

DOMESTIC VIOLENCE IN NEPAL

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DOMESTIC VIOLENCE IN NEPAL

I. PREFACE

II.

MALATI - A Victim of Domestic Violence

Malati was born and raised in a village [in the] Sindhupalchowk district. Married twenty years ago at the age of fifteen to a man who was then twenty-eight, she is at present living in the heart of Kathmandu city with her three daughters and two sons aged sixteen, fifteen, eleven, eight and seven respectively. Her husband no longer lives with her. But he does frequently come to her place in the day time to quarrel and ends up beating her seriously before leaving. The children too get beaten and thrown around when they try to [stop] their father from beating their mother.

Malati narrates her story with a sad voice and tear drops start to roll down her bony cheeks. Her sixteen year old daughter sitting beside her also starts weeping.

* * *

For the last ten years of her married life, Malati's husband has always been going around with girls half his age.

* * *

Malati tried very hard to persuade her husband to change, but he refused to listen. In fact, he would beat her mercilessly after going out with other girls. Until Malati gave birth to her first son his reason was that since she couldn't give him a son, she was an unfit wife. But after that his reason was that she looked too old and ugly, thus an unfit wife to be seen with him in society.

* * *

While ending her story, Malati sighs hopelessly and sees no solution to her problems.[1]

Domestic violence has been found to be a serious problem in every country where the problem has been studied.[2] The risk of violence in the home is common to women regardless of their social position, creed, color or culture.[3] In September 1995, at the United Nations' Fourth World Conference on Women in Beijing, China, elimination of violence against women was one of the primary unifying themes among women from countries all over the world. The Beijing Declaration and Platform for Action adopted at the United Nations Fourth World Conference on Women recognizes that violence against women is a violation of human rights and suggests strategies for eliminating this violence.[4]

Violence against women is now clearly recognized as a priority for international attention.[5] In 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence Against Women.[6] This Declaration outlines the international legal instruments that protect a woman's right to be free from violence and

sets forth the responsibilities of individual governments to ensure that these protections are enforced. In 1994, the United Nations Commission on Human Rights appointed a Special Rapporteur on Violence Against Women to collect comprehensive data and to recommend measures at the national, regional and international levels to eliminate violence against women. Both the Declaration on the Elimination of Violence Against Women and the Beijing Platform for Action encourage government and non-governmental organizations to eliminate violence and to promote research and study on the nature and causes of violence against women.

As part of this international effort to eradicate violence against women, Minnesota Advocates for Human Rights ("Minnesota Advocates") has conducted research on domestic violence as a human rights abuse. In 1996, at the request of a human rights organization in Kathmandu, Minnesota Advocates for Human Rights sent a delegation to Nepal to investigate domestic violence as a human rights violation.[7] In the course of the investigation, the delegation used the definition of domestic violence from the United Nations publication, *Strategies for Confronting Domestic Violence: A Resource Manual*:

Domestic violence is defined as the use of force or threats of force by a husband or boyfriend for the purpose of coercing and intimidating a woman into submission. The violence can take the form of pushing, hitting, choking, slapping, kicking, burning, or stabbing.[8]

In Nepal, violence against women frequently takes the form of verbal harassment and emotional abuse in addition to physical violence. In the opinion of several women's human rights advocates, psychological abuse (often described as "mental torture") is more pervasive than purely physical abuse. [9] Many Nepalese interviewed by the delegation emphasized that the extended family structure frequently fosters abuse by persons other than the husband or boyfriend. Therefore, to accurately capture the experience of Nepali women, the delegation documented both psychological abuse and abuse perpetrated by members of the extended family.[10]

A. Summary of Findings

Domestic violence is a widespread problem in Nepal. Cultural, economic and religious factors reinforce male dominance and female subservience so thoroughly that neither the domestic violence nor the failure to complain about it are unusual. By law, men inherit and control most property with the concomitant responsibility to support parents, wives and children. Women's dependence is reinforced in the law, religion and cultural norms. Moreover, grinding poverty, lack of jobs and alcohol abuse feed the opportunities for violence inherent in the dependency relationship.

Every sector of civil society in Nepal responds to domestic violence by encouraging compromise. Family members, village elders, police, quasi-judicial administrators, and even women's advocates and lawyers retained to represent victims work to reconcile the victims of domestic abuse with their abusers. This pressure to reconcile is due in part to

the pervasive view that there is no place for a woman to live outside her family; a woman is completely dependent on her husband for food, clothing and shelter for herself and her children.

The Nepali legal system does not provide an effective remedy to women subjected to domestic violence. Civil law provides for the material support of abused women by partition of the husband's property. Delays in the Nepalese legal system, however, often effectively deny women their right to partition. Divorce is extremely uncommon and provides very limited, if any, financial security. Civil law and the state's administration of the property laws thus reinforce dependency.

Perpetrators of domestic violence are generally not prosecuted in the Nepali criminal justice system. The National Code does not require the state to prosecute the crime of assault. Accordingly, assault is usually left to private prosecution. The state prosecutes some assaults that disturb the public peace, as violations of a lesser, ancillary law. Because women lack the financial resources to seek private legal relief and given the non-public nature of most assaults on women, domestic violence has been relegated to a second class crime. Women rarely report incidents of domestic violence to the police. When a report is made, an arrest is very unlikely and police usually encourage the woman to reconcile with her partner. Unless domestic violence rises to the level of murder or attempted murder, state prosecutors will generally not pursue the cases.

The national police organization is implementing several important new initiatives to address domestic violence through the Kathmandu Women's Cell and at the National Police Academy in Kathmandu. The incipient use of the Public Offenses Act to prosecute perpetrators of violence, the growing initiative to train new and existing police, and efforts to recruit more women to the police force are significant steps toward improved police response to domestic violence.

Despite the efforts of several non-governmental organizations and a few police authorities to change law and policy in Nepal, the Nepalese government is complacent about the widespread violence against women. The Nepalese government continues to condone domestic violence by: 1) failing to enact a law to prohibit domestic violence; 2) failing to accord women property rights necessary to support themselves and their children; and 3) failing to develop and implement government policies for public education and social services targeted at domestic violence.

The Nepalese government's silence and inaction violates its international legal obligations as a member of the United Nations. The Nepalese government has failed to protect the following rights of domestic violence victims:

1. Violence against Nepalese women in their homes is a violation of their fundamental right to security of the person as guaranteed in the Universal Declaration of Human Rights[11] and to freedom from torture and cruel and inhuman or degrading treatment as guaranteed in the International Covenant on Civil and Political Rights.[12]

2. Nepalese victims of domestic violence have been denied their right to an effective and adequate remedy for harm they have suffered. By systematically failing to provide effective prosecution for crimes of domestic violence and by failing to enforce criminal laws on behalf of domestic violence victims, Nepal is violating the right to a remedy guaranteed under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

3. The Nepalese government is not in compliance with the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women[13] (including General Recommendations 12 and 19 of the Committee on the Elimination of Discrimination Against Women)[14] and the Declaration on the Elimination of Violence Against Women,[15] including the following:

- a. Nepal has not met its obligations to protect women from violence perpetrated by private persons or to punish perpetrators of that violence;
- b. Nepal has not met its obligation to ensure that women who are victims of violence are provided with health and social services, and other support structures to promote their safety and physical and psychological rehabilitation; and
- c. Nepal has not met its obligation to develop comprehensive legal, political, administrative and cultural programs to prevent violence against women.

4. The Nepal is not in compliance with the International Covenant on Economic, Social and Cultural Rights because it has failed to establish programs and policies that promote physical and mental health for domestic violence victims.[16]

B. Recommendations

1. Declaration on The Elimination of Violence Against Women

The Nepalese government should make every effort to comply with the recommendations outlined in Article 4 of the United Nations Declaration on the Elimination of Violence Against Women.

The Nepalese government should not discriminate against victims of domestic violence in enforcement and prosecution of the laws. It should provide domestic violence victims equal and effective access to the criminal justice system and an effective remedy for harm they have suffered.

2. Reform of Criminal Law and the Criminal Justice System

- a. The Nepalese government should amend the National Code to include physical assault and domestic violence within the category of cases to be prosecuted by the state.

