



RECASTING JUSTICE: SECURING DALIT RIGHTS IN NEPAL'S NEW CONSTITUTION

Summary Briefing Paper

I. INTRODUCTION

Nepal is in a process of democratic transition following a prolonged civil war. The central feature of this transition is the country's new constitution, which will be drafted by elected members of the Constituent Assembly. In creating this fundamental document, the Constituent Assembly has the opportunity to crystallize the country's peace and advance Nepal's political, economic, and social development. It also has the opportunity to demonstrate Nepal's commitment to the inherent dignity of all individuals. Recognizing and ensuring the human rights of all Nepalese people is vital to fulfilling these paramount goals. In particular, the rights of Nepal's Dalit population—a group that continues to face systematic discrimination and exclusion on the basis of caste—must finally be realized.

Recasting Justice analyzes Nepal's Interim Constitution to inform the ways in which the new constitution may be drafted in accordance with the country's international human rights obligations to secure Dalit rights. The report's principal areas of focus are: access to citizenship; the right to equality and non-discrimination; civil and political rights; economic, social, and cultural rights; women's rights; children's rights; the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment; and the right to a remedy.

Each of these areas is analyzed in the report using a consistent four-step process that provides: (1) an outline of Nepal's relevant legal obligations as set out in the international human rights treaties to which Nepal is a party and therefore bound; (2) a factual overview of the situation of Dalits in Nepal with respect to that particular area; (3) an evaluation of the likely impact of the Interim Constitution's provisions on Dalit rights; and (4) recommendations for how Nepal's new constitution might improve or additionally build on the existing strengths of the Interim Constitution to ensure that Nepal's international obligations are met. The report concludes by briefly addressing the primary challenges Nepal is likely to meet in implementing its constitutional provisions and by assessing the enforcement mechanisms contained within the Interim Constitution.

This summary briefing paper presents the report's key findings and recommendations. The recommendations are based on a detailed analysis of Nepal's obligations as set forth in international human rights treaties, and on the comments and observations of the international human rights treaty bodies that monitor their implementation.

II. THE CONSTITUTIONAL MOMENT IN CONTEXT: FACTUAL AND LEGAL STARTING POINTS

A. The Dalit Experience in Nepal

Nepal's "all pervasive" caste system has a "hegemonic hold" on Nepalese society; a fact that the Nepalese government itself recognizes. Stripped of its historical underpinnings and religious justifications, it is a social hierarchy that is nothing other than a *discrimination* system by which certain groups of people, based exclusively on their birth into a particular social group, are forever branded as inferior.

This distinction defines every conceivable aspect of a Dalit's existence; her citizenship, her access to land, her education, her livelihood, her choice of spouse, her place of worship, her security, her health, and her bodily integrity, are each principally limited by her caste. The grossest manifestation of this discrimination system is the practice of "untouchability"—the complete repudiation and segregation of Dalits from members of other castes, including a prohibition on touching non-Dalits and their possessions based on the belief that Dalits are "polluted."

Caste discrimination and the practice of "untouchability" have ensured the complete subordination of Dalits who, based on some unofficial estimates, may comprise up to 25 percent of Nepal's population and 80 percent of the country's "ultra poor." While some Dalits have excelled despite the caste system's substantial constraints, a large percentage of Dalits remain vulnerable to extreme forms of exploitation. "Upper-caste" community members typically force Dalits to live in segregated communities; forbid them from entering public spaces; deny them access to food, water, and land; and coerce them into caste-based occupations considered too "ritually impure" for "higher castes." Attempts by Dalits to defy this prescribed social order are met with punitive violence and social ostracism.

B. Nepal's International Human Rights Legal Obligations

Nepal's implicit and explicit endorsement of caste discrimination is illegal under international law. Nepal is a party to the following international human rights treaties that reject the inherently discriminatory features of the caste system: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

These treaties create binding obligations that must be carried out in good faith in respect of all those within a State's jurisdiction, including, for the large part, non-citizens. In light of these obligations, and the fact that many Nepalese Dalits lack citizenship certificates, the Constituent Assembly will need to construct the new constitution to ensure that it appropriately extends rights protections to both citizens and non-citizens, including in the areas of civil and political rights; non-discrimination; and the right to a remedy.

