

Nepal's Civil Society

ALTERNATIVE REPORT

**to the UN Committee on the Elimination of All Forms of Racial
Discrimination in addition to the Government of Nepal periodic
reports 17 to 23, to be reviewed at the 95th session,
23 April -11 May 2018**

Caste-Based Discrimination and Untouchability against Dalit in Nepal

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Table of Contents

Abbreviations	3
1. Introduction.....	4
2. Discrimination against Dalits in Nepal	6
3. Updates on the previous CERD recommendations.....	7
Article 1: Definitions of racial discrimination	8
Article 2: Measures to eliminate discrimination and promote equality	9
Article 3: Prevention, prohibition and eradication of racial segregation and apartheid.....	11
Article 4: Measures to eliminate all propaganda and organizations based on theories of racial superiority.....	12
Article 5: Measures to promote equality and non-discrimination in the enjoyment of civil, political, economic, social and cultural rights.....	13
Article 6: protection and remedies through judicial and non-judicial mechanisms.....	17
Article 7: Measures to combat prejudices and promote understanding and tolerance.....	21
Article 8: reporting obligation.....	22
ANNEX-I.....	24
1. Summary of the report consultation.....	24
2. Inter-caste marriage displaces Dalit family	24
3. Caste Based Discrimination and Untouchability Act	25
4. Ajit Mijar Murder Case awaiting for justice.....	26
5. Fear of reprisals prevents access to criminal justice	26
ANNEX-II.....	27
List of Participating Organizations:	27

Abbreviations

CA	Constituent Assembly
CBDU Act	Caste Based Discrimination and Untouchability Act
CBOs	Community Based Organizations
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CPA	Comprehensive Peace Accord
CSOs	Civil Society Organizations
DNF	Dalit NGOs Federation
FPTP	First-Past-the Post
GBV	Gender Based Violence
GESI	Gender Empowerment and Social Inclusion
GON	Government of Nepal
HRBA	Human Rights Based Approach
ICERD	International Convention on the Elimination of All Forms of Racial Discriminations
JuRI-Nepal	Justice an Rights Organization
MDGs	Millennium Development Goals
MOE	Ministry of Education
MoFALD	Ministry of Federal Affairs and Local Development
MoHA	Ministry of Home Affairs
NDC	National Dalit Commission
NGOs	Non-Governmental Organizations
NHRAP	National Human Rights Action Plan
NHRC	National Human Rights Commission
NHRIs	National Human Rights Institutions
NWC	National Women Commission
OBC	Other Backward Communities
OHCHR	Office of the High Commissioner for Human Rights
OPMCM	Office of the Prime Minister and Council of Ministers
PAF	Poverty Alleviation Fund
UCPN (M)	United Communist Party of Nepal (Maoists)
UDHR	Universal Declaration of Human Rights
UPR	Universal Periodic Review
UN	United Nations
UNDP	United Nations Development Program

1. Introduction

This joint report is submitted in addition to the Government of Nepal report, combining 17 -23 reports, covering a period from 2002 to 2016, in advance of Nepal's review by the CERD at the 95th session scheduled from 23 April to 11 May 2018. This report offers Dalit CSOs perspective and intends to highlight areas where Nepal could make further advances in meeting its obligations under the ICERD and protection of Dalit human rights.

The NGO report has been jointly prepared by the following organisations:

Dalit NGO Federation (DNF) - established in 1996, is an umbrella organization of all Dalit NGOs in the country. The main aim of DNF is fighting together against untouchability and all forms of caste-based discrimination. It is a common forum of more than 300 Dalit NGOs for raising collective voices at national and international level of Dalit community to ensure their rights, dignity and opportunity through influencing policy, networking and alliance building. Also, ensure proportional participation, democratic governance, social justice and accountability of Dalit.

SAMATA foundation was established in 2009 as a profit-not-sharing organization destined for emerging as a Dalit Think Tank. It primarily engages in policy research and advocacy for the protection and promotion of Dalit human rights. SAMATA conducts research to generate needed strategies and policy recommendations for lawmakers and advocates. It has published various books, reports, policy papers and policy briefs on the issues of Dalit.

Nepal National Dalit Social Welfare Organization (NNDSWO) - established in 1982, became a credible and experienced national level NGO working with Dalit for last 35 years. It has a wide and grass-roots level outreach across the country with district chapters in 72 out of 75 districts. It works in a decentralized manner through its district chapters. The core thematic areas of NNDSWO are human rights, non-discrimination and social justice, democratic governance— inclusion/ participation and accountability, education and livelihood empowerment are core thematic areas of NNDSWO.

Jagaran Media Center established in 2000 with the mission to mobilize mass media to end all forms of discrimination and build an equitable society. JMC works to ensure justice to the victims of caste-based atrocities. The organization has representatives in 75 districts, a regional office and its own FM Radio Station 93.6 MHz in Butwal. Four radio programmes Katwal Radio Magazine, Sajha Pahal, Mukti and Volika Lagi Ajai are produced and broadcasted through 35 FM radio stations on weekly basis across the country.

Rastriya Dalit Network (RDN) Nepal is a non-government and non-profit oriented organisation registered in DAO, Kailali and affiliated with SWC in 2004. It was formed as 'Regional Dalit Network' in 2000 as a loose forum by Dalit and non-Dalit development practitioners and activists to advocate poverty issues, of vulnerable and socially excluded communities, caste discrimination and untouchability, food security, social empowerment, livelihood improvement, health and sanitation and social inclusion in mid and far western region of Nepal.

Madhesi Dalit Development Federation (MDDF) was established in 2062 B.S. as a federation of Terai Madhesi Dalit-led local NGOs with 45 member organisations. Since its establishment, it has worked on asserting the rights, advocated for mainstreaming of Madhesi Dalit issues in national development programmes and acted as a citizen pressure group for the protection and promotion of human rights and participation in the state mechanisms of Madhesi Dalit.

In association with:

Human Rights Treaty Monitoring Coordination Committee (HRTMCC), a coalition of human rights organizations established in 2003 to monitor the implementation of the international human rights treaties ratified by Nepal for making state and non-state actors accountable to its international human rights obligations. Currently, it has 78 members working on almost all human rights, including civil and political rights, economic social and cultural rights, rights of women, children, Dalit, migrants and person with disabilities.

International Dalit Solidarity Network (IDSN) is an international network that works on a global level for the elimination of caste discrimination and similar forms of discrimination based on work and descent. Members include national Dalit platforms in caste-affected countries, Dalit Solidarity Networks in seven European countries, and international associates among others. PDSN is a member of IDSN. Email: unadvocacy@idsn.org, website: www.idsn.org.

2. Discrimination against Dalits in Nepal

Caste based discrimination and untouchability system in Nepal was officially abolished in 1963. The Nepalese Constitution prohibits untouchability and discrimination on the grounds of caste and recognizes such practice as an offence punishable by law. However, despite these provisions, Dalits continue to face severe discrimination and violence.

It has been recognised that the denial of economic, social and cultural rights of those most marginalised and vulnerable, including Dalits, as well as entrenched discrimination and inequality, were some of the root causes of the ten-years armed conflict in Nepal¹. The 40 Point Demands put forward by the Communist Party of Nepal (Maoist), before launching the armed struggle, raised a number of issues related to discrimination, exclusion and denial of economic, social and cultural rights, including the elimination of untouchability practice and caste-based discrimination.²

Referring to inequality and discrimination as causes of the conflict, the Comprehensive Peace Agreement (CPA) 2006 also stresses the need to social and economic transformation.³ It has been acknowledged that the State failed to improve economic and social conditions of Dalits, Adibasi Janajati, Madhesis, Muslim community and of residents of the Karnali zone, and the situation not only led to conflicts but also aggravated it.⁴ There is a growing realisation that unless the root causes of the conflict, including endemic inequality, caste-based discrimination (CBD) and untouchability practice are resolved, it could contribute to the future instability.⁵

Although the Government adopted the highly welcomed Caste Based Discrimination and Untouchability (Offence and Punishment) Act (CBDU Act) to end practice of untouchability and CBD, its implementation has not been effective⁶. To hold the Government of Nepal (GoN) accountable, a civil society organization - JuRI-Nepal brought a Public Interest Litigation to the Supreme Court⁷, which ordered the Government to prompt formulation of the rules and take necessary steps towards ensuring effective implementation of the Act. In response to the Supreme Court's order, the Government recently formulated and adopted a regulation to receive complaints. Yet, it falls short in providing protection for victims and witnesses, full implementation of the court decisions and promotion of laws dealing with CBD and untouchability practice.

