



Background Paper – Nepal

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Country Advice – Melbourne

Australian Government

Refugee Review Tribunal

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Section 1: Overview

Four years after the end of the Maoist insurgency, Nepal remains in a transitional state of post-conflict uncertainty. While much of the widespread violence associated with the Maoist uprising has subsided, the state remains largely unable to establish its authority, particularly in the Terai region. This is mainly due to the prolonged inability of the Constituent Assembly (CA) to draft a constitution, and to the absence of a stable government.

With the government unable to provide many basic services to much of the population, political parties – and in particular their respective youth wings – at times provide parallel *de facto* local governance, with a particular focus on security. Youth militias also provide a deniability factor to the major parties in terms of acts of politically motivated violence. By ostensibly maintaining a plausible distance from militia activities, parties can publicly denounce acts of violence and intimidation on the one hand, while at the same time reaping benefits of such acts on the other.

Despite four term extensions, in May 2012, the CA failed once again to reach an agreement on the final draft of a new constitution. Nepal's Supreme Court refused to allow a fifth extension and on 25 May 2012, President Yadav dissolved the assembly. Prime Minister Baburam Bhattarai was appointed caretaker prime minister and he promptly announced that elections for a new CA would be held in November 2012. Both opposition leaders and political commentators believe that fresh elections will not be possible in November and that a government of national consensus must be formed.

1.1 Map

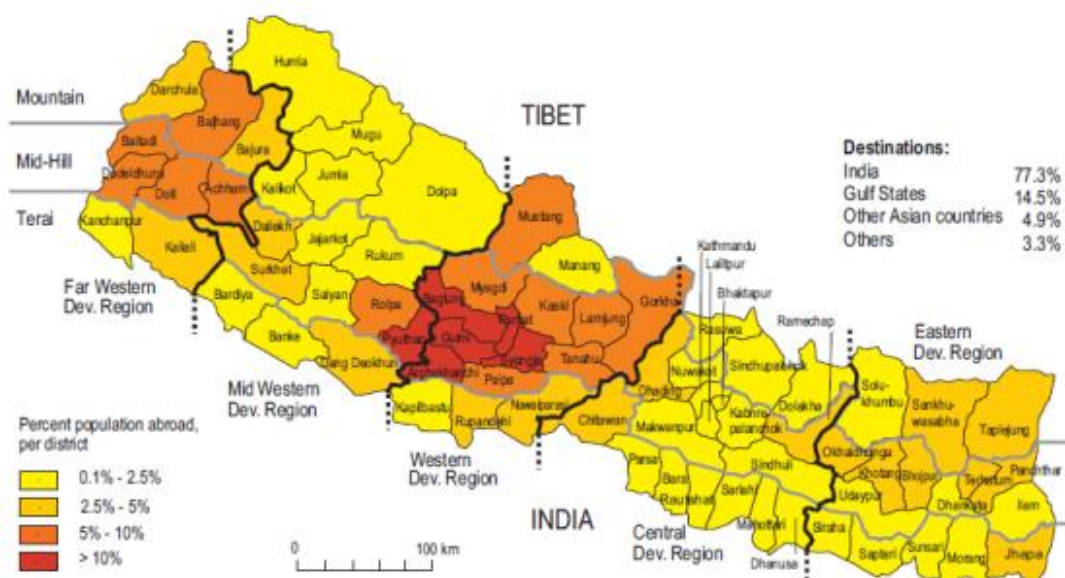


Figure 1 (Ctrl Click to enlarge): *Origins and destinations of migrants from Nepal*¹

¹ Thieme, S. *et al* 2005, 'Addressing the Needs of Nepalese Migrant Workers in Nepal and in Delhi, India', *Mountain Research and Development*, Vol 25, No 2, May, pp.109-114
<http://www.geo.uzh.ch/~suthieme/MRD_PAMS.pdf> Accessed 20 March 2006

1.2 Nepal Overview

Population	29,391,883 (July 2011 est.) Growth rate 1.596% (2011 est.)
Area	147,181 sq km
Government	Head of State: President Ram Baran Yadav Head of Government: Prime Minister Baburam Bhattarai
Languages	Nepali (official) 47.8%, Maithali 12.1%, Bhojpuri 7.4%, Tharu (Dagaura/Rana) 5.8%, Tamang 5.1%, Newar 3.6%, Magar 3.3%, Awadhi 2.4%, other 10%, unspecified 2.5% (2001 census)
Ethnic Groups	Chhettri 15.5%, Brahman-Hill 12.5%, Magar 7%, Tharu 6.6%, Tamang 5.5%, Newar 5.4%, Muslim 4.2%, Kami 3.9%, Yadav 3.9%, other 32.7%, unspecified 2.8% (2001 census)
Religions	Hindu 80.6%, Buddhist 10.7%, Muslim 4.2%, Kirant 3.6%, other 0.9% (2001 census)
GDP* GDP ** GDP per capita	US\$35.81 billion (2010 est.) US\$15.84 billion (2010 est.) US\$1,200 (2010 est.) ² *purchasing power parity **official exchange rate

1.3 Timeline of Events

1768	Gurkha ruler Prithvi Narayan Shah conquers Kathmandu and lays foundations for unified kingdom.
1814-1816	Anglo-Nepalese War: culminates in treaty establishing Nepal's current boundaries.
1846	Hereditary chief ministers known as Ranas dominate monarchy and isolate Nepal from outside world.
1923	Treaty with Britain affirms Nepal's sovereignty.
1951	Anti-Rana forces restore sovereignty of monarch; Nepali Congress Party forms government.
1959	Multi-party constitution adopted.
1960	King Mahendra seizes control, suspending parliament, the constitution and party politics.
1962	New constitution introduces non-party system of councils with the king exercising sole power.
1980	Constitutional referendum follows agitation for reform; king allows direct elections to national assembly, but on a non-party basis.
1985	Nepali Congress begins civil disobedience campaign for restoration of multi-party system.
1990	Pro-democracy agitation coordinated by Nepali Congress and leftist groups leads to the king agreeing to a new democratic constitution.
1991	Nepali Congress wins first democratic elections.
1994	Government defeated in no-confidence motion; new elections lead to communist

² Central Intelligence Agency 2011, *The World Factbook – Nepal*, 14 June
<<https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>> Accessed 21 June 2011

	government.
1995	Communist government dissolved.
1996	Start of Maoist insurgency.
2001	King, Queen and other royal family members killed in shooting by Crown Prince.
2005	<i>February</i> – the king assumes direct control and dismisses the government: declares state of emergency citing the need to defeat Maoist rebels.
2006	<i>April</i> – King Gyanendra agrees to reinstate parliament; Maoists call a three-month ceasefire. <i>May</i> – parliament votes to curtail the king’s political power; government and Maoists begin peace talks. <i>November</i> – government and Maoists sign peace accord declaring a formal end to the 10-year insurgency.
2007	<i>January</i> – Maoists enter parliament under temporary constitution. <i>April</i> – Maoists join interim government. <i>September</i> – Maoists quit interim government demanding monarchy be scrapped. <i>December</i> – parliament approves abolition of monarchy; Maoists re-join government.
2008	<i>May</i> – Nepal becomes a republic. <i>August</i> – Maoist leader Prachanda forms coalition government.
2009	<i>May</i> – Prachanda resigns, Maoists leave government.
2010	<i>May</i> – Governing coalition and Maoist opposition agree to extend deadline for drafting of new constitution.
2011	<i>February</i> – Jhala Nath Khanal elected premier, ending seven-month stalemate during which Nepal had no effective government. <i>14 August</i> – Resignation of Prime Minister Jhala Nath Khanal. <i>29 August</i> – Swearing in of Prime Minister Baburam Bhattarai. ^{3 4 5}
2012	<i>May</i> – Constituent Assembly (CA) misses fourth deadline to reach an agreement on a new constitution. The Supreme Court refuses to allow a fifth extension to the life of the CA. The president dismisses the CA and appoints Baburam Bhattarai to lead a caretaker government. Bhattarai announces that new elections will be conducted in November 2012. ⁶

³ ‘Timeline: Nepal’ 2011, *BBC News*, 17 February <http://news.bbc.co.uk/2/hi/south_asia/1166516.stm> Accessed 12 August 2011

⁴ ‘Prime Minister Khanal steps down, finally’ 2011, *The Himalayan Times*, 14 August <<http://www.thehimalayantimes.com/fullNews.php?headline=Prime+Minister+Khanal+steps+down%E2%80%9A+finally&NewsID=299296>> Accessed 15 August 2011

⁵ ‘Bhattarai sworn in as 35th prime minister’ 2011, *The Himalayan Times*, 30 August <<http://www.thehimalayantimes.com/fullNews.php?headline=Bhattarai+sworn+in+as+35th+prime+minister&NewsID=301052>> Accessed 30 August 2011

⁶ ‘Nepal: Political impasse deepens economic uncertainty’ 2012, *IRIN News*, UNHCR Refworld, 30 May <<http://www.unhcr.org/refworld/docid/4fc8ab2b2.html>> Accessed 13 June 2012; ‘NEPAL: Divided over federalism’ 2012, *IRIN News*, 25 May <<http://www.irinnews.org/Report/95526/NEPAL-Divided-over-federalism>> Accessed 13 June 2012; ‘PM Bhattarai dismisses demands for resignation; vows to hold election on Nov 22’ 2012, *Nepal News*, 25 June <<http://www.nepalnews.com/home/index.php/news/1/19708-pm-bhattarai-dismisses-demands-for-resignation-vows-to-hold-election-on-nov-22.html>> Accessed 2 July 2012

1.4 Recent History

1.4.1 Civil War / Maoist Insurgency

In 1996, the Communist Party of Nepal-Maoists (CPN-M) initiated a ten-year 'People's War' insurgency aimed at overthrowing the monarchy and based heavily on communist ideology as espoused by Mao Zedong. During this time, it formed a People's Liberation Army and a Revolutionary Council, which acted as a quasi-central government for those areas in Nepal under its control. The CPN-M was led by Pushpa Kamal Dahal, better known as Comrade Prachanda, and Baburam Bhattarai.⁷

Support for the insurgency relied largely on the 'illiterate, impoverished peasantry in the hinterlands'.⁸ In 2003, the strength of the CPN-M was estimated to consist of approximately 5,500 combatants, 8,000 militia, 4,500 cadres, 33,000 hard core followers, and 200,000 sympathisers. It is estimated that one-fifth to one-third of cadre and combatants were women. CPN-M guerrillas operated in 68 of 75 districts of Nepal, and were strongest in the western and mid-western areas of the country.⁹

A ceasefire in May 2006 allowed for a military truce to be brokered, with a Peace Treaty signed in November 2006. The Maoists, now a legitimate political organisation, subsequently entered candidates in the 2008 Constituent Assembly elections.¹⁰

1.4.2 Death of Royal Family

On 1 June 2001, Crown Prince Dipendra killed his parents, the King and Queen of Nepal, and seven other members of the royal family before fatally shooting himself. The Prince – reportedly affected by drugs and alcohol – was believed to have had a bitter argument with his parents after they had opposed his plans to marry Devyani Rana.¹¹ Dipendra was crowned king while still in a coma, but he did not recover from his injuries, and died three days later. Dipendra's uncle, Gyanendra, was crowned on 4 June 2001.¹²

Gyanendra was considered to be much less popular than his late brother, who had introduced democracy and a constitutional monarchy to the country. Gyanendra's unpopularity increased in 2005, when he dismissed the government and assumed

⁷ 'Communist Party of Nepal-Maoist' (undated), South Asia Terrorism Portal website <http://www.satp.org/satporgtp/countries/nepal/terroristoutfits/index.html> – Accessed 31 March 2008; Curtis, T. 2004, 'Nepal' in *Revolutionary and Dissident Movements of the World*, ed. B. Szajkowski, 4th edn, John Harper, London, pp.345-347

⁸ Banks, A. et al. 2010, 'Nepal', *Political Handbook of the World*, CQ Press, Washington http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011

⁹ 'Communist Party of Nepal-Maoist' (undated), South Asia Terrorism Portal website <http://www.satp.org/satporgtp/countries/nepal/terroristoutfits/index.html> – Accessed 31 March 2008

¹⁰ 'Royalist' parties warn against extension' 2010, *Kathmandu Post*, 16 April <http://www.ekantipur.com/the-kathmandu-post/2010/04/16/Nation/Royalist-parties-warn-against-extension/207269/> – Accessed 14 April 2011

¹¹ 'Prince blamed for Nepal massacre' 2001, *BBC News*, 14 June http://news.bbc.co.uk/2/hi/south_asia/1387953.stm – Accessed 12 August 2011

¹² Central Intelligence Agency 2005, *The World Factbook – Nepal*, Central Intelligence Agency website, 10 February

absolute power. The King's actions led to the Maoists insurgents allying with mainstream political parties, which in turn led to the abolition of monarchy and introduction of Republicanism in 2008.¹³

1.4.3 Republic / Maoist Government

After numerous failed peace agreements, talks, and cease-fires, in January 2007 the CPN-M and the Seven-Party Alliance (SPA), representing the government, agreed to promulgate a draft interim constitution. A new unicameral interim parliament of 330 members was also formed, including 83 representatives of the CPN-M. In April 2008, elections were held for the new Constituent Assembly. The CPN-M won the most seats, 220 out of a total of 601, and formed a coalition government. Other major parties winning significant numbers of seats are as follows: the Nepali Congress won 110 seats; the Communist Party of Nepal-Unified Marxist-Leninist won 108 seats; the Madhesi People's Rights Forum Nepal (*Madhesi Janadhikar Forum – MJF*) won 52 seats; the Terai Madhesh Democratic Party (*Tarai Madhesh Loktantrik Party – TMLP*) won 20 seats; the National Democratic Party (*Rashtriya Prajatantra Party – RPP*) won eight seats; the Communist Party of Nepal-Marxist-Leninist won eight seats; and the Communist Party of Nepal-United won five seats.¹⁴

The new Constituent Assembly abolished the monarchy and declared Nepal a federal democratic republic. In January 2009, the CPN-M merged with the Communist Party of Nepal-Unity Centre-Masal, renaming itself the Unified Communist Party of Nepal-Maoist (UCPN-M), and formally renounced its ideology of *Prachandapath* – the adaptation of Maoist principles to Nepalese conditions. Prachanda was named Prime Minister on 18 August 2008, but resigned in May 2009 over disagreements on the role of the Maoists Peoples Liberation Army (PLA) in the Nepalese army. A new coalition government followed, with Madhav Kumar Nepal of the Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML) elected Prime Minister.¹⁵

1.4.4 New Government & Constitution

The time-frame for drafting the new constitution, the task of the Constituent Assembly, has been extended on three occasions. Delay has occurred because of the inability of the major parties to agree on a number of issues, primarily the level of compensation for the 19,000 Maoist combatants and their integration into the Nepal Army, as well as the question of federalism.¹⁶ In 2010, the RPP/RJP threatened to quit parliament and stage demonstrations if the major parties extended the timeframe of the constitutional

¹³ 'Nepal's royal massacre still a mystery 10 years on' 2011, *The Dawn*, source: *Agence France-Presse*, 31 May <http://www.dawn.com/2011/05/31/nepals-royal-massacre-still-a-mystery-10-years-on.html> – Accessed 12 August 2011

¹⁴ Banks, A. et al. 2010, 'Nepal', *Political Handbook of the World*, CQ Press, Washington http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011

¹⁵ Banks, A. et al. 2010, 'Nepal', *Political Handbook of the World*, CQ Press, Washington http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011

¹⁶ United Nations High Commissioner for Refugees 2011, '2011 UNHCR country operations profile – Nepal', UNHCR website <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487856> – Accessed 11 August 2011

negotiation/drafting process.¹⁷ The RPP has nevertheless continued to serve in the Constituent Assembly, having claimed that they are the only legitimate opposition.¹⁸ The RPP has also demanded that a referendum be held on federalism.¹⁹ Other parties also have concerns with federalism, and see the creation of a number of semi-autonomous cantons or 'states' as undermining national unity and a means by which the CPN-M hopes to buy support from potentially powerful ethnic groups such as the Madhesis from Nepal's Terai.²⁰

