

NO JUSTICE, NO PEACE: CONFLICT, SOCIO-ECONOMIC RIGHTS, AND THE NEW CONSTITUTION IN NEPAL

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I. INTRODUCTION

One day after the signing of the November 21, 2006 Comprehensive Peace Accord (CPA) between the Nepali government¹ and the Communist Party of Nepal (Maoist), Kathmandu's *The Himalayan Times* editorial board declared, "Nepal has entered into a new era of peace, democracy and governance."² The CPA formally ended the more than ten-year conflict waged by Maoist insurgents since 1996.³ Over the next

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1. The government was primarily represented by the Seven-Party Alliance (SPA) in Parliament which was reinstated in April 2006. International Crisis Group, *Nepal's Peace Agreement: Making It Work*, Asia Report No. 126 1–2, Dec. 15, 2006, available at [http://www.crisisgroup.org/~media/Files/asia/south-asia/nepal/126_nepals_peace_agreement_making_it_work.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-asia/nepal/126_nepals_peace_agreement_making_it_work.ashx). The SPA parties were Nepali Congress (NC), Nepali Congress (Democratic) (NC(D)), Communist Party of Nepal (Unified Marxist-Leninist) (UML), Janamorcha Nepal, Nepal Workers and Peasants Party (NWPP), United Left Front (ULF), and Nepal Sadbhavana Party (Aanandi Devi) (NSP(AD)). *Id.* at 1 n.2.

2. *An Idea Is Born*, HIMALAYAN TIMES, Kathmandu (Nepal), Nov. 22, 2006, <http://thehimalayantimes.com/fullnews.php?headline=An+idea+is+born&NewsID=139353>.

3. The Maoists formally declared their "People's War" on February 13, 1996, beginning raids of government offices, private property, land, and homes, and escalating protests. DAVID N. GELLNER, RESISTANCE AND THE STATE: NEPALESE EXPERIENCES 298 (2007). A forty-point demand was submitted to the government on February 4, 1996, by the United People's Front (*Samyukta Jan Morchā* in Nepali, a faction of Maoists organized by Baburam Bhattarai in 1991), stating that if there were no developments towards those demands by February 17, the Mao-

thirteen months, a new interim constitution was adopted,⁴ the royal family's property was nationalized,⁵ and a republic was declared, dissolving the world's last Hindu royal kingdom.⁶ National elections were held the following year.⁷ For hundreds of thousands of Nepalis, peace was a welcomed change. In the southern plains and hill regions, where much of the guerilla fighting had been concentrated, farmers were finally able to return to work.⁸

ists would begin armed struggle against the state. See Baburam Bhattarai, *40 Point Demand*, in UNDERSTANDING THE MAOIST MOVEMENT OF NEPAL app. at 391-95 (Deepak Thapa, ed. 2003) (citing Baburam Bhattarai, *Barta ra tatkalin rajnaitik nikasko prashna* (2003)), available at <http://www.satp.org/satporgtp/countries/nepal/document/papers/40points.htm>. The demands ranged from writing a new constitution, to instituting a living wage, to eliminating corruption. *Id.* Maoist activities began primarily in Rolpa and surrounding districts, but they grew to encompass much of the country and increasingly focused on grabbing local sources of power, including police outposts and local government offices, as well as vast tracts of private land. See Krishna Hachhethu, *The Nepali State and the Maoist Insurgency, 1996-2001*, in HIMALAYAN PEOPLE'S WAR: NEPAL'S MAOIST REBELLION 58, 61 (Michael Hutt ed., 2004) [hereinafter HIMALAYAN PEOPLE'S WAR]; Sudheer Sharma, *The Maoist Movement: An Evolutionary Perspective*, in HIMALAYAN PEOPLE'S WAR, *supra*, at 42-45 (2004).

4. *Nepal Maoists Lock Their Weapons*, BBC NEWS, Jan. 17, 2007, http://news.bbc.co.uk/2/hi/south_asia/6268375.stm.

5. *Nepal To Seize Property Acquired by Its King*, N.Y. TIMES, Feb. 27, 2007, at A7, available at <http://www.nytimes.com/2007/02/27/world/asia/27nepal.html>.

6. See *Nepal To End Its Monarchy in a Deal with Ex-Rebels*, N.Y. TIMES, Dec. 24, 2007, at A8, available at <http://www.nytimes.com/2007/12/24/world/asia/24nepal.html>. A Republic was formally declared on May 28, 2008, with a vote by the Constituent Assembly (CA). Somini Sengupta, *Nepal Reborn as a Republic*, N.Y. TIMES, May 29, 2008, at A8, available at <http://www.nytimes.com/2008/05/29/world/asia/29nepal.html?scp=2&sq=nepal+republic&st=nyt>.

7. CA elections, in which the Maoists won a landslide of seats, were held on April 10, 2008. See Somini Sengupta, *Nepal's Maoists Lead in Early Election Results*, N.Y. TIMES, Apr. 15, 2008, available at <http://www.nytimes.com/2008/04/15/world/asia/15nepal.html>.

8. The Informal Sector Service Centre (INSEC), a nongovernmental organization (NGO) based in Kathmandu, recorded the deaths of 2,381 agricultural workers during the conflict (out of a total of 13,347 confirmed deaths). INSEC, *No. of Victims Killed by State and Maoist in Connection with the "People's War" (Feb. 13, 1996-Dec. 31, 2006)*, <http://www.insec.org.np/pics/1247467500.pdf> [hereinafter, INSEC, *No. of Victims Killed*]. In addition to the deaths of agricultural workers, agricultural production was slowed because people were unable or unwilling to maintain or improve farmland because of insecurity during the conflict. David Seddon & Karim Hussein, *The Consequences of Conflict: Livelihoods and Development in Nepal* 22 (Overseas Dev. Inst., Working Paper 185, 2002). Approximately forty percent of the country's GDP is derived from agriculture. U.N. OFFICE OF THE HIGH REPRESENTATIVE OF THE LEAST DEVELOPED COUNTRIES, LANDLOCKED DEVELOPING COUNTRIES, NEPAL (2008), <http://www.unohrrls.org/en/orphan/117/> [hereinafter LANDLOCKED DEVELOPING COUNTRIES, NEPAL]. As a result, GDP rates were extremely low during the conflict. For example, in 2002, one of the most violent years of the conflict in terms of numbers of recorded deaths, Nepal's GDP growth rate was a mere 0.1%. GLOBAL FINANCE, NEPAL COUNTRY REPORT, available at <http://www.gfmag.com/gdp-data-country-reports/212-nepal-gdp-country-report.html>.

Yet as Nepal's government seeks to move beyond the devastating effects of the war, the economic and exclusionary causes of the conflict remain largely unaddressed. Post-conflict programs in Nepal tend to focus on civil and political rights⁹ without also incorporating considerations of economic and social rights (ESR).¹⁰ This reflects the dominance of civil and political rights internationally, despite international law's insistence that all rights are indivisible, interdependent, and interrelated.¹¹ In Nepal, feudal exclusionary laws and policies that have been reformed on paper continue to shape the enjoyment of both civil and political rights as well as socio-economic rights. These laws and policies are deeply discriminatory, affecting especially women, indigenous nationalities, those of

9. There was an influx of international actors to aid Nepal in the transition. The U.N. Mission in Nepal (UNMIN) was established by a Security Council Resolution in January 2007 and continues to have a presence there. S.C. Res. 1740, ¶ 1, U.N. Doc. S/RES/1740 (Jan. 23, 2007). NGOs also expanded activities in Nepal after the conflict, and some NGOs focusing on post-conflict transition and transitional justice opened offices there. For example, the International Center for Transitional Justice opened an office in Kathmandu in August 2007. Int'l Ctr. for Transitional Justice, *Nepal*, <http://www.ictj.org/en/where/region3/1684.html> (last visited Mar. 16, 2010). The International Institute for Democracy and Electoral Assistance (International IDEA), which concentrates on constitution writing and peace building activities, also initiated a major project in Nepal in 2006. INT'L IDEA, A RECORD OF ACTIONS 28-30 (2007), http://www.idea.int/publications/annualreport_2007/upload/annual_report_07.pdf.

10. This article will refer to "economic and social rights," and "socio-economic rights" interchangeably. Specific socio-economic rights (for example, the right to housing, right to food, right to education, and right to health) are articulated in the Universal Declaration of Human Rights, and elaborated and codified in the International Covenant on Economic, Social and Cultural Rights. Universal Declaration of Human Rights, G.A. Res. 217A, at arts. 25-26, U.N. Doc. A/810 (Dec. 10, 1948); *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI), at art. 11, 12, 13, U.N. Doc. A/6316 (Jan. 3, 1976), available at <http://www2.ohchr.org/english/law/pdf/cesr.pdf> [hereinafter ICESCR]. This article will not include a full discussion of cultural rights, although they are also included in the ICESCR, because of their unique place in the ICESCR and broader international legal framework, distinct from socio-economic rights.

11. World Conference on Human Rights, June 14-25, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/24 (July 12, 1993) ("All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."); U.N. Food & Agric. Org., Comm'n of Jurists the Faculty of Law of the Univ. of Limburg & the Urban Morgan Inst. for Human Rights Univ. of Cincinnati, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, ¶ 4, Maastricht, (Jan. 22-26, 1997) ("It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights."); see also International Conference on Human Rights, Teheran, Iran, Apr. 22-May 13, 1968, *Proclamation of Teheran*, ¶ 13, U.N. Doc. A/CONF.32/41 ("Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.").

low caste (in particular Dalits, so-called “untouchables”), and ethnic minorities—especially with respect to their access to land and its resources—and were a major contributing factor to growing unrest throughout the twentieth century.¹² Land, a source of socio-economic resources and political power, is scarce in Nepal, and remains a touchstone for conflict in political centers and in the fields.¹³ The land tenure system that existed in Nepal until the mid-twentieth century created that nexus, characterized by state ownership, a powerful landed elite, and limited peasants’ rights. After almost fifty years of apathetic, incomplete, and insignificant reforms, the Maoist insurgency was waged in part on calls for “land to the tiller.”¹⁴

A great number of post-conflict and transitional justice programs—those approaches that aim to respond to widespread human rights abuses after periods of conflict or political transition¹⁵—are underway in Nepal. There is no shortage of civil

12. One study, for instance, notes that lack of government action on growing poverty and gaps between haves and have-nots contributed to growing frustration and was a factor contributing to conflict. The study also cites unemployment/underemployment as another factor. See WHOSE WAR? ECONOMIC AND SOCIO-CULTURAL IMPACTS OF NEPAL’S MAOIST-GOVERNMENT CONFLICT 38–40 (Arjun Karki & Binod Bhattarai eds., 2003); see also JAGAT BASNET, COMM. SELF-RELIANCE CENTRE, LAND RIGHTS MOVEMENT IN NEPAL 1 (2006), http://www.landcoalition.org/pdf/06nl_art_csrc.pdf [hereinafter CSRC, LAND RIGHTS MOVEMENT].

13. See, e.g., CSRC, LAND RIGHTS MOVEMENT, *supra* note 12, at 1.

14. Interview by World People’s Resistance Movement (Britain) with Baburam Bhattarai (Oct. 26, 2009), available at <http://www.wprmbritain.org/?p=926> (“To complete the New Democratic Revolution you have to . . . confiscate the property of the feudal landlords and distribute it to the peasants on the principle of ‘land to the tiller’. This was the basic policy of our party during the People’s War, which we practiced in the rural areas.”).

15. The concept of transitional justice emerged as a means to address abuses by former regimes in Latin America and Eastern Europe while also supporting political transformations there. INT’L CTR. FOR TRANSITIONAL JUSTICE, WHAT IS TRANSITIONAL JUSTICE? 1 (2008), available at http://www.ictj.org/static/tIJApproaches/WhatisTH/ICTJ_WhatisTJ_pa2008_.pdf. Transitional justice mechanisms include international and domestic prosecutions, truth commissions, reparations, lustration, amnesties, reporting, and other forms of inquiry. While most mechanisms aim to ensure accountability, transitional justice is based on the premise that justice must move beyond simple retribution, which can lead to further cycles of violence. Miriam J. Aukerman, *Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice*, 15 HARV. HUM. RTS. J. 39, 60 (2002). Indeed, “[t]ruth and accountability are essential if traumatized societies are to begin resolving their political, ethnic, racial, and religious conflicts through democratic processes, rather than through torture, rape, and genocide.” *Id.* at 47. Transitional justice “is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuses.” WHAT IS TRANSITIONAL JUSTICE?, *supra*, at 1. The goals for the transitional justice framework include establishing truth, creating a public platform for victims, ensuring accountability and punishment, establishing the rule of law, compensating victims, engaging in institutional reform and long-term development, reconciliation, and creating space for public deliberation. David A. Crocker, *Reckoning with Past Wrongs: A Normative Framework*, 13 ETHICS & INT’L AFF. 43, 49–

and political rights violations for the country to cope with following a conflict that left more than 13,000 dead,¹⁶ and thousands of documented cases of detention, torture, and disappearance,¹⁷ most of which were perpetrated by the state. While the value of programs and policies that aim to ensure accountability and redress are unquestionable, in order to ensure a lasting peace, there is also a clear need to consider the socio-economic rights-related needs of Nepalis in the aftermath of a conflict waged along economic lines.

This Article argues that in order to do this, it will be essential to strengthen protections for ESR in the new constitution. Part II provides an overview of ESR in Nepal today and considers its root causes. Part III then considers the relationship between poverty, socio-economic rights, and conflict generally, and in Nepal specifically. Further, Part III will demonstrate that in Nepal, socio-economic concerns are not just a fundamental rights issue, but also a stability issue. Part IV discusses the place of socio-economic rights in post-conflict Nepal, and argues that the current government bodies charged with providing for ESR discussion and guarantees are inadequate. Finally, Part V provides an overview of ESR in Nepal's previous constitutions, and argues that the inclusion of ESR in Nepal's new constitution is a unique opportunity to both

62 (1999). Deterrence, or the prevention of future atrocities, is also a goal for countries in transition. See PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY 11 (2001) (citing the "widely held belief" that such crimes must be addressed).

16. No comprehensive official statistics exist; while reports generally cite the figure 13,000 killed, the actual number may be higher. See, e.g., Int'l Ctr. for Transitional Justice Nepal, *The Importance of Truth in Times of Transition: Reflections for the Nepali Case*, INFORMAL, July–Sept. 2008, at 19, 26, available at http://ictj.org/static/Publications/INFORMAL_NPL_TruthinTransition_ar2008.pdf. The INSEC, a Nepali human rights organization, puts the figure of deaths between 1996 and 2006 at 13,347. INSEC, *No. of Victims Killed*, *supra* note 8.

17. Statistics are similarly unavailable for the total number of people that disappeared during the conflict. According to an official at the National Human Rights Commission (NHRC): in total, 1,619 disappearances were reported to the NHRC (1,234 attributed to the security forces, 331 to the Communist Party of Nepal (Maoist) (CPN-M), and 54 unattributed). HUMAN RIGHTS WATCH, *WAITING FOR JUSTICE: UNPUNISHED CRIMES FOR NEPAL'S ARMED CONFLICT* 11 (Sept. 2008) (citing Human Rights Watch Interview with Gauri Pradhan, member of the NHRC, in Kathmandu, Nepal (Oct. 27, 2007)). The U.N. Working Group on Enforced or Involuntary Disappearances reports that as of the end of 2009, there were 458 outstanding cases of disappearances in Nepal, twenty-two reported just that year. U.N. Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, ¶ 392, U.N. Doc. A/HRC/13/31 (Dec. 21, 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-31.pdf>.

guarantee fundamental human rights and ensure a lasting peace.

II. HISTORICAL EXCLUSION AND SOCIO-ECONOMIC RIGHTS IN NEPAL

Situated between China and India, Nepal is landlocked, geopolitically weak, and extremely poor.¹⁸ Inequality and poverty both cause and result from socio-economic rights violations. The human rights challenges that faced Nepal prior to the conflict, which continue to challenge development and stability in the country, are broad and widely varied. During Nepal's most recent review by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), the committee included a litany of abuses, noting primarily extreme poverty, inequalities between men and women, trafficking in women and girls, the high rate of domestic violence, under- and unemployment, problems faced by ex-bonded laborers, inadequacies in mandated minimum wages, and the high incidence of child labor.¹⁹ Additionally, the right to food, work, health, and housing²⁰ were all cited as being out of reach for much of the population, especially in rural areas.²¹

The accessibility of land and its resources are increasingly recognized as having serious implications for many of these human rights.²² Indeed, some argue that the right to land is it-

18. Nepal is a "Least Developed Country" (LDC). Almost a quarter of its population lives on less than one dollar a day, and 68.5% of the population lives on less than two dollars a day. These figures are taken from the 2007–2008 Human Development Report, where Nepal is ranked 142 out of 177 countries on the "human development index." U.N. DEV. PROGRAMME [UNDP], HUMAN DEVELOPMENT REPORT 2007/2008, at 231, 239, 376 (2007), available at <http://hdr.undp.org/en/reports/global/hdr2007-2008/>. According to the UNDP, Nepal's Human Development Index is the lowest of the five countries of the South Asian Association for Regional Cooperation (SAARC)—which includes Bangladesh, India, Nepal, Pakistan, and Sri Lanka—as of 2005. UNDP, NEPAL HUMAN DEVELOPMENT REPORT 2009, at 32 (2009), available at <http://www.undp.org.np/publication/html/nhdr2009/NHDR2009.pdf>.

19. U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc., and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Nepal*, ¶ 11, U.N. Doc. E/C.12/NPL/CO/2 (Jan. 16, 2008) [hereinafter ECOSOC, *Consideration of Reports Under Articles 16 and 17*].

20. International Covenant on Economic, Social and Cultural Rights, arts. 6, 11, 12, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3.

21. ECOSOC, *Consideration of Reports Under Articles 16 and 17*, supra note 19, ¶¶ 18, 22–23.

22. See, e.g., U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, ¶¶ 31, 33, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007) (prepared by Miloon Kothari) ("[T]he Special Rapporteur strongly believes

self a free-standing right.²³ In Nepal, the link between land and ESR is especially clear: exclusion from land is a result of control by the state and elite groups over land and its resources, and leads to the inability to realize access rights to housing, food, and work. This is rooted in a long history of political centralization, and political and economic exclusion turning primarily on the axes of caste, ethnicity, gender, and geographic location.²⁴ As a result of growing tenant movements in the hill and Tarai regions,²⁵ the Nepali government began introducing land reforms in the 1940s and 1950s, but re-

that the Human Rights Council should consider devoting attention to the question of the human right to land and should conduct studies in this regard In particular, the Special Rapporteur requests the Council to: . . . Recognize the right to land as a human right and strengthen its protection in international human rights law.”); U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, ¶ 104, U.N. Doc. A/HRC/7/16 (Feb. 13, 2008) (prepared by Miloon Kothari) (“[T]he [Human Rights] Council should: . . . Consider the relationship between the right to land and congruent human rights and their implementation, in particular in regard to adequate housing and the right to food and work as a means to combat poverty, discrimination, violence, evictions and displacement”). Compare ELISABETH WICKERI & ANIL KALHAN, LAND RIGHTS ISSUES IN INTERNATIONAL HUMAN RIGHTS LAW (2009), http://www.institutehrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf (arguing that despite lack of an explicit right to land in the international human rights framework, access to land remains a fundamental element for ensuring numerous international human rights), with Jean du Plessis & Scott Leckie, *Property Rights and the Need for More Inclusive Concepts, Laws, Policies, and Practices*, in REALIZING PROPERTY RIGHTS 194 (Hernando de Soto & Francis Cheneval eds., 2006) (arguing that embracing a broader concept of property rights, including housing and land rights, may provide stronger protections for human rights).

23. See, e.g., LA VIA CAMPESINA ET AL., INT’L NGO/CSO PLANNING COMM. FOR FOOD SOVEREIGNTY, AGRARIAN REFORM IN THE CONTEXT OF FOOD SOVEREIGNTY, THE RIGHT TO FOOD AND CULTURAL DIVERSITY: “LAND, TERRITORY AND DIGNITY,” 5 (Jan. 2006), available at http://www.icarrd.org/en/icard_doc_down/Issue_Paper5.pdf (“The most fundamental pillars of food sovereignty include the recognition and enforcement of the right to food and the right to land . . .”).

24. See UNDP, NEPAL HUMAN DEVELOPMENT REPORT 2009, *supra* note 18, at 21. Nepal is a very diverse country with over 92 language. *Id.* at 8.

