



Universal Periodic Report of Nepal

3rd Cycle - Fact Sheet

Addressing the Rights of Dalit in Nepal

Summary of the key issues from previous cycle

Nepal received 195 recommendations where 153 responded and 43 noted. Out of these 153, eighteen were directly related to Dalits. Among the recommendations, 44% were partially implemented, 56% not implemented and none fully implemented. Most of the recommendations from different delegations were related to the effective implementation of Caste-Based Discrimination and Untouchability (CBDU) Act, regarding justice and remedies to the victims. Those countries recommending this were Germany (122.40), Switzerland (122.36), Paraguay (122.33), Thailand (121.17), Japan (121.18), Denmark (122.35), Czech Republic (122.39), Namibia (122.41), and Argentina (122.55). Another area of recommendation was the effective implementation of constitutional provisions meant for most marginalized and vulnerable groups. Those countries recommending were India (122.1), Ukraine (122.38), Sweden (121.16).

Another area of recommendation was the effective implementation of rights related to women and children by: Sweden (121.16), Finland (122.104), Singapore (122.105), Lao, People's Democratic Republic (122.22). The issue of housing rights to marginalized and low income group was raised by Morocco (122.89). The USA recommended ensuring the engagement of earthquakes victims from Dalits and vulnerable groups (122.111).

National Framework

Nepal has constitutional, legal and institutional framework to address the issues and problems of Dalits, which constitutes 13.8% of the country's population. Unfortunately, what is lacking is any implementation of those laws which ensure the protection of Dalits and other minorities. The Constitution of Nepal, Article 24 ensures the rights against untouchability and Article 40 addresses the issues related to ICCPR and ICESCR. However, even after the four years of its promulgation, the Dalit community has not been able to enjoy these rights.

The National Dalit Commission has been established as a constitutional body, but there are no commissioners appointed for the last four years, neither has it been mandated to act in accordance with the Paris principles. There is no political will from the Government of Nepal for constructive engagement between NDC and Dalit CSOs has been taking place to promote Dalit rights.

The CBDU Act is currently in force, but the burden of proof lies with the victim and punishment rates are very small, resulting on widespread impunity. The Criminal Code Act 2017 also provides for punishment for the practice of 'untouchability'.

All the rights related to Article 40 of the constitution of Nepal ensure economic, social and political rights including right to allocation of land to landless and home to homeless. Although there is a general practice around the world that implementation of such fundamental rights should be mandatory after promulgation of the Constitution, in Nepal such provisions are still not implemented upon the enactment of respective laws designed to protect Dalits.

Two institutions were established to ensure Dalit development, such as the Neglected Oppressed and Dalit Upliftment Development Committee, (NODUDC) and the Badi Development Committee. They were quite effective in distributing scholarships to Dalit students in their higher studies. But now they have been made defunct without any alternative, or equivalent body being proposed.

