern region and Terai and, ultimately, to capture Kathmandu. The conflict quickly escalated from the initial weapons raids on remote and abandoned police posts in the western part of the country to a highly organized, wide-scale insurgency affecting life in the entire nation.¹³¹

In response to the government's refusal to yield to their demands for a secular government, Maoists dismantled educational and business facilities throughout Nepal's seventy-five districts.¹³² They imposed *bandhs*,¹³³ or strikes, forcing the closure of schools, roads and businesses, and used homemade socket and "pressure cooker" bombs to ravage basic infrastructure, including roads, transmission towers, government offices, power plants, and bridges.¹³⁴ Those who violated the strikes experienced fatal reprisals by the Maoists, as did civilians suspected of being informers or political opponents.¹³⁵ Where Maoists garnered almost exclusive control over the district, they engaged in public acts of humiliation and torture against those believed to oppose their insurgency, crushing dissent with virtual impunity. Emboldened

¹²⁷ BBC News, Timeline: Nepal, at http://news.bbc.co.uk/1/hi/world/south_asia/1166516.stm (last modified July 26, 2005); *Nepal's Royal Family Slain in Palace 'Massacre,'* CNN.COM, June 2, 2001, at <http://archives.cnn.com/2001/WORLD/asiapcf/south/06/01/nepal.palace.shooting.03/>.

¹²⁸ BBC News, Timeline: Nepal, at http://news.bbc.co.uk/1/hi/world/south_asia/1166516.stm (last modified July 26, 2005); *Nepal's Royal Family Slain in Palace 'Massacre,'* CNN.COM, June 2, 2001, at <http://archives.cnn.com/2001/WORLD/asiapcf/south/06/01/nepal.palace.shooting.03/>.

¹²⁹ For an interesting analysis of the royal massacre in Nepal, see generally AMY WILLESEE & MARK WHITTAKER, *LOVE AND DEATH IN KATHMANDU: A STRANGE TALE OF ROYAL MURDER* (2003); see also JONATHAN GREGSON, *MASSACRE AT THE PALACE: THE DOOMED ROYAL DYNASTY OF NEPAL* (2002).

¹³⁰ AMNESTY INTERNATIONAL, *REPORT 2002: NEPAL 1* (2002), available at <http://web.amnesty.org/web/ar2002.nsf/asa/nepal?Open>.

¹³¹ Sudheer Sharma, *The Maoist Movement: An Evolutionary Perspective*, in *HIMALAYAN PEOPLE'S WAR*, *supra* note 96, at 39-40, 42. See also *infra* notes 3166-3344 and accompanying text.

¹³² See Sarahana, *Children in Conflict*, SAMUDAYA.ORG, Mar. 2005 (discussing the film *Schools in the Crossfire*, written by Deepak Thapa, forthcoming in 2005, focusing on the effect that the civil war has had on poor rural children, their schools, and their teachers, and the role that each has played in the civil war), at http://samudaya.org/articles/archives/2005/03/children_in_con.php.

¹³³ A "bandh" is a strike closing schools, roads, buses, and businesses. Bandhs can be regional or national. Sometimes bandhs are called to target particular groups or institutions.

¹³⁴ Navin Singh Khadka, *This Land is Mined Land*, NEPALI TIMES, Nov. 21-27, 2003, available at <http://www.nepalnews.com/ntimes/issue171/headline2.htm>; Moti Lal Paudel, *Destitute Children's Home Comes Under Maoist Attack*, KATHMANDU POST, May 19, 2002, available at http://www.kantipuronline.com/archive/kpost/2002-5-19/kp_frontpg.htm; S. CHANDRASEKHARAN, PM DEUBA'S VISIT TO INDIA: TIME TO TAKE STOCK OF THE SITUATION IN NEPAL (South Asia Analysis Group Note No. 238, Sept. 8, 2004), available at <http://www.saag.org/notes3/note238.html>; see also Sarahana, *Children in Conflict*, SAMUDAYA.ORG, Mar. 2005 (discussing the film *Schools in the Crossfire*, written by Deepak Thapa, forthcoming in 2005, focusing on the effect that the civil war has had on poor rural children, their schools, and their teachers, and the role that each has played in the civil war), at http://samudaya.org/articles/archives/2005/03/children_in_con.php.

¹³⁵ *BETWEEN A ROCK AND A HARD PLACE*, *supra* note 100, at 6, 15.

by the extent of their political and arms control, the Maoists executed a coordinated and otherwise unprecedented attack on a Nepali army installation. On November 23, 2001, Maoists killed over eighty members of the security forces in forty-two districts in a single day.¹³⁶ In the days that followed, around 250 people were killed on both sides, signaling a definitive escalation of violence in the conflict.¹³⁷

“War on Terror”: Enter the Army

The Nepalese government quickly responded to the Maoist attacks, strategically characterizing its intensified struggle against the Maoist insurgency as part of the “global war on terror.” On November 26, 2001, a state of emergency was declared pursuant to Article 115 of the Constitution; basic rights and freedoms were suspended.¹³⁸ On the same day, a Terrorist and Disruptive Activities (Prevention and Control) Ordinance (TADO) was promulgated, the CPN-Maoists were declared “terrorists,” and the army was deployed.¹³⁹

Prior to November 2001, the primary force used to resist the Maoists was the police. Armed only with patrol sticks and 1941 .303 Lee Enfield bolt-action rifles, the police forces were ill-equipped for counter-insurgency operations¹⁴⁰ and simply could not restrain the growing strength of the Maoist army. Following the November 2001 Maoist offensive, the government moved to reinforce an overwhelmed police force by committing 54,000 troops from the RNA.¹⁴¹ The RNA also availed itself of the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA), which was enacted into law in April 2002.¹⁴² According to Human Rights Watch:

TADA grants sweeping discretionary powers to the security forces in dealing with anyone deemed to be a terrorist, and provides immunity from prosecution for “any act or work performed or attempted to be performed in good faith while undertaking their duties.” Such a broad grant of immunity has fostered a climate of impunity among the Nepali security forces, in clear violation of Nepal’s international obligation to investigate and punish human rights violations.¹⁴³

¹³⁶ *Id.* at 12.

¹³⁷ Judith Pettigrew, *Living Between the Maoists and the Army in Rural Nepal*, in *HIMALAYAN PEOPLE’S WAR*, *supra* note 96, at 264-265.

¹³⁸ Article 115(1) of the Nepalese Constitution states: “If a grave crisis arises in regard to the sovereignty or integrity of the Kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, His Majesty may, by Proclamation, declare or order a State of Emergency in respect of the whole of the Kingdom of Nepal or of any specified part thereof.” CONST. OF THE KINGDOM OF NEPAL 2047 (1990) art. 115(1).

¹³⁹ AMNESTY INTERNATIONAL, REPORT 2002: NEPAL, *supra* note 130, at 1.

¹⁴⁰ A bolt-action rifle is a single-shot, manually operated fire arm—the archetypical hunting rifle. As a combat weapon, the bolt-action rifle was last used by most modern forces, in a limited role, during World War II. Thomas A. Marks, *Insurgency in Nepal*, FAULTLINES, Feb. 2004, available at <http://www.satp.org/satporgtp/publication/faultlines/volume15/Article1.htm>.

¹⁴¹ *Id.*

¹⁴² Although TADA was initially enacted for a two-year period, it was renewed by royal proclamation. *BETWEEN A ROCK AND A HARD PLACE*, *supra* note 100, at 13 n.27.

¹⁴³ *Id.* at 13.

Extrajudicial Killings and Forced “Disappearances”

The introduction of the RNA, and the declaration of the state of emergency (which remained in effect for nine months)¹⁴⁴ led to a dramatic escalation of human rights abuses in Nepal.¹⁴⁵ According to the National Human Rights Commission of Nepal, government security forces have engineered roughly 2,000 extrajudicial killings since 2001.¹⁴⁶ The scale of executions reflects the State’s unofficial policy to kill all individuals suspected of taking part in the Maoist insurgency without leaving opportunity for further investigation.¹⁴⁷

According to Human Rights Watch, the summary execution of detained civilians is also “troublingly common” in Nepal.¹⁴⁸ This state of lawlessness has infiltrated both the police force and the RNA,¹⁴⁹ and has fostered an environment in which suspected Maoists were, and continue to be, routinely arrested and killed, and then simply listed as “disappeared.”¹⁵⁰ Unrestrained by whatever modest legal protections existed before the state of emergency,¹⁵¹ and equipped with TADA’s extraordinary powers of arrest and detention,¹⁵² State forces have made widespread use of this practice. Suspected Maoists are not the only victims: lawyers, human rights activists, political opponents, journalists, academics and even ordinary civilians have been “disappeared.”¹⁵³

Despite the prevalence of forced “disappearances,”¹⁵⁴ not a single soldier, policeman or state official has been held accountable for these abuses,¹⁵⁵ and the State has generally denied all

¹⁴⁴ The state of emergency was lifted on August 28, 2002. U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES-2002: NEPAL (2003), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2002/18313.htm>.

¹⁴⁵ Judith Pettigrew, *Living Between the Maoists and the Army in Rural Nepal*, in *HIMALAYAN PEOPLE’S WAR*, *supra* note 96, at 264-265.

¹⁴⁶ *BETWEEN A ROCK AND A HARD PLACE*, *supra* note 100, at 27.

¹⁴⁷ AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL’S VISIT TO NEPAL: OFFICIAL STATEMENT 6 (2004) (“The Amnesty International delegation concluded that there is strong evidence to suggest that the security forces, under the unified command of the army, are operating a policy of killing all those suspected of being active Maoists or supporters, even if they are unarmed, or have surrendered or been taken into custody.”), *available at* <http://web.amnesty.org/library/index/engasa310142004>.

¹⁴⁸ *BETWEEN A ROCK AND A HARD PLACE*, *supra* note 100, at 27.

¹⁴⁹ *Id.* at 26, 29.

¹⁵⁰ HUMAN RIGHTS WATCH, *CLEAR CULPABILITY: “DISAPPEARANCES” BY SECURITY FORCES IN NEPAL* 43 (2005) [hereinafter *CLEAR CULPABILITY*], *available at* <http://hrw.org/reports/2005/nepal0205/nepal0205.pdf>.

¹⁵¹ AMNESTY INTERNATIONAL, *NEPAL: WIDESPREAD “DISAPPEARANCES” IN THE CONTEXT OF ARMED CONFLICT* 3 (2003) [hereinafter *WIDESPREAD DISAPPEARANCES*], *available at* [http://web.amnesty.org/library/pdf/ASA310452003ENGLISH/\\$File/ASA3104503.pdf](http://web.amnesty.org/library/pdf/ASA310452003ENGLISH/$File/ASA3104503.pdf).

¹⁵² *BETWEEN A ROCK AND A HARD PLACE*, *supra* note 100, at 64; *CLEAR CULPABILITY*, *supra* note 150, at 3-4; *WIDESPREAD DISAPPEARANCES*, *supra* note 151, at 3.

¹⁵³ *WIDESPREAD DISAPPEARANCES*, *supra* note 151, at 3. According to the United Nations, Nepal earned the dubious distinction of having the highest number of reported new “disappearances” in the world in both 2003 and 2004. *Nepal: Danger of “Disappearances” Escalates*, HUMAN RIGHTS NEWS, Feb. 9, 2005, *available at* <http://www.hrw.org/english/docs/2005/02/09/nepal10152.htm>.

¹⁵⁴ See CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS, QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/2005/65, 23 Dec. 2004, *available at* <http://daccessdds.un.org/doc/UNDOC/GEN/G04/169/65/PDF/G0416965.pdf?OpenElement> (last visited August 5, 2005), paras. 238-249.

¹⁵⁵ *CLEAR CULPABILITY*, *supra* note 150, at 1.

knowledge and responsibility in connection with the killings.¹⁵⁶ Even where the evidence strongly indicates otherwise, the State has consistently asserted that the individuals were Maoist insurgents who were killed in an exchange of fire with security forces.¹⁵⁷ In contrast, individual members of the security forces have been unexpectedly candid about how they treat suspected Maoists, openly declaring that suspects are taken to jail and killed.¹⁵⁸

The Maoists Consolidate Control: 2003 - 2005

In January 2003, after two years of intense fighting, the government of Nepal and the Maoists agreed to their third ceasefire,¹⁵⁹ and both parties pledged to engage in peace talks.¹⁶⁰ The ceasefire broke down in August 2003 after the government refused to agree to key Maoist demands.¹⁶¹ According to the International Crisis Group, the end of the ceasefire was marked by a dramatic upsurge in violence. At least 1,000 people were killed in the ensuing four-month period.¹⁶² Over the next year and a half, the insurgency intensified and protests and other manifestations of intense opposition to the government spread even to Kathmandu. Throughout 2003 and 2004 the Maoists made significant territorial gains and continued to promote their system as a viable alternative to an autocratic king and ineffective political parties.¹⁶³

Maoist Campaign of Public Torture

As the level of abuse by the RNA continued to rise, the Maoists remained equally culpable in terrorizing the civilian population with a campaign of brutal public torture and persecution. Maoists and security forces reportedly took turns patrolling villages—each side accusing villagers of supporting the other and torturing and killing innocent civilians in order to deter sympathy for the other side.¹⁶⁴

¹⁵⁶ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 28.

¹⁵⁷ *Id.* at 28; CLEAR CULPABILITY, *supra* note 150, at 46.

¹⁵⁸ *Id.* at 47-48. A policeman questioned by Human Rights Watch about the treatment of detained Maoists stated, “[W]e take them to jail and then we kill their asses.” *Id.* at 47-48.

¹⁵⁹ AMNESTY INTERNATIONAL, NEPAL: KILLING WITH IMPUNITY (2005) [hereinafter KILLING WITH IMPUNITY], available at <http://web.amnesty.org/library/index/ENGASA310012005>. The first cease-fire lasted from December 1999 to October 2000 and the second from July to November 2001. *Id.*

¹⁶⁰ Suman Pradhan, *Nepal Cease-Fire Declared*, CNN.COM, Jan. 29, 2003, at <http://edition.cnn.com/2003/WORLD/asiapcf/south/01/29/nepal.ceasefire/>.

¹⁶¹ KILLING WITH IMPUNITY, *supra* note 159, at 2.

¹⁶² INTERNATIONAL CRISIS GROUP, NEPAL: MAOIST INSURGENCY, at <http://www.crisisgroup.org/home/index.cfm?id=2929&l=1> (last visited Aug. 2, 2005).

¹⁶³ Will Tuladhar-Douglas, *This Turbulent Monarchy: Nepal and the Shah Dynasty*, ASIAMEDIA, Feb. 17, 2005, at <http://www.asiamedia.ucla.edu/article.asp?parentid=20866>.

¹⁶⁴ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 54 (demonstrating that executions and torture are clearly intended to intimidate communities into supporting Maoists); Open Letter from Catherine Baber, Deputy Program Director of Asian & Pacific Regional Program, Amnesty International, to Lt. Colonel Raju Nepali, Head of Royal Nepal Army Human Rights Cell (June 18, 2004) (discussing reports that the RNA humiliated an UML party member in order to intimidate villagers), available at <http://web.amnesty.org/library/Index/ENGASA311342004?open&of=ENG-NPL>; Online Discussion with Julia Todd, Amnesty International USA Country Specialist for Nepal (June 22, 2005) (describing state’s use of torture to intimidate captives), available at <http://www.amnestyusa.org/askamnesty/live/display.php?topic=37>; U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES-2000: NEPAL (2001) (stating that human rights groups allege state has used arbitrary arrest and detention to intimidate communities considered sympathetic to the Maoists), available at <http://www.state.gov/g/drl/rls/hrrpt/2000/sa/711.htm>.

In contrast to State forces that detain and abuse their victims in secret, Maoists commit summary executions and brutal forms of torture in full public view. By exposing the range of violence and brutality that they are willing and able to commit, Maoists effectively ensure a community's full cooperation while simultaneously eliminating active opponents who would otherwise challenge the movement.¹⁶⁵ As such, Maoists have primarily targeted suspected informants, non-Maoist political activists and officials, academics and teachers, government officials and civil servants, and, occasionally, civilians who have refused extortion demands or have otherwise failed to cooperate.¹⁶⁶ Their intimidation tactics are so effective that these attacks are rarely reported to State officials, making it increasingly difficult to determine the scale and extent of Maoist killings.¹⁶⁷

Ultimately, civilians in Nepal are trapped powerless in the middle of a conflict: caught between extrajudicial killings, forced disappearances, and a virtual lack of accountability on the part of security forces¹⁶⁸ and parallel abuses by the Maoists. Their vulnerability is further exploited by the practice of extracting forced confessions. Maoist insurgents are known to physically torture civilians until they admit to being supportive of the State, while security forces utilize the same methods to extract confessions of Maoist sympathies. State forces often "disappear" or execute suspected Maoists after they have questioned them.¹⁶⁹ Similarly, the Maoists often kill those they detain after they have finished torturing them.¹⁷⁰ Acutely aware that even assuming a neutral stance on the conflict will not ensure against such threats and violence, peaceful villages have been thrust into a constant state of fear and anxiety.¹⁷¹

Children, too, are caught in the middle. Both the Maoists and the security forces have intentionally killed children.¹⁷² According to an Amnesty International Report, the security forces often detain for questioning, and sometimes torture, "disappear" or execute, children they believe to be Maoists or Maoist sympathizers (or who come from Maoist or Maoist sympathizer families).¹⁷³ For their part, Maoists have reportedly targeted the children of security force members in addition to killing and maiming those they suspect to be informers.¹⁷⁴

The Royal Takeover, February 1, 2005

While Maoists were consolidating control over the countryside—and running "people's governments" in 45 of Nepal's 75 districts¹⁷⁵—the government was falling into chaos. In May 2004, then-Prime Minister Thapa, who had been appointed by the King in June 2003, resigned

¹⁶⁵ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 54.

