

The State of Human Rights in Nepal in 2010 - Asian Human Rights Commission (AHRC)

Dalit/caste references:

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For years, human rights groups have been advocating for the adoption of legislation criminalizing torture, **caste-based discrimination** or enforced disappearances, which would allow the effective prosecution of persons alleged to be responsible for such crimes, therefore creating a deterrent against further abuses of this kind.

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The National Human Rights Commission, the National Women Commission and the **National Dalit Commission** all have a primordial role to play in the creation policies that protect human rights. Their independence and capacity for action must therefore be guaranteed.

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The lack of an adequate witness protection mechanism encourages interference and leaves the victims and witnesses vulnerable to pressure and threats. In cases involving an unbalanced power relationship, such as the **murder of Dalit women by** Nepal Army soldiers, institutional protection by the State is required so that a fair prosecution can take place.

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In 2010, the Bardia National Park¹⁶ killings show the extent to which a lack of political will to address impunity, the vulnerability of the police to external pressure, the resistance of the army to any attempts to hold its personnel accountable and the lack of witness protection mechanisms, result in the denial of justice to victims. In this case, **two Dalit women** and one child who belonged to a group of labourers who had come to Bardia National Park to collect medicinal herbs, were shot dead on 10 March, under circumstances that remain unclear, after they had been detained by 17 members of the army.

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Similarly, to cover up their responsibility in the death of Sanu Sunar, a 45 year old **Dalit** man who was tortured to death while in police custody in Kathmandu on 23 May 2010, the police officers from the Kalimati police station arrested Bishnu - the man who had made the complaint against the victim leading to his arrest - and charged him with Sunar's murder. They also prevented the media and human rights activists and even Bishnu's family from meeting him in custody.

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4.4 Caste-based discrimination

The irregular implementation of **anti-caste based discrimination** legislation and the difficulties **the Dalit** communities are facing to access the justice system, continue to hamper the enjoyment of their fundamental rights.

Although the **caste** system was officially abolished in Nepal in 1963, it is still in operation in reality and condemns **Dalits** (members of the lower **castes**, also known as untouchables) to poverty, illiteracy and discrimination, including in access to education, health and employment. In some rural areas, the rest of the society still give little value to a **Dalit's** life which enables violent crimes, such as rape, physical assault or even murder, to be carried out with impunity.

Changes in legislation have not been able to dismantle the barriers of **caste** in the society, as the rule of law remains elusive in the country. The murder of Manisha Harijan illustrates the severity of the problem. According to information the AHRC has received from local NGO the Jagaran Media Center, the victim, an 8-year-old Dalit girl, was found dead on the morning of 4 December 2009, with her throat slit. The circumstances of the crime have led the villagers and the police officers to suspect that a local non-Dalit businessman killed the girl as a human sacrifice in his brick kiln, as part of a superstitious offering.

Caste-based discrimination is prohibited under national law and international standards. The 1963 Civil Code (Muluki Ain), banned untouchability and declared that every citizen is equal under the law, irrespective of **caste**, creed and sex. In 1971, Nepal ratified the International Convention on the Elimination of All forms of Racial Discrimination. The 1991 Constitution declared that the act of untouchability was illegal and punishable by law. As a result of these developments, the House of Representatives declared in 2006 that the country was free 'of untouchability and all kinds of discrimination.' The rights against **caste** discrimination and untouchability have been included as fundamental rights in the 2007 Interim Constitution. Nevertheless, those different steps, although welcomed, have had a limited effect in reality and discrimination which is inherently contained in the hierarchy of the **caste** system continues to affect every aspect of the life of the **Dalit** community in Nepal.

Article 14 of the 2007 Interim Constitution, which guarantees the protection from **caste-based** discrimination is hampered by the way it addresses the issue, which is included under racial discrimination, without specific emphasis being given to the situation of the **Dalits**. Section 14 -1 says that a discriminating act shall be punishable by law, but, since 2007 no law specifying the punishment has been adopted. Furthermore, the article focuses only on discrimination that can take place in public places but does not include specific provisions about discrimination in private places.

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In January, the appointment of a chairperson and of the members of the National Dalit Commission, after a gap of six months in which the work of the commission was stalled, has been a positive development although insufficient resources still hamper the ability of this entity to more effectively raise the issue of **caste-based** discrimination and related violence.

In addition to the loopholes contained in the laws, the flaws of the criminal justice system have denied victims of **caste-based** discrimination the protection of their rights. The police regularly refuse to file cases of discrimination or violence against **Dalits** and to offer protection to the victims. These obstacles ultimately discourage **Dalits** from seeking legal redress.

