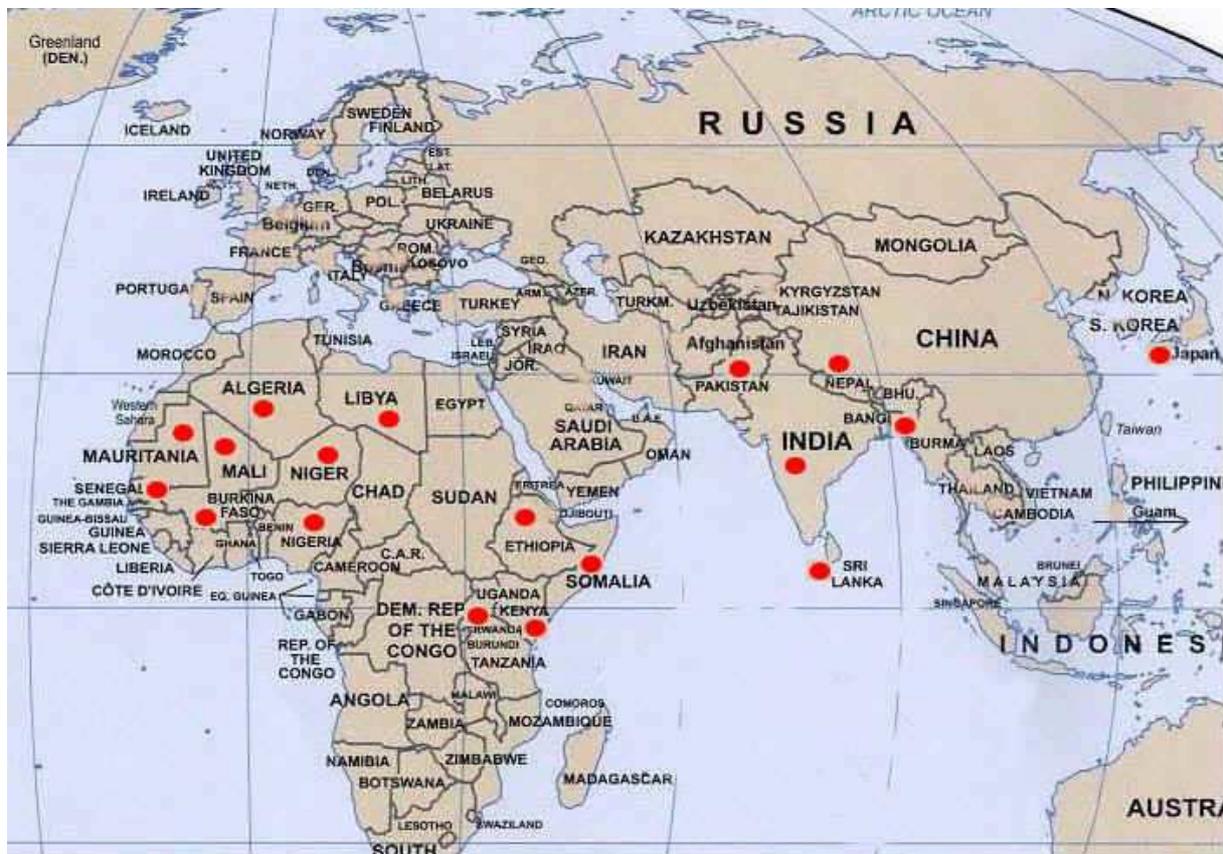


International Consultation on Caste-Based Discrimination:
Establishing Dalit Rights in the Contemporary World; the Role of Governments, the United Nations and the Private Sector



29 November – 1 December 2004
Kathmandu, Nepal

"My community is forced to dispose of dead animals and we are not paid for it. If they give me food, they put it on a banana leaf and throw it towards me, like you would do to a dog. If we refuse to do this work, they boycott us. When we complain to the police about the abuse we face, they tell us "you are Dalits, you should be treated like this." When we protest against this abuse, the police attack

"What efficiency can there be in a system under which neither men's hearts nor their minds are in their work? As an economic organisation caste is therefore a harmful institution, in as much as it involves the subordination of man's natural powers and inclination to the exigencies of social rules."

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Preface

The International Consultation on Caste-Based Discrimination held in Kathmandu on 29th November to 1st December 2004 was organised by the International Dalit Solidarity Network and the Dalit NGO Federation of Nepal. This historic event was attended by over 100 participants and included high level officials and ministers of the government of Nepal, United Nations human rights experts, and representatives of UN specialised agencies, as well as bilateral agencies, Dalit leaders, representatives of other caste affected communities, and local and international NGOs.

Caste-based discrimination has finally gained recognition as a serious international human rights problem. As this report sadly documents, more than 260 million Dalits and other 'outcaste' communities in South Asia, East Asia and Africa suffer extreme forms of discrimination, injustice and violence on a daily basis solely because of their inherited status.

This report contains a wealth of information about the extent and manifestations of caste-based discrimination; the legal and policy measures applied; and agency and civil society efforts to curb caste discrimination. It also tells the story of the shortcomings of existing interventions. More than fifty speakers from all over the world contributed their insights and the personal testimonies of Dalits moved the participants to tears. The consultation created a much-needed and welcomed space for sharing of knowledge, experience and strategies. The discussions on measures, policies and enhanced roles of all stakeholders are summarised in the various sections of this report. The lack of political will to implement legal provisions and policy measures ran through the deliberations as a connecting thread - this remains the largest barrier to the elimination of caste-based discrimination.

The level of commitment given at the Consultation was, however, encouraging. Governments were strongly advised to develop time-bound plans and follow-up mechanisms, and the Government of Nepal vowed to focus on implementation and to take the Consultation recommendations to the centre of its work. Experts from United Nations institutions and bilateral agencies offered their support to both governments and civil society in the continued efforts to eliminate caste discrimination.

The landmark **Kathmandu Dalit Declaration** contains the Consultation's recommendations to governments of caste-affected countries, national human rights institutions, the United Nations, aid agencies, the European Union, financial institutions, transnational corporations and NGOs. The declaration is a global challenge to decision-makers to be in solidarity with the victims of caste abuse.

The Consultation took place in a country ridden by conflict and human rights abuses. The Consultation participants recognised that without a drastic improvement in the human rights situation and a lasting solution to the present conflict in Nepal, Dalits and the wider population will continue to suffer.

IDSN and DNF wish to thank everyone involved in the Consultation for their contributions, especially the financial contributions of DfID-UK and DfID-Nepal, DANIDA, DanChurchAid, PLAN-International; MS – the Danish Association for International Cooperation, the Lutheran World Federation, CARE-Nepal and Action Aid-Nepal; and extend our warm thanks to the management and advisory committees and to the reporting team, led by Tim Gill of the Asian Human Rights Commission. We hope that this report and the Kathmandu Dalit Declaration will be a source of inspiration to all who struggle against caste-based discrimination.

Rikke Nöhrind
International Dalit Solidarity Network

DB Sagar Bishwakarma
Dalit NGO Federation-Nepal

January 2005

Executive Summary

Introduction

Kathmandu, Nepal was the venue for an historic event in the relatively young global movement to eliminate caste-based discrimination. Held from November 30 to December 1, 2004, the International Consultation on Caste-based Discrimination (“the Consultation”) carried the theme *Establishing Dalit Rights in the Contemporary World; the Role of Governments, the United Nations and the Private Sector*. The organisers – the International Dalit Solidarity Network¹ (IDSN) and the National Dalit NGO Federation of Nepal² (DNF) – welcomed over 100 participants from Nepal, India, Sri Lanka, Bangladesh, Japan, Senegal, USA, Switzerland, UK, Denmark and several other European nations. Experts came not only from low-caste communities around the world, but also from the UN system, governments, development agencies, human rights bodies, the labour movement, academia, the World Bank and Dalit solidarity movements.

The Consultation aimed to enhance implementation of General Recommendation XXIX of the United Nations Committee on the Elimination of Racial Discrimination (CERD), to explore best practices and to consider new measures to fight caste discrimination. The programme sought to enhance capacity to influence and advocate for policies and measures to counter caste discrimination through international and governmental agencies, the United Nations (UN), the European Union, the private sector and other decision-makers. These objectives were achieved.

The Consultation addressed important issues such as ‘best practice’ both in terms of legal, judicial, administrative and educational measures: and in terms of mainstreaming Dalit human rights in development cooperation and in the private sector. Valuable and insightful research was presented in terms of the mechanisms of continuing caste-based discrimination and the place of Dalits in government, corporate, UN and development policy. However, one outcome of the Consultation overshadows the others: the adoption of the **Kathmandu Dalit Declaration**. The Declaration (see Annex part J) provides a raft of concrete measures that can be taken by all stakeholders to work towards the goal of eliminating caste-based discrimination throughout the world. These measures provide a challenge and opportunity for action by governments of caste-affected countries, national human rights institutions, the UN human rights bodies and specialised agencies including the International Labour Organisation (ILO), bilateral aid agencies, the European Union, donor countries, financial institutions, the private sector including transnational corporations, and Non-governmental Organisations (NGOs).

Such action is indeed urgent, for descent-based discrimination affects in the most obscene and inhumane ways the daily lives of an estimated 260 million people around the world. The full scale of the problem is still probably not known, but the depth of the problem was made painfully clear by the five ‘witnesses’ who presented their testimonies during the Consultation. Very real and current manifestations of caste-based discrimination were described with the authority of those who have

¹ The International Dalit Solidarity Network (IDSN) was established in 2000 with the purpose of raising consciousness of Dalit issues nationally and internationally and advocating for Dalits human rights at all levels. IDSN is a network of international organisations, national solidarity networks and national advocacy groups in caste-affected countries. Dalit Solidarity networks exist in Germany, the United Kingdom, the United States of America, the Netherlands, France, Denmark and Sweden. Associates of IDSN include Human Rights Watch, International Movement against All Forms of Discrimination and Racism, the Lutheran World Federation, Anti-Slavery International, Minority Rights Group and the Asian Human Rights Commission.

² The National Dalit NGO Federation (NDF) is a national umbrella body for Dalit organisations in Nepal with a membership of 200 individual organisations. NDF is a coordinating member of the Human Rights Treaty Monitoring Coordinating Committee, and has been a Council Member of IDSN since 2002.

suffered, struggled and survived in the face of this deeply entrenched system. They portrayed their experiences and those of the Nepalese Dalit communities they belong to: intergenerational bonded labour; degrading untouchability practices; forced occupations such as removal of animal carcasses and prostitution; rape and sexual abuse of girl-children; abandonment of Dalit mothers and children by 'higher caste' fathers; perversion of justice; destruction of property and livelihood; beatings by police; denial of citizenship; extreme impoverishment; and exploitation by both sides of Nepal's armed conflict. The participants in the Consultation were moved to tears by the statements and also moved to action. Petitions were collected on behalf of the victims of two of the cases and a delegation went with the witnesses to seek justice from the Nepalese authorities. The participants will eagerly follow these and similar cases to urge effective action in favour of the victims of caste abuse.

The armed conflict in Nepal was at the forefront of consideration throughout the Consultation. It was clear to all that caste discrimination is both a cause and a consequence of the civil war, with Dalits being the primary victims. Ms. Jasmine Rajbhandary of the Department for International Development perhaps summarised the feelings of the participants by saying, "Resolving the conflict is a precondition for poverty reduction in Nepal, and addressing exclusion is a key conflict reduction priority."

Yet Nepal is far from alone in relegating a significant section of its population to treatment normally reserved for animals: Dalits and low-caste people in a wide range of countries are subject to remarkably similar forms of 'untouchable' or slave-like treatment, and similar violent or degrading punishments for standing up for their most fundamental human rights.

Opening Session

The Consultation began with Mr. Paul Divakar explaining the need for internationalisation of the fight against caste-based discrimination. "This struggle has emanated from the villages and cities in our countries, where Dalits have discovered that the issue must have visibility, that caste discrimination must have a place in the international human rights arena, and that the policies in our countries (which in fact display a dual policy – that the problem exists, but that the issue should be denied) must be changed. In short, we must break the mask of invisibility."

From the beginning, the Consultation took a political stance on the current conflict in Nepal, with the Chairperson Mr. DB Sagar Bishwakarma announcing: "From the dais of this consultation, I would also like to urge His Majesty's Government to initiate peace talks to resolve the prevailing conflicts and restore peace in the country through the involvement of the United Nations if necessary." The severe impact of the conflict on Dalits was reiterated time and again during the course of the three-day Consultation.

Undertakings were made by Nepal's Deputy Prime Minister Mr. Bharat Mohan Adhikari, who declared that the government would implement reservations for Dalits in addition to providing 140 million Nepali Rupees worth of scholarships to 500,000 Dalit and other marginalized children, and that the government would institutionalise the National Dalit Commission. Mr. Kedar Prasad Poudyal, Acting Secretary of Nepal's National Human Rights Commission announced that the Commission would inaugurate a new programme to resolve the vulnerability of Dalit people: their low level of education, their poor economic condition, and especially the untouchability practices. Ms. Nathalie Prouvez of CERD stated, "This is an important event for the CERD and the Office of the High Commissioner of Human Rights. You will have our full cooperation and support in your efforts to achieve the result we are all aiming for."

Session I: The UN Committee on the Elimination of Racial Discrimination, General Recommendation XXIX and Country Situations

The first session provided a global overview of caste-based discrimination, an explanation of CERD's General Recommendation XXIX, a look at the implementation of CERD's Concluding Observations to Nepal and an overview of the current situation of caste-discrimination in India, Sri Lanka, Bangladesh, Japan and Africa.

I-A. CERD and General Recommendation XXIX

The Consultation was presented with a sobering overview of descent-based discrimination around the world. Twenty different nations were identified where this degrading form of discrimination is still being practiced (Algeria, Bangladesh, Burkina Faso, Ethiopia, Guinea Conakry, India, Japan, Kenya, Libya, Mali, Mauritania, Nepal, Niger, Nigeria, Pakistan, Rwanda, Senegal, Somalia, Sri Lanka and Yemen). Caste discrimination has proven more resilient than legal 'safeguards', free education and economic development. Parallels between Asian and African systems are remarkable, particularly in terms of the concepts of purity/pollution and untouchability, forced occupations and bans on inter-marriage. There are deep connections between caste and slavery, servitude, bonded labour and economic class, and the parallels with racism are all too evident.

In many of these countries, even recognition of the problem and basic data about affected communities are lacking, and legislative measures have not yet even been considered by the relevant governments. However, even in those countries with model legislation such as India, implementation of measures remains pitifully low. The collection of more data (particularly in Africa) was seen as urgent, as was the development of anti-caste social movements and increased UN intervention.

CERD has provided a tool for civil society to call governments to account on caste abuse in the form of General Recommendation XXIX. This Recommendation interprets the International Convention on the Elimination of Racial Discrimination (ICERD) in terms of the specific form of discrimination faced by Dalits and low-caste communities, urging a wide range of measures on the part of governments. CERD's Concluding Observations on Nepal's periodic report provides even more specific obligations on the part of the Nepalese government. For countries like India which have seriously failed to meet their reporting requirements, CERD can and often does undertake its own review procedure to analyse the level of implementation of the Convention. The Committee can also take up communication directly with states during the period between submission of reports.

The Dalit movement in Nepal outlined in detail the failure of their government to implement CERD's General Recommendation and Concluding Observations. The few positive initiatives proposed by the government (reservations in education, maternal registration of children and the establishment of a National Dalit Commission) have not materialised, and socio-economic upliftment measures have thus far failed to reach the impoverished millions of Dalits in rural Nepal.

Mr. Tek Tamrakar called for meaningful political representation for Nepal's Dalits, saying, "It is not reasonable to think that the perpetrators and beneficiaries of caste discrimination will effectively implement plans and policies against caste discrimination." He also called for continued general democratic reform in Nepal and for the introduction of special legislation to protect Dalits. In response the Secretary of the Ministry of Local Development, Mr. Bal Krishna Prasai said the government was "serious" about eliminating caste discrimination, that it would implement free secondary education for all Dalits, and that it was "considering" reservations in education, employment and in Village Development Committees.

I-B. Country Situations

Over the past eight years, the Government of **India** has taken the cynical position that caste should not be raised at UN fora. India has however been unable to prevent the issue from being raised by the CERD and the UN Sub-Commission on the Promotion and Protection of Human Rights (“the Sub-Commission”). Further, India’s superficial ‘success’ – in preventing the inclusion of the paragraph on discrimination on the basis of work and descent from the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) Programme of Action – backfired when it sparked an unprecedented international awakening to the problem, due to both the government’s own intransigence and the enormous civil society movement in favour of the Dalits. The problem in India is not seen as a Constitutional or legal one, but rather a criminal justice problem: the laws are simply broken with impunity. Lack of political will has doomed administrative measures to failure. The statutory bodies established to safeguard the rights of Dalits and other marginalized groups have “been of no serious consequence to the affected communities in India,” according to Mr. Henri Tiphagne. He also highlighted civil and political problems such as lack of voting rights and political representation, and stated that “inter caste marriage is still an illusion, the realisation of which leads to gross forms of violence.” Economic, social and cultural rights have also been denied to Dalits on a massive scale, particularly in terms of access to education, health care, social security services, programmes for child labourers, debt bondage and the continuation of degrading practices such as manual scavenging. India’s Dalits demand the submission of the Indian government’s overdue reports to CERD and expect a more enlightened approach to the issue on the part of the new government.

Sri Lanka faces a dual caste problem: a secularised version of caste discrimination which leaves the Rodiya community at the bottom of the Sinhalese hierarchy; and a traditional Hindu caste system practiced by the Tamil minority, which oppresses Plantation Tamils (or ‘Indian origin’ Tamils, mostly working in difficult conditions on the Sri Lanka’s tea estates) and other outcaste groups. The government remains in the hands of the Sinhalese upper caste community, with Dalits and low-caste groups completely disenfranchised. One enormous victory of the Plantation Tamils was to gain citizenship after decades of being Sri Lanka’s ‘non-people’. This is, however, overshadowed by the socio-economic deprivation and exclusion which they still face. Despite the free education system, private, discriminatory practices continue to flourish, as witnessed by marriage advertisements openly referring to the ‘caste status’ of potential husbands and brides.

Significantly, the 1.5 million Dalits of **Bangladesh** were represented at the Consultation. Brought to modern Bangladesh more than 150 years ago to perform their traditional sweeping jobs for the colonial rulers, the community continues this occupation as their main source of economic survival. However even this meagre form of survival is being taken away, and while some have found work in other ‘polluting’ spheres, such as in graveyards and tanneries, many have had to migrate to India to find work. The Dalit community is suffering immense economic hardship, which is extreme even considering the under-development of Bangladesh as a whole. With approximately 1% literacy, the constant threat of unemployment, dilapidated housing, landlessness and a lack of access to affordable basic healthcare, the community is struggling with grinding poverty, poor health and a bleak outlook. Their representative Mr. B.G. Murthy explained candidly, “Malnutrition and diseases are our constant companions and many of us have to die every year due to lack of medical treatment.”

The Buraku community of **Japan** continues to be discriminated against despite the country’s economic advancement and the application of special measures to facilitate Buraku education. Japan’s efforts to educate the public about the need for respect and social advancement for Burakumin have been seriously inadequate. As a result, hate-speech and anti-Buraku propaganda has been on the increase in graffiti and on the internet. The government has decided to tolerate such abuse, which goes so far as to call for ‘extermination of Buraku clans’. In addition the withdrawal of special measures for Buraku improvement has gone ahead without evaluation regarding the effectiveness of these programmes. The Buraku community fears that in the absence of special measures for education, school completion rates for Buraku children will again fall after a period of increased education and job-readiness. The approach of the Japanese government in relation to reconsidering affirmative action for Burakumin

has been unflinching, in line with its refusal to admit that Buraku discrimination is covered by the ICERD in spite of CERD's explicit endorsement of this fact. Burakumin are calling for action from the Japanese government and from UN agencies including the Commission on Human Rights, the ILO and the Educational, Scientific and Cultural Organisation (UNESCO) to support moves by CERD and the Sub-Commission to promote the rights of people discriminated on the basis of work and descent.

The presence of an expert on caste discrimination in **Africa**, Mr. Abdoul Lamin Kamara, opened the window to a widespread yet obscured problem in the continent grounded in the same concepts of 'purity' and 'pollution'. A history of following particular forced occupations, myths about ancestors and descent from prisoners of war or from slaves mark out particular groups for extreme socio-economic oppression and exclusion. Mr. Kamara referred to outcaste people collectively as 'castes' rather than 'Dalits', but the forms and reality of discrimination in Africa and Asia are astonishingly similar. He notably called for African states and the African Commission on Human and Peoples' Rights to establish specific mechanisms to combat caste and descent-based discrimination, as this phenomenon is widespread in the continent. He provided four country examples.

The situation of castes in **Senegal** showed some signs of political advancement with the formation of political parties since 1992. However, the situation on the ground has changed little, and despite Senegal's secular democracy castes continue to be prevented from speaking in public, from marrying freely, from going to school or owning land and continue to be treated as untouchable. In **Guinea Conakry**, despite the ratification of ICERD and Constitutional provisions outlawing such discrimination, castes continue to be subject to severe social exclusions that prevent them from intermarriage, from participating in socio-religious ceremonies and even from accessing public land. In **Mauritania** there is an intertwining between caste discrimination and traditional slavery practices, oppressive interpretation of religious 'law', and racial discrimination. The effect of these influences leaves groups such as the Imraguen and the Haratins outcaste, vulnerable to slavery, impoverished and completely oppressed. Three caste groups of **Somalia**, referred to collectively as the Sab, experience life-long discrimination and systematic isolation, face violence, rape, slavery and landlessness and are prevented from freely marrying, going to school or entering into politics on account of their low-caste status.

Session II: Effective use of UN Mechanisms, National Human Rights Institutions and UN Agencies in Eliminating Caste-Based Discrimination

This session provided an overview of recent developments on caste-based discrimination in the UN, with special input from an expert of the Sub-Commission and the UN Special Rapporteurs on the Rights to Education and to Adequate Housing. Following this, the role of the Nepalese and Indian National Human Rights Commissions was investigated. Finally the Consultation was given a deeper look at the place of caste discrimination in the UN system in terms of mainstreaming, and a complete analysis of the historical, present and future role of the UN in tackling caste-based discrimination.

II-A. UN Mechanisms and Caste-based Discrimination

The UN human rights system has done too little too late to address caste-based discrimination in its instruments, and missed another enormous opportunity to do so at the WCAR. However the efforts of civil society at that Conference brought the issue into the consciousness of the international human rights community, and some very positive steps forward have been taken since then. CERD has issued General Recommendation XXIX on descent-based discrimination, and has analysed caste discrimination in its Concluding Observations to Nepal. The Sub-Commission has continued a process of describing and highlighting discrimination on the basis of work and descent, issuing three Working Papers on the subject and proposing a study by Prof. Chung Chin-Sung and Prof. Yoza Yokota, leading to a set of Principles and Guidelines for the effective elimination of this type of discrimination.

Sub-Commission expert Prof. Chung explained that a three-year process would be undertaken, and would involve workshops with NGOs and government staff. She expressed concern about the impact of globalisation on Dalits and low-caste communities. Research, monitoring and social, economic and structural measures should be taken for the advancement of low-caste communities, including land reform and more comprehensive housing policies. All procedures to eliminate discrimination should be made with the self-determination of the affected parties, with special attention to women and children.

Mr. Vernor Muñoz Villalobos, UN Special Rapporteur (SR) on the Right to Education stated, "The Dalit cause is my cause, that's why I'm here. There is much left to do in terms of the right to education, especially for the discriminated groups such as those in Nepal, India and Africa." The SR shared his sentiments on hearing of a case where an anonymous 11 year-old Dalit boy was beaten – one of so many Dalits deprived of security and education as a result of caste discrimination.

The UN Special Rapporteur on the Right to Adequate Housing, Mr. Miloon Kothari, was also on hand to explain his mandate in terms of caste discrimination. He spoke of the need to more strongly denounce the deprivation of economic, social and cultural rights – including the right to adequate housing – faced by excluded low-caste communities. Mr. Kothari encouraged the Dalit movement to link with civil society networks working on various issues connected to the problems of Dalits, and to provide information to relevant SRs, who can send 'communications' to governments even where visits are impossible. He also spoke of caste-like practices against slave-descendent communities of Brazil, and likened caste discrimination to that faced by the Roma in Europe.

II-B. The Role of NHRCs in protecting and promoting Dalits' human rights

Nepal's National Human Rights Commission (NHRC) came under fire for its lack of Dalit representation and a perceived unwillingness to effectively investigate and advocate on behalf of Dalit victims of human rights violations, even in extreme cases and where data was readily available. The Acting Secretary of the NHRC assured the Consultation that the Commission was trying to address the issue of representation of marginalized communities, saying that "a draft provision to this end will be ready within a few months." The NHRC has made some positive impact by documenting atrocities in the conflict, by visiting areas of the country inaccessible to the government, and by influencing the government to provide compensation to women victimised through accusations of 'witchcraft'.

The efforts of the Indian NHRC were also seen as inadequate in terms of taking up cases of abuse against Dalits and marginalized groups in general. Problems relate to inaccessibility, inefficiency, and lack of cooperation and accountability. However, the role of the NHRC in the debate on including caste discrimination in the WCAR was very positive, as it took a public line opposing that of the government. Recent positive developments include the publication of an NHRC report on atrocities against Dalits and the formation of a Dalit cell in the Commission.

II-C. The Role of UN Organisations in the Elimination of Caste-Based Discrimination

The UN is now taking human rights seriously and attempting to mainstream them into all areas of the UN's work, from peacekeeping to development. Human rights are seen as the foundation for all that the UN does, and fighting discrimination is one of the most fundamental means by which human rights for all can be achieved. The UN treaty monitoring bodies and UN Special Procedures are available for civil society to use in their efforts to end caste-based discrimination. 'Shadow reporting' is seen as an effective way for NGO's to portray the true picture of discrimination in a given country. Ms. Carla Covarrubias of the UNDP informed the Consultation that the UN stands ready to follow up on the recommendations of the Consultation and to cooperate with Dalit movements to combat caste-based discrimination by strengthening national protection mechanisms.

The UN is expected to act on its words to help deliver the elimination of all forms of discrimination, including caste-based discrimination. However, the history of the UN's failure to raise the caste issue does not help to build confidence. Mr. Vincent Manoharan outlined the mechanisms which should apply to Dalits in India but have until recently completely ignored their plight. The Human Rights Committee took 18 years to raise the issue. CERD took 27 years. The Sub-Commission, the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Rights of the Child and the ILO have only recently (since 2000) added their voices in support of outcaste communities. UNESCO and the UN Commission on Human Rights³ have still not referred to caste discrimination. Even the UN's high profile development initiative was seen to have fundamentally ignored Dalits: "The Millennium Development Goals have yet to address the root cause of Dalit deprivation. Because of this non-committal approach towards Dalit development, the goals of reducing poverty and injustices may not be realised." Mr. Manoharan concluded his presentation by saying, "Ever since the UDHR was promulgated and the UN Human Rights Charter was passed, Dalit rights have not found any space under the sun. The discourse on a global standard for human rights has always excluded Dalit rights in every possible way... even these belated initiatives are insufficient. A great deal needs to be done before we can say that UN bodies have played a significant role in the elimination of caste based discrimination."

Session III: The Role of the Private Sector and Transnational Corporations in Addressing Caste-Based Discrimination

This session probed the role of the private sector in respecting the rights of outcaste communities. Firstly the existing and planned codes of conduct for business were summarised in terms of their relevance to caste-based discrimination. The ILO explained its measures relating to discrimination on the basis of caste. The role of transnational corporations in Dalit exclusion from the new economy was explored. Finally, a comprehensive analysis of the historical and current exclusion of India's Dalits from markets, and the implications for addressing this discrimination were presented.

As transnational companies penetrate from the international to local level and governments' ability to regulate them wanes, Dalits become integrated in highly unequal economic relations at the end of the chain of production. At the same time, Dalits are being excluded from the new technology industries in India because they lack the caste networks and often the education necessary to be considered. With the failure of governments to use legislation to ensure multinational investors respect the rights of marginalized communities, the companies themselves are being called to account through voluntary codes of conduct. The most popular of these is the *UN Global Compact*, which is vague and lacks enforcement mechanisms, but may still be used to compare practice to stated ideals. The *OECD Guidelines for Multinational Companies* are more clearly elaborated and have a pseudo-enforcement mechanism in the form of National Contact Points, to which complaints can be made. One of the most comprehensive codes of conduct is the *UN Human Rights Norms for Business*, which encourages reservations to counter traditional discrimination and has a reporting and monitoring mechanism. Other important initiatives are the *Global Sullivan Principles*, the *ILO Decent Work Agenda* and its *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*.

There is a need for studies to be conducted on the impact of private sector activities on Dalits, and the movement needs to combine with the wider human and worker rights movements to include issues affecting Dalits in codes of conduct. The *Ambedkar Principles*, drafted in September 2004, were presented to the Consultation. After further discussion and amendment, these Principles could create

³ Special Rapporteurs and the Sub-Commission are increasingly paying attention to caste discrimination within their mandates, but the Commission on Human Rights is yet to make reference to caste-based discrimination.

an appropriate instrument that foreign investors in South Asia may endorse to signify their willingness to engage with the process of eliminating caste discrimination.

ILO Convention 111 provides an important mechanism for combating caste-based discrimination, referred to as discrimination on the basis of 'social origin'. The Convention urges anti-discrimination measures in employment, occupation training and work placement. Affirmative action measures and skills development are seen as important in tackling entrenched discrimination. However, lack of resources hampers monitoring in Nepal, and the informal sector in which the majority of Dalits work is not being monitored. The ILO is trying to further improve its efforts to combat discrimination in work.

