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HUMAN RIGHTS IN THE KINGDOM OF NEPAL:

DO THEY ONLY EXIST ON PAPER?

*Lara L. Manzione**

The tragic events of June 2001 focused the world's attention for a brief period on the tiny Himalayan Kingdom of Nepal, nestled between India and China in Southern Asia.¹ At first report, the massacre of many members of the royal family was blamed on the Crown Prince Dipendra,² who allegedly committed the gruesome acts in

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1. On June 1, 2001, ten members and relatives of the royal family of Nepal, including King Birendra and Queen Aishwarya, were killed in the Narayanhiti Royal Palace. See, e.g., Barbara Crossette, *Royal Family of Nepal Is Shot Dead In Palace*, N.Y. TIMES, June 2, 2001, at A1; *King Birendra Is No More*, THE KATHMANDU POST, June 3, 2001, at 1, available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/jun/jun03/index-htm> (last visited Oct. 27, 2001).

2. Crown Prince Dipendra was the eldest son of King Birendra and heir to the throne. Three eyewitnesses to the carnage of June 1, 2001 stated

frustration over his parents' disapproval of his fiancée or bride.³ Later, in a public relations misstep, the palace asserted that the shootings were not intentional but rather the result of an accidental discharge of semi-automatic weapons.⁴ At the same time, Maoist rebel insurgents⁵ claimed the killings were a conspiracy of the Prime Minister and national leaders unhappy with the King's political philosophy. A medical doctor related by marriage to the royal family who was present at the tragic scene commented that Crown Prince Dipendra was "very, very intoxicated" and alternately wielded an M-16, M-5 or other type of assault weapon.⁶ Whatever the motivation behind the untimely royal deaths, they catapulted Nepal into the global spotlight.⁷

While the deaths of so many members of the royal family were devastating to the majority of the Nepali populace,⁸ they were by no means an anomaly in Nepal's

that the Prince wielded numerous firearms and shot at many royal family members before turning the gun on himself. His self-inflicted injuries caused him to fall into a coma, for several days before he died. While he was in the coma, Prince Dipendra was named King and the former King's younger brother was named Regent. *King Birendra Is No More*, *supra* note 1; *see also*, e.g., *First Eyewitness Account of Palace Incident*, THE KATHMANDU POST, June 8, 2001, at 1, available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/jun/jun08/> (last visited Sept. 29, 2001).

3. *See*, e.g., *King Birendra Is No More*, *supra* note 1.

4. *See*, e.g., *Regent Says Shooting An Accident*, THE KATHMANDU POST, June 4, 2001, at 1, available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/jun/jun04/> (last visited Sept. 29, 2001).

5. The Maoist rebel insurgents are a radical group of Nepali political activists using violence to wage a "People's War" throughout Nepal in order to replace the elected government with a "people's government." *See* discussion *infra* Part IV.E.

6. *See*, e.g., *First Eyewitness Account of Palace Incident*, *supra* note 2.

7. *See* Crossette, *supra* note 1; Michael Binyon, *Nepalese Prince Massacres His Family*, THE TIMES, June 2, 2001, at 1.

8. The mourning of the death of King Birendra, a well-respected and beloved leader in Nepal, was expressed through the Hindu ritual of men shaving their heads and not eating salt as a mark of respect for the "departed souls," by leaving flowers at the Palace gate and by Nepalis waiting in line for hours in the hot sun to sign the condolence book. *See*, e.g., *King Birendra Is No More*, *supra* note 1; *see also*, e.g., *Their Majesties' Last Rites Performed*, THE KATHMANDU POST, June 3, 2001, at 3, available at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/jun/jun03/> (last visited Sept. 29, 2001).

political history, modern or ancient. The recent death of King Birendra came at the end of the ten-year period following the establishment of a multi-party democracy in 1990. The transition to a modern democracy was spurred on by a groundswell of support from the people following many decades of absolute monarchy.⁹ The political and governmental changes were codified by the Constitution of 1990 that states that the democratic government shall be in the form of a constitutional monarchy. Under the constitutional monarchy, the Kingdom of Nepal retained its King but also implemented a framework for the establishment of a political party system. The Constitution further reflected the will of the masses behind the pro-democracy movement by incorporating key human rights protections and provisions for equality.

These ostensible improvements in the Constitution and correlating adjustments in the political structure seemingly satisfied the people and stabilized the Nepali government, even if only in appearance, while simultaneously improving the status of many of Nepal's citizens. In actuality, however, the tragedy of June 2001 is a vivid reminder of the inherent instability in any country plagued by massive un- and under-employment, staggeringly high levels of poverty, appallingly low rates of access to health care and rampant discrimination against many of its residents based on immutable characteristics and historical relations. While these challenging societal conditions did not cause the deaths of the members of the royal family, perhaps the world-wide attention aimed at Nepal during this tragedy will cause a closer examination of the other underlying tensions and difficulties of this remote, land-locked nation heavily reliant on subsistence agriculture. Upon review, it will likely be discovered that Nepal is a country facing a "People's War" that has taken the lives of approximately 1600 people since 1996 in trying to replace the constitutional monarchy with a communist regime. Also, research will likely show that various groups are trying to improve the standard of living for Nepalis through other methods including political activism, governmental lobbying and general awareness-

9. FORUM FOR WOMEN, LAW AND DEVELOPMENT, SHADOW REPORT ON INITIAL REPORT OF GOVERNMENT OF NEPAL ON CEDAW: BRIEFING OF INITIAL REPORT AND CONCLUDING COMMENTS 7 (1999) [hereinafter SHADOW REPORT].

raising. For better or worse, the tragedy among the royalty in Nepal may perhaps motivate activists, lawyers, leaders and scholars to evaluate the current state of affairs, particularly with an eye towards assisting in the process of the implementation of human rights.

I. INTRODUCTION

The phrase "human rights" is often employed but not frequently defined. The phrase understandably has different connotations for individuals, depending on each person's worldview. By definition, human rights are rights ascribed to humans purely based on the status of being human. According to the first comprehensive international instrument addressing human rights, the Universal Declaration on Human Rights,¹⁰ ("Declaration") "[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."¹¹ The Declaration articulates a variety of specific rights contemplated by the drafters of this groundbreaking document, including the right to be free from discrimination on protected bases¹² as well as the right to "life, liberty and security of person."¹³ In its remaining Articles, the Declaration enumerates other rights such as those guaranteeing freedom in religion and marriage,¹⁴

10. The Universal Declaration on Human Rights was adopted by the United Nations in December 1948 and was built upon the fundamental principles of the United Nations Charter. G.A. Res. 217 A (III), U.N. GAOR, 3d Sess., Supp. No. 1, at 71, U.N. Doc. A/810 (1948), *available at* <http://www.un.org/Overview/rights.html> (last visited Sept. 29, 2001) [hereinafter Declaration]. "The declaration recognizes the universality, indivisibility, inalienability of the rights of all people as the foundation of equality, freedom, justice and peace in the world." UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2000 44 (2000), *available at* <http://www.undp.org/hdr2000/english/book/ch2.pdf> (last visited Oct. 27, 2001) [hereinafter HUMAN DEVELOPMENT REPORT 2000].

11. Declaration, *supra* note 10, art. 1.

12. The Declaration lists "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" as the protected bases. *Id.* art. 2.

13. *Id.* art. 3.

14. *Id.* art. 16.

substantive rights with respect to criminal justice,¹⁵ property ownership,¹⁶ civil and political issues,¹⁷ as well as freedom of opinion, expression and association.¹⁸ The Declaration further classifies as human rights the right to work, with a "free choice of employment . . . [in] just and favourable conditions . . . [with] protection against unemployment,"¹⁹ the right to an adequate standard of living including "food, clothing, housing and medical care,"²⁰ the right to a free elementary education,²¹ and the right to "participate in the cultural life of the community."²² In exchange for these rights, individuals are assigned duties to the community and are subject to limitations "meeting the just requirements of morality, public order and the general welfare in a democratic society."²³

The Declaration was the first milestone in the establishment of international human rights instruments. Its adoption by the United Nations on December 10, 1948 was followed over the years by the passage of other international conventions relating to subcategories of human rights.²⁴ The status of adoption of these other instruments

15. *Id.* arts. 5, 9-11, 14.

16. *Id.* art. 17.

17. Declaration, *supra* note 10, arts. 6-8, 12-13, 15, 21-22, 28.

18. *Id.* arts. 18-20.

19. *Id.* arts. 23-24.

20. *Id.* art. 25.

21. *Id.* art. 26.

22. *Id.* art. 27.

23. Declaration, *supra* note 10, art. 29.

24. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, S. Exec. Doc. C, 95-2 (1978), 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter ICERD]; International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (entered into force June 26, 1987) [hereinafter CAT]; Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990). *See also* HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 44-45.

varies by country; the Kingdom of Nepal has ratified all six major conventions.²⁵ Nepal has also signed on to at least one other international human rights document²⁶ promulgated by the South Asian Association for Regional Cooperation ("SAARC").²⁷

Since Nepal has ratified these conventions, this Article will utilize the broad concept of human rights expressed in the Declaration and the other international instruments. Before discussing the application of these concepts in the context of Nepal, however, it is important to have a basic understanding of Nepal's historical background.

The Kingdom of Nepal has had a long and rich history. It is believed that people have lived in the Kathmandu Valley since the 4th century A.D. and have maintained their independence throughout the ages.²⁸ In its early history, Nepal was controlled by a succession of monarchs and first unified under the Malla Kingdom in the late 14th and early 15th centuries.²⁹ The country was divided in 1484 into three separate kingdoms and was not reunified until the 18th century under Prithvi Narayan Shah.³⁰ Following the Anglo-Nepalese War in 1816, the

25. See HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 50.

26. Nepal ratified the South Asian Association for Regional Cooperation Colombo Convention on the Child in 1992. See SIXTH SAARC SUMMIT DECLARATIONS, at <http://www.saarc-sec.org/summits/6ss-decl.htm> (last visited Oct. 27, 2001).

27. SAARC was formed in 1985 by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. SAARC was modeled after both the Association of South East Asian Nations ("ASEAN") and the European Union and focuses on "soft issues" such as development and education. Dr. Lok Raj Baral, Presentation to students at Dhulikhel Mountain Resort, Nepal (Jan. 9, 2001). See also Suman K. Sharman, *Some Aspects of Dependency Crisis in Nepal*, in DOMESTIC CONFLICT AND CRISIS OF GOVERNABILITY IN NEPAL 203, 225-27 (Dhruba Kumar ed., 2000).

28. The fact that Nepal has remained independent is remarkable, especially since its largest and arguably most influential neighbor, India, was colonized by the British throughout the 19th and into the 20th century. Pakistan was a part of India until 1947 when it became a separate country and similarly, in 1971, Bangladesh won its independence from Pakistan. Sri Lanka was also a British colony. Dr. Lok Raj Baral, Presentation to students at Dhulikhel Mountain Resort, *supra* note 27.

29. Dr. Prem Raman Upreti, Presentation to students at Dhulikhel Mountain Resort, Nepal (Jan. 6, 2001).

30. *Id.*

Treaty of Sagauli reduced the territory of the Kingdom of Nepal to an area close in size to its modern day boundaries.³¹ In 1846, Jang Bahadur Rana established the hereditary rule of the Ranas and began a period of isolationism for the next one hundred years, albeit with little attention paid to the welfare of its citizenry.³²

The Nepali Congress Party³³ was founded in 1946 and the first Constitution was promulgated in 1948. These acts marked the beginning of Nepal's modern history and were followed by a decade of political turmoil, during which the hereditary Rana rulers (while serving as prime ministers) openly opposed and conflicted with the King. As a result, ruling power over the nation alternated between these two power centers almost annually. In 1959, a second Constitution was promulgated and the first general elections were held. The Nepali Congress Party won an absolute majority and B.P. Koirala headed the first popular government. In the following year, however, the King retook direct control of the government, ousted Koirala and banned all political parties.

In 1962, yet another Constitution³⁴ was promulgated under the rule of the King. This 1962 Constitution established a *panchayat*³⁵ form of government, and a series of prime ministers were appointed, dismissed, recalled and re-appointed during this period. In 1980, following nationwide student demonstrations, a national referendum was held and the people voted to continue the *panchayat* form of government and the ban on political

31. *Id.*

32. Sharman, *supra* note 27, at 210.

33. The Nepali Congress Party is a large, powerful political party and follows a democratic-socialist ideology. INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH COUNTRY REPORTS, available at <http://www.igc.org/iwraw/publications/countries/nepal.htm> (last visited Sept. 29, 2001).

34. In contrast to the Constitution of 1990, the Constitution of 1962 vested all power in the King rather than the people. For example, the King could override any law, including the Constitution itself. The King also was, in effect, the court of last resort, since he could return to the Supreme Court any case for reconsideration, thus severely limiting the independence of the Judiciary. See RISHIKESH SHAHA, DEVELOPMENT RESEARCH FOR A DEMOCRATIC NEPAL, DREFDEN PAPER III: HUMAN RIGHTS AND PARLIAMENTARY PRACTICES IN NEPAL 1 (1995).

35. The *panchayat* form of government was notable for its lack of any political parties.

parties. Following a downturn in the economy, due mainly to the failure to renegotiate treaties with India, massive public demonstrations triggered the dissolution of the *panchayat* system and the establishment of an interim government. The interim government charged a committee with the task of drafting yet another Constitution.

