

FROM RIGHTS TO RECONCILIATION:

THE EROSION OF THE RULE OF LAW IN NEPAL

ON FEBRUARY 1, 2005, Nepal's King Gyanendra declared a state of emergency, dismissed the prime minister and his government, and assumed absolute control of the state. The king justified this bloodless coup by claiming that more assertive action would help to curb the terrorist violence perpetrated by the growing Maoist insurgency. Yet despite the king's claims to the contrary, Amnesty International reports that "legal safeguards against human rights abuses have virtually collapsed since the state of emergency,"¹ and cites evidence that more than 3,000 political prisoners have been arrested since February 1, 2005.²

This latest development highlights the unique challenges of protecting the rule of law, defending human rights, and preserving political and institutional stability in the midst of internal conflict. In Nepal, one of the world's poorest nations,³ the conflict perpetuates poverty and prevents the country from embarking on a path toward sustainable development. Governed by fear, with its legal system and political institutions growing less stable every day, Nepal seems poised to descend down a path toward outright civil war.

Ironically, in spite of the country's troubles, its institutional framework appears functional on paper. With a constitution, a supreme court, a bicameral legislature, an independent human rights commission, and a constitutional monarchy that tenuously balances an ancient monarchical tradition with a newfound appreciation for democratic ideals, Nepal seems to possess the tools necessary for a just political system. The problem lies in the disconnect between the system on paper and the system in reality, between the king's ability to seize control and the pleas of the government, the people, and the international community to maintain a modicum of functional democracy.

That disconnect has permitted a breakdown of the rule of law, which has resulted in widespread loss of life, forced disappearances, extrajudicial torture, and the spread of a culture of lawlessness that

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has discouraged foreign investment and tourism. The deterioration of the legal system has not benefited the people of Nepal, but it does provide an excellent case study of the perils of a poor constitution, weak human rights institutions and the political and cultural challenges of a transition to democracy.

This paper aims to provide a brief background on the conflict; to analyze the strengths and weaknesses of current institutions by examining the Constitution, the National Human Rights Commission, and the international legal system; to consider the impact of the conflict on Nepal's legal system, and finally, to explore possibilities for using legal mechanisms to promote post-conflict reconciliation.

BACKGROUND

Following centuries of monarchic rule, Nepal began a transition to democracy in 1990, as the "Movement to Restore Democracy" gained popularity and King Birendra recognized that his ability to maintain power depended on his willingness to compromise.⁴ An interim government drafted and signed a new Constitution in November 1990, providing increased protections for human rights and realigning Nepal as a parliamentary democracy "under a constitutional monarch."

The Maoist insurgency began in February 1996, when leaders of the Maoist United People's Front began a campaign of murder, torture, terror, and intimidation in the hopes of rallying the Nepalese people to force a transition to a more democratic government. The conflict between the Maoists and the government of Nepal has been characterized by gross human rights abuses on both sides, with the army searching rural villages for suspected insurgents and the Maoists using violent intimidation tactics in an attempt to convince the Nepalese to side with them.⁵ The U.S. State Department estimates that approximately 10,000 people have died in the conflict, though neither side has gained the upper hand. In 2003, the UN Working Group on Enforced or Voluntary Disappearances cited Nepal as the country with the highest number of disappearances in the world.⁶

The king's February 2005 declaration of a state of emergency has brought increased international attention to Nepal, one of the world's poorest countries. The country ranks 140th out of 177 countries in the UN Development Program's Human Development Indicators.⁷ Social indicators are discouraging: the female literacy rate is 26 percent, 82 percent of

the population lives on less than \$2 per day, and 48 percent of children are born underweight.⁸ The conflict has not helped to improve citizen welfare, stagnating development and foreign investment while preserving high poverty rates.