Transnational corporations are investing heavily in India across a wide range of sectors. These corporations are increasingly being made aware of the impact that their investments can have on the continuation of caste-based discrimination. The caste system was likened to the apartheid system in South Africa, marked by segregation, discrimination and violent oppression of those who try to assert their equality. The fight against apartheid – which involved holding transnational corporations to account for their role in promoting the regime – can serve as a model for the international struggle to end caste-based discrimination. Those corporations who ignore caste-based discrimination run an enormous risk of exacerbating the problem as caste bias is the default option. Dalits are excluded from India's famous 'new economy', further increasing the gap between the caste Hindus and the 'untouchable' Dalits. Some corporations have already begun to implement affirmative action policies to ensure that Dalits are given an equal chance to prove themselves in the new economy.

Perhaps the most striking insight of the Consultation was that provided by Prof. Sukhadeo Thorat on the exclusion and unfavourable inclusion of Dalits in the labour, land, housing, education, capital, consumer goods and product markets. Discrimination against Dalits has chiefly been viewed as a human rights issue, but ignored in terms of its negative impact on economic growth. Yet it is clear that discrimination in access to occupations on the basis of caste is a significant constraint on growth. Productivity is affected by reduced work commitment and effort on the part of Dalit workers who realise they are victims of wage discrimination. Income inequality can even lead to communal conflict. As market discrimination is deeply entrenched, and has proven to be anything but self-correcting, special measures are required to enable equal access for Dalits. Taking relevant examples from around the world, Prof. Thorat showed that three measures would be necessary to overcome market discrimination: enactment of Equal Employment Opportunity Laws, wide-reaching affirmative action in both private and public sectors, and compensation through one-time land or monetary settlements in reparation for historical disadvantage. According to mainstream economic theory, such measures to open up access to markets closed to Dalits by the caste system should lead to economic growth, in addition to their contribution to justice, equality and human rights.

Session IV: Mainstreaming Dalit Rights in Development Programming

In this session, the exclusion of Dalit women from development in India and Nepal was made evident, and an outline of the overall place of Nepal's Dalits in terms of development was presented. A means of Dalit upliftment through non-formal education was described, and the Nepalese government explained its past problems and future plans in terms of Dalit development. Agencies active in Nepal – Save the Children US, the UK Department for International Development (DfID), the World Bank, Denmark's Danida and the European Union – provided their insights on the challenges and successes of Dalit development in Nepal. This was followed by an analysis of the role of NGOs and political parties in building Dalit movements capable of social transformation.

IV-A. Dalits and Development

What the Government of India has achieved on behalf of Dalit women can best be described as “mal-development”. Dalit women are the most economically depressed, the least literate, the most excluded from markets and the least protected in employment. Each Dalit woman should be granted at least five acres of land in their own name, and should have access to Dalit reservations in both the public and the private sectors.

With very high levels of both gender discrimination and caste discrimination in Nepal, it is not surprising that Dalit women are at the bottom of the development pile. But the true revelation of their plight is in the range of problems they face: untouchability, poverty, illiteracy, poor health, domestic violence, sexual exploitation and trafficking. They are the main victims of the armed conflict and of intercaste marriages, are denied the most basic labour and occupational rights, and suffer other human rights violations ranging from rape to accusations of witchcraft. Ms. Durga Sob presented a damning summary audit of a number of the government’s programmes designed to assist women or Dalits, each of which has completely failed to include Dalit women. Ms. Sob urged the women’s movement, the Dalit movement and the human rights movement to agitate for the upliftment and protection of the oppressed Dalit women of Nepal.

Development indicators show that in Nepal, as the country develops, Dalits continue to be left behind. There is a correlation between this fact and the absence of specific Dalit policies in development programming. Very few agencies have specific Dalit policies, either in their development programmes or in their staffing arrangements. The agencies, for their part, cited various factors contributing to the lack of Dalit development, including untouchability and geographic problems, the lack of cooperation and of disaggregated data, and the perceived priorities of Dalit NGOs. Significantly, there was consensus among Nepal’s development agencies that not enough is being invested in Dalit development given the size of the population and the severity of Dalit problems.

Participatory processes for the development of non-formal education curricula provide a means by which Dalit communities can have access to education relevant for their own upliftment. By identifying the important issues and determining the mechanisms by which they can best learn about those issues, Dalits can work with educators to develop materials and educational fora that enable community organising, critical discussion and community decision-making, which contribute to their development and liberation. This process is being used effectively in rural Nepal.

Mr. Hem Sharma Pokharel of Nepal’s Ministry for Local Development admitted that there are serious problems with the implementation of legal and Constitutional provisions designed to protect Dalits and other marginalized groups. While he acknowledged that the results of the government’s 8th and 9th five-year plans were “not very inspiring”, the 10th plan contains stronger measures based on the socio-economic upliftment of Dalits and other impoverished or excluded groups. The plan promises free education to secondary level for all Dalit children, along with measures for empowerment and development of Dalits. The government’s current challenges include institutionalising the National Dalit Commission; empowerment of Dalit women; improving Dalit research, monitoring and evaluation; resolving the problems delaying Dalit reservations; and most importantly the implementation of existing legislation designed to assist Dalit development and eradicate discrimination and untouchability.

IV-B. The Role of NGOs, Bilateral and Multilateral Agencies

Save the Children US and DfID are two development organisations attempting to actively include or target Dalits in their programmes. Save the Children US has placed a high priority on preparing and assisting Dalit children to participate equally in good quality public schooling. DfID’s focus is on increasing the institutional capacity of national Dalit NGOs and on ensuring the collection and analysis of useful and meaningful data for the current and future development of Dalits.

The World Bank (WB) has also begun to consider the problem of caste discrimination as a fundamental barrier to poverty reduction, and requires the government to enable Dalit access as a criterion for receiving WB poverty alleviation funds. WB has developed a means of measuring empowerment and inclusion, which shows that Dalits are far behind all other groups, with Dalit women being the most deprived of a voice and the capacity for self-development.

The invaluable experience of Danida's work with Dalits in Nepal provides numerous insights for development agencies, NGOs and all others seeking to assist Dalit self-empowerment and equality on the ground. Dr. Jit Gurung shared some of the problems identified during the first phase of Danida's support for Dalit organisations (2000-2003): traditional ideologies and mentalities; lack of access to the means of production and technology; lack of awareness amongst Dalits, non-Dalits and government agents; low capacity of Dalit NGOs; and gender-based discrimination. Taking these problems into account, in the second phase Danida is supporting the development of local, independent Dalit organisations via the main national Dalit NGOs and aiding the development of the National Human Rights Commission. Action is being taken on issues such as public-police interaction, land rights and coordination of donor programmes. Danida's early decision to invest in Dalit self-empowerment has paid off notably in terms of sensitising government, aid agencies, NGOs and the general public to the problems associated with caste-based discrimination in Nepal.

The European Union is funding several initiatives targeting the Dalit community of Nepal including advocacy, media and community empowerment projects. The European Commission is capable of 'mainstreaming' Dalit rights through its political dialogue with concerned governments, and by assessing the impact of all assistance (trade, development, economic co-operation) in terms of its impact on Dalits. In addition the EU could ensure and promote good employment practices by giving Dalits equal opportunities to access EU work.

Mr. Hira Vishwakarma was highly critical of the role being played by Dalit NGOs and the Dalit 'sister organisations' of Nepal's political parties. The NGOs have concentrated on acting as 'contractors' for international agencies rather than calling the government to account for its responsibility to uplift Dalits. The Dalit sister organisations of political parties have failed to take up opportunities to provide concrete assistance to Dalits facing grave problems. If they continue to flounder in building Dalit social movements, Dalits may need to form their own political party. Ironically the greatest impact in building a real Dalit movement has been made by a non-Dalit NGO who used adult education to encourage the Chamar community to stand up for its rights by refusing to continue their traditional, forced, 'polluting' occupations. This resulted in an enormous backlash by the upper caste residents, but it also had a very positive effect in building a movement in support of Dalit emancipation. The current resources available for Dalit grassroots work must lead to the formation of a true social movement of Dalits, which is the only hope for eradicating caste-based discrimination in Nepal.

Closing Session

Following the presentation of the landmark Kathmandu Dalit Declaration, Ms. Rikke Nöhrind summarised the outcomes of the Consultation: "We have expanded our knowledge especially on the situation of Dalits in Nepal, and made new contacts. Measures and strategies to work towards the elimination of caste-based discrimination have been put on the table. Inspiration and new ideas have flowed on how to enhance the impact of what's already being done and what we will set out to do in the future. We have witnessed new and important commitments and will eagerly follow the response to the recommendations presented at this Consultation - especially that of governments and the international community."

Conclusion

The Consultation expressed its deep concern that the efforts being made to combat this severe and systematic form of discrimination are at this stage completely inadequate. Caste discrimination remains rampant in the world, and has proven to be resilient to the normal measures expected to combat such problems. Oppression, exclusion and violence with impunity against low-caste communities remains feverishly strong whether one looks at countries which have put in place laws and affirmative action measures to counteract caste discrimination (such as India), countries that are highly economically developed (such as Japan), non-Hindu countries (such as Bangladesh), or countries with very high education standards (such as Sri Lanka). In these countries political will is seriously lacking, and much deeper measures – including compensation and private sector reservations – are needed in order to address not only current but also past exclusion from markets. Clearly the affected African countries – which have almost universally turned a blind eye to the problem – have not made any progress at all. Much more research is needed before we can even comprehend the scale and depth of the problem in that continent.

In spite of this, with few exceptions the UN, governments, development bodies, financial institutions, corporations and NGOs have failed to even ensure they are not exacerbating the problem, let alone take strong steps to counteract this type of discrimination. So much more needs to be done. The Consultation's *Kathmandu Dalit Declaration* provides concrete proposals for how to move forward in this regard. All stakeholders are urged to implement the measures outlined in this document.

The papers presented at the Consultation were of an exceptionally high standard. While the papers could only be summarised in this report, they are nevertheless available in their entirety on the IDSN website (www.idsn.org). These documents should be used widely, as they provide groundbreaking analysis of caste based discrimination, invaluable insights from unique experiences of working with Dalit communities and an enormous number of specific recommendations for tackling discrimination on the basis of work and descent.

Witness Statements

Ms. Manju Nepali

Badi Community, Nepalganj, Nepal



Manju, 32, is a victim of the traditional Nepalese caste system. Among Dalits, the Badi⁴ caste to which she belongs is considered the lowest. The story begins 51 years ago. Manju's mother Champu Nepali was living in Dang District. Because their occupation was performing dance and music, they did not have a permanent house in which to live; they used to move from place to place. During this time Champu Nepali met a landlord from the same area. They became close, had a physical relationship and lived like husband and wife, but did not marry. They had been together for about five years when she gave birth to her daughter Manju Nepali. One year after Manju's birth he stopped coming to see her. Then two years later Champu moved to Nepalganj with Manju because that man had left her and she felt uncomfortable living in the same village. She became the main person providing for her whole family.

Champu sent Manju to a public school in Nepalganj. Manju was a good student. When Manju was 13, she fell in love with an upper caste class friend called Ramesh Thapa. They became close and Manju trusted him. They were together for about 12 years in a relationship. During this period of 12 years, Ramesh did not take Manju to his own home but as they were in love they agreed together that they were 'husband and wife'. In reality however he exploited her physically and Manju gave birth to three of his children. During their twelve-year relationship he occasionally stayed at Manju's mother's house and was often physically violent to both her and her mother.

After the twelve years Ramesh Thapa got married legally to a different woman from a so-called 'higher caste' and took her to his family's home. After this he refused to acknowledge Manju as his wife, because she is from the Badi community. Having been his wife effectively for twelve years this hurt Manju very much. After this she tried to assert her rights as his wife but no-one supported her.

Today Manju is looking after three children as well as her mother. It is very difficult to provide for their food and education. A major problem for her is trying to obtain both birth registration and citizenship for her children. According to Nepalese law the father's citizenship details and recognition are necessary for registration. If her children are unable to get citizenship they will be unable to get employment with the government, open a bank account or have any access to support or facilities, such as public education. Due to her husband's denial of their marriage and rejection of her she was also unable to obtain her marriage registration.

Three generations of Manju's family have suffered and continue to suffer from caste discrimination. Legally they have no voice and economically and physically they are exploited. This is one of thousands of cases of serious human rights violations and caste discrimination in Nepal for which no justice has been possible. The Badi community continues to be dominated and treated as lesser human beings. Since there is no-one from the Badi community at the decision making level in the government or with access to the higher levels of government people the Badi community are unable

⁴ The Badi community in Nepal is discriminated against and stigmatised wrongly as a caste of 'prostitution'. Due to the exploitation of the Badi in society many women have been forced to work illegally as sex workers to provide shelter and food for their children. The Badi community has been working hard to cast off this stigma of prostitution and be treated with dignity and respect.

to obtain justice, despite the provisions provided by the Constitution. Manju concluded by appealing on behalf of all the Badi community to human rights activists, social workers, politicians, donors and responsible persons from the government to address the problems that the Badi community face: "People from the Badi community are also citizens of Nepal - we are human beings with the right to live with dignity as respected citizens in our nation. So please think about and act to support the rights of the Badi community."

Ms. Janaki Ram

Chamar community, Nepal



Janaki Ram was 'engaged' to be married when she was 5 years old, and went to live at her husband's house when she was 8. She remembers when she was a child that her neighbours told her not to come near and not to touch her. She used to help the women of her village as a midwife. When the upper caste women needed her, she could go to their homes, deliver the baby, then a few hours later she was again untouchable. She was even called on to be a wetnurse for the children, but was never allowed to even give them water. She gave massages to the upper caste people, and they had to shower before going inside to purify themselves. When they gave her food, they gave it on a banana leaf which they threw towards her, like you would give food to a dog. Her community also has to dispose of dead animals, for which they're not paid.

The Chamars made a collective decision to refuse to do this 'untouchable' work, and to send their children to school. In response the upper caste villagers organised a boycott against the Chamar community, after they refused to remove a buffalo calf from the home of a prominent high-caste ex-minister named Padam Narayan Chaudury. The community was no longer allowed to work, to buy medicine or food, or use public telephones, and were even prevented from using the lands made available for their toilet. During this time, three women were taken away and raped by the upper caste men. Overall 600 Dalits were affected by the boycott, with the women affected the worst.

The Chamar community complained about these violations to the police, but they took no action. As a result the Chamars organised a rally, at which the police attacked and beat them. They were seriously injured. Janaki Ram was beaten to the point of unconsciousness. Another woman named Siyawati Ram was beaten at the rally and required three days hospitalisation to recover. She was 70 years old. They informed the media, and got some coverage in the newspapers. With the help of some local NGOs they organised a conference to discuss the problem and a food programme in which Dalits cooked for people from all castes to eat together in defiance of untouchability practices.

Two years after the boycott began they organised a relay hunger strike and a rally with the help of Dalit NGOs. The police came and beat the Dalits and used teargas on them. Eventually they registered their own Chamar NGO. They are working for women and children to combat caste discrimination. It is called Dalit Society Welfare Organisation.

Ms. Lil Kumari Bishwakarma

Dalit community, Pokhara, Nepal

Lil's household was one of 2 Dalit houses in a village of 90 houses, the other families being from a higher caste group called 'Gurung'. The family suffered the usual severe discrimination and untouchability: they were prevented from entering the temple or other houses or touching food or water used by the



Gurungs. But because their house was as nice as the non-Dalit houses and they could send their children to school, to these practices were also added jealousy and anger that Dalits could be socio-economically equal to Gurungs.

This jealousy found an outlet when Lil's younger sister Saraswati, aged 13, witnessed the horrific murder of her friend Deepa. Deepa was knifed to death by a woman named Sunita, in the presence of Saraswati. Sunita told Saraswati that if she told anyone of the murder, she herself would be killed also.

"All of our possessions were stolen and our house burnt down by the Gurungs with the aid of the police. We were

Sunita eventually confessed to killing Deepa, but told Deepa's family that Saraswati and all of her family had helped her to kill the young girl. The family then beat Saraswati and her brother, whose leg and hearing were seriously injured as a result.

The police arrested Lil's whole family, but later released all but Saraswati and her mother, Shir. Upon their release, however, the family was driven out of the village, their possessions stolen, their animals eaten and their house burnt down, with the aid of the police. The case went to court, and the Gurungs

had already organised with Saraswati's school to falsify the records to make her age 17 instead of 13, so that she could be convicted and sentenced as an adult. She was tried along with her mother Shir Kumari and the actual killer Sunita. The Gurungs threatened the judge and ordered him to deliver a guilty verdict to the Dalit girl and mother, and he sentenced the three of them to 20 years imprisonment.

Saraswati is now close to a mental breakdown, as a result of the injustice of being convicted for a crime she did not even witness. Saraswati would like to continue her study from jail, but even that right has been denied her, as the Gurung have prevented her from taking the examinations. Lil says that they had to go through all of these things just because they are Dalit, and that no-one in the village would help them.

Mr. Ram Bahadur

Haliya Community, Hajapur, Nepal



I come from Hajapur. I am a Haliya, and my community has suffered greatly. There is a lack of food, despite working hard the whole day. It's not enough for a livelihood. There are six members in my family. My child became ill, but I was denied expenses for medicine. The landlord came to beat me one day, and I escaped. We Haliyas are denied social justice and economic justice. Many of us are living as refugees in the district administration. The Kamaiya people should also be given justice, but we are not even given the little assistance Kamaiyas have received. We have spent three generations of servitude in tilling the land, and despite so much hard work we are denied the bare necessities of life. We work the whole day until midnight, but we see our children are suffering. My young children

cannot go to school. We are even denied fresh water. Being a Dalit, we were forced to drink 'impure' water. The whole environment for us is negative and unpleasant. My village in western Nepal is considered untouchable and we are treated as untouchable. We have been suffering the same kind of problem for generations. I have no place to stay now, and what can I do? At the rate of Rps 60, I cannot feed six people. We expect the government should provide some other things for our living conditions. We are landless and we want the government to do something for us. This is the pitiful and miserable plight we are living in.

Ms. Gita Rana-Sunar

Dalit Community, Nepal

Gita was 13 when she had physical relations with and became pregnant to her upper caste teacher at the time. The teacher admitted that he was the father of the baby, and Gita moved to his house just before giving birth to a girl, Mousamee. However, the teacher's parents refused to allow a Dalit girl and her baby to stay in their house, and forced her to leave with her newborn baby on the day of her birth and move to another village. The teacher left for India on the same day.



The traditional ceremony to name a baby is held 11 days after the birth, and must be attended by the father. After a lot of pressure, Mousamee's father returned, and the ceremony was held on the 19th day. The three of them lived together for 2 months before the second village also told Gita to leave. She moved with Mousamee to the outskirts of the village, and the teacher abandoned them. Gita managed to convince her parents-in-law to provide a minimum support, which they did for one year. After this, the parents decided to stop helping them. They called a village meeting with Gita and forced her to sign a paper without being able to read the contents. She received no more help from the family and had to move back into her parents' house again.

Ten years after he left, Gita learnt that the teacher had returned to Nepal. She went to ask him to look after her and Mousamee. He denied that he was the girl's father until the police pushed him to admit it. He told the police he would arrange for her care with the village, but ran away before they got there. Two years ago she found her husband again and asked him to arrange her birth registration, which can only be done by him. He again refused to help his daughter get her citizenship. Gita brought the case before the Village Development Committee, who are supposed to arrange it if the father refuses to do so. But since they were from the upper caste, they also refused. Now Mousamee has no birth certificate (which is necessary for citizenship) or identity and no right to attend the public school. If Gita wants to educate her child, she will be forced to take Mousamee to a private school, which she has no hope of being able to pay for. She has filed a case with DNF and called for the Consultation to be seriously concerned about cases such as hers⁵.

Flowers on the Sea⁶

Mr. Vernor Muñoz Villalobos

UN Special Rapporteur on the Right to Education

On October 21, 2003, a Member of Parliament from Saptari District in the Eastern Development Zone, allegedly beat an 11 year-old Dalit youth and his mother, claiming that their animals were eating his crops. The name of the child was not revealed.

Human Rights Watch

Dear brother:

I don't know if I have the wisdom to understand the history of your people, or the ability to explain the blows of this man, or the predicament that has caused that pain to you and your family. I don't even

⁵ Representatives from the Consultation, along with Gita Rana-Sunar, Mousamee Rana-Sunar and Lil Kumari met with Nepalese officials including the Minister for Justice, the Attorney-General and the Acting Secretary of the National Human Rights Commission, who promised to assist the just resolution of their cases.

⁶ Excerpts are presented from the Special Rapporteur's letter to an anonymous Dalit victim entitled "Flowers on the Sea".

know if someday I will find the right words to explain to my students the reasons why a system of inequity between human beings who share the same sky and the same earth, still remains in the XXI century.

The reasons, as you see, have been obscured by this feeling that surrounds me and forces me to throw you these words into the fog, as if it was possible to plant flowers on the sea. It is a feeling that you already know; a mixture of rage and determination, neglect and bravery, in which our peoples have grown and prevailed, despite all predictions.

For that reason I can tell you that in a not very distant day, nobody will deny their hands to you, no one will refuse to listen to you or to plough the land of your ancestors. The law of the Kingdom of Nepal, that years ago abolished all kinds of discrimination and prescribed free education to the disadvantaged groups, will be remembered like an ancient print of hard times, because in the days to come, it will be improbable, inconceivable, that somebody rejects the glance of the eyes of children.

You will say that I am dreaming, that in these days neither you nor your sisters can easily stand to stay outside the classroom by the fact of being Dalits. You will say that to stay outside the classroom is a stroke of luck, because in many cases it is not even possible to be admitted in school. Perhaps you will think that my words forget the repulsion of the men of upper castes, when a Dalit offers them milk, water or shoes...

More than four million people [in Nepal] with the same pain but with the same dignity can't be wrong in their hope, because in spite of the strike of a 97% rate of illiteracy in Dalit women and extreme poverty, every time with greater force and participation, your people establishes organisations with the purpose of eradicating this system of inequity from society.

The first possible and desirable education for the Dalit people, is its independent and direct management for the understanding of their reality. To learn about the fights of other discriminated groups and cultures, about the lights they followed, the errors they committed and to return that learning in constructive proposals.

The right to education, according to that context, must be demanded and be developed like a mechanism of self-affirmation of dignity and freedom.

The history of segregation hides a great blindness that the liberation of the Dalit people could only bring into light. For that reason perseverance must be accompanied by patience and by the force of the ideals. Education certainly represents all those contradictions. But it also opens the windows to the world and allows to construct the knowledge and skills that we required to exert our rights.

Options are part of life and when we thought that there weren't other ways than the use of violence, a new flame arises illuminating the sky. The absence of means is already a means. A Dalit school can be the way for many children; for many other children a conventional school is also an answer.

Nobody could say that Dalits are alone. Nobody could either deny the existence of the caste-based discrimination that at this point of history is only accepted by those who play the role of domination and privilege positions.

These words are yours, dear brother. Put the truth on your mouth and launch it as a comet to the border of Mother Earth.

Inaugural Session

The *International Consultation on Caste-Based Discrimination* was inaugurated with a traditional Nepali song on the 30th of November, 2004 at the Hotel Himalaya, Kathmandu, Nepal. The Chief Guest of the opening session was the **Hon. Deputy Prime Minister of Nepal Mr. Bharat Mohan Adhikari**, who lit the ceremonial lamp and declared that the government would implement reservations for Dalits in addition to providing 140 million Rupees worth of scholarships to 500,000 Dalit and other marginalized children. Mr. Adhikari reaffirmed that the Government of Nepal concurs that caste discrimination is covered by the UN International Convention on the Elimination of all forms of discrimination. The Deputy Prime Minister said, "I would like to reiterate the government's commitment in front of the representatives of the international community present: we are very serious about the problems and issues of Nepalese Dalits and other marginalized communities around the world. The government believes that unless the problems related to social justice, marginalization and poverty can be addressed no lasting peace can be achieved."

The first session was chaired by **Mr. DB Sagar Bishwakarma**, President of the Dalit NGO Federation of Nepal (DNF), who stated that the Millennium Development Goals would never be achieved in Nepal without recognising caste-based discrimination. Mr. Bishwakarma asserted that "Development, democracy, human rights and poverty alleviation programmes should target those who are discriminated on the basis of caste and work, and all strategies should have a component designed to fight caste-based discrimination... I would like to draw the attention of international communities that 'Dalits' and 'poverty' are synonymous."

From the beginning, the Consultation took a political stance on the current conflict in Nepal, with the Chairperson announcing: "From the dais of this consultation, I would also like to urge His Majesty's Government to initiate peace talks to resolve the prevailing conflicts and restore peace in the country through the involvement of the United Nations if necessary." The severe impact of the conflict on Dalits was reiterated time and again during the course of the three-day Consultation.

Dalit activist **Ms. Ambika Paswan** added the concerns and problems of all Dalit women of Nepal, particularly those from the plains region (the 'Terai') and urged more attention to the plight of these 'lowest' among the Dalits. This theme was echoed by **Mr. Hari Shankar Pariyar**, one of only two Dalits to rise to the position of Assistant Minister (for Physical Planning and Works) in Nepal. Mr. Pariyar noted, "The condition of Nepalese Dalits is miserable in every respect. Even after the restoration of democracy, nothing tangible could be done to bring about changes in the lives of the Dalits. I must admit this. And despite the appreciable activities of NGOs, I don't think their efforts are sufficient to bring about fundamental changes in Dalits' lives nor establish their human rights. We need to pay particular attention to intra-Dalit discrimination among the 23 different Dalit castes in Nepal... The life of the Dalits in the western part of Nepal is even more miserable than that of other Dalits."

Mr. Tej Sunar of DNF contributed to the session by announcing, "The Consultation will be a milestone in mainstreaming human rights if practical and realistic strategies and guidelines can be developed to enhance effective implementation of CERD's General recommendation XXIX."

Mr. Paul Divakar of the Indian National Campaign for Dalit Human Rights explained the need for internationalisation of the fight against caste-based discrimination. "This struggle has emanated from the villages and cities in our countries, where Dalits have discovered that the issue must have visibility, that caste discrimination must have a place in the international human rights arena, and that the policies in our countries (which in fact display a dual policy – that the problem exists, but that the issue should be denied) must be changed. In short, we must break the mask of invisibility. We knew about the existence of the problem throughout South Asia, but now it is clear that it exists also in many African countries, in which it remains virtually invisible. Through the Dalit Solidarity Networks in the

north and the Dalit bodies in the south, and by using national mechanisms and international covenants and recommendations, we can create space for the struggling Dalit masses to ensure that we can realise our human rights.”

Mr. Kedar Prasad Poudyal, Acting Secretary of Nepal's National Human Rights Commission asserted, “Dalits are not seeking separate sets of rights different from other people – they just want to have equal rights: equality before the law, equality of opportunities. Dalits deserve rights related to the vulnerability of Dalit people: their low level of education, their poor economic condition, and especially the untouchability practices. The National Human Rights Commission will inaugurate a new programme for Dalits to this end.” The Hon. **Mr. Rishi Babu Pariyar**, Member of the Nepalese National Assembly and **Mr. Lal Bahadur Bishwakarma**, Assistant Minister for Population and Environment in Nepal also affirmed the need for more concrete action, such as reservations, to combat the traditional discrimination against Dalits in Nepal.

Ms. Nathalie Prouvez, Secretary of the United Nations Committee for the Elimination of Racial Discrimination (CERD), delivered the greetings and apologies of Mr. Mario Jorge Yutzis, the Chairman of the CERD, Mr. Patrick Thornberry (CERD Rapporteur and architect of General Recommendation XXIX), and Mr. Morten Kjaerum, who was Rapporteur for the discussion on Nepal's recent report to the Committee. Ms. Prouvez stated, “This is an important event for the CERD and the Office of the UN High Commissioner for Human Rights. You will have our full cooperation and support in your efforts to achieve the result we are all aiming for.”

Session I: The UN CERD, General Recommendation XXIX and Country Situations

Chair: Mr. Peter Prove, Lutheran World Federation

Session I-A: UN CERD and General Recommendation XXIX

Global Overview of Forms and Extent of Caste-Based Discrimination

Mr. Paul Divakar

National Campaign for Dalit Human Rights, India

The caste system divides society into various castes and places humans in a social hierarchy of upper and lower castes. The single factor differentiating Dalits from others is their low caste status. The community in which one is born determines one's caste status; hence, it is an irreversible phenomenon. Descent refers to lineage and family origin, that is the relationship defined by connection to an ancestor through a culturally recognised sequence of parent-child links. In many parts of the globe, there exists discrimination on the basis of descent, which has the same social effect as the caste system.



Presence of descent-based discrimination around the world

The problem of caste discrimination is prevalent in South Asia, East Asia, and east and west Africa⁷. In south Asia, Nepal and India are well researched, but the problem exists in Bangladesh and Pakistan as well as in Sri Lanka, where the Sinhalese caste system coexists with the Tamil caste system. In Pakistan, Christians are generally from a Dalit background. In Bangladesh, Dalits come from a Hindu background. Japan defies the argument that economic development will wipe out caste-based discrimination, as discrimination against Burakumin continues to this day. The forms of caste-based discrimination in Africa are not as well researched as they are in South Asia or Japan. Colonialism exacerbated this discrimination, but even before colonialism hierarchical systems were in place.

The following are some common features of caste systems around the globe and their incidences:

- Concept (meta-physical) of purity and pollution [e.g. Algeria, Bangladesh, Ethiopia, India, Mali, Nepal, Nigeria, Pakistan, Senegal, Uganda]
- Forced unclean occupations [e.g. Bangladesh, Ethiopia, India, Mali, Nepal, Nigeria, Pakistan, Senegal]
- Untouchability and segregation in settlements, burial or cultural institutions [e.g. Ethiopia, India, Kenya, Mali, Nepal, Nigeria, Pakistan, Senegal]
- Discrimination in hotels/restaurants (entry, seating, usage of utensils) [e.g. India, Kenya, Nigeria]
- Denial of services (haircutting, laundry, tailoring, pottery, carpentry) [e.g. Kenya, India, Nigeria, Senegal, Somalia]
- Restricted access to land [e.g. Bangladesh, Ethiopia, India, Japan, Kenya, Mali, Nepal, Nigeria, Pakistan, Somalia]

⁷ See Annex part A for a summary of individual country situations. The map on the cover page gives a geographic overview.

