

**Shadow Report on Fifteenth and
Sixteenth Periodic Report of Government
on ICERD**

January 2004

Shadow Report on Fifteenth and Sixteenth Periodic Report of Government on ICERD¹

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Supported by
DANIDA/HUGOU

January 2004

¹ Consideration of reports submitted by States Parties under Article 19 of the Convention 15th and 16th periodic reports of State Party, due on 1 March 2000 and 2002, submitted as one document in 2003. Appendix: Nepal CERD/C/452/Add.2.

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Acronyms

BK	Bishwakarma
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CBS	Central Bureau of Statistics
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CRC	International Convention on the Rights of Child
CVICT	Centre for Victims of Torture
CWIN	Child Workers Concerned Centre in Nepal
DANIDA	Danish International Development Assistance
DDC	District Development Committee
DNF	Dalit NGO Federation
DWO	Dalit Welfare Organisation
FEDO	Feminist Dalit Organisation
FWLD	Forum for Women, Law and Development
HIV	Human Immune-Deficiency Virus
HMG	His Majesty's Government
HRTMCC	Human Rights Treaty Monitoring Coordination Committee
HUGOU	Human Rights and Good Governance Advisory Unit
HURON	Human Rights Organisation of Nepal
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRICON	Institute for Human Rights and Communication
INGO	International Non-Governmental Organisation
INHURED	Institute for Human Rights, Environment and Development
INSEC	Informal Sector Service Centre
JUP/N	Jana Utthan Prastisthan, Nepal
LANCAU	Lawyers National Campaign against Untouchability Nepal
MP	Member of Parliament
NDC	National Dalits Commission
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NWC	National Women Commission
RRN	Rural Reconstruction Nepal
SAFHR	South Asia Forum for Human Rights
SLC	School Leaving Certificate
UNDP	United Nations Development Programme
VDC	Village Development Committee
WCAR	World Conference against Racism

INTRODUCTION

A. Introduction

Human Rights Treaty Monitoring Coordination Committee (HRTMCC), a joint forum of NGOs in Nepal working in the field of human rights, prepares the Shadow Report to the fifteenth and sixteenth Periodic Report of the Government of Nepal on the Convention of Elimination of All Forms of Racial Discrimination, coordinated by Jana Utthan Pratisthan Nepal (JUP-Nepal), an NGO working to advocate human rights issues of Dalits 'untouchables' communities of Nepal at national and international level since last 5 years.

B. Process

The preparation of the Shadow Report writing was carried out by JUP-Nepal following different processes. A meeting was held on 13 March 2003 to discuss on the implementation of CERD as well as on the preparation of Shadow Report. Different NGOs working on Dalit issues and on indigenous people's rights were present in the meeting. The meeting was called to form the writing committee of the report, first in coordination of JUP-Nepal and the second by the Secretariat itself inviting the organisations and individuals participated in at the meeting hosted by JUP-Nepal. The meeting decided to prepare article-wise report including emerging issues like Armed Conflict and Dalits, Dalit Children, Dalit Women and Intercaste Marriage. A two-day national consultation programme was held among the representatives of NHRC, NWC, NDC, Ministries, INGOs, NGOs, Media persons, Lawyers, individuals, professionals and stakeholders aiming at collecting constructive suggestions and inputs so as to make the report more informative and convincing. A total of 80 participants representing different constituencies and agencies of the country from diverse backgrounds took part in the consultation. Suggestions and recommendations from the consultation programme have been incorporated in finalising the draft report. Nevertheless, further inputs will be sought and presented in the session during the oral presentation.

C. Human rights situation of Dalits in Nepal

The Constitution of the Kingdom of Nepal, 1990 guarantees basic human rights to every citizen of Nepal, envisages the parliamentary system of government and an independent and competent system of justice with a view to transforming the concept of the rule of law into living reality. The Constitution introduces a number of social and economic measures to empower so called 'untouchable' peoples. Indeed, Article 11(2) of the Constitution explicitly prohibits discriminations on the ground of religion, sex, and others and ensures that no one will be discriminated on the basis of caste. Furthermore, the Tenth Five-Year Plan of Nepal has highlighted the essence of Dalits reformative programmes such as social security, scholarship schemes, and grassroots-based projects, skill oriented training, self-employment and social awareness campaigns. Moreover, the Plan has strived to eliminate all forms of social discrimination and disparities and eradicating poverty from the marginalised communities.

Nepal has been a state party to 16 several international human rights conventions, treaties and optional protocols. According to the provision of the Treaty Act, 1990, the provision of conventions prevail over national laws. Despite the strong advocacy for the protection and promotion of human rights in Nepal, situation of human rights has been further worsening. State massively violates the provisions enshrined in the Constitution. Because of political instability and Maoist insurgency, state has failed to fulfill its commitment as it shown to international community and in domestic arena as well. Due to the negligence of state, violation of rights of the marginalised people like Dalits are rampant. Dalits are victimised

from different layers of discriminations in the country. “Upper” caste peoples restrict them in every social aspect like denial of entering temples, services, access to common/public resources, kinship and social relationship, and participation in societal activities, dominance, forced labour, social boycott and so on.

His Majesty’s Government formed the National Dalits Commission considering and respecting the interest and wellbeing of Dalits along with a major aim to bring them in the mainstream of national development. However, Dalits are yet to be benefitted. The Dalits are passing through hazardous situation. The state has arrested, tortured, disappeared and even killed many innocent Dalits in the name of being Maoists. On the other hand, Maoists misused Dalit youths as human shield and got shot dead in crossfire. They also abducted Dalits to exploit their professional skills. Dalit women are suppressed, oppressed and exploited: firstly, for being women and secondly, being Dalit women. They are living the life of misery, misconduct, maltreatment and suffering.

Dalits are at the crossroads but paths leading to full exercise of their human rights blocked. Much has been talked on Dalits’ deprivation of enjoying rights; much has been prescribed what is to be done to rescue them. Sadly, no one has come front to clear the blocks forcing them to go nowhere. If we have democracy and if we advocate rule of law, Dalits mustn’t go suffered, their human rights rampantly offended and the offenders enjoying impunity. We are in the civilisation of the 21st century - do we feel comfortable a large community of our society forced to be oppressed and deprived of their status as human beings?

D. Background of Shadow Report

The report reflects the situation of Dalits’ human rights in the country. Under each Article, prevalence of the problem, critical areas of concern, gaps and challenges are analysed and possible measures are recommended. Moreover, comments on the implementation of Concluding Observations are made and Role of NGOs has been dealt.

Article 1

Definition of Caste/Racial Discrimination

Article 1 of the Convention defines "racial discrimination" as an distinction, exclusion, restriction or preferences based on race, colour, descent, or national or ethnic origin, which has the purpose of or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedom. However, in Nepali context, caste-based discrimination is an important form of decent based discrimination where a person's caste status is an ascribed phenomenon; he or she is discriminated against just because of his or her birth on the ground of caste. Still, 205 practices of caste-based discriminations prevail in Nepal. ICERD definition of discrimination fails to include caste based discriminations. Hence, it is desirable that the Convention modernise definition of discrimination as it is done in WCAR. Discrimination based on caste exists in different parts of the world; being acute in South Asia.

Article 2

State Obligation to Abolish Caste-based Discrimination

A. Prevalence of the problem

The International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965 has identified responsibilities of the state regarding the elimination of discriminations on the basis of caste. Article 2 of the Convention has focused on the measures to be taken to eliminate racial and caste-based discriminations.

The Constitution of the Kingdom of Nepal, 1990 has focused social justice and equal distribution of economic gains preventing economic exploitation by any class². The state has obligation to eliminate all types of social inequalities and establish harmony among citizens.³ The state is also obliged to pursue a policy so as to strengthen national unity.⁴

Besides the preamble and directive principles and policies of the state, the Constitution has guaranteed some basic human rights under fundamental rights provision. The Article 11 has guaranteed right to equality and equal protection before law and restricted any form of discrimination as 'untouchability'.⁵ Cultural rights have also been protected.⁶ Similarly, right to religion is also one of the fundamental rights and everyone is entitled to pursue and practice his/her religion.⁷

The Treaty Act, 1990 has the provision on the domestication of the Convention to which Nepal is a party.⁸ The Civil Rights Act, 1954 has guaranteed right to equality and prohibited discriminations on the basis of caste.⁹ The Legal Aid Act, 1998 has made some provisions for

² Preamble of the Constitution of Kingdom of Nepal, 1990

³ Article 25 (3) of the Constitution

⁴ Article 26 (2) of the Constitution

⁵ Article 11 (14) of the Constitution

⁶ Article 18 of the Constitution

⁷ Article 19 of the Constitution

⁸ The Treaty Act, 1990, Section 9

⁹ The Civil Rights Act, 1954 Section

providing necessary legal aid to those who are incapable of protecting their rights due to economic factor. The Local Self-Governance Act, 1999 has prioritised people of the backward and downtrodden communities in VDC, Municipality and DDC posts.¹⁰ The Act has also explained that member of backward community and women should be preferred as mediators to look at the complaints lodged at the local bodies, VDC and Municipality.¹¹

B. Critical areas of concern

- Despite abolition of caste system in Nepal, discrimination on the basis of caste is still widespread in Nepali society. The implementation of laws has not been effective as expected.
- The state is under obligation to ensure public authorities to act in conformity to the Convention.¹² But the reality is different and the caste-based discriminatory attitudes are found in the government organisations. A few Dalits have got chance to enter in army and police forces and they are not allowed to take food but drink water with their fellow men.¹³ In several public schools the Dalit children are bound to sit in separate seats particularly at the back of the class.
- The state is obliged not to sponsor, support and defend the discrimination on the basis of caste. However, the practices go contrary.