¹⁶⁶ *Id.* at 53, 63.

¹⁶⁷ *Id.* at 53-55. An increasingly difficult dimension of the conflict has been the emergence of so called "fake Maoists" – or petty thieves and other criminals who dress and act like Maoists in order to capitalize on the reputation of the insurgents to extort money from villagers. *Extortionists posing as Maoists arrested*, HINDUSTAN TIMES, Apr. 26, 2005.

¹⁶⁸ See generally CLEAR CULPABILITY, *supra* note 150.

¹⁶⁹ *Id.* at 29, 43; WIDESPREAD DISAPPEARANCES, *supra* note 151, at 5, 6, 37, 38; AMNESTY INTERNATIONAL, NEPAL: A SPIRALING HUMAN RIGHTS CRISIS 24 (2002).

¹⁷⁰ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 53-55.

¹⁷¹ CLEAR CULPABILITY, *supra* note 150.

¹⁷² AMNESTY INTERNATIONAL, NEPAL: CHILDREN CAUGHT IN THE CONFLICT (July 6, 2005) [hereinafter CHILDREN CAUGHT IN THE CONFLICT], available at <http://web.amnesty.org/library/index/engasa310542005>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Aniket Alam, *Abductions, a political message by Maoists?*, THE HINDU, Jan. 23, 2005, available at <http://www.hindu.com/2005/01/23/stories/2005012303061200.htm>.

following weeks of massive street protests.¹⁷⁶ The King appointed Sher Bahadur Deuba—whom the King had dismissed 19 months earlier—as Thapa’s replacement. In August 2004, the Maoists blockaded Kathmandu for a week, effectively blocking supplies from reaching the city.¹⁷⁷ By January 2005, by the government’s own admission, the Maoists controlled the majority of the country outside of Kathmandu,¹⁷⁸ setting the stage for the February 2005 royal takeover.

On February 1, 2005, King Gyanendra dismissed the country’s government, effectively banned political party activity and arrested political leaders. A state of emergency was declared as the King vested all executive authority in the monarchy.¹⁷⁹ In a televised address the King cited the former government’s poor handling of the Maoist insurgency and the government’s inability to meet a deadline for holding national elections as the impetus for the takeover.¹⁸⁰ To preempt any form of resistance, the King shut down all modes of communication, effectively preventing the opposition and the media from publicizing developments internally or internationally. Army trucks lined the streets, flights to the capital were stopped, and phone and internet lines were cut.¹⁸¹

The army surrounded publishing houses and transmission towers to censor any “direct or indirect” criticism of the royal takeover. Within a half an hour of the King’s television appearance, twenty RNA soldiers shut down operations at Kantipur Publications, Nepal’s largest newspaper and television company.¹⁸² On February 2, the media was given notice that it would no longer be permitted to report news that might lower the morale of the security forces or conflict with the “spirit” of the royal takeover.¹⁸³

Activists, journalists, and other critics of the government were detained for questioning.¹⁸⁴ The use of force was also exercised against private citizens and students. Protests on

¹⁷⁶ BBC News, Timeline: Nepal, at http://news.bbc.co.uk/1/hi/world/south_asia/1166516.stm (last modified July 26, 2005).

¹⁷⁷ *Id.*

¹⁷⁸ Dee Aker, Deputy Director of the Joan B. Kroc Institute for Peace and Justice (IPJ), University of San Diego, *IPJ Editorial Statement on Nepal Crisis* (Feb. 10, 2005) (stating that the Maoists control at least 85% of the country), at <http://peace.sandiego.edu/programs/Nepal/nepalcrisis.html>; Aniket Alam, *Abductions, a political message by Maoists?*, THE HINDU, Jan. 23, 2005, available at <http://www.hindu.com/2005/01/23/stories/2005012303061200.htm> (On January 23, 2005 then Deputy Prime Minister Madhav Kumar Nepal was reported as agreeing that there was hardly any district outside Kathmandu where the Maoists had not “terrorized the people into submission.”)

¹⁷⁹ *Nepal’s King Declares Emergency*, BBC NEWS, Feb. 1, 2005, at http://news.bbc.co.uk/2/hi/south_asia/4224855.stm. Press Release, Human Rights Watch, Nepal: Human Rights Concerns for the 61st Session of the U.N. Commission on Human Rights (Mar. 10, 2005), at <http://hrw.org/english/docs/2005/03/10/nepal10297.htm>.

¹⁸⁰ KRISTINE YIGEN, DANISH INSTITUTE FOR HUMAN RIGHTS, ROYAL COUP IN NEPAL (2005), at http://www.humanrights.dk/news/featureuk/nepal_gyanendra/.

¹⁸¹ *Id.*; *Nepal’s King Declares Emergency*, BBC NEWS, Feb. 1, 2005, at http://news.bbc.co.uk/2/hi/south_asia/4224855.stm.

¹⁸² Rita Manchanda, *Royal Coup*, FRONTLINE, Feb. 12-25, 2005, available at <http://www.frontlineonnet.com/fl2204/stories/20050225005612700.htm>.

¹⁸³ NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, SITUATION UPDATE: HUMAN RIGHTS IN NEPAL 4 (2005), available at <http://insn.org/wp-content/050322HumanRightsinNepal.pdf>.

¹⁸⁴ ASIAN CENTER FOR HUMAN RIGHTS, NEPAL: NO TO 100 DAYS OF SOLITUDE- BRIEFING PAPER ON KEY HUMAN RIGHTS CONCERNS IN NEPAL FROM 11-16 FEBRUARY 2005 (2005) (detailing arrests of journalists, human rights activists, academics, and politicians in first two weeks following the royal takeover), available at http://www.achrweb.org/briefingpapers/Nepal-BP-0205_HTML.htm.

campuses and in western Nepal were quickly stifled by armed forces¹⁸⁵ and received little coverage in the censored media. In the resort city of Pokhara, the RNA barred local reporters from reporting on a State attack on student protestors at Prithwi Narayan University in which one student was shot and 58 were detained and beaten.¹⁸⁶

Aggressive control over public dissent became routine in the weeks and months following the King's announcement. On March 1, the Ministry of Information and Communication barred the media from publishing any information on the security situation not specifically approved by State censors.¹⁸⁷ In Kathmandu, the military shut down radio stations, eliminating the primary source of news for most of the population, and issued strict guidelines that have severely restricted newspapers' autonomy.¹⁸⁸ In Nepalganj, the largest city in western Nepal, the military directed civilian authorities to issue the "Twelve Point Guidelines," which prohibit any media criticism of the monarchy or the state of emergency and ban the reporting of any information intended to "demoralize" civil servants.¹⁸⁹

While phone lines, internet connections and flights were restored within a week's time,¹⁹⁰ at this writing, the media continued to be censored.¹⁹¹ The imposition of media restrictions has been accompanied by the unfettered use of state force against protesters or anyone publicizing human rights violations, including abuses by the military.¹⁹² In February 2005 alone, 227 conflict-related deaths were reported, nearly double the monthly average for the conflict.¹⁹³ According to one estimate, security forces killed an average of six civilians each day that month.¹⁹⁴

Hundreds of journalists, human rights activists and students have also been detained and placed in the custody of the government since the takeover.¹⁹⁵ A number of political activists and

¹⁸⁵ Manchanda, *supra* note 182.

¹⁸⁶ *Nepal: Media Blackout Heightens Risk of Abuses*, HURPEC REPORTER, Feb. 17, 2005, at <http://hurpeconline.com/?page=news&id=252>; Manchanda, *supra* note 182.

¹⁸⁷ NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, *supra* note 183, at 4.

¹⁸⁸ *Nepal: Media Blackout Heightens Risk of Abuses*, *supra* note 186.

¹⁸⁹ *Nepal: Media Blackout Heightens Risk of Abuse*, HRW HUMAN RIGHTS NEWS, Feb. 16, 2005, available at <http://hrw.org/english/docs/2005/02/16/nepal10180.htm>.

¹⁹⁰ *Communications Restored in Nepal*, BBC NEWS, Feb. 8, 2005, at http://news.bbc.co.uk/2/hi/south_asia/4245411.stm. As of May 2005, mobile phone services had only been partially restored. Authorities suspect that Maoists have been using mobile phones as part of their insurgency operations. As a result, mobile phone users have had to register their details with authorities.

Communist Leader Freed in Nepal, BBC NEWS, May 2, 2005, at http://news.bbc.co.uk/1/hi/world/south_asia/4504777.stm.

¹⁹¹ From July 10 – 16, 2005, nine international media organizations sent delegates to Nepal to try and dialogue with the government and highlight problems facing journalists in the country. Press Release, World Association of Newspapers, International Media Rights Mission Heads to Nepal (Jul. 8, 2005), at <http://www.wan-press.org/article7679.html>. The delegation concluded that repression of the press was still prevalent and expressed particular concern about the State's treatment of community radio stations. Press Release, World Association of Newspapers, International Media Group Calls for Press Freedom in Nepal (July 18, 2005), at http://www.wan-press.org/article7725.html?var_recherche=nepal.

¹⁹² *Nepal: Media Blackout Heightens Risk of Abuse*, HRW HUMAN RIGHTS NEWS, Feb. 16, 2005, available at <http://hrw.org/english/docs/2005/02/16/nepal10180.htm>.

¹⁹³ NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, *supra* note 183, at 3.

¹⁹⁴ *Id.* at 3.

¹⁹⁵ Press Release (Statement), Asian Human Rights Commission, Immediate Intervention Needed to Save Human Lives in Nepal (Feb. 1, 2005), at <http://www.ahrchk.net/statements/mainfile.php/2005statements/255/>.

human rights defenders have been “disappeared” by State security forces.¹⁹⁶ According to Front Line, an NGO dedicated to the protection of human rights defenders, the capacity of human rights organizations and other associations to function has been severely curtailed “and there is a widespread sense of fear that makes the work of human rights monitoring and reporting difficult if not impossible.”¹⁹⁷ Reportedly, “phone lines are routinely tapped and there is a general assumption that e-mail traffic is also monitored.”¹⁹⁸ Those who try to take action against the regime face reprisals. A lawyer in Surket district, for example, was arrested after filing a torture case.¹⁹⁹

The State’s determination to repress all forms of criticism by any means necessary has bred deep fear and insecurity among activists, journalists, and concerned citizens. In the words of one activist, “The whole country is like a prison. Nobody knows what is happening. When colleagues leave in the morning, we have no idea if they are going to come back.”²⁰⁰ Nicholas Howen, Secretary General of the International Commission of Jurists (ICJ), gave a similar characterization: “Through very selective arrests, selective surveillance, selective late night calls, selective warnings that the King’s proclamation should be read carefully, through selective restrictions banning criticism of the royal proclamation or the actions of the Royal Nepalese Army, the message is very clear that there will be no democratic space.”²⁰¹

Six weeks after the takeover, the Nepal Coalition of Human Rights Defenders reported that 1,481 individuals had been detained—1,436 politicians and 45 journalists and activists²⁰²—while police vans continued to be filled on an almost daily basis with protestors who voiced their dissent against the King. Many activists left the country and others went into hiding.²⁰³ After international pressure by the U.N. Commission on Human Rights,²⁰⁴ the government pledged in early April to end travel restrictions and allow human rights activists to meet detainees.²⁰⁵ Soon thereafter, both promises were broken.²⁰⁶

¹⁹⁶ Press Release (Urgent Appeal), Asian Human Rights Commission, Welcomed Release of Persons Arbitrarily Arrested and Detained by Nepal’s Security Forces, But Much More Must be Done (July 12, 2005), at <http://www.ahrchk.net/ua/mainfile.php/2005/1165/>.

¹⁹⁷ Frontlinedefenders.org, Nepal: Human Rights Defenders Detained, Censored, Harassed and Intimidated, at <http://www.frontlinedefenders.org/news/2008> (last updated May 17, 2005).

¹⁹⁸ *Id.*

¹⁹⁹ AMNESTY INTERNATIONAL, NEPAL: A LONG IGNORED HUMAN RIGHTS CRISIS IS NOW ON THE BRINK OF CATASTROPHE: REPORT OF AMNESTY INTERNATIONAL MISSION TO THE COUNTRY, 10 – 16 FEBRUARY 2005 (2005) [hereinafter AMNESTY MISSION FEB. 2005], available at <http://web.amnesty.org/library/index/engasa310222005>.

²⁰⁰ Amrit Dhillon, *King’s Coup Puts Royal Future of Nepal in Doubt*, SUNDAY TIMES (London), Feb. 6, 2005, available at <http://www.timesonline.co.uk/article/0,,2089-1471923,00.html>.

²⁰¹ *Royal Coup Emboldening Maoists in Nepal, Says International Jurists Body*, ASIAN NEWS INTERNATIONAL, Mar. 17, 2005, available at <http://news.webindia123.com/news/showdetails.asp?id=73728&cat=India>.

²⁰² NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, *supra* note 183, at 3. The Nepal Coalition of Human Rights Defenders was formed after the February 1, 2005 royal takeover. The group is comprised of numerous prominent human rights organizations.

²⁰³ AMNESTY MISSION FEB. 2005, *supra* note 199.

²⁰⁴ See *infra* notes 2455-2555 and accompanying text.

²⁰⁵ AMNESTY INTERNATIONAL, NEPAL: HUMAN RIGHTS ABUSES ESCALATE UNDER THE STATE OF EMERGENCY 8 (2005) (documenting the government’s refusal to allow a senior academic travel to the U.S. on April 10 or to allow a human rights activist to visit a CPN leader under house arrest), available at <http://web.amnesty.org/library/Index/ENGASA310362005?open&of=ENG-NPL>.

²⁰⁶ *Id.* at 8.

Despite domestic and international condemnation of the royal takeover, the King moved slowly to restore basic rights. On April 30, 2005, a full three months after the takeover, the state of emergency was lifted through a short statement issued by the palace.²⁰⁷ The move was viewed by many as a political gesture, aimed at garnering some legitimacy for the government with the international community.²⁰⁸

Though the state of emergency had been lifted, basic civil liberties were not restored. Restrictions on civil society have continued past the lifting of the emergency.²⁰⁹ Prominent human rights activists in the Kathmandu valley have reportedly been restricted from leaving the area.²¹⁰ While some detainees were released in July 2005, according to the Asian Human Rights Commission, more than 3,400 political activists and human rights defenders continue to be detained in facilities across the country.²¹¹ On July 25, in defiance of a ban on protests, a range of civil society actors, including doctors, lawyers, engineers, writers, and artists in Kathmandu demonstrated against the persistent crackdown on civil liberties. Twenty protesters, including two prominent journalists were arrested.²¹²

At the same time, NGO activity is being increasingly restricted. On July 15, 2005, the Nepalese cabinet passed an ordinance to amend the Social Welfare Council Act. According to the amendment, the Social Welfare Council reportedly will soon introduce a new code of conduct to regulate NGOs. Among the many restrictions, the new code of conduct would prohibit NGOs from organizing political programs,²¹³ and would make it even more difficult for NGOs to criticize the government. Against this backdrop of restrictions on the media, all forms of protest, and NGOs, human rights violations have accelerated without any corresponding increase in internal monitoring.²¹⁴

The International Community's Response

Immediately after the royal takeover, international and regional NGOs began calling for U.N. intervention to help prevent further State-sponsored violence, extrajudicial killings, illegal detention, and torture.²¹⁵ The appeals were quickly followed by a condemnation of the

²⁰⁷ BBC News, Timeline: Nepal, at http://news.bbc.co.uk/1/hi/world/south_asia/1166516.stm (last modified July 26, 2005).

²⁰⁸ *Nepal's State of Emergency Ended*, BBC NEWS, Apr. 30, 2005, at http://news.bbc.co.uk/2/hi/south_asia/4500291.stm; *Nepal Lifts State of Emergency*, THE NATION (Pakistan), May 1, 2005, available at <http://nation.com.pk/daily/may-2005/1/international1.php>.

²⁰⁹ NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, *supra* note 183, at 2.

²¹⁰ See Asian Human Rights Commission (AHRIC), Nepal: Restriction of Movement of Activists can Prevent Human Rights Monitoring, UA-106-2005 (June 24, 2005).

²¹¹ Press Release, Asian Human Rights Commission, Urgent Appeal: Welcomed Release of Persons Arbitrarily Arrested and Detained by Nepal's Security Forces, But Much More Must be Done (July 12, 2005), at <http://www.ahrchk.net/ua/mainfile.php/2005/1165/>.

²¹² *Arrests at Nepal Demonstration*, BBC NEWS, July 25, 2005, at http://news.bbc.co.uk/2/hi/south_asia/4716009.stm.

