

Holmes, Janet (REPS)

From: Committee, JSCFADT (REPS)
Sent: Monday, 25 November 2002 10:13 AM
To: Holmes, Janet (REPS)
Subject: FW: Submission for parliamentary inquiry

Submission 2



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-----Original Message-----

From: Roland Tam [mailto:rolypoly88@hotmail.com]
Sent: Friday, 22 November 2002 5:09 PM
To: Committee, JSCFADT (REPS)
Subject: Submission for parliamentary inquiry

Dear Sir/ Madam

Attached is my submission for the Parliamentary Inquiry into Good Governance and Human Rights Education in the Asia-Pacific Region.

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Please reply by email to acknowledge receipt of this submission and contact me with any questions.

Sincerely

Roland Tam

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Executive Summary

It is a sad but indelible fact that the relationship between human rights and poverty is an inverse, inseparable one. The international community is slowly becoming more concerned with the plight of human dignities in the developing world. 1995 – 2004 has been deemed the United Nations Decade on Human Rights Education. Donor agencies are recognising the need to draft explicit human rights frameworks in their activities as an essential component of effective international development programs. As human rights agencies initiate pressure on governments to promote good governance and improve their human rights records, local leaders are slowly mending their ways. From education springs change- both in infrastructure and attitude- and raising awareness of human rights within civil societies is seen as one way in which the developing world can maximise its enormous human resource potential. International aid must focus on strengthening civil society from within, in particular through the participation of marginalised people to determine development strategies.

This submission attempts to illustrate the importance of good governance and human rights to building socio-economic development within the context of the case study of Nepal. It is only through good governance and the maintenance of the primacy of the rule of law that individuals are able to claim social, economic and cultural rights. Active participation in civil society and the separation of powers in an impartial and effective legal system protects societies from the cancerous evils of corruption and abuse of power. Often in development projects there is an excessive reliance on macro economic and sectorial policies – this paper suggests that more emphasis must be placed on regional development strategies to create strong civil society.

It is up to the international community to incorporate an explicit rights based approach to sustainable development to alleviate poverty. Most nations in Asia contain very regulated and restrictive political environments. In the wake of 9/11, there is concern that human liberties will be the casualty of the sweeping paranoia generated by the fear of terrorism. Asia today is a virtual patchwork of repressive rules and restrictions- maintained under the guise of national security laws, antsubversive laws or internal security acts- which give leaders wide powers to tighten the screws in the service of “stability and order”.¹ The focus of Australia’s aid in the Asia-Pacific must be:

- to build capacities to enact strong local legislation in keeping with all international obligations under human rights laws
- to develop independent judicial mechanisms capable of maintaining checks and balances on the executive and legislative arms
- to provide well trained and well resourced law enforcement systems
- to encourage the participation of all people, particularly marginalised groups, at various levels of civil society
- to encourage all mechanisms which promote transparent and accountable governance weeding out the dangers of corruption, nepotism and abuse of authority

¹ “Political Freedom’s Price” Opinion p19, *Newsweek* Nov 18, 2002

Submission

Introduction

My name is Roland Tam and I am currently living in Kathmandu, Nepal as part of the AUSAID Australian Youth Ambassadors for Development Program. At the moment, I am working on an internationally funded human rights education project with HUREF, a Nepali non-government organisation. The 12-month project is a tiered project with four major objectives:

- 1) Develop and implement a year long human rights course to be taught at secondary school level to Nepali students within the national Social Studies curriculum
- 2) Develop and implement intensive training of teachers in the course and 'best practice' methods of teaching human rights
- 3) Establish human rights centres in village areas which act as a resource for human rights education as well as provide a facility for complaint handling where alleged violations can be heard and advice given as to potential solutions. Heads of these centres will consist of members of the local community from various demographic groups and it is hoped that the majority of complaints can be heard and resolved using conflict resolution processes within the community centre.
- 4) Develop impact performance measures and overall project effectiveness

I write to share my 'on the ground' experience of working in human rights development in SouthEast Asia. In my opinion, when we talk about development, the importance of creating explicit human rights guidelines and improving accountability cannot be overestimated. Often in development projects there is an excessive reliance on macro economic and sectorial policies – more emphasis must be placed on regional development strategies to protect the rule of law and provide good governance. Aid does not necessarily improve governance or human rights – and is not wholly about economic development. Since human rights are holistic, a holistic approach is the most effective way to create good governance and in turn help alleviate poverty.