The Constitution Recommendation Commission ("Commission")³⁶ met its goal and a new Constitution³⁷ was promulgated on November 9, 1990.³⁸ Among several key provisions, the new Constitution reiterated the nation's status as a constitutional monarchy, having both a King and a parliamentary system of government, but vested the sovereign authority in the nation's people. The Constitution of 1990 also declared for the first time in Nepal's modern history that the nation was a Hindu Kingdom.³⁹ Perhaps most importantly with respect to human rights, the Constitution of 1990 also included many specific clauses and articles attempting to protect the human rights of its citizens.

Although Nepal has ratified all of the major international human rights instruments currently in effect, and has included human rights provisions in its constitution, this Article explores what impact, if any, these "paper protections" afford to the individuals who make Nepal their home. This Article details the strong human rights language incorporated into the Constitution of 1990 as well as those sections that are inherently contradictory with this language. It also catalogues Nepalese civil laws that violate either or both the Constitution and the provisions of the international conventions. Additionally, the

36. For more information see *infra* note 67.

37. The author is working with a copy of the English translation of the Constitution of 1990 printed in Nepal. THE CONSTITUTION OF THE KINGDOM OF NEPAL, 2047 (1990), available at <http://www.uni-wuerzburg.de/law/> (last visited Oct. 20, 2001) [hereinafter NEPAL CONST.].

38. Nepal does not follow the Gregorian calendar. Under the Nepalese calendar, the Constitution came into force on the twenty-third day of the month of *Kartik* of the year 2047 *Bikram Sambat* or November 9, 1990 A.D. See NEPAL CONST. art. 133. See also Ter Ellingson, *The Nepal Constitution of 1990: Preliminary Considerations*, HIMALAYAN RESEARCH BULLETIN, vol. XI, nos. 1-3 (1991), at <http://asnic.utexas.edu/asnic/countries/nepal/nepconstanalysis.html> (last visited Oct. 27, 2001).

39. NEPAL CONST. art. 4.

Article will identify the many enforcement problems of these provisions in Nepal due to the country's overwhelming geographic and social obstacles. This Article also questions whether any of the "paper rights" guaranteed by these documents are truly enforceable and critiques different methods the people of Nepal have employed to actualize these rights. Finally, it analyzes how Nepal has progressed under the first ten years of the Constitution of 1990 and suggests possible future courses for Nepal at this critical juncture.

II. LEGAL FRAMEWORK FOR HUMAN RIGHTS

The Preamble⁴⁰ to the Constitution of 1990 reveals

40. The language of the Preamble of the Constitution of 1990 is as follows:

WHEREAS, We are convinced that the source of sovereign authority of the independent and sovereign Nepal is inherent in the people, and, therefore, We have, from time to time, made known our desire to conduct the government of the country in consonance with the popular will;

AND WHEREAS, in keeping with the desire of the Nepalese people expressed through the recent people's movement to bring about constitutional changes, We are further inspired by the objective of securing to the Nepalese people social, political and economic justice long into the future;

AND WHEREAS, it is expedient to promulgate and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal; and also to consolidate the Adult Franchise, the Parliamentary System of Government, Constitutional Monarchy and the System of Multi Party Democracy by promoting amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality; and also to establish an independent and competent system of justice with a view to transforming the concept of the Rule of Law into a living reality;

NOW, THEREFORE, keeping in view the desire of the people that the State authority and sovereign powers shall, after the commencement of this Constitution, be exercised in accordance with the provisions of this Constitution, I, KING BIRENDRA BIR BIKRAM SHAH DEVA, by virtue of the State authority as exercised by Us, do hereby promulgate and enforce this

both the motivation for and key components of Nepal's "fundamental law."⁴¹ This introductory section contains both praiseworthy phrases, from a human rights standpoint, as well as internally contradictory concepts. For example, the Preamble refers to securing "to the Nepalese people social, political and economic justice long into the future." The concepts of social, political and economic justice are discussed in many of the Articles in the Declaration of Human Rights, such as Articles addressing freedom from discrimination and equality of all people regardless of status. However, the Preamble also emphasizes that the Constitution is promulgated by the King. This is inapposite because the sovereign authority of the nation is inherent and vested in the people.

While there are other apparent contradictions within the Constitution itself, the document is also replete with strong provisions furthering the cause of human rights. For example, the Constitution avers that "the Nepalese people irrespective of religion, race, caste or tribe, collectively constitute the nation."⁴² Furthermore, the document affirmatively recognizes Nepal as "multi-ethnic, multilingual, democratic [and] independent. . . ."⁴³ Additionally, Part 3 of the Constitution, entitled "Fundamental Rights,"⁴⁴ grants rights to citizens regarding equal protection before the law,⁴⁵ freedom of personal liberty,⁴⁶

CONSTITUTION OF THE KINGDOM OF NEPAL on the recommendation and advice, and with the consent of the Council of Ministers.

Id. at Preamble.

41. *Id.* art. 1.

42. *Id.* art. 2.

43. *Id.* art. 4.

44. *Id.* arts. 11-23.

45. Article 11 proscribes discrimination by the State or in the application of general laws on the grounds of religion, race, sex, caste, tribe or ideological conviction, except that there may be special provisions made for "the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward." NEPAL Const. art. 11.

46. Article 12 describes the freedoms of personal liberty to include freedom from capital punishment; freedom of opinion and expression; freedom to assemble peaceably; freedom to form unions and associations; freedom to move throughout the Kingdom; and freedom to practice any profession or

freedom of the press and publication,⁴⁷ rights regarding criminal justice and against preventive detention,⁴⁸ the right to information or transparency,⁴⁹ rights to property,⁵⁰ culture and education,⁵¹ religion,⁵² privacy,⁵³ and rights against exploitation⁵⁴ and exile.⁵⁵ These rights are guaranteed by the Right to Constitutional Remedy⁵⁶ and may be enforced in the Supreme Court of Nepal,⁵⁷ the highest court of the nation.

trade. All of these are tempered with "reasonable restrictions" as determined by the State. *Id.* art. 12.

47. Article 13 prevents censorship, except in certain circumstances, such as "any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations subsisting among the peoples of various castes, tribes or communities; or any act of sedition, defamation, contempt of court or incitement to an offence; or on any act which may be contrary to decent public behaviour or morality." *Id.* art. 13.

48. Articles 14 and 15 prohibits ex post facto laws, double jeopardy, self-incrimination, torture, detention without being informed of a charge and provides the right to legal counsel (although not free counsel). *Id.* arts. 14-15.

49. *Id.* art. 16.

50. Article 17 grants all citizens "subject to the existing laws . . . the right to acquire, own, sell and otherwise dispose of property." It also discusses eminent domain. *Id.* art. 17.

51. Article 18 allows "[e]ach community residing within the Kingdom of Nepal . . . to preserve and promote its language, script and culture. Each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children." NEPAL CONST. art. 19.

52. Article 19 provides each person the freedom to "profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices: Provided that no person shall be entitled to convert another person from one religion to another." *Id.* art. 19.

53. *Id.* art. 22.

54. Article 20 prohibits trafficking in human beings or "slavery, serfdom or forced labour in any form" or the employment of a minor in any hazardous work. *Id.* art. 20.

55. *Id.* art. 21.

56. *Id.* art. 13.

57. NEPAL CONST. art. 88.

Any Nepali citizen may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by this Constitution or on any other ground, and extra-ordinary power shall rest with the Supreme Court to declare that law as void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with the Constitution.

Most of these constitutional provisions are in accordance with the concepts outlined in the key international human rights instruments of which Nepal is a signatory. For example, Article 11 of the Constitution, concerning the right to equal protection before the law and prohibiting discrimination on the basis of religion, sex, caste, tribe or ideological conviction, encompasses the ideas contained within both the International Covenant on the Elimination of All Forms of Racial Discrimination ("ICERD"),⁵⁸ as well as the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").⁵⁹ Article 11 exceeds those instruments by adding religion and caste⁶⁰ as protected bases. Similarly, a subdivision of Article 14 of the Constitution closely tracks the prohibitions in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").⁶¹ Analogous comparisons may easily be made to other international human rights instruments and specific Articles within Nepal's Constitution of 1990.

Before addressing the many internal inconsistencies within the Constitution or between the Constitution and the civil laws,⁶² it is crucial to have an understanding

Id. The Supreme Court also has extraordinary powers to enforce or settle any dispute concerning the fundamental rights. *Id.*

58. The ICERD prevents discrimination based on "race, colour, descent or national or ethnic origin." See ICERD, *supra* note 24. The corollary bases under Article 11 of the Constitution of Nepal would likely be race or tribe. NEPAL CONST. art. 11.

59. The CEDAW prevents discrimination against women and requires affirmative action to advance gender equality. See CEDAW, *supra* note 24. Article 11 of the Constitution of Nepal prohibits discrimination based on sex and explicitly proscribes discrimination in remuneration between men and women for the same work. It further allows for special provisions for the protection and advancement of women. NEPAL CONST. art. 11.

60. The question of discrimination on the basis of religion is a hotly debated topic due to the overt characterization of Nepal as a Hindu state, the Constitutional prohibition on proselytizing and the direct relationship between the caste system and Hinduism.

61. Interestingly, but not surprisingly, the language in Nepal's Constitution tracks the language in the title of the CAT, verbatim, in proscribing any "cruel, inhuman or degrading treatment." See CAT, *supra* note 24; NEPAL CONST. art. 14.

62. The civil laws are codified in the Civil Code of 1963. The Muluki Ain of 1963, 29 Nepal Gazette No. 2 (1979), reprinted in Nepal Digest 22, Nepal Misc. Series (1979). For more information see *infra* note 76.

of the evolution of the Constitution. The Constitution of 1990 represents an improvement from prior ones in many ways, while simultaneously taking a step backward for other reasons. For example, the Constitution of 1990 omitted important concepts contained in the 1962 Constitution. The latter "authorised the enactment of laws to regulate or control the exercise of fundamental rights for the sake of 'public good'. These laws, vague and arbitrary in their wording, were consistently used to hamper politics."⁶³ Even though safeguards for prisoners were included in the 1962 Constitution, prisoners' rights were regularly infringed upon. One example was the enactment of the Destructive Crimes (Special Control and Punishment) Act in August of 1985.⁶⁴ This law was used to retroactively apply the death penalty to a prisoner whose crime was allegedly committed in June of 1985 (although the Act was passed in August of 1985).⁶⁵ The 1962 version also specifically omitted any characterization of the state in religious terms, while the 1990 Constitution's formal declaration of Nepal as a Hindu Kingdom represented a step backward in terms of human rights progress. The later Constitution included the provision over serious objection by representatives on the drafting committee on the grounds that a country proclaiming freedom of religion as a basic tenet should not specify a state religion.

There are several possible explanations for this type of contradiction within the Constitution of 1990. As with any document drafted by a committee, the Constitution is the result of a compromise. The three main forces in power at the time of the popular movement to abolish the *panchayat* form of government were King Birendra, the Nepali Congress Party and the United Left Front.⁶⁶ These parties agreed to establish the Commission,⁶⁷ and charged

63. SHAHA, *supra* note 34, at 2 (citing THE CONSTITUTION OF THE KINGDOM OF NEPAL art. 17 (1962)).

64. SHAHA, *supra* note 34, at 2.

65. In May 1987, the Destructive Crimes Act was invoked against Ram Raja Prasad Singh, leader of the Janabadi Morcha, a political party, and against three other party members in absentia. *Id.*

66. BHESH JUNG BADAL, THE KING VERSUS THE PEOPLE 111 (1997).

67. The Constitution Recommendation Commission was comprised of the Chairman Vishwanath Upadhyaya and eight other members: Laxman Aryal, Pradyumna Lal Rajbhandari, Ramananda Prasad Singh, Bharat Mohan Adhikari, Mukund Regmi, Madhav Kumar Rimal, Daman Dhungana

it with drafting a constitution to be presented to the government within ninety days. During the first month of this period, the Commission members toured the nation "to collect the opinion of the political parties, associations and institutions and individuals . . . in respect of the nature of the constitution."⁶⁸ Since the composition of the Commission included members from opposing ends of the political spectrum, there was a great deal of debate concerning major sections of the draft document. Hotly contested topics included whether the monarchy itself should be retained, the question of sovereignty,⁶⁹ whether the series of events of the popular movement should be described in the preamble and whether the constitution should be theocratic or secular.⁷⁰ At one point in the process, the possibility of drafting three separate versions of a constitution was raised. This potential crisis was deftly averted by an agreement entered into by the leaders of the political parties involved.⁷¹

In the face of these challenges, the Commission met its mandate and submitted a draft to the King on September 10, 1990. The King gave the document to Prime Minister Krishna Prasad Bhattarai to discuss with the Council of Ministers ("Council").⁷² The Council named a subcommittee of three members to review the draft constitution and "effect appropriate changes and amend-

and Nirmal Lama. Three of these members represented the Nepali Congress Party, while three others represented the united left front. *Id.* at 114-17.

68. The Commission collected over "8,707 suggestions from 1,95,665 [sic] individuals" concerning the Constitution. *Id.* at 113.

69. The question of sovereignty centered around whether power should be vested in the people under a constitutional monarchy or remain with the King as with the prior absolute monarchy. *Id.* at 115.

70. *Id.* at 114.

71. Apparently, one of the greatest points of contention had to do with the procedure for amending the Constitution itself. The left front representatives were opposed to the possibility of amendment at all, but it was finally agreed that a complicated procedure be adopted for amendment, and the crisis was avoided. *Id.* at 115-16.