²¹³ Ghanashyam Ojha, *Govt Tightens Screws on HR NGOs*, KATHMANDU POST, July 16, 2005, available at <http://www.kantipuronline.com/kolnews.php?&nid=45920>. See also NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, SITUATION UPDATE: HUMAN RIGHTS IN NEPAL 2 (2005), available at <http://insn.org/wp-content/050322HumanRightsinNepal.pdf>.

²¹⁴ *Nepal: Media Blackout Heightens Risk of Abuse*, HRW HUMAN RIGHTS NEWS, Feb. 16, 2005, available at <http://hrw.org/english/docs/2005/02/16/nepal10180.htm>.

²¹⁵ See, e.g., Press Release, Asian Human Rights Commission, Statement: Immediate Intervention Needed to Save Human Lives in Nepal (Feb. 1, 2005), at <http://www.ahrchk.net/statements/mainfile.php/2005statements/255/>.

emergency by the European Union, which called for the immediate restoration of multiparty democracy in Nepal.²¹⁶ India responded by suspending all military aid, including rifles, helicopters, and mine-protected vehicles,²¹⁷ while European, Indian, and U.S. ambassadors were called back to their countries as a sign of protest.²¹⁸ As discussed below, some of the international community's response has been tempered by the "war on terror" and by other political considerations. Even limited interventions have failed to address caste discrimination as a major cause and consequence of the conflict.

United States, India and China

Until the royal takeover in February 2005, the United States had been uncritically supportive of the Nepalese government. The Bush administration has joined hands with Nepal in placing the Maoist insurgency within the broader context of the global "war on terror,"²¹⁹ and has even suggested that those countries that have expressed reservations about the conduct of Nepal's security forces are soft on terrorism.²²⁰ Unlike India and the U.K., it did not suspend its military assistance program after the royal coup,²²¹ and only temporarily pulled its ambassador from Kathmandu.

Within the international arena, the U.S. has not only refused to join international condemnations of State-sponsored violence in Nepal, but has also actively campaigned against and undermined efforts to address the violence in Nepal.²²² It has failed to recognize and support Nepal's National Human Rights Commission, and blocked efforts to address the civil war at the 60th Session of the U.N. Commission on Human Rights in 2004.²²³ The U.S. explains its refusal to cooperate in international efforts on Nepal by claiming that it has "very good access with the government. So we raise issues privately at various levels, including the highest levels."²²⁴

The U.S. Department of State, however, does continue to detail human rights abuses in Nepal, including violence against Dalits, in its annual Country Report on Human Rights Practices,²²⁵ and the government tempered its support for Nepal in November 2004, when it passed an appropriations bill that placed general human rights conditions on its military aid.²²⁶

²¹⁶ Press Release, Luxembourg Presidency of the Council of the European Union, Declaration of the European Union on the Royal Takeover in Nepal (Feb. 2, 2005), *available at* <http://www.eu2005.lu/en/actualites/pesc/2005/02/02nepal/>.

²¹⁷ The suspension was announced on February 20, 2005. *Nepal Defiant on Military Aid Cut*, BBC NEWS, Feb. 23, 2005, *at* http://news.bbc.co.uk/2/hi/south_asia/4289765.stm.

²¹⁸ Ray Marcelo, *West Recalls Envoys from Nepal*, FINANCIAL TIMES (UK), Feb. 15, 2005, at 8.

²¹⁹ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 20, 79.

²²⁰ *Id.* at 80.

²²¹ AMNESTY INTERNATIONAL, NEPAL: MILITARY ASSISTANCE CONTRIBUTING TO GRAVE HUMAN RIGHTS VIOLATIONS 1 (2005) [hereinafter MILITARY ASSISTANCE], *available at* <http://web.amnesty.org/library/Index/ENGASA310472005>.

²²² BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 79, 81.

²²³ CLEAR CULPABILITY, *supra* note 150, at 75.

²²⁴ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 80 (quoting Patricia Mahoney, first Secretary at the U.S. Embassy in Nepal).

²²⁵ U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES-2004: NEPAL (2005), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2004/41742.htm>.

²²⁶ MILITARY ASSISTANCE, *supra* note 221, at 10-11. The bill stipulated that future U.S. military assistance provided to Nepal through the Foreign Military Financing (FMF) program could be made available upon the U.S. Secretary of State's certification that the Government of Nepal was: (a) identifying and making substantial progress in complying with habeas corpus orders issued by the Supreme Court of Nepal; (b) cooperating with the National Human Rights Commission (NHRC) to identify and resolve all security-

The bill also contains a provision which allows the U.S. Secretary of State to waive the conditions for national security reasons.²²⁷ As of June 14, 2005, the State Department had yet to determine whether these conditions had been met, or whether it would suspend the conditions irrespective of Nepal's progress on human rights.²²⁸ The U.S. also continued to provide military assistance out of the Fiscal Year 2004 budget, as opposed to the Fiscal Year 2005 budget.²²⁹

India represents Nepal's other critical backer. Motivated partly by concern for a burgeoning Maoist presence within its own borders, and cautious that international intervention in Nepal's human rights situation might prompt similar intervention in Kashmir, India has long maintained that the international community should not intervene in Nepal's civil war.²³⁰ India has offered strong and consistent support to Nepal,²³¹ and is suspected of being Nepal's largest supplier of weapons and military training.²³² Although India suspended its military assistance program to Nepal following the takeover in February 2005, the program was reinstated three months later in May 2005.²³³ A number of other countries have also directly supplied arms and military equipment to the Nepalese government or have authorized their domestic companies to do so.²³⁴

Nepal was also on the agenda of a meeting between President Bush and Indian Prime Minister Manmohan Singh on July 21, 2005. According to a White House press release, "Both the United States and India remain committed to seeing a peaceful, prosperous, and democratic Nepal and both firmly believe the government of Nepal needs to reach out to the legitimate political parties to unite on a common agenda to return to democracy and to combat the Maoist insurgency."²³⁵

China has taken a similar approach to India. Publicly, it has assumed a "non-interventionist" stance, characterizing the King's actions as "an internal matter."²³⁶ Since the

related cases involving individuals in government custody; (c) granting the NHRC unimpeded access to all places of detention; and (d) taking effective steps to end torture by security forces and prosecute members of the forces who are responsible for gross human rights violations. The Secretary of State may waive the certification if he determines and reports that it is in the interest of the United States' national security to do so. Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, 118 Stat. 3036.

²²⁷ MILITARY ASSISTANCE, *supra* note 221, at 9.

²²⁸ *Id.* at 9-10.

²²⁹ *Id.* at 9.

²³⁰ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 92.

²³¹ *Id.* at 20, 92.

²³² *Id.* at 92.

²³³ MILITARY ASSISTANCE, *supra* note 221, at 1.

²³⁴ Governments that have directly provided aid include: the United Kingdom (which supplied extensive "non-lethal" equipment including helicopters and in-country military training; Israel (which supplied guns); Belgium (which supplied guns potentially in violation of the EU Code of Conduct); South Africa (which supplied communications equipment although a new law prohibits the government from providing arms if they will be used to perpetuate human rights violations); Kyrgyzstan (which supplied weapons); and Poland (which supplied tactical support aircraft). Governments that authorized private companies to sell weapons and military equipment to Nepal include: the United Kingdom (which has issued 17 licenses to private companies to sell weapons); France, which issued two licenses to private companies to sell weapons; and Austria (which issued a single license to a private company to sell weapons). MILITARY ASSISTANCE, *supra* note 221, at 4, 6; BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 96.

²³⁵ Press Release, U.S. Embassy- Kathmandu, Bush and Singh Discuss Nepal (July 21, 2005), *available at* http://kathmandu.usembassy.gov/pr_07-21-2005.html.

²³⁶ S. CHANDRASEKHARAN, NEPAL TWO WEEKS AFTER THE ROYAL COUP: A REVIEW (South Asia Analysis Group Note No. 254, Feb. 14, 2005), *available at* <http://www.saag.org/%5Cnotes3%5Cnote254.html>.

royal takeover, however, there has been increased evidence of strengthened ties and relations between Beijing and Kathmandu. Four days after the takeover, the King announced a plan to create a second road to China,²³⁷ and on June 16, 2005, the *Himalayan Times* in Kathmandu reported that China had supplied Nepal with five armored personnel carriers.²³⁸ China's support has been linked to the King's decision to close the Office of the Dalai Lama's Representative and the Tibetan Refugee Welfare Office in Kathmandu on January 21, 2005. China had long complained about the presence of the two offices, which worked to assist the approximately 30,000 Tibetan refugees living in Nepal.²³⁹

The European Union

The European Union's record on Nepal could reasonably be considered to be the strongest in the international community—it involved itself in Nepal more forcefully, and at an earlier date, than any other nation or body. While Belgium independently provided Nepal with military support, the EU as a whole rejected Nepali requests for military assistance six times in 2002 alone.²⁴⁰ Moreover, in cooperation with Australia, the EU has been Nepal's National Human Rights Commission's primary financial and diplomatic supporter.²⁴¹

The EU has also used forceful diplomacy to compel Nepal to adequately investigate and deal with some of its more severe human rights violations.²⁴² In particular, the EU convinced Nepal to acknowledge that its soldiers massacred nineteen people at Doramba²⁴³ and to court martial an RNA Major involved in the killings.²⁴⁴ In 2004, EU criticisms and direct diplomatic overtures, combined with its threat to force through a strongly worded U.N. Commission on Human Rights resolution, prompted Nepal to pledge to uphold human rights and abide by international law. The resolution was ultimately downgraded into a Chairperson's Statement that, in addition to condemning Maoist violence, appealed to the government to increase efforts to fulfill its human rights obligations.²⁴⁵ In response, Nepal made a public commitment, spelled out in a twenty-five point plan, to respect human rights.²⁴⁶

²³⁷ S.D. Muni, *The Coup that Confused the World*, THE PIONEER (New Delhi), Feb. 19, 2005, available at <http://www.observerindia.com/analysis/A382.htm>.

²³⁸ *Chinese Arms 'Supplied to Nepal,'* BBC NEWS, June 17, 2005, available at http://news.bbc.co.uk/2/hi/south_asia/4105036.stm.

²³⁹ *Nepal Orders Closing of Dalai Lama's Office in Kathmandu*, ASIAN POLITICAL NEWS, Jan. 31, 2005; Praful Bidwai, *After Nepal's Royal Coup*, COUNTERCURRENTS.ORG NEWSLETTER, Feb. 18, 2005. <http://www.countercurrents.org/nepal-bidwai180205.htm>.

²⁴⁰ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 95.

²⁴¹ *Id.* at 81.

²⁴² *Id.* at 82.

²⁴³ On August 17, 2003, RNA soldiers reportedly surrounded a house where a group of suspected Maoists was meeting in Doramba village. One man was shot dead at the scene while 19 others, including five women, are believed to have been executed at Dandakateri, a hill outside the village. Amnesty International, *Nepal: Human rights abuses rise as conflict continues*, Feb. 2, 2004, available at <http://news.amnesty.org/index/ENGASA31300320042004> (last visited August 5, 2005).

²⁴⁴ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 82.

²⁴⁵ CLEAR CULPABILITY, *supra* note 150, at 75.

²⁴⁶ MILITARY ASSISTANCE, *supra* note 221. In its 25-point 'commitment paper,' the government pledged to safeguard the rights of its people and effectively implement humanitarian laws. When announcing the plan, the government stated that its main focus "will be to protect the rights of all" and to "ensure that nobody is discriminated on grounds of caste, creed, sex, language, ethnicity, physical ability or economic conditions." Among other things, the government committed to: (1) refraining from arbitrarily arresting and detaining anyone; (2) refraining from mentally or physically torturing detainees; (3) abiding by court orders; (4) treating captives and those who surrender in accordance with Article 3 of the Geneva Conventions; (5)

The United Nations

Due in part to the forceful positions of the American and Indian governments, the U.N. failed to instigate any significant action on Nepal until 2004.²⁴⁷ Since that time, the U.N. has taken numerous measures to address the deteriorating situation in Nepal, although notably none of its public statements have ever included commentary on the unique effects of the conflict on Dalit communities.

In December 2004, the U.N. Working Group on Enforced and Involuntary Disappearances visited Nepal²⁴⁸ and met with Nepalese authorities and communicated dozens of complaints and calls for action to the State.²⁴⁹ At the conclusion of its visit, the Working Group expressed its concern at the State's failure to address forced "disappearances."²⁵⁰ The Working Group visit was followed by the High Commissioner for Human Rights' visit in January 2005.²⁵¹

By April 2005 Nepal had yet to implement its twenty-five point plan, and the U.N. Commission on Human Rights adopted a resolution that called upon the authorities "to immediately reinstate all civil and political rights; to cease all State of Emergency related and other arbitrary arrests; to lift the far-reaching censorship; to restore freedom of opinion, expression and the press as well as the freedom of association; to immediately release all detained political leaders and activists, human rights defenders, journalists and others; to allow citizens to enter and exit the country freely and to respect all international and national obligations as well as the 25 points of the commitment of 26 March 2004."²⁵² The resolution also demanded that Nepal clarify the condition and whereabouts of all disappeared individuals; amend security legislation to bring it in line with international law; end the impunity enjoyed by its security forces through immediate and impartial investigations; and initiate criminal prosecutions of security force members where appropriate.²⁵³

Most significantly, in April 2005 Nepal signed a "Memorandum of Understanding" with the Office of the High Commissioner for Human Rights (OHCHR) in which it agreed to set up a U.N. monitoring mission in Nepal, with a mandate to monitor human rights and international law

permitting the International Committee of the Red Cross to visit detention centers; and (6) introducing special programs to protect the rights of women and children. *Government Unveils Dossier on Commitment to Human Rights*, NEPAL NEWS, Mar. 26, 2004, available at

http://www.nepalnews.com.np/archive/2004/mar/arc_mar04_29.htm.

²⁴⁷ MILITARY ASSISTANCE, *supra* note 221, at 9.

²⁴⁸ CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS, QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/2005/65, 23 Dec. 2004, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G04/169/65/PDF/G0416965.pdf?OpenElement> (last visited August 5, 2005), para. 238-249; *see also* MILITARY ASSISTANCE, *supra* note 221, at 9.

²⁴⁹ CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS, QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/2005/65, 23 Dec. 2004, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G04/169/65/PDF/G0416965.pdf?OpenElement> (last visited August 5, 2005), para. 238-249; *see also* CLEAR CULPABILITY, *supra* note 150.

²⁵⁰ CLEAR CULPABILITY, *supra* note 150, at 76.

²⁵¹ MILITARY ASSISTANCE, *supra* note 221, at 9.

²⁵² *Id.* at 9.

²⁵³ *Id.* at 9.

violations.²⁵⁴ Since the office began operations in May 2005, it has worked with local human rights groups to actively monitor the human rights situation in the country.²⁵⁵

While there has clearly been increased attention to human rights in Nepal—through the efforts of the U.N. and the EU in particular—the international community’s response to the crisis has failed to address caste discrimination as a root cause and consequence of the conflict. The caste-based dimensions of the conflict are also largely absent from international NGO reports. The sections below begin to fill these missing pieces of the larger puzzle.

IV. ABUSES AGAINST DALITS BY POLICE AND SECURITY FORCES

Caste Dynamics in the Army

The militarization of the conflict has exacerbated caste dynamics and the resulting abuses against Dalits in Nepal. Historically, the Nepalese army was built around caste lines. In 1768, Nepal’s first monarch, King Prithvinarayan Shah, built an army whose senior ranks were composed almost entirely of “upper-caste” *Chetris* – the warrior caste. “Lower-caste” community members, including Dalits, were excluded. Building on these origins, caste structures persist in the modern army and serve to reinforce discriminatory caste-based practices. The overwhelming majority of senior officers in the RNA continue to hail from the “upper-caste” *Chetri* community.²⁵⁶ Only lower service units contain Dalits. According to one estimate, the “upper castes,” who form only thirty five percent of the general population, constitute 98 percent of all army officers.²⁵⁷ Within this context, Dalits are extremely vulnerable to human rights abuses. *Chetri* officers may be more likely to trust information provided by villagers of their own caste and may be inherently suspicious of and abusive toward Dalit villagers.

Collective Punishment: Attacks on Dalit Communities

Police and security forces regularly assume that Dalit civilians unilaterally support the Maoists. This assumption stems partly from the rhetoric of the Maoist themselves—who, in claiming that they strive to end caste discrimination, also foster the belief that Dalits are natural supporters of the Maoist insurgency. While individual Dalit men and women have actively joined Maoist forces, Dalit communities as a whole are collectively and summarily punished by

²⁵⁴ *Id.* at 9; Press Release, United Nations, Office of High Commissioner for Human Rights Set to Monitor Situation in Nepal (Apr. 11, 2005), *available at* <http://www.unhchr.ch/hurricane/hurricane.nsf/0/A1515914E258F19AC1256FE000439AC5?opendocument>. The OHCHR field office is charged with: engaging with relevant actors to ensure observance with international human rights and humanitarian law; assisting the National Human Rights Commission in fulfilling its mandate; and submitting detailed reports to the U.N. Commission on Human Rights, the Secretary General, and the General Assembly. Office of the United Nations High Commissioner for Human Rights, Human Rights Field Presence in Nepal, *at* <http://www.ohchr.org/english/countries/field/nepal.htm> (last viewed July 23, 2005).