- Restricted access to political elections (entry into polling booths, separate queues/times, standing for political offices) [e.g. Bangladesh, India, Mali, Nepal, Niger, Nigeria, Pakistan, Senegal, Somalia, Sri Lanka]
- Prohibited use of bicycles and other vehicles, sandals, umbrellas, etc. [e.g. India, Nigeria]
- Impunity for perpetrators of crimes against low-caste communities [e.g. India, Nepal]

Similarities between African and Asian descent-based discrimination include: the use of humiliation; regional specificities contributing to the hidden nature of the problem; strong cultural acceptance and sanction of discriminatory practices; existing Constitutional measures are ineffective; overlap between caste, class and gender; and the impact of colonialism in exacerbating the caste systems. Differences between African and Asian descent-based discrimination include: the level of visibility of the problem; the (non-)existence of social movements and Constitutional provisions for the eradication of caste discrimination; and the extremity of the manifestations of the various systems.

In conclusion, more data is needed, in particular from African countries. One must be aware that the collection of such data and the development of social movements opposed to these systems may open up 'a hornets' nest'. The coincidence of ethnic, political and territorial conflicts in the countries further complicates the potential for eradicating discrimination. The UN should extend their mandate to include 'descent-based discrimination'. The argument that talking about discrimination creates discrimination is not valid. Solidarity is needed to build the movement globally.

CERD General Recommendation XXIX and the review of Nepal's Periodic Report

Ms. Nathalie Prouvez

Secretary, UN Committee for the Elimination of Racial Discrimination

There are 170 States who are party to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). The Committee on the Elimination of Racial Discrimination (CERD) is responsible for monitoring progress made by States parties in fulfilling their obligations under the Convention. The Committee examines periodic reports by States parties in which they provide information on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention. In cases where States parties are overdue in submitting their reports by five years or more, the Committee may decide to review the implementation of the provisions of the Convention on the basis of all other available information (review procedure).

CERD relies not only on the state party reports for the formulations of questions to the governments but also on information sent by from national human rights institutions and from NGOs or provided by these organisations in informal meetings. After dialogue with the government, the Committee adopts Concluding Observations which summarise the discussion and indicate issues requiring specific follow-up action at the national level. The concluding observations point out the positive aspects, the factors and difficulties impeding the implementation of the Convention, the principal subjects of concern and concrete suggestions and recommendations for future action. These observations are tools to be used by civil society, governments, and other actors. CERD also adopts General Recommendations (GRs), to clarify its approach and the meaning of specific provisions of the Convention, as well as the corresponding obligations of States parties. In August 2002, CERD adopted GR XXIX on descent-based discrimination, following a thematic debate on the subject.

General recommendation XXIX and concluding observations on Nepal

The first question raised by CERD in GR XXIX is the meaning of the concept of descent as mentioned in article 1, paragraph 1 of the Convention. CERD asserted that this concept includes discrimination

against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.

Measures of a general nature: CERD recommended to States not only to ensure the adoption of legislation outlawing all forms of descent-based discrimination, but also to resolutely implement this legislation. Such implementation should be complemented by a comprehensive national strategy which must be put into action with the participation of members of affected communities. This strategy ought to include the adoption of positive measures, in particular so as to promote access for members of descent-based communities to employment and education. The Committee also recommended the establishment of strong statutory mechanisms to promote respect for the equal human rights of members of descent-based communities. CERD has underscored the importance of the restoration of Nepal's parliament in order to expedite the process of resuming normality in the country. CERD also expressed concern over the effects of the insurgency, especially its impact on vulnerable groups.

Cross-cutting issues: GR XXIX tackles a number of cross-cutting issues, in particular multiple discrimination affecting women (including forced prostitution and discrimination in the politics, security, employment and education), the question of segregation in housing and employment, the right of access to public places and services, and the role of the administration of justice system in combating

"Prompt and impartial investigations are paramount in counteracting discriminatory attitudes and practices, and procedures relating to the investigation of complaints with respect to the work of the police should be

descent-based discrimination. Systems of administration of justice have so far played an insufficient role in the elimination of descent-based discrimination, even when legislation has been adopted to prohibit and punish discriminatory acts, creating a culture of impunity that apparently permeates the higher strata of a hierarchical social system. CERD is also concerned about allegations of ill-treatment and ineffective protection of Dalits by the police. Combating impunity presupposes the adoption of legal aid and group claim facilities among other measures to secure equal access to justice for victims of discrimination. Persons who commit crimes against members of descent-based communities must be prosecuted and victims of such crimes must be granted adequate compensation. Recruitment of members of descent-based communities into the police and other law enforcement agencies should also be encouraged.

Civil and political rights: Measures to secure the right of descent-based communities to marry freely outside the community would undoubtedly progressively reduce the systemic segregation of which they are victims. Also helpful would be the adoption of special and concrete measures to guarantee to members of descent-based communities the right to participate in elections, to vote and stand for election on the basis of equal and universal suffrage, and to have due representation in government, judiciary and legislature. Dalits remain underrepresented at these levels.

Economic, social and cultural rights: Combating poverty, marginalization and social exclusion of descent-based communities presupposes the adoption of effective programmes for socio-economic development, covering their rights to employment, education, adequate housing and health care. CERD recommends that States parties work with intergovernmental organisations, including international financial institutions, to ensure that all projects which they support take into account the economic and social situation of members of descent-based communities. The rights of children from descent-based communities must be respected in terms of freedom from exploitative child labour and equal access to education without harassment. Further, public education campaigns are seen as an important part of breaking down descent-based discrimination.

Concluding Remarks: the need to follow-up on recommendations

The value of the recommendations adopted by CERD is determined by the use made of them at the national level. Governmental agencies should draw up a plan with specific deadlines in order to ensure the implementation of the recommendations, and national human rights institutions and civil society organisations should lobby for and monitor this implementation process. The Committee is permitted to request information from States parties at any moment, even if their periodic report is not due for some time. CERD has appointed a co-ordinator on follow-up to recommendations addressed to States parties at the August 2004 session. Mr Morten Kjaerum (Denmark), who also acted as rapporteur for the 2004 Nepalese report. He can be provided, through the Secretariat, with relevant information pertaining to implementation of CERD's recommendations.

Implementation of CERD's Concluding Observations on Nepal⁸

Mr Subodh Pyakurel
Chairperson, INSEC

The Nepalese people are victims of Hinduism, which is the official foundation of the state. Religion created this caste system. This was a kind of conspiracy in which the skilled became Dalits and those with knowledge became Brahmins. The Vedas provided sanction for discrimination. This is how Nepal became handicapped. Those in power are afraid of losing power. My own 'Brahmin' family has benefited from exploiting Dalits. The government and the Maoists have also exploited Dalits. The moment a Dalit is arrested – whether by the State or by the Maoists – he's beaten. More than 60% of arrested Dalits are beaten.

CERD's Concluding Observations on Nepal

In its 15th and 16th joint report on ICERD the government has claimed that the points raised by the Committee in its concluding observations have been properly and adequately addressed. One should ask the question: did the government adequately address CERD's concluding observations? The recommendations and concluding observations are not to be entertained as 'mere suggestions'; they carry a sense of urgency. Explanations such as 'we are considering', 'we are committed', 'we are serious' are insufficient. How can such sincerity and commitment be gauged? Just being repeatedly serious and committed for more than three decades for the same issues falls short of being able to proclaim that the 'concluding observations have been properly and adequately addressed'. If people's basic needs are not being met, the state has not fulfilled its obligation.

The Committee has expressed its concern about, *inter alia*⁹, the impact of the conflict; the need to allocate resources for Dalit upliftment; the disruption to the Parliament; the need for increased powers and independence for the National Dalit Commission and National Human Rights Commission; the culture of impunity for crimes against Dalits; private and public segregation; lack of information about Dalit women; under-representation in politics and the media; and the liberation and rehabilitation of bonded labourers.

Nepal's Legislative and Programmatic Efforts

⁸ A list of references is provided in the Annex, part B.

⁹ A fuller summary of CERD's concerns and recommendations regarding Dalits in Nepal is available in Annex part B

Legal provisions include: Constitutional provisions (guaranteeing the right to equality); the Treaty Act, 1990 (which recognises ratified international human rights instruments in national law); Civil Liberties Act, 1954 (provides grounds for affirmative action in favour of socially and economically backward communities); Legal Aid Act, 1998; Local Self-Governance Act, 1999 (aimed at wider participation in governance, including that of socio-economically backward groups); and the Bonded Labour (Prohibition) Act, 2002 (which provides land for freed bonded labourers).

The government's 10th Plan (2003-2007) states that one of the three overall strategies will be to implement poverty alleviation programmes specifically for women, Dalits, nationalities and other deprived groups. In 1998, the government established, under the Ministry of Local Development, a National Committee for the Upliftment of the Depressed, Oppressed and Dalits Community. The Committee is working under an executive order for the development of the Dalits.

The existing laws authorise the local/government institutions like Village Development Committees, municipalities, the Office of the Chief District Officer, and the local police stations to take action against any person or groups practicing caste-based discrimination

However, Nepal's reservation of ICERD Articles 4 and 6, in spite of CERD's repeated request to withdraw these reservations, makes plain that the government has not really paid attention to the Committee's remarks. Legislative efforts are insufficient, as seen in the failure to effectuate the reservations law. Specific laws with strong implementing mechanisms and stiff penalties for the perpetrators of caste-based discrimination are needed. The structural, traditional power structure of state governance and the lack of result-oriented political will has hindered implementation of CERD's recommendations. Collective effort among civil society is another front that should be developed to this end, in the light of the growing awareness for the elimination of such inhuman practices.

A Dalit Perspective on Implementation

Mr. Tek Tamrakar

President, Dalits, Development and Law, Nepal

The Nepalese government is legally bound by the Treaty Act to implement the obligations of ICERD and the recommendations of its Committee. These obligations must be implemented effectively through legislative measures, judicial pronouncements and administrative plans and programmes.

Implementation status of CERD General Recommendation XXIX in Nepal

One of the major recommendations is to identify forms of descent-based discrimination and carry out relevant surveys of the victims. However, the State reports to CERD without any statistics spelling out the nature and scope of this discrimination. Besides this, the government always submits exaggerated reports, lacking wide and real information both on its progress and on the situation of the victims of caste-based discrimination. The government has recognised the existence of untouchability, but has failed to provide information about the number of cases where it has taken action.

Another recommendation of CERD is to consider and enact or amend legislation in order to outlaw all forms of discrimination based on descent, in accordance with ICERD. However, despite this obligation there are various discriminatory provisions under the existing laws and even in the Constitution. These include Section 10 of the Civil Code, 1963 and its preamble; a provision under the Old Heritage Protection Law, the Tin Dhara Pathshala Rule; Section 3 of the Children's Act, 1991; and Articles 3 and 9 of the Constitution of the Kingdom of Nepal, 1990. No special attempts have been initiated to abolish such discriminatory provisions. Likewise, the government is yet to initiate promised special laws. The provision against untouchability in the Civil Code is vague, ambiguous and discretionary.

Regarding CERD's call for effective implementation of the legislative and other measures already in force, there are in fact no programmes in place to combat discrimination against Dalits. The positive programmes intended for their socio-economic upliftment suffer from inherent weaknesses, which result in their non-implementation. For effective implementation, the compulsory representation of Dalits in the policy-making and execution bodies must be effectuated.

Another recommendation of the Committee is for the immediate formulation and application of special measures for Dalits. If the state really wanted to provide reservations to Dalits and other vulnerable students, it would carry out the measures necessary by enacting laws through ordinances. It has failed to do so. As per the stereotypical mind-set of state policy makers, the planned Dalit reservations will apply only at the third class officer level of the Civil service. This weak approach impedes *de facto* upliftment of the Dalit community in Nepal.

CERD has recommended the strengthening of the National Dalit Commission (NDC) through a statutory mechanism. Meanwhile the NDC is in fact dead in its function. No doubt the government's establishment of a National Human Rights Commission (NHRC) is a progressive step towards the promotion and protection of human rights. However, the NHRC has not been very sensitive and active towards the Dalit issue, and it lacks proper Dalit participation, as required by the Paris Declaration's insistence on pluralistic participation.

The Committee has obliged Nepal to take necessary steps to secure equal access to the justice system for all members of descent-based communities, including by providing access to legal aid. Dalits have been denied their right to justice because of their low economic and social status. The government has failed to properly implement the Legal Aid Act in the case of Dalits.

CERD has also recommended awareness-raising about legal provisions against discrimination among the state machinery. This has not been taken seriously in Nepal, neither in relation to untouchability, nor in relation to those responsible for the execution of anti-discrimination provisions. Meanwhile the current reality for Dalit victims of crime is impunity: no punishment; no prosecution and no imprisonment of offenders.

The Committee has suggested taking special, concrete measures to guarantee to members of descent-based communities the right to participate in public and political life. Without proper representation in the decision-making process the dominant class manipulates all decisions. Dalit people remain deprived of representation in all wings of politics. Some provisions have been detailed to provide Dalit representation merely in local bodies' nominations, but this is insufficient for transformation of society.

A reservation policy in the private sector is also recommended. The extent of the public service is being narrowed because of moves towards privatisation, industrialisation and the influence of the World Trade Organisation. Reservation limited to the public service will not change the life of Dalits.

The State is obliged to formulate socio-economic policies and plans which can help to eliminate descent-based discrimination. Mere economic upliftment is not sufficient to root out the existing caste-based discrimination. Undermining this truth, the government formulates programmes for economic upliftment but not for social upliftment. In other words, it wants the perpetuation of caste system.

"Unless the police administration itself becomes respectful of Dalit rights, the decision of the State to outlaw and prosecute untouchability"

The Committee has recommended the provision of measures to eliminate multiple discrimination against Dalit women and has asked the government to include in its next report the measures taken in this regard, including specific action taken to eradicate the forced prostitution of girls and women from the Badi caste¹⁰. Members of the Badi community, however, continue to be deprived of citizenship certificates and the right to birth registration. Even the Constitution prevents mothers from obtaining citizenship for their children.

"It is generally considered that the root of untouchability is the caste system; the root of the caste system is religion attached to varnashram; the root of varnashram is the brahminical religion; and the root of the brahminical religion is

CERD recommends that the State party intensify its efforts to end discriminatory practices in criminal investigations and further recommends that the procedures relating to the investigation of complaints against the police be conducted and overseen by a body independent of the police. Unless the police administration itself becomes respectful of Dalit rights, the State's decision to outlaw and prosecute untouchability practices will be meaningless. The government has not made any specific plans for criminal justice reform in this regard.

The Committee is concerned that, although the system of agricultural bonded labour known as Kamaiya was abolished in July 2000, the emancipated Kamaiyas are facing many problems, including lack of housing, land, work, and education for their children. The Hali and Khali Dalit communities working as bonded labour in Nepal have not benefited from

emancipation and rehabilitation. Dalit bonded labourers have missed out on even the scant and inadequate assistance provided to Kamaiyas.

Roots of the Barriers to Dalit Emancipation

Under the existing Constitution and the State machinery it has provided for, *de facto* elimination of descent-based discrimination is not possible. The existing Constitution is prejudiced against Dalit emancipation and prevents real social transformation. Likewise, the Constitution declares Nepal to be a Hindu state and bars conversion from Hindu to other religions. It is generally considered that the root of untouchability is the caste system; the root of the caste system is religion attached to *varnashram*; the root of *varnashram* is the *brahminical* religion; and the root of the *brahminical* religion is the authoritarianism of political power.

The election method adopted by Nepal's Constitution is also a barrier for Dalit representation in the legislative wings of the state. It has adopted the first-past-the-post system, which benefits the elite communities. Proportional participation is a must for inclusive democracy. It is a fact that to date only one member from the Dalit community has been able to become a member of the parliament's elected law-making body. The legal system is no doubt a product of the social system, which is heavily influenced by the caste system: a stratified power structure where a few are endowed with all the powers and the many are condemned to serve the powerful. So, the laws are enacted to protect their vested interest. Nepal's justice system is adversarial. Under this system, only communities having power and money can buy justice. Judicial institutions can only judge, but they cannot enable justice.

Recommendations

¹⁰ CERD's phraseology with regard to the Badi community refers only to 'those who are affected and forced into prostitution' not in any sense implying all of the Badi community are involved in prostitution.

The government is urged to take initiatives for the introduction of policies and programmes focusing on the qualitative representation of this community. It is not reasonable to think that the perpetrators and beneficiaries of caste discrimination will effectively implement policies against caste discrimination.

A special legal mechanism to counter descent-based discrimination also needs to be enacted. The law should have wide scope in terms of implementation. All forms of descent-based discrimination defined by ICERD should be included and dealt with. Punitive measures for the elimination of discrimination are to be highlighted within the law. The law should not be focused only on perpetrators but also on the victims of prejudice. The government is also urged to take steps to remove the roots of descent-based discrimination in Nepal, through: enhancement of a pluralistic democracy; devolution of the political structure, with wide participation; Constitutional recognition of reservation in both public and private sectors; Constitutional and legal recognition of the NDC; pluralistic structure of NHRC; formation of a Special Court; punitive laws against untouchability; and use of a victim-based justice system.

A Comment from the Government of Nepal

Mr. Bal Krishna Prasai
Secretary, Ministry of Local Development

The Government of Nepal will take the recommendations of this Consultation seriously, and is committed to these issues. Nepal has signed global declarations against all kinds of discrimination. The Constitution says that all persons are equal before the law. CERD's general recommendations and specific provisions are under way to being implemented. In March 2004, the Nepalese delegation to CERD showed its commitment to the upliftment of Dalits; the rights of the Dalits have been taken into consideration.

We know that because of illiteracy and backwardness, the country is not free of discrimination. But the government is committed to uproot this discrimination and is prepared to work with NGO's to eliminate discrimination. A draft ordinance has been brought out for a Dalit Commission. In twelve districts, many new programmes have been worked out. Free education will be provided for Dalits up until secondary level. Many women-focused programmes have been spelled out. New plans for social and economic upliftment of Dalits have been devised, as implementation of previous plans has been weak. Economic self-sufficiency and access to schooling are important for Dalit upliftment. The government is also very sensitive to issues of torture of Dalits.

Regarding poverty alleviation plans, the government has taken social inclusion seriously and have tried to mainstream Dalits in national development through joint programmed with international agencies. The government is willing to make changes to the Constitution and laws as necessary, and is considering Dalit reservations and representation in Village Development Committees. The Ministry of Local Development is willing to work with and to discuss all these issues with interested parties.

Session I-B: General Recommendation XXIX and Country Situations

Dalits in India

Mr. Henri Tiphagne
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India*



CERD's General Recommendation XXIX was preceded by several important events that help appreciate the Indian situation with regard to the recommendation. The Indian government has opposed the UN Sub-Commission on the Promotion and Protection of Human Rights procedure, despite which three papers have been produced, and a new resolution on descent-based discrimination passed in 2004.

At the 2001 World Conference against Racism in Durban, the issue of caste based discrimination was made visible both by the actions of NGOs and the 'politics' behind the Indian government's efforts to prevent the inclusion in the Durban Declaration & Plan of Action of Paragraph 73 on discrimination on the basis of work and descent.

India has, since 1996, taken the position that CERD should not deal with caste discrimination. Despite CERD's conclusion that the situation of Scheduled Castes and Schedules Tribes (SCs and STs) falls within scope of ICERD; there has been no inclination by India to reconsider its position. CERD recommended that India's next periodic report contain detailed information in relation to SCs & STs, but India has not even submitted its periodic reports that fell due in 1998, 2000, 2002 and 2004.

Measures of a general nature in India

In India, the necessary Constitutional provisions and legislation are generally in place but implementation is very poor. The statutory mechanisms have been of no serious consequence at all for the affected communities. Affirmative action programmes are totally lacking implementation in public employment, and special measures have not been extended to the private sector.

Action to combat multiple discrimination against women members of low-caste communities needs much greater, speedier and effective implementation. There is also a need for disaggregated data on this matter. Effective monitoring is not being done by statutory bodies on segregation in education, housing or employment, nor regarding the effective implementation of laws in place to counter such segregation.

Regarding administration of justice, effective implementation to either ensure equality of access or to provide compensation to victims for mental trauma caused remains elusive. In addition, pro-Dalit recruitment practices remain poor in law enforcement agencies and caste bias has been seen in the process of administration of justice. Further, almost no effective, meaningful dialogue with Dalits on the subject is taking place.

Regarding civil and political rights, there is a need to seriously review the present system of candidacy and voting rights to ensure due representation in legislative bodies, and to identify violence-prone areas. Inter caste marriage is still an illusion, the realisation of which leads to gross forms of violence.

"Inter caste marriage is still an illusion, the realisation of which leads to

Effective implementation of the Special Component Plan is necessary to ensure the economic, social and cultural rights of affected communities. There is also a need for inter-governmental organisations and international financial agencies to ensure that development programmes actually reach affected communities. More effective and rigorous implementation of measures is required to ensure equal access to health care, social security services, programmes for child labourers, elimination of debt bondage and the total abolition of the degrading practice of manual scavenging. The participation of affected

communities in designing and implementing such programmes is essential.

Finally, Dalits are being deprived of their rights to education. There is a serious prevalence of caste discrimination in school, and stereotypic, demeaning references and language is still present in

textbooks. Worse still is the widespread exclusion of children of affected communities in schools, and the total lack of education among the general population regarding the importance of non-discrimination and respect for affected communities. In sum, the UN Decade for Human Rights Education (1995-2004) was not implemented by the previous Indian government.

There are serious deficiencies in the implementation in India of all of CERD's major recommendations. Previous governments have failed to bring human rights to India's massive Dalit population, and the international community has a right to expect a more logical, humane and serious approach to resolving the issue from the new government. The first step towards this would be submitting the overdue reports to CERD, and responding honestly to the questions raised by the Committee with regard to caste-based discrimination in India.

Caste in Sri Lanka

P.P. Sivapragasam

Human Development Organization, Kandy, Sri Lanka.

Sri Lankan society possesses a caste system similar to that of India's. In Sri Lanka there are two caste systems, one for the Sinhalese (who make up 74% of the population) and the other for the Tamils (12.6% of the population). The ethnic war has, especially since mid-1983, resulted in emphasising ethnic rather than caste division among communities. But the 'hidden agenda' of caste in Sri Lanka is re-emerging with the cease-fire.

Both systems have their origin in India, but the Sinhalese caste system was a secular hierarchy derived from a feudal society. Social distance was practiced but the notion of pollution hardly existed. Within Sri Lanka's Sinhalese community, the Rodiya community was historically excluded from villages and communities, forcing them into street begging, scavenging and roving.

Caste differentiation occurs in both of Sri Lanka's main Tamil communities ('Plantation Tamils' also known as 'Indian Origin Tamils', and Sri Lankan Tamils). Inter-caste marriage bars persist (as revealed by the fact that 60% of marriage advertisements specify 'caste'), as do other social bans. Caste-based discrimination is sometimes applied to non-Hindus, including Sinhalese and Tamil Christians, and members of other minority groups. These tensions are exacerbated by conflict-driven displacement, which can place groups of varying caste backgrounds in closer proximity to one another. Caste differences between Indian-origin Tamil plantation workers (who were brought by British from the Dalit community in Southern India to work on the Plantations) and other Sri Lankans remain prominent.

"A history of exclusion has carried forward into present-day practices and Rodiya continue to reside in segregated communities with little to no interaction with

Caste in Sri Lanka is politically important for two reasons. First, members of the national political elite tend to be members of the higher status castes. Since independence all but one of Sri Lanka's Prime Ministers and Presidents have been members of the dominant Sinhalese Goyigama caste. In short, the government in Sri Lanka is run by the dominant caste. Secondly, voters tend to support people of their own caste, though caste identification rarely becomes a campaign issue because electoral districts tend to be homogeneous in terms of caste and the major parties generally put up candidates of that caste.

The right to equality is guaranteed in the 1978 Constitution under Chapter III Article 12(2) which states "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex,

political opinion." Unlike other caste-afflicted countries, Sri Lanka historically follows a welfare policy under which free education and health have brought changes to the caste hierarchy. Nevertheless, in addition to the political and socio-economic domination of the upper castes, various communities practice caste discrimination in private forms. Problems also exist in relation to education, health, housing and participation in elections for the Plantation community. In March 2004 the 250,000 plantation Tamils were finally given citizenship and a right to participate in the general elections. This was a massive achievement for the movement.

According to CERD's GR XXIX, states are morally bound to eliminate work and descent-based discrimination in the society, but this remains a 'question mark' in Sri Lanka.

Bangladesh's Dalits

B. G. Murthy

*President, Bangladesh Dalit's Human Rights*¹¹

The Dalit community migrated to present-day Bangladesh from India in 1838, brought by the British regime to perform their traditional sweeping jobs. Bangladesh's Dalits are traditionally regarded as lower caste people and have been oppressed, socially excluded and economically deprived. They continue to suffer the same, extreme, everyday vulnerability they have experienced for centuries.

Bangladesh is one of the least developed countries in the world, but Dalits (who make up around 1.5 million of the 140 million population and are present in 63 of the 64 districts) are even more deprived than others. Bangladesh's Dalits aspire for a dignified life with the restoration of their fundamental rights. They want the state to comply with its obligation of ensuring equal rights to all its citizens, as granted by its Constitution and by its ratification of the UN International Covenant on Civil and Political Rights and the ICERD. Despite repeated approaches to the Government of Bangladesh, no effective initiatives have been undertaken so far for Dalit upliftment.

"Dalits remain landless and deprived of facilities required for living as a human being. Only 1% of our people can read and write. Malnutrition and diseases are our constant companions and many of us have to die

Situation and Demands

Around 800,000 Dalits are still engaged in sweeping jobs, while more than 200,000 are working as labourers in the tea gardens of Bangladesh. The rest of the Dalit population is engaged in 18 other professions including work in tanneries, graveyards and shipyards.

Bangladesh's Dalits are not only deprived socially but also in terms of economy, culture and public life. They lead a subhuman life without sufficient facilities for housing, sanitation, healthcare, education, income and so on. During the British regime almost 100% of Dalits were engaged in the job of sweeping. But due to unfavourable policies of the government, bureaucratic impediments and non-cooperation on the part of concerned authorities, Dalits are losing their jobs day by day, which is aggravating Dalit sufferings¹².

¹¹ The work and participation of Bangladesh Dalits' Human Rights would not be possible without the continued support and assistance of the Alliance for Development Support and Cooperation (ADSC), Nagorik Udyog, Samata and Nijera Kori.

¹² Please note: policy differences were expressed by India's NCDHR, which campaigns for the abolition of menial, manual jobs traditionally assigned to Dalits such as manual scavenging, rather than the safeguarding of Dalit access to these jobs.

Dalits remain landless and deprived of facilities required for living as a human being. Dalit children are deprived of education due to poverty. Only 1% of the community can read and write. Although a few primary schools were established for Dalits by the Government of Bangladesh, almost all are now non-operational due to lack of teachers and education materials. There is no proper health care facility for Bangladesh's Dalits. Although the cities provide advanced health care facilities the Dalits cannot access them due to financial inability. As a result, malnutrition and diseases such as diarrhoea, cholera, tuberculosis and pneumonia are our constant companions and many of us have to die every year due to lack of medical treatment. Due to lack of any means of livelihood many Dalits have to migrate to India every year. If such trends continue we fear that our people will face complete extinction within a few decades.

Bangladesh's Dalits demand the government ensure: employment of Dalits in government institutions without any discrimination on the basis of caste; access to proper housing for Dalits from deprived households; Dalit land rights; equal access to basic social services (such as home renovation and health care), regardless of their ability to pay for services; full access to quality primary education and equal access to higher education and technical and vocation training. There must be a special focus on the right to education of Dalit girls and women.

Japan's Buraku Liberation Movement

Nozomi Bando

IMADR Japan Committee, on behalf of the Buraku Liberation League

Buraku discrimination is a centuries old, Japanese, caste-like practice in which the people known as 'Eta'¹³ have been condemned to practice 'polluting' occupations and treated as outcastes of society. These outcaste people have chosen the name 'Burakumin' (meaning people of the community) for themselves as part of their continuing struggle for self-assertion, dignity and human rights.

There are an estimated 6,000 Buraku communities with 3 million Burakumin in Japan. While a series of special measures was implemented by the Japanese government after 1969 that have resulted in ameliorating the Buraku problems to some extent, the issue remains unresolved and remains a serious social problem, especially in marriage and employment. In recent years discriminatory graffiti and postings have been seen nationwide, calling for mass killings of Buraku people through such messages as "Exterminate Buraku clans." Such propaganda has been observed on the internet since the late 1990s. The Buraku movement has pointed out the necessity for legislative measures against such discriminatory propaganda and hate-speech, but the government has chosen instead to leave the crimes unpunished in the name of freedom of expression.

The development of the Buraku liberation movement

In 1922 Japanese Buraku founded the National Levelers' Association (Zenkoku Suiheisha) whose main objective is to eradicate Buraku discrimination, and adopted the *Suiheisha Declaration*. It is regarded as Japan's first declaration of human rights.

The first phase of the movement (1922-1945) was of **public recognition**. The Buraku liberation movement focused on denunciation struggles against discriminatory scandals and administrations and also promoted 'Dowa education'.

¹³ Eta is a highly discriminatory term meaning 'full of filth'. It came to be commonly used in the caste-like class system of Japan's Edo period (AD1603-1867), and its usage has continued in modern times with regard to Buraku people. The government uses the term 'Dowa' to refer to the Buraku community.