25. Nepal’s topography ranges from the Himalayan mountain ranges along the border with China, through hill regions, and down to a low-lying plains region along its border with India, known as the Tarai. CENT. INTELLIGENCE AGENCY: NEPAL, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html> (last visited May 20, 2010); MINISTRY OF FORESTS AND SOIL CONSERVATION, NEPAL BIODIVERSITY STRATEGY 5-8, 20 (2002), available at <http://www.ansab.org/UserFiles/Nepal%20Biodiversity%20Strategy%202002.pdf>. The outer Tarai is known as the Madhesh, some of the most valuable land in Nepal. Madheshi (or Madhesi), Dalits, and other poor groups living there, however, have been discriminated against and are generally landless. In the mid-twentieth century, these groups began to organize, and conflict grew in this region. LIZ ALDEN WILY ET AL., LAND REFORM IN NEPAL: WHERE IS IT COMING FROM AND WHERE IS IT GOING? 96 (2008); See *infra* Part III.B.

forms lacked political will and oversight, leading to little meaningful change.²⁶

A. Historical Exclusion

Until the mid-1900s, Nepal operated under a centuries-old land tenure system characterized by state ownership, a powerful, landed elite, and limited peasants' rights.²⁷ This system remained largely unchanged until the mid-twentieth century, and its imprint is still felt today.²⁸ The traditional land tenure framework was based in state authority and limited individual property rights.²⁹ Moreover, because the Shah monarchy and Rana dynasty³⁰ generally conferred grants to the royal family, government functionaries, and their families and associates as a means of ensuring loyalty, generations of Nepalis who were not related to the royal family or working in high-ranking positions for the state were excluded from land ownership.³¹

The traditional system was divided into two primary types of tenure: state landlordism, known as *Raikar*, whereby the state owned all land and alone retained the right of alienation through sale, mortgage, or bequest;³² and *Kipat*, a form of

26. See discussion *infra* Part III.A; see also Jagannath Adhikari, *Farmers' Rights to Land: A Crucial Dimension on "Livelihood Security,"* SOUTH ASIA PARTNERSHIP CANADA, Nov. 22, 2004, http://action.web.ca/home/sap/nepal_resources.shtml?x=69984&AA_EX_Session=9d86c19199f328047e249d66c406d87b; JAGAT BASNET, LAND WATCH ASIA & CMTY. SELF RELIANCE CENTRE NEPAL, LAND AND LAND TENURE SECURITY IN NEPAL 3 (2008) [hereinafter CSRC, LAND TENURE SECURITY]. See generally WILY, LAND REFORM IN NEPAL, *supra* note 25, at 98, 101 (providing an overview of the history of land reform in Nepal and documenting efforts at reform since the 1950s, reflecting that little has changed on the ground since reforms were first introduced).

27. See MAHESH C. REGMI, LANDOWNERSHIP IN NEPAL 16, 197 (1976); WILY, *supra* note 25, at 82.

28. Wily notes that despite the introduction of land ceilings and subsequent reforms lowering the land ceilings, land distribution remains skewed in much the same way as it was in 1950. WILY, *supra* note 25, at xiii.

29. REGMI, LANDOWNERSHIP, *supra* note 27, at 15-17, 170-171; SHANKAR THAPA, HISTORICAL STUDY OF AGRARIAN RELATIONS (1846-1951) 162-163 (2000) [hereinafter THAPA, AGRARIAN RELATIONS].

30. The Shah dynasty ruled Nepal from the country's unification in 1768 until the establishment of the republic in 2008. However, between 1846 and 1953, the Rana family was the dominant ruling party, holding the position of Prime Minister and other government positions hereditarily, which reduced the Shah royals to mere figureheads. JOHN WHELPTON, A HISTORY OF NEPAL 1 (2005).

31. REGMI, LANDOWNERSHIP, *supra* note 27, at 16-19; CSRC, LAND TENURE SECURITY, *supra* note 26, at 10.

32. REGMI, LANDOWNERSHIP, *supra* note 27, at 16.

communal land ownership whereby “traditional concepts of customary rights in the land” applied.³³ The vast majority of land was organized under *Raikar* tenure after unification of the country in 1768. This system secured ownership of land in the state, and ownership could only be relinquished upon state initiative through sale, mortgage, or usage grants to individuals or organizations.³⁴ Even then, such land grants were subject to state resumption or confiscation with one exception.³⁵ Absent a grant of some sort, private individuals who lived and farmed on *Raikar* land were considered tenants of the state, and paid annual land taxes in exchange for the right to cultivate the land.³⁶ *Raikar* tenure operated through three sub-systems: *Birta* (grants to upper classes that consolidated their wealth and power), *Guthi* (grants to religious or charitable institutions), and *Jagir* (grants in consideration for services for state employees).³⁷

A brief examination of the different forms of *Raikar* tenure clarifies the ways that the system consolidated both economic and political power in the hands of a small group of landowners. *Birta* tenure referred to tax-free grants primarily to upper class individuals or groups, including members of the royal family and other nobility, in order to “provide them with a livelihood.”³⁸ *Birta* owners collected land tax from tenants as a price for the right to cultivate the land,³⁹ and as such the system helped solidify class determinations, by which non-agriculturalists were given control of the land at the cost of the agrarian class.⁴⁰ In this way, *Birta* land not only provided security of tenure and income to the grantee, but also served as

33. *Id.* at 19. The tradition of *Kipat* dates back to pre-unification Nepal, when the area now known as Nepal consisted of a number of principalities, each with their own political, economic, social, and cultural systems. TULSEY RAM PANDAY ET AL., UNESCO, FORMS AND PATTERNS OF SOCIAL DISCRIMINATION IN NEPAL, A REPORT 33 (2006). This system was generally limited to communities in the eastern and western hill areas of Nepal: land owners derived their rights in land by virtue of membership in a particular ethnic group. REGMI, LANDOWNERSHIP, *supra* note 27, at 19.

34. See PANDAY ET AL., *supra* note 33, at 33–34.

35. REGMI, LANDOWNERSHIP, *supra* note 27, at 16–18.

36. THAPA, AGRARIAN RELATIONS, *supra* note 29, at 165.

37. REGMI, LANDOWNERSHIP, *supra* note 27, at 16–18.

38. *Id.* at 17. Generally, the *Birta* grantees were individuals who, by virtue of their “religious tradition or their social or political function,” did not participate in economic pursuits (for example, priests, religious teachers, soldiers, nobles, and royal family members). *Id.*

39. CSRC, LAND TENURE SECURITY, *supra* note 26, at 48.

40. See REGMI, LANDOWNERSHIP, *supra* note 27, at 17.

an indicator of high social status. Under the *Guthi* system, the state, *Kipat* owners, or *Birta* owners could endow land for the establishment or maintenance of religious, charitable, cultural, or social institutions.⁴¹ These institutions could then rent out the land to individual farmers who paid rent to the *Guthi* authorities.⁴² Unlike *Birta* land, *Guthi* land was protected from state confiscation.⁴³ Finally, under the *Jagir* system, the state could grant land to government employees as payment for services.⁴⁴ This tenure generally took the form of an assignment to a civil servant of the income from *Raikar* lands in lieu of salary.⁴⁵ Property rights under the *Jagir* system were considerably more limited, and grantees could not sell or transfer their rights to any other persons, nor was the tenure inheritable.⁴⁶ The grants could be nullified when employment ceased or at the discretion of the government.⁴⁷

The *Raikar* system was strengthened by limiting peasant rights and using bonded labor. Owner-landlords of *Raikar* grants, whether temporary or permanent, owned not only the land but also the peasants who worked the land.⁴⁸ Owners were free to—and did—appropriate rents (and under some systems, compel unpaid labor⁴⁹), creating an exploitative landlord-tenant nexus that continues to characterize modern day Nepali land tenure.⁵⁰ The result was a vastly lopsided co-dependency whereby the powerful privileged class depended on the peasants for agricultural production, and vulnerable peasant farmers depended on the landowning elite for subsistence and residency.⁵¹ Because landlords, who were primarily relatives of the royal or ruling government families, state functionaries, or high-ranking military officers, were tied to the

41. See *id.*; see also CSRC, LAND TENURE SECURITY, *supra* note 26, at 48–49.

42. See Laya Prasad Uprety et al., *People-Centered Advocacy for Land Tenancy Rights in Nepal* 3–4 (Action Aid Int'l, Working Paper No. 6, 2005).

43. See REGMI, LANDOWNERSHIP, *supra* note 27, at 17.

44. See *id.* at 17–18.

45. See Bishnu Raj Uprety, Resource Governance, Resource Scarcity and Conflict in Nepal 20 n.7 (Int'l Union for Conservation of Nature, Discussion Paper 2003).

46. CSRC, LAND TENURE SECURITY, *supra* note 26, at 48.

47. REGMI, LANDOWNERSHIP, *supra* note 27, at 18; see also UPRETY, *supra* note 45.

48. REGMI, LANDOWNERSHIP, *supra* note 27, at 18.

49. See *infra* text accompanying notes 53–63 (describing bonded labor systems of *Kamaiya*, *Haruwa*, *Haliya*, and *Rakam*).

50. REGMI, LANDOWNERSHIP, *supra* note 27, at 170.

51. THAPA, AGRARIAN RELATIONS, *supra* note 29, at 162.

rulers, peasant-tenants were left extremely vulnerable. Those in the lower castes,⁵² indigenous groups,⁵³ and ethnic minorities—not to mention women—were completely disenfranchised and left open to the more abusive aspects of the system.

In particular, these groups were frequently brought under the bonded labor systems, which resulted from, and were reinforced by state landlordism in Nepal. These forms of debt bondage had regional variations: *Kamaiya* (overwhelmingly from the indigenous Tharu group, found in the Far and Mid-Western regions of the Tarai),⁵⁴ *Haliya* (primarily Dalits, found in the western hill regions), and *Haruwa* (primarily Dalits, found in parts of the Tarai).⁵⁵ Each of these arrangements is categorized by inherited debt bondage: loans are made to in-

52. See *infra* text accompanying notes 64–116 (for a discussion of the caste system).

53. The terminology used to refer to the tribal population in Nepal is inconsistent and confusing. There is considerable slippage in the usage of the terms “tribal” and “indigenous” in literature referring to this population in Nepal. The terms “Adivasi” and “Janajati” are also used by both the government and the populations themselves, and sometimes jointly as “Adivasi Janajati.” The use of the term “Janajati” became politicized in the 1990s, but before this it simply meant “tribe” or “general public.” Susan Hangen, *Creating a “New Nepal”: The Ethnic Dimension*, 34 POL’Y STUD. 1, 19 (2007), available at <http://www.eastwestcenter.org/fileadmin/stored/pdfs/ps034.pdf>. As it became associated with the ethnic movement during *Jana Andolan*, it came to refer to “a community that is outside the fold of the Hindu caste system. . . . *Janajatis* are also held to share a common history of subjugation by the state.” *Id.* The National Committee for Development of Nationalities defines a *Janajati* group as that “which has its own mother tongue and traditional culture,” which exists outside the Hindu caste system and has its own “distinct collective identity . . . traditional homeland or geographical area . . . ‘we-feeling’ . . . [and] who declare themselves as Janajati.” Dilli Ram Dahal, *Social Composition of the Population: Caste/ Ethnicity and Religion in Nepal*, in POPULATION MONOGRAPH OF NEPAL 87, 91 (2003), available at <http://www.cbs.gov.np/Population/Monograph/Chapter%2003%20%20Social%20Composition%20of%20the%20Population.pdf>.

54. There are no current official statistics on the number of ex-*Kamaiya* households. Official government numbers collected in 2000 found approximately 19,863 *Kamaiya* households. SHIVA SHARMA ET AL., NEPAL: BONDED LABOUR AMONG CHILD WORKERS OF THE *KAMAIYA* SYSTEM: A RAPID ASSESSMENT 14 (2001). NGO estimates were as high as 116,000 in 1995. WORLD ORGANIZATION AGAINST TORTURE, THE *KAMAIYA* SYSTEM OF BONDED LABOUR IN NEPAL 6 (2007) [hereinafter *KAMAIYA* SYSTEM REPORT]; see also Sherab Posel, *Kamaiya: Bonded Labor in Western Nepal*, 27 COLUM. HUM. RTS. L. REV. 123, 125 (1995); Rishikeshab Raj Regmi, *Deforestation and Rural Society in the Nepalese Terai*, 4 OCCASIONAL PAPERS IN SOC. & ANTHROPOLOGY 72, 74 (1994).

55. See WILY, *supra* note 25, at 72; Jagat Deuja & Nari Ram Luhar, *Status of Haliyas in Nepal*, in LAND POLITICS AND CONFLICT IN NEPAL: REALITIES AND POTENTIALS FOR AGRARIAN TRANSFORMATION 199–200 (2008) [hereinafter *LAND POLITICS AND CONFLICT*] (describing the difference in status between the Tharu *Kamaiya* and the *Dalit Haliya/Haruwa*). Another system, known as *Rakam*, was found primarily in the Kathmandu valley region, and was unpaid labor compelled by the government for the performance of specific government-designated functions (e.g., carpentry and bricklaying). REGMI, *LANDOWNERSHIP*, *supra* note 27, at 18. The state was able to impose *Rakam* on any of the other tenure systems. *Id.*

dividuals or families in the form of cash or rent for lands that are then worked off over time by the debtors who live on the lands owned by their landlords. Debtors and their families are compelled to work off their debts through agricultural labor and in some cases in the homes of their landlords.⁵⁶ Where bonded families were unable to meet their basic subsistence needs, or incurred medical or other unexpected costs, they were forced to borrow more from their landlords, thereby extending their debts.⁵⁷

Each of the systems helped solidify class determinations, and control by non-agriculturalists⁵⁸ was bolstered by absentee landlords,⁵⁹ intermediaries,⁶⁰ arbitrary evictions,⁶¹ and revenue contractors,⁶² all of which kept the peasant class dependent while exploiting agricultural resources.⁶³ Mass illiteracy and innumeracy among peasants (as well as discrimination) prevented upward mobility, and also heightened vulnerability to each of these factors: peasants had no way of verifying which taxes, for instance, were lawful and which were not. Because it was such an effective means of both ensuring loyalty and increasing tax revenue for a newly-unified country, there were few changes to the system of land governance for almost two centuries.⁶⁴

56. Only *Kamaiya* laborers worked in the homes of their landlords, as *Dalits*, *Haruwa*, and *Haliya* were considered "untouchable" and were not allowed in the homes. See WILY, *supra* note 25, at 64. But see Suresh Dhakal, *Haruwa, The Unfree Agricultural Labourer: A Case Study from Eastern Tarai*, 34 CONTRIBUTIONS TO NEPALESE STUDIES 277, 296 (Jul. 2007), http://findarticles.com/p/articles/mi_go2754/is_2_34/ai_n29458746/ (highlighting various types of household chores that a *Haruwa* might be required to perform).

57. See Posel, *supra* note 54, at 130; Purna Nepali & Kailash Nath Pyakuryal, *Land and Power Relations*, in LAND POLITICS AND CONFLICT, *supra* note 55, at 85, 100; Deuja & Luhar, *supra* note 55, at 212.

58. THAPA, AGRARIAN RELATIONS, *supra* note 29, at 162; REGMI, LANDOWNERSHIP, *supra* note 27, at 17. The distributions of grants also increased over time. See PANDAY ET AL., *supra* note 33, at 33.

59. WILY, *supra* note 25, at 91-92.

60. Members of the nobility and their allies were appointed to serve as tax collectors (*Jimidar*s) who were permitted to collect more than would be transferred to the state. See *id.* at 82.

61. THAPA, AGRARIAN RELATIONS, *supra* note 29, at 160-161.

62. WILY, *supra* note 25, at 93.

63. THAPA, AGRARIAN RELATIONS, *supra* note 29, at 162.

64. CSRC, LAND TENURE SECURITY, *supra* note 26, at 10.

B. Discrimination

Caste, ethnicity, gender, and geographic origin played a large role in determining access to and control over economic and political resources throughout the twentieth century and continue to be a significant determinant today.⁶⁵ In particular, the caste system and social hierarchy remains the single most determinative factor in terms of excluding low caste Nepalis, specifically Dalits, from social and political access and power. The system has historic and religious bases and creates a social hierarchy at birth that individuals are unable to escape throughout their lives. The system formalizes discrimination and impacts a broad range of rights, including access to food and water, land, work, and political participation.⁶⁶ The caste system also takes different forms in different regions of the country—mountains, hills, and Tarai—and amongst speakers of different languages,⁶⁷ and there is an internal hierarchy within the various castes, including the Dalit population, with some Dalit groups having a higher social status than others,⁶⁸ resulting in an extremely complex system of social relations.

Equality provisions and prohibitions against discrimination have been a part of Nepali law since the 1950s, first appearing in the 1951 Constitution—Nepal's second constitution.⁶⁹ The article covered only discrimination by the state, however, and therefore did not prohibit all forms of discrimination, but

65. See Rajendra Pradhan & Ava Shrestha, *Ethnic and Caste Diversity: Implications for Development* 16–19 (Asian Dev. Bank, Nepal Resident Mission, Working Paper No. 4, 2005), available at <http://www.adb.org/Documents/Papers/NRM/wp4.pdf>.

66. The general four-caste structure of Brahmins (priests and teachers), Chetris (rulers and soldiers), Vaisyas (merchants and traders), and Dalits (the so-called “untouchable” caste of laborers, cobblers, and manual scavengers) varies depending on geographical location, and each caste within the four-caste framework has numerous subcategories, which are often tied to specific occupations. Generally, Nepali-speaking groups and Madheshis (people who speak North Indian dialects and live in the outer Tarai) practice some variation of the four-caste system. See WHELPTON, *supra* note 30, 9–10. See also CTR. FOR HUMAN RIGHTS, CASTE DISCRIMINATION: A GLOBAL CONCERN 6–8 (2001), available at <http://www.hrw.org/legacy/reports/2001/globalcaste/caste0801.pdf> [hereinafter CTR. FOR HUMAN RIGHTS, CASTE DISCRIMINATION].

67. WHELPTON, *supra* note 30, at 9–10.

68. Mary M. Cameron, *Transformations of Gender and Caste Divisions of Labor in Rural Nepal: Land, Hierarchy, and the Case of Untouchable Women*, 51 J. ANTHROPOLOGICAL RES. 215, 220 (1995).

69. NEPAL CONST. of 1951 art. 15(1) (“His Majesty’s Government shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”).

equality and anti-discrimination provisions remained in each of the subsequent constitutions, and gradually became stronger.⁷⁰ During the Panchayat (partyless democracy)⁷¹ years between 1960 and 1990, affiliation along caste and ethnic lines was “discouraged” by the government as an impediment to development and nation-building, and all political parties were banned.⁷² The post-*Jana Andolan* (People’s Movement)⁷³ Constitution of 1990 provided for multi-party democracy⁷⁴ and was much more inclusive than past documents, explicitly prohibiting discrimination on the basis of caste and gender.⁷⁵ However, the Constitution itself remained discriminatory. For example, women could not pass citizenship onto their children,⁷⁶ and, moreover, discrimination on the basis of caste for religious reasons could still be permitted.⁷⁷ The 1990 Constitution did, however, also include provisions to provide for the inclusion of women in the national government,⁷⁸ and allowed for special measures to be taken for the advancement of vul-

70. See NEPAL CONST. of 1959 art. 4; NEPAL CONST. of 1962 art. 10; NEPAL CONST. of 1990 art. 11. The 2007 Interim Constitution, currently in force, provides the strongest protections to date, but still falls short of Nepal’s obligations under international law. NEPAL (INTERIM) CONST. art. 13(2). See discussion *infra* Part V.B.

71. Following the collapse of the Rana regime in 1951, the Royal family again emerged as the dominant political force in Nepal. See WHELPTON, *supra* note 30, at 86. Following a brief experiment with parliamentary elections in 1959, King Mahendra dissolved parliament and took control of the state “clothed in the rhetoric of ‘partyless Panchayat democracy,’” which remained largely in effect through political turmoil in Nepal until popular protests in 1990. *Id.* at 86–87. Panchayat is the Nepali word for “council of five,” one of the elected bodies created by the 1962 constitution, set up at different levels of government. *Id.* at 264.

72. See David N. Gellner, *Caste, Ethnicity, and Inequality in Nepal*, 42 ECON. & POL. WKLY. 1823, 1824 (2007); see also Lynn Bennett, *Gender, Caste, and Ethnic Exclusion in Nepal: Following the Policy Process from Analysis to Action 7* (2005) (unpublished manuscript), available at <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Bennett.rev.pdf>; Pradhan & Shrestha, *supra* note 65, at 7.

73. The 1990 People’s Movement brought an end to absolute monarchy and the Panchayat system, instituting constitutional democracy. See WHELPTON, *supra* note 30, at 113–17.

74. See NEPAL CONST. of 1990 pmbl., art. 113.

75. NEPAL CONST. of 1990 art. 11(2).

76. NEPAL CONST. of 1990 art. 9(1). See also Bennett, *supra* note 72, at 30–31.

77. NEPAL CONST. of 1990 art. 19(1) (“Every person shall have the freedom to profess and practice his own religion as handed down to him from ancient times having due regard to traditional practices . . .”).