- b. With the rights, safety and concerns of women victims as their paramount concern, the government should require that police investigate and document all reports of domestic violence, and that all reports be submitted to the public prosecutor.
- c. The government should require that the criminal justice system conclude the investigation and trial of domestic violence claims within a maximum, reasonable time period.
- d. The government should amend the law specifically to assure the personal safety of any person filing a report of domestic violence and to provide for necessary financial support if that person is without the resources to maintain him/herself.
- e. The government should amend the national law to make it a crime to harass or threaten a bride or her family to secure or collect a dowry.
- f. The government should expand the existing National Police Academy training efforts to a mandatory program of education and training of all law enforcement officials, including police officers, prosecutors and judges on issues of domestic violence. This training and education should include information about the effective and appropriate handling of victims and perpetrators within the legal system.
- g. The government should require that police procedures reflect a priority for the immediate safety of all domestic violence victims regardless of caste or other social status.
- h. The government should promptly review the success of the Women's Cells and develop a plan to support and expand the successful work of the Women's Cells.

3. Reform of Civil Law

- a. The government should amend the law to provide that all courts resolve an application for partition of property within a given, reasonable period of time.
- b. The government should amend the law to provide that applicants for partition receive temporary financial support from the spouse or his family during the pendency of the application.
- c. The government should amend the property laws to allow women to inherit and control property on an equal basis with men. The property of both spouses should be taken into consideration in any inheritance or division of familial property.
- d. The government should amend the law to provide for the option of automatic partition of property, with interim support, for any woman whose husband takes a second wife.

4. Public Education

- a. The government should develop educational materials that promote the elimination of domestic violence. These materials should be appropriate and

mandatory for all levels of public education, in private schools which seek charters or licenses from the government, and in adult literacy programs.

b. The government should sponsor nationwide radio programming to raise awareness that domestic violence is a violation of international human rights law and Nepalese law and to alert the public that police and prosecutors are engaged in protecting these rights.

c. The government should distribute written materials designed to raise awareness about domestic violence to teachers, social workers, health care workers, elected officials, and the general public in all of Nepal's 75 districts.

d. The government should conduct a general review of educational materials to ensure that they teach respect and equality and are consistent with the prohibition of domestic violence.

5. Medical Professionals

The government should require special training for medical professionals to identify potential cases of domestic violence and to provide referrals to the police and other appropriate organizations.

6. Data Collection

1. The government should support women's non-governmental organizations in the study and documentation of the nature and extent of domestic violence in Nepal.
2. The government should require the police, judiciary, hospitals, clinics and other health care providers to compile detailed statistics on domestic violence and should publish these statistics.

7. The Ministry of Women

The Ministry of Women should include the eradication of domestic violence as part of its mission. The Ministry of Women should work in concert with the Ministries of Justice, Health and Education to advise in the preparation and distribution of educational materials, to monitor judicial compliance with laws designed to eradicate domestic violence, to provide support to non-governmental organizations who work on domestic violence, to support shelters for victims of domestic violence, and to engage in such other activities the Ministry finds necessary or helpful in the eradication of domestic violence.

II. DOMESTIC VIOLENCE IN NEPAL

A. Introduction

Approximately 20 million people live in Nepal. Fewer than a million people live in the Khatmandu Valley, which is comprised of Khatmandu, Lalitpur (Patan), Bhaktapur and the surrounding hilly area. The remainder of the population is spread throughout the country - the legendary high mountains in the north, the hilly districts which cross the middle of the country from west to east and the low-lying subtropical Terai across the south of the country along its border with India. While Khatmandu proper and the mountains are known to trekkers and climbers, much of the remainder of the country remains untouched by the outside world. Nearly 40% of all Nepalese live in absolute poverty, defined as income inadequate to support a minimum caloric intake.

Infrastructure, including roads, sanitary systems, electricity and piped water are slowly making their way to the inaccessible regions where the vast majority of Nepal's people live. Subsistence farming remains the most common occupation throughout the country and walking the most common form of transportation. The issue of domestic violence must be considered against this backdrop of rugged physical features, distribution of population in remote areas and extremely limited infrastructure. Additionally, while more than 85% of the people identify themselves as Hindu, there are dozens of ethnic groups with varying cultural and religious practices and at least a dozen languages with numerous local dialects.

B. Evidence of Domestic Violence

The delegation interviewed individuals in Kathmandu, Patan, Biratnagar, and in rural Raj Biraj from all sectors of the community including health care professionals, judges, prosecutors, lawyers, police, other government administrators, individuals from the academic community, a journalist and non-governmental organizations (NGOs). Most of the individuals interviewed report that domestic violence is a serious problem in Nepal and few resources exist to confront it.

1. Evidence of Domestic Violence From the NGO Community

Non-governmental groups (NGOs) report an alarming incidence of violence against women in their homes. [17] SAATHI, established in 1992 in Kathmandu, maintains the only shelter for victims of domestic violence in Nepal. It also sponsors a crisis intervention center and a call-in service for domestic violence victims. Members of SAATHI recount their own initial surprise at the breadth and depth of the problem of domestic violence.[18] Their activities, including contacts with the police and hospitals, have resulted in a sustained flow of clients and continued reports of physical abuse and mental abuse.

Other non-governmental groups have documented cases of domestic violence. In a recent report outlining various forms of violence against women, a social service group reported

a brutal incident from the Parbat district of Nepal. A 20-year-old mother was breast feeding her daughter in her home when she caught sight of her husband in the mirror. She reported:

I saw my husband lifting [a] Khukeri (typical Nepali knife-like weapon with sharp edges) prepared to chop my neck. He was drunk. I quickly covered my neck with both of my hands. One of my palms got separated instantly whereas the other was connected by a thin skin. The doctors in the hospital had to amputate the other palm as well.[19]

The young woman's husband was sentenced to eight years in prison for attempted murder.[20] She went to live with her parents because she had no means of supporting herself. At the time of the report, she had not received her legal share of her husband's property.[21]

The Minnesota Advocates delegation interviewed a human rights worker who described her experience visiting the burn ward at Bir Hospital in Kathmandu.[22] Six or seven badly burned female patients confided separately to her, following many promises of strict confidentiality, that they had been burned intentionally by their husbands. Each woman had reported on admission to the unit that the injury was accidental. Because they lacked other sources of financial support, the women intended to return to their husbands and homes if they survived the burnings.

The human rights worker had spoken with the husband of one burn victim at the hospital. He expressed no remorse and, in fact, felt entirely justified in burning his wife.[23] About ten years earlier he had moved to Kathmandu from a village, leaving his wife behind in the home of his parents where she lived as a virtual house servant.[24] After several years, the husband stopped sending her money so villagers helped her travel to Kathmandu to find her husband. She located him in Kathmandu and moved in with him. Throughout this time he was frequently away from home and the woman learned from neighbors that he was staying with another woman. When she would confront him about his absences he would beat her severely. One particularly brutal beating caused a miscarriage. One evening the husband returned home after drinking excessively. He pulled his wife from her bed and demanded that she prepare food. He complained that the food was unsatisfactory and that it was not prepared quickly enough. He then doused his wife in kerosene and set her on fire. When neighbors heard her screams, the husband and the neighbors put the fire out with a rug and then took her to the hospital.[25]

The husband told the human rights worker that he did not want his wife. He complained that she was ugly and that he had another woman he wanted to marry. He was indignant that anyone would show regard for the woman he scorned and that anyone would question his conduct.[26] The wife demonstrated no interest in having her husband charged or punished. In fact, she planned to return to her him when she had fully recovered because she had nowhere else to go. The man expressed no concern about whether there would be a societal response to his inhumane act.[27]

Another human rights worker reported receiving a desperate call from a woman one night. The woman, who was the principal of a school, had been assaulted by her husband

on a number of occasions. She tolerated the abuse for a long time until the beatings began to occur in front of her two children. At that point she called the human rights worker who advised her to report the abuse to the police. The woman refused to do so because she feared that her job would be in jeopardy if anyone discovered the abuse.[28]

The same human rights worker described another incident reported by a woman who had been maimed by her husband. The woman's husband had attempted to kill her with an ax. Although she survived the attack, one of her arms was severed when she defended herself against the blows.[29]

In another case described by a member of SAATHI, a woman was married at age thirteen and gave birth to her first child shortly thereafter.[30] A few years later, the man began abusing the woman after he took a second wife. His mother soon began physically abusing the woman as well. After tolerating extreme physical and emotional abuse for ten years, she left the marriage out of desperation.[31]

Another SAATHI client was badly burned and scarred when her husband threw acid on her. After living in SAATHI's shelter for several months, she received notes from her husband professing his love for her, convincing her to return home. Her husband ultimately repeated his heinous assault, burning her with acid again.[32]

Another case involved mediation by the local governmental authorities, the Village Development Committee, following intervention by a neighbor. In this case, a young woman heard cries and enlisted her brother to rescue the victim. The victim had been tied to a chair in her house. She was being beaten by her husband while his second wife, appearing amused, performed household tasks. This incident had followed months of violence and the woman was desperate and suicidal. The intervening family sought the assistance of the Village Development Committee. They recommended that the husband give the first wife a separate place to live and a small amount of property so she could grow food to feed her children.[33] The man followed these recommendations.

