

## Lobby brief on Dalit women in Nepal for the examination of Nepal at the 49<sup>th</sup> CEDAW session, New York, 20 July 2011

This lobby brief summarizes key concerns, questions and recommendations on the situation of Dalit women for the review of Nepal by the Committee on the Elimination of all forms of Discrimination against Women (CEDAW) in July 2011. It has been prepared by the Feminist Dalit Organization (FEDO) Nepal and the International Dalit Solidarity Network.<sup>1</sup>

### Caste discrimination and Dalit women in Nepal

Discrimination on the basis of caste is still widely prevalent in Nepalese society and a large section of the population have been subjugated, marginalized and oppressed due to their ascribed caste as per the Hindu Hierarchical system. Dalits have been considered as impure and 'untouchables' and are deprived of a dignified life and compelled in leading a degrading life. This practice has existed for centuries and results in discrimination in many areas from social life to access to legal remedies.

Caste, class and gender discrimination prevents Dalit women from enjoying their basic human rights, particularly to dignity, equality and development. Out of the Dalit population in Nepal, which makes up more than 13% of the country's population, 50 % are women. The socio-economic conditions of Dalit women are worse than Dalit men and women in general. Dalit women face triple alienation as women, as Dalits and as Dalit women and they face violations of their civil, political, economic, social, cultural and religious rights. Dalit women in Nepal continue to endure discrimination in many areas including education, health, employment and access to economic resources. They are discriminated against not only by people of higher castes, but also within their own communities, where men are dominant. The discrimination is systematically structured, distinctively marked, gender biased, collectively targeted, entrenched with violence, and generationally imposed resulting in life-long disastrous effects.

### Key concerns affecting the human rights situation of Dalit women in Nepal

- **Political participation:** Dalit women are generally underrepresented at the political and decision-making level of the state machinery. Dalit women are therefore demanding that there should be provisions for proportional opportunity for the Dalit women in the public sector (e.g. government services, employees' administration) as well as in the private sector in the new constitution. At a National Conference on Dalit women, which was held in Kathmandu on 11-13 May 2011, the Dalit Women Association issued demands and recommendations on the inclusion of Dalit women in the new constitution. In the outcome document, the Kathmandu Declaration on the Issues of Dalit Women, the women appealed to the Government, Constituent Assembly, political parties, and other stakeholders to promulgate a progressive constitution based on proportional inclusive principles ending ethnic, class, gender and all types of discrimination, among other things (see the list of demands in the Kathmandu Declaration on the Issues of Dalit Women, 2011/04/14).
- **Economic issues and land rights:** Most Dalits are landless and have very limited access to economic resources, in particular Dalit women. Land is one of the main sources of income and Dalit women's right to own land is therefore essential. Therefore, loans should be made easily available in order to protect and promote the industries and businesses run by the Dalit women. Some are even still serving as bonded laborers. Exploitative labour management systems like the customs of *Balighare*, *Haliya*, *Charuwa*, *Khalo* should be abolished, and provisions should be made so that labourers are paid in cash.



*Dalit women demonstrate during the National Conference of Dalit Women in May 2011. The women requested the government to make special provisions for them in the new constitution. Photo: FEDO/IDSN*

1. The Feminist Dalit Organisation (FEDO), which is a national organisation working against caste and gender discrimination in Nepal, has also contributed to the section on Dalit women in the CEDAW Shadow Report by the Forum for Woman, Law and Development (FWLD).

- **Discrimination and impunity for violence against Dalit women:**

Dalit women are subjected to systematic violence due to their ascribed low caste-class-gender status. Also, certain kinds of violence are traditionally reserved for Dalit women. These includes extreme verbal abuse and sexual epithets, physical assault, being forced to drink urine and eat faeces, branding, pulling out of teeth, tongue and nails, and violence including murder after proclaiming witchcraft. Impunity for violence against them is rampant due to weak legal mechanisms. Not only do they face problems while seeking legal and judicial redress for violence, but also while attempting to access and enjoy their fundamental rights and freedoms. Perpetrators enjoy virtual immunity from prosecution for violence against Dalit women, because the police, who themselves often harbor caste prejudices, willfully neglect to enforce the law. Not only the police, but perpetrators and their communities use their political, social and economic power to silence Dalit women, thereby denying them access to justice.

- **Violence resulting from inter-caste marriages:** Another trend of violence towards Dalit women in Nepal is violence related to inter-caste marriages between Dalits and non-Dalits. Irrespective of the level of education and occupation, the rate of non-acceptance of inter-caste marriages between Dalits and non-dalits is increasing leading to violence and intimidation. In many cases, this results in displacement of families and physical assaults. The stigmatization by the society contributes to the separation of couples and many times non-Dalits abandon their spouse and children leaving them in situation of despair. This is further compounded by discriminatory policies relating to citizenship and inheritance of property. If at all cases are registered to the police authorities, they are either not entertained or mediated outside the formal justice system. The state should provide protection and social security to the inter-caste couples of the Dalit and non-dalits and their families. Special initiation should be made for justice to female victims of inter-caste marriage.