²⁵⁵ Ian Martin, former Secretary General to Amnesty International, heads the office. Press Release, United Nations, UN High Commissioner for Human Rights Appoints Chief for Nepal Monitoring Operation (Apr. 29, 2005), *available at* <http://www.un.org/News/Press/docs/2005/hr4832.doc.htm>.

²⁵⁶ NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, *supra* note 183, at 4. Northern tribes, such as Gurungs, Magars, Rais, and Limbus, are also well represented in the army, though not in the senior ranks. Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

²⁵⁷ Marks, *supra* note 140, at n.8.

State agents, even when there is no evidence of their involvement in the insurgency. Dalit homes are also targeted by security forces following forced home stays by Maoists demanding food and shelter for the night.²⁵⁸

As a result, security forces will seek out Dalit communities and unleash heightened violence and brutality on those sites. This type of targeting is facilitated by the fact that villages with high percentages of Dalit residents are designated as such with a Dalit name. For example, villages with a high population of Dalit tailors will be called “Damai Tol” or “Dalit Tailor Community.” Those villages with a high concentration of Dalit shoe smiths are often called “Sarki Tol” or “Dalit Shoe Smith Community,”²⁵⁹ making it easy for State forces to identify which Dalit-dominated villages.

Dalit homes may also be more vulnerable to confiscation by security forces. In November 2005, for example, in Dullu village, Dailekh district, 18 Dalit families were forced to abandon their homes so that a security base could be set up on their property. Although the government had initially planned to set up the base on the outskirts of the village, local community members reportedly pressured them to take over the Dalit land instead. At this writing, the families had yet to be compensated for their loss.²⁶⁰

Caste-Based Profiling at Security Check Posts

The imposition of the emergency also led to the proliferation of security check posts throughout the country,²⁶¹ and rapidly accelerated the level of interrogations and violence in all aspects of civilian life. Passengers on board buses were often required to get off at each checkpoint and submit to searches of their person and their belongings.²⁶² As the contents of bags were searched, passengers were subject to probing questions in a serious and intimidating manner about their background and purpose in traveling.²⁶³ Sometimes, rather than force people to disembark, an armed police officer or member of the army boards the vehicle and walks slowly down the aisle, making eye contact with each individual and questioning those who seem suspicious. Security forces are usually able to discern a person’s caste from his or her last name or village; and although no groups have extensively documented the rate of incidence, Dalits may face more intrusive questioning at these check posts,²⁶⁴ likely because of their presumed sympathy towards the Maoist movement.

Interrogations are not limited to checkpoints and security posts. RNA officials are a constant presence throughout Nepali villages in Maoist-dominant districts, and residents have

²⁵⁸ See *infra* notes 3066-3099 and accompanying text.

²⁵⁹ Center for Human Rights and Global Justice communication with Kathmandu-based Dalit human rights defender [name withheld] (July 2005).

²⁶⁰ *18 Dalit Families Homeless*, KATHMANDU POST, July 23, 2005, available at <http://www.kantipuronline.com/kolnews.php?&nid=46580>.

²⁶¹ Hotel Association of Nepal (HAN), News and Bulletins (internet bulletin board for individuals intending to travel to Nepal), at

http://www.hotelassociation.org.np/news_detail.php?newsid=1031&news_type=association, last updated March 29, 2004 (last visited August 2, 2005).

²⁶² Mobilisation, Nepal: Winter Outreach Underway!, at <http://www.om.org/features/feature19.jsp> (last visited August 2, 2005).

²⁶³ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

²⁶⁴ *Consequences of Conflict on Dalit Community Muddled*, KATHMANDU POST, Dec. 9, 2003 (quoting Durga Sob), available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2003/dec/dec10/local.htm>.

become accustomed to security forces taking them to camps and barracks for questioning.²⁶⁵ Although removal to the barracks is often veiled as a polite request for the villagers' cooperation, numerous reports have documented extensive human rights violations, including physical and sexual abuse during these interrogations and searches.²⁶⁶ Caste dynamics exacerbate the interrogation experience. Because most officer-level positions are filled by "upper-caste" *Chetris*, Dalits may be intimidated by simply being addressed by them. Yet any indication of undue fear can be interpreted to mean involvement in the Maoist movement, while acting with over confidence may engender resentment by security forces who expect Dalits to submissively adhere to the caste system hierarchy.²⁶⁷ As described in more detail below, Dalit women may be disproportionately affected because they are even more vulnerable to abuse at the hands of "upper-caste" men.²⁶⁸

Dalits are also profiled on the basis of their physical appearance. As detailed above, Dalits are forced into professions that involve rigorous labor or regular contact with human waste and dead animals and lack access to healthcare.²⁶⁹ As a result, they are more likely to succumb to physical injuries and display open sores, cuts, and infections on their person. The presence of physical wounds and scars is often interpreted by security forces as evidence of engagement in combat as part of the Maoist militia.²⁷⁰ Dalit women may also be marked as Maoists based on their appearance and dress.²⁷¹ Maoist women tend to wear simple *kurtas*,²⁷² without *tikkas*²⁷³ or glass bangles.²⁷⁴ In contrast to "upper-caste" women, Dalits dress in a manner similar to the Maoists because they cannot afford adornments or fancier clothing, and as a result, may appear to be Maoists to security forces.²⁷⁵

Sexual Violence against Dalit Women by the Police and Army

Late night intrusion into Dalit homes and sexual abuse by intoxicated police officers was a common experience for many Dalit women even before the Maoist insurgency was officially declared.²⁷⁶ The burgeoning presence of the police and army in the villages since the insurgency, and the subsequent power of the security forces to detain, question, and intimidate rural villagers at will has led to even greater sexual abuse and exploitation.²⁷⁷ In the wake of State resistance to the insurgency, armed forces are unrestrained in entering Dalit homes and victimizing Dalit women. According to a 2005 Amnesty International report, there have been a number of reports

²⁶⁵ Center for Human Rights and Global Justice communication with Kathmandu-based Dalit Human Rights defender [name withheld] (July 2005).

²⁶⁶ AMNESTY MISSION FEB. 2005, *supra* note 199; KILLING WITH IMPUNITY, *supra* note 159.

²⁶⁷ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

²⁶⁸ See *infra* notes 2766-28080 and accompanying text.

²⁶⁹ See *supra* notes 277-31 and accompanying text.

²⁷⁰ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

²⁷¹ Judith Pettigrew, Living Between the Maoists and the Army in Rural Nepal, in HIMALAYAN PEOPLE'S WAR, *supra* note 96, at 273-275.

²⁷² Punjabi style, long simple shirts.

²⁷³ Red vermilion powder applied to the forehead by practicing Hindu women.

²⁷⁴ Also worn by Hindu women.

²⁷⁵ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] August 2005.

²⁷⁶ SOWING THE WIND, *supra* note 110.

²⁷⁷ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] July 2005.

of security forces raping girls during “searches” of villagers’ homes.²⁷⁸ Girls belonging to marginalized communities are particularly vulnerable to attack by the “upper-caste” members of the security forces.²⁷⁹

Women and girls are also abused at security check posts. According to one observer, “The checks are so intrusive that little heed is paid even to the ordinary protocols that govern the public interaction between men and women. The militarisation of the country has gone so far that it now routinely invades the modesty of the village woman.”²⁸⁰ Within a climate that legitimizes violence against anyone believed to be a Maoist sympathizer, sexually abused Dalit women are unable to bring these perpetrators of abuse and sexual violence to justice. Complaints against State forces may be perceived as forms of dissent against the government and the monarchy and may result in further violence and exploitation, both by State authorities and by “upper-caste” civilians. In effect, Dalit women are doubly punished; as “low-caste” women they continue to be easy targets of both sexual abuse and violence. Within the specific context of the conflict, any effort to expose State abuses may result in Dalits being mislabeled as Maoists and ultimately would only invite more abuse.

Attacks by Government-Sponsored Militias: The Village Defense Committees

State forces have also come to rely on “upper-caste” villagers, many of whom are only too cooperative and willing to charge Dalits as Maoist sympathizers, and aid security forces in identifying Dalit homes.²⁸¹ Their support and cooperation extends to explicit coordination with State officials in rooting out “suspected Maoists,” most especially through the use of Village Defense Committees.²⁸²

Village Defense Committees were first introduced by then Prime Minister Sher Bahadur Deuba on November 4, 2003.²⁸³ In an effort to counter the strength of the Maoists, Deuba equipped villagers, most of whom are “upper-caste,” with weapons and ammunition to use against Maoists trying to infiltrate their villages. These armed “village militias” first formed in Sudama village, Sarlahi district,²⁸⁴ and soon emerged in several districts with government support and assistance.²⁸⁵ In Bhajo, in the eastern district of Ilam, for example, a Village Defense Committee was reportedly formed by giving weapons to 30 children, who then underwent training with the RNA.²⁸⁶

Between February 17 and 24, 2005, Village Defense Committees unleashed coordinated attacks in villages throughout Kapilvastu district. On February 18 and 19, villagers in Jabamari

²⁷⁸ AMNESTY INTERNATIONAL, NEPAL: CHILDREN CAUGHT IN THE CONFLICT (July 6, 2005) [hereinafter CHILDREN CAUGHT IN THE CONFLICT], available at <http://web.amnesty.org/library/index/engasa310542005>.

²⁷⁹ *Id.*

²⁸⁰ Hari Roka, *Militarisation and Democratic Rule in Nepal*, HIMĀL, Nov. 2003, available at http://www.himalmag.com/2003/november/perspective_1.htm.

²⁸¹ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

²⁸² NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, *supra* note 183, at 3. Village Defense Committees are sometimes referred to as Village Defense Councils.

²⁸³ HUMAN RIGHTS TREATY MONITORING COORDINATION COMMITTEE (HRTMCC), NEPAL: FACT-FINDING REPORT OF KAPILVASTU INCIDENTS (March 2005).

²⁸⁴ *Id.*; INTERNATIONAL CRISIS GROUP, NEPAL: DANGEROUS PLACE FOR VILLAGE MILITIAS 2 (2004), available at <http://www.reliefweb.int/library/documents/2004/icg-npl-17feb.pdf>.

²⁸⁵ HRTMCC, *supra* note 283.

²⁸⁶ *Id.*

village were beaten to death by armed anti-Maoist groups,²⁸⁷ while on February 23 twenty homes of “Maoist sympathizers” were destroyed in Singokhor, Parshoia and Lalbani.²⁸⁸ Ultimately, thirty-one people were killed – some of whom were burned alive – and 680 homes were burned down by the vigilante groups.²⁸⁹ In retaliation, the Maoists returned to these villages and killed 11 individuals suspected of perpetrating the attacks.²⁹⁰

Inter-caste and inter-religious tensions underlie the use of vigilante violence. “Upper-caste” Hindu villagers armed by the government may be targeting religious minorities and Dalits without any real basis to suspect that they are aligned with the Maoists. The International Crisis Group has warned against this very danger, noting that, “[n]ot only will village militias intensify the civil war, but given the class and ethnic tensions in Nepalese society, weapons in undisciplined villagers’ hands will be misused for personal reasons.”²⁹¹ In Nawalparasi district, members of a village defense committee cut off a Dalit man’s left arm, forced him to eat it, and then shot him.²⁹² The villages attacked in Kapilvastu contained mostly Dalit and Muslim residents, many of whom claimed that they were living there after fleeing from the Maoists.²⁹³ According to a report in the *Nepali Times*, “The... attacks had sinister communal and ethnic overtones against hill settlers. Activists fear the vigilante violence could turn into a... caste war.”²⁹⁴

Despite the violence that has been perpetrated by village defense committees, the State continues to support them, financially and otherwise. Following the Kapilvastu attacks, three senior government officials traveled to Ganeshpur in Kapilvastu to praise the actions of the village defense committees.²⁹⁵ Government spokesperson and Minister for Information and Communications, Kamal Thapa, stated that the government would continue to provide weapons and training to the villagers.²⁹⁶

²⁸⁷ NEPAL COALITION OF HUMAN RIGHTS DEFENDERS, *supra* note 183, at 3.

²⁸⁸ *Id.* at 3.

²⁸⁹ *Id.* at 3.

²⁹⁰ Press Release, AdvocacyNet, Death Squad Warning as Repression in Nepal Deepens (Apr. 25, 2005), available at http://www.advocacynet.org/pr_view/pr_40.html.

²⁹¹ Press Release, International Crisis Group (ICG), Nepal: Dangerous Plans for Village Militias (Feb. 17, 2004) (quoting Robert Templer, Director of Asia Program, ICG), available at <http://www.crisisgroup.org/home/index.cfm?id=2520&l=1&m=1>.

²⁹² Press Release, AdvocacyNet, Death Squad Warning as Repression in Nepal Deepens (Apr. 25, 2005), available at http://www.advocacynet.org/pr_view/pr_40.html.

²⁹³ Aarti Basnyat, *Hope in Kapilbastu*, NEPALI TIMES, June 24-30, 2005, available at <http://www.nepalitimes.com/issue253/nation.htm>. See also Naresh Newar, “We Will Flush Them Out,” NEPALI TIMES, Mar. 25-31, 2005, available at <http://www.nepalitimes.com/issue240/>.

²⁹⁴ Naresh Newar, “We Will Flush Them Out,” NEPALI TIMES, Mar. 25-31, 2005, available at <http://www.nepalitimes.com/issue240/headline.htm>.

²⁹⁵ Thomas Bell, a freelance reporter with London’s *Daily Telegraph*, provided the following account after visiting the area in March 2005:

On 21 Feb, 3 government ministers arrived in Ganeshpur by helicopter and addressed the mob. They were Dan Bdr Shahi (Home, Law and Justice), Ram Narayan Singh (Labour and Transport) and Radha Krishna Mainali (Education and Sport). People present say that they congratulated and encouraged the crowd. Maj Ghale says they received the events of the previous days “in a positive way.” He said the ministers agreed to consider a request by the mob to arm them with shotguns.

E-mail from Thomas Bell, Freelance Journalist, The Daily Telegraph (London), to various recipients (Mar. 12, 2005), available at <http://insn.org/wp-content/BellKapilvastu.pdf>.

²⁹⁶ HRTMCC, *supra* note 283.

V. ABUSES AGAINST DALITS BY MAOIST FORCES

The “People’s Militia”: Dalits on the Frontlines

According to government estimates from 2003, the Maoist “People’s Militia” was composed of approximately 5,500 combatants, 8,000 militia members, 4,500 cadres, and 33,000 followers.²⁹⁷ As noted above, Maoists have recruited heavily among Dalits and women to fill the lower ranks of their army. Dalit men and women, who endure extreme marginalization under the caste system, may experience a feeling of unprecedented authority, control, and empowerment when armed with a weapon. Once drawn in, they are deployed on the frontlines of battle. While it is difficult to assess the number of Dalit deaths from the conflict, a disproportionate number of Dalits may be dying on the frontlines in clashes with security forces as very few assume positions of authority or decision-making in the insurgency.

Although the Maoists claim political empowerment of Dalits and women as a central tenet of their agenda, within the Maoist leadership, all three principals are men and none are Dalit.²⁹⁸ In fact, the chief architects of the movement, Baburam Bhattarai and Pushpa Kamal Dahal (alias “Prachanda”), are both “upper-caste” Brahmin men,²⁹⁹ while the leader of the military wing, Ram Bahadur Thapa (alias “Badal”), is of *Magar* origin. Maoists have borrowed the three-tier Chinese model of central leadership, incorporating a Central Committee, Politburo, and a Standing Committee.³⁰⁰ The Central Committee, which ranges in size from eleven to fifty members, makes all high level and strategic decisions. According to a 2001 estimate, only two of the thirty-seven members of the Maoist Central Committee were believed to be Dalit.³⁰¹

The absence of Dalit leaders has also fostered the belief that the Maoist leadership is adopting the same Brahmin-dominated leadership model used by mainstream political parties.³⁰² Coupled with reports that the practice of “untouchability” persists even within the ranks of the Maoist movement, some speculate that Dalits have begun to feel extremely alienated and underserved by the very movement that purports to liberate them.³⁰³

²⁹⁷ South Asian Terrorism Portal, *Nepal Terrorist Groups - Communist Party of Nepal-Maoist*, at <http://www.satp.org/satporgtp/countries/nepal/terroristoutfits/index.html> (last visited August 2, 2005).

²⁹⁸ PRADHAN & SHRESTHA, *supra* note 10, at 12 n.25 (stating that reports indicate the Maoists are dominated by Brahmins); SOWING THE WIND, *supra* note 110, at 32; Com. Parvati, *Women’s Leadership and the Revolution in Nepal*, MONTHLY REVIEW, Feb. 2003 (critique by a female member of CPN addressing male dominance of the party), available at <http://www.monthlyreview.org/0203parvati.htm>; Celia Dugger, *As Maoist Revolt Grows, Nepal Fears for Its Democracy*, N.Y. TIMES, Apr. 24, 2002, at A3 (observing that the Maoists are led by two Brahmin men).

²⁹⁹ B. RAMAN, NEPAL MAOISTS, INDIA AND CHINA (South Asia Analysis Group Paper No. 446, Apr. 18, 2002), available at <http://www.saag.org/papers5/paper446.html>; Celia Dugger, *As Maoist Revolt Grows, Nepal Fears for Its Democracy*, N.Y. TIMES, Apr. 24, 2002, at 3 (documenting that the Maoists are led by two Brahmin men).