The next stage was **public acceptance** (1951-1990), focusing on gaining governmental administrative measures. As a result of the efforts of the movement, special measures were implemented for Burakumin, along with improved housing conditions, a scholarship programme for Buraku children (which provided the first opportunities for Buraku children to access higher education) and an improvement in the employment situation of Buraku people. Starting in 1977, the movement began to expand to work at the international level by campaigning for Japan to ratify the international Covenants on human rights (1977) and ICERD (1995), by sending activists to lobby at the UN level, and by calling for other NGOs and the UN experts to establish the International Movement against all forms of Discrimination and Racism (IMADR) in 1988.

After the expiration of the special measures¹⁴, a **joint international struggle** against all forms of discrimination throughout the world came as the next stage of the movement. The movement has learnt the principles of international human rights laws (e.g. restrictions on discrimination, pro-active educational measures, affirmative action, public acceptance of minorities and effective protection and remedy for victims). As Japan's current legal system does not effectively cope with daily-occurring discriminatory incidents, the campaign is now calling for a law to provide a remedy for human rights violations, including the establishment of an independent and effective National Human Rights Commission in Japan. The Buraku people are actively contributing to work towards new human rights standards together with Dalit liberation movements.

CERD and GR XXIX and the UN: their meaning for the Buraku movement

CERD's examination of Japan's periodic report in 2001 clearly explained that the Committee interprets "descent" as going beyond race/ethnic/national origin, contrary to the Japanese government's stance, and it stated that Buraku discrimination is covered by ICERD. Important articles of ICERD in relation to current Buraku problems are: Article 2-1(d) (restrictions on discrimination); Article 2-2 (measures to protect socially vulnerable groups); Article 4(a) (prohibition of incitement to discriminate); Article 6 (effective protection and remedies); and Article 7 (pro-active educational measures).

GR XXIX is important because it comes as a new standpoint after the expiration of special measures in March 2002, providing a new tool to show that Buraku discrimination is covered by ICERD. Thus far, the Japanese government has maintained their stance of not accepting Buraku discrimination as falling within the ICERD definition of discrimination. GR XXIX has brought hope and confidence for the movement; that the discrimination it faces is recognised worldwide.

It is important to ensure a constant dialogue with the Japanese government, in which GR XXIX can be used as a tool. The government must change its stance on the interpretation of article 1, to bring it into line with CERD's interpretation that discrimination against Buraku is covered. Other measures based on GR XXIX that should be concretely implemented by the Japanese government towards the elimination of Buraku discrimination include: conducting a national level survey on the current situation of Burakumin, including that of Buraku women; restricting and preventing the dissemination of discriminatory propaganda on the internet; retrial/reconsideration of false and discriminatory criminal investigations and judgements against Burakumin; guaranteeing the right to education for Buraku children, including reintroduction of a scholarship fund¹⁵; enrichment of awareness-raising measures among the general population; and improvement of the next government report to CERD.

¹⁴ All the special measures were originally set in legislation with a specified duration. However, the problem is that the government finished the measures without conducting any survey to examine whether the measures had improved the situation of Buraku Community and which issues remained unresolved.

¹⁵ The improvement in Buraku education can be attributed to the implementation of the special scholarship fund. The programme for high school students has been successfully integrated into the general measures that include other

The Buraku liberation movement expects that the Sub-Commission will ensure the effectiveness of GR XXIX in the UN system through the elucidation of comprehensive and effective standards. The movement looks to the UN Commission on Human Rights to support the Sub-Commission resolution on descent-based discrimination, and expects the Special Rapporteur on Racism to take an active role of the matter. The ILO, the UN Educational, Scientific and Cultural Organisation (UNESCO) and other UN agencies should also take up the issue within their own mandates. International and national NGOs should keep sharing information of each struggle in each region to strengthen our solidarity to eliminate discrimination based on work and descent.

Castes in Africa

Abdoul Lamin Kamara
RADDHO, Senegal

The caste system, based on the principle of division of labour, dates back to ancient times with the emergence of organised societies. It was in this period that certain groups of people concentrated on different types of lucrative, honourable and mystic activities, which later became their specialities. As a result of the invasion of Islam and Christianity in the 11th and 16th centuries, new concepts and thoughts on these activities were developed and a pejorative connotation on castes emerged. Henceforth, the term 'castes' has been the synonym of sub-human or outcaste people. The devaluation of the products of the activities of 'castes' resulted from the arrival of western-manufactured products on the consumer market. Alongside these socio-professional groups came the 'prisoners of wars, incursions and religious conflicts', sentenced to serve the victors. The prisoners of war were associated with the castes irrespective of their social origin or occupation. The new Christian and Islamic societies elaborated social hierarchies, feudal systems or monarchies with the

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classification of people as either sovereign, free men, castes or servants. The phenomenon of caste is widespread in Africa. Four country examples are presented here: Senegal, Guinea Conakry, Somalia, and Mauritania.

Senegal

The caste system is a well-entrenched phenomenon in Senegalese customs irrespective of the fact that Senegal is a secular, democratic society and despite the recent emergence of Dalit political parties. The

vulnerable groups, but the special scholarship programme has been discontinued. There is a very real concern that this will cause the high school and college enrolment rate of Buraku children to drop again.

discrimination is rarely discussed but exists in various forms in all the different ethnic groups in spite of the process of modernisation.

Castes are easily identified by surnames, and some who have succeeded in the field of commerce, religion, politics or education hide their social origin by changing their surnames or create new genealogies for themselves to avoid being despised by those who claim to be superior by birth. Most 'castes' who are members of political parties are victims of discrimination within their own parties. Castes who are members of some political parties are not even allowed to speak at meetings. Moreover, it is difficult for them to be elected in their constituencies because of their inferior social origin. Those who have managed to succeed in occupying key posts in political parties or in public institutions and the private sector are often despised by their juniors. Furthermore, it is often difficult for non-castes to marry castes or vice versa. Many castes prefer to remain single or marry foreign nationals. Many abortions and infanticides occur because of opposition to inter-caste love. This form of discrimination is based on the concept of pollution, as castes are perceived to be a channel of pollution. For instance, any contact with Griots (praise singers) by a non-caste – even by touching – is seen as polluting because of their role in circumcision and midwifery.

The restoration of democratic institutions and the evolution of economic institutions have progressively contributed to the resolution of castes-related problems in some urban areas. For instance, some young castes excel in music or in commerce. In most villages however, students of noble origin refuse to sit beside classmates who belong to caste families. From an agricultural point of view, the caste farmers cannot acquire land sufficient for large-scale agriculture, production or building projects. As a result, they are limited to subsistence farming. They live in dilapidated houses and are forced to depend greatly on others for their livelihood.

Guinea Conakry

The following castes exist in Guinea Conakry: the praise-singers, the potters, the sculptors, the weavers and the descendants of former war prisoners. Article 8 of the Guinean constitution states: 'Nobody shall be discriminated against or privileged because of his or her birth, race, ethnicity, language, beliefs, or political, religious or philosophical opinions'. The Republic of Guinea Conakry has also ratified the ICERD. Nevertheless, discrimination based on castes still exists.

The problem of the castes is due to social prejudice, which makes their case more difficult in comparison with other social groups in the country. They can only marry within their groups and sometimes the community does not allow them to assume certain social, religious or political responsibilities. Moreover, even though the law states that the land belongs to the state, the castes cannot access it and as a result they are socially and economically dependent on landowners.

"Haratins are considered to be slaves. They can be sold, transferred, used to pay the bride"

Mauritania

The following social groups exist in Mauritania: the Arab-Berbers (known as the white moors, who constitute the ruling class); the black Africans (the non-Arab ethnic group, comprising the Fulani, Soninkes, Wolof and the Bambaras); the Imraguen (the smallest black African group, still enslaved by Mauritanian Arabs; they depend on fishing for their livelihood and live in miserable huts in the region stretching from Cap Timiris to Nouadhibou); and the Haratins or black moors (slaves and ex-slaves who live in misery in the desert, economically and culturally dependent on their former masters).

Slavery as an institution flourishes in Mauritania, especially in the rural areas. Thousands of black Africans continue to be the personal property of Arab-Berber masters and work unpaid for long hours. They are denied education, freedom of movement and the right to visit other black Africans or marry

freely. Haratins are considered to be slaves and cannot hold key political positions. A slave can be sold, transferred, used to pay the bride price, or castrated to prevent him from having sexual relations with the harem of his master. In the wake of the 1981 abolition of slavery, slave-masters perpetuated their dominion and stamped out feelings of revolt or liberation, cynically using the Islamic religion as an instrument of indoctrination¹⁶. They give themselves the 'right' to have sexual relations with the wives of their slaves. A slave cannot go to the mosque for prayers when his master needs him.

Considering the Mauritanian culture, it is easy to understand why a lot of slaves trust the words of their masters. The non-recognition of their rights, the fear of being captured again and the resulting torture as well as their lack of easily marketable talents prevent a considerable number from escaping.

Somalia

In Somalia caste-based discrimination continues to exist. There are three main castes in Somalia who are victims of human rights violations namely the Midigan, the Tumul and the Yibir. They are often referred to as the Sab. Traditionally, the Tumul are blacksmiths while the Yibir and the Midigan are hunters and leatherworkers. The word Midigan means impure or unlucky. The origin of their impurity may be due to the nature of 'polluting' occupations practiced by them, or myths related to hunting and eating habits seen as transgressing the precepts of the sharia.

The Sab Somalis experience life-long discrimination and systematic isolation. They are brutally beaten and wounded, raped and forced into slavery on account of their low-caste status. They have no land and most of them are attached to and controlled by noble dominant clans as their clients, serfs or virtual slaves. In the event they complain or protest, they face severe reprisal from their *patrons*. They are not allowed to freely marry other Somalis. Somali tradition holds that if anyone murders must pay one hundred camels to the relatives of their victim, but castes are not compensated, nor are their murderers punished. The castes have no right to education and are restricted to traditional or odd jobs. They are excluded from politics and their opinion merits no attention.

Recommendations

RADDHO recommends that the international community impose economic sanctions on states that fail to respect their international legal obligations in relation to caste discrimination¹⁷. Human rights NGOs

"African states and the African Commission on Human and Peoples' Rights should establish specific mechanisms to combat caste and descent-based discrimination, as this

involved in the promotion and protection of the rights of members of descent-based communities should be strengthened. International and national NGOs, civil society, associations, community leaders and others should form international networks and regional and sub-regional coalitions against caste-based discrimination, and should develop programmes to sensitise public opinion with respect to caste-based discrimination.

The UN Working Group on Minorities should reinforce the existing international legal instruments relating to the protection of the rights of the minorities by creating

specific mechanisms for the elimination of caste-based discrimination.

¹⁶ Despite its official abolition, slavery is still acknowledged by state officers, especially in the Ministry of Justice. The *Cadis* (Muslim judges), under the cloak of a doubtful interpretation of the Islamic law, adopt and accept slave practices. They take advantage of the ambiguity of the preamble of the Constitution, which quotes Islam as the only source of law in the country. Traditional judges often honour the claims of slave masters who bear authentic proof of ownership.

¹⁷ Please note: policy differences were expressed by India's NCDHR, which has taken a position to not support economic sanctions against countries practicing caste-based discrimination.

African States and the African Commission on Human and Peoples' Rights should establish specific mechanisms to combat caste and descent-based discrimination, as this phenomenon is widespread in the continent. African governments should work in harmony with human rights NGOs in order to evaluate the consequences of caste-based discrimination and devise specific action plans and mechanisms to eliminate it. Public debates on the phenomenon of castes should be organised to enable intellectuals, diplomats, jurists, historians and others to express their opinions on the issue.

Session II: Effective use of UN Mechanisms, National Human Rights Institutions and UN Agencies in Eliminating Caste-Based Discrimination

Session II-A: UN Mechanisms and Caste-based Discrimination

Chair: Ms. Smita Narula, *Center for Human Rights and Global Justice*

UN Human Rights Bodies and Discrimination based on Work and Descent

Mr. Peter Prove

Office for International Affairs and Human rights, Lutheran World Federation



The UN has a role to play in fighting caste-based discrimination, despite having done too little, too late. The process has now arrived at a transitional point. In 1996 CERD reviewed India's report and gave caste-based discrimination unprecedented attention. CERD has since addressed situations of discrimination based on caste through looking at descent, notably through General Recommendation (GR) XXIX. The UN Sub-Commission on the Promotion and Protection of Human Rights ('the Sub-Commission) is keeping an important focus on discrimination on the basis of work and descent, and is requesting action by the UN Commission on Human Rights, which has so far completely ignored the issue.

After receiving the third working paper on discrimination based on work and descent (prepared by Prof. Yokota) at its 56th session in 2004, the Sub-Commission adopted a resolution appointing Prof. Yokota and Prof. Chin-Sung Chung of Korea as special rapporteurs of the Sub-Commission with the task of "preparing a comprehensive study on discrimination based on work and descent" The key focus of this mandate is "the finalization of a draft set of principles and guidelines for the effective elimination of discrimination based on work and descent, addressing all relevant actors, including Governments, local authorities, private sector entities, schools, religious institutions and the media, ". In addition, the mandate entails obtaining "more comprehensive information on constitutional, legislative, judicial, administrative and educational measures taken to address discrimination based on work and descent, including through the elaboration and submission of a questionnaire to Governments, national human rights institutions, relevant organs and agencies of the United Nations system and non-governmental organizations". IDSN is now lobbying for the approval of the Sub-Commission mandate at the 2005 session of the Commission of Human Rights.

The Sub-Commission and Elimination of Discrimination Based on Work and Descent

Professor Chung Chin-sung

Expert member, UN Sub-Commission on the Promotion and Protection of Human Rights

The UN Sub-Commission is a charter-based organisation. This means it doesn't have to limit its work to specific conventions. Protection of minority rights remains a focus of the Sub-Commission. The Sub-Commission has 26 individual experts, five of whom are Asian (from India, Pakistan, Japan, China and Korea). In 2000, NGO efforts led to a resolution being passed on discrimination based on work and descent. Having completed the first study on this subject, Mr. Goonesekere from Sri Lanka

was not re-elected to the Sub-Commission. In 2003, the scope was widened to take in the situation outside of Asia, including Africa. In 2004, the situation of the diaspora communities was included.

Mr. Yokota and Professor Chung have a three-year plan to write more on this issue. They would like to further explore the diaspora community, the Middle East and North America and would also like to examine the impact of globalisation on the Dalit situation. They will look at reports by National Human Rights Commissions from relevant countries, and lay out principles and guidelines. They are also planning to hold workshops for NGOs and government staff.

This type of discrimination should also be seen in the context of modernisation and globalisation. Discriminated groups are under multiple pressures. Discrimination based on work and descent is prohibited by national human rights law and local institutions in some countries, and is covered by international conventions. All procedures to eliminate discrimination should be made through the self-determination of the affected parties, with special attention to women and children. Research could be expanded.

Regarding the proposed Principles and Guidelines, legal and administrative measures should be put in place to eliminate discrimination. Social, economic and structural measures should be taken, including land reform and more comprehensive housing policies. Judges and law enforcement personnel should also be trained. Monitoring systems are key at the local and national levels.

Educational Measures for the Elimination of Caste-Based Discrimination

Mr. Vernor Muñoz Villalobos

UN Special Rapporteur on the Right to Education:

The Special Rapporteur heard about the beating of an 11 year-old Dalit boy and his mother, and was inspired to write a letter to the boy. Excerpts are included in the section 'Witness Statements'

Eliminating Caste-Based Discrimination in Housing

Mr. Miloon Kothari

UN Special Rapporteur on the Right to Adequate Housing

Dalit organisations must more strongly stress economic, social and cultural rights, such as the rights to food, health, housing, water and land rights. Housing needs to be seen as more than just shelter but also to be free from displacement. The right to housing is indivisible from the right to security of the home and person and the right to freedom from degrading treatment. The multiple forms of discrimination faced by Dalit women need to be stressed.



The SR recently went on country missions to Kenya and to Brazil (where slave descendents face descent-based discrimination similar to the caste system). The SR recommends that all countries with problems of caste-based discrimination have visits by Rapporteurs, whether or not a country has ratified a relevant treaty. The SR has also done work on the Roma community in Europe, plantation workers in Sri Lanka, and forced evictions and displacement, which are all related issues. There are often large civil society networks working on these areas which can be tapped into.

In addition to country missions, the Special Rapporteur on the right to adequate housing can also respond to individual complaints received on allegations concerning the situation of housing rights in

particular countries. The SR also collaborates with UN treaty bodies and civil society to provide assistance for standard setting. The SR can assist the work being done by UN rapporteurs on: the right to food, health, education, human rights defenders, violence against women, internal displacement and freedom of religion.

Recommendations

Important General Comments include those on: housing, forced evictions, human rights and water, food and health. The SR also recommends looking at CEDAW and the Committee against torture, who have linked forced evictions with their work. Principles such as that of **progressive realisation** are also important: caste discrimination violates this principle. International cooperation is underused, for example Dalit organisations should work more closely with working groups including the one on discrimination against people of African descent. Guidelines that can also be used include those on:

*"Caste
discrimination
violates the
principle of*

human rights and poverty reduction, compensation and rehabilitation, development-based displacement, internal displacement, trans-national corporations. The SR would like to see research done on opportunities to address caste/descent within the UN system.

The Millennium Development Goals (MDGs) are a major initiative of the UN, the donor community and governments. As governments prepare reports of their compliance with the MDGs, it is important to see if Dalit communities are included. Civil and political rights can be used as a conduit to examine economic, social and cultural rights, e.g. lack of land rights and discrimination in housing result in segregation. Market discrimination and globalisation are also important considerations.

Salient Points from Plenary Discussion

It's important that all of the **Special Rapporteurs** receive information about this type of discrimination. They go to many countries each year, but can only do so at the invitation of the government. Where visits are impossible SRs can at least take up communications with the concerned states parties.

Dalits are one-fifth of the population of Nepal, but there is no significant representation at any level. Atrocities from the upper caste are increasing, and this after 50 years of Nepalese membership of the UN. **CERD** and other UN bodies must find a way to pursue the Government of Nepal to ensure that GR XXIX is properly implemented; and there must be consequences if the recommendation is not implemented. CERD, however, is not vested with power to do this directly. There is no guarantee for immediacy of results, but procedures are there for NGOs to relentlessly use. There is also the Urgent Action procedure of CERD, which can be utilised. Governments sign UN treaties and then do nothing about it, which is like signing a contract and then throwing it in the rubbish. The international community must take steps to enforce or encourage the effective implementation of GR XXIX. The UN recommendations have to be brought into the community at the grassroots level.

If the UN Commission on Human Rights approves the **Sub-Commission resolution**, Ms. Chung will be one of two SRs appointed to investigate the situation of descent-based discrimination. If the resolution is not approved the two experts will still make a report, but without the same status regarding the Commission on Human Rights.

Together with the witness Lil Kumari are many people with the same problem in South Asia who have problems with the law and judiciary. **Administration of justice** and law enforcement is really at play, but is well camouflaged. We should take a clue from Lil Kumari's statement and put in place proper practices for the application of law and criminal justice for Dalits.

In South Asia where there is low **literacy and discrimination** against Dalits, the World Bank and others are providing funding for basic education. Yet there are Dalit communities with 1% literacy. The human right to education hasn't been seen as a human right for a long time. A lot of work has been done on this, but there is a lot more to do, especially for the discriminated groups such as Dalits.

The **National Human Rights Commission** in Nepal is dominated by Brahmins, and Dalits are not represented there. In addition, it doesn't have a mandate to look at economic, social and cultural rights. This must be addressed to make sure it works for Dalits too. There is also need for reform of the national judicial institutions so the Supreme Court can uphold the UN Conventions.

Activists in developed countries have a role to play in ensuring that development funding addresses caste discrimination. IDSN is working on a handbook for activists to help them access the UN mechanisms in the fight for Dalit rights.

Session II-B: The Role of the National Human Rights Commissions in protecting and promoting Dalits' human rights

Chair: Mr. Miloon Kothari, UN Special Rapporteur on Housing

Role of Nepal's NHRC in protecting and promoting Dalit human Rights

Mr. Kedar Prasad Poudyal

Acting Secretary, National Human Rights Commission, Nepal

Nepal's National Human Rights Commission (NHRC) is currently discussing increasing the number of members to broaden representation of marginalized groups – a draft provision to this end will be ready within a few months. Article 2 has broadened NHRC's mandate on economic, social and cultural rights. Human rights are related to the concept of dignity, and include the rights expounded in the UN Conventions. All rights are covered under this. The rights of Dalits are a key focus for NHRC.

NHRC is today looking at specific issues of marginalized communities but also of the general population. There is no free access for government representatives to visit certain areas in the country to record the situation during the conflict. NHRC has collected evidence of atrocities committed by both non-state and state actors, and has published monitoring reports. Dalits cannot migrate from conflict-affected areas; they are the most vulnerable as poverty binds them to such areas. The Nepalese Army labels them as Maoists because they live in the conflict area, and they suffer further.

NHRC's activities include making recommendations to the government regarding: human rights violations; the impact of legislation and its implementation on marginalized groups; women's issues such as condemnation for 'witchcraft'. The government has followed NHRC's recommendations on witchcraft, and has begun providing compensation for such abuses.

The NHRC sees that Dalits are seeking equality and equal enjoyment of their rights. Dalits need special attention regarding certain rights e.g. right to quality education and improvement of socio-economic conditions. The international community, NHRC and NGOs need to address the real needs of Dalits, e.g. provide food and education rather than only raising awareness of human rights.

A Dalit Response to the Situation in Nepal

Mr. Padam Lal Bishwakarma

Chairman, Society for the Liberation of Oppressed Dalit Castes

Democracy and inclusion are key issues for Dalits. At present in Nepal there is a Constitutional and parliamentary problem, and we have experienced ten years of Maoist conflict. Dalits are the biggest victims of the war. One quarter of the population is suffering from the civil war, and Dalits are suffering more than other sections. Dalits are considered Maoists as they want similar things, such as freedom from oppression. The international community can show solidarity with Nepal not through militarisation but through a peace process. The UN should support this process by encouraging the formation of a constituent assembly.

The Constitution does not represent Dalit issues. People's rights will only be achieved when they can make their own Constitution and establish a constituent assembly. Dalits want this and must be involved in this.

The National Dalit Commission (NDC) is seriously limited. It was not established through legal procedures. The lowest caste groups (such as Badi, Gaine and Chamar) have not been included in the NDC. Dalit women are not properly represented.

The UN has a role to pursue the Nepalese government in terms of caste discrimination. Dalits are currently fighting for reservation rights, and the international community must support these efforts.

The NHRC and Dalits in India

Henri Tiphagne

People's Watch Tamil Nadu and NCDHR, India

The Indian NHRC operates under the principles of independence, defined jurisdiction, efficiency, cooperation, accessibility and accountability. In terms of the latter four principles, the NHRC's performance has been very weak. Even the speaker – an official consultant to the NHRC – has problems getting through security to access the NHRC. Its level of cooperation with civil society is generally quite poor. And in terms of efficiency and accountability, the procedures take far too long. Over 40,000 cases have accumulated in the 'backlog' in the 10 years of NHRC's existence.

There is also some confusion between the National and the State-level Human Rights Commissions, and between the NHRC and the National Scheduled Castes/Scheduled Tribes Commission.

However, the NHRC played a very positive role in terms of the WCAR, where it held two public hearings, eventually settling on a position opposing that of the government's policy that caste discrimination did not belong in the Conference. NHRC has also recently conducted a study on atrocities against Dalits, which provides good information, analysis and recommendations. The NHRC has also created a Dalit cell which is not publicised but is nevertheless open to participation by civil society. Civil society could make more use of NHRC's complaints system and of its ex-officio members. The UN has mandated the work of NHRCs. They have a responsibility to remind the government of their responsibilities and ensure that they at least submit reports fulfilling their treaty obligations.

Session II-C: The Role of UN Organisations in the Elimination of Caste-Based Discrimination

Chair: Mr. Miloon Kothari, UN Special Rapporteur on Housing

The role of UN organisations in the Elimination of Caste-Based Discrimination

Ms. Carla Covarrubias

Human Rights Officer, UNDP Nepal

As a global institution, the United Nations has an important role to play in curbing discriminatory practices at the policy level as well as in its operations on the ground. In the UN Programme for Reform of 1997, the Secretary-General called on all entities of the UN system to mainstream human rights in their international peace and security activities, humanitarian affairs, economic and social affairs and development cooperation. The Statement of Common Understanding of a human rights based approach among UN agencies adopted at Stamford in 2003 created a new approach to development cooperation and development programming as a whole. The emphasis on human rights standards and principles places non-discrimination at the centre of UN policy, in terms of both processes adopted and the content of the programming. Integrating disadvantaged groups into the decision-making process itself is an important way of ensuring that this happens, and makes these groups active participants in their own development. To this end, countries could develop mechanisms in which Dalits meaningfully, actively and consistently participate in programme design and evaluation.

In October 2004, the UN outlined its new 'Action 2' approach to bolstering human rights protection at the country level, in order to get the UN system to work together on human rights by bringing in human rights advisers and specialists into UN Country Teams.

The UN treaty and non-treaty mechanisms (including those of the often overlooked Conventions related to anti-slavery) are important methods for the UN in engaging with governments in constructive dialogue, by means of treaty reporting cycles, concluding observations generated and general recommendations issued by the treaty monitoring bodies. The equally important role of civil society cannot be emphasised enough, particularly in the process of providing "shadow reporting", which form an invaluable part of the dialogue process on combating caste-based discrimination.

*"Civil society
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the dialogue
process on*

The work of the UN Special Procedures also adds invaluable documentation of the trends and patterns in any given country. Civil society organisations are encouraged to give some consideration to those mandates that might not immediately spring to mind, such as the SR on the independence of judges and lawyers, and on human rights defenders.

In countries experiencing armed conflict, it is particularly important to place human rights at the centre of activities. Thoroughly analysing whether a conflict is exacerbating pre-existing caste-based discrimination and from that point on choosing the types of interventions to be adopted, must always be at the forefront of our programming, particularly in the assessment and designing stages.

In conclusion the UN stands ready to support and assist its national partners in the process of eliminating caste-based discrimination. It is one of the cornerstones of the UN to combat all types of discrimination. The way in which it does this is by strengthening the national protection systems, always in line with international obligations that the State has committed itself to. In Nepal there are concrete recommendations to follow up on, and the UN looks forward to cooperating to make this

happen. The UN looks forward to the recommendations from this consultation and hopes that this international Consultation will help create further momentum at the international level. The UN looks forward to cooperating closely with all stakeholders working for the elimination of caste-based discrimination in Nepal and the rest of the world.

Dalit Perspective on the Role of UN Organisations in Combating Caste Discrimination

Mr. Vincent Manoharan (with additional research by Umakant)¹⁸

General Secretary, National Campaign for Dalit Human Rights



Though the UN Commission on Human Rights has, since 1974, focused on a wide range of human rights violations and has expressed concern about the incessant growth of racism, but the Commission has failed to specifically or substantially addressed caste or similar forms of human rights violations.

However, the recent work through its Sub-Commission has provided a breakthrough. After years of failing to refer to caste discrimination, in August 2000 the Sub-Commission issued a significant resolution declaring the prohibition of "discrimination based on work and descent" under international human rights law, and calling on governments to take measures to eliminate this type of discrimination. Three important working papers on the subject followed. In a recent development (August 2004) which could have far-reaching consequences, the Sub-Commission has adopted a Resolution on Discrimination Based on Work and Descent in which it recommends to the Commission on Human Rights that two expert members be appointed as Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent leading to a draft set of Principles and Guidelines on tackling this form of discrimination.

India ratified ICERD in 1969, but it was only in 1996 that the CERD made its first reference to caste discrimination, 'untouchability' and Scheduled Castes, under the rubric of "descent". Later, in a post-Durban development (General Recommendation XXIX), CERD took a fairly bold and comprehensive position in presenting caste discrimination as part of a global problem of descent and work-based discrimination.

Likewise, though the Indian government ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979, it was only in 1997 that the Human Rights Committee (HRC) first noted serious shortcomings in the performance of the government in guaranteeing basic human rights to Dalits. The HRC highlighted how "the *de facto* perpetuation of the caste system entrenches social differences in India, which contribute to *inter alia* inter-caste violence, bonded labour and discrimination of all kinds." On Nepal, it observes that "the principle of non-discrimination and equality of rights suffers serious violations in practice" through "inadequacies in the implementation of the prohibition of the system of castes." Regarding Japan, the HRC, recommends that the government "takes measures to put an end to such discrimination [against Buraku]." The HRC has not framed questions on caste or related practices to any other countries. Moreover, none of HRC's General Comments have touched on caste.

The Office of the UN High Commissioner for Human Rights (OHCHR), which coordinates the UN human rights agenda has, with respect to India, raised the question of 'social inequalities relating to the caste system' and generally acknowledges that 'victims of slavery and slavery-like practices

¹⁸ A comprehensive paper on the role of UN organisations in combating caste discrimination has been produced by Mr. Manoharan and Mr. Umakant. It can be accessed at www.idsn.org,

frequently belong to minority groups... including people of "low" caste status'. However, despite NGO interventions, the elimination of caste discrimination does not feature in any substantial manner in the OHCHR's human rights reports, the Programme of Action for the third Decade to Combat Racism and Racial Discrimination, or in the official WCAR documents.

In 1996 and 1997, the UN Special Rapporteur on Racism and Racial Discrimination inquired with the Indian Government about the situation of 'untouchables' in the country, requesting the relevant information be sent to him. The government rejected allegations that it tolerated untouchability, but refused the Special Rapporteur's request to visit India in order to evaluate the discrepancies between information supplied by civil society and the government.

