

# The Dalits of Nepal and a New Constitution



A Resource on the Situation of Dalits in Nepal, their Demands and  
the Implications for a new Constitution

Compiled by:  
United Nations Development Programme

Kathmandu, September 2008





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## FOREWORD

"Untouchability" does not exist - at least that is what one might conclude from reading the revised Muluki Ain, or Country Code, of 1963. Or the Constitution of 1990. Or the Declaration of the recalled Parliament in May 2006. Or the Interim Constitution. All of these have said that "No person shall, on the basis of caste, be discriminated against as untouchable" - or similar words. But the lived experience of the Dalits is quite to the contrary. Untouchability is only too much alive.

Dalits have not called bandhas or burned buses. There have been no special agreements with the government to amend the Interim Constitution to reflect their special needs. However, the provisions of the Interim Constitution and the election law and in particular the system of proportional representation have produced a far more representative Constituent Assembly (the CA) than Nepal has ever known. Moreover, with 49 representatives, this is by far the highest number of representatives that the Dalit community has ever attained. This situation does offer a chance for them to make a real impact on the deliberations of the CA.

One of the thorny issues that remain unsettled is the real population among different communities and caste groups. For example, while official data show that Janajatis constitute 37.8% and Madhesi 31.2% of the total population, these two groups argue that their populations have been underestimated and are higher than shown. Similarly, whereas the 2001 census recorded 13.8% Dalits, they would claim a higher percentage of about 20% to 25%.

In order to have real impact, and ensure that the new Constitution does more than record aspirations, Dalits need tools - facts and arguments to present to the CA. The purpose of this volume is to provide some of these tools.

But, in the light of the repeated, and unsuccessful, efforts to make Untouchability a thing of the past, is there any point? Is it realistic for Dalits to rely on a new Constitution? Will it not be as much a broken reed as these other documents? Certainly it is important not to expect too much of constitutions. But a constitution is a beginning, it is a framework for a new future, and both legislation and changes of social attitudes will be required for effective improvement in their situation. The Dalits are not discouraged, but are determined to claim their rightful place in Nepali society. The UNDP is also optimistic. It is happy to have been associated with the development of the Dalit Charter, and with the current volume. The UNDP pledges that it will remain engaged with Dalits in turning the Charter into reality.



Robert Piper

Resident Representative, UNDP



## Preface and Acknowledgements

The origin of this publication lies in the association of UNDP with major Dalit organisations, a number of whom approached UNDP in early 2007 for assistance in promoting awareness among their communities and in formulating, and disseminating, a Dalit agenda of appropriate constitutional reforms. In the ferment that followed the King's stepping down in April 2006, little attention was paid to the oppression suffered by Dalits or their hopes and aspirations for better treatment under the new constitution, policies and laws. Dalits had pursued their agenda peacefully and democratically (unlike some other marginalised communities) but felt neglected by political parties, media, and donors—and wondered whether their case was not taken seriously precisely because they had not resorted to violence.

UNDP readily agreed. One of our priorities from the beginning has been to work with the marginalised communities. We were also attracted to the proposal from the Dalits because of the emphasis on people's sovereignty in inter-party agreements and the Interim Constitution (IC). The preamble of the IC described as one of its functions guaranteeing "the basic rights of the Nepali people to frame a constitution themselves" and Article 63 says that the people will formulate a new constitution by themselves through the Constituent Assembly (CA). Like many others, we believe that it is only if all of Nepal's communities participate in constitution making that a legitimate constitution that responds to Nepal's diversity would be achieved.

The basis of our association with the Dalits was that all principal Dalit organisations would have to form a partnership for the purposes of the project; factionalism within an ethnic community weakens it. Accordingly the Dalit organisations (see Appendix 8) formed a core committee to take major responsibility for the planning and implementation of the project and to liaise with UNDP. UNDP helped to raise money and identify resource persons, especially from outside Nepal. In view of the diversity among the Dalits, it was agreed to hold five regional conferences on Dalit issues, with largely but not exclusively Dalit participation. These took place in Dadeldura, Dang, Dharan, Pokhara and Birgunj. Each of these conferences was attended by approximately 100 to 120 participants representing different districts in each region. The core committee was exclusively responsible for organising the conferences, deciding on the agenda and resource persons, with the UNDP offering advice, leading some sessions, and providing logistical support. Each of these conferences developed a Declaration (which can be read as part of the bilingual publication by NNDSWO available on the UNDP Constitution Building website at [www.undp.org.np/constitutionbuilding](http://www.undp.org.np/constitutionbuilding)).

Members of the Core Committee were Bhakta Biswakarma (NNDSWO), Durga Sob (FEDO), Tej Sunar (DNF), Gajadhar Sunar (DWO), Birendra BK (DNF Nepal), Jeevan Pariyar (LANCAU), Shambu Hajara Paswan (NDC), Amrit Biswakarma (JUP), Meen BK (HRCC), Desh Bahadur Sarki (LRPS), Hari Gandharva (GKK) and Man Bahadur BK (SCUS).

It was also agreed that after the regional conferences, a national conference on Dalit issues relating to the constitution would be convened jointly by the core committee and the UNDP. At the national conference, the recommendations of the regional conferences would be discussed. This meeting took place in Godavari from 13-14 December 2007. Over 300 persons, representing themselves or their organisations, participated.

The regional conferences attracted national interest and gave representatives of Dalits all over the country to meet and discuss their participation in the constitution making process.

The division of responsibility as regards publication and dissemination of the results of the conferences was that these organisations would prepare and disseminate reports on all the conferences and UNDP would prepare a briefing paper on the Charter and Dalit issues. This publication is the result of the UNDP promise. It is not much the report of its activities with the Dalit organisations or of the national conference. Instead, it is a resource for those engaged in making the new constitution who are committed to ensuring that it includes all provisions necessary for the full acceptance of Dalits in Nepal.

UNDP, and the various Dalit organisations wish to thank all those involved in this endeavour which was spread out over several months. In every town where a regional conference was held local Dalit organisations assisted. The hotels were very helpful, and managed to cope well with large groups of visitors. Robert Sila Muthini of UNDP was actively involved in the organisation of each conference. Financial assistance was given by the following: DanidaHUGOU, Enabling State Programme (ESP), Voluntary Services Overseas (VSO) and Save the Children US (SCUS), for which our collective thanks are expressed.

Among the Dalit organisations themselves, a large share of the organisational responsibility fell on the Nepal National Dalit Social Welfare Organization, especially its chair, Bhakta Biswakarma.

Speakers at the various regional conferences included (in alphabetical order): Sanju Baitha, Hira Bishwakarma, Min Bishwakarma, Jill Cottrell, Surya Dhungel, Yash Ghai, Mahendra Lawoti, Roberts Sila Muthini, Govinda Pariyar, Prakash Chandra Pariyar, Shambu Paswan, Durga Sob and Tek Tamrakar. Basant Subba of UNDP translated at some of the conferences. Speakers at the national conference included Professor Nandu Ram of Jawahar Lal Nehru University of India.

Thanks are also due to the large number of people without whom this publication itself would not have been possible, especially Dr Krishna Bhattachan. Others who helped with the editing were Jill Cottrell, Binda Magar and Robert Sila Muthini of UNDP. We are grateful to the Center for Human Rights and Global Justice for permission to include their publication *Recasting Justice*, and to the Jagaran Media Center for use of some individual stories from their website.