³⁰⁰ Sudheer Sharma, *The Maoist Movement: An Evolutionary Perspective*, in HIMALAYAN PEOPLE’S WAR, *supra* note 96, at 39.

³⁰¹ SOWING THE WIND, *supra* note 110, at 32.

³⁰² It should be noted that Maoists estimate at least ten percent of their people’s government is comprised of Dalits – significantly more inclusive than Nepal’s present government structure which has no Dalit representation in its judiciary or ministry. Additionally, Maoist inclusion of Dalits in its Central Committee spurred both the CPN-UML party and the Rasthriya Prajathantra Party (RPP) to include Dalits in their own central committees. Aniket Alam, *A Dalit Backlash*, FRONTLINE, Feb. 12-25, 2005, available at <http://www.flonnet.com/fl2204/stories/20050225006213400.htm>.

³⁰³ SOWING THE WIND, *supra* note 110, at 32.

When juxtaposed against the Maoists' expressed political rhetoric of Dalit empowerment, the lack of real Dalit representation in the movement is striking. In effect, Dalits are serving as dispensable persons who can literally take the bullets for the Maoist insurgency. Nowhere is this imbalance more starkly reflected than in Dalit women's participation in the movement. The 2003 National Women's Commission's report indicates that women account for 33 to 50 percent of the Maoist militia in various districts and constitute 50 percent of the cadres at the lower level.³⁰⁴

Economic Effects of the Insurgency on Dalit Communities

The Maoist insurgency has crippled Dalit communities into a state of constant fear and economic deterioration. Already living on the brink of starvation and destitution, Dalit community members have been further pushed into grinding poverty.³⁰⁵ Although dismantling caste discrimination was cited by the Maoist leadership as one of the central causes for their insurgency, Dalits often face discrimination and egregious abuses at the hands of Maoists themselves.³⁰⁶ Under cover of resisting "untouchability," Maoist soldiers make heavy use of Dalits' private homes for their overnight stays. These stays can be particularly burdensome in certain parts of the country. In the remote west, food and water are simply not readily available and housing ten or twelve soldiers for even a single night often requires Dalit families to starve for days in order to compensate for lost rations. Whereas "upper-caste" villagers can avail of traditional age, caste, and seniority customs to limit exploitation by Maoists, Dalits cannot leverage similar concepts to taper abuses by Maoist soldiers who demand too much of their limited resources.³⁰⁷ Dalits, who average a per capita income of only US\$39 a year, are also not exempt from paying the Maoist-imposed "people's tax."³⁰⁸ Not only do overnight stays deplete food and water supplies, they can also result in a fierce backlash by security forces. "Upper-caste" villagers will regularly report that Maoists stayed in a Dalit home, prompting security forces to target those families with violent attacks and intimidation tactics.³⁰⁹

Sexual Exploitation of Dalit Women

Where Maoists impose themselves on homes for nightly food and shelter, there have been reports of resident women being raped. The risk to women only increases if the family fails to

³⁰⁴ Kamala Sarup, *Conflict and Nepali Women* (2003), at http://www.peacewomen.org/resources/Peace_Negotiations/WomenPeaceAgrNepal.html.

³⁰⁵ CHILDREN CAUGHT IN THE CONFLICT, *supra* note 278. Increased poverty, food shortages, and health crises at least partially attributable to the conflict have had a dramatic effect on villagers. The war has badly damaged infrastructure, disrupting trade and impeding the provision of relief. Amnesty International reports that both the Maoists and the security forces have intentionally "restricted supplies of food and other essential goods to certain areas as part of their military strategies." *Id.* According to a Nepalese NGO report, as a result of the conflict, even more Dalit women and girls have been forced into sex work to make ends meet for themselves and their families. DURGA SOB, DALIT WOMEN, *supra* note 63, at 3.

³⁰⁶ Anita Pariyar, *National Dalit Commission Dismissed*, MANAV ASTITWA, Mar. 11, 2004, available at <http://www.ahrchk.net/ma/mainfile.php/0206/79/>.

³⁰⁷ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (August 2005).

³⁰⁸ See *supra* note 123 and accompanying text.

³⁰⁹ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005). See also notes 281-296 and accompanying text.

cooperate with the insurgents.³¹⁰ Underage girls abducted into the Maoist movement also report being sexually abused while in captivity.³¹¹ Since the collapse of the 2003 ceasefire Maoists have increased their efforts to recruit young women and girls.³¹² Limited, though credible, anecdotal reports suggest that at least some of these women and girls have been physically and sexually attacked by their “comrades.”³¹³ One 19-year old member of the Maoists’ all Nepal Women’s Organization described her experiences as follows:

Not only high-ranking leaders or activists, but sometime we have to fulfill the sexual desire of our own level’s activists and the militia. This is against the party rule and moral duty, but this is the fact of many women like me in this party. Sometimes this happens by chance...but, sometimes the party policy forces us. Most of the women like us are the temporary wives of male militia. Sometimes...the militia forces us to have sex with them. Sometimes we are forced to satisfy about a dozen per night. When I had gone to another region for party work, I had to have sex with seven militia [men] and this was the worst day of my life.³¹⁴

Already disposed to being victimized by sexual violence, Dalit women are even more vulnerable to Maoist abuse.³¹⁵

Dismantling Education: Schools in the Crossfire

As their movement has grown, Maoists have heavily targeted students and teachers using intimidation tactics, including the forcible closure of schools.³¹⁶ Gunfire is routinely exchanged on school premises.³¹⁷ Teachers are often forced to contribute one quarter of their salary to the Maoists and may be harassed under suspicion that they are undercover informants to the police and army.³¹⁸ Private schools in particular have come under attack. Maoists allege that these schools only educate privileged children and thereby contribute to social and economic inequality.³¹⁹ The Maoists have also regularly demanded that Sanskrit not be taught in schools³²⁰

³¹⁰ WATCHLIST ON CHILDREN IN ARMED CONFLICT, CAUGHT IN THE MIDDLE: MOUNTING VIOLATIONS AGAINST CHILDREN IN NEPAL’S ARMED CONFLICT 28 (2005) [hereinafter CAUGHT IN THE MIDDLE], available at <http://www.watchlist.org/reports/nepal.report.20050120.pdf>.

³¹¹ HUMAN RIGHTS WATCH, CHILD SOLDIER USE 2003: A BRIEFING FOR THE 4TH U.N. SECURITY COUNCIL OPEN DEBATE ON CHILDREN AND ARMED CONFLICT 30 (2004) [hereinafter CHILD SOLDIER USE], available at <http://hrw.org/reports/2004/childsoldiers0104/childsoldiers.pdf>.

³¹² CAUGHT IN THE MIDDLE, *supra* note 310, at 38.

³¹³ *Id.* at 38.

³¹⁴ *Id.* at 38-39.

³¹⁵ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

³¹⁶ In August 2004, for example, Maoists’ threats of violence lead authorities in Argakhanchi to close the district’s 17 private schools. Maoists reportedly contended that the schools helped perpetuate inequality by only educating the rich. Charles Haviland, *Harsh Lessons of Nepal’s Insurgency*, BBC NEWS, Nov. 15, 2004, available at http://news.bbc.co.uk/1/hi/world/south_asia/3992539.stm.

³¹⁷ Rajaram Gautam, *Education at the Mercy of Political Violence*, MS-NEPAL NEWSLETTER, Issue 3, 2003 (“Things have now reached the point where schools in the countryside are commonplaces for clashes between rebels and the army”), available at http://www.msnepal.org/reports_pubs/ekchhin/2003_issue3/11.htm. See also, Press Release, Watchlist on Children in Armed Conflict, Nepal’s Children Devastated by Nepal’s Raging Conflict (Jan. 26, 2005), available at http://www.essex.ac.uk/armedcon/story_id/000248.html.

³¹⁸ Gautam, *supra* note 317; CAUGHT IN THE MIDDLE, *supra* note 310, at 25-26.

³¹⁹ CHILDREN CAUGHT IN THE CONFLICT, *supra* note 278.

and have prohibited the singing of the national anthem, as it praises the King.³²¹ Principals and teachers who defy the ban may be subject to severe penalties, including death.³²²

Simply acquiescing to Maoist demands does not ensure the teachers' safety. Teachers and administrators who obey Maoist mandates are in turn subject to harassment and interrogation by security forces and by the Department of Education. Security forces reportedly target and attack teachers they perceive to be "enemies."³²³ The military and the police regularly bring teachers into district government security offices for interrogation, disrupting the school environment,³²⁴ and will often target Dalit teachers, who are particularly vulnerable to false accusations made by their non-Dalit peers.³²⁵ Students also fall victim to abuses by both sides: reports of children being killed on their way to school by both Maoists and security forces have become common place,³²⁶ as have reports of students being abducted en masse by Maoists.³²⁷ Reports suggest that tens of thousands of children have been abducted and subjected to some form of "political education" since the start of the Maoists' campaign.³²⁸

Maoists have also taken a more direct approach to shutting down schools through the imposition of *bandhs* or strikes.³²⁹ Under threat of violence, the imposition of a *bandh* requires all area schools and educational institutes to close their doors to students and teachers. *Bandhs* are often imposed just before schools hold their district level exams and the School Leaving Certificate (SLC) exam – the latter being compulsory for students hoping to advance to higher education.³³⁰ Teachers and students often remain fearful of returning to schools even after a *bandh* has been lifted, leaving schools effectively closed down for months at a time.³³¹ A report issued by a Danish NGO states that in 2003 alone Maoists torched and destroyed at least forty-one educational establishments including teacher training and educational resource centers.³³² The cumulative effect of these intimidation tactics and mistreatment is that teachers abandon their school posts and students cease going to school.³³³ Families have also taken their children out of school or married off their daughters at very young ages in an effort to prevent Maoist abduction and recruitment.³³⁴

³²⁰ Maoist opposition to the teaching of Sanskrit, an ancient South Asian language, "is based on the grounds that it assists in perpetuating the predominance of the Brahmin community and disadvantages children from ethnic minorities." A SPIRALING HUMAN RIGHTS CRISIS, *supra* note 169, at 6.

³²¹ A popular nationalistic poem written by Madav Ghimire has been used as the new people's national anthem. RAMAN, *supra* note 115.

³²² CAUGHT IN THE MIDDLE, *supra* note 310, at 25.

³²³ CHILDREN CAUGHT IN THE CONFLICT, *supra* note 278.

³²⁴ CAUGHT IN THE MIDDLE, *supra* note 310, at 25.

³²⁵ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

³²⁶ Gautam, *supra* note 317.

³²⁷ Press Release, Watchlist on Children in Armed Conflict, Nepal's Children Devastated by Nepal's Raging Conflict (Jan. 26, 2005), available at http://www.essex.ac.uk/armedcon/story_id/000248.html.

³²⁸ CHILDREN CAUGHT IN THE CONFLICT, *supra* note 278.

³²⁹ Gautam, *supra* note 317.

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ CHILDREN CAUGHT IN THE CONFLICT, *supra* note 278.

Maoist Recruitment of Child Soldiers

The dismantling of the educational system by the Maoists has fed large numbers of children into the People's Militia.³³⁵ As schools are systematically closed and children's education regularly disrupted, Maoists have more easily recruited children into the insurgency.³³⁶ The imposition of *bandhs* has made it impossible for children to take the School Leaving Certificate (SLC) exam, setting them back from advancing their education and ultimately their professional opportunities.³³⁷ Lagging far behind in all indexes for education and literacy, Dalit children are even more prone to joining the Maoist movement. The mere promise of food is sometimes enough to attract a young Dalit child to join the Maoist army.³³⁸

In addition to using conventional recruiting methods, the Maoists have also abducted and indoctrinated children in order to get them to join their movement.³³⁹ One method of indoctrination combines lectures on history and current political events with cultural programs, such as Maoist-themed songs and dances.³⁴⁰ This method, particularly when directed at marginalized Dalit children, has proven effective at least in part because it addresses real social problems. Recent reports indicate that Maoist education often includes a special emphasis on societal discrimination and oppression of the lower castes, as well as the Maoists' alleged role in liberating them.³⁴¹ A Dalit child who had been abducted and educated by the Maoists stated, "I never tried to run away from the Maoists. I learned we are all Dalits and everyone is discriminating against us, so I felt that to be a Maoist was good."³⁴²

In certain circumstances the Maoists also use more visceral emotional approaches. Victimized children, and particularly children whose Maoist parents have been killed by the security forces, are often subjected to specific forms of indoctrination targeted at stoking the children's desire for revenge. A number of reports indicate that child recruits often cite retribution as their primary reason for joining the movement.³⁴³ The All Nepal National Independent Students' Union-Revolutionary (ANNISU-R), a group that is intimately allied with,

³³⁵ Gautam, *supra* note 317.

³³⁶ See Sarahana, *Children in Conflict*, SAMUDAYA.ORG, Mar. 2005 (discussing the film *Schools in the Crossfire*, written by Deepak Thapa, forthcoming in 2005, focusing on the effect that the civil war has had on poor rural children, their schools, and their teachers, and the role that each has played in the civil war), at http://samudaya.org/articles/archives/2005/03/children_in_con.php.

³³⁷ *Students, Parents Demand Withdrawal of Nepal Bandh*, THE RISING NEPAL, Mar. 30, 2002, available at <http://www.nepalnews.com.np/contents/englishdaily/trn/2002/mar/mar30/index1.htm>. See also note 68 and accompanying text.

³³⁸ Charles Haviland, *Meeting Nepal's Maoists*, BBC NEWS, Apr. 12, 2005, available at http://news.bbc.co.uk/2/hi/south_asia/4434197.stm. Rights groups have reported that Maoists often prey upon vulnerable, poor children by effectively bribing or blackmailing them into the movement with promises of food and protection. CAUGHT IN THE MIDDLE, *supra* note 310, at 39.

³³⁹ Louise Arbour, United Nations High Commissioner for Human Rights, Address at the Launch of the Watchlist Report on Children in Armed Conflict in Nepal (Jan. 26, 2005) (stating that Maoists have abducted, indoctrinated and recruited thousands of children into the movement) (transcript available at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/5AAB526E1F25CEAEC1256FA50054D8CF?opendocument>).

³⁴⁰ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 42.

³⁴¹ John Lancaster, *Concern Grows Over Nepal's Child Fighters; "Untouchables" Used by Rebels in Brutal War*, WASH. POST, June 14, 2005, at A18.

³⁴² *Id.* at A18.

³⁴³ CAUGHT IN THE MIDDLE, *supra* note 310, at 39.

if not controlled by, the Maoists, uses a more overtly coercive approach in its recruitment, using intimidation tactics to force students into joining their ranks and silencing their opponents.³⁴⁴

On the basis of these recruitment tactics, the Maoists have enlisted several hundred children into their ranks,³⁴⁵ most of whom range from age 15 to 18 years old³⁴⁶—although a small number of children under 15 and as young as ten years have also been recruited.³⁴⁷ Once children are brought into the movement, they are either deployed in frontline combat cohorts, tasked with carrying arms and supplies, or become part of the non-combat support staff as cooks and porters.³⁴⁸ Children have also been used as spies and informers. Although the majority of child soldiers do not engage in direct combat, many children receive military training.³⁴⁹ Inevitably, some children go on to fight as guerillas or serve in combat roles.³⁵⁰ NGOs report that Maoists have used children as young as ten as armed sentries.³⁵¹ Some sources even indicate that children have been used as human shields.³⁵²

A statement published on the Maoists' official website in August of 2003 approvingly observed: "the increasing participation of women in the People's War has had another bonanza . . . [namely] the drawing of children into the process of war and their politicization."³⁵³ On February 23, 2004, a leading member of the ANNISU-R claimed that the Maoists were committed to raising a 50,000-strong child militia in order counteract a developing shortage of soldiers due to civilians' increasing reluctance to be drawn into the conflict.³⁵⁴

VI. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

In the face of a spiraling human rights crisis in Nepal, international human rights NGOs have issued numerous recommendations addressed to the government of Nepal, the CPN-Maoist leadership, and the international community to observe and uphold international human rights and humanitarian law.³⁵⁵ These recommendations must be heeded by all parties to the conflict. In addition, it is imperative that the Nepalese government fulfill its obligations to end caste-based discrimination. The CPN-Maoist must also undertake to respect applicable international standards regarding protection of Dalit human rights. Meaningful and lasting reform cannot be sustained in

³⁴⁴ CHILD SOLDIER USE, *supra* note 311, at 30.

³⁴⁵ A SPIRALING HUMAN RIGHTS CRISIS, *supra* note 169, at 41.

³⁴⁶ CHILD SOLDIER USE, *supra* note 311, at 30.

³⁴⁷ *See* CAUGHT IN THE MIDDLE, *supra* note 310, at 40.

³⁴⁸ BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 60.

³⁴⁹ CAUGHT IN THE MIDDLE, *supra* note 310, at 37-40; CHILDREN CAUGHT IN THE CONFLICT, *supra* note 278 (reporting that, in areas they control, Maoists impose a "people's education" curriculum on local schools that includes "military-style" training).

³⁵⁰ CAUGHT IN THE MIDDLE, *supra* note 310, at 37.

