

## Nepal Dalit Charter

**Note:** This document draws upon the Declarations produced at 5 Dalit regional conferences held in 2007. While the Charter is yet to be finalized by the Dalit organisations to be submitted to the elected CA members, this draft Charter has been prepared with legal advice by UNDP, as an interim document based on the regional Declarations.

### WE ARE THE DALITS OF NEPAL

For centuries we have suffered discrimination, victimization and humiliation by the so called high-caste groups and others who have imposed an unjust social system on us;

Despite the declaration of the abolition of untouchability by the 1990 Constitution of Nepal, and repetition by the Interim Constitution of 2007, and despite the *jana andolan* II, a people's movement for justice and inclusion for all, despite the enactment of various laws designed to end such practices, and despite the creation of a Dalit Commission such discrimination, victimization and humiliation have continued.

The treatment of the Dalits is in fundamental violation of the human rights norms of equality, human dignity and social justice proclaimed in the Universal Declaration of Human Rights and other legal instruments and declarations of the United Nations as well as in the 1990 and Interim Constitutions and its perpetuation brings shame to the country

A society which exploits and humiliates a section of its people demeans itself and distorts its sense of justice and impoverishes its standards of morality.

The vision of the *jana andolan* II and the dream of a New Nepal will remain unfulfilled unless and until Dalits enjoy with all other communities dignity, equal rights and respect;

WE ARE THEREFORE CONVINCED that all possible measures must be taken, in the interests of both the Dalits and the nation to end immediately all discrimination on the grounds of caste and empower previously marginalized communities so that they can play a full part in national life;

WE REMIND our fellow citizens that Dalits have been active in the various people's movements in the past, including the historic *jana andolan* II of 2006, in which the people have demanded a democratic and inclusive system of governance, and have always sought to advance their cause by peaceful means

WE RECALL with sadness and pride the bravery and sacrifice of countless heroes and martyrs for the Dalit cause and for the nation as a whole, including Dipak Biswokarma, Chandra Bahadur Bayalkoti and Setu Biswokarma in the movement of 2007;

AND WE ARE DEEPLY SADDENED by the repeated failure of the Nepali State and society, despite the involvement of the Dalit community in the common struggle for equality, fairness and justice, to address the issues of the Dalit community in a meaningful and effective way.

WE RECOGNISE the need for change within the Dalit community itself, and for an end to discrimination between "Dalit castes;

WE CALL UPON all Dalit organisations to work together, and with the rest of the Nepali people, for the realisation of these goals;

THEREFORE through our various organisations gathered in Godavari, today  
December 13 2007

**WE DEMAND THE FOLLOWING FROM THE STATE, FROM THE SOCIETY AND FROM THE CONSTITUENT ASSEMBLY THAT IS TO BE ELECTED.**

***Establishing the facts***

1. An acceptance that previous national censuses have seriously underestimated the proportion of Dalits in the population of Nepal, and a commitment to carrying out as soon as possible either an accurate census to establish the size of the Dalit community as a proportion of the population of Nepal' or at least an accurate assessment of the proportion of Dalits
2. That, pending an accurate determination of the size of the Dalit population, national planning and laws, including the laws relating to the elections to the Constituent Assembly, should assume a Dalit population of [20%] of the national population of the country.
3. The setting up of a body, as part of the policy of reparation for past wrongs and injustices, to establish the facts about Dalit oppression over the centuries.

***Citizenship***

4. That all remaining discriminatory provisions, in the Constitution and the law, that affect the equal rights to obtain citizenship and to pass it on to children and to one's spouse be removed immediately.
5. That the Constitution must make clear that no provisions in law or administrative practice may deprive citizens of Nepal of their right to be recognised as citizens and to receive citizenship certificates.
6. The taking of active steps to ensure that Dalits who have been wrongfully deprived of evidence and benefits of citizenship are enabled to have their citizenship fully recognised as soon as possible.

***Representation and participation in the CA***

7. That, just as the 7 party alliance and the Government have made agreements with other communities, and taken consequent steps, designed to ensure inclusive proportionate representation in the Constituent Assembly for those groups, effective steps should be taken to ensure such representation for the Dalit community. This is especially important in view of the fact that political parties' failure to be inclusive has been even more marked in relation to Dalits than to other members of disadvantaged groups in the society, such as Madhesis, janjatis and women.