- **Sexual exploitation and trafficking of Dalit women:** Sex trafficking of girls and young women to India and other countries is a significant and internationally recognized problem in Nepal. Evidence to date suggests that trafficking disproportionately affect Dalit girls and women, as well women from rural areas. It is more likely that Dalit girls' economic insecurity and low educational status makes them more vulnerable to being trafficked. In addition, the traditional ties of the Badi community (one of the sub-group of the Dalit community) to the sex trade may make girls and women in this community more vulnerable to exploitation. The excessive exploitation of the Badi women should be put to an end, and alternative employment for those involved in the sex trade must be arrangement immediately. In order to solve the issues of the Badi Community, the agreement reached between the National *Badi* Rights Struggle Committee and the Government should be implemented immediately.



*Kalli Kumari B.K, Dalit women was physically abused, tortured and forced to eat human excreta by the Head Mistress of a School after proclaiming witchcraft. Her case is ongoing in the court and she is still waiting for justice*



*Radha Kasera a Dalit girl married a non-Dalit boy in 2007. The marriage was not accepted by the family and society. The couple out of poverty moved to India and her husband started working as an electrician. In an accident her husband lost both his arms and they returned back to Nepal. Even now boys' family has not accepted them and they are living in an impoverished condition with their two children.*



*Soni Badi, 25, is a sex worker from the Badi sub-caste in Nepal. She is prevented from owning land, has little access to education and other basic services. Recently Badi rights activists ensured that Badi's can now use their mother's name to gain citizenship for their children. However Badi women are still dismally poor and socially excluded. Photo: Jakob Carlsen, IDS.N.*

## Current political situation in Nepal and new opportunities

Since the publication of the state report and shadow report by the FWLD, an important political development has taken place. On May 24, Nepal's Interim Parliament passed the Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act. It prohibits the practices of 'untouchability' both in the public and private sphere, and it is the first in the world to criminalise such practices in the private sphere.

While the passing of the law is a great achievement, it is however only the first step to ensuring effective protection of Dalits rights. Effective implementation is the main challenge, and in the past the government has failed in implementing many of the commitments intended to ensure Dalit rights. For example, the 28 points agreement signed with Badi community for improving their status in the society has not been implemented by the government despite their struggle for self-respect, identity and fundamental rights.

Despite Nepal's commitment to adhere to international human rights law, the human rights situation in Nepal still remains precarious. While Nepal is party to most human rights treaties, the domestic legal framework remains weak, and in most cases implementation of international instruments is deficient. Frequent changes in government, a political culture that does not value the protection of human rights, and weak governance are among the major factors affecting the human rights situation of people, particularly vulnerable groups such as Dalits, in the present context. While there has been some progress on the human rights situation in recent years, major challenges remain, especially in combating impunity, building national institutions, and the delivery of timely justice in line with international standards.

Nepal is in the midst of a historic political transition, which provides a unique opportunity to ensure full and meaningful participation of Dalit women for the first time in the country's history. FEDO and IDSN therefore call on the Government to adopt a National Action Plan to comprehensively eliminate caste-based discrimination, with explicit provisions on the political participation and protection of Dalit women. The formulation of such a plan, with the active involvement of affected communities, would provide an institutional tool to ensure implementation of such provisions and national commitments and set an example for other countries with caste systems.

## UN recommendations on Dalit women in Nepal

Nepal went through Universal Periodic Review Process (UPR) of the United Nations (UN) on January 2011 and the final report was adopted by the Human Rights Council on June 7 2011. During the UPR examination, a total of 24 states made observations and recommendations on the situation of Dalits, many of which related to the vulnerability of women and children. On this basis, the Government of Nepal has made several commitments for the improvement of human rights situation and establishment of rule of law. It remains to be seen how these commitments will be followed up and implemented.

The UN Treaty Bodies have addressed the human rights situation of Dalit women in Nepal in several reviews.<sup>2</sup> In 2004, the CEDAW Committee expressed strong concerns about Nepal's poor record regarding discrimination against women (Concluding Comments A/59/38/SUPP). Among other things, it emphasized Nepal's failure to amend prevailing discriminatory laws; the fact that there are fewer educational opportunities for rural women; the generally poor health status of rural women; the practice of prostitution among young girls of the Badi caste; and the gender-based discrimination inherent in Nepal's citizenship laws.