UNREALIZED POTENTIAL: THE CONSTITUTION, THE NHRC, AND INTERNATIONAL LAW

The Constitution, the National Human Rights Commission (NHRC), and international legal institutions represent three primary mechanisms for maintaining the rule of law, minimizing human rights abuses, and resolving political, military, and cultural conflicts. Each of these institutions—the Constitution in its textual flaws, the NHRC in its minimal practical power vis-à-vis the king, and the international legal system in its inability to hold perpetrators accountable—possesses its own internal weaknesses, hindering its capacity to promote good governance. They serve as excellent examples of how conflict can exacerbate institutional flaws, and they demonstrate how even small loopholes in institutional design may have a widespread impact on a nation and its people. Looking closely at these institutions points the way toward more effective institutions that can play a stronger role in promoting national reconciliation.

A LOOPHOLE-FILLED TEXT: THE CONSTITUTION OF THE KINGDOM OF NEPAL

Nepal's Constitution, enacted in the wake of the "Movement to Restore Democracy" in November 1990, affirms the government's responsibility to govern in "consonance with the popular will."⁹ Moreover, it recognizes the gap between the endorsement of the concept of the rule of law and the actual realization of it, aiming "to establish an independent and competent system of justice with a view to transforming the concept of the Rule of Law into a living reality."¹⁰ Sovereignty, according to the Constitution, rests neither with the government nor the king, but with the people.

Section 2 of Article 12, the "Right to Freedom," enumerates several aspects of this right, nearly all of which the king abridged in his declaration of a state of emergency. Section 2 provides for the following five freedoms: freedom of opinion and expression; freedom to assemble peaceably and without arms; freedom to form unions and associations; freedom to move throughout the

kingdom and reside in any part thereof, and freedom to practice any profession, or to carry on any occupation, industry, or trade."¹¹

Yet in spite of this broad provision of social and political liberty, the Constitution significantly limits the practical application of these rights. In the subsequent section, each freedom is paired with a clause that broadly defines a circumstance in which that freedom could be circumscribed. For the freedom to assemble, for example, the government could pass a law that restricts assembly if that law imposes a "reasonable" restriction on an act that threatens the "sovereignty and integrity" of the state.¹² According to this clause in the Constitution, during a period of crisis, the king or other political leaders could adopt a broad definition of what might constitute a reasonable restriction, thus using the unique parameters of a conflict situation to validate otherwise unconstitutional behavior.

Similar structural flaws appear throughout the Constitution: vague clauses about preserving the "integrity" of the state conflict with the provision of specific rights.¹³ For example, Article 13 establishes freedom of the press ("No news item, article or any other reading material shall be censored")¹⁴ but the Constitution permits laws that limit this freedom if they restrict an act that threatens the state or "jeopardizes the harmonious relations" of the people.¹⁵ This clause defies logic: in almost all cases, the government could construe the very dissent Article 13 intends to protect as a threat to the stability of the state. The consequences of this enormous loophole appeared in February 2005, as the king cited his need to protect the country from the Maoist rebels as a reason for censoring the media.¹⁶

In 2002, to justify his suspension of democracy, the king used Article 127, which states, "[I]f any difficulty arises in connection with implementation of this Constitution, His Majesty may issue necessary orders to remove such difficulty, and such orders shall be laid before the Parliament."¹⁷ As Human Rights Watch points out, this provision conflicts with others that deny the king the right to appoint the prime minister and cabinet: "Article 127 cannot

in any way be used to suspend democratic governance and the Constitution."¹⁸

By comparison, Article 115 provides for a more sweeping assumption of power. It provides the king with the authority to declare a state of emergency "if a grave crisis arises in regard to the sovereignty or integrity of the Kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray."¹⁹ After establishing this state of emergency, the king may "issue such Orders as are necessary to meet the exigencies," including the suspensions of freedom of assembly and speech.²⁰ The crux of this issue obviously revolves around the defini-

tions of "grave" and "necessary," words with meaning broad enough to apply to a variety of situations. By appropriating to the king such latitude in making decisions, the Constitution permits the type of misuse of power witnessed since the Maoist insurgency began in 1996.

Moreover, if the king makes questionable decisions, the Constitution protects him by insulat-

ing him from judicial prosecution or legislative attack: "No question shall be raised in any court about any act performed by His Majesty. . . No discussion shall be held in either House of Parliament on the conduct of His Majesty, Her Majesty the Queen and the heir apparent to His Majesty."²¹ Without the threat of prosecution or criticism from the legislature, the king has little incentive to enact any policy that might curb his power, even if such a policy could benefit the Nepalese people as a whole.