72. The Council of Ministers is a political body, headed by the Prime Minister and comprised of key government officials. See BADAL, *supra* note 66, at 116-17.

ments.”⁷³ The subcommittee made several changes and submitted the document to the King for promulgation. At this time, however, there was speculation concerning another draft version of the constitution allegedly written and circulated “by the Palace.”⁷⁴ Once again, the situation was handled diplomatically and the subcommittee’s draft, not the “Palace draft,” was resubmitted to the King. Finally, the King “proclaimed the promulgation of the Constitution 1990 of the Kingdom of Nepal and revoked the 1962 *panchayat* Constitution.”⁷⁵

While the Constitution of 1990 was drafted over the period of a few months, the Civil Code of 1963,⁷⁶ the nation’s federal statutes, have been amended from time to time over the years. While the Civil Code is not ideal from a human rights perspective, many of the amendments over the years have improved it considerably. For example, the Sixth Amendment to the Civil Code, in 1975, made sizeable human rights advancements, particularly with respect to women’s issues.⁷⁷ The Civil Code, however, still contains multiple discriminatory and unconstitu-

73. Nilamber Acharya, Yoga Prasad Upadhyaya and Keshar Jung Rayamajhi were the three ministers asked to serve on the subcommittee. *Id.* at 117.

74. *Id.* at 119-20.

75. *Id.* at 123.

76. In Nepali, the Civil Code is called the *Mukli Ain* (or *Muluki Ain*). The author has been unable to find a comprehensive English translation of it and thus must rely on partial translations made by other authors, researchers or activists. The Civil Code is based on a combination of earlier forms of legislation, English common law and Hindu legal concepts and as such, often codified cultural or religious traditions as law or as exceptions to the law. For example, although the Civil Code of 1963 outlaws child marriage, payment of dowry and bride price, the transaction of dowry bride price is permissible if it is a community custom. See CHILD WORKERS IN NEPAL CONCERNED CENTER (CWIN), STATE OF THE RIGHTS OF THE CHILD IN NEPAL 59 (1998).

77. The Sixth Amendment granted women the right to alimony at their divorce (for a maximum of five years or until remarriage); legal custody of their children at divorce (as long as they do not remarry); allowed an unmarried daughter thirty-five or older to possess an equal share of parental property (which she must forfeit if she gets married); increased the penalty for polygamy and bigamy; legalized adoption of a female child; increased the penalty for human trafficking (ten years imprisonment if caught before the sale, twenty years if caught after the sale); increased the penalty for rape; and improved female inheritance rights under certain circumstances. PRATIVA SUBEDI, NEPALI WOMEN RISING 136 (1997).

tional provisions that should be amended in order to further Nepal's implementation of a comprehensive human rights policy. More specific examples of the conflicts will be discussed in Part III *infra*.

Finally, it must be noted that while Nepal has ratified the major international human rights instruments, it is not in full compliance with them. The instruments, ratified under the auspices of the United Nations, require various periodic reporting concerning the ongoing status and progress made towards various goals. Nepal has not filed all of the required reports. The United Nations, however, does not have an effective enforcement mechanism to remedy these deficiencies. Moreover, since these are voluntary instruments, the more germane question is what impact, if any, does the failure to file reports have on the people living in Nepal. This author submits, none, except for the fact that Nepal's failure to meet all requirements may raise its profile with interested parties and may focus more attention on the actual policies in place affecting the Nepalese citizens. This focused attention itself is helpful in highlighting a country that intentionally remained isolated for over 100 years during the 19th and 20th centuries as international pressure exerted on Nepal may hasten the realization of human rights.

III. OBSTACLES TO NEPAL'S FULL IMPLEMENTATION OF HUMAN RIGHTS

Part 4 of the Constitution of 1990⁷⁸ concerns "Directive Principles and Policies of the State." One of the directive principles states:

The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliant system by preventing the available resources and means of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as will prevent economic exploitation of any class or individual, and by giving preferential treatment

78. NEPAL CONST. arts. 24-26.

and encouragement to national enterprises, both private and public.⁷⁹

While this principle is commendable, it is a far cry from reality. At least one politician⁸⁰ has pointedly described Nepal's current situation as:

Hospitals exist without doctors, offices function without officials and its head; demand for increased food supplies are made from the food-deficient districts but decisions are eventually made to remove the food supply depots; the fiscal year is about to end but there is no sign of the stipulated budget disbursement for these districts.⁸¹

Although the president of the most powerful political party in Nepal⁸² may have had ulterior motives⁸³ in stating that reality is a far cry from what is proposed in the Constitution, his statement was nonetheless true. Nepal lies in one of the poorest areas of the world and is consistently listed on the bottom of the rankings with respect to life expectancy, literacy and health services.⁸⁴ Many of the causes of these social problems in Nepal are at least partly due to its remote location, unique geography and diverse nature of its population.

Nepal is a land-locked country situated in South Asia, sandwiched between the regional powers of China to the north (including the province of Tibet) and India to

79. *Id.* art. 25(2).

80. It was reported that while the Nepali Congress president, Girija P. Koirala, was touring several districts, he made the quoted remark. Dhruba Kumar, *What Ails Democracy in Nepal?*, in DOMESTIC CONFLICT AND CRISIS OF GOVERNABILITY IN NEPAL 14, 40-41 (Dhruba Kumar ed., 2000).

81. *Id.*

82. The Nepali Congress Party is the most powerful political party. There have been eleven governments elected since the popular movement caused the demise of the *panchayat* system of government in April 1990. Out of those eleven governments, the King has appointed the prime minister from the Nepali Congress Party eight times: Krishna Prasad Bhattarai (Apr. 1990), Girija Prasad Koirala (May 1991), Sher Bahadur Deuba (Sept. 1995), Girija Prasad Koirala (Mar. 1998), Girija Prasad Koirala (Aug. 1998), Girija Prasad Koirala (Dec. 1998), Krishna Prasad Bhattarai (May 1999) and Girija Prasad Koirala (Mar. 2000). The King must appoint the leader of the majority party as prime minister. Dipak Gyawali & Ajaya Dixit, *Mahakali Impasse: A Futile Paradigm's Bequested Travails*, in DOMESTIC CONFLICT AND CRISIS OF GOVERNABILITY IN NEPAL 236, 291 (Dhruba Kumar ed., 2000).

83. For example, it may be in a political party leader's interest to blame the condition of a nation's economy on another party's failed policies.

84. See generally HUMAN DEVELOPMENT REPORT 2000, *supra* note 10.

the East, West and South.⁸⁵ Its Northern region is bounded by the Himalayan mountain range, which boasts eight of the world's highest peaks, including *Sagarmatha*, better known as Mount Everest. Its southern landscape descends from the Himalayan foothills to fertile valleys and farming terrain in the Terai region⁸⁶ where it shares an open border with India.⁸⁷ This type of geography, with great mountains in the north and a veritable jungle in the south, necessarily results in severe obstacles to communication within the country, especially when coupled with linguistic and cultural differences among the people inhabiting these diverse and geographically remote, if not virtually inaccessible, regions.

The people of Nepal may be characterized into two broad ethnic groups: the Indo-Nepalese and the Tibeto-Nepalese, which comprise approximately 80% and 20% of the current population, respectively.⁸⁸ The Indo-Nepalese include the ethnic groups of the *Newar*, *Pahari*, *Thari* and indigenous people of the Terai region, while the *Bhote*, *Gurung*, *Limbu*, *Magar*, *Rai*, *Sunwar* and *Tamang* ethnic groups compose the Tibeto-Nepalese.⁸⁹ As the names suggest, the Indo-Nepalese people have origins on the Indian subcontinent while the Tibeto-Nepalese originate from the Tibetan region of China. Over sixty-one distinct ethnic groups have been identified in Nepal.⁹⁰

Most of these ethnic groups have distinctive cultures with unique traditions, often based on their dominant religion. Many of these groups also have their own

85. Prof. Prem Raman Upreti, Presentation to students at Dhulikhel Mountain Resort, *supra* note 29.

86. Approximately 23.1% of flat land is located in the Terai region. SHAVITRI SINGH, STATISTICAL PROFILE ON WOMEN OF NEPAL i (1995).

87. Dr. Lok Raj Baral, Presentation to students at Dhulikhel Mountain Resort, *supra* note 27.

88. See Atlapedia Online (Nepal), at <http://www.atlapedia.com/online/countries/nepal.htm> (last visited Oct. 28, 2001).

89. *Id.*

90. Dr. Lok Raj Baral, Presentation to students at Dhulikhel Mountain Resort, *supra* note 27. The Task Force on Academy for Upliftment of Nationalities identified sixty-one ethnic groups and subgroups in 1996. See Kapil Shrestha, *Minority Politics In Nepal: A Human Rights Perspective*, in DOMESTIC CONFLICT AND CRISIS OF GOVERNABILITY IN NEPAL 197, 198 (Dhruba Kumar ed., 2000). However, the 1991 Census of Population listed 35 different languages and 59 ethnic groups. See SINGH, *supra* note 86, at i.

language,⁹¹ including their own script.⁹² This diversity, while adding to the richness of Nepal's cultural mosaic, is also a source of tension. For example, Hinduism, traditionally the religion of the great majority of the Indo-Nepalese people, constructed a caste system in society, with hierarchical levels of membership.⁹³ Originally, individuals were assigned to castes based on the color of their complexions and later according to the three virtues.⁹⁴ Around 800-1000 B.C., however, people began to be assigned to castes by virtue of their birth, without an opportunity to change castes during their time on earth.⁹⁵

The caste system consisted of four levels. Brahmins or noblemen were "thinkers or inquirers" at the highest level, followed closely by the protectors or warriors and called *Chhetris*.⁹⁶ Merchants and traders, called *Vaishya* made up the next level of society. The lowest level, or *Dalits*,⁹⁷ were members of the "untouchable" caste. Al-

91. The National Language Policy Advisory Commission listed sixty living languages in Nepal in 1994. Shrestha, *supra* note 90, at 198.

92. Because of all these differences, Nepal is sometimes referred to as a *fulbari*, or garden, to represent all the varieties of plants growing together. *Id.*

93. Prof. Mukunda Aryal, Presentation to students at Dhulikhel Mountain Resort, Nepal (Jan. 11, 2001).

94. Those with the fairest complexions were assigned to the highest caste and the darkest complexions were assigned to the lowest caste. The three virtues were *Satwa*, *Raja* and *Tama*; a caste was assigned depending on which of these qualities an individual possessed. Prof. Manohari Upayhyay, Presentation to students at Dhulikhel Mountain Resort, Nepal (Jan. 7, 2001).

95. *Id.*

96. According to the Census of Population of 1991, these two top caste categories together constituted 39% of the total population. SINGH, *supra* note 86, at 10.

97. *Dalits* have been socially and economically suppressed and oppressed for thousands of years. The Census of Population of 1991 indicated that *Dalits* constituted approximately 15% of the total population in Nepal.

Due to the intense pressure exerted by the ruling Hindus, the *Dalits* themselves have developed internal caste hierarchy with the concept of purity and pollution among themselves in the process of Sanskritization, which in fact is an internal colonization by the ruling Bahun and Chhetris. Due to the influence of the dominant Hindu values, *Dalits* exist within the *Dalits*.

Krishna B. Bhattachan, *Possible Ethnic Revolution or Insurgency in a Predatory Unitary Hindu State, Nepal*, in DOMESTIC CONFLICT AND CRISIS OF GOVERNABILITY IN NEPAL 135, 153 (Dhruba Kumar ed., 2000) (emphasis in

though the caste system was abolished in 1960⁹⁸ and discrimination on the basis of caste is prohibited by the Constitution of 1990,⁹⁹ certain groups of people who were closely affiliated with either high or low castes may not easily shake (or lose) their family's prior association. Accordingly, many "high caste" members currently occupy prime government positions in the capital along with *Newars*.¹⁰⁰ Similarly, many *Dalits* continue to face discrimination¹⁰¹ based on this past association and there has developed "a process of social exclusion through which participation is restricted and claims to social opportunity denied."¹⁰² Moreover, "[w]omen in the *Dalit* community, a significant proportion of Nepal's female population, faced triple discrimination, they were women, poor and of the lowest caste."¹⁰³

Another major hurdle to progress in realizing the fundamental human rights promised in the Constitution and under the international instruments is the overwhelming corruption in the government. "Scandals about corruption are regular features of news in Nepal."¹⁰⁴ The

98. Prof. Manohari Upayhyay, Presentation to students at Dhulikhel Mountain Resort, *supra* note 94.

99. NEPAL CONST. art. 11(4).

100. While *Newars* were not traditionally Hindus, this ethnic group is said to be the original inhabitant of the Kathmandu Valley, now the capital of the country and seat of governmental power. Currently, many *Newars* still hold government positions. See *Newars Community*, at <http://www.newarscommunity.com> (last visited Oct. 29, 2001).

101. *Dalits* have been demanding "secularism, positive discrimination [affirmative action] and elimination of the practice of untouchability," among other things, and His Majesty's Government recently established a National Dalit and Oppressed Development Committee. The political appointment of a *Bahun* as the first executive director, however, caused *Dalit* protest. Bhattachan, *supra* note 97, at 153.

102. Kumar, *supra* note 80, at 48.

103. Press Release, United Nations, Nepalese Women Suffer from Ill Health, Poverty, Legal Discrimination Women's Anti-Discrimination Committee Told, (June 15, 1999), at <http://www.un.org/News/Press/docs/1999/19990615.WOM1136.html> (last visited Oct. 27, 2001).

