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New Report Urges Nepal to Address Critical Gaps in Constitution
Provides Concrete Steps for Ending Caste Discrimination and Ensuring Human Rights

(New York, February 9, 2010)—Nepal’s Constituent Assembly (CA) must immediately address critical gaps in proposals for its new Constitution and ensure the fundamental rights of all Nepalese people, said the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law in a new [report](#) released today. The report’s release coincides with the CA’s preparation of the first full draft of the new Constitution based on proposals from Thematic Committees of the Constituent Assembly.

The report, entitled [*Rights Within Reach: Securing Equality and Human Rights in Nepal’s New Constitution*](#), analyzes proposals for Nepal’s new Constitution and provides Nepalese lawmakers with a clear roadmap for ensuring that the country lives up to its human rights obligations. This includes recommendations for translating Nepal’s commitment to eradicating caste-based discrimination against Dalits—a group that has faced more than 2,000 years of systematic exclusion and discrimination—into a legal reality.

“As it drafts the new Constitution, the CA must seize this historic opportunity to dismantle Nepal’s caste system and ensure human rights for all of Nepal’s people,” said CHRGJ Faculty Director Smita Narula, an expert on caste discrimination. “There can be no true democracy without equality and fundamental rights for all.”

The exact form of Nepal’s new federal structure is currently under heavy national debate. *Rights Within Reach* emphasizes that regardless of which state structure is ultimately adopted, all levels of government—national, regional, and local—must respect, protect, and fulfill Nepal’s human rights obligations. This principle is of particular relevance to Nepal’s Dalit population, which is not confined to a particular geographic area, nor ethnic or linguistic group, and whose rights are seldom protected or enforced in practice. The Center also calls on the Constitutional Committee to consult with Dalits and other marginalized groups on this issue and throughout the constitutional drafting process.

“The voices of Dalits and other marginalized groups have been silenced for far too long,” said Narula. “It is crucial that Dalits, particularly Dalit women, be included in the constitutional drafting process and in the governance of their country.”

Many of the proposals for the new Constitution take promising steps toward crafting a constitution that protects fundamental rights that are of particular significance to Dalits and other marginalized groups in Nepal. For example, current proposals include: expansive protections against caste discrimination; a prohibition on the imposition of occupations based on caste; a right to be free from exploitation in the name of religion; and the right to freely choose one’s spouse. CHRGI expresses particular support for the Fundamental Rights Committee’s proposal to include a right for the Dalit community to inclusive and proportional participation in all state organs—a right that is essential to empowering the Dalit community in Nepal.

Of significance for the human rights of all Nepalis—and for securing lasting peace and economic development in Nepal—current proposals for the new Constitution also include key civil and political rights, and give a number of economic and social rights fundamental rights status, including the rights to food, housing, health, and water.

Despite these promising first steps, *Rights Within Reach* identifies critical gaps in the proposals and a number of problematic provisions that threaten to undermine the rights protections already included.

Key Recommendations in the Report:

CHRGI calls on the Constituent Assembly of Nepal to implement the recommendations contained in its report and to resolve all gaps in rights protections, including those listed below. To ensure that Nepal enters its new constitutional era with a solid foundation for the protection of human rights for all Nepalese people, the new Constitution should:

- **Include Missing Rights:** The new Constitution must protect the rights to: participate in the conduct of public affairs; freedom of association; and freedom of conscience. None of the current proposals for the new Constitution provide for these rights.
- **Restrict Emergency Powers:** The proposed Emergency Powers section of the new Constitution must include restrictions on when and how Nepal can declare a state of emergency. Such restrictions are critical to protect against the grave human rights abuses that have taken place during past “states of emergency” in Nepal.
- **Ensure the Right to an Effective Remedy:** The Fundamental Rights Committee’s proposal for the implementation of fundamental rights fails to guarantee the right to an effective remedy. Without a right to an effective remedy, all the other rights guaranteed in the Constitution risk being hollow and ineffective. The new Constitution must provide that all individuals have the right to petition competent and impartial tribunals to have a law declared unconstitutional and to seek redress and compensation if their fundamental rights have been violated.