A human rights worker in Kathmandu told the story of a woman who had come to her organization for legal services.[34] The woman had been married through an arrangement made by her family at a very young age. Soon after the marriage, her husband began to abuse her physically and forced her to leave their home. When she returned to her parents' home, they admonished her for failing in her marriage. Her brothers became angry that the family was supporting a married woman and began to abuse her.[35] The woman took a job as a domestic servant. She was later raped in the marketplace by a stranger and became pregnant. While she had a legitimate legal claim to support from her husband when she was forced to leave his home, her advocates say her claim will now be denied because she cannot prove that her husband is the father of her child.[36]

2. Evidence of Domestic Violence from the Criminal Justice System

The delegation interviewed judges, police officials, public prosecutors, private lawyers, and administrative officials in Kathmandu, Patan and the Terai. The interviews provide a national perspective because these public servants are rotated to different districts

throughout the country in one and two-year assignments.

In Kathmandu, the police established the Women's Cell, a special unit headed by a female inspector to handle police matters involving women.[37] Although women are extremely reluctant to come forward and report domestic violence, the Women's Cell logged 115 domestic violence cases in one eight month period in 1996.[38] A police inspector reported that domestic violence victims were cut, punched, beaten by sticks and burned by cigarettes.[39] In one case reported by police, a man had put chili and salt inside a woman's vagina causing a severe infection. In another, a woman was doused with kerosene and badly burned.[40]

In an eight month period in 1996, the Women's Cell also logged 72 cases of men illegally taking second wives.[41] Police reported that these cases of polygamy were almost always accompanied by abuse of the first wife. One police official identified polygamy as the leading cause of domestic violence in Nepal.[42]

In the Terai region, much of the violence reported by the legal authorities is related to dowry. One police official reported two cases of violence involving young wives.[43] In the first case, an 18-year-old woman was being harassed by her husband's family for more dowry money. One day her brother-in-law gave her yogurt to eat that tasted sour. When she objected, the family put sugar in it and forced her to eat it. The woman then died of food poisoning and the family fled to India.[44] This murder is being investigated by the police. Local social workers, however, claim that there are so many cases and so few prosecutions that police intervention does not serve as a deterrent to these crimes.[45]

A police official reported a second dowry-related death. A young man went to work in another district and sent money to his young wife who remained in his family's home.[46] The man's family constantly harassed his wife for the money he sent her. She had no recourse against the abuse. When she was found dead, the husband's family reported that she died of diarrhea. An autopsy, however, revealed the woman had sustained bruises and massive internal injuries. [47]

A prosecutor from Raj Biraj in the Terai region reported yet another dowry murder. In this case, a man and his family were harassing the man's young wife to get a motorcycle, an undelivered part of the promised dowry. When the woman died, the man's family reported that she died of a snake bite. Local activists contend that the husband's family bribed the police investigators and successfully quashed the investigation.[48]

In a more urban district of the Terai, a woman expressed her desire to participate in her family's celebration of Tihaar, a major Hindu holiday. Her husband forbade her to go. When she persisted he beat and strangled her. He tried to make it appear that she had committed suicide by hanging her.[49] In another case reported by a judge and prosecutor, a man killed his wife by throwing a large stone at her head. The motivation for this murder was not clear. Some thought her husband had become angry when she asked for money. Others attributed the husband's anger and resulting murder to the wife's

inability to provide food for her husband when he asked for it.[50] Police also recounted that one man burned his wife's face by heating a Khukeri, the curved Nepal knife, and holding it to her face.[51]

A khukeri was used in another assault reported by a judge. A newly married couple was rejected by the husband's family because their marriage was not arranged in the traditional fashion. They claimed to have a "love marriage." The couple struggled with financial problems and the husband often abused alcohol. The wife complained and they fought regularly. One night, the husband returned home to his wife and brutally "chopped her up" with a khukeri.[52]

Virtually every police official interviewed reported that domestic violence is commonplace but mostly goes unreported. Police and prosecutors repeatedly emphasized that they do not have the authority under the National Code to investigate or prosecute domestic violence absent a death or attempted murder.[53]

3. Evidence of Domestic Violence from the Medical Community

The delegation interviewed health care workers in Kathmandu, Patan, and Rajbiraj. Some doctors and nurses who work in hospitals and several private physicians reported that they believe many female patients' injuries have been inflicted by their husbands or extended families. Frequently, women either provide false information or do not disclose the causes of these injuries. Emergency room and outpatient physicians reported that they are exceptionally busy and do not have time to inquire about domestic violence. Other health care workers also reported that time constraints prevented any inquiry into the causes of injuries to women. Some were dismissive of domestic violence generally and expressed their view that it was not a significant problem in Nepal.

The burn unit at the major hospital in Kathmandu admits many patients from the Terai. One medical resident in the burn unit speculated that the hospital received three to four domestic violence-related burn cases each month.[54] The doctor noted that most of these cases are fatal and involve burns covering more than 50% of a woman's body.[55] A nurse in the same facility commented that, at the time of admission to the hospital, almost all women report being burned accidentally with a kerosene stove.[56] Sometimes, after three to four days, the women would reveal that they were burned in a suicide attempt or an attempted homicide. From 1992 through 1995, this hospital had two to three cases per year in which it was clear that a husband had murdered or almost murdered his wife by burning her.[57] An emergency room doctor at Bir Hospital in Kathmandu believes that he treats many cases of domestic violence though many may not identify domestic violence as the cause of their injuries. He noted that two weeks before the delegation's interview, he had treated a woman who was brought into the emergency room after her husband had chopped the fingers off one of her hands.[58]

A private physician in a rural community recounted a domestic violence fatality in which he was pressured to falsify medical records.[59] The case, which occurred more than a decade ago, involved a young pregnant woman. A man approached the doctor and asked

the doctor to follow him to a house where a young pregnant woman was lying on the floor crying and begging for water. Another man was rubbing ointment on her back in an attempt to soothe the severe burns that covered her back. The men claimed that she had tried to commit suicide, but the doctor believed the burns were inconsistent with a suicide attempt. Later the doctor learned that the woman had died en route to the hospital. He was suspicious of the story. The victim's husband was a prominent member of the community. In the doctor's opinion, this prominence led community authorities to pressure the doctor to falsify medical records relating to the cause of the young woman's death. When he refused to do so, the hospital fired him.

Another doctor in rural southern Nepal reported that in his opinion, most women are assaulted by neighbors or other family members and not by their husbands.[60] In a four-month period, this doctor treated three women for severe burns, all of whom reported that their saris accidentally caught fire. Two local social workers who observed the interview commented afterwards that the doctor only presented "half the picture." These social workers estimated that domestic violence occurs in 80% of the households in their community.[61]

C. Domestic Violence in the Legal System

1. Introduction

The Kingdom of Nepal is a constitutional monarchy. A multi-party democracy was established by the Constitution of November 1990 following a coup in 1989. The Constitution prohibits discrimination by the State on the basis of "religion, race, sex, caste, tribe or ideology." [62] The highly principled, egalitarian language of the Constitution, however, is not reflected in all of Nepal's laws, nor in the daily lives of most Nepalese people. Male domination is prominent in custom and tradition and, in combination with Nepalese law, renders women dependent on their fathers, husbands and sons.

The legal system fails to protect battered women in Nepal. The government does not prosecute domestic assault unless the violence rises to the level of attempted murder or murder. Although women may pursue prosecution without the aid of the state, social and economic obstacles preclude women from prosecuting in almost every case. The civil laws provide no recourse or escape for battered women and frequently facilitate or aggravate domestic violence.