104. Kumar, *supra* note 80, at 34.

Out of 22 major corruption cases recorded so far, besides gold, idol and drug smuggling, 18 were committed between 1974 and 1989 (king [sic] Birendra era). Among the rest of the four scandals, namely the RNAC-Dhamija deal, fertilizer deal, telephone

problem is so rampant, in fact, that the Constitution of 1990 created a Commission for the Investigation of Abuse of Authority.¹⁰⁵ This group is charged with investigating allegations of "improper conduct or corruption by a person holding any public office" and may result in an admonishment or other legal action.¹⁰⁶ One would think that this widespread level of abuse would result in a lack of faith or trust in the government by the citizens.¹⁰⁷ However, the relatively high level of participation in national and other elections¹⁰⁸ strongly suggests that Nepalis are committed to their democratic form of government.¹⁰⁹ In 1991, the turnout for the national election was 65.2%, or 11.1 million voters.¹¹⁰ Nepalis eighteen years of age or older are eligible to vote and the number of voters continues to increase.¹¹¹ Interestingly, the voter turnout is much higher

distributions, and sugar and petroleum deals, all the major political parties' leaders were found indulging in corrupt practices.

Id.

105. NEPAL CONST. arts. 97-98.

106. *Id.* art. 98.

107. At least one scholar maintains a different point of view. "Disillusionment, though widespread, has yet to depoliticize the people. Indeed, the people feel betrayed by the political parties of their choice, not by the political processes even under the procedural democracy." Kumar, *supra* note 80, at 34.

108. For example, the turnout of voters in the June 1999 election was 66%. See HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 245-46.

109. Their commitment to democracy is evidenced by the voter turnout and the understanding that voting in Nepal is not as simple as it is in many developed nations. "There are places in remote areas where voters will have to walk eight hours just to cast a vote . . . [or] walk through forests and formidably difficult terrain." Dev Raj Dahal, *Reforms in the Electoral Process of Nepal*, in COMPARATIVE ELECTORAL PROCESSES IN SOUTH ASIA 55, 75 (Devendra Raj Panday et al. eds., 1999). See also SHIVA SHARMA & MANASA THAKURATHI, A REVISIT TO THE KAMAIYA SYSTEM OF NEPAL 51 (1998) ("In rural areas, one may have to spend from a half day to full day in the process of voting.").

110. The Election Commission's Report for 1991 indicated that 65.2% of total voters in the national election participated. SINGH, *supra* note 86, at 50. The total population of Nepal was then approximately 18.5 million. *Id.* at 66.

111. In 1994, the number of voters was 12.1 million and in 1999 the number increased to 13.5 million. The author was not able to determine whether the number of voters is just the eligible number of voters (i.e. Nepali citizens 18 and over) or whether these citizens are somehow "registered" to vote. Although there have been pilot tests with national voter registry lists as

in the rural areas, than in the urban areas, where voters tend to vote in blocks.¹¹²

Other obstacles to implementing universal human rights in Nepal are the high rates of poverty, illiteracy and lack of access to health care. The per capita gross domestic product for Nepal in 1998 was \$1,157.¹¹³ A huge majority of the population, approximately 94%, is engaged in subsistence agricultural endeavors.¹¹⁴ Only 18% of all arable land has access to irrigation, so farmers must depend on an unreliable source, the rain, for their crops and livestock.¹¹⁵ In order to eke out a minimum survival from the land, farming requires all family members, including children, to participate in the agricultural work. Therefore, not all children have the luxury of attending school.¹¹⁶ Since many children are forced to drop out of school at a young age, the incidence of illiteracy remains high and the cycle continues. "The illiteracy of parents, as

well as with identification cards to prevent voter fraud, neither of these schemes has been wholly effective. The fact that many rural Nepalis do not even register the births of their children and the open border with India are two commonly mentioned difficulties in accurately counting the voters. Dahal, *supra* note 109, at 65.

112. Voter turnout in the rural areas averages close to 90% while the urban turnout is between 30-40%. Averaging these figures results in the overall turnout of approximately 65%. Prof. Prem Raman Upreti, Presentation to students at Dhulikhel Mountain Resort, *supra* note 29.

113. HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 159. Some activists argue that this figure is too high and reflects the wealth of the capital city, Kathmandu. Nearly 70% of the country's population lives in poverty. OMAR SATTAUR, CHILD LABOUR IN NEPAL 12 (1993). Another statistic estimates that Nepal's annual per capita gross domestic product is approximately \$210. U.S. DEPT OF STATE, 2 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1999 - NEPAL 2374, 2375 (2000), available at http://www.state.gov/www/global/human_rights/1999_hrp_report/nepal.html (last visited Oct. 26, 2001) [hereinafter HUMAN RIGHTS REPORTS FOR 1999-NEPAL].

114. SUBEDI, *supra* note 77, at 75. The distribution of the land is the main cause for the prevalence of subsistence farming. As of 1998, 46% of the total available agricultural land was owned by 9% of the population; the remaining 91% of the people divided up the other 54%, resulting in high levels of subsistence farming. CWIN, *supra* note 76, at 4.

115. SUBEDI, *supra* note 77, at 75.

116. The costs of attending primary school, such as the need for paper and pens as well as appropriate attire may appear minimal, but often cannot be met by Nepali families. If families can only afford to send one child to school, it is almost universally the male child.

well as social taboos and role expectations limit girls' access to education.¹¹⁷

Illiteracy, therefore, is both a symptom of and an obstacle to improving the human rights situation in Nepal. The adult literacy rate in 1998 was measured at 39.2%.¹¹⁸ This figure means that a little more than one in three adult Nepalis are able to read. This number is also skewed towards males since they are typically favored over females in educational opportunities. When the rates are divided by gender, the literacy rate for women is 21.7%, while the rate for men is 56.9%.¹¹⁹ The fact that men are favored over women may be partly based on Hindu traditions. One such tradition requires that when a woman marries, she move into her husband's household. The reasoning is that since a female is essentially raised to benefit another, it does not make economic sense to waste any more resources on her than necessary.¹²⁰ This argument extends even to the distribution of food. Therefore, although malnutrition is prevalent throughout most of Nepal, its rates are much higher among females than males. Additionally, the rate of pregnant women with anemia, another sign of poor diet, was recently recorded at 65% in Nepal.¹²¹

While the reasons for this discrepancy may be both lack of sufficient food and the cultural practice of feeding

117. SUBEDI, *supra* note 77, at 58.

118. Individuals 15 years of age or older are classified as adult in this study. HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 159.

119. *Id.* at 163. See also SINGH, *supra* note 86, at 22-25.

120. SUBEDI, *supra* note 77, at 2-3.

A stanza from a famous epic reflects the joy of the parents who have just handed over the responsibility of their daughter:

'The daughter is a thing to give away

For someone else she is kept

What a relief to send her away today

I'm light as a feather and free from debt.'

Kalidasa's play 'Abhigyanashakuntal,' 4th century A.D., translated into English by Shambhu Prasad Dhungel.

The author quoting this epic reminds that even though this poem was written centuries ago, these attitudes still persist among both the educated populace and in rural areas. *Id.*

121. The data used in this report does not list the specific year for this category; it only represents that the data refers to the most recent year available between 1975 and 1991. HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 192.

males before females, another contributing factor may be an overall lack of knowledge concerning nutrition, and lack of access to health care in general.¹²² In Nepal, there are only five doctors and five nurses for every 100,000 people.¹²³ The lack of access to trained medical professionals is also often given as an explanation for the low life expectancy for both sexes. In fact, Nepal is one of the few countries in the world where the life expectancy for women (57.6 years) is actually lower than that for men (58.1 years).¹²⁴ The lower rate for women may also be caused by an unusually high maternal mortality rate.¹²⁵

With overwhelming fundamental problems such as producing enough food to provide for one's family and lack of access to health care, it would not be surprising if Nepalis chose not to squander their time on ethereal protections such as human rights. However, many individuals and groups are fighting to enforce the rights granted to citizens in the Constitution and international instruments. Through use of the Judiciary, Parliament, administration, external groups and even revolution, human rights issues are being addressed. Part IV will cover key examples of these activities.

122. SUBEDI, *supra* note 77, at 92.

In [Nepal] the majority of people live in rural areas. It is difficult for these people to benefit from the various types of information and services which are available in the urban areas, and few, even among the educated youth, have a good understanding of the structure and functioning of the human body. There is a lack of knowledge even of basic first aid amongst the majority of people in the rural communities who do not have even a minimal education.

Id.

123. The data cited refers to the time period of 1992-1995. HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 192.

124. *Id.* at 159.

125. According to Nepal's national authorities' reports to UNICEF and the World Health Organization, approximately 540 mothers died for every 100,000 live births in Nepal during the 1990-1998 timeframe. *Id.* at 188-89.

IV. TAKING ACTION TO ENFORCE HUMAN RIGHTS IN NEPAL

The Constitution of 1990, together with the Civil Code, constitutes Nepal's national laws. Many of the civil laws and Constitutional provisions were originally based on traditional or religious customs¹²⁶ and later codified or formalized into law. For example, in order to be a Hindu, one must be born into the faith. There is neither a tradition of conversion into Hinduism nor the proselytizing of potential new members that occurs in other religions.¹²⁷ Therefore, while the Constitution purportedly gives individuals the ability to practice their own religion, it is limited by the caveat that, "no person shall be entitled to convert another person from one religion to another."¹²⁸ The author contends that a person is not truly free to practice any religion in a country that has declared itself a Hindu kingdom.¹²⁹ The implication of such a statement is that all Nepalis are Hindus, follow the Hindu way or that Hinduism is the State-sanctioned religion.¹³⁰ The

126. The distinction between culture, tradition and religion often blurs in Nepal, due to the nature of the two main religions, Hinduism and Buddhism, which interweave their practices and observances throughout daily life. Sudheer Birodkar, *Buddhism-Our Message of Peace, Non-Violence and Goodwill*, at http://www.hindubooks.org/sudheer_birodkar/hindu_history/buddhism.html (last visited Oct. 28, 2001).

127. For example, Christianity has a long history of proselytizing, from the Crusades to modern day. The Church of Jesus Christ of Latter-day Saints considers missionary work a fundamental part of their faith and requires all young men to perform two years of this service. C. A. Abraham, *Christian Missionary Activities*, at <http://www.huk.org/articles.0501/142.html> (last visited Oct. 28, 2001).

128. NEPAL CONST. art. 19.

129. Other faith-based organizations share this view:

Whilst the constitution prescribes freedom of religion, the only religion it protects is Hinduism. Conversion to another religion, along with proselytizing by 'foreign religions,' are [sic] strictly prohibited by law and punished with imprisonment or deportation. Even Christians giving their children Christian instruction in schools is treated as proselytizing the children.

Nepal: Christians Heavily Afflicted in Only Hindu State in the World, VIA MISSION NEWS, Mar. 3-16, 2000, at <http://www.viamission.org/3/vianews/nations/nepal.html> (last visited Oct. 29, 2001).

130. Although Nepal is by Constitution a Hindu state, the Census of Population of 1991 data shows that 86.5% are Hindus, 7.8% are Buddhists,

Civil Code strengthens this Constitutional caveat by making proselytizing a crime, with a penalty of up to six years in prison or expulsion for foreigners.

This religious example is only one of many provisions of Nepal's law that is characterized as discriminatory by opponents. Interested parties and organizations such as non-governmental organizations ("NGOs"), international non-governmental organizations ("INGOs") and trade unions, among others, have tried many avenues to challenge these types of apparent contradictions, including the judicial system, the legislature and grass roots organizing. Further, radical activists have even resorted to violence and revolution in favor of pursuing change through diplomatic, evolutionary means. The following Sub-Sections offer examples of the many specific types of human rights groups that are trying to bring about change in Nepal, and the methods they are employing.

A. Judicial System

In 1994, a groundbreaking lawsuit was filed by two female attorneys concerning the disparity between the words and actions of the Nepalese government with respect to women's rights.¹³¹ They alleged through a writ petition that No. 16 of the Chapter on Partition of the Country Code, 1963, was inherently discriminatory against women and therefore unconstitutional. This section of the law states that a daughter is entitled to inherit parental property provided that she is unmarried and has reached the age of thirty-five years. If she gets married after receiving her share, she has to return the property to her natal family, excluding the marriage expenses.¹³²

3.5% are Muslims and 2.2% are other religions. Even these numbers are misleading due to the unique nature of the interrelationship between Hinduism and Buddhism in Nepal. "In Nepal, Hindus and Buddhists live together and worship each other[s] deities and celebrate festivals of both religions." SINGH, *supra* note 86, at 9.

131. Meera Dhungana v. His Majesty's Government of Nepal, 3 NLJ 2053 (1995), reprinted in SAPANA PRADHAN MALLA, FORUM FOR WOMEN, LAW AND DEVELOPMENT, BASELINE STUDY ON INHERITANCE RIGHT OF WOMEN 55 (2000) [hereinafter BASELINE STUDY].