Case study: The Kingdom of Nepal

The Background

The Himalayan kingdom of Nepal has long been admired for its mountainous beauty and the warmth and diversity of its many peoples. For many years Nepal has been viewed internationally as a type of "Shangri-la" – a mysterious land of harmonious community and peace. Much of Nepal's mystique lies in its isolation from the outside world. Due to a myopic ruling dynasty, the country was not opened up to foreigner visitors or western ideas until well into the 1950's. Nepal is hamstrung by its geography and topography. Landlocked between the giant jackals of China and India, natural resources are scarce and the country can barely produce enough to feed its people. With a GDP per capita of \$220 US and a life expectancy of 57 years Nepal is one of the poorest nations in the world.²

² Quoted from BBC SE Asian Country Profiles

Sadly, in the last half-decade, Nepal has become more famous for political instability, revolutionary insurgency and a royal massacre than its reputation as a tourist haven. Prima facie, Nepal has embraced human rights at the forefront of its constitution, signing and ratifying most of the major human rights instruments of the United Nations.³ However, in the last 6 years, and most particularly in the last 12 months, there has been a disturbing escalation of human rights abuses. Amnesty International reports that deaths, torture, disappearances, arbitrary detentions, unfair trials, hostage taking and recruitment of child soldiers have all been increasingly recorded across many districts of the country.⁴

Since 1996, an ever-increasing number of human rights violations, including killings and torture, are being committed with impunity. According to the latest figures as at Oct 31 2002 released by the Home Ministry and Royal Nepal Army, the six and a half-year "people's war" has claimed the lives of over 7,000 Nepalese people.⁵ Official figures say the insurgency has claimed the lives of 6,011 Maoist rebels, 873 civilian policemen, 773 civilians, 97 armed police and 219 army personnel. The escalation of violence has meant that the vast majority of deaths have occurred in the past year, with over 4,000 people killed after the imposition of the state of emergency in Nov 2001.

The modern history of Nepal began really when a popular uprising led King Birendra to abrogate power in late 1990; overnight, Nepal moved from a non-party system to a parliamentary democracy. Despite hopeful beginnings, the years since 1990 have been characterised by political infighting, inefficiency and ineffectiveness to bring change and improvement. The lack of development has meant a continuation of poverty exacerbated by nepotistic corrupt leaders, a lack of land reforms and an alienation of marginalised groups left to wonder where millions of dollars of foreign aid were disappearing. Political leaders all came from the "higher castes", leaving many people to feel there was no equal access to power. The majority of the population continue to live in poverty.

The "People's War"

"Human rights have been the prime casualties of the ruthless "people's war" and the government's heavy-handed response to it."⁶

On 13 February 1996 the Communist Party of Nepal (CPN - Maoist) declared a "people's war" against the ruling state which aimed to establish "a New Democracy" and constituted a "historical revolt against feudalism, imperialism and so-called reformists".⁷ In effect to the present, the rebels are seeking to represent marginalised groups who are dissatisfied with the climate of corruption and the lack of

³ To this date, Nepal is a signatory to 16 UN Treaties, including the International Convention on Civil and Political Rights (1st/3rd Protocols), International Convention on Social Economic and Cultural Rights, the Convention against Torture and other Cruel, Inhuman or degrading treatment or Punishment, Convention of the Rights of the Child, Convention on the Elimination of all forms of Discrimination against Women.

⁴ 'Nepal: A spiralling human rights crisis' *Amnesty International Working Paper 4 Apr 2002*

⁵ 'The Kathmandu Post' Nov 1 2002

⁶ Rory Mungoven, Director of Amnesty International's Asia Program in a speech to press conference, Kathmandu 1999

⁷ Bulletin No.1 May 1996, published by Central Publicity Division of the CPN (Maoists)

development under the parliamentary democracy by setting up parallel political systems and establish a social revolution across the land.

The “people’s war” has affected people across nearly all districts of Nepal. By mid 2001, Maoists had set up “people’s governments” in 22 districts of Nepal, holding elections, running development programs, establishing people’s courts and promising to control consumption of alcohol, gambling and corruption. Daily armed operations are conducted against army/police posts, and socio-economic targets such as factories, schools, transportation and shops are often the subject of Maoist bombings. Through the instillation of fear, Maoists hold significant power to affect the functioning of the economy, regularly calling national bandhs (strikes) affecting transportation, trade, and education. Forced “donations” and robbery are one method Maoist forces are able to fund its insurgency.