The inconsistencies and flaws in the Constitution seem particularly ill-suited to the unique demands of a nation in conflict.²² With state authority threatened, instability permeating political life, and few Constitutional restrictions on the authority of the monarchy or the infringement on individual freedoms, Nepal's leaders have little incentive to enforce basic human rights provisions or the rule of law.

From a more general perspective, the Constitution exposes itself to inconsistent implementation in its attempt to balance the country's ancient monarchic tradition against a modern trend toward democracy. The text assumes an ambivalent position

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on these competing conceptions of the country's contemporary identity, often failing to reconcile them. The Constitution declares "His Majesty" as the "symbol of the Nepalese nationality and the unity of the Nepalese people" and endows him with the duty "to preserve and protect this Constitution by keeping in view the best interests and welfare of the people of Nepal." Endowing the king with complete authority to speak for the interests of the people invites both paternalistic governance and a blanket justification for the king's policies, regardless of how they actually affect the people. Ascribing such extensive power to the king clearly fails to achieve the delicate balance between monarchy and democracy for which the Constitution strives.

As a foundational document that establishes a theory of spirit of governance, a Constitution may assume an exalted position in a nation's public life, guiding the legal and political spheres in both procedure and substance. Unfortunately, Nepal's Constitution suffers from textual flaws that impede its practical relevance and enforceability. Though the document purports to protect freedoms from state intrusion, the Constitution's failures have left the country with a gaping hole at the core of its legal system, a hole that its leaders may exploit during periods of upheaval.

A PAPER TIGER: THE NATIONAL HUMAN RIGHTS COMMISSION

The NHRC is the official state institution devoted to monitoring human rights in Nepal. Though it possesses a certain aura of legitimacy as a state institution, its direct affiliation with the government also subjects it to charges of bias. It has managed to achieve some success in monitoring forced disappearances and other human rights violations, but the effectiveness of the NHRC has been diminished by its often contentious relationship with the king.

Established in 2000, the NHRC is composed of a chairperson, four members, and an acting sec-

retary. The commission uses a variety of mechanisms—from reports and speeches to monitoring and legislative advocacy—to champion human rights principles. It has also published two books: *Conflict, Human Rights, and Peace: Challenges Before Nepal* and *Building Capacity of Human Rights Institutions: The Case of Nepal*.

In his foreword to *Building Capacity of Human Rights Institutions*, NHRC Chair Nayan Khatri describes the desperation of the current human rights situation and outlines a unique role for the

NHRC in mediating the conflict: "We need to dig deeper and look for creative ways to deal with these issues which affect our own security and are very much at the core of our activities for promoting and protecting the human rights of all Nepalese people."²³

The NHRC recognizes the immense challenges it faces in translating the human rights principles of the Constitution into a re-

ality for the people: "The first and foremost [challenge] is our capability to enforce human rights, as they only exist on paper."²⁴ The NHRC also demonstrates an awareness of its own institutional failures: "We have been lacking in devising concrete strategies to achieve genuine progress. Very often there is much talk and little action, and even our activities fall far short of our aspirations."²⁵ One significant institutional failure is the extent to which the success of the NHRC depends on the cooperation of the government. This dependence erodes the NHRC's independence, especially when the government has "actively sought to undermine the legitimacy of the NHRC in Nepal."²⁶ This government opposition has grown even stronger since the state of emergency declaration: "The NHRC, which for a long time has faced obstruction, has been unable to carry out many of its core functions since 1 February."²⁷

Despite these challenges, the NHRC has managed to be marginally effective in articulating the king's problematic human rights record and in promoting dialogue between the Maoists and the king. Though in some documents it equivocates in assigning blame for either specific human rights violations or the conflict as a whole, the NHRC

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makes a staggering admission in its status report for 2003. The document attributes the root of the Maoist insurgency to economic and social marginalization, acknowledging that the movement has a rational basis in the country's problematic development history.²⁸

This justification stands in opposition to the king's use of "war on terror" rhetoric to portray the Maoists as irrational terrorists committed only to violence and anarchy. It shows the potential of an institution like the NHRC to provide a mediating influence for two groups in the midst of heated conflict and to offer an objective perspective that may help to bring two opposing sides together in the long term. Unfortunately, the NHRC has not realized this potential, and it finds itself struggling to gain relevance while maintaining independence.