132. *Id.*

A Special Bench of the Supreme Court declared on July 3, 1995, that existing provisions of the civil laws were discriminatory and called for amendment of existing provisions in support of women.¹³³ The Court reasoned:

Taking into consideration the social condition of men and women, the Nepalese law has provided only some different process of getting partition share. Instead of depriving a daughter of the right to get partition share or making discrimination against her, the right of a daughter to get partition share has only been managed in a slightly different manner from that of a son, taking into account the social status of women. For instance, according to No. 16 of the Chapter on Partition, an unmarried daughter should attain the age of at least 35 years in order to get partition share, while even a married daughter should attain the age of 35 years and a period of 15 years should have been spent from the date of marriage to get partition share. In regard to the process of getting partition share, a son gets partition share at his birth, but a daughter should fulfill some terms to get the same, which cannot be disregarded. Before declaring No. 16 of the Chapter on Partition unconstitutional, and making provision as to the same entitlement of a daughter to partition share as that of a son, the negative sides thereof or its implications on the society should also be taken into account. This results in a great impact on the structure of the patriarchal society like ours, handed down from ancient times; a daughter may not be compelled to get married and to go to her husband's house after marriage, and while on the other hand declaring No. 16 of the Chapter on Partition unconstitutional and making provision entitling a daughter to get partition share as of a son, a married daughter will be entitled to get partition share from the properties of both her father and husband, and a son will be entitled to get partition share only from the property of his father, in regard to the right to obtain partition share, this will create the right of a daughter to obtain more partition share than a son's right to obtain partition share thus, creates conditions discriminatory against the son. . . . [The Court continued] . . . declaring No. 16 of the Chapter on Partition void and making provision entitling a daughter to get partition share as of a son is not a solution to the problem. In making sudden changes in traditional social practices and in matters of social norms pursued by the society since a long time ago, the society happens to become unable to adopt several matters, and if so happens, a different situation be-

133. *Id.*

yond perception would emerge. Therefore, before reaching a decision all of a sudden, a just provision should be made by holding wide and extensive discussions and deliberations taking also into account the constitutional provision vis-à-vis equality. As the family law relating to property is to be wholly considered, a directive is hereby issued ordering that His Majesty's Government introduce an appropriate [b]ill in Parliament within one year of receipt of this order, by making necessary consultations on this matter with the recognized women's organization, sociologists, the concerned social organizations and lawyers as well, and by studying and considering also the legal provisions made in other countries in this regard.¹³⁴

While the Court did not directly declare the inheritance law unconstitutional and therefore void, it did direct the government to introduce a bill on the topic and review the issue. The Court reasoned that before such a fundamental change could be enacted, extensive discussion, serious contemplation and comparative review of other countries' laws should be undertaken by knowledgeable and concerned parties. In light of the Court's ruling, many of the recognized women's organizations, concerned social organizations and lawyers were understandably disappointed when the government failed to propose any bill.¹³⁵ Representatives of these NGOs united to draft a private bill for discussion and a plan for its implementation.¹³⁶

134. *Id.*

135. *Id.*

136. BASELINE STUDY, *supra* note 131, at 56.

Legal Aid and Consultancy Center (LACC) took up the initiative to draft a Private Bill. Following the Supreme Court's order, LACC first held discussion programs to review the situation and to formulate plans for the future. It formed a Comparative Study Team to study foreign laws and prepare arguments for the equal right of women as well as to see how the foreign laws are protecting women's inheritance right. It also gathered different amendments on Hindu Succession Act from India that have guaranteed equal inheritance right to a daughter. This study conducted by the [Forum for Women, Law and Development] in coordination with LACC (March-May 1996) also looked into the gaps in the existing system in detail. The British Council supported the Coordinator of the Committee to visit England and study the British Legal System. LACC then

However, in February 1995, prior to the Court's ruling, the Ministry of Women and Social Welfare had already formed a task force on the issue, and drafted a bill on inheritance rights.¹³⁷ The NGOs made the tactical decision to support this submission and held advocacy programs to lobby Parliament in favor of the government's bill, including a rally on International Women's Day (March 8, 1997).¹³⁸

Simultaneous with this grass roots advocacy, another NGO¹³⁹ filed a contempt of court petition with the Supreme Court, raising two questions. First, "[w]hether it is sufficient for the Government just to submit the Bill or is it necessary for the Parliament to discuss and enact the law considering its obligation under CEDAW and equality clause under [the] [C]onstitution?" Second, whether the Bill should "look into the concept of equality or not?"¹⁴⁰ The Court sidestepped directly answering the questions presented and ruled that the court order was not disobeyed, following a ripeness rationale.¹⁴¹

Another key legal case in Nepal concerned the use of "mother tongues," or native regional languages, as the medium of discussion at local or municipal level meetings. On April 14, 1998, the Supreme Court ruled that the

initiated necessary activity to prepare the Bill that would guarantee economic rights to women, and to formulate extensive plan of action to get the Bill adopted. The Bill was also shared with many [Members of Parliament], concerned ministries, and the speaker/chairman of the both houses of Parliament.

Id.

137. *Id.*

138. *Id.*

139. The Forum for Women, Law and Development ("FWLD"), located in Kathmandu.

140. Forum for Women, Law and Dev. v. His Majesty's Gov't of Nepal, Writ No. 3897 (1997), reprinted in BASELINE STUDY, *supra* note 131, at 57.

141. The more complete answer of the Court was:

Government submitted the Bill on 13-1-1997 [January 13]. . . in eleventh session of the [P]arliament, however the Bill was not discussed, hence it was again registered on 31-7-1998 [July 31] . . . in its twelfth session and right now it is under the considerations of the human right committee, hence we cannot say that the court order was disobeyed.

Id.

Newari and *Maithali* languages could not be used as official languages at the local level.¹⁴² This decision caused domestic protest and many political party leaders condemned the Court's verdict.¹⁴³ The Constitution states that while the Nepali language is the "official" language, "[a]ll languages spoken as the mother tongue in the various parts of Nepal are the national languages of Nepal."¹⁴⁴

The Constitution's Article 6 language provision could reasonably be interpreted to require all government meetings, even those held in remote regions where the majority of residents speak another tongue, to be conducted in the "official" language.¹⁴⁵ This interpretation, however, belies the Constitutional provisions recognizing Nepal's "multilingual"¹⁴⁶ nature and each community's right to "preserve and promote its language, script and culture."¹⁴⁷ It would be more in line with the spirit of the Constitution, as well as the human rights instruments ratified by Nepal, to find that both languages are acceptable under the law. If the Court fails to adopt liberal interpretations, then Constitutional provisions may be rendered useless and become mere "paper protections." The native tongue speakers lost their case in the Supreme Court, and accordingly the government has made no change in the practice of requiring the "official" language to be spoken at regional meetings.

Although the Supreme Court has extraordinary power to remedy unconstitutional laws, it would be equally extraordinary for most Nepali citizens to avail themselves of the judicial system. As discussed in Part II, *supra*, a large number of Nepalis are illiterate, live in rural regions at great distance from the venue of the Supreme Court (Kathmandu) and lack the time or money to bring a civil action. It is also highly unlikely that most citizens are cognizant of the exact contents of the Consti-

142. See Pancha N. Maharjan, *The Maoist Insurgency and Crisis of Governability in Nepal*, in DOMESTIC CONFLICT AND CRISIS OF GOVERNABILITY IN NEPAL 163, 181 (Dhruba Kumar ed., 2000).

143. There were also allegations that influential Brahmins lobbied the Court to uphold the verdict. *Id.*

144. NEPAL CONST. art. 6.

145. *Id.*

146. *Id.* art. 4.

147. *Id.* art. 18.

tution or Civil Code. It is even more doubtful that many would know the series of steps required to file such an action in Court. Furthermore, the rampant corruption throughout government extends into the judicial system.¹⁴⁸

Awareness of the corruption may act as a deterrent to litigants without the means or desire to face a potentially "unfair" trial presided over by a judge who may have accepted a bribe or succumbed to political influence. Even if a citizen were able to meet the prerequisites of filing a lawsuit and was undeterred by possible corruption, she would still face a great delay in the administration of justice. According to the latest statistics, more than 150,000 cases are listed as active throughout Nepal.¹⁴⁹ "The Supreme Court has a backlog of approximately 15,000 cases, which it expects to take four years to clear. A case appealed to the Supreme Court may take more than 10 years to conclude."¹⁵⁰

The fundamental question concerning the efficacy of the judicial system is what impact a ruling by the Supreme Court has in Nepal.¹⁵¹ Both cases discussed herein may be said to have had the same result: no change. From an optimistic standpoint, however, the lawsuits raised awareness of the issues and have laid the groundwork for the next salvo, whether it be in the courts, the Parliament or elsewhere. The decision of the Court in *His Majesty's Gov't of Nepal v. Meera Dhungana* was, on paper, a partial victory for the plaintiffs, as well as all women in Nepal. The Court required the Parliament to introduce a bill improving inheritance rights for women. In reality, however, the ruling has had little, if any, impact on the situation of women. To date, no laws have been changed, re-

148. "The Constitution provides for an independent judiciary; however, the courts are susceptible to political pressure and corruption." HUMAN RIGHTS REPORTS FOR 1999-NEPAL, *supra* note 113.

149. *Id.*

150. *Id.*

151. While this discussion is specifically addressed to the impact of a Supreme Court ruling, it is equally applicable to a ruling by any of the lower courts as well. The lower courts include the Appellate Courts, District Courts and other specially created courts and tribunals. NEPAL CONST. art. 85.

scinded or amended as a result of the Court's decision.¹⁵² Yet, a heightened awareness of this issue by society at large is viewed by activists and lawyers as a key to success of their endeavors.¹⁵³ Furthermore, most of the political parties have added a plank to their party platform that would extend property rights to daughters.¹⁵⁴ In fact, even the Prime Minister has described his hope for a change in women's roles in his inaugural address at a regional conference on women entrepreneurs in the new millennium.¹⁵⁵

B. Parliament and the Electoral Process

Another avenue used by challengers to the status quo is Parliament and its related electoral process. The Nepalese Parliament follows the Westminster system ("first-past-the-post") under which Nepal is "divided into 205 constituencies, each of which elects one member of

152. A legislative proposal concerning gender equality in property rights was reintroduced in 2000, but at the time of writing of this Article, the results of the latest activity remain to be seen.

153. BASELINE STUDY, *supra* note 131, at 57.

Due to the court decisions in the inheritance right case, the entire society has been forced into rethinking about the patriarchal structure, male supremacy and the status of individual freedom of women. Women have begun to be vigilant about the issues and link them with the broader issue of equality.

Id.

154. *See id.* Compare another activist's opinion from a few years earlier: "[T]he leaders of all the political parties have managed to side-step the issue, although [two women's organizations] have continued to push for legislation on this matter." SUBEDI, *supra* note 77, at 141-42.

155. Prime Minister Girija Prasad Koirala said:

As women are best managers of the family . . . they will be the best managers of the nation and its business as well. . . . So they must be given greater entrepreneurial roles. For this, we must have both political will and a sense of sharing of economic management. *Our ultimate goal is to change the role of women from the management of household to the management of the national economy.*

Women Can Be Competent Managers, THE RISING NEPAL, Jan. 11, 2001, at 1, available at <http://www.nepalnews.comnp/contents/englishdaily/trn/2001/jan/jan11/index.htm> (last visited Oct. 28, 2001) (emphasis added).

[P]arliament.”¹⁵⁶ Eligible citizens directly elect the 205 members of the *Pratinidhi Sabha* (Lower House) for five-year terms.¹⁵⁷ The sixty members of the *Rastriya Sabha* (Upper House) are elected for six-year terms. The Upper House is comprised of ten people nominated by the King; 35 people (including three women) elected through a system of proportional representation by means of a single transferable vote of the Lower House; and fifteen people, three from each of the development regions elected by an electoral college consisting of people from the Village Development Committees, municipalities and District Development Committees.¹⁵⁸

The Constitution of 1990 makes special provisions in the form of a “reservation” in the recruitment of candidates in political parties for women. Article 114 requires “[f]or the purposes of elections to the House of Representatives, at least five percent . . . from any organisation or party must be women candidates.”¹⁵⁹ This type of affirmative action is a positive step towards involving more women in the political process, specifically through electoral politics. Many advocates for women’s rights, however, argue the 5% reservation is too low, especially with respect to reservations of neighboring countries.¹⁶⁰ The reservation in Nepal has yet to level the playing field with respect to representation of women in Parliament.¹⁶¹ In April 1997, an ordinance¹⁶² was implemented which amended the election laws to require reservations at the

156. Dahal, *supra* note 109, at 56.

157. *Id.*

158. *Id.* at 57.

159. NEPAL CONST. art. 114.

160. The reservation in India is 33% of the seats at the village level, and in Bangladesh more than 30% at the village level. See SUBEDI, *supra* note 77, at 134.

161. See Dahal, *supra* note 109, at 58. In 1991, in both the Upper and Lower Houses of Parliament, women represented only 4.25% of all members. Similarly, in 1997, women constituted only 0.7% of elected members on the local District Development Committees. Dilli Ram Dahal, *Nepal’s Governing Elite: Their Composition and Role in Constituting the State*, in DOMESTIC CONFLICT AND CRISIS OF GOVERNABILITY IN NEPAL 117, 124 (Dhruba Kumar ed., 2000).