In addition, the international human rights treaties to which Nepal is a State Party unequivocally obligate Nepal to undertake the following with respect to caste discrimination:

- Pursuant to ICERD, Nepal is obligated to eliminate all forms and manifestations of direct and indirect descent-based discrimination, which includes caste discrimination; to ensure non-discrimination in the fulfillment of civil, political, social, economic, and cultural rights; and to take positive measures to ensure equality for Dalits and other marginalized groups.
- Pursuant to the ICCPR, Nepal is obligated to guarantee civil and political rights to all individuals within its territory or subject to its jurisdiction. Among other things, the ICCPR forbids the arbitrary denial of the right to life, torture or cruel, inhuman or degrading treatment or punishment, slavery, servitude, and certain instances of forced or compulsory labor, arbitrary arrest or detention, arbitrary interferences with privacy, family, and correspondence, and unlawful attacks on honor and reputation. Further, the ICCPR mandates that Nepal allow for freedom of opinion and expression, freedom of assembly and association, the right to marry freely, freedom to take part in the conduct of public affairs, directly or through freely elected representatives, the right to vote, and the right to enjoy culture and practice religion freely. Moreover, Nepal is obligated to treat as equal all persons before the law and to provide, without discrimination, equal protection of the law.
- Pursuant to the ICESCR, Nepal is obligated to guarantee certain economic, social, and cultural rights. These rights include, but are not limited to, the right to work in a field freely chosen, fair and equal remuneration for work, pay that provides a decent living for workers and their families, safe and healthy working conditions, reasonable limitations on working hours and days, the right to organize with regard to labor and employment issues, social security and social insurance programs, the right of everyone to an adequate standard of living (including adequate food, clothing and housing, and to the continuous improvement of living conditions), the right of everyone to the highest attainable standard of physical and mental health, the right to an education, and the right of everyone to take part in cultural life, enjoy the benefits of scientific progress, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which they are the author. The ICESCR also guarantees that the rights enunciated therein will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Pursuant to CEDAW, Nepal is obligated to pursue policies to eliminate discrimination against women and to take positive measures to ensure equality for women in relation to all substantive rights guarantees to which women are entitled; these include the enjoyment of economic, social, and cultural rights and of civil and political rights.

- Pursuant to the CRC, Nepal is obligated to protect the rights of children, including protection from: all forms of sexual exploitation and sexual abuse, prostitution and other unlawful sexual practices, and child labor.
- Pursuant to its accession to CAT, Nepal is obligated to prevent, prohibit and punish acts of torture under its jurisdiction, and other forms of cruel, inhuman or degrading treatment or punishment, and to ensure that victims of torture can obtain redress in the State's legal system.

Nepal's human rights record has been examined by each of the treaty bodies that monitor implementation of these treaties. These bodies have found that Nepal has not fulfilled many of its obligations under ICERD, CEDAW, CRC, ICCPR, ICESCR, or CAT. These obligations continue to apply to Nepal, irrespective of the political mechanisms that are envisaged in the transition to democracy.

Nepal's new constitution must counter the pervasive negative effects of the caste system and must champion Dalit rights in a way that its predecessors have failed. Though the *1990 Constitution of the Kingdom of Nepal* prohibited caste discrimination, it was littered with exceptions that significantly weakened rights protections. Moreover, the prohibition against caste discrimination was neither consistently implemented nor enforced. While the Interim Constitution—introduced in January 2007 and amended three times since—represents an improvement, caste discrimination in Nepal continues unabated with Dalits being denied equal status in practice and in law.

Nepal's poor constitutional record of addressing Dalit rights, along with its dismal record of enforcing human rights obligations with respect to Dalits, necessitates the analysis and recommendations contained in this report.

C. The Role and Representativeness of the Constituent Assembly

The Interim Constitution tasks the Constituent Assembly with creating the new constitution. International human rights law binding on Nepal requires that Dalits participate on equal terms with non-Dalits in decision-making processes, such as those embodied in the Constituent Assembly. In human rights treaties, the requirement of equality means both formal or *de jure* equality and substantive or *de facto* equality. In addition, the substantive equality obligation requires that attention be paid to ensuring the participation of those marginalized *within* the Dalit community, including Dalit women and those in “lower” Dalit castes.