2. The Criminal Laws

The National Code, called the Muluki Ain, prohibits murder, attempted murder, and physical assault.[63] The State Cases Act defines all crimes for which the state is the prosecuting party; murder and attempted murder are included in this definition.[64] Physical assault, known as kut pit, is not included in this category; thus, state prosecutors do not prosecute these cases.[65]

The law affords little protection to women who are assaulted in their homes. Even if a woman decides to pursue the prosecution of the perpetrator of domestic violence without the aid of the state, she experiences resistance at each stage of the process. Police officials explained that the first step in any intervention is reconciliation.[66]

Reconciliation is a process through which the police attempt to convince the victim to return to her abuser in exchange for a written promise that he will not assault her again. Even a police officer who expressed deep concern and empathy for battered women explained that she uses all potential leverage to keep the couple together including stressing to the woman the negative impact separation might have on her children.[67]

In 1970, the government passed the Some Public Offenses Act to deal with a variety of situations that could threaten the public peace.[68] Unlike ku pit, this petty crimes act requires the government to prosecute the offenders.[69] This process occurs in an administrative rather than a judicial forum. The Some Public Offenses Act is significant for two reasons. First, it illustrates that the State has prioritized what it considers to be public violence over what it considers to be private violence. One police officer reported that the passage of the Some Public Offenses Act was motivated to deal with public fights between political parties.[70] The state considers the listed public offenses to be serious enough to warrant state prosecution. In contrast, the government does not prosecute fighting or assault that occurs in the home. Such violence is sufficiently insulated from the public to avoid being a public nuisance. This disparity in prosecution depends solely on the location of the violence and denies women equal protection of the law.[71]

The Some Public Offenses Act is also significant because, ironically, it provides the only available avenue of prosecution for domestic violence. For example, one Deputy Superintendent of Police described an egregious incident of domestic assault. This police officer was aware that the victim had been assaulted on a number of prior occasions. After a particularly severe beating that occurred outside the couple's home, the officer charged the husband with a violation of the Some Public Offenses Act. He reports that he "twisted" the law and did not disclose that the victim and perpetrator were husband and wife.[72] In contrast, police in Raj Biraj, a district in the Terai region, recounted a chilling case of domestic violence where the prosecutor had rejected the use of the Public Offenses Act. Angered by his wife, a husband heated a khukeri knife on the stove and burned both sides of his wife's face, permanently scarring her with crescent-shaped burns. The police investigated and reported the case for prosecution.[73] A later interview of the public prosecutor revealed that he had rejected this case for prosecution, even in the quasi-judicial administrative system since, in his view, it did not meet the requirements of the Some Public Offenses Act.[74]

It is important to emphasize that although some prosecutors may use the Some Public Offenses Act in an attempt to protect battered women, the Act is not an adequate remedy for domestic violence crimes because it usually carries only modest penalties. The broad discretion vested in both the police and prosecutor to interpret and apply this law further disadvantages victims of domestic violence and often results in an unequal enforcement of the law.

In those instances where a victim of domestic violence decides to pursue her case on her own, a complaint, called a First Information Report (FIR), must be filed with the police.[75] If a doctor has not yet examined the battered woman when the FIR is filed, the police often send the victim to the public hospital where, by law, an examination occurs.[76] Most of the doctors interviewed emphasized that their role was merely to provide medical treatment; very few said that they would inquire as to the cause of a woman's injuries.[77] The medical report from the doctor may later be used in court as evidence of the woman's injuries.

Domestic violence that rises to the level of murder or attempted murder is prosecuted by the state. In cases of severe domestic violence injuries, even those resulting in death, there are still legal hurdles. The law excuses acts of self-defense which cause injury and reduces the penalty in cases of negligence, where there is no intent to harm or where the injury is "repairable." [78] One judge recommended a reduction of a murder sentence from 20 to 10 years in a case where the husband killed the wife because she had no food to give him when he asked for it. The judge categorized this as an "emotional murder" without premeditation and caused by the extreme poverty of the couple.[79] Many sources reported that women are hesitant to report domestic violence to legal authorities. Though there are various reasons for this reluctance, including financial dependency and keeping the family together, it is clear that the criminal justice system's inability to punish and prevent domestic violence effectively is a major deterrent to reporting it.[80]

3. Civil Laws

a. Women in Civil Society

A woman's role and status in Nepalese society is largely defined by the laws governing marriage, conjugal relations, and property. These laws frequently aggravate and facilitate domestic violence.

The family is the basic organizational unit forming the infrastructure for virtually all activity: economic, social, and personal. The male family head has a legal obligation to provide food and clothing for his wife or wives, his dependent parents, and his children and their families if they live in his house. By law the wife has a right to food, clothing, a place in the home and control of certain defined types of property. To retain her place, the law requires that the wife remain faithful, bear children, and not be physically or mentally disabled.

A husband's legally-imposed financial obligation to meet the subsistence needs of his wife or wives may, in some circumstances, exacerbate domestic violence. Control over financial resources can be a vehicle for domestic violence. Several Nepalese women reported that women they knew were forced to stay in abusive marriages because they would not be able to support themselves if they left.[81]

A woman outside the family, that is, a woman who is not defined and supported by her relationship to her father, husband or son, is alien to Nepalese society. The civil laws reflect and reinforce this reality. Men and women are not equal in the eyes of the law; each has distinct roles.[82]

b. Property Laws

Women have little control over property in Nepal. By law, the control of all property is a function of its source, *i.e.*, ancestral property, property gifted to a bride by her family, property gifted to a bride/wife by her husband's family, and property acquired independently of these sources. For example, the law states that a woman may exercise control of property earned outside the home or, gifted by her family or her husband's family.[83] In most families, however, women's control over property is illusory since disposition of property requires the consent of the dominant male.[84] This lack of control increases women's dependence on men, making it difficult for battered women to leave their husbands.

c. Divorce, Partition, and Maintenance

The divorce laws in Nepal deter women from separating from their husbands, even in cases of severe domestic violence.[85] A woman may divorce her husband if he is impotent, illegally takes a second wife or a mistress, or if he deserts, grossly neglects, or abuses her.[86] A husband may divorce his wife if she is unfaithful, deserts him or "plots" against him.[87] A husband and wife may also divorce by mutual consent.[88] Divorce is extremely rare for several reasons. The social stigma is enormous. In a divorce, a woman loses her only source of shelter, food, and clothing. Following a divorce, a husband is required to provide maintenance to his former wife for a maximum of five years.[89] Birth families do not welcome the return of a once married daughter or sister.

The law restricts a husband's ability to obtain a divorce both substantively and procedurally. Before a man may file for a divorce in a court of law, he must first file his petition with the Village Development Committee (VDC) or the municipal authorities. It is then the legal responsibility of these elected officials to try to reconcile the parties. The husband may not proceed to court until the VDC has had a year in which to try to effect the reconciliation.[90] A wife may proceed directly to court without the year of attempted reconciliation.[91] Although not legally required, however, a woman seeking divorce will encounter rigorous attempts at reconciliation.[92]

A wife who seeks to leave her husband's family usually turns to the legal remedy called partition.[93] This law provides that a married woman may seek a share of her husband's property, and live separately, if she can demonstrate abusive conditions or if she has reached the age of 35 and has been married for 15 years.[94] Again, her ability to encumber or dispose of property obtained by partition is limited and she loses her rights if she is not sexually faithful to her husband.[95] In theory, partition allows a woman to obtain the resources to support herself and her children. In reality, it is extremely difficult

to obtain partition due to severe delays in the legal system.

4. Conclusion

The system of criminal and civil laws in Nepal supports a society that fosters domestic violence. The criminal laws do not adequately articulate that domestic violence is a crime, and to the extent they are used in cases of domestic violence, the laws and those who implement them do little to punish perpetrators of violence and prevent further abuse. The civil laws further women's dependency and aggravate situations of domestic violence.