# Contents

Foreword	iii
Preface and Acknowledgements	v
The Dalit Agenda: Dignity, Inclusion, and Social Justice	1
Kathmandu Charter of Dalit Rights 2007	11
Background Paper on Dalit Issues : Dr. Krishna B. Bhattachan	19
Section 1: Historical Background	19
Section 2: Who Are The Dalits?	21
Section 3: Hardship and Humiliation	25
Section 4: The Challenges of New Nepal	33
Conclusion	35
From Charter to Constitution	37
What does a Constituent Assembly do?	37
Demands	38
What might be in the New Constitution?	38
Helping Constituent Assembly Members to be Effective	41
Responsibility of the Individual Members	41
Can a Constitution be “self-executing”?	42
Recasting Justice: Securing Dalit Rights in Nepal’s New Constitution : Center for Human Rights and Global Justice	45
Appendices	
Appendix 1: Dalit castes, sub-castes, surnames and traditional occupations	47
Appendix 2: Scenes from Nepali Dalit Life	50
Appendix 3: What have the recent Constitutions of Nepal said about Dalits ?	54
Appendix 4: Protecting the rights of Dalits in the Courts by Ankit Dhakal	60
Appendix 5: What do other Constitutions say about previously exploited and excluded groups ?	63
Appendix 7: Short Bibliography and Website List	70
Appendix 8: Dalit Organisations involved in the Regional and National Conferences	73



# The Dalit Agenda: Dignity, Inclusion, and Social Justice

– Yash Ghai

## I This publication

The origin of this document is explained in the Preface. It contains a number of documents (“Collection”) on the situation of the Dalits of Nepal, exploring the discrimination and oppression they suffer in their daily lives, in almost all spheres of life, in both state and society. The principal document for this purpose is a background paper by the distinguished social scientist and activist, Dr. Krishna Bhattachan, on the origins of the caste system in Nepal and the contemporary social, economic and political circumstances of the Dalits. This is supplemented by extracts from the Jagaran Media website which depict, through personal experiences, the numerous ways in which Dalits are discriminated against, their rights violated and their dignity denied, by upper castes and classes, and agents of the state.

The centre piece of the Collection is the Kathmandu Charter of Dalit Rights 2007 adopted by a large number of Dalit organisations, which sets out the aspirations of the Dalits for a better future, a life in dignity, and the satisfaction at least of their elementary rights and basic needs. A number of proposals for inclusion in the new constitution are presented in the Charter. This is followed by suggestions from Jill Cottrell, a well known scholar and consultant on constitutional processes and law, on how to incorporate the proposals in the constitution (“From Charter to Constitution”). A paper by New York University’s Centre for Human Rights and Global Justice examines how far the Interim Constitution responds to the concerns of the Dalits, by reference to rights and freedoms guaranteed by international human rights treaties to which Nepal is a party. It recommends specific changes to strengthen the protection or fill gaps, as a guide to the drafting of the new constitution. Ankit Dhakal (a law student who interned

with UNDP) examines some key decisions of Nepali courts on the rights of Dalit, which provide guidance on the way in which the concerns of Dalits should be formulated to give the legal effect. Two documents aim to provide useful background information: a Table (Appendix) compares the provisions of the 1990 Constitution and the Interim Constitution as they relate to Dalits (“What have recent Constitutions of Nepal said about Dalits?”), while the other document contains extracts from the constitutions of India, Sri Lanka, Bangladesh, and South Africa which in their different ways have tried to deal with acute problems of discrimination and deprivation, through forms of representation and participation and guarantees of both equality and equity, the latter often by affirmative action.

## II Social, economic and political situation of Dalits

The report is concerned largely with the Dalit community. But this focus has to be seen within the wider context of Nepal as it attempts to build a *Naya Nepal* in which the country’s ethnic, religious, linguistic and cultural diversity is acknowledged and expressed. As this introduction shows, the aspirations of the Dalits for the improvement in their situation and for social justice for the disadvantaged are fully consistent with the broad aims of the 2006 *jana andolan*. Dalits realise that they are not the only community which has suffered in the formation of the Nepali state. And that Nepal is a poor country where nearly 40% of the people live below the poverty line. But they feel that they are uniquely disadvantaged; many of the hardships they suffer and the status they occupy in Nepali society are greater than of other communities, and are indeed specific to them.

Several documents in the collection refer to the material condition of the Dalit, but the primary source is the paper by Professor Krishna Bhattachan, a leading authority on Dalits as well as indigenous peoples. He provides a detailed account of the economic, social and political situation of Dalit, and traces the roots of the discrimination against and ostracism of the Dalits in religion, state and society. Quite how many Dalits there are is a disputed point: official statistics say 13%, Dalits say over 20%—the difference could be due to the way people identify, or the way the census is conducted. For unlike the janajatis, there is no clear definition of a dalit community. This also makes it difficult to accord them a special legal status. Bhattachan points to the social diversity within the Dalits, often perceived by outsiders as a homogenous group. There are at least 22 castes among them, hierarchically classified. Some castes are distributed throughout the country and some fairly localised (Appendix 1 sets out the main caste and sub-castes and their principal occupations). Some dalit communities, especially those in Madhesh, are particularly disadvantaged. And women suffer more from being Dalit than men.

Bhattachan traces in some detail the many types of discrimination and humiliation that Dalits face daily: exclusion from houses, temples, hotels, restaurants, food factories, dairy farms, water sources, and discrimination in jobs (including forced labour), feasts, festivals, marriage processions, and funerals.<sup>1</sup> They are frequently subjected to insults and emotional and physical abuse. Dalit women especially suffer great hardships, as some of their disadvantages are rooted in the social structure of Dalits themselves. They are easy victims of domestic violence and trafficking for work in brothels. Lives are valued less than those of others (as demonstrated in India with the Kosi floods, Dalits were the last to be rescued, and many no doubt lost their lives as a result). Accordingly he has related the forms of discrimination to domination, exclusion, vilification, atrocities, and ostracism.

Undisputed figures show that on matters which determine the status and well being of a community (literacy, education, property, income, health and life expectancy, occupation, representation in centres of power in state

and society, and participation in public affairs), Dalits come at the bottom. Until recently there was no Dalit in cabinet or the judiciary (and very minute representation in the legislature), or constitutional bodies and commissions, and no senior post in the civil service has been held by a Dalit. Dalits are similarly excluded from the economy, confined to low paid jobs, forced labour, and are landless even when engaged in agriculture. Even in their traditional occupations, they are threatened by changes in technology and mass production (e.g., in leather work or tailoring).

Quite apart from these specific disadvantages, extensive discrimination against Dalits (in education, access to employment, to representation, etc) has the result of trapping them in poverty. Although poverty is not peculiar to Dalits in Nepal, they suffer the most from it. Poverty is not merely the lack of income. Poverty is about physical and economic insecurity, fear of the future, a constant sense of vulnerability. It is the lack of qualities that facilitate a good life, defined in terms of access to the conditions that support a reasonable physical existence and enable individuals and communities to realize their spiritual and cultural potential—opportunities for reflection, artistic creativity, development of and discourse on morality, and contribution to and participation in the political, social and economic life of the community.