162. An ordinance is a law initially proposed and implemented unilaterally by the King, but requires subsequent ratification by Parliament. See HUMAN RIGHTS REPORTS FOR 1999-NEPAL, *supra* note 113.

local and district levels in addition to the national level.¹⁶³ Despite the reservation, party leaders recruit women to run in districts that are very difficult to win, thus giving women a low likelihood of victory from the outset.¹⁶⁴ Additionally, not all political parties meet the reservation requirement prescribed by the Constitution.¹⁶⁵ For the religious and cultural reasons discussed earlier, many women do not have the freedom to participate in political parties at all,¹⁶⁶ and female politicians are drawn mostly from two categories, teachers and lawyers.¹⁶⁷

Even when a woman is elected to office, it is rare that she espouse an agenda of women's issues for fear of losing the power she holds,¹⁶⁸ and thus the cycle of non-representation continues. At least one activist laments this state of affairs and reminds these politicians to remember their history: "[I]t was a delegation of women activists that was able to get the franchise for women in 1948. It is because of the women's movement that they are able to be in parliament today."¹⁶⁹

Members of minority ethnic groups face similar problems in using the electoral process as a means to enhance their position and human rights in society. Ethno politics has been emerging as a new force, and powerful political parties are attempting to leverage it into more

163. See SUBEDI, *supra* note 77, at 133.

164. In 1994, out of the eighty-six female candidates fielded by all political parties, only ten women were elected. Dr. Prem Raman Upreti, Presentation to students at Dhulikhel Mountain Resort, *supra* note 29. See also UNITED NATIONS DEVELOPMENT PROGRAMME, KEY DOCS., BEIJING +5 REVIEW: NEPAL, REVIEW OF NGO/INGO ACTIVITIES, at <http://www.undp.org.np/keydoc/beijingp5/chap03.htm> (last visited Oct. 28, 2001) [hereinafter REVIEW OF NGO/INGO ACTIVITIES].

165. NEPAL CONST. art. 114. The constitutionally created Election Commission recently demanded explanations from parties not meeting the 5% requirement. See Dahal, *supra* note 109, at 61.

166. "Politics is still considered a man's territory, influenced by the four M's: Man, Muscle, Money, and Mafia." SUBEDI, *supra* note 77, at 134. See also SINGH, *supra* note 86, at 50 ("a woman's place is the home, not in politics has left a lot of influence in many communities of Nepal."); Dahal, *supra* note 161, at 125-26.

167. Dr. Prem Raman Upreti, Presentation to students at Dhulikhel Mountain Resort, *supra* note 29.

168. SUBEDI, *supra* note 77, at 134.

169. *Id.*

strength for themselves. "In the competitive atmosphere of democratic polity, the multicultural ethnic diversities are more often than not provoked, exploited and manipulated by political parties craving for power."¹⁷⁰ Single issue political parties or parties comprised solely of members of the same ethnic group would violate the Constitution¹⁷¹ and therefore not be recognized by the Election Commission.

The two major political parties, the Nepali Congress and the Communist Party Nepal – United Marxist Leninist ("CPN-UML"), have been either the majority or opposition party since the promulgation of the Constitution of 1990. The Nepali Congress Party follows a socialist ideology, while the CPN-UML adhere to a more communist/Marxist philosophy.¹⁷² These parties set the agenda for the legislature as outlined in their party platforms. For technical matters, however, such as economic policy, the parties hire experts to advise them on trade liberalization, privatization, deregulation and fiscal reform. These concepts are generally not included in a party's plank.¹⁷³ This lack of understanding by the majority of elected representatives themselves and failure to clearly publicize the party's recommended economic policy has negative results.

This scenario, on the one hand, has drastically reduced the chances of formulating and enacting effective and meaningful legislation and, on the other, increased the possibility of unpredictable policy changes and aberrations since a handful of politicians enjoy the freedom of anarchic proportion in the absence of [a] party[] policy blue-print, thus providing room for ad-hocist and whimsical changes.¹⁷⁴

170. Kumar, *supra* note 80, at 47.

171. NEPAL CONST. art. 112.

172. Achyut Wagle, *Economic Reform: Political Component in Reform Agenda*, THE RISING NEPAL, June 13, 2001, at <http://www.nepalnews.com.np/contents/englishdaily/trn/2001/jun/jun13/featu res.htm> (last visited Oct. 27, 2001).

173. *Id.*

174. *Id.*

C. The King and His Majesty's Government

Before the pro-democracy movement and the promulgation of the Constitution of 1990, the late King Birendra ruled Nepal as an absolute monarch for eighteen years.¹⁷⁵ While under the constitutional monarchy, the King's powers are greatly reduced as compared to an absolute monarchy,¹⁷⁶ but the King still retains a position of high respect and status.¹⁷⁷ During the late King's reign, Nepal was transformed into a constitutional monarchy, moving the sovereign power from the King to vest in the people. King Birendra, as absolute monarch at the time of the transformation possessed the authority to maintain the status quo. However, he chose to oversee Nepal's peaceful transition to a modern democracy and the codification of many positive human rights provisions into the 1990 Constitution.

While the late King Birendra possessed a great degree of authority and respect, his administration was criticized by human rights activists for his lack of advancements. They argued that the small steps taken to address human rights issues were tokens¹⁷⁸ and merely

175. The King reigned from 1972 as an absolute monarch through the transformation to a constitutional monarchy in 1990, when he declared Nepal a mutli-party democracy in accordance with the will of the people. "It is folklore now, of how [King Birendra] mixed up with the ordinary folks, had meals together with them, slept in their homes and talked with them about their aspirations and needs. Maybe few monarchs in the world had gone to that extent to know the problems of their subjects." *Crown Prince Dipendra Proclaimed King*, THE RISING NEPAL, June 3, 2001, at <http://www.nepalnews.com.np/contents/englishdaily/trn/2001/jun/jun03/index1.htm> (last visited Oct. 28, 2001).

176. The exception to this rule concerns emergency powers. Under the Constitution of 1990, the King may disregard its provisions for a period of up to six months under certain circumstances. See NEPAL CONST. art. 115.

177. "People in Nepal, the only Hindu Kingdom in the world, believe that the King is an incarnation of Lord [God] Vishnu." Satish Jung Shahi, *Late King Birendra Bade Farewell in Surreal Katto Ceremony*, THE KATHMANDU POST, June 12, 2001, at <http://www.nepalnews.com.np/cotents/englishdaily/ktmtpost/2001/jun/jun12/index1.htm> (last visited Oct. 29, 2001).

178. Women's rights activists offer the appointment of a man to head the newly created Ministry of Women and Social Welfare as an example of the inattention of the administration. Also, while the Ministry of Labour and Transport Management oversaw a six-month sewing and stitching training

served to segregate underrepresented individuals (such as women and minority group members) from the government's mainstream focus, thus once again, de-legitimizing them.¹⁷⁹ This criticism may be more appropriately directed towards the main power in the executive branch of the Nepalese government, the Prime Minister and his dominant political party. The political parties set the legislative agenda and decide which issues are priorities for action.

Many human rights activists similarly condemn the composition of the administration itself as not representative of Nepal's population. They assert that the make-up of the government's workforce is inconsistent with the Constitution's recognition of Nepal as a multi-ethnic, multi-lingual nation comprised of people "irrespective of religion, race, caste or tribe."¹⁸⁰ In fact, a great majority of the prime government positions are disproportionately held by men,¹⁸¹ mostly *Newars* and members of

program organized by an NGO "for the benefit of socially and economically deprived women, illiterate women and women from remote and backward areas" only thirty-five women participated and received a sewing machine. See *Sewing Machines Given Away to Poor Women*, THE RISING NEPAL, Jan. 8, 2001, at 6.

179. See SINGH, *supra* note 86, at 59.

The main approach taken by His Majesty's Government of Nepal for women's development has been the creation of several women's sections or cells within various ministries and launching the activities directed to women. Although such activities have been moderately successful, it is perceived as a separate issue rather than an integral part of national policy and programmes.

Id.

180. NEPAL CONST. art. 2.

181. See SINGH, *supra* note 86, at v.

Women in civil service are very few in number and the proportion of female gazetted officers to the total remained almost stagnant over the years. The proportion of women officers was 3.2% in 1978 and increased only to 4.4% in 1993. Comparative proportion of women with men in higher positions of power in bureaucracy/judiciary/diplomatic service are almost negligible.

Id. As of April 1998, the representation of women in the civil service at the officer level was 4.64%, 3.52 % at the rank of secretary and 3.95% at joint secretary rank, according to a report under the United Nations Development Programme. See *Pant for More Women in Civil Service*, THE RISING NEPAL, Jan. 10, 2001, at 7.

the former Hindu high castes.¹⁸² The Minister of State for Women, Children and Social Welfare recently pointed out the need to increase the representation of women in the civil service "for the sake of the development of the country."¹⁸³ Similarly, a report commissioned by the United Nations Development Programme identified that although His Majesty's Government determined in the Ninth Plan¹⁸⁴ to increase female participation in the civil service, it has not been accomplished.¹⁸⁵ The report suggested that the Tenth Plan include positive discrimination for women, including a 25% reservation in the civil service and the initiation of two separate merit lists segregated by sex.¹⁸⁶ Furthermore, in the judicial system, there are also far more male judges than female.¹⁸⁷ During the 1990's, the government appointed only one woman to serve as an ambassador abroad. Since termination of her service in 1995, no other women have been appointed.¹⁸⁸

The sudden death of King Birendra and other royal family members prevents any immediate speculation as to

182. The *Brahmins*, *Chhetris* and *Newars* comprised 73.5%, 16.0% and 8.5%, respectively, for a total of 98% of the category of "New Appointment in Class III Officer" in the bureaucracy. The three groups represented 94% of all those promoted in Class III officer positions; 94% of those promoted in Class II Officer; and 95.8% of those promoted in Class I Officer. Similarly, in 1989, the *Brahmins*, *Newars* and *Chhetris* made up 54.5%, 26.6% and 11.15% of the Section Officers in the bureaucracy, respectively. This is compared to the *Terai* people (5.15%); *Rai*, *Limbu*, *Magar*, *Gurung* and *Tamang* people who form a combined (0.85%); and Muslims (0.29%). Maharjan, *supra* note 142, at 183. See generally Ananta Raj Poudyal, *Nepal: Ethnicity in Democracy*, in SOUTH ASIA DEMOCRACY AND THE ROAD AHEAD 134 (Lok Raj Baral ed., 1992).

183. See *Pant for More Women in Civil Service*, *supra* note 181 at 7.

184. The government of Nepal creates numbered plans for long term planning. The Ninth Plan covers the years 1996 to 2001, while the Tenth Plan would cover the years 2002 to 2007. See REVIEW OF NGO/INGO ACTIVITIES, *supra* note 164.

185. See *Pant for More Women in Civil Service*, *supra* note 181.

186. *Id.*

187. As of 2001, women have never sat on the Supreme Court. Since 1994, there have been two female judges (special class) serve on the Court of Appeals, which represents 3.1% of its total judges. At the district level, there has been one female judge (0.9%) out of 107 district judges. See SINGH, *supra* note 86, at 56.

188. *Id.*

what course the new King will follow. King Gyanendra¹⁸⁹ was only recently crowned and must first ensure continued stability in the nation after the tragedy before announcing any political initiatives. In his first inaugural address to the nation, "the new monarch . . . solemnly pledged to strictly adhere to the exemplary footsteps of his late brother."¹⁹⁰ It remains to be seen how and if King Gyanendra will use his newfound position of authority and influence in shaping Nepal's human rights policies.

D. NGOs, INGOs and Trade Unions

While the situations discussed above have mainly concerned actions taken directly by those involved with or affected by the laws, there are also a growing number of domestic and international groups working on improving human rights conditions for multiple groups of Nepali citizens. While these groups, mainly NGOs¹⁹¹ and INGOs¹⁹² often focus on specific issues of concern or categories of individuals, they are generally interested in improving the human rights situation as a whole. Also, trade union activities, while only directly affecting a small number of organized workers,¹⁹³ generally introduce beneficial workplace ideas¹⁹⁴ to the human rights dialogue.

189. His Majesty King Gyanendra Bir Bikram Shah Dev was named King after the Crown Prince died as a result of self-inflicted gun shot wounds. See Crossette, *supra* note 1; Barry Bearak, *Riots Breakout As Nepal Gets 3rd King In 4 Days*, N.Y. TIMES, June 5, 2001, at A1.

190. These pledges include continuing the commitment to the constitutional monarchy, the parliamentary system of government and a multi-party democracy. Nagendra Chhetri, *Institution of Unity in Diversity*, THE KATHMANDU POST, June 13, 2001, at <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/2001/jun/jun13/editorial.htm> (last visited Oct. 27, 2001).

191. An example of an NGO is Child Workers in Nepal ("CWIN"), an organization formed in 1987, "at the forefront of the campaign for children's rights in Nepal." CWIN Homepage, at <http://www.cwin-nepal.org> (last visited Oct. 28, 2001).

192. An example of an INGO is Anti-Slavery International, "the oldest human rights organisation in the world." Anti-Slavery Int'l Homepage, at <http://antislavery.org> (last visited Oct. 28, 2001).

193. Approximately 7-10% of all workers are employed in the organized workforce in Nepal, while another 20% work as wage laborers in the unorganized sectors. More than 92% of the employed workers are in rural areas, with 81% involved in agriculture. MADAN K. DAHAL ET AL.,

NGOs and INGOs exist throughout Nepal and are working on a wide variety of issues concerning human rights, including the struggle against child labor. NGOs, and especially INGOs, may be criticized for applying standards of non-affected individuals to people actually affected by the behavior or activity meant to be remedied or improved. This foreign perspective may be useful for the degree of objectivity it brings, but it sometimes minimizes or overlooks very real obstacles to change.¹⁹⁵

The Constitution of 1990 addresses children in several sections. First, in Part 3, Fundamental Rights, under "Right to Equality," children are grouped into a special category of citizens¹⁹⁶ who may have special provisions made for the advancement or protection of their interests, ostensibly in violation of the equality promised by Article 11. Minors¹⁹⁷ are also specifically prohibited from working in factories or mines, or engaging in any other hazardous work.¹⁹⁸ Finally, in the section entitled "Directive Principles and Policies of the State," it outlines, "[t]he State shall make necessary arrangements to safeguard the

PRODUCTIVITY, WAGES, EMPLOYMENT AND LABOR MARKET SITUATIONS IN NEPAL: THE ROLE OF TRADE UNIONS 45 (1999).