In Durgamandau Primary School of Doti, Dalit students were put in a separate queue to take meal provided by the government under the Nutritious Food Programme.¹⁴

- The state is liable to amend and nullify discriminatory laws, but there are several laws, which support caste-based discriminations. For instance, Preamble of the County Code legitimises caste hierarchy. No. 10 of Chapter on Miscellaneous of the Code provokes caste-based discriminations in the name of ritual; Civil Rights Act, 1954 Section 2 (a) protects discrimination in the name of regulation of trust; and Antique Memorial Preservation Act, 1955 prevents entrance in religious places in the name of traditional practices.

A research done by Action Aid Nepal, an INGO, has found during the study that there are 205 existing practices of caste-based discriminations, 54 are related to denial, which include: 10 related to entry; 14 to services; six to access to common resources; 10 to kinship and three relationship and 14 to participation. The report says that 36 percent of Nepali people do not have any idea whether there is legal provision, instruments that penalise caste-based discriminations.

"Lower" caste people in Godawari VDC of Kailali district are suffering due to the discriminations perpetrated by the government itself against them. The government still implements development activities specifying "upper" and "lower" castes. For example, there are separate taps for the so-called "upper" and "lower" castes at the Godawari VDC. According to locals, the VDC and DDC constructed separate taps for "upper" and "lower" castes to supply water to the locals. Eleven taps and wells for the Dalits have been constructed from the funds allocated by government agencies during last few years. After separate funds were allocated for the wells of Dalits and non-Dalits, how can caste untouchability be eliminated; says Lal Singh, a local. These things are happening even though the Dalits have elected their representative as village chief a number of times.¹⁵

¹⁰The Local Self-Governance Act, 1999, Sections 8 (2) c, 172(2) e, 12 (2) c, 80 (2) (d), 176 (2) (d)

¹¹The Local Self-Governance Act, 1999, Clause 35

¹²ICERD, Article 2 (1) (9)

¹³Dalit in Nepal and Alternative Report for WCAR 2001, Jana Utthan Pratishtan, p. 26

¹⁴National Dalits Commission, Souvenir, 2003

¹⁵The Space Time Today, 1 January 2003

- The state is under obligation to discourage caste-based discriminations, but "high" caste people excluded Chamar in Siraha and Saptari and the government could not deal the matter appropriately.¹⁶ Such events happen frequently.
- Despite the legal provisions to nominate people from backward community like Dalit in VDCs and Municipalities, Dalits have been ignored and non-Dalits have been nominated, instead.
- The state has not ensured adequate development and equal enjoyment of human rights to Dalits. Dalits have not been able to exercise equal enjoyment of human rights; there is no separate desk at the National Human Rights Commission to deal the human rights issues pertaining to Dalits. Both the Ninth and Tenth Five-Year Plans have focused on social and economic development of Dalits. But the government has failed to implement it with appropriate mechanism.

There are two Dalit employees, one *mukhiya*¹⁷ and one peon, at the Mahendranagar Municipality Office in Kanchanpur district. Whenever any employee needs tea or snacks, they press the callbell, to as the peon to bring it from nearby teashops. After ringing the bell if any non-Dalit peon comes, they ask him to bring tea or food. If any Dalit peon comes, instead of asking him to bring tea or food, they ask him to all another non-Dalit peon and asks the later to bring tea or food. When we asked a Dalit peon that how does he feel when he experiences such behaviours of his superior officers, the Dalit peon said, "I feel very bad about it; I get hurt. Why should they treat me differently when all of us are government's servants?"¹⁸

- The establishment of National Dalits Commission has not fully covered the issues of Dalits, and the effectiveness of the Commission is questionable. The presence of the Commission is felt only in the central level.

C. Recommendations

- Despite restriction on the practice of 'untouchability', the government officials are found to have practiced it. Therefore, a provision of additional punishment should be incorporated in the law to the offenders who work in government offices or agencies supported by the government.
- There are several laws, which provokes caste-based discriminations. Therefore, the government should take immediate initiation to amend and nullify those discriminatory laws.
- Separate laws should be made to deal with the caste-based discriminations and separate tribunal should be set up to implement the laws.
- The state should launch the programmes to involve Dalits in social activities.
- The state should make separate law to support the economic, social and educational development of Dalits through reservation to ensure equal justice.
- Special monitoring unit in every district office should be established to gauge the implementation of the programmes that have been specified for Dalits.
- Words used in the text of laws to humiliate and discriminate Dalits should be repealed according to the human rights perspectives.
- There is a vast disparity between the law in text and law in practice. Law in text should be translated into practice.

¹⁶Supra Note 18 page 31

¹⁷ Non- Gazetted third class civil servant.

¹⁸ Action Aid Nepal, 2003

Prevention, Prohibition and Eradication of Caste-based Segregation

A. Prevalence of the problem

Nepali society is guided by the traditional Hindu philosophy. Caste-based discriminations are prevalent in every aspect of the Nepali society and culture, and it cuts through class, gender and ethnicity. The marginalised people of Nepal are often referred as Dalits, which itself is a heavily loaded political word, meaning “the poor and oppressed persons.”

Caste-based discriminations are legally abolished by the Country Code, 1963 in accordance with the Constitution of Nepal, 1962. To eliminate all forms of caste-based discriminations Nepal has expressed strong commitment to the international community by ratifying various international instruments.

The fundamental norm of Universal Declaration of Human Rights, which states, “All human beings are free and equal in dignity and rights”, has been accepted by the Nepali Constitution by guaranteeing basic human rights to every citizen.¹⁹

The fundamental rights protected by the Constitution include the rights to equality before law,²⁰ the right not to be discriminated on the ground of religion, race, sex, caste, tribe or ideology,²¹ the right to preserve and promote culture and language,²² the right to profess and practice any religion²³.

The Country Code provides that any person who practices discrimination based on caste or ‘untouchability’ shall be liable to a fine of up to Rs. 3,000 or one year of imprisonment or both²⁴ An explanation attached to this provision seeks to establish that traditional caste-based discriminations in temples and religious sites would not attract punishment under the Country Code.

Dalits are facing problems in getting legal treatment. They have perceptions and bitter experiences that their right to justice is deemed wherever they approach seeking legal and administrative remedies from state agencies i.e. police stations, VDCs, Municipalities, DDCs and Courts. A Dalit from Kotbhairab VDC of Bajhang District said that when the VDC Vice-chairperson himself is subjected to caste-based untouchability, how ordinary Dalits could go against such practices.²⁵

The directive principles and policies of state that the social objective of the state is to develop a healthy social life by eliminating all types of economic and social inequalities on the foundation of justice and hence establish harmony amongst the various caste, tribes, religions, languages, races and communities.²⁶ The directive principles and policies are not enforceable by Courts. However, they guide the state to give effect to them.

¹⁹ Preamble of the Constitution

²⁰ Article 11(1) of the Constitution

²¹ Article 12(2) of the Constitution

²² Article 18(1) of the Constitution

²³ Article 19 of the Constitution

²⁴ The Country Code, On Disciplinary Matters Section 10(A)

²⁵ Action Aid Nepal, 2003

²⁶ Article 25(3) of the Constitution

Due to the lack of effective monitoring mechanism to protect the victims of discriminations, state organs have appeared reluctant to implement laws in connection with caste-based discriminations. There are no special substantive and procedural laws to eliminate social evils.

All social structures pursuant to the Hindu philosophy regulate Dalits to a subordinate position in the society. Social norms based on the marginalisation and oppression of various caste and ethnic groups have led to the inferior placement of ethnic groups and lower castes in the social hierarchy. Lack of education and opportunity, inferior complexity, minimum access to justice have hindered Dalits to represent and influence in the decision and policy-making bodies.

B. Critical areas of concern

- Situation of Dalits have not changed considerably over the years, as Dalits still have the lowest social, economic, political and cultural status compared to other communities in Nepal. They are not treated as human beings in the society.
- They are socio-economically, politically, educationally and culturally deprived. Dalits are heavily discouraged to enter into civil service and teaching profession because these occupations are traditionally considered as respectable, which would not match with the Dalits, as they are generally believed as 'non-respectable' people. Dalits are structurally discouraged to participate in high-level political activities.
- Another serious problem relating to Dalits that their level of awareness relating to various laws, their rights and issues in general is very low which in turn minimises their opportunity to enjoy their rights in various spheres of the society like health, education, economy, etc.
- Dalits are facing difficulties in receiving justice and are discriminated in legal treatments. They are treated discriminately in custodies too. If they are detained in custody, they are beaten or tortured deliberately.

C. Gaps and challenges

The existing legislations prohibit all practices of caste-based segregation. It continues to exist in various forms in Nepal. Segregation in all aspect of society such as, religious,²⁷ social,²⁸ cultural,²⁹ occupational,³⁰ educational³¹ and residential³² still prevails in our society. The purity principles is in operation and non-commensal behaviours are expressed in different forms and places from the use of public water tap to market places, participation in religious activities to village festivals and important other social ceremonies.

D. Recommendations

- State should enact law to provide periodical reservation in all of the state opportunities to Dalit people.
- Special substantive and procedural law should be enacted to protect and promote their rights and uplift their status.
- Special programmes should be launched by the government to empower them. Policies set to strengthen are found only in papers, that need to implement.
- State institutions like National Dalits Commission established for the upliftment of the status of Dalits should be autonomous.
- Dalit issues should be the major agenda of all political parties.

²⁷ Dalits in Nepal consider themselves Hindu but they are not allowed to freely worship in Hindu temples.

²⁸ Dalits are not allowed to sit, work or eat together with the "higher" caste people.

²⁹ Dalits are not allowed to participate in religious ceremonies, events and festivals with higher caste groups

³⁰ Dalits traditional skills like shoemaking, tailoring, etc are considered as lower level jobs and are believed 'untouchable'.

