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Alternative report to the 16th periodic report of State Party Nepal to the Committee on the Elimination of Racial Discrimination¹

Asian Legal Resource Centre

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Introduction

The Asian Legal Resource Centre has prepared this report to coincide with the consideration of the joint 15th and 16th reports of the State of Nepal (the State) to the Committee on the Elimination of Racial Discrimination (the Committee), under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The initial reports were due on 1 March 2000 and 2002 and were submitted in 2003, for consideration at the 64th session of the Committee, 23 February – 12 March 2004.

This report is based upon the Asian Legal Resource Centre's accumulated experience regarding caste-based discrimination as a form of discrimination based on work and descent. The Asian Legal Resource Centre was at the forefront of the Asian campaign to include caste-based discrimination in the agenda of the World Conference against Racism, and built a website to that end [<http://wcar.alrc.net>]. It has also made interventions on caste discrimination at the UN Commission on Human Rights annual sessions, and its Executive Director has also spoken and published widely on caste discrimination. Its sister organisation, the Asian Human Rights Commission, has for a number of years released statements and Urgent Appeals on both specific and general cases of caste discrimination and human rights abuse, and published articles on caste discrimination in its periodical, *Human Rights SOLIDARITY*. More recently it has begun an e-newsletter on Dalit issues in Nepal, *Manav Astitwa* [<http://www.ahrchk.net/ma>], in conjunction with the Feminist Dalit Organisation of Nepal. Both the Asian Legal Resource Centre and Asian Human Rights Commission have some twenty years experience in human rights and rule of law issues throughout Asia.

Ms Anita Pariyar, a partner of the Asian Legal Resource Centre and board member of the Feminist Dalit Organisation, prepared this report in cooperation with Mr Tim Gill, the European Campaigns Coordinator of the Asian Legal Resource Centre and Asian Human Rights Commission. Mr Gill coordinated the work of the Asian Legal Resource Centre at the World Conference against Racism.

1. General background

Apart from the CERD, Nepal has acceded to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocols, and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It has ratified the Convention on the Elimination of All Forms of Discrimination against Women, and signed its Optional Protocol. It has ratified the Convention on the Rights of the Child, and signed its Optional Protocols.

The Constitution of the Kingdom of Nepal (the Constitution) has outlawed caste-based discrimination and untouchability, but this provision is not enforced in practice.

The institutions of the State, including those established ostensibly to address caste discrimination, are inadequate and unresponsive to the needs of victims.

Dalit ('untouchable') communities in Nepal face violations of their rights both by state agents—primarily the police, secondarily the army—and other members of the public alike. These violations include physical and verbal attacks, and economic and social isolation. As the civil war of recent years has worsened, so too have human rights violations on the basis of caste increased.

The State report to the Committee, while admitting that caste-based discrimination continues in Nepal, infers that social conditions regarding caste cannot be changed quickly, and tends towards education and economic development as solutions. It inadequately accounts for the most important requirement to eliminate caste-based discrimination in Nepal: effective legal avenues for the prosecution of perpetrators, and redress for victims. It incorrectly suggests that adequate legal avenues already exist and implies that regulations outlawing caste discrimination are unlikely to have an effect.

2. Legal and institutional structure

2.1 Constitutional provision outlawing caste-based discrimination

Article 11(4) of the Constitution reads

“No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.”

Despite this provision, the practice of untouchability remains rampant, and the perpetrators are in most cases not prosecuted. Thus far the State has failed to implement measures that might significantly contribute to the ending these practices, and seeing article 11 of the Constitution enforced. The range of existing legislative provisions identified in the report by the State does not amount to adequate protection for victims of caste-based discrimination. Notable by its absence is any single piece of legislation for the explicit protection of Dalits, despite them making up some 20 per cent of the total population of Nepal. At present, a draft bill entitled Upliftment and Protection of the Dalit Community is pending. However, since parliament was suspended on 4 October 2002 the bill has not proceeded.

2.2 Institutions to address caste-based discrimination

A number of institutions exist ostensibly to address caste-based discrimination in Nepal. None of them are effective. None of them are independent; all are subject to political influence.

