

Recommendations for UPR Review on Nepal on Dalits

DRC Follow-up Committee-Nepal and International Dalit Solidarity Network.

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Civil society organizations of Nepal known as the DRC Follow Up Committee – concerned with Dalits, Indigenous People, Madhesi, gender and sexual minorities, religious minorities and women - made a joint report to the Durban Review Conference in Geneva. The DRC Follow up Committee is a national coalition consisting of 134 member organizations. The recommendations and questions below have been prepared by this Committee and IDSN.

Background

Dalits are the *de facto* 'untouchables' of Nepal. They are victims of caste related violence, including when attempting to enter inter-caste marriages. Dalits are religiously, culturally, socially, economically and historically oppressed, excluded and treated as untouchables. It is estimated that there are 205 forms of discriminatory practices against Dalits in Nepal, severely affecting their daily lives. Still many discriminatory provisions exist in different laws of the country incompatible with international human rights law. A draft bill on Caste-based discrimination and untouchability was submitted by the National Dalit Commission two years ago but has not yet been addressed. The Government of Nepal has not established the National Dalit Commission, which was founded in 2002, as a statutory body.

Therefore key recommendations must be made to the Government of Nepal to:

- Accept the individual complaints procedure under ICERD
- Immediately enact a bill to eliminate caste-based discrimination and 'untouchability' taking into consideration concerns on the draft bill raised by the Office of the High Commissioner for Human Rights and the National Dalit Commission
- Immediately enact a bill to establish the National Dalit Commission as a statutory body
- Ensure proportional representation with additional compensation for Dalits including Dalit Women at all levels of state and non-state sectors and mechanisms
- Immediately enforce a code of conduct to stop discriminatory practices against Dalits - for state officials and political parties
- Adopt necessary constitutional, legislative, administrative and institutional measures for effective implementation of all international and national obligations, policies and programmes to eliminate and prevent caste discrimination.
- Take immediate initiatives to rehabilitate freed Haliyas (bonded labourers) and their families ensuring an adequate standard of living.

- Arrange policy, laws and programmes to provide adequate areas of land for all landless Dalit families, equal rights and support for their indigenous knowledge and occupation and ensure equal benefit in sharing of natural resources¹.
- Make use of the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent as a guiding framework in combating caste discrimination.

Recommended Written and Oral Questions to the Government of Nepal

1. The Government of Nepal is requested to explain why the passing of the draft Untouchability Bill submitted by the National Dalit Commission two years ago has been delayed?²
2. Is the Government of Nepal prepared to amend the draft bill to accommodate the concerns raised by the National Dalit Commission of Nepal and the Office of the High Commissioner for Human Rights in Nepal in their recent analysis of the draft “Caste-Based Discrimination and Untouchability Crime and Elimination Punishment Act”?
3. Has the Government of Nepal taken steps to establish the National Dalit Commission as a statutory body?
4. Many marginalised communities feel that although the government has made various declarations with regard to their rights, they have not put effective measures in place to implement those rights. For example, no measures have been implemented to ensure the proportionate representation of Dalit women so that it compares favourably to that of women in general. What are the plans of the Government to fill such gaps and ensure effective implementation?
5. What steps is the government of Nepal taking to ensure that *the position of Dalits* is established and protected within the new structures of federalism and all state mechanisms which are being proposed under the new constitution?

¹ A large number of Dalit are landless and has historically been denied access to land while contributing to the state and society including by giving their indigenous knowledge. The state now should give first priority to ensure land for landless Dalits for the first time. On the basis of their indigenous knowledge, they should get support to promote their occupation and knowledge.

² Explanatory Note: The National Dalit Commission of Nepal and the Office of the High Commissioner for Human Rights in Nepal have called for improvements in the draft “Caste-Based Discrimination and Untouchability Crime and Elimination Punishment Act”. The shortcomings noted include: a failure to define caste discrimination and ‘untouchability’; an inadequate emphasis on the government’s obligations under international human rights law; a lack of classification of offences; a failure to provide guidance to police officers; inadequate provisions for punishments; and a failure to set out positive duties for the government.

6. When does the Government of Nepal expect that Nepal will be a country which is **in practice** totally free of 'untouchability' and caste-based discrimination? In this respect, have time bound plans been developed to ensure adoption and implementation of adequate laws, reforms and policies?

7. Could the Government of Nepal elaborate on its role in promoting and supporting the endorsement of a UN framework for the Elimination of Discrimination based on Work and Descent?

Observation by the DRC Follow Up Committee

Whilst recognizing the term "work and descent based discrimination", related definitions and comments, provided inter alia in the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent and by the Committee on the Elimination of Racial Discrimination, the civil society of Nepal is concerned that past HRC resolutions on the topic only refer to "work and descent based discrimination" and do not mention the word "caste". The phrase "caste-based discrimination" must be specifically used in any new resolutions.

Supporting documents

Link to: ['Observations on the Untouchability Bill'](#)

Links to UPR reports:

- [UPR Submission – Nepal NGO Coalition](#)
- [UPR Submission – Nepal DRC Committee](#)
- [UPR Report – Nepal National Human Rights Institutions](#)

Links to other relevant documents:

- [The UN and discrimination against Dalits in Nepal](#)
- [Draft UN Principles and Guidelines](#)



Addendum to Joint Recommendations and Questions for UPR Review on Nepal on Dalits by DRC Follow-up Committee-Nepal and International Dalit Solidarity Network

IDSN briefing note

In January 2011, the human rights record of Nepal will be assessed by the United Nations Universal Periodic Review mechanism. As part of this process, Nepalese human rights bodies and NGOs submitted reports for consideration of the UPR during the summer of 2010. Significant parts of these reports describe the situation of the country's sizeable Dalit population, being subjected to caste discrimination.