³¹ In schools, Dalits students are segregated in providing water and arranging their seats.

³² Dalits are considered impure people and are not welcomed in areas settled by the supposedly 'pure' people.

Eradication of All Incitement to, or Act of, Caste/Racial Discrimination

A. Prevalence of the problem

The Constitution of the Kingdom of Nepal, 1990 has guaranteed the right to equality to all citizens and says that "No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, tribe or ideological conviction or any of these."³³ The Country Code, 1963 on Miscellaneous Chapter prohibits the act of discrimination on the base of caste and tribe. The Code has a provision of penalties of Rs. 3 Thousand or one year of imprisonment, or both of them for such type of acts. The cases of inhuman behavior and discrimination based on caste are government plaintiff; still there are a number of cases, which are not taken to the Courts. Only few are challenged at the court for legal remedies. Dalit employees have been victims of caste-based discriminations particularly from the responsible officials of the law enforcing agencies.

B. Critical areas of concern

- The government of Nepal has ratified the Convention on the Elimination of All Forms of Racial Discrimination with a reservation on Article 4. Therefore, the government is not bound to fully implement the provisions of the Convention.
- Besides few urban centric places, caste-based discrimination is still prevalent. Such practices have robbed people's dignity.
- People from so-called "lower" or 'untouchable' classes are not allowed to enter public places and use public facilities. Even though if they are allowed, behaved discriminately. A Dalit boy can't enjoy companionship with a so-called "higher" class people in the school. From the cradle to the cremation, Dalits are treated differently and discriminately.

Kumar Nepali and Bhimsen Nepali from Dalit community of Bhimeshwar Municipality-19 of Dolakha district were beaten and sent to the police custody on the charge of drinking water from a public tap by not caring the water vessels of so-called "higher" class. They spent one night in the custody.³⁴

Narayan Baraili, Juddha Bir Baraili, Ded Kumar Baraili and Janak Gadaili of Murtidhunga VDC-9 in Dhankuta district were not allowed to enter a local temple by the priest because of their caste.³⁵

- The Constitution and other legal provisions of Nepal rightly say that everyone has right of freedom to practice own religion. In contrary, Dalits who are Hindu by religions are not allowed to enter the Hindu temples.
- The establishment of National Dalits Commission and National Women Commission is noteworthy, however, these commissions are not autonomous in terms of finance and operation. Similarly, the efficiency of National Human Rights Commission is not assertive to Dalit community despite the strategy of the Commission talks about the upliftment of Dalits.

³³ Article 11(2), 11(3) of the Constitution of the Kingdom of Nepal, 1990

³⁴ INSEC, 2003

³⁵ Ibid

- The use of and access to common resources is denied to Dalits. A recent research carried out by DNF reports that nearly 72 percent of the Dalits (out of a total of 1892) were discriminated against using public water taps. Denial of other common resources includes use of trails used by "higher" cast people, use of cremation grounds near the 'higher' caste cremation grounds and use of community forest resources.³⁶
- The Constitution of the Kingdom of Nepal, 1990 under Article 112(3) has empowered the Election Commission to reject recognition of any political party that has been formed on the basis of religion, community, caste, tribe or region. The Election Commission has registered the Shiva Sena Party as a political party of the country in 1999. The party follows the extreme Hindu ideology.³⁷

C. Gaps and challenges

- Poor implementation of commitment by the government to eliminate the caste-based discriminations.
- Impunity to the perpetrators who commit inhuman behaviour against Dalits.
- Lack of awareness and sensitivity in the law enforcing and policy-making bodies and officials.
- Dalit movement is not recognised in the mainstream of the human rights movement of the country.

D. Recommendations

- Specific laws should be enacted for the upliftment of Dalits.
- Strong penalties to the perpetrators should be provided.
- Special package programme on social and cultural reform of Dalits.
- Impunity and safe-haven should not be granted to the perpetrators.
- Reservation made on Article 4 should be withdrawn.

³⁶Action Aid, 2003

³⁷Report of National Human Rights Commission, 2003

Civil and Political Rights

A. Prevalence of the problem

Despite existence of legal provision guaranteeing security of person, Dalits have most probability of meeting physical violence from the "higher" caste groups. "Higher" caste people involved in violence have higher chances of avoiding punishment because, firstly, Dalit victims themselves usually fear further reprisals and do not complain, and secondly, the "higher" caste peoples accused in the discrimination rarely hear seriously undermining their status of the victim and also because of their influence peddling cases against them.

Right to security is a major problem in the present state of insurgency. Citizens are neither safe from the security forces nor from the Maoists. Although Dalits comprise of about one fifth of the total population, they are not recognised as a political force. One of the main reasons for such a sad state of affairs is the split of Dalits.

Dalit intellectuals feel that Dalits could hardly accept any significant change in their plight unless the government does not recognise existing practices of caste-based discriminations as the major national political problem. They complain that Dalits issues have not been recognised as a political issue.

Dalits participation in election as voters and candidates is very low. There are rare cases of Dalits winning elections both for the local and national level positions. They are used only as "vote bank". Their presence is negligible in armed forces and in private sectors.

The government has no focused policies and programmes to eliminate or reduce caste-based discriminations, including 'untouchability'. The Ninth Five-Year Plan had some policies and programmes for Dalits but they fell short of implementation.³⁸

Main contributing factors for the backwardness of Dalit peoples are: ignored by state, lack of effective legal and social support, lack of generalisation of national and international laws, trend of impunity, inferior complexity and lack of self confidence.

B. Critical areas of concern

- Dalits have no significant representation in executive, legislature and judiciary. The highest position ever held by the Dalits in the legislative body is the Vice-Chairperson of the National Assembly.
- Dalits are not represented in policymaking and implementation bodies from central to local levels of the government, donors and NGOs.
- Dalits are discriminated at the district, Municipality and VDC levels by being discouraged them to enter the offices and ill-treatment in the office.
- Difficulty in changing family name in citizenship certificate, Dalits are not permitted to write their real surname because of the similarity with the surnames of 'upper' caste

³⁸ The government had established *Upekshit, Utpidit tatha Dalit Bikas Samiti* but the slender budget and over politicisation have made it ineffective.

people. They refuse to issue such certificates if Dalits should write their family names in their citizenship certificates.³⁹

- Badi⁴⁰ children are facing an identity problem because their mother are involved in commercial sex work. It is hence their fathers remain unknown. As mothers legally cannot recognise their offsprings as citizens, Badi children are facing the problem of statelessness.

C. Gaps and challenges

The main institutional challenges that government has not pointed out are: to develop rights-based movement instead of service oriented movement, mobilise more Dalits in the Dalit movement, create an environment for integrated and effective Dalit movement, develop sincere and capable leadership, identify clear vision and appropriate direction of Dalit movement, expansion of relationship, coordination and networking among the institutions of Dalits.

D. Recommendations

- The caste problem of the country is really the impediment for development. To uproot this problem, the state mechanisms should be sincere and serious. The state has to define it as a common problem rather than the problem of certain groups.
- Reservation and priority to Dalits in education, training, employment and politics should be given. Developing working relationship between Dalit movement and other minority rights movements is necessary, networking with other social movements including ethnic, linguistic, religious and gender movements is needed.
- They should be given equal participation and opportunity in decision-making levels. Dalits should be united and organised for an effective movement and for the elimination of conflict among different castes within Dalits.
- Effective implementation of laws and legal education and awareness programme is required to both Dalit and non-Dalit activists, as they are not really aware of legal provisions against ‘untouchability’ in Nepal and also about international instruments that could be related to ‘untouchability’.
- Dalit organisations like, federation of Dalits organisations, unions of Dalit teachers and students should be formed first at national level for solidarity to strengthen their movements.
- Right to life should be guaranteed by the judicial interpretation.
- Badis need some concrete programmes to solve the problems, citizenship among others of poverty in their community

³⁹ The older generation had written their caste identity in the citizenship certificates but now the younger generation want to write their true but non-Dalit local administrations including the chief district officers do not permit.

⁴⁰ One Dalits group who has been traditionally involved in commercial sex work.

Economic, Social and Cultural Rights

A. Prevalence of the problem

Dalits of Nepal are the most marginalised and deprived group of Nepal, they have been subjected to caste-based discriminations from ancient time. Dalits are large groups that suffer discriminations including social and educational, economic and cultural, struggle to join the mainstream. Despite the legal abolition of the caste system in 1963 and the legal prohibition of caste based discriminations, these sorts of activities still prevail in our society.

The Constitution abolishes the practice of ‘untouchability’ and punishes the enforcement of any disability arising out of the practice. The directive principles and policies of the state incorporated in our Constitution are not translated into practice. HMG formed NDC on 19 March 2002 with a view to protecting and promoting Dalits community drawing them into the mainstream of national development but it has not given any output for their upliftment. The government has no concrete policies and strategies to eliminate or reduce caste-based discriminations such as ‘untouchability’. The problems of so-called inferiors are the state defective mechanisms.

The central and the local bodies of the government have made no concrete efforts to increase people’s awareness that ‘untouchability’ is a punishable crime. HMG on 16 August 2001 declared eight-point socio-economic programme in the parliament mentioning that ‘untouchability’ is a punishable crime, further efforts have not been made for its follow-up.

In spite of the fact that various acts were promulgated and amended the plight of the Dalits continued unchanged and unchallenged. Dalits have not been liberated from the servitude and bondage they are chained under the caste system. The majority of ‘untouchables’ have led life of misery, humiliation, discrimination and are in under poverty.