The most important is the National Dalit Commission, which came subsequent to the National Committee for the Upliftment of the Depressed, the Oppressed and Dalit Community. Despite the weight given to the National Committee in the report of the State, this agency has been a complete failure. It is a body consisting of political appointees whose sole purpose seems to be to silence opposition to the government in the Dalit community. For its part, the National Dalit Commission has been instrumental in getting the stalled draft bill on the Upliftment and Protection of the Dalit Community before parliament, but has done little else besides. It does not fully utilise its investigative and lobbying powers. Like the National Committee, it is subject to political influence, as it too is directly under the Ministry for Local Development and is entirely reliant on the minister and his chief staff. It is also not a permanent body: it has a mere two-year tenure after which its continuation is subject to the decision of parliament.

The National Human Rights Commission has also been a disappointment for Dalits. None of its members are Dalits. It is not concerned with the needs of the Dalit community, nor is it responsive to their demands. It has no special provisions for persons complaining of caste-based discrimination. It is also subject to political influence.

The National Womens' Commission has likewise failed Dalit women. Rather than take up their cases and advocate on their behalf as would be expected, it simply prefers to direct complainants to the National Dalit Commission.

3. The practice of caste-based discrimination in Nepal

3.1 Physical attacks

Dalits in Nepal are attacked both by the State authorities—principally the police, secondarily the army—and by non-Dalit members of the public. The forms that physical attacks take include:

- Shooting
- Public lynching
- Burning alive
- Beating with hands, boots, sticks and guns

- Stabbing with knives and swords
- Force-feeding human faeces and urine
- Rape and gang-rape
- Parading naked in public
- Enforced disappearance
- Eviction from houses
- Burning of houses and property
- Verbal abuse

Abuses by the police and army have accelerated with the spread of civil war in the country. At times of insecurity, it is inevitable that the least powerful groups face the greatest threats to their physical security. This situation is made worse by the fact the security forces associate most Dalits with the Maoist insurgency. The police and army typically commit murder, kidnappings, enforced disappearances and torture against Dalits and also members of other vulnerable groups, including bonded labourers and sexual minorities.

The case of Kumari Damai, a 13-year-old Dalit schoolgirl taken by the army from Bhasriya, in Kailali district, on 24 September 2002, is illustrative. After being detained by soldiers along with six other girls, non-Dalits, she was kept behind when the others were later released. According to her mother, two of them reported that the soldiers kept her with the intention to commit rape. At a public hearing about her case on 10 December 2003, organised by the National Dalit Commission, Kumari's father remarked that, "The others who were abducted along with my daughter, all non-Dalits, have returned to the village, but Kumari has not." Her whereabouts are also not known, and hers was the 287th name on the list of enforced disappearances publicly released by the National Human Rights Commission. At the hearing, her father added, "I visited every security post at Dhangadi, Atariya, Teghari... but everywhere I faced disappointment." He has demanded that he be informed if she is dead or alive, and what has become of her, but to date to no avail.

Young women from downtrodden communities are easy prey for police and soldiers wanting sex. On 27 October 2003 the Asian Human Rights Commission released an Urgent Appeal about two teenage girls from the Kamaiya—bonded labourers—community allegedly gang-raped by seven police. The police took them from a construction site and raped each of them. After filing a complaint, the two girls, Janaki Chaudhari (16-years-old) and Chinki Chaudhari (14-years-old), were subjected to threats and coercion to withdraw the complaint. In a press release the police force also defended the alleged perpetrators.

The extent to which the police in Nepal are motivated by prejudice and are prepared to use violence at a whim is also apparent in another recent Urgent Appeal issued by the Asian Human Rights Commission, on the brutal assault of two homosexuals near Ratnapark, Kathmandu, on 6 December 2003. In this instance, the police approached the two men, Jaya Bahadur Lama (28-years-old) and Mani Lama (20-years-old), as they were being harassed by street hoodlums. Although the two were victims of crime, when the hoodlums told the police that they were homosexuals the police reportedly began beating them. They then took them to a police van, tied up their hands, covered their faces, and forced them to lie face down. They drove around for almost one hour, and beat Jaya and Mani with boots and rifles in the van. After this time, they were taken to a dark room in a camp and about 15 to 20 policemen came and started beating them even more severely, and accused them of being Maoists. They tried to force the men to give them oral sex, but they were unable by this time. Eventually they were dumped on a roadside around 2am the next day.