8. That the allocation of the 17 seats in the Constituent Assembly to be filled on the nomination of the Council of Ministers because of the persons' "contribution to society" takes account of the contribution of Dalits to society.
9. Provision in the rules and procedures of the Constituent Assembly to ensure that all group in society, including the Dalit community, can be fully informed of the process to make the new constitution and have full opportunities to express their views on the new Constitution that the Constituent Assembly is to draft, in order that the constitution may respond to the needs of society, avoid the defects of the previous constitution and reflect the "people's sovereignty" recognized by the recalled Parliament after the jana andolan II.

***Effective measures to end untouchability***

10. That the new Constitution for Nepal include truly effective provisions for the eradication of the scourge of untouchability from Nepal society, bearing in mind the ineffectiveness of the previous provisions to this effect.
11. That the new Constitution for Nepal prohibit discriminatory acts based on the notion of untouchability not only in public places but also in commercial and private relations such as employment, provision of housing and services of all sorts.
12. The necessary resources and mechanisms and commitment on the part of government to implement such new laws once they are passed, and existing laws that remain.
13. That mechanisms are found by the drafters of the constitution to ensure that such promises in the constitution that something shall be punishable are not hollow. Although it is not the place of a constitution to establish specific criminal offences, experience shows that a statement does not guarantee that any such law will be passed.].

***Participation in public bodies and national life***

14. That the system of Government to be set up under a new Constitution for Nepal includes effective and enforceable provisions for the proportionate participation in all organs of government of all communities including Dalits.
15. That the existing Government respect and make all efforts to comply with the commitments already entered into in the Interim Constitution (Article 21) to ensure the proportionate participation of all communities including Dalits in all organs of government.
16. That the new Constitution has an effective provision for ensuring that political parties are unable to carry out their activities, including standing for elections, unless they have a genuinely democratic structure that makes it equally possible for any of their supporters, including Dalits, to hold office within the party, to make their voice heard on party matters, and to be a candidate for election on behalf of the parties. Such provisions are meaningless unless the machinery for enforcement is effective, and such machinery must be provided.
17. A commitment on the part of political parties themselves to be fully inclusive in their procedures and choices of candidates.
18. Provisions should be made in the future constitution for reservation of seats for Dalits in the national legislature and in all elected bodies in the states/regions and local bodies, as a transitional measure.

19. Programmes to be introduced by the government and the media organisations to ensure the active involvement of Dalits, including in decision making, and that news items about Dalits are given the same prominence as similar news about other groups in society. Active measures should be taken to encourage the training of Dalit journalists.

### ***Restructuring the State***

20. That in a new federal system in Nepal there will be effective provisions to ensure that at all levels of government the rights of all minorities, including Dalits, as defined in national and international instruments, are fully respected. No exercise of autonomous power or policy for the preservation of local culture can be allowed to justify untouchability or other discrimination on the basis of caste.
21. That protection of Dalits be a concurrent subject over which both the national and the regional/state governments have power in order to ensure that protection is effective.

### ***Effective institutions***

22. That the new Constitution for Nepal includes a binding and enforceable commitment to establish an autonomous Commission for the protection and fulfilment of Dalit rights, provided with the necessary personnel and resources and powers.

### ***Employment and the Economy***

23. The necessary means and measures to do away with all practices that imprison Dalits in certain occupations, including the exploitation of the Badi community. This must include a commitment to a sustained programme, including of education, training and financial support, rather than one-off interventions in order to ensure that changes are permanent. Dalits must be able to feel a sense of pride in their work.
24. The immediate abolition in reality and not in name only, of all forms of bonded labour including, but not limited to, Haliyas.
25. The necessary research, political will, legal and policy measures and resources to eliminate all evil social practices affecting the Dalit community in the context of work in any part of the country.
26. A programme to develop in a systematic way possibilities of decent work for Dalits who have previously been forced to work in various forms of forced or humiliating employment, including targeted programmes to ensure that Dalits can be employed in all schools as teachers and have fair opportunities in the public service, as well as in various forms of private employment.
27. Programmes that meet the needs of particular groups within the Dalit community, including the Badis, founded on proper research and related to their specific circumstances.
28. A programme of land reform that addresses specifically the needs of different groups in society, including the protection of the residence rights of freed Haliyas. Such a programme must give priority to the neediest, and take account of the fact that over 90% of the Dalits in the Far Western Region are landless.

