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| **United Nations Commission on Human Rights** Sub-Commission on the Promotion and Protection of Human Rights Working Group on Contemporary Forms of Slavery 28th Session |
| Geneva 16 - 20 June 2003 |
| **Contemporary forms of slavery related to and generated by discrimination: Forced and bonded labour in India, Nepal and Pakistan** |
| The High Commissioner for Human Rights recently noted that:  "Victims of slavery and slavery-like practices frequently belong to minority groups, particular racial groups or categories of people who are especially vulnerable to a wide range of discriminatory acts, including women, children, indigenous people, people of 'low' caste status and migrant workers." 1  This is certainly the case for millions of bonded and forced labourers 2 in India, Pakistan and Nepal, the vast majority of whom are *dalits*, of "low" caste status, indigenous people or other minority groups.  **India** Research carried out in March 2000 by the Indian NGO Mine Labour Protection Campaign (MLPC) documented a high incidence of bonded labour amongst the three million mineworkers in Rajasthan and estimated that 95 per cent of them were *dalits* or indigenous people. This pattern is repeated in many different industries throughout India.  Scheduled castes (*dalits* and "low" castes) and scheduled tribes (indigenous groups) make up 24 per cent of the Indian population (1991 census). However, the Government itself accepts that more than 86 per cent of bonded labourers are from scheduled casts and scheduled tribes.3 This clearly shows that these minority groups are disproportionately subjected to bonded labour. This situation is replicated in Pakistan and Nepal.  **Nepal** In Nepal, bonded labourers are either from the *Tharu* indigenous community (*kamaiya*) or they are *dalits*. Although the Government prohibited the *Kamiaya* system through an Act in Parliament in 2002, up to 20,000 *kamaiya* still have not been released and continue working as bonded labourers. It is clear that there are also many thousands of *dalit* bonded labourers (*haliya*) working in agriculture in Western Nepal and in the plains, but a survey is needed to identify the exact number of *dalit* bonded labourers in Nepal.  **Pakistan** In Pakistan, research by a non-governmental organisation, the Pakistan Institute for Labour Education and Research (PILER), estimated the total number of sharecroppers in debt bondage in 2000, across the whole of Pakistan, to be over 1.8 million people.4 A further 6.8 million people are subjected to compulsory labour for the landlord on their farm or house - a practice known as *begar*. 5  The agricultural labourers who are in debt bondage or compelled to provide *begar* (commonly referred to as *haris*) are almost exclusively from minority groups (those of "Indian origin", religious minorities or indigenous groups). Other industries follow the same practice, for example, PILER's research also indicates that up to one million brick kiln workers in Pakistan are bonded labourers.  **Societal discrimination is the key factor behind bonded labour** The information provided above shows that virtually all the victims of bonded and forced labour in India, Nepal and Pakistan are either *dalit*, "low" caste, indigenous people or other minority groups. This indicates that the use of this contemporary form of slavery is based on and maintained through societal discrimination against these minority groups. As Kiran Prasad, Director of the NGO JEEVIKA notes:  "Bonded labour in India is not just an economic issue, but a social issue linked with caste. Unless we associate bonded labour with caste, we won't understand bonded labour, and we won't find a solution." 6  Similarly, in Pakistan, Lieten and Breman stress that societal control is more important than debt in understanding and combating the bonded labour system. They note that:  "It is quite possible that the *hari* family is not indebted and nevertheless its freedom of movement, employment and schooling are circumvented by the *zamindar* (landlord), who represents an omnipotent authority. A solution to indebtedness will therefore not solve the issue of bondedness, and may only be of short-term significance." 7  The allocation of labour on the basis of caste is a fundamental part of the caste system, in which *dalits* and "low" castes are considered to be "polluted" from birth and assigned tasks and occupations which are deemed ritually polluting by other caste communities. Such occupations include work in agriculture, brick kilns, mines, leatherwork, domestic work and manual scavenging. 8  This societal discrimination which proscribes the type of work these minorities can do, along with the fact that over 86 per cent of *dalits* in India are landless or near landless, 9 leaves them economically dependent on their employers. The employers in turn exploit this position by paying poor wages and in some cases demanding unpaid labour from workers and/or members of their family. *Dalits* and other "low" castes are not in a position to complain. If they do they may be subject to violence or social and economic boycotts, which then deprive them of any source of income.  