At Oct 31 2002, the six and a half-year “people’s war” had claimed the lives of over 7,000 Nepalese people.⁸ The vast majority of deaths have occurred in the past year, with over 4,000 people killed after the imposition of the state of emergency in Nov 2001. Aside from the loss of life, Amnesty International has recorded a significant increase in the past year of reports of disappearances, torture, illegal arbitrary detention, hostage taking and physical abuse by both warring sides.

Peace talks, aimed at ending the "people's war", and an accompanying cease-fire broke down in November 2001. The government declared a state of emergency, leading to more than 5,000 arrests by early February 2002. Those arrested included lawyers, teachers and a doctor arrested on suspicion of providing medical treatment to Maoist suspects.

State of emergency

Peace talks with Maoist leaders broke down on 23 November 2001, after rebels attacked army/police posts in 42 districts, reportedly killing 80 army / police officers. On 26 November 2001, the government announced a state of emergency, invoking a suspension of various articles of the Constitution. Soon after it enacted various ordinances, granting greater powers for police and army to help control the insurgents.

Despite assurances from the Prime Minister to provide legal provisions to protect human rights at the time the state of emergency was declared, the security forces have been arresting people, holding them incommunicado and often torturing them.

On 28th November 2001, the Ministry of Information and Communications published a list of issues not to be broadcast or published in local media outlets. These included “anything that aims to create hatred and disrespect against His Majesty the King, and the Royal family”, “anything that is likely to create hatred against the Royal Nepal Army, police or civil servants and lower their morale and dignity” or “news that supports Maoists terrorists including individuals or groups”. It also encouraged reports “regarding the bravery and achievements of the Royal Nepal Army, police and

⁸ ‘The Kathmandu Post’ Nov 1 2002

civil servants. According to Amnesty international reports over 50 journalists have been arrested since the state of emergency was declared in 2001.⁹

To this day Nepal is riddled with political instability and infighting. In May 2002, parliament was dissolved in the midst of political dissent regarding the extension of the state of emergency. In October 2002, King Gyanendra invoked special Article 127 of the Constitution, dismissing the incumbent government of Prime Minister Sher Bahadur Deuba as “incompetent” and placing an interim government in charge until new elections could be held in the country. The violation of fundamental freedoms is being reported daily and is on the increase. Democracy has been in suspended animation since the removal of the government. Such instability makes the future of human rights in the country even more uncertain and bleak.

Term of Reference 1. The role of human rights and good governance education in the promotion of fair and sustainable social, political and economic development;

The promotion of human rights and good governance is fundamental to achieving the goal of sustainable reduction in poverty. It is only through good governance that individuals are able to claim social, economic and cultural rights. Maintaining the primacy of the rule of law allows individuals to be confident in the protection of their fundamental rights as well as providing sufficient transparency and accountability for transgressions. Democracy allows individuals guaranteed civil and political rights to freely express their views without fear of being arrested, tortured or discriminated against. Corruption reduces the strength of the law. The separation of powers through an impartial and effective legal system protects the civil rights of all people in relation to their property, personal security and liberty. A strong law serves the interests of its people rather than a particular political party. Human rights flow from this.

In 1998 the World Bank released a landmark report titled *Assessing Aid: What Works, What Doesn't*. Its findings suggested that aid works best when it supports reforms in policies and governance- as an explicit requirement of foreign aid packaging. The key to macro economic growth is to establish sound policy frameworks and robust economic institutions – from this poverty can be reduced.

Creating participatory civil service however is much easier said than done. For decades, corruption, poverty and culture have continually condemned marginalised groups to unequal access to education or jobs. The inequality of the system is endemic and cyclic; poverty passes from generation to generation. Basic education is the only way for social reconstruction- children must be removed from the rice paddies and placed back in schools. Marginalised people need to be empowered to gain the solid base of competencies required to actively mould their civil society. It is through forming groups that minorities can gain inclusion into society and influence attitudes and laws. Clubs and societies affect government policy on issues that concern them through protests, active debate and civil disturbance. Good governance ensures that public resources are given for groups to interact socially and debate topical issues to enact popular change.