78. NEPAL CONST. of 1990 art. 46(1)(b) (requiring at least three of the thirty-five members of the National Assembly elected by the House of Representatives to be women).

nerable groups.⁷⁹ Prohibitions against caste discrimination in national legislation also began to appear in the 1950s.⁸⁰

Despite these legal protections against discrimination on the basis of caste and gender, in practice discrimination remains commonplace, both due to a lack of enforcement and because other discriminatory laws remained on the books even after discrimination was barred by the constitution or other legislation. In 2000, for example, one non-governmental organization (NGO) identified more than one hundred provisions in Nepali laws and regulations that had facially discriminatory provisions.⁸¹ These included a lack of criminalization of marital rape; restrictions on property inheritance; issues in employment, health, education, and family relations; and discriminatory citizenship laws that allow fathers, but not mothers, to vest citizenship upon their children.⁸² Some of these provisions have since been struck down as a result of litigation,⁸³ and others have now been superseded by provisions in the Interim Constitution, which includes the strongest constitutional provisions prohibiting discrimination and protecting vulnerable groups to date.⁸⁴

That discrimination is such a determinative factor has at the very least been recognized by the Nepali government in recent years.⁸⁵ Detailed reports provided to the U.N. Treaty Bodies,

79. NEPAL CONST. of 1990 art. 11(3). For further discussion of the development of anti-discrimination provisions in the various Nepali constitutions, see KRISHNA HACHHETHU, *THE QUESTION OF INCLUSION AND EXCLUSION IN NEPAL: INTERFACE BETWEEN STATE AND ETHNICITY* (2003), available at <http://www.uni-bielefeld.de/midea/pdf/harticle1.pdf> (discussing the development of anti-discrimination provisions in various Nepali constitutions).

80. See, e.g., Civil Rights Act of 1955, Act. No. 12 of 2010, art. 4 (Nov. 4, 1955).

81. See Jane Aiken, *Lessons from Nepal: Partnership, Privilege, and Potential*, 2 WASH. U. GLOBAL STUD. L. REV. 391, 402 (2003); see also CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, N.Y. UNIV. SCH. OF LAW, *RIGHTS WITHIN REACH: SECURING EQUALITY AND HUMAN RIGHTS IN NEPAL'S NEW CONSTITUTION 13-14* (2010) [hereinafter CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH], available at <http://www.chrgj.org/projects/docs/rightswithinreach.pdf>.

82. See Bennett, *supra* note 72, at 31. See generally CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH, *supra* note 81 (analyzing proposed provisions to Nepali laws regarding human rights obligations).

83. For example, laws on marital rape were amended following a legal challenge by the Forum for Women, Law, and Development. Charles J. Ogletree & Rangita de Silva-de Alwis, *The Recently Revised Marriage Law of China: The Promise and the Reality*, 13 TEX. J. WOMEN & L. 251, 278 (2004).

84. See discussion *infra* Part V.B.

85. See, e.g., U.N. Comm. on the Elimination of Racial Discrimination [CERD], *Reports Submitted by States Parties Under Article 9 of the Convention: Nepal*, ¶ 75, U.N. DOC. CERD/C/452/Add.2 (July 30, 2003) ("The persistence of a caste-based ideology in the day-to-

statements made by members of the government, and new protections in the Interim Constitution provide stronger provisions than before against discrimination in the law. Non-governmental organizations, U.N. bodies, and the Nepali government have all recognized the ways in which discrimination has contributed to the denial of fundamental economic and social rights.⁸⁶ For example, Dalits are often restricted to certain traditional occupations, including work as cobblers, scavengers, and working with animals or human waste.⁸⁷ Dalits who attempt to practice non-traditional occupations are met with opposition.⁸⁸ As a result of their low-status occupations and underpayment for the work that they do, Dalits are the poorest segment of Nepal's population, owning only 1% of the nation's wealth and 1% of the arable land, despite making up over 20% of the population.⁸⁹ Ninety percent of Dalits in Nepal live under the poverty line, compared with 45% of the general population.⁹⁰ Dalit poverty is particularly acute in the Tarai region.⁹¹ This poverty has made Dalits vulnerable to "bonded labor, slavery, trafficking, and other forms of extreme exploitation."⁹² The relationship between discrimination against Dalits and extreme poverty has resulted in problems of access to water, food, and basic healthcare needs, and a lower life expectancy than non-Dalit populations.⁹³ On average, high caste Brahmins and Newars live eleven years longer than Dalits.⁹⁴

Caste and ethnicity also affect the right to education. Despite laws requiring free primary education for all, in practice,

day life of people has not been totally eliminated, especially in rural areas of the country. Casteism is a major social problem that still makes the Dalits vulnerable to attitudinal discrimination in society.").

86. See, e.g., ECOSOC, *Consideration of Reports Under Articles 16 and 17*, *supra* note 19, ¶¶ 7, 8, 32, 43; U.N. Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant*, ¶ 8, U.N. Doc. CCPR/C/79/Add.42 (Nov. 10, 1994).

87. CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, N.Y. UNIV. SCH. OF LAW, *THE MISSING PIECE OF THE PUZZLE: CASTE DISCRIMINATION AND THE CONFLICT IN NEPAL 8* (2005) [hereinafter CTR. FOR HUMAN RIGHTS, *THE MISSING PIECE*], available at <http://www.hrw.org/legacy/reports/2001/globalcaste/caste0801.pdf>.

88. *Id.* at 10.

89. *Id.* at 8.

90. HUMAN RIGHTS WATCH, *CASTE DISCRIMINATION*, *supra* note 66, at 18.

91. Bennett, *supra* note 72, at 15.

92. CTR. FOR HUMAN RIGHTS, *THE MISSING PIECE*, *supra* note 87, at 3.

93. See *id.* at 14.

94. See Bennett, *supra* note 72, at 16.

minorities and lower-caste children cannot attend the same schools as children who are from higher castes.⁹⁵ As a result, the Dalit literacy rate is 24.2% while the Nepali literacy rate is approximately 50%.⁹⁶ The figures are even more skewed when examining literacy levels among women.⁹⁷ Women, particularly Dalit women, also suffer disproportionately with respect to access to healthcare. Dalit women have, on average, a life expectancy five years shorter than non-Dalit women.⁹⁸ As in poor populations in most countries, Nepali women tend to be the last in the family to receive food or other necessities, a phenomenon that contributes to this difference.⁹⁹ Dalit women are especially faced with discrimination during periods of crisis. For example, where food shortages periodically hit areas in southern Nepal, Dalit women are often the last to receive aid, despite government and international programs that seek to distribute food to vulnerable groups.¹⁰⁰

In recent years, the Nepali Supreme Court has considered cases dealing with both gender and caste discrimination. In 1995, discriminatory laws governing inheritance of property were challenged as unconstitutional.¹⁰¹ While the Court did not strike the law down as unconstitutional, it ordered Parliament to deliberate on the issue and introduce a bill reforming

95. Michele D'Avolio, *Child Labor and Cultural Relativism: From 19th Century America to 21st Century Nepal*, 16 PACE INT'L L. REV. 109, 130 (2004) (citing BUREAU OF INT'L LABOR AFFAIRS, U.S. DEP'T OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN: EFFORTS TO ELIMINATE CHILD LABOR, ch. 2 (1998), available at <http://www.dol.gov/ilab/media/reports/iclp/sweat5/toc.htm>). For other discussions of caste discrimination in the provision of education, see CTR. FOR HUMAN RIGHTS, THE MISSING PIECE, *supra* note 87, at 10–11; HUMAN RIGHTS WATCH, CASTE DISCRIMINATION, *supra* note 66, at 16.

96. CTR. FOR HUMAN RIGHTS, THE MISSING PIECE, *supra* note 87, at 10–11; HUMAN RIGHTS WATCH, CASTE DISCRIMINATION, *supra* note 66, at 16. For a detailed study of the effects of caste and gender on access to education, see Sharon Stash & Emily Hannum, *Who Goes to School? Educational Stratification by Gender, Caste, and Ethnicity in Nepal*, 45 COMP. EDUC. REV. 354 (2001).

97. See CTR. FOR HUMAN RIGHTS, THE MISSING PIECE, *supra* note 87, at 13.

98. *Id.* at 14.

99. See INT'L CTR. FOR HUMAN RIGHTS & DEMOCRATIC DEV., THE HUMAN RIGHT TO FOOD IN NEPAL 24 (2007) [hereinafter RIGHT TO FOOD REPORT], available at http://www.dd-rd.ca/site/_PDF/publications/globalization/food/report_nepal_sep07.pdf.

100. Food distribution programs, which theoretically should benefit the most vulnerable populations, have often failed to be effective in targeting those groups. A report by the group Rights & Democracy, for example, noted that in rice distribution programs, Dalits were systematically discriminated against by being forced to wait at the end of the line; the food often ran out before the Dalits were served. See *id.* at 52.

101. See Savitri Goonesekere, *Family Support and Maintenance: Emerging Issues in Some Developing Countries with Mixed Jurisdictions*, 44 FAM. CT. REV. 361, 369 n.22 (2006).

property rights for women.¹⁰² A 2002 law provided for limited inheritance rights for women,¹⁰³ though it did not allow a married woman to inherit from her own family and required a married daughter to return her inheritance should she marry after the distribution of the estate.¹⁰⁴ Another significant achievement was made in 2005, when the Court made a ruling requiring the government to provide a citizenship certificate to every person found in the country, regardless of paternal certification.¹⁰⁵ This ruling was especially significant for women of the Badi caste, who are traditionally sex workers and unable to document the paternity of their children.¹⁰⁶ In 2006, the Supreme Court of Nepal also invalidated a law that allowed men “to file for divorce if they were able to prove through a doctor their wives were unable to conceive for 10 years.”¹⁰⁷ The Court held that the divorce law contradicted both the Constitution of Nepal and international law.¹⁰⁸ Recently, the Court has also “eased the regulations for women to obtain passports and ruled that women should not suffer discrimination during the menstruation cycle.”¹⁰⁹ Finally, the Supreme Court issued a decision in 2007 decriminalizing homosexuality, holding that “sexual minorities should be guaranteed the same rights as other citizens.”¹¹⁰ With respect to caste discrimination, a notable 2005 decision prohibited the building of separate wells and water taps for Dalits and non-Dalits, finding that such a practice violated the constitutional ban on caste discrimination.¹¹¹ The Supreme Court also held that legislation that bans Dalits from accessing religious temples is unconstitutional.¹¹²

102. *See id.* at 361.

103. *See Aiken, supra* note 81, at 395–96.

104. *See id.* at 396.

105. Jagaran Media Center, Supreme Court Ruling in Favor of Badi Women (Sept. 19, 2005), <http://www.nepaldalinfo.20m.com/news/JMCeBulletin2.PDF>.

106. *Id.*

107. *Nepal Women Hail Divorce Ruling*, BBC NEWS, Mar. 31, 2006, http://news.bbc.co.uk/2/hi/south_asia/4863560.stm.

108. *Id.*

109. *Id.*

110. *Nepal Court Rules on Gay Rights*, BBC NEWS, Dec. 21, 2007, http://news.bb.co.uk/2/hi/south_asia/7156577.stm.

111. *See Jagaran Media Center, supra* note 105.

112. Tafadzwa Pasipanodya, *A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal*, 2 INT'L J. TRANSITIONAL JUST. 378, 396 (2008). Note that the Interim Constitution also explicitly prohibits discrimination in access to public utilities and religious sites. NEPAL (INTERIM) CONST. art. 14(2).

Despite these achievements, implementation remains weak, particularly in rural areas. Discrimination continues to occur with alarming frequency, and Dalits and indigenous groups report serious impediments, especially persistent poverty, to accessing justice at the local level, let alone finding some way to bring a claim before the Supreme Court. As one local government official reviewing land claims in southern Nepal noted, if people can't settle their disputes through administrative channels, and "can't afford to go to court, . . . then that's it."¹¹³

C. Landlessness and Rights

Discrimination and the condition of landlessness form the primary method of denying economic and social rights in Nepal. The main source of economic subsistence and productivity in Nepal is ownership of or access to land.¹¹⁴ It is the single most important resource in a country that is still largely rural and heavily reliant on agriculture.¹¹⁵ Land is an economic resource, but it also occupies a position of primary social, political, and symbolic importance,¹¹⁶ serving as an indicator of

113. Crowley Program Interview with Ram Narayan Pandey, Chief Land Revenue Officer, Land Revenue Office, in Rupandehi Dist., Nepal (May 13, 2009). One landless tenant, Ram Dutta Harijan, a man from the Harijan (Dalit) caste, provided a number of examples of instances in which he had been discriminated against and exploited. When asked whether he has ever tried to approach a lawyer or take a case to court, he said, "No. We don't have any money and we don't know a lawyer. We are very poor and . . . [w]ithout money, we can't file the case. I don't know anyone who has ever gone to court for a lawyer." Crowley Program Interview with Ram Dutta Harijan, in Kerwani Village Dev. Comm. (VDC), Rupandehi Dist., Nepal (May 12, 2009).

114. See REGMI, *LANDOWNERSHIP*, *supra* note 27, at 16.

115. Approximately 40% of the country's GDP is derived from agriculture. See *LAND-LOCKED DEVELOPING COUNTRIES, NEPAL*, *supra* note 8 (citing this figure as 38%); WORLD RESOURCES INSTITUTE, *COUNTRY PROFILE: NEPAL* (2000), <http://earthtrends.wri.org/text/agriculture-food/country-profile-130.html> (citing this figure as 40.3%); WORLD BANK, *NEPAL AT A GLANCE* (2008), http://devdata.worldbank.org/AAG/npl_aag.pdf (measuring the annual percentage of GDP from agriculture as 33.7%). At least 65% of the labor force depends on agriculture for its livelihood. INT'L LABOR ORG., *SOCIAL PROTECTION FOR THE PEOPLE IN THE INFORMAL ECONOMY OF NEPAL 4* (2004) (stating that nearly 80% of Nepal's population engage in agricultural labor); REGMI, *LANDOWNERSHIP*, *supra* note 27, at 1 (citing this figure as 93% of the working population, the highest percentage of laborers employed in agriculture among South East Asian countries); Jagat Deuja, *Landlessness in Nepal*, in *LAND POLITICS AND CONFLICT*, *supra* note 55, at 178 (stating that based on the 2001 Nepalese Agricultural Census, 65% of Nepal's total population is dependent on agriculture for their living).

116. CSRC, *Foreword* to *LAND RIGHTS MOVEMENT IN NEPAL: REFLECTIONS 2005* (2006).

wealth and power,¹¹⁷ and affecting a host of related social, political, and economic goods, from education to electricity.¹¹⁸ As demonstrated below, land provides the platform for access to fundamental human rights. Indeed, landlessness in Nepal—the condition of living or working on land in which the individual has no legal rights—is characterized by: exploitative labor conditions for tenant farmers; near-bonded-labor conditions for bonded laborers freed as recently as 2002 and 2008; frequent arbitrary and often violent evictions; lack of access to traditional resources (for example, fisheries and forests) for tribal and indigenous groups; lack of access to water and food resources; inability to access police and the judiciary; and deep-seated discrimination.

The effects of these conditions on disparity in land distribution and ownership in Nepal is stark. According to the 2001 census, 47% of land-owning households owned only 15% of the land with an average lot size of less than 0.5 hectares,¹¹⁹ whereas 5% owned nearly 37%.¹²⁰ The 2004 U.N. Development Program Human Development Report further shows that almost 29% of rural households do not own any farmland at all; other figures suggest that at least 10% of Nepalis are completely landless,¹²¹ and up to 85% of Nepal's rural households can accurately be described as "land poor."¹²² However, the figures on landholdings are outdated and inadequate; records in each district are not yet computerized and often consist of bags of land certificates sitting in district land reform or land

117. *Id.*

118. CSRC, LAND TENURE SECURITY, *supra* note 26, at 5.

119. In Nepali, a hectare is known as a *ha* (equal to 1.5 bigha, 30 kattha, or 20 ropani). WILY, *supra* note 25, at viii.

120. The Gini coefficient of land-owning in Nepal is 0.544, a measure of land-holding inequality. UNDP, NEPAL HUMAN DEVELOPMENT REPORT 2004: EMPOWERMENT AND POVERTY REDUCTION 43 (2004) [hereinafter UNDP REPORT]. For comparative context, Finland, part of the Scandinavian region that traditionally has egalitarian land distribution, measured at 0.26 in 1990; Brazil, historically plagued with extreme inequality in land distribution, measured at 0.85. FOOD & AGRIC. ORG. [FAO]—STATISTICS DIV., NUMBER AND AREA OF HOLDINGS, AND GINI'S INDEX OF CONCENTRATION: 1990 ROUND OF AGRICULTURAL CENSUSES, available at <http://www.fao.org/es/ess/census/gini/default.asp>.

121. WILY, *supra* note 25, at 45 (settling on a 10% estimate after explaining how various reports like the Community Self-Reliance Center, the INSEC, the National Population Center, the National Agricultural Census, and the World Bank reported in 2006 that Nepal's landless population reached 16% without clearly defining landlessness).

122. *Id.* at 46.

survey offices.¹²³ Existing data and interviews with landless people living in the Tarai does, however, make clear that landlessness leads to poverty and violations of fundamental human rights. In particular, families who do not own land or do not have registered tenancy rights are vulnerable to exploitation by landlords and local officials, and are themselves unable to access their rights to food and housing.¹²⁴

Despite the prohibitions against discrimination outlined above,¹²⁵ women, ethnic minorities, and those of low caste have historically been excluded from equal access to political, economic, and social power, and such exclusions persist in contemporary Nepali society. Dalit and indigenous communities in particular are frequently poorer than their higher-caste neighbors,¹²⁶ and are vulnerable to abuse from landlords as well as local officials. The discrimination Dalits face is tangible in their interactions with private landlords. For example, farmers working for private landowners report having to meet with their superiors in the fields because they are not allowed inside the homes of higher caste people; where food comprises part of their wages they are served on make-shift plates made of leaves rather than anything that would be reused by others.¹²⁷

Dalits, women, and indigenous groups, are also disproportionately landless.¹²⁸ While only 6% of the higher caste Brahmin/Chetri are landless, for example, 44% of Tarai Dalits have

123. This is the case, for example, in the Kailali Land Reform Office. In its office building, there are rooms containing land certificates in large cloth sacks, some organized, but most without any order, as noted during a visit by the author to the Land Reform Office during an interview. Interview with Shankar Vista, Land Reform Officer, Dist. Land Reform Office, in Dhangadi, Kailali Dist., Nepal (May 13, 2009).

124. For example, most people living in communities in rural Nepal live with or near their extended families in one or two room shelters that accommodate ten or more people. They are often temporary or semi-permanent structures with roofs made of hay, mud, or corrugated metal. The farther west the communities, the more basic their homes; this is consistent with the increasing level of poverty. In Rupandehi District, for example, community members described their homes as made of mud with hay roofs. Crowley Program Interview with Ram Dutta Harijan, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009); Crowley Program Interview with Yam Kumari Sunar, in Suryapura VDC, Rupandehi Dist., Nepal (May 12, 2009).

125. See *supra* Part II.B.

126. CTR. FOR HUMAN RIGHTS, *THE MISSING PIECE*, *supra* note 87, at 8.

127. As Nimali Charmar, a farmer, related, “[The landlords] wouldn’t even let us eat off of a plate because they said we were unclean.” Crowley Program Interview with Nimali Charmar, a farmer, in Godiparsauri VDC, Nawalparasi Dist., Nepal (May 14, 2009).

128. Yamuna Ghale, *Women, Globalization and Land Based Exclusion in Nepal*, in *LAND POLITICS AND CONFLICT*, *supra* note 55, at 169.

no rights in land.¹²⁹ Of all the castes, the Dalits own the least arable land with less than 1%,¹³⁰ despite the fact that they compose approximately 20% of Nepal's total population.¹³¹ Dalit and indigenous women are subject to multiple forms of discrimination, occupy the lowest socio-economic place in society, and have very little economic power.¹³² Land ownership secures one's ability to access housing, food, and work in both rural and urban areas, enabling people to challenge other forms of oppression within households and society.¹³³ Since land is a critical determinant of social status, marginalized groups, therefore, continue to have minimal influence in society, perpetuating their inferior status.¹³⁴

A land certificate demonstrates ownership of land or registered tenancy, and is required to set up services, including water and electricity. The legal framework does not recognize nonregistered tenants. As a result, landless communities are left with few options but to live without electricity and running water, borrow from their landlord, or try to become registered—a process that is extremely difficult and exploitative. Many people report trying to register land numerous times in

129. WILY, *supra* note 25, at 79.

130. *Id.*; Purna Nepali, *Dalits, Land and Social Exclusion in Nepal*, in *LAND POLITICS AND CONFLICT*, *supra* note 55, at 184–85 (stating that Dalits own the least amount of land in Nepal, quantified at 3%).

131. RIGHT TO FOOD REPORT, *supra* note 99, at 24 (“Dalits . . . represent 20% of Nepal’s population . . .”); HUMAN RIGHTS WATCH, *DISCRIMINATION AGAINST DALITS IN NEPAL* (2004), available at http://www.hrw.org/legacy/english/docs/2004/02/09/nepal7322_txt.htm (stating that Dalits compose about 21% of Nepal’s total population). Note that official figures measure Dalits as approximately 12.82% of the population, but researchers attribute the wide range in estimates to an absence of an acceptable definition of Dalits, and lack of consensus on which sub castes to include in estimates of the Dalit population. INT’L LABOUR ORG., *DALITS AND LABOUR IN NEPAL: DISCRIMINATION AND FORCED LABOUR* 9–11 (2005), available at http://webdev.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/document/s/publication/wcms_112922.pdf (citing CENT. BUREAU OF STATISTICS, NATIONAL POPULATION CENSUS (2001)).

