

NEPAL: The caste-related UPR commitments must be made reality

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A Joint Statement by the Asian Human Rights Commission and the Jagaran Media Center

"Overcoming racism compels us to address public policies and private attitudes that perpetuate it." Ban Ki-Moon, Secretary-General of the United Nations, on the occasion of the 2011 International Day for the Elimination of Racial Discrimination.

Every year since 1966, 21 March is observed globally as the International Day for the Elimination of Racial Discrimination. It is annually the opportunity to call on the international community and the individual countries to step up their efforts toward the elimination of all forms of racial discrimination and violence, including discrimination on the basis of caste. The UN Special Rapporteur on contemporary forms of racism and the Committee on the Elimination of Racial Discrimination have affirmed on several occasions that caste discrimination falls under the authority of the Convention on the Elimination of All Forms of Racial Discrimination. Although Nepal has been a signatory of that Convention since 1971, being born in a Dalit community continues to mean a life of stigmatization, poverty and exclusion for millions of persons in the country.

The figures of the persisting inequalities between the Dalit community and dominant castes draw a clear picture of the continuous impact of the caste-system on the distribution of resources and power in Nepalese society.

The United Nations Development Programme Nepal Human Development report 2009 draws a clear picture of the structural inequalities of the Nepali society and of the persisting socio-economical divisions between castes. It reveals that in 2006 the Human Development Index (HDI) of persons belonging to the Brahmin/Chhetri communities reached 0.552 while it was of only 0.424 among the Dalit community. The HDI takes into account three indicators of the development opportunity and well-being of a community: educational attainment, health measured through the life expectancy and the income. The gap among the HDI of the different castes is therefore mirrored by a parallel gap in those different indicators. For instance, according to the 2006 population survey, the life expectancy of a Hill Brahmin was 68.10 years while for a Hill Dalit it was of 61.03 years only. The average income of a member of the Dalit community, US\$ 977, was less than half of the average income of all Brahmans/Chhetri, at US\$ 2027. And last but not least, those figures also show that structural differences in access to education decide the Dalit access to economic, social and political opportunities as only 38% of all Dalit adults are literate as opposed to the 63.65% of Brahmans and Chhetris.

This also conditions the lack of access of the Dalit community to the political sphere, where they could have defended and organized their interests: even now Dalits make up only 8% of the members in the CA, while official figures states that Dalits represent 13 % of the population and non-official estimations put that percentage as high as 20%.

What the figures do not tell are stories of the everyday life, the violence and discrimination that Dalits continue to face in Nepal. Several cases of abuse on the basis of caste against members of the Dalit community have been reported this year, from different corners of Nepal, including from the modern Kathmandu region, showing that much more should be done to effectively address the issue. Those include reports of Dalit women being accused of witchcraft and violently beaten, of inter-caste couples forced to flee leaving everything behind following threats from the non-Dalit family, of Dalit houses being burned down, of attacks against Dalit for having used public water, of Dalits being assaulted for having entered a temple. Dalit women, doubly discriminated against because of their gender and caste, bear the worst brunt of those attacks.

In spite of those widespread violations, only in a few cases is the justice system holding the perpetrators accountable. The 16 February 2011 report of the UN High Commissioner for Human Rights on the human rights situation in Nepal rightly goes through the different layers of obstacles continuously faced by victims of caste-based violence, as well as of gender-based violence, to access justice: 1-police failing to treat offences targeting Dalits as criminal acts by refusing to take proactive steps when a case is reported to them and by delaying the registration of the case, 2-shortcomings in the criminal justice system which imply that the judicial process will be slow and lengthy and non-implementation of the court verdicts, insufficient margin of action and resources granted to the National Dalit Commission, 3-police encouraging the victims to "resort to measures beyond the criminal justice system" such as reaching a negotiated arrangement with the perpetrators to avoid prosecutions, and 4- socio-economic and cultural barriers to justice, in other words lack of awareness of their rights, social stigma and further victimization of Dalits that speak out and seek justice.

In light of the challenges that continuing caste-based discrimination poses to the democratization and economic development of the country, the Universal Periodic Review of Nepal in Geneva in January 2011 offered a welcomed opportunity for dialogue and concerted action to make improvement in the country's human right record, notably concerning caste issues. The session showed that caste-based discrimination remained an issue of serious concern for a consequent part of the international community, with 20 countries noting its persistence and several of them making recommendations to Nepal to improve its record in that aspect.

We welcome the government's commitment to uphold its efforts to fight caste-based discrimination and strongly urge that the commitments listed below must be translated into concrete actions.

Regarding the adoption of a human rights friendly and inclusive Constitution:

Nepal has committed to recommendations to ensure the full participation of the Dalits in the constitution making process and to ensure that the constitution fully guarantees the right to equality and non-discrimination in line with international standards. It further agrees to undertake a democratic, inclusive and progressive State restructuring. We welcome those recommendations and the government's commitment and urge in particular that the constitution shall have provision to reinforce Nepal as a State free of untouchability and caste based discrimination and for the representation and inclusion of Dalit members from the local to the national level of state mechanisms.