Also, though the GoN introduced a provision of incentive to promote inter-caste marriages by providing Rs. 100,000 (US\$ 1000) for a few years to the couples who entered into an inter-caste (between Dalit and non-Dalits) marriage, the programme was discontinued without a clear reason

¹ OHCHR, *Opening the Door to Equality: Access to Justice for Dalits in Nepal*, 2011, Page 2&3.

² Communist Party of Nepal (Maoists), "40 Point Demands", dated 4 February 1996.

³ Comprehensive Peace Accord (CPA) Concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), 21 November 2006, subsections 3.5 and 7.1.1.

⁴ See Government of Nepal, *The Three Year Interim Plan (2007/08 – 2009/10)*, page 1.

⁵ See OHCHR Report " *OPENING THE DOOR TO EQUALITY: Access to Justice for Dalits in Nepal, 2011*", page 4.

⁶ Especially, the provisions concerning complaint filing and the investigation.

⁷ *Shyam Bishwokarma for JuRI-Nepal v. Government of Nepal*, OPMC, and decision dated 2073/3/26 (10 July 2016).

or a consultation with stakeholders and no evaluation was carried out⁸. Moreover, media reports indicate that some of the authorities themselves engaged in breaking up an inter-caste marriage⁹.

3. Updates on the previous CERD recommendations

The GoN states that it has always been supportive in providing resources for the smooth functioning of the NHRIs¹⁰, in line with the Paris Principles. However, the financial autonomy and independence of the NHRC is compromised as it is subject to approval from the Finance Ministry for its receipt of foreign assistance¹¹, lacks independence in its staff recruitment¹² and weak implementation of its recommendations¹³ (only 15% have been honoured by the Government). The Human Rights Service Bill for the NHRC although endorsed in principle has not been enacted¹⁴.

Recently NDC and NWC were elevated by the constitution as constitutional commissions. The enacted law further elaborated powers and provided a procedural framework, however, the commissions lack autonomy, independence and resources.¹⁵ The NDC commissioners were not appointed for five months, and due to the lack of funding NDC only operates in Kathmandu, which limits its ability to monitor, investigate, document and assess complaints effectively¹⁶.

Though annual reports of the Office of the Attorney General indicate that there have been few instances where the perpetrators of untouchability practice and CBD have been prosecuted, these figures do not correlate with the high prevalence of CBD and untouchability in Nepal. These reports reveal that there is a lack of legal accountability. A review of the Annual Reports of OAG shows that only 13 cases concerning CBD and untouchability were under the consideration of the District Courts of Nepal in the fiscal year 2070/71 and only 6 in 2071/72.

Nepal lacks legal provisions to hold law enforcement officials accountable for denying registration of the First Information Reports (FIRs) or not initiating criminal investigations¹⁷. Stakeholders

⁸ Consultation meeting with stakeholders held on 20 December 2017.

⁹ See Annex number 2 on page 24.

¹⁰ National Human Rights Commission, National Women Commission, National *Dalit* Commission (NDC), National Inclusion Commission, Indigenous People and nationalities Commission, *Madheshi* Commission, *Tharu* Commission, National Foundation for Development of Indigenous Nationalities (NFDIN), Badi Community Upliftment and Development Committee, Marginalized and Dalit Upliftment and development Committee, Backward Community Upliftment and Development Committee, and Buddhism promotion and Monastery Development Committee.

¹¹ Section 20(2) of NHRC Act, 2012 provides that in case any agreement that NHRC entered into with any national and international organization constitute any financial matters, NHRC is obligated to secure an approval from the Finance Ministry to bring that agreement into force.

¹² According to Section 27 of the NHRC Act, Government approval is must for creating posts and changing the organogram of NHRC.

¹³ Annual Report of NHRC, 2072/7. Page, 81, 82. The 2073/74 report also reflects the same concerns.

¹⁴ Interview with Shayam Babu Kafle, Head of Legal Division, NHRC dated 20 September 2017.

¹⁵ The commissions will rely on the Government for staff and resources. Approval of Finance Ministry is must for generating resources from Donors.

¹⁶ Interview with Sitaram Ghale Pariyar, former Member Secretary, NHRC, dated 20 September 2017.

¹⁷ For example, the Indian Penal Code was amended in 2013, inter alia, to insert a provision that criminalizes deliberate denial of registration of FIR with a term of 2 years imprisonment.

report that in rural areas police were reluctant to investigate incidents of the alleged caste-based discrimination, often preferring to mediate such cases¹⁸. As police is the first point of contact it is their primary responsibility to take FIR and investigate cases¹⁹. Even in cases where no formal FIR is registered by a victim, police officers can take action as a matter of *suo motu* obligation²⁰. Yet, police discourage filing the formal FIR and the complainants are informally encouraged to settle through informal mediation, which is not permitted under the law and does not meet the basic standards of justice. Thus, in Nepal, access to justice for victims of CBD is significantly hindered, often perceived as a social rather than a criminal issue.

Recommendations:

1. Provide adequate resources to allow the NDC to effectively fulfill its roles and responsibilities as specified under the constitution and the newly enacted legislation.
2. Ensure an effective implementation of court decisions and recommendations of the NHRC and other national human rights institutions, in relation to the cases of caste-based discrimination and untouchability.
3. Encourage close cooperation of the NHRC, NDC and NWC and joint activities to promote access to justice for victims of caste-based discrimination and untouchability.

Article 1: Definitions of racial discrimination

We note that there has been a significant progress towards shaping and developing national legal framework dealing with CBD and practice of untouchability. The Constitution of Nepal includes not only a generic prohibition of discrimination including on caste²¹ but also devoted a separate article to the prohibition of caste-based discrimination and ‘untouchability’. However, it lacks provisions on indirect forms of discrimination, adequate reparations²² and provisions on compensation for historical marginalization of Dalit communities.

The CBDU Act 2011 provides a legal regime of preventive and punitive measures to end caste-based discrimination, however, it includes an inadequate punishment in the view of the seriousness of crime, restrictive statutory limitation, lack of protective measures for victims and witnesses²³ and other concerns. The newly introduced amendment to the Act fails to address the normative flaws of the existing law as the amendment is confined to increment of fine.

¹⁸This complains was appeared in almost consultations held in Districts.

¹⁹ State Cases Act and State Cases Regulation entrust the Police with these responsibilities.

²⁰ A circular to that effect was issued by the Ministry of Home to al CDOS on 2070/05/04 (20 August 2013).

²¹ Article 18 of the Constitution of Nepal (2015) guarantees equality and non-discrimination irrespective of caste.

²² Ibid, Article 24(5).

²³ For detailed discussion of the flawed provisions, see, UN OHCHR, *OPENING THE DOOR TO EQUALITY:*

Access to Justice for Dalits in Nepal, 2011", page 48-52. Available at:

http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2011_12_07_Opening_the_Door_to_Equality_E.pdf

Recommendations:

4. Prohibit all direct and indirect forms of caste-based discrimination and pave the way for remedying such forms of discrimination.
5. Widely disseminate the constitutional provisions, the Anti-Untouchability Act, and provisions of ICERD amongst the Dalit communities, law enforcement officials as well as the general public.