132. See Pradhan & Shrestha, *supra* note 65, at 12. Women bring in 61.1% of the agricultural sector’s revenue and yet own only 5% of the country’s arable land. Sabitra Bushal, ALL NEPAL WOMEN’S ASSOC., *WOMEN’S ACCESS TO FOOD AND LAND RIGHTS* (stating that women own 10% of the land and 5% of arable land); see also UNDP REPORT, *supra* note 120, at 43 (stating that women own 8% of rural land); WILY, *supra* note 25, at 55 (noting that women own smaller plots than men). Note that 90% of women working outside of household labor work in the agricultural sector—the highest rate in South Asia. RIGHT TO FOOD REPORT, *supra* note 99, at 24.

133. Ghale, *supra* note 128, at 173; Jagat Basnet & Bishnu Raj Upreti, *Transformative Land Reform in Nepal: Ways Forward*, in *LAND POLITICS AND CONFLICT*, *supra* note 55, at 249 (2008).

134. Ghale, *supra* note 128, at 152.

order to obtain running water or electricity to no avail,¹³⁵ others discover that land they have lived on for generations is already registered in someone else's name.¹³⁶ Local officials as well as service installers frequently ask for additional payments in order to provide services.¹³⁷ Local authorities deny that bribing occurs, but also admit that there are no oversight mechanisms to ensure that abuses do not occur.¹³⁸ Local government workers agree that the problem is that official channels are not available to people who are "landless," or unregistered,¹³⁹ and many people are not registered because agreements have been verbal for generations.¹⁴⁰ The fact remains that the lack of registration has a real impact on people's everyday lives.¹⁴¹ Even where communities are wired, servicing one's home is often cost-prohibitive for families that struggle

135. For example, Yam Kumari Sunar, a landless farmer in Rupandehi District, has tried to obtain a certificate many times, even by paying money to have his land surveyed, but nothing has happened. Interview with Yam Kumari Sunar, *supra* note 124.

136. Crowley Program Interview with Ram Lakhan Harijan, in Gopiganj VDC, Nawalparasi Dist., Nepal (May 14, 2009) ("We went [to the VDC headquarters] but that office told us that it's not possible to register the land in your name – our land was already registered to another man – we all know him from the other village. He has about ten bighas of land in this district and also has land in Kathmandu. We didn't know that he had registered the land in his name around 1990! He used to come in the night and survey the land in his name.").

137. For example, even after registering with the Nepal Electricity Authority and providing an official deposit of one thousand rupees, Radhar Tharu in Nawalparasi had to give an additional five hundred rupees to the man who installed her electricity for his refreshments. She noted that this is a standard bribe, and everyone expects it. Crowley Program Interview with Radhar Tharu, in Gopiganj VDC, Nawalparasi Dist., Nepal (May 14, 2009).

138. Baburam Bhandari, a Land Survey Officer in Rupandehi, stated "There has been no corruption, and if it happens, it would be a crime." Crowley Program Interview with Baburam Bhandari, Land Survey Officer, Dist. Land Survey Office, in Rupandehi Dist., Nepal (May 13, 2009). Yagya Pakhore, a local Maoist politician in the same district, however, notes that problems occur because there is no political will on the issue of land reform and land rights. Crowley Program Interview with Yagya Pakhore, Dist. Chair, United CPN (Maoist), in Rupandehi Dist., Nepal (May 13, 2009).

139. *Id.* According to Bhandari: "This office only deals with official settlements that are registered. . . . This office is not going to register landless people."

140. Ram Chandra Dhatal, Chair of the Rupandehi District Nepali Congress Party, noted that this was a key problem for many people living in Rupandehi District. Interview with Ram Chandra Dhatal, Chair, Nepali Congress Party, in Rupandehi Dist., Nepal (May 13, 2009).

141. As Hemlata BK in Kailali District notes, "One needs to have a land certificate to be able to have meters in the house for electricity. . . . We also cannot obtain loans without a land certificate." Interview with Hemlata BK, Sec'y, Dist. Land Forum, in Gheta VDC, Kailali Dist., Nepal (May 13, 2009).

to put food on the table.¹⁴² As a result, landless people rely on their landlords for loans for school fees, medication, food, and other expenses – incurring debts they cannot pay off.¹⁴³

People have often lived on land without a land certificate for generations.¹⁴⁴ Despite reforms that purportedly sought to make registration of tenancy more accessible, many illiterate tenants never heard of the reforms, much less understood them.¹⁴⁵ Because the land certificate is such a powerful document in gaining access to services and acts as a form of identity, those without the document are extremely vulnerable to abuse. There is no tenancy security for anyone without a land certificate because a landowner can appeal to local authorities to evict unregistered tenants.¹⁴⁶ The law does not require any of the due process procedures required under international law.¹⁴⁷ More often than not, landlords simply hire others to evict communities, often violently.¹⁴⁸ One man in Bankatti VDC, Banke District, said that in one case more than twenty people hired by their landlord beat people living in his community¹⁴⁹ and burned down several homes.¹⁵⁰ In that case, people were living on the landlord's land as well as adjacent

142. Kalidevi Parki cannot afford electricity in her home, though it is available in her community. Her priorities are obtaining food for her family. Crowley Program Interview with Kalidevi Parki, in Amargodhi VDC, Dhadeldhura, Nepal (May 12, 2009).

143. Crowley Program Interview with Women's Group, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009).

144. The community living in Khadgabangai VDC are former bonded laborers (*Haliya*), who have been living on the land for at least two to three generations. Despite being freed from their debt bondage, almost no one in the community holds a land certificate. Crowley Program Interview with Anonymous, former *Haliya* farmer, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009).

145. Prem Chaudhary, a local activist lawyer in Dang District, notes that until community organizers started to meet with and train landless people there, no one knew about the law allowing people to claim ownership rights in fifty percent of the land on which they were tenant farmers for at least three years, a right instituted by an amendment made to the Lands Act in 1996. Crowley Program Interview with Prem Chaudhary, in Argu VDC, Dang Dist., Nepal (May 11, 2009).

146. Lands Act of 1964, ch. 4(29).

147. *Id.*

148. Evictions without consultation or notice, and undertaken with violence, are reported in a number of communities in Nepal, including the Dhadeldhura and Kailali Districts. Crowley Program Interview with Nariram Lohar, Land Rights Activist, in Amargodhi VDC, Dhadeldhura Dist., Nepal (May 12, 2009); Crowley Program Interview with Khushi Ram, Land Rights Activist, in Dhadeldhura Dist., Nepal (May 12, 2009).

149. Crowley Program Interview with Anonymous, unregistered farmer, in Bankatti VDC, Banke Dist., Nepal (May 14, 2009).

150. *Id.*

public land that he wanted to use, and he evicted people from both parcels.¹⁵¹ Forty-two people were evicted, but they later returned; months later, the landlord returned to destroy the crops the community had been growing.¹⁵² In 1997, the law was amended to allow people who had been living on land for at least five years to register, even providing some ownership rights.¹⁵³ The result has been, however, that landlords now evict communities more frequently, ensuring that people do not stay on land long enough to register.¹⁵⁴ People living on public lands are similarly at risk for eviction, and they fear being removed when they notice public works that are likely to affect the land they live on.¹⁵⁵

Landlords appear to actively avoid formal relationships with their tenants and the associated obligations that such a relationship would create.¹⁵⁶ They take advantage of the fact that many of their tenants are illiterate, and do not sign agreements, or provide documents that are inaccurate.¹⁵⁷ Oral agreements are traditionally renewed annually, but there is no way to prove they exist when landlords, who are much more powerful, break them.¹⁵⁸ Those who do enter into written

151. *Id.*

152. *Id.*

153. The 1997 amendment to the 1964 Lands Act provided for a transfer of fifty percent of the land to registered tenants. WILY, *supra* note 25, at 107.

154. Crowley Program Interview with Gaya Prasad Chaudhary, in Peharani VDC, Kailali Dist., Nepal (May 14, 2009).

155. Crowley Program Interview with Anonymous, former *Haliya* farmer, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009) (saying her community fears eviction because the government is expanding the road near their homes).

156. These obligations would include a transfer of ownership to registered tenants, and refraining from evicting without notice, among others. See Lands Act of 1964, ch. 7; WILY, *supra* note 25, at 14.

157. Even in the unusual circumstance where landlords provide written agreements or grain receipts to tenants, tenants are never sure what they say and sometimes discover they do not say what the landlord said they did. See, e.g., Crowley Program Interview with Suka-daiya X, in Kamdi VDC, Banke Dist., Nepal (May 13, 2009) (“We receive grain receipts from our landlord but [me and my husband] can’t read them. Others have read them to me. Initially, they didn’t have the landlord’s signature on them. Then, the plot number was often incorrect.”).

158. For example, Prem Saeliari related that she and others in her community came to an oral agreement with their landlord during the Maghi festival (Tharu New Year festival) as is the traditional practice. There was no written agreement, and she had no legal documents pertaining to the land or her right to be there. The landlord evicted her two months after their agreement was reached; she believes this happened because he was worried about her staying long enough to become registered. She said that she could not have asked for any documen-

agreements report not knowing what they are signing.¹⁵⁹ Their vulnerability prompts them to sign regardless of what they are told. Landless people who take out loans from their landlords never know exactly what they owe, leaving them in deep, long-term debt.¹⁶⁰

Many tenants are not aware that they can ask for a receipt for the grain they provide to the landlord as evidence of their agreement to live on the land. This leaves them vulnerable to abuse. One man said that he believed if he asked for a receipt he would not be allowed to work,¹⁶¹ and others are afraid to ask because landlords are so much more powerful. As one woman said, "I never asked for the documents and the landlord did not give them to me. Why would I ask? I believed in him. I couldn't ask him because he is big and we are little."¹⁶² Even where grain receipts are provided, tenants are ill-equipped to ensure their accuracy.¹⁶³ For many ex-*Kamaiya* and ex-*Haruwa*, their relationships with their landlord have changed little despite the fact that they are no longer bonded, particularly with respect to the extent of their debt.¹⁶⁴ Landlords still make loans to ex-bonded laborers living on their land, often with interest rates as high as sixty percent,¹⁶⁵ leaving them with much the same relationship as they had previously, and with patterns of abuse similar to what they faced as bonded laborers.¹⁶⁶ Ex-bonded laborers continue to suffer

tation anyway because "[the landlord] is big, and we are little." Crowley Program Interview with Prem Saeliari, in Argu VDC, Dang Dist., Nepal (May 11, 2009).

159. One woman in Kerwani VDC noted, "Whatever the landlord said, we would put thumbprints on the contract. We don't know what it said on the paper. His scribes would sometimes read it to us before we make the thumb print, but the landlord doesn't give us a copy of the loan agreement." Crowley Program Interview with Anonymous, unregistered farmer, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009).

160. *Id.* ("The landlord sometimes tells us that he would reduce the interest rate or that we had paid off the interest, but he never said that the principal had reduced.")

161. Interview with Kamal Bahadur Chaudhary, in Mashuriya Village, Peharani VDC, Kailali Dist., Nepal (May 14, 2009) (noting that the "landlord[] will think you are betraying [him] if you ask [him] for small things").

162. Interview with Prem Saeliari, *supra* note 158.

163. Interview with Sukadaiya X, *supra* note 157.

164. See Nepali & Pyakuryal, *supra* note 57, at 99.

165. Crowley Program Interview with Deepa Chaudhary, in Peharani VDC, Kailali Dist., Nepal (May 14, 2009) (noting that she is still in debt to her landlord for twenty thousand rupees at a sixty percent interest rate and does not know how she will pay it off).

166. Interview with Gauri Lohar, in Dehilely Village, Manilekh VDC, Ward #9, Dadeldhura Dist., Nepal (May 12, 2009) (observing that life is "alright" as long as the landlord gets what he wants, but otherwise he can be abusive).

from food insecurity and poverty in the absence of government assistance.¹⁶⁷ Another key area of concern is that many tribal groups rely on the rivers and forests for food. As deforestation occurs and other lands are established as “national forests,” tribal groups lose their access to these valuable resources and are not provided with alternatives or food assistance.¹⁶⁸ Further, the state has failed to recognize the rights of indigenous people with regard to traditional resources.¹⁶⁹

The state’s failure to seek consent from the relevant stakeholders in the land shows that it has not effectively addressed the negative impacts that protected areas and forest management policies have on equitable and fair access to natural resources and land. The state’s resettlement programs have instead served as serious impediments to secure land tenure for indigenous communities and others who have, based on customary land ownership practices, historically resided on now-protected land.¹⁷⁰

Although local authorities state that most people now have land certificates,¹⁷¹ the reality is that this assertion is far from the truth. For illiterate farmers who work every day, the process of getting certificates is difficult and daunting.¹⁷² In the words of one farmer, “[w]e have no land, no education, we are poor. We work for others to survive. We don’t have time to go to the city and wait in the offices.”¹⁷³ Some local officials admit that there are problems for people who do not have proof of land ownership or tenancy, despite official drives to register tenants who had been tilling the land for generations. The Chief Land Revenue Officer in Rupandehi District, Ram

167. See NARAD N. BHARADWAJ ET AL., FRIENDS FOR PEACE AND INT’L ALERT, NEPAL AT A CROSSROADS: THE NEXUS BETWEEN HUMAN SECURITY AND RENEWED CONFLICT IN RURAL NEPAL 30 (2007), available at [http://www.nrc.ch/8025708F004CE90B/\(httpDocuments\)/6931A722625045CBC12573B50034D2E8/\\$file/Nepal+at+a+crossroads+--The+Nexus+between+Human+Security+and+Renewed+Conflict+in+Rural+Nepal.pdf](http://www.nrc.ch/8025708F004CE90B/(httpDocuments)/6931A722625045CBC12573B50034D2E8/$file/Nepal+at+a+crossroads+--The+Nexus+between+Human+Security+and+Renewed+Conflict+in+Rural+Nepal.pdf); see also SHARMA ET AL., *supra* note 54, at 7 (describing the effects on children whose parents are ex-bonded laborers).

168. See RIGHT TO FOOD REPORT, *supra* note 99, at 24.

169. See *id.* at 25.

170. See *id.* at 39.

171. Interview with Ram Narayan Pandey, *supra* note 113 (“According to the records of 1970, most people have gotten land certificates.”).

172. Applications must be supported by proof in the form of citizenship papers, which themselves can be applied for by supplying a land certificate, or a recommendation from the local VDC. Nepal Citizenship Act of 2006, Act No. 25 of 2063, art. 8(ii) (Nov. 26, 2006).

173. Crowley Program Interview with Anonymous, unregistered farmer, in Godiparsauri VDC, Nawalparasi Dist., Nepal (May 14, 2009).

Narayan Pandey, stated, "I can't give a land certificate unless they have proof. . . . I am a government officer, and can only act based on the Act."¹⁷⁴ Even those who are willing to attempt to register simply do not know which of the many local offices regulating land has the ultimate authority to provide a land certificate.¹⁷⁵

Moreover, tenants charge that local officials are in league with the landlords or are landlords themselves, putting them at a disadvantage.¹⁷⁶ There are few political avenues for farmers who live miles away from the local district office, let alone Kathmandu. The result has been, therefore, that land-poor communities are vulnerable not only to abuse by large landowners but also to manipulation by groups who seek to organize them for political gain. The ties that bind farmers to political tensions are rooted in land.

III. CONFLICT AND SOCIO-ECONOMIC RIGHTS IN NEPAL

There is little doubt that an intimate link exists between poverty, exclusion, and conflict.¹⁷⁷ The negative effect that conflict has on poverty has been well-documented,¹⁷⁸ and argu-

174. Interview Ram Narayan Pandey, *supra* note 113.

175. Local officials themselves complain that there is no regional or national oversight on land issues, leading to clashes in jurisdiction, or, more often, buck-passing between the various local district offices. Interview with Shankar Vista, *supra* note 123.

176. Other people report that they attempted to register land in their names and discovered that someone else had already registered the land. There have been reports of landlords taking advantage of their tenants and agreeing to register the land under their own names in the guise of assistance, leaving tenants disenfranchised. Interview with Ram Lakhan Harijan, *supra* note 136; RIGHT TO FOOD REPORT, *supra* note 99, at 42-43.

177. The peace studies and development fields have focused on the impact that conflict has on poverty but are progressively considering the extent to which poverty plays a role in generating conflict. See, e.g., S. Mansoob Murshed, *Globalisation, Marginalisation and Conflict*, in GLOBALISATION, POVERTY AND CONFLICT: A CRITICAL 'DEVELOPMENT' READER 67, 76-77 (Max Spoor ed., 2004) (suggesting that extreme poverty may facilitate conflict by "making soldiering less unattractive" and noting that conflicts fueled along ethnic lines persist where historical discrimination results in economic inequalities); Jonathan Goodhand, *Violent Conflict, Poverty and Chronic Poverty* 12, 24 (Chronic Poverty Research Ctr., Working Paper No. 6, 2001), available at http://www.chronicpoverty.org/uploads/publication_files/WP06_Goodhand.pdf (highlighting the need for greater analysis of the causal relationship between conflict and poverty, and suggesting that, while no absolute causal link can be demonstrated, chronic poverty contributes to growing grievances which "may explode into open conflict when triggered by external shocks (such as a sudden change in terms of trade) or mobilized by conflict entrepreneurs").

178. Case studies have demonstrated the impact of conflict on poverty and suggest a causal link between poverty and conflict. See, e.g., Sumudu Atapattu, *Sustainable Development and*

ments are progressively made to demonstrate the contributing role that poverty and economic exclusion play in causing conflict.¹⁷⁹ A rights-based approach¹⁸⁰ to poverty¹⁸¹ provides a

Terrorism: International Linkages and a Case Study of Sri Lanka, 30 WM. & MARY ENVTL. L. & POL'Y REV. 273, 293 (2006) (noting that in addition to the general economic impacts resulting from a conflict, the increases in military spending tie up "expenditure on basic amenities, exacerbating poverty-related issues. A vicious cycle of poverty breeding conflict and conflict breeding poverty results."); Rasheed Draman, *Poverty and Conflict in Africa: Explaining a Complex Relationship* 15 (May 19–23, 2003) (unpublished paper), available at http://parl-cent.ca/povertyreduction/seminar1_e.pdf (noting that poverty levels in several African countries at war, including Chad and Democratic Republic of Congo, increased due to damages to infrastructure); U.N. Human Rights Council, *Human Rights Situation in Palestine and Other Occupied Arab Territories*, ¶¶ 7, 26, U.N. Doc. A/HRC/10/22 (Mar. 10, 2009) (stating that conflict pushes more people into a life of poverty in Gaza, and the poor suffer disproportionately in conflict situations).

179. Many authors argue that "poverty may lead to conflict when other factors are present—it is not a sufficient condition." E.g., Draman, *supra* note 178, at 7; Laurent Goetschel, *Property Rights, Conflicts, and Peace*, in REALIZING PROPERTY RIGHTS 194 (Hernando de Soto & Francis Cheneval eds., 2006). Even where acute factors in addition to poverty are not present, studies have shown that "poverty, inequality, scarcity of resources and external economic forces all combine to have a destabilizing impact on political stability." Draman, *supra* note 178, at 8. Case studies have borne out this quasi-causal link in African and Asian countries. In Sri Lanka, "[p]oor people become desperate and start 'support[ing] . . . guerrilla groups.'" Atapattu, *supra* note 178, at 302 (quoting NORMAN MYERS, *ULTIMATE SECURITY: THE ENVIRONMENTAL BASIS OF POLITICAL STABILITY* 22 (1st ed. 1993)). In Angola and Mozambique, "the resentment of the rural people toward an urban elite of partly mixed-race that controlled economic and political power contributed to the emergence of conflict in the two countries." Draman, *supra* note 178, at 11.

180. Over the past decade, U.N. agencies and nongovernment actors have adopted a "rights-based" approach to a number of issues traditionally relegated to the development realm. There are different interpretations of the concept, but each emphasizes the universality and inalienability of human rights and the use of baseline standards as principals upon which to premise programs that seek to, for example, reduce poverty. OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, FREQUENTLY ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION 15 (2006). A rights-based approach to poverty provides universality and a focus on vulnerable populations. Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT'L L. 691, 700 (2006). As Smita Narula highlights in the context of the right to food:

[a] rights-based approach includes four essential elements: evaluating the claims of rights holders and the corresponding obligations of duty bearers; developing strategies to build the capacity of rights holders' to claim their rights and of duty bearers to fulfill their obligations; monitoring and evaluating outcomes and processes using human rights principles and standards; and finally, incorporating the recommendations of international human rights bodies to inform each step of the process.

Id.

