

Call for submissions on Nepal in advance of the Visit of the Special Rapporteur on Extreme Poverty and Human Rights – November 2021

Contribution by the International Dalit Solidarity Network

The nature of poverty and inequality in Nepal, including how poverty is or should be defined and measured, its prevalence, and its distribution.

In the specific context of Dalits, poverty walks hand in hand with the practice of untouchability, affecting access to work and meaningful income possibilities. Caste based discrimination affects 13.8% of the total population of Nepal,ⁱ comprised of seven Hill Dalit castes and 19 Madhesi Dalit castes. Caste based discrimination and untouchability (CBDU) continue to be deeply entrenched in Nepalese society.

As a consequence of the system based on casteism, in many parts of the country Dalits are still subjected to the worst forms of discrimination. They are subjected to endless humiliation and injustices in their social, cultural, economic, administrative, and political lives; assaulted, raped and murdered; and denied access to places of worship, common water sources, education and dignified jobs.

The impact of poverty on civil and political rights, as well as on economic, social and cultural rights such as the rights to health, housing, food, education, and social security.

The longstanding discrimination and deprivation of economic benefits by the state and society has left the Dalit community economically backward.

The Dalit community is the second lowest in **Human Development Index (HDI)** ranking just above the Muslim community in Nepal. Although Dalits work in traditional occupations, a large portion of Dalits have day-to-day problems, contributing to an inadequate standard of living. The Dalit community lives below the line of hunger-based povertyⁱⁱ. The Dalit community always struggles with food scarcity. The daily wages they earn are not adequate to cover their nutrition needs.

The practice of untouchability is directly related to the use of **water**. The water touched by a Dalit is considered polluting to mainstream society. Hence, the majority of Dalit households face violence and severe restrictions while collecting water from common water sourcesⁱⁱⁱ. The Dalit population also has minimal access to improved toilet facilities^{iv}.

The Constitution's Article 40 (6) ensures homeless Dalits are provided with a settlement. However, the relevant legislation on the right of **housing** contains no mention of Dalits. Furthermore, the government has not taken expedited efforts to ensure housing services to Dalits.

Article 35 of the Constitution of Nepal ensures that every citizen shall have the right to free basic **health services** from the State and that no one shall be deprived of emergency health services, even though discrimination in access to health services remains a major obstacle^v.

Traditional occupations, skills and arts are historically inherited by the Dalit community. Nevertheless, this group has rarely gotten recognition for the services provided to society. Dalits survive mostly in the **informal sector**, without enjoying social protection benefits. Most skilful Dalits do not receive fair wages and social respect for their work^{vi}.

The **financial illiteracy** affecting Dalits is a further obstacle to obtain loans for private or business purposes. The Rastriya Banijya Bank (National Commerce Bank) once offered easy loans without collateral for the Dalit community, but due to its complex procedures very few Dalits benefitted. Food and dairy production of the Dalit community do not get to market as their product is considered impure. Some government and NGO programs have encouraged this deprived community to produce food and dairy items but have not solved the whole problem of access to market of their products.

Although **Dalit women** constitute half of the Dalit population, they face intersectional three-fold discrimination: class, gender and caste. Dalit women in Nepal continue to endure discrimination in many areas including education, health, employment and access to economic resources. They are discriminated against, not only by dominant castes, but also within their own communities, where men are dominant. The discrimination against them is structural, distinctively marked, fraught with gender biases, collectively targeted, entrenched with violence and generationally imposed, resulting in life-long perverse effects. Traditional harmful practices against Dalit women include extreme verbal abuse and sexual epithets, physical assault and rape. Impunity for perpetrators is rampant due to weak legal mechanisms. The local level election law has guaranteed Dalit women to be members of ward committees at the local level. A large number of women from the Dalit community are represented at the local level, and 6,567 are ward members. However, such representation is merely formal and has not led to effective participation of Dalit women in local decision-making processes. Dalit women still face hardships regarding property rights and do not enjoy ownership of property on equal footing with Dalit men. Child marriage, early pregnancy and uterus prolapse have worsened the health conditions of Dalit women, mostly the Madheshi Dalit women. In some Dalit groups 62% of Girls get married before the age of 15.

