



CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE

NEW YORK UNIVERSITY SCHOOL OF LAW

STATEMENT BEFORE COMMITTEE AGAINST TORTURE, 35TH SESSION, NGO BRIEFING

TUESDAY NOVEMBER 8, 2005, 5.00PM

Good Afternoon.

I am speaking on behalf of the Center for Human Rights and Global Justice. The Center is part of New York University School of Law. Since its founding in 2002, it has examined central, albeit overlooked, issues in the larger human rights discourse. In August 2005 the Center released a report looking at the role of caste discrimination in the conflict in Nepal. The report, titled *The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal*, was released in Geneva with the help of CERD and Sub-Commission members. The findings of the report are based on primary research conducted in Nepal; research that was then substantiated by NGOs, caste discrimination experts and human rights defenders, as well as secondary sources.

The report's key finding is that caste discrimination is a root cause and insidious consequence of the conflict in Nepal. Over 20 percent of Nepal's population is treated as "untouchable" by "upper-caste" community members. They are denied access to land, subject to degrading and exploitative labor, segregated in housing, marriage, and employment, and routinely abused and even killed by upper-caste communities that enjoy the State's protection. Their vulnerability is further heightened in the current political climate in Nepal.

The report finds that Dalits have been abused by both Maoist insurgents and government security forces. The militarization of the conflict has exacerbated caste dynamics and the resulting abuses against Dalits in Nepal. The overwhelming majority of senior officers in the Royal Nepalese Army continue to hail from "upper-caste" communities. While individual Dalit men and women have actively joined Maoist forces, Dalit communities as a whole are collectively and summarily punished by State agents, even when there is no evidence of their involvement in the insurgency. Caste-based profiling is also a common occurrence at security check posts and during village interrogation round-ups. The burgeoning presence of the police and army in the villages has led

to even greater sexual abuse and exploitation of Dalit women. The State has also armed upper-caste village militias—or village defense committees—whose members abuse their power to settle personal scores and target Dalits and religious minorities.

Rather than fulfilling its international human rights obligations to end caste-based discrimination, the Nepalese government has branded Dalits and the poor as ‘terrorists.’ It has been responsible for a well-documented surge in extrajudicial killings and forced ‘disappearances’ under the cover of fighting the global ‘war on terror.’ The government has used instruments, such as the Terrorist and Disruptive Activities Ordinance, and the Public Security Act to carry out this campaign.

Maoists too have been responsible for drawing Dalits into the conflict. The Maoists have capitalized on pervasive caste discrimination in the country as a means of legitimizing and recruiting for their insurgency. Maoists regularly force their way into Dalit homes seeking shelter, and levy burdensome “people’s taxes” on families that can ill-afford to pay them.

All of these abuses occur in a climate where torture is rampant. As you are aware, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, has stated that torture and ill-treatment are ‘systematically practiced’ and considered acceptable by the police and the RNA in Nepal. Mr. Nowak also pointed to the use of torture by Maoists. His assessment is reinforced by the extremely lenient treatment given to three Nepalese soldiers who tortured and murdered a 15-year old girl. Despite the gravity of their crimes, in September 2005 the soldiers were only sentenced to six months jail, time they are not likely to serve, ordered to pay the equivalent of \$1,500 to the girl’s family, and received a temporary suspension of promotion.

The Center is concerned about a potential nexus between the endemic practice of torture in Nepal and the long-standing pattern of caste discrimination. The Center is not alone in this concern. As recently as October 2005, the Office of the High Commissioner for Human Rights in Nepal reported that Dalits were disproportionately victimized and harassed by state authorities and the Maoists. It noted that Dalits are caught in the middle—the State targets Dalits as Maoist sympathizers while Maoists often use coercive tactics to win Dalit support for their insurgency. Similarly, the International Crisis Group highlighted accusations that Dalits were being manipulated by the Maoist leadership and used as “cannon-fodder” in the conflict. The Asian Legal Resource Centre also emphasized that Nepalese police systematically torture Dalits more than other groups in Nepal because the police do not fear retribution from Dalits.

The Nepalese government does not deny that caste discrimination is pervasive in Nepal. In 2002 the government established the National Dalit Commission to combat caste discrimination and other human rights abuses. In its most recent state report to CERD, the government committed itself to overcoming the “evil practices” that characterize the treatment of Dalits.

We were surprised, therefore, to see that caste discrimination does not feature in Nepal’s report to the Committee Against Torture. The state report does not, for example, mention whether and how the government addresses the relationship between caste discrimination and torture. Indeed, the fact that caste discrimination even occurs in Nepal is not mentioned anywhere in this report. Given that the government has acknowledged the wide-reaching implications of caste

discrimination in Nepal, this omission is significant and merits thorough discussion during the upcoming Committee session.

The need for the Committee's scrutiny is reinforced by the current lack of monitoring mechanisms in Nepal. The King's media ordinance and the NGO Code of Conduct (which authorizes the government to regulate activities of international and national NGOs) cripple key avenues by which torture can be monitored and addressed. The extent to which the Government will silence the media can be seen in its recent actions, and in particular, the recent incident on October 21, 2005 in which Government forces laid siege to the Kantipur FM station, ultimately ordering the station to cease transmission of broadcast to eastern Nepal.

Without a searching inquiry into the state's compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the victimization and harassment of Nepalese civilians, and especially Dalits, will continue.

Specifically, the Center for Human Rights and Global Justice respectfully requests that the following issues be raised with the State party:

- In addition to the Committee's request for disaggregated data by sex, age and ethnicity of victims in paragraph 9 of the List of Issues, please provide such data disaggregated by caste.
- What accountability mechanisms are in place to ensure that police forces and members of the RNA are not using caste as a basis for profiling, detention, and abuse? For example:
 - what steps has the State party taken to ensure more diverse caste and ethnic representation in its police and army structures?
 - how does the State party ensure that Dalit victims of torture are able to report abuses against them without fear of retribution?
- What steps has the State party taken/will the State party take to ensure that Dalits are protected from abuse by non-state actors, including Maoists and upper-caste community members?

We thank you for your time and consideration of our statement. Copies of this statement and the Center's report have been distributed to Committee members. The report is also available online at www.nyuhr.org/nepalreport.htm.

Center for Human Rights and Global Justice
New York University School of Law
110 West Third Street Room 204
New York, NY 10012
Email: law.chrgj@nyu.edu
Website: www.chrgj.org