There have been four governments since Nepal was declared a Republic in 2009, the latest being a UCPN-M led coalition with Baburam Bhattarai as Prime Minister. Bhattarai succeeded Jhala Nath Khanal, who resigned in August 2011 when it became apparent that a new constitution and peace agreement would not be drafted as per the agreed timetable.²¹ The Bhattarai led coalition government was given until 30 November 2011 to finalise a draft constitution and formulate a new peace agreement. On 2 November, 2011, Bhattarai, and the leaders of the other major parties, announced that they had signed a deal which would allow for 6,500 Maoist combatants to be integrated into the Nepal Army, and the remaining combatants to receive compensation packages.²² At the time of writing, the parties had agreed to form a select committee to expedite the drafting of the constitution.²³

In late May 2012, Nepal's Constituent Assembly (CA) missed its fourth deadline since 2008 to reach an agreement on a new constitution.²⁴ *IRIN News* reported that "[u]nable to reach an agreement, the CA requested another three-month extension, but this was rejected by the Supreme Court on 24 May, which directed the government to promulgate a new constitution by the 27 May deadline".²⁵

¹⁷ '“Royalist” parties warn against extension’ 2010, *Kathmandu Post*, 16 April

<http://www.ekantipur.com/the-kathmandu-post/2010/04/16/Nation/Royalist-parties-warn-against-extension/207269/> – Accessed 14 April 2011

¹⁸ 'RPP-Nepal protest for CA dissolution and Hindu State revival' 2011, *Telegraph Nepal*, 30 August

<http://www.telegraphnepal.com/headline/2011-08-30/rpp-nepal-protest-for-ca-dissolution-and-hindu-state-revival.html> – Accessed 27 September 2011

¹⁹ International Crisis Group 2010, *Nepal's Political Rites of Passage*, Asia Report N°194, 29 September, p.29

²⁰ 'Maoists declare two more autonomous states in Nepal' 2009, BBC Monitoring Service, source:

Nepalnews.com, 13 December; 'Dahal courts Madhesi leaders' 2010, *Nepal News.com*, 20 July
<http://www.nepalnews.com/main/index.php/news-archive/2-political/7724-dahal-courts-madhesi-leaders.html> – Accessed 21 July 2010

²¹ 'Prime Minister Khanal steps down, finally' 2011, *The Himalayan Times*, 14 August

<http://www.thehimalayantimes.com/fullNews.php?headline=Prime+Minister+Khanal+steps+down%E2%80%900%9A+finally&NewsID=299296> – Accessed 15 August 2011; 'Bhattarai sworn in as 35th prime minister' 2011, *The Himalayan Times*, 30 August
<http://www.thehimalayantimes.com/fullNews.php?headline=Bhattarai+sworn+in+as+35th+prime+minister&NewsID=301052> – Accessed 30 August 2011

²² Chapagain, K. and Pun, K. 2011, '7-Point Peace Deal', *Republica*, 2 November

http://www.myrepublica.com/portal/index.php?action=news_details&news_id=37772 - Accessed 3 November 2011.

²³ 'Constitution to be endorsed in shortcut way', 2012, *The Himalayan Times*, 6 January

<http://www.thehimalayantimes.com/fullNews.php?headline=Constitution+to+be+endorsed+in+shortcut+way&NewsID=315558> – Accessed 20 January 2012

²⁴ 'Nepal: Political impasse deepens economic uncertainty' 2012, *IRIN News*, UNHCR Refworld, 30 May
<<http://www.unhcr.org/refworld/docid/4fc8ab2b2.html>> Accessed 13 June 2012

²⁵ 'NEPAL: Divided over federalism' 2012, *IRIN News*, 25 May

<<http://www.irinnews.org/Report/95526/NEPAL-Divided-over-federalism>> Accessed 13 June 2012

Failing to reach an agreement, and without the possibility of another extension, the President dissolved the CA at the end of May 2012; the Unified Communist Party Nepal – Maoist (UCPN-M) led coalition government and prime minister remain in power in ‘caretaker’ mode. Prime Minister Baburam Bhattarai has stated that elections for a new CA will take place in November 2012.²⁶

Speaking on *ABC Radio National’s* Rear Vision programme in late June 2012, the editor of the *Nepali Times*, Kunda Dixit described the political situation in Nepal as follows:

We are in complete limbo: the prime minister is a lame duck, the president is ceremonial, there is no constitution and we have to govern ourselves with an ad hoc interim constitution. There is no government because the ruling coalition is opposed by all the other 22 parties. So it’s a political paralysis at the moment and the prime minister has called for elections and the other parties have said, ‘We’ll boycott it.’ But I think that is a bargaining ploy. Essentially, according to the doctrine of necessity now, because there is no other laws in place, according to that doctrine you just have to now find a compromise which will be least harmful for the country at present and not lead the country towards anarchy. And that solution can only be government of national unity, led by the current prime minister or someone else—it doesn’t really matter, which will then work towards elections at some point in the future. I think November, which is the date that the prime minister gave, is just too early for that.²⁷

The primary reason for the now dissolved CA’s failure to reach a consensus on the final draft of the constitution is the differences between the three largest parties’ views on the form of federalism to be adopted. The UCPN-M supports the creation of provinces that grant autonomy to ethnic and low-caste groups, a model that would undermine the historical political dominance of the highest Hindu castes, the Brahmins, Thakuris and Chhetris.²⁸ According to Bertelsmann Stiftung, “the [Nepali Congress] NC and [Communist Party of Nepal – United Marxist Leninist] CPN-UML refuse the division of provinces on base of caste and ethnicity, maintaining that such a step might foster disintegration... The major political parties are unable to overcome their divergence on the future shape of the presidential system, the electoral mode to be adopted, and the modalities of constituting federal units, and risk political instability and a collapse of the transformation process”.²⁹

The UCPN-M is also experiencing its own internal divisions; in June 2012, the former senior-vice chairman of the party, Mohan Vaidya ‘Kiran’, split from the party, forming

²⁶ ‘PM Bhattarai dismisses demands for resignation; vows to hold election on Nov 22’ 2012, *Nepal News*, 25 June <<http://www.nepalnews.com/home/index.php/news/1/19708-pm-bhattarai-dismisses-demands-for-resignation-vows-to-hold-election-on-nov-22.html>> Accessed 2 July 2012; ‘PM tries to woo foreign envoys’ 2012, *The Himalayan Times*, source: *Himalayan News Service*, 11 June <<http://thehimalayantimes.com/fullNews.php?headline=PM+tries+to+woo+foreign+envoys+&NewsID=335716>> Accessed 12 June 2012; ‘NC leader says caretaker govt has no moral right to bring new budget’ 2012, *Nepal News*, 11 June <<http://www.nepalnews.com/home/index.php/news/1/19408-nc-leader-says-caretaker-govt-has-no-moral-right-to-bring-new-budget.html>> Accessed 13 June 2012; ‘BMF urges President Yadav to seek ways to remove PM Bhattarai’ 2012, *Nepal News*, 2 June <<http://www.nepalnews.com/home/index.php/news/2/19214-bmf-urges-president-yadav-to-seek-ways-to-remove-pm-bhattarai.html>> Accessed 13 June 2012

²⁷ Rear Vision 2012, ‘Nepal: A political vacuum’, *ABC Radio National*, 24 June

²⁸ Bertelsmann Stiftung 2012, *BTI 2012 – Nepal Country Report*, p.6; ‘Bahuns almost like Dalits due to govt discriminatory policy’ 2010, *Nepal News*, 27 January <<http://www.nepalnews.com/home/index.php/news/2/3771-bahuns-almost-like-dalits-due-to-govt-discriminatory-policy.html>> Accessed 17 May 2012

²⁹ Bertelsmann Stiftung 2012, *BTI 2012 – Nepal Country Report*, p.9

the Nepal Communist Party – Maoist (NCP-M).³⁰ An editorial in *The Himalayan Times* on 21 June 2012 suggested that the split within the Maoists has caused the UCPN-M to “softened its stance” and now the party “appears convinced of the need to build consensus”. The UCPN-M Chairman Pushpa Kamal Dahal ‘Prachanda’ has held meetings with the NC, the CPN-UML and the Madhesi Front regarding the creation of a government of national consensus until national elections can be held.³¹ *The Kathmandu Post* suggests that the greater flexibility on a national consensus government by the CPN-UML is the result of a directive from the party’s Chairman, Prachanda, rather than from Prime Minister Baburam Bhattarai.³²

An editorial in *Republica* argues that the consequences of the failure to promulgate a new constitution are yet to be fully understood; “[t]he fallout of the failure of the CA to carry out its responsibility will be clear in the days and weeks ahead. But a few things can be said for certain: the immediate post-CA climate is likely to be extremely fractious. Given the failure of the political actors across the board, it will also provide plenty of space for regressive forces”. Although not precisely identified, those ‘regressive forces’ are described as groups seeking to “destroy all achievements of post-2006 politics”.³³

1.4.5 Unrest in the Terai

Historical grievances and the current political situation in Nepal have seen the Nepali lowlands bordering India, known as the Terai, become highly restive, violent and lawless.³⁴ While nearly half of Nepal’s population lives in the Terai, the dominant ethno-linguistic group – the Madhesi – have never shared in political power. Until a 2006 amendment to the citizenship law, many Madhesi were not entitled to Nepali citizenship due to Nepali language requirements.³⁵

Following the abolition of the monarchy and the erosion of state power in the Terai, a number of armed Madhesi political and militant groups formed, advocating political and economic inclusion, ethno-regional autonomy, or secession from the state. These groups include: Janatantrik Terai Mukti Morcha (JTMM); the Madhesi Mukti Tigers (MMT); Samyukta Janatantrik Terai Mukti Morcha (SJTMM); Liberation Tigers of Terai Elam; the Terai Cobras; the Madhesi Virus Killers; the Terai Army; and the National Defence Army.³⁶ The United Democratic Madhesi Front (UDMF), a coalition of several Madhesi

³⁰ ‘Interview: Nepal on the brink of another ‘people’s war’ 2012, *Deutsche Welle*, 25 June <<http://www.dw.de/dw/article/0,,16049292,00.html?maca=en-rss-en-asia-5133-rdf>> Accessed 2 July 2012

³¹ ‘Political consensus’ 2012, *The Himalayan Times*, 21 June <<http://thehimalayantimes.com/fullNews.php?headline=Political+consensus&NewsID=336864>> Accessed 2 July 2012; ‘First meeting of major parties after CA’s demise discusses possibilities of consensus’ 2012, *Nepal News*, 20 June <<http://www.nepalnews.com/home/index.php/news/1/19608-first-meeting-of-major-parties-after-cas-demise-discusses-possibilities-of-consensus-.html>> Accessed 21 June 2012

³² Bhattarai, KD 2012, ‘Dahal, Bhattarai at odds over key political issues’, *The Kathmandu Post*, 1 July <<http://www.ekantipur.com/the-kathmandu-post/2012/07/01/nation/dahal-bhattarai-at-odds-over-key-political-issues/236660.html>> Accessed 2 July 2012

³³ CA’s demise 2012, *Republica*, 28 May <http://myrepublica.com/portal/index.php?action=news_details&news_id=35603> Accessed 13 June 2012

³⁴ International Crisis Group 2007, *Nepal’s Troubled Tarai Region*, Asia Report N°136, 9 July, p.i

³⁵ ‘NEPAL: Tension in south could lead to war, analysts warn’ 2007, *IRIN News*, 9 April <<http://www.irinnews.org/Report.aspx?ReportId=71235>> – Accessed 19 July 2010

³⁶ ‘NEPAL: Small arms fill power vacuum’ 2008, *IRIN News*, 14 May <<http://www.irinnews.org/Report.aspx?ReportId=78188>> – Accessed 19 July 2010

political groups, which had demanded the creation of a single federal state encompassing the entire Terai plain, is now seeking the creation of two separate states instead. The UDMF is allied with Tharuhat Samyukta Sangharsha Samiti (TSSS) and Tharu Kalyankarini Sabha (TKS), which represent the Tharu peoples, a linguistic group which also resides in the Terai.³⁷ A Defence Minister in the Bhattari government, Sharad Singh Bhandari, was forced to resign in October 2011 after he had stated publicly that if the 22 districts of the Terai wanted to succeed from Nepal, they could not be stopped.³⁸

Militant groups and criminal gangs have taken advantage of the power vacuum in the Terai, and the relative absence of law and order has resulted in increases in the numbers of killings, kidnappings, rapes, shootings and bombings.³⁹ Armed groups in the Terai have attacked civilians, government officials, members of ethnic groups, each other, and Maoist militias.⁴⁰ In 2010, armed groups in the Terai were believed to be responsible for killing more than 21 people; of a reported 185 abductions in Nepal in 2010, most were for ransom and occurred in the Terai.⁴¹ Unrest has continued in 2011. Public buses were targeted in a series of bombing attacks in March.⁴² In July a man was found beheaded and mutilated, allegedly the victim of inter-gang violence.⁴³ In September, a police officer was shot in the head during a shoot-out with members of the JTMM.⁴⁴ Also in September a Chinese business was bombed.⁴⁵ Despite claims that security in the Terai has been bolstered⁴⁶, police are generally unable to fully enforce law and order; for instance, their ability to patrol the region and respond to requests for help is hindered by a shortage of motor vehicles..⁴⁷ The Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) has nevertheless alleged that police in the Terai are guilty of perpetrating and covering-up human rights abuses. Between January 2008 and June 2010, 39 incidents of extra-judicial killings by police and Nepal Army officers were

³⁷ Ansari, G. 2011, 'Madhesi parties to drop one state demand', *Republica*, 1 November http://www.myrepublica.com/portal/index.php?action=news_details&news_id=37747 - Accessed 4 November 2011.

³⁸ 'Nepal PM sacrifices defence minister ahead of India trip', 2011, *The Times of India*, 19 October http://articles.timesofindia.indiatimes.com/2011-10-19/south-asia/30297041_1_bhandari-party-office-madhesi-parties - Accessed 4 November 2011.

³⁹ 'NEPAL: Small arms fill power vacuum' 2008, *IRIN News*, 14 May <http://www.irinnews.org/Report.aspx?ReportId=78188> - Accessed 19 July 2010

⁴⁰ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Introduction

⁴¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Sections 1.a, 1.b

⁴² Parashar, U. 2011, 'Nepal blasts threaten fragile peace', *Hindustan Times*, 28 March <http://www.hindustantimes.com/Nepal-blasts-threaten-fragile-peace/Article1-678471.aspx> - Accessed 4 November 2011.

⁴³ 'Unknown gang beheaded, cut penis of cadre of Terai armed outfit' 2011, *Nepal Mountain News*, 8 July <http://www.nepalmountainnews.com/cms/?p=31633> - Accessed 4 November 2011.

⁴⁴ 'Two Killed in Bara shootout', 2011, eKantipur.com website, 19 September <http://www.ekantipur.com/2011/09/19/top-story/two-killed-in-bara-shootout/341032/> - Accessed 4 November 2011.

⁴⁵ 'Terai, the first attack on Chinese industry' 2011, *Spero News*, 6 September <http://www.speroforum.com/a/59803/Nepal--China---Terai-the-first-attack-on-Chinese-industry> - Accessed 4 November 2011

⁴⁶ 'NEPAL: Small arms fill power vacuum' 2008, *IRIN*, 14 May <http://www.irinnews.org/Report.aspx?ReportId=78188> - Accessed 19 July 2010

⁴⁷ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 1.g; for lack of motor vehicles see: Puri, S. 2011, 'Security fear in Tarai (Terai)', *Kathmandu Post*, 31 October <http://www.ekantipur.com/the-kathmandu-post/2011/10/31/nation/security-fear-in-tarai/227698.html> - Accessed 4 November 2011.

reported in the Terai region. Officers typically justify their actions by claiming ‘self-defence’. Witnesses have tended to allege, however, that the victims were not armed, or were shot only after being placed under arrest.⁴⁸ The Nepal government has been accused of ignoring evidence of extra-judicial killings provided by the OHCHR-Nepal and other Non-Government Organisations, and in a May 2011 statement, the Asian Legal Resource Centre expressed concern that extra-judicial killings continued to occur in the Terai region.⁴⁹

⁴⁸ UN Office of the High Commissioner for Human Rights in Nepal 2010, *Investigating Allegations of Extra-Judicial Killings in the Terai*, July <http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf> - Accessed 4 November 2011.