B. Critical areas of concern

- The denial of education to Dalits through out history resulted in the dominant caste society establishing its hegemony, over the minds of Dalits in multiple forms. This has ultimately resulted in the denial of the rights to freedom of expression.
- Dalits' rights to work and free choice of occupations though provided in the domestic laws, is obviously constrained by socio-cultural conventions. They cannot start a dairy business because non-Dalits don't buy milk from them. The principle of equal pay for equal work is not applied in the case of Dalits.
- Dalit people are forced to continue conventional jobs.⁴¹ Different forms of forced labor like *haliya*⁴² and *bali bhare*⁴³ still prevail in their community. Dalits are also casually made to work without wages, like disposal of carcass, low-level jobs like washing dishes in hotels, cleaning streets and toilets, etc.
- Caste based traditional works (blacksmith, leatherwork, tailoring) are the main economic activity for Dalits in order to support themselves. Though their occupations are gradually declining; they still support Dalits to a large extent.

⁴¹ Chamar community was made the subject of social boycott in Siraha and Saptari alleging that they had denied performing the conventional job. Chamar community was forced to continue their traditional job.

⁴² Dalit males work as ploughmen for “higher” caste households and remunerated annually, mostly in land.

⁴³ Dalit household members work as ploughmen for “higher” caste households for a fixed amount of grain per year.

- Dalits settlements are economically segregated from non-Dalits settlements throughout the country. Dalits are supposed to be impure and are not welcomed in areas settled by so-called “upper” caste peoples.
- Dalits are often considered as dirty and uncultured, Studies have shown that Dalits live poor and unhygienic life.

C. Gaps and challenges

- With the view of monitoring and implementing human rights conferred by different international conventions including rights to equality, equal access to the resources. NHRC, NDC have been established but their contribution is yet to be felt to uplift socio-economic and cultural status of Dalits.
- Democracy cannot be established unless certain minimal rights, which are assured to every members of the community, are respected.
- Lack of autonomous bodies, which work for Dalits.
- Socio-economic and cultural rights are not regarded as enforceable rights.

D. Recommendations

- Caste-based discriminations, have been institutionalised by the state that’s why state should give compensation to the victims.
- Dalits have an alarmingly low literacy rate as compared to other community. There is an immediate need by the government to address this issue.
- The National Planning Commission, the Ministry of Education, the Ministry of Local Development should co-ordinate in achieving the goals set by the National Plan of Action. They should work in the partnership with all stakeholders in promoting socio-economic and cultural status of Dalits.
- NDC should be given an autonomy so that it can work, give best efforts to government in policy making as well as to review and monitor Dalits issues and concerns.
- Mass awareness campaigns against discriminatory social values should be initiated.
- Dalits traditional skills should be recognised promoted and modernised in correspondence with the advancement of technologies.
- Need of effective monitoring mechanism. Adopt clear-cut policies and guidelines on prohibiting wage disparities, reservation and special provision for encouraging Dalits in all sectors.
- Health behaviour as well as health rights are closely linked to the attainment of other social rights and opportunities. So, the government should pay more attention to improve Dalits access to health care services.
- To maintain social justice with caste discrimination, economic justice with fulfillment of basic needs, protective discrimination, human dignity and political justice with human rights and democracy. Therefore, this kind of special law should be enacted which gives social, economic and political justice particularly to Dalits.

Right to Seek Effective Protection and Remedies

A. Prevalence of the problem

The Constitution of the Kingdom of Nepal, 1990 under fundamental rights in Part Three, has guaranteed the right to equality, and equal before the law and equal protection of law.⁴⁴ Discrimination against any citizen on the grounds of caste in the application of general law is prohibited by the Constitution.⁴⁵ Furthermore, no person is discriminated against as untouchable on the basis of caste and be denied access to any public places or be deprived of the use of public utilities.⁴⁶

However, even today, there are legal provisions that discriminate against people on the basis of caste and such people are far behind in getting remedies through the competent national tribunals or the state institutions against any caste or racial discrimination. Regarding the legal provisions, the government report has identified the Supreme Court as a competent institution to provide remedy for discrimination on the basis of caste pursuant to Article 23 and 88 of the Constitution. District Courts have been identified to hear the cases of alleged torture and award compensation to the victims under the Compensation against Torture Act, 1996. Under Miscellaneous Chapter of the Country Code, 1963 (*Muluki Ain*), District Courts have been authorised to hear cases of discrimination. The NHRC has also been mentioned as an institution, which can receive the complaints from citizens who feel that their human rights have been infringed. But the report does not state specifically the tribunal set up to hear the offences of caste-based discriminations as per the state obligation under the Article 6 of the Convention.

Hence, Dalits have not received any protection and remedies through the national tribunals and institutions when discrimination on the grounds of caste takes place. On the contrary, they have been the victims of caste-based discriminations in the state. Those who violate the human rights of Dalits are rarely punished. Neither Dalits have ever been compensated against the atrocities that were forced upon them. As mentioned earlier, the Supreme Court is the apex body to administer justice. However, no any person from Dalit community has been at the apex body ever. So, the cases related with Dalits, in terms of caste-based discrimination, never get prioritised in the courts and no one really take initiation from the higher level to look at this front punishing the offender/s of discrimination. Continuation of the laws with discriminating provisions on the grounds of caste has been a boon for those who want to tread the path of caste-based discriminations. A vast majority of the members of Dalits community are totally ignorant of the constitutionally guaranteed rights for them as the citizens of this country.

Feeling of inferiority complex within Dalits has also contributed not to come fore to enjoy the constitutional and legal rights. As Dalits hail from poor community, it is often so, no legal aid has marred most of them from seeking justice from the court. Lack of appropriate consultation on their rights, their enjoyment and challenge legally the perpetrators of rights is another block they need to dismantle. Prevailing conservative practices in the society, even within the Dalit community discrimination based on caste exists.

⁴⁴ Constitution of the Kingdom of Nepal, 1990, Article 11(1)

⁴⁵ Constitution of the Kingdom of Nepal, 1990, Article 11(2)

⁴⁶ Ibid, Article 11(4)

Dalits and human rights activists were barred from entering the Samauji temple in the Lalpur VDC of Kailali district on 10 June 2003. The people of non-Dalit communities, in the presence of local authorities, physically assaulted and injured who tried to enter⁴⁷.

Government has prepared a draft that 10 percent quota in civil service should be reserved for Dalits. Though it is under discussion at the High Committee for the Monitoring of Administrative Reform under the Prime Minister, it is a welcome sign even at the initiation level. Ministry for General Administration proposed such an innovative initiation.

The government has filed cases against perpetrators of caste-based discriminations in Kailali and Saptari district under Public Offence Act, 1990. The cases were filed against Bhim Bahadur Thapa and his wife Parvati Thapa on the charge of feeding human faeces to Muna Devi Damai alleging her to be a 'witch' in Dhangadhi of Kailali and police lodged case against ex-MP Danalal Chaudhary and others in Saptari on the charge of beating a Dalit boy. Both of the cases have been filed at the respective District Courts.

In an order, District Court in Mahottari, charged a non-Dalit Rs. 2 thousand following a case filed by a Dalit against the perpetrator. The perpetrator had injured the Dalit fellow on the charge of using water of common well at Hathilet VDC of the district.⁴⁸

B. Critical areas of concern

The Convention⁴⁹ has made provision to seek just and adequate reparation or satisfaction for any damage suffered as a result of caste-based discriminations. Court and tribunal play dominant role in the administration of justice and implementation of prevailing laws. Judiciary becomes important when there is ambiguity of law and it does not seek justice unless the court interprets it. The Constitution has guaranteed right to equality,⁵⁰ and practices of 'untouchability' punishable. But there are some contrary legal provisions in the Country Code 1963 (*Mulikin Ain*)⁵¹, which allowed restricting *Dalits* to enter temples in the name of traditional practices. Such unconstitutional provisions were challenged in the Supreme Court.⁵² The Supreme Court declared the law void as it was against the fundamental rights guaranteed in Article 11(4) of the Constitution. Some Nepal Acts Amendment Act, 1998 amended the law in the same year.

Public authorities always attempt to practice caste discrimination.⁵³ In a case filed in Appeal Court of Ilam⁵⁴, the Court issued injunction order not to arrest Dalits in connection with the allegation on the use of public utilities i.e. use of public taps. In Dalits NGO Federation versus Cabinet secretariat,⁵⁵ the Supreme Court has issued directive orders to the government to make responsible the efforts to abolish the practice of 'untouchability'.

The Court has repealed the writ petition filed under Article 23 and 88 of the Constitution seeking mandamus order for the enactment of a separate law for the upliftment of *Dalits* pursuant to Section 11 (3).⁵⁶

⁴⁷ *The Himalayan Times*, 11 June, 2003

⁴⁸ Nepal Samacharpatra, 15 December 2003

⁴⁹ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965

⁵⁰ Constitution of Kingdom of Nepal, 1990, Article 11(4)

⁵¹ Muluki Ain, Adalko 10 Ka

⁵² Man Bahadur Bishwakarma v His Majesty's the Government, Ministry of Law & Parliamentary Affairs & Others, Nepal Kanoon Partrika 2049 BS. P. 1010

⁵³ Judiciary against practice of 'untouchability' in Nepal and Action Aid Nepal, 2003 p. 88

⁵⁴ Kaghanath Baraili vs. Ilaka Police Office No. 115/2057

⁵⁵ Supra Note 8 P. 89

⁵⁶ Krishna Prasad Shiwakoti Vs His Majesty's Government, Cabinet Secretariat and Others, Supra Note, 8 p. 90

The establishment of NDC to monitor and work for the upliftment of the Dalits is a positive step. The Commission, however, was established by the cabinet decision and not by the Act of parliament. In the absence of a solid legislative foundation, politicians and bureaucrats could easily manipulate the Commission. Therefore, the enactment of a separate law for legislative foundation to the NDC and for the establishment of separate tribunal to hear cases on discriminatory treatment to Dalits on the basis of their caste is essential.