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has taken note of caste discrimination in Burundi and Nepal. On the other hand, the Commission's Working Groups on Arbitrary Detention, and on Enforced or Involuntary Disappearances do not give attention to the caste factors underlying violations. Neither does the Special Rapporteur on the question of religious intolerance fully deal with the implications of caste discrimination.

"The discourse on a global standard for human rights has always excluded Dalit rights in every possible way. A great deal needs to be done before we can say that UN bodies have played a significant role in the

Considering the Indian Government's first report to the Committee on the Elimination of Discrimination Against Women (CEDAW) in 2000, the Committee concluded that it was "concerned with the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989. The committee considers that widespread poverty [and] such social practices as the caste system... as reflected in a high incidence of violence against women [and] significant gender disparities... present major obstacles to the implementation of the Convention". The Committee on the Rights of the Child while making a similar observation in 2000 said it was concerned at the existence of caste-based discrimination and discrimination against tribal groups, despite these practices being prohibited under the law.

The UN Educational, Scientific and Cultural Organisation (UNESCO) Convention against Discrimination in Education entered into force in 1962. This Convention commits States Parties to a national policy which will promote equality of opportunity and treatment in matters of education. Though similar provisions are found in the Indian Constitution, still a large chunk of the India's women, Dalits and Adivasis face various kinds of discrimination. The education status of non-Dalits and non-Adivasis has progressed at a faster pace as compared to Dalits and Adivasis, clearly showing the bias of planners and implementers in bypassing the various policy guidelines framed for giving impetus to widening educational access. UNESCO has so far not taken any note of this flagrant violation of the right to education.

The International Labour Organisation (ILO) Committee of Experts observed in 2003 that there is a "certain reluctance" by state governments in India to participate in efforts to identify and release bonded labourers. As a family becomes more impoverished or indebted so the pressure increases on them to force their children to work. This puts the children's health and safety at risk and deprives them of an education. Human Rights Watch's study of bonded child labour in India's silk industry found that children as young as six typically work between 10 and 14 hours a day, for six or more days a week. These children – the majority of them Dalits – suffer from work related injuries and illness and may also be subjected to abuse from their employers. 71% of children working in brick kilns are Dalits and "low" castes and the school drop-out rate of children at brick kilns is 89%. The removal of Dalit, "low" caste or indigenous children from school because they are bonded or because they are subject

to discrimination at school perpetuates their marginalization in society and allows the cycle of discrimination to continue.

The UN Development Programme (UNDP) Human Development Report of 2001 talks about Dalits of Nepal and India, but certainly more needs to be done. The human development indices should cover Dalit deprivations separately when dealing with the question of human development across various social groups as the process of exclusion of Dalits and other outcaste groups in socio-economic and political milieu is very unique. The MDGs have yet to address the root cause of Dalit deprivation. Because of this non-committal approach towards Dalit Development, the goals of reducing poverty and injustices may not be realised.

In conclusion, various UN bodies have so far not adequately taken up the human rights issues related to Dalits in any significant way. Ever since the Universal Declaration of Human Rights was promulgated and the UN Human Rights Charter was passed, Dalit rights have not found any space under the sun. The discourse on a global standard for human rights has always excluded Dalit rights in every possible way.

It is principally due to the efforts made by Dalit individuals and groups, especially NCDHR, Dalit Solidarity Networks and IDSN that there is an emerging visibility about the massive human rights violations faced by Dalits and similar social groups on the global level. In recent times there have been many occasions when issues related to Dalit rights have been raised in various UN bodies and other forums. As a result of these interventions, CERD and the Sub-Commission have taken significant initiatives to address human right issues related to Dalits which, if put into operation, would certainly be an important milestone in creating an egalitarian society based on the notion of liberty, equality and fraternity. But even these belated initiatives are insufficient. A great deal needs to be done before we can say that UN bodies have played a significant role in the elimination of caste-based discrimination.

Salient Points from Plenary Discussion

Three of the **major issues** which need to be confronted in the struggle for Dalit justice are: the role of national commissions, the role of UN agencies, and the impact of current conflict on Dalits, human rights and struggle for land rights. We are now at a juncture where we cannot keep quiet about human rights. We have to fight for the truth as human rights defenders. It is also important to consider the impact of the war on terrorism, which is being used as a legitimising cover to attack and criminalise anti-poverty efforts, social movements and human rights defenders. Numerous NGOs have requested the appointment of a Special Rapporteur of the UN Commission on Human Rights in this regard.

In the context of such injustice at the hands of the state, Nepal's Dalits need to have a human rights cell in the **UNDP**. UNDP is starting to adopt a rights based approach that enables a human rights analysis of society. This kind of work inevitably raises conflict as it is challenging power relations in the society whilst linked in a critical relationship to the government. Dalits are starting to challenge the power structures in society, both those of the Government and of the Maoists. UNDP faces enormous challenges when implementing a rights-based approach. Conducting analysis before programming starts is essential in order to avoid conflict. UNDP is looking to improve these processes and the policy implementation. UN agencies have to be more courageous in tackling these issues and moving beyond rhetoric in this work. Shadow reports could be sent to UNDP to question their statistics and assumptions from a Dalit perspective, as existing reports fail to properly recognise the reality.

SESSION III: Role of the Private Sector and Transnational Corporations in Addressing Caste-Based Discrimination

Chair: Mr. Paul Divakar, National Campaign on Dalit Human Rights, India

Dalits and the Human Rights Responsibilities of Companies

Mr. Gerard Oonk

Dalit Solidarity Network Netherlands and India Committee of the Netherlands

The context of caste or 'social origin' discrimination revolves around market discrimination against Dalits, which is being reinforced by national and international market forces and growing corporate power. Transnational companies are breaking down the units of production through outsourcing and penetration from the international level to the local level. As the state's ability to regulate transnational companies wanes, Dalits become integrated in highly unequal economic relations at the end of the chain of production. This has a serious impact on Dalit traditional occupations, land and other natural resources. At the same time, Dalits remain excluded from modern competitive sectors due to their limited access to professional qualifications and their exclusion from existing caste networks. The effect: caste inequalities have increased because of the power and impact of new economic sectors.

Companies can, and sometimes do, play a positive role by respecting and promoting human rights in general and countering caste discrimination in particular. Human rights NGOs are increasingly addressing companies directly on their human rights responsibilities. This does not mean that they want to shift the final responsibility for implementing human rights from governments to companies. Instead, a human rights focus on the corporate sector is a strategy to press governments to regulate the actions of companies across country borders.

Instruments

There is increasing pressure from civil society to work towards binding regulations for national and transnational companies. A number of international voluntary guidelines for companies already exist.

The Global Compact is an initiative by UN Secretary-General Kofi Annan in response to pressure for more corporate accountability and binding international regulations for companies. It contains ten short principles that companies should adhere to ranging from human rights and labour rights to environmental standards and corruption. One standard under the labour heading is: *eliminate discrimination in employment*. The Global Compact is purely voluntary and there is no form of elaboration on the principles nor any monitoring or verification. Companies are only expected to report once a year on a good practice related to one of the principles. The Global Compact is seen by some as a great window-dressing operation by companies using the authority of the UN. However, thousands of companies have signed up (including almost 100 from India and 11 from Nepal), whose participation can be used to assess their performance with respect to the principles. In other words, their reputation is on the line.

"The Global Compact is seen by some as a great window-dressing operation by

The **OECD¹⁹ Guidelines for Multinational Companies** are voluntary recommendations from governments to multinational enterprises consistent with applicable laws. The Guidelines cover a wide

¹⁹ OECD is the Organisation for Economic Co-operation and Development.

range of recommendations and disallow discrimination with respect to social origin (except for the purposes of affirmative action measures). The Guidelines only “encourage” enterprises to: promote their widest possible use, including for small/medium enterprises; ask business partners including suppliers to apply principles compatible with the Guidelines; disclose statements of business conduct and management systems regarding compliance with laws and relationships with employees and other stakeholders; and apply the same principles in non-OECD countries. The Guidelines are accompanied by ‘National Contact Points’ in every adhering country to deal with complaints. Dozens of complaints have been registered, some of which have led to improvement of company behaviour. The network OECD Watch is pushing for a stronger complaints mechanism.

The UN Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission) has approved the **UN Human Rights Norms for Business** after a 3-year process of study and consultation. The Norms cover: discrimination (including elimination of discrimination on the basis of social origin), right to security of persons, workers rights and decent conditions of work, respect for national sovereignty and human rights, consumer protection and the environment. The Norms encourage reservations to counter traditional discrimination. The Norms provide for periodic public reporting by companies and periodic monitoring and verification by UN and/or other international and national mechanisms (including through NGO inputs). The Norms are applicable to contractors, sub-contractors, suppliers, licensees etc. right down the chain of production. The Norms cannot diminish the responsibilities of the State nor the effective protection of international human rights law. They are being ‘road-tested’ by nine companies and the UN Human Rights Commission will report in early 2005 on an additional study process on the scope and legal status of existing initiatives and standards.

Challenges and Action Points

One major challenge is to bring the issue of caste discrimination and Dalit affirmative action into the debate on implementation of rights-based corporate accountability. A rights-based approach is needed towards fighting corporate abuses and promoting corporate contributions that positively affect the poor and oppressed (including Dalits), covering labour, land, water, housing and food rights.

Both Dalit and non-Dalit NGOs should conduct action-oriented studies on caste-based discrimination (with a gender perspective) in the private sector. This would contribute to efforts to challenge companies and sectoral initiatives to include policies on these issues in their codes of conduct, community development programmes and actual behaviour. Companies party to the Global Compact or who refer to non-discrimination, living wages, bonded labour, child labour or corruption in their codes of conduct should be called on to explain what their policy is in these areas in relation to Dalits.

The International Labour Organisation (ILO) and its tripartite membership should be targeted for discussion on efforts to combat caste discrimination. Complaints should be prepared for the National Contact Points of the OECD Guidelines in order to ‘mainstream’ discussion on caste discrimination in corporate accountability. State policies on public procurement and subsidies for companies should be critiqued in relation to transparent consideration of caste discrimination in programmes.

Measures against Caste-Based Discrimination in the Market and the Workplace

Ms. Leyla Tegmo-Reddy
Director, ILO Office in Nepal

The ILO is a Specialised Agency of the UN, guided by governments, employers and workers. Civil society groups also have input into the ILO. In relation to caste-based discrimination, the question for the ILO is: What proactive measures are we taking up at the country level and how can we improve our efforts to combat discrimination in employment?

Dalits in Nepal face many problems in relation to work. Direct discrimination based on perceived untouchability is still rampant in the informal economy in rural areas. Indirect discrimination due to the legacy of the caste system has forced Dalits into a lower socio-economic and political status, leading to lower employment levels in the organised sector and perpetuating poverty. Occupational segregation remains the reality and forced labour continues to exist. The incidence of Dalit children in hazardous child labour is high.

ILO Convention 111 (the Discrimination (Employment and Occupation) Convention) is the most widely ratified of all ILO conventions. It forbids direct and indirect discrimination on the basis of social origin, which covers caste and ethnicity. The Convention requires non-discriminatory access to: education, vocational guidance and training, employment and occupation, placement services, and workers' and employers' organisations. It further obliges equality in: career advancement; security of job tenure; collective bargaining; remuneration for work of equal value; access to social security, welfare facilities and benefits related to employment; and other conditions of work.

"The question for the ILO is: What proactive measures are we taking up at the country level and how can we improve our efforts to combat

Policies to combat discrimination should take into account measures such as legislation, enforcement, affirmative action, relevant data collection and analysis, education and training, and employment services. Legislation is an indispensable first step, but Dalit access to justice is often denied through lack of legal literacy. Thus there is a trend towards 'mainstreaming' equality in development plans.

Enforcement, monitoring and promotion are essential elements to prevent discrimination, requiring government investment in human and financial resources. However, labour inspectorates are overburdened and under-resourced (in Nepal there are only 11 inspectorates for 24 million people) and only concentrate on formal economy workers, while Dalits predominate in informal economy work. New partnerships for monitoring discrimination need to be developed and training is required on non-discrimination and sensitisation in relation to Dalit issues. In addition, coherent, temporary affirmative action measures (such as reservations, quotas and targets) are needed to obtain effective equality. These measures should include access to education, coaching, training, confidence building and job placement and should cover the whole range of positions in the workforce. They require consistent monitoring and adaptation.

The development of Dalits' skills is crucial to escape labour market discrimination. Effective mechanisms need to be developed and support systems established. Governments have a vital role in addressing caste-based discrimination in work through education, training, recruitment practices and the provision of career guidance and support. They should introduce social justice education in primary schools and in all teacher-training programmes.

The role of trade unions includes – at all sectoral/occupational levels – organising Dalits, sensitisation of workers, building strong alliances with Dalit organisations, and working with communities. They must make a commitment to social inclusion both externally and internally.

Employers should – in consultation with Dalit organisations – develop proactive policies, raise awareness, recruit and retain Dalits in employment, and ensure non-discriminatory work environments. Employers should also promote equality education, inclusion of Dalits in skills development, corporate social responsibility, codes of conduct and networking in the area of discrimination. Multinationals enterprises are obliged to apply national laws but can go beyond these, e.g. by adherence to the Tripartite Declaration of Principles concerning Multinational Enterprises and

Social Policy. They can join the Global Compact and/or develop and implement their own codes of conduct or guidelines in consultation with effected communities.

Multiple Measures to Combat Market Discrimination in India²⁰

Prof. Sukhadeo Thorat

Indian Institute for Dalit Studies

Unlike those of other countries, India's affirmative action ('reservations') policy, designed to counter the intense discrimination and inequalities of the caste system, is confined to a small government sector. The vast private sector, including agriculture, tertiary activities and industry (employing 90% of Dalit workers) has remained outside its scope. Privatisation and the general trend towards withdrawal of the state under the impact of liberalisation of the Indian economy ('de-reservation') has raised serious concern about the significance of this limited policy. Clearly, to be effective, affirmative action must include both public and private sectors.

On the other hand it must be noted that multiple strategies are necessary to resolve endemic caste discrimination. Denial of access in the economic sector means analysing the discrimination through the concept of *market*: if you are a Dalit you cannot get access to land for agriculture; cannot get access to a shop to be able to sell something; cannot sell food because it is made impure by your untouchability. Dalits cannot buy land in high-caste localities or rent housing in congested cities. Discrimination exists in the land, consumer, capital, housing and education markets.

Market discrimination and its consequences – insights from theories

Concerns about exclusion and discrimination are not only because of their consequences on economic inequality and the deprivation that it brings to the excluded and discriminated groups but also the adverse consequences on economic development.

"Overcoming market discrimination is a necessary condition to remove constraints on economic growth, to reduce income inequality between groups and also

General reasoning implies that market discrimination slows economic growth due to less-than-optimal allocation of labour among firms in the economy. This necessarily happens because the firms involved in discrimination hire labour at a wage rate lower than their marginal product²¹, and they end up using labour that is lower quality. Productivity is also affected by reduced work commitment and effort of workers who realise they are victims of wage discrimination, and also by reducing investment in human capital of discriminated groups and return on this investment.

Exclusion and discrimination in access to income-earning assets through agricultural and capital markets also reduce the income-generating capacities of discriminated groups. Further, by exacerbating current income inequality between groups, and by contributing to its perpetuation from one generation to the next, discrimination and exclusion have led to inter-group conflict.

²⁰ This paper presents groundbreaking research on the discrimination faced by Dalits in the economic sphere. It makes comparisons between the Indian situation and the measures employed to address discrimination in other countries. The length of this section of the report reflects the importance of this paper in addressing the root causes of contemporary caste discrimination in India. The paper itself is far more substantial than this summary presents. It is recommended that the original paper – available at www.idsn.org – be read in its entirety. A list of references is provided in Annex part C

²¹ Marginal product is defined in labour terms as the extra output produced by an additional worker. According to the theory of profit-maximisation, employers choose to employ labour until the marginal value product is equal to the wage.

Overcoming market discrimination thus becomes a necessary condition to remove constraints on economic growth (posed by reduced mobility of production's factors, particularly labour), to reduce income inequality between groups and also to reduce the potential for conflict, to which inequality between groups may give rise.

Mainstream free-market economic theories – which propose that market discrimination dampens economic growth and income distribution – also predict that, in highly competitive markets, discrimination will prove to be a transitory, self-correcting phenomenon as it contributes to increased costs and lower profits. The free market solution however has serious limitations. Firstly, not all markets are competitive, and many in developing countries are in fact monopolistic. Secondly, even if full competition existed, the discrimination may still persist if all the competitive employers practice market discrimination. Further, pre-market discrimination in access to education and skill development reduces the chance of entering the labour market in the first place.

The policy implications of the standard neo-classical theory are fairly obvious: interventions to overcome the various consequences of market failure associated with market discrimination in the labour, land, capital, product, education and housing markets. It is necessary to recognise that it is these insights from theory that induced and justified the adoption of various types of affirmative and positive action policies in favour of discriminated groups in many countries²².

The caste system and market discrimination

Discussion and debate on affirmative action policy in India is largely devoid of economic logic and justification. Economists in India have paid little attention to the study of caste-based market discrimination. Ambedkar developed a general theory of caste as far back as 1916 but economists elaborated the economic underpinning of the system much later (Akerlof 1976, Scoville 1984, Lall 1991).

Three underlying principles and customary rules govern and structure production, organisation and distribution under the caste system: (a) fixed occupation for each member of caste by birth and its hereditary continuation, (b) unequal distribution of economic and social rights related to occupation, property, employment, wages and education among different caste groups, and (c) the provision of a strong system of penalties for enforcement of the system. Occupations under the caste system are hereditary, compulsory and endogenous, which implies “exclusion” of one caste from undertaking the occupations of the other castes.

"The caste system as an economic organisation lacks all of the elements required to fulfil the conditions for

In the framework of a market economy, the restrictions on occupational mobility operate through preventions on taking the occupation or economic activities of other castes. Market discrimination may operate through exclusion, restriction and/or discriminatory access to various markets such as agricultural land, labour, credit or other inputs and services necessary for starting any occupation. The restrictions may also prevail in the exchange of product and consumer goods between members of different castes.

Labour market discrimination is obviously a part of the exclusionary process of occupation. At a theoretical level labour market exclusion and discrimination manifests in (a) exclusion or complicit

²² Examples include USA, Britain, Northern Ireland, Germany, Yugoslavia, Brazil, Bolivia, Peru, Nigeria, Sudan, South Africa, Kenya, Malaysia, Pakistan, China and Japan.

restriction on transferring employment from one caste-occupation to another, and (b) unfavourable inclusion, that is, access or entry to labour employment in another caste's occupation but with unequal treatment in wage payment and other conditions of work. This essentially means wages lower than the market level (or lower than the wages of other groups with same productivity level) for workers of discriminated groups, along with unequal working conditions governed by the caste-related coercive norms and obligations.

The economic interpretation of Akerlof-Scoville-Lall implies that caste-based market discrimination has a negative impact on economic growth and income distribution. Fixed occupations (or economic activities) for caste groups essentially means restrictions on mobility of labour and other factors of production across caste occupations. Immobility of labour and capital, as seen in the segmented labour market of the caste system, leads to a less-than-optimal economic outcome in a competitive market situation.

Ambedkar, however, argued that efficiency and productivity of labour is adversely affected in a number of other ways also, namely the nature of customary rules that regulate employment, wages, education and dignity of labour under the caste system. In addition, he explained that the principle of individual choice is violated in the caste system insofar as it involves an attempt to appoint a task to an individual in advance, selected not on the basis of training or capacity but on that of the social status of parent. Social and individual efficiency require us to develop the capacity of an individual to the point of competency to choose and make one's own career, which is almost absent in the overall scheme of the caste system. Furthermore, some occupations are considered polluting or impure, which reduces the social status of persons engaged in them. Forced into these occupations on account of their caste origin, people do not derive job satisfaction and indeed this constantly provokes them to aversion, ill will and desire to escape.

The caste system also puts a low value on physical work, as compared to mental work. Consequently, the lack of dignity of labour adversely affects the incentive to work. Thus, in view of the standard criterion of economic efficiency in mainstream theories of discrimination (and also that of Ambedkar), the caste system as an economic organisation lacks all of the elements required to fulfil the conditions for optimum economic outcome.

The economic inequality of the distributive scheme involved in the caste system is particularly pronounced in terms of income distribution, employment and poverty. The unequal and hierarchical assignment of occupation and property rights among castes implies that every caste, except those at the top, suffers in various magnitudes from an unequal division of social and economic rights, with Dalits suffering the most as they can only access economic rights in the form of manual labour or services to the castes above them. The institution of 'untouchability' adds an additional dimension to the economic discrimination and exclusion of Dalits as they are prohibited from social intercourse and participation in a variety of economic activities.

"The high caste Hindu would generally prefer to be voluntarily unemployed than to take up an

By putting restrictions on mobility of labour across caste occupation and thereby not permitting readjustment of employment, caste becomes a direct cause of much 'voluntary unemployment' among high castes and 'involuntary unemployment' among the low castes. The high caste Hindu would generally prefer to be voluntarily unemployed than to take up an occupation not assigned to his

caste. On the other hand for Dalits the social restrictions on taking other castes' occupation compel them to remain involuntarily unemployed. Economic theories indicate the serious consequences of the caste system's negative impact on economic development and income distribution, on the right to individual development, and on equal rights to employment and wages, all of which have cumulative poverty-inducing consequences particularly for Dalits.

Evidence of market discrimination and economic inequality

Despite legal provisions for equality between castes since (and even prior to) India's independence, the caste system has continued in modified and changing forms. The impact of historical exclusion and discrimination of Dalits (who officially constitute about one fifth of India's population, or about 167 million in 2001) in terms of their limited access to capital assets (land and non-land), heavy dependence on wage labour, and high levels of unemployment and poverty are reflected in the official data. Under the customary rules of the caste system, Dalits have been prevented from engaging in occupations based on fixed income-earning capital assets. In 2000, about 16% of rural Dalit households pursued cultivation as a self-employed occupation, (compared to 41.11% of non-Dalits) and another 12% were engaged in some kind of non-farm self-employment activities. In urban areas, 23% of Dalit households were engaged in petty business (compared with 35.5% of non-Dalits). Thus an exceptionally high proportion of Dalits are still dependent on wage labour (61% in rural areas and about 64% in urban areas)²³.

High dependence on wage employment means Dalit incomes are determined by the level of employment and wage rates/salaries. Dalits, however suffer from higher levels of underemployment and unemployment. The unemployment rates for Dalits in rural and urban areas are 5.0% and 5.2% respectively, compared to 3.5% for non-Dalit workers in both areas. This of course means higher poverty levels for Dalits. In 2000, about 35.43 % of rural Dalits were poor as compared to 20% of non-Dalits. In urban areas about 39% of Dalits were poor as against only 21% of non-Dalits. The poverty level is particularly high among the Dalit wage labour-dependent households: 46% in agricultural labour households and more than half among the casual labourers in urban areas.

Malnutrition and under-nutrition are also relatively high among Dalits: in 1998-99 about 33% and 56% of Dalit women and children, respectively, suffered from anaemia as compared to figures of 15% and 49% among non-Dalits. In 1999 the Under Five Mortality was 119 per 1,000 live births among Dalit children, compared with 82 for non-Dalit children; life expectancy was about 62 years for Dalits and 66 for non-Dalits.

Consequences of past exclusion and discrimination

The consequences of past exclusion and discrimination of Dalits are reflected in unequal access to capital assets (land and non-land), employment, human capital development, and greater incidence of poverty and deprivation. Persisting disparities in capital assets and human capital between Dalits and non-Dalits provide indirect evidence of past discrimination.

Action Aid's 2004 study, conducted in ten states and covering about 550 villages, has revealed discrimination in hiring and wage payment in a significant number of sample villages during 2001. In about 36% of villages Dalits were denied wage employment in agriculture. In about 25% of villages Dalits faced discrimination in wage payment. In about one third of villages Dalits were excluded from employment for construction of houses and many were forced to carry on their traditional 'polluting' occupations. In about a quarter of the villages Dalits faced exclusion or discrimination in various forms in the sale and purchase of consumer goods.

"The economic function which the system performs for favoured castes suggests that taste for discrimination is based, consciously, or unconsciously, on economic interest, so

²³ Significantly low access to fixed capital assets (land and non-land) is captured by the aggregate value of household assets. In the early 1990's, the average rural Dalit household owned assets of Rs.49,189 as compared with Rs.134,500 for non-Dalits. Urban Dalit households possessed Rs. 57,908 of assets per as compared with Rs.159,745 for urban non-Dalits.

In relation to urban areas, Banerjee and Knight (1991) observed: "there is indeed discrimination by caste, particularly job discrimination and that discrimination appears to operate at least in part through traditional mechanism, with untouchables disproportionately represented in poorly-paid dead-end jobs". Even if discrimination is no longer practiced, the effects of past discrimination could carry over to the present. This may help to explain why discrimination is greater in operative jobs, in which contracts are more important for recruitment, and less so in white-collar jobs in which recruitment involves formal methods. The economic function which the system performs for favoured castes suggests that taste for discrimination is based, consciously, or unconsciously, on economic interest, so making prejudice more difficult to eradicate.

Remedies against discrimination – international experience

In terms of the economic spheres or markets, the USA, Northern Ireland, South Africa and Malaysia have developed policies for religious, racial or ethnic minority groups for agricultural land, labour, capital and other markets, and non-market transactions covering multiple economic spheres. Broadly speaking, in these countries multiple economic and social spheres are covered in the orbit of anti-discrimination and affirmative action measures, including labour, agricultural land, capital, product and consumer goods markets, and also supply of social goods such as education, housing and the transactions undertaken by the government with private minority businesses.

Countries have used at least three kinds of positive action methods. First is the legal protection against discrimination in the form of **Equal Employment Opportunity Laws (EEOC)**. These laws prohibit any private or public employers from discriminating on the basis of group identities like religion, gender, colour, ethnicity, or national/social origin.

The second method is **affirmative action**, in which positive, pro-active steps are taken to ensure fair participation of discriminated groups (in employment, education, housing and government contracts), in contrast to laws that only prevent employers from taking steps that disadvantage minorities. Given the limitations of EEOC in ensuring fair participation of discriminated groups, they are supplemented by affirmative action measures. Affirmative action indeed goes a step further to ensure discriminated groups a 'fair share' via enforcing or monitoring progress towards fixable participation goals.

The third strategy is **reparation or compensation**, defined as payment for an acknowledged grievous social injustice to a group. Affirmative action is generally used to address present discrimination, and does not provide a vehicle for redressing wealth disparity. The instruments of compensation or reparation on the other hand are specifically used to make amends for the intense deprivation caused to a particular group by a history of denial of property or other rights. The rationale for reparations is considered on three counts: compensation for slavery, compensations for discrimination and exclusion, and compensation for a cumulative disparity in wealth or capital/asset ownership. There are several examples where compensation has been used as a method to empower the excluded and discriminated groups via a one-time settlement.

Implications for the Indian Private Sector

Dalits in India clearly suffer from societal discrimination in multiple economic spheres. Therefore adopted remedies against past and present discrimination should cover multiple economic spheres and not just the labour market. The treatment cannot be partial; it has to address discrimination comprehensively. Given the wide coverage of societal discrimination against Dalits, strictly speaking all the three measures alluded to above are essential for resolving market and non-market discrimination. The strategy of reparation is necessary to compensate for denial of property rights in agricultural land and other capital assets, and also for long-term denial of education. Regarding

discrimination in labour, capital, product and consumer goods market and social services, the combined use of legal measures and affirmative action may be necessary.

Land Market

As a result of the poor impact of affirmative action in land redistribution²⁴, even today over three-fourths of Dalit rural households are either landless or near landless (i.e. own less than one acre of land, which is insufficient for effective farming). The high incidence of landlessness among Dalits is the result of past customary and even legislative restrictions on ownership of agricultural land exercised in the past.

Affirmative action measures (similar to the one used by Indian government in the case of land distribution) are generally used as remedies against present discrimination, but are extremely limited in their ability to correct the impact of past discrimination. Historic denial of ownership of capital assets like agricultural land has generally been addressed through reparations or compensation. Among other countries the Malaysia programme to improve the Malaya (or Bhumiputras) ownership of agricultural land is a case in point. The Malaya "special right" includes the reservation of large tracts of agricultural land for them, just as in the USA native Americans were compensated for displacement via large tracks of land. In the context of this international experience the strategy of compensation through a one-time settlement is possibly necessary to improve Dalit ownership of agricultural land. The Indian government should create a pool of common land free of legal problems and redistribute it to Dalits in standard size plots to compensate them for long-term denial of their land rights. This is probably the singular way of distributing land for correcting imbalances caused by past injustice.

The Indian government should follow the Malaysian strategy by developing an affirmative action policy in all financial institutions and

Capital Market

Dalits have been debarred from establishing businesses except those considered lowly, impure or polluting. To date, even among the low percentages of Dalits engaged in 'business', most are engaged in petty businesses in which more than one third among them are poor. At present the government uses special measures including positive actions (preferential lending) and compensatory actions (SC/ST Finance Corporations).

Given the discrimination in the private capital market it is also necessary to develop some affirmative action policy to improve the access of marginalized groups to the private capital market. Dalits require access to private financial institutions for regular working capital and also a greater share in corporate capital (business ownership). Specific and well-defined affirmative action policy is needed for public and private sector financial institutions to improve the access of minority social groups to regular financial capital. In addition a compensatory policy, which would increase Dalit access to the capital market, is necessary. In this respect there is a lot to be learnt from the Malaysian experience. The legally sanctioned, systematic redistribution of private capital ownership resulted in the share of Malaysian corporations owned by natives Malayas rising from 2% to 20% in two decades. The Malaysian government set up special institutions to ensure that the minority community gets the appropriate share in the business and in share capital of domestic and foreign companies. The Indian government should follow the Malaysian strategy by developing an affirmative action policy in all financial institutions and making a compensatory payment for past losses suffered by Dalits.