³⁵¹ *Id.* at 40.

³⁵² *Id.* at 37.

³⁵³ *Reprinted in* BETWEEN A ROCK AND A HARD PLACE, *supra* note 100, at 60-61.

³⁵⁴ *Id.* at 61.

³⁵⁵ *See, e.g.*, CLEAR CULPABILITY, *supra* note 150 (containing recommendations to the government of Nepal regarding ceasing, investigating and establishing accountability for "disappearances," as well as to the United Nations, the United States, the United Kingdom and other countries providing military aid to Nepal). *See also* BETWEEN A ROCK AND A HARD PLACE, *supra* note 100 (containing recommendations regarding the need to respect human rights and humanitarian laws, addressed to the government of Nepal, the CPN-Maoist leadership, the King, states providing military aid to Nepal, and to the international community). *See also* AMNESTY MISSION FEB. 2005, *supra* note 199 (for recommendations regarding respect for human rights addressed to the government of Nepal, the CPN-Maoist and the international community).

the absence of the rule of law and real democratic governance. The Nepalese government must also move quickly to restore all fundamental rights formally suspended under the state of emergency.

Nepal's Obligations to End Caste-Based Discrimination

The caste-based abuses documented in this report are in violation of a number of international human rights treaties to which Nepal is a party. Nepal acceded to the International Covenant on Civil and Political Rights (ICCPR) and to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1991.³⁵⁶ As a result, Nepal is bound by ICCPR's provisions guaranteeing civil and political rights for all individuals "within its territory and subject to its jurisdiction . . . , without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."³⁵⁷ Nepal is also bound by the ICESCR's provision guaranteeing economic, social and cultural rights "without discrimination of any kind."³⁵⁸ As a signatory to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD),³⁵⁹ Nepal is additionally obligated to eliminate caste- and other descent-based discrimination. As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Nepal is obligated to pursue a "policy of eliminating discrimination against women."³⁶⁰

Since 1987 the U.N. Committee on the Elimination of Racial Discrimination (CERD) has continuously expressed concern over caste-based discrimination in Nepal and has pressed the government for information on measures taken to eliminate *de jure* and *de facto* caste discrimination in the State.³⁶¹ In its most recent concluding observations, CERD expressed its concern over "de facto caste-based discrimination and the culture of impunity that apparently permeates the higher strata of a hierarchical social system,"³⁶² and recommended that Nepal eliminate all forms of segregation and social exclusion based on caste.³⁶³ In its consideration of

³⁵⁶ OFFICE OF THE U.N. HIGH COMM. FOR HUM. RTS., STATUS OF RATIFICATION OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES 8 (as of June 3, 2005), *available at* <http://www.ohchr.org/english/bodies/docs/RatificationStatus.pdf>

³⁵⁷ International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, art. 2, 999 U.N.T.S. 171 (acceded to by Nepal Aug. 14, 1991).

³⁵⁸ International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 2, 993 U.N.T.S. 3 (acceded to by Nepal Aug. 14, 1991).

³⁵⁹ International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (acceded to by Nepal Mar. 1, 1971).

³⁶⁰ International Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (ratified by Nepal Apr. 22, 1991). Nepal is also party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 (acceded to by Nepal May 14, 1991).

³⁶¹ See, e.g., *Review of Nepal's Periodic Report, Report of the Committee on the Elimination of Racial Discrimination*, U.N. GAOR, 42d Sess., Supp. No. 18 ¶ 519, U.N. Doc. A/42/18 (1987); *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Nepal*, 53d Sess. ¶¶ 10, 13, 14, U.N. Doc. CERD/C/304/Add.61 (1999); *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Nepal*, 57th Sess. ¶¶ 6, 11, U.N. Doc. CERD/C/304/Add.108 (2001); *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Nepal*, 64th Sess. ¶¶ 12, 16, U.N. Doc. CERD/C/64/CO/5 (2004).

³⁶² *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Nepal*, 64th Sess. ¶ 12, 299, U.N. Doc. CERD/C/64/CO/5 (2004).

³⁶³ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Nepal*, 64th Sess. ¶ 12, 299, U.N. Doc. CERD/C/64/CO/5 (2004).

Nepal's initial report, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) condemned discrimination based on caste status as a traditional practice harmful to women and girls.³⁶⁴ CEDAW urged the government to work together with civil society to implement policies and programs to eliminate discriminatory cultural attitudes directed towards women and girls.³⁶⁵ Despite pressure to act from both CERD and CEDAW, Nepal has yet to demonstrate a substantive commitment to uplifting and bettering the lives of Dalits throughout the country.

Though Nepal has made caste discrimination unconstitutional³⁶⁶ and punishable by various laws,³⁶⁷ these laws are rarely enforced. The adoption of the 1997 Compensation for Torture Act, the adoption of Decision of 17 July 2000 on the emancipation of bonded laborers, and the adoption of the Ninth Plan, which *inter alia* seeks to eradicate racial discrimination against disadvantaged groups,³⁶⁸ are all positive steps towards eliminating *de jure* discrimination. Still, and as detailed throughout this report, *de facto* discrimination remains the order of the day.

In its 2003 report to CERD, Nepal referred to existing legal measures to combat discrimination, including the enactment of the 1998 Legal Aid Act, which, according to the government, seeks to “enforce the principle of State obligation to improve access to justice to the economically underprivileged and other disadvantaged groups like Dalit, women and other ethnic groups;” and the enactment of the Local Self-Governance Act of 1999, which seeks to enhance the representation of ethnic communities, indigenous groups, and “downtrodden people” in local government institutions.³⁶⁹ In addition, the government claimed that it is “committed to implementing special socio-economic measures to achieve the objective of social equality and development enshrined in the various legal measures and instruments with the means and resources at its disposal.”³⁷⁰ Specifically, the government pointed to the establishment of a National Committee for the Upliftment of the Depressed, Oppressed and Dalit Community.³⁷¹ In

³⁶⁴ See *Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women: Nepal*, 21st Sess., Rev. 1 ¶ 153, U.N. Doc. A/54/38 (1999).

³⁶⁵ See *Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women: Nepal*, 21st Sess., Rev. 1 ¶ 154, U.N. Doc. A/54/38 (1999).

³⁶⁶ Nepal's Constitution, adopted in 1990, guarantees basic human rights to every citizen. Article 11(4) provides that “No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.” CONST. OF THE KINGDOM OF NEPAL 2047 (1990) art. 11(4).

³⁶⁷ The Civil Liberties Act of 1954, for example, prohibits unequal treatment of Dalits by the government. Section 10A of the Civil Code also prohibits some forms of discrimination against Dalits, but excludes places of religious practice from the scope of the act. HRW, DISCRIMINATION AGAINST DALITS, *supra* note 22.

³⁶⁸ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Nepal*, 57th Sess. ¶¶ 5, 6, U.N. Doc. CERD/C/304/Add.108 (2001).

³⁶⁹ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Sixteenth Periodic Reports of States Parties due in 2002, Addendum: Nepal, at 5, U.N. Doc. CERD/C/452/Add.2 (2003).

³⁷⁰ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Sixteenth Periodic Reports of States Parties due in 2002, Addendum: Nepal, at 5, U.N. Doc. CERD/C/452/Add.2 (2003).

³⁷¹ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Sixteenth Periodic Reports of States Parties due in 2002, Addendum: Nepal, at 24, U.N. Doc. CERD/C/452/Add.2 (2003) (noting that the National Committee is undertaking various activities related to research, advocacy, income-generation, literacy, scholarships, capacity-building, and legal awareness). *But see* UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, COMMISSION ON HUMAN RIGHTS, STATEMENT SUBMITTED BY THE ASIAN LEGAL RESOURCE

its 2003 report to CERD the government also announced that it was preparing a draft bill on “Upliftment and Protection of [the] Dalit Community” that incorporated the recommendations of Dalit and human rights NGOs.³⁷² At this writing, however, no progress had been made on the bill.

In a March 2005 statement to the 61st Session of the U.N. Commission on Human Rights, Ambassador Gyan Chandra Acharya of Nepal noted that, in recognition of the prevalence of racism and xenophobia, effective implementation of the Durban Declaration and Programme of Action is a priority for Nepalese government.³⁷³ Through his statement, Nepalese government once again pointed to legal and statutory instruments that have been enacted to protect and promote the rights of Nepal’s citizens, such as the Legal Aid Act, 1998 and the Local Self-Governance Act, 1999.³⁷⁴ Commentators, however, note that the Legal Aid Act has not been implemented in all spheres and does not speak of Dalits as beneficiaries of the Act.³⁷⁵ Moreover, the Local Self-Governance Act only mentions the nominal representation of Dalits in the councils of local governance mechanisms and does not mandate substantive participation of minority groups.³⁷⁶

A Slow Pace of Progress

A growing and politically-unaligned Dalit NGO movement has begun to take root in Nepal. The movement’s efforts have resulted in increased attention to the plight of Dalits by the government and political parties. In March 2002 the government formed the National Dalit Commission and the National Women’s Commission. However, two years later, in March 2004, both Commissions’ terms came to an end and were not renewed.³⁷⁷ Although a new National

CENTRE ON ITEM SIX OF THE PROVISIONAL AGENDA OF THE SIXTIETH SESSION: RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION, ¶2, U.N. Doc. E/CN.4/2004/NGO/26 (2004) (“In its alternative report to the sixteenth periodic report of Nepal to the Committee on the Elimination of Racial Discrimination, the Asian Legal Resource Centre has pointed out that although a number of institutions exist ostensibly to address caste-based discrimination there, none of them are effective or independent. Among these, the National Committee for the Upliftment of the Depressed, the Oppressed and Dalit Community has been a complete failure. It is a body consisting of political appointees whose sole purpose seems to be to silence opposition to the government within the Dalit community.”).

³⁷² United Nations, Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Sixteenth Periodic Reports of States Parties due in 2002, Addendum: Nepal, U.N. Doc. CERD/C/452/Add.2 (2003).

³⁷³ Ambassador Gyan Chandra Acharya of Nepal, Statement to the 61st Session of the Human Rights Commission under Agenda Item Six: Racism, Racial Discrimination, Xenophobia and all forms of Racial Discrimination (Mar. 21, 2005) (transcript on file with the author). The Durban Declaration and Programme of Action came out of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001. *Report of the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Durban, 31 August – 8 September 2001*, U.N. Doc. A/CONF.189/12 (2002).

³⁷⁴ Ambassador Gyan Chandra Acharya of Nepal, Statement to the 61st Session of the Human Rights Commission under Agenda Item Six: Racism, Racial Discrimination, Xenophobia and all forms of Racial Discrimination (Mar. 21, 2005) (transcript on file with the author).

³⁷⁵ Tek Tamraka, President of Dalits, Development and Law (Nepal), Comments to the Statement by Ambassador Gyan Chandra Acharya of Nepal to the 61st Session of the Human Rights Commission (Mar. 28, 2005) (transcript on file with author).

³⁷⁶ *Id.*

³⁷⁷ Anita Pariyar, *National Dalit Commission Dismissed*, MANAV ASTITWA, Mar. 11, 2004, available at <http://www.ahrchk.net/ma/mainfile.php/0206/79/>.

Dalit Commission was formed in January 2005, the National Women's Commission has yet to be reconstituted.³⁷⁸

On December 31, 2004, leaders of 13 political parties in Nepal came together and signed a "White Paper for Elimination of Untouchability." The document proclaims 2005 as the "Year of Elimination of Untouchability" and 2005-2015 as the "Decade of Elimination of Caste Based Untouchability." The White Paper further declares that all members, officials or volunteers of the respective parties are obliged to take action against the practice of untouchability and other forms of caste-based discrimination.³⁷⁹

The judiciary too has made some effort to address the rights of Dalits. As recently as April 21, 2005, the Supreme Court of Nepal directed the government to enact relevant laws that would address problems faced by Dalits in accordance with Article 11(4) of Nepal's Constitution.³⁸⁰

Despite these positive steps, the practice of untouchability remains rampant and violence against Dalit continues with impunity. The government itself acknowledges that "[d]espite the numerous efforts by the Government to eliminate discriminations and to provide equitable participation, discrimination still persists in Nepalese society. The representation of the underprivileged communities in decision-making bodies is not adequate."³⁸¹ CERD too has expressed concern over the existence of "segregated residential areas for Dalits, social exclusion of inter-caste couples, restriction to certain types of employment, and denial of access to public spaces, places of worship and public sources of food and water, as well as at allegations that public funds were used for the construction of separate water taps for Dalits."³⁸² CERD also noted with concern allegations of ill-treatment and ineffective protection of Dalits by law enforcement officials, especially the police.³⁸³

CERD's concerns echo statements made by human rights organizations in their shadow reports to CERD and in other forums, and support the assertions that Nepal's government has by and large failed to live up to its obligations under international human rights law towards the Dalit communities.

³⁷⁸ Center for Human Rights and Global Justice communication with Kathmandu-based expert on caste discrimination [name withheld] (July 2005).

³⁷⁹ White Paper for Elimination of Untouchability, 2004: A Common Signature of the Political Leaders of the Major Political Parties (Dec. 31, 2004), available at <http://www.idsn.org/WhitePaper.doc>.

³⁸⁰ *SC Directs Govt to Enact Laws on Untouchability*, THE RISING NEPAL, Apr. 21, 2005, available at <http://www.gorkhapatra.org.np/pageloader.php?file=2005/04/22/topstories/main7>. See also text of Article 11(3), *supra* note 366.

³⁸¹ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Sixteenth Periodic Reports of States Parties due in 2002, Addendum: Nepal, U.N. Doc. CERD/C/452/Add.2 (2003).

³⁸² United Nations, Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Sixteenth Periodic Reports of States Parties due in 2002, Addendum: Nepal, U.N. Doc. CERD/C/452/Add.2 (2003).

³⁸³ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Sixteenth Periodic Reports of States Parties due in 2002, Addendum: Nepal, U.N. Doc. CERD/C/452/Add.2 (2003).

VII. RECOMMENDATIONS

Caste-based discrimination and violence is not unique to Nepal.³⁸⁴ As the global nature of caste discrimination is increasingly recognized, the international community has become more explicit about States' obligations to protect and secure equality for "lower-caste" communities. Often these obligations are couched within the rubric of eliminating all forms of "work and descent based discrimination." Using this formulation, the U.N. Sub-Commission on the Promotion and Protection of Human Rights passed a resolution in August 2000 reaffirming that discrimination based on work and descent is prohibited under international human rights law.³⁸⁵ In his 2001 report commissioned by that same resolution, Sub-Commission expert R.K.W. Goonesekere underscored that caste systems are inherently economic and social in their consequences and represent a deeply oppressive form of work and descent based discrimination.³⁸⁶

In 2002, CERD passed General Recommendation XXIX to ICERD, which explicitly includes caste based systems within discrimination based on descent.³⁸⁷ In 2004, the Sub-Commission appointed two Rapporteurs to undertake "a comprehensive study on discrimination based on work and descent." The Rapporteurs were tasked with: determining the impact that the practices and policies of governments, local authorities, private sector entities, schools, religious institutions and the media have had on discrimination based on work and descent; obtaining information on existing measures taken by governments, national human rights groups, the U.N. and NGOs to combat discrimination based on work and descent; and drafting a set of principles or guidelines setting forth the measures necessary to effectively eliminate discrimination based on work and descent. The appointment of the Rapporteurs was approved by the U.N. Commission on Human Rights at its 61st Session in April 2005.³⁸⁸

These international legal developments underline what is clear from the situation on the ground: without a sustained commitment to addressing caste discrimination as both a root cause and insidious consequence of the insurgency, the conflict will remain unresolved. For this

³⁸⁴ See generally, CASTE DISCRIMINATION, *supra* note 5.

³⁸⁵ See *Discrimination Based on Work and Descent*, Sub-Comm. on Promotion & Protection of Hum. Rts. Res. 2000/4, 52d Sess., U.N. Doc. E/CN.4/SUB.2/RES/2000/4 (2000). See also, CASTE DISCRIMINATION, *supra* note 5.

³⁸⁶ *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Working Paper by Mr. Rajendra Kalidas Wimala Goonesekere on the Topic of Discrimination Based on Work and Descent, Submitted Pursuant to Sub-Commission Resolution 2000/4*, Sub-Comm. on Promotion & Protection of Hum. Rts., 53d Sess., U.N. Doc. E/CN.4/Sub.2/2001/16 (2001) (indicating that "Discrimination based on work and descent is a long-standing practice in many societies throughout the world and affects a large portion of the world's population. Discrimination based on descent manifests itself most notably in caste- (or tribe-) based distinctions. These distinctions, determined by birth, result in serious violations across the full spectrum of civil, cultural, economic, political and social rights" and providing numerous examples of such violations)

³⁸⁷ "The Committee on the Elimination of Racial Discrimination . . . [s]trongly reaffirming that discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights." *General Recommendation No. XXIX, Article 1, Paragraph 1 of the Convention (Descent)*, Committee on the Elimination of Racial Discrimination, 61st Sess. (2002).