D. Domestic Violence: Some Causes and Complicating Factors

The causes of domestic violence in Nepal are deeply rooted and complex. As in many countries where the problem has been studied, any explanation for domestic violence must go beyond the individual characteristics of the man, the woman, and the family and look to the structure of relationships and the role of society in underpinning that structure.[96] Research indicates that domestic violence is rooted in the subordinate role accorded women in private and public life.[97] It is a function of the belief, fostered in many cultures, that men are superior and that women are possessions to be treated as men see appropriate.[98] In Nepal this belief is manifested in religious doctrine, historical tradition and the current laws and customs of society. The primacy, indeed supremacy, of the male in the every sphere of current life in Nepal cannot be overstated. A Nepalese writer, Gauri Pradhan, explains:

With regard to violence against women, we have reached the conclusion that the existing problems of poverty, illiteracy, religious superstition, subjugation, conservative tradition, social injustice, legal discrimination and cultural invasion are responsible for the increasing problems of sexual abuse and violence against women. In fact, these are the consequences of the existing socio-economic and cultural practices of our society. The insidious root cause of all violence against women is the male dominated and feudal socio-economic structure of the society in which we live.[99]

Another Nepalese writer describes the low value placed on the life of a female from the time of her birth:

In the Nepali context, the birth of a girl is usually marked with sorrow as if some great misfortune had befallen her parents and family. She is regarded right from her infancy as an additional burden to the family that somehow has to be brought up and married off. She will soon belong to her husband's family and is thus not of any use to the family in which she is born. However, since she is already born and has to live anyway, she should at least pay a good price for her breeding. And she pays this price in terms of work - any work that may assist the family right through her early childhood to the time she is married off.[100]

A Kathmandu lawyer provided the delegation with a simple but graphic example of the disparate treatment of girls. His neighbor prepared two eggs every morning for her three children, one for her son and one to be divided by her two daughters, candidly announcing that she needed to take better care of the son as he would be helpful to her and the daughters would not.[101]

Religious tradition in Nepal has had a profound impact on women's roles in society. The majority of the Nepali population practices the Hindu religion in some form.[102] Many sources reported that current practice of the Hindu religion supports a social order that promotes the superiority of men over women. As one writer observed in her discussion about religious influences over the role of Nepali women:

Spiritually, the husband is the wife's God and master and the wife is seen as the husband's "unpaid servant," "unbought slave" and "married cohabit". The husband is supposed to be dynamic and dominant while the wife is supposed to be dormant and docile. He is trained to rule and reign, while she is taught to submit.[103]

Traditional Hindu beliefs also create a distinct preference for male children. According to Hindu religious customs, it is the son who must look after his parents in old age or in infirmity. The son offers prayers and rituals after his parents' death to assure their place in heaven.[104]

Silence plays a role in the dynamic of domestic violence in at least two ways. Children are taught from the time they are very young that wives should not voice disagreement with husbands.[105] There is also a societal taboo, a conspiracy of silence, about the existence of domestic violence in Nepalese society.[106] One woman who counsels victims of violence volunteered her opinion that the largest impediment to addressing domestic violence in Nepal is the failure to acknowledge that it occurs. She stated that the conspiracy of silence renders domestic violence an invisible epidemic.[107]

The traditional Nepali family structure also contributes to violence against women. A betrothed woman or girl leaves her birth family, historically before her first menses, to live with and provide domestic labor for her husband's family.[108] Once girls are betrothed, the birth family is relieved of responsibility for her care and support. The girls then owe allegiance and obedience to the extended family of the new spouse. A "joint family" typically consists of parents, their married and unmarried sons, daughters-in-law, grandchildren, and unmarried daughters. One professional woman commented that her present extended family numbers over 20 and that she grew up in a joint family of 35.[109] There is a strict hierarchy within this joint family system, wherein the bride is subject to the domestic needs of the household, husband, and in-laws. This hierarchical structure, coupled with male primacy leaves women generally, and young brides in particular, vulnerable to abuse.[110] The seemingly insignificant reasons for such domestic violence by husbands and in-laws were noted by one writer:

Women in the family are battered for trifle reasons such as the bad taste of food, mismanagement of their home, inability to bear a son, unwanted sex and so on.[111]

Polygamy is legal in Nepal under certain circumstances and illegal polygamy is widely practiced.[112] Several women's advocates from NGOs list polygamy as a leading cause of domestic violence.[113] A private physician noted that many political leaders, parliamentarians, and ministers have a second wife.[114] One police officer who works closely with women suggested that polygamy is the main cause of domestic violence.[115] Often, men who remarry either physically abuse the first wife or cause her harm through extreme neglect.[116]

Child marriage and the dowry system, while illegal, also contribute to domestic violence.[117] One young professional woman explained that she was married at age 14 and pregnant for the first time at age 15. She stated that her experience is not uncommon.[118] Dowry is a form of marital payment from the bride's family to the groom and his family. Many people report that the payment of dowry is still expected in the Terai region, the southern region of Nepal that borders India. While the families of the bride and groom typically negotiate the amount of the dowry before the marriage, the marriage may occur with only a partial payment of the negotiated amount. Disputes then arise due to subsequent non-payment of the negotiated dowry or to demands to increase the original amount. There is an implication that if the bride's family provides the disputed dowry, the family's daughter will be spared future violence. Because the groom's entire family benefits financially from the payment of dowry, domestic violence related to dowry often involves more than one perpetrator in the groom's family.[119]

One police official explained that the dowry requirements may continue to increase after the marriage as the husband's family decides they need a new motorcycle, television, or gold.[120] Conflicts over the payment of dowry then lead to domestic violence and, in severe cases, murder or "dowry death." [121] A common form of this type of murder is "bride burning," which involves pouring kerosene on the wife and setting her on fire.[122]

The incidence of abuse within the marriage structure can be exacerbated by inter-caste marriages (marriages in which one spouse is from a higher social caste).[123] Although the caste system has been legally dismantled in Nepal, it still operates in practice. Most marriages are arranged by the families of the prospective bride and groom. Parents often do not want their son to marry a woman from a lower caste. If a wife is from a lower social caste, she may be more susceptible to ill-treatment, or even violence, from her husband or her husband's family. According to many, such a marriage would reflect badly on the parents of the higher caste. Some relent, however, acceding to their children's wishes.

Women's economic dependence on men greatly aggravates domestic violence in Nepal and makes it difficult for a woman to extricate herself from an abusive relationship. The stark economic and social reality in Nepal is that most women have no source of food or

shelter and no place in society outside the family.[124]

Biased marriage laws and minimal property rights create an economic conundrum for married women. If a woman leaves her husband, divorce or partition laws provide limited economic support. Because she married, she has also lost her right to her parental property. This complete economic dependence, coupled with the severe social stigma facing women who live alone in Nepal, often forces women to stay in abusive marriages. Many sources interviewed by the delegation report that alcohol, poverty, gambling, and the lack of jobs also contribute significantly to the high incidence of domestic violence in Nepal.

III. NEPAL'S OBLIGATIONS UNDER INTERNATIONAL LAW

A. State Responsibility under International Law

International law requires states to protect against and respond to human rights violations. States must conform to the human rights norms that arise from customary international law[125] and international human rights treaties. International instruments such as the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Declaration on the Elimination of Violence Against Women, and the International Covenant on Civil and Political Rights define the state's role in preventing domestic violence as a human rights abuse.

Under international law, a state may be responsible for the violent acts of a private citizen if the violence results from a systemic failure by the state to prevent such human rights violations. In the case of domestic violence, states have an affirmative obligation to prevent, investigate, and prosecute domestic abuse. To be in compliance with international law, states must exercise due diligence to eradicate domestic violence. In contravention of these international human rights norms, the Nepalese government has failed to respond effectively to domestic violence.

B. Nepal Is Not in Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (The "Women's Convention") or the Declaration on the Elimination of Violence Against Women

Nepal ratified the Women's Convention on April 22, 1991, without any reservations. Article 2 of the Women's Convention prescribes State Parties' obligations as follows:

State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means without delay a policy of eliminating discrimination against women . . . by any person, organization or enterprise [and] . . . modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.[126]

Systemic failure to prosecute domestic violence or to combat domestic violence through other means is a form of sex discrimination. The Committee on the Elimination of

Discrimination Against Women (CEDAW), the committee that monitors implementation of the Women's Convention, has issued a General Recommendation to clarify States Parties' responsibilities to combat violence against women. General Recommendation No. 19 unequivocally states, "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." [127] Although the Women's Convention does not specifically refer to domestic violence, this authoritative interpretation by the Committee places domestic violence squarely within the purview of the Convention.

General Recommendation No. 19 provides guidelines for States Parties to fulfill their obligations under the Women's Convention with respect to violence against women. The CEDAW recommends that States Parties "take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act." [128] According to General Recommendation No. 19, States Parties should also "take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, *inter alia*:

- (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence . . .
 - (ii) Preventive measures, including public information and education programs to change attitudes concerning the roles and status of men and women;
 - (iii) Protective measures, including refuges, counseling, rehabilitation and support services for women who are victims of violence or who are at risk of violence . . .
- ." [129]

As a State Party to the Women's Convention, Nepal must "take all appropriate measures, including legislation, to modify or abolish existing laws, customs or practices which constitute discrimination against women." [130] The Women's Convention and General Recommendation No. 19 establish that States Parties must take meaningful steps to eliminate domestic violence in order to fulfill obligations under international law.