⁴⁹ Asian Human Rights Commission 2011, ‘Nepal: Authorities failing to address extra-judicial killings’, 17 March <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc17/ALRC-CWS-17-03-2011> - Accessed 4 November 2011; and also Asian Human Rights Commission 2011, ‘Review of the UPR recommendations-2 extra judicial killings’ 2 June <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-072-2011> - Accessed 4 November 2011.

Section 2: Political Parties

2.1 Communist Party of Nepal-Maoists

The Communist Party of Nepal-Maoists (CPN-M) was established in 1994 by a faction of the Communist Party of Nepal-Unity Centre. In 1996, the CPN-M initiated a ten-year 'People's War' insurgency aimed at overthrowing the monarchy. The CPN-M was led by Pushpa Kamal Dahal, better known as Comrade Prachanda, and Baburam Bhattarai.⁵⁰ Following a merger with the Communist Party of Nepal-Unity Centre-Masal, the CPN-M renamed itself the Unified Communist Party of Nepal-Maoist (UCPN-M). Prachanda served as Prime Minister between August 2008 and May 2009.⁵¹ In August 2011, Baburam Bhattarai was sworn in as Nepal's 35th Prime Minister.⁵²

An October 2005 International Crisis Group report provides information on the aims, structure and strategy of the Maoists during the insurgency. The party had 'overall responsibility for all activities related to the 'people's war' and for the development of policy'. The People's Liberation Army (PLA) was under the party's full control, and was responsible for offensive operations against the enemy and defensive arrangements. The chairman of the party was also the supreme commander of the PLA. The United People's Revolutionary Council Nepal was the central body of the united front, which the Maoists 'fashioned partly as a revolutionary tool and partly as a central people's government in waiting'. The Maoist strategy was of a protracted people's war, both political and military.⁵³

During the civil war, Maoists were accused of extorting money from opponents and businesses to fund the insurgency.⁵⁴ In its 2010 Human Rights Report, the US Department of State reported that extortion continued to occur despite the formal end of hostilities:

Maoists and Maoist-affiliated organizations continued to commit abuses during the year in contravention of the CPA. Maoists regularly extorted money from businesses, workers,

⁵⁰ 'Communist Party of Nepal-Maoist' (undated), South Asia Terrorism Portal website <http://www.satp.org/satporgtp/countries/nepal/terroristoutfits/index.html> – Accessed 31 March 2008; Curtis, T. 2004, 'Nepal' in *Revolutionary and Dissident Movements of the World*, ed. B. Szajkowski, 4th edn, John Harper, London, pp.345-347

⁵¹ Banks, A. et al. 2010, 'Nepal', *Political Handbook of the World*, CQ Press, Washington http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011

⁵² 'Bhattarai sworn in as 35th prime minister' 2011, *The Himalayan Times*, 30 August <http://www.thehimalayantimes.com/fullNews.php?headline=Bhattarai+sworn+in+as+35th+prime+minister&NewsID=301052> – Accessed 30 August 2011

⁵³ International Crisis Group 2005, *Nepal's Maoists: Their Aims, Structure and Strategy*, Asia Report No. 104, 27 October, Executive Summary & p. 7

⁵⁴ International Crisis Group 2006, 'Nepal's Peace Agreement: Making it Work: Executive Summary and Recommendations', International Crisis Group website, 15 December <http://www.crisisgroup.org/en/regions/asia/south-asia/nepal/126-nepals-peace-agreement-making-it-work.aspx> - Accessed 22 November 2011; US Department of State 2006, Country Reports on Human Rights Practices 2005, 8 March: "Maoists regularly extorted money from businesses and workers, as well as NGOs. When individuals or companies refused or were unable to pay, Maoist recrimination frequently was violent."

private citizens, and NGOs. When individuals or companies refused or were unable to pay, Maoists retaliated violently or threatened violence.⁵⁵

Extortion may take the form of demanding that people or organisations ‘donate’ to the Maoist party.⁵⁶ Extortion by Maoists continued to be an issue in 2011.⁵⁷ It should be noted, however, that groups other than the Maoists have been accused of extortion in 2011.⁵⁸

2.2 Communist Party of Nepal–Unified Marxist-Leninist

The Communist Party of Nepal–Unified Marxist-Leninist (CPN-UML) has been described as a moderate left party that has rejected the concepts of one-party dictatorship in favour of a competitive democratic system.⁵⁹ Following the establishment of the multi-party system in 1990, the former Communist Party of Nepal–Marxist-Leninist and the Communist Party of Nepal–Marxist merged in 1991 into the CPN-UML.⁶⁰

The CPN-UML is a cadre-based party, and party workers have been accused of behaving like “democrats or deviationists” due to the belief promulgated by the late leader Madan Bhandari that power can be attained through elections by defeating rival bourgeois parties. It is currently led by Jhala Nath Khanal.⁶¹

Prime Minister Jhala Nath Khanal took office in February 2011, but resigned in August 2011, after failing to progress the peace process, and without the completion of the draft constitution.⁶²

⁵⁵ US Department of State 2011, Country Reports on Human Rights Practices 2010 – Nepal, 8 April

⁵⁶ Parashar, U. 2010, ‘In Nepal Maoists’ dictionary extortion means donation’, *Hindustan Times*, 22 November <http://www.hindustantimes.com/world-news/Nepal/In-Nepal-Maoists-dictionary-extortion-means-donation/Article1-538574.aspx> - Accessed 22 November 2011; Paudel, S. and Hamal, C. 2010, ‘Maoists’ extortion terror grips country’, *Republica*, 28 April http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=18043 - Accessed 22 November 2011.

⁵⁷ ‘Extracts from Incidents involving Communist Party of Nepal–Maoist 2011’ 2011, *South Asian Terrorism Portal* website http://www.satp.org/satporgtp/countries/nepal/terroristoutfits/cpn_2011.html - Accessed 23 November 2011.

⁵⁸ Rai, R. 2011, ‘Auto dealers in Dharan protest extortion’, *Republica*, 22 November http://www.myrepublica.com/portal/index.php?action=news_details&news_id=38680 - Accessed 23 November 2011; ‘Stop extortion: Dharan tycoons’ 2011, *The Himalayan Times*, 24 August <http://www.thehimalayantimes.com/fullNews.php?headline=Stop+extortion%3A+Dharan+tycoons&NewsID=300509> - Accessed 23 November 2011.

⁵⁹ Sharma, J. 2007, ‘Political Parties, Civil Society, and Electoral System in Nepal’, FES-Nepal website http://www.fesnepal.org/reports/2007/seminar_reports/Cets_papers/paper_JanSharma.pdf - Accessed 21 February 2008

⁶⁰ ‘Polarisation and Integration’ (undated), Communist Party of Nepal–United Marxist-Leninist website <http://www.cpnml.org/en/polarisation.php> - Accessed 11 August 2011

⁶¹ ‘Major Political Parties’ (undated), Nepal Democracy website http://www.nepaldemocracy.org/institutions/major_parties.htm#cpnml - Accessed 11 August 2011

⁶² ‘Prime Minister Khanal steps down, finally’ 2011, *The Himalayan Times*, 14 August <http://www.thehimalayantimes.com/fullNews.php?headline=Prime+Minister+Khanal+steps+down%E2%80%9A+finally&NewsID=299296> - Accessed 15 August 2011

2.3 Nepali Congress

The Nepali Congress was formed in exile in India in 1946 as a result of a merger between the Nepali National Congress and the Nepal Democratic Party. Its original objectives were the overthrow of the century-old Rana regime, the end of feudalism, and the establishment of a democratic system of government with a constitutional monarchy. In 1956, the Nepali Congress adopted democratic socialism as its ideology for socio-economic transformation.⁶³

Following an illegal national convention in 1985, the Nepali Congress launched a civil disobedience movement to press for the release of political prisoners and for party legalisation. In 1990, widespread popular agitation led to the Nepali Congress President, K.P. Bhattarai, being asked to head a coalition government, pending an election in May 1991. The Nepali Congress remained in government until 2002, when the King dissolved the House of Representatives and installed the National Democratic Party. Nepali Congress returned to government in April 2008.⁶⁴ In 2009, following the resignation of the Maoist-led government, the Nepali Congress formed a coalition government with the Communist Party of Nepal-Unified Marxist-Leninist and several smaller parties.⁶⁵ As of September 2011, the Nepali Congress is once again in opposition, with the UCPN-M and the United Democratic Madhesi Front entering into coalition government in August 2011.⁶⁶

2.4 Rashtriya Prajatantra Party

The Rashtriya Prajatantra Party (RPP – National Democratic Party) is a monarchist political party that advocates constitutional monarchy and economic liberalism. The party's three main ideological pillars are nationalism, democracy and liberalism.⁶⁷ The RPP was established in the 1990s with the merger of two right-wing pro-monarchist parties led by S.B. Thapa and L.B. Chand. Tensions between the two leaders led to the resignation of Thapa and the formation of his own party, the Rashtriya Janshakti Party (RJP), in March 2005. In Nepal's most recent elections, held in April 2008, the RPP won eight seats in the 601 seat Constituent Assembly. In June 2009 the RPP joined the Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML) led government.⁶⁸

⁶³ 'Nepali Congress History' (undated), Nepali Congress website

<http://www.nepalicongress.org/index.php?linkId=3> – Accessed 21 June 2011

⁶⁴ Banks, A. et al. 2010, 'Nepal', *Political Handbook of the World*, CQ Press, Washington

http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011

⁶⁵ Central Intelligence Agency 2011, *The World Factbook – Nepal*, Central Intelligence Agency website, 14 June <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html> – Accessed 21 June 2011

⁶⁶ 'PM Dr Bhattara, DPM Gachhadar sworn-in' 2011, *The Himalayan Times*, 29 August

<http://www.thehimalayantimes.com/fullNews.php?headline=PM+Dr.+Bhattarai%E2%80%9A+DPM+Gachhadar+sworn-in&NewsID=300969> – Accessed 2 September 2011

⁶⁷ 'About RPP' (undated), Rashtriya Prajatantra Party website

<http://www.rppnepal.com/channels/aboutus.htm> – Accessed 17 July 2007

⁶⁸ Banks, A. et al. 2010, 'Nepal', *Political Handbook of the World*, CQ Press, Washington

http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011; 'Rastriya Prajatantra Party (RPP)' (undated), Nepal Election Portal website

<http://deannepal.org/election/EN/political-parties/partydetails/rpp.php> – Accessed 18 August 2010; DIAC

The Department of Foreign Affairs and Trade (DFAT) advised in 2009 that: ‘the RPP...is not seen to be a significant political force’.⁶⁹ While both the RPP and the RJP advocate constitutional monarchy, the RJP does not publicly advocate the restoration of Nepal as a Hindu state. The RPP and RJP reunited in February 2010, and the ideology of the new entity, known as the Rastriya Shakti Prajatantra Party (RSPP), seems to be centrist.⁷⁰ The RSPP also seems to be more supportive of the process to draft a permanent constitution than the RPP-N.⁷¹ Despite the merging of the two parties, and the use of a new party name, the Nepali media continue to use the acronyms RPP and RJP.⁷²

2.5 Rastriya Prajatantra Party-Nepal

In January 2006, a pro-monarchy off-shoot of the RPP known as the Rastriya Prajatantra Party-Nepal (RPP-N) was formed after RPP leader Chand indicated that the party would support ‘pro-democracy agitation’. In Nepal’s most recent elections, held in April 2008, the RPP-N won four seats in the 601 seat Constituent Assembly.⁷³

Of the two RPP parties, the RPP-N appears to be the more devoted to the restoration of the monarchy. This may be due to the fact that under former King Gyanendra, the RPP-N enjoyed a level of power it no longer enjoys in the democratic republic; after Gyanendra deposed the democratic government in 2005, the RPP-N participated in the government appointed by the King. In 2008 the RPP-N was the only parliamentary party that voted against the re-constitution of Nepal as a republic. Since 2008, the party has continually advocated a national referendum on the restoration of Nepal as a monarchy and Hindu state.⁷⁴

Although support for the former King, Gyanendra, or for monarchy in general, seems to be relatively modest in Nepal, the ICG believes that the RPP-N deliberately links the end

Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009), 5 August

⁶⁹ DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009), 5 August

⁷⁰ ‘RJP and RPP merge into new party’ 2010, *Republica*, 6 February
http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=14840 - Accessed 7 November 2011.

⁷¹ ‘‘Royalist’ parties warn against extension’ 2010, *Kathmandu Post*, 16 April
<http://www.ekantipur.com/the-kathmandu-post/2010/04/16/Nation/Royalist-parties-warn-against-extension/207269/> – Accessed 14 April 2011

⁷² For use of RPP see: ‘RPP Chief dismisses BIPPA critics as fundamentalists’ 2011, *The Himalayan Times*, 26 October
<http://www.thehimalayantimes.com/fullNews.php?headline=RPP+chief+dismisses+BIPPA+critics+as+fundamentalists&NewsID=307021> - Accessed 7 November 2011; For RJP see: ‘Top leaders seem laid-back about peace, statute writing’, 2011, *The Kathmandu Post*, 26 October <http://www.ekantipur.com/the-kathmandu-post/2011/10/26/nation/top-leaders-seem-laid-back-about-peace-statute-writing/227603.html> - Accessed 7 November 2011.

⁷³ Banks, A. et al. 2010, ‘Nepal’, *Political Handbook of the World*, CQ Press, Washington
http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011; ‘Rastriya Prajatantra Party (RPP)’ (undated), Nepal Election Portal website
<http://deannepal.org/election/EN/political-parties/partydetails/rpp.php> – Accessed 18 August 2010; DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009), 5 August

⁷⁴ Banks, A. et al. 2010, ‘Nepal’, *Political Handbook of the World*, CQ Press, Washington
http://library.cqpress.com/phw/document.php?id=phw2010_Nepal&type=toc&num=5 – Accessed 3 May 2011

of the monarchy with the end of Nepal as a Hindu state, an issue that concerns many in the Hindu majority country.: '[r]oyalists are trying to link their issue with the end of Nepal as a Hindu state; uneasiness with the latter is more widespread than nostalgia for the king'.⁷⁵ The logic would appear to be that the RPP-N is attempting to broaden its appeal by capitalising on common religious anxieties. In May 2011, it was claimed that the RPP-N has only 'meagre popular support'.⁷⁶

⁷⁵ International Crisis Group 2011, *Nepal: Identity Politics and Federalism*, Crisis Group Asia Report N°199, 13 January, p.20

⁷⁶ 'Kamal Thapa's Change of Heart: Distancing from Nepal Monarchy Revival' 2011, *Telegraph Nepal*, 7 May <http://www.telegraphnepal.com/headline/2011-05-07/kamal-thapas-change-of-heart:-distancing-from-nepal-monarchy-revival> – Accessed 9 May 2011

Section 3: Youth Militias

While the Carter Center reported in February 2011 that '[p]olitical party youth wings have the potential to play a positive role in Nepal', they acknowledged that in reality, youth militias tend to engage in 'activities that undermine political space, development, and public security'.⁷⁷ In addition to acts of violence and intimidation against the broader community, youth militia cadres often target rival militia.⁷⁸

3.1 Young Communist League

The Young Communist League (YCL) is the youth wing of the Unified Communist Party of Nepal-Maoist (UCPN-M), and is the largest of the political party youth wings. The organisational structure of the YCL mirrors the UCPN-M's structure, with directives flowing from the YCL central level down through several committee layers. The activities of the YCL are also directed by the leadership of the UCPN-M and coordinated at a peer level with the youth wing. There is generally strong coordination between the party and the youth wing.⁷⁹

Although the YCL was built on the former 'people's militia', its set-up and purpose was significantly different. According to International Crisis Group, the YCL's purpose:

was not to fight the security forces, but to provide the Maoists with muscle in everyday politics. Organisation and deployment vary widely. In some areas, YCL cadres live together in rented or captured buildings and are involved in parallel policing. But it is difficult to describe the YCL as paramilitary. Camps still appear to be few and far between and in many districts YCL cadres are far less organised.⁸⁰