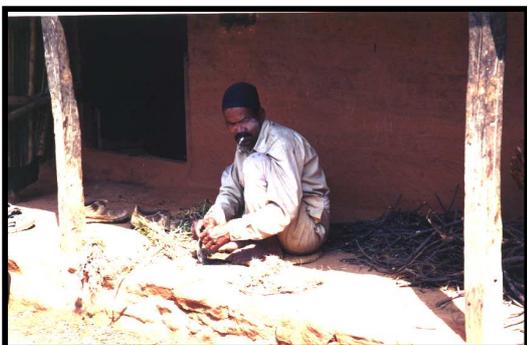
²⁴ By 1996 only 2% of total cultivable land was redistributed under the introduction of a private 'land ceiling', the ratio increased to only 8 percent if we add distribution of government land.

Labour Market

The employment pattern for Dalits is such that more than 60% rely on (mostly casual) wage labour. With discrimination in hiring, wage payment and conditions of work, Dalits need access to an Equal Employment Opportunity Act. In the industrial and service sector, employment discrimination is of a high order in many job categories. Here there is a need to use both the strategy of legal safeguards (an EEOA, for legal protection against discrimination in hiring) and of affirmative action (identical to the present reservation policy in public sector employment). To bring transparency and to monitor the programme, an 'Equal Employment Enforcement' administrative mechanism similar to those in the US and Northern Ireland will be necessary.

Product and Consumer Goods Market

Discrimination in the product and consumer goods market is in terms of: (a) access to the infrastructure such as space and amenities, and (b) restriction on sale and purchase of the goods and service. Affirmative action policy in USA has addressed this issue by offering a proportion of federal contracts to African-American and other minority businesses. Strategies in this sector should provide



both legal safeguards through an Equal Opportunity Law and affirmative action measures in government contract tendering. For example, the government could develop a policy for the purchase of agricultural products such as vegetables, flowers, fruits, milk and poultry from Dalits, as these groups face discrimination in the retail and wholesale market in the sale of these commodities on account of the notion of purity and pollution. Similar legal and affirmative action policies are necessary for education, health and other social amenities supplied by private sectors.

Affirmative Action and International Companies

The Indian government could develop an understanding with multi-national companies to follow a positive, voluntary policy in their employment and other activities (such as via the Global Compact, the OECD Guidelines, the Global Sullivan Principles, the ILO 'Decent Work' Agenda or the UN Norms under development). Some countries have pursued certain norms for multi-national companies (e.g. Malaysia). With the increase in the participation of international companies in India under globalisation there is a need for the Indian government to develop positive action in employment and other spheres for Dalit participation under the provisions of the Global Compact and other UN instruments.

Conclusion

Economic discrimination on the basis of race, religion, ethnicity, national or social origin exists in many nations under diverse social, economic and political systems. Economic discrimination in general and market discrimination in particular not only leads to income inequalities, a high degree of deprivation for discriminated groups and increased risk of inter-group conflict, but also affects economic growth. Therefore many countries have resorted to various remedial measures against discrimination and inequality to correct the imbalances in access to fixed capital assets, employment and education between sub-groups in their population. These policies mainly include reparation or compensation, affirmative and positive actions, and enactment of EEOs. These three policies are applicable not only for the employment market but also for capital, agricultural land, education and housing markets and other spheres for improving access to sources of livelihood.

India has used legal and affirmative action policies for discriminated groups. However, one of the major difference between India and other countries is that while from the very beginning other countries have used various affirmative action policies in both the public and private sectors, India has confined the policy to the minuscule public sector and excluded the vast private sector where more than 90% of Dalits still earn their livelihood with no protection against economic discrimination. Due to the diminution of the public sector, there is a growing demand for some kind of affirmative action policy in the private sector. It has to be recognised that Dalits suffer from societal discrimination in multiple economic and social spheres. Therefore, legal safeguards and affirmative action policy for the private sector should cover all markets as well as social needs like private education and housing. It is necessary that the government enact EEOs to provide legal safeguards against discrimination. The legal safeguards should be supplemented by affirmative action to improve effective Dalit access to employment and various other spheres. It will be necessary to compensate Dalits at least for the long-term denial of property rights through a one-time provision of agricultural land.

Comment on Dalit labourers

Mr. Mohan Lal Nepal
GEFONT, Nepal

Dalits in Nepal are frequently denied tea and refreshments, even by other, 'higher' Dalits. Women Dalits get less than Dalit men for the same work. Some of the skilled Dalit workers do not get market access; their skills are not recognised. If the same items are sold and labelled 'high caste' produce they can be sold. Dalits have the problem of slavery too. Many Terai Dalits who do cleaning work believe in fatalism, believe that they are cursed to do that kind of work. Dalits who become sick or injured at work do not get any compensation, as other workers do. There is a large wage disparity between Dalits and non-Dalits. The value of their labour is recognised neither in the private nor the public sector. They are employed on a daily wage basis not on salary basis. If a Dalit continues working for an organisation until the age of 60, there is still no pension offered. Dalits are required to bring their tools themselves, they are not provided by the employer. From Mumbai to Dhaka to Kathmandu, Dalit 'sweeper' castes are being highly exploited and discriminated against to this day.

Employment Principles for Foreign Investors in South Asia

David Haslam
Chair, UK Dalit Solidarity Network

The manifestations of apartheid in South Africa in the 1960s and 70s, have many similarities with the ongoing impact of caste discrimination in South Asia and certain countries in East and West Africa. Although by the early 1990s everyone was "anti-apartheid", those of us active in the anti-apartheid movement from the early 60s remember how hard it was through the 60s, 70s and even the 80s to get active support from churches, trades unions, aid agencies, governments and international institutions.

In the end, because of the advocacy, campaigning and sometimes confrontation of thousands of activists against apartheid, both inside and outside South Africa, another world was possible: without apartheid. It did however take almost 80 years from the formation of the African National Congress in 1913 before Nelson Mandela walked out of a South African prison to become the first black President of South Africa. India was one country involved in this struggle, yet we see that India has its own system of hidden apartheid: the caste system. There are many parallels between caste and race, and the structures of discrimination and the ideologies which support them are often similar. Caste

discrimination needs the same type of vigorous campaigning used against apartheid, both inside and outside the countries where it exists, to bring about the necessary change.

There are a number of responses that may be made along these lines: building a broad-based campaigning movement; providing a platform for the victims of discrimination to be heard; informing wider public opinion; informing and pressurising UN and development agencies²⁵ as well as Western governments; challenging the governments of affected countries in public fora; and developing economic pressure through awareness-building and campaigning around transnational companies which operate in the countries concerned. The latter response was particularly effective with respect to South Africa. Eventually companies and banks were no longer willing to do business there because of the international political and economic pressures put on them for doing business with and profiting out of the apartheid system.

Growth of foreign investors in South Asia and corporate responsibility

A large number of international companies²⁶ are now operating in India and other South Asian countries. Others are 'outsourcing', especially from Europe. Caste discrimination is increasingly being brought to their attention and they are being challenged to examine the discriminatory system of which they are now a part.

Corporate responsibility is a growing movement in many parts of the world. A fair number of companies are signing up to agreements such as the UN Global Compact and the Global Sullivan Principles²⁷. These systems are not legally binding standards but voluntary initiatives. If companies who sign up to these principles do not fulfil them, however, there should be a vigorous campaign for international regulation and binding codes of conduct. In the UK campaigners have begun to attend company Annual General Meetings as was done during the anti-apartheid years. Awareness is growing among 'ethical investors' and there is gradually increasing publicity on this issue.

"Caste discrimination needs the same type of vigorous campaigning used against apartheid, both inside and outside the countries where it exists, to bring about

In Denmark the airline company SAS had the issue raised vigorously by one of its trades unions. SAS was seeking to outsource to India and has been pressed – as a signatory of the UN Global Compact – to examine carefully its employment policies, and those of its subcontractors. It has been suggested to companies that there is strong business case for reducing and if possible eradicating caste discrimination. The airline's ground-staff union has now written to 300 companies in Scandinavia that do business with India asking them if they are aware of the caste system and in what way they are going to address it. Employment issues have also been raised with a range of Dutch-based companies operating in South Asia, particularly in reference to the companies' responsibility to support the principles of the ILO.

²⁵ The type of actions that can be taken by NGOs and government departments of development are outlined in a UK Dalit Solidarity Network Paper 'Dalits and International Development Aid'.

²⁶ As far as the UK is concerned these companies include the banks HSBC, Standard Chartered, Lloyds TSB and Barclays. Other financial companies include Abbey, Axa and Prudential. Among the manufacturing firms are Unilever (present in India for many decades) and ICI. An example of new investors is Reuters.

²⁷ Rev. Leon Sullivan is an African-American clergyman who first gave his name to a set of principles meant to influence companies operating in apartheid South Africa. His Global Principles state that companies will 'work with governments and communities in which [they] do business to improve the quality of life in those communities, their educational, cultural, economic and social well being and seek to provide training and opportunities for workers from disadvantaged backgrounds'.

A UK seminar was held in September 2004 for bankers, trade unionists and civil society on the topic of 'Employment Principles for Foreign Investors in South Asia'. At this seminar a first draft of employment principles for external employers was presented. These have subsequently been amended and are now tentatively titled the *Ambedkar Principles*²⁸, after Dr Ambedkar, Dalit leader and architect of the Indian Constitution. After further discussion and amendment, these Principles could create an appropriate instrument that foreign investors in South Asia may endorse, to signify their willingness to engage with the process of eliminating caste discrimination.

Salient Points from Plenary Discussion

Regarding the **informal sector**, the Global Compact doesn't contain direct provisions. However, it does relate in terms of the supply chain. In the guidelines, investors are 'encouraged' to apply the same standards on supply chains as in their own factories. The UN Norms are stronger, and the supply chain issue is part of them. This still excludes a large part of the informal sector. To reach these people requires national pressure and pressure through the unions and the corporate sector. At the upcoming tri-partite dialogue on amending labour laws in Nepal, one issue is the informal sector. However, of the 11 employment monitoring positions in Nepal only 7 are filled at present; none are dedicated to monitoring the informal sector.

Investors in South Asia have codes of conduct, but they don't seem to be **linked to the Nepalese situation**. Some companies are investing money in the Dalit community, such as for buffalo farming, but Dalits are not allowed to sell the milk or meat. They have to sell the whole animal directly, rather than after processing. The Norms and other codes must be linked to this grassroots perspective. Dalits are being uprooted from their traditional forms of work. Upgrading of traditional skills is important to increase productivity, but cheaper products are coming into the market, so if Dalits want to change occupations they should be able to.

There is no clarification on the **monitoring mechanism** for the UN Norms, but there is a move to merge the UN Norms with the Global Compact. Periodic reporting by companies could be made mandatory, and the Norms could be applied to contractors and sub-contractors. The companies don't want the international enforcement to happen, so efforts need to continue. There are also some moves to monitor government subsidies for corporations violating human rights. Governments that are home to transnational corporations should hold corporations accountable for their practices abroad. This is difficult because of the unwillingness of governments to reign them in and because they have organised special conditions for companies to invest in third countries without respect for legislation.

Reparations in terms of caste discrimination are needed to go some way towards making amends for the denial of proper wages over many generations. The right of Dalits to own property was actually legally denied in the state of Punjab for 45 years. How can they be compensated for this? Dalits were not allowed to have education for 200 years. This goes beyond the need for affirmative action. Discrimination in the market is also extremely important, as with the example of buffalo meat production. Reservations must provide multiple solutions to the historical and current discrimination. Empowerment has to come to the local level to ensure the collective mechanisms such as these can work. As a resource on compensation the UN has Basic Principles and Guidelines for the reparation of victims of violations of human rights. The UN Norms also talk of reparation for affected communities.

²⁸ The draft Ambedkar principles are included in Annex part I.

Malaysia is a relevant case study because the situation in rural areas is quite similar to that in India and Nepal. Reservation in education and employment is relatively easy, but handing over reservations in the land and capital sections is a greater challenge. Malaysia reserved a tract of land purchased by the government, to legally distribute free land to the indigenous people.

The caste issue did not appear at all in the global discrimination report presented at the **ILO** conference. To include caste in the ILO report, one needs to lobby with delegates at the conference, have them bring up the problem that caste discrimination is missing, and to instruct the office to take some legal action. CERD receives reports from the ILO on implementation of the ILO Conventions, particularly Convention 111. The ILO has done seven rapid assessments on child labour in Nepal and found that Dalit child labour is rampant.

Session IV: Mainstreaming Dalit Rights in Development Programming

Session IV-A: Dalits and Development

Chair: Under-Secretary Guna Laxmi Sharma, Ministry of Health

Dalits and Development in India

Ms. Ruth Manorama

National Federation of Dalit Women/NCDHR, India

In the Indian context we are talking about 3000 years of suffering. Scheduled castes in India are ground or broken to pieces – this is what the term “Dalit” means. We use this name deliberately. Today we are a broken community. Our lands, resources and cultures have been robbed. What is left is only our humanity. We deny the caste hierarchy.

Dalits are people of the land, with skills of production. We are not only scavengers and sweepers, but a self-sufficient economy including goldsmiths and blacksmiths. Our leader Dr. Ambedkar was the principal architect of the Indian Constitution, providing a basis for affirmative action, anti-discrimination and other socio-economic improvement measures. He also made a major contribution to the field of economics and the establishment of the Federal Bank of India. He described the nature of the caste system, analysed its exploitation and developed a concept of state socialism.

*"Dalit women: let
us change our
pain into power!
Let us not cry
but turn our*

Reviewing the reality from the perspective of Dalit women, what can be seen is ‘mal-development’. Dalit women are the most economically depressed, suffer the lowest levels of literacy, have no protection in employment and are excluded from access to markets. Dalit rights to capital and land are denied. The UNDP’s reports clearly show that Dalits are being left far behind.

Dalits and Dalit organisations are using every opportunity to claim livelihood demands. One demand is for a minimum five acres land in the name of each Dalit woman, and the designation of a special category for Dalit women in development policies. Affirmative action policies should be reviewed and expanded. Human rights instruments must be used to pressurise countries to meet their commitments.

International Assistance and Inclusion of Dalits in Nepal²⁹

Mr. Jagadish Pokharel

Former member of National Planning Commission

Initial analysis from the 2001 census shows that despite an improvement in Nepal’s international standing regarding poverty, the wide gap between Dalit and other communities still persists according to all Human Development Indicators. However, according to research by the Dalit NGO Federation of Nepal (DNF), few development agencies seriously consider the Dalit issue in their programming.

²⁹ A list of references is provided in the Annex part D

International Agencies and Dalits

According to DNF's research³⁰, most international development agencies surveyed use 'neutral' terms meant to include Dalits. In total only 8 of the agencies surveyed had programmes explicitly designed for Dalits. Many others are only now designing programmes to benefit Dalits explicitly. Most agencies are unclear about the effectiveness of their programmes in addressing Dalit issues. Their monitoring mechanisms do not separate the beneficiaries according to caste; they can only assume that they have succeeded in their goal. In general the agencies do not have any plan or guidance to generate caste 'balance' in their staffing. As a result there are some significant imbalances³¹. The two main reasons given for not hiring Dalits were the absence of an explicit agency policy and the unavailability of qualified Dalit workers.

Important issues for Dalit upliftment nominated by surveyed agencies ranged from poverty and lack of access to basic services to the inaccessibility of the justice system and the effects of the national conflict. Stigma of being 'Dalit', lower status of Dalit women and slowness of attitudinal change were also highlighted. Some international aid agencies criticised Dalit NGOs for 'over-analysing' the caste problem and prioritising advocacy over livelihood improvement. Others pointed to the geographic differences in Dalit-related problems and a flawed interaction between international and local agencies as barriers to improvement.

"The majority of development agencies believe that the cause of conflict in Nepal is

The agencies believed that the level of investment on Dalit problems was low compared with the size of the population and the problems they face. Some agencies thought that results for the investment could be improved with better interagency coordination, and harmonisation of agency and government plans. The lack of disaggregated data on Dalits was seen as a problem for many agencies, as was the absence or under-representation of Dalit staff in both the agencies and the government.

Conflict related programmes, peace making and post conflict rehabilitation are the major foci of programmes being planned. The majority of development agencies believe that the cause of conflict in Nepal is discrimination and exclusion; hence Dalits will form a major part of future programming. Based on available statistics, Dalits require 30% more funding than the general population to end up on a par. Yet the resources allocated for this large section of the population (at least 12.9%) are miniscule (around 2.8%) compared to the total foreign aid inflows.

Recommendations

International agencies should increase the level of funding for dedicated Dalit programmes and should invest more on livelihood improvement programmes using the comparative advantage of Dalits. Agencies should implement measures (such as investing in extra training) to ensure Dalit representation on their staff and more generally support initiatives for affirmative action for Dalits. They should ensure that their plans and programmes are linked to the Millennium Development Goals (MDGs) or national goals and make their staff better aware of these goals and how to monitor progress towards them. The Nepalese government should effectively play the role of coordinator, monitor and facilitator for Dalit development, encouraging donors to link their programmes with the MDG and national goals and to give priority to income-generating activities for Dalits. The government should harmonise local and district Dalit planning and link short-term projects with long-term goals.

³⁰ DNF researched the volume of monetary support made by international aid agencies in Nepal and the way the money was spent. A total of 30 international agencies – 6 Multilateral, 10 Bilateral and 14 International NGOs – were surveyed and questioned on their views on the Dalit issue and their philosophy, future plan and strategy to support this community.

³¹ See Annex part D for an indication of Dalit proportion of staff in relevant development agencies working in Nepal.

Dalit Women in Nepal: Issues and Challenges³²

Durga Sob

President, Feminist Dalit Organisation, Nepal

"I want justice", cried 13-year-old Anita Chamar. Victim of a rape case, at an age where she should have a pen and a book in her hand, Anita has a baby to carry. Anita was raped by the son of the owner of a hotel in Beriyar, Kanchanpur, Rajbiraj. She is homeless, helpless and a single mother, but who will

In a case like Anita's (see box), of which there are many, why don't the police or the court take any action after they find out who the culprit is? Do the police service, court service and justice system only exist for high-class people of the society? Is this the equality that Dalits have struggled for? If justice is only for the high people, why do we say Nepal is a legal state? If so, let's stop saying that Nepal is a legal state because the law must be equal for all in a legal state.

As a whole, women in Nepal lag behind in comparison to their male counterparts. However, Dalit women are far behind non-Dalit women on every development indicator. Dalit women are discriminated by the patriarchal social structure on one hand, and they are humiliated due to the persisting, caste-based, discriminatory, Hindu social system on the other hand.

As a result, they have less access to resources, power, education, socio-economic mobility and control over their lives than Dalit men and non-Dalit women in Nepal. Their families are ultra poor and represent about 80% of the ultra poor in Nepal. Their liberation cannot be achieved by purely economic or political means, but must involve social and cultural change in the surrounding institutions and in the attitudes, beliefs and values of their fellow Nepali citizens.

Existing Positive Measures for Dalit Women

Nepal's Constitution (1990) and national legislation assure the right to equality, make punishable acts of untouchability and discrimination in use of public goods and places and permit the adoption of special measures for women and for Dalits. The Government of Nepal has also ratified the UN International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW), which oblige the upliftment of women and Dalits.

There are 150 existing, positive legal provisions and policies for women in Nepal. All these provisions are intended to improve the status of women. But so far only the "high caste" women have benefited from these provisions. Some positive provisions and their application to Dalit women are given below.

Positive Provision	Participation of Dalit Women	Explanation
<i>Protective discrimination</i>	Nil	Only "higher caste" women have benefited from this.
<i>5% candidacy for the House of Representatives</i>	Nil	Not one Dalit woman has had a chance for a candidacy yet in any election. Only non-Dalit women have benefited.
<i>Reservations for women in the national assembly</i>	Nil	Only high caste women have benefited from this provision. Not a single Dalit woman has been asked to join the Assembly

³² A list of references is provided in Annex part E

Reservations in local government	Ward Committee seats: nil Development Council seats: very few	There is a provision for the reservation of a least one seat in the Ward Committee for women, but no Dalit women have benefited from this provision.
Free education	Low access	Early marriage and low economic status hampers enrolment of Dalit women in school.
At least 1 woman teacher in every primary school	No known benefit	It seems that only non-Dalit women have been given these opportunities
Scholarships: 20% reservation for women	Nil	Every seat is provided to the better off and so-called higher caste women.
National Commission for Women	Lack of representation	Low representation of Dalit women calls the effectiveness of the Commission into question.
Deprived, Depressed and Dalit Upliftment Committee	Nil	Males dominate the committee and Dalit women have no influence on its policies.
National Dalit Commission	One	This is far from proportional representation.
Committee for formulation of reservation policy	Nil	No representation of Dalit women in the committee, nor on the Dalit nor the women's sub-committees.
20% Reservation to women; 15% to Dalits in college admissions	Nil	The first attempts at reservations at Tribhuwan University are being held up by a Supreme Court challenge.

In addition to these measures, there are other plans and programmes for Dalits and women. The 10th plan of the Government of Nepal has made social inclusion one of its four pillars and speaks specifically about the need to improve services, opportunities and rights for Dalits and women. Despite the introduction of these measures, the situation of Dalit women has not changed. All positive measures for women that have materialised seem to be almost exclusively for higher caste women.

Issues and Challenges

Gender, caste and ethnicity are the three interlocking institutions or critical fault lines defining social identity in Nepal. It is not only the government and the political parties who have ignored the situation of Dalits in Nepal; donors and non-governmental agencies have also ignored them. They are similarly neglected by the women's movement. The oppression of Dalit women manifests itself in many ways, as outlined below.



Untouchability: Both Dalit men and women suffer from the inhumane practice of untouchability, but Dalit women face the unique, dual burden of being subordinate at home and facing caste discrimination and exploitation outside of the home. They are not allowed to freely draw water from public taps and wells used by the high caste people. They are forbidden from entering into temples and participating in public ceremonies. Many Dalit men and women are forced into bonded labour and 'traditional' occupations. Dalit women have difficulties finding jobs in certain profitable enterprises such as teashops, hotels, and restaurants. Dalit women themselves avoid society due to the feeling of inferiority resulting from centuries of domination and humiliation. If they stand up for their rights, they often become the victims of violence and punishment.

Poverty: Dalit women's disproportionate and extreme poverty stems from illiteracy, untouchability, physical violence and lack of empowerment. The social scenario has confined them to the lowest paid jobs. Since Dalit

women have no economic power in the family, they end up working as labourers but barely earn enough to feed themselves or their families.

Literacy: Access to education is the most significant factor for self-development and upliftment. Government figures shows that the literacy rate of Dalits as a whole is 16%, and the literacy rate of Dalit women on average is about 10%³³, perhaps the lowest of the Nepalese population. Dalit women and girls have been deprived of education because caste bias and untouchability is practiced in schools and colleges and the patriarchal society places a low value on female education. Dalit girls have rarely been accepted for enrolment in boarding schools. The government announces scholarships to Dalit children but usually they have not been provided. Dalit women's low level of literacy is due to three interrelated factors: continued monopolisation of sources of wealth and power by 'high caste' women and men, the strong influence of caste discrimination on women in rural areas, and the control of Dalit males over Dalit women and girls. Dalit females are either invisible or insulted in school curricula and textbooks.

Weak Health Condition: Disaggregated data on the health status of Dalit women is virtually non-existent and sincere efforts are needed to monitor the health of Dalit women. Nevertheless it is clear that average life expectancy for Dalit women is just 50 years compared with a national average of 55. In Dalit settlements, particularly in rural areas, women do not have access to proper toilet facilities, clean drinking water nor even first aid medical facilities, despite the high prevalence of gynaecological diseases. Lack of regular health checks means Dalit women fall victim to preventable, chronic illnesses. Many Dalit women and children are severely malnourished. They are not aware of family planning and are pressured to give birth often in the want of a son. They lack proper care during pregnancy and childbirth, which leads to disproportionately high maternal death rates. Early marriage has also been a major factor in damaging the health condition of Dalit women. Dalit women's health is worsened by physical beatings and mental stress bordering on torture.

Domestic Violence: Dalit women are the most perfect victims of social and domestic violence. They are beaten by their own male partners and relatives under the influence of alcohol. They face hardship due to child marriage, double marriage, bride price and as little as one tap/well for a hundred houses. Being poor, illiterate and oppressed, Dalit women are victimised and subject to brutal and inhumane treatment, torture, rape, trafficking, forced prostitution, sexual harassment, exploitation and exclusion by the 'higher' castes. They are sometimes even accused of witchcraft (Boksi). In the Terai, rural belt of the country, Dalit women may be forced to eat human faeces by the upper caste people. Dalit women are taken as a means of fulfilling men's sexual appetites. In all cases of caste conflict Dalit women are the first victims. They are raped, gang raped and made pregnant.

Sexual Exploitation and Trafficking: Poverty, ignorance and societal discrimination have forced many Dalit women and girls to become commercial sex workers. Brokers and traffickers sell Dalit women for a few thousand rupees by falsely attracting these innocent girls with promises of 'employment', 'visits to cities' and 'marriage'. Due to poverty and illiteracy, Dalit women are easily influenced by such offers. Women from the Badi caste (a Dalit community from western Nepal) have, in the name of social customs, had prostitution imposed on them. Those who remain aloof from such practices have been threatened, or illegally searched/arrested by the police. They are described informally as forming a "prostitute" caste and experience problems in obtaining citizenship rights for their children, because of paternal absence and Nepal's male-oriented Constitution.

Pramila Dum of Jhapa District was accused of Boksi (withcraft) by the Anarmani Village Development Committee and ordered to pay N.Rp.25,000 as 'compensation'. The government agencies have

³³ The average female literacy rate is 42.8% in Nepal. By comparison, 9% of Mushahar Dalit women are literate.

Victims of Armed Conflict: Dalit women and children have suffered the most as a result of the upsurge in the Maoist-government conflict. Dalit girls have been forced to abandon their education and take up exploitative activities to make ends meet for themselves and their families. Dalit women have been highly terrorised by both sides of the conflict and are suffering from physical and psychological suppression and torture. On one hand women are being exploited by the security forces, and on the other hand the Maoists enter villages during the night and demand food from the villagers. The Maoists target those who refuse to be enlisted in the Maoist fighting squads, and those who give their support to the Maoists (often by force) are victimised by the state. Special laws are lacking to protect Dalit women from threats to their life.

Victims as a result of Inter-caste Marriage: In the rare cases where Dalit girls or women have married a non Dalit man, the couple are usually punished by the society in a merciless way, such as through social boycott, beatings, threats, torture and family pressure to divorce. If the non-Dalit husband gives in to such pressure, he suffers little, but the Dalit girl is left “nowhere”, i.e. left with no home, no future, rejected by society and tainted by perceptions of impurity. Government agencies do not help those who suffer from exercising their right to inter-caste marriage.

Labour and Occupation Rights: Dalit women receive lower wages in comparison to their male counterparts. Nearly 95% of Dalit women are rural; most are landless or marginal farmers. They often work as daily labour transplanting seedlings, threshing rice paddy or wheat or working in construction. Others are forced to do ‘traditional’ work as midwives, entertainers³⁴, or even scavengers³⁵. Women comprise just 8% of overall civil service staff and 4% of its officers.

Human Rights Violations and Dalit Women: Despite legal provisions protecting the rights of Dalit women, the law enforcement agencies often fail to treat victims accordingly. The law enforcement agencies often lack an understanding of the law and the social context of Dalit women. Likewise many Dalit women remain unaware of their rights. Only 20% of women in one survey were aware of the legal remedies available to them to combat discrimination. Even the right to vote is encroached on, as Dalit women are forced to vote as per the will of their husband and male guardians. In spite of the Nepalese government's obligations under the Beijing Platform for Action³⁶ and the observations of CERD³⁷, Dalit women's situation remains deplorable. Dalit women are being exploited by upper castes and in general are deprived of their fundamental human rights.

Conclusion and Recommendations

Within the Hindu social structure Dalits are the most poor, tortured and socially hated group. In this group the women are the ones who most suffer from society's actions. They face harassment and exploitation in their day-to-day living. Every single Dalit woman is a living history of pain, agony, sorrow and suffering. They are victims of not only gender discrimination but also of caste discrimination and economic disadvantage. They have been deprived of services, resources, opportunities and a voice.

³⁴ Women of the *Chamar, Dum, Badi, Damai, Gaine, and Hudke* castes are supposed to entertain the high caste people with various folk songs and dances. In return, they get nominal tips at the mercy of high caste people.

³⁵ Women of *Mehatar* and *Chyame* castes must, like their husbands and men, work as scavengers, performing the humiliating job of clearing the houses and public places, even to the extent of removing human faeces.

³⁶ Obligations regarding women and girl-children include: eradication of the persistent and increasing poverty burden; participation in public life and decision-making; equal access to education and health services; promotion of economic autonomy; encouragement of equity and power-sharing in the family.

³⁷ Obligations regarding women and girls include: implementing special measures for the elimination of discrimination against women and for their political representation in the governance process; ensuring individual security, education and employment; reporting on the situation of women, especially Badi women; consideration of women from discriminated communities in all programmes, projects and measures; eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education.

Society's deeply negative attitude towards Dalit women constrains the lives and opportunities of these women. But Dalit women are slowly becoming aware of the injustice that surrounds them. They are no longer willing to accept it meekly. The government must enact special punitive laws against atrocities based on discrimination and untouchability. All laws and acts that discriminate against Dalits should be rescinded immediately. The perpetrators of crimes against Dalit women must be punished immediately and effectively. Nepal's 'Education for All' programme must be implemented to ensure that Dalit girls and boys get equal access to primary education. Civil society organisations should monitor this programme carefully to ensure that scholarships for Dalits go to the most needy and that teachers who do not welcome and respect Dalit students are publicly reprimanded.