The potential of and challenges facing the existing social protection system to address poverty, inequality, and social exclusion, especially with a view to protecting informal workers, rural populations, refugees, and unregistered/unrecognized citizens.

The exclusion of Dalits from the main **social protection schemes** is another factor that perpetuates poverty within this group. The government has made some provisions for the social security of people, including a senior citizen allowance. Dalits receive lower pensions than the remainder of the population. The Dalit elder people get elderly allowance at the age of 60 where the non-Dalits get it at the age of 70. However, the allowance amount is NPR. 3,000.00 per month but the Dalit who gets at the 60 only gets NPR. 2,000.00 per month and gets an equal allowance amount after 70 years.

The challenges facing the implementation of constitutional guarantees of equality and social inclusion for marginalized groups, such as Dalits, women, non-citizens, indigenous peoples, and religious minorities.

The Constitution of Nepal recognized the rights of Dalits as fundamental rights, assuring their representation in the state bodies under Article 24 (Rights against Untouchability and Discrimination) and

Article 40 (Rights of Dalits), which is in line with both ICCPR and ICESCR. However, even after four years of its promulgation, the Dalit community has not enjoyed those rights on equal footing, nor felt satisfactory action has been taken by the government to ensure the rights enshrined therein. The National Dalit Commission (NDC) has been elevated to a constitutional status, but the commission is not in line with the Paris Principles. Moreover, the NDC commissioners have not been appointed after the Commission acquired constitutional status due to the apathy of the GoN.

The Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 is the main law which has criminalized CBDU. The Criminal (Code) Act # 2,074 (2017) has also further strengthened actions against it. To date, the Dalit Empowerment Act is only enacted by the provincial government of Province 2. Remaining provincial governments have not shown much interest or expedited efforts to enact it.

The Constitution of Nepal, mainly the preamble and the Articles 18 and 42 (Right to Equality and Right to Social Justice) provide that the socially backward and indigent KhasArya shall have the right to participate in the State bodies on the principle of proportional inclusion. However, Article 84 of the Constitution has guaranteed KhasAryas, the major dominant caste group in Nepal, will have more than full proportional representation, as per their population. Accordingly, the electoral law of Nepal has prioritized compulsory in the first rank for KhasArya, while nominating members for the House of Representatives under proportional electoral system. Therefore, it is inconsistent with the spirit of Constitution's preamble and fundamental rights, which aims to provide for affirmative action to the groups that underwent through historical injustices.

Article 40(1) of the Constitution ensures that the Dalit community shall have the right to political participation in every state body according to the principle of proportional inclusion. After the promulgation of the Constitution, the country became a federal system where the principle of inclusion needs to be considered. However, there is not proportional representation in every mechanism of the state. For example, the Federal Cabinet of Nepal does not have proportional representation of women and Dalits. It is alarming that there are no Cabinet Ministers from the Dalit community in any of the seven provincial governments of Nepal. The House of Representatives of Nepal has only 6.91% representation of Dalits. Not a single provincial parliament has proportional representation of Dalits. Among 753 mayoral positions at local level, only 6 (2.05%) individuals are elected as mayors in Municipalities and 1(0.22%) in Rural Municipality, 12 (4.10%) as Deputy-mayors in Municipalities and 15 Vice-chairs (3.26%) in Rural Municipalities.

The representation of the Dalit community in the judicial mechanisms is insignificant, as there have never been any Dalit judges in the Supreme Court, only three judges in all seven high courts and one district judge out of 77 district courts. Representation in high-ranking positions in the police force is negligible. Article 285 of the Constitution ensures that positions in the federal civil service as well as all federal government services shall be filled through competitive examinations, based on open and proportional inclusive principles. The Public Service Commission has reserved quotas for Dalits and marginalized communities spurred by the Constitution on inclusive representation. However, these quotas are not in compliance with the proportional system, as the Dalit community has only 9% reserved seats in classified (allocation for marginalized groups is 45% of total vacancy and is considered as 100%) vacancies. The representation of Dalit community in Civil Service is around only 2% whereas the KhasArya's is approximate 62%^{vii}.