⁹ ‘Nepal: A spiralling human rights crisis’ *Amnesty International Working Paper 4 Apr 2002*

Sadly, the escalation of human rights violations in Nepal today is a reflection of the weakness of civil society and lack of good governance in this country; poverty being both the cause and effect of this weakness. In Nepal, governance and participation in civil society is left to the wealthier and privileged upper classes; there is minimal opportunity to participate for the poor, unemployed, hungry, homeless and uneducated. The creation of accountable and transparent institutions so vital to good governance and to sustainable development is sadly lacking. Rampant corruption, nepotism and inefficiency have an asphyxiating hold on the social and economic development of this country, rocking the very foundations on which a free society is based.

Good governance and human rights are inseparable bedfellows- one cannot exist without the other. It is only when civil society is strong and democratic that individuals are afforded the ability to participate in all aspects of governing, legislating and judging. The maintenance of human rights is a natural attachment to good and participatory governance- and good governance arises out of a unanimous concern for the welfare and rights of all human beings. Poverty alleviation can only be achieved through the retrieval of effective democratic systems of civil participatory government and an executive willing to take responsibility for the social security of its people.

The major cause of the escalation of human rights abuses in Nepal today is the weakness of the law as a mechanism to protect fundamental freedoms and foster an environment capable of breeding social and economic development. Prima facie, Nepal has embraced human rights at the forefront of its constitution; however, in reality Nepal's human right provisions are mere charters, barely worth the pieces of paper they are drafted on. In the past decade, constitutional equanimity has been highjacked in the wake of an economy in tatters. Politicians usurp the fundamental nature of the constitution, preferring to use beneficial aspects for political power broking and their own political purposes. The inadequacies of the current legal structures contribute to the impunity of human rights violators – and the wide powers given to law enforcement officials to use lethal force appear to encourage violations. The current legal framework in Nepal is inadequate, occasionally in breach of its obligations under international treaties and suspends fundamental human rights provided under the Constitution of Nepal.

Since the outbreak of the "People's War" the Nepali government has enacted various ordinances in its war against the insurgent rebels. New security legislation, known as the Terrorist and Disruptive Activities (Prevention and Control) Ordinance (TADO) was promulgated to grant wider powers to police/army forces. Under the ordinance, Maoists were declared as "terrorists" and police powers were extended to help quash the rebel forces. Under TADO, senior officers of the army/police can authorise to "use necessary force or weapons...if it appears that a person who is carrying out or has carried out terrorist and disruptive act can run away or cannot be arrested" or "if any resistance is put up when someone is being arrested...or when a search is carried out...or while taking any other action."

In its paper "Nepal: a spiralling human rights crisis" Amnesty International expresses serious concerns about TADO as being in breach of international human rights obligations. The Constitution of Nepal does not explicitly guarantee the right to

life. Under the TADO, the vague definition of a "terrorist" could lead to people being detained simply for expressing their peaceful political ideas. TADO allows for detention for up to 90 days, with possible extension to 180 days. Most of those arrested under TADO have not been produced before a court of law. In some cases there has been no intention to charge arrested individuals, but to detain and threaten them as a warning to others. In many instances of extrajudicial killings carried out since the enactment of TADO, deceased bodies have been disposed of prior to being subjected to an official autopsy, in breach of UN obligations.¹⁰

Amnesty International also reports that there is an escalation of "disappearances" and long term unacknowledged detention emerging since 1998. Whilst Nepal's constitution requires an arrested person to be produced before a court of law within 24 hours of arrest, in practice, disappearances, kidnappings and arbitrary arrest have become commonplace, with no regard for constitutional freedoms. Habeas corpus writs can be filed in the Supreme Court of Nepal but have proven to be ineffective in finding the whereabouts of missing people. Currently there is no legal basis for compensation to be paid in relation to "disappearances".

Despite ratifying the UN Convention against Torture in 1990, torture is still yet to be recognised as a crime in Nepal. The lack of investigative mechanisms and skills available to inexperienced government forces results in police taking the easy way out and using torture to beat confessions out of people. It is reported that police frequently refuse to allow injured detainees to see a doctor or delay up to 7-8 days - in strict violation of Nepal's obligations under the International Covenant on Civil and Political Rights (ICCPR), to which the country is a party.¹¹ There is a tradition of torture and a general climate of impunity in police beatings. The Torture Compensation Act is toothless and rarely used. Six years after being due, Nepal is yet to produce its second report to the UN Committee against Torture, after its first report was deemed "incomplete".