BARK WITH NO BITE: ACCOUNTABILITY AND INTERNATIONAL LAW

Raphael Lempkin, who coined the term "genocide," said, "Only man has the law . . . you must build the law!"²⁹ Lempkin recognized that without legal codification of human rights norms, the duty to protect them falls victim to the arbitrariness of state behavior. The current conflict in Nepal exemplifies Lempkin's fears, as the absence of an active international legal system has permitted human rights abuses to persist without punishment.

The conflict between the Maoists and the government meets the definition of an "internal armed conflict," according to the official commentary to the Geneva Conventions of 1949 by the International Committee of the Red Cross (ICRC).³⁰ International law defines an internal armed conflict as one in which the insurgents possess "an organized military force, an authority responsible for its acts, [is] acting within a determinate territory and is having means of respecting and ensuring respect for the conventions."³¹ The Maoists meet these criteria.

Compliance with the Geneva Conventions means that "persons taking no active part in hostilities . . . shall in all circumstances be treated humanely."³²

This notion of humane treatment forbids torture, murder, "cruel treatment," taking hostages, "humiliating and degrading treatment," and extrajudicial sentencing and executions.³³ Because Nepal ratified the Geneva Conventions in 1964, both the state and the Maoists are bound by these provisions.

The Nepalese government and the Maoists are also bound by additional provisions of the Geneva

Conventions, including prohibitions on attacks against civilians, weapons that cannot distinguish between combatant and civilians, and force that causes disproportionate damage to the civilian population beyond what would be considered militarily advantageous.³⁴

Beyond laws of war, Nepal is also subject to

international human rights law, as it has signed all major human rights treaties, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.³⁵ These treaties prohibit a wide range of abuses, from forced disappearances to extrajudicial execution and torture.³⁶

Despite their international legal obligations, both the Maoists and the state of Nepal have participated in significant violations of basic international humanitarian and human rights law. As discussed previously, Nepal has the highest number of forced disappearances in the world. Daily news reports announce murders of both Maoists and government forces. Yet despite the persistent human rights violations and the growing presence of human rights monitors to document them, Nepal has not faced prosecution in international courts or threats of serious international diplomatic or military intervention. Only in recent months have major donors like India and the UK suspended aid, though both countries did so in response to the king's declaration of a state of emergency rather than in reaction to his violations of international human rights law.³⁷

Alley suggests that internal conflict challenges the international community's response capacity: "The international community's response to the rights violations incurred by internal wars has been slow, reactive and inadequate."³⁸ Without clear success stories or a legal system that provides specific

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guidelines on humanitarian intervention, the international community has historically been hesitant to take action: "Intra-state war generates international uncertainty and confusion over appropriate responses."³⁹ According to Alley, the "state-based international order . . . is inadequately equipped to deal with the moral, political and diplomatic dilemmas generated by the violation of rights during internal conflict."⁴⁰

Without a strong system of international legal accountability, human rights abuses will continue unpunished and neither the king nor the Maoists will feel an incentive to change their behavior. The lack of a clear system for addressing human rights concerns leaves states on their own to protect human rights, a problematic prospect for a state with a human rights record like Nepal's.

IMPLICATIONS FOR THE LEGAL SYSTEM

The lack of a strong domestic legal system capable of addressing substantial humanitarian challenges, coupled with the weaknesses of the Constitution, the NHRC, and the international legal system, have allowed human rights perpetrators to act without fear of legal punishment. The twin failings of the international and domestic legal systems have combined to create a problematic legal climate in Nepal, one with potentially long-term effects on Nepal's prospects for social reconciliation and economic development. International and domestic actors must seek to strengthen legal institutions in order to generate opportunities for development.