The Dalits are subjected to serious human rights violations of caste discrimination and untouchability practices which include segregation in housing, lack of or restricted access to land, temples, public resources and services, and markets, and de facto prohibition on inter-caste marriage. Being exploited at the labour market, Dalits are often forced into bonded and forced labor. Dalits clearly lack protection by an appropriate legal framework and access to justice to curb day to day untouchability practices as well as physical violence and attacks, which rarely lead to redress for the victims.

According to some estimates, Dalits constitute 20 percent of Nepal's population – or as many as five million people. Almost half of them live below the poverty line. They are landless and much poorer than the dominant caste population. Their life expectancy is lower than the national average, and so is their literacy rate.

In the international human rights arena, the government of Nepal has expressed support for the draft UN Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent, thus showing a willingness to involve the international community in addressing the issue and setting an example for other countries with caste systems.

UPR report by the national human rights bodies

The joint report submitted by the National Human Rights Commission of Nepal, the National Women Commission of Nepal and the National Dalit Commission of Nepal (NDC) contains a number of observations relevant to the issue of caste discrimination including the following:

- Nepalese legislation contains many discriminatory provisions that are incompatible with international human rights law;
- Efforts of the state to fulfill its human rights obligations enshrined in international human rights instruments are inadequate;
- Implementation of existing legislation is weak;
- NDC has identified 205 forms of discriminatory practices against Dalits in modern Nepalese society. These include denial of public benefits and participation in public life as well as the right to observe religious practices;

- Dalits have less than one percent of jobs in the civil service – despite constituting up to 20 percent of the population. They suffer discrimination in the work place and are made redundant because of their caste;
- The government has in some cases failed to respect the right to food of the poorer sections of the population, mainly Dalits;
- The literacy rate of Dalits is 33.8 percent, compared to a national average of 72.29 percent;
- The school enrollment ratio of Dalit children is very low – 20.4 percent at primary level, 11.4 percent at lower secondary level and 7.8 percent at secondary level;
- Madhesi Dalits are a particularly vulnerable group. 44 percent of them are landless, a number of them are bonded labourers (Haliyas), and they suffer discrimination on the issue of citizenship.
- Dalits have less than one percent of jobs in the civil service – despite constituting up to 20 percent of the population. They suffer discrimination also in the work place.
- Dalits continue to be under-represented at the political level, having secured just eight percent of the seats in the current constitutional assembly despite representing a share of the population which is roughly double that figure.

UPR report by NGO coalitions

Three coalitions of Nepalese human rights NGOs (namely Nepal NGO Coalition for UPR, National Women Coalition and Durban Review Conference Follow-up Committee Nepal) have in their UPR report called on the government to improve the rights of Dalits. The recommendations represented in the report form the basis for the recommendations and questions in the joint submission by the DRC Follow Up Committee and IDSN.

The observations and recommendations on Dalits in the two reports are significant and should be taken into consideration when reviewing the human rights record of Nepal.

IDSN and its partners in Nepal also wish to underline the following recommendations:

The Constitution

The new Constitution should establish effective legal remedies for rights violations. The constitution should clearly provide that all fundamental rights, including social, economic and cultural rights are fully justiciable.

The Constitution should explicitly prohibit the imposition of certain occupations on the basis of caste and provide freedom of choice of occupation.

The Constitution should provide for special measures to help secure substantive equality for Dalits and other members of disadvantaged groups, especially Dalit women, who face multiple forms of discrimination.

The National Dalit Commission should be made a constitutional body with full authority to investigate Dalit rights violations.

Analyses of draft Anti-discrimination legislation

The National Dalit Commission of Nepal (NDC) and the Office of the United Nations High Commissioner for Human Rights in Nepal (OHCHR-Nepal) have recently released an analysis of the draft Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act, entitled, "NDC and OHCHR-Nepal Observations on the Untouchability Bill."

NDC and OHCHR-Nepal point out that given the prevalence of practices of caste-based discrimination and untouchability in Nepal, and the implications on the enjoyment of human rights by many, the submission of the untouchability bill is a positive step forward. However, it requires strengthening to be a genuine tool to curb discriminatory practices.

We recommend that the observations and recommendations be fully taken into account, and that the draft 'Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act' be revised in line with national and international obligations.

OHCHR and the National Dalit Commission have further offered the following recommendations on the process to relevant stakeholders to ensure improved legislation that will contribute to ending caste-based discrimination and untouchability:

To the Legislative-Parliament and the Government:

- Publicise the details of the bill to seek the views of the general public on its contents, as provided under the Constituent Assembly (Legislative Functions) Rules.
- Organise a wider consultation with the Dalit community, civil society and other stakeholders on the draft bill.
- Support the Government and civil society in their efforts for the swift passage of the bill following its revision and the wider public consultation.
- Provide technical as well as financial assistance to effectively implement the legislation after it comes into force.

To all actors:

- Upon the enactment of the legislation, work together to raise awareness among rights holders and duty bearers on its contents.

January 7, 2011