181. There are many definitions of poverty. Most international bodies have recognized that the condition of poverty goes beyond poverty in income or economic wealth. The UNDP Human Poverty Index (HPI), for example, measures illiteracy, lack of access to health services, and life expectancy, among other factors, as relevant to measuring poverty levels. The HPI was introduced by the UNDP in 1997. UNDP, *HUMAN DEVELOPMENT REPORT 1997: HUMAN DEVELOPMENT TO ERADICATE POVERTY* 17–21 (1997). The CESCR has defined poverty as "a human condition characterized by sustained or chronic deprivation of the resources, capabili-

means of examining the relationship between conflict and the deprivation of socio-economic rights. While there is some debate around whether the condition of poverty is itself a human rights violation,¹⁸² it is generally agreed that poverty results from the violation of existing human rights obligations,¹⁸³ and

ties, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights." ECOSOC, Comm. on Econ., Soc. & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, ¶ 8, U.N. Doc. E/C.12/2001/10 (May 10, 2001) [hereinafter ECOSOC, *Poverty and the Covenant*]. The Committee notes that in 1948 the Universal Declaration of Human Rights established poverty as a human rights issue by including "freedom from want" in its preamble. *Id.* ¶ 1 & n.1.

182. Despite this debate, as early as 1991, the General Assembly named "extreme poverty and exclusion from society" a violation of human dignity. U.N. General Assembly, *Human Rights and Extreme Poverty*, ¶ 1 (Dec. 17, 1991). An independent expert on human rights and extreme poverty was appointed in 1998. ECOSOC, Comm'n. on Human Rights, *Human Rights and Extreme Poverty*, ¶ 6, CHR Res. 1998/25 (Apr. 17, 1998). The Independent Expert admits that the relationship between poverty and human rights is complex, and the place of poverty in the international legal framework is not without debate. ECOSOC, CHR, *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*, ¶¶ 23-35, U.N. Doc. E/CN.4/2005/49 (Feb. 11, 2005) (prepared by Arjun Sengupta). Other individuals have been less cautious about naming poverty as a human rights violation. See, e.g., ECOSOC, Comm'n on Human Rights, *Human Rights and Extreme Poverty* ¶ 116, U.N. Doc. E/CN.4/1999/48 (Jan. 29, 1999) (stating that extreme poverty is a "violation of all human rights"). Some advocates hesitate to name poverty as a human rights violation per se because the concept is nonspecific. Thomas Pogge, one of the most prominent writers on the subject of human rights, states that poverty is a violation of human rights as a "moral claim," rather than simply a legal one. See THOMAS POGGE, *WORLD POVERTY AND HUMAN RIGHTS* 50-56, 58-76 (Polity Press 2008) (2002). Other scholars have demonstrated that a rights-based approach focuses advocacy and state action around poverty reduction. Naming poverty as a human rights violation provides "a higher priority to the elimination of poverty as an economic and political goal," and enables actors to identify specific mechanisms with which to tackle it. Tom Campbell, *Poverty as a Violation of Human Rights: Inhumanity or Injustice?* in *FREEDOM FROM POVERTY AS A HUMAN RIGHT: WHO OWES WHAT TO THE VERY POOR?* 55, 55-56 (Thomas Pogge ed., 2007). Moreover, when poverty is deemed a human rights violation, remedies become available under international law. *Id.* at 57. As a result of this debate, in 2001 the former Commission on Human Rights began to consider the need to develop "guiding principles" on human rights and extreme poverty. Draft guiding principles were submitted to the Human Rights Council in 2006. U.N. Human Rights Council Res. 2/2 (Nov. 27, 2006) and consultations around the draft principles have been undertaken over the past several years. The Human Rights Council has directed the Independent Expert on the question of human rights and extreme poverty to provide recommendations on how to improve the draft guiding principles with the possibility of adopting guiding principles by 2012. U.N. Human Rights Council Res. 12/19 (Oct. 2, 2009).

183. The Independent Expert states that poverty is frequently a result of deprivation of human rights, suggesting that the reduction of poverty be a principal objective for the international community. ECOSOC, *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*, ¶ 31, U.N. Doc. E/CN.4/2006/43 (Mar. 2, 2006) (prepared by Arjun Sengupta). Poverty, though, "has to be defined as the denial of rights that have already been recognized in international human rights law." *Id.* ¶ 49. The human rights in the two principal human rights covenants have already been deemed state obligations, so "it is not difficult to

in particular socio-economic rights.¹⁸⁴ The protection of socio-economic rights therefore provides a means of both combating poverty and avoiding conflict.¹⁸⁵

The exclusion of people from land and its resources can therefore result in entrenched poverty but has also contributed to conflict.¹⁸⁶ Inadequate protection of housing, land, and property rights create a nexus of socio-economic rights concerns that have been linked to many conflicts worldwide.¹⁸⁷ A state's best option in providing security is to ensure that these rights—including tenure security, equal access to land in the market, and access to resources—are protected.¹⁸⁸ Struggle over control of land in Nepal is exacerbated by its history—the long-entrenched feudal and discriminatory laws and policies relating to land—but also its geography. Due to its extreme topography,¹⁸⁹ at least seventy-five percent of the country's land is uncultivable.¹⁹⁰ The result is deeply skewed land ownership patterns.¹⁹¹ Despite reforms that began in fits and

define poverty in terms of the denial of all these rights. . . . denial of these rights can be regarded as equivalent to the conditions of poverty." *Id.*

184. See, e.g., U.N. ECOSOC, Comm'n on Human Rights, *Human Rights and Extreme Poverty*, ¶ 8, U.N. Doc. E/CN.4/1999/48 (Jan. 29, 1999) (prepared by A-M Lizin, Independent Expert); ECOSOC, *Poverty and the Covenant*, *supra* note 181, ¶¶ 16–18. Note, however, that civil and political rights are also implicated by poverty.

185. Atapattu, *supra* note 178, at 298 (arguing both that "steps taken to reduce poverty and achieve economic growth are also steps toward conflict prevention [and that] [p]overty alleviation programs, as well as conflict prevention and reconciliation programs, should factor in this important link").

186. Housing and property rights are often viewed as an underlying cause of conflict. In one study by the International Peace Academy, the authors assert that "virtually every violent intra-state conflict in recent memory, from Cyprus to Darfur, has involved underlying disputes over housing, land or property. . . . If not addressed, such disputes carry the potential for further conflict, such as in South Africa, Zimbabwe or Namibia." Agnès Hurwitz et al., *Housing, Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming* 6 (International Peace Academy Working Paper No. 1, 2005).

187. *Id.* at 1.

188. *Id.* at 6–9.

189. In the north, the Himalayan mountain range includes eight of the world's highest peaks; these descend to hilly areas cutting across the middle region of the country, and then to flat farming terrain in the Terai region along an open border with India.

190. U.S. DEPT. OF STATE, BACKGROUND NOTE: NEPAL, ECONOMY (2009) <http://www.state.gov/r/pa/ei/bgn/5283.htm> (last visited May 20, 2010).

191. In 2001, the top 5% of the population owned 37% of arable land, whereas 47% of households owned only 15% of arable land; 25% of households were landless, and 28% were marginal cultivators (having access to 0.21 to 1 hectares of land). Madhave Joshi & T. David Mason, *Land Tenure, Democracy, and Insurgency in Nepal: Peasant Support for Insurgency Versus Democracy*, 47 ASIAN SURV. 393, 410 (2007). Some estimates state that 75% of rural households

spurts in the early 1950s to dismantle the system, the lack of political will and absence of any mechanism for oversight means that many of the same power dynamics that were in place two centuries ago persist today. A brief overview of the failure of successive governments to reform the traditional land tenure framework is instructive as a basis for identifying the way that land, socio-economic rights, and conflict are intertwined in Nepal.

A. Inadequate Reform

For almost two centuries, the land tenure system in Nepal remained intact. During escalating tensions in the 1940s and 1950s among tenant farmers, however, the state was finally forced to institute reforms, which coincided with a time of political change. The 1964 Land Reform Act enacted the first major set of progressive, if not always beneficial, changes to the land tenure framework, and was amended six times (most recently in 2001). It remains the primary law governing rights in land in Nepal today.¹⁹² The Act imposed ceilings on land holdings,¹⁹³ fixed rents to the landowner at fifty percent of the principal crops,¹⁹⁴ abolished intermediary tax collectors (the *jimindari* system),¹⁹⁵ strengthened tenant protections,¹⁹⁶ and introduced measures such as “compulsory savings schemes” to generate capital for investment in rural areas.¹⁹⁷

In many ways, these reforms achieved significant change on a scale never before experienced in Nepal.¹⁹⁸ The imposition of land ceilings broke the concentration of land ownership in the hands of the few and spread out land holdings through redistribution practices.¹⁹⁹ The Act also resulted in greater tenure security, in that tenants could appropriate a greater portion of

hold under one hectare of land, which is considered to be the “minimum to meet subsistence,” WILY, *supra* note 25, at 123.

192. Lands Act of 1964, ch. 3(25).

193. *Id.* ch. 3.

194. *Id.* ch. 8(33).

195. *Id.* ch. 2(3).

196. *See id.* ch. 7(25).

197. *See* WILY, *supra* note 25, at 104.

198. *See* REGMI, LANDOWNERSHIP, *supra* note 27, at 207–08.

199. In the 1964 Act, the land ceilings for ownership differed by region. In the Tarai, where agricultural land is concentrated, the land ceiling was set at 25 *bighas* (one *bigha* is approximately 1.6 acres). Lands Act of 1964, ch. 7(7).

the produce; eliminated intermediary tenants and tax collectors as well as abolished the right to evict tenants arbitrarily or increase rents; and provided legal rights for tenants,²⁰⁰ which can be asserted by a show of documentation in the form of a land certificate. The government also established land commissions to consider further reforms, leading to the formalization of tenancy contracts and receipts for rent paid.²⁰¹ Reductions in the land ceilings through subsequent amendments to the Lands Act provided further means for redistributing land and the power base. Bonded labor, however, remained in place until the 2002 Kamaiya Labor (Prohibition) Act,²⁰² which also canceled the loans and freed individuals and families bonded under the *Haliya* and *Haruwa* systems.²⁰³ Despite these prohibitions on paper, in practice many communities who were bonded to their landlords remain in exploitative relationships with them.²⁰⁴

Unfortunately, the reforms that began in the 1950s also served to further entrench a landed elite and poor, disenfranchised class due to lack of political will, ineffective implementation, and the fact that, to take advantage of the benefits provided by the Act, landless tenants had to know about them, understand them, and access the process.²⁰⁵ All of these are relatively extreme assumptions for a largely uneducated and illiterate peasant class whose landlords had little incentive to inform them of their rights.²⁰⁶ The drawbacks of the Act were many:

200. REGMI, LANDOWNERSHIP, *supra* note 27, at 208.

201. WILY, *supra* note 25, at 101.

202. *Id.* at 107.

203. U.S. DEP'T OF LABOR, 2005 FINDINGS ON THE WORST FORMS OF CHILD LABOR—NEPAL (Aug. 29, 2006), available at <http://www.unhcr.org/refworld/country,USDOL,,NPL,4562d8cf2,48d748fe52,0.html>. The Nepali government's enforcement of the 2002 Act has proved unreliable, with social integration of the *Kamaiyas* difficult. By 2004, 12,019 *Kamaiyas* reported that they had received land, 7,149 families had received 10,000 rupees (\$127) for building homes, and approximately 3,000 had received timber to build houses. The government set up temporary camps for approximately 14,000 other *Kamaiyas* awaiting settlement. See BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICE (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100618.htm>.

204. See RIGHT TO FOOD REPORT, *supra* note 99; KAMAIIYA SYSTEM REPORT, *supra* note 54; Dhakal, *supra* note 56.

205. WILY, *supra* note 25, at 101–06.

206. Uprety et al., *supra* note 42, at 5.

Ineffective land ceilings: Land ceilings were poorly conceived and badly executed,²⁰⁷ allowing, for instance, big landholders to transfer holdings to family members to avoid violating the cap.²⁰⁸ Acquired but undistributed land remained in the hands of the owners, sometimes for as long as fifteen to twenty years, or was distributed to the wrong beneficiaries.²⁰⁹

Reduced avenues for landless tenants to acquire land: Poor tenants lost rights in the land they tilled,²¹⁰ an obstacle compounded by the fact that so many peasants lived in a state of indebtedness, and could not produce enough to buy land.²¹¹

Insecurity of tenure: Although arbitrary evictions were outlawed, there were broad exceptions, including the right to forcibly evict a tenant if the landowner submitted a request to use the land for residential, as opposed to agricultural, purposes.²¹² Tenants were permitted to file complaints, but these had to be made in writing.²¹³

Creating a politically and socially invisible landless class: The Act required the registration of tenants for farmers to take advantage of tenancy rights, but few knew to register.²¹⁴ Without reference to unregistered tenants (i.e., landless farmers) the Act effectively precluded any upward mobility.²¹⁵

Confiscation of indigenous lands: Remaining *Kipat* (traditional non-State) holdings were effectively abolished

207. Ravi Bhandari, *Searching for a Weapon of Mass Production in Nepal: Can Market-Assisted Land Reforms Live Up to their Promise?*, 22 J. DEVELOPING SOCIETIES 111, 116-17 (2006).

208. See Rishi Raj Lumsalee, *Land Issues in Nepal 2* (June 4-6, 2002) (paper presented at the Regional Workshop on Land Issues in Asia). See also Bhandari, *supra* note 207, at 116.

209. Bhandari, *supra* note 207, at 116.

210. REGMI, *LANDOWNERSHIP*, *supra* note 27, at 188.

211. See *id.* at 188-89.

212. Lands Act of 1964, ch. 4(27).

213. See Lands Rules of 1964, ch. 1(7). The Lands Rules were promulgated by the King in accordance with the Lands Act.

214. LAND WATCH ASIA, *ASSERTING FREEDOM FROM CENTRAL CONTROL* 113 (2008) available at http://www.angoc.ngo.ph/pdffiles/SRL_Nepal.pdf. The Ministry of Land Reforms estimated that approximately forty percent of tenants were left out of this process. Bhandari, *supra* note 207, at 119.

215. Bhandari, *supra* note 207, at 119-20.

by confiscating the communal lands and forests of indigenous communities and redistributing them as private property to the ruling class,²¹⁶ decimating traditional ethnic communities.²¹⁷

Thus, despite reforms in the 1960s and through the end of the twentieth century, there remained a large disenfranchised class: 7.5% of people own nearly a third of the farming area, while nearly half of all holdings are too small for families to meet subsistence requirements.²¹⁸

B. Growing Conflict

After almost fifty years of apathetic and insignificant reforms, a Maoist insurgency, waged in large part on calls for economic equality, consumed the country for ten years: the Maoists' bulletins and demands consistently included rights to food, housing, land, and education. Land has frequently been a source of conflict in Nepal;²¹⁹ historic exclusion from land and related socio-economic rights for large segments of society contributed to growing political tensions and helped to escalate conflict, especially beginning in the 1940s.

The Nepali Congress Party (NCP) brought land issues to the fore challenging the privatization policies and tying exclusion to conflict.²²⁰ The NCP's 1959 victory appeared to signify a victory for tenant farmers, too, when NCP leader Koirala announced that "[i]t is the tillers alone that must own the land."²²¹ Four days later, King Mahendra dismissed the Con-

216. Parshuram Tamang & Bijay Kumar Singh, An Assessment of the Implementation of the Nepalese Government's International Commitments on Traditional Forest Related Knowledge (TFRK) from the Perspective of Indigenous Peoples 9 (unpublished case study), available at http://74.125.93.104/search?q=cache:ukW7b_YWH_sj:www.international-alliance.org/documents/nepal_eng_full.doc+nepal+rana+abolish+kipat&cd=6&hl=en&ct=clnk&gl=us&client=safari.

217. The 1974 Nationalization of Grazing Lands Act and 1957 Private Forest Nationalization Act later allowed indigenous peoples to access—but not own—forests and pastures. In 1993, this framework was solidified under the Forest Act which asserted that forests were state property, whose management and use could only be granted to citizens via the state. PANDAY ET AL., *supra* note 33, at 39; WILY, *supra* note 25, at 105, 111.

218. WILY, *supra* note 25, at 52.

219. Bishnu Raj Upreti, *Land as Source of Marginalization and Conflict in Nepal*, in LAND POLITICS AND CONFLICT, *supra* note 55, at 1.

220. WILY, *supra* note 25, at 101.

221. *Id.* at 99.

gress government and jailed Koirala.²²² Farmer and peasant movements in the 1960s—the Panchayat years—continued, protesting rent policies and exploitation²²³ and grew into minor insurgencies. These sporadic violent struggles were met with violent suppression from the government.²²⁴ The Land Reform Act passed at this time was intended in part to diffuse this tension. The preamble declared one of the aims of the Act to be “equitable distribution of cultivable land.”²²⁵ It would emerge as the single most significant reform legislation to date, but still left millions of tenant farmers without tenancy security, lacked an oversight mechanism to ensure that lowered land ceilings would be implemented, and in some ways made it more difficult for landless tenants to register themselves. As a result, clashes between groups of landless people, groups hired by private landowners, and authorities continued through the 1990s. Successive land commissions were constituted with a stated aim to provide rights to landless people, but their recommendations were rarely adopted.

The 1990 People’s Movement (*Jana Andolan*) ended the absolute monarchy, ushered in a period of constitutional democracy, and ended the one-party Panchayat system.²²⁶ Land reform rhetoric again took the stage, most famously with the constitution of the 1995 Badal Commission. The Commission Report is still referenced by land rights activists and government actors alike as having produced the best recommendations for realistic and meaningful land reform in Nepal.²²⁷ The Commission proposed stronger tenant rights, transfer of ownership rights to some registered tenants, lowering of land ceilings and the establishment of a land floor, and stronger im-

222. *Id.*

223. CSRC, LAND TENURE SECURITY, *supra* note 26, at 30–31.

224. *Id.* at 30–31.

225. Lands Act of 1964, pmb.

226. See WHELPTON, *supra* note 30, at 113–17.

227. Jagat Basnet, Executive Director of the Community Self-Reliance Centre, Keshav Raj Kanel, Acting Secretary of Land Reform and Management until mid-2009, and Mirolam Giri, District Secretary of the Communist Party of Nepal (Unified Marxist-Leninist) (CPN-UML) in Rupandehi District, all praised the findings and recommendations of the Commission. Interview with Jagat Basnet, Executive Dir., Cmty. Self-Relance Ctr., in Kathmandu, Nepal (May 18, 2009); Crowley Program Interview with Mirolam Giri, Dist. Sec’y, CPN-UML, in Rupandehi Dist., Nepal (May 13, 2009); Interview with Keshav Raj Kanel, then-Acting Sec’y of Land Reform & Mgmt., in Kathmandu, Nepal (May 19, 2009).

plementation mechanisms.²²⁸ But the Commission was ultimately a failure due to the government's inability to implement its findings.²²⁹ The instability that impeded that implementation—in the capital and in the fields—continued through the late 1990s amid ongoing exclusion of most rural people, especially vulnerable groups and minorities, from land and its resources.²³⁰

Two weeks before it launched its armed insurgency in 1996, the Maoist Party issued a forty-point Charter of Demands, criticizing the government for prioritizing “privatization and liberalization” at the expense of the Nepali people who were suffering from dire poverty and an inability to subsist.²³¹ Among several demands related to employment, exemption of farmers from loan repayments, and increased availability of fertilizer and seeds, the memorandum also specified that “[l]and should . . . belong to ‘tenants.’ Land under the control of the feudal system should be confiscated and distributed to the landless and the homeless.”²³² The Maoists officially launched their “people’s war” or “rule of the proletariat” in mid-February 1996.²³³ Amid the Maoists’ calls for an end to discrimination,²³⁴ the establishment of a secular republican state, and a constituent assembly to draw up a new constitution,²³⁵ they waged their war in the villages, organizing uprisings against landlords. In 2005, the head of the Unified Communist Party of Nepal (Maoist) (CPN (Maoist)), Pushpa Kamal Dahal, better

228. WILY, *supra* note 25, at 118–19; Interview with Keshav Badal, Badal Comm’n Chair & CPN-UML Standing Comm. Member, in Kathmandu, Nepal (May 18, 2009).

229. Interview with Keshav Badal, *supra* note 228. See also CSRC, LAND TENURE SECURITY, *supra* note 26, at 30–31.

230. See WHELPTON, *supra* note 30, at 202–03, 207.

231. Memorandum from Baburam Bhattarai, Chairman, Cent. Comm., United People’s Front, Nepal, to Prime Minister’s Office, Singha Darbar, Kathmandu (Feb. 4, 1996), available at <http://www.satp.org/satporgtp/countries/nepal/document/papers/40points.htm>.

232. *Id.*

233. HUMAN RIGHTS WATCH, BETWEEN A ROCK AND A HARD PLACE: CIVILIANS STRUGGLE TO SURVIVE IN NEPAL’S CIVIL WAR 9 [hereinafter HUMAN RIGHTS WATCH, BETWEEN A ROCK], available at <http://www.hrw.org/sites/default/files/reports/nepal1004.pdf>.

234. The link between discrimination and the 1996–2006 conflict should not be underplayed. One Center for Human Rights and Global Justice report documents the ways in which the Maoists specifically built a base of support among tribal groups and low caste communities by including in their demands calls for autonomy and punishment for upper caste elites, including calls that were based in discrimination and access to fundamental rights. CTR. FOR HUMAN RIGHTS, THE MISSING PIECE, *supra* note 87, at 17–18.