Regarding strengthening the National Dalit Commission:

Nepal's agreement to the Bolivian recommendation to continue promoting the work of the National Dalit Commission (NDC) through the reinforcement of its resources is also a positive commitment. The OHCHR as well as numerous NGOs have repeatedly deplored the lack of resources of the commission and the low implementation rate of its recommendations. The Asian Human Rights Commission and the Jagaran Media Center therefore urge the government of Nepal to quickly make its commitment real and establish the commission as a strong, independent and effective body for the promotion and protection of Dalits' rights. This must include giving it the statutory status that it still lacks as well as proper infrastructure and manpower. It should be established as a watch-dog overseeing the implementation of the laws against discrimination, and government plans and policies. Further, we recommend that the NDC should be given the power to conduct investigation into cases of caste-based discrimination, provide legal support to the victims seeking justice and develop safe house mechanisms.

Regarding criminalization of caste-based discrimination:

The question of the criminalization of caste-based discrimination and the practice of untouchability was brought up by several countries. Nepal has accepted the recommendations to pass the bill on caste-based discrimination and untouchability. It also agreed to a recommendation by the Czech Republic to make sure the policy will be implemented by the local authorities in remote and rural areas. Nevertheless, it did not commit itself regarding the recommendation made by Norway to ensure that the legislation on caste-based discrimination will be in line with international standards and indicated that it would first examine this recommendation. A joint analysis of the draft Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act by the Office of the High Commissioner for Human Rights in Nepal and the National Dalit Commission have pointed several flaws in the draft bill, notably relating to the clear definition of sanctions which apply to each act, which must be filled.¹ It is therefore of tremendous importance that Nepal not only commits to enacting legislation but also commits to filling those loopholes so as to ensure that the Bill will be in line with international standards to make it an effective instrument of eradication of caste-based discrimination. In particular,

the law should provide for clear sanctions, proportionate to the gravity of acts of caste-based discrimination or caste-based violence. Its implementation should be closely monitored and the National Dalit Commission may be entrusted with that task.

Regarding effective investigation of cases of caste-based discrimination and compensation of the victims:

Nepal similarly said that it is examining a Czech Republic's recommendation to see "that the cases of caste-based violence are reported, investigated, perpetrators are prosecuted and victims of such violence are compensated." The Convention on the Elimination of Racial Discrimination mandates the government to ensure a legal remedy to the victims, as well as appropriate reparations. There is no doubt that legislation alone will be enough to put an end to the impunity of those who commit acts of caste-based discrimination and that the criminal justice system must be held accountable to ensure that this law is well implemented, which requires positive efforts from the government. Effective investigation of crimes of caste-based discrimination and violence is a pre-requisite to establish a discrimination-free society in Nepal. We therefore urge the government of Nepal to agree to positive efforts to put an end to impunity of acts of caste-based discrimination by accepting this recommendation.

Further, Nepal indicated that it viewed favourably a Swedish recommendation to "Conduct thorough and impartial investigations into allegations that the police or any person of the justice system has taken part in discriminatory actions" and that this recommendation was already being implemented by the state. We welcome this commitment, which if translated into concrete measures, would be a tremendous improvement in the accountability of the criminal justice system in its handling of caste-based violence cases. Nevertheless, in light of the current practices in the police stations throughout the country, we urge the government not to restrict the implementation of that commitment to the current limited policies.

Regarding economic, educational and social opportunities of the Dalit community:

In light of the persistent discrepancies in opportunities between the Dalits and the rest of the Nepali society two recommendations respectively formulated by Malaysia and Finland appear to be crucially important for the upliftment of the Dalit community: the formulation of "effective strategies and programmes in order to provide employment and income generating opportunities for the population, in particular the rural population, Dalits and ethnic minorities" and paying special attention to the education and employment opportunities of Dalit (as well as of girls and ethnic minorities) children in order to "enable them to claim their rights and work as agents of change for their communities". We also urge the government of Nepal to accept those two recommendations and translate them into comprehensive policies to guarantee equal economic, educational and social opportunities to members of the Dalit communities. Other state policies to allow the economic and social upliftment of the Dalit community should also include, but not be limited to: providing

citizenship certificates to those among the Madeshi, in particular the Madeshi Dalits and the Badi community, social support to inter-caste couples, support to the survival of traditional occupations of the Dalit community (clothing, iron tools, leather work, music etc...) including financial incentives and land reform.

The caste-related recommendations made during the UPR if accepted and seriously implemented by Nepal would form the bedrock of a comprehensive approach to the eradication of this continuous challenge. It is now the responsibility of the government to take measures to implement them in good faith and in a prompt, transparent and verifiable manner.

On the occasion of the International Day against Racial Discrimination, we therefore encourage the government of Nepal to show its commitment to international community by making the end of caste-based discrimination one of its priority objectives.

1. The OHCHR and NDC analysis of the Untouchability Bill is available [here](#).

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