An important but often overlooked means of preventing Dalits from uplifting themselves is the systemic use of torture, such as that described above, by the police in Nepal. Torture is used as a means to intimidate and silence minority populations, including Dalits. The types of torture include beating with hands and feet, guns and other objects, suffocation, rolling objects on the shins, and beating the soles of the feet with plastic pipes. According to a 2003 report by the Advocacy Forum (Nepal), around 70 per cent of detained persons are tortured. Police do not produced detainees before the courts as required, and only record their arrest after the torture is completed. Inevitably, Dalits are exposed to this practice more than other segments of the society, as the police and other state agents do not fear retribution when they torture a Dalit person.

This situation is worsening under the current conditions of civil war, as Dalits are increasingly identified with the Maoist insurgency.

Until torture in Nepal is ended, it will be impossible to eliminate caste discrimination. However, the State has failed to introduce effective legal provisions to deal with torture. The Torture Compensation Act (1996) does not define torture as widely as required by the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which the State has acceded to, nor does it impose a specific punishment. The amount of compensation that may be awarded also is far below international standards.

Aside from attacks by agents of the State, Dalits in Nepal face the daily threat of attacks by members of neighbouring communities, and also even from persons within their own communities, as they have for centuries. Given the treatment that is meted out against them by the police and army, the civilian perpetrators of attacks feel free to commit atrocities without risking arrest or prosecution, despite suggestions in the report by the State to the contrary. Among the day-to-day discrimination that persons in these communities face from other members of the public, only a few of the more serious cases receive wider attention.

One is the story of Muna Devi Damai, a 40-year-old Dalit woman from Dhangadi, Far Western Region. On 8 April 2003, Muna was force-fed human feces by her neighbours, Bir Bahadur Thapa and his wife, Parbati Thapa, both of the upper caste. In the morning the couple called her to their house. When she entered the compound, Bir Bahadur Thapa grabbed her by hair and threw her on the ground. Then Parbati Thapa sat on her chest and both of them started to beat her. Muna Devi cried and tried to defend herself, but to no avail. While Parbati Thapa was continuously beating Muna Devi, Bir Bahadur Thapa brought human faeces, which they had prepared into paste mixed with chili powder. They forced the paste into Muna Devi's mouth. She could not save herself and fainted. Her children rushed out when they heard their mother's cry, but they could do nothing but to cry out loud. They were too small to defend their mother. They carried their mother home and cleaned her, but she remained unconscious. The other neighbors came to Muna Devi's house and expressed their sympathies, but refused to provide any other help. Muna Devi tried to launch a complaint at the local police station but was turned down by the police since she is Dalit. Later the couple paid her to drop her attempts at legal action.

Other members of the public target Dalit women for rape, and again the police have failed to assist the victims for reasons of caste. On 8 October 2001, Aindra K C, Binod Mahat, Lilu Mahat and Bimal Chhetri together raped Manisha Darjee, of Parbat district. Manisha was working as an assistant teacher at the Adult Learning Programme in her village. At about 9pm the men came to her house and asked her to come out on the pretext that they wanted to discuss about an adult class. Manisha was staying alone, since her husband was working in India. When she opened the door, the men asked her to come out, which she refused. The men threatened her, and while two of them blocked the door, the other two pulled her out. They dragged her out for about 25 meters and later raped her until she fainted. The next day Manisha went to the District Police Station along with a neighbour, and then to the court. However her complaint did not yield any result since she is Dalit and the perpetrators are from the upper caste, even though she named them and provided the authorities with their addresses. She has since given birth and been rejected by her husband. She has also been threatened by the perpetrators that if she take any further steps against them then she will be 'permanently dealt with'.