29. Poverty alleviation programmes that are specially developed to meet the needs of the Dalit community, including programmes for Karnali zone generally and the Dalit community specially, special financial benefits for the most deprived, and funds targeted specifically at Dalit poverty alleviation and development.

### *Human Rights*

30. That the Bill of Rights in the new Constitution explicitly states that Dalits are fully entitled to all the rights. This is because, although in theory a general protection of “equality” and non-discrimination in a Bill of Rights protects Dalits, experience has shown that when attitudes are deeply ingrained in society it is important that rights are granted in a way that removes the slightest doubt or excuse for doubt. It is also important for Dalits themselves to see their rights set out in this explicit way.
31. That rights in a new Bill of Rights must operate not only between the individual or community and the State but "horizontally" where the State is not involved. This is particularly important in a country like Nepal where many functions that in other countries would be carried out by the state are performed by private bodies, NGOs or international agencies.
32. The Bill of Rights in the Constitution should include the right of every person to a free choice of whom they marry. It should also be clear that any victimization of either party to a marriage on the grounds of caste constitutes an offence which must be punishable by law.
33. In order to achieve the full realisation of the rights in relation to marriage and family life, the necessary research, appropriate policy decisions, laws, implementation, resources and political commitment to do away with social practices that stand in the ways of such realisation. These practices include dowry, veil system, *Chaupadi* [isolating women during menstruation and childbirth], child marriage, polygamy, excessive age differences in marriage and other forms of sexual exploitation and abuse.
34. The constitution must include the following economic and social rights: to education, health, food and water, housing and a decent standard of living. These rights must be legally enforceable before the courts. The rights should be phrased so that they reflect international understandings of rights, and also make it clear that in fulfilling their obligations the state must give priority to the most disadvantaged.

### *Religion*

35. A recognition that freedom for religion for some must not include the right to restrict the freedom of others on any ground, including on the basis of caste. The constitutional provision on the freedom of religion must make this clear. Thus it must be recognised as unconstitutional for any person to be denied access to any temple on the basis of caste, and such exclusion must be a punishable act like others which violate the prohibition on untouchability.
36. As far as compatible with the status of Nepal as a secular state, steps should be taken to ensure that Dalits are employed as priests.

### *Education*

37. Specifically the right to education should include the language of the International Covenant which includes "principle of compulsory education free of charge for all".

38. That the right to education should include the progressive extension of education beyond the primary stage to all sections of the community with special priority being given to the most disadvantaged groups, particularly Dalits because of their extreme disadvantage.
39. A recognition of the fact that the right to education should include the right to teachers who understand one's needs and background, and who can act as role models. The corollary of this is the Dalit children should have the opportunity to be taught by Dalit teachers and that all staff within the education system should be sensitised to issues of discrimination and should modify any outdated attitudes.
40. A recognition of the fact that segregation of pupils in the classroom or elsewhere in school on the basis of caste is a violation of both the right to education and to fundamental human rights, and the institution of active measures to ensure the eradication in the shortest possible time of such practice, including the punishment of educational administrators who condone or institute such practices.
41. A recognition that the right to education includes a right to a curriculum that is designed to end rather than to perpetuate prejudice or injustice in society. Thus no child should learn from its school that caste discrimination is a justified concept.
42. An end to discriminatory practices in employment, of all types, including the immediate end to practices of segregating Dalit teachers, and preventing them from attaining higher positions within the teaching services.

*Health*

43. A recognition of the fact that refusal to give any or equal treatment on the basis of caste is a violation of both the right to health and to fundamental human rights, and the institution of active measures to ensure the eradication in the shortest possible time of such practice, including the punishment of health staff or administrators who practice, condone or institute such behaviour.

*Water*

44. A recognition of the fact that refusing to permit access to water supply which is or should be available to the public on the basis of caste is a violation of both the right to water and to fundamental human rights, and the institution of active measures to ensure the eradication in the shortest possible time of such practices, including the punishment of public servants who facilitate, and members of the public who perpetrate such practices.
45. A recognition that it is a violation of the right to water and of the existing right to non-discrimination for any agency to provide separate facilities for Dalits, even if the motives for doing so are well-meaning.
46. Acceptance of the responsibility to fulfil the right to water which means that the State has the responsibility to take steps to ensure water supply to those who have no access to drinking water.