The U.N. General Assembly, of which Nepal is a member, adopted the Declaration on the Elimination of Violence Against Women in 1993 by consensus. [131] The Declaration asserts that "States should pursue by all appropriate means and without delay a policy of eliminating violence against women" [132] Recognizing that domestic violence and other forms of violence against women interfere with their full enjoyment of fundamental rights and freedoms, the Declaration specifically recommends that member states adopt measures to eradicate such violence including:

- 1) Preventing, investigating, and punishing acts of violence against women;
- 2) Providing adequate redress and services for women subjected to violence;
- 3) Developing a national plan to prevent violence against women;
- 4) Protecting women from violence through legal, political, administrative, and cultural systems;

- 5) Training law enforcement officers and public officials;
- 6) Educating the public in an effort to eliminate gender stereotypes and promote gender equality;
- 7) Promoting research and compiling statistics related to domestic violence;
- 8) Adopting measures to prevent violence against women who are especially vulnerable.

The 1995 Beijing Platform for Action reaffirmed the commitment of the international community to work toward eliminating domestic violence. It restated that domestic violence is a violation of women's human rights and that states have an obligation to work to eliminate this violence. As a member of the United Nations, Nepal has a duty to uphold the principles outlined in the Beijing Platform for Action.

C. Women in Nepal Are Being Denied the Right to Security of Person and Freedom from Torture and Cruel and Inhuman or Degrading Treatment

The Universal Declaration of Human Rights protects the fundamental right to live without violence and abuse. Article 3 of the Universal Declaration recognizes the right of all people to life, liberty, and security of person. Additionally, Article 5 provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Around the world, domestic violence threatens the lives, liberty, and security of women. The violence many women face in their homes can aptly be described as torture or cruel, inhuman and degrading treatment. Article 3 and Article 5 of the Universal Declaration are generally regarded as customary international law. Nepal, like other governments, must therefore take steps to combat domestic violence in order to protect women's fundamental right to be free from violence.

D. The International Covenant on Economic, Social, and Cultural Rights Obligates States Parties to Take Steps to Ensure the Right to the Highest Standard Attainable of Physical and Mental Health [133]

Nepal ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on May 14, 1991. Article 12 of the ICESCR states, "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." [134] As outlined in this report, women in Nepal suffer a staggering number of physical injuries or fatalities as a result of domestic violence. Although often underestimated because the scars are less visible, emotional or mental abuse can be equally devastating for women. As a State Party to the ICESCR, Nepal is legally bound to recognize women's right "to the highest attainable standard of physical and mental health." To be in compliance with the treaty, Nepal should establish support programs to meet the physical and mental health needs of domestic violence victims.

E. The Legal System in Nepal Does Not Afford Women an Effective Remedy for Acts Violating Their Fundamental Human Rights

Article 8 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights (ICCPR) require States Parties to provide an adequate remedy for acts that violate fundamental human rights. States Parties must ensure that the judicial system responds to the needs and concerns of victims of domestic violence. By its failure to adequately address domestic violence in its criminal and civil laws, Nepal is not in compliance with the ICCPR.

IV. CONCLUSION

Women in Nepal are systematically denied their basic, fundamental right to be free from violence. By failing to respond to the high incidence of domestic violence and by discriminating against victims of domestic violence in the prosecution of its criminal laws, the Nepalese government has failed to meet its commitment as a member of the United Nations and has violated international human rights law. The Nepalese government should immediately take the steps outlined in this report to eliminate the serious human rights abuses currently being suffered by women in Nepal.

ENDNOTES

- [1] This story is excerpted from Case Study Ch. 2 in *A Situational Analysis of VIOLENCE Against Women and Girls in Nepal*, SAATHI in collaboration with the Asia Foundation at 17 (1997).
- [2] United Nations Centre for Social Development and Humanitarian Affairs, *Violence Against Women in the Family*, at 12, U.N. Doc. ST/CSDHA/2 (1989).
- [3] *Id.*
- [4] Beijing Platform for Action, U.N. Doc. A/Conf./177/20 (1995). The Platform states, "Violence against women both violates and impairs or mollifies the enjoyment by women of their human rights and fundamental freedoms." Para. 113.
- [5] *Id.* at 10. In the Vienna Declaration and Programme of Action, U.N. Doc. A/Conf.157/23 (1993), violence against women was recognized as a violation of fundamental human rights.
- [6] G.A. Res 48/104 (1993).
- [7] The Minnesota Advocates delegation consisted of two lawyers, Kathleen Graham and Johanna Bond. During the summer of 1996 Minnesota Advocates' intern Johanna Ronnei identified numerous groups and individuals to be interviewed and completed other groundwork for the investigation.
- [8] The delegation's decision to define domestic violence as violence *against women* reflects the research revealing that women are the usual victims of violence in the home. United Nations Centre for Social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence: A Resource Manual*, at 7, U.N. Doc. ST/CSDHA/20 (1993).
- [9] *A Situational Analysis of VIOLENCE Against Women*, SAATHI in collaboration with the Asia Foundation, 1997 at ii (1997). (Hereafter cited as SAATHI Report). This view was confirmed in many of the delegation's interviews.
- [10] Our sources identified the husband, mother-in-law, second wife, father-in-law and brother-in-law as possible abusers. Usually the victims are women, most commonly the junior wife in the joint family.
- [11] G.A. Res. 217 A(III) Dec. 10, 1948, U.N. Doc. A/810 (1948).
- [12] G.A. Res. 2200 A(XXI), December 16, 1966, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976.
- [13] G.A. Res. 34/180, U.N. GAOR Supp. (No. 46), U.N. Doc. A/Res/34/180, *entered into force* September 3, 1981.
- [14] U.N. Doc. A/44/38 (1989); U.N. Doc. A/47/38 (1992).
- [15] G.A. Res. 48/104 (1993).
- [16] G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) 49, U.N. Doc A/6316 (1967).
- [17] The number of NGOs in Nepal was severely restricted before the 1989 coup and the 1990 Constitution. The huge increase in the number of NGOs since that time includes many dedicated to women's and human rights' issues.
- [18] Interviews on November 4 and 21, 1996. See also SAATHI Report, supra note 9.
- [19] *Women's Initiation to Fight Against Victimization of Women, A Report of Victim Women's Forum*, Informal Sector Service Centre (INSEC) at 11-12 (Kathmandu, Nepal February 1993).
- [20] *Id.*

[21] See notes 82 and 84, infra, and accompanying text (discussing property rights in the context of domestic violence).

[22] Interview on November 7, 1996.

[23] Id.

[24] Id.

[25] Id.

[26] Id.

[27] Id.

[28] Interview on November 22, 1996, with a lawyer and women's human rights activist in Kathmandu.

[29] Id.

[30] Interview on November 21, 1996. The staff at SAATHI placed high priority on the confidentiality of any woman who came to the shelter or organization.

[31] Unlike this woman, many women feel that social and economic constraints prevent them from leaving even the most severely violent relationships.

[32] Interview on November 4, 1996, with SAATHI staff.

[33] Interview on November 7, 1996, with a women's human rights activist in Kathmandu.

[34] Interview on November 21, 1996, with SAATHI staff.

[35] Interview on November 21, 1996.

[36] Id., see also note 84.

[37] Women's Cells are a recent innovation in Nepal. Only a few urban districts have women's cells, and only the Women's Cell in Kathmandu was functioning when this investigation was conducted in 1996.

[38] Interview with high ranking police official in Kathmandu on November 17, 1996.

[39] Id.

[40] Id.

[41] See note 111, infra, and accompanying text, for discussion of legal and illegal polygamy.

[42] Interview with a high ranking police official in Kathmandu on November 17, 1996. See also SAATHI Report, supra note 9 at 18, which states: "The most common traditional form of violence against women in Nepal was seen to be polygamy which was reported without fail by respondents from all districts"

[43] Interview on November 14, 1996, with police official in the Terai region.

[44] Id.

[45] Interviews on November 13 and 14, 1996.