Unfortunately, physical attacks on Dalits occur not only at the hands of upper caste persons, but also among Dalits themselves, equally aware that there will be no consequences for their actions. On 13 September 2003 the *Kathmandu Post* reported on the assault of Krishna Bahadur Damai (47-years-old), of Salu, by Dhukune Sarki (45-years-old) and his family members. The Sarki family—consisting of husband and wife, daughter, sister and a cousin—reportedly attacked Krishna for using a spring and walking near their house, despite having done so for years. Krishna Bahadur Damai also alleged that the family had attacked and beaten his seven-year-old daughter for the same reason. A local from the village said that the villagers have been pressurising the Damai family to leave. "The house is my sole property. Where am I to go?" questioned Damai.

Dalit houses are also the targets of physical attack when people are trying to force families out of their neighbourhoods. In the case of the Damai family, the house was reportedly pelted with stones and other objects. In another story from 13 November 2003, Komalnath Kandel and his family burnt down the house of Manmaya B K, a Dalit woman living in Dhamja, Baglung district, after the latter refused to move away. Although they had been living close together for years, Komalnath became fearful of his neighbours after Manmaya sold some of her land to her brother Ram Bahadur B K, so that he could build a house on it. Komalnath Kandel then began threatening Manmaya to move away. Finally, when Manmaya was at a distant market telephoning her husband—who is working abroad—the Kandel family burned down the house. Manmaya's children had been left at her parents' house. Manmaya lodged a complaint with the Baglung District Police Office, demanding compensation for the fire. Balaram Bista, the Sub-Inspector of Police at the office, promised to complete the investigation on the incident within one week. However, thus far the police have reportedly not taken any serious action.

3.2 Economic and social attacks

Caste discrimination is referred to as discrimination on the basis of descent and work because each caste is restricted to one kind of work, with the most demeaning, menial, degrading and 'polluting' work done by Dalits. Typically, this work involves the disposal of human excreta, or the bodies of dead animals and corpses. Invariably, it is the Dalit women who are forced by the men to do these jobs. The feudal nature of the caste system also prevents Dalits from leaving their prescribed work. Many are paid nothing at all. Others are given no money, but only a portion of grain or some other payment in kind. This practice leaves them in complete dependency on the upper castes who control and own the businesses and land.

When Dalits refuse to perform the allotted tasks, reprisals in the form of one or another physical attacks, such as those described above, often result. On other occasions, upper caste communities have engaged in social and economic boycotts of Dalit communities. In 2000, the Feminist Dalit Organisation—in collaboration with other Dalit organisations—brought to wider attention the actions of one such Chamar community in Siraha and Saptari districts. The community refused to continue the unpaid work of disposing of dead animals from upper caste houses and was subjected by the upper caste community to a crippling social and economic boycott, preventing them from buying and selling goods or gaining employment. The community could overcome the boycott only with their own strength.

The State has not thus far seriously attempted to introduce or enforce legal provisions to deal with such practices. In its report, it has admitted that, while free access to places of public utilities is legally guaranteed, "in some cases, there exist some forms of discrimination based on caste". Although it is not possible to assess how far Dalits in Nepal are denied access to public places and utilities, in addition to the kind of boycotts described above, they are routinely refused entry to public temples and schools, and denied the use of public wells and taps. They are also refused entry and service in restaurants and hotels, and opportunities for employment. Most importantly, they are also refused the right to marry freely, a practice that ensures the endogamous categories of the caste hierarchy remain intact. Even blind couples have been ostracised and forced apart by their communities when they have attempted to marry across caste divisions.

Apart from being forced into the most demeaning 'ritual' jobs, Dalit women are also extremely vulnerable to sexual exploitation. Among the Dalit communities, one landless group, the Badi, has for years survived by prostituting its women. More recently, young Dalit women from all groups are being brought to India in increasing numbers, where they are forced to work as prostitutes. Sometimes they are sent further afield. Many believe that they will obtain jobs as domestic helpers or similar, and willingly follow recruitment agents in the hope of earning money with which to support their families. The police in both Nepal and India support the trade, opening up routes for the women and girls to be sent through, and protecting the brothels. The victims end up as sex slaves, and many die miserable deaths due to sexually transmitted diseases. Those who protest are threatened and, if necessary, murdered, while the police ensure that such crimes are never uncovered.

