



## Briefing paper for the ICERD committee members

*Review of Nepal, 30 April – 1 May 2018*

The Nepalese Constitution prohibits untouchability and discrimination on the grounds of caste and recognizes such practice as an offence punishable by law. However, the Constitution lacks provisions on indirect forms of discrimination, adequate reparations and provisions on compensation for historical marginalization of Dalit communities. Moreover, despite the provisions, Dalits continue to face severe discrimination and violence.

The adoption of the Caste Based Discrimination and Untouchability (Offence and Punishment) Act 2011 was celebrated and recognized as a landmark development, yet the implementation of the Act remains partly ineffective due to an inadequate *statutory* limitation, range of punishment not corresponding to the seriousness of crime, excessive judicial discretion in determining the punishment, and gaps in guaranteeing adequate compensation and reparation. The Act recently was amended to increase a range of fines and after a judicial intervention a new regulation was introduced, yet it has failed to address the issues of victim and witness protection.

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 segregation.

**Landlessness** among Dalits is extreme –36.7% among the hill population and 41.4% among 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 laborers. Landlessness is also one of the root causes of the exploitative Haliya, Balighare/Khalo, Charuwa and Haruwa systems.

**Poverty:** In Nepal approximately 42% of Dalits fall below the poverty line, which is 17% point higher than that of the national average (25.2%). An average per capita consumption in Nepal is 34,187, yet Madhesi Dalits consumption per capita is 23,106, followed by Hill Dalit 25,298 per annum.

**Education:** The Government of Nepal has ensured free primary education to all children below 5 years, including free text books and Rs.450 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/Madhesi Dalit. Literacy rates of Dalit women are 45.5%, but from Musahar and Dom community it is only 17.4% and 17.9%. Children from Dalit communities face discrimination at school by teachers and peers. Dalit children are not permitted to drink water, are addressed in a rude manner, placed in separate lines etc. Ultimately, their learning achievements become slow, often leading to dropout.

**Health:** The second Long-term Health Plan of Nepal (1997-2017) aimed to provide essential health care services in all districts to 90% of the population within 30 minutes of walking distance, yet only 39.7% of Hill Dalits have access to such facilities. 43% of Tarai/Madhesi Dalits and 14.6% of Hill Dalit experience discrimination when receiving medical treatment in local health services. Moreover, as around 62% of Dalit girls get married before 15 years of age their health situation is at a further risk.

**Water and sanitation:** Although the overall access to drinking water of Nepalese people has significantly improved, only 14.1% of Tarai/Madhesi Dalits have access to safe drinking water. Dalit population also has a very minimal access to the improved toilet facilities - just 5.5% of Tarai/Madhesi Dalits, compared to 30.6% of Hill Dalit and 41.7% of the national average.

## The Committee members are encouraged to recommend to the Government of Nepal to:

1. Prohibit all direct and indirect forms of caste-based discrimination and pave the way for remedy such forms of discrimination and strengthen legal framework improving number of normative flaws regarding statute of limitation, penalty, reparation, compensation, reparation and protection along with amendments of the CBD&U regulation to detail the processes and procedures for victims and witness protection.
2. Take adequate measures to effective implementation of anti- discrimination law including pro Dalit laws and policies and strengthen an independent oversight (through NHRIs, Parliamentary Committee and Government mechanisms) of law enforcement functions of police.
3. Strengthen National Dalit Commission (NDC) as a quasi-judiciary institution able to review cases of CBD&U and provide adequate resources to effectively fulfill its roles and responsibilities.
4. Take adequate measures, including budgetary allocations and capacity development initiatives, to ensure effective monitoring and coordination in implementing the CBD&U Act.
5. Make provisions that allow departmental action against those who deliberately deny registration of the FIR, delay investigations and fail to fulfill their duties. Government Attorneys must take a more proactive role in supervising police investigations and decisions related to cases caste-based discrimination and untouchability.
6. 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 pertaining to access to land for agriculture, adequate housing, social/food security and equal access and inclusion for Dalits to natural resources.
7. Ensure proportional political representation at all levels of governance including executive, legislative, judiciary, bureaucracy, security forces, political and diplomatic appointments and constitutional bodies.
8. Enact a legislation to tackle inter-caste marriage issues, including investigation of inter-caste marriage-induced violence against Dalits, offering protection and rehabilitation to the victims, and take measures to promote safe and conducive environment for inter-caste marriage and restore the cash incentive scheme to encourage inter-caste marriages.
9. Strengthen its efforts to achieve universal quality education for Dalit boys and girls at all levels of education- in urban, rural and remote areas, with special attention to Dalit girls and adopt and implement an action plan to make schools and educational institutions discrimination free zones.
10. Revise schools, universities and training institutions curricular (e.g. National Judicial Academy, Staff College, Judicial Service Training Center, Police Academy, teachers trainings etc.) to include CBD and untouchability related laws and policies focusing on intersectionality, gender dynamics.
11. 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.

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Based on the joint UPR report by the following organisations:



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