The Court has repealed the application filed seeking punishment for contempt of Court for not following the directives issued by the Court regarding the prohibition of practice of 'untouchability' not being enforced by the government.⁵⁷

C. Gaps and challenges

- Despite the state commitment, there is no separate tribunal to hear the cases on Dalits human rights violations.
- No administrative programmes are launched for the eradication of the practices that result in discrimination to Dalits on the basis of caste.
- The government officials are found to have practiced 'untouchability' and discriminatory treatment to the weaker sections of the society on the basis of their caste.⁵⁸ The Court has not imposed stringent sentence to the evil practices of 'untouchability'.
- Victims have not been receiving just and adequate reparation or satisfaction for the damage suffered as a result of discrimination on the basis of caste.
- The government report speaks about the establishment of NHRC. However, it is silent on the formation of the Commission and how the complaint procedures in connection with the caste-based discriminations are handled and executed.
- The report is silent whether the government implemented the action plan it had prepared following the Convention.
- The government is falling behind in terms of constituting an autonomous institution/organisation that works for Dalits.
- The report is silent on the number of recommendations it executed forwarded by the NHRC on Dalit issues.
- The report talks about the establishment of NHRC. However, it has wrongly informed about the capacity of the Commission in terms of punishing the human rights offenders. The Commission can only recommend the government to take action against the perpetrators of rights.

D. Recommendations

- Compensation for Torture Act, 1996 does not give space for the establishment of separate tribunal for the purpose of hearing of the cases relating to caste-based discriminations. Similarly, no other mechanism mentioned in the government report mention about effective protection and remedies through the national tribunal for any act of caste-based discriminations. Therefore, separate tribunal or Court should be set up by the state to deal cases on 'untouchability' and caste-based discrimination.
- The compensation provided to the victims of caste-based discriminations is inadequate. Therefore, appropriate provision for the sufficient compensation for damage suffered as a result of caste-based discriminations is a must.

⁵⁷ Ratna Bahadur Bagchand vs. His Majesty's Government, Cabinet Secretariat and Others, Supra note, 8 p 91

⁵⁸ Final report of an study on interaction between Public and Selected Law Enforcement Agencies with special reference to weaker section of the society, submitted to Danida /HUGOU by Development Associates for Rural and Regional Development (DEVA) Kathmandu in August 2002.

- Sensitisation of judiciary and government officials on the issues of caste-based discriminations and Nepal's obligation under international law for the protection of equal treatment should be made for the effective implementation of Article 6.
- There was a comment on 14 state Periodic Report that the cause of non-implementation of Article 6 was due to the lack of awareness among the people regarding prohibition of 'untouchability' by the Constitution and international treaty. But 15 and 16 government report of CERD is lacking to mention as to what measures were adopted by the government.
- Though the government has made the cases of 'untouchability' as the state plaintiff case by the notification published in Nepal Gazette dated 28 July 2003, it is difficult to establish such types of offences. Therefore, separate investigation team under the police office should be set up for the investigation of cases on caste-based discriminations.
- The government should implement the action plan as adapted by the World Conference against Racism.
- UN should depot special rapporteur to study the situation caste-based discriminations in Nepal and reservation on Article 6 should be withdrawn.

Education, Teaching, Culture and Information

A. Prevalence of the problem

The International Convention on the Elimination of All Forms of Racial Discrimination mentions that the state parties to this Convention undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information with the view to combating prejudices.⁵⁹ Similarly, the Constitution of the Kingdom of Nepal, 1990 guarantees every citizen the right to demand and receive information on any matter of public importance⁶⁰ and has imposed restrictions on acts, which jeopardize the harmonious relations subsisting among the peoples of various castes, tribe or communities.⁶¹ Despite such provisions, Dalits are victimized on many grounds. Of 10 percent literate Dalits, 27.7 percent are primarily educated, 8.4 percent have received secondary education and 0.8 percent are SLC graduates.⁶² Dom, one of the Dalit castes, and their children are 100 percent illiterate⁶³. The government commitments for quality education are limited only in words and documents. Similarly, having been the restrictions in practicing the attitudinal behaviour to jeopardize the harmonious relations among the different caste peoples, the so-called “high castes” people still practice clichés to demoralize them. *Doom matdaina, mate pacchi banchdaina* (“Dalits are difficult to be pampered for enjoyment, if they do so they do not survive”), *Jaba chaddhyo Doom chula tauli, taba lagyo ulmauli* (“If Dalits control over hearths and foods, they become over-smart”), *Kukoor maryo, Doom maryo* (Dog died, Dalits died), *Aaphu mare Doomai raja* (“No matter who would be the king after my death”), *Rajako kam chhadi kamiko diwali* (King’s work is important than *kami’s*⁶⁴ festival) are some of the common controversial clichés often used in the media. But government has not been effortful to penalise those who practice such. The registered print media in the country have been reached to 3258 by the mid of June 2002. Of the 53 registered radios, 28 are providing services. The number of television broadcast has reached to eight.⁶⁵ A total of 2491 journalists have been working through out the country. Of them, only 17 are Dalits.⁶⁶ However, the state own media do not have Dalits’ representation and their issues are rarely prioritised.

Nepali government is never serious in these matters. There is no programme by the government to create good relationship between social groups. Instead so-called high caste peoples who make the dominant influence in the government, always hide the provisions of declarations and domestic laws for their own benefit. No government authorities have tried to aware the “lower” caste people like Dalits about the provisions of ICERD and other relevant laws. State guarantees the citizens’ rights of the country. But if the citizens are denied to enjoy such rights, the provisions get no life. It is what has been in the case of Dalits who are victims of denial to exercise their rights.

⁵⁹ See Article 7 for details

⁶⁰ Article 16 of the Constitution of the Kingdom of Nepal, 1990

⁶¹ Article 13 of the Constitution of the Kingdom of Nepal, 1990

⁶² Kattel, 2002

⁶³ The Space Time Daily, 22 May 2003

⁶⁴ Kami is one of the Dalit castes considered “untouchable”

⁶⁵ Data available from the Department of Communication, HMG

⁶⁶ Data based on Federation of Nepali Journalists’

B. Critical areas of concern

- It is because of the government's poor management to fight the prevalent problems, Dalits are counter victimized. They are treated as non-human beings. Their access to jobs is beyond imagination. Their rights to self-dignity, education, work and health have been played down.
- Scholarship provisions though announced by the government for Dalits' children's higher education, have not been received by them. The non-Dalits are enjoying benefits in the name of Dalits. Schools opened for Dalits either have gone without teachers and the students of the same schools are bound to teach the student of lower grade or have no physical infrastructures.

Students of Santhal Primary School at Bhathigach VDC-9 of Morang district have been studying sitting on the floor of schoolroom for 9 years. School opened for only Satar, one of the Dalit castes; children have one teacher who reaches 118 students in the school. Similarly, the students of higher grades at Siddha Nath Secondary School of Bitrayani of Dadheldhura district are obliged to teach students of lower grades for the school has only three teachers for 280 students.

- The major contributing factor behind promoting such acts is the government's negligence. It is not true to its commitments as promised in the Convention and Constitution. Apart from this, the hierarchical society, *barnashram* system has also contributed promoting such practice.
- Besides a few urban cases, many cases related to right to education and right to equality have gone unnoticed. In many rural schools, Dalits children are placed separately in classroom. They are compelled to be away of sitting and playing together with other castes students. They are provided with separate drinking water taps or pitchers.
- Dalit issues are not prioritised in the state owned media. Whatever the private media have covered the issues they are very nominal. State owned media has not launched a separate programme highlighting Dalits' issues. Issues of human rights education, concept of equality and programmes contributory to eliminate caste-based discriminations have not come to be the programmes to broadcast through radio Nepal and Nepal Television.

Teachers from so-called "high caste" of a local school stationed at Pothiyahi VDC-5, of Rautahat district boycotted to join school showing dissatisfaction on the decision of recruiting a peon from Chamar⁶⁷ caste. The teachers also smashed a water pot and asked the students not to accept water from him⁶⁸.

Many cases leaving a mark in a society like carcass case of Siraha, diary case of Nawalparasi have gone unbroadcast through the state media. The cases were the historical movement of Dalits who refused to dispose the carcass and campaigned for selling dairy milk.

C. Gaps and challenges

- The government deems to be failure to implement the commitment it made in the international arena committing to be effortful to create equitable society. Even the NHRC, NDC, established to monitor the human rights situation of the state and pressurise and provide inputs to the government for a just society, have been noticed powerless to work for the cause.
- Human rights education has not been widely recognised as a subject in school curricula.

⁶⁷ Chamar caste is considered "untouchable" in Nepali society

⁶⁸ The Annapurna Post Daily, 24 November 2003

- Dalit issues have not got priority in the state media. Those who commit crime offending the provisions in the Constitution go enjoying impunity for there is no concrete legal provision for those who dehumanise people on the ground of caste.
- Clichés meaning to dehumanise the Dalit peoples are used frequently in the rural areas. It has also segregated peoples in the tiers of “higher” and “lower” castes.
- Though 10 percent of quota is guaranteed to Dalit students in the MBBS scholarship, only 41.5 percent (5 Dalits) received it, where remaining 58.3percent(7) were occupied by non-Dalits⁶⁹. It is because of the government’s negligence and lack of effective monitoring.