235. HUMAN RIGHTS WATCH, BETWEEN A ROCK, *supra* note 233, at 11.

known by his *nom de guerre*, Prachanda (“the fierce one”), characterized the revolution as “basically . . . agrarian.”²³⁶

The Maoists developed their tactics regionally: in the Tarai,²³⁷ they seized land from big landholders and redistributed it among tenant farmers and landless groups; in the hill districts, where most people had small holdings, they aimed to “develop collective farming and revolutionize the production relations.”²³⁸ The seizure of land was often violent and included organized squad raids on homes and lands,²³⁹ bombings, beatings, and killings.²⁴⁰ The victims were frequently left homeless and unable to return to their property or villages.²⁴¹ Tens of thousands of people, who included former property holders but were more often ordinary tenants terrorized by the violence, were displaced as a result of the conflict.²⁴²

C. *Post-Conflict ESR*

During the conflict, numerous rights violations were perpetrated—including arbitrary killings, detentions, rapes, torture, and disappearances—on both Maoist and government sides. Socio-economic rights violations, however, were also rampant: while denial of these rights contributed to growing tensions and escalating conflict in Nepal, so too did conflict escalate rights violations. The result is that at the end of the ten-year conflict in 2006, much of Nepal’s population lived out of reach of those rights guaranteed in international covenants or domestic law. Physical destruction in the Tarai and hill regions, *bandhs* (strikes), and forced closures of government offices,

236. LI ONESTO, *DISPATCHES FROM THE PEOPLE’S WAR IN NEPAL* 67 (2005).

237. The Tarai is the most fertile region in Nepal, with 55.7% of the country’s arable land. The Tarai is therefore extremely economically desired and as such many land-related conflicts are centered there. MINISTRY OF FORESTS AND SOIL CONSERVATION, *NEPAL BIODIVERSITY STRATEGY 8* (2002), available at <http://www.ansab.org/UserFiles/Nepal%20Biodiversity%20Strategy%202002.pdf>.

238. ONESTO, *supra* note 236, at 67.

239. *Id.* at 69–70.

240. *Id.* at 70–73.

241. See Gopal Sharma, *Maoists Fail To Return Seized Property-Nepal Party*, REUTERS, Dec. 16, 2008, http://www.reuters.com/article/idUSDEL284226_CH_2400; see also *Former Maoist Rebels Causing Trouble*, IRIN, Dec. 24, 2008, <http://www.irinnews.org/Report.aspx?ReportId=82081>. The Maoists also evicted and abducted thousands of people it regarded as enemies to their cause. HUMAN RIGHTS WATCH, *BETWEEN A ROCK*, *supra* note 233, at 1–2.

242. RURAL RECONSTRUCTION NEPAL, *DEVELOPMENT STRATEGIES FOR A NEW NEPAL: A NATIONAL DEBATE* 61 (2007).

where fighting was concentrated, disrupted local infrastructure including roads, waterways, electrical wiring, and communications systems, cutting off physical access to food, water, and services.²⁴³ Many children did not attend school during the conflict, and disruptions in higher education led to a dearth of teachers and nurses.²⁴⁴ Constant conflict and raids in rural communities also upset food production, leaving many communities who already suffering from food shortages in even more precarious settings. In the aftermath of the active conflict, access to clean water, food, housing, land, and education are all tenuous for millions living in rural areas.

IV. EFFORTS AT PROMOTING SOCIO-ECONOMIC RIGHTS IN POST-CONFLICT NEPAL

In diverse settings worldwide, exclusion from land, and violations of ESR, have often contributed to and escalated conflict, and as a result of the conflict, violations of ESR are themselves escalated.²⁴⁵ Nepal's history encapsulates the relationship between exclusion, ESR, and access to land that has been underpinned frequently in conflict. This would suggest that in the aftermath of serious conflict, approaches that seek to ensure accountability and punishment, establish truth, compensate victims, engage in institutional reform, and prevent future conflict would incorporate socio-economic rights as core considerations. In fact, however, post-conflict and transitional justice programs worldwide have tended to limit themselves to civil and political rights concerns, even where ESR issues have been recognized as factors contributing to the causes of the conflict.²⁴⁶ In Nepal, this general principle holds, though in fact the CPA and subsequent documents setting the framework for post-conflict transition do include numerous references and commitments to ESR. The most fundamental way for the country to ensure strong future protections of these rights is to include them in a more robust manner in the constitution now being drafted.

243. ECOSOC, *Consideration of Reports Under Article 16 and 17, supra* note 19, ¶ 10.

244. Pasipanodya, *supra* note 112, at 384.

245. *See supra* text and accompanying notes 167–68.

246. Louise Arbour, *Economic and Social Justice for Societies in Transition*, 40 N.Y.U. J. INT'L L. & POL. 1, 3 (2007).

International transitional justice programs—constituted by the United Nations or provided by NGOs—move from region to region as conflicts end, providing advice and recommendations on what instruments to adopt. These recommendations range from pursuing prosecutions²⁴⁷ to implementing truth commissions, vetting and lustration systems, and reparations programs.²⁴⁸ The mechanisms seek to enact or support both political change through, for example, lustration programs that make supporters of past regimes ineligible for government office, and structural change, for example, by overhauling government agencies whose processes previously excluded certain groups in society. Attention has been focused on political change and restructuring even though many of the same programs are well-suited to socio-economic considerations.²⁴⁹ As a result, the impact that conflict has had on economic and social wrongs, and the way that those wrongs exacerbate and contribute to further conflict, remains underappreciated.

Recognizing this disconnect between the causes and consequences of conflict and the emphasis in current post-conflict models, some practitioners now advocate a “holistic” theory of justice.²⁵⁰ Holistic justice that will incorporate ESR concerns

247. In some cases, prosecutions may be necessary under international law to ensure accountability for certain crimes, including genocide. However, there may also be situations where countries can and should legitimately abstain from prosecutions. Indeed, an unyielding preference for prosecutions fails to take into account the numerous needs of a society in transition that has been torn apart by violence and terror. Paul van Zyl offers two legitimate reasons why a successor government to a period of violence may forgo prosecutions: where security forces of the previous regime are so powerful that an attempt to prosecute them will block the transition to democracy, and where there are insurmountable practical difficulties in doing so. Paul van Zyl, *Justice Without Punishment: Guaranteeing Human Rights in Transitional Societies*, in LOOKING BACK, REACHING FORWARD: REFLECTIONS ON THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA 42, 43 (Charles Villa-Vicencio & Wilhelm Verwoerd eds., 2000).

248. See HAYNER, *supra* note 15, at 11–14.

249. See, e.g., Pasipanodya, *supra* note 112, at 393. Transitional justice mechanisms often fail to incorporate economic concerns as a result of their mandates, which “frequently ignore structural economic factors.” Zinaida Miller, *Effects of Indivisibility: In Search of the ‘Economic’ in Transitional Justice*, 2 INT’L J. TRANSITIONAL JUST. 266, 275 (2008). Even where mechanisms have been provided with the mandate to consider economic concerns and exclusion, their end result (usually a report) tends to remain unspecific. *Id.* at 277–78. The only mechanism self-consciously geared towards economic concerns is the reparations program, but those programs are based on CPR violations.

250. Authors have argued that a deeper justice that provides for holistic societal healing will include stronger gender concerns as well as socio-economic rights. Louise Arbour, former High Commissioner for Human Rights, has emphasized that “holistic” justice incorpo-

ensures that transitional justice will “reach to—but also beyond—the crimes and abuses committed during the conflict that led to the transition, and it must address the human rights violations that pre-dated the conflict and caused or contributed to it.”²⁵¹ This holistic approach ensures that in the aftermath of conflict, ESR becomes a focus of the work of the transitional government as well as international actors. This view confirms the notion that ESR are an indisputable part of the comprehensive human rights framework, which demands the justiciability of ESR.²⁵² Yet in the post-conflict years of Nepal, during which the international community flocked to the country to collaborate with the government, set up transitional justice mechanisms, and advocated justice for those killed and disappeared during the conflict, the question of ESR has been virtually ignored. The same is true for local government bodies. This is not to say that work in post-conflict Nepal that focuses on prosecuting perpetrators of civil and political rights abuses is not important—that, too, is essential. However, without paying ample attention to ESR violations, Nepal runs the risk of ignoring factors that will undermine the peace process and destabilize the government. This Part will pro-

rates civil and political as well as economic and social understandings of wrongs and accountability. She argues that including economic, social, and cultural rights in transitional justice models will provide a “fully integrated vision of human rights as key for ensuring real security in a post-conflict setting.” Arbour, *supra* note 246, at 7–8. Other authors have also argued that traditional transitional justice models do not fully incorporate gender concerns. The failure to include women’s views, for instance, can result in an “impoverished understanding of peace and security that focuses on militarism and power supported by force” and “undermines a sense of societal belonging.” Christine Chinkin, *Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women 10* (Nov. 10–13, 2003) (paper presented at the UN Division on the Advancement of Women Expert Group Meeting), available at <http://www.un.org/womenwatch/daw/egm/peace2003/reports/BPChinkin.PDF>. See also Fionnuala Ní Aoláin, *Women, Security and the Patriarchy of Internationalized Transitional Justice* (Univ. of Minn. Law School Legal Studies, Research Paper No. 08–40, 2009), available at <http://ssrn.com/abstract=1279622> (arguing that transitional justice models and processes that focus on legal accountability exclude women); Christine Bell & Catherine O’Rourke, *Does Feminism Need a Theory of Transitional Justice? An Introductory Essay*, 1 INTL. J. TRANSITIONAL JUST. 23 (2007) (demonstrating that including women in transitional justice processes will make justice more responsive to the needs of women, including socio-economic needs).

251. Arbour, *supra* note 246, at 3.

252. For an overview of justiciability and ESR, as well as a review of cases, see INT’L COMM’N OF JURISTS, *COURTS AND THE LEGAL ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMPARATIVE EXPERIENCES OF JUSTICIABILITY* (2008). See also CHRISTINE CHINKIN, *THE PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS POST-CONFLICT* (2008).

vide an overview of the programs and mechanisms that Nepal has adopted after the conflict, including those that focus especially on ESR. It argues that programs already in place lack the ability to provide substantive guarantees for economic and social rights as required under international law, suggesting that the best approach for the government, through the Constituent Assembly, is to adopt strong guarantees for those rights in the new constitution.

A. Primary Efforts at Addressing Transition

At the end of 2006 and after months of highly sensitive negotiations over which compromises each party was willing to make, the CPA was reached between the Maoists and the government, now represented by a number of political parties vying for power. In an effort to secure peace, Maoists were promised a place in government and the establishment of a republic.²⁵³ The CPA and subsequent documents governing present-day policies in Nepal, including the 2007 Interim Constitution,²⁵⁴ contain provisions on economic and social rights, land reform, and social justice. However, accountability for violating civil and political rights (CPR) and the politicized issue of the merging the national army and the Maoist fighters have dominated both popular media and government programs.²⁵⁵

253. Comprehensive Peace Accord, Nepal-Communist Party of Nepal (Maoist), arts. 10.6-10.7, Nov. 21, 2006 [hereinafter CPA], available at http://www.peace.gov.np/admin/doc/CPA_eng-ver-corrected.pdf.

254. See NEPAL (INTERIM) CONST. art. 3.

255. The Comprehensive Peace Agreement committed both armed sides of the conflict, the People's Liberation Army (the Maoists' army) and the Nepali Army, to be confined to barracks and cantonments and to commit to a cease fire. CPA, *supra* note 253, arts. 4.1, 4.6, 5.1. Commitments were also made towards exploring the integration of the Maoist fighters into the national army. *Id.* at 4.4. The issue of when, how, and to what extent to integrate the Maoists is highly politicized, with opinions among the political parties, the Maoist fighters, and the army, ranging from allowing all Maoists who want to join the Army to integrate, to keeping the Nepali Army intact, and allowing no integration. See, e.g., *Bid To Defuse Nepal Military Row*, BBC NEWS, Feb. 4, 2009, available at <http://news.bbc.co.uk/2/hi/7868833.stm>. The issue became more difficult to negotiate after the Maoists unexpectedly won a landslide of seats in the April 2008 elections; leaders within the Nepali Army were suspicious of the Maoists, and the Maoists were similarly wary of the Nepali army, creating difficult negotiations. INT'L CRISIS GROUP, NEPAL'S FUTURE: IN WHOSE HANDS? 14 (Aug. 13, 2009), available at [http://www.crisisgroup.org/~media/Files/asia/south-asia/nepal/173_nepals_future__in_whose_hands.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-asia/nepal/173_nepals_future__in_whose_hands.ashx). In 2009, the issue came to a head when the Maoists accused the Nepali Chief of Army Staff, General Rookmangud Katawal, of insubordination. *Id.* at 3. General Katawal re-

The key transitional justice mechanisms that Nepal has pursued in the aftermath of the conflict have been the Truth and Reconciliation Commission (TRC), and a disappearances commission. The terms of the CPA demand the formation of a TRC "to investigate truth about those who have seriously violated human rights and those who were involved in crimes against humanity in course of the war and to create an environment for reconciliations" ²⁵⁶ In July 2007, the release of the draft bill for the TRC was met with harsh criticisms from the United Nations and international NGOs. While these criticisms rightly focused on serious flaws in the bill, ²⁵⁷ they failed to criticize the bill for a restrictive thematic mandate that did not including economic justice. ²⁵⁸ Yet especially because Nepal's conflict was based in part on economic exclusion and social justice concerns, the TRC could conduct investigations of distributive injustices and structural inequalities and make recommendations for addressing these root causes through development and reconstruction. ²⁵⁹ The draft TRC bill still does not even match the agenda set by the terms of the peace agreement insofar as economic and social rights are concerned. ²⁶⁰ Enlarging the thematic and temporal mandate of the TRC could of course raise concerns over resource constraints, as well as resistance from political and economic elites, who

futed the claims angrily, and the Maoists pressed towards dismissing him, a move they pursued unilaterally. *Id.* at 5–6. The Maoists' main coalition partner, CPN-UML, walked out of a cabinet meeting, refusing to endorse a decision to dismiss Katawal, and the Maoist Prime Minister, Pushpa Kamal Dahal (who went primarily by his *nom de guerre*, Prachanda), resigned over the dispute the following day. *Nepal PM Quits in Army Chief Row*, BBC News, May 4, 2009, available at http://news.bbc.co.uk/2/hi/south_asia/8032389.stm. The ongoing dispute not only dominated the media and cabinet meetings, but also continued to play a big role in government negotiations even after Prachanda's resignation. See, e.g., *Army Integration Special Committee Reconstituted*, REPÚBLICA, Kathmandu, (Nepal) July 14, 2009, available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=7420.

256. CPA, *supra* note 253, art. 5.2.5.

257. The criticisms included a controversial amnesty provision and concern about independence of the commission, among others. See, e.g., INT'L CTR. FOR TRANSITIONAL JUSTICE, COMMENTS ON THE NEPALI TRUTH AND RECONCILIATION BILL 1 (2007).

258. This failure may reflect the view that truth commissions are not designed to deal with economic and social justice, although Louise Arbour argues that "truth commissions lend themselves particularly well to the investigation and protection of economic, social, and cultural rights." Arbour, *supra* note 246, at 14.

259. Pasipanodya, *supra* note 112, at 393.

260. See Daniel Aguirre & Irene Pietropaoli, *Gender Equality, Development and Transitional Justice: The Case of Nepal*, 2 INT'L J. TRANSITIONAL JUST. 356, 361–62 (2008) (noting that the CPA articulates components of the right to development).

may otherwise allow the TRC to function. But ignoring a wide range of ESR concerns that were both contributing causal factors for the conflict and which were exacerbated by the conflict runs the risk of disregarding much of the truth that this commission is mandated to cover.

A second key mechanism used in post-conflict Nepal is the Commission on Disappearances. The CPA did not specifically call for a disappearance commission but the problem in Nepal was rampant, especially during the later years of the conflict. Between 2002 and 2004, Nepal had the world's highest number of enforced disappearance cases according to the U.N. Working Group on Enforced or Involuntary Disappearances.²⁶¹ International pressure led the government to announce plans to form a Commission on Disappearances in July 2007;²⁶² and a draft bill for disappearances was made public in November 2008.²⁶³ This bill has also been widely criticized, fundamentally because of its ambiguous definition of "disappearance." The lack of clarity may provide loopholes for perpetrators and jeopardize its independence.²⁶⁴ Economic and social rights concerns are far from the mandate of the Commission on Disappearances, though it could potentially be empowered to investigate patterns of violations. Of course, even including ESR concerns in the mandates of the two commissions now underway in Nepal may not ensure that those concerns are ultimately addressed. Indeed, past commissions constituted by the government to investigate socio-economic wrongs have had little impact and are often undermined by lack of independence. Recommendations are rarely adopted by the government.²⁶⁵

261. *Nepal: Towards Ending Impunity for Human Rights Violations*, IRIN NEWS, Dec. 10, 2008, available at <http://www.irinnews.org/report.aspx?ReportId=81901>.

262. See U.S. INST. OF PEACE, TRANSITIONAL JUSTICE IN NEPAL: A LOOK AT THE INTERNATIONAL EXPERIENCE OF TRUTH COMMISSIONS 3-4 (Sept. 2007), available at http://www.usip.org/files/resources/transitional_justice_nepal.pdfpubs/usipeace_briefings/2007/0905_justice_nepal.html.

263. INT'L CTR. FOR TRANSITIONAL JUSTICE, COMMENTS ON NEPAL'S DISAPPEARANCES ORDINANCE (Feb. 12, 2009), available at http://www.ictj.org/static/Asia/Nepal/Disap_Ordinance_comments_summarised.pdf.

264. *Id.*

265. Shobhakar Budhathoki, *Transitional Justice Commissions in Nepal (2008)* (unpublished manuscript), available at http://www.anfrel.org/mission.asp?current_id=196.

B. Land Reform and ESR

At the end of the conflict, the agreements reached between Maoist fighters and the government of Nepal included promises for stronger attention paid to ESR. In particular, the CPA provides a robust framework to pursue ESR as a primary element of Nepal's post-conflict political agenda. The CPA includes provisions calling for policies to be developed relating to food, sovereignty, housing, health, education, and land reform, especially for traditionally neglected groups.²⁶⁶ It outlines a commitment to socio-economic rights, recognizing rights to livelihood,²⁶⁷ food security,²⁶⁸ health,²⁶⁹ and education.²⁷⁰ Indeed, as compared to other post-conflict legal frameworks, the CPA may be "quite revolutionary in its explicit and targeted focus on economic and social justice"²⁷¹ and for adopting policies for "political, economic and social transformation" in the country.²⁷² Land reform is a central aim of the CPA, which calls for a policy to introduce a scientific land reform program by "end[ing] feudal land ownership"²⁷³ and to adopt policies "to provide land and other economic and social security to the economically backward classes including landless, bonded laborers, tillers, and pastoral farmers."²⁷⁴ Significantly, the CPA also encourages equitable redistribution of land.²⁷⁵ The Interim Constitution, too, commits the state to pay compensation for compulsory acquisition of property for public purposes, and commits to "doing away with feudal land ownership."²⁷⁶

Unsurprisingly, land reform is a highly charged and politically sensitive topic.²⁷⁷ Any change to the land tenure system

266. CPA, *supra* note 253, arts. 3.5, 3.7, 3.9.

267. *Id.* art. 7.5.1.

268. *Id.* art. 7.5.2.

269. *Id.* art. 7.5.3.

270. *Id.* art. 7.5.4.

271. Pasipanodya, *supra* note 112, at 385.

272. CPA, *supra* note 253, art. 3.1.

273. *Id.* art. 3.7.

274. *Id.* art. 3.10.

275. *Id.*

276. WILY, *supra* note 25, at 108.

277. Politicians from different political parties, government actors, and international and domestic NGOs agree that land reform is one of the most difficult things for Nepal today, because it is so highly politicized. *E.g.*, Interview with Jagat Basnet, Executive Dir., Comm. Self-

will naturally result in a change in the economic and political power base. Although many of the political parties currently in power ran campaigns that called for land redistribution and tenancy reform, they are now cautious to protect their own economic security and positions in power. Indeed, local factions of the NPC, Maoists, and other political parties continue to make promises of reform, and specifically to redistribute land, during election season to ensure that landless communities who hear their calls register for elections.²⁷⁸ Following elections, however, communities see no changes and frequently cannot even reach the same politicians who made those promises. As one farmer noted, “political parties use us and throw us away.”²⁷⁹

Commitments to land reform on the part of political parties and the government are complicated by the fact that land grabbing was used as a tactic by Maoists during the conflict. The political negotiations in 2006 included assurances on the part of the Maoists to return some seized land, and on the part of the government to provide for comprehensive land reform that would include land redistribution. The political compromise in the CPA, however, is anything but specific.²⁸⁰ Attempts to return land to pre-1996 owners have had varied results. In

Reliance Ctr., in Kathmandu, Nepal (Mar. 14, 2009); Interview with Mirolam Giri, *supra* note 227; Interview with Ram Chandra Dhatal, *supra* note 140; Interview with Yagya Pakhore, *supra* note 138; Interview with Keshav Badal, *supra* note 228. One of the more controversial issues continues to be how to reform the land ceiling and the extent to which compensation should be given to landlords whose land may be taken as part of a redistribution scheme. Interview with Jagat Basnet, Executive Dir., Comm. Self-Reliance Ctr., in Kathmandu, Nepal (Mar. 31, 2010). Parties and other actors disagree about whether compensation should be provided to landlords at all. *Id.* Redistribution schemes that include redistribution of privately-held land are resisted by some politicians as well as, unsurprisingly, landlords themselves. Interview with Ram Chandra Dhatal, *supra* note 140; Crowley Program Interview with Mahendra B. Munankami, landowner, in Kathmandu, Nepal (May 18, 2009). For more about land redistribution programs that have been considered in Nepal, see WILY, *supra* note 25, at 98-109, 150-152.