This approach is best captured in Amartya Sen's concept of human 'capabilities' which he defines as opportunities to achieve valuable "functionings" or "states of being", that represent different facets of well being, including not only food and housing, but also "more complex social achievements such as taking part in the life of the community, being able to appear in public without shame", and so on.<sup>2</sup> Townsend, an authority on poverty studies, from a different perspective, reaches somewhat similar conclusions about the defining characteristic of poverty, centred around the viability of the community, as the inability to "achieve at all or sufficiently the conditions of life—that is, the diets, amenities, standards and services which allow them to play the roles, participate in the relationships and follow the customary behaviour which is expected of them by virtue of their membership of society".<sup>3</sup>

<sup>1</sup> Some typical examples of the suffering and humiliation of Dalits are set out in Appendix 2 ("Scenes from the Nepali Dalit Life").

<sup>2</sup> *Inequality Reexamined* (Oxford: Clarendon Press, New York, 1992) p. 110.

<sup>3</sup> Townsend, Peter *The International Analysis of Poverty* (New York: Harvester Wheatsheaf 1993) p. 36.

In the specific context of Dalits, the NPC-UNDP-UNICEF report, *Voices of People in Development* (2006) notes that “the poor people, especially the Dalits and minority groups, also find themselves trapped in a vicious cycle of other complicated problems. They include the loss of confidence due to the humiliation and distrust by rich families. The poor people seem to be more vulnerable to exploitation as a result of their ignorance and isolation. They desperately seek access to services, information and opportunities, which are often systematically denied or deprived, making their lives even more difficult. And usually they are not in a position to demand or bargain” (p. 203). Because of these and other vulnerabilities, Dalits suffered greatly during the insurgency period (the Kathmandu Charter calls for investigations into atrocities committed against Dalits, and to compensate them in appropriate ways).

The above account and other sources in the Collection shows how most aspects of life and relationships are implicated in untouchability and discrimination: and how a range of rights are violated, in private and public domains. The disadvantages and sufferings of the Dalits cannot be attributed to the denial of one, or even a set of, human rights. The discrimination and oppression is so pervasive, and in so many instances they affect different members of the community (children, women, the elderly, workers, the landless) differently, that the denial of most human rights are involved, both at the level of the individual and community (as the NYU report so clearly demonstrates). The consequence is not the violation of specific rights but the marginalisation, subordination and oppression of a whole community—and the denial in a most fundamental way of their humanity. This requires us to strategise in terms of justice for individuals as well as the community. Nor can the remedy be just the protection of these rights. We have to envision not only the relationship of Dalits to the state, but also between them and other communities; and action in not only the public sphere but also the social and private.

Due to the lack of representation in politics, civil service and professions, Dalits’ efforts to improve their situation have been largely ineffective. And their low status and the arrogance with which they are treated by upper castes, motivated in part by the desire to remind Dalits of their

place in society, often lead to terrible retribution when they struggle for better rights. However, now the making of the new constitution for new Nepal opens up opportunities for their political, social, and economic advance. A major demand of the 2006 *jana andolan* was social and regional inclusion and the empowerment of the marginalised. The Interim Constitution, drawn up by the leaders of the major political parties, acknowledges the exclusion of and discriminations against Dalit (and other communities) and commits the state to an extensive programme of inclusion and social justice through the restructuring of the state, including reservations and other forms of affirmative actions. Not all of the reforms identified for this purpose will serve the Dalits as effectively as other communities (for example federalism). Dalits have stated clearly and emphatically what reforms they would like to see in the constitution, and the structures and practices of the state, in the Kathmandu Charter—and in many other places.

### III Kathmandu Charter of Dalit Rights 2007

One objective of our project with Dalit organisations was for them to prepare and adopt a Charter of Dalit Rights. The Charter was drawn up in an inclusive and participatory manner. It was designed to reflect the concerns of Dalits in different parts of the country and from different Dalit communities. Each conference, reflecting regional concerns, produced its own charter. These charters formed the basis of the national charter, the Kathmandu Charter of Dalit Rights 2007, a draft of which was discussed and debated at length, and adopted, at the Godavari conference. Delegates were invited by the then Prime Minister, Mr. GP Koirala, to his residence in Baluwatar to present the Charter to him and the government. He expressed his full support for the Charter, which now constitutes the Dalit fundamental demands regarding the constitution making process and the constitution.

The Preamble identifies the “feudal, Hindu caste system” as cause of the marginalisation of the Dalits, and endorses the call by the House of Representatives in its Proclamation of 4 June 2006 “to make the nation free of untouchability”. It calls for the implementation of existing laws and formulation of new ones to meet their

demands. The principal provisions of the Charter can be summarised as follows.

### **Participation in the Constituent Assembly**

The Charter says that the procedures of the Constituent Assembly should allow proportional representation and full participation of all citizens. "Political parties must facilitate the Dalit members of different parties working together to achieve the social inclusion aims of the *jana andolan*".

### **Restructuring of state and Dalit participation**

The key elements of restructuring, from the Dalit perspective, are their representation and participation according to the principle of proportionality, participation (incl. reservations), for all categories (Madhesi Dalits and Khas Parbate Dalits, men and women), and which includes reservations.

The Charter, expressing concern about federalism which would not benefit Dalits (due to the distribution of their population), says that it should not become the source of their further discrimination and marginalisation; that states should not be able to derogate from rights given in the constitution or by the national government for their protection. At no level of government should there be "any concession to any religion or cultural heritage that allows caste discrimination and untouchability towards Dalits in any way".

### **Politics and Political parties**

Politics and political parties should be inclusive and facilitate the participation of Dalits. Parties should adopt sufficient number of Dalit candidates who are able to win seats. If they are not willing to do so, the rule prohibiting "sectional" political parties should be repealed. Codes of conduct for politicians should explicitly rule out caste discrimination and untouchability.

### **Economic and employment opportunities**

The Charter notes that due "to lack of economic and social security Dalits have been dislodged from their chosen professions and businesses". It advocates the abolition of all forms of bonded labour and the promotion of rights connected to work and the satisfaction of basic needs. It supports affirmative action

in the economic sphere, including in state owned industries and educational facilities. It points to the need for radical land reform. And Dalits must participate in plans for Dalit development.

### **Ending caste discrimination and untouchability, and protecting human rights generally**

Discrimination must be outlawed "unequivocally". The constitution should ensure that the fundamental and human rights of the Dalit community are not violated in the name of social norms and values. Measures should be taken to ensure that: there is no discrimination in civil society; educational materials are reviewed for derogatory language or references to any community; corporations are bound by human rights obligations; educational facilities are ensured; access to water regardless of caste is available; and to guarantee an individual's right to marry any person of their choice and punish those who oppose this right. Everyone should have access to justice (with the necessary re-orientation of judges) and the right to fair administrative practices. The cultural rights of Dalits should be protected and their access to sacred sites guaranteed.

### **Dalit women**

The Charter notes the triple burden of Dalit women: as woman, as Dalit, and as dalit woman. It asks the state to ensure their right to equal participation regarding marriage and divorce, and to guarantee full protection from domestic violence. Women should have equal access to and control over financial assets of the family. The state should formulate policies and launch programmes to encourage inter-caste marriage.

Noting the special disadvantages of the Badi community, it calls for their economic, educational, social and cultural exploitation to be rooted out.