Article 2: Measures to eliminate discrimination and promote equality

The adoption of the CBDU Act 2011 was celebrated²⁴ and recognized as a landmark development, yet, the implementation of the Act remains partly ineffective due to an inadequate *statutory* limitation²⁵, range of punishment not corresponding to the seriousness of crime²⁶, excessive judicial discretion in determining the punishment²⁷, and gaps in guaranteeing adequate compensation and reparation²⁸. The Act recently was amended to increase a range of fines²⁹ and after a judicial intervention³⁰ a new regulation was introduced, yet it has failed to address the issues of victim and witness protection.

Despite the legal respect to equality and non-discrimination, including based on caste and ethnicity, law enforcement agencies have failed to adhere to it by denying FIR and failing to investigate and prosecute the perpetrators of caste-based discrimination³¹. The implementation of the affirmative legal and policy provisions to improve the situation of Dalits in Nepal is still very weak³².

²⁴NDC and OHCHR welcome the new law on Caste-based Discrimination and Untouchability. Available at: <https://reliefweb.int/report/nepal/ndc-and-ohchr-welcome-new-law-caste-based-discrimination-and-untouchability>

²⁵Section 10 provides that, "A case shall have to be filed for the offence pursuant to this Act within three months from the commission of the offence".

²⁶Under Section 7 of the Act, the penalties stipulated include both financial penalties and imprisonment of up to three years.

²⁷On one hand, the Act fails to prescribe a minimum range of punishment on the other there is no guidance on the elements that constitute aggravating or mitigating factors, except those cases where convicted defendants are holding public posts under Section 7(2).

²⁸Under Section 9 of the Act, compensation cannot exceed 100,000 Nepali rupees (approximately 1,400 US dollars) which may be inadequate in cases where the magnitude of the crime and its impact upon victims may be high. It would have been preferable to have no mention of the maximum amount under the law. Moreover, the responsibility of providing compensation to the victim falls solely on the convicted perpetrator. If he/she is not able to pay the amount stipulated, the law stands silent. The section should have included guidance on State responsibility to provide compensation.

²⁹Proposed amendment of Section 7 (1) (a) is to replace 'minimum one thousand rupees to maximum twenty-five thousand rupees' with 'minimum twenty-five thousand to one hundred thousand'. Similarly, proposed amendment of Section 9 (1) aims at replacing 'compensation amount of minimum twenty-five thousand to maximum one hundred thousand' with ' fifty thousand rupees to two hundred thousand'.

³⁰Shyam Biswokarma for JuRI-Nepal v. Office of the Prime Minister and Council of Ministers, decision dated 10 July 2016.

³¹SAMATA Foundation, Report of the District Consultation held in Bara, Sunsari and Dailekh, dated 1 March 2016, , 26 March 2017, 23 Feb 2016 respectively.

³²See, JuRI-Nepal's Publication titled "Review of the Pro-Poor Laws", 2074, which indicates the lack of implementation of the affirmative provisions including under Labour Act, Civil Code, Poverty Alleviation Act and Local Self-Governance Act.

Landless people lack the protection against forced evictions due to a number of reasons, including inherent limitations of the rights languages and attached preconditions such as "as prescribed by law"³³. The promise to enact the necessary laws within three years implementing fundamental rights, including Dalit rights, remains unfulfilled³⁴. Moreover, the GoN has failed to submit its annual report to Parliament on the implementation progress of the directive principles that inter alia impact on Dalit communities³⁵.

The GoN also did not deliver on its promise to create universal and targeted awareness programmes on legal and policy framework promoting Dalit rights. Though the central and district level committees exist, their activities of coordinating/monitoring the implementation of laws and policies are ineffective. Many of these committees appear symbolic³⁶. Whilst there have been significant developments in advancing Dalits representation at local, provincial and federal level government positions it has not reached a proportional inclusion.

Recommendations:

- 6.** Strengthen legal framework dealing with CBD and Untouchability including through improving a number of normative flaws regarding statute of limitation, penalty, reparation, compensation and protection.
- 7.** Amend the CBDU Regulation to detail the processes and procedures for victims and witness protection.
- 8.** Ensure prompt enactment of the necessary laws to enforce fundamental rights, including Dalit rights, guaranteed under Article 40 of the Constitution, in consultation with Dalit communities.
- 9.** The Judiciary should address the justiciability issues of the ESCR (e.g. housing) by adopting a progressive interpretation.
- 10.** NHRC should carry out pro-active monitoring of denial of ESCR of Dalits and offer effective remedies, including compensation to an individual victim or communities.
- 11.** Take adequate measures, including budgetary allocations and capacity development initiatives, to ensure effective monitoring and coordination mechanisms in implementing the CBDU Act at central as well as district level.

³³ Right to housing clause (Art. 37.2) of the Constitution limits the constitutional protection from forced eviction to those having their ownership.

³⁴ Presenting a paper in a program organized by Nepal Law Society and International Idea in the context of Constitution Day dated 19 Sept. 2017, Professor Purna Man Shakye referred to the implementation gaps including slow progress towards enacting necessary laws to implement fundamental rights including the Dalit right.

³⁵ Article 53 obligates the Government to submit, on annual basis, a report to the President/the Parliament regarding the implementation of the directive principles and policies.

³⁶ The participants of the Consultations meetings held by SAMATA in Bara, Kailali, Saptari, Dailekh, Sunsari seriously raised the concern that the mechanisms have become confined to paper only.

12. Empower and enhance a capacity of women Dalit representatives at the local government positions for quality representation of Dalit issues in the local level policy making and implementation.
13. Ensure proportional political representation of Dalits at all levels of governance including executive, legislative, judiciary, bureaucracy, security forces, political and diplomatic appointments and constitutional bodies as guaranteed by the constitution of Nepal.

Article 3: Prevention, prohibition and eradication of racial segregation and apartheid

Caste-based segregation in Nepal continues today in a form of marriage segregation, inter-caste marriage violence, denial of access to temples, religious and cultural functions, denial to access public utilities and educational facilities, blocking access to housing/residential facilities and occupational segregation³⁷.

Although inter-caste marriage is legally accepted, socially it remains unacceptable and almost 90% of Nepalese do not engage in an inter-caste marriage. Those in inter-caste marriage often face threats, killings, displacements, physical punishments and violence. Studies indicate that mixed or inter-caste marriage couples and their families face a number of problems³⁸:

- Harassment, which often leads to living in seclusion from friends and neighbors.
- Forced separation from their chosen partner, often by parents of a non-Dalit partner.
- Displacement - forced to leave their village and even flee the country to escape from parents and family.
- Institutional discrimination towards inter-caste couples and their children by authorities and officials who are regularly denied citizenship, without which they are unable to vote, move to another village and children cannot access education.

The CBDU Act did criminalise a range of actions amounting to segregation including inter-caste marriage, caste-based discrimination and untouchability practices³⁹. However, very few incidents of such practices were investigated and perpetrators punished. Inter-caste marriages are not accepted by the Nepalese society and no specific measures were taken to transform those social attitudes⁴⁰. Rather than expanding the measures addressing segregation practices some of the GoN's actions appear retrogressive, including the withdrawal of inter-caste marriage incentive scheme, introduced in 2009, which ended without an assessment of its impact on the society.⁴¹

³⁷ SAMATA Foundation, Benchmarking the Draft UN Principles and Guidelines on the Elimination of (Caste) Discrimination based on Work and Descent, NEPAL REPORT, page 1. Available at: <http://asiadalitrightsforum.org/images/imageevent/1819514436nepal.pdf>

³⁸ Advocacy Net News Bulletin 189, INTER-CASTE MARRIAGES IN NEPAL FACE VIOLENCE AND INTIMIDATION, February 2009, <http://www.advocacy.net/wp-content/uploads/2012/12/PR-189-Nepal-intermarriage.pdf>

³⁹ See Annex number 4 on page 26.