One reason for the large number of Dalit women being tricked into prostitution while searching for employment is the severe poverty and landlessness among Dalit communities. The National Dalit NGO Preparatory Committee (Nepal) claimed in 2001 that around 80 per cent of Dalits in Nepal live below the poverty line, whereas in the total population this figure is estimated to be 42 per cent. This situation is clearly a product of the economic discrimination that Dalits daily experience due to caste. Even where only scant resources exist, the government has failed to take steps to ensure that they be evenly and equitably distributed throughout the society. Meanwhile, although Dalits make up some 20 per cent of the total national population, they are estimated to own only one per cent of the arable land in Nepal. Despite suggesting in its report that it is working on poverty relief programmes, the State has likewise failed to initiate any effective land reform schemes that may take into account this disparity.

Those Dalits who do not go abroad in a desperate search of work, for want of their own resources, are compelled to live as slave labourers for landlords. A 13 September 2003 report in the *Nepal News* described how landless Dalits living in Galuwa, Baglung district, work strenuously throughout the year for around 40–60kgs of cereal. “This trend has been continuing since many generations and we have no other option than to work as porters or land tillers as we did not gain the skill of plying musical instruments or stitching clothes,” said 71-year-old Himlal Nepali. Among the few in the community who own land, it is not sufficient to feed a family for even one month. Although many organisations in the district have been running income-generating programmes, so far such programmes have not suited and benefited the poor Dalits. Meanwhile, although there is a primary school nearby, none of the Dalits in the village have completed education to the end of that level.

4. Institutional and legal problems

Although caste discrimination is illegal under the Constitution, the chances of Dalits getting restitution for their grievances, particularly Dalit women, are remote. Very often the victims do not even lodge complaints. The reasons are many. They include:

1. The victims are afraid of the consequences if they complain. They may be subjected to threats by the perpetrators, other members of the community, or the police.
2. The victims are not aware of their rights.
3. The victims have no support and feel isolated.
4. The victims have seen other cases where complaints have been made but yielded no result, therefore they think it is pointless to complain. The police may often even be unwilling to record a complaint, and instead inform the perpetrators of the attempt at legal action by the victim.

These conditions are self-perpetuating. They create a fatalistic and apathetic attitude among the victims and broader society alike, that caste-based discrimination and its attendant violence are inevitable, or at least things unlikely to change within a lifetime. Such attitudes can be inferred from the report of the State to the Committee, which argues that, “Due to their remoteness, illiteracy, lack of legal awareness, ignorance, as well as traditionally conceived caste ideology, the Dalits are still subject to caste-based discrimination” (para. 61). This explanation implies that Dalits are themselves largely to blame for their ongoing discrimination, along with unalterable social factors. The State report admits to the persistence of problems, but suggests that they are due to “our socio-cultural and historical legacy and the ineffectiveness of the interventions to reach the target population” (para. 41). The said interventions, however, consist primarily of programmes for education and economic development. These include programmes for poverty alleviation, and the training of law enforcement officials and schooling for the general public. The government, then, is hoping for changes in attitudes and improved economic conditions to deal with caste discrimination.

Such shallow analysis undermines the notion of the rule of law. It ignores the overriding reason for the lack of success of State programmes, namely, the failure of the State to introduce and enforce effective regulations to eliminate caste-based discrimination, in keeping with article 11 of the Constitution. Education by itself is inadequate. Persons who violate human rights must be prosecuted first, educated second. From many years of deep experience in work on human rights and legal reform in Asia, the Asian Legal Resource Centre is acutely aware that where the training of police and other officials is placed ahead

of prosecution of violators, it yields no good result. Often it leads only to perpetrators of abuses who are more conversant in the language of human rights, and therefore better able to defend their actions.