*"Every single
Dalit woman is a
living history of
pain, agony,*

Dalit women should be actively involved in planning, designing and implementing government and NGO programmes. They must be allowed to make the decisions and help shape the institutions that affect them. Governments should formulate and implement affirmative action policies for Dalit women and create a Dalit women's cell in all major ministries, councils and commissions. A specific campaign should be launched to promote inter-caste marriages. The Dalit women's movement and the movements for Dalits, human rights, women's rights and democracy should join hands as their struggle is a part of the struggle for the liberation of all oppressed people. The UN should recognise the rights of Dalits and intervene to improve their situation, paying special attention to Dalit women.

Combating Caste-Based Discrimination through Non-formal Adult Education³⁸

Ms. Laurie Ann Vasily
Researcher, Cornell University

According to Nepal's 2001 census statistics, only three of the fifteen Dalit groups enumerated have literacy rates above the UNESCO estimate of the national average: 48.6%. In fact, the two groups with the absolute lowest level of literacy in Nepal are Dalit caste groups: the Musahar with an 11.1% literacy rate and the Dom with a 13.8% literacy rate. These two Dalit caste groups are from the terai (plains region), where averages reveal that Dalit groups have literacy rates significantly lower than non-Dalits. All hill Dalit caste groups have lower literacy on average (47.16%) than hill ethnic groups (59.33%), and far lower average literacy than hill non-Dalit caste groups (70.08%). Thus both in the terai and in the hills, Dalits are comparatively lower than other groups³⁹. Examples from around the world show that raising literacy rates takes a long-term commitment to children's formal schooling, adult literacy education and non-formal adult education (NFE), as well as overall improvement of all educational systems.

Many of Nepal's poor believe that education is useless to them as they struggle to subsist on agricultural and day labour. However this cynicism must be countered. Education is essential for the poor in Nepal and it is essential for Nepalese Dalits. The challenge we must face here is to construct educational opportunities for the poor and for Dalits that are relevant and meaningful.

Understanding Literacy

³⁸ See Annex part F for a list of references, acknowledgements and graphs showing literacy rates.

³⁹ Figures giving more detailed information on hill and terai literacy rates are provided in Annex part F

A different but interrelated challenge to raising Dalit literacy rates is attitudinal and conceptual. In contemporary Nepal, as elsewhere, a 'great divide' has developed, based on the assumption that the literate and illiterate are fundamentally different. Illiterate people are viewed as lacking critical awareness and thought, or as lacking individual or collective agency. Nepalese Dalits who are not literate are able to think and to act. They are able to combat caste-based discrimination and are already very much aware of the oppressive structures within which they live. Exposure to relevant and meaningful Non-Formal Education (NFE) for adult illiterates heightens the chances that literacy more narrowly defined (technical tasks like reading and writing) will become more important to them.

The process of developing NFE has broader relevance, as it is a grassroots example of supporting the kind of participation in public life recommended in the CERD General Recommendation XXIX. NFE among Dalit communities needs to be more effectively harnessed to build bridges between international advocates and local, grassroots groups. The civil society pressure on the government to implement ICERD and other measures needs to come from these groups, and NFE provides a means for effective communication to this end.

Participatory Process for NFE Programme Development

Ms. Vasily is engaged in a participatory, adult NFE curriculum development process in partnership with the Sustainable Livelihood Forum, explicitly aimed at constructing adult educational materials that assist in combating caste-based discrimination. After curriculum development workshops, the community decided to construct NFE materials aimed at complementing the currently used government literacy books, written at a level such that neo-literates would be able to read them. The major focus of the book became consciousness raising and community organising rather than the instrumental tasks of literacy more narrowly defined.

Brainstorming led to discernment of topics⁴⁰, audience and a very local focus for the material. Topics were prioritised and local stories collected to highlight the various topics in a manner relevant to the respective communities. Also included were controversial questions, illustrative pictures, real-life problematic events, key words, poems, and songs. It was discovered that local adult Dalit learners were interested in having NFE materials that spoke to issues of Dalit oppression, local-national-international discourse on human rights, successes of local Dalit struggles and practical issues general to many poor communities (e.g. sanitation, income generation). In the process of constructing these chapters, local people's real life events were connected to broader social issues. The chapters provide innumerable starting points for the critical analysis, critical discussions, consciousness raising and community organising that are essential to the fight against caste-based discrimination.

The experience of this participatory curriculum development process shows that analysis of the 2001 Nepal census data from a Dalit perspective is necessary in order to better understand the educational, social, economic and political status of Dalit communities. Literacy statistics must be disaggregated by district in order to target literacy and NFE programmes to those whose literacy rates are the lowest. Literacy programmes could be tailored to better meet Dalit needs through research and documentation of current Dalit literacy usage. Dalit NGO field workers should be trained in participatory adult NFE curriculum development processes. The efforts of Dalit communities to use educational forums for community organising, critical discussion and community decision-making should be supported.

⁴⁰ The topics decided on were: Untouchability; the Dalit social movement and struggles; human rights; Dalit oppression; equality in occupations; women's concerns; children's rights and children's oppression; superstitions, faith-healers and witches; alcohol; sanitation; group income generation; out-migration; education and learning; local resources; HIV/AIDS.

The Government's Perspective on Mainstreaming Dalit Rights

Mr. Hem Sharma Pokharel

Secretary, Ministry for Local Development, Nepal

The caste system was established by Manu, based on an occupational classification system called Varnashram. King Jayasthiti Malla and the Shah kings gave legitimacy to the caste system in Nepal. The 1990 Constitution of the Kingdom of Nepal guarantees fundamental rights, without any discrimination on the grounds of caste, creed, religion, race or ideology. The Constitution requires the government to implement affirmative action and other measures to eliminate discrimination with a view to promoting and enhancing harmony and respect among the different caste groups. The relevant legal and statutory instruments are: the New Civil Code 1953, the Treaty Act, 1990, the Civil Liberties Act, 1954, the Legal Aid Act, 1998 and the Local Self-Governance Act, 1999

It is estimated that more than 38% of Nepalese people are living below the poverty line. However the Intensity of poverty is concentrated among the female-led families and Dalit people. The average Human Development Indices for Brahmins and Newars (high castes) is 135.9 and 140.7 respectively, compared with 73.6 for hill Dalits. The poverty level of Dalits is 65.68% in comparison to indigenous groups/nationalities, which range from 45% to 59%. Most of the Dalits in Nepal can certainly be classified as disadvantaged and ultra-poor.

Government strategies for Dalit Empowerment

The government's Eighth and Ninth Plans (1992-2002) both had specific policies, strategies and programmes meant for Dalits. But the outputs of these two plans were not very inspiring. The long term vision of the Tenth Plan is to raise the living standard of Dalits and neglected communities by empowering them on the basis of equality and mainstreaming them into the development efforts while enhancing their self respect. It focuses on socio-economic development, empowerment, modernising traditional skills and increasing the social prestige of Dalits through programmes (e.g. free secondary education), research, institutional arrangements, monitoring and financing.

"Most of the Dalits in Nepal can certainly be classified as disadvantaged and ultra-poor... legal provisions are sufficient to some

Governmental efforts for the upliftment of Dalits include the establishment of a Board (working on limited skills development, scholarships and income generation and awareness-raising programmes), the National Dalit Commission (currently stalled, but designed to monitor, coordinate and advise on efforts for Dalit equality), a 12-district, income generation/awareness raising pilot project for the upliftment of Dalits, plans for reservations for Dalits in universities and public service (also currently stalled) and poverty alleviation projects through the Ministry of Local Development.

Constitutional and Legal Provisions are sufficient to some extent but their implementation is very weak. The monitoring and evaluation mechanism of the Ministry of Local Development doesn't fully enable the compilation of Dalit-based information. Cooperation between national and international partners is under development to consolidate efforts towards this end.

Problems and Recommendations

In addition to inadequate databases on Dalit conditions, lack of a proper monitoring and evaluation mechanism, ineffective implementation and lack of resources for Dalit upliftment/development

projects, there is also a lack of collaboration between donor agencies, NGOs and the government. Few non-Dalits take initiatives to uplift Dalits, and the attitude towards Dalits remains highly unacceptable. The promotion of traditional and indigenous technology is a low priority and agricultural extension/development projects and programmes don't address Dalit issues properly. Laws designed to achieve Dalit equality are not being effectively implemented. Dalits experience very low levels of education, awareness and health care. Affirmative actions have not been adequately implemented and Dalit women remain 'triple discriminated'.

Dalit people's upliftment would be aided by: the implementation of plans, policies and legal/Constitutional provisions; institutionalisation of the National Dalit Commission; execution of a Dalit audit and a separate Dalit monitoring and evaluation mechanism; empowerment of Dalit women; and the promotion of traditional technology. Dalit empowerment programmes should be developed for: i) the promotion of employment; ii) entrepreneurship development, soft loans, market promotion and technology transfer; iii) social development and education; iv) leadership development; v) religious and cultural awareness; and vi) mainstreaming through appropriate policy and programme intervention.

Session IV-B: The Role of NGOs, Bilateral and Multilateral Agencies

Chair: Ms. Rikke Nöhrlind, Co-ordinator, International Dalit Solidarity Network

Mainstreaming Dalits into Development

Keith D. Leslie
Save the Children US

If left to the *laissez-faire* attitude of the government, private enterprise and civil society, the gross economic inequalities among castes and ethnic communities seem to end up a forgotten or lesser development goal. Even the MDGs set by the UN do not yet offer a means by which to disaggregate information to look more closely at the lowest 15-20% of society. Yet, in order to ensure that these poorest of the poor receive the full attention that they deserve, data on Dalit communities must be rigorously sought, analysed, debated and used for the design of targeted national initiatives.

Only when individuals, their families and the local communities in which they live begin to change their social values and moral attitudes will issues of exclusion or discrimination begin to wane. Hence it is essential that every Dalit parent appreciates the opportunities that they can provide for their children and assists their children to receive the best possible education the country can offer. Every Dalit child should have the confidence that they can study and achieve as well as any other caste in the country. The traditional ideas of Dalit children being afraid to challenge and surpass other caste children need to be eliminated. Such mental and emotional barriers within the Dalit community itself must be overcome and removed. Research shows that given an equal opportunity the natural intelligence and latent desire of these Dalit children can evidence truly impressive results.

It is in the education system that we can offer Dalit children the best chance of overcoming historical and demeaning discrimination and compete with those caste communities who have monopolised the country's education system. Given their weaker socio-economic status, especially in the villages, there are few Dalits who can afford a private school education. Therefore, to sincerely mainstream Dalits in the country's development, there is no greater or more urgent task than to improve the poor quality of the country's rural education system for everyone. Then, given the historical patterns of discrimination, additional intensive efforts will be needed within the public school system, especially in outreach to Dalit children and families.

This systemic approach to education will require: ensuring equal access to early childhood development before primary school, so that Dalit children can build their confidence and leadership from an early age; eliminating hidden costs and fees for primary school; recruiting qualified and motivated local Dalit teachers; offering parenting education so parents appreciate the value of school; adding free tuition and coaching classes for Dalit students; using community process tools, where

"We will be able to judge the seriousness of the government's long-term commitment to social inclusion by the quality of the nation's public school system, as well as

community members publicly participate in assessing local government institutions; and redesigning schools so that they are child-friendly and community-supported. Unless these basic, minimum requirements are fulfilled, it is unlikely that Nepal will see any serious change in the overall socio-economic status of Dalit communities in the coming decades. We will be able to judge the seriousness of the government's long-term commitment to social inclusion by the quality of the nation's public school system, as well as the future pass rates of Dalit students.

Where possible, development partners should consider offering higher scholarships to the brightest and most deserving of Dalit students. Unless they have the opportunity to study at the Bachelors or Masters level, they will remain limited in the roles and professions they can take on in Nepali society.

In addition to strengthening the basic service delivery of an effective and responsible government, there is a need for greater presence of Dalits in civil society. Many of the newer Dalit organisations require funding, skills, advice and training in crucial organisational management and development strategies. Nepal has thousands of young NGOs, but only a few have the internal capability to manage large projects or ensure reliable financial controls essential for their organisational growth. If donors are committed to helping Dalits help themselves, they need to diversify funding to a greater number of Dalit NGOs (especially at the local and district levels) and commit to working with them to strengthen their organisational capacity, leadership development, personnel policies, financial checks and balances, staff development, fundraising strategies and local board development.

Similarly, it is the responsibility of the development partners of the Nepalese people to look closely at their internal policies and procedures regarding Dalits. Ironically, after 40 years of public commitment to working with the poorest of the poor in Nepal, the recent report "Is there room enough?" showed that very few international development agencies had seriously tried to bring those Dalit communities into their own organisations. Although Dalits represent 15% of the nation's population, some of the largest development agencies in the country still have not hired a single Dalit. Most development agencies haven't written an equal opportunity or diversity policy which would encourage their hiring managers to consider creative ways to bring Dalits into their organisations. Similarly, until the government begins to address its own discriminatory hiring and promotion policies with regard to Dalits, it will be difficult to make major improvements nationally.

It is crucial to note that there is a diversity within the Dalit community and that the Terai Dalits, especially, the Dom, Chamar, Musahar and Paswan Dalits are even less represented than the Hill Dalits. Special attention should be concentrated on these communities, and organisations that represent them. Similarly, greater importance should be given to women representatives and leaders from these various Dalit castes.

Mr. Leslie claims that a reservations policy would not lead to improved understanding between communities, and believes that a diversity policy (where organisations commit themselves to ensuring

equal opportunity and diversity of staff) is a more participatory and positive approach to the very real problem of discrimination in Nepal⁴¹ that would be supported by all castes and ethnic communities. Clearly, urgent change is needed in order to bring a better semblance of equality and equity to a society that has been built upon traditional forms of discrimination and exclusivity. If the leaders of the country, in the government, the public administration, the academic institutions and civic organisations do not accept responsibility for the lack of Dalits in their institutions, then some time-bound, merit-based remedies may be needed.

Addressing Caste-based Exclusion in Development Programming

Jasmine Rajbhandary

Social Development Advisor, UK Department For International Development (DfID), Nepal

DfID Nepal's vision for assisting women and excluded caste and ethnic groups to achieve more equitable access to resources and opportunities is to work at three 'sites of change': policies and institutions; individual and group voice and influence; and livelihoods, assets and capabilities. This work aims to achieve more informed and responsive government policy; greater civic capacity to influence government and public opinion; and improved access to DfID programmes.

Dalits make up a at least 12% (more than 3 million) of Nepal's population. They are overwhelmingly poor and face major disparities in health and educational status. This is particularly true for Dalit women. Nepal is unlikely to meet the MDGs unless more is done to improve their access to services and economic opportunity. There is strong evidence that caste-based exclusion plays a direct role in restricting access to markets, resources and services.

Consultation with Dalit communities repeatedly shows that social discrimination and humiliation are a part of daily life for many Dalits, particularly those in rural areas. A human rights approach entails addressing these rights violations, and the exclusion from political, social and economic life that result.

Caste discrimination and social exclusion are among the central causes of both poverty and conflict in Nepal's highly stratified and feudalistic social system, where elite groups have traditionally captured access to education, jobs and opportunities. Resolving the conflict is a precondition for poverty reduction in Nepal, and addressing exclusion is a key conflict reduction priority.

DfID Nepal's vision for working with Dalits is to help them achieve more equitable access to resources and opportunities. The expected outcomes of this work are: that government policy will be more informed and responsive to Dalits (through better data collection, assessment and analysis); that Dalits will be better able to hold the government to account and influence both government and public opinion (as a result of institutional development of national Dalit NGOs); and better access to DfID programmes.

Caste is complex and sensitive at both policy and community level in Nepal. Interventions at community level, particularly if targeted exclusively at the poorest, risk undermining informal safety

"Caste discrimination and social exclusion are among the central causes of both poverty and conflict in Nepal's highly stratified and feudalistic social system, where elite groups have traditionally captured

⁴¹ The "What's the Difference?" report showed that inclusive child development programmes –not necessarily targeted at Dalits – were the most effective for all children, with Dalits gaining a disproportionate benefit

nets without providing alternative and/or secure entitlements. Who exactly is really 'excluded' and who needs to be 'targeted' are often difficult to define, particularly because poverty overlaps with gender and caste or ethnic identities. Measuring and gaining evidence or proof that programmes are actually reaching whom they are supposed to is also difficult.

In the case of Nepal the particular context of political instability and conflict of course add their own challenge to all development programmes. The impact of DfID interventions is likely to be modest in comparison to broader social change processes: for example, resulting from migration, or conflict. This is not a reason to avoid caste or equity issues in DfID's programmes, but rather a reason to further efforts to this end.

It is clear that donor programmes are unlikely to drive social transformation. DfID would like to stress the crucial need to work in partnership with many groups of stakeholders (international partners, the government, and of course civil society representatives) at several sites of change to address caste-based and other forms of social exclusion. The international community cannot afford to be silent on caste-based exclusion, but should engage in a way that is practical, positive, and strengthens the voice of Nepalese who are themselves promoting change.

Poverty and Caste-based Social Exclusion in Nepal⁴²

Lynn Bennett

Lead Social Scientist, World Bank

The World Bank (WB) has been extremely reticent about taking corporate views on social issues such as caste-based discrimination. The WB has begun to recognise that poverty is in fact embedded in economic, political and cultural institutions and structures. Caste is one such institution. Yet WB economists working on India or Nepal remain reticent to mention caste directly in their reports.

The WB views the Dalit situation in Nepal within the larger framework of social exclusion, with caste, ethnic and gender-based social exclusion seen as one of the fundamental causes of continuing poverty in Nepal. It is also a factor in the on-going Maoist insurgency – though the conflict like poverty itself is complex and has many other causes as well.

In understanding poverty and its persistence in Nepal it is essential to understand the caste system and its logic of social and economic stratification based on ritual pollution and purity. This ideology of purity and pollution has served to exclude Dalits, women and non-caste ethnic groups or Janajatis. All three groups find themselves less than full citizens of Nepal in terms of access to economic opportunity, social services and voice. These three groups comprise over half Nepal's population, so their issues must be addressed by a state that defines itself as a representative democracy.

One of the core objectives of the WB Country Assistance Strategy is supporting the government's commitment to address social exclusion. As well as efforts to include women, the WB is now looking carefully at the barriers to Dalit as well as Janajati participation in the projects it supports (such as in rural water supply, sanitation, health and education). Access for Dalit populations is now a core criteria by which WB will judge the success of the Poverty Alleviation Fund.

There is an important difference between empowerment and social inclusion and both are essential for social transformation. Upliftment of discriminated communities comes through 'livelihood'

⁴² A list of references and the initial findings of a comprehensive study of Dalit empowerment are available in Annex part G

empowerment (access to resources), 'mobilisation' empowerment (social awareness) and social inclusion. This implies changes at the system level in the 'rules of the game' (which in Nepal's case include social exclusion and discrimination on the basis of gender, caste and ethnicity) that determine the distribution of assets, capabilities and voice.

Self-assertion of Dalits can lead to socio-economic boycott or even death (e.g. the killings of Dalits by private upper-caste armies in Bihar, India). For excluded castes the community may be the most difficult site to transform. This is the domain where caste behaviours are most strictly enforced. In

"Although it has been legally abolished for decades, our qualitative fieldwork showed that in the everyday lives of Nepali people caste is

Nepal and India, local elites are likely to be from the upper castes. In local government, the representation of women, indigenous peoples and Dalits in decision-making bodies has been extremely low.

As groups, women, Janajatis and Dalits all have lower poverty and human development outcomes than the average Nepali. However, emerging WB data makes it clear that in addition, the Dalits are by far the worst off among the three excluded groups. Indeed, the only group that is manifestly worse off than Dalits as a whole are Dalit women who suffer two layers of exclusion simultaneously. For all the economic indicators the Dalits ranked

much lower than the Brahman/Chhetri/Newari (BCN) upper-caste group. For example, their average land holdings were less than half the average BCN household. In an additional measure of self-ranked economic status, 61% of Dalits ranked themselves as poor compared to only 15% of the BCN group. Dalits also have significantly lower education and literacy rates than any other group. On average members of the BCN group had completed more than twice as many years of schooling as Dalits.

To help capture the non-income dimension of poverty, WB developed indicators for empowerment and social inclusion and combined them in a Composite Empowerment and Inclusion (CEI) Index⁴³. WB analysis shows that in a broad sense, the ranking of caste/ethnic groups that was set out in the National Code of 1854 is still reflected in the CEI levels of rural Nepalese. The dominant BCN group scores higher than Janajatis who in turn score higher than Dalits. BCN CEI levels are 21% higher than those for Dalits and 10% higher than those for Janajatis. This pattern holds true not only for the CEI index as a whole, but Dalits were also on the bottom for each individual indicator⁴⁴.

In each of the four communities covered by the WB in-depth studies, caste continues to be the most important factor determining economic status, community involvement and education level. Although it has been legally abolished for decades, WB's qualitative fieldwork showed that in the everyday lives of Nepali people caste is a reality that enters into every aspect of being. To overcome the kind of structural inequalities that the caste system has created is a task that demands systemic change over a long period. Even in communities where the most progress has been made in the empowerment and inclusion of Dalits and Janajatis, there is still a noticeable difference between the socio-economic levels of different caste/ethnic groups.

However, the good news is that the influence of caste and ethnicity can theoretically be reduced by development interventions to deliver livelihood empowerment through improved access to education, income earning and asset accumulation opportunities to excluded groups and by supporting

⁴³ The indicators used for the CEI index include those for empowerment (knowledge/awareness of rights and procedures; participation in local development services; confidence in accessing services/exercising rights; social networks; efforts to influence) as well as those for social inclusion (self-perceived status of own caste/ethnic group; restricted access and public intimidation; effectiveness of local political influence; effectiveness in getting service and opportunities).

⁴⁴ For more details of the initial findings of this study, see Annex part G

mobilisation empowerment by involving them in groups. WB analysis showed that a Dalit who has three years of schooling and is a member of a group would have almost the same level of empowerment and inclusion as an uneducated BCN who is not a member of any group.

Mainstreaming Dalits in Development Programming: Danida's Experience in Nepal⁴⁵

Dr. Jit Gurung

Advisor, Danida Human Rights & Good Governance Advisory Unit, Nepal

Dalits have for generations been treated as untouchable and thereby excluded from the social, cultural, economic and political mainstream. They have been forced to live in ghettoised hamlets, survive on marginal pieces of land, and serve the 'high caste' people with their traditionally inherited menial skills. They have been denied access to power, resources, and education.

There are also many examples of discrimination among Dalit sub-groups and some even practice untouchability toward others. Hill Dalit women are double victims of discrimination (on the basis of gender and caste), while Terai Dalit women are said to be suffering from triple discrimination: gender, caste-based and regional discrimination. Worse still, while women in general perform the bulk of domestic activities and remain deprived of power in the household, it seems that alcohol-related domestic violence against women is the highest among Dalit households. Participation in government and non-government development activities is low among Dalit women. Dalit women also fare the worst in terms of education, health, income generation and awareness.

"Dalits have been forced to live in ghettoised hamlets, survive on marginal pieces of land, and serve the 'high caste' people with their traditionally inherited menial skills. They have

Learning experience

The first phase of Danida's Dalit support⁴⁶ provided the following experiences that are incorporated in the second phase support. All the problems identified below have contributed to the poor socio-economic, cultural and political participation of Dalits, which is a serious threat to democratic, peaceful and just development.

Traditional ideologies that Dalits are 'inferior' by birth and that they are 'impure' and must be excluded from social intercourse to avoid ritual defilement are pervasive even today. These ideologies have been deeply entrenched into the minds of the people. Dalits lack **access to means of production and technology**. As an agrarian society, land is still the most important means of production and is also associated with social status in Nepal's rural areas. Skewed distribution of land is a cause of social conflict. Dalits as a group own the least amount of land among all the major caste/ethnic groups in Nepal and also have less access to both capital and technology for farming and other forms of income generation for sustained livelihoods.

Dalits still lack **awareness** regarding many dimensions of well being: their rights as elaborated in local and international law; the state and civic protection available to them; basic health and hygiene principles for the prevention of common diseases; their options for improving their livelihood. The non-

⁴⁵ A list of references is available in Annex part H

⁴⁶ Starting in August 2000, the first phase of Danida's Dalit support had the development objective: "Public awareness of human rights and equality of opportunity for Dalit women and men".

Dalit population not only lacks awareness of Dalit rights, but also tends to exhibit low awareness of the frequent violation of Dalit human rights because centuries of degrading behaviour has led to the perception that Dalit maltreatment is normal. Dalit civil society organisations remain weak and lack **capacity** to effectively plan and implement activities. They need institutional and capacity-building support. **Gender-based discrimination** also forms one of the major problem clusters.

Strategies

The second phase⁴⁷ builds on the first phase while increasing the geographic reach and diversity of means of the programmes. 'Capacity development'⁴⁸ of the three partner organisations (in order to implement their own programmes as well as promote district-based autonomous Dalit organisations) remains one of the strategic thrusts of the second phase. Once the organisations are strengthened they are expected to be able to more effectively direct their rights-related advocacy, awareness, educational, and legal activities to contribute to the dilution/deconstruction of traditional caste-based ideologies. Gender is considered a crosscutting issue in all the partner organisations, meaning that in addition to mainstreaming gender in support activities, partner organisations work on gender issues.

"The non-Dalit population tends to exhibit low awareness of the frequent violation of Dalit human rights because centuries of degrading behaviour has led to

The second phase support programme has been designed also to support other Dalit and pro-Dalit NGOs as well as relevant government agencies for specific short-term work in Dalit-related issues. Priority is given to projects that: promote empowerment and organising of Dalit community groups; increase membership of Dalit organisations; improve alliances between Dalit organisations and pro Dalit organisations; and include Dalits in mainstream and government service programmes.

A 2002 study suggested that, while Dalits have been supported in terms of 'pluralism' or 'disadvantage', there is room for devising more effective, deliberate mechanisms for the inclusion of Dalits. Thus second phase will aim to coordinate with other

Danida supported programmes/projects to enhance Dalit participation in education, natural resource management, energy programmes, decentralisation, and livelihood enhancing activities.

In addition to its focus on building up national Dalit NGOs in order to develop democratic, grassroots people's organisations, Danida provides support to the National Human Rights Commission, work on land rights⁴⁹ and studies on police-public interaction. Danida is also taking a lead role in efforts to better coordinate development work between agencies with the involvement of Dalits.

It is generally observed that the activities supported by Danida have noticeably contributed to sensitising relevant government agencies, political parties, donor agencies and individuals about the socio-economic, cultural and political situation of Dalits. These activities have also contributed to the realisation that the rights of Dalits should be respected and that they should have access to opportunities on a par with other sections of Nepalese society. There is increased government, civil society and donor involvement in Dalit support activities and stronger, more independent and effective

⁴⁷ The second phase of Danida's Dalit support began in 2003 with the development goal: "The human rights of Dalit men and women in Nepal are respected and they have equal opportunities to participate in the political, social and economic life".

⁴⁸ 'Capacity development' consists of two elements: 'organisational development' – transforming the organisations into institutions through financial and technical support – and 'capacity building' of the personnel through training, exposure visits, workshops, seminars, internships and apprenticeships.

⁴⁹ The distribution of land is highly skewed in Nepal and land ownership broadly corresponds to caste status. Although tillers are legally entitled to own 50% of the land they are cultivating, an estimated 266,000 households have not been able to take benefit of this legal provision. Furthermore, one fourth of agricultural workers – mostly Dalit – are landless.

Dalit NGOs are emerging. Many organisations are engaged in awareness raising on legal and human rights and are providing assistance to those in need. Although there is a need to do more, these developments are contributing to the enhancement of Dalit inclusion.

European Union's Approach to Supporting Dalit Rights

Mr. Guy Banim

European Union Mission, Nepal

The European Union (EU) places a strong emphasis on respect for and promotion of the Universal Declaration of Human Rights and its complementary Covenants, which, along with other international and regional instruments, enshrine common values regarding fundamental freedoms and democratic principles, which are universal, indivisible and interdependent.

The protection of persons belonging to minorities is an inherent part of EU policy on human rights and is entrenched in European law via the EU Charter on Fundamental Rights. The European Commission's actions in the field of external relations are guided by compliance with the rights and principles contained in this Charter.

Specific assistance programmes, notably the European Initiative for Democracy and Human Rights (EIDHR), aim to support human rights NGOs. EIDHR includes specific references to minorities issues and finances a range of projects and initiatives aimed at increasing the protection of minorities and capacity building of state officials, NGOs and minority communities. In Nepal the EIDHR is providing funding in order to combat discrimination against minorities, in particular Dalits. Examples of such projects include: combating xenophobia and discrimination against Dalits; advocacy for basic human rights of Dalits; backward community empowerment; combating caste-based discrimination through tele-serials; and a Dalit empowerment project.

"The European Commission has the potential to mainstream Dalit rights issues through political dialogue [and] assessing the impact of all assistance (trade, development, economic co-

The European Commission has the potential to mainstream Dalit rights issues through political dialogue with the Government of Nepal during which all issues of concern can be raised. The Commission's work in assessing the impact of all assistance (trade, development, economic co-operation) in terms of its impact on minority communities and ensuring good employment practices can also contribute to mainstreaming Dalit rights.

Mainstreaming is a rather controversial topic within most donor agencies as many complaints are heard of 'mainstreaming fatigue' and 'policy evaporation' when headquarters attempt to impose oversimplistic guidelines on field staff. It is therefore important to develop an approach directly relevant and meaningful to the situation in Nepal.

The EU will continue to push for implementation of existing national legislation to combat caste discrimination, while remaining a strong supporter of international legal frameworks aimed at tackling discrimination and promoting the protection of human rights. Rhetoric is not enough: it must be followed by action. The EU is a strong supporter of legal frameworks with 'teeth' that are more effective. Regional integration of networks is also important.

Employment practices of the EU have not yet been surveyed, but the EU is aware that they may not fare well if they were assessed, as they do not yet address these issues. There is an openness to making such an assessment.