If the conflict continues at its present pace, with each day bringing a new level of instability and uncertainty, Nepal's legal institutions will suffer as citizens become less and less confident that the rule of law will return to the country in the near future. Human Rights Watch says that the virulence of the tactics that Maoists and the government use against each other has "led to a climate of intense fear in the villages."⁴¹ Some of the human rights abuses, like forced disappearances, are not even specifically addressed by Nepalese criminal law, and therefore cannot be prosecuted directly.⁴² Moreover, the political system has been in disarray since the king assumed direct rule in 2002, a maneuver that

provoked public distrust. Amnesty International argues that the legal system has deteriorated even more in the wake of the declaration of a state of emergency: "Legal safeguards against human rights abuses—which were already very weak—have almost entirely collapsed since 1 February."⁴³

The legal ambiguity that has dominated this conflict period has resulted in the promulgation of far-reaching laws that directly erode the civil liberties of the Nepalese. The concerted effort by the state to quash the Maoist rebellion led to the passage of the Terrorist and Disruptive Activities Act (TADA) in April 2002.⁴⁴ This law afforded broad power to the security forces in handling anyone believed to be a terrorist and provided immunity from prosecution for "any act or work performed or attempted to be performed in good faith while undertaking their duties."⁴⁵ By granting the state and its

security forces such discretionary authority—and thereby allowing individuals, and not courts, to make sensitive decisions about the deprivation of civil liberties—TADA has sanctioned human rights violations and hastened the deterioration of the rule of law. According to Human Rights Watch, "TADA has allowed the security forces to literally get away with murder. The security forces have used their sweeping powers to broadly target anyone suspected of having Maoist sympathies."⁴⁶

This climate of fear has serious negative consequences for the legal system and may impede the society's chances of post-conflict reconciliation and development: "Collapsing state functions, and degradation of the rule of law, intimidate peaceful dispute settlement and reward resort to the gun in the lethal micro-politics of revenge, personal enrichment and survival."⁴⁷

The legal system provides a primary form of stability for people, guaranteeing the security and reliability of business transactions, the sanctity of contracts, the transfer of property, and protection of constitutional rights. An effective legal system depends on enforceable rights, consistency in the judicial process, and reliability in government institutions. Without clear systems for governing daily behavior, economic, cultural, and artistic activity decreases, citizens will be more hesitant to invest in public life, and human rights abuses may become more prevalent.

The people of Nepal may never find answers to questions of why or how, but at least effective monitoring will permit future generations a clear understanding of what and who.

EMERGING FROM THE RUBBLE: STEPS FORWARD OUT OF CONFLICT

Though internal conflict may leave behind a hobbled legal system and a legacy of human rights violations—Alley describes this phenomenon as “the capacity of human rights denials to precede, persist throughout, and post-date internal conflict”—societies must move beyond the “remembered injustices.”⁴⁸ Real reconciliation necessitates recognition of a common community, an appreciation for the mutual advantages of ceasing the violence, a commitment to rebuilding the public sector, and tolerance between former enemies.

In Nepal, national actors—the king, the government, and the Maoists—struggle over competing visions of how the country’s past will affect its future. The Maoists want a new constitution, one that would curtail the king’s power and create a more vibrant democracy.⁴⁹ The king, though his public statements might suggest otherwise, has demonstrated through his actions that he believes in the continuing authority of the monarchy. Finally, beyond the walls of government, the country’s citizens have a stake in how Nepal is governed. Ordinary citizens seek a future in which their voices are heard, their interests are represented, and their rights are protected.

Such competing visions of governance in Nepal obscure a path toward compromise. For the Maoists, real reconciliation would mean integrating themselves into the political mainstream, finding a legitimate institutional outlet for their advocacy efforts, and reorienting their identity to permit existence within a state structure they have long criticized. In contrast, the king seeks a return to a past in which he could rule unchecked. The balance point, a point of compromise between the political systems of the past and the desired structures of the future, is uncertain.