³⁸⁸ *Discrimination Based on Work and Descent*, Sub-Comm. on Promotion & Protection of Hum. Rts. Res. 2004/17, 56th Sess., U.N. Doc. E/CN.4/Sub.2/2004/L.8 (2004) (reaffirming Resolution 2000/4 and appointing two Special Rapporteurs to prepare "a comprehensive study on discrimination based on work and descent"), approved by U.N. Comm. on Hum. Rts., 61st Sess. (2005).

reason, attention must be paid to the recommendations made by CERD, CEDAW and the Sub-Commission, and to the commitments made during the *International Consultation on Caste-Based Discrimination*, which was held in Kathmandu from November 29 – December 1, 2004. The Kathmandu Consultation brought together a number of actors from around the world to explore measures to promote implementation of relevant laws, regulations, policies and recommendations to end caste-based discrimination as a key human rights responsibility of governments, civil society, and the international community. Participants included: Dalit human rights defenders from several South Asian countries; representatives of communities suffering similar forms of discrimination (such as the Burakumin of Japan); U.N. human rights experts; representatives of U.N., bilateral, and multilateral agencies; Nepalese NGOs and government officials; and private sector representatives.³⁸⁹

The armed conflict in Nepal was “at the forefront of consideration throughout the Consultation,” with participants acknowledging that “caste discrimination is both a cause and a consequence of the civil war, with Dalits being the primary victims.”³⁹⁰ As one participant surmised, “[r]esolving the conflict is a precondition for poverty reduction in Nepal, and addressing exclusion is a key conflict reduction priority.”³⁹¹

The Consultation culminated in the adoption of the *Kathmandu Dalit Declaration*, attached to this report as appendix A. The Declaration provides a comprehensive set of recommendations for governments, national human rights institutions, U.N. agencies and human rights mechanisms, NGOs, international donors, international financial institutions, and the private sector, to work toward the goal of eliminating caste-based discrimination in Nepal and other caste-affected countries throughout the world. The Center for Human Rights and Global Justice urges the government of Nepal and the international community to implement these recommendations.

³⁸⁹ INTERNATIONAL DALIT SOLIDARITY NETWORK & THE DALIT NGO FEDERATION OF NEPAL, REPORT OF THE INTERNATIONAL CONSULTATION ON CASTE-BASED DISCRIMINATION, ESTABLISHING DALIT RIGHTS IN THE CONTEMPORARY WORLD: THE ROLE OF GOVERNMENTS, THE UNITED NATIONS AND THE PRIVATE SECTOR 8 (2005). The full report of the Consultation is available at <http://www.idsn.org/ICCBD.html>.

³⁹⁰ *Id.* at 8.

³⁹¹ *Id.*

Appendix A**KATHMANDU DALIT DECLARATION****INTERNATIONAL CONSULTATION ON CASTE-BASED DISCRIMINATION**

Establishing Dalit Rights in the Contemporary World;
the Role of Governments, the United Nations and the Private Sector
November 29 – December 1 2004
Kathmandu, Nepal

The Participants to the International Consultation on Caste-Based Discrimination:

RECOGNIZING that caste discrimination¹ affects, in its most severe forms, at least 260 million people worldwide and is particularly acute in South Asia, Africa, and Japan,

RECALLING the terms of the Universal Declaration of Human Rights according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status,

RECALLING the terms of the Vienna Declaration and Programme of Action of the World Conference on Human Rights according to which it is the duty of States, regardless of political, economic and cultural system, to promote and protect all human rights and fundamental freedoms,

RECALLING the condemnation of discrimination against persons of Asian and African descent and indigenous and other forms of descent in the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

RECALLING also General Recommendation XXIX on descent-based discrimination of the Committee on the Elimination of Racial Discrimination,

RECOGNIZING the relevance of the Discrimination (Employment and Occupation) Convention, 1958 and its accompanying Recommendation (No. 111) for Dalit² Human Rights,

HIGHLIGHTING the reinforcing relationship between poverty, landlessness, and caste discrimination,

AFFIRMING the need for the full implementation of the Millennium Development Goals as key mechanisms for the elimination of extreme poverty and the fulfilment of other rights-based human needs.

¹ The term “caste discrimination” as used in the Declaration, is meant to cover discrimination based on work and descent and analogous forms of discrimination.

² The term “Dalit”, as used in this Declaration, is meant to encompass Dalits, outcasts and other communities discriminated against on the basis of work and descent.

FULLY SUPPORTING Resolution 2004/17 of the U.N. Sub-Commission on the Promotion and Protection of Human Rights to appoint two Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent,

SUPPORTING also the U.N. Sub-Commission Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,

CONSCIOUS OF the difficulties faced by Nepal's Dalits who represent a significant sector of Nepal's population and economy, and who are being caught in the crossfire of the conflict being waged in the country,

RECOMMEND that concerned governments, international and national human rights bodies, U.N. and aid agencies, the European Union, donor countries, international financial institutions, the private sector, and non-governmental organisations adopt the following measures:

1. To Governments in Caste-Affected Countries:

CONCERNED GOVERNMENTS MUST ACT TO UPHOLD THEIR CONSTITUTIONAL PRINCIPLES AND INTERNATIONAL TREATY OBLIGATIONS AND WORK TOWARD THE FULL ENJOYMENT OF RIGHTS BY ALL CITIZENS, REGARDLESS OF CASTE OR DESCENT.

In particular, we call on concerned governments to:

Constitutional, Legislative and Judicial Measures

1. Ensure that all necessary constitutional, legislative and administrative measures, including appropriate forms of affirmative action and public education programs, are in place to prevent, prohibit and redress caste-based discrimination, and that such measures are respected and implemented by all state authorities at all levels.

2. Establish a program and timetable to enforce the abolition of "untouchability", segregation, manual scavenging and similar practices. In both public and private sectors, Dalits and other outcaste communities should have full access to employment opportunities; agricultural land; credit; adequate housing; health; and common property resources, such as forest and water resources. Similar programs should also be established to counter existing cultural exclusion and social discrimination, such as the separation of Dalit children in schools and the social exclusion of inter-caste couples. National surveys should be conducted on a regular basis to assess the effectiveness of such programs.

3. Ensure that, where they exist, national human rights institutions, women's commissions, minority commissions and Dalit commissions can act independently and effectively in protecting the interests of all people affected by caste discrimination by providing adequate financial, statutory and personnel support. Establish such institutions in caste-affected countries where they do not already exist.

4. Take special measures to guarantee that members of Dalit and other outcaste communities enjoy the rights to vote, stand for election and have due representation in government and legislative bodies, revenue administration, the police, and the judiciary. Dalit women should be proportionally represented.

5. Ensure greater participation by Dalits in civil administration. Priority should be given to the administration of justice, particularly in key institutions such as the police and the judiciary.
6. End the culture of impunity for atrocities against Dalits through strict enforcement of relevant penal codes and legislation. Prosecute and condemn those responsible for incidents of caste-based discrimination, segregation, exploitation and violence.
7. Monitor and publicize the extent to which existing laws and rulings to end caste discrimination, including untouchability, have been implemented.
8. Repeal national security and anti-terrorism laws that are contrary to the due process norms of international law. Ensure that anti-terrorism measures do not discriminate against anyone on any ground, including caste, and are not used against human rights defenders, including Dalit rights activists.
9. Uphold human rights obligations, even in the face of national security concerns. In particular, cease diversion of state resources away from social and development programs for vulnerable communities.
10. Ensure that Dalit human rights defenders are able to carry out their mandates effectively without any illegal or arbitrary interference or intimidation by the government or other forces in society.
11. Take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by providing legal aid, facilitating of group claims and encouraging non-governmental organisations to defend individual and peoples' rights.
12. Reform criminal justice systems to ensure that Dalits at the local level have an independent complaints mechanism freely available to them in cases of police torture, other abuses or general failures to uphold justice.
13. Implement the recommendations of national HR institutions and other relevant national commissions on measures to eliminate caste-based discrimination.

Gender Equity and Violence against Women

14. Take adequate measures to address abuses particular to Dalit women and girls who suffer multiple discrimination on the basis of caste, class and gender. Ensure the representation of Dalit women in relevant institutions referenced in this Declaration and evolve a comprehensive development policy focused on Dalit women as a special category.
15. Take action to eradicate trafficking, forced and ritual prostitution of Dalit girls and women; take measures to address sexual exploitation and domestic violence, including early marriage and sexual violence in marriage, against Dalit women and girls.
16. Amend discriminatory laws regarding birth and marriage registration, and citizenship laws that confer citizenship to children solely on the basis of their father's identity.

Media and Public Awareness

17. Take special affirmative measures to promote due representation in the mass media of members of Dalits and other disadvantaged groups, including women.
18. Carry out sensitisation campaigns and awareness-raising programs with media representatives.
19. Liaise with media outlets to profile and publicize abuses faced by caste-affected communities, including acts of violence, discriminatory social and customary practices and exploitation of labour.

Policy Reform and Access to Land, Education, Health, Housing and Common Resources

20. Enact land reform legislation that includes land distribution clauses to counter the pervasive landlessness of Dalits, a majority of whom are dependent on agriculture for their livelihood.
21. Amend and enforce existing land reform legislation to prevent land alienation and ensure development of land belonging to Dalits through, among other things, greater access to credit and markets.
22. Introduce measures to combat homelessness and discrimination in tenancy, particularly in urban areas.
23. With the involvement of and input from civil society organisations, launch nationwide public awareness campaigns regarding legal prohibitions on caste discrimination. These campaigns should explain in simple terms what actions are legally prohibited and what recourse is available to victims of such discrimination and abuse. Enlist the support of civil society groups in such campaigns. Ensure removal of prejudicial content from textbooks and other teaching resources and methodologies.
24. Enlist the support of school teachers, social workers, law enforcement officials, government employees, the private sector and other relevant actors to undertake active training and sensitization programs against caste discrimination. Include a social justice education component in the curricula from primary to tertiary levels as well as in all teacher training programs. Implement the U.N.'s World Program on Human Rights Education in primary and secondary schools with a particular focus on caste discrimination.
25. Ensure the inclusion of all Dalit children in free, full-time formal quality education from primary level until the completion of elementary level. All working and other out-of-school children up to 15 years of age, including Dalit children, should have the right and opportunities to enter and finish a formal elementary education through the provision of transitional educational support such as bridging classes and courses.
26. Introduce mid-day meal schemes in all public schools and ensure non-discriminatory access. Where meal schemes exist, ensure that Dalit children are not denied access to these meals and that Dalit cooks are employed by the schools in the preparation of the meals.
27. Ensure greater participation by Dalits and other outcaste communities in educational institutions after finishing elementary education.

28. Introduce social justice and human rights education, including principles of non-discrimination, in public schools

Employment

29. Enact equality laws that prohibit public and private employer discrimination on the basis of caste. Require affirmative action programmes in the public and private sector and set up appropriate monitoring and reporting systems.

30. Take necessary steps to remove the customary constraints on leaving traditional caste-based occupations and promote more gainful alternative employment opportunities for Dalits. Increase access to finance and marketing to enable Dalits to set up enterprises. Improve functional literacy, for Dalit women and girls in particular, so they may engage in both skilled labour and entrepreneurship.

31. Enact and enforce legislation guaranteeing decent work, a living wage, labour rights, and access to land for Dalits and other exploited or oppressed communities, particularly in the informal economy

Development Planning and Implementation

32. Ensure that government programs are designed in consultation with Dalits and other marginalized communities at both the state and central government levels. In particular, infrastructure projects in the areas of water and sanitation, irrigation, rural roads and electricity should actively involve Dalit community members to ensure access to basic services.

33. Pay particular attention to the needs of Dalit and other outcaste communities in the devising and implementation of strategies and plans to achieve the Millennium Development Goals (MDGs). To this end, disaggregate the data on progress achieved on each and every MDG for Dalits.

34. Include Dalit groups and other civil society groups in discussions on priorities for engagement with the World Bank and Asian Development Bank.

35. Allocate adequate funding for programs for the socio-economic and educational support of communities that have faced discrimination on the basis of caste or descent. Actively involve caste-affected communities in the formulation and monitoring of these programs.

International

36. Strongly support initiatives to promote and enhance the fight against caste discrimination in all relevant United Nations and related fora, including U.N. human rights bodies, the International Labour Organisation (ILO), the United Nations Development Programme (UNDP), the United Nations Fund for Women (UNIFEM), the United Nations Children's Fund (UNICEF), the World Bank, the Asian Development Bank and the International Monetary Fund.

37. Support efforts at the 61st session of the U.N. Commission on Human Rights in 2005 to adopt the draft decision contained in resolution 2004/17 of the Sub-Commission on the Promotion and Protection of Human Rights to appoint two Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent. Cooperate fully with the appointed Rapporteurs.

38. Ratify (or accede to) and fully implement provisions of the U.N. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Make a declaration under Article 14 of the Convention recognizing the jurisdiction of the Committee on the Elimination of Racial Discrimination (CERD) over individual and group complaints regarding violations of any rights under the Convention committed by a State party. Ensure timely submission of state reports to the Committee.

39. Implement without delay recommendations contained in CERD's General Recommendation XXIX on descent-based discrimination, including those on the administration of justice, civil and political rights, economic and social rights, the right to education, and the dissemination of hate speech.³ Duly implement recommendations on descent-based discrimination addressed to governments by CERD following consideration of state reports due under the Convention. Include in periodic reports all followup measures taken to implement CERD's General Recommendation XXIX.

40. Promote the call for the appointment of a Special Rapporteur on Caste Discrimination by the U.N. Commission on Human Rights. Extend invitations to and cooperate with all relevant Special Rapporteurs to investigate caste-based abuses specific to their respective mandates.

41. Ratify and implement the provisions of the International Covenant on Civil and Political Rights (including its Optional Protocol), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (including its Optional Protocol), the Convention on the Elimination of All Forms of Discrimination Against Women (including its Optional Protocol), and the Convention on the Rights of the Child. Cooperate fully with the treaty bodies set up to monitor these covenants and conventions.

42. Review and make effective time-bound action plans for the implementation of all ILO Conventions and domestic laws pertaining to labour rights, bonded and child labour, and manual scavenging.

2. To National Human Rights Institutions and Other National Commissions

43. Ensure affected community representation, including women, in the membership and staff of national human rights institutions, women's commissions, minority commissions, and Dalit commissions. Where relevant, establish state-level branches for these institutions and commissions.

44. Create a core group of NGOs to assist in the commissions' work and ensure Dalit NGO representation in this group.

45. Ensure that the Asia Pacific Forum of National Human Rights Institutions (APFNHRI) discusses specific strategies to fight caste discrimination. The NGO Forum of the APFNHRI should include representation from caste-affected communities.

³ See Appendix B.

3. To U.N. Human Rights Bodies

46. Take every opportunity to raise the issue of caste and descent-based discrimination with relevant governments and encourage enactment and implementation of laws against the violations of human rights of members of Dalit communities, including laws prohibiting manual scavenging, bonded labour, caste-based violence and other abusive practices.

Commission on Human Rights and its Special Procedures

47. The Commission on Human Rights should adopt the draft decision contained in the resolution 2004/17 of the Sub-Commission on the Promotion and Protection of Human Rights to appoint two Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent, and call upon States to extend all necessary cooperation to the Rapporteurs.

48. The Special Rapporteur on Contemporary Forms of Racism should continue to raise the issue of caste discrimination in their reports, make specific recommendations to concerned governments, and continue to request government invitations for official visits to the respective countries.

49. All relevant Special Rapporteurs should pay particular attention to the plight of Dalits in a manner relevant to their respective mandates.

50. The Commission on Human Rights should appoint a Special Rapporteur on Caste Discrimination and declare in a resolution that caste-based discrimination is prohibited by international law, and call upon all concerned States to take necessary measures for its elimination.

51. Support the U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and promote its development into an international instrument that is binding on companies in order to ensure, within their sphere of influence, their accountability and liability with regard to the realisation of human rights.

Sub-Commission on the Promotion and Protection of Human Rights

52. The Sub-Commission's prospective Rapporteurs on discrimination based on work and descent should be provided with all the necessary support and resources required to carry out their mandate.

53. Subject to confirmation of the Rapporteurs' mandate by the Commission on Human Rights, priority should be given to the formulation of the requested Principles and Guidelines for the Elimination of Discrimination Based on Work and Descent.

Human Rights Treaty Monitoring Bodies

54. Treaty monitoring bodies - in particular the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Human Rights Committee, and the Committee Against Torture - should pay particular attention to human rights violations against Dalits when examining the periodic reports of concerned countries, and should take into account the recommendations contained in this Declaration when formulating their Concluding Observations, Comments and Recommendations.

4. To the United Nations and its Specialized Agencies

55. The Secretary-General of the United Nations and the United Nations High Commissioner for Human Rights should help ensure that all U.N. agencies working in caste-affected countries pay particular attention to the issue of caste violence and discrimination.

56. Assess the impact of existing programs in caste-affected countries with regard to caste discrimination. Develop social, economic, educational and health programs and strategies designed to curb abuse and encourage accountability.

57. All U.N. agencies should build partnerships with Dalit organisations and establish consultative mechanisms to seek Dalit NGO input into project design and evaluation. All U.N. agencies should incorporate an analysis of caste into poverty reduction strategies and ensure that all data is disaggregated on the basis of caste and gender.

58. In its programs on HIV/AIDS, the UNDP should ensure that Dalit children are not discriminated against in their access to health and education. UNDP Annual Development Reports should include caste disaggregated data and analyses on patterns of discrimination.