For instance, two groundbreaking court verdicts condemning instances of **caste-based** violence are still to be implemented. The first concerns a decision issued in January 2009 by the Baitadi District Court, which condemned the main perpetrator in a case of physical assault of 12 **Dalits** in October 2007 to two years imprisonment and a fine of NRS 25,000. The victims were assaulted as they refused to be subjected to a discriminatory ritual in a temple. The decision was upheld by the Kanchanpur Appellate Court on August 23, 2009. The second verdict concerned a case in which the father of a groom was assaulted for having practiced "rituals reserved for high-**caste** communities." The main perpetrator was sentenced to one year

imprisonment and a fine of NRS 5,000 by the Baitadi District Court on March 9, 2010. Both verdicts strongly condemned acts of violence committed on the basis of **caste**, which is outlawed in the Interim Constitution. However, neither verdicts have been implemented, in spite of the commitment of the local government officials to do so.³²

The way that the military pressured the witnesses and the families of the victims in the Bardia National Park killings to drop their cases, also shows the vulnerability of such persons and the difficulties they have in accessing the justice system. The victims were all **Dalit** manual workers and as such belonged to one of the poorest, most vulnerable communities in Nepal. The army and the forest department reportedly pressured the families including threats of arbitrary detention based on fabricated charges and the refusal to pay promised monetary compensation, to force them to drop the prosecutions, and granting impunity to the perpetrators of these killings.

Dalits also suffer from a range of other violations of their rights, including social and economic rights. Data provided by the National **Dalit** Commission shows the magnitude of the challenge: "*the analysis of Dalits' access to the national resources demonstrates the appalling condition. The literacy level is startlingly low among Dalits with the rate 33.8% in comparison to aggregate national rate 54%. The annual per capita income of Nepal is 210 US\$, where the per capita income is inconsistently less among Dalits with the level 39.6 US\$. Similarly, out of 17% of the poorest population of Nepal 80% belong to the Dalit Community and most of them are landless. Despite the entrance of societal development in the modern scientific stage, the condition of Nepalese society has become a matter of anxiety and challenge for the state since it has not yet been freed from inhumane behaviors like racial discrimination and untouchability.*"³⁴

The situation of those who dare to challenge discriminatory practices is also precarious. Pushpa Karki, a **non-Dalit** teacher was dismissed for having defended the rights of her non-Dalit students. She had objected to the use of separate facilities for **Dalit** students and to the banning of **Dalit** students from attending certain classes, which are common practices in Saraswoti Secondary School in Kailali district. She was sacked from her job in 2008, then prevented by her colleagues from taking up a post in another school. In order to counter allegations that discriminatory practices were being used by the school, the school administration reportedly submitted a report claiming that there were no **caste**-based discrimination and untouchability practices in the school, forging the signatures of the **Dalit** students to support their claim. Pushpa Karki has since then reportedly been the victim of a series of threats and intimidation. For one and a half years (at the time of writing in December 2010), this mother of three has not received any salary. During this period, five different Chief Education Officers have been in charge of the District Education Office. None of them have taken action concerning her case, and have ordered her to look for a job herself, in a remote part of the country and refused to transfer her to nearby schools. The National Information Commission had sent several letters to the District Education Office-Kailali, ordering them to reinstate Ms. Pushpa Karki. However, in spite of the authority of the NIC, its order has not lead to any action by the relevant local authorities. The DEO was eventually fined Rs. 5000.00 for not implementing the NIC decision and has appealed to the court.³³

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Those who suffer most from a lack of food are members of the lower **caste** community, or **Dalits**, indigenous people, the disabled, and some people infected by HIV/AIDS, who are the more marginalized and vulnerable social groups in terms of food security. They are identified as the being Below the Poverty Line (BPL) and are estimated to account for as much as 31% of the population.

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5.2 Who is hungry?

The **caste-based** Hindu hierarchy and patriarchal societal values are strongly rooted in Nepal's economic and social structure, which causes systematic exclusion and marginalization of the majority of low caste communities and indigenous groups. The majority of natural resources, including forests, land, and water, belong to high **caste** groups. In addition, inadequate government policies and poor implementation of government programmes contribute to an increase in food insecurity among these groups.

The National **Dalit** Commission has listed 22 cultural groups under the category of **Dalits**. According to the 2001 census, the total **Dalit** population in the country is 2,973,871 (13 % of the total population of 23.2 million). The Central Development Region (CDR) has the highest **Dalit** population (800,151) followed by the Western Development Region (719,101).

According to the Laxmi Prasad Prasai, a member of the National Land Reform Commission, there are some 1.4 million people without land. Most of them are squatters, haliyas, freed kamaiyas (which are lower caste communities). 50% of **Dalits** country-wide are landless, including 92% of women, 15% of **Dalits** in the hill area, and 45% of **Dalits** in the plains area. They are more exposed to food insecurity as they are living below the poverty line.

The landless Gadarva **Dalit** community in Saharawi Village Development Community (VDC) has been living by the Mankhola river side in Vardiya district. The main occupation of around 43 households in this community living is playing Sarangi (a string instrument) and singing songs.

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Only 15,000 persons are officially recorded as being infected by the Ministry of Health, among them 4,000 are single women and 1,000 are children. Many of them are poor from **Dalit** communities, who are further socially and culturally isolated, even within their families and communities, due to their being infected with HIV/AIDS.

6. Conclusions and recommendations

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9. Facilitate the access to justice of marginalized groups or communities. Complaints of **caste-based discrimination** must be given priority treatment and be properly investigated and prosecuted. Officers who are found to be intentionally negligent in dealing with such cases must be disciplined or discharged from duty. The National Dalit Commission should be strengthened to allow its effective intervention into reported cases of **caste based discrimination**.