D. Recommendations

- Citizens should be informed about the happenings going round their close. Therefore, media either print or electronic, state owned or private should prioritise the issues of backward community like Dalits.
- Media disseminating information should be sensitive on using words. Words of the nature of dehumanising Dalits like *Jaba chaddhyo Doom chula tauli, taba lagyo ulmauli* (“If Dalits control over hearths and foods, they become over-smart”), *Kukoor maryo, Doom maryo* (Dog died, Dalits died) should be strictly censored. Those who defy should not be granted a safe place to hide. Civil society should pressurise for the cause.
- Enactment of special legislation to penalise those who promote ‘untouchability’ basically in the public places like schools, hotels is in the dire need of Judiciary should act impartially while delivering justice.
- Massive campaign against caste-based discriminations should be launched where state should be in the front to lead. People of grassroots level should be informed with the legal provisions guaranteed in the Convention, Constitution and other legal codes. Media should act at the fore for this cause.
- Reservation guaranteed for Dalit students in education as granted by the Ministry of Education and Sports should be received by the recipients directly. Monopoly of non-Dalits in the name of Dalits should not go unnoticed.
- Human rights education including practice of caste-based discriminations as a crime should be widely recognised as a subject in curricula.

⁶⁹ The Himalayan Times , 22 December 2003

Dalits and Armed Conflict

A. Prevalence of the problem

Dalits in Nepal have been victims of multiple problems. They have been discriminated in every sector of society like education, health, employment, politics and legal rights. The Constitution of the Kingdom of Nepal, 1990 has guaranteed the discrimination on the basis of caste is punishable by law.⁷⁰ Despite such provisions, Dalits are the only community treated most inhumanly by the so-called “high castes” through caste-based discriminations, including ‘untouchability’ and occupational divisions. Their position in Nepali society marks as second-class citizens. They are treated as washing, cleaning and sweeping caste groups. Similarly, their economic condition is very poor. Since they are deprived of getting education, they are compelled to work as low-paid agricultural labourers. Of Dalit population, 16 percent are landless, 50 percent of them have almost 5 *ropanis* and 34 percent have more than 5 *ropanis* of land.⁷¹ Due to the lack of market, 40 percent of Dalits have given up their traditional occupation.⁷² It is because of these complications, the realisation or enjoyment of human rights guaranteed in the Constitution is beyond their imagination. It is thus they are victimized and the structural domination of laws has added the plight bad to worse. Since the government has turned a deaf ear to their sufferings and problems, they heard Maoists voicing their issues and some of them joined the Maoists willingly where some of others were enlisted in the fighting squads provoking them enjoy of their rights.

B. Critical areas of concern

- The government could not materialise its commitments and legal provisions into action. Country Code (*Muluki Ain*) 1963 has stated “No person shall be considered untouchable on the ground of birth”.⁷³ Similarly, the Constitution of the Kingdom of Nepal, 1990 has not only guaranteed not to discriminate citizens on the ground of sex, race, religion, caste, tribe and so on but also has directed the state to provide special provisions for the protection and advancement of the class, which is economically, socially or educationally backward.⁷⁴ Nevertheless, the commitments are limited only in documents.
- On the other front, the Maoists have included the issues of women, Dalits and ethnic minorities in their major political agenda. By means of their radical movement, they have behaviourally eliminated the concept of “higher” or “lower” caste people in the districts of their control. It is thus Dalits perceived the Maoists as the party of concerning on their issues and joined the party, whatever the inner realities are.
- Because of the conflict, Dalits are counter victimised. The Maoists target those who defy to be enlisted in the Maoists fighting squad and those who cast a support to them are victimised by the state. Since most of Dalits are supportive to Maoists, others who hardly know politics have too undergone state repression. In this light, Dalits are physically and psychologically victimised.
- Many Dalits have been displaced either to avoid the parties or forage for works. Due to the multi-layers of repression, their children are deprived of education and Dalits women are overburdened. Due to the embargo imposed by the Maoists or state to transport goods in the remote areas, Dalits have to bear plight.

⁷⁰ Article 11 (4) of the Constitution

⁷¹ Kattel 2002, pp 68-69

⁷² Ibid, p 69

⁷³ Chapter 19, No. 10, p. 621

⁷⁴ Article 11 (3) of the Constitution

C. Gaps and challenges

Armed conflict has gripped the nation for eight years. But the government has not reported the façade of the conflict in its report. It is enough to gauge the government's negligence on the major issues and its strategy to transform it.

D. Recommendations

- State should be serious while preparing its report. It should mention all issues that affect people.
- Many Dalits have been displaced due to the insurgency. State should rehabilitate them and provision them income-generating programmes.
- Restoration of sustainable peace should be the core programme of the state and 'special programme' should be launched especially for Dalits.
- Commitments made in the laws should be implemented and guaranteed to all the citizens.
- Dalits issues should not be (mis)used just for fulfilling the political will of the parties.
- Constitutional reservations should be guaranteed for Dalits by the state on the proportional basis as per their population in every section of nation.
- Dalits should be provided with trainings to modernise their skills and their easy access to market should be guaranteed to sell their products.
- Joblessness, illiteracy, poor health and low economic conditions are the major problems of Dalits. They should be provided with land, easy access to health services, education and job opportunities.
- Special law should be enacted to lull social disparities. Pro-Dalit laws should be enacted to address and redress their issues.

Dalit Women

A. Prevalence of the problem

The Constitution of the Kingdom of Nepal 1990, under the chapter of fundamental rights strictly prohibits the practice of 'untouchability'.⁷⁵ The same act is made punishable up to one-year imprisonment or fine of up to rupees three thousand or both.⁷⁶ However, the practice of 'untouchability' still exists in Nepal. The Nepali social structure, which is based on caste hierarchy, discriminates against Dalit who lie at the bottom of this class hierarchy. Though according to law, all citizens can equally access all public places, the deep-rooted discriminatory societal norms still deny Dalits entering in to the public places like temple, water spring, hotels and house of so-called "upper" caste people. Marrying and eating together with the so-called higher caste people and fetching water from the same public tap are strictly prohibited for Dalit people. Such discriminations and lower social and economical status of Dalit women are making them abused both mentally and physically.

In recent days, government efforts for women empowerment are taking place through structural reforms in civil services and establishment of National Women Commission and National Dalits Commission. Similarly, civil society organisations are taking a leading role in women's movements. Despite these positive initiation and efforts, no significant change in Dalit women's life is realised.

⁷⁵ Article 11(4) of the Constitution of Nepal, 1990

⁷⁶ No. 10(a) of Chapter on Adal/ Miscellaneous, The Country Code of Nepal, 1963

B. Critical areas of concern

- Dalit women's quality of life is substandard compared to the national levels, though they comprise about 16 percent of Nepali women.⁷⁷ Their families are ultra poor and occupy about 80 percent of ultra poor of Nepal. All of human development indicators show substandard level of Dalit women. Dalit women's literacy rate accounts 9 percent against 42 percent, the national average for women of other caste.⁷⁸ The life expectancy of the Dalit women is 42 years as against the national average of about 59.8 years.⁷⁹ High rate of birth mortality and high rate of maternal death amongst Dalit women are the serious and common health problems.
- A small tribe amongst Dalits called *Badi* are still unwillingly engaged in the sex works as granted by the society. They are being trafficked and sexually harassed by the people from "high" caste due to their poverty and lack of societal prestige.⁸⁰ It is apparent that Dalit women cannot easily raise their voice against such misconducts since almost all Dalit men and women's economy largely relies on the patron-client relation with the so-called "high" caste people while, on the other hand, they are unaware of their legal rights.
- Dalit women are left behind in the policy making from the grassroots to the central level. Thus, their daily routine and living lies in to the history of pain, agony, sorrow, misconduct and ill treatment.
- Dalit women are facing threats of social embargo and even of death as to when they get married with "higher" caste and touch the water of "higher" caste people.

A heterogeneous society of Eastern Nepal expelled a blind couple from their village, because a blind Dalit woman got married to a blind man belonging to a "higher" caste. Similarly, Muna Devi Pariyar of far-western region was beaten to death by a "higher" caste couple as she touched the water of "high" caste couple. They charged her to be a 'witch' and even forced her to eat human faeces.⁸¹

- Such evidences can be seen in daily newspapers regularly.⁸² However, Nepali women movement is hardly paying its attention to such violence.

C. Gaps and challenges

Effectiveness of government initiatives that prohibits caste-based discriminations is yet to be felt.

D. Recommendations

- The mass awareness, functional education, women's organisations and economic empowerment along with positive discriminatory legislative provisions in state functions would serve as the necessary tools that should be carried out by the state without further delaying. The civil society in collaboration with the government should take the actions of social transformation, such as prohibition of traditional negative custom of untouchables and adopting new culture that respects individual's rights.

⁷⁷ Dahal et al, 2002

⁷⁸ CBS, 2001

⁷⁹ UNDP, 2001

⁸⁰ Bhattachan, 2002

⁸¹ Feminist Dalit Organisation (FEDO), Nepal

⁸² Public hearing on "Issues of caste discrimination against Dalits in Far-Western Nepal", organised on 17 June 2003, Kathmandu.

- Specific law to address the issues of Dalit as a whole and Dalit women including the problem of ‘untouchability’ needs to be enacted to address the multiform of discriminations.
- Massive awareness in community and technical educational should be encouraged.
- Dalit women themselves should be assertive.
- Intercaste marriage should be recognised and the couple needs to be protected from harassment.
- Equal wages for equal work regarding to Dalit women should be guaranteed.
- Special measures for Dalit women in each and every sector of society i.e. education, health, employment, etc.
- Skill development training should be provided to Dalit women.

Dalit children

A. Prevalence of the problem

We have hardly any front uncharted by the armed conflict and its repercussions. The Maoist insurgents have dragged the entire nation into a battlefield. For eight years, and gradually without any sign of an end of it, the Maoist initiated armed conflict has put things in chaos and confusion of the lowest degree. The violence of the insurgents veiled under ‘politics of the people’ and the counter violence on the part of the state to quell the violence and maintain ‘law and order for the people’ has coloured every society, community; say every group and individual. As it is obvious that armed conflict has gone pervasive and intense in the land, the younger generation of Nepali populace faces the worst blows. Children, Nepal law defines people under 16 as children, have been caught in an unprecedented dilemma due to the conflict. When it comes the matter of the children of marginalised, backward, Dalit community- the situation is horrific.