The weakness of the law leads to a climate of impunity and a complete lack of accountability in regard to unlawful killings, executions and many other forms of human rights violations. Despite the large numbers of violations reported to both government and independent sources to date, in many cases authorities have failed to bring perpetrators to justice. According to Amnesty International reports, none of the alleged killings by police and army operations reported in the context of the "people's war" has been independently investigated, and not one member of the police or army has been charged with murder or related offences. Of even more concern is the failure of the relevant authorities to condemn unlawful killings. Where investigations have occurred they are merely toothless ones, conducted only as a response to public pressure.

Contributing to the weakness of the law is the lack of separation of powers between the legislature, executive and the judiciary. Under TADO, the same party

¹⁰ Under the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, deceased bodies must not be disposed of without a proper autopsy being conducted by a physician.

¹¹ The Human Rights Committee in its General Comment 20 on Article 7 of the ICCPR has stated that the protection of detainees requires that each person detained be afforded prompt and regular access to doctors.

that authorises detention orders under TADO can act as judicial authority before which the accused is produced. The United Nations Human Rights Committee, which examined Nepal's human rights record in 1994, recommended that "necessary measures be taken...to give effect to the separation of executive and judicial functions". Where investigations into human rights abuses have been conducted, they have been convened by non-independent members; authorities under whose control police and army have been operating. Investigations produce no publicly available or tangible outcomes. The suspension of Article 23 under the Constitution denies judicial review of executive powers- the judiciary cannot question the substantiality or constitutionality of laws made by the legislature- its jurisdiction is limited to procedural aspects of law. It prevents judicial review of the state of emergency or the promulgation of TADO. There is a distinct police disregard for the independence of the judiciary; sometimes individuals are re-arrested the moment they are released from court.

The state of emergency invoked a suspension of articles 12, 13 15,16,17,22 and 23 of the constitution of Nepal. Essentially, it suspended the freedom of expression and thought, assembly and movement, the right not to be held in detention without sufficient grounds, the right to information, property, privacy and constitutional remedy. The suspension of Article 23 of the Constitution denied people access to judicial remedy (apart from habeas corpus) and granted police in certain districts permission to shoot on sight any curfew violators. According to Amnesty International reports, the police unlawfully killed hundreds of people throughout the six and a half-year-old "people's war", and have not been held accountable for them.

The only independent mechanism to investigate human rights violations is the National Human Rights Commission, established in 2000. Its operation has proven to be wholly ineffective, the lack of funding, mission and goals rendering it a toothless tiger.

Term of Reference 2: Australia's involvement in human rights and good governance education in the Asia Pacific region, identifying achievements and obstacles to further progress

At just over \$7 million (AUD) per annum, Australia's foreign aid to Nepal is relatively small compared to that offered to other Asian-Pacific nations. The majority of AUSAID funding is disbursed in forestry, hydro electricity and education projects. There are currently 26 youth ambassadors for development and one AVI working in the various fields of medicine, micro finance, public health, information technology, rural development and sustainable tourism. To my knowledge, there is no current Australian funded project that directly adopts an explicit approach to implement human rights goals or good governance strategies.

In preparing a strategy for future developmental projects in Nepal, AUSAID needs to be aware of some of the barriers to overcome in creating good governance in Nepal:

Poverty

In Nepal, literacy rates are below 40%, unemployment is high and average GDP is well below the World Bank Poverty description of \$1 per day. In such a context it is not surprising that concern for the plight of marginalised peoples is low on the priority list. In a Darwinist 'survival of the fittest' world, teaching rural villagers about United Nations conventions can be an understandably distant and irrelevant notion.

Nepal is caught in a spiralling poverty trap; whilst the current development strategy is that of aid-led growth rather than export based fiscal growth, investments in infrastructure are being funded by debt rather than aid. Annual GDP growth is stagnant around 4.7%- this is well below the targeted 7% rate needed to reduce Nepal's poverty by 50% by 2015. As rising debt escalates, the economy lies in tatters- business investment and fiscal demand is low as Nepal's greatest money-spinner, the tourism industry stands on the brink of collapse. It has been suggested that the majority of government departments are either already or on the verge of bankruptcy.¹² Much of the government's finances are being spent on defence in the midst of the Maoist insurgency. The domestic economy is riddled by corruption, inefficiency and a widening gap between the haves and have nots.