In the lead up to the 2008 Constituent Assembly election in Nepal, the YCL was implicated in extortion, intimidation and violent activities. Carter Center observers noted many reports of negative youth wing activities, primarily involving the YCL:

aimed at obtaining financial gain and which have the effect of undermining political space, development, and public security... In many districts, the YCL and, to a lesser extent, the UML Youth Force, have interfered in contract tender processes, been complicit in smuggling, solicited forced donations, and engaged in violent clashes. Additionally, in some districts, YCL has used intimidation and violence to control political space.⁸¹

⁷⁷ The Carter Center 2011, 'Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain', The Carter Center website, 28 February, p.1 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf – Accessed 17 March 2011

⁷⁸ 'Tarun Dal involves murdering Youth Force cadre' 2011, *Nepal Everest News*, 29 August <http://www.nepaleverestnews.com/en/?p=2453> – Accessed 2 September 2011

⁷⁹ The Carter Center 2011, 'Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain', The Carter Center website, 28 February, pp. 1 & 25 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf – Accessed 17 March 2011

⁸⁰ International Crisis Group 2010, *Nepal's Political Rites of Passage*, Asia Report N°194, 29 September, pp. 9-10

⁸¹ The Carter Center 2011, 'Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain', The Carter Center website, 28 February, pp. 1, 3, 4 & 8 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf – Accessed 17 March 2011

As part of the peace agreement signed in November 2011, the Maoists agreed to: “dissolve the paramilitary structure of the Young Communist League.”⁸²

3.2 Youth Force

The Youth Force is the youth wing of the CPN-UML.⁸³ It was established after the 2008 Constituent Assembly election to counter YCL activities, though all Youth Force activities were reportedly suspended in December 2008 ‘due to concerns about negative activities’, though the Youth Force seems to have remained active in several districts⁸⁴ In December 2009, the Youth Force was officially absorbed into the CPN-UML, and renamed the Youth Federation Nepal (YFN). Despite this, the group is generally still referred to as the Youth Force.⁸⁵

The Youth Force, like other youth militias, is regularly accused of engaging in violent activities and acts of intimidation against the community. In mid-2011, a newspaper article identified the Youth Force as being responsible for an attack against an individual facing a court hearing. Youth Force activists reportedly assaulted the journalist responsible for the article as retribution.⁸⁶ Police later arrested Youth Force chairman Mahesh Basnet for protecting a suspected attacker, resulting in Youth Force cadres disrupting local transport services and shutting down marketplaces.⁸⁷

3.3 Nepal Students Union / Tarun Dal

Both the Nepal Students’ Union (NSU) and Tarun Dal have been referred to separately as the youth wing of the Nepali Congress. The NSU website claims the group subscribes to the principles of nationality, democracy, socialism, and student unity.⁸⁸ The NSU has been described as a ‘prominent students union, associated with Nepali Congress’.⁸⁹

⁸² Chapagain, K. and Pun, K. 2011, ‘7-Point Peace Deal’, *Republica*, 2 November http://www.myrepublica.com/portal/index.php?action=news_details&news_id=37772 - Accessed 3 November 2011.

⁸³ ‘Youth Force chairman Basnet in police net’ 2011, *The Himalayan Times*, 16 June <http://www.thehimalayantimes.com/fullNews.php?headline=Youth+Force+chairman+Basnet+in+police+net&NewsID=291993> - Accessed 2 September 2011

⁸⁴ The Carter Center 2011, ‘Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain’, The Carter Center website, 28 February, p.1 no.1 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf - Accessed 17 March 2011

⁸⁵ The Carter Center 2011, ‘Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain’, The Carter Center website, 28 February, p.2 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf - Accessed 17 March 2011

⁸⁶ ‘UML’s Youth Force assaults journalists’ 2011, *Kathmandu Post*, 6 June <http://www.ekantipur.com/2011/06/06/national/umls-youth-force-assaults-journalist/335274.html> - Accessed 2 September 2011

⁸⁷ ‘Youth Force chairman Basnet in police net’ 2011, *The Himalayan Times*, 16 June <http://www.thehimalayantimes.com/fullNews.php?headline=Youth+Force+chairman+Basnet+in+police+net&NewsID=291993> - Accessed 2 September 2011

⁸⁸ ‘Nepal Students’ Union – Introduction’ 2009, Nepal Students Union website, 28 November http://www.nsu.org.np/index.php?option=com_content&view=article&id=46&Itemid=53 - Accessed 6 July 2011

⁸⁹ ‘Nepal parties wary of Prachanda’s demand for top posts’ 2008, *The Hindu*, source: PTI, 31 May <http://www.hindu.com/thehindu/holnus/003200805311441.htm> - Accessed 7 July 2011

In February 2011, Nepali Congress youth leaders called for the Tarun Dal central committee to be dissolved, accusing the leadership of incompetence.⁹⁰ Such calls were repeated in April 2011, with the Tarun Dal president facing accusations of impeding the organisation's revitalisation.⁹¹ On 11 April 2011, the NC formally decided to dissolve the NSU central committee, replacing it with a three-member panel.⁹²

3.4 Youth Volunteers

Following the precedents set by the major political parties in Nepal, in August 2010 the RPP announced the formation of its youth wing, the Youth Volunteers (YV). According to former Prime Minister and RPP Chairman Lokendra Bahadur Chand, the party was compelled to form the youth front to cope with increasing 'injustice and tyranny'. He further claimed that the group's purpose was not to participate in communal violence, but rather to 'resolve the problems surfacing in the nation'. The YV was formed in Bhaktapur, where an estimated 2000 local youths were initially associated with the group.⁹³ Senior RPP official Buddhiman Tamang was quoted as saying that the YV would work as a 'safety cover' for the party and would undertake social works. Tamang also stated that the group would 'hit back whenever there is an attack on the party members'.⁹⁴

⁹⁰ 'Tarun Dal leaders want organisation dissolved' 2011, *The Kathmandu Post*, 24 February <http://www.ekantipur.com/the-kathmandu-post/2011/02/24/nation/tarun-dal-leaders-want-organisation-dissolved/218785.html> – Accessed 7 July 2011

⁹¹ 'Revitalise Tarun Dal' 2011, *The Himalayan Times*, 4 April <http://www.thehimalayantimes.com/fullNews.php?headline=%C2%B4Revitalise+Tarun+Dal%C2%B4&NewsID=283844> – Accessed 7 July 2011

⁹² 'NSU central body to be dissolved' 2011, *The Himalayan Times*, 11 April <http://www.thehimalayantimes.com/fullNews.php?headline=NSU+central+body+to+be+dissolved+&NewsID=283482> – Accessed 27 September 2011

⁹³ 'RPP on big parties' youth wing footsteps' 2010, ekantipur website, 21 August <http://www.ekantipur.com/2010/08/21/top-story/rpp-on-big-parties-youth-wing-footsteps/320918.html> – Accessed 7 July 2011

⁹⁴ 'RPP Unveils its Youth Wing' (undated), *Greatway Magazine* online, 21 August http://greatwaymag.com/detail.php?article_id=3009&cat_id=7 – Accessed 7 July 2011

Section 4: State Protection

4.1 Security Forces

Corruption and impunity remain problems within the security forces in Nepal.⁹⁵ In a 2010 report, the OHCHR-Nepal alleged that members of the Nepal Army (NA) were responsible for a number of extra-judicial killings, especially in the Terai region.⁹⁶ The government of Nepal has “objected to [the OHCHR-Nepal] report in its totality.”⁹⁷ However, in its response to the UN Working Group on the Universal Periodic Review of Nepal in June 2011, the government of Nepal stated that:

The Government of Nepal is committed to bring to an end all extrajudicial activities...the allegations of extrajudicial killings will comprehensively be addressed upon the passage of the Civil Code Bill, Penal Code Bill, Civil and Criminal Procedures Codes Bill and Sentencing Bill, which has already been tabled in the Legislature (sic) Parliament.⁹⁸

At the time of writing, the laws cited above had not yet been passed by the Constituent Assembly. Further to allegations of extra-judicial killings, the NA has been accused of torture, and a report by Advocacy Forum-Nepal indicates that incidents of torture have continued in 2011.⁹⁹ The UN Special Rapporteur on Torture has stated that, among military officials in Nepal, torture was viewed as “acceptable in some situations”.¹⁰⁰ The NA resists accountability for its actions, and the police rarely file cases of human rights violations against NA personnel. Police report that the army refuses to allow them onto army bases, and police have been pressured and threatened to not open investigations against the army.¹⁰¹ The OHCHR-Nepal has claimed that, in cases in which the NA was allegedly responsible for extra-judicial killings, the army either refused to cooperate with police, or pressured the victim’s family to withdraw the complaint.¹⁰² Authorities have

⁹⁵ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 1.d

⁹⁶ UN Office of the High Commissioner for Human Rights in Nepal 2010, *Investigating Allegations of Extra-Judicial Killings in the Terai*, July
<http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf> - Accessed 4 November 2011.

⁹⁷ UN Human Rights Council 2011, *Report of the Working Committee on the Universal Periodic Review*, 8 March <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement> - Accessed 7 November 2011.

⁹⁸ UN Human Rights Council 2011, *Report of the Working Committee on the Universal Periodic Review – Addendum*, 1 June
http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/A_HRC_17_5_Add.1_Nepal_E.pdf - Accessed 7 November 2011.

⁹⁹ Advocacy Forum-Nepal 2011, *Torture Briefing: Prevention of Torture in Nepal: January to June 2011*, pp.6, 8-9 <http://www.advocacyforum.org/downloads/pdf/publications/briefing-jan-to-june-2011.pdf> - Accessed 7 November 2011.

¹⁰⁰ Nowak, M. 2010, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, Office of the High Commissioner for Human Rights website, 26 February
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/116/20/PDF/G1011620.pdf?OpenElement> - Accessed 23 November 2011.

¹⁰¹ Human Rights Watch 2010, *World Report 2010 – Nepal*, 20 January; ‘UN rights office calls for army cooperation in investigating deaths’ 2010, *United Nations News Service*, 25 March
<http://www.reliefweb.int/rw/rwb.ns f/db900SID/MUMA-83W4S7?OpenDocument&RSS20=02-P> – Accessed on 29 March, 2010.

¹⁰² UN Office of the High Commissioner for Human Rights in Nepal 2010, *Investigating Allegations of Extra-Judicial Killings in the Terai*, July, p.9

failed to action court-ordered arrests of military personnel accused of human rights violations,¹⁰³ and are often reluctant to punish militia members for politically-motivated violence.¹⁰⁴ By the end of 2010, no government officials or Maoists had been prosecuted for disappearances during the civil war. In addition, none of the approximately dozen members of the Youth Communist League accused of killing a Youth Force member had been arrested.¹⁰⁵ In 2011, the Maoist led Bhattarai government announced a general amnesty for those accused of war crimes during the civil war.¹⁰⁶ The declaration has been criticised by Human Rights' groups and the Nepali Congress Party.¹⁰⁷

4.2 Police

It is generally accepted that Nepalese police lack basic resources, are poorly trained and equipped, and are relatively few compared to the population and terrain. According to the International Crisis Group, the transitional political situation has 'politicised policing – from policy decisions, promotions and transfers to pressure to release suspects or drop cases'. Special policies on policing implemented by both the Maoist-led and UML-led governments have reportedly shown mixed results. While a special security plan (SSP) increased numbers of police and posts, 'most commentary on the SSP has become negative, pointing out that high hopes failed to materialise in practice'.¹⁰⁸

Corruption and impunity also remain problems within the National Police (NP), and there are regular reports of bribery and police abuse. A severe shortage of senior-level officers has resulted in untrained constables at the district level making decisions and policies outside their authority and without supervision from officers. This has provided fertile ground for corruption, bribery, misinterpretation, and abuse of authority.¹⁰⁹ In 2011, the US Department of State (USDOS) reported that Nepalese police 'did not respond to most incidents of violence, particularly events involving Maoists and armed

<http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf> - Accessed 4 November 2011.

¹⁰³ Amnesty International 2011, *Annual Report 2011 – Nepal*, 13 May

¹⁰⁴ Freedom House 2010, *Countries at the Crossroads 2010 – Nepal*, UNHCR REFworld, 7 April, pp.13-14 <http://www.unhcr.org/refworld/docid/4be3c8ce0.html> - Accessed 19 July 2010

¹⁰⁵ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 1.a, 1.b

¹⁰⁶ Wakefield, M. 2011, 'Nepal's New Prime Minister Grants Impunity for Civil War Crimes', Center for Human Rights and Humanitarian Law website, 3 November

<http://hrbrief.org/2011/11/nepal%E2%80%99s-new-prime-minister-grants-impunity-for-civil-war-crimes/> - Accessed 7 November 2011.

¹⁰⁷ Amnesty International, et al. 2011, *Accountability for Human Rights and Concerns over proposed Withdrawals and Amnesties*, 2 September

<http://www.amnesty.org/en/library/asset/ASA31/009/2011/en/1a677195-7017-47a9-bfb1-1f018996b134/asa310092011en.pdf> - Accessed 7 November 2011; and: 'NC against amnesty to political convicted' 2011, *Nepal Mountain News*, 14 September

<http://www.nepalmountainnews.com/cms/?p=38417> - Accessed 7 November 2011.

¹⁰⁸ International Crisis Group 2010, *Nepal's Political Rites of Passage*, Asia Report N°194, 29 September, pp. 29-33 & 36

¹⁰⁹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 4

groups in the Terai'. On occasions when perpetrators were detained by police, political leaders 'sometimes pressured the NP to release detainees'.¹¹⁰

Many regions of Nepal have little or no police presence. A 2009 survey found that only 54 per cent of Nepalis had a police post in their locality. In some mid-western and far western regions of the country, 58 per cent and 83 per cent respectively reported that they had no police presence in their communities. Most respondents with no police presence stated that they rely on posts in neighbouring villages for security, seek help from village security committees, or have no security arrangements at all.¹¹¹ In November 2011, citing a need to find budget savings, the NP decided to recall vehicles used for patrolling remote areas, such as the Terai region. The NP stated that it could not afford the cost of fuel, repairs and vehicle lease arrangements. It was expected that the savings would impede the NP's ability to police many of the affected districts, especially in the Terai region.¹¹²

People who have petitioned authorities to investigate crimes committed by both Maoists and security forces have faced 'serious harassment and threats of retaliation'.¹¹³ Investigations into human rights violations, often established in the face of political pressure or public outcry, are consistently flawed, and the government generally fails to act on recommendations. Investigations are also impeded by the failure of police officers to seek court sanctions, based on the knowledge that the authorities and the Maoists will not cooperate with such inquiries.¹¹⁴ According to the OHCHR-Nepal, NP officers will often refuse to file a First Information Report, and the practice has become "so widespread it appears to have become official policy." In cases of extra-judicial killings by NP officers, witnesses have allegedly been forced to sign blank documents, on which an NP officer later writes 'exculpatory' evidence in support of the accused. Police officers are also accused of planting evidence.¹¹⁵ The government of Nepal has rejected the claims.¹¹⁶

¹¹⁰ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 1.d

¹¹¹ Interdisciplinary Analysts and Saferworld 2009, 'On track for improved security? A survey tracking changing perceptions of public safety, security and justice provision in Nepal', April http://www.humansecuritygateway.com/documents/SAFERWORLD_Nepal_ontrackforimprovedsecurity.pdf – Accessed 15 June 2011

¹¹² Puri, S. 2011, 'Security fear in Tarai (Terai)', *Kathmandu Post*, 31 October <http://www.ekantipur.com/the-kathmandu-post/2011/10/31/nation/security-fear-in-tarai/227698.html> - Accessed 4 November 2011.

¹¹³ International Crisis Group 2010, *Nepal: Peace and Justice*, Asia Report N°184, 14 January, p.17

¹¹⁴ Human Rights Watch 2010, *Indifference to Duty: Impunity for Crimes Committed in Nepal*, Human Rights Watch website, December, pp.2, 14 <http://www.hrw.org/sites/default/files/reports/nepal1210webwcover.pdf> – Accessed 9 May 2011

¹¹⁵ UN Office of the High Commissioner for Human Rights in Nepal 2010, *Investigating Allegations of Extra-Judicial Killings in the Terai*, July, p.9 <http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf> - Accessed 4 November 2011.

