

**Outline of the Statement by
Hon'ble Jeet Bahadur Gautam Darjee, State Minister for General Administration,
at the side event on Draft Principles and Guidelines on the Effective Elimination
of Discrimination Based on Work and Descent
Geneva, September 16, 2009**

Mr. Chairman,
Distinguished Ladies and Gentleman,

I thank you for this opportunity to be amidst you this afternoon. For the benefit of time, I will confine my remarks on the issue of caste-based discrimination and our efforts to eliminate this scourge from our society.

Caste-based discrimination in Nepal should be viewed in the context of legal provision that came into effect in the country. Legal arrangements have played significant role in shaping Nepalese society.

In the context of Nepal, they should be understood in two phases namely: the pre-legislation and post-legislation phase, each having its own characteristics. After the advent of *Kirant* Dynasty and before the unification of Nepal, there were obvious social discriminations. The bases of suppression, however, were religion and practices related to it. The ruling systems and structures had important role to mould the society.

The span between *Kirant* dynasty and the unification of Nepal marked two major social reforms. The *first* was made by *Jayasthiti Malla* who not only stratified the people on the basis of occupations but also provided various facilities and perks on the same basis by dividing the population in four castes and 36 sub-castes. The *second* was made by *Ram Shah*, whose move strengthened the reforms of Jayastithi Malla. The so-called reforms of both the kings institutionalized, to our dismay, the discrimination based on the occupations. This continued even in the modern era of Nepalese history that dawned when king *Prithivi Narayan Shah* got victory over *Malla* kings of Kathmandu.

The first Codified Law of Nepal introduced by Janga Bahudur Rana in 1853 institutionalized discrimination that made profound impact in the Nepalese society. The Codified Law deemed to be institutionalizing equitable social order, unfortunately institutionalized the discriminatory notion of so called "pure and unpure" and "touchable and untouchable". Moreover, there was an unfair punishment system; the severity of punishment differed according to the occupation of the offender, the upper caste got lesser punishment than the lower caste for the similar offense. The social life, perks and privileges also depended on the occupation of the people. It was through this law that caste-based discrimination and practice of untouchability received legal recognition.

The Effects of Discrimination

Discrimination based on that legal foundation not only has had human rights implications but also crippling effects on the overall healthy development of the entire

society. Vertical stratification into upper and lower caste helped legitimization of untouchability and the notion of “pure and unpure”. This had debilitating effect in the social mobility and interchange of a particular section of the society and encouraged vertical stratification even among the Dalits. The system of assigning authority, punishment and duties on the basis of caste stratification hindered people belonging to these communities to grow and realize their full potentials by using their traditional skills and knack, for they believe that it is because of their occupation that determined their social status. This phenomenon had exclusionary impact with their minimal access to the State structures and the mainstream national life that ultimately helped entrench social disequilibrium.

It is now incumbent upon us to eliminate the remnant of this unfortunate past and foster a culture of equality, non-discrimination and tolerance that enables everyone in our society to realize the aspiration of justice and equality in all spheres of social life.

Efforts to eliminate caste-based discrimination

In retrospect, successive legal and constitutional frameworks, such as, the Nepal Government’s Act of 1947, Interim Constitution of 1950, the Constitution of 1958 and that of 1962 came into existence condemning social injustice and discriminations but they could not combat the evil owing to the lack of political commitment. They tried to propagate non-discrimination but could not effectively eliminate the practice in reality.

At the meantime, a new Codified Law was enforced in the year 1963 with the ambition of eradicating the prevalent caste-based discrimination. However, the implementation part remained weak. This legal provision was a positive development as this for the first time outlawed the caste-based discrimination and to some extent helped in sensitizing at the higher level of the policy making. However, the message could not reach to the ground level where the impact of the problem was felt. After the popular movement of 1990, the Constitution of Nepal which came into being in 1991 prohibited caste-based discrimination in its entirety. Although the constitution was progressive in its approaches, it unfortunately could not eliminate the vestiges of caste-based discrimination.

A considerable number of the Dalits and marginalized people partook in April movement of 2006, many of them attained martyrdom. Their contribution to bring the social and political change in the country which eventually helped to dethroning of the feudal monarchy was recognized by the reinstated House of Representatives by declaring Nepal an “untouchability-free” State in June 2006.

The Interim Constitution that came into effect in January 2007 comprehensively guarantees the right against untouchability and caste-based discrimination. Discrimination against any citizen on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these is prohibited. No person shall, on the ground of caste, descent, community or occupation, be subject to untouchability in any form. Such discrimination is liable to punishment and the victim is entitled to

compensation as provided by the law. The Constitution also guarantees the right to social justice, right against racial discrimination, right regarding employment and social security, among others.

Now we have the opportunity of consolidating this provision of the interim constitution in the new constitution which is being drafted by the Constituent Assembly and translating them in real life of the people in our endeavor to create a society that is founded on the principles of equality justice and non-discrimination.