Dalits were effectively excluded from the drafting processes of both the 1990 and Interim Constitutions. Under the obligation to ensure substantive equality, Nepal was required to take measures to ensure adequate representation of Dalits in the Constituent Assembly (including through the adoption of special measures if necessary), and must now also ensure the capacity of Dalits in the Constituent Assembly to participate on equal terms, including in key decision-making positions.

III. SECURING DALIT RIGHTS IN THE NEW CONSTITUTION

A. Access to Citizenship

For many Dalits, the ability to access citizenship has been undermined by the requirements for obtaining a citizenship certificate. Under these requirements, certain documentary evidence demonstrating that an individual is Nepalese must be produced in order to obtain a certificate—a requirement that is often difficult, if not impossible, for many Dalits. For example, evidence of property ownership is considered sufficient evidence for obtaining a Nepalese citizenship certificate, yet most Dalits are unable to own land and/or produce evidence of land ownership. More generally, the Interim Constitution discriminates against Nepalese women by not allowing their foreign spouses to acquire citizenship through marriage, and by imposing additional requirements for citizenship on children born to Nepalese women and their foreign spouses.

Article 8 of the Interim Constitution seeks to overcome these barriers to citizenship in some respects, for example by enabling the children of both Nepalese mothers and Nepalese fathers to be recognized as citizens of Nepal and by repealing certain requirements of naturalization that were formerly present in the 1990 Constitution. Despite these advances, the Interim Constitution (and the Nepal Citizenship Act 2063 (2006)) continues to discriminate against women and likely discriminates against Dalits and other marginalized groups.

In order to help ensure equitable access to citizenship in the new constitution, the Constituent Assembly should:

- **Include language allowing foreign spouses of Nepalese women to acquire citizenship in the same way as foreign spouses of Nepalese men; *and*,**
- **Include language enabling children to be equally eligible for citizenship whether it is their mother or father who is foreign.**

B. The Right to Equality and Non-Discrimination

Caste discrimination and “untouchability” persist in Nepal’s public and private sphere and in blatant disregard of prohibitions in the 1990 and Interim Constitutions. Indeed, Nepal has been severely criticized by international human rights treaty monitoring bodies for its failure to end caste discrimination in law and in practice.

The seminal non-discrimination provisions in Part 3 of the Interim Constitution include Article 13 (“Right to equality”) and Article 14 (“Right against untouchability and racial discrimination”). While improving upon the 1990 Constitution by including a more fully expressed catalogue of non-discrimination protections, these articles contain several deficiencies, inconsistencies, and imprecise uses of language that should be addressed in the new constitution for Nepal to comply with its international human rights treaty obligations. The new constitution must strike at the heart of caste discrimination in ways that its predecessors have not.

In order to help ensure the right to equality and non-discrimination in the new constitution, the Constituent Assembly should:

- Consider including human rights as a central concern of the Preamble;
- Extend the guarantee on equality and non-discrimination to non-citizens by stating that the guarantee applies to “all persons”;
- Ensure that the grounds on which discrimination is prohibited are non-exhaustive and fully include those covered by international human rights law;
- Ensure that the prohibition on discrimination in remuneration or social security benefits is extended to discrimination on the basis of all grounds used in the “right to equality” provision;
- Make clear that any list corresponding to groups eligible for “special provisions” is non-exhaustive, so that other groups not listed may also be considered eligible for “special provisions” as needed;
- Include a consistent list of grounds throughout the new constitution’s anti-untouchability and anti-racial discrimination article. This list should include “national or ethnic origin” as enumerated in ICERD’s definition of racial discrimination, along with caste, descent, community, occupation, and tribe;
- Include in any relevant equality and/or non-discrimination provision(s) an explicit prohibition on the imposition of certain occupations on the basis of caste and other proscribed grounds; *and*,
- Include in any relevant equality and/or non-discrimination provision(s) an explicit prohibition of private acts of discrimination.