194. Such ideas include increased wages and employee benefits, provident funds or social security programs, as well as working against gender discrimination and child labor. *Id.* at 64, 123-28.

195. For example, one scholar on child labor commented:

[C]hild labour is so commonplace that, to many Nepalis, it is unremarkable and therefore invisible. Its roots lie in the poverty of rural Nepalis, in the general ignorance of the value of education and of child rights, in the excesses of a feudal system that in many ways still operates and in certain religious and cultural practices which persist into modern times, despite their prohibition by successive Nepali Constitutions and legislation to protect the rights of children.

SATTAUR, *supra* note 113, at 9.

196. Other members of the special section include women, the aged, the physically or mentally incapacitated or "those who belong to a class which is economically, socially or educationally backward." NEPAL CONST. art. 11.

197. Although this term is used, it is not defined in the Constitution itself. See NEPAL CONST. arts. 9, 20. This is not a mere question of translation because both the terms "child" and "minor" are also used in the Civil Code and other legislation. See Labour Act, 2048 (1991), ch. 1, *available at* <http://www.rojgarayog.gov.np/labouract.html> (last visited Nov. 14, 2001).

198. NEPAL CONST. art. 20.

rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements for free education.”¹⁹⁹

This final sweeping provision safeguarding the rights and interests of children, however, is made in Part 4 of the Constitution and accordingly unenforceable in any court.²⁰⁰ In September 1989, Nepal ratified the Convention on the Rights of the Child.²⁰¹ Nepal also endorsed the Colombo Convention on the Child, made at the SAARC Conference on Children in South Asia in September, 1992.²⁰² Even in the face of these apparent protections, many children still face the same situations outlawed by these documents, whether in agricultural settings, prostitution or forms of urban slavery.

A great strength of NGOs is their ability to meet societal needs often ignored by the government due to lack of funding, desire or political unpopularity. One NGO working for children's rights founded a night shelter for street children in 1997, offered health and hygiene classes and developed a “safe deposit locker” program to encourage the habit of saving money.²⁰³ NGOs are also an excellent resource for gathering and publishing anecdotal stories or personal interviews of individuals to identify trends and highlight problems in society, such as the fact that many children in Nepal are virtually enslaved in work at young ages.²⁰⁴ The NGO Child Workers in Nepal Concerned Center (“CWIN”) has published numerous stories, such as the plight of an orphaned girl, brought by her brother to work in a distant relative's home as a ser-

199. *Id.* art. 26(8).

200. *Id.* art. 24.

201. HUMAN DEVELOPMENT REPORT 2000, *supra* note 10, at 50.

202. *See* SIXTH SAARC SUMMIT DECLARATIONS, *supra* note 26.

203. In 1997, the Child Workers in Nepal Concerned Center housed 788 street children at their night shelter, treated 3,324 children in their emergency clinics and introduced 452 children to the money-saving scheme. CWIN, *supra* note 76, at 30-31.

204. For purposes of this Article, the author characterizes child labor as any work done by children under fifteen years of age. This choice is based on the International Labour Organisation Minimum Age Employment Convention. Convention Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297. *See also* Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 16, U.N. Doc A/44/49 (1989) (entered into force Sept. 2, 1990) (setting the age of a child below 18).

vant;²⁰⁵ the story of a nine year-old boy who ran away from his violent and abusive alcoholic father and now works as a rag picker;²⁰⁶ and the saga of the eleven year-old girl who was sent by her family to weave carpets from 6 a.m. to 8 p.m. in a Kathmandu factory.²⁰⁷

Another horrific social problem that has attracted the attention and efforts of numerous NGOs is human trafficking, especially that of young women and girls for the purpose of prostitution.²⁰⁸ It is estimated between 5,000-7,000 Nepali girls are sold into prostitution in India every year, and more are trafficked within Nepal itself.²⁰⁹

205. See SATTAUR, *supra* note 113, at 55-56. The girl, known as Ramrati (a name for all servant girls), had a difficult time remembering her given name when asked.

Ramrati prefers life as a servant because she had to do even more work when she was at home. . . . Ramrati has never thought about payment. Earning money is an incredible idea in her view. She remembers her brother, who brought her to the house, saying that she has to work in the mistress' house and, for that, she will be properly fed. . . . working more than 12 hours a day for just two meals.

Id. at 56.

206. The boy, Buddh Tamang, tried begging when he first ran away to Kathmandu but very soon opted for rag picking for a junkyard instead. He typically earned Rs. 10-15 (Nepalese Rupees) per day and managed to save Rs. 300 in one year. He "made his way back to Narayanghat in the hope of finding his parents. But he found nothing but their abandoned mud hut. He returned, disappointed, to Kathmandu." *Id.* at 23.

207. The girl, Gauri Maya Tamang, has eight brothers and sisters, none of whom have ever been to school. She was excited to go to work in the capital city "to escape the hardship of life at home." She said:

My parents were happy to let me go because some girls from our village had become weavers in Kathmandu and were already sending money home. . . . I suppose I'd like to go home, but only when I'm rich. My father said that he'll bring my younger sister here this autumn. It will be nice to have my sister here. We can support our family together.

Id. at 35.

208. Some of the NGOs actively working against human trafficking in Nepal are the Women's Security Pressure Group, Child Workers in Nepal, Women's Rehabilitation Center, Maiti Nepal, Shanti Rehabilitation Center, Stri Shakti and Navajyoti Canter. See SUBEDI, *supra* note 77, at 34.

209. Human trafficking occurs in Nepal and India despite the fact that prostitution and trafficking are illegal in both countries. *Id.* at 23. See also CWIN, *supra* note 76, at 33-36.

This problem is especially difficult to remedy for intertwined social reasons. As discussed above, many families are extremely poor, especially in rural areas and therefore may be complicit in the sale of their children into sex slavery.²¹⁰ Additionally, less educated Nepali citizens may easily be tricked or go along with the idea of an "agent" from a large urban factory who is looking to hire young workers, and ends up taking children away under false pretenses.²¹¹ Furthermore, corrupt officials, including members of the police, who are aware of these trafficking schemes, often do not enforce the laws.²¹²

In the face of these challenges, NGOs are making headway on even the most complicated social issues. On January 17, 1996, the Maharashtra High Court in India issued a petition ordering police to raid various Bombay brothels and rescue some of the city's 70,000 prostitutes

210. In addition to selling daughters into prostitution, it is also not uncommon for husbands to sell their wives, and brothers to sell their sisters. See SUBEDI, *supra* note 77, at 37.

211. SATTAR, *supra* note 113, at 60.

Girls are recruited in a number of ways. Village girls and their families are often deceived by smartly dressed young men who arrive in the village . . . offering marriage and all the comforts of modern urban life. They go through a local ceremony and leave the village never to be seen again. The girls end up in Indian brothels Another avenue is through distant relatives or friends who pretend to arrange a marriage with relatives or friends in another village but instead abduct the girl and send her to India. Sometimes a trusted individual abducts the girl on the pretext of educating her in India. Finally *didis* (literally elder sisters) buy girls for as little as Rs. 135 [\$3.30] and sell them over the border to 'trainers' for anything from Rs. 1,700 to 8,000 [\$42 - \$200].

Id.

212. SUBEDI, *supra* note 77, at 38.

Although the law has fixed equal penalty for both the seller and the buyer, this crime is still increasing in society. One of the reasons for this is the inability to identify the criminals spread throughout the country. Also, those who are arrested often escape penalty because they deposit large sums of money as a bribe. It is clear that the administration and the criminals reach a common understanding that allows them to go free.

Id. See also SATTAR, *supra* note 113, at 62 ("A CWIN survey of newspaper reports between April and September 1992 revealed that 35% of all reported cases of sexual offences implicated police or political figures.").

from their owners, and repatriate any who were not citizens.²¹³ Of the girls freed, 218 were Nepali. The NGOs successfully lobbied the government to receive them and work to prevent trafficking in prostitution from occurring in the future.²¹⁴ The NGOs were able to realize these demands due to their tireless advocacy including lobbying the Prime Minister, the Health Minister, the Women and Social Welfare Minister and the Foreign Minister.²¹⁵

Another type of external group that applies pressure and raises issues affecting human rights is a trade union. Trade unions are mostly focused on improving working conditions for members of the organized labor force, but they also work to prevent the related issues of child labor as well as bonded or indentured servitude. One of the most infamous forms of agricultural slavery in Nepal that affects families of adults and their children over generations is the *kamaiya* system.²¹⁶ The term *kamaiya* is generally applied to a system of bonded labor that mainly affects the *Tharu* ethnic group²¹⁷ in far-Western

213. Suo Moto Writ Petition No. 112 of 1996 (Bombay H.C.).

214. The NGOs demanded that: (i) a national working committee be formed for the welfare of the girls/women sold in Bombay; (ii) a meeting be held with the Indian government concerning the rescue of other girls sold in Bombay; (iii) the girls imprisoned should be returned to Nepal and funds be provided for their welfare; (iv) a strong law be created for stopping the trafficking; and (v) securities should be tightened. See SUBEDI, *supra* note 77, at 35.

215. *Id.*

216. While the *kamaiya* system has been studied and discussed a great deal, other forms of bondage and semi-bondage exist that also arise out of indebtedness. These other forms include: (i) the *haruwari* system (landlord allots a portion of land for use by a family without any tenancy rights); (ii) *hali* system (similar to *haruwari* but usually affects people of low caste where women and children may be abused and sexually exploited); (iii) *dhakre* system (poor people work as porters (*dhakre*) for traders in exchange for loans); (iv) *khetala* and *jana* systems (farmers take loans from the landlords or money lenders during the "hungry months" preceding the harvest and are charged usurious interest rates of 40-100% per year); and (v) the *bali* system (people from specific castes and regions take loans of small amounts of food, and in order to repay they must work for an unlimited period at any task). See SATTAUR, *supra* note 113, at 44-45. See also SHARMA & THAKURATHI, *supra* note 109, at 1.

217. According to the Census of Population of 1991, the *Tharu* ethnic group is the fourth largest ethnic group in Nepal (6.5%) and is indigenous to the Terai region. See SHARMA & THAKURATHI, *supra* note 109, at 11.

Nepal. The *Kamaiya* and his family usually work up to 18 hours per day cultivating land and tending animals while the wife acts as a domestic servant for the landlord. They are paid in kind (land, food, shelter) or cash, but in amounts that rarely meet their needs; therefore they are repeatedly forced to borrow from their masters. Following a large study of bonded labor in far-Western Nepal, an NGO drafted legislation²¹⁸ granting debt relief to the laborers and lobbied for its passage. The Informal Sector Service Centre was successful and the government allocated money for programs from 1994-1997.²¹⁹ Some of these programs have been effective²²⁰ but the *kamaiya* system and its effects are far from being eradicated.

In January 2001, arrangements were made to provide a small plot of land to 55 landless ex-*Kamaiya*²²¹ families in the Dang district, 186 families in Banke, 109 in Bardiya and seventy-six families in the Kailali district. The Ministry of Local Development provided low cost loans of Rs. 5,000 (Nepalese Rupees) for home construction.²²² Other *Kamaiyas* who were not fortunate enough to receive land grants are homeless and cannot even turn to their prior landlords for loans.²²³ Some families received

218. The NGO, Informal Sector Service Centre, also identified potential plaintiffs for a lawsuit that they would bring in the Supreme Court for violation of Constitutional rights. This lawsuit was never filed. See SATTAUR, *supra* note 113, at 67.

219. A total of Rs. 60 million was spent on the *Kamaiya* for institution building, creation of a revolving fund, skills development, housing and settlement, a credit fund and vehicle purchases. See SHARMA & THAKURATHI, *supra* note 109, at 27.

220. Literacy rates have increased among the *kamaiya* from about 4% to 20%, and approximately 10% of all school age children attend school compared to none before. See *id.* at 62-63.

221. When the Government "freed" the *Kamaiyas*, many were rendered homeless because they were evicted or dismissed from their prior landlords' properties. *No Maghi for Freed Kamaiyas*, THE KATHMANDU POST, Jan. 11, 2001, at 5, available at <http://nepalnews.com.np/contents/englishdaily/ktmpost/2001/jan/jan11/local.htm> (last visited Oct. 28, 2001).

222. *Government to Speed Work for Settlement of Kamaiyas*, THE RISING NEPAL, Jan. 10, 2001, at 4, available at <http://nepalnews.com.np/contents/englishdaily/trn/2001/jan/jan10/index.htm> (last visited Oct. 28, 2001).