*Right to fair administration*

47. That the Constitution includes a right to fair administration for all citizens which includes that every one is entitled to be treated with respect by public

servants and for those public servants to have an understanding of their particular problems. This requires appropriate training for all levels of the public services including the police and the judiciary.

### ***Affirmative action***

48. Affirmative action measures, including quotas, must be explicitly stated as not amounting to discrimination under the new constitution. Such measures may include subsidised health and other services, special scholarships, special training and any other measures, including reservations in public appointments.
49. A duty must be imposed on government under the new Constitution to carry out affirmative action measures for the benefit of the truly disadvantaged in society including Dalits.
50. Affirmative action measures taken by non-governmental and private bodies must also be recognised as not amounting to discrimination provided they are reasonable and proportionate to the needs.

### ***Empowerment***

51. That steps be taken in all ways possible to empower the Dalit community in relation to their lives. Specifically that national bodies and donors alike whenever possible try to ensure that projects for Dalits are implemented by organisations that are managed by and accountable to Dalits.

### ***Heritage***

52. Recognition, where relevant, of the cultural heritage of Dalit communities, especially in Madhes [terai], and the implementation of effective measures to protect and promote the languages, cultures and artistic heritage of such communities.

### ***Dalit women***

53. A recognition, by Dalits themselves and by the machinery of the State, of the special burdens borne by Dalit women, who suffer from a double burden of discrimination, as Dalits and as women, who labour under the burden of poverty which so often falls particularly heavily upon women, and who endure social perceptions that are especially derogatory to women.
54. A recognition of the destructive impact upon Nepal society of widespread violence against women, and of its specific impact upon Dalit women. We demand also well-grounded research into the causes of this violence, and the institution of effective measures to bring it to an end.
55. That, as well as including rights to a fair trial, the Constitution must make it clear that the community and victims have the right to expect that the law about prosecutions, and the behaviour of the prosecuting authorities will achieve the conviction of the guilty. This is particularly important for Dalits whose complaints about crimes are not treated with sufficient respect by these authorities. This provision is particularly important for victims of violence against women.

### ***Transitional Justice***

56. The institution, whether within the existing or a future constitution or otherwise, of an effective programme of transitional justice which recognises the impact upon Dalits generally and specifically upon Dalit women, of the

Maoist insurgency, and also of the long history of marginalization, brutalisation and humiliation that Dalits have endured in Nepal. Such a programme should include a process for the acknowledgement by individuals and society of past wrongdoing, as well as providing for the formal recognition of the public contribution made by those who struggled and suffered.

57. A compensation process that makes a genuine difference to those who have suffered. Such a programme should include ensuring compensation to the victims of the suppression of the *jana andolan II*.

#### ***Commitment to radical change***

58. A commitment on the part of the State and Society as a whole to make the radical changes in social structures and attitudes that are necessary to eliminate the scourge of untouchability from Nepal society. This must include, but not be limited to, a constitutional commitment to take necessary steps within the education system, the public service and all aspects of public life. It must be recognised that a new culture of tolerance must be nurtured in the country, in which every human being is respected and treated as of equal worth.

#### ***The New Constitution***

59. That a new Constitution for Nepal will, unlike the 1990 Constitution, make clear in express terms that Dalits are full and respected citizens of Nepal and that they are entitled to the full enjoyment of every human right.
60. That the various rights of and protections and guarantees for Dalits of Nepal set out in this Charter will, as far as possible be provided for in an explicit and effective way in the new Constitution of Nepal, disregarding objections of social and legal traditionalists.

#### ***Implementation of a new Constitution***

61. A recognition that oppression that has endured for centuries cannot be removed except by a comprehensive set of measures such as outlined in this Charter.
62. That the Constitution itself recognises that implementation is vital or the document itself will remain empty words, and that the authorities act upon that recognition.
63. That an independent body with a majority of Dalit members, perhaps linked to, but not replacing the Dalit Commission, be set up by the new Constitution, to assist in and supervise the implementation of the Constitutional provisions in the form of appropriate laws, practices and education.

#### ***Party Programmes***

64. Of the political parties that purport to represent the people of Nepal, and who will be standing for election to the Constituent Assembly, to commit themselves to adopt policies that will make it possible for this Charter to be realised and for a new and inclusive Nepal to be formed.