C. Civil and Political Rights

The caste system denies Dalits their fundamental civil and political rights. The exclusion of Dalits (and Dalit women in particular) from all levels of government and political processes has ensured their continued subjugation and unequal receipt of the State’s attention and resources. While the inclusion of Dalits in the Constituent Assembly is both significant and welcomed, Nepal must still ensure their meaningful participation in the Assembly, and in future elections, ensure that their presence is truly proportional to their percentage in the population. Dalits are still largely unrepresented in leadership positions and executive committees within Nepal’s major political parties. The Nepalese government itself admits that “[t]he historical exclusion of Dalits from resources and the decision-making process has not only kept them outside the social, economic and political mainstream [but] has also been a loss to the country in terms of their input to nation-building.”

Dalits’ political exclusion makes them especially vulnerable to violations of their civil rights. Rural Dalits were disproportionately targeted by both sides during the “People’s War,” when thousands were unlawfully killed, tortured, and “disappeared” by Maoists insurgents and Nepalese

security forces. The Nepalese government has all but ensured the impunity of security forces for these crimes. Additionally, the Government has engaged in arbitrary and unlawful arrest and detention, has restricted the right to assemble, and has obstructed the right of citizens to change their Government. The bulk of these violations occurred as a result of declared “states of emergency” in 2001 and 2005.

Dalits may also be denied the freedom to marry the person of their choosing, as inter-caste marriages between Dalits and non-Dalits are traditionally forbidden and Dalits who marry “upper-caste” spouses risk severe repercussions. Additionally, many Dalits are denied the freedom to practice the occupation of their choice because they are coerced into caste-based occupations considered too “ritually impure” for “higher castes.” Moreover, Dalits are routinely denied entry into temples, which in practice violates their fundamental rights of non-discrimination and freedom of religion.

The Interim Constitution commendably improves upon the 1990 Constitution with regard to certain civil and political rights. Most notably, Article 12—the “Right to freedom” provision—states that “[e]very person shall have the right to live with dignity...” The Interim Constitution also takes important steps toward reversing the significant under-representation of Dalits in political decision-making bodies and processes. Article 142 forbids the Election Commission from registering any political party that discriminates in its membership policy on the basis of caste. Article 21—the “Right to social justice”—specifically mandates “proportional inclusion” of Dalits and other marginalized groups within the “state structures.” Additionally, Article 23 grants every person the “right to profess, practice, and preserve his or her own religion.” The new constitution must still go further and include stronger measures to ensure Dalits’ civil and political rights.

In order to help secure civil and political rights in the new constitution, the Constituent Assembly should:

- **Include in the “Right to freedom” provision freedoms included elsewhere in the constitution or otherwise required by Nepal’s international human rights obligations;**
- **Limit the freedom to movement only to the extent allowed by the ICCPR;**
- **Avoid using any language that may limit Dalits’ freedom to practice any occupation based on potential offenses to “public health or morality”;**
- **Consider moving the Article 33(d1) equivalent (on proportional inclusion) and Article 35(8) equivalent (on special provisions for women) and related articles to the Fundamental Rights Part of the constitution;**
- **Prohibit or revoke registration of political parties that unlawfully discriminate in either their membership, leadership, or their nomination of individuals for political positions;**
- **Prohibit the use of religion to encroach upon all fundamental rights and freedoms of others, including non-discrimination rights and the freedom to practice religion;**
- **Ensure that the new constitution’s equivalent to Article 23(2) contains a similar clause prohibiting the encroachment on the religious rights of others;**

- **Include within the new constitution’s list of non-derogable rights during a state of emergency the rights guarantees contained within Article 11 and Article 16 of the ICCPR and ensure that these rights are reflected in the constitution; *and*,**
- **Indicate that any derogation measures during a state of emergency must be limited to the extent strictly required by the exigencies of the situation.**

D. Economic, Social & Cultural Rights

Caste discrimination in Nepal undermines Dalits’ ability to live with dignity and fulfill their basic daily needs. Dalits’ access to employment, education, land, health, food, and water is wholly compromised by their so-called inferior status in the caste order. Dalits seeking to earn a living suffer a wide range of human rights abuses. Many of Nepal’s bonded laborers are Dalits, forced to work the land of others to pay off unscrupulous loans. Others are forced to engage in sex work, remove human waste from public and private latrines, and dispose of dead animals under the reasoning that these “polluting” occupations can only be performed by “untouchables.” In addition to being denied equal opportunity in employment, Dalits are also consistently paid less money than their “upper-caste” counterparts for the same or similar work. As a result, Dalits have the lowest annual per capita income, expenditure, savings, and investment in Nepal. As the country’s largest employer, the Nepalese Government is directly implicated in employment discrimination.