There is no exact data on the number of children of Dalit. The Dalits occupy 20 percent of the total population of Nepal⁸³. If the number of Dalit children is assumed dwelling on the ratio of the children in correspondence with the total population of Nepal, it is nearly half to the total Dalit population. It means the number of Dalit children is nearly 2 million.

Ongoing conflict has added government’s non-action attitude decline more down in connection with doing something to save the future generation of the country, i.e. the children in general and the Dalit children in particular. Dalits, the backward and downtrodden community, is hit hard by the conflict. They are poor, marginalised and cornered. Their access to resources is nominal; they fall apart in holding state power. Most of them are illiterate too.

Armed conflict has demanded a lot from the Dalit community and everything from the children of the community. Dalits, specially the younger children, are provoked by the insurgents to join them ‘to fight the rule of the upper caste’. Besides, the rebels also drive them away to work in their technical sections, for instance, blacksmithing, tailoring and cobbling. The state does not recognise innocent people, and Dalits, among others, and are killed in the conflict.

Two teachers of Bhuwaneshwari Primary School in Durgamandau VDC of Doti district beat up a Dalit boy and a girl and punished five thousand rupees each. The victims had opposed the idea of the school to distribute nutrient to the Dalit students in a separate line. Sunil BK,

⁸³ CBS, 2001

one of the victims, says the school makes a separate line of the Dalit children while they are served snacks, nutrients. They just throw the items from afar; often it is out of our children's plates. Dabal Kami and Deepak BK were taken to the public places with their hands tied back and were punished five thousands each for the same 'crime'. Deusara BK, another victim maintains that the case was a worse example of extreme discrimination against them without any rational grounds. To discriminate the students in this line is unbearable, she says, "However, no one has come front to support us."

Conflict has displaced many people- internally, internationally. Those poor are compelled to roam from one place to another. Dalits, pinched by poverty and socially 'untouchable', find hard to settle in another place too. So, the education and other development of the children of such families have gone stray.

According to the list published by the National Human Rights Commission on the occasion of the International Human Rights Day last December, the 13-year old girl is the youngest among those held by the security forces in their captivity and disappeared. Kumari Nepali (Damai), was taken into control and disappeared consequently from Bhasriya in Kailali district on 24 September 2002. According to Gagane Damai, victim's father, she was taken away along with other six, all non-Dalits. However, the others have already been released and Kumari has not been yet. Gagane was informed by the security forces in Kailali that they had taken Kumari in control. He believes that security forces did not release Kumari, for she is from a Dalit community.⁸⁴

B. Critical areas of concern

According to a study on Dalit children by Dalit Sewa Sangh (Dalit Welfare Organization) in six different conflict hit districts, the children suffer major psychosocial problem. The conflict has done to them:

- They rear the instinct of reprisal
- Terror infested
- Short-tempered
- Introvert, reticent
- Inferior complexity
- Caught in confusion: what is right- guns or other things?
- Dubious on everything
- Passive and going non-creative
- What can we expect from them if it goes unfettered? Their mental and physical development has stagnated. Instead, they are forcibly being led a prone to violence and pessimists. They are compelled to miss social, economic, cultural, and educational and other opportunities to go more wild and brutal.
- It is not to be undermined that the discriminatory acts of the non-Dalits towards Dalits gripping the entire society have negatively impressed the community, specially the younger circle.

C. Gaps and challenges

- Dalits, specially the children of the community, are always out of focus in government programmes. There is no data on the number of the Dalit children. No official study has been made on their status.
- As humiliation and discrimination is acute against the Dalit children from the teachers and their colleagues even at the educational institutes, the chances of dropping schools on their part is high.

⁸⁴ The Kathmandu Post, 11 December 2003

- We have good planning papers, legal provisions and other commitments, but we always fail in implementing front. So-called formality and non-action on the part of the government in the pretension of one or other thing is the big impediment to let the situation go degraded.

D. Recommendations

- State should investigate, study on the status of Dalit Children. It is essentially desirable that it implements the plans whatever it has in store for children of backward community.
- The guardians, the security personnel and the Maoists insurgents need being trained on the psychosocial problem clutching the children badly.
- The Tenth Five-Year Plan of the government talks about the development of the children but is silent on the children from Dalit community. The government's decisions for Dalit scholarship and reservation in civil service are welcome sign. But, the case of non-Dalit students recommended in the scholarship quota of Dalits is the example how it will see in implementing front. Scholarship to Dalit children is a must, however.
- Removal of the contents in educational curricula, formal and informal, that fuels caste-based discriminations.
- Parties directly involved in the conflict need to agree that children and educational institutes are the 'zones of peace'.
- State should launch education campaign focusing the Dalit children.

Intercaste Marriage

A. Prevalence of the problem

Article 5(4) of the Convention on the Elimination of Racial Discrimination and the Convention on Women have provisioned the right to marriage and choice of a spouse. On the Chapter on Marriage of the Country Code (Ninth Amendment), it has been accepted that every citizen has right to marry with his or her own choice⁸⁵. Despite the provisions, intercaste marriage has not been socially accepted due to the discriminatory behaviour and social acceptance of 'untouchability'. The Hindu *barnashram* system disqualifies the marriage between the so-called unequal castes – Dalit and non-Dalit castes. The so-called "lower" caste people are boycotted in the social functions and other rituals if they have practiced unequal marriage though they are from the same community and religious group. Thus, many intercaste lovers are obliged to give up their rights and interest due to the strong hatred towards intercaste marriage.

B. Critical areas of concern

- Denial of kinship of intercaste marriage is pervasive in the country.
- Denial of legitimate relationship between Dalits and non-Dalits is prevalent.
- Practice of social boycott is common if there are relationship between Dalits and non-Dalits. The married couple face exclusion by their own community and their families. They are not allowed or invited in the social as well as religious rituals, feast and festivals.
- Such types of practices are not only prevailing between the Dalits and non-Dalits but also in Dalit community itself. Due to the social rejection, intercaste marriage remains aloof and isolated.

⁸⁵ The Code has provisioned the age of marriage 18 years for girls and 20 years for boys

A young *bahun* of Budhabare VDC of Jhapa district fell in love with a young Dalit girl. When they got married, many non-Dalit people including VDC Chairperson tried to break off their marriage. As the tension mounted, some Dalit well-wishers helped the new couple to leave the village for their protection. The couple returned to the village after some months. It created tension in the *bahun* community. They threatened the boy by saying, “Either you must leave the Dalit girl or leave the village immediately.” Under tremendous pressure, relatives of the boy forced him to leave the Dalit girl for good. He obeyed them. Thus, the Dalit girl was left to nowhere.⁸⁶

Namsaling VDC in Ilam district has set an exemplary tradition of rewarding those newly married couples who do intercaste marriage with Dalits. So far, they have given rewards to four such couples. Though the VDC has initiated a noble cause, non-Dalits and “upper caste” Dalits still do not accept such marriages. Couples face humiliation and problem of separation. Non-Dalits do not like their sons or daughters to get married with Dalits. They try to break such relations. “Upper caste” peoples generally take it seriously if such marriages take place between non-Dalit boys and Dalit girls. Males are considered to be 'pure' even after having illicit relation with Dalit women.⁸⁷

Ram Ashis Mahara Chamar of Laxminia VDC-4 was beaten by Butan Chaudhari of the same VDC, on the charge of involving in politics. Though the case is registered in the concerned authority, the victim is not redressed.⁸⁸

- Only few victims of caste-based discriminations are redressed by the concerned agencies due to the public pressure.

The case of Nanda Sarki of Godawari VDC in Kailali district is a significant one in the country that the District Court has been able to provide remedy to the victim. The Court declares the child of Nanda as a child of Chakra Rawal and proved that he is her husband who denied accepting their relationship and the newborn child.

C. Recommendations

- Society and community should be aware of the legal provisions on the intercaste marriage.
- Counseling and special protection should be granted to the victims.
- Local and concerned agencies should be empowered and adopt effective mechanisms to punish the perpetrators.
- Specific campaign should be launched to promote intercaste marriages.
- Databank should be established to collect such types of incidents occurring throughout the country to record such cases.
- Complaint box should be installed to receive complaint against these sorts of inhuman behaviour in every VDC and DDC.
- Public hearing programme should be launched by the government against the violation of right to marriage.
- Counseling and orientation should be provided to the guardians and parents of the victims.

⁸⁶ Action Aid Nepal, 2003, p.42

⁸⁷ Action Aid Nepal, 2003, p.40

⁸⁸ INSEC, 2003

Implementation of Concluding Comments

Recommendation No. 295

The CERD committee has been regularly recommending the government of Nepal to withdraw the reservation on Articles 4 and 6 of the Convention. The government report says that the government is serious to withdraw the reservations, but it has failed to live up with the commitment. The government is yet to set the timeline and procedure to with the reservation.

Recommendation No. 296

Though National Human Rights Commission has been established under National Human Rights Commission Act, 1996, it has fallen short in operational and financial autonomy. The Commission itself has no separate section to deal with the Dalit issues. Since the Commission itself can't enforce the decisions of its own, the government shows lack of its interest to comply with the decisions of the commission. Recently, the government of Nepal has established Human Rights Promotion Centre work to closely with the Commission on human rights issues.

Recommendation No. 297

The government has incorporated the disaggregated data as per the recommendation by the Committee. However, the data does not meet the requirement of the Committee.

Recommendation No. 298

The government has failed to answer as recommended by the Committee. The government has neither formed any monitoring mechanism nor has conducted investigations on caste-based discriminations. It has not assessed the impacts of the activities operated by it to wipe out such discriminations.