The Committee on the Elimination of Racial Discrimination (CERD) has also expressed serious concern about Dalit women in 2004 (CERD/C/64/CO/5), and so has the Committee on Economic, Social, and Cultural Rights (CESCR) in 2001 (E/C.12/1/Add.66) and in 2008 (E/C.12/NPL/CO/2). In 2005, the Committee on the Rights of the Child (CRC) made some very critical observations on Dalit children (CRC/C/15/ADD.261).

In 2004, CEDAW confirmed that that protection from discrimination under the Convention also encompasses grounds such as age, class, caste, race and ethnicity. In General Recommendation 25 on temporary special measures, the Committee stated that "Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them."

In CEDAW General Recommendation 28 on the Core Obligations of States Parties under article 2 (2010) the CEDAW

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2. A comprehensive overview of UN observations and recommendations on caste discrimination and the situation of Dalits in Nepal can be found on the following link (prepared and updated by IDSN on 1 July 2011): [http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/UN/UNcompilation\\_2011.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/UN/UNcompilation_2011.pdf)

Committee underlined that the non-discrimination provision of the Convention encompasses the basic concept of intersectionality, i.e. that “discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity”. Furthermore, the Committee stated that “States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and General Recommendation No. 25.”

### Recommendations for the CEDAW review of Nepal 2011

- ⤴ The new Constitution of Nepal must fully guarantee the right to equality and non-discrimination in line with international human rights law, taking into consideration the specific obligations under the International Convention on the Elimination of all forms of Discrimination against Women and the recommendations contained in CEDAW General Recommendation 25 and 28.
- ⤴ The new Constitution must ensure compulsory, proportional representation of Dalit women at all levels of the state (parliament, government, judiciary, administrative mechanism, local authorities and social organizations, etc). E.g. there should be at least 20% reservation for Dalit community in the women’s quota and 50% reservation for Dalit women in the Dalit’s quota should be ensured until the status of Dalit women reach the level of other ethnicities and communities of the society. While allocating rights, there should be special emphasis on the Madheshi Dalit women, *Badi*, *Gandharwa* as well as Dalit women, and amongst them the single Dalit women and the disabled Dalit women who are the most backward.
- ⤴ The Government must adopt necessary constitutional, legislative, administrative and institutional measures for effective implementation of all international and national obligations, policies and programmes to eliminate and prevent caste discrimination. When adopting policies for the inclusion of Dalit women, they must be developed for Dalit women, and in consultation with them, to specifically address the issues and challenges that affect them.
- ⤴ The Government should develop a National Action Plan to eliminate caste-based discrimination, which establishes specific provisions for the inclusion and promotion of Dalit women’s rights. In this process the Government may use the draft UN Principles and Guidelines on the effective elimination of discrimination based on work and descent, which has been endorsed by the Government in 2009, as a guiding framework to comprehensively address caste discrimination.<sup>3</sup>
- ⤴ The Government must adopt stronger policies to provide financial, social and legal support to couples of inter-caste marriages and protect them from violence perpetrated by private actors.
- ⤴ The Government should arrange policy, laws and programmes to provide adequate areas of land for all landless Dalit families, equal rights and support for their indigenous knowledge and occupation and ensure equal benefit insharing of natural resources<sup>1</sup>.
- ⤴ There should be provision for birth registration of the children of the *Badi* women engaged in forced prostitution where the children’s fathers are unascertained; and the Supreme Court’s order of issuing citizenship certificates in the name of the mother should be implemented. In addition, the *Badi* Development Board must be constituted immediately for resolving the issues of the women from the *Badi* community.
- ⤴ The Interim Parliament should commit to pass the law which mandates the National Dalit Commission (NDC) as a full statutory body. In the NDC, the provision of proportional representation of the Dalit women must be ensured. In addition, a separate mechanism to look into the issues of Dalit women must be developed.

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3. *The draft UN principles and guidelines is an outcome of a Sub-Commission study on discrimination based on work and descent, the UN terminology for caste-based discrimination. They were published by the Human Rights Council in May 2009 (A/HRC/11/CRP.3). Although still a draft, DSN-UK and IDS N recommend that governments use them as a guiding framework to comprehensively eliminate discrimination based on work and descent.*

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#### Feminist Dalit Organization (FEDO)

Kupondol, Lalitpur P.O. Box 4366  
Kathmandu, Nepal  
Tel: 977-1-5543986, 5520982, Fax: 977-1-5520982  
E-mail: [dms@fedo.wlink.com.np](mailto:dms@fedo.wlink.com.np)  
Website: [www.fedonepal.org](http://www.fedonepal.org)



#### International Dalit Solidarity Network

Fælledvej 12, 3rd floor  
Dk – 2200 Copenhagen N  
Denmark  
Phone +45 60 43 34 32  
[info@idsn.org](mailto:info@idsn.org)  
[www.idsn.org](http://www.idsn.org)