¹¹⁶ UN Human Rights Council 2011, *Report of the Working Committee on the Universal Periodic Review*, 8 March <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement> - Accessed 7 November 2011.

4.3 Law / the Judiciary

Although Nepal's constitution provides for an independent judiciary, most courts are also characterised by endemic corruption, and access to justice is limited, or denied, to many Nepalese citizens.¹¹⁷ Though judges are mandated to spend a proportion of their time in remote district offices, a 2011 report, citing the latest Supreme Court Annual Report, states that many remote areas are neglected. This may prevent people in remote districts from accessing justice.¹¹⁸

In Nepal, there is one Supreme Court, 16 Appellate Courts, 75 District Courts and a number of small bodies responsible for the administration of justice. Judges are governed by the Judicial Council Act (1990), Judicial Council Rules (2000), and the Codes of Conduct for Judges (2009). Corruption by a person holding public office, including a judge, is investigated by the Commission for the Investigation of Abuse of Authority (CIAA) and the Judicial Service Commission.¹¹⁹ Nevertheless, corruption within the judiciary is a problem in Nepal. In 2008, the chief justice of the Supreme Court acknowledged that the court was regularly subject to political pressure,¹²⁰ and in a 2010 report it was noted that:

while the Commission for the Investigation of Abuse of Authority is active, high-level officials are rarely prosecuted... Graft is particularly present in the judiciary, with frequent payoffs to judges for favourable rulings.¹²¹

In 2011, a Supreme Court Justice claimed that corruption was still a “major problem in the judiciary”, noting that most corruption cases are delayed, “with some high-profile graft cases pending for seven years.”¹²²

Corruption by office holders, besides members of the judiciary, is also a major problem, with, as of 2010, about 40 per cent of cases registered in the courts not resulting in a conviction.¹²³ The author of a report on corruption, who is a member of the Supreme Court of Nepal, cites a number of reasons for this, including: corruption cases not being fast-tracked; ambiguity in the law; reluctance by judges to decide cases involving

¹¹⁷ Freedom House 2009, *Freedom in the World – Nepal 2009*, July

¹¹⁸ Luitel, A.R. 2011, ‘Judges’ injustice to hill people’, *The Himalayan Times*, 9 March <http://www.thehimalayantimes.com/fullNews.php?headline=Judges'+injustice+to+hill+people&NewsID=79281> - Accessed 8 November 2011.

¹¹⁹ For all of the above facts see: Upadhyaya, B.P. ‘Current Situation and Issues Relating to Ethics and Codes of Conduct for Judges, with Special Reference to the Criminal Justice System of Nepal’, in The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders 2010, *Resource Material Series No.80*, March, pp.313-323 http://www.unafei.or.jp/english/pdf/RS_No80/No80_33PA_Upadhyaya.pdf - Accessed 7 November 2011.

¹²⁰ Freedom House 2009, *Freedom in the World – Nepal 2009*, July.

¹²¹ Freedom House 2010, *Freedom in the World – Nepal 2010*, June <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7885> – Accessed 10 September 2010.

¹²² Luitel, A.R. 2011, ‘Graft plaguing judiciary: Justice KC’, *The Himalayan Times*, 21 April <http://www.thehimalayantimes.com/fullNews.php?headline=Graft+plaguing+judiciary%3A+Justice+KC&NewsID=284847> - Accessed 8 November 2011.

¹²³ Parajuli, S.P. ‘Criminal Justice Response to Corruption in Nepal’, in The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders 2010, *Resource Material Series No.80*, March, pp.179-188 http://www.unafei.or.jp/english/pdf/RS_No80/No80_23PA_Parajuli.pdf - Accessed 8 November 2011.

politicians; lack of co-ordination and co-operation among concerned agencies; lack of security for witnesses; lack of victim support; difficulties in obtaining forensic evidence; political pressure; and political control of the CIAA. The author concludes that: “power, money and muscle are used to avoid the law.”¹²⁴

4.4 Returnees/Relocation

Nepal is not a signatory to either the 1951 United Nations Convention on the Status of Refugees, or the 1967 protocol.¹²⁵ As such, Australia does not have an agreement with Nepal regarding involuntary return of failed asylum seekers.¹²⁶ However, the International Organisation for Migration facilitates the removal of failed asylum seekers from Australia and their subsequent return to Nepal.¹²⁷ No information was found concerning the treatment of failed asylum seekers in Nepal.

Nepal-India Treaty

Concerning the potential for Nepalese citizens to reside in India, the 1950 Treaty of Peace and Friendship states:

The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.¹²⁸

Australian case law is inconclusive on the nature of the right to enter and reside provided under the treaty, and whether such a right satisfies the requirements of section 36(3) of the *Migration Act* (1958).¹²⁹ Nevertheless, as a 1997 article in the journal *Geopolitics and International Boundaries* points out, the treaty does not explicitly grant to nationals of either country ‘employment’ privileges, though this has not prevented Nepalis from working in India.¹³⁰ This view is not however universal.¹³¹

¹²⁴ Parajuli, S.P. ‘Criminal Justice Response to Corruption in Nepal’, in The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders 2010, *Resource Material Series No.80*, March, pp.179-188 http://www.unafei.or.jp/english/pdf/RS_No80/No80_23PA_Parajuli.pdf - Accessed 8 November 2011.

¹²⁵ ‘2011 UNHCR Country operations profile – Nepal’ 2011, United Nations High Commissioner for Refugees website <http://www.unhcr.org/pages/49e487856.html> - Accessed 19 December 2011.

¹²⁶ ‘Nepal-Australia Relations’ (undated), Embassy of Nepal in Canberra website <http://www.necan.gov.np/narelations.htm> - Accessed 19 December 2011; ‘Nepal Country Brief’ 2011, Department of Foreign Affairs and Trade website, November http://www.dfat.gov.au/geo/nepal/nepal_country_brief.html - Accessed 19 December 2011.

¹²⁷ ‘Nepal: Facts and Figures’ 2011, International Organization for Migration website, April <http://iom.ch/jahia/Jahia/nepal> - Accessed 19 December 2011.

¹²⁸ ‘Treaty of Peace and Friendship’ 1950, United Nations Treaty Collection, 31 July http://untreaty.un.org/unts/1_60000/3/9/00004432.pdf – Accessed 11 July 2011.

¹²⁹ See the chapter ‘Third Country Protection’ in the Refugee Law Guide, and various decisions of the Federal Court of Australia and Federal Magistrates Court cited therein: Migration Review Tribunal – Refugee Review Tribunal 2011, ‘Third Country Protection’, *Guide to Refugee Law in Australia*, December, p.13f..

¹³⁰ Subedi, S.P. 1997, ‘Transit Arrangements between Nepal and India: A Study in International Law’, *Geopolitics and International Boundaries*, Vol. 2, no.1, 175-196: p.179: “neither government is under treaty obligation to accord national treatment in matters of employment.”

Aside from the question of legal rights, it should be noted that the treaty is a political document and, as such, is subject to the political requirements of the two nations. In a June 2010 article in *Strategic Analysis*, an Indian strategic studies journal, the author states that: “in practice, the treaty is more breached than respected by both countries”, and lists a number of ways in which both parties have ignored the treaty.¹³² Reports indicate that the future of the treaty is the subject of ongoing debate in both Nepal and India, with groups in both nations advocating for its alteration or complete abrogation.¹³³

[paragraph excised]

However, more recent reports suggest that some Nepalis residing in India do experience discrimination, and indicate that Nepalis continue to occupy low skilled positions in which they are vulnerable to exploitation.¹³⁴

Internal Relocation

It should be noted that the issue of internal relocation should not be conflated with the issue of internally displaced persons (IDPs), who are forced to flee their homes or place of habitual residence on account of conflict or disaster and whose living arrangements are usually temporary, being often in large camps.¹³⁵ The ability of applicants to internally relocate within Nepal is dependent on the applicant’s unique characteristics, and ought to be considered on a case by case basis.

¹³¹ Samuels, F. et al. 2011, *Vulnerabilities of Movement: Cross-Border Mobility between India, Nepal and Bangladesh*, Overseas Development Institute <http://www.odi.org.uk/resources/docs/7404.pdf> - Accessed 19 December 2011: p.6: “The [Treaty] ensures Nepalese citizens the right to travel, carry trade and seek employment...”

¹³² Nayak, N. 2010, ‘India-Nepal Peace and Friendship Treaty (1950): Does it Require Revision?’, *Strategic Analysis*, Vol. 34, no.4, pp579-593, esp. p588.

¹³³ Jha, P. 2010, ‘Revisiting 1950’, *Nepali Times*, 5 March
<http://www.nepalitimes.com.np/issue/2010/03/9/PlainSpeaking/16852/print> - Accessed 20 December 2011; ‘Siliguri Intellectuals for demand abrogation of Indo-Nepal treaty’ 2008, My Gorkhaland website, source: *The Statesman*, 23 May <http://mygorkhaland.wordpress.com/2008/05/23/siliguri-intellectuals-for-demand-abrogation-of-indo-nepal-treaty/> - Accessed 21 December 2011; ‘Ready to discuss treaty revision with Nepal: India’ 2011, *The Hindu*, 29 January
<http://www.thehindu.com/news/national/article1134749.ece> - Accessed 21 December 2011. For additional citations see: Nayak, N. 2010, ‘India-Nepal Peace and Friendship Treaty (1950): Does it Require Revision?’, *Strategic Analysis*, Vol. 34, no.4, pp579-593, esp. p588.

¹³⁴ Bhattra, R., 2007, *Open Borders, Closed Citizenships: Nepali Labour Migrants in Delhi*, 31 August
<http://www.iss.nl/Cross-cutting-themes/Migration/Panel-5> – Accessed 20 August 2010.; Samuels, F. et al. 2011, *Vulnerabilities of Movement: Cross-Border Mobility between India, Nepal and Bangladesh*, Overseas Development Institute <http://www.odi.org.uk/resources/docs/7404.pdf> - Accessed 19 December 2011. The author of the above report, Mr Raju Bhattra, provided advice to the Tribunals in August 2010, in which he provided further information regarding the ill-treatment of Nepalis in India: Bhattra, R., 2010, Email to RRT Country Advice: ‘Re: Request for information from the Refugee Review Tribunal’, 24 August.

¹³⁵ Office for the Coordination of Humanitarian Affairs 2004, *Guiding Principles on Internal Displacement*, p.1 <http://ochanet.unocha.org/p/Documents/GuidingPrinciplesDispl.pdf> - Accessed 20 December 2011.

4.5 Religion

4.5.1 Hindus

Hindu extremism has reportedly increased in recent periods, particularly after the declaration of Nepal as a secular state in 2006. Hindu extremist groups of particular concern include the India-based Hindu political party Shiv Sena, locally known as Pashupati Sena, Shiv Sena Nepal, Nepal Shivsena, and the Hindu fundamentalist organisation, Ranbir Sena.¹³⁶

The Nepal Defence Army (NDA) is a Hindu fundamentalist group that seeks to re-establish Nepal as a Hindu kingdom, and has been responsible for a number of terrorist attacks.¹³⁷ The NDA – comprised of former soldiers, ex-police personnel and victims of Maoist guerrillas – united to ‘form a Hindu army with suicide bombers to fight Islamic and Christian zealots as well as communists’. As of 2007, the NDA was headed by Parivartan, a former policeman who claims to have joined the CPN-UML as a schoolboy. Parivartan has claimed the NDA had nearly 1,200 trained soldiers who possessed arms and have the expertise to manufacture explosives. He further claimed the soldiers were being trained in India, where they obtained ingredients to manufacture explosives.¹³⁸

Four leaders of the NDA, including Chairman R.P. Mainali, were arrested for possessing arms in September 2009. Mainali had been released on bail for a previous arrest, and was reportedly on the police ‘most-wanted’ list.¹³⁹ In January 2010, Mainali reportedly denounced communal violence from gaol, claiming he wanted to launch a ‘peaceful agitation’ to establish a Hindu state.¹⁴⁰ Following Mainali’s arrest, the pastor of a church bombed by the NDA thanked the government for ‘having done its duty’, but warned the arrest did not mean ‘that threats for Christians in the country are over’.¹⁴¹

On 4 March 2011 it was reported that six NDA members were arrested by Nepali police with a cache of arms and explosives. Officials claimed they were planning an attack in an unspecified location in Kathmandu under the direction of Mainali. No further information verifying Mainali’s involvement was located.¹⁴²

¹³⁶ US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, Section III

¹³⁷ International Crisis Group 2010, *Nepal’s Political Rites of Passage – Crisis Group Asia report No 194*, 29 September, p.28

¹³⁸ ‘Hindu army training in Nepal to fight Al Qaida’ 2007, India Info website, 20 June

<http://news.indiainfo.com/2007/06/20/nepal.html> – Accessed 16 February 2011

¹³⁹ ‘Four extremist Nepal Defence Army leaders arrested with arms’ 2009, Thaindian News website, 6 September http://www.thaindian.com/newsportal/south-asia/four-extremist-nepal-defence-army-leaders-arrested-with-arms-2_100243510.html – Accessed 3 March 2011

¹⁴⁰ ‘Jailed Nepal Defence Army chief going through change of heart’ 2010, Kantipur website, 11 January <http://www.ekantipur.com/2010/01/11/top-story/jailed-nepal-defence-army-chief-going-through-change-of-heart/306153/> – Accessed 3 March 2011

¹⁴¹ ‘The arrest of Hindu extremist Mainalo does not extinguish the fears of Nepali Christians’ 2009, AsiaNews, 11 September <http://www.asianews.it/news-en/The-arrest-of-Hindu-extremist-Mainalo-does-not-extinguish-the-fears-of-Nepali-Christians-16305.html#> – Accessed 3 March 2011

¹⁴² ‘Major terrorist plot foiled, six held with explosives’ 2011, *Himalayan News Service*, source: *The Himalayan Times*, 4 March <http://www.thehimalayantimes.com/fullNews.php?headline=Major+terrorist+plot+foiled%2C+six+held+with+explosives&NewsID=278696> – Accessed 9 March 2011

No information was located suggesting that the NDA maintains formal links to any political parties in Nepal. In 2009, Mainali claimed that the NDA was established in New Delhi, India at a meeting attended by a large number of Indian Hindu nationalists, including ‘many leaders from the *Vishwa Hindu Parishad* (World Hindu Council), the *Bajrang Dal*, the *Rashtriya Swayamsevak* and the *Shiv Sena* party’. Mainali further claimed that every month the NDA received an estimated 500,000 Nepalese rupees from these organisations, though he ‘declined to divulge how the Hindu extremist groups in India funded the NDA’.¹⁴³

In August 2011, *The Christian Post* reported that Mainali was negotiating with the Nepalese government to have the NDA surrender its arms in exchange for formal recognition as a political party, as well as for the release of currently imprisoned NDA members.¹⁴⁴

4.5.2 Christians

While the Christian population of Nepal is estimated to be between one and two per cent of the total population¹⁴⁵, members of minority religious groups believe their numbers are significantly undercounted.¹⁴⁶ In June 2011 Christians were counted in the national census for the first time.¹⁴⁷

In 2010, USDOS reported that:

‘[a]dherents of the country’s many religious groups generally coexisted peacefully and respected places of worship, although there were reports of societal abuses and discrimination based on religious affiliation, belief or practice. Those who converted to a different religious group occasionally faced violence and were ostracised socially, but generally did not fear admitting their affiliations in public’.¹⁴⁸

Christians continue to be subject to threats and attacks in Nepal. As recently as August 2011, a bomb was discovered at an Assembly of God-run church in western Nepal; the device was defused by a Nepal Army bomb disposal unit. The church’s pastor claimed

¹⁴³ ‘Church Bomber in Nepal Repents, Admits India Link’ 2009, *Compass Direct News*, 30 December <http://www.compassdirect.org/english/country/nepal/13156> – Accessed 5 September 2011

¹⁴⁴ ‘Nepali Terrorist Leader To Be Released From Life in Prison Sentence’ 2011, *The Christian Post*, 29 August <http://global.christianpost.com/news/neplai-terrorist-leader-to-be-released-from-life-in-prison-sentence-54717/> – Accessed 27 September 2011

¹⁴⁵ ‘Pope appoints first Catholic bishop to Nepal’ 2007, Catholic Online website, source: *Union of Catholic Asian News*, 2 February http://www.catholic.org/international/international_story.php?id=23009 – Accessed 19 April 2007; ‘Easter rally calls Nepal gov’t to expand religious freedom’ 2007, Catholic Online website, source: *Union of Catholic Asian News*, 10 April http://www.catholic.org/international/international_story.php?id=23700 – Accessed 24 April 2007

¹⁴⁶ US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, Section I

¹⁴⁷ ‘Kathmandu, for the first time Christians included in Nepalese census’ 2011, *Spero News*, source: *Asia News*, 18 June <http://www.speroforum.com/a/55703/Nepal---Kathmandu-for-the-first-time-Christians-included-in-Nepalese-census> – Accessed 27 September 2011

¹⁴⁸ US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, Introduction

that he had no personal enemies, and believed that the bomb was directed against the church.¹⁴⁹ No information was located as to who was responsible for planting the bomb.