The Public Service Commission in 2019 curtailed the quotas for all classified marginalized communities while publishing many vacancies. There were in total 9,161 vacancies for various posts in local level governments, but it failed to follow the principle of inclusiveness, as maximum seats were reduced to only

30 seats for Dalits^{viii}. This led to months of protest by Dalit, indigenous, physically disabled communities and other marginalized sectors of Nepal, but the government did not listen to their claims.

The National Human Rights Commission has not had any Commissioners from the Dalit community since its establishment in 2000. Similarly, except NDC no constitutional commissions have Dalit representation.

The question of indigenous and rural populations' access and title to land and income-generating activities, and their intersection with existing issues of poverty and inequality.

Landlessness makes Dalits economically vulnerable and dependent on landlords. Most Dalits are agricultural and occupational labourers and are generally landless. This makes them vulnerable to violence and discrimination. Landlessness among Dalits is a serious problem, affecting, 36.7% among the hill population and 41.4% among Madhesi Dalits, the poorest Dalit section. The Constitution guarantees provision of lands and housing for landless Dalits according to the law. However, the amended law on land distribution is overly complex, imposing many conditions on land acquisition. Similarly, Dalits can obtain housing but under complex conditions. By adopting a community and leasehold forestry scheme, 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 1995 pave the way for leasing out forest land for commercial purposes, rather than providing a remedy to the poverty in Dalit communities. There is a lack of inclusion in the institutions made for forest resources and an unsatisfactory situation with regard to natural resources.

The social and economic impacts of COVID-19 on poor and low-income groups.

The Dalit community are disproportionately affected in humanitarian responses, relief distribution and other support programs. During the COVID-19 pandemic, most Dalits encountered difficulty in accessing income and basic needs, due to unequal social protection schemes. Such lack of social protection on equal footing, once more, perpetuates the vicious circle of poverty, exclusion, and marginalization.

Amid the lockdowns, the many violations against Dalits remained invisible, such as the case of the massacre of 23 Dalit youths, showing a brutal picture of deeply entrenched caste-based discrimination of Nepali society. The origin of this massacre was the disapproval by family members of a higher caste of an inter-caste marriage, which also fired the anger of some villagers.

ⁱ Central Bureau of Statistics-CBS, 2011

ⁱⁱ Within overall poverty status about 42% of Dalits are 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 NR. 34,187 per annum, yet Madhesi Dalits consumption per capita is NRs.23,106, followed by Hill Dalit at NR.25,298. Among the Dalits of both Hill and Madhesi origin, every two in five persons are below poverty line.

ⁱⁱⁱ NMSS

^{iv} The situation is particularly poor for Tarai/Madhesi Dalits, of whom just 5.5% have access to improved toilet facilities; it is 30.6% for Hill Dalits, compared to 41.7% of national average. Source: National Census 2011, CBS

^v 43% of Tarai/Madhesi Dalits and 14.6% of Hill Dalits experience discrimination when receiving medical treatment in local health services. On average, 72% of women experience problems in accessing health services. The figure for Dalit women is higher than the national average with 79% and 85% respectively for Hill and Tarai/Madhesi Dalit women. Source: National Demographic Survey.

^{vi}Dalits are often exploited in the name of Balighare, Khalo, etc. systems and get only minimal payment (mostly in kind/grains) for their work.

^{vii}https://nagariknews.nagariknetwork.com/news/114057/?fbclid=IwAR0ssaaKh3cmudCQLQgg6U4DxiZFPY8Kdo4yv7X1YE_CRhNpXsAywnMxIJY#/.Xi09ItJT2xw.facebook

^{viii}<https://ekantipur.com/opinion/2019/06/06/15597859514011394.html>