Key issues affecting Dalits in Nepal

Challenge	Impact
Non-discrimination and Equality	Despite legal and constitutional provisions discrimination is rampant and 15 deaths occurred after CBDU act enacted in 2011 and 25 deaths after the lockdown of COVID-19 pandemic since 23 March 2020 till 31 October 2020. The dead body of Ajit Mijar is awaiting justice resulting from the inter-caste marriage.
Participation and representation	The political participation has increased from local to provincial and federal level especially that of Dalit women at the ward level. Their participation in decision making posts remains low. The participation in other government bodies is very low with less than 2% participation in the bureaucracy.
Fulfillment of ESCRs	Article 40 of the Constitution has recognized the rights to free education with scholarship up to university level; employment in all sectors with the modernization of the tradition occupation; land to landless and housing to homeless. Implementation is very low and still 41% Dalits are landless and are forced to live in meager subsistence. Still 42% Dalits are poor compared with 25.2% national average.
Defunct institutions	Despite the elevation of the National Dalit Commission to a constitutional body, no commissioners have been appointed for the last four years. The Dalit Development Committee and the Badi Development Committee are almost closed without any alternative arrangements. Rampant violations of Dalit rights taking place and poor and vulnerable Dalits are deprived of the socio-economic upliftment opportunities.
Access to Justice	During the 10 year conflict between Maoist and State forces, at least 1100 Dalits were killed or disappeared, out of 17,000 total populations. Many families of the killed and disappeared are waiting for the justice and redress.
Right to access to natural resources	Dalits living near the National Park and buffer zones have problems related to land, forest, water and livelihoods.
Implementation of International commitment	Commitments made by GoN on CERD and UPR recommendations not being implemented. Dalits lag behind in all sectors but SDG indicators lag Dalit specific targets.
Dalit Women	Status of Dalit women in relation to socio-economic rights, access to justice, citizenship, financial resources remain a serious issue. Access to education remains very low. Dalit Women are the victims of social stigma, different forms of caste and gender related violence, social and physical insecurity to inter-caste marriage couple (Dalit and Non-Dalit). Their meaningful participation in decision making process of local level is very weak.
Madhesi Dalit	Represent 4% of the overall population. Madhesi Dalit are the most marginalized group, as 45% of them are landless and 15% of them deprived of citizenship. 45% of Madhesi Dalit women are severely malnourished. Toilet users among them represent only 5% compared to 25% national average.
Cross cutting issues (person with disabilities, LGBTIQ, minority and marginalized Badi, Gandharva, Dom groups)	The issue of disabilities and LGBTIQ among Dalits are hardly ever discussed and their voices remain unheard. Badi women are still forced to flesh trade and the Gandharva and Dom remain poorest of the poor.

Recommendations

1. Implement the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 and increase the sentences to ten years and 1,000,000 rupees, or both and make a provision of compensation for the victims borne by the State.
2. Establish special benches to deal with cases of CBDU with the burden of proof on the defendant and not the victim.
3. Establish "Zero Tolerance" policy against CBDU cases and ensure impartial investigation, prosecution, and right to a fair trial.
4. Develop a 10-year National Plan of Action with adequate financial resources to eradicate CBDU.
5. Take accelerated actions to implement the concluding observations arising from CERD and other treaty bodies and accept individual complaint procedure (Article 14) of ICERD.
6. Enact an Integrated Act in order to implement the fundamental rights of the Dalits, enshrined under Article 40 of the Constitution and ensure full proportional representation in every state body at all levels including the judiciary, administrative bodies, diplomatic missions, commissions and political appointments.
7. Appoint the National Dalit Commission members shortly; provide adequate resources and mandate as Paris principal along with quasi-judiciary status.
8. Ensure that each provincial government enacts necessary legislation urgently to empower and protect Dalits.
9. Ensure protection and life security to inter-caste married couples and their family members; and provide special packages to them.
10. Adopt concrete measures to strengthen efforts to ensure the implementation of SDGs from a Dalit perspective in order to "Leaving No One Behind".
11. Ensure every Dalit student receives compulsory free education from primary to the higher levels with standardized scholarship.
12. Ensure that no Dalits deprived of citizenship especially from Madeshi Dalits.
13. COVID-19 worsening the situation of Dalit so introduce adequate packages to build back better.

Questions

1. Can you provide a timeframe for when the constitutional provisions made for Dalits especially article 40 and its sub articles 1-6 will be implemented?
2. Why has the Dalit Development Committee and Badi Development Committee remained dormant and what are the proposed alternative arrangements that Dalits can continue to receive the services from these institutions?
3. When will the National Dalit Commission be fully functional, including the appointment of its commissioners and mandate their quasi-judicial authority?
4. When and how will the government of Nepal ensure *de facto* equality to Dalits by applying Zero Tolerance policy?
5. What is Nepal's strategy to implement the recommendations of the previous UPR cycle and the most recent CERD committee review?
6. What is Nepal's strategy to implement "No Dalit Left Behind" in applying Sustainable Development Goals, Agendas 2030?

Sources

In Collaboration with



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