### **Madhesi Dalits**

Madhesi Dalits are another especially depressed category of Dalits. For long they have suffered from the denial of citizenship and rights connected to it. They also suffer from acute landlessness. The Charter says that the "problems relating to Madhesi Dalits should be resolved and their proportional representation in all spheres of national life should be guaranteed".

### Information and communications

State and private media are urged to disseminate programmes on Dalit issues, including celebrating their contributions and achievements in public and private life. They “should accept the responsibility to promote equality and the abolition of all sorts of caste and gender discrimination”.

Once the Charter was adopted, UNDP was asked to advise on how its demands could be incorporated into the constitution. The following section, which deals with this issue, draws in part on the paper prepared by Jill Cottrell for this purpose, and discusses first the context and the procedure of constitution making and secondly, the substantive provisions of the constitution.

## IV From Charter to Constitution

### Context and process

The context in which the constitution is being made is very favourable to Dalit aspirations and demands. The 12 point agreement between the seven parties (22 November 2005) was marked more by the commitment to democracy rather than to the rights of marginalised communities. However, the 2006 *jana andolan*, led by communities hitherto excluded from political and social power, established a progressive reform agenda with particular attention to the concerns and aspirations of minority, marginalised communities. This agenda was first reflected in the 8 point agreement between the seven parties and the CPN (Maoists) signed on 16 June 2006, when they agreed to “make a forward-looking restructuring of the state so as to resolve the class based racial, regional and gender based problems through the election of the constituent assembly”.<sup>4</sup> In an agreement on 8 November 2006 between the high level leaders of the parties, a slightly more elaborate form of this commitment was agreed between these sides: “In order to end class, ethnicity, lingual, gender, cultural, religious and regional discriminations and also to end the centralised and unitary structure of the state it shall be restructured into an inclusive, democratic and progressive state” (Point 10). This was expanded in Article 3.5 of the Comprehensive Peace Accord (CAP) by identifying groups or communities,

including Dalits, against whom discrimination would be ended. The CPA also committed the parties to socio-economic rights: to food, health, education, and private property (Article 7.5)—of particular relevant to Dalits due to pervasive poverty. There thus seems to be very broad commitment to the aspirations of the Dalits and other marginalised communities not only among a large proportion but also the major political parties (and is already reflected, as shown later, in the Interim Constitution (IC)).

The process of making the constitution is also favourable. The task is given to the Constituent Assembly (CA). Women, janjatis, Dalits and Madhesis are represented in greater number than ever before. They are also more conscious of their rights than before and most of them are determined to ensure a constitution which would protect their rights. Decisions of the CA are to be made through consensus (failing which by a two-thirds vote), which means that if Dalits and other marginalised communities are united, it would be hard to pass a constitution which does not protect their vital interests.

It cannot of course be assumed that Dalits will have their way in the Constituent Assembly. Some of their demands, particularly affirmative action and reservations, are likely to be resented by the more privileged (and influential) communities and their representatives. Dalits are a relatively small minority in the CA, and their own spatial distribution (and internal divisions) makes it difficult to develop and present a common position. Dalits and other minorities have been made to enter the CA only on the tickets of national parties, dominated by traditional ruling elites. Under the IC rule, they are subject to party discipline and liable to be removed from the party and the CA by the leader of the party, although the exact powers of the party are unclear (Art. 67(d)). At the very least, traditional party control may also make it difficult for Dalits to develop a common stand or co-ordinate their strategies. But in practice there would be little reason for party leaders to oppose such co-ordination, for the Dalit agenda as expressed in the Charter is perfectly compatible with the commitments of all the parties to inclusion and social justice and their promises on specific measures.

<sup>4</sup> The Maoist had of course made a commitment in the 1990s to advance the cause of Dalits and other disadvantaged communities when they announced their insurgency. Point 20 of their 40 points in 1996, stated that “All kinds of exploitation and prejudice based on caste should be ended” and point 21 that the “status of dalits as ‘untouchables’ should be ended and the system of untouchability ended once and for all”.

In order to achieve the objectives of the Charter, Dalit members of the CA will have to play an active role in the proceedings of the CA, in plenary and committees. They will need to have a good understanding of the rules and procedures of the CA, and consider how to maximise their use for their own purposes. Dalit members of all parties should work together and lobby with non-Dalit members for only in this way will their case be properly understood by the CA. They have to articulate their sufferings and oppression and show how they are violations of human and group rights under both Nepali constitution and law and international treaties which Nepal has signed. They should also explain how these can be removed and the community integrated socially, economically and politically into the rest of society and state (as for example argued in the Charter). These statements must be read into the records of the CA, for as Jill Cottrell reminds us, these records will constitute an important source of history and information for the future, enabling people in time to come to know of the struggles of the Dalits, and the reasons for and the purposes for which particular provisions for the benefit of Dalits were included in the constitution. Such records will help courts, state officials and others to interpret the constitution and to implement it.

The Dalit CA members will need help from Dalit organisations, intellectuals and activists (and from others outside the community)—who should do research and prepare briefing papers. For example, although the IC has provisions for affirmative action, they are on the whole not binding, merely declarations of policy. If an attempt is made to make them binding and specify a minimum quota, there is likely to be opposition. Research on the experience of affirmative action and reservations would be desirable and a paper prepared for the CA members on how to answer criticisms would greatly strengthen the hands of Dalit members.

The members and their supporters should use the numerous opportunities that a participatory process opens up to influence the drafting of the constitution, lobby for support from inside and outside Nepal, build their case on the empirical evidence of their disadvantages as well as norms of democracy and human rights. And they should establish solidarity with other marginalised communities and where differences exist, harmonise them; such solidarity could be critical to their success.

In most countries the period during which a constitution is being debated and drafted (when financial and other assistance can generally be obtained) provides opportunities and incentives to mobilise the people and educate them about the purpose and structure of the state, how they relate to it and can influence it, about their political and economic rights and how they exercise and protect them. It is a way to empower them, explaining the significance of the concept of “people’s sovereignty” now widely but usually only rhetorically proclaimed. The symbolic importance of their inherent right to vote and the sensible use of it need to be emphasised constantly. Here is a chance to build or reinforce Dalit solidarity, important for a minority which is dispersed and fragmented in other ways, not in diminution of their own internal identities or opposition to national identity, but a way to lobby for and achieve their common interests, unimpaired by factional politics.

### Constitution

As has already been mentioned above, the major political parties have made a firm commitment to ensure full rights and social justice to the marginalised communities. This fundamental transformation in attitudes, policies and commitments has been expressed in a number of Articles and the Preamble of the Interim Constitution. The IC represents a considerable improvement on the similar provisions of the 1990 Constitution. When providing for affirmative action, beneficiary communities are mentioned, and include Dalits (Article 13(3)). The language in which the right against untouchability and racial discrimination is expressed is longer, but not necessarily more extensive, than before. Real advance is made in Article 21 which gives “women, Dalits, indigenous groups, Madheshi communities, oppressed groups, the poor farmers and labourers, who are economically, socially or educationally backward...the right to participate in state structures on the basis of the principles of proportionality”. An amendment of the Interim Constitution provides for recruitment into armed forces “on the basis of the principles of equality and inclusiveness” including of Dalits (Art. 144(4) A). The IC contains specific rights of women and children (Arts. 20 and 22). The right against exploitation has been strengthened by inclusion of new language: “no person shall be exploited in the name of custom, tradition, and practice, or in any other way” (Art. 29). The IC guarantees the right to work (Art. 18 (a)) and



to “proper work practices” (Art. 30(a)). Cultural rights of minorities receive greater protection than in the old constitution (Art. 17). These rights are reinforced by various state responsibilities and policies, and directive principles (especially Article 33(d) to (i)). Consequently the regime of the rights of minorities and disadvantaged communities is a big improvement on previous constitutions.