[46] Interviews on November 13 and 14, 1996, with police official in the Terai region.

[47] Id.

[48] Interviews on November 14, 1996, with local activists and a police official in the Terai district.

[49] Id.

[50] Interviews with a judge and prosecutor in the Terai region on November 14 and 15, 1996.

[51] Interview on November 14, 1996, in the Terai region. This case was also reported by local prosecutors. See infra p. 19

[52] Interview with a judge from Lalitpur District on November 3, 1996.

[53] Interviews with police and prosecutors on November 13, 14, and 17, 1996. See also notes 66-80, infra, and accompanying text for police use of the "Some Public Offenses Act" to redress domestic violence.

[54] This doctor noted, however, that it is difficult to measure the number of domestic violence cases because women are often reluctant to reveal the source of their injuries. Interview on November 21, 1996.

[55] This doctor noted, however, that it is difficult to measure the number of domestic violence cases because women are often reluctant to reveal the source of their injuries. Interview on November 21, 1996.

[56] Interview with a burn unit nurse on November 22, 1996; See also SAATHI Report, supra note 9 at 46 which explains that most victims will not confide the cause of their injuries.

[57] Interview with burn unit health worker on November 22, 1996.

[58] Interview with emergency room doctor in Kathmandu on November 21, 1996.

[59] Interview with a doctor on November 15, 1996.

[60] Interview with a doctor in the Terai region on November 13, 1996.

[61] Interview on November 13, 1996.

[62] The Constitution of the Kingdom of Nepal, Part 3, 11.(2) and (3). The Constitution does not stop at equal protection for these identified groups, but states that "special provisions may be made by law for the protection and advancement of the interests of women, children . . ." and others in need of special attention.

[63] This code is published in Nepali only. For purposes of this investigation and report Minnesota Advocates retained a law professor from Tribuhan University Law School to translate the following sections of the Muluki Ain, the National Code: Law on Offenses Affecting Life; on Assault (kut pit); Law on Conjugal Relations; Law on Marriage; Law on Subdivision of Property; Law on Inheritance Rights of Women. Also translated were the State Cases Act of 1992, and "Some Public Offenses Act", 1970.

Citations to the translation, which is on file at the office of the Minnesota Advocates for Human Rights, identify whether the provision is part of the National Code or another major law, identify the section of the National Code by name, and then cite numerically to the specific provision. For example, a reference to murder would be cited as: National Code, Offenses Affecting Life § 1; and to assault: National Code, on Assault, § 1.

[64] State Cases Act, Schedule 1, No. 3; and § 23. The critical difference between the prohibition on murder and the prohibition on physical assault is that the former is listed in the State Cases Act, which specifies the government as the prosecuting party, while kut pit requires private prosecution, with the victim prosecuting the offense by means of a retained lawyer. There is no reference to the method of prosecution in the National Code. The Biratnagar Deputy Superintendent of Police clarified the difference for Minnesota Advocates' investigation in explaining why police have no recourse to file or investigate reports of physical domestic violence. Interview on November 13, 1996.

[65] The section of the National Code dealing with physical assault, or kut pit, proscribes all manner of personal assault, listing a wide variety of physical injuries and the penalty for each. A victim of a domestic assault that does not rise to the level of attempted murder, however, would have to hire a private lawyer to prosecute the perpetrator and enforce such penalties because the State Cases Act, which delineates the crimes that the State will prosecute, does not include assault or domestic assault. Assaults which disturb

the public peace are given special status under the Some Public Offenses Act and state prosecution is provided. The chapter on Physical Assault (*kut pit*) proscribes personal assault, specifically listing a wide variety of physical injuries and the penalty for each, ranging from blindness and emasculation (eight years and 30,000 rupees) to bruises (100 rupees a piece). National Code, on Assault §§ 6 and 11. See also State Cases Act, § 23 and Schedule 1.

[66] See also SAATHI Report which states that 35% of the twenty police officials surveyed said they tried to "settle the incident." SAATHI Report, *supra* note 9 at 37.

[67] Interview on November 17, 1996. It is important to note that the role of police in Nepalese society often renders them a problematic force in addressing domestic violence. Prior to 1990 when the country was ruled by monarchy or by the Rana (Prime Minister's family) the role of the police was to maintain order, without regard for the safety or rights of the citizens. The historical fear of the police engendered by their authoritarian function inhibits women from considering police involvement as an option in cases of domestic violence.

[68] This law proscribes a wide spectrum of offensive behavior, including, among many others, public assault or property damage; interfering with public servants; printing or distributing obscenity; obstructing the mail, telephones or electricity; molesting or insulting women in public places; and behaving "indecorously" in public. Some Public Offenses Act, § 2.

[69] The Some Public Offenses Act has several unique procedural provisions. Violations are not prosecuted in the regular judicial system. The cases are presented to the Chief District Officer (CDO), who acts as a judge in determining liability and punishment. Some Public Offenses Act, § 5. The CDO is the highest ranking administrative official appointed by the central government in each of the 75 districts in Nepal. He has wide-ranging administrative and quasi-judicial responsibilities. Interview on November 14, 1996, with a CDO in the Terai region.

Also, there is a first offense provision, which allows the CDO to acquit the accused, first securing the written promise of the violator not to repeat his offense. The time allowed for prosecution is short in the Some Public Offenses Act: the accused must be taken to court within 24 hours of arrest; charged within seven days unless an extension to 35 days is obtained; and the case must be determined within three months. Finally, if a penalty is imposed under this law, the convicted person cannot be prosecuted under any other law for the same conduct. Some Public Offenses Act § 6.

A convicted offender can be sentenced to 35 days in jail by the CDO, but upon application the Appellate Court can increase the sentence to a maximum of two years. A significant fine can also be levied. Interview on November 14, 1996, with a CDO in the Terai region.

[70] Interview with police official in Biratnagar on November 13, 1996.

[71] As one commentator has observed:

Nowhere is the effect on international human rights practice of the public/private split more evident than in the case of domestic violence which literally happens "in private." States dismiss blatant and frequent crimes, including murder, rape, and physical abuse of women in the home, as private, family matters, upon which they routinely take no action. Moreover, the state's failure to prosecute violence against women equally with other similar crimes or to guarantee women the

fundamental civil and political right to equal protection of the law without regard to sex have largely escaped international condemnation.

Dorothy Thomas and Michelle Beasley, Domestic Violence as a Human Rights Issue, in Vol. 15 Human Rights Quarterly 36, 40 (1993).

[72] Interview with a police official in the Terai region on November 13, 1996.

[73] Interview with police official on November 14, 1996.

[74] Interview with a public prosecutor in the Terai region on November 14, 1996.

[75] State Cases Act § 2-3; interviews on November 3, 5, and 13, 1996.

[76] State Cases Act, § 13. If the police station is located far away from where the injury occurs, the complaint can be filed with the local elected government representatives, the village development committee (VDC). An examination by a bipartisan group from the community takes the place of a prompt medical examination where there is no access to a public hospital or doctor. Doctors at public medical facilities are required to document police examinations by completing a form provided by the government. This form, however, is not used for record-keeping; it is turned over to the woman in case she decides to pursue a legal cause of action. (Interview on November 18, 1996, with a doctor at Patan Hospital.) In contrast, the legal procedures are similar but more extensive in the case of murder or attempted murder, requiring local officials to maintain the corpse and crime scene until the police arrive and to identify and detain the murderer if possible. The Muluki Ain sets out detailed procedures for investigating a murder, including specific physical observations and medical findings that must be included in the post mortem. The body may not be released for ritual cremation until all procedures have been completed. National Code, Offenses Affecting Life, §§ 2-4.

[77] One doctor, who works in the emergency room of Patan's largest hospital, expressed frustration that some women come in with relatively minor injuries related to domestic violence. The doctor characterized these injuries as "superficial" and lamented that she was required to spend time and energy treating such injuries when she had more serious patients waiting. Interview on November 8, 1996.

[78] National Code, Offenses Affecting Life, §§ 5-14. Similarly, the law excuses death caused in self-defense or defense of the home or certain public properties. It significantly reduces the penalty for "accidental homicides," which include various unintended deaths as well as "homicide due to assault by the teacher or the guardian for the benefit of the deceased." The law also reduces the penalty in cases of diminished capacity, passion, and provocation. The crime of attempted murder is handled and prosecuted the same manner as murder, but carries a lesser penalty. *Id.*

[79] Interview with a judge in the Terai region on November 14, 1996. Another judge reported that he recommended a reduction of a murder sentence from 20 to 10 years, where a wife killed her husband following a beating, following years of physical violence. Interview with a judge in Lalitpur, November 3, 1996.