It is the role of concerned international organisations to facilitate domestic development. Sound domestic policies are the flow on effect of good governance. Rather than rely on aid, Nepal's strategy must be to empower people to be active agents of social change within their own communities. Clubs and societies must be established to encourage open debate of topical issues- popular attitudes enact change. Markets must be opened up and opportunities and access to education availed to all. Development aid must focus on educating impoverished and marginalised groups and ensure their active inclusion in a free market economy. Foreign investment should be encouraged through the removal of tariffs and trade restrictions. Nepal must market its greatest resource, tourism, with far more vigour and effectiveness. Nepal must stimulate fiscal demand rather than rely on international handouts – only then can poverty be reduced.

Corruption

'Corruption, at all levels of governance, especially at the policy- making level is the single biggest cause of our backwardness'¹³

Corruption, nepotism and abuse of authority is rampant at all levels of governance in Nepal. It has long been scoffed that for every aid dollar that enters Nepal, as little as half reaches the target group, with the other half going into a corrupt official's pocket. Despite millions in foreign aid pouring into the country through sources such as the World Bank, ADB and foreign governments, development remains stagnant. Corruption has almost become synonymous with power. The situation has reached such endemic proportions that political, cultural and government trustworthiness has become questionable. Where corruption pervades every facet of

¹² Editorial "The Kathmandu Post" 22 Oct 2002

¹³ "Anti Corruption Drive" by Vijaya Chalise Article in *The Himalayan Times Newspaper*, Nov 11 2002

living, social and economic development is impossible. Social and economic inequalities widen by the day as the average Nepali gets poorer and poorer. The corruption plaguing the country is one of the major causes of the "people's war" today.

Change is coming slowly. The recently formed Commission for the Investigation into Abuse of Authority is calling upon all government officials to account for their assets and earnings. So far, it has won popular support with its swift and decisive actions; arresting offenders and confiscating illegally obtained property. Its investigations have gone all the way to the top, with former Prime ministers' families and senior ministers being called to testify. It is yet to be seen whether the commission can effectively weed out the roots of corruption but it is a step in the right direction. All foreign assistance must be given to any measures that bring accountability and transparency to Nepali governance.

Social change must be enacted to ensure that the poorest people are the epicentre of economic and political reform. It is the role of international governments to ensure that democratic ideals are maintained and that the primacy of the rule of law is always paramount. Nepal is a very young democracy, and there is a general ignorance about the way in which democratic systems function. Open inclusive forums for debate are the cornerstones of democratic ideals. Group formations allow minorities to influence attitudes and laws. Clubs and societies are able to affect government policy on issues that concern them through protests, active debate and civil disturbance. They demand and provide access to public resources, giving the opportunity for individuals to interact socially and debate topical issues, for the mutual benefit of others.

All assistance must be given to educate the people of their role as protectors of transparent and accountable public sectors. Emphasis must be placed on creating a strong legal system under which the separation of powers maintains checks and balances on those in positions of authority. Only then can the asphyxiating hold that corruption has on the development of the nation be removed.

Culture

'Educating a girl child is like watering your neighbours' garden'
Traditional Nepali saying

In discussing the role of human rights and governance in development, the impact of culture is highly significant. As can be seen from the saying above, what is seen as a human right in one place might not be so fundamental in another. In the developing world it is both morally wrong and inherently doomed to try to import western ideals of what human rights should be. It is important to separate fundamental freedoms as outlined in the United Nations Universal Declaration of Human Rights from other human rights afforded to individuals in developed Western nations. Human rights education is not a science, and cultural difference needs to be embraced within the unique local circumstances.

As Mrs Mary Robinson, UN High Commissioner for Human Rights recognised:

“The expression ‘human rights’ carries different meanings, resonates differently in various parts of the world and within countries depending on political preferences, ethnic associations, religious views and, importantly, economic status.”

Nepalese society is characterised by a class and caste system. Rural regions still function by a feudal system of landowners and servants. The vast majority of the population is scattered in villages across the country, scrapping together a subsistence existence. The culture is based around community. The family is the epicentre of all activity and the individual is expected to be subordinate to the group. Each member of a family has a defined social role to fill. Historically, women have been expected to be housewives, not actively participating in politics or public sector institutions. Children, particularly female ones, often leave school before age 12 to work the fields. In a male dominated society the challenges of providing access to all aspects of civil society are large. Traditionally only the higher castes fulfil the positions of authority in government, business and professional vocations. Jobs will always go to a relative or political supporter. Minority and marginalised groups do not have equal access to education, power or employment.