The IC was prepared and adopted by the seven parties and the Maoists, who dominate the Constituent Assembly. The values of the IC outlined above have strong support among a large proportion of the people. The Dalit agenda is already widely accepted and endorsed. So one may assume that these provisions would be retained, even strengthened in the new constitution. The real struggle for Dalits, as is argued later, may not be in incorporating suitable provisions in the constitution but in making them a working reality. Nevertheless, as papers by Jill Cottrell and the Center for Human Rights and Global Justice show, it is important that the provisions be formulated precisely, without internal contradictions or coherence<sup>5</sup>, and be capable of implementation easily, without requiring a lot of new laws and regulations, or dependent on the initiatives of the government. As materials in the Collection show, there were fundamental weaknesses in this regard in the 1990 constitution, where the commitment to inclusion was qualified by provisions designed to maintain the ideology and rule of traditional elites, and diluted by the legal status of provisions which promised progressive policies.

As an example of the last point, the 1990 Constitution acknowledged the importance of social justice (Art. 25(3)), public participation and decentralisation (Art. 25(4) and the special rights of women and children (Art. 26(7) and (8) respectively). Relatively little was done about these goals, and it was not possible for the potential beneficiaries to seek the assistance of the courts to enforce them (as these provisions appeared as directive principles or policies of the state). Ankit Dhakal’s note on the role of courts shows how judges sympathetic to directive principles were handicapped by the fact that they were not enforceable in the courts. And indeed, as Jill Cottrell shows, even if a provision appears in the bill of rights, it may actually not be enforceable on its own, without

more. The public may have no means to ensure that “more”. The availability or the scope of some rights is to be determined in accordance with the law. This can have two consequences. The first is that whether the right is available or not depends on whether a law has been made. The second, the law may also set qualifications on the right. Jill Cottrell draws attention to the fact that although Article 16 of the 1990 Constitution guarantee every person’s right “to demand and receive information on any matter of public importance”, the law which operationalised the right was not passed until 2007, and regulations under the Act were being drafted in mid-2008. It is therefore extremely important that provisions to meet the needs of Dalits (and other marginalised communities) should be as far as possible be included as enforceable, for example by inclusion in the bill of rights or by expressly statement if elsewhere, and that its language should not leave its implementation to the discretion of the legislature or the executive. If for some practical reason, a provision cannot be enforced immediately, a deadline for its implementation should be stated in the constitution, and perhaps the institution responsible for the implementation should be identified. Nor should the availability of a right be based on complicated conditions or procedures. These considerations are of particular importance to the Dalits for it is likely that their ability to influence the legislative or executive process will diminish after the CA, even if they can secure special representation in future legislatures.

An innovation in the IC for Nepal is the transformation of some directive principles and policies into enforceable rights as well as to include entitlements to social and economic rights in the bill of rights. Jill Cottrell shows by reference to the provisions and jurisprudence of the International Covenant on Economic, Social and Cultural Rights and under national constitutions, what rights to water, education and health mean and how they can be implemented. Not in all cases does the state have to provide all these basic needs. It can discharge its obligations by encouraging or supporting private institutions or the initiatives of families, not placing obstacles but facilitating access to them. But in a poor and unequal society like Nepal with weak institutional infrastructure, the state may have to play an important role in promoting social and economic rights.

<sup>5</sup> A major criticism by the CHRGI paper of the relevant provisions of the 1990 Constitution is that they contain “several deficiencies, inconsistencies, and imprecise uses of language”.

Jill Cottrell suggests that consideration should be given to a separate article in the constitution dealing exclusively with Dalits, even if it means that some general rights guaranteed in other articles are repeated (as is now done in many constitutions for women and children). This technique would highlight the importance of specific rights for Dalits (such as citizenship or the guarantee of religious practices or equality and dignity). It also points to their past and contemporary disadvantages and vulnerabilities and highlights the special responsibilities of state and society to secure justice for them.

The focus among Dalit activists (as among activists of other marginalised communities) has so far being on rights, provisions and institutions specifically important to them, overlooking the wider design of the constitution. For example even the Kathmandu Charter says little about fundamental values and principles which should form the basis of the state or the structure of the state. This is understandable in view of the severe hardships and handicaps they have confronted. But the nature and the design of state institutions and the relationships among them will have a major impact on how the constitution functions or is operationalised, including provisions favouring Dalits. Ultimately it is the structure and institutions of the state and those who control them which will determine how state power is used, and how vigorously or subversively the goals in the constitution will be pursued<sup>6</sup>. The lesson of the 1990 Constitution is that its progressive and forward looking directives and policies for the state remained dormant because its institutions were captured by political parties dominated by traditional elites who had limited interest in social reform and who were for the most part not accountable to the marginalised communities. The Dalits should therefore take a keen interest in all aspects of the constitution and must lobby for institutions that will be responsive to their interests. Familiarity with the wider aspects of the constitution will come handy if there are horse trading and compromises—and it would be invaluable as the process of implementing and using constitutional provisions begins.

## V Challenge of Implementing Equity and Social Justice

It is likely that the new constitution will include many, perhaps most, of the demands of the Dalits in the Kathmandu Charter. Perhaps they will be at a higher level of generality than they would wish, avoiding for example a detailed scheme for affirmative action and reservations. But the real challenge will be the implementation of whatever provisions are agreed upon. The NYU paper comments, as have many others, on Nepal's "poor constitutional record of addressing Dalit rights" and "its dismal record of enforcing human rights obligations with respect to Dalits". UN committees which have examined Nepal's record of observing international human rights treaties have found it seriously wanting. Most state policies in the 1990 Constitution were disregarded. Courts, mostly sympathetic to the cause of social justice, have been unable to make much headway. Even the state authorities since the April 2006 movement, and despite their numerous commitments in the CPA, the IC and other documents to the cause of marginalised communities, have taken hardly any steps to improve their situation. Some of these communities have had to resort to strong pressure and not infrequently disruption of public order or violence in order to be heard—and specific agreements have been negotiated. The 1990 provision restricting political parties based on religion, caste, tribe, or language, or those whose objectives or symbols "that may disturb the country's religious or communal unity or is divisive in character" is retained in the IC (Art. 142(4)), and if it continues, it may limit the ability of the marginalised communities to take political and policy initiatives.

There are several reasons why constitutional provisions protective of Dalits may not be properly implemented. Many of these reasons are connected with the nature and limits of law in respect of social, political or economic change. It is of course true that caste distinctions or their significance were, if not created by law, were incorporated in it, and not just customary or traditional law, but by state law, the *Muluki Ain* of the 19<sup>th</sup> century. It succeeded in imposing in reality its caste classifications,

<sup>6</sup> This is the theme of my paper, "Redesigning the State for 'Right Development'" in Bård A. Andreassen & Stephen P. Marks, eds., *Development As a Human Right: Legal, Political, and Economic Dimensions* (A Nobel Book) (Cambridge, Mass: Harvard University Press, 2006).

disqualifications, and ultimately disempowerment, because the law was designed and therefore consonant with the objectives of the monarchy and classes associated with it. And with a large measure of coercion. The Constitution today seeks to reverse that role of the law, to emancipate those who were stripped of their power and property, and to usher in a new social order. The reach and mechanisms of the state are more extensive and complex; and so one might expect that it would be able to bring about the reversal.