⁴⁰ Meeting with chief of Women and Children Office, Bara, dated 2073/11/18 B.S.

⁴¹ Even Government authorizes including in Bara District participated in the consultations were unaware of the reasons for termination of this provision.

Questions:

The Committee should consider asking the Government for the following information:

1. Measures to deal with marriage segregation and inter-caste marriage related violence?
2. Measures to enhance access to temples, religious and cultural functions?
3. Measures to ensure access to public utilities and educational facilities?
4. Measures to remove barriers in accessing housing/residential facilities?
5. Measures towards addressing occupational segregation?

Recommendations:

14. Organise diagnostic public hearings on specific themes/issues, such as inter-caste marriage.
15. Restore the cash incentive scheme to encourage inter-caste marriage and introduce a program addressing the social norms and taboos on gender and caste.
16. Consider adopting a legislation to tackle inter-caste marriage issues, including investigation of inter-caste marriage-induced violence against Dalits, offering protection and rehabilitation facility to the victims, and obligating three levels of government to take measures to promote safe and conducive environment for inter-caste marriage.
17. Design policy, strategies and schemes combating segregation, in consultation with Dalit communities.
18. Instruct the CBDU Committees, at the district level, to monitor segregation issues in multiple sectors of society.

Article 4: Measures to eliminate all propaganda and organizations based on theories of racial superiority

The state report to the CESCR provides a good account of constitutional and legal provisions aimed at tackling behaviors of racial superiority. However, it is silent on the implementation aspects and the positive effects of those legal provisions.

Prejudiced societal mindset within public and private sector, galvanized by the notion of caste superiority and inferiority continues to persist. Nepal lacks monitoring/tracking of propaganda and organisational activities based on theories of racial superiority, and systematic efforts to promote mass media efforts to reduce the ideas of superiority based on caste. Also, there is no adequate coverage of Dalit rights education in the national educational curricula and Dalit representation in the Curriculum Development Centre is weak⁴².

⁴² SAMATA Foundation, Benchmarking the Draft UN Principles and Guidelines on the Elimination of (Caste) Discrimination based on Work and Descent, NEPAL REPORT, page 106. Available at: <http://asiadalitrightsforum.org/images/imageevent/1819514436nepal.pdf>

Recommendations:

19. Undertake activities to challenge the notion of caste superiority and to discourage segregation practices.
20. The GoN jointly with NDC should develop and implement a system to track caste-biased attitudes and practices of law enforcement agencies and take steps to prevent it.
21. NDC and NHRC should consider jointly carry out a national inquiry into the root causes of the longstanding caste discrimination and its dynamics in terms of gender and other considerations and make necessary recommendations to all levels of the government.
22. Update the national curricula and textbooks to include positive information on Dalit human rights, condemning CBD and untouchability, and ensure it does not contain derogatory, humiliating and caste-based discriminatory language.
23. Ensure proportional representation of Dalits at all national educational mechanisms, agencies, councils and committees.
24. Existing legal mechanisms and educational programs should be reviewed from Dalit rights perspective and mainstreamed Dalit-friendly and inclusive perspective into them.
25. Take measures to develop modules that promote diversity, equity and social inclusion in classrooms and schools, including in teacher training modules.
26. Adequate measures should be taken to advance the role of media and civil society transforming prejudiced social attitudes towards Dalit communities and promoting the culture of respect and human dignity irrespective of caste, gender and ethnicity.

Article 5: Measures to promote equality and non-discrimination in the enjoyment of civil, political, economic, social and cultural rights

The longstanding practice of untouchability and caste-based discrimination remains a serious impediment to Dalit economic, social and cultural rights. ‘Untouchability’ prevents Dalits from accessing water sources, entering temples, or being able to marry someone from the so-called higher castes, or participating in a society. It affects their access to education, health care, employment, water and the ability to enjoy an adequate standard of living.⁴³

The protective legal provisions lack an effective implementation in Nepal. The CBDU Act outlawed caste-based discrimination in public and private spheres.⁴⁴ However, due to the lack of awareness and sensitivity among the stakeholders, and the lack of ability of Dalits to invoke the justice system, the implementation of the Act remains weak.⁴⁵ For example, The Land Act

⁴³ For details see, OPENING THE DOOR TO EQUALITY: Access to Justice for Dalits in Nepal, Office of the High Commissioner for Human Rights (OHCHR) in Nepal, December 2011, page 14.

⁴⁴ Ibid., Section 4.

⁴⁵ See, OPENING THE DOOR TO EQUALITY: Access to Justice for Dalits in Nepal, Office of the High Commissioner for Human Rights (OHCHR) in Nepal, December 2011, page 65-71.

established a land ceiling system aiming to acquire the land exceeding the legal limit from big landlords and redistribute it to the freed bonded laborers, downtrodden (*dalit*), indigenous nationalities (*janajati*), and other local landless people. However, the Act has not been implemented. A PIL, *Madhav Basnet v. Government of Nepal*⁴⁶ was initiated at the Supreme Court of Nepal to hold the authorities accountable for the failure to implement the Land Act, 1964⁴⁷, which is still under the consideration at the Supreme Court.

Landlessness among Dalits is extreme –36.7% among the hill population, 41.4% Madhesi Dalit and those that do hold land have very small landholdings. Landlessness made Dalits economically vulnerable and dependent on landlords. Most Dalit victims of violence and discrimination are agricultural and occupational labourers, generally landless. Also, the root causes of the exploitative Haliya⁴⁸, Balighare/Khalo⁴⁹, Charuwa and Haruwa⁵⁰ systems are landlessness and small holdings⁵¹. The Freed Haliya programme lacks adequate resources and sustainable rehabilitation plans.

By adopting a community and leasehold forestry schemes, the Forest Act 1993, established the link between forest management, the livelihood of the people and poverty alleviation. However, the Forest Act 1993 and Regulations 1995⁵² paved the way for leasing out forest land for commercial purpose⁵³ rather than addressing poverty.

Approximately 42% of Dalits fall below the poverty line in Nepal, which is 17% point higher than that of the national average (25.2%). Also, an average per capita consumption in Nepal is 34,187, yet Madhesi Dalits consumption per capita is NRs.23,106, followed by Hill Dalit 25,298 per annum. Whereas, among the Dalits of both Hill and Madhesi origin, every two in five persons are poor⁵⁴.

⁴⁶ Filed in the Supreme Court on 2066/5/2 B.S.

⁴⁷ Section 13(1) of the Land Act reads, "The prescribed authority may, by issuing a notice as prescribed, order all the landowners to submit, or cause to be submitted, an inventory as prescribed within thirty-five days after the date of issuance of the notice."

⁴⁸Haliya: The word Haliya comes from Halo which means a plough, a person ploughing the field is called Haliya (without bondage – Hali, with bondage – Haliya).

⁴⁹Balighare is a traditional system of paying wages not in the form of cash but in the form of crop or kind. This system does not pay enough in comparison to the work done and has been found to be very exploitative in economic terms and very humiliating in the social term. The main victims of this system are Dalits. The Dalit households who provide services would go to those families who used their services and collect certain amount of grain (mostly maize, millet and sometimes rice).

⁵⁰Charuwa: in Terai or Madhesh terms Haruwa and Charuwa are used synonymously and sometime pronounced together. Charuwa means wanderer and herder but used in reference to semi bondage labour. In Terai region poor families bondage themselves with a landlord who then agrees to use the labour of the family to cultivate crops and in return they would be provided with a shelter and grain. Haruwa means defeated and used to describe a similar kind of semi slavery system in Terai/Madhes. Haruwa are mostly landless without having proper means of production, not necessarily Dalits, could be indigenous people such as Gharti, Bhujel, Tamang of the hill and Tharu of Terai (NND SWO).