As a result, *dalits* and other "low" castes often do not earn enough to live on and are compelled to take loans from contractors or landowners to meet their daily subsistence needs and other expenses, such as the cost of arranging a marriage or buying medicines.  In this way they become bonded labourers. They are required to pay high rates of interest on their loans and cannot negotiate their conditions of work or seek work elsewhere. Generally bonded labourers work longer hours for less pay and become even more indebted. In this way the bonded labour system reinforces their marginalisation from society and makes them even more vulnerable to exploitation and human rights abuse.  For example, bonded labourers working in mines or quarries can be forced to pay for the costs of drilling and blasting rocks and are exposed to very serious health risks. According to the MLPC study referred to earlier, approximately one third of mine workers are women and 84 per cent of these are *dalits*. MLPC estimate that almost a quarter of the female workforce comes from widows of mine labourers who have died of silicosis and tuberculosis. If a family member becomes sick or dies from these work related illnesses, the debt is simply passed on to the spouse or children along with the additional debts incurred for medicines or a funeral.  As a family becomes more impoverished or indebted so the pressure increases on them to force their children to work. This puts the children's health and safety at risk and deprives them of an education. Human Rights Watch's study of bonded child labour in India's silk industry found that children typically work between 10 and 14 hours a day, for six or more days a week. These children suffer from work related injuries and illness and may also be subjected to abuse from their employers. Medical examinations carried out in 2000 of 200 children (aged six to 14) working in the industry found that 86 per cent had respiratory diseases and 70 per cent had skin infections. The majority of these children were *dalits*.  A study conducted for UNICEF and the Punjab State Human Rights Commission shows that 71 per cent of children working in brick kilns are *dalits* and "low" castes and that the school drop-out rate of children at brick kilns is 89 per cent. 10 The removal of *dalit*, "low" caste or indigenous children from school because they are bonded, or because they are subject to discrimination at school, perpetuates their marginalisation in society and allows the cycle of discrimination to continue.  **The legal framework** The High Commissioner for Human Rights has stressed that:  "Governments have a particular obligation to ensure that individuals from such vulnerable groups are not victims of discrimination, that their rights are recognized and protected, and that they do have access to effective remedies and rehabilitation measures." 11  While bonded labour is prohibited by law in India, Pakistan and Nepal, many millions of *dalits*, indigenous people and other minority groups continue to be enslaved under this system in these countries. Anti-Slavery International believes this is because the discrimination which underpins this system is also helping to maintain it.  Many local officials continue to show a reluctance to implement legislation which prohibits bonded labour. This may be because they are afraid of the power of local landowners or contractors, but it may also be because the individuals and institutions themselves are inherently discriminatory and sympathise with the idea that *dalits*, indigenous people and other minority groups owe a duty of labour to landlords for little or no pay.  In the case of India, it is now 27 years since the *Bonded Labour System (Abolition) Act* was passed. In this time only 280,000 bonded labourers have been identified by the Government, which even by the most conservative estimates constitutes only a fraction of the total number of bonded labourers in India. In Pakistan, government officials have yet to recognise the scale of the problem and recently dismissed the bonded labourer issue as affecting between 5,000 and 7,000 people in Pakistan.12 In Nepal, it is not clear whether the new legislation prohibiting bonded labour extends to cover *dalit* bonded labourers.  The ILO Committee of Experts observed in 2003 that there is a "certain reluctance" by state governments in India to participate in efforts to identify and release bonded labourers. 13 The former Labour Secretary for the Indian Government was less circumspect. He noted that "There have been cases where the magistrate has refused to issue a release certificate even after all the ingredients of bonded labour system have been proved beyond doubt." 14  Such a case occurred in 2002 when an Indian District Magistrate refused to free a family of bonded labourers, stating that it is a "social phenomenon in villages where the farmers borrow money from landowners". She told the family to pay back the debt and not to leave the village without doing so. This ruling is in direct contradiction of the law.  