Attacks on Christians in Nepal by Hindu extremist groups such as the NDA have ranged from bombings of Christian properties to murder. The NDA, which is known to target religious minorities, has accused Christians of threatening Hindu culture through religious conversion.¹⁵⁰

Despite this, acts of violence by extremist religious groups have been condemned by mainstream Hindu organisations. Following a 2009 bomb attack on a Catholic church in Kathmandu, Hindu and Muslim religious leaders united at the church in an act of solidarity with the local Christian community.¹⁵¹ This act of unity was followed by Hindus, Muslims and Christians marching in Kathmandu in protest against the bombing.¹⁵²

A 2010 report, published by *Compass Direct News*, suggests that Christians in rural areas sometimes escape local discrimination and the fear of harm by moving to larger districts.¹⁵³ An undated personal testimony posted on the Christian website, 'Breadsite', also states that urban Christians have greater freedom than rural Christians, who face societal pressure. The testimony, which was provided by a Canadian national who lived in Nepal, states that levels of police protection provided to Christians varies according to the attitudes of officials towards Christians.¹⁵⁴

4.5.3 Buddhists

Buddhists constitute an estimated nine per cent of the population in Nepal. Tibetan Buddhists in particular face various restrictions, such as direct interference and police intimidation during religious observations. Tibetan religious festivals are tolerated only on private property. As referred to in [Section 5.4](#), the Chinese Government pressures Nepal into preventing Tibetans from conducting anti-China protests. Tibetan Buddhists routinely face harassment and extortion from police and other authorities.¹⁵⁵ In one incident in October 2010, police 'seized ballot boxes at Tibetan government-in-exile

¹⁴⁹ 'Fear Grows as Nepal Church Escapes Bomb Attack' 2011, Persecution.org website, source: IANS, 29 August <http://www.persecution.org/2011/08/29/fear-grows-as-nepal-church-escapes-bomb-attack/> - Accessed 5 September 2011

¹⁵⁰ Christian Solidarity Worldwide 2009, *Nepal: Emerging threat of Hindu extremism*, October, Section 4.1 <http://dynamic.csw.org.uk/article.asp?t=report&id=116> - Accessed 19 February 2010

¹⁵¹ Bhandari, S. 2009, 'Two dead, 14 injured in Nepal church blast: police', Google News website, source: *Agence France-Presse*, 23 May

<http://www.google.com/hostednews/afp/article/ALeqM5jfl7xiIg0glqihUYMP8I0W5Q9eqQ> - Accessed 22 March 2010

¹⁵² 'Christians rally to protest church bombing' 2009, *Union of Catholic Asian News*, 2 June <http://www.ucanews.com/2009/06/02/christians-rally-to-protest-church-bombing/> - Accessed 22 March 2010

¹⁵³ 'New Threats, Old Enmity Pummel Nepal's Christians' 2010, *Compass Direct News* <http://www.compassdirect.org/english/country/nepal/25596/> - Accessed 27 October 2010

¹⁵⁴ Fox, G (undated), 'Miracles in the Hindu Kingdom', Breadsite.org website <http://webcache.googleusercontent.com/search?q=cache:Rpwclmtrm9cJ:www.hvk.org/articles/0605/87.html+miracles+in+the+hindu+kingdom&cd=1&hl=en&ct=clnk&gl=au> - Accessed 27 October 2010

¹⁵⁵ US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, Section I

polling stations in Kathmandu'.¹⁵⁶ According to a statement by the Home Minister, the polling 'violated Nepal's policy and existing laws of the host country'.¹⁵⁷

4.5.4 Conversion

Proselytising is illegal in Nepal. The 2010 USDOS report on religious freedom stated that Nepal's interim constitution, promulgated in January 2007, provides for freedom of religion; however, it specifically prohibits proselytising.¹⁵⁸ Proselytising is punishable by fines or imprisonment, and foreigners face expulsion. Non-Governmental Organisations (NGOs) and individuals are allowed to file reports where suspicions of proselytising arise, which are in turn investigated by the government. Some Christian and Muslim groups share concerns that the ban on proselytism limits the expression of non-Hindu religious belief.¹⁵⁹ No evidence was located to indicate that anyone has been arrested or imprisoned for proselytising in recent years.

Despite Nepal's adoption of secularism and the abolition of the monarchy, a new draft criminal code reportedly enshrines prohibitions forbidding an individual from converting a person or abetting them to change their religion. According to Article 160 of the code, 'no one will be allowed to do anything or behave in any way that could cause a person from a caste, community or creed to lose faith in his/her traditional religion or convert to a different religion'.¹⁶⁰ Some Christians are concerned that such a law could 'jeopardise a number of activities that they see as central to their faith, including aid work'.¹⁶¹

¹⁵⁶ Minority Rights Group 2011, *State of the World's Minorities and Indigenous People 2011*, 6 July p.148

¹⁵⁷ Human Rights Watch 2011, *World Report 2011 – Nepal*, 24 January

¹⁵⁸ US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, Introduction

¹⁵⁹ US Department of State 2010, *International Religious Freedom Report 2010*, 17 November, Section II

¹⁶⁰ 'Nepal Plans New Criminal Code Forbidding Evangelism' 2011, *Compass Direct News*, 2 June http://www.compassdirect.org/english/country/nepal/article_113290.html – Accessed 5 September 2011

¹⁶¹ 'What Nepal's Law Against Evangelism Means for Christians' 2011, Persecution.org website, source: *Inspire Magazine*, 1 July <http://www.persecution.org/2011/07/01/what-nepals-law-against-evangelism-means-for-christians/> – Accessed 5 September 2011

Section 5: Social Groups

5.1 Women

Discrimination against women in Nepal remains common, particularly in rural areas.¹⁶² In 2010, the Internal Displacement Monitoring Centre (IDMC) reported that women in the Kathmandu Valley displaced by conflict: ‘were struggling to find proper accommodation or access basic services. They were also exposed to trafficking, sexual exploitation, discrimination and child labour’.¹⁶³ While women account for approximately 40 per cent of the total work force in Nepal, they tend to occupy lower status jobs, and are paid less than men.¹⁶⁴

In 2010, the Asian Development Bank reported that a number of discriminatory provisions had been repealed. Women were granted the right to their husband’s property after divorce, and the provision of receiving monthly or yearly support in lieu of property. Women are also now allowed to divorce their husbands on the grounds of rape, while a man can no longer divorce his wife due to her inability to bear a child. However, some discriminatory provisions remain, enabling the husband to divorce his wife if he can prove that she has a sexually transmitted disease, or that she is having an affair. The report noted that, in Nepal, it is: “likely that the husband’s accusations would not be questioned by others, and the wife would not be given the opportunity to disprove such accusations”.¹⁶⁵

Domestic violence against women remained a serious problem during 2010, and while cases were seldom reported, anecdotal evidence suggested that physical and verbal abuse was common.¹⁶⁶ Legislative weaknesses and inadequate policing have obstructed prosecution of domestic and sexual violence cases. Police have reportedly refused to record cases of violence against women or provide information on the status of such cases to human rights defenders.¹⁶⁷ The government has taken few steps to curb violence against women or to assist victims; generally, authorities do not prosecute domestic violence cases.¹⁶⁸ In 2010 the Nepal government formulated a national plan of action to implement 12 critical areas of concern, one being violence against women,¹⁶⁹ and in January 2011 the Prime Minister reaffirmed the government’s commitment to dealing

¹⁶² US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 6

¹⁶³ Internal Displacement Monitoring Centre 2011, ‘Internal Displacement: Global Overview of Trends and Developments in 2010 – Nepal’, UNHCR Refworld, 23 March
<http://www.unhcr.org/refworld/docid/4d932e1ac.html> – Accessed 3 May 2011

¹⁶⁴ ‘Women in Nepal’ 2006, Laligurans Women Skill Development Centre website
http://www.laliguranswomenskill.org.np/nepali_women.htm – Accessed 16 October 2007

¹⁶⁵ Asian Development Bank 2010, *Overview of Gender Equality and Social Inclusion in Nepal*, pp.10, 16-17
<http://www.adb.org/documents/reports/country-gender-assessments/cga-nep-2010.pdf> – Accessed 11 February 2011

¹⁶⁶ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 6

¹⁶⁷ Amnesty International 2010, *Annual Report 2010 – Nepal*, 28 May

¹⁶⁸ Freedom House 2010, *Freedom in the World 2010 – Nepal*, UNCHR Refworld website, 1 June
<http://www.unhcr.org/refworld/docid/4c1a1ea4c.html> – Accessed 8 September 2010

¹⁶⁹ Asian Development Bank 2010, *Overview of Gender Equality and Social Inclusion in Nepal*, p.5
<http://www.adb.org/documents/reports/country-gender-assessments/cga-nep-2010.pdf> – Accessed 11 February 2011

with the issue of violence against women in a coordinated manner.¹⁷⁰ At the time of writing, no information was found on whether reforms have been developed and implemented. Reports indicate that various forms of gender related discrimination continued to occur in 2011, particularly: domestic violence¹⁷¹; forced prostitution¹⁷²; abduction and trafficking of women¹⁷³; stigmatisation of victims of trafficking;¹⁷⁴ and forced marriage¹⁷⁵. A 2011 report by *IRIN News*, a United Nations news service, suggests that discrimination may be amplified for those women who were Maoist combatants during the civil war, with many currently displaced owing to stigmatisation and a lack of economic opportunity.¹⁷⁶

5.2 Homosexuals

5.2.1 Gays and Lesbians

Prior to 2007, homosexual sex was not explicitly criminalised in Nepal.¹⁷⁷ However, Part Four, Chapter 16 of Nepal's Country Code stated, according to an unofficial translation, that: "anyone who does or makes someone practice unnatural sex may be sentenced to one-year jail or 5,000 Nrs (sic) fine."¹⁷⁸ 'Unnatural sex' was not defined, and Lesbian, Gay, Bisexual, Transexual and Intersex (LGBTI) groups claimed that the provision had been used to target homosexuals.¹⁷⁹ In 2007, the Supreme Court of Nepal ruled that homosexual sex is natural, and that sexual activity was a private affair, outside the

¹⁷⁰ 'PM Nepal issues instructions to forward campaign against violence against women' 2011, *Republica*, 20 January http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=27390 - Accessed 24 November 2011.

¹⁷¹ 'Domestic Violence against Women on Rise' 2011, *Nepal Mountain News*, 25 September <http://www.nepalmountainnews.com/cms/?p=39402> - Accessed 24 November 2011.

¹⁷² Kafle, N. 2011, 'Badi women say prostitution is their only option', *Radio Netherlands Worldwide*, 16 June <http://www.rnw.nl/english/article/badi-women-say-prostitution-their-only-option> - Accessed 24 November 2011; 'Teenage girls trapped in Nepal restaurant prostitution' 2011, *Nepal Mountain News*, 1 March <http://www.nepalmountainnews.com/cms/?p=18981> - Accessed 24 November 2011; 'Nepal's women easy target in pornography trade in Nepal' 2011, *Deccan Herald*, 16 June <http://www.deccanherald.com/content/75687/nepals-women-easy-target-pornography.html> - Accessed 24 November 2011.

¹⁷³ Shah, D. J. 2011, 'Prostitution, trafficking thriving in Nepal: CNN Hero', Ekantipur.com website, 25 April <http://www.ekantipur.com/2011/04/25/top-story/prostitution-trafficking-thriving-in-nepal-cnn-hero/333068.html> - Accessed 24 November 2011; Adhikari, A. 2011, 'Paradigm shift in women's trafficking', ekantipur.com website, 9 May <http://www.ekantipur.com/2011/05/09/top-story/paradigm-shift-in-womens-trafficking/333714.html> - Accessed 24 November 2011.

¹⁷⁴ 'Trafficked women returnees on a razor edge' 2011, ekantipur.com website, 31 October <http://www.ekantipur.com/2011/10/31/headlines/Trafficked-women-returnees-on-a-razor-edge/342971/> - Accessed 24 November 2011.

¹⁷⁵ Ingber, H. 2011, 'Child Marriages Burden Young Nepalis', *Pulitzer Centre on Crisis Reporting*, 31 October <http://pulitzercenter.org/reporting/nepal-child-marriage-women-education-maternal-health> - Accessed 24 November 2011.

¹⁷⁶ 'Nepal: Reintegration Challenges for displaced women, girls' 2011, *IRIN News*, 26 August <http://www.irinnews.org/report.aspx?reportid=93584> - Accessed 24 November 2011.

¹⁷⁷ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Nepal*, 8 April <http://www.state.gov/documents/organization/160061.pdf> - Accessed 26 October 2011.

¹⁷⁸ International Gay and Lesbian Human Rights Commission 2007, *Nepal Supreme Court Case on Relief for Sexual and Gender Minorities: Observers' Report*, December, n.3 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/111-1.pdf> - Accessed 26 October 2011.

¹⁷⁹ 'Nepal Court Rules on Gay Rights' 2007, *BBC News*, 21 December http://news.bbc.co.uk/2/hi/south_asia/7156577.stm - Accessed 27 October 2011; Rana, U. 2004, 'Happy to be Gay', *Nepali Times*, 17 December <http://www.nepalitimes.com/issue/226/Nation/10644> - Accessed 26 October 2011.

cognizance of the State. It ordered the government to amend sexually discriminatory legislation.¹⁸⁰ The 2007 Supreme Court ruling, in conjunction with a later 2008 ruling, also called on the government to enact gay marriage legislation.¹⁸¹ Though the Supreme Court ruling has been interpreted as a victory for LGBTI rights in Nepal, it should be noted that, at the time of writing, legislation has not yet been brought before the Constituent Assembly for consideration. As with many other rights issues in Nepal, legislative progress is dependent on the drafting of a new constitution, and has been retarded by successive changes in government.¹⁸² Moreover, as a 2011 Human Rights Watch report indicates, gays and lesbians remain exposed to 280 discriminatory laws and regulations.¹⁸³ In June 2011, amendments to the Country Code were reportedly drafted by the Law and Justice Ministry, which would have the effect of reinstating ‘unnatural sex’ as a criminal act and define marriage as a union between a man and a woman, to the exclusion of all others.¹⁸⁴ Information was not found regarding the current status of the draft amendments, and whether the amendments have support within the Constituent Assembly.¹⁸⁵

Information regarding societal attitudes toward gays and lesbians is contradictory. A number of reports were found which claim that societal attitudes are generally positive, and that the LGBTI rights movement has met relatively little resistance. Nepal has even been described as a “gay rights haven”.¹⁸⁶ A September 2011 report by *Reuters* described

¹⁸⁰ National Judicial Academy of Nepal 2008, ‘Sunil Babu Pant and Others v Nepal Government and Others: Decision of the Supreme Court on the Rights of Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) People’, *National Judicial Academy of Nepal Law Journal*, Vol.2, No.1, pp261-286 http://njanepal.org.np/index.php?option=com_rokdownloads&view=file&Itemid=157&id=33:nja-law-journal-2008-issue-2 - Accessed 27 October 2011; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Nepal*, 8 April <http://www.state.gov/documents/organization/160061.pdf> – Accessed 26 October 2011.