These conflicting narratives of Nepal’s past and future present a perfect opportunity for using creative legal and extrajudicial mechanisms to promote reconciliation. The dwindling of legal authority during a conflict contrasts sharply with the powerful capacity of the legal system to develop meaningful institutional mechanisms for post-conflict reconciliation. Three main institutional responses may provide successful public mechanisms for moving beyond a period of conflict into more stable, more accountable governance.

AD HOC TRIBUNALS

Ad hoc tribunals range from the post-World War II tribunals at Nuremberg and Tokyo to the more recent UN-operated courts, the international criminal tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR, respectively). Ad hoc tribunals are similar in that they are not permanent, but use a legal process to address a specific period of social unrest, violence or genocide. Proponents believe that such tribunals help post-conflict nations to develop a unified narrative of the conflict period, allowing victims and perpetrators to discuss their experiences in a public setting and permitting victims some measure of justice. Critics often accuse them of victor’s justice, arbitrarily choosing a system of law to employ, lacking sustainability and cost-ineffectiveness.

TRUTH AND RECONCILIATION COMMISSIONS

Truth and reconciliation commissions (TRCs), which gained popularity after the South African TRC in 1994, use a less formal approach to promote reconciliation after conflict. Though each TRC may employ a slightly different strategy, the basic idea revolves around using the provision of amnesty to encourage both victims and perpetrators to come forward to discuss their role in the conflict in question. TRCs rely on the intrinsic value of documenting torture and genocide, the idea that simply telling a more accurate, more representative story may constitute a critical step on the path toward social healing.⁵⁰

While they may often succeed in establishing a more complete narrative of the conflict and in bringing citizens together to confront their past from divergent perspectives,⁵¹ victims often criticize TRCs for failing to provide real justice or hold individuals accountable for their crimes.⁵²

PERMANENT NATIONAL OR INTERNATIONAL COURTS

While the majority of countries possess some form of an operational judiciary, a permanent national court would designate a separate body within that judicial system solely to address human rights violations or crimes connected with internal political conflict. Creating permanent courts may be a compelling option, but it is also one of the most difficult to implement. A permanent international

court, such as the International Criminal Court (ICC), would have responsibility similar to that of a national court, but would consider cases from complainants from all over the world, effectively serving as the world's judicial body.

CONCLUSION

Steps forward toward a strong democracy in Nepal depend on the capacity of the international aid community to work with the citizens of Nepal in advocating for the incorporation of strong democratic norms in everyday political life. Despite its historical reluctance to intervene in internal conflicts, the international community must recognize the tremendous costs of allowing the conflict to persist.⁵³ Even realists might concede the potential for internal instability to overflow into the international arena, destabilizing entire regions: "Internal conflict's capacity to project upheavals upon the international community will not reduce quickly."⁵⁴ Developing more strategic conditions to govern the receipt of aid, bringing human rights perpetrators to trial in international courts, supporting an assertive government to counter the king, and using independent monitors to provide the transparency that will deter human rights violations will all help to improve the country's development prospects.

In addition, Nepal will face a significant challenge in the near future, as it eventually will need to move beyond the conflict, to heal the political wounds that have afflicted the vast majority of the population, and to develop a consistent, humane method for dealing with perpetrators. As Minow states, "There are no tidy endings following mass atrocity."⁵⁵ The ability to achieve this social reconciliation will depend upon the country's ability to rebuild trust in its legal and political institutions, countering the disenchantment and skepticism that developed over the course of the conflict: "Gross human rights violations suffered during conflict . . . leave deep and abiding mistrust of the authority structures that have been associated with the perpetrators."⁵⁶

The state may achieve this goal by fostering robust public institutions that provide lawful justice and use the country's public spirit as the foundation for a thorough examination of the conflict's history. These institutions need not follow the tribunal or truth and reconciliation models initiated in other war-ravaged countries, yet they should learn from the strengths and weaknesses of these models in devising a strategy more suitable for Nepal. Main-

taining a long-term perspective may also inform current policymaking, as politicians and citizens attempt to develop policy that will move the country toward a future resolution.