278. As one landless farmer noted, “The Nepali Congress said that they would solve the problem [of landlessness]. Then the UML said that too—only promises, no action. Now the Maoists have said the same, but still no action. . . . Before the elections, everyone promises everything, but after the election, no one does anything.” Interview with Sumitra Sunar, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009).

279. Cheta Raj Puri continued, “They come at the time of elections and make promises but never do anything. We don’t believe political parties. We voted. . . . Political parties came and wrote down the house numbers and write fake notes to get us to vote. Then they used us and threw us away.” Interview with Cheta Raj Puri, in Mashurya Village, Kailali Dist., Nepal (May 14, 2009).

280. See CPA, *supra* note 253.

some cases, no movement has been made to return land that was redistributed; in others, communities who said they received land in good faith have now been forced to leave. During the conflict in Rupandehi District, for example, Maoist fighters bombed a landowner's home and seized the land it was on, turning it over to the community. After the conflict, the Maoists made a deal to return the land to the landowner, pushing the community off the land again, leaving them feeling betrayed.²⁸¹ In most cases, little actual attempt is made to return land to their former owners, either because landlords are fearful of returning to their land due to ongoing fighting in the region,²⁸² or because of weak political will, or both.²⁸³ Civil society actors charge that the deadlock between Nepali Congress (who demand return of land) and the Maoists (who use land restitution as leverage for the release of Maoist fighters from camps) is likely to exist for some time.²⁸⁴

Land reform in Nepal is high on the agenda in the CPA and Interim Constitution, but lacking in specifics. A High-Level Land Reform Commission was constituted in December 2008,²⁸⁵ but few have hopes that it will be able to implement significant change. This is in large part because past land reform commissions and initiatives have failed so completely to ameliorate land inequality. The main beneficiaries of reform have been to landowning elites. The most recent failed initiative—the 1994 Badal Land Reform Commission—made broad and sound recommendations for a near complete overhaul of the land tenancy system, advocating a definitive land to the tiller reform.²⁸⁶ Although some of the Badal Commission recommendations were incorporated in 1997 as Amendments to the 1964 Lands Act, the government failed to implement the recommendations adequately.²⁸⁷

281. Interview with Man Kumari Kumar Joti, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009).

282. *Former Maoist Rebels Causing Trouble*, *supra* note 241.

283. Interview with Jagat Basnet, Executive Dir., Comm. Self-Reliance Ctr., in Kathmandu, Nepal (Mar. 14, 2009).

284. *Id.*

285. *Govt Forms Land Reform Commission*, NEPALNEWS.COM, Dec. 10 2008, <http://www.nepalnews.com/archive/2008/dec/dec10/news11.php>.

286. WILY, *supra* note 25, at 100.

287. *See id.* at 106. The Badal Commission recommended the “abolition of the dual ownership system” by requiring that land under tenancy be “equally divided between the landlord and tenant, each party receiving ownership of 50 percent of the land.” Furthermore, the

The current High-Level Land Reform Commission was initially led by Haribol Gajurel, a Maoist leader with almost no background in land reform.²⁸⁸ Following political disruptions beginning in the summer of 2009, the reform commission's chair and all but one commissioner were replaced after they resigned or were removed.²⁸⁹ It has since resumed work by surveying local communities and drafting recommendations on how the government should undertake land reform. However, the commission suffers from its own composition: there is only one woman among its eleven members, and only one landless Dalit. Whereas six of the twelve members are seen as having pro-poor agendas, including the Chair, Ghanendra Basnet, the other six are seen as interested in maintaining the status quo and protecting large landholdings.²⁹⁰ As a result, the commission has reached consensus on general principals of reform,²⁹¹ but baseline questions, including where to set new land ceilings and how landless groups will be identified, remain contentious, and a report has yet to be issued.²⁹² Other commission members are primarily drawn from past land reform commissions or political bodies. The government has

Commission advocated a land to the tiller approach, recommending that "tenancy rights could be claimed by any person who is tilling the land and is registered as doing so." Uprety et al., *supra* note 42, at 5-6.

288. Interview with Jagat Basnet, Executive Dir., Comm. Self-Reliance Ctr., in Kathmandu, Nepal (Mar. 14, 2009); Interview with Haribol Gajurel, in Kathmandu, Nepal (Mar. 14, 2009). See also *Govt Forms Land Reform Commission*, *supra* note 285.

289. In July 2009, Land Reform and Management Minister Dambar Shrestha called for Gajurel's resignation, and noted that he would reconstitute the commission. *Land Reform Commission To Be Reconstituted*, NEPALNEWS.COM, July 25, 2009, <http://www.nepalnews.com/main/index.php/news-archive/2-political/596-land-reform-commission-to-be-reconstituted.html>.

290. Interview with Jagat Deuja, Programme Manager, Comm. Self-Reliance Ctr., in Kathmandu, Nepal (Apr. 14, 2010).

291. In an interview in April 2010, the new Chair of the High Level Land Reform Commission said that consensus between the twelve members had been reached on the need to identify truly landless people, provide for the purchase and distribution of Guthi (religious) land, institute policies for the support of Dalits and other disenfranchised groups, and provide for joint ownership of land between men and women. Interview with Ghanendra Basnet, Chair, High Level Land Reform Comm'n, in Kathmandu, Nepal (Mar. 31, 2010).

292. The High Level Land Reform Commission Chair said he would not provide details about non-consensus issues, but indicated the most contentious among these was compensation for land to be redistributed. *Id.* Jagat Basnet of CSRC confirmed that this was holding up the release of a report, as well as programs to address the problems for unregistered tenants. Interview with Jagat Basnet, Executive Dir., Comm. Self-Reliance Ctr., in Kathmandu, Nepal (Mar. 31, 2009).

also instituted other programs demanding that land reform be enacted,²⁹³ but little has been implemented.

In the aftermath of the conflict, efforts at strengthening protections for Dalits and ethnic minorities have continued. Even before 2006, civil society and political movements along caste and ethnic lines became more frequent, spurring government action.²⁹⁴ The National Foundation for the Development of Indigenous Languages was established in 2002, though it struggled with lack of funding and political instability.²⁹⁵ Ethnic minorities were also specifically included in the last four five-year development plans.²⁹⁶ A National Dalit Commission was established in 2002,²⁹⁷ though it also struggled with party affiliation issues and lack of funding.²⁹⁸ Current government commissions have also sought to name and address the problem of caste discrimination.

These efforts to include land rights at the national level must be viewed with caution in light of Nepal's history of failed and misconceived land reforms and efforts to address discrimination, especially through commissions with limited powers.²⁹⁹ Since Maoist ascent to (and subsequently, descent from)³⁰⁰ power, little has changed. Ongoing political instability impacts the government's ability to deal with the multiple causes and problems associated with poverty and socio-economic rights deprivation all at once, but the fact remains that it is

293. These include, for instance, the Common Minimum Programme of the National Consensus Government. Wily notes the specifics of the August 2008 Common Minimum Programme as instituting a Land Reforms Commission, waiving certain debts, improving access to land for landless and tenants, and compensating persons who lost property during the conflict. WILY, *supra* note 25, at 108.

294. See Alexandra Geiser, *Social Exclusion and Conflict Transformation in Nepal: Women, Dalit and Ethnic Groups* 26–28 (Swiss Peace, Working Paper No. 5, 2005), available at http://www.swisspeace.ch/typo3/fileadmin/user_upload/pdf/Working_Paper/WP_5_2005_nepal.pdf. See also STEPHEN D. BIGGS ET AL., AN EXPLORATORY STUDY OF GENDER, SOCIAL INCLUSION AND EMPOWERMENT THROUGH DEVELOPMENT GROUPS AND GROUP-BASED ORGANIZATIONS IN NEPAL: BUILDING ON THE POSITIVE 76–77 (2004), available at <http://www.infobridge.org/asp/documents/3283.pdf>.

295. See Hangen, *supra* note 53, at 40–41.

296. See *id.*

297. See Bennett, *supra* note 72, at 27.

298. See *id.*

299. WILY, *supra* note 25, at 100–09, 158.

300. The Maoists withdrew from the CA following their Prime Minister's resignation during a heated political battle related to the power of the national army generals in May 2009. Since then, political negotiations have been focused on trying to engage them within the government. NEPAL'S FUTURE: IN WHOSE HANDS?, *supra* note 255, at 7–13.

critical for ESR factors that contribute to instability to be addressed, in the government's own interest.

V. TOWARDS A LASTING PEACE: SOCIO-ECONOMIC RIGHTS IN NEPAL'S NEW CONSTITUTION

Constitutional entrenchment of socio-economic rights is often a key aspect of transition for post-conflict and other transitional countries, in part because exclusion from socio-economic power (as well as political power) is so widespread prior to transition.³⁰¹ For example, South Africa's Constitution, adopted following the end of Apartheid, is one of the most comprehensive worldwide, including numerous ESR, including protections for workers' rights,³⁰² environmental rights,³⁰³ the right to education,³⁰⁴ "the right to use the language and to participate in the cultural life of their choice,"³⁰⁵ and the right to access to health care,³⁰⁶ food and water,³⁰⁷ and adequate housing,³⁰⁸ among others. The South African Constitution is an instructive example for Nepal because its Constitution also includes commitments to engage in land reform,³⁰⁹ and because the African National Congress (ANC) had a strong position in the post-Apartheid government that drafted the Constitution. The ANC had for decades called for substantive social and economic rights to be guaranteed to all.³¹⁰ Similarly, the

301. The constitutions of South Africa, Morocco, and Timor Leste, to name just a few examples, all include provisions protecting ESR, including education rights. S. AFR. CONST. § 29; TIMOR LESTE CONST. art. 59; MOROCCO CONST. art. 13. Violations of socio-economic rights occurred in each of these countries before their respective transitions. For a discussion, see Arbour, *supra* note 246, at 9, 18-19.

302. S. AFR. CONST. § 23(1)-(2).

303. S. AFR. CONST. § 24.

304. S. AFR. CONST. § 29.

305. S. AFR. CONST. § 30.

306. S. AFR. CONST. § 27(1)(a).

307. S. AFR. CONST. § 27(1)(b).

308. S. AFR. CONST. § 26.

309. S. AFR. CONST. § 25(4)-(6). The provisions provide "[t]he state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis." S. AFR. CONST. § 25(5). It explicitly addresses past exclusion from land: "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress." S. AFR. CONST. § 25(6).

310. See AFRICAN NAT'L CONG., 1994 ELECTION MANIFESTO, available at www.anc.org.za/ancdocs/policy/manifesto.html. In 1994, incoming leaders promised "[h]ousing . . . for all."

Timor Leste Constitution, adopted after the conflict leading to independence, includes protections for the right to work,³¹¹ property,³¹² health,³¹³ and housing.³¹⁴ The experience of Timor Leste, a post-conflict country that continues to struggle with many of the same issues that face Nepal—including accountability for rights violations following conflict,³¹⁵ the way to incorporate ESR into the transitional justice framework,³¹⁶ and access to land and conflicts over land³¹⁷—is similarly useful.

Constitutional entrenchment of rights provides the means to ensure compliance with international obligations which require that everyone is entitled to an effective remedy.³¹⁸ Unlike legislative protections, constitutional provisions stipulate guarantees which are more difficult to change or amend, providing a baseline of protections for all. This kind of protection is especially important to ensure that the rights of minorities and otherwise vulnerable groups are protected from legislative curtailments undertaken by groups who have stronger representation in positions of political power. Despite settled international principles demanding that civil and political rights and ESR be treated in the same manner,³¹⁹ the international

Id. As in Nepal, promises have not immediately translated into change. Millions of South Africans continue to face housing crises. For an examination of the ANC's platform on housing rights contributing to electoral victory, see Elisabeth Wickeri, Grootboom's *Legacy: Securing the Right To Access to Adequate Housing in South Africa* 10–12 (Ctr. for Human Rights & Global Soc. Justice Working Paper Econ., Soc. & Cultural Series, Working Paper No. 5, 2004), available at <http://www.chrgj.org/publications/docs/wp/Wickeri%20Grootboom%27s%20Legacy.pdf>.

311. TIMOR LESTE CONST. art. 50.

312. TIMOR LESTE CONST. art. 54.

313. TIMOR LESTE CONST. art. 57.

314. TIMOR LESTE CONST. art. 58.

315. For an overview of human rights violations during the conflict in Timor Leste, see CHEGA! THE REPORT OF THE COMMISSION FOR RECEPTION, TRUTH, AND RECONCILIATION IN TIMOR-LESTE: EXECUTIVE SUMMARY 43–153 (2005), available at <http://www.etan.org/etanpdf/2006/CAVR/Chega!-Report-Executive-Summary.pdf>.

316. CHEGA! THE REPORT OF THE COMMISSION FOR RECEPTION, TRUTH, AND RECONCILIATION IN TIMOR-LESTE, CHAPTER 7.9: ECONOMIC AND SOCIAL RIGHTS 46–48 (2005), available at <http://www.cavr-timorleste.org/chegaFiles/finalReportEng/07.9-Economic-and-Social-Rights.pdf>.

317. *Id.* at 23.

318. See Universal Declaration of Human Rights, *supra* note 10, art. 8 (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”).

319. The Vienna Declaration proclaims that “[t]he international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” *Vienna Declaration*, *supra* note 11, ¶ 5. See also *Proclamation of Teheran*, *supra* note 11, ¶ 13; *Maastricht Guidelines*, *supra* note 11, ¶ 4.

discourse frequently continues to treat ESR differently in nature, content, and obligation.³²⁰ Some commentators and states take issue particularly with justiciability, arguing that as mere aspirational goals, socio-economic rights have no place in constitutions or the courts.³²¹ Successful adjudication of ESR in numerous courts worldwide, however, has demonstrated that objection to ESR on that basis is without merit.³²² In addition to the powerful rhetoric of “rights,” which is often available in court only to those claiming civil and political rights, socio-economic rights litigation has provided for substantive legal and policy changes, judgments on specific substantive rights violations, and judgments that demand government action on the basis of nondiscrimination and equality in order to rectify situations in which some groups have been unable to access their rights.³²³

In Nepal, the CA’s efforts to draft a new constitution have drawn a great deal of attention. Attention has particularly centered on what kind of federal structure the government will take, representation of Nepal’s diverse ethnic and social groups, and inclusion of fundamental rights.³²⁴ While Nepal’s

320. The debate over whether and in what form to adopt an optional protocol to the ICESCR allowing for communications alleging violations of state obligation have crystallized the way in which some states view their obligations to implement economic, social and cultural rights differently, but the Optional Protocol ultimately provided for communications on the basis of all rights in the covenant. See G.A. Res. 63/117, U.N. Doc. A/RES/63/117 (Dec. 10, 2008).

321. For an overview of the arguments surrounding justiciability of ESR, see INT’L COMM’N OF JURISTS, *supra* note 252, at 13–16.

322. See *id.* at 16. The Centre on Housing Rights and Evictions (COHRE) has analyzed socio-economic rights litigation in a number of contexts. MALCOM LANGFORD & AOIFE NOLAN, CENTRE ON HOUSING RIGHTS AND EVICTIONS, LITIGATING ECONOMIC, SOCIAL AND CULTURAL RIGHTS: LEGAL PRACTITIONERS DOSSIER 4 (2006). Examples of cases litigated before domestic courts include *Government of the Republic of South Africa v Grootboom*, 2000 (1) SA 46 (CC) (S. Afr.), and *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, (1981) 2 S.C.R. 516.

323. In a review of housing rights cases, Aoife Nolan suggests that the right to housing has been litigated in a wide variety of ways, and focuses her analysis on cases where housing rights have been “litigated directly before decision-making bodies, resulting in their making judgments and orders expressly on the basis of that right,” and where, as a result of the interdependence between civil and political rights and socio-economic rights, housing rights are “protected by means of the interpretation and application of provisions relating to civil and political rights such as the right to equality.” Aoife Nolan, *Litigating Housing Rights: Experiences and Issues*, 28 DUBLIN U. L. J. 145, 147 (2006).

324. See, e.g., *Constitutional Committee Finalises Key Provisions in New Constitution Through Voting*, NEPALNEWS.COM, Dec. 26, 2009, <http://www.nepalnews.com/main/index.php/news-archive/1-top-story/3086-constitutional-committee-finalises-key-provisions-in-new-constitut>

Interim Constitution goes further than earlier iterations in protecting socio-economic rights, it remains out of sync with Nepal's international obligations.³²⁵ Drafting a new constitution therefore presents a unique opportunity for the government of Nepal to provide stronger protections, particularly for groups who have traditionally been denied fundamental human rights.

A. Nepal's International Obligations

As a State Party to the ICESCR, Nepal is obligated to take steps, to the maximum of its available resources, with a view to "achieving progressively the full realization of the rights" using all appropriate means.³²⁶ This imposes obligations of immediate and continuous effect. Nepal is required to immediately ensure nondiscrimination and equality, and must also "take steps" towards progressive realization³²⁷ using "all appropriate means."³²⁸ These steps must be taken "within a reasonably short time after the Covenant's entry into force,"³²⁹ and Nepal must "move as expeditiously and effectively as possible" towards that realization.³³⁰ The CESCR has further emphasized that steps towards realization of the rights within the ICESCR are not exhausted by passing legislation.³³¹ While the Covenant does not obligate States Parties to use any specific means to incorporate it into the national law, "the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party,"³³² which includes an obligation to give domestic effect to the ICESCR.³³³ Finally, the CESCR has

ion-through-voting-.html (providing an overview of the most recent CA Committee proposals related to the new constitution).

325. See *infra* Part V.B.

326. ICESCR, *supra* note 10, art. 2.

327. ECOSOC, Comm. on Econ., Soc. & Cultural Rights, *General Comment 3: The Nature of States Parties' Obligations*, ¶¶ 1-2, U.N. Doc. E/1991/23 (1990) [hereinafter CESCR, *General Comment 3*].

328. *Id.* ¶ 3.

329. *Id.* ¶ 2.

330. *Id.* ¶ 9.

331. *Id.* ¶ 4.

332. ECOSOC, Comm on Econ., Soc., & Cultural Rights, *General Comment 9: The Domestic Application of the Covenant*, ¶ 5, U.N. Doc. 1E/C.12/1998/24 (Dec. 3, 1998) [hereinafter CESCR, *General Comment 9*].

333. *Id.* ¶ 1.

stated that there is also a “minimum core” obligation on states to “ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” in the Covenant.³³⁴ The CESCR has outlined elements of the minimum core with respect to the various rights included in the Covenant, identifying the minimum levels of what governments are obligated to provide.³³⁵

Developing countries like Nepal, therefore, have obligations despite limited financial resources, though they can determine the extent to which the economic rights in the Covenant should be extended to non-nationals.³³⁶ Moreover, the Committee has interpreted Article 2 of the Covenant, calling on all states to “take steps, individually and through international assistance and cooperation,”³³⁷ to mean that “to the maximum of its available resources” was intended to include both resources “within a State and those available from the international community.”³³⁸

In addition to Nepal’s international obligation to give effect to the provisions of the ICESCR, Nepali domestic law also requires the state to give it effect. The Nepal Treaty Act stipulates that international treaties to which Nepal is a party are enforceable as domestic law.³³⁹ The Act further provides that provisions of Nepali laws that are inconsistent with treaties to which the state is a party are void.³⁴⁰

334. CESCR, *General Comment 3*, *supra* note 327, ¶ 10.

335. For example, with respect to the right to the highest attainable standard of health, core obligations include: ensuring non-discriminatory access to health facilities, goods and services; providing access to essential food, basic shelter, housing, sanitation, as well as potable water; providing essential drugs; ensuring equitable distribution of health facilities, goods, and services; and adopting and implementing a national public health strategy and plan of action on the basis of epidemiological evidence which addresses the health concerns of the whole population. ECOSOC, Comm. on Econ., Soc. & Cultural Rights, *General Comment 14, The Right to the Highest Attainable Standard of Health*, ¶ 43, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

336. ICESCR, *supra* note 10, art. 2(3).

337. *Id.* art. 2(1).

338. CESCR, *General Comment 3*, *supra* note 327, ¶ 13.

339. Nepal Treaty Act, Act No. 16 of 2047, § 9(1) (Nov. 11, 1990), available at <http://www.unhcr.org/refworld/docid/3ae6b51724.html>.