⁵¹See, Dalit Civil Society Organizations Coalition for UPR, Nepal and International Dalit Solidarity Network (IDSN), Human Rights Situation of Dalit Community in Nepal: Submission to the United Nations Universal Periodic Review of Federal Democratic Republic of Nepal for Second Cycle, Twenty Third Sessions of the UPR, Human Rights Council, 2-13 November 2015.

⁵²Provisions under Section 31, 32, 33 and 34 under the Forest Act deal with the leasehold forestry

⁵³Communities, institutions or commercial firms are illegible to enter into leasehold forest scheme.

⁵⁴Nepal Living Standard Survey 2010.

Keeping huge labour forces out of the arena of labour law regime⁵⁵ has had a disproportionate effect on Dalit, given the poor socio-economic status of Dalit communities. Only recently the minimum wage based on the consumer index has been updated. Until recently, there was no penalty for the failure to pay a minimum wage or for paying an unequal wage on the basis of prohibited grounds including gender and caste⁵⁶.

The Government of Nepal has ensured free primary education to all children below 5 years, including free text books and Rs.400 a year to all Dalit students. However, primary school education is still unaffordable for households below the poverty line. Dalits' literacy rate (6 years and above) is 52.4% compared to the national average of 65.9% and 34.5% for Tarai/Madhese Dalit.⁵⁷ Only, 24.7% of Hill Dalits and 11.8% of Tarai/Madhese Dalits complete 8th grade which is far behind the national average (41.7%). Dalits comprise only 1.6% of those with a SLC and above and only 0.8% of those with a Bachelors' degree⁵⁸. Literacy rates of Dalit women are 45.5%, but from Musahar and Dom community it is only 17.4% and 17.9%⁵⁹. Children from Dalit communities face discrimination at school by teachers and peers. Due to the prejudiced mindset teachers provide less care for Dalit children, who are not permitted to drink water, addressed in a rude manner, Dalit children placed in separate lines etc. Ultimately, their learning achievements become slow, often leading to dropout. In turn, low educational attainments have a multifaceted impact on the socio-economic and political life of Dalits, and a barrier to human development.⁶⁰

Dalits have 9% reservations in all public-sector employment out of 45% reserved seats, however, Dalits' livelihood and employment situation remains very bad as they continue to depend on elementary occupations based on their caste (i.e. blacksmith, leatherworks, tailoring etc.) and poor access to better jobs. For instance, 42.5% of Tarai/Madhese Dalits earn their livelihood from elementary occupations⁶¹. One out of 12 male Dalits is engaged in professional/technical jobs, and only one out of 25 females. For women from Madhese Dalit communities it is only 0.8% compared to their hill counterparts. Due to the segregation practice, Dalit community has been denied the right to earn a livelihood by running their own business, i.e. tea-shop, dairy or a small hotel.

Most Dalits have traditional occupational skills such as iron work, goldsmith, tailoring, shoemaking, bamboo crafts, etc. Unfortunately, they are not receiving fair value and social respect for their work. Lack of modernization, limited access to markets and having no patent rights for

⁵⁵ The Labour Act 1992 that has recently been replaced by Labour Act 2017 defined the 'enterprise' as including any factory, company, organization, association, firm, or group thereof, established under the prevailing laws for the purpose of operating any industry, profession or service, where ten or more workers or employees are engaged. The Act denied the legal protection to workers engaged in enterprises where fewer than ten workers are engaged and where workers are engaged in the informal sector, in particular, agriculture and domestic work.

⁵⁶ In view of the fact that discrimination in wage rates between women and men is frequently reported in Media, constitutional and statutory guarantee of "equal pay for equal work."

⁵⁷ Nepal Social Inclusion Survey (NSIS)2012, Central Department of Sociology/Anthropology, Tribhuvan University, Nepal

⁵⁸Ibid.

⁵⁹National Census 2011, Central Bureau of Statistics, Nepal

⁶⁰Nepal Human Development Report 2009, UNDP

⁶¹NMSII

their traditional enterprise has adversely affected Dalit communities. Food sufficiency is extremely low for Dalits compared to the national average of 77%. Food sufficiency for Hill Dalits and Tarai/Madhesi Dalits is only 56.0% and 53.7% respectively, indicating that up to 46% of Tarai/Madhesi Dalits do not consume adequate amounts of food (i.e. two meals a day throughout the year).⁶²

The second Long-term Health Plan of Nepal, 1997 to 2017 aimed to provide essential health care services in all districts to 90% of the population within 30 minutes of walking distance, yet only 58% of households have access to such facilities in Nepal. Only 39.7% of Hill Dalits have access to health facilities within 30 minutes of walking distance. 55.5% of people in Nepal cannot afford medical treatment but even less Dalits - 60.5% of Hill Dalits and 66.1% of Tarai/Madhesi Dalits.⁶³ 43% of Tarai/Madhesi Dalits and 14.6% of Hill Dalit experience discrimination when receiving medical treatment in local health services. Approximately, 72% of women experience problems in accessing health service,⁶⁴ yet for Hill and Tarai/Madhesi Dalit women it is 79 and 85% respectively.⁶⁵ As around 62% of Dalit girls get married before 15 years of age their health situation is at a further challenge due to uterus prolapse, early pregnancy, sexual violence and exploitation.

Moreover, although the overall access to drinking water of Nepalese people has significantly improved, the situation of Tarai/Madhesi Dalits remains very bad - only 14.1% have access to safe drinking water, affecting the worse Dalit women, who look after the family affairs. Dalit population also has a very minimal access to the improved toilet facilities, especially poor for Tarai/Madhesi Dalits, of whom just 5.5% have access to the improved toilet facilities, compared to 30.6% of Hill Dalit and 41.7% of the national average.

Additionally, the Government has introduced the Social Security Act, including a senior citizens' allowance. However, it is confined to contributory scheme of social security, to which Dalits have little access as most of them engage in an informal labor sectors.

Recommendations:

- 27.** Take adequate measures to effectively implement the pro poor and pro Dalit laws and policies that are long-standing under the Nepalese legal system without an effective implementation.
- 28.** Enact required legislations immediately to implement the constitutional guarantees pertaining to access to land for agriculture, adequate housing and social/food security.
- 29.** Ensure full compliance with the constitutional provisions requiring proportional inclusion of Dalits in public service, security forces and decision-making positions.

⁶²NMSII

⁶³Nepal Social Inclusion Survey (NSIS) 2012, Central Department of Sociology/Anthropology, Tribhuvan University, Nepal

⁶⁴ Nepal Demographic Health Survey 2011

⁶⁵ Ibid.

30. Distribute land to the landless and housing to the homeless Dalits, as promised by the Constitution, and ensure equal access for Dalits to natural resources and inclusion of Dalits in the natural resource management committees.
31. Strengthen its efforts to achieve universal quality education for girls at all levels of education- in urban, rural and remote areas, with special attention to Dalit girls, as recommended by the CEDAW in 2011.
32. Adopt and implement an action plan to make schools and educational institutions discrimination free zones.
33. Devise and implement free medical service and health insurance policy for all, including Dalits, who are unable to bear health service costs.
34. Monitor and prosecute the offenders discriminating against Dalit women in their access to reproductive health services.
35. Take immediate steps guaranteeing employment opportunities, vocational training and micro-credit support for entrepreneurship of Dalits, Dalit women and unemployed youths.
36. Introduce sustainable rehabilitation facilities and add gender dynamics to the freed Haliyas program.
37. Ensure effective implementation of the new Labour Act, including enforcing equal wages, minimum wage standards, including in the agriculture sector, strengthening labour monitoring and inspection system, and access to justice.
38. Take immediate legislative and administrative steps to enforce legal provisions against the caste-based discrimination in adequate wages.
39. Review the social security /service delivery system to ensure it also benefits Dalit communities.
40. Implement the Supreme Court's of Nepal decision to provide the Badi community, in particular the Badi children, with the identity and citizenship rights, necessary to uplift their socio-economic status.
41. Devise and implement a special scheme for social security and protection of Dalit women and children at all levels of the government.