59. All U.N. agencies should implement affirmative action measures in order to proportionately employ Dalits, including women, in all development activities.

60. In its forthcoming Global Report on non-discrimination as one of the four fundamental labour rights, the ILO should conduct a thorough analysis of the impact of caste discrimination on labour. The report should include a specific plan of action to address and eradicate caste discrimination in the labour force, forced and bonded labour, and child labour, including a gender analysis. The ILO should work closely with its social partners to eradicate caste discrimination at the national level.

61. Undertake assessments of UN recruitment policy and practice in relevant country offices to ensure non-discrimination of Dalits and other caste affected and marginalised groups.

5. To Bilateral Aid Agencies

62. Promote the inclusion of marginalized groups such as Dalits into the consultation and design of programs.

63. Provide political and financial support for programs of the United Nations and regional bodies to assist countries seeking to eradicate caste discrimination.

64. Provide assistance for Dalit groups at the community level to participate in the planning of infrastructure and other government programs to ensure equal access by Dalits.

65. Take every opportunity to raise the issue of caste discrimination with caste-affected country officials, and encourage enactment and implementation of relevant laws against caste-based abuses.

66. Support civil society initiatives, including those led by Dalit organisations, that seek to eliminate caste-based discrimination.

67. Implement affirmative action measures in order to proportionately employ Dalits, including women, in all development activities.

6. To the European Union (Member States, the Council, the Commission and the Parliament)

68. Open up political and human rights dialogue with caste-affected countries on caste discrimination and ensure the effectiveness of EU Human Rights policy in this respect by ensuring that the issue forms a central part of Ministerial-level dialogues.

69. Ensure that caste-discrimination and its consequences are effectively analyzed and included in EU country strategy papers, reports, recommendations, resolutions, mid-term reviews and communications on affected countries.

70. Ensure that EU development programmes in affected countries are designed to assist national Governments to counter existing inequalities and specifically eradicate caste discrimination, and monitor the results.

71. The EU must promote and support initiatives to address caste-based discrimination in all relevant United Nations fora, including the adoption of the U.N. Sub-Commission's resolution 2004/17 by the U.N. Commission on Human Rights at its forthcoming session in March/April 2005.

72. Include references to and recommendations for the elimination of caste-based discrimination in all relevant EU statements, resolutions, working papers, declarations and programs of action pertaining to relevant agenda items in the United Nations Commission on Human Rights, the General Assembly's Third Committee, and in the follow up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

73. As part of its policies on corporate social responsibility, encourage and provide incentives for private companies with EU origin operating in caste-affected countries to adopt and implement the Ambedkar Principles.⁴

74. Assess the impact of trade, investment relations, and cooperation programs between EU and caste-affected countries on those suffering from caste discrimination. Formulate recommendations to make these programmes non-detrimental and more beneficial to Dalits.

7. To Donor Countries

75. Fulfil commitments made under Millennium Development Goal 8 to build a global partnership for development. Specifically work with national governments to address the elimination of caste discrimination as pivotal to the achievement of the MDGs 1 to 7 in caste-affected countries and undertake regular reporting.

76. Fulfil the human rights obligations of international cooperation as found in the Universal Declaration of Human Rights, the U.N. Charter and the ICESCR, toward the promotion of economic, social and cultural rights in developed and developing countries. In this regard,

⁴ The Ambedkar Principles: Employment Principles to Assist Foreign Investors to Address Caste Discrimination in South Asia, are attached as Appendix A.

provide financial support to the U.N. World Program on Human Rights Education in primary and secondary schools and promote inclusion of caste discrimination in the curricula.

77. Be mindful that the obligation of States to protect economic, social and cultural rights extend also to their participation in international organisations, where they act collectively, such as the World Trade Organisation and international financial institutions. It is particularly important for States to use their influence to ensure that violations and discrimination such as castebased discrimination do not result from the programmes and policies of the organisations of which they are members.

8. To the World Bank and Asian Development Bank

78. Incorporate an analysis of caste exclusion into Corporate Social Development Strategies. For policy-based lending ensure that Poverty and Social Assessments (PSIA), carried out before loans are approved, include investigations of how the proposed policy changes will affect Dalit men and women, and their livelihoods. For sector investments or project loans ensure that the social analysis covers Dalit issues, and that measures to ensure equal benefits to Dalits - as well as women, indigenous peoples and other disadvantaged groups - are included in the Vulnerable Communities Development Plan (VDCP).

79. As part of their commitment to good governance, the World Bank and Asian Development Bank, as well as other international lending institutions, should, together with the governments concerned, establish an ongoing dialogue with Dalit NGOs and representatives of other marginalized groups at all stages of the decision-making process, i.e. before a loan is released, whilst a project is being implemented, and in the course of any post-project evaluation.

80. In the design of infrastructure programs, the World Bank and Asian Development Bank should ensure that concerned governments consult with Dalit and other marginalized groups, particularly women, to promote access to water, food, sanitation, land, rural transport, irrigation and social infrastructure.

81. With regard to basic services in health and education, the World Bank and Asian Development Bank should design an accountability framework that allows Dalit and other civil society groups to monitor access to these services.

9. To the Private Sector including Transnational Corporations

82. All companies investing in or operating in caste-affected countries should support and implement the U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, as well as sign the more general Global Compact, and implement changes in their business practices consistent with its principles.

83. Companies from OECD countries, should also implement the OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinationals and other Enterprises, whilst all companies should implement the principles contained in the ILO Tripartite Declaration.

84. Adopt specific policies pertaining to human rights and ensure that, within your sphere of influence, these principles are also implemented by all suppliers and business partners.

85. Ensure that infrastructure investments are carried out in consultation with marginalized groups, including Dalits, and prioritise access of these groups to the fruits of these investments.

86. Ensure compliance with nationally mandated affirmative action programs. Where no such programs exist, companies should voluntarily institute and implement affirmative action programs for Dalits.

87. As a specific development of the above, adopt and implement the Ambedkar Principles (see Appendix A). The Ambedkar Principles are employment principles to assist foreign investors to address caste discrimination in South Asia. They are intended to acknowledge and compensate for historic injustices against Dalits through affirmative action and the norms of non-discrimination and labour rights that are in line with international human rights standards

10. To Non-Governmental Organisations

88. Include documentation on caste-based abuses and analysis of caste-based discrimination in reporting on caste-affected countries. Where appropriate, include critical assessments of the effectiveness of national policies and legislation addressing caste discrimination. Documentation of the plight of communities discriminated against on the basis of work and descent in Africa, Latin America, Pakistan, Bangladesh and Sri Lanka is sorely lacking and much needed.

89. Pay particular attention to the intersection of gender, class and caste discrimination as it affects Dalit and other outcaste women.

90. Give due attention to the nexus between caste discrimination and other forms of human rights violations such as torture, gender-based violence, modern forms of slavery including child and bonded labour, denial of equal treatment before the law, and deprivations of livelihood, food, water, healthcare, education, housing and land.

91. Plan for the reduction and elimination of caste-based discrimination and violence through development programming and monitor the impact of such programs.

92. Implement public awareness-raising and education campaigns to promote positive change in public attitudes and practices vis-à-vis members of communities affected by caste discrimination.

93. Lobby and provide information to relevant U.N. bodies (including the Sub-Commission on the Promotion and Protection of Human Rights, CERD and all relevant Special Rapporteurs) to increase their attention to the plight of Dalits and other caste-affected communities, and encourage the creation of social, economic, cultural and political programs to help overcome historic discrimination.

94. Lobby governments to implement CERD General Recommendation XXIX as well as recommendations addressed to them following consideration of state reports by CERD.

95. Translate into national languages and disseminate widely CERD General Recommendation XXIX and CERD's country-specific recommendations. Provide CERD's Coordinator on Follow-up with information on the measures taken at the national level to implement CERD's country-specific recommendations on descent-based discrimination.

96. Provide CERD and other relevant human rights treaty bodies with information on caste-based discrimination and encourage them to review the implementation of ICERD and other relevant instruments even when governments fail to comply with their reporting obligations.

97. Raise awareness among international aid agencies, the private sector, transnational corporations, and governments on the prevalence of caste discrimination and recommend appropriate interventions similar to those outlined in this document.

98. Develop and implement staff policies that will ensure the maximum participation of Dalits at all levels within domestic and international NGOs. Ensure that Dalits, including women, are involved in all stages of relevant projects, including planning, implementation, monitoring and evaluation.

Appendix A (of the Kathmandu Dalit Declaration)

THE AMBEDKAR PRINCIPLES⁵

Employment Principles to Assist Foreign Investors to Address
Caste Discrimination in South Asia

The Signatories of these Principles, building on existing national anti-discrimination laws and policies and in the spirit of internationally recognized human rights will:

Include in any statement of employment policy a reference to the unacceptability of caste discrimination and a commitment to seeking to eliminate it;

Develop and implement a plan of affirmative action, where appropriate with specific reference to Dalit women, particularly where Dalits are under-represented as employees in relation to the local population;

Avoid any form of bonded or indentured labour and, as the victims of these are mostly Dalits, pay specific attention to the role that caste relations might play in legitimising or covering up such forms of labour;

Use fair recruitment, selection and career development processes, with clear objective criteria, and ensure that these processes are open to scrutiny from Dalit themselves as well as other civil society groups;

Take full responsibility for their workforce, both direct and sub-contracted, seeking to detect and remedy any caste discrimination in employment conditions, wages, benefits or job security;

Evolve comprehensive training opportunities for employees and potential recruits from Dalit communities, integrated with other staff where appropriate but separate if not, and with the aim of enabling them to fulfil their potential;

Designate a manager at appropriate level to carry out the policy, aimed at meeting business needs, maximising the benefits of a diverse workforce, and ensuring the policy, its monitoring and the related practices are carried through;

⁵ These Principles were presented in draft form to the International Consultation on Caste-Based Discrimination held in Kathmandu between November 29 and December 1, 2004. The International Dalit Solidarity Network hopes to receive comments and suggested amendments over a six-month period and to adopt the Principles in final form in mid-2005.

Develop effective monitoring and verification mechanisms of progress with effect to the above at the level of the individual company, and also co-operate in monitoring at the levels of sector and the state, involving Dalit representatives, including women, in these mechanisms;

Publish annually a report on progress in implementing these Principles – preferably in relation to an appropriate section of the Annual Report and appoint a specific board member with responsibility for oversight of this policy area.

Ensure that all corporate support to community development programmes and other charitable activities in caste-affected countries or areas includes the participation of Dalits and assures their at least equal share in any benefits.

Appendix B (of the Kathmandu Dalit Declaration)

General Recommendation XXIX on descent-based discrimination adopted by the Committee on the Elimination of Racial Discrimination General Recommendation XXIX Article 1, paragraph 1, (Descent) (Sixty-first session, 2002)

The Committee on the Elimination of Racial Discrimination,

RECALLING the terms of the Universal Declaration of Human Rights according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status,

RECALLING also the terms of the Vienna Declaration and Programme of Action of the World Conference on Human Rights according to which it is the duty of States, regardless of political, economic and cultural system, to promote and protect all human rights and fundamental freedoms,

REAFFIRMING its general recommendation XXVIII in which the Committee expresses wholehearted support for the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

REAFFIRMING ALSO the condemnation of discrimination against persons of Asian and African descent and indigenous and other forms of descent in the Durban Declaration and Programme of Action,

BASING its action on the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination which seeks to eliminate discrimination based on race, colour, descent, or national or ethnic origin,

CONFIRMING the consistent view of the Committee that the term “descent” in article 1, paragraph 1, the Convention does not solely refer to “race” and has a meaning and application which complement the other prohibited grounds of discrimination,

STRONGLY REAFFIRMING that discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights,

NOTING that the existence of such discrimination has become evident from the Committee's examination of reports of a number of States parties to the Convention,

HAVING ORGANIZED a thematic discussion on descent-based discrimination and received the contributions of members of the Committee, as well as contributions from some Governments and members of other United Nations bodies, notably experts of the SubCommission for the Promotion and Protection of Human Rights,

HAVING RECEIVED contributions from a great number of concerned non-governmental organisations and individuals, orally and through written information, providing the Committee with further evidence of the extent and persistence of descent-based discrimination in different regions of the world,

CONCLUDING that fresh efforts need to be made as well as existing efforts intensified at the level of domestic law and practice to eliminate the scourge of descent-based discrimination and empower communities affected by it,

COMMENDING the efforts of those States that have taken measures to eliminate descent-based discrimination and remedy its consequences,

STRONGLY ENCOURAGING those affected States that have yet to recognize and address this phenomenon to take steps to do so,

RECALLING the positive spirit in which the dialogues between the Committee and Governments have been conducted on the question of descent-based discrimination and anticipating further such constructive dialogues,

ATTACHING THE HIGHEST IMPORTANCE to its ongoing work in combating all forms of descent-based discrimination,

STRONGLY CONDEMNING descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention,

RECOMMENDS that the States parties, as appropriate for their particular circumstances, adopt some or all of the following measures:

1. Measures of a general nature

1. Steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status, and whose existence may be recognized on the basis of various factors including some or all of the following: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality;

2. Consider the incorporation of an explicit prohibition of descent-based discrimination in the national constitution;

3. Review and enact or amend legislation in order to outlaw all forms of discrimination based on descent in accordance with the Convention;
4. Resolutely implement legislation and other measures already in force;
5. Formulate and put into action a comprehensive national strategy with the participation of members of affected communities, including special measures in accordance with articles 1 and 2 of the Convention, in order to eliminate discrimination against members of descent-based groups;
6. Adopt special measures in favour of descent-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to public functions, employment and education;

2. Multiple discrimination against women members of descent-based communities

11. Take into account, in all programmes and projects planned and implemented and in measures adopted, the situation of women members of the communities, as victims of multiple discrimination, sexual exploitation and forced prostitution;
12. Take all measures necessary in order to eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education;
13. Provide disaggregated data for the situation of women affected by descent-based discrimination;

3. Segregation

14. Monitor and report on trends which give rise to the segregation of descent-based communities and work for the eradication of the negative consequences resulting from such segregation;
15. Undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment;
16. Secure for everyone the right of access on an equal and non-discriminatory basis to any place or service intended for use by the general public;
17. Take steps to promote mixed communities in which members of affected communities are integrated with other elements of society and ensure that services to such settlements are accessible on an equal basis for all;

4. Dissemination of hate speech including through the mass media and the Internet

18. Take measures against any dissemination of ideas of caste superiority and inferiority or which attempt to justify violence, hatred or discrimination against descent-based communities;
19. Take strict measures against any incitement to discrimination or violence against the communities, including through the Internet;

20. Take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination;

5. Administration of justice

21. Take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by providing legal aid, facilitating of group claims and encouraging non-governmental organisations to defend community rights;

22. Ensure, where relevant, that judicial decisions and official actions take the prohibition of descent-based discrimination fully into account;

23. Ensure the prosecution of persons who commit crimes against members of descent-based communities and the provision of adequate compensation for the victims of such crimes;

24. Encourage the recruitment of members of descent-based communities into the police and other law enforcement agencies;

25. Organize training programmes for public officials and law enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities;

26. Encourage and facilitate constructive dialogue between the police and other law enforcement agencies and members of the communities;

6. Civil and political rights

27. Ensure that authorities at all levels in the country concerned involve members of descent-based communities in decisions which affect them;

28. Take special and concrete measures to guarantee to members of descent-based communities the right to participate in elections, to vote and stand for election on the basis of equal and universal suffrage, and to have due representation in Government and legislative bodies;

29. Promote awareness among members of the communities of the importance of their active participation in public and political life, and eliminate obstacles to such participation;

30. Organize training programmes to improve the political policy-making and public administration skills of public officials and political representatives who belong to descent-based communities;

31. Take steps to identify areas prone to descent-based violence in order to prevent the recurrence of such violence;

32. Take resolute measures to secure rights of marriage for members of descent-based communities who wish to marry outside the community;

7. Economic and social rights

33. Elaborate, adopt and implement plans and programmes of economic and social development on an equal and non-discriminatory basis;

34. Take substantial and effective measures to eradicate poverty among descent-based communities and combat their social exclusion or marginalization;
35. Work with intergovernmental organisations, including international financial institutions, to ensure that development or assistance projects which they support take into account the economic and social situation of members of descent-based communities;
36. Take special measures to promote the employment of members of affected communities in the public and private sectors;
37. Develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labour market;
38. Take measures against public bodies, private companies and other associations that investigate the descent background of applicants for employment;
39. Take measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities;
40. Ensure equal access to health care and social security services for members of descent-based communities;
41. Involve affected communities in designing and implementing health programmes and projects;
42. Take measures to address the special vulnerability of children of descent-based communities to exploitative child labour;
43. Take resolute measures to eliminate debt bondage and degrading conditions of labour associated with descent-based discrimination;

8. Right to education

44. Ensure that public and private education systems include children of all communities and do not exclude any children on the basis of descent;
45. Reduce school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls;
46. Combat discrimination by public or private bodies and any harassment of students who are members of descent-based communities;
47. Take necessary measures in cooperation with civil society to educate the population as a whole in a spirit of non-discrimination and respect for the communities subject to descent-based discrimination;
48. Review all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning descent-based communities and replace it by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality of human rights.