Many Dalit children are vulnerable to exploitation. Almost one in five are involved in their families’ caste-based occupations, such as rag picking, collecting metal scraps and glass, disposing of carcasses, cremating dead bodies, disposing of human waste, and working in coal mines. Moreover, nearly one in ten Dalit children is reportedly forced into sex work, slavery, or slave-like practices. Caste discrimination has also compromised both the availability and quality of education for Dalit children. While Nepal’s average literacy rate is about 50 percent, only 25 percent of Dalits are literate. Discriminatory practices against Dalits in schools has had a disastrous impact on their ability to secure higher education; Dalits make up less than 1 percent of people in Nepal with a Bachelors of Arts or higher degree.

Land is a significant source of social, economic, and political entitlement in Nepal. The fact that Dalits own only 1 percent of Nepal’s arable land has foreclosed their capacity to accumulate wealth. Landlessness has also obstructed Dalits’ ability to obtain citizenship certificates and the ensuing rights and benefits afforded to Nepalese citizens. Caste discrimination also has severe repercussions for Dalits’ physical and mental health. Dalits are, for example, routinely denied access to communal water sources under the pretext that they are “polluting.” Many Dalits also suffer occupational health hazards as a consequence of the professions into which they are relegated. As a result of the above, Dalits’ life expectancy is significantly lower than other caste groups and their child mortality rates are twice as high.

The Interim Constitution takes significant and commendable steps toward ensuring economic, social, and cultural rights in Nepal, which if implemented would go a long way to secure Dalit rights. For example, under Article 16 of the Interim Constitution, and for the first time in Nepal, every citizen has a constitutional right to free basic health services. Article 17(2) of the Interim Constitution provides every citizen a constitutional right to free primary and secondary education. Article 17(3) of the Interim Constitution gives each community residing in Nepal the “right to

preserve and promote its language, script, culture, cultural civilisation and heritage.” Article 18(1) stipulates that “Every citizen shall have the right to employment as provided for in the law.” Article 18(2) recognizes every citizen’s right to “food sovereignty.” Article 30(1) provides every employee and worker the right to “proper work practices.” Article 18(2) of the Interim Constitution gives various sections of the population the important right to social security. Article 29 prohibits forced labor, human trafficking, and other forms of exploitation. Article 19 recognizes every citizen’s right to “acquire, own, sell and otherwise dispose of property.”

Finally, the Interim Constitution has several provisions in its “Responsibilities, Directive Principles, and Policies of the State” section that specifically address the economic, social, and cultural rights of Dalits. Unlike the fundamental rights discussed earlier, according to the Interim Constitution these principles and policies are not justiciable, but are instead policies around which the Nepalese State “shall mobilize or cause the mobilization of the required resources and necessary means for [their] implementation.”

The new constitution must still go further in order to: rectify some of the deficiencies of the articles described; forcefully address the pervasive denial of Dalits’ economic and social rights; and come into compliance with Nepal’s international human rights obligations.

In order to help secure economic, social, and cultural rights in the new constitution, the Constituent Assembly should:

- **Include a provision guaranteeing every person’s right to enjoy the highest attainable standard of physical and mental health;**
- **Expand the right to education to include progressive introduction of free higher education and encouragement or intensification of fundamental education for those who have not received or completed all of their primary education;**
- **Prohibit the use of the right to preserve and promote language, script, culture, cultural civilization, and heritage to infringe on the fundamental rights and freedoms of others, particularly the right to non-discrimination;**
- **Explicitly state that the right to freely choose or accept employment is a component of the right to work;**
- **Clarify the content of the right to proper work practices or specify that workers are entitled to “just and favorable” work conditions;**
- **Amend the language on the right to social security to establish it as a right to “social security, including social insurance,” specify that the right is to be enjoyed without discrimination, and indicate that particular attention should be paid to marginalized groups, including Dalits.**
- **Clarify that the meaning of the right to food sovereignty includes the right to the minimum essential food, which is sufficient, nutritionally adequate and safe, in order to ensure freedom from hunger.**