¹⁸¹ For the 2008 ruling see: ‘Nepal SC approves same-sex marriage’ 2008, *Hindustan Times*, 19 November <http://www.hindustantimes.com/News-Feed/nepal/Nepal-SC-approves-same-sex-marriage/Article1-352722.aspx> - Accessed 27 October 2011.

¹⁸² Knight, K. 2011, ‘Nepal: New Prime Minister Must Keep Promise to LGBTI Community’, The New Civil Rights Movement website, 25 September <http://thenewcivilrightsmovement.com/nepal-new-prime-minister-must-keep-promise-to-lgbti-community/news/2011/09/25/27547> - Accessed 27 October 2011; Freedom House 2010, *Freedom in the World – Nepal (2010)*, June <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7885> – Accessed 31 October 2011. See also the comments of Sunil Pant, a member of parliament who is gay: “Our concern is about how long it will take to have the constitution”, in: Hughes, R. 2011, ‘Third Gender For Nepal?’, Gay News Network website, 15 September <http://gaynewsnetwork.com.au/news/northern-territory/1388-third-gender-for-nepal.html> - Accessed 27 October 2011.

¹⁸³ Human Rights Watch 2011, *World Report 2011 – Nepal*, 24 January

¹⁸⁴ Williams, S. 2011, ‘Nepal’s Gay Community Faces Recriminalization Under Proposed Laws’, Care2 website, 14 June <http://www.care2.com/causes/human-rights/blog/nepals-gay-community-faces-re-criminalization-under-proposed-laws/> – Accessed 20 June 2011; ‘New law threatens to crush Nepal’s gays’ 2011, *The Times of India*, 9 June http://articles.timesofindia.indiatimes.com/2011-06-09/south-asia/29638154_1_sunil-babu-pant-gay-rights-gay-bar – Accessed 20 June 2011; Sarkar, S. 2011, ‘New law threatens Nepal as gay rights haven’, *News One News*, 10 June <http://www.inewsone.com/2011/06/10/new-law-threatens-nepal-as-gay-rights-haven/55986> Accessed 21 June 2011.

¹⁸⁵ ‘New law threatens to crush Nepal’s gays’ 2011, *The Times of India*, 9 June http://articles.timesofindia.indiatimes.com/2011-06-09/south-asia/29638154_1_sunil-babu-pant-gay-rights-gay-bar – Accessed 20 June 2011. The report states that the draft legislation has been tabled in the ‘Nepali parliament’. No information was found on whether the legislation has been voted on at the time of writing.

¹⁸⁶ ‘New law threatens Nepal as gay rights haven’, *News One News*, 10 June <http://www.inewsone.com/2011/06/10/new-law-threatens-nepal-as-gay-rights-haven/55986> Accessed 21

the building of a shelter for ‘ostracised gays’ from South Asia, the holding of gay parades and gay beauty contests, and the emergence of a gay travel industry as evidence of an increasingly ‘gay friendly’ Nepal.¹⁸⁷ This seems to be supported, at least with regard to attitudes in Kathmandu, by an August 2011 report of a gay pride rally, in which a participant was quoted as stating that: “People in the capital mostly accept the idea [of homosexuality]”.¹⁸⁸ In a September 2011 report, the author, an academic specialising in LGBTI issues in Nepal, claimed: “The violence against LGBTI people has largely ceased thanks to successful advocacy and publicity...”¹⁸⁹ In an August 2011 report, Sunil Babu Pant, a member of Nepal’s Constituent Assembly who is also gay, stated that:

All the major political parties in Nepal support LGBT[I] rights and even the religious groups haven’t opposed [LGBTI rights].¹⁹⁰

Reports also indicate that some universities in Nepal have included LGBTI issues in their curricula, while plays and films about homosexuality are also being produced. This is cited as evidence of progress in societal attitudes.¹⁹¹ In a June 2011 report, however, the author argued that the production of films and plays about LGBTI issues in Nepal is designed to reduce prejudice; it is not evidence that prejudice is absent.¹⁹²

In contrast to the reports cited above, a number of reports indicate that gays and lesbians continue to experience discrimination and harm on account of sexual orientation, and that the situation is worse for those homosexuals living in rural areas. In its 2010 Human Rights Report, the US Department of State stated, based on information from a Nepali gay rights organisation, that homosexuals were harassed and abused by both government authorities and members of society. The same report also claimed that harassment occurred particularly in rural areas, such as the Terai districts.¹⁹³ In an attempt to combat

June 2011: “Since 2008, Nepal has established itself as a gay rights haven with people flocking to the Himalayan nation for same sex unions.”

¹⁸⁷ ‘Nepal shelter for Ostracised gays a sign of change’ 2011, *Reuters*, 24 June

<http://www.reuters.com/article/2011/06/24/us-nepal-gays-idUSTRE75N0RL20110624> - Accessed 27 October 2011.

¹⁸⁸ Gurubacharya, B. 2011, ‘Nepal Gay Rights Rally Draws Hundreds’, *Huffington Post*, source: Associated Press, 14 August http://www.huffingtonpost.com/2011/08/14/nepal-gay-rights-rally_n_926395.html - Accessed 27 October 2011.

¹⁸⁹ Knight, K. 2011, ‘Nepal: New Prime Minister Must Keep Promise to LGBTI Community’, The New Civil Rights Movement website, 25 September <http://thenewcivilrightsmovement.com/nepal-new-prime-minister-must-keep-promise-to-lgbti-community/news/2011/09/25/27547> - Accessed 27 October 2011.

¹⁹⁰ Pokharel, K. 2011, ‘South Asia’s First Gay Temple Wedding’, *The Wall Street Journal*, 22 June <http://blogs.wsj.com/indiarealtime/2011/06/22/south-asia%E2%80%99s-first-gay-temple-wedding/> - Accessed 27 October 2011; see also: Hughes, R. 2011, ‘Third Gender For Nepal?’, Gay News Network website, 15 September <http://gaynewsnetwork.com.au/news/northern-territory/1388-third-gender-for-nepal.html> - Accessed 27 October 2011: “The Hindu religion is very inclusive and accepting of the third gender and homosexuality.”

¹⁹¹ ‘LGBTI issues in TU course’ 2011, Ekantipur.com website, 8 September

<http://www.ekantipur.com/2011/09/08/national/lgbti-issues-in-tu-course/340432.html> - Accessed 27 October 2011; Thapa A. 2011, ‘Homosexuality in Nepali Films’, *Republica*, 20 September http://www.myrepublica.com/portal/index.php?action=news_details&news_id=36252 - Accessed 27 October 2011; Knight, K and Bhandari, B. 2011, ‘Brokeback Everest: Nepal’s Film Industry Embraces Gay Romance’, *Huffington Post*, 18 October http://www.huffingtonpost.com/kyle-knight/nepal-lesbian-movie_b_1016865.html - Accessed 27 October 2011.

¹⁹² Ojha, A. 2011, ‘Truth on Wings’, *The Kathmandu Post*, 7 June <http://www.ekantipur.com/the-kathmandu-post/2011/06/07/et-cetera/truth-on-wings/222618.html> - Accessed 27 October 2011.

¹⁹³ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Nepal*, 8 April <http://www.state.gov/documents/organization/160061.pdf> – Accessed 26 October 2011.

negative attitudes regarding homosexuals in rural areas, LGBTI groups staged a rally in the town of Narayanghat, about 160 km from Kathmandu, in August 2011. According to a report of the rally in the *Huffington Post*, a gay rights activist stated that: “more people are coming out to declare their sexual preference in the urban areas, but people in rural villages are still afraid.”¹⁹⁴

Reports also claim that Nepali culture, and in particular the Hindu religion practiced in Nepal, tends to treat homosexuality as a form of social deviance. A January 2011 report by the Pulitzer Centre claims that many gays and lesbians keep their sexuality secret from fear of social and familial exclusion.¹⁹⁵ A September 2011 editorial in the *Kathmandu Post* goes further. The author claims that legislative progress is merely evidence of a progressive legislature, rather than support for LGBTI issues within society. Instead, homosexuality remains ‘frowned upon’, and a majority of LGBTIs in Nepal “forcibly live a heterosexual life”, from fear of society’s and their family’s reactions.¹⁹⁶ This seems to be supported by reports of gays and lesbians being forced to marry members of the opposite sex or pretending to be heterosexual.¹⁹⁷ Maoists allegedly kidnapped, detained, abused, and attempted to forcibly recruit two suspected lesbians in 2006 and again in 2007; it is claimed that the Maoists acted in accordance with the wishes of the women’s families.¹⁹⁸ According to a July 2011 report by the Asia Tribune, the head of the UN Office of the High Commissioner for Human Rights-Nepal, Jyoti Sanghera, stated during a speech in Kathmandu that homosexuals, along with other sexual minorities, are often:

ostracised, driven out, forced to lead closeted lives, delegitimised and discredited, deemed abnormal, unnatural, perverse or deviant, the discrimination and stigma faced by this group leads to a denial of multiple rights, including right to freedom from violence and abuse, right to family, livelihood, housing, education and health, right to bodily integrity and even right to life.¹⁹⁹

¹⁹⁴ Gurubacharya, B. 2011, ‘Nepal Gay Rights Rally Draws Hundreds’, *Huffington Post*, source: Associated Press, 14 August http://www.huffingtonpost.com/2011/08/14/nepal-gay-rights-rally_n_926395.html - Accessed 27 October 2011.

¹⁹⁵ Kaphle, A. and Nosheen, H. 2011, ‘Nepal: Society Lags Behind Progressive Laws on Homosexuality’, Pulitzer Centre on Crisis Reporting website, 3 January <http://pulitzercenter.org/blog/nepal-society-lags-behind-progressive-laws-homosexuality> - Accessed 27 October 2011.

¹⁹⁶ ‘On Sexuality’ 2011, *Kathmandu Post*, 1 September <http://www.ekantipur.com/the-kathmandu-post/2011/09/01/editorial/on-sexuality/225815.html> - Accessed 27 October 2011.

¹⁹⁷ Bhandari, B. 2011, ‘Refining Love’, *Republica*, 25 March http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=29571 - Accessed 27 October 2011; Thapa, S. ‘LGBT youth strive for acceptance’ 2010, *Republica*, 17 November <http://news.meronepalma.com/readnews/47364-via-meronepalma.com> - Accessed 27 October 2011; ‘Nepal gays draw heart from Ricky Martin’ 2011, *The Times of India*, 30 March http://articles.timesofindia.indiatimes.com/2010-03-30/south-asia/28120668_1_sunil-babu-pant-blue-diamond-society-nepal-gays - Accessed 27 October 2011.

¹⁹⁸ Human Rights Watch 2007, ‘Nepal: Maoists Should End Anti-Gay Violence’, 16 April <http://www.hrw.org/news/2007/04/15/nepal-maoists-should-end-anti-gay-violence> - Accessed 31 October 2011.

¹⁹⁹ Koirala, K.R. 2011, ‘OHCHR-N Chief Lauds Nepal’s efforts to ensure equal rights to sexual minorities’, *Asian Tribune*, 8 July <http://www.asiantribune.com/news/2011/07/08/ohchr-n-chief-lauds-nepals-efforts-ensure-equal-rights-sexual-minorities> - Accessed 27 October 2011.

Sanghera is also reported to have stated that lesbians: “are subjected to ‘corrective rapes’ and gay men denigrated”.²⁰⁰ A February 2009 report noted that lesbians in Nepal are doubly discriminated against on account of their gender and sexuality, as patriarchy remains a dominant feature of Nepalese society. The threats faced by lesbians, particularly those living in rural areas, reportedly include: ‘[s]exual assault, violence, ostracism from family and forced marriage’.²⁰¹ There are reportedly 1,200 openly-declared lesbians out of a total 200,000 sexual minorities in Nepal, and at least five lesbian rights groups: Saino Nepal in Chitwan, Sangini Nepal in Birgunj, Nawalo Srijana in Nepalgunj, Sahara Samaj in Itahari,²⁰² and Mitini Nepal in Kathmandu.²⁰³ According to the Asian Legal Resource Centre (ALRC) and Women’s Rehabilitation Center (WOREC) Nepal, which issued a joint statement in February 2011, advocates for lesbian rights are persistently discriminated against.²⁰⁴

5.2.2 Third Gender

The term Third Gender (TG) is generally used by members of the LGBTI community in Nepal to refer to ‘transgender’ and ‘intersex’ peoples exclusively, though a report was found in which TG refers to homosexuals as well.²⁰⁵ According to an October 2011 report, the term developed out of the Supreme Court decision of 2007 relating to the treatment of LGBTI people in Nepal.²⁰⁶ The Supreme Court ruled that TGs could not be discriminated against on the grounds of sexual orientation/gender, and that the new constitution should provide for the protection of TG rights, which the Supreme Court held were the same rights afforded to all citizens under the constitution.²⁰⁷ Despite the 2007 Supreme Court decision, TGs remain socially and politically excluded. Since 2007 only two TGs have managed to acquire a citizenship card, and a July 2011 report in the *Hindustan Times* claims that: “officials in most districts still refuse to issue citizenship

²⁰⁰ Koirala, K.R. 2011, ‘OHCHR-N Chief Lauds Nepal’s efforts to ensure equal rights to sexual minorities’, *Asian Tribune*, 8 July <http://www.asiantribune.com/news/2011/07/08/ohchr-n-chief-lauds-nepals-efforts-ensure-equal-rights-sexual-minorities> - Accessed 27 October 2011.

²⁰¹ Fox, K. 2009, ‘Ex-Olympian lends a helping hand to Nepal lesbians’, OneWorld South Asia website, source: *SX News*, 19 February <http://southasia.oneworld.net/todayshadlines/ex-olympian-lends-a-helping-hand-to-nepal-lesbians> – Accessed 8 June 2011.

²⁰² Sarkar, S. 2009, ‘Nepal Lesbian Haven’, *Fuse Magazine*, source: Big News Network website, 23 April <http://www.fusemagazine.com.au/index.php/news/article-archive/300-nepal-lesbian-haven> – Accessed 7 June 2011.

²⁰³ ‘About Mitini Nepal’ (undated), Mitini Nepal website <http://www.mitininepal.org.np/index.php?cid=1> – Accessed 17 June 2011.

²⁰⁴ Asian Legal Resource Centre 2011, ‘Nepal: Security and Protection of Women Human Rights Defenders in Nepal’, 25 February <http://www.alrc.net/doc/mainfile.php/hrc16/660/> - Accessed 31 October 2011.

²⁰⁵ The Blue Diamond Society, an LGBTI rights group in Nepal, reportedly complained that homosexuals, bisexuals and transgender people were not counted as TG in the 2011 Nepal census: Sharma, G. 2011, ‘Nepal’s gays say ‘cheated’ in census count’, *Reuters*, 30 September <http://in.reuters.com/article/2011/09/30/idINIndia-59638720110930> - Accessed 31 October 2011.

²⁰⁶ Knight, K. 2011, ‘Zero in 26,620,809’, *Kathmandu Post*, 1 October <http://www.ekantipur.com/the-kathmandu-post/2011/10/01/oped/zero-in-26620809/226915.html> - Accessed 31 October 2011.