Article 6: protection and remedies through judicial and non-judicial mechanisms

Victims of CBD and untouchability face a number of legal and non-legal barriers in accessing justice. It includes the lack of legal provisions on specific punishments corresponding to the seriousness of an offence. The penalties stipulated in the law range from 1000 NPR to 25000 and an imprisonment from three months to three years, leaving it to the judge's discretion to decide on the punishment without comprehensive guidelines. In a number of cases, where sentences have been pronounced, only a minimum fine was imposed against the perpetrators even in cases where

access to water and freedom of religion was threatened.⁶⁶ An amendment of the Act is confined to the increment of the fine and does not change imprisonment guidelines.⁶⁷

In contradiction to the international human rights law, the Act does not require the State to provide an adequate reparation (individual or collective) or a compensation to the victim, including to cover medical treatment or other additional expenses to cover the damages⁶⁸. The criminal justice system fails to fully recognize the damage done to the victim of CBD and untouchability, and thus does not ensure their right to full remedy. Below table indicates the ratio of criminal investigations and prosecutions, which does not correspond to the wide spread CBD and untouchability practice.

Fiscal year	Total cases in the district courts	Remarks
2063/64	7	Including the cases registered in this fiscal year
2064/65	11	Including the cases registered in this fiscal year
2065/66	12	Including the cases registered in this fiscal year
2066/67	12	Including the cases registered in this fiscal year
2067/68	16	Including the cases registered in this fiscal year
2068/69	19	Including the cases registered in this fiscal year
2069/70	14	Including the cases registered in this fiscal year
2070/71	13	Including the cases registered in this fiscal year
2071/72	15	Including the cases registered in this fiscal year
2072/73	20	Including the cases registered in this fiscal year

The importance of compensation is an even greater due to the lack of income opportunities for Dalit communities.⁶⁹As OHCHR claimed in its report, Dalit communities frequently informed OHCHR of their need for compensation to cover medical bills⁷⁰. One victim wished he had settled the case through negotiations with the perpetrator as he would have then had his medical expenses

⁶⁶ EQUITY WATCH 2014, NEPAL: ACCESS TO JUSTICE FOR DALITS. This report analyses 18 cases and concluded that in most of the cases where verdicts have been pronounced by the district courts, all the perpetrators were only fined and some compensation was given to the victims.

⁶⁷ Recent amendment to the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 replaced NRs 1000 with 20,000, 25,000 with 100,000, 10,000 with 50,000, 25,000 with 50, 000 and 100,000 with 200,000 under Section 7 and 9.

⁶⁸ Section 9 of the Act narrowly confines the right to compensation to the amount of restitution to be awarded by the perpetrator without creating any obligation for the stat authorities.

⁶⁹ This is enlarged upon later in this report

⁷⁰ OHCHR Report "Opening the Door to Equality: Access to Justice for Dalits in Nepal, 2011".

paid. Often for Dalits, such medical bills, put an insurmountable pressure on their already meager budgets that can push them into a cycle of poverty and marginalization that in turn further reduces their ability to access justice.

Similarly, under the Nepali criminal law, there are no penalties or disciplinary action procedures for police officials failing to register a FIR. The complainant can appeal to different state bodies and officials (CDO, NDC District Court, and High Court) who can then instruct the concerned police station to proceed with the registration, yet, none of these are authorized to proceed with either criminal or a disciplinary hearing/action against the police official in question. This is a significant issue in the context of CBD and untouchability⁷¹. Without an effective accountability mechanism, including disciplinary measures, police have little incentive to initiate criminal proceedings for the alleged crimes of caste-based discrimination⁷². Procedural provisions also lack clear guidance as it does not require the police to immediately act upon a complaint, attend the crime scene, prompt investigation, record complaints, provide protection for the victim, their family and witnesses, and ensure confidentiality of information received during the investigation.

The CBD and Untouchability Act states that caste-based discrimination cases have to be filed⁷³ within three months of the commission of the crime, where police must complete its investigation and the District Government Attorney has to file a charge sheet with the relevant court or the case hearing authority. However, when a formal complaint is not registered by the victim police rarely register a case of caste-based discrimination despite the *prima facie* evidence. Often police argue that the victims should provide a direct testimony before they will consider registering the case. When asked about the pro-active measures police officers were of the view that caste-based discrimination crime is not serious enough to take action *suo moto*, believing it is reserved only for the cases of mutilation and murder⁷⁴. Moreover, the current accountability mechanisms focus on cases where an FIR is filed by the outsiders. There is no requirement for the police to take a proactive (*suo muto*) action. Even when a victim comes forward, the proper registration of the case by police remains a challenge as rather than registering the FIR *prima facie* in the Diary Number 10 and initiating criminal proceedings, police strongly encourage victims and perpetrators to negotiate for a settlement⁷⁵.

⁷¹ Many of the participants of the National Consultation meeting dated 17 Nov 2017 concerned that there should be a provision of accountability to curb the trend of bypassing the obligation to investigate and prosecute CBD an untouchability.

⁷² Section 10(1) of the Act reads; " Case shall have to filed for the offence pursuant to this Act, within Three months from the commission of the offence."

⁷³ Section 10, CBD and Untouchability Act, 2068 BS.

⁷⁴ OHCHR, Opening the Door to Equality: Access to Justice for Dalits in Nepal, page 53.

⁷⁵ Ibid, page 55.

In cases of violence against women and children state authorities are obligated to observe the principle of "due diligence"⁷⁶ and the "best interest of the child"⁷⁷. However, no such attention is given to Dalit women and children, against whom gender and caste-based violence is inflicted.

As complained by the stakeholders, who participated in the consultations, police often fail to follow up the FIR with a full and prompt investigation that includes going to the crime scene, collecting evidence, taking statements from the witnesses and suspects. As a result, the District Government Attorney has limited opportunities to supervise the police on their investigations and charge sheets. Often police wait until the last date to submit the investigation report to the Government Attorney, which, given the time restraints imposed by the 3 months Statute of Limitations, can result in weak or incomplete charge sheets.

What is more, given the distances in Nepal, most Dalit communities face significant transportation costs to reach the relevant law enforcement and judicial body, including the nearest Areas Police Office (APO) or the District Court. Although Section 15(3) of the State Cases Regulation states that the expenses for producing such witness (including the victim) to the court shall be made available by the concerned police office, including paying the daily and travel allowances, in practice this rarely happens. Additionally, due to the under-representation of Dalits in the justice and law enforcement system, the fear of social boycott, reprisal and violence discourage victims to report the crimes committed against them.

Recommendations

42. Insert provisions that allow departmental action against those who deliberately deny registration of the FIR, delay investigations and fail to fulfill their duties.
43. Provide Dalit rights-based trainings to police, judges, courts at all levels on the Anti-Untouchability Act and CBD Act and CERD.
44. District Government Attorneys must take a more proactive role in supervising police investigations and decisions related to charges of caste-based discrimination and untouchability.
45. Ensure full and meaningful participation of the victims in judicial proceedings, including through support, protection of victims, witnesses and their family members against any threats or intimidation.
46. Develop a time bound plan of action with adequate budget and implemented effectively to eliminate CBD and ensure *de facto* equality.
47. Strengthen an independent oversight (through NHRIs, Parliamentary Committee and Government mechanisms) of law enforcement functions of police.

⁷⁶ As specified in General Recommendation 19 (1992) of the Committee on the Elimination of Discrimination against Women.