It is hard to assess if, and what, are obstacles to this reversal. Constitutions can be effective in restructuring the state and redesigning its institutions. And some times they may even influence the way in which these institutions work. But constitutions are not very good at changing social structures. The experience of the Indian constitution with respect to both these matters attest to the plausibility of these propositions: Dalits have permeated structures of state and have even become a “vote bank” to be reckoned with but have not pierced the citadels of caste and social hierarchies. Bhattachan points to the deep roots in society which sustain untouchability and other social oppression of the Dalits, and notes that the real challenge is not the change in law, but in the ‘mindset and attitudes of those who practice untouchability and fight to retain the hierarchies that reinforce the oppression of the Dalits’. And then, as this quotation from Bhattachan reminds us, there may be resistance from higher castes and local elites, and party leaders would probably place greater value on their votes than on Dalit votes. Dalits may lack the legal and social resources, perhaps even the knowledge, to mobilise the protective provisions of the constitution, deal with lawyers and courts, and the struggle with the bureaucracy. Their task will be harder if the new constitution protects the structure of existing political parties and the existing property relations, as the IC does (Arts. 142(4) and 19 respectively). Social change through law is easier if the apparatus of the state is controlled by those favouring change (as in the days of the original *Muluki Ain*) than when it is deployed in the cause of the resisters.

On the other hand, if there is, and this cannot be ruled out, a genuine desire on the part of the establishment to bring about more equitable relations between

different communities and greater measure of social justice, it would be necessary to spell out more clearly in the new constitution than now in the IC, the precise goals, extent, methods and institutions for affirmative action, full and effective participation, basic needs, and so on. Dalits themselves must be involved in the decisions and implementation, including periodic reviews of criteria, progress and necessary adjustments in policy and procedure.

Dalits would have to organise themselves to take major responsibility, politically and administratively, for implementation. Too many of the demands in the Kathmandu Charter are addressed to a somewhat amorphous “state”. The state cannot do a great deal about change of “attitudes and mindset”, without resorting to forms of compulsion that deny the rights and freedoms of others, but would undermine the Dalit cause itself. A major responsibility will lie on Dalits to translate constitutional gains into practical reality by persuasion as well as procedures of the law. They can begin by setting their own house in order: abolish internal caste hierarchies and untouchability. Then they and other communities must talk to each other, and their leaders must stand together in the promotion of the values of *Naya Nepal*. And political leaders must turn their attention from “party politics” and “party competition” and give the lead in integrating, and thus, uniting the people into a nation—which I discuss briefly in the next section.

## VI Conclusion: diversity and integrity

The Dalit agenda cannot be considered in isolation from political and social developments in Nepal. It is part of a broader commitment to a new Nepal in which values of democracy, inclusion and social justice must prevail. Each of these values has great significance for the recognition and well being of the Dalits, and of other marginalised communities. And yet the assertion by these communities of their rights, and demands for constitutional provisions which would secure them, have caused great disquiet among established elites. The IC as originally promulgated went little beyond generalities and its drafters seem to have ignored the specific

recommendations of members. Some of these recommendations were later inserted in the IC after protests and a measure of violence by the communities. And agreements between them and the government on measures for their benefit were signed. But no such amendments or agreements were made with the Dalits, because of their inability to organise as a community and consequent lack of political clout.

The negative reaction in some quarters to the demands of the marginalised communities, such as for quotas or reservations in the institutions of the state (schools, legislature, executive, judiciary and the public service), federalism with preference for local communities, the use of local languages, and the declaration of Nepal as a secular state, is understandable. Many feel that these measures would lead to inefficiency and discriminate unfairly against the more meritorious, and destroy the unity and integrity of Nepal. These concerns need to be taken seriously, even if others believe that they are selfish or mistaken. The multiple transitions that Nepal is undergoing (monarchy to republic, authoritarianism to democracy, hierarchical relations to egalitarianism, religious state to secularism, exclusion to inclusion, centralised state to federalism) are bound to be controversial and difficult to manage. They raise fundamental questions about the identity of the Nepali people, particularly whether they are a nation or merely a conglomeration of distinct communities each with its own history, traditions, religion, and language, forced together under the military might of the deposed dynasty.

Outsiders can have nothing but sympathy for the Nepali people as they struggle with these uncertainties and dilemmas, and the courage they have shown so far. Fortunately, they have hit upon a device to resolve them—the Constituent Assembly. Nepali identity is not, and cannot be, given but must be negotiated; it must

balance the national identity with attachments to localities, communities, languages and traditions. Unlike traditional constitutions (and indeed Nepal's recent constitutions), which focussed on the relationship between the state and citizens, many contemporary constitutions in countries facing dilemmas similar to Nepal, deal with the highly complex issues of the relationships between the state and specific communities and as between the communities themselves.

The CA, as the most representative institution in the country with a mandate from the people, is the proper place for the balance to be negotiated and national values and identity defined. In the months following the 2006 *jana andolan* and in anticipation of the CA, the people have conducted discussions on the future of the country and their communities and groups, and formulated their demands for the new constitution. The Kathmandu Charter was one outcome of this type of process. The CA must interact with the initiatives of the people, for the continued engagement of the people is necessary for the emergence of the identity of Nepal based on the values of the *jana andolan*. The drafting of the new constitution is as much an exercise in nation building as it is of state building.

It is for this reason that the Kathmandu Charter of the Dalits must be taken seriously by the CA and party leaders. And there is another reason. Untouchability and discrimination against Dalit violate the core of human rights: equality and human dignity. Nepal must do away with the terrible concept of the "impurity" of certain sections of its citizens and the horrendous connotations of that concept which seems to justify institutions and relationships close to slavery, bonded labour, sexual submission to outsiders, ostracism and exclusion—just because of the accident of birth. It must do away with it, not in the text of the constitution, but in the lived reality of the formerly excluded.

# Kathmandu Charter of Dalit Rights 2007

## WE, DALITS OF NEPAL,

Asserting that Nepali Dalits have been marginalized in political, economic, social, cultural, educational and other spheres of national life by the state system based on the feudal, Hindu caste system,

Remembering with respect and pride the participation of the Dalit community, their sacrifice and the role played by brave Dalit martyrs with the objective of ending untouchability prevalent in Nepali society and creating equality during the course of (each of) the revolutions and popular movements of the country and the 19-day historic movement in 2006,

Analysing and seriously considering the failure to implement provisions of human rights (which are also Dalit rights) as outlined in the Universal Declaration of Human Rights 1948, the Covenant on Civil and Political Rights 1966, Covenant on Social, Cultural and Economic Rights 1966, International Convention on the Elimination of all Forms of Racial Discrimination 1965, Convention on the Elimination of all Forms of Discrimination Against Women 1979, Convention on the Rights of the Child 1989, Convention on Slavery 1926, and Convention Against Torture 1984 and the continued occurrence of incidents of racial discrimination and untouchability as gross violation of human rights,