223. See *No Maghi for Freed Kamaiyas*, *supra* note 220.

After being evicted by the landowners, the former *Kamaiyas*

small, insufficient donations of rice from NGOs. However, an ex-*Kamaiya*, Ramkishan Tharu, expressed his sentiment, "[w]e are ready to die of hunger but we'll never again think of making ourselves vassals to the landlord."²²⁴

At the time of these changes, one ex-*Kamaiya* had to be rescued from his prior landlord.²²⁵ The landlord claimed the laborer broke a plow worth Rs. 10,000. The landlord tortured him and kept him locked in a cage without food for four days to urge repayment.²²⁶

Another labor issue the trade unions are involved in is raising the minimum wage. While raising this wage would by no means eradicate poverty throughout Nepal, it would certainly be a step forward. The current prevailing minimum wage in the organized, industrial sector is set at approximately Rs. 5 per hour, explicitly without regard to the sex of the worker.²²⁷ Trade unions are demanding increases so that adults would earn a daily rate of Rs. 70, or a range of Rs. 2,500-2,700 per month.²²⁸ In the wake of the tragic incident in June 2001, at a meeting of a group of trade unions, it was agreed to implement an agenda of minimum pay, recruitment and collective bargaining "to

have hardly any survival alternatives to turn to. The consequence has been that most of them are unemployed – and above all – homeless and stranded along the roadside. They have no choice but to battle with the falling temperatures in temporary plastic huts alongside the highway.

Id.

224. *Id.*

225. *Kamaiya Released from Captivity*, THE KATHMANDU POST, Jan. 21, 2001, at 6.

226. *Id.*

227. NEPAL CONST. art. 11. Although the minimum wage is set, "in practice such discriminations are noticed. Discrimination in onorganised [sic] sectors are more prominent." SINGH, *supra* note 86, at 47-49. Female farm laborers in Sindhulimadhi district said that while males were paid Rs. 50 per day for farm work, women were only paid Rs. 25. Furthermore, the Rs. 50 per day wage rate violates the directive wage rate of Rs. 60 issued by the Ministry of Labour. See *Equal Wages for Both Sexes Urged*, THE RISING NEPAL, June 9, 2001, at <http://www.nepalnews.com.np/contents/english-daily/trn/2001/jun/jun09/index.htm> (last visited Oct. 27, 2001).

228. DAHAL, *supra* note 193, at 29-32.

cope with the difficult situation arisen from the tragic Royal deaths and its consequences."²²⁹

As can be seen in these examples, external groups such as NGOs and trade unions can be very effective in raising the profile of selected issues. The result of a higher profile is that it directs attention and resources to societal problems while simultaneously raising awareness about related, but not directly addressed, issues. If a person sees her neighbor becoming active in the movement against prostitution, she may be persuaded that something can be done to change the dowry system. And often-times, the work of these external groups translates into legislative proposals acted upon in Parliament.

E. Revolution

Finally, a small group of impatient, militant activists have chosen to take a more violent, even vigilante approach.²³⁰ This group was organized in February 1996 by armed members of the political wing of the Communist Party of Nepal (Maoist).²³¹ Their actions are referred to as the "People's War." By using guerilla tactics, it has established "people's governments" in multiple districts to replace the elected governments throughout Nepal. Many international human rights groups condemn the Maoists' tactics that include murder, abduction and retaliation.²³²

The stated aims of the proponents of the People's War concern nationalism,²³³ public welfare²³⁴ and living

229. *Impact of Tragic Incident Mulled*, THE KATHMANDU POST, June 13, 2001, at <http://www.nepalnews.com.np/contents/englishdasily/ktmpost/2001/jun/jun13/economy.htm> (last visited Oct. 27, 2001).

230. According to an INSEC report, as of 1998, 133 people have been killed, including seventy-seven Maoist rebels and fifty-six casualties. See CWIN, *supra* note 76, at 7.

231. See AMNESTY INTERNATIONAL ON-LINE, NEPAL: HUMAN RIGHTS AT A CRITICAL CROSSROADS, Mar. 15, 1999, at <http://web.amnesty.org/ai.rof/Index/ASA310061999?OpenDocument&of+Coun tries/Nepal> (last visited Oct. 27 2001).

232. *Id.*

233. The Maoists would, among other things, firm up the border with India, elevate the role of Nepali citizens by giving them preference over foreigners in hiring, and stop the "cultural pollution of imperialists and expansionists." Maharjan, *supra* note 142, at 191.

conditions.²³⁵ While many of the Maoists' goals are laudable from a human rights perspective, the methods by which they seek these goals are not. For example, an NGO recently reported that "children as young as 14-year-old [sic] are recruited, sometimes, involuntarily, by the underground Communist Party of Nepal (Maoist) against their commitment not to do so."²³⁶ This is the biggest failure of the Maoists revolutionary scheme. "Contemporary Nepal is much ahead of the Maoists' vision in governance. The rights to dissent are only possible under democracy, not the Maoist Nepal."²³⁷ The administration's response to the organized revolt was at first "naïve and negligent" and progressed (degenerated) to the "indiscriminate arrests of a large number of innocent people; some of whom were severely interrogated and some are reportedly killed when under custody."²³⁸ Also, despite the Maoists' requests to negotiate, the administration has repeatedly rebuffed them, but has failed to devise a suitable solution to control the largely ethnic rebellion.²³⁹ It would be in Nepal's best interest to implement a plan to end the People's War peacefully, while simultaneously realizing many of the human rights provisions incorporated into the Maoists' manifest.

234. To address the public welfare, the Maoists urge the drafting of a new constitution, an end to the special royal rights and privileges, the release of political prisoners, the declaration of Nepal as a secular state, the equalization of property rights by gender, an end to exploitation and prejudice and the decentralization of the government. *See id.* at 191-92.

235. The Maoists would also redistribute the land and assets of the rich, guarantee all citizens jobs or stipends, implement a minimum wage, end homelessness, release poor farmers from debt, improve infrastructure (clean water, good roads, expand electricity), eradicate corruption and give special assistance to orphans, the disabled, the elderly and children. *See id.* at 192-93.

236. *Maoists Recruiting Child Soldiers*, THE KATHMANDU POST, June 13, 2001, at <http://www.nepalnews.com.np/contents/englishdaily/ktpmpost/2001/jun/jun13/index.htm> (last visited Oct. 27, 2001).

237. Kumar, *supra* note 80, at 52.

238. Maharjan, *supra* note 142, at 177.

239. *Id.* at 179-86.

V. CONCLUSION

While the letter of the Declaration or other human rights instruments has not yet been realized in Nepal, the fact that these documents are in force and ratified, even if in name only, makes open discussion and activism more possible.²⁴⁰ Even if the enactment of legislation or signing of international conventions are the only forward steps taken in furthering human rights in Nepal, at least they are steps forward, not merely the status quo and most importantly, not steps in retreat. Many learned Nepali citizens understand the important, yet often slow method of fundamentally transforming government, with a goal of lasting change.²⁴¹

This Article does not address all the social issues or contradictions within the laws, or all the positive action individuals in Nepal are taking towards furthering the cause of human rights. There are numerous actions that Parliament, the King, the Judiciary and all the other key players could do to improve the situation. The author believes that Nepal is generally headed in the right direction.²⁴² The majority of Nepalis have their hands full cop-

240. One NGO staffer wrote:

The change of government [in 1990] has allowed non-governmental organisations greater freedom to challenge the factors that persist in blighting the future of the nation's children and to lobby for the enforcement of the new laws to safeguard their well being. This, in turn, has helped to raise awareness of the plight of working children.

SATTAUR, *supra* note 113, at 10.

241. Former Chief Justice of the Supreme Court, Bishwo Nath Upadhyaya, was recently quoted as stating that "[o]ur society is based on the feudal system. We have yet to learn the process of democratization." Keshab Poudel, *In a Political Crisis*, THE NATIONAL NEWSMAGAZINE, Nov. 3-9, 2000, at 1, available at <http://www.nepalnews.com.np/cotents/english-weekly/spotlight/2000/nov/nov03/coverstory.htm> (last visited Oct. 27, 2001).

242. One notable recent exception was the decision to arrest an editor and the publishers of Kantipur Publications (a newspaper publisher) for printing an opinion article by Dr. Baburam Bhattarai, a rebel Maoist leader. The piece suggested that the killing of members of the royal family on June 1, 2001 was a conspiracy. The journalists were all charged with sedition, a crime that carries a sentence of at least three years in prison. Human rights activists contend that this arrest violates the constitutional protection of freedom of the press. See *Kantipur Editor Publishers Arrested*, THE KATHMANDU POST, June 7, 2001, at <http://www.nepalnews.com.np/con->

ing with daily existence and do not have the luxury of debating theoretical ideas or hypothetical questions. But even while most citizens cannot participate in the discussion, the outcomes of these debates already affect their lives, even if to a limited degree.²⁴³

The author urges all the parties working towards reform to continue to do so in their own ways. NGOs and trade unions should continue to raise the profiles of issues and Parliament should continue debating social policy, even if nothing comes of it immediately. The discussion and action undertaken by the various parties include overlap and build on each other. The process of evolution is a slow one and has a greater likelihood of permanency than rash revolutionary tactics.²⁴⁴ The debate that could be entertained in Nepal at this time is the same debate that is often heard in the United States, namely, should there be more laws, or better enforcement of the current laws. The author's answer to this question is the same in either country: Both. The enactment of more laws is promising because it spreads human rights protections to a greater number of citizens (on the basis of disability, age,²⁴⁵ or sexual orientation, for example). The enforce-

tents/englishdaily/ktmpost/2001/jun/jun07/index1.htm (last visited Oct. 27, 2001). The government will likely argue that its action is constitutionally protected under the sedition exception of Article 13. See NEPAL CONST. art. 13; *supra* note 48 and accompanying text.

243. Sometimes, human rights ideas become less theoretical, as in the case of female farm workers receiving only one-half of male pay. One woman in Sindhulimadhi province said, "I want to educate my children but the money I earn is not enough even to feed them." *Equal Wages for Both Sexes Urged*, *supra* note 226. These workers claim that the gender discrimination occurs despite the government mandate to provide equal wages for the same work for both sexes. This district also violated the minimum wage mandate of Rs. 60 per day (by paying Rs. 50 per day for men), highlighting the prevalence of multiple human rights violations. *See id.*

244. For example, as of January 2001, members of major political parties in Nepal all agreed that the nation's education system needed improvement and expansion to ensure access to all people, especially women and the poor. The parties agreeing were the Nepali Congress Party, Communist Party of Nepal (Marxist -Leninist), United People's Front and National People's Front. *See Ensure Access to Quality Education*, THE RISING NEPAL, Jan. 4, 2001, at 4.

245. Job advertisements in Nepalese newspapers often specify whether men or women should apply and from what age group candidates are sought. *See, e.g., Vacancy*, THE KATHMANDU POST, Jan. 8, 2001, at 11. The

ment of existing laws is important because without enforcement, the existence of laws is moot. A Human Rights Commission could function as an effective monitoring mechanism and even a central clearing house for all alleged human rights violations. Although Parliament unanimously enacted a bill for a permanent Commission in 1996,²⁴⁶ it has not yet been established.²⁴⁷

At least one scholar predicts that if this slow process of evolution is ineffective in remedying the many human rights violations in Nepal, especially rampant discrimination, then revolution will be the unavoidable result.²⁴⁸ Alternatively, if Nepal chooses to follow the strategy of its neighbor to the Northeast, Bhutan, and implement a more homogeneous national identity, we may see thousands of ethnic minorities forced to flee the country as refugees.²⁴⁹

Nepal is on the right path. Even if Nepalis are only nominally protected by the paper documents of the Constitution and international human rights instruments, at least they have those protections. Judges and justices are called to interpret the Constitution and State laws, and in doing so may look to the wider context of human rights to offer guidance in their decision-making.²⁵⁰ The "paper

job advertisement for the Bluestar Hotel read: "Position: Front Office Manager, Age: Not above 40 years. . . . Position: Banquet Sales Manager (Female), Age: Not above 35 years." The advertisement also triggers the question of whether men would be welcome to apply for the Banquet Sales Manager position and whether women would be allowed to apply for the Front Office Manager job. *Id.*

246. See HUMAN RIGHTS REPORTS FOR 1999-NEPAL, *supra* note 113.

247. See generally INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH, ETHNIC NEWS WATCH, ACTIVISTS DEMAND HUMAN RIGHTS PANEL, at <http://www.iwraw.igc.org> (last visited Oct. 27, 2001).

248. Bhattachan, *supra* note 97, at 152.

If the '[P]eople's [W]ar' should fail or succeed but the Bahun-Chhetri rulers become a mirror image of their predecessors in not yielding much to the satisfaction of the indigenous ethnic groups and if they should lose their patience with utter disenchantment, in either case, violent ethnic clashes are inevitable.

Id.

249. Currently, Nepal is host to approximately 600,000 Bhutanese refugees, who fled Bhutan when the government, an absolute monarchy imposed its "one nation, one people" policy. Dr. Lok Raj Baral, Presentation to students at the Dhulikhel Mountain Resort, *supra* note 27.

250. In an address at a Regional Conference and Dialogue be-

rights" are frequently being reviewed, researched, scrutinized and questioned by NGOS, INGOS, the United Nations, academics, members of the media, politicians, rebels, trade unionists and others. These documents signal to the world the direction in which Nepal is headed, even if it has yet to reach the final goal.

tween the Judiciary and civil society, the Chief Justice of the Nepal Supreme Court, Keshav Prasad Upadhyay, spoke about:

Instances where Courts have justified even differential treatment to ensure substantive equality . . . [He] cautioned that the justice delivery system must never betray stereotypical attitudes towards the nature and roles of men and women or their relative worth. Objective assessment of individual abilities free of all bias and merits of the case must be the prime and only consideration. However . . . in the absence of legislation, Judiciary can fulfill its constitutional duty of guaranteeing and enforcing fundamental rights on the basis of international instruments and the emerging international principles.

Toward Gender Equity, THE RISING NEPAL, Jan. 8, 2001, at 10.