A similar situation exists in Pakistan. In January 2002, the High Court of Sindh in Pakistan dismissed 94 cases filed by bonded labourers for their release. The court stated that "living beyond ones means and being in a state of continuous debt has become the main reason for such disputes and the resultant emergence of petitions." The ruling has the effect of negating the *Bonded Labour System (Abolition) Act*, 1992 which sets all bonded labourers free and nullifies their debts. The Supreme Court has allowed an appeal, but has refused to set aside the High Court's ruling.  This information shows that bonded labourers encounter many obstacles when trying to use  the established legal process to free themselves. Conversely, the vast majority of those who  use bonded labourers seem to evade the sanctions set out in the *Bonded Labour System (Abolition) Acts* in India and Pakistan. Anti-Slavery International has also documented  cases where bonded labourers and organisations working on their behalf have been victims  of violence, kidnappings, threats and harassment because they are seeking to access their  rights under the law. Such acts are generally committed with impunity even when reported  to the police.   This seems to indicate that bonded labourers are not able to access their right to equal and effective protection before the law because of societal discrimination and that the governments in these countries have not done enough to ensure that the available legal remedies can be effectively accessed.  **Recommendations for the Governments of India, Pakistan and Nepal**  1. Fully implement the Committee on the Elimination of Racial Discrimination's General Recommendation on Descent-Based Discrimination, 15 including: reviewing, enacting or amending legislation to outlaw all forms of discrimination based on descent; resolutely implementing legislation and other measures in force; and formulating and implementing a comprehensive national strategy, with participation of members of affected groups, in order to eliminate discrimination against members of descent based groups. 16  2. Carry out comprehensive and independent national surveys to identify the total number of bonded labourers in each country. These surveys should include breakdowns of *dalit* bonded labourers and those who have to provide forced labour for landlords (*begar*).  3. All local and national officials responsible for implementing the bonded labour laws (including District Magistrates, Vigilance Committees, the police, etc.) must be properly trained and function effectively, so that they actively seek out cases of bonded labour and ensure immediate release and rehabilitation, in compliance with the law.  4. Prosecutions must be initiated against all those who use bonded labour and against those who use intimidation and violence to retain people as bonded labourers. The number of successful convictions and sentences passed should be published, by state, on a regular basis.  1 Report to the 56th session of the United Nations Commission on Human Rights (E/CN.4/2000/12), para 53. 2 Human Rights Watch estimates that there are 40 million bonded labourers in India alone (*Broken People*, 1999, page 139).  3 Ministry of Labour, Government of India, *Annual Report 2000-2001*, page 181. Quoted in Human Rights Watch, *Small Change*, January 2003, page 41. 4 PILER, *Bonded Labour in Pakistan*, October 2000. 5 *Begar* is the word used to refer to this traditional system of forced labour demanded by landlords.  6 Quoted in Human Rights Watch, *Small Change*, January 2003, page 41. 7 K. Lieten and J. Breman, "A Pro-Poor Development Project in Rural Pakistan: an academic analysis and a non -intervention", *Journal of Agrarian Change*, Vol.2, No.3, July 2002, page 338. 8 For more details see Anti-Slavery International, *Manual scavenging*, submission to the UN Working Group on Contemporary Forms of Slavery, 27th Session, 2002.  9 Human Rights Watch, *Small Change*, January 2003, page 43. 10 This is in line with the findings of the National Survey on the Incidence of Bonded Labour (1981) which found that 90-94 per cent of bonded labourers had no school education. 11 Report to the 56th session of the United Nations Commission on Human Rights (E/CN.4/2000/12),  para 53. 12 *Report of the ILO Committee of Experts, 2000*. Observations concerning Pakistans's application of Convention No.29. 13 The NGO Volunteers for Social Justice (VSJ), has filed some 2,000 cases for the release of bonded labourers in Punjab State. According to VSJ only four of these bonded labourers have been formally released since 1990. 14 Dr L Mishra, Secretary to the Government of India, Ministry of Labour, *Bonded Labour*, presentation in the National Consultation on Forced Labour, 21-22 September 2000, New Delhi, page 35. 15 Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation XXIX, General Recommendation on Descent-Based Discrimination*, 61st session, August 2002. 16 CERD strongly reaffirmed that "discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights." *Ibid* |