Recalling the political change in the country and in the context of achievements such as the Constitution of the Kingdom of Nepal 1990, the public Proclamation of the House of Representatives 2001, all declarations, understandings and agreements including the Comprehensive Peace Agreement, and the adoption of the principle of proportional inclusiveness by the Interim Constitution 2007,

Criticizing and condemning the continuance of untouchability and racial discrimination against Dalit community despite the provisions of equality before the law and prohibition of discrimination on the basis of one's caste in the *Naya Muluki Ain* (New Civil Code), the Constitution of Nepal 1990 and The Interim Constitution of Nepal 2007, and, in spite of the proclamation made by the reinstated House of Representatives on June 4, 2007 to make the "nation free of untouchability",

Convinced of the necessity for full implementation of the existing policies and laws and immediate formulation of required policies and laws for the empowerment of Dalit community and for their all round development, and to enable to take part in all spheres of national life by fully abolishing untouchability and caste discrimination,

Declaring that it is the democratic right of the Dalit community to be proportionately represented in all bodies of the state structure, and that the realization of the democratic right to self rule and full control over themselves inherently lies with the Dalits and that Dalits have important roles and responsibilities towards society and the State but have been forcefully denied the opportunity to fulfil them,

Believing in the need for fruitful and amicable continued collaboration among Dalit social organizations, caste-based organizations and sister organizations of political parties active in the areas of protecting Dalit rights, and in ensuring social rights, progress and all round development of the country's Dalit community,

Considering important spheres of life such as health, education, communications, politics, economy, cultural heritage, family and marital life, religion and culture

from the perspective of social, economic and cultural rights as well as political and civil rights and taking account of the demands and proposals endorsed by the participants in the five regional conferences held in Dadeldhura of Far-west, Dang of Mid-west, Pokhara of West, Birgunj of Central and Dharan of Eastern region, for the process of making a new constitution and restructuring of the state.

Being nearly 300 participants of the National Dalit Conference (held at Godavari of Lalitpur from 13-14 December 2007) from 75 districts, HEREBY DECLARE the Kathmandu Charter of Dalit Rights 2007 with the following demands for implementation by the forthcoming Constituent Assembly -

### Restructuring of state and Dalit participation:

1. Constitutional and legal provisions should be made for the involvement of Dalits in all structures of the State, whether elected or appointed, or established by the constitution, law or in other ways, in proportion to their population in the country.
2. Radical change in governance of the State and restructuring of the institutions of the state, including by provision for reservations should be achieved to ensure proportional inclusion of Dalits in the security forces, in the bureaucracy and in all bodies operating under the government.
3. Provision should be made to ensure that the proportional representation of the Dalit community is representative of all sectors of the Dalits (Madhesi Dalits and Khas Parbate Dalits - both men and women) in the representative, constitutional, legal and all other bodies of the State on the basis of their population.
4. Provision should be made for accurate population census by an independent body in order to ensure accurate counting of Dalits and other members of the community.
5. Dalit rights should be clearly stated in the constitution in order to ensure their effective implementation by constitutional and all other bodies of the state including legislature, executive, and judiciary.

6. Provisions regarding Dalit rights should be implemented effectively in view of the adoption of the principle of proportional representation by (Article 21) the Interim Constitution 2007.
7. Since Dalits would not be able to have their own state in a federal Nepal, and would derive no benefit from a federal system as such, special provision should be made in the national constitution for arrangements that will address their economic, political, administrative and socio-cultural problems, and ensure that they are not disadvantaged by the federal system. Provisions should be made to ensure that autonomous states do not diminish the protective provisions of the national constitution, though it should be possible for them to enhance those protective provisions.
8. Provision should be made, in the constitution and in the law, to fully guarantee Dalit rights in provincial and local systems of governance, while building a federal system in the country. The allocation of powers under such a system should not give any concession to any religion or cultural heritage that allows caste discrimination and untouchability towards Dalits in any way.

### Dalit participation in Constituent Assembly:

9. The Constituent Assembly is taking place for the first time in the history of Nepal. It is a democratic right, under international law, of all Nepali citizens belonging to different communities, caste/ethnic groups and regions to send their representatives to the Assembly to make a new constitution.
10. The procedures of the Constituent Assembly should ensure that all members of the Assembly, whatever their background and experience, should be able to participate fully and make a full contribution to the deliberations. Political parties must facilitate the Dalit members of different parties working together to achieve the social inclusion aims of the jana andolan.
11. The procedures of the CA should ensure that all sectors of Nepali society are able to make input into the Assembly, through their parties, and civil society organisations and as individuals. To this end the procedures of the CA must allow sufficient time,

and must ensure that the public are made aware of the issues, and understand the processes adopted by the Constituent Assembly to make a new constitution of Nepal so that Dalits and all other marginalized backward communities would be able to use their sovereign right to express their aspirations, thoughts, feelings and issues independently and without any fear.

## Politics and political parties:

12. Dalits have in the past been excluded from office in political parties and not selected to be candidates for winnable seats. Yet they have also been prohibited from setting up parties comprising Dalits only, because of the ban on parties which exclude people from membership on certain grounds, and might be prevented from setting up a party devoted to Dalit issues on the grounds of its being “divisive”. A new Constitution must resolve this dilemma either by allowing “sectional” parties or by requiring all parties to be genuinely inclusive.
13. The new constitution should guarantee that political parties that purport to be national in composition and programme must be inclusive in their structures and choice of candidates to that proportional participation and representation in and access of the Dalit community is assured.
14. Codes of conduct for leaders and cadres of all political parties, against caste discrimination and untouchability, should be required by the Constitution, and should be made and implemented effectively.

## Economic and employment opportunities:

15. Economic policy has neither linked the economic role of Dalits with the policy of the country nor formulated plans/policies and launched programmes to maintain, promote and modernize their professions. Prevailing social, economic and other obstacles have constrained Dalit participation in economic activities. Due to lack of economic and social security Dalits have been dislodged from their chosen professions and businesses. So it is necessary to ensure Dalits’ economic rights for empowerment

and all round development of the community. There is a need for constitutional provision to guarantee access for Dalits giving priority to the economic sector including by affirmative action.

16. Land ownership for landless Dalit communities should be ensured through radical land reform.
17. The Constitution must include the right to work, and to work of one’s choice and the State must take all necessary steps to implement it for the benefit of Dalits and other disadvantaged communities.
18. The State must take seriously the Right to Development, for which it has voted in United Nations forums.
19. The Constitution should recognise the right to food – which means that the State must respect that right, must protect it against interference by others and must if needed fulfil it – so as to guarantee food security for the Dalit community.
20. The State should make arrangements for government subsidy and loan without collateral to promote business for Dalit community by setting up small enterprises and modernizing the skills needed for Dalits’ professions, and ensure market for their products. Also, provision should be made for easy access of Dalit communities to micro finance services.
21. All kinds of bonded labour and forms of exploitation of labour as established by the feudal land-use system such as Haliya, Kamaiya, Haruwa, Charuwa, Baligharey, Doli, Bhund, Sino khaney and phyankney, Bethbegari, Kamlary and chaukidari in Madhesh should be abolished and necessary arrangements made to rehabilitate Haliyas (tillers) and landless Dalits by providing them with required piece of land and a place to live, and the Constitution must recognise these rights.
22. Reform in the justice system must ensure that justice is given in labour law courts regarding incidents that relate to feudal land use system.
23. Policies should be formulated for fair and compulsory participation of the Dalit community in the planning of all development and other activities of the government that are aimed to bring about social change and in all programmes launched by international and national non-governmental organisations.