The complexity of the conflict and the diverse interests of its principal actors cast doubt on the long-term prospects for a comprehensive healing process in Nepal. This essay attempts to find both descriptive and prescriptive lenses for viewing the conflict, but it simultaneously acknowledges the strong possibility that future generations, both inside and outside of Nepal, will ask themselves, "How did our predecessors stand idly by while this tragedy unfolded?" Faced with the frustrations of their own paralysis, international and domestic human rights institutions must strive to achieve what they can, creating a clear historical record by thoroughly documenting the human rights abuses, the disintegration of the rule of law, and the passive international response. The people of Nepal may never find answers to questions of why or how, but effective monitoring will permit future generations an understanding of what and who.

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NOTES

1. Amnesty International, "Nepal: Human Rights Abuses Escalate Under State of Emergency," press release (April 20, 2005). Online. Available: <http://web.amnesty.org>.
2. Ibid.
3. Nepal ranks 140th out of 177 countries in the 2004 index. United Nations Development Program, *Human Development Report 2004: Cultural Liberty in Today's Diverse World*. (New York: 2004), p. 3. Online. Available: <http://hdr.undp.org>.
4. Unless otherwise noted, information in this section is based on the State Department's background note on Nepal. "Background Note: Nepal," U.S. Department of State (March 2005). Online. Available: <http://www.state.gov/r/pa/ei/bgn/5283.htm>.
5. Human Rights Watch, "Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal's Civil War," pp. 26-55.
6. Ibid. Also, the National Human Rights Commission maintains a list of the disappeared. The most recent list available on the organization's website lists 808 disappearances. The victims are overwhelmingly male, with men representing nearly 92 percent of the total number of disappeared. National Human Rights Commission, *Disappearance Name List*. Online. Available: <http://www.nhrc-nepal.org>.

7. United Nations Development Program, *Human Development Report 2004*.
8. World Bank, *05 World Development Indicators* (2005). Online. Available: <http://devdata.worldbank.org/wdi2005>.
9. Kingdom of Nepal, *Constitution of the Kingdom of Nepal* (Nov. 9, 1990). Online. Available: <http://www.concourt.am/wwconst/const/nepal/nepal--e.htm>.
10. Ibid.
11. Ibid.
12. Ibid.
13. "The most striking feature of the Constitution of Nepal is how it provides constitutional safeguards against the infringement of the fundamental rights of citizens but suspends all these safeguards through another provision even in a normal situation." V.T. Patil, *Human Rights Developments in South Asia* (Delhi, India: Authorspress, 2003), p. 264.
14. Kingdom of Nepal, *Constitution of the Kingdom of Nepal*.
15. Ibid.
16. "Nepal journalists urge free press," *BBC News* (March 29, 2005). Online. Available: [http://news.bbc.co.uk/](http://news.bbc.co.uk;); Charles Haviland, "Nepal curbs reporting on rebels," *BBC News* (March 2, 2005). Online. Available: <http://news.bbc.co.uk>.
17. Kingdom of Nepal, *Constitution of the Kingdom of Nepal*.
18. Human Rights Watch, "Between a Rock and a Hard Place."
19. Kingdom of Nepal, *Constitution of the Kingdom of Nepal*; Human Rights Watch, "Between a Rock and a Hard Place," p. 15.
20. Kingdom of Nepal, *Constitution of the Kingdom of Nepal*.
21. Despite these fairly strong statements about limiting dissent and true, unfettered debate, the Constitution includes language that seems to substantiate the idea of a full-fledged democracy. Article 62, for example, declares that "there shall be full freedom of speech in both Houses of Parliament and no member shall be arrested, detained or prosecuted in any court for anything said or any vote cast in the House." This provision conflicts directly with the aforementioned protections of the king. Kingdom of Nepal, *Constitution of the Kingdom of Nepal*.
22. In the February 2005 seizure of power, for example, the king dismissed the prime minister, while circumventing the process outlined in the Constitution. Because the Constitution insulates the king from prosecution and affords him ultimate decision-making power to act for the good of the nation, his behavior might be considered constitutional, despite violating the Article 36 guidelines for removing a prime minister from office. Ibid.
23. Nayan Bahadur Khatri (Foreword), in Bipin Adhikari, *Building Capacity of Human Rights Institutions: The Case for Nepal* (Kathmandu, Nepal: Right to Education Foundation, 2004).
24. National Human Rights Commission, *Human Rights in Nepal: A Status Report 2003* (Kathmandu, Nepal: National Human Rights Commission, 2003), p. v.
25. Ibid.
26. Human Rights Watch, "Between a Rock and a Hard Place," p. 20.
27. Amnesty International, "Nepal: Human Rights Abuses," (online).
28. "The rise of the Maoist insurgency, by and large, can be attributed to the absence of protection of economic and social rights of the marginalized people," National Human Rights Commission, p. vi.
29. Samantha Power, *A Problem From Hell* (Perennial, New York: 2002), p. 47.
30. Human Rights Watch, "Between a Rock and a Hard Place," p. 22.
31. Ibid.
32. Geneva Conventions, "For the amelioration of the condition of the wounded and sick in armed forces in the field," Chapter 1, Article 3 (Aug. 12, 1949). Online. Available: <http://www.genevaconventions.org>.
33. Ibid.
34. Human Rights Watch, "Between a Rock and a Hard Place." p. 23.
35. Ibid., p. 24.
36. Though international human rights law permits the suspension of certain rights during a declared state of emergency, the prohibitions listed above would not be permissible during even the direst political emergency.
37. "India 'may resume' Nepal arms aid," *BBC News* (April 25, 2005). Online. Available: <http://news.bbc.co.uk>.
38. Roderic Alley, *Internal Conflict and the International Community* (Hants, England: Ashgate, 2004), p. 108.
39. Ibid., p. 3.
40. Ibid., p. 96.
41. Human Rights Watch, "Between a Rock and a Hard Place," p. 2.
42. United Nations, Commission on Human Rights (61st session), *Civil and Political Rights, Including the Questions of: Disappearances and Summary Executions: Report of the Working Group on Enforced or Involuntary Disappearances* (Dec. 6-14, 2004).
43. Amnesty International. April 2005 (online).