[80] See SAATHI Report, *supra* note 9 at 24.

[81] Interviews with social workers, members of NGOs, and other individuals on November 14, 19, and 20, 1996.

[82] Remnants of historical practices are reflected in the current codes. Child marriage is now forbidden, as are dowry and bride purchase. National Code, On Marriage, § 2, § 6. It is still legal, however, for a husband to take a second wife, under limited circumstances. Those circumstances include: if the couple does not have a living child after ten years; if

the wife becomes incurably blind, lame or insane; or if she is unfaithful or has a sexually transmitted disease. *Id.* at § 9.

Offenders can be prosecuted criminally as well as civilly for arranging underage marriages or adding illegal wives. State Cases Act, § 23; Schedule 1. A marriage can be annulled if the bride or her family do not reveal that she has been previously married, even if she is a widow. National Code, On Marriage, § 8. There are no reciprocal provisions warranting the marital background of the groom, nor is there mention of conditions when a second husband is warranted. Such situations are inconceivable and are therefore not mentioned in the law.

[83] Ancestral property, which includes most real property, is passed only to sons and to daughters who attain the age of 35 and remain unmarried. If the daughter then marries, her share reverts to the original male heirs, as it does when she dies. She loses the property if commingled, and has limited ability to sell or encumber it. National Code, On Inheritance Rights of Women, §§ 2, 4, 5 and On Subdivision of Property §16.

[84] National Code, On Marriage § 8. Also, a woman loses all interest in property if she is unfaithful to her husband, even if she is a widow. National Code, *Id.* and at § 6, 7; National Code, On Subdivision of Property, § 5. Interviews on November 5 and 6, 1996 with a women's rights activist and a lawyer from Kathmandu. *See also* Kate Gilbert, *Women and Law in Nepal*, 24 N.Y.U.J. Int'l L. & Pol. 729, 747 (1992).

[85] National Code, On Conjugal Relations § 1.

[86] *Id.* Second wives are legal under circumstances described *supra*, note 82.

[87] *Id.* at § 1(2).

[88] *Id.* at § 1(3).

[89] *Id.* at § 4a.

[90] National Code, On Conjugal Relations, § 1A, Interview on November 7, 1996; confirmed in subsequent correspondence.

[91] Interviews on November 5 and 7, 1996.

[92] Interview on November 5, 1996.

[93] Interview on November 5, 1996.

[94] National Code, On Conjugal Relations, § 4; National Code, on Subdivision of Property, § 10A.

[95] *Id.*, On Subdivision of Property, § 5. *See also* Gilbert, *supra* at note 83.

[96] United Nations Centre for Social Development and Humanitarian Affairs, *Violence Against Women in the Family*, at 33, U.N. Doc. ST/CSDHA/2 (1989).

[97] For a discussion of the causes of domestic violence, *see Domestic Violence, Report of the Secretary-General*, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders at 8, U.N. Doc. A/Conf.144/17 (1990).

[98] United Nations Centre for Social Development and Humanitarian Affairs, *Violence Against Women in the Family* at 33, U.N. Doc. ST/CSDHA/2 (1989).

[99] Gauri Pradhan, *Violence Against Women in Nepal, Realities, Challenges and Change* in Voice of Child Workers, Issue No. 22 at 33 (April - June 1994).

[100] Rupa Dhital. *Working Girls in Nepal* in The Girl Child, A 1993 Compilation of Articles, compiled by CWIN, Kathmandu, Nepal.

[101] Interview on November 3, 1996.

[102] U.S. Dept. of St., *Country Reports on Human Rights Practices for 1996* (1997).

[103] Gauri Pradhan, *Violence Against Women in Nepal, Realities, Challenges and Change*, supra note 99 at 7.

[104] Prativa Subedi, *Nepal Women Rising*, Women's Awareness Centre at 8 (Kathmandu, Nepal, June 1993).

[105] In the Level Four Reader from which Nepali children learn to read, there is a story called "Medicine for an Argument." A young wife sought the counsel of her wise older neighbor. She was unhappy because she and her new husband argued all the time. The neighbor gave the wife a bottle of clear liquid and told her to fill her mouth with it, but not to swallow, each time an argument began. The young bride returned to her neighbor's house several months later. She reported that they rarely argue, but the medicine is gone and she needed more. The wise neighbor pointed out that the medicine was only flavored water and the wife had learned that her silence was the best medicine for a disagreement with her husband.

[106] Interviews with SAATHI on November 4 and 21, 1996, and with a human rights' activist on November 6, 1996.

[107] Interview with human rights activist on November 6, 1996.

[108] Although child marriage has been officially abolished, the tradition has not died. One source reported that some Hindus believe the parents of a girl who is not married before menstruation begins will go to hell, as will her ancestors. Another source reported that her mother was married at 10 and her aunt was prevented from marrying because she menstruated before a marriage could be arranged, at age 12. Interview on November 20, 1996, with a female doctor and activist in Kathmandu.

[109] Interview with a physician/human rights activist in Kathmandu on November 20, 1996.

[110] Interview with approximately 25 women from an NGO devoted to women's economic development, November 16, 1996. Some Nepalese believe, however, that the concept of the joint family system actually helps prevent domestic violence, as the older generation counsels younger couples to facilitate a peaceful household. Id., interview with judge in Raj Biraj, November 14, 1996. These observers report that the growing number of single families found in urban areas provide fertile ground for domestic violence because no other family members are present to moderate conflict and there is little opportunity for external observation of the abuse. Id.

[111] See Gauri Pradhan, *Violence Against Women in Nepal, Realities, Challenges and Change*, supra note 99 at 7.

[112] See discussion of polygamy law, supra note 82. The ongoing prevalence of illegal polygamy was described in interviews with activists, a physician, and police officials on November 4, 5, 15, and 17.

[113] See also SAATHI Report, supra note 9 at 18.

[114] Interview with a doctor in the Terai region on November 15, 1996.

[115] Interview with a high ranking police official in Kathmandu on November 17, 1996.

[116] Id.

[117] There is a strong belief in Nepal's traditional families that parents will gain merit by giving their daughter in marriage before her first menstruation. The incidence of child marriages, however, is declining. The proportion of married girls in the 10-14 age group was 7.4 percent in 1991, down from 14.3% in 1981, but in the Terai, the southern region of Nepal that borders India, such percentage was 11 percent in 1991. See Meena

Acharya, *Statistical Profile on Nepalese Women: An Update in the Policy Context*, Institute for Integrated Development Studies at 132 (Kathmandu, Nepal 1994).

[118] Interview on November 21, 1996.

[119] Interviews on November 13, 14, and 15, 1996, with police and activists in the Terai region.

[120] Interview with police official in the Terai region on November 14, 1996.

[121] *Id.*

[122] Interviews with physician and social workers, November 15, 1996.

[123] Interview with women's economic development NGO on November 16, 1996.

[124] Women's economic dependency on men is discussed in Pravativa Subedi, *Nepal Women Rising*, *supra* note 105 at 8. See also SAATHI Report, *supra* note 1 at ii, which states: "Women's economic dependency on the spouse and extended family were identified as the primary reason (73%) for women not reporting incidents of violence against them, followed by lack of education and the need to keep the family intact due to children (both 49%)."

[125] Customary international law consists of legal principles that are so widely accepted as legally binding that they constitute international norms or standards of behavior. Customary international law is binding on all states regardless of their formal legal commitments.

[126] G.A. Res. 34/180, U.N. GAOR Supp. (No. 46) art. 2(f), U.N. Doc. A/Res/34/180, *entered into force* September 3, 1981.

[127] U.N. Doc. A/47/38 (1992). General Recommendation No. 19 also states:

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks, and female circumcision The effect of such violence on the physical and mental integrity of women is to deprive them of equal enjoyment, exercise, and knowledge of human rights and fundamental freedoms.

[128] *Id.*

[129] *Id.*

[130] The Women's Convention, see *supra* note 126, art. 2.

[131] G.A. Res. 48/104 (1993).

[132] *Id.* Although a U.N. declaration is not legally binding, it does establish goals to which States should aspire.

[133] G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) 49, U.N. Doc A/6316 (1967).

[134] *Id.*