²⁰⁷ See pp.278, 283-284 of: National Judicial Academy of Nepal 2008, ‘Sunil Babu Pant and Others v Nepal Government and Others: Decision of the Supreme Court on the Rights of Lesbian, Gay, Bisexual, Transexual and Intersex (LGBTI) People’, *National Judicial Academy of Nepal Law Journal*, Vol.2, No.1, pp261-286 http://njanepal.org.np/index.php?option=com_rokdownloads&view=file&Itemid=157&id=33:nja-law-journal-2008-issue-2 - Accessed 27 October 2011.

cards to [TGs] citing technical difficulties”.²⁰⁸ It should be furthermore noted that, despite having acquired a citizenship card, one of the two TGs cited above was subsequently refused a passport, on the grounds that the computer software used to produce passports does not allow for an option other than ‘Male’ or ‘Female’. Moreover, as the same report notes, the introduction of a TG category for passports requires amendments to the Citizenship Act, which “may take years”.²⁰⁹ LGBTI activists have alleged that sections of the bureaucracy are purposefully obstructing attempts at reform. According to a September 2011 report by the *Himalayan Times*, bureaucrats stated at a meeting between LGBTI advocates and the Prime Minister that: “one should think twice before granting citizenship to minorities.”²¹⁰ Without a citizenship card, TGs cannot access services provided by the State, obtain a passport, nor open a bank account.²¹¹

In May 2011 the Nepal Government announced that TGs would be counted in the 2011 census. This was interpreted as a major victory for LGBTI rights in Nepal.²¹² However, when the preliminary results were published in October 2011, TGs were absent. According to an October 2011 report, officials from the Bureau of Statistics admitted that TGs were not in fact included in the formal census forms. The report quotes a civil servant, who claimed that people “could list themselves as TGs, but it [was] not counted. It was there to make them not angry at us, but not to make them part of the data.”²¹³ Reports were found which indicate, however, that a TG category has been included in voter registration forms by the Electoral Commission of Nepal.²¹⁴

Reports suggest that violence and discrimination against TGs, especially in Kathmandu, has decreased since 2007, but information was found which indicates that, as with homosexuals, TGs are still attacked and discriminated against on account of their sexual orientation/gender.²¹⁵ A 2010 report in *Republica* includes anecdotal evidence of third

²⁰⁸ Parashar, U. 2011 ‘Gender identity and technical obstacles’, *Hindustan Times*, 27 July <http://www.hindustantimes.com/Gender-identity-and-technical-obstacles/Article1-726337.aspx> - Accessed 31 October 2011.

²⁰⁹ Parashar, U. 2011 ‘Gender identity and technical obstacles’, *Hindustan Times*, 27 July <http://www.hindustantimes.com/Gender-identity-and-technical-obstacles/Article1-726337.aspx> - Accessed 31 October 2011.

²¹⁰ ‘Third Gender [People] slam ‘Virulent’ Bureaucracy’ 2011, *The Himalayan Times*, 27 September <http://www.thehimalayantimes.com/fullNews.php?headline=Third+gender+slam+‘virulent’+bureaucracy&NewsID=304142> - Accessed 31 October 2011.

²¹¹ “[Citizenship certificates] are required for accessing jobs, education and pensions.”: Sharma, G. 2011, ‘Nepal’s gays say ‘cheated’ in census count’, *Reuters*, 30 September <http://in.reuters.com/article/2011/09/30/idINIndia-59638720110930> - Accessed 31 October 2011; “The [Citizenship card] gives the holder access to all kinds of entitlements, including a ration card, a passport, residential rights, etc.”: International Gay and Lesbian Human Rights Commission 2007, *Nepal Supreme Court Case on Relief for Sexual and Gender Minorities: Observers’ Report*, December, n.3 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/111-1.pdf> – Accessed 26 October 2011.

²¹² Shrestha, M. 2011, ‘Nepal Census Recognizes ‘third gender’, *CNN*, 31 May http://articles.cnn.com/2011-05-31/world/nepal.census.gender_1_gender-identity-citizenship-first-openly-gay-lawmaker?_s=PM:WORLD - Accessed 28 October 2011.

²¹³ Knight, K. 2011, ‘Zero in 26,620,809’, *Kathmandu Post*, 1 October <http://www.ekantipur.com/the-kathmandu-post/2011/10/01/oped/zero-in-26620809/226915.html> - Accessed 31 October 2011.

²¹⁴ ‘Nepal readies to recognise third gender voters’ 2009, *Hindustan Times*, 18 November <http://www.hindustantimes.com/Nepal-readies-to-recognise-third-gender-voters/Article1-477674.aspx> - Accessed 31 October 2011; ‘Efforts to boost ‘Third Gender’ rights in Nepal’ 2011, United Nations Development Program – Nepal website, 9 August <http://www.undp.org.np/newsroom/details.php?n=1338> - Accessed 31 October 2011.

²¹⁵ For the claim that the situation has improved for TGs in Kathmandu see: Gurubacharya, B. 2011, ‘Nepal Gay Rights Rally Draws Hundreds’, *Huffington Post*, source: *Associated Press*, 14 August

gender people being raped, attacked, ostracised and discriminated against in the work place.²¹⁶ In a speech in 2011, the head of the UN Office of the High Commissioner for Human Rights-Nepal, Jyoti Sanghera, reportedly stated that sexual minorities, such as TGs, remain ostracised, are subject to abuse and denied access to social services.²¹⁷

5.3 Monarchists

Reports by the United Nations, the Department of Foreign Affairs and Trade (DFAT), Freedom House, Amnesty International and the US Department of State indicate that Maoist militias, such as the YCL, harass and carry out violent attacks against pro-Monarchists.²¹⁸ United Nations Mission in Nepal (UNMIN) reports indicate that some Maoist cadres, mainly those belonging to the YCL, have engaged in acts of violence against monarchists, including abduction, torture, and murder.²¹⁹

A 2010 report by the Carter Center indicates that despite an overall decrease in violence perpetrated by youth wings since the elections, the YCL has continued to use 'intimidation and violence to control political space'.²²⁰ Both the International Crisis Group and the United Nations suggest that the violent activities of the Maoists and the YCL have significantly decreased since the 2008 elections. The Maoist government's treatment of opponents, including pro-monarchists, following the elections consisted of isolated violent incidents by some cadres rather than widespread targeting of political opponents.²²¹ Reports indicate that pro-monarchists held demonstration in 2011.

http://www.huffingtonpost.com/2011/08/14/nepal-gay-rights-rally_n_926395.html - Accessed 27 October 2011.

²¹⁶ Thapa, S. 'LGBT youth strive for acceptance' 2010, *Republica*, 17 November

<http://news.meronepalma.com/readnews/47364-via-meronepalma.com> - Accessed 27 October 2011.

²¹⁷ Koirala, K.R. 2011, 'OHCHR-N Chief Lauds Nepal's efforts to ensure equal rights to sexual minorities', *Asian Tribune*, 8 July <http://www.asiantribune.com/news/2011/07/08/ohchr-n-chief-lauds-nepals-efforts-ensure-equal-rights-sexual-minorities> - Accessed 27 October 2011.

²¹⁸ DIAC Country Information Service 2009, *Country Information Report No. 09/58 – Nepal: Discrimination – CIS Request No. NPL9770*, (sourced from DFAT advice of 3 August 2009), 5 August; US Department of State 2011, *Country Reports on Human Rights Practices for 2010: Nepal*, 8 April, Introduction, Section 1g; Freedom House 2010, *Freedom in the World – Nepal 2010*, June <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7885> – Accessed 10 September 2010; Amnesty International 2010, *Annual Report 2010 – Nepal*, 28 May; US Department of State 2010, *Country Reports on Terrorism for 2009*, August, p.156; United Nations Security Council 2010, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 28 April, p.5 <http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf> – Accessed 19 August 2010; United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 2 January, pp.2, 10 <http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf> – Accessed 19 August 2010

²¹⁹ United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 2 January, pp. 2 and 10 <http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf> – Accessed 19 August 2010

²²⁰ The Carter Center 2011, 'Clashes Between Political Party Youth Wings Have Decreased But YCL And UML Youth Force Continue To Seek Financial Gain', The Carter Center website, 28 February, pp.3-4 http://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-political-party-youth-wings-022811-en.pdf – Accessed 17 March 2011

²²¹ International Crisis Group 2009, *Nepal's Faltering Peace Process*, Asia Report N°163, 19 February, p.6; United Nations Security Council 2008, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN)

Demonstrations involved clashes with police, and on one occasion members of the RPP-N were reportedly arrested for “chanting ‘improper’ slogans”.²²²

5.4 Tibetans

The United Nations High Commissioner for Refugees (UNHCR) estimates that there are some 20,000 Tibetan exiles in Nepal. Approximately 1,000 Tibetans transit through Nepal annually. Those who arrived in the country before 1990 are recognised as refugees by the government, and are entitled to documentation enabling them to remain in the country but not to work.²²³ Since 1990, successive governments have taken a hard line against new Tibetan arrivals. The 2007 election of the Communist Party of Nepal-Maoists saw the party attempt to demonstrate:

their friendship with China by increasing pressure and engaging in a harsh crackdown on Tibetan refugees...since 2008 Nepali authorities have effectively sealed the border to prevent the arrival of Tibetan refugees.²²⁴

Similarly, the *Epoch Times* alleges that as a small, poor nation, Nepal relies heavily on Chinese aid, and it is widely accepted that Nepal is vulnerable to pressure from the Chinese Government regarding Tibetan refugees; Nepal does not allow Tibetans to organise anti-China political activities. In 2008, thousands of Tibetans in Nepal were detained and later freed for protesting against the Chinese crackdown on Tibetans demonstrating in Lhasa during the lead up to the 2008 Beijing Olympic Games. In June 2008, nearly 600 Tibetan protestors in Kathmandu were arrested for trying to storm a visa office of the Chinese Embassy, while hundreds of Tibetan exiles, including nuns and monks, were detained after shouting anti-China slogans and scuffling with police.²²⁵

website, 24 October <http://www.unmin.org.np/downloads/keydocs/2008-10-29-UNMIN.SG.Report.to.SC.ENG.pdf> – Accessed 19 August 2010; United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 2 January <http://www.unmin.org.np/downloads/keydocs/2009-01-09-UNMIN.SG.Report.to.SC.ENG.pdf> – Accessed 19 August 2010; United Nations Security Council 2009, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 26 October <http://www.unmin.org.np/downloads/keydocs/SG%20Report%20Oct%202009.pdf> – Accessed 19 August 2010; United Nations Security Council 2010, *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, United Nations Mission in Nepal (UNMIN) website, 28 April <http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf> – Accessed 19 August 2010

²²² For clashes with police see: Parajuli, K. 2011, ‘Police and Hindu radicals clash as the nation fears anarchy’, AsiaNews.it website, 28 May <http://www.asianews.it/news-en/Police-and-Hindu-radicals-clash-as-the-nation-fears-anarchy-21690.html> - Accessed 23 November 2011. For arrest for bearing slogans see: ‘I didn’t give up throne to see this situation: Ex-King’ 2011, *Republica*, 7 July http://www.myrepublica.com/portal/index.php?action=news_details&news_id=33216 - Accessed 23 November 2011.

²²³ United Nations High Commissioner for Refugees 2011, ‘2011 UNHCR country operations profile – Nepal’, UNHCR website <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487856> – Accessed 11 August 2011.

²²⁴ Human Rights Watch 2010, *World Report 2010 – Nepal*, 20 January.

²²⁵ ‘U.S. Group Protests Nepal Arrest of Tibetan Leaders’ 2008, *The Epoch Times*, 20 June <http://www.theepochtimes.com/n2/content/view/989/> – Accessed 5 May 2010.

Despite not being a party to the 1951 UN Convention relating to the Status of Refugees, Nepal, in agreement with the UNHCR, allowed ‘Tibetans arriving in Nepal passage to India, where they were ‘transferred to the government-in-exile set up by the Dalai Lama in Dharamsala’.²²⁶ In 2008, however, the Maoist government abandoned this agreement, and stopped giving refugee status to Tibetans, thereby removing their right to safe passage through Nepal. Further, Nepalese police and Maoist cadres were ‘ordered to spot and arrest Tibetan refugees escaping into Northern Nepal, and hand them over to the immigration authorities’.²²⁷ In June 2010, there was a confirmed forcible return of three Tibetans to China, thought by the US Department of State to be the first since 2003. Two of those returned are thought to be in gaol. There were also reports of newly arrived Tibetans being pushed back to the border, or being detained and charged with entering Nepal illegally.²²⁸

In March 2011, Chinese General Chen Bingde offered a ‘loyalty-trust proposal’ to the Nepalese Government, proposing that Nepal ‘[d]eport refugees to China to prevent the rise of a militant Tibetan émigré force’. Chen insisted that Nepal should be intolerant to any anti-Chinese activity, adding the incentive of US\$20 million assistance in non-lethal military aid to the Nepalese Army. According to a senior Nepali immigration official, Nepal has agreed to deport Tibetan arrestees to Chinese officials.²²⁹ Reports indicate that Tibetans in Nepal have been arrested in 2011 for “anti-China activity”. One report claims that, on one occasion, police detained 100 Tibetan protestors and: “took them away in trucks to detention centers (sic).” According to a 2011 report by Radio Free Asia:

Tibetan refugees living in Nepal are under pressure to avoid asserting their national identity as their host country moves closer to its powerful northern neighbour China, analysts say.

Even religious ceremonies and community gatherings by Tibetans are increasingly viewed with suspicion by authorities in Nepal. They were also prevented from celebrating the birthday of the Dalai Lama last month.²³⁰

5.5 Inter-caste marriage

It is illegal in Nepal to discriminate against citizens on the basis of caste.²³¹ According to the US Department of State, however, a ‘rigid caste system continued to operate

²²⁶ Pandey, N.N. 2006, ‘Bhutanese and Tibetan Refugees in Nepal: Implications for Regional Security’, Institute of South Asian Studies, National University of Singapore, 19 December

²²⁷ ‘Nepal deporting Tibetans to China secretly’ 2011, India Defence Review website, 15 April <http://www.indiandefencereview.com/geopolitics/Nepal-deporting-Tibetans-to-China-secretly.html> – Accessed 11 August 2011.

²²⁸ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 2.d.

²²⁹ ‘Nepal deporting Tibetans to China secretly’ 2011, India Defence Review website, 15 April <http://www.indiandefencereview.com/geopolitics/Nepal-deporting-Tibetans-to-China-secretly.html> – Accessed 11 August 2011.

²³⁰ ‘Tibetans Held Amid China Visit’ 2011, *Radio Free Asia*, 17 August <http://www.rfa.org/english/news/tibet/visit-08172011155555.html?searchterm=None> - Accessed 23 November 2011.

throughout the country in many areas of religious, professional, and daily life...[s]ocietal discrimination against lower castes, women, and persons with disabilities remained common, especially in rural areas'. USDOS further noted that '[r]esistance to intercaste marriage (upper and lower caste) remained high and in some cases resulted in forced expulsion from the community'.²³² A government committee established to study caste based discrimination and offer solutions was still holding public meetings at the time of writing.²³³

Relatively small numbers of inter-caste marriages take place in Nepal, and there are reports that such marriages have led to severe social ostracism and physical violence.²³⁴ In an attempt to discourage discrimination, in July 2009 the Nepali government announced that it would provide Rp 100,000 to inter-caste couples when they married.²³⁵

²³¹ *Caste Based Discrimination and Untouchability (Offence and Punishment) Act* (Promulgated 1 June 2011), Nepal Law Commission website, <http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-acts/func-startdown/1195/> - Accessed 22 November 2011.

²³² US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Nepal*, 8 April, Section 6.

²³³ 'House team in Jhapa to study untouchability' 2011, *The Himalayan Times*, 31 October <http://www.thehimalayantimes.com/fullNews.php?headline=+House+team+in+Jhapa+to+study+untouchability&NewsID=307512> - Accessed 22 November 2011.

²³⁴ 'Inter-caste marriages in Nepal face violence and intimidation' 2009, Advocacy Project website, 12 February, <http://www.advocacynet.org/page/intercaste> - Accessed 20 July 2010; 'Locals evict inter-caste couple' 2010, *The Himalayan Times*, 7 June, <http://www.thehimalayantimes.com/printNepaliNews.php?id=248998> - Accessed 15 July 2010; 'Inter-caste marriage spells trouble' 2009, *Naya News*, http://www.nayanews.com/news.php?subaction=showfull&id=1260892758&archive=&start_from=&ucat=1& - Accessed 20 July 2010.

²³⁵ 'Nepal introduces grants for inter-caste marriages' 2009, *Hindustan Times*, source: *Agence France-Presse*, 13 July <http://www.hindustantimes.com/News-Feed/nepal/Nepal-introduces-grants-for-inter-caste-marriages/Article1-431879.aspx> - Accessed 30 July 2009.