The admissions by the State that caste-based discrimination persists in Nepal despite its efforts towards its elimination cannot excuse it from responsibility. It has an obligation under article 2 of the International Covenant on Civil and Political Rights, to which it is also a party, to ensure that victims of rights violations have an effective remedy in law. Until it is prepared to seriously reform the criminal justice system to ensure that prosecutions occur and meet this obligation, it is unentitled to claim that it is “committed to redressing this imbalance”.

Conclusion

The State asserts that “vestiges of caste-based discrimination still persist in Nepalese society. Efforts both at the policy and application levels have been made to eliminate all forms of the discrimination” (p. 6). The ongoing and widespread atrocities committed against Dalits in Nepal cannot be described as mere vestiges of caste-based discrimination. The practice continues to be deeply institutionalised throughout the country.

As rightly observed by the State in its report, rights are relevant only if they are enforceable. Contrary to its assertion that due process is ensured in Nepal, however, Dalits there have virtually no opportunities to seek remedies and redress when their rights are violated. That their rights continue to be violated on the basis of caste is recognised and admitted to by the State. However, the State has not implemented measures that will end these violations by holding the perpetrators responsible for their actions. The relevant legal and statutory provisions identified by the State in its report do not in any way amount to effective protection for these persons, nor do any bodies to date exist in Nepal to monitor and enforce their rights.

Recommendations

a) Caste-based discrimination against the Dalit community in Nepal, especially against Dalit women, must be treated as a matter requiring the introduction and effective implementation of laws that will hold the perpetrators of abuses responsible for their actions, and ensure adequate compensation for the victims. These laws must supplement and amplify the general provision contained in article 11 of the Constitution.

b) Immediate action must be taken to deal with the perpetrators in the above-mentioned cases, as follows:

i) Investigate and respond to the allegation that army personnel kidnapped Kumari Damai, and prosecute the perpetrators.

ii) Seriously investigate and prosecute the police allegedly responsible for the rape of Janaki Chaudhari and Chinki Chaudhari.

iii) Investigate the allegations of Muna Devi Damai against Bir Bahadur Thapa and Parbati Thapa, and also her allegation that police refused to take up the case when she lodged a complaint. Suggestions that the victim in this case may have been compensated by way of a settlement with the perpetrators are irrelevant to the question of their alleged criminal action.

iv) Investigate the allegation of Manisha Darjee concerning her rape by Aindra K C, Binod Mahat, Lilu Mahat and Bimal Chhetri, and again, her allegation that the police refused to take up her initial complaint.

v) Investigate the allegation of Krishna Bahadur Damai regarding the assaults on he and his daughter by Dhukune Sarki and family.

- vi) Investigate the allegation of Manmaya B K that Komalnath Kandel and family burnt down her house and repeatedly threatened her and her family, and her allegation that the police have failed to act on her complaint.
- c) In each of the above cases also the question of adequate compensation for the victims also arises. However compensation is a separate matter from criminal prosecution, and where compensation is awarded it should never be seen or used as a substitute for prosecution, or a supplementary measure where the punishment handed to an offender is widely perceived to be inadequate. In addition to compensation, the emotional and personal needs of the victims also must be considered, particularly in the case of rape leading to pregnancy, where the mother—child relationship is the product of a gross human rights violation.
- d) Existing institutions to prevent caste-based discrimination must be reformed, and new ones developed. In particular, the National Dalit Commission must be made permanent, independent, and be given adequate resources to carry out its tasks. Its role should also be broadened and deepened under new or expanded legislation. Other institutions, notably the National Human Rights Commission and National Womens' Commission, must be given greater resources and freedom to conduct independent enquiries into violations, with a view to prosecution of perpetrators arising from their findings.
- e) The abuses that come with caste-based discrimination will persist until the use of torture is properly outlawed in Nepal. To this end, the existing legislation on torture must be review with an eye to bringing it into line with the provisions of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It will also be necessary to set in place new institutional measures to ensure that such provisions be properly enforced.
- f) The problem of cross-border trafficking of women and girls into forced prostitution in India must be treated with far greater seriousness, in particular taking into account the role of the police forces in the two countries in encouraging and perpetuating the trade.