340. *Id.*

B. Current Framework

The 2007 Interim Constitution is the sixth constitution Nepal has drafted since its first in 1948.³⁴¹ As compared with its previous iterations, the Interim Constitution includes the most robust human rights protections. However, it is important to note that the Interim Constitution was not the first to include provisions protecting human rights. Earlier constitutions included protections for equality and nondiscrimination,³⁴² civil and political rights, and socio-economic rights, though the language was far from perfect.

The constitutions adopted before 1990, when a popular movement demanded explicit protections for human rights,³⁴³ included few articles protecting individual human rights. However, a brief examination of what was included in Nepal's first few constitutions provides a useful comparison with the current framework of rights. The first constitution, drafted in 1948, had just two articles under Part II, "Fundamental Rights and Duties,"³⁴⁴ laying out rights guaranteed to all citizens, including socio-economic rights,³⁴⁵ and obligating all citizens to contribute to the public welfare and bear allegiance to the King.³⁴⁶ The Constitution was never implemented due to the collapse of the Rana regime.³⁴⁷ The 1951 Constitution included some stronger language but protections were framed as fundamental duties of the state and were explicitly not enforceable in court.³⁴⁸ The language of the document did point to inequalities in society, by stating that the government "shall promote with special care the educational and economic interests of the weaker sections of the people, and shall protect them from social injustice and forms of exploitation."³⁴⁹ It directed the state to adopt policies that provide men and women the equal right to an adequate standard of living, protect

341. NEPAL CONST. of 1948. Subsequent constitutions were passed in 1951, 1959, 1962, 1990.

342. *See supra* Part II.B.

343. *See supra* notes 71-73 and accompanying text.

344. NEPAL CONST. of 1948 arts. 4-5.

345. NEPAL CONST. of 1948 art. 4.

346. NEPAL CONST. of 1948 art. 5.

347. *See* WHELPTON, *supra* note 30, at 1.

348. NEPAL CONST. of 1951 art. 3.

349. NEPAL CONST. of 1951 art. 11.

against the exploitation of children, ensure a living wage,³⁵⁰ and it prohibited forced labor and hazardous employment for children under fourteen.³⁵¹ The 1951 Constitution thus reflected the concerns of the day, during a time where tensions between the haves and have-nots were growing. Although the 1959 Constitution's protections against discrimination were more explicit than previous constitutional iterations,³⁵² substantive socio-economic rights for citizens were less robust, while executive power was primarily consolidated in the King,³⁵³ though parliament was also instituted.³⁵⁴ Yet another constitution was adopted in 1962 after the King assumed absolute political power. Provisions related to equality were again strengthened in 1962, and the right to citizenship was conferred on all Nepalis.³⁵⁵ The provision itself was facially discriminatory,³⁵⁶ however, and in any case not enforced. The 1962 Constitution did also provide for the right against exploitation,³⁵⁷ but did not include further ESR protections.

Prior to the adoption of the Interim Constitution in 2007, the most progressive constitution was adopted in 1990, by the new multi-party government. In addition to its strong protections for equality and nondiscrimination, the article relating to the right against exploitation,³⁵⁸ as well as the provisions covering civil and political rights,³⁵⁹ were more explicit and more closely tracked international standards, though still falling short of protections in the Universal Declaration of Human Rights.³⁶⁰ However, like each of the earlier constitutions,³⁶¹ the 1990 Con-

350. NEPAL CONST. of 1951 arts. 5(a), 5(f), 9.

351. NEPAL CONST. of 1951 arts. 20(1), 21.

352. *See* NEPAL CONST. of 1959 art. 4.

353. *See* NEPAL CONST. of 1959 art. 10.

354. NEPAL CONST. of 1959 art. 18.

355. NEPAL CONST. of 1962 arts. 7, 10.

356. The provision grants citizenship to women who have relationships with Nepali men but not to men who have relationships with Nepali women. NEPAL CONST. of 1962 art. 7(c).

357. NEPAL CONST. of 1962 art. 13.

358. NEPAL CONST. of 1990 art. 20.

359. *E.g.*, NEPAL CONST. of 1990 arts. 12-13, 16, 19.

360. For example, forced labor was prohibited subject to the limitation that "nothing herein shall be a bar to providing by law for compulsory service for public purposes." NEPAL CONST. of 1990 art. 20(1).

361. NEPAL CONST. of 1948 arts. 46-47; NEPAL CONST. of 1959 art. 55; NEPAL CONST. of 1962 art. 81. The 1951 Constitution did not include a specific article related to emergency powers, but this Constitution included no absolute protections, and provisions related to "rights" were

stitution also included wide exceptions and broad emergency powers for the executive.³⁶²

In the aftermath of a ten-year conflict and the founding of the Republic, hopes for the new constitution were extremely high. The Interim Constitution removes references to the King and to Hinduism, stating explicitly that “Nepal is an independent, indivisible, sovereign, secular, inclusive and a fully democratic State.”³⁶³ The Interim Constitution includes two sections relevant to the discussion of human rights: Fundamental Rights (Part 3) and Responsibilities, Directive Principles, and Policies of the State (Part 4). Provisions in Part 3 are enforceable in court,³⁶⁴ provisions in Part 4 are not.³⁶⁵

The equality and nondiscrimination provisions of the Interim Constitution are expansive. The equality provision states, “There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these.”³⁶⁶ There are several proactive provisions protecting women’s rights. These include provisions protecting reproductive health rights,³⁶⁷ equal inheritance rights to sons and daughters,³⁶⁸ and the right to “social justice” for vulnerable populations (women, Dalits, tribal peoples, and peasants), which involves the right to “participate in state structures on the basis of principles of proportional inclusion.”³⁶⁹ Violence against women is also prohibited.³⁷⁰ Even these expanded protections, however, could be made more robust.³⁷¹

Substantive protections in Part 3 protect both civil and political rights, as well as socio-economic rights. ESR provisions

not enforceable in court. NEPAL CONST. of 1951 art. 3. Executive power vested in the King was already very expansive. NEPAL CONST. of 1951 arts. 22–23.

362. NEPAL CONST. of 1990 art. 115.

363. NEPAL (INTERIM) CONST. art. 4(1).

364. NEPAL (INTERIM) CONST. art. 32.

365. NEPAL (INTERIM) CONST. art. 36(1).

366. NEPAL (INTERIM) CONST. art. 13(2).

367. NEPAL (INTERIM) CONST. art. 20(2).

368. NEPAL (INTERIM) CONST. art. 20(4).

369. NEPAL (INTERIM) CONST. art. 21.

370. NEPAL (INTERIM) CONST. art. 20(3).

371. Protections for Dalits improve upon previous constitutions in the realm of anti-discrimination and the right against untouchability, but can be expanded and clarified to ensure compliance with international law. CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH, *supra* note 81, at 2–10.

in the Interim Constitution include the right to education,³⁷² health,³⁷³ property,³⁷⁴ and employment and social security.³⁷⁵ Because these provisions are included in Part 3, a constitutional remedy is available for some economic and social rights.³⁷⁶ The inclusion of so many socio-economic rights is a significant step forward from earlier constitutions. The Interim Constitution also provided the first constitutional entrenchment of the right to food sovereignty.³⁷⁷

However, most of the articles protecting fundamental rights include language that can potentially undermine the application of the right, by stating that the provision applies “as provided for in the law.”³⁷⁸ This language suggests that constitutional rights can be limited by implementing legislation.³⁷⁹

Part 4 lays out a series of responsibilities, policies, and directive principles, and its provisions are explicitly not enforceable in court. Part 4 requires the state to govern the country and oversee the restructuring of the state in an “inclusive, democratic and progressive” manner.³⁸⁰ Most of the other provisions are similarly phrased as goals rather than rights; for example, the state is directed to “adopt a policy of ensuring socio-economic security and provide land to the economically backward classes, including the landless, bonded labourers [kamaiyas], tillers [haliyas], farm labours and shepherds [haruwa charuwa].”³⁸¹

The provisions of Part 4 include calls to ensure a just society. This includes distributing economic gains equitably and based

372. NEPAL (INTERIM) CONST. art. 17(1)–(2).

373. NEPAL (INTERIM) CONST. art. 16(2).

374. NEPAL (INTERIM) CONST. art. 19.

375. NEPAL (INTERIM) CONST. art. 18(1)–(2).

376. NEPAL (INTERIM) CONST. art. 32 (granting the right to constitutional remedy for rights in Part 3).

377. NEPAL (INTERIM) CONST. art. 18(3) (“Every citizen has the right to food sovereignty as provided by law.”).

378. *E.g.*, NEPAL (INTERIM) CONST. art. 17 (“(1) Each community shall have the right to receive basic education in their mother tongue as provided for in the law. (2) Every citizen shall have the right to receive free education from the State up to secondary level as provided for in the law . . .”).

379. As the NYU Center for Human Rights and Global Justice has noted, “International human rights and the embodiment of those rights in the Constitution must inform legislation, and not the other way around.” CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH, *supra* note 81, at 15.

380. NEPAL (INTERIM) CONST. art. 33(d).

381. NEPAL (INTERIM) CONST. art. 33(i).

on principles of social justice,³⁸² and the “eliminat[ion of] all types of economic and social inequalities.”³⁸³ The Constitution also promotes proactive measures to address, for example, policies that promote the livelihoods of marginalized communities, “by making provisions for reservations in education, health, housing, food security and employment for a certain period of time,”³⁸⁴ and generally directs the state to raise the population’s standard of living.³⁸⁵ Land distribution is also envisioned by the document.³⁸⁶ The Constitution further encourages “positive discrimination” on behalf of “minorities, landless, squatters, bonded labourers, disabled [persons], backward communities and sections, and the victims of conflict, including women, Dalits, indigenous tribes [Adivasi Janajati], Madhesis and Muslims.”³⁸⁷

Part 4 also includes a number of provisions that are phrased as aspirations or goals, even where the directive in essence directs the state to implement Nepali laws or fundamental rights already included in Part 3, including the rights to education, health, and employment.³⁸⁸ In Part 4, the state is directed “[t]o pursue a policy of establishing the rights of all citizens to education, health, housing, employment and food sovereignty.”³⁸⁹ Similarly, Part 4 requires the state “to repeal all discriminatory laws,”³⁹⁰ and “implement effectively international treaties and agreements to which the State is a party.”³⁹¹

C. *Toward a New Constitution*

There is no specific obligation for a state to include economic and social rights in its constitution, but States Parties are obligated to give domestic effect to the ICESCR.³⁹² Because Nepali legislation does not otherwise protect all the rights in the Covenant, drafting a new constitution provides a unique oppor-

382. NEPAL (INTERIM) CONST. art. 34(4).

383. NEPAL (INTERIM) CONST. art. 34(5).

384. NEPAL (INTERIM) CONST. art. 35(10).

385. NEPAL (INTERIM) CONST. art. 35(1).

386. NEPAL (INTERIM) CONST. art. 35(15).

387. NEPAL (INTERIM) CONST. art. 35(14).

388. NEPAL (INTERIM) CONST. arts. 17, 16, 19, 18.

389. NEPAL (INTERIM) CONST. art. 33(h).

390. NEPAL (INTERIM) CONST. art. 33(n).

391. NEPAL (INTERIM) CONST. art. 33(m).

392. See CESCR, *General Comment 9*, *supra* note 332, ¶ 1.

tunity to include them as foundations to the post-conflict Nepali legal framework and comply with international legal standards. It also enables the government to comply with its own Nepal Treaty Act, which requires the state to give effect to international treaties to which it is a party.³⁹³ The new constitution should clarify and expand provisions relating to ESR, both to comply with its international obligations and to secure a lasting peace.

The fundamental rights in Part 3 of the Constitution fall short of the obligations imposed by the ICESCR. For example, Part 3 does not include a right to adequate housing;³⁹⁴ the right to housing is referenced in Part 4, but as a responsibility of the state.³⁹⁵ The provisions in Part 4 cannot be adopted wholesale into Part 3 because they are not drafted as rights *per se*,³⁹⁶ but Part 3's protections must be expanded and strengthened,³⁹⁷ especially with respect to food, housing, water, and work, all of which were contributing factors to the conflict, and as a result should merit special attention by the Constitution's drafting committees.

CA Committees charged with reviewing each section of the Interim Constitution returned reports to the full assembly in late 2009, identifying how the new constitution should incorporate provisions from the Interim Constitution, and what elements need to be changed entirely.³⁹⁸ In many respects, the reports of the CA Committees do identify the need to change or to incorporate additional elements,³⁹⁹ but the proposed

393. Nepal Treaty Act, Act No. 16 of 2047, § 9 (Nov. 11, 1990).

394. Compare NEPAL (INTERIM) CONST. Part III, with ICESCR, *supra* note 10, art. 11.

395. NEPAL (INTERIM) CONST. art. 33(h).

396. See, e.g., NEPAL (INTERIM) CONST. art. 35(13) ("The State shall pursue the policy of creating conditions to gradually accelerate rural development, keeping in view the welfare of the majority of the rural population.").

397. CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH, *supra* note 81, at 2-10.

398. CONSTITUENT ASSEMBLY COMM. FOR FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES, A REPORT ON THEMATIC CONCEPT PAPER AND PRELIMINARY DRAFT (2010) [hereinafter CONSTITUENT ASSEMBLY COMM. REPORT]. The CA has formed a number of committees to examine each of these issues, including the Committee on Fundamental Rights and Directive Principles, the Committee for the Protection of the Rights of Minorities and Marginalized Communities, and the Committee for Determining the Form of Governance of State. For English translations of the reports of these committees to the CA, see Centre for Constitutional Dialogue, <http://ccd.org.np/new/> (in "Constitution in Progress" section of homepage; click a committee name for links to its reports) (last visited May 7, 2010).

399. See CONSTITUENT ASSEMBLY COMM. REPORT, *supra* note 398.

changes still fall short of international standards.⁴⁰⁰ Recommended language related to the right to food⁴⁰¹ does not specify food as a fundamental right, as mandated by the ICESCR.⁴⁰² The proposed right to housing is articulated as the “right to an access to proper accommodation,”⁴⁰³ which does not provide for adequate housing.⁴⁰⁴ Several of the proposals redrafting articles still include language limiting rights “in accordance with law.”⁴⁰⁵ Moreover, a new provision related to the “Implementation of Fundamental Rights and Constitutional Treatment” includes language allowing for a delay in implementing rights, and states that Nepal should “make appropriate provisions for the implementation” of the rights in Part 3.⁴⁰⁶ This language again has the potential to limit the rights set out in the same section, especially as it does not refer to all rights, or to the rights as fundamental human rights.⁴⁰⁷ Finally, proposed revisions to articles currently under Part 4 still fail to clarify that human rights referenced in that part remain fundamental rights and are fully enforceable.⁴⁰⁸

The Nepali Supreme Court has enforced socio-economic rights provisions in the constitution in cases brought before it, including by interpreting these articles and state objectives expansively. In 2001, the Court interpreted the “directive principles” in the 1990 Constitution to include providing pure drinking water.⁴⁰⁹ The Court did not guarantee the right to water, but did direct the Ministry of Housing and Physical Development to oversee the distribution of water.⁴¹⁰ The

400. For a full analysis of the Fundamental Rights Committee’s recommendations and their compliance with international law, see CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH, *supra* note 81, at 2–10.

401. CONSTITUENT ASSEMBLY COMM. REPORT, *supra* note 398, at 62–63.

402. ICESCR, *supra* note 10, art. 11.

403. CONSTITUENT ASSEMBLY COMM. REPORT, *supra* note 398, at 63–64.

404. ICESCR, *supra* note 10, art. 11.

405. For example, under labor rights, proposed language on unionizing and collective bargaining reads: “Every worker shall have the right to form trade unions, participate in them and engage in collective bargaining and strikes in accordance with law.” CONSTITUENT ASSEMBLY COMM. REPORT, *supra* note 398, at 59.

406. *Id.* at 77–78.

407. CTR. FOR HUMAN RIGHTS, RIGHTS WITHIN REACH, *supra* note 81, at 52 (noting that the proposed provision falls short of international obligations, and a revised provision should also clarify that all fundamental rights are fully justiciable).

408. *Id.* at 47.

409. Prakash Mani Sharma v. Nepal Drinking Water Corp., WP 2237/1990 (July 10, 2001).

410. *Id.*

Court also held bonded labor to be illegal (1992),⁴¹¹ outlawed the owning of *Haliyas* (2006),⁴¹² and required equal treatment for lesbian, gay, bisexual, transgender, and intersex people.⁴¹³ An expansive constitution may enable further entrenchment of socio-economic rights. As Brinks and Gauri have noted, the ESR provisions adopted by developing countries may initially be an “overdraft.”⁴¹⁴ However, a constitution that includes all fundamental human rights allows for groups and individuals to “find some hook, some demand mechanism, to bring universal principles to bear on their own particular situation. When they are active and effective, the courts have become one of many such possible mechanisms.”⁴¹⁵ A Nepali Supreme Court that remains active can apply international standards more effectively when they are comprehensively included in the new constitution. At the same time, a court that may in future years be less inclined to interpret ESR provisions broadly, will still be bound to implement Nepal’s international obligations. Thus, to provide for greater entrenchment of ESR in Nepali society, it is essential that these rights are incorporated comprehensively into the new constitution.

VI. CONCLUSION

Including economic and social rights in Nepal’s Constitution is not a panacea for lasting peace or the end of Nepal’s political woes, nor indeed will it immediately lead to poverty reduction or the elimination of violations of socio-economic rights. The country faces numerous challenges as a relatively weak and very poor post-conflict state whose ability to ensure that it does not become a failed state is often questioned do-

411. WILY, *supra* note 25, at 106.

412. *Id.* at 63.

413. Richard Bennett, Representative of the United Nations High Comm’r for Human Rights in Nepal, Statement at a Discussion Program on the Supreme Court decision on Sexual Minorities (Jan. 12, 2008).

414. Daniel M. Brinks & Varun Gauri, *A New Policy Landscape: Legalizing Social and Economic Rights in the Developing World*, in *COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD* 303, 304 (Varun Gauri & Daniel M. Brinks eds., 2008).

415. *Id.* at 305. The authors acknowledge that access to courts for particular groups and for the destitute will play into the effectiveness of legalizing ESR, but stress that “in the course of bringing rights to bear on one claimant, the courts often trigger the effective extension of this right to other similarly situated individuals.” Moreover, the courts sometimes help to instigate policy changes. *Id.*

mestically and internationally. After the 2008 elections, there was a period of jubilation and expectancy for commitment to democracy and stability on all sides. Nepal's political stability has faltered numerous times since then—not least when the Prime Minister suddenly stepped down in May 2009 and the Maoists withdrew from government. Major challenges include the integration (or not) of the Maoist fighters into the army, and the return (or not) of land seized during the conflict.

The drafting of the constitution is itself a political hurdle. The CA has now said it will extend the May 26, 2010 deadline.⁴¹⁶ These potential delays, together with general opposition to the coalition government, led to strikes called by the Maoists that shut down Kathmandu as recently as May 2010.⁴¹⁷ Land reform remains one of the most politically contentious issues in Nepal today. Most major political documents include some commitment to it and providing rights to landless tillers, but a clear way forward has not yet been identified or agreed upon.

People working on land reform and land rights in Nepal agree that including ESR in the document is essential for guaranteeing the fundamental human rights of landless people.⁴¹⁸ Moreover, the relationship between those rights, access to land, and political stability is not lost on land rights activists. As one activist noted, "There is political instability, but without social justice, the conflict between the haves and have-nots will not end. We've had 10 years of armed conflict, and now democracy, so we are hopeful. But without solving these issues of land reform and social justice, there will be no peace."⁴¹⁹

Including socio-economic rights in Nepal's new constitution will not be sufficient to ensure actual implementation of those

416. Phanindra Dahal, *Scant Hopes Left for Statute*, KATHMANDU POST (Kathmandu), Apr. 27, 2010, available at <http://www.ekantipur.com/the-kathmandu-post/2010/04/27/Nation/Scant-hopes-left-for-statute/207672/>; *PM Says Govt Will Soon Table Proposal for Constitution Amendment in Order To Extend CA Term*, NEPALNEWS.COM, May 11, 2010, available at <http://www.nepalnews.com/main/index.php/news-archive/1-top-story/5990-pm-says-govt-will-soon-table-proposal-for-constitution-amendment-in-order-to-extend-ca-term.html>.

417. See, e.g., Gopal Sharma, *Indefinite Strike by Maoists Cripples Nepal*, REUTERS, May 2, 2010, <http://www.alertnet.org/thenews/newsdesk/DEL529268.htm>.

418. Interview with Jagat Basnet, Executive Dir., Comm. Self-Reliance Ctr., in Kathmandu, Nepal (Mar. 31, 2010).

419. Interview with Suprasad Bandari, Land Rights Activist, Comm'r, High-Level Land Reform Comm'n, in Kathmandu, Nepal (Mar. 31, 2010).

rights for Nepalis, especially those who have traditionally been discriminated against. However, inclusion of those rights in the new constitution will provide a meaningful signal to the millions of Nepalis who have been left out of the political process for centuries, and provide one cornerstone for a lasting peace.