It has been suggested that Nepalis grow up with a sense of powerlessness—always deferring to parents, teachers, political and social leaders and to the coercive powers of the state’s security apparatus.¹⁴ In such an environment democracy naturally gets reduced to acts of popularism. There is no healthy civil disobedience to keep check of authority; the quid pro quo is missing. It is the role of international agencies to encourage local governments to educate and provide opportunities to all individuals to contribute to civil society. Such encouragement must be promoted with understanding. Cultural and religious sensitivity is always paramount in developing good governance programs – colonial importation of Western notions of what is ‘fair and just’ are doomed to failure and inevitably breed ill-feeling and bad relations. This is where strong laws come into place—effective legislation has the power to mould community attitudes to protect human rights, but also reflect community attitudes in place. It is not for us to tell developing nations what their law should be; but we must encourage them to enact strong effective laws that provide protection and cultivate opportunity for all people, particularly marginalised groups, to engage actively in the governance of their country.

Term of Reference 3: The involvement of the UN and other international and regional government and non-government organisations in promoting human rights education and good governance in the Asia Pacific region

Amnesty International is monitoring the human rights situation in Nepal with great concern following the escalation of violence and political instability in the country. As well as conducting research, it is investigating reports of human rights violations, offering training for police/army in human rights education and placing pressure on the government and Maoist insurgents to put an end to grave abuses of fundamental freedoms. In its recent paper “Nepal: a spiralling human rights crisis” it listed out 20 recommendations for the Nepali government aimed at establishing viable procedures for investigating human rights abuses and prevention of further violations.

¹⁴ ‘Crisis of leadership’ Madhukar Rana in *The Himalayan Times* Nov 20, 2002

A number of the recommendations relate to fostering good governance and human rights:

- 1) Government should officially condemn human rights violations with a clear message that abuses will not be tolerated under any circumstances
- 2) Chain of command control- clear and strongly worded directives must be given to security forces to adhere to basic principles of international humanitarian law
- 3) Individuals should be personally responsible for violations and face criminal prosecution for breaches
- 4) All legal obstacles should be removed to ensure that responsible parties would be criminally liable for human rights violations. This includes creating effective legal systems to investigate alleged abuses and independent and impartial investigation by an independent body (National Human Rights Commission). NHRC will have full powers to work effectively and all findings should be made fully public.
- 5) Compensation should be provided for victims of human rights abuses
- 6) Fundamental human rights which are deemed non-derogable in international law are fully protected in local law
- 7) Accountability of police and armed forces should be maintained by the establishment of a permanent independent complaints authority with powers to assess compliance with national and international regulations on the use of force. Police should be given extensive training on human rights standards and their proper role vis a vis the judiciary
- 8) The Nepali government should fully implement all UN recommendations and submit its outstanding reports to UN Committees as required to obtain assistance in implementing the country's existing human rights obligations
- 9) Ensure all local legislation is in compliance with international standards

However, as Amnesty recognises, the scope for human rights work in Nepal is limited, particularly as the political climate deteriorates. Local human rights organisations are finding their freedom to operate narrowing, as the authorities clamp down on anti-state sentiment. Journalists, lawyers and human rights workers face constant threat of arrest for their work.

The United Nations Human Rights Commission has sent 2 representatives to inspect Nepal in the past decade. In 1996, the Chairman of the UN Working Group on Arbitrary Detention visited Nepal to inspect gaoling processes. Unfortunately few of the recommendations he made have been implemented since his visit. In her 2001 report to the Commission, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stressed the "urgent need to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses." She also recommended that "the international community should support and assist the Government with the resources required, including funding and expertise" to "continue the process of democratisation, and to renew its efforts to strengthen democratic institutions and protect the fundamental principles its development depends upon."

There is only so much that the international community can do, only so much aid they can provide. What must be ensured, is that aid is well spent, transparent and accountable. Good governance and desire to protect human rights must come from within. Ultimately, as the Amnesty paper recognises, it is "the cooperation of the

government, key institutions such as parliament, the judiciary, the media, the legal and medical professions and other sectors of civil society [that] is essential if the deterioration in the current human rights situation is to be reversed.”

Conclusion

This submission has not sought to make any specific recommendations with regard to Australia's foreign aid policies. It is designed to take observations and insights from the case study of Nepal's worsening political and social crisis. If one thing can be taken from the experience of Nepal, it is to stress the importance of good governance and human rights in cultivating socio-economic development- building strong democratic foundations from within is the only effective method of alleviating poverty in the world.