⁷⁷ Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and considered as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Also, Constitution of Nepal, 2015 also refers to this principle under article 51(j)(5).

48. Devise special protective and supportive measures (e.g. pro bono legal aid service, psycho social counseling service, interim relief, rehabilitation services, mobile clinics and cash incentives to follow up cases) to enhance access to justice of Dalit women and children.
49. Promote legal education, internship opportunities, especially for female Dalits, and offer capacity building opportunity for Dalit lawyers to enhance their capacity.
50. Strengthen NDC as a quasi-judiciary institution able to review cases of CBD and untouchability.

Article 7: Measures to combat prejudices and promote understanding and tolerance.

The GoN report to the CERD states that the education system of Nepal is founded on a principle of equality and non-discrimination, and that human rights related subjects have been incorporated into the school curricula. Also, that the GoN has been raising public awareness against untouchability practice, including through mobilization of media. However, the National Dalit Commission's report indicates that the government training curricula does not adequately mainstream CBD and untouchability.⁷⁸ Many of the training manuals and curriculums contain merely a reference to the legal prohibition of CBD and untouchability and lack any reference to the national and international human rights standards dealing with caste-based discrimination, as well as that any practice of untouchability and CBD is a punishable criminal offence and every public servant is under an obligation to implement the anti-untouchability and CBD law.

While the Code of Conduct for public servants and other professionals⁷⁹ incorporates and mainstreams CBD and untouchability perspective, the monitoring of its adherence in practice is not found effective⁸⁰. The Code of Conduct for lawyers⁸¹ and teachers (Education Regulation, 2028, Section 41) does not have any guidance on CBD and untouchability. Section 41- 55 of the Civil Service Act, details ethical norms, enforceable on all civil servants, but lacks references to non-discrimination on the basis of caste. Also, the Code of Conduct for Government Attorneys 2073, contains a provision requesting not to discriminate any client but fails to directly refer to caste-based discrimination⁸².

On the other hand, the Nepalese Police Human Rights Standing Order requires police personnel not to tolerate any type of discriminatory, including based on caste, and requires to act against it.⁸³ Yet, the exiting initiatives educating the general public on caste discrimination are insufficient given the magnitude of the problem. The ICERD Nepali translation is yet to be widely disseminated amongst the different stakeholders.

⁷⁸ National Dalit Commission, Review Report on Inclusion of CBD and Untouchability perspective in the Training Curricula, 2072.

⁷⁹ Section 5 of Code of Conduct for Journalists, 2073.

⁸⁰ National consultation organized by DNF, SAMATA Foundation and others at Kathmandu, December 20, 2017

⁸¹ The Code of Conduct for Legal Practitioners, 2051.

⁸² Code of Ethics for Government Attorneys, 2073.

⁸³ Nepal Police Headquarter, Human Rights Standing Order, 2008.

The GoN did make some progress since the last review in making the education system inclusive and equitable, including through an incorporation of non-discrimination and Dalit rights in school and university curricula as well as efforts by the NWC, DDC and civil society promoting wider sensitization. However, these were confined to urban population.

Dalit representation in the Nepalese media is very limited due to the lack of Dalit journalists. The main stories reaching Nepalese media focus on major instances of violence, discussions on backwardness, population growth, and the lack of entrepreneurship and productivity, perpetuating caste-based stereotypes. Other than producing and broadcasting programmes on electronic media - radio and television, particularly by NDC and Dalit Development Committee, the state media such as NTV, RSS, Gorkhapatra, Radio Nepal have hardly produced and broadcasted any programs to promote tolerance and harmony needed for Dalits. Only, private TV and FM stations have initiatives to promote Dalits' rights through dedicated programmes.⁸⁴

Recommendations:

- 51.** All levels of the governments - federation, province and local - should work together in a planned way to promote awareness of caste-based discrimination and untouchability issues through state, non-state and community media as part of "national civic education" to erase caste-based hatred and prejudices in the Nepalese society.
- 52.** Take concrete measures to raise awareness among the public and government officials, teachers, and media practitioners on discrimination based on work and descent, including through theatre, songs and the internet.
- 53.** Develop policy guidelines and programs for media, ensuring that racial or other prejudices are not propagated by the state and non-state own media.
- 54.** Ensure adequate media representation of Dalit issues and build a capacity of Dalit journalists to investigate and report on Dalit issues.
- 55.** Introduce a transformative training for school teachers, police, community and religious leaders, political activists, bureaucrats and local representatives focusing on intersectionality, gender dynamics and the adverse effect on prosperity and development of the entire society.
- 56.** Revise schools, universities and training curriculars (e.g. National Judicial Academy, Staff College, Judicial Service Training Center, Police Academy etc.) to include CBD and untouchability related laws and policies.

Article 8: reporting obligation

Nepal's last report to the CERD was reviewed in 2004 and only 13 years later, in February 2017, the CERD received the GoN 17-23 Periodic Reports⁸⁵. Nepal's failure to comply with its reporting

⁸⁴ For example, ABC TV has been airing "Dalit Awas" program for a few years as a part of its social responsibility.

⁸⁵ Government's first, second and third report were followed by a first combined report (6th, 7th and 8th together), second combined report (9th, 10th, 11th, 12th, and 13th together), third combined report (14th, 15th and 16th together) and fourth combined report (17th, 18th, 19th, 20th, 21st, 22nd, and 23rd) together in 2017.

obligations was noted in the Committee's 2004 concluding observations⁸⁶. The Committee also recommended in the next report to address all points raised in the 2004 observations. However, the Government failed to implement this recommendation. This illustrates that the Government lacks a genuine commitment to comply with the reporting obligations and so has obstructed the assessment process of the progress⁸⁷.

The Government is also yet to accept the individual complaints procedure of the Committee, hence, there is no possibility of resorting to this complaint mechanism when national mechanisms have been exhausted. Finally, Nepal has not embraced fully the norms and values of the ICERD and is reluctant to withdraw its reservation to article 4 and 6⁸⁸.

Recommendations:

57. The CERD should continue to raise its concerns about Nepal's non-compliance with its reporting obligations.

58. The GoN should withdraw its reservations on the article 4, 6 and 14.

⁸⁶ Concluding observations of the Committee on the Elimination of Racial Discrimination issued by COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION concerning Nepal, Sixty-fourth session, 23 February-12 March 2004, Para 23.

⁸⁷ The stakeholders in the National Consultation dated 8 June 2017 and the consultative meeting of the Dalit Rights experts dated 18 August 2017 expressed the serious concern that the Government without any valid reason bypassed the reporting obligation and created a problem in tracking the progress.

⁸⁸ The CERD Committee in its Concluding Observations to Nepal dated 2004 had actually welcomed Nepal's statement that Nepal was considering to withdrawing its reservations to articles 4 and 6 of the Convention and making the optional declaration provided for in article 14.

ANNEX-I

1. Summary of the report consultation

Under the leadership of DNF Nepal, five Dalit Organizations came together to prepare this Shadow Report and formed a Task Force to coordinate the drafting process. In order to create this report, different processes ranging from desk review to consultation meetings were adopted. The team has tried its best to make the report preparation process as much consultative and research-oriented as possible. Extensive discussions and dialogues with stakeholders including representatives of Dalit organizations, civil society organizations and media were held at national as well as sub-national levels. A series of interactions were held in 6 districts providing a platform for stakeholders to offer their views and suggestions in relation to Nepal's compliance with the ICERD. A national consultation programme was convened bringing together the representatives of NHRC, NWC, NDC, Ministries, INGOs, NGOs, Media persons, lawyers, individuals, professionals and stakeholders inviting them to offer constructive suggestions and inputs on the initial draft of the report. In total 323 of participants took part in the consultation program at national and local level. Suggestions and recommendations from the consultation programme have been incorporated in finalizing the draft report. Recommendations of the final report were also shared with the key stakeholders for their comments and suggestions. This report also relies on data gathered through CSOs efforts to monitor incidents of caste-based discrimination and untouchability in selected districts of Nepal. A number of documents such as case files, field mission reports, CSOs submissions to UPR, media reports, letters to authorities, court decisions and complaints submitted to the police (known as First Information Reports) are used as sources of data.