Role of NGOs in Mainstreaming Dalit Rights

Mr. Hira Vishwakarma

Team Leader, Dalit Empowerment and Inclusion Project

The Dalit movement in Nepal is more than five decades old. However, compared to the atrocities and exploitation Dalits have undergone, their struggle and their movement has not been sufficiently strong. As a result they have become like a beggar in front of the state. Following the restoration of multi party democracy in 1990 many social movements emerged to assert the rights of Dalits in public places. The Dalit Mukti Samaj led such movements until 1996 but could not gain momentum by spreading throughout the country.

Political parties and sister organisations

Most Nepalese political parties have their own Dalit sister organisations⁵⁰. The primary job of these sister organisations is to help the parties gain power through the ballot or the bullet. There is nothing wrong with their motive: since they are doing politics in the name of Dalits it is their duty to ensure Dalit rights. Unfortunately they have not committed energy to the Dalit cause. Atrocities and exploitation against Dalits have occurred where these sister organisations could have played a significant role to provide justice but they did nothing – not even issue a press release. The NGOs are doing far better than these sister organisations. An exception is the Nepal Dalit Sangh (sister organisation of Nepali Congress), which has played a significant role in carrying out a hunger strike, drafting a bill and formulating National Planning Commission strategies for Dalit upliftment. The Dalit movement is a political as well as social movement and without the involvement of these sister organisations it is almost impossible to create the desired change in the policies and programmes of the government. Hence, a clear strategic linkage is required between social and political movements.

The sister organisations of the political parties have contributed in a small way to raising the awareness level. If they cannot promote Dalits politically, in the long run Dalits can follow the inspiration of India's Bahujan Samaj Party. The larger Dalit movement of Nepal has not yet seriously considered the need for a separate Dalit political party.

Dalit NGOs and movements

In the beginning the role of NGOs was considered to be to run literacy classes, income generating activities, small construction works and so on. At the moment there are nearly 200 Dalit NGOs all over the country which have taken or sought affiliation with DNF. Among those Dalit NGOs that are active, activities range from service provision to advocacy and lobbying.

Work with marginalized communities can be analysed through two perspectives: improving conditions (providing sustainable access to basic needs) or improving status (active representation in decisions affecting the community). Until the stomach of a hungry person is filled, that person cannot think of his/her rights. Not much thinking has developed among NGOs to analyse both perspectives of

⁵⁰ Both Nepali Congress Girija lobby and Nepali Congress Democratic party have Dalit sister organisations called Nepal Dalit Sangh. Other parties with Dalit sister organisations include: Nepal Communist Party (United Marxist-Leninist) – Mukti Samaj; Nepal Communist Party (Masal) – Jatiya Samata Samaj; Rastriya Prajatantra Party – Prajatantrik Janautthan Sangathan; Sadbhawana Party – Dalit Utthan Manch; and Nepal Communist Party (Maoist) – Dalit Mukti Morcha.

condition and status, as most of the NGOs in Nepal are working as efficient contractors for donors and international NGOs in order to reach the donors' target beneficiaries. Donors are promoting this culture. Neither the majority of donors nor their NGO contractors are willing to actively raise the issue that fulfilling the people's needs is the duty of the state. The role of NGOs should be as a watchdog to ensure people's rights, and the role of donors is to complement or supplement the efforts of the government. NGOs have forgotten their role and are taking on the task of government.

It is much more difficult to improve status than to improve conditions. Conditions can be improved in the affected communities themselves, whereas improving status implicates the wider society. The root cause of hindering their access to control and decision-making has to be deduced and movements created accordingly. The role of NGOs should be like dropping a stone in an undisturbed pond so that its ripples can be seen at the shore.

Compared to the magnitude of the problems that Dalits of Nepal have, the efforts put forth by Dalit as well as non-Dalit NGOs are inadequate. Only if the entire state machinery is involved can some relief be achieved, but their efforts are meagre and NGOs have not been able to pressure them to do otherwise. In other words NGOs are letting the state sleep without being responsible and accountable to its people. Nepalese NGOs need to play their proper role and Dalit movements need to be built to challenge Nepal's socio-economic structure.

This situation has contributed to a confusion between professionalism and activism. Professionalism is required to deal with donors and international communities; for the movements, activism is imperative. Likewise, injecting resources only cannot create mass movements: a feeling is needed. When NGOs try to create a movement they are charged for cultivating dollars in the name of poor. Sometimes

"The voluntarism, which should be the heart of any social movement, is dying out. This should be

people expect some sort of financial incentive even to participate in a mass demonstration. Though donors provide financial resources necessary for such activities, it is not possible to provide financial incentives to thousands of participating people. The voluntarism, which should be the heart of any social movement, is dying out. This should be the matter of concern.

The active Dalit NGOs have been able to raise awareness among Dalit people (through the electronic and print media), establish savings and credit programmes in selected districts, build

international linkages and lobby at the same time. Likewise they are responding to violations against Dalits as they happen. But they have not been able to create a large social movement based on a particular issue.

A non-Dalit NGO called Saraswati Community Development Forum (SCDF) working in Saptari district of eastern Nepal was able to use adult education to create a social movement against the exploitation of Terai Dalits living there. The Chamar caste of that region realised that disposing of carcasses is the root cause of their dehumanisation and started to boycott it, which subsequently led to an economic blockade against their communities in several places. A large movement emerged which gained partial success. The ripple effect of that movement is still continuing. That movement has added another movement for land rights as most of the terai Dalits have been deprived of land despite cultivating it for generations. SCDF has formed Dalit people's organisations and now Dalits themselves are leading the movement. This has come about through the impact of raising social awareness and self-esteem.

Conclusion

Dalit NGOs are providing important leadership to the movement for reform of the caste system. However, due to support from international agencies, voluntarism is fizzling out. Unless Nepal's major

political parties take up the Dalit issue seriously, the desired change in the government policies and programmes cannot be achieved. There is a need to strengthen Dalit NGO and party sister organisations' capacity for the creation of Dalit social movements.

Closing Session

The International Consultation on Caste-based Discrimination closed on the 2nd December 2004. The closing was chaired by **Mr. DB Sagar Bishwakarma** who, in his address, outlined the format of the Consultation, critiqued the weakness and lack of Dalit focus of the National Human Rights Commission, and urged the introduction of reservations for Dalits. The witnesses and victims who gave their testimonies were honoured and awarded flowers and scarves for their bravery. Reflecting on their testimonies and closing the conference, Mr. Sagar said, “These kinds of atrocities will be registered as black events in the history of human rights. These five cases are only an example that represents the atrocities faced by 260 million people from various corners of the world. We condemn these inhuman practices which are based on caste. We appeal to the Government of Nepal as well as UN agencies and the international community to protect their lives.”

As part of the panel, **Mr. Motilal Nepali** of DNF described Dalits as “international freedom fighters.” He explained that the feudal system still exists in Nepal, with the high castes at the top and Dalits at the bottom. He demanded, “Power should be divided among the Dalits and high caste landlords should have the power removed from them... We need to unite from all over the world to end untouchability and struggle for Dalit and human justice.”

The Royal Danish Embassy in Nepal was represented by **Mr. Stephan Schonemann**, who said, “The practice of untouchability and other similar realities have led to the exclusion of Dalits from all areas of life. Nepal knows this problem, which has now resulted even in armed conflict. We believe we have contributed to the sensitisation of government agencies in Nepal to Dalit problems. We hope to work towards equal and human rights for Dalits in all spheres. It may take a long time, but there is no other route to peace and stability.”

A banner petition with the signatures of thousands of people from all over the world created at the World Social Forum in Mumbai and calling for Dalit rights was accepted by the government representative **Mr. Yub Raj Gyanwali**, Nepal’s Minister for Local Development. The Minister added, “Many laws have been formulated or reformed since 1990 towards overcoming the problems faced by Dalits. Laws against untouchability practices have made violations of Dalit rights punishable. But these good laws are not enough. If they are not implemented, they are of no use to the Dalit people. We need to monitor and evaluate whether the laws have been implemented, and we should focus on implementing them properly. This Consultation no doubt has very valuable suggestions for this. Nepal expresses a commitment to honour the many UN Conventions we have signed.” Mr. Gyanwali also urged all present to “focus on the economic rights to ensure the real freedom and equality of Dalits, and eradicate economic disparity. The right to speak is not enough – the right to food is even more important. We should work collectively for all the rights of Dalits.”

The Minister continued, “In our country there is violence. The whole country is in the grip of violence. Dalits are the most vulnerable to this – whether they have been killed as a Maoist, as a security force member or as a political leader. This shows that they are committed to their rights and are quite aware that they are deprived of their rights... The present government is trying to find a peaceful solution to the conflict.”

Ms. Smita Narula of New York University’s Center for Human Rights and Global Justice, officially launched the *Kathmandu Dalit Declaration*, which had been reformulated and approved by the Consultation. The Declaration provides concrete recommendations to help eliminate caste discrimination addressed to governments in caste-affected countries, national human rights commissions, the UN human rights bodies and specialised agencies including the ILO, bilateral aid agencies, the European Union, donor countries, the World Bank and Asian Development Bank, the

private sector including transnational corporations, and NGOs. Ms. Narula saw the formulation of this Declaration as a landmark in the international struggle for Dalit justice.

Mr. David Haslam of the UK Dalit Solidarity Network noted that “this is the largest solidarity gathering for Dalits held so far. The international Dalit movement is a young movement, but it is growing steadily. There is growing recognition of caste discrimination in Nepal. The IDSN will act further inside Nepal and in other countries where caste discrimination exists to struggle for Dalit rights.”

IDSN Coordinator **Ms. Rikke Nöhrind** expressed her gratitude to all participants in the Consultation, including the witnesses, Dalit activists from around the world, trade unionists, UN experts and agencies, aid agencies, governmental representatives and NGOs. She also thanked the co-organisers, the Dalit NGO Federation of Nepal, the Consultation Advisory Committee and in particular Mr. Pratik Pande.

Ms. Nöhrind expressed regret that more Dalit activists could not be included in the Conference because of limited space and funds, but noted that the Consultation would have been impossible altogether without the generous financial contributions of DfID-UK and DfID-Nepal and from Danida, DanChurchAid, PLAN - International; MS - the Danish Association for International Cooperation, the Lutheran World Federation, CARE-Nepal and Action Aid-Nepal.

Ms. Nöhrind summarised the achievements of the Consultation: “We have expanded our knowledge especially on the situation of Dalits in Nepal, and made new contacts. Measures and strategies to work towards the elimination of caste-based discrimination have been put on the table. Inspiration and new ideas have flowed on how to enhance the impact of what’s already being done and what we will set out to do in the future. We have witnessed new and important commitments and will eagerly follow the responses to the recommendations presented at this Consultation - especially those of governments and the international community.”

Ms. Nöhrind also referred to the context of Nepal’s current situation: “The consultation has been held in a country devastated by a human rights crisis and a prolonged conflict situation which have prompted calls also in the course of our deliberations here for the involvement of the United Nations in mediation and a peace process. IDSN supports this call.” In concluding, she added, “Our thoughts, admiration and appreciation are with those who are in the forefront – the Dalits – who suffer, fight and give their lives in search for justice, equality and a life in dignity. We want a world without ritual purification. We want equality for Dalits.”

Annex

A. Annex to 'Global Overview of Caste-Based Discrimination'

Mr. Paul Divakar, NCDHR

Country Situations – Descent-based discrimination

Bangladesh

Name of Community: Methor

Population: estimated 1.5 million

Traditional Occupation: Sweepers, cleaners of private and public toilets, drains and other dirty places

Forms of discrimination and violation of rights:

- Socio-religious sanctions on inter-marriages
- Notions of purity and pollution, low/ inferior status of Dalits
- Separate cups for tea given at tea stalls
- Discrimination in renting houses
- Prohibited from entering hotels and restaurants to obtain food
- Restrictions on interaction with other communities
- Discrimination in access to public places, e.g. roads, schools, etc.
- Violence against women and extreme forms of humiliation
- Discrimination in workplaces, e.g. separate water, dining arrangements
- Restricted access to land

Constitutional Safeguards: None

Burkina Faso

Name of the Community: Bellah

Traditional occupations: Slaves to other caste 'owners', usually as unpaid manual labourers, producing goods such as salt that are then traded by their owners.

Forms of discrimination and violation of rights:

Treated as slaves to other castes

Constitutional Safeguards: *Art. 1(3) Burkina Faso Constitution* prohibits discrimination on the basis of caste. Discrimination on the basis of caste in marriages is also prohibited.

Ethiopia

Name of the Community: not researched

Traditional Occupation: tanners, potters, blacksmiths, weavers

Forms of discrimination and violation of rights:

- Prohibition on inter-marriages
- Segregated habitations
- Notion of pollution attached to these castes, to regulate social distance to non-castes
- Denial of access to land ownership
- Rarely possess political or judicial rights

- Segregated seating at wedding, separate burial grounds

Constitutional Safeguards: None

Guinea Conakry

Name of the Community: not available

Population: unknown

Traditional Occupation: praise-singers, potters, sculptors, weavers and descendants of former war prisoners

Forms of discrimination and violation of rights:

- Prohibition on inter-marriages
 - Denial of access to public land
 - Social, cultural and religious exclusion
 - Unable to assume political responsibilities
- Constitutional Safeguards: Article 8 of the Guinean constitution states: 'Nobody shall be discriminated against or privileged because of his or her birth, ...'; ratified ICERD.

India

Name of the Community: Dalit or Scheduled Castes (numerous sub-castes exist), formerly known as Untouchables.

Population: 260 million (NCDHR's 2004 estimate; official figures claim only 160 million)

Traditional occupation: Leather workers, cobblers, skimmers of dead cows; manual scavengers (safai karamcharis); sweepers; cremation workers; toddy tappers; drummers to bring news of the dead; removers of dead animal carcasses; landless agricultural labourers

Forms of discrimination and violation of rights:

- Segregation in housing
- Prohibition on inter-dining and inter-marriage
- Separate tumblers for Dalits in tea stalls and discriminatory seating arrangements and separate utensils in restaurants
- Segregation in seating and food arrangements in village functions and festivals
- Widespread impunity for non-Dalits who commit crimes or atrocities against Dalits
- Devadasi system of ritualised temple prostitution of Dalit women
- Prohibition on entry into dominant castes' houses
- Violence against Dalit women
- Discrimination in access to health services

- Discrimination against and segregation of Dalit children in schools, e.g. sitting arrangements, access to water taps
- Restricted access to land
- Discrimination in access to public places, e.g. post offices, public health centres, roads, public transport, government schools, public bathing ponds, etc.

Constitutional Safeguards:

- Constitution Provisions (Articles 14 to 25, 46, 330, 332, 335, 338)
- Protection of Civil Rights Act, 1955
- Child Labour (Prohibition and regulation) Act 1986
- Minimum Wages Act 1948
- Protection of Human Rights Act 1993
- National Commission for Women Act 1990
- Scheduled Castes and Tribes (Prevention of Atrocities) Act 1989 and Rules 1995

Japan

Name of the Community: Buraku

Population: Approximately 3 million

Traditional occupation: The *eta* were assigned jobs such as disposing of dead cattle, leather production, being security guards and sweeping. The *hinin* were assigned jobs such as security guards, executioners and performers

Forms of discrimination and violation of rights:

- Physical segregation in housing
- Discrimination in employment, particularly by private companies drawing up of lists of Burakumin to ensure their exclusion.
- Discrimination in acquisition of land
- Discrimination in marriage
- Derogatory terms in speech and writing against Burakumin

Constitutional Safeguards:

- *Art. 14 Constitution of Japan* prohibits discrimination on the basis of race, creed, sex, social status or family origin.
- *Law for the Special Measures for Promotion of Human Rights Protection 1996* establishes a committee to analyse extent of Buraku discrimination, and make recommendations for human rights education and relief measures to Buraku victims.
- The Law on the Promotion of Human Rights Education and Human Rights Awareness-Raising 2000 establishes a basic law for Buraku liberation, but discriminatory practices still exist.

Kenya

Name of the Community: Watta (also the Asian (Hindu) community of Kenya)

Population: 2,000-3,000 Wattas

Traditional occupation: hunter-gatherers

Forms of discrimination and violation of rights:

- Social segregation
- Prohibition on inter-marriage

- Expected to stand when in the presence of a so-called upper caste person
 - Segregation of Watta children in schools
 - Discrimination in access employment
- Constitutional Safeguards: The *Constitution of Kenya* prohibits discrimination of any kind. However, without any enabling legislation, this right remains non-justiciable

Mauritania

Name of the Community: Haratin

Population: 90,000-300,000

Occupations: Slaves to the Bidan

Forms of discrimination and violation of rights:

- Denied education
- Suffer extreme physical violence
- Denied employment other than in menial occupations
- Many are not allowed to marry
- Still considered as slaves, and hence find it difficult to hold key political positions

Constitutional Safeguards: Slavery was formally abolished in 1980.

Nepal

Name of the Community: Dalit (about 25 sub-castes)

Population: Approximately 4.5 million (21% of Nepalese population)

Traditional occupation: Removers of dead animal carcasses; manual scavengers; artisans and singers

Forms of discrimination and violation of rights:

- Segregated habitations
- Notions of purity and pollution, inferior status of Dalits.
- Not allowed to sell milk, nor to operate tea stalls, hotels or restaurants
- Excluded from the army, administrative and diplomatic services, and political structures
- Denied free access to public places, water taps, schools and temples
- Impunity for atrocities committed against Dalits is common.
- Socio-economic boycott used as a method to punish Dalit community.
- Enforcement of unpaid occupations/duties
- Discrimination at workplaces, e.g. in dining and accessing water

Constitutional Safeguards:

- Untouchability was declared illegal in 1963 in the *Civil Code*, but was not made punishable until the *Constitution of Nepal*, 1990, declared caste discrimination a punishable offence.
- No legislation exists to enforce this constitutional ban. Though *Arts. 11 & 26(10) of the Constitution of Nepal* call for equality in Nepalese society, these provisions are not enforced.

- National Dalit Commission has been set up in 2002 to monitor State's compliance with international instruments as regards Dalits.

Nigeria

Name of the Community: Osu, Oru, Adu-Ebo, Oruma, Ume, Ohu, Omoni. Blacksmith and potter castes exist in the Mandara Hills region of Nigeria

Population: Approximately 2-4 million

Traditional occupation: Osus are assistants to high priests of the traditional religion to serve deities/ gods of their shrine. Outcastes in the Mandara Hills region are blacksmiths and potters, who also perform traditional roles of leatherworking, weaving, arranging funerals, midwifery, castration and drumming.

Forms of discrimination and violation of rights:

- Segregated habitations on outskirts of village, to be the target of any bad luck that might occur
- Prohibition on inter-marriages
- Social segregation in terms of even sometimes speaking to Osus
- Notions of impurity and pollution
- Violence used, in extreme cases, to enforce caste system of segregation
- Ostracised from local markets in certain regions

Constitutional Safeguards:

A law prohibiting Osu caste system exists in Anamba and Enugu states, covering the eastern region of Nigeria. But this law is rarely, if ever, enforced.

Otherwise, no protective legislation exists to prevent caste discrimination.

Pakistan

Name of the Community: Dalit

Population: Approximately 2 million

Traditional occupation: Sweepers; washermen; barbers; those who work with the guts of animals

Forms of discrimination and violation of rights:

- Segregated habitations
- Socio-religious sanctions against inter-marriages
- Bondage in labour
- Discrimination in access to public places, e.g. water, roads, schools, etc.
- Discrimination at workplaces, e.g. in dining and accessing water points
- Restricted access to land
- Forms of extreme humiliation, destruction of property and violence against women used against community

Constitutional Safeguards: None

Rwanda

Name of the Community: Twa

Population: to be estimated

Traditional Occupation: Hunter-gatherers, Potters, Jesters

Forms of discrimination and violation of rights:

- Notions of pollution

- Segregated habitations
- Prohibition on access to common wells, land and ownership of valuables

Constitutional Safeguards: None

Senegal

Name of the Community: Neeno, Griot, Nyamakalaw

Population: to be estimated

Traditional Occupations: Neeno - blacksmiths, leatherworkers, midwives, circumcision performers; Nyamakalaw - blacksmiths, bards and leatherworkers; Griot – praise singers, circumcision performers and midwives.

Forms of discrimination and violation of rights:

- Prohibition on inter-marriages and inter-dining (Neeno & Nyamakalaw)
- Notion of pollution and purity, and low social status (Neeno & Nyamakalaw)
- Prohibition on imams coming from low castes and exclusion from key initiation societies (Neeno)
- Separate burial grounds (Neeno)
- Untouchability (Griots)

Constitutional Safeguards:

Senegal's Constitution affirms rights of all Senegalese to equal protection of the law and freedom from discrimination regardless of descent or caste.

Somalia

Name of the Community: Sab ('low caste'), Midigan (Mahdibhan), Tumul, Yibir (also called Gaboye, Mitgan, Rahanwein, Les gitanes)

Population: to be estimated

Traditional Occupation: Tumul – blacksmiths; Yibir, Midigan – hunters and leatherworkers

Forms of discrimination and violation of rights:

- Notions of purity, pollution, low caste status
- Widespread impunity for beatings, rapes and attacks
- Often forced into unpaid labour or slavery
- Social segregation and prohibition on inter-marriages
- Denial of right to own land, cattle and horses; to access education or drinking water
- Restrictions on employment to menial or traditional tasks

Constitutional Safeguards: None

Sri Lanka

Name of the Community: Rodi or Rodiya (Singhalese caste system); Pallars, Nalavas and Paraiyars (Tamil caste system)

Population: to be estimated

Forms of discrimination and violation of rights:

- Denied access to land
- Discrimination in employment
- Prohibition on temple entry (Tamil system)

Constitutional Safeguards:

- *Prevention of Social Disabilities Act 1957*, as amended and strengthened in 1971, makes it an offence for anyone to discriminate on the basis of caste in access to various public places and educational institutions. However, tendency is towards

impunity for those committing atrocities and discriminating against Dalits or Rodis.

- *Art. 12(2) Constitution of Sri Lanka 1978* prohibits discrimination on the basis of caste, particularly in access to public places and places of public worship.
- No affirmative action measures exist.

N.B. In addition, descent-based discrimination exists in Algeria, Libya, Mali, Niger and Yemen. Unfortunately not enough research has been done to enable a summary to be presented here.

B. Annex to 'Implementation of CERD's Concluding Observations on Nepal'

Mr. Subodh Pyakurel, INSEC

Areas of Concerns and Recommendations, CERD's Concluding Observations on Nepal 2004:

- Impact of the insurgency, especially on vulnerable groups
- Diversion of state resources away from social and development programmes
- Importance of the restoration of Parliament in order to expedite the process of resuming normality in Nepal
- Need for adequate financial support, so as to ensure the independence and effectiveness of National Human Rights Commission
- Need for statutory laws to enable the National Dalit Commission to carry out its mandate effectively
- Persistence of de facto caste-based discrimination and the culture of impunity that apparently permeates the higher strata of a hierarchical social system.
- Need to make priority of measures to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind.
- Lack of information on prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination.
- Lack of information in the periodic report on the situation of women who belong to disadvantaged groups as victims of multiple discriminations.
- Under-representation of disadvantaged groups in government, legislative bodies and the judiciary.
- Proper rehabilitation of freed kamaiyas.
- Lack of representation of disadvantaged groups or their issues in the state-owned media
- Need to continue engagement with civil society organisations during the preparation of the next periodic report and to disseminate it widely among the public upon submission

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C. Annex to 'Multiple Measures to Combat Market Discrimination in India'

Prof. Sukhdeo Thorat, Indian Institute for Dalit Studies

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¹ http://www.oecd.org/departement/0,2688,en_2649_34889_1_1_1_1_1,00.html

D. Annex to 'International Assistance and Inclusion of Dalits'

Mr. Jagadish Pokharel

Agency	Total Staff	Dalit Staff	Remarks
CARE Nepal	234	8	
UNICEF	115	1	
UNDP (PDDP/LGP)	-	-	17% of staff recruited in 2003 were Dalit
WWF	-	1	
GTZ	230	5	
Helvetas	165	36	ie. 22% of staff are Dalit
The Asia Foundation	15 local staff	-	
OXFAM	-	1; 22	Central office; Partner NGOs
LWF	98	6	
MS-Nepal	14 (Local Staff)	11	
EU	7	1	
Save the Children Japan	8	-	Local/Supported NGOs have Dalit staff

Table: Staffing of Some International Aid Agencies

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E. Annex to 'Dalit Women in Nepal: Issues and Challenges'

Ms. Durga Sob, FEDO

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Note: If you are interested to learn more about Dalit issues and women particularly please contact:
 Feminist Dalit Organization (FEDO) Website: www.fedonepal.org
 P.O. Box 4366, Kathmandu, Nepal Email: dms@fedo.wlink.com.np

F. Annex to 'Combating Caste Discrimination through Non-formal Adult Education'

Ms. Laurie Ann Vasily, Cornell University

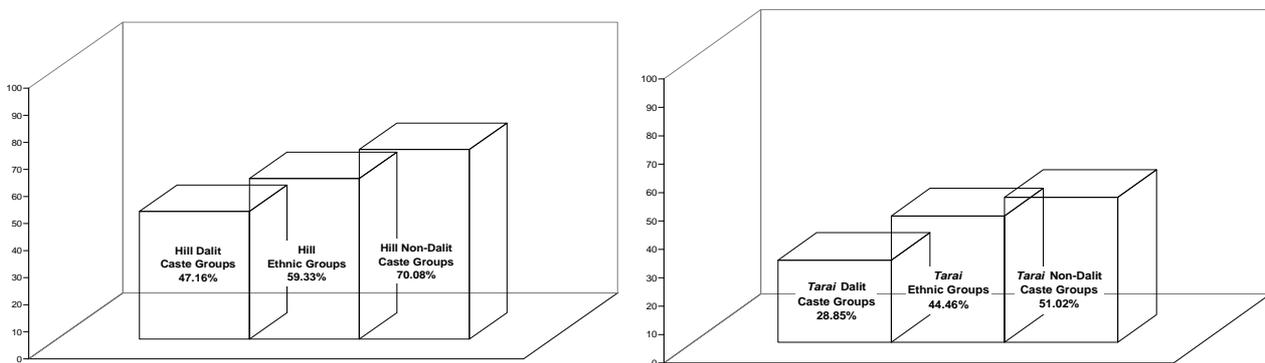


Figure: Average literacy rates for hill groups (left) and for terai groups (right), 2001 Census, Nepal

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G. Annex to 'Poverty and Caste-based Social Exclusion in Nepal'

Ms. Lynn Bennett, World Bank

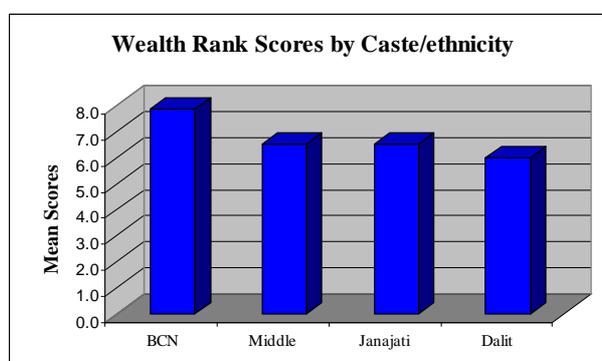


Figure: Caste/ethnicity vs. wealth

Data Stories⁵¹: Wealth

A composite wealth ranking score that included scores of ownership of consumer goods, land and house type showed the Janajati and the middle caste groups almost exactly equal in the second place with the Brahman-Chhetri-Newar (BCN) well on the top with wealth levels more than 75% higher than the Dalits (see above figure). For all the economic indicators in the composite index, Dalits ranked much lower than the BCN group:

- Dalit average land holdings were less than half the average BCN household.
- 22% of Dalit households had less than 10 hectares of land
- 61% of the Dalits ranked themselves as poor compared to only 15% of the BCN group.

Data Stories: Empowerment and Inclusion

(measured using the Composite Empowerment and Inclusion (CEI) Index⁵²)

The dominant BCN group scores higher than Janajatis who in turn score higher than Dalits. (See below figure), as per the rankings set out in Nepal's National Code of 1854.

- BCN CEI levels are 21% higher than those for Dalits

⁵¹ These stories are based on primary data from a survey of one adult male and one adult female in 1000 household in 60 villages plus qualitative studies of four villages in the sample – the first phase of a longitudinal WB study to develop a rigorous means of measuring empowerment and social inclusion levels and to track changes in these levels for men and women and for different caste and ethnic groups before and after a project intervention.

⁵² The indicators used for the CEI index include those for empowerment (Knowledge/awareness of rights and procedures; Participation in local development services; Confidence in accessing services/exercising rights; Social networks; Efforts to influence) as well as those for social inclusion (Self-perceived status of own caste/ethnic group; Restricted access and public intimidation; Effectiveness of local political influence; Effectiveness in getting service and opportunities.

- The Janajatis CEI is 11% higher than that for Dalits.

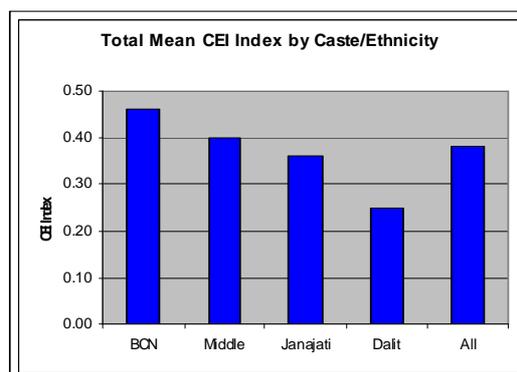


Figure: Composite Empowerment and Inclusion Levels by Caste and Ethnicity

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H. Annex to 'Mainstreaming Dalits in Development Programming'

Dr. Jit Gurung, Danida/HUGOU

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