- **Include language that explicitly prohibits exploitation in the name of religion;**
- **Add specific language securing an entitlement to tenure or comparable redress in cases where land tenure has been compromised by previous discrimination;**
- **Review and amend the placement of provisions related to economic, social, and cultural rights in the constitution so as to ensure their justiciability; *and*,**
- **Add Dalits to the list of groups that should benefit from “a policy of ensuring socio-economic security and provid[ing] land to the economically backward classes,” and ensure that this list is non-exhaustive so as to ensure access to socio-economic security to all who need it.**

E. Women’s Rights

Dalit women face the intersectional burden of caste and gender discrimination. In addition to confronting the barriers to citizenship noted above, the patriarchal nature of Nepal’s public and private spheres excludes them from meaningful participation in the country’s governance. Dalit women also face substantial challenges in accessing education, healthcare, and an adequate standard of living. Moreover, the general status of Dalit women in Nepal has made some susceptible to sexual coercion, exploitation, torture, and cruel, inhuman, and degrading treatment.

Article 20 of the Interim Constitution sets forth specific rights in respect to women. No such article existed in the 1990 Constitution and a similar provision should be included in the new constitution. However, in order to effectively combat gender discrimination, the new constitution’s provision must more closely follow CEDAW and more fully track the CEDAW Committee’s recommendations.

In order to help ensure women’s rights in the new constitution, the Constituent Assembly should:

- **Add a provision requiring all appropriate measures to modify the social and cultural patterns of conduct of men and women;**
- **Include specific rights concerning family relations, including the equal rights of men and women with respect to entry into marriage; dissolution of marriage; parental rights and responsibilities; family planning; relations with children; and property; *and*,**
- **Include within the “right to reproductive health and other reproductive rights” provision a list of the kinds of reproductive rights guaranteed under international human rights law, including but not limited to, equal access to reproductive health care services and the right to be fully informed regarding medical options.**

F. Children's Rights

Dalit children are an especially vulnerable group in Nepal; countless numbers are coerced into labor, becoming victims of exploitative practices. Additionally, caste discrimination compromises both the availability and quality of education for Dalit children.

Article 22 of the Interim Constitution is commendable for introducing explicit constitutional rights for children. If enforced, these provisions will have a positive impact on Dalit children's rights, particularly their economic and social rights. This is because of the prohibition on child exploitation and the guarantee of the rights to basic health and social security. However, some improvements can be made to the article in order to ensure its full compliance with Nepal's international human rights obligations.

In order to help ensure children's rights in the new constitution, the Constituent Assembly should:

- **Clarify that children are prohibited from performing work or providing services that place children's well-being, physical or mental health, or spiritual, moral or social development at risk;**
- **Affirm that the best interests of the child is the primary consideration in all actions concerning the rights of children, including actions taken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies; *and*,**
- **Affirm that children have a voice in all matters affecting them in all spheres of society, particularly in the family, school, and in their communities.**

G. The Right to be Free from Torture and other Cruel, Inhuman or Degrading (CID) Treatment or Punishment

Nepal has failed to comply with its international legal obligations on the prohibition of torture and other CID treatment or punishment. As Dalits have increasingly resisted discrimination, Government forces have responded with torture and other mistreatment, taking full advantage of their ability to act with particular impunity against individuals perceived to be "low-caste." Maoist insurgents have also used torture to extort Dalit support.

The Government has failed to effectively criminalize, punish, and compensate for torture and other CID acts. While the Torture Compensation Act of 1996 seeks to provide victims of torture and their families the right to compensation, it does not require the Government to punish a perpetrator of torture. Further, the Act includes procedural barriers to fair and adequate victim compensation and rehabilitation.

Article 26 of the Interim Constitution prohibits torture and other CID treatment of "any person who is detained during investigation, or for any other reason" and makes such acts punishable by law. Despite introducing a criminal penalty for torture and CID acts, the Interim Constitution remains inadequate in ensuring that Nepal adheres to its international obligations.