2. Inter-caste marriage displaces Dalit family

Tilak Kami of Budeli VDC in the district, his wife Minu and elder brother Tek Bahadur have been displaced for the past one year after Minu's parents and relatives allegedly chased them away for marrying a girl from the so-called upper-caste family. Tilak had eloped with Minu Shahi one year ago. The trio is living in Surkhet. "My sons are not allowed to enter the village. They are displaced. There is no one to speak in my favour. I want justice," Tilak's 63-year-old mother Nanna shared her woes to visiting rights activities in the district on Monday. Earlier, the three displaced people organised a press conference, seeking justice. "The District administration Office is not serious about the case, nor does the state hear our woes. We want to return home," Tilak said. Nanna said Tek Bahadur was attacked when he came to the village to perform 13-day death ritual of his step-mother. "He (Tek Bahadur) has not returned home after the incident. I cannot go out. Locals mock me, calling me 'Dumini'," Nanna said. She said there is no one to take care of her in the house and that she calls her daughter Ranga whenever she falls ill. Tilak, who was a relief-quota teacher at the Janakalyan Lower Secondary School, was expelled from his job after he eloped with Minu. Nanna said Tilak is yet to get salary of 12 months. "We are scared to live here too as we heard that they may finish us off with the help of goons. We do not even visit bazaar," Tilak said. Meanwhile, Dalits in the village told rights activists that teachers discriminate their children on the basis of

caste in school. They said their children are forced to sit on floor in school while children from the so-called upper caste sit on the benches. Minu's uncle Tej Bahadur denied the accusation. "We have not issued any threats against them (Tilak and Tek Bahadur). They can live in the village," he said. Chairman of the Nepal National Dalit Society Welfare Association, Resham Sunar, said that Dalit victims in the village are not safe to lodge complaints with the authorities concerned.

Source: The Kathmandu Post, published on 01-01-2014.

3. Caste Based Discrimination and Untouchability Act

Such actions include the act of preventing, controlling or restricting anyone in any way from entering, attending or participating in public or private sphere; expelling anyone individually or collectively from public place or public occasion or to commit social exclusion or discrimination of any kind or to impose restriction on such act or to demonstrate any other kind of intolerant behavior; depriving a person of using or enjoying public service; depriving a person of organizing public occasion or performing any act to be organized publicly; instigating or provoking anyone to commit an act that causes caste-based discrimination or untouchability or abet any one to commit such act, or knowingly participate in such act; prohibiting any one to carry on profession or business or compel any one to carry on any occupation or business; depriving or causing to deprive any one of performing any religious act on the ground of caste, race, descent, community or occupation. Section 7(1)(b) of the Act provides penalties for the imprisonment for a term from one month to One year or the fine from Five Hundred Rupees to Ten Thousand Rupees or the both for anyone who commits an offence of: preventing or causing to prevent anyone from producing selling or distributing any goods, services or facilities on the ground of caste, race, descent, community or occupation; producing, selling or distributing any goods, services or facility only for particular caste or race; excluding any member of family or preventing him/her from entering in to the house or evicting him/her from the house or village, or compelling him/her to leave the house or village on the ground of caste or race; preventing a person of marriageable age pursuant to prevailing law from getting inter-caste marriage; or shall denying to perform naming ceremony for the person born from such marriage or compelling or causing to compel for divorce on the ground of caste race, descent or community; denoting hierarchical supremacy of a person belongs to particular caste or race or committing an act that justifies social discrimination on the ground of caste or race or transmit the views based on caste- supremacy or hatred or using derogatory words or indicating thereof, by his/her conduct, gesture or behavior, or instigating or abetting or causing to do so in any manner that promotes caste based discrimination by dissemination, publication or exhibition of audio visual materials, articles, pictures, figure, cartoon, poster, book or literature or by any other means; and, denying anyone to provide employment or discriminating in remuneration or causing to do so on the ground of caste, race, decent or community.

4. Ajit Mijar Murder Case awaiting for justice

Ajit Mijar, a member of the Dalit community, married Kalpana Parjuli on July 9. On July 14, Mijar's body was found hanged in Dhading district. Although the case was initially reported as a suicide, Mijar's family suspected he had been killed deliberately and filed a case with the police. Dalit NGOs stated that the police were unresponsive and did not conduct a thorough investigation of the case. The NHRC, jointly with the National Dalit Commission and the Nepal Police, was monitoring the investigation. Prime Minister Pushpa Kamal Dahal directed concerned authorities to form a committee for investigation into the alleged murder of Ajit Mijar, a youth belonging to the Dalit community. Prime Minister Pushpa Kamal Dahal met a delegation from United Political Dalit Struggle Committee at PM's official residence in Baluwatar, Kathmandu, on August 24, 2016. The family of victim has been provided with a sum of one million rupees, however, his body still remains at the morgue of TU Teaching Hospital as family has refused to cremate him and demanded the culprits to be punished by law. In the meantime the Dalit Struggle Committee has been demanding a fair investigation into the alleged murder of that Dalit youth.

5. Fear of reprisals prevents access to criminal justice

In March 2010, a 35-year-old Dalit man in Kanchanpur district was seriously beaten and verbally insulted by a group of non-Dalits during the "Holi" religious festival. The incident occurred when the Dalit had been given their religious blessing, by placing a mark on his head known as a "tika", without realizing he was a Dalit and someone traditionally considered to be "impure". The severe nature of the assault left the man unconscious for three days with serious head injuries. Despite the seriousness of the incident, and the clear caste-based discrimination motives of the assault, the victim refrained from pursuing a criminal case as he feared further retaliation from non-Dalits should he do so. Instead, the victim agreed that the case should be "mediated" by the police. This resulted in the man being given 4,400 Nepal rupees – approximately 44 US dollars – by the perpetrators. However, this was less than half of the medical expenses that he had incurred as a result of his injuries.

Source: OHCHR Report "Opening the Door to Equality: Access to Justice for Dalits in Nepal, 2011".

ANNEX-II

List of Participating Organizations:

- 1) Dalit Welfare Organization(DWO)
- 2) Jana Utthan Pratithan(JUP)
- 3) Professional Development and Research Centre (PDRC)
- 4) Center for Dalit Women Nepal(CDWN)
- 5) Dalit Welfare Association(DWA)
- 6) Dalit Alliance for Natural Resources, Nepal(DANAR)
- 7) SAMABESHI Foundation
- 8) Association of Dalit Women Advancement of Nepal(ADWAN)
- 9) Dalit Studies and Development Centre(DSDC)
- 10) Dalit Human Rights, Nepal
- 11) ACE Nepal
- 12) Global Forum against Caste Based Discrimination
- 13) SOCH-Nepal
- 14) JCI-Nepal
- 15) SAFA Nepal
- 16) Dalit Ekata Sanjal
- 17) Janachetana Sanstha
- 18) Dalit Sanjal
- 19) Prayash Nepal
- 20) Shantira Samridhhi Ka Lagi Ekbadha
- 21) Samajik Naya Manch
- 22) Dalit Mahila Uthan Sangh
- 23) Janchetana
- 24) SASARIF
- 25) Mahila Udyam
- 26) YAC Nepal
- 27) DWRF Nepal
- 28) Nabha Pratibha
- 29) Chetana Bikash Manch
- 30) ManavAdhikar Sanjal
- 31) Sahayogi Samaj
- 32) Human Right Society
- 33) CRESH-Nepal
- 34) Sabal Nepal
- 35) Hukodon
- 36) Handicapped Organization