- **Ensure Non-Interference with Other Rights:** The new Constitution must ensure that the observance of a particular right cannot be used as a cover to justify infringing upon the rights of others.
- **Ensure the Rights of All Persons:** With a few limited exceptions, the new Constitution must ensure that fundamental rights are guaranteed to all persons in Nepal and not just to citizens.
- **Avoid Caveats and Loopholes:** The new Constitution should avoid qualifying language such as “as provided for in the law” that may be used to deprive fundamental rights of their content.
- **Establish National Commissions:** The new Constitution must establish the National Human Rights Commission and the National Dalit Commission as financially independent constitutional bodies with broad investigative and enforcement powers. Nepal must ensure that Dalits, and in particular Dalit women, are adequately represented in these bodies and are afforded equal representation in governance structures.
- **Provide for Special Measures:** The new Constitution should provide for special measures to help secure substantive equality and the full enjoyment of human rights for members of disadvantaged groups, paying particular attention to multiple forms of discrimination. Nepal should ensure that such proposals are carried out on the basis of accurate and disaggregated data, including an accurate census in 2011 to establish the actual number of Dalits in Nepal.

Report Methodology

Rights Within Reach—which is available in both Nepali and English—focuses on CA Thematic Committee Concept Papers that are particularly relevant to human rights. It includes a Statement summarizing some of the key proposals in light of Nepal’s obligations under international human rights law and a Chart that analyzes and provides recommendations for specific proposals in more detail. The report is informed by CHRGI’s earlier work on securing human rights in Nepal’s new Constitution. As in all our efforts on Nepal, this report is also informed by the experience and expertise of Nepalese Dalit rights advocates, Nepal’s legal and academic community, and international law and constitutional scholars.

Background on the Issue

Caste discrimination and the practice of “untouchability” have ensured the complete subordination of Dalits. Both government and private actors subject Dalits to extreme forms of exploitation, violence, and segregation. “Upper-caste” community members typically force Dalits to live in segregated communities; forbid them from entering public spaces; deny them access to food, water, and land; and coerce them into caste-based occupations considered too “ritually impure” for “higher castes.” Attempts by Dalits to defy this prescribed social order are met with punitive violence and social ostracism and the State frequently fails to step in to prevent or punish such acts. In addition, as Dalit women and girls in Nepal endure the intersectional burden of both caste and gender discrimination, they bear the brunt of exploitation and violence and are consistently denied the ability to fulfill their basic daily needs. Along with Dalit women,

some Dalit castes—such as Gaine, Badi and the Madhesi Dalits living in the Southern part of the country—are subject to additional exclusion and marginalization.

Nepal’s constitutional drafting process comes at a time of unprecedented international attention to caste discrimination. In her [recent ground-breaking statement](#), the UN High Commissioner for Human Rights, Navi Pillay, proclaimed that, “the time has come to eradicate the shameful concept of caste. Other seemingly insurmountable walls, such as slavery and apartheid, have been dismantled in the past. We can and must tear down the barriers of caste too.” Nepal has already begun to take the lead, promoting the [draft UN principles and guidelines](#) to end caste discrimination as “a useful tool” to “eliminate this scourge from society.”

About the CHRGI

The Center for Human Rights and Global Justice (www.chrgj.org) at New York University (NYU) School of Law brings together and expands the rich array of teaching, research, clinical, internship, and publishing activities undertaken within NYU School of Law on international human rights issues. The International Human Rights Clinic (IHRC) at NYU School of Law (a program of the Center) provides high-quality, professional human rights lawyering services to individual clients and nongovernmental and intergovernmental human rights organizations, partnering with groups based in the United States and abroad. Working as legal advisers, counsel, co-counsel, or advocacy partners, Clinic students work side-by-side with human rights activists from around the world. In its work on discrimination, the CHRGI and its IHRC have focused extensively on caste discrimination in South Asia and have published several widely cited reports on India and Nepal. For more on our work on caste discrimination and Nepal please see <http://www.chrgj.org/projects/discrimination.html>