

Minority Rights Forum

United Nations Office, Geneva, Switzerland

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Honorable Mr. Chair,

Distinguished guests, Ladies and gentlemen.

A very Good afternoon!

I take an honor to be a part of this huge auspicious Forum of Minority Rights. I take consent to share my observations on the situation of Dalits and Dalit women of Nepal in the Criminal Justice System followed with the root causes of the hurdles faced by them, challenges and the measures of the mitigation that needs to be adopted.

Nepal is known for its distinctive feature- a land of diversity. It is a multi-caste, multi-ethnic, multi-lingual, multi-religious, multi-geography, secular, inclusive and democratic country. Amongst the caste groups, Dalits comprises of 13.21% of the total population of Nepal. Dalits are the most vulnerable and socially excluded citizens of Nepal who are deprived in the socio-economic and political aspects of the development. Moreover Dalit women in particular suffer from caste-based oppression including untouchability, gender-based discrimination, violence and trafficking and sexual abuses, prohibition in education, and in

access to health facilities, economic opportunities and participation.

Mr. Chair,

In relation to the Criminal Justice System, I would like to share you that it's hugely influenced by the Common Legal System and requires a lot of formal process and procedures and influential lawyer to win the cases. The investigation and prosecution system that being adopted in Nepal is also not poor and Dalit friendly. They are too formalistic in nature and money minded in attitude. Some of the current studies have spelt out that there is a corruption in this system as well. The adjudication process is also too technical and orthodox. Apart from some good decisions regarding public interest issues, in overall the court seems still not dynamic and justice driven.

The legal aid system is also a part of socio-cultural phenomena. It is therefore, the existing defective and discriminatory practices have directly indirectly been part of the criminal justice system in Nepal. The criminal justice system is neither due represented by Dalit nor does it orient towards the protection and promotion of their rights.

Sharing some examples, though the caste based discrimination has been criminalized by a separate anti-untouchability and caste based discrimination law and new constitution as well, there are very few cases where the victims have received full justice. Even there are very few cases lodged at the police and other concerned

agencies. While analyzing the reasons, the attitude, process, corruption and lack of quality legal aid services are some that prevent Dalits to approach to. There are some systematic issues as well. For example, unless there is a good representation of Dalit in the policy, security, prosecution and judiciary, the confidence of Dalit towards these agencies will not be increased.

Mr. Chair,

One more issue that needs to be addressed is about enforcement of the existing laws and human rights obligations made through different human rights system including UPR and various treaties reports. After the attempts of many years, the new Constitution has been promulgated by the constituent Assembly. And there are some good examples that guarantees the right to criminal justice, free legal aid, right to have compensation against caste based discrimination and inclusive representation in state agencies. However the enforcement is yet to be seen.

Mr. Chair

Having said that, I would like to put forward some of the recommendations and suggestion that need to be taken care:

1. Revision and effective implementation of Caste based discrimination an untouchability (Offence and Punishment) Act, 2011 law

2. Passage and enforcement of the proposed penal code and criminal procedures. The civil code which has been operating over century need to be repealed and criminal justice system has to be modernized.
3. The investigation has to be standardized and modernized. The existing old template that requires a lot of formalities need to be rectified
4. The cases against caste and untouchability are non-visible crime and it is not easy to get witness and evidences. In this regards, there should be waiver in terms of witness and other testimonies
5. The investigation and prosecution system should be more human rights friendly
6. Implement effectively the provision of the constitution regarding rights of Dalit and constitutional oversight mechanism providing full supports to National Dalit Commission
7. The due representation of Dalit in all justice sector institutions (police, prosecution and judiciary) is a must. Unless they have the representation in the system, the confidence of dalits and poor will not be there and access to justice of this group will always at risk.
8. The holistic legal aid system need to be introduced and implement at community level.

9. Immediate implement the recommendations of the Universal Periodic Review of Nepal (November, 2015)
10. The legal empowerment program including quality free legal aid services need to be introduced.

With this let me conclude my notes and would like to express my generous thanks to you all for your all out support for the promotion and protection of rights of Dalit.

Thank you for your attention!!!