24. Proportional participation of Dalits in industries and enterprises wholly or partly owned or run should be ensured, on the basis of constitutional principles. The State should also adopt a policy of encouraging employment of Dalits in the private sector on similar basis, and in the case of larger industries of requiring affirmative action to ensure Dalit employment.
25. Special arrangements for employment and other benefits should be made for those in special need including single women and those Dalit women who have to support their families.
26. In view of the fact that most of the Dalit communities live below the poverty line and that the poverty alleviation programmes have not been able to reach such communities, the State should formulate and implement effective policies in this regard to reach the target groups.
27. Recognising the difficulties faced by Dalits in obtaining education, the age limit for Dalit candidates should be five years higher in comparison to other candidates while applying for civil service, Nepal Army, Nepal Police, educational institutions, corporations and other sector.

### Effective mechanisms to end caste discrimination and untouchability:

28. The new Constitution must state in unequivocal language that untouchability is an abomination and is contrary to the Constitution and is abolished.
29. Caste discrimination and untouchability should be clearly defined. The social, economic and political conditions of Dalit community should be analysed, and comprehensive legislation should be passed and implemented to ensure complete guarantee of human rights, and justice for the Dalit community.
30. The National Dalit Commission should be provided for in the Constitution, and should be powerful, effective and proportionally inclusive in its composition.
31. The new Constitution for Nepal should 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, by making the human rights provisions apply between private persons and bodies as well as between persons and the state.

32. Effective means must be devised to ensure that impunity in the country for untouchability is ended in order. It must be treated as a serious social crime, and a crime against the State and humanity. Provision should be made for stiff penalties for the perpetrators of such crimes, and for compulsory compensation for victims.

### Human Rights generally

33. The Universal Declaration of Human Rights 1948 guarantees basic human rights of all people at the international level and the Interim Constitution of Nepal prohibits caste discrimination and untouchability with the provision of compensation for the victim and punishment for the perpetrator, which gives the impression that Dalits are entitled to all rights. In reality, in Dalits' context, experience shows that the implementation and enjoyment of these rights depend on the attitude and behavioural practice in the society. So, from now on, the Constitution should ensure that the fundamental and human rights of the Dalit community are not violated in the name of social norms and values.
34. The future constitution must not only declare in clear language the prohibition of discrimination but also incorporate the duty of the State to initiate and to require and to encourage programmes of affirmative action for the disadvantaged including Dalits.
35. At a time when Nepal is adopting the policy of privatization and liberalization the task of ensuring fundamental and human rights of the citizens of the country should not be the responsibility of the State alone. Human rights should be binding between citizens and should bind commercial enterprises, private sector NGOs and INGOs.

### Education and Health, and other economic rights:

36. The right to education, health services, food, water, housing and the right to live with dignity should be incorporated in the constitution as social and economic rights, not as Directive Principles only. The State should give priority to the Dalit community while carrying out its responsibilities in regard to these rights. The rights must be enforceable in court.



37. Provision should be made for Dalit students to pursue free and quality education, which at school level is compulsory, with appropriate scholarships from primary level to higher education in fulfilment of the right to education as provided for in the International Covenant on Economic, Social and Cultural Rights to which Nepal is a party.
38. In order to achieve the necessary radical change in discriminatory attitudes and in the educational system generally, Government should aim to ensure or encourage the employment of at least one male and one female teacher from the Dalit community in every government and private school.
39. Government should ensure that scholarships are provided proportionately to Dalit students in educational institutions run by the private sector.
40. Discrimination within the education sector, whether inside and outside the classroom, on the basis of caste hierarchy is a violation of fundamental and human rights of the Dalit community. Those who encourage and indulge in such activities should be subjected to stiff punishment. Likewise, discriminatory phrases, language, stories and assertions in the text books and syllabus – from primary to higher education – should be immediately removed.
41. It is a violation of right to access to health services if doctors and health workers discriminate against, or refuse to treat people equally on the basis of caste. So, provision should be made for strong legal action against those health workers and administrators who encourage and engage in such practices.
42. If Dalits are denied access to the source of water meant for the general public on the grounds of their caste, it should be considered a gross violation of Dalits' right to water as well as violation of their fundamental and human rights. Those who encourage and engage in such activities should be subjected to strong legal punishment. The practice of constructing separate water taps and spouts for Dalits and non-Dalits should be ended completely.
43. The access of the Dalit community to health services should be ensured by stopping privatization of health services and establishing

access to health care as a fundamental right. The State should provide special cards for Dalits for free health care services.

## Social, Religious and Cultural:

44. The Constitution should guarantee the right of an individual to marry the person of his/her choice. Anyone who opposes and denies personal independence to get married on the basis of caste discrimination should be subjected to stiff penalty. All Acts, laws, policies and related value system that go against the right to independently choose one's marriage partner should be completely abolished, and the Constitution should require the state and the citizens to work to this end.
45. Prevalent social evils in Nepali society such as *daijo pratha* (dowry), *burka pratha*, *chhaupadi pratha*, child marriage and polygamy should be punishable.
46. To stop, or to encourage anyone else to stop anybody from entering into sites sacred to his religious belief, or worshipping at such places or to stop anybody from taking part in collective religious or social activities, is against the right to religion, the principle of secularism, as well as the right to live with dignity and against discrimination. Provision of legal punishment should be made for perpetrators of such acts.
47. The cultural heritage of the Dalit community (especially that of Madhesi Dalits) should be recognized and effective steps should be taken to protect and promote their language, culture and cultural heritage.

## Law, Justice and fair administration:

48. Judicial selection and training, as well as allocation of cases to judges, should ensure that the courts and quasi-judicial bodies have the necessary competence and attitude to deal effectively and justly with Dalit issues.
49. The justice system and judicial administration should be completely restructured, and provisions should be made to organize appropriate training and orientation programmes to orientate judges, legal practitioners, government lawyers and staff

members working in each court and make them more aware of and sensitive towards caste discrimination and untouchability.

50. Provision should be made for a unit in each court to guarantee Dalit the right to legal aid.
51. All citizens must have the constitutional right to fair administrative services, and in order to ensure its implementation, special training of public servants, and codes of conduct should be prepared and implemented effectively to guarantee that the Dalit community receives, knowledgeable, understanding, equal and respectful treatment from staff members working in government and semi-government offices, and NGOs and INGOs, if necessary and possible by specialist officers.

### Dalit women:

52. Dalit women have to bear a triple brunt of discrimination: being a Dalit; being a woman and being a dalit woman. The State mechanism should admit the suffering of Dalit women, and formulate and implement appropriate policies and laws to address their plight.
53. The State should ensure Dalit women's right to equal participation regarding marriage and divorce, and guarantee full protection from domestic violence.
54. Provision should be made to ensure Dalit women's equal access and control over financial assets of the family.
55. The State should formulate policies and launch programmes to encourage inter-caste marriage.
56. The economic, educational, social and cultural exploitation of the Badi community (within the Dalit community) should be rooted out. The State should implement the agreement reached between the Badis and the government without any further delay.

### Madhesi Dalits:

57. Madhesi Dalits are the most backward community even among the Dalits. Most Terai Dalits do not own land even if the land there is very fertile for agriculture. Due to dual land ownership policy and denial of citizenship Terai