Best Practices in Nepal

In our efforts to address the issues of caste-based discrimination and also as part of our national agenda of broader socio-political transformation, there are very encouraging developments that we have brought about in recent years. In Nepal we are now in a crucial stage of nation building following the historic people's movement of April 2006 which brought lasting changes and transformation in the socio-political and cultural life of our country.

I have the distinct pleasure to share with you that there exists broad national and political consensus and commitment at the highest level to the elimination of caste-based discrimination. As a result, an inclusive Constituent Assembly is in the process of drafting new constitution based on the principle of equality and non-discrimination. The dalits have 50 seats in the Assembly which is the largest Dalit representation in such bodies. Dalit heads one of the Committees of the Constituent Assembly and a Committee of the Legislative Parliament. There are four Ministers in the Council of Ministers of the present Government.

An independent National Dalit Commission has been established to work solely for the cause of Dalits. The Commission works on awareness raising programs and is an authority to investigate the complaints of untouchability and caste-based discrimination. We are in the process of enhancing the autonomy of the Commission through strengthened the legal base.

In our efforts to empower the hitherto marginalized communities, we have moved ahead with the specific targeted provisions of positive discrimination. Out of total 45 percent of reservation, 9% has been allocated to the Dalits in the recruitment of public sector employment, including in the civil service, Nepal Army, Nepal Police and Armed Police Force. These provisions have already put into implementation and we have started seeing the impact with steady inclusion of the candidates from these communities in the public sector employment and different positions of the State both at the centre and local level. This arrangement is in the phase of expanding into other sectors even beyond public services.

Out of all national and international scholarship opportunities available for Nepal for higher level studies, 9 percent has been reserved for Dalits. Dalit Development Committee whose network is spread across the country has been providing financial aid

and scholarships to the Dalits students. They are being given priority in the skill development training conducted in the country.

The Government has recently announced an incentive of 1,00,000 Rupees for inter-caste marriage, if one of the couple is dalit. A vibrant civil society is active working at local, provincial and national level to advocate the cause of Dalits and conduct targeted programs to their benefit.

The Government has allocated Rs. 300 million to construct low cost modern houses, under "**People's Residences Program**", in Siraha, Saptari and Kapilvastu districts to provide housing facilities to 3,000 households targeting the *Dom, Musahar, Chamar, Dusadh, Khatwe*, other *Dalits* and disadvantaged Muslims.

A detailed outline of the efforts of the Government of Nepal in the protection and promotion of the Dalit rights in Nepal is circulated in a separate document at the back of this room.

These developments have given hope to the acceleration of the pace of reforms and change as well as consolidation of the achievements to further advance the cause and create an equitable social foundation.

Challenges

Having said that, I must state that there is no room for complacency. We understand the need to continue concerted efforts in accelerating the pace of change and transformation with renewed vigor and determination to combat discrimination in all its forms and manifestations. To be more specific, effective implementation of the existing laws and altering the weak institutional capacity remains a major challenge. We also are in need to fill the gap of enabling legislation for compensation to the victims of untouchability and cope with the constraint of resources in further pushing the agendas of change. In addition, comprehensive socio-cultural awareness programs into the societal level where the victims live are crucially important to sustain the changes. Efforts from all sector, Government as well as from the civil society, are essential in such endeavors. Internalization of inclusive policies and programs right from the grassroots level is another challenge which needs mass social mobilization efforts to bring change for good.

Use of the Draft Principles and Guidelines

Nepal is in the process of drafting a new constitution by the Constituent Assembly. As different Committees of the Assembly are busy in preparing concept papers, the draft principles and guidelines can serve as good reference in devising the ways and means to address the issue of caste-based discrimination. These principles and guidelines also may be useful tools to work out amendment and reforms of discriminatory laws and revitalize their implementation. We have yet to elaborate the constitutional provision of

compensating victims of untouchability into implementation legislation. We may take reference from the draft principles, as applicable, in devising draft compensation law.

Positive Aspects of the Draft Principles and Guidelines

Having said that, let me turn to highlight some of the positive aspects of the draft Principles and Guidelines. It is significant that the guidelines and principles affirm to the preamble of the universal declaration of human rights. The principles extend to individual, group, federation, institution, bodies or community not to practice any forms of untouchability, boycotts, ban, and blockade. This is a significant aspect of it. The underlying assumption of such principles are founded on the fact that no citizen should be excluded from using services and privileges provided by the state. Above all, the victim oriented approach, with particular attention to women, aged, and disabled is not only humane but also respects wider spectrum of human rights. This is very much a notable aspect of the draft principles. Emphasis on collective efforts on the part of the international communities, regional and international mechanisms, the UN and its organs, international civil society and private sectors are positive.

Conclusion

Finally, the caste discrimination and untouchability have been the issues of human rights concerns. While actions are required at the national and community level, wider understanding of the dynamics and complexities associated with caste-based discrimination is important. Concerted efforts need to be exerted at social, cultural, economic and political fronts as well as at the local and national level to realize the goal of discrimination-free society. International community and UN could complement these efforts by sharing the best practices, enabling the national actors and helping through resources and capacity building. In this context the draft guidelines can serve as useful tool to borrow the idea from for national efforts.

I thank you.

Geneva, September 16, 2009