Other recommendations

The Committee has recommended to the government to adopt and take different measures to combat caste-based discriminations and prevent caste motivated abuses; prosecute state and private actors responsible for such abuses (*Recommendation No. 299*) and has recommended ensure adequate support to local authorities to implement the Convention at local level (*No. 300*). The Committee has also directed the government to adopt all necessary measures to ensure the training and education of law enforcement officials, teachers and social workers and include the teaching of human rights curricula and carry out public education campaigns to combat discriminatory traditional customs and societal attitudes (*No. 302*). Till the date, no such measures are seemed to be adopted and still human rights education is just nominal and it is in its very introductory phase in school level. Training provided to the police personnel is limited to the high-ranking officers. The text of the Convention is translated into Nepali language but is not disseminated widely in the country. Many law enforcing agencies and officials, even judges, do not have idea on the Convention and disagree to apply the universal norms of human rights while delivering services and administering justice. The government has accepted the fact that caste based discriminations are rampant in the country but there is no exercise of preparing the Action Plan of CERD to implement the Convention.

Recommendation No. 303, 304 and 305

The government should recognise the competency of complaint mechanisms of the ICERD. It is the responsibility of the state to make the report public. During the preparation of the report, the government seeks expert assistance from among the NGOs and individuals. But, it never recognises their contribution in the final report sent to the Committee; even it doesn't inform about it to the members of drafting committee from non-government side⁸⁹.

⁸⁹ Advocate Ratna Bagchand as a member of Drafting Committee of State Report of the country sharing his experiences in a two- day National Consultation Programme on CERD Shadow Report, organized by HRTMCC/JUP-Nepal, Kathmandu, 8-9 January 2004.

Role of NGOs⁹⁰

A number of NGOs and INGOs are involved in eliminating caste-based discriminations and improve the socio-economic status of Dalits. A total of 42 organisations including 20 NGOs, 12 INGOs, 4 Bilateral and 6 Multilateral were purposively working for the promotion of Dalits. Among them, many NGOs are actively working in the Municipalities and a few in VDCs. Different types of intervention programs such as awareness, legal aid services for victims, income-generating programmes have been launched. Advocacy and lobbying programmes are also some of the successful programmes of NGOs, which have been crucial to exert a lot of pressure on the government to formulation of national plans and policies relating to Dalits.

Though these organisations are established with the intention of protecting and promoting human rights and social justice, most of the NGOs are controlled and run by non-Dalits. Action Aid Nepal is the only INGO run by non-Dalits that has sole focus on the development of Dalits. Dalits NGO Federation has been working solely in Dalits issues. It had petitioned for the liberation of Chamar.⁹¹

Among 20 NGOs, only 9 have recruited Dalit employees, among 12 INGOs, 6 have dalits employees, among four Bilateral agencies, only one has Dalit employees and in Multilateral agencies, no Dalit employees are recruited. Altogether 70 Dalit employees have to be found to be working in NGOs and INGOs including the agencies.⁹²

Dalits prefer Dalits to work for their upliftment. They very strongly suggest donors and the government work directly with them. Nevertheless, many NGOs and INGOs are proving their efforts to upgrade the socio-economic, educational status of Dalit communities. Regarding the recruitment policies NGOs have given preference to Dalits. However, the presence of Dalits in such organisations/agencies is not encouraging.

While working on Dalit issues, NGOs and INGOs need to introduce Dalit recruitment policy. The NGOs and INGOs should work proportionally in each VDC. All of their activities have to be used for Dalits welfare for the real implementation of Dalits policies. NGOs and INGOs have to concentrate their programmes with due priority to improve their educational status. This can be done establishing schools only for Dalits and ensuring individuals and organisational support to them.

⁹⁰ Based on research on Dalits Recruitment Policies and Practices in Selected I/NGOs and Bi/Multilateral Organisations of Nepal carried out by INSEC, 2003.

⁹¹ Chamars problem is entirely related with their legal and constitutional rights. They were excluded by the local community by the Saptari/Siraha. They were denied having public benefits and public things.

⁹² Unpublished research report, INSEC, 2003

Concluding Remarks of Report

Conclusion

Though bitter, Dalits community is one of the poorest constituencies in Nepali society. Landlessness, illiteracy, unemployment, pervasive poverty are the collections in their archives. The dilemmas of Dalits are complex, serious and deeply embedded in religious, cultural, historical, and social structures. Discriminatory practices are not imposed upon them only by the “high” caste people, it is also equally prevalent among them. As the caste-based discriminations are byproducts of power structure, fighting it has been a major challenge. Sustainable development, education, awareness raising campaigns could be supportive to corner the social evil, equally important is a change in mental perception both in Dalits and non-Dalits so that a way opens up to the equitable society.

The government has to play a crucial role to empower Dalits. Guarantee of representation of Dalits in all spheres of state bodies either provisioning certain quota or recruiting them with special policies marks a step in this process. Easy access of Dalits in the public resources further helps mainstreaming them. Strong laws and penal system to those who act for social exclusion, if institutionalised, alerts even Dalits and other caste peoples, social injustice could no longer prevail.

Apparently, Dalits are still not honoured and respected equivalent to other caste peoples. State though considered as a guardian to guarantee fundamental rights, is often deemed on the front of violating non-derogable rights too. Maintenance of transparency and accountability on the part of state comes the first what has not been maintained yet, which unabashedly was introduced while preparing the state report too. On the other front, even the set policies and efforts made time and again by the government either written or perceptual, are almost implemented and they have proved failure thus, which hit Dalits big pushing them bad to worse. Therefore, implementation of commitment should be the prime act of the state where vision and goal-oriented result sprouts. All state machineries/mechanisms should be clear on the fact that social justice is an end of any state. If human rights and social dignity is played down, it is inequality; disparity and deteriorating condition that rules defying the directives of ideal state and again the big share goes to Dalits.

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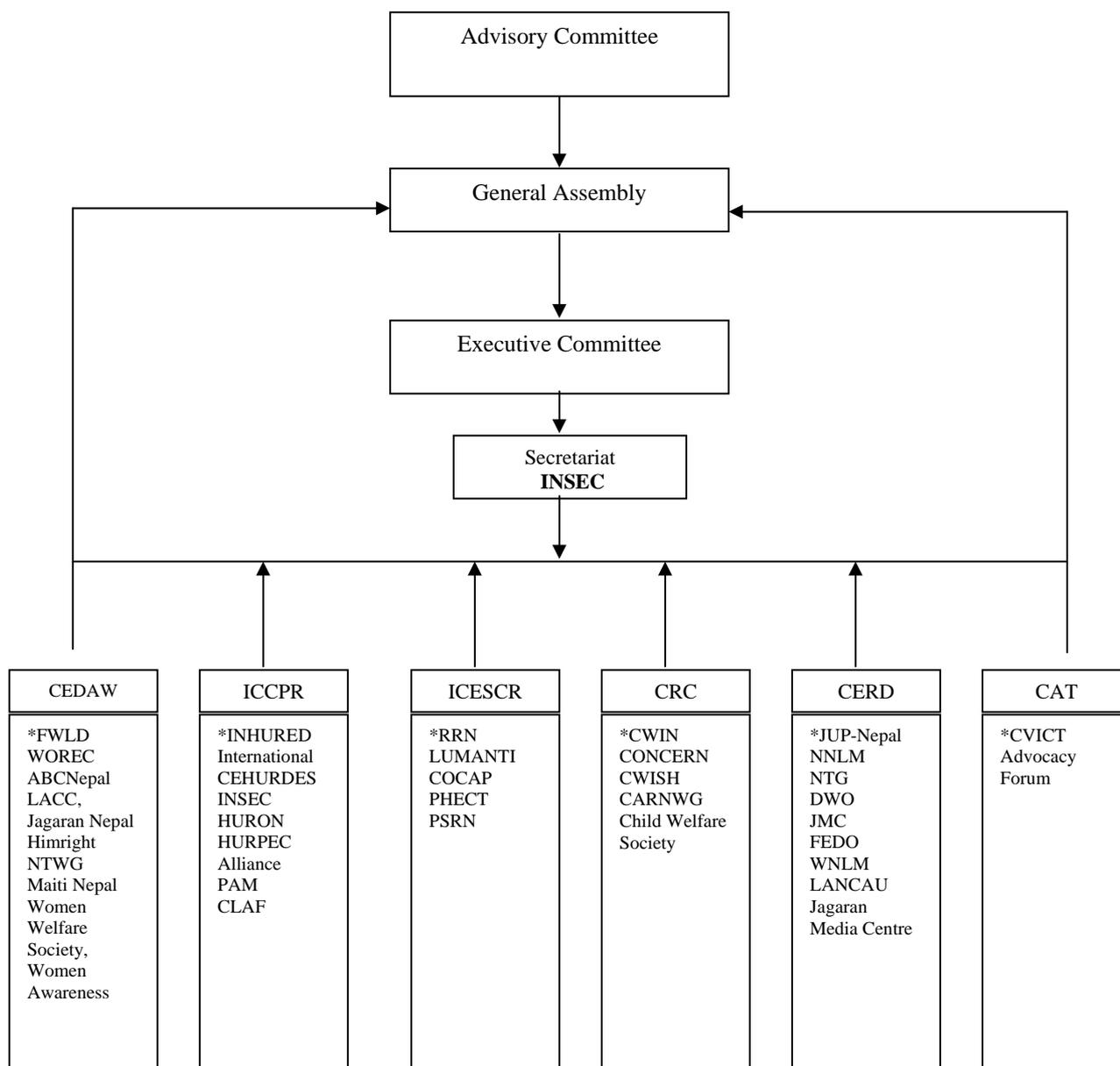
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Annex 1 Structure of HRTMCC



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