In order to ensure prevention, punishment and redress for acts of torture and other CID treatment or punishment in the new constitution, the Constituent Assembly should:

- **Ensure that the definition of torture and CID treatment extends beyond those acts occurring in traditional custodial detention;**
- **Ensure that all acts of torture and CID treatment, including those acts which constitute complicity or participation in torture and CID treatment, are punishable;**
- **Ensure that all such acts will be punishable by law and by appropriate penalties which take into account their grave nature; *and***
- **Ensure that the compensation for torture and CID treatment shall be determined in accordance with an individual's enforceable right to fair and adequate compensation.**

H. Realizing Constitutional Rights & Protections in Nepal: Issues of Implementation and Enforceability

Constitutional protection of Dalit rights in Nepal is a crucial initial step. Yet, as evidenced by the limited efficacy of the 1990 Constitution, ultimate success requires commitment from all levels of the Nepalese government, the judiciary, and law enforcement officials, as well as Nepalese civil society. Moreover, Nepal has a general obligation to respect, protect, and fulfill its binding human rights commitments. Additionally, Nepal has the related obligation to secure the right to an effective remedy for human rights violations, which includes ensuring that its institutions and agents are capable of enforcing human rights.

In order to help ensure the implementation and enforcement of rights contained in the new constitution, the Constituent Assembly should:

- **Include threshold sections in the new constitution's equivalent of Part 3 that emphasize the importance of the rights; their binding nature; and the obligation to respect, protect, and fulfill the rights established under the constitution;**
- **Ensure that both citizens and non-citizens have the constitutional right to petition the Supreme Court to have a law declared unconstitutional;**
- **Provide for the financial autonomy of the National Human Rights Commission; *and,***
- **Establish the National Dalit Commission as a constitutional body.**

IV. CONCLUSION

In drafting the new constitution, the Constituent Assembly is tasked with the paramount responsibility of crystallizing the peace after Nepal's prolonged civil war and with the challenge of fulfilling Nepal's international legal obligations to secure fundamental rights. These two responsibilities will only be met if the rights of Nepal's Dalit population—a group that has faced more than 2,000 years of systematic discrimination on the basis of caste—are fully realized.

That all human beings share the same basic worth is a fundamental principle enshrined in the various human rights treaties to which Nepal is a State Party. Nepal is therefore legally obligated to respect, protect, and fulfill the human rights of Dalits. Meeting this obligation will greatly increase Nepal's ability to maintain a sustainable peace and achieve effective political, economic, and social development. As demonstrated above, Nepal's new constitution must serve as the foundation for this crucial endeavor.

METHODOLOGY

Recasting Justice was produced in close cooperation with Dalit advocates and members of the legal community in Nepal. It draws on the expertise of Nepalese academics and international constitutional scholars, as well as CHRGI's own expertise on caste discrimination and international human rights law. The report's recommendations, which are addressed to members of the Constituent Assembly, are based on a detailed analysis of Nepal's obligations under a number of international human rights treaties. The report additionally reflects extensive research on human rights abuses against Dalits in Nepal, drawn from a variety of credible sources.

In November 2007, CHRGI conducted numerous in-person interviews with Dalit advocates, lawyers, national and international non-governmental organization representatives, and U.N. and other international experts in Kathmandu, Nepal. Also in November 2007, CHRGI participated in an academic Regional Seminar on Caste Discrimination in South Asia organized by the International Dalit Solidarity Network and the Indian Institute of Dalit Studies in Kathmandu where the authors were able to consult with a number of regional experts on the report. CHRGI also solicited written feedback on earlier drafts of the report from a variety of experts.

ABOUT THE CENTER

The Center for Human Rights and Global Justice (CHRGI) brings together and expands the rich array of teaching, research, clinical, internship, and publishing activities undertaken within New York University (NYU) School of Law on international human rights issues. Philip Alston is the Center's Faculty Chair; Smita Narula and Margaret Satterthwaite are Faculty Directors; Jayne Huckerby is Research Director; and Veerle Opgenhaffen is Program Director.

In its work on discrimination, the CHRGI and its International Human Rights Clinic have focused on caste discrimination in South Asia, collaborating extensively with the International Dalit Solidarity Network www.idsn.org and with Dalit NGO partners throughout South Asia. For more information on CHRGI's work on caste discrimination, and for all our statements and reports, please visit www.chrgi.org.