44. Human Rights Watch, "Between a Rock and a Hard Place," p. 13.
45. *Ibid.*, p. 2.
46. *Ibid.*, p. 15.
47. Alley, *International Conflict and the International Community*, p. 6-7.
48. *Ibid.*, p. 90.
49. "Maoists' 40 Point Demands," International Nepalese Solidarity Forum. Online. Available at: <http://www.insof.org>.
50. "Psychological restoration and healing can only occur through providing space for survivors of violence to be heard, and for every detail of the traumatic event to be reexperienced in a safe environment. Such space a truth commission could furnish." Brandon Hamber, "Does the Truth Heal? A Psychological Perspective on Political Strategies for Dealing with the Legacy of Political Violence," in *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, ed. Nigel Biggar (Washington, DC: Georgetown University Press, 2003), p. 158.
51. Analysts differ on whether a TRC actually has the capacity to establish a single common narrative. Ignatieff writes, "I wonder now whether shared or common narratives of historical events are actually possible between ethnic groups that have a history of slaughter or murder between them." Michael Ignatieff, "Reflections on Coexistence," in *Imagine Coexistence: Restoring Humanity After Violent Ethnic Conflict*, ed. Antonia Chayes and Martha Minow (San Francisco: Jossey-Bass, 2003), p. 329.
52. Martha Minow, "Innovating Responses to the Past: Human Rights Institutions," in *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, ed. Nigel Biggar. (Washington, DC: Georgetown University Press, 2003), p. 95.
53. Alley describes costs due to resource mobilization, an ignorance of the linkages between the factors that encourage internal conflict, and the external costs of increased institutional, political, and organizational tensions. Alley, *International Conflict and the International Community*, p. 7.
54. *Ibid.*, p. 12.
55. Richard J. Goldstone (Foreword), in Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998), p. x.
56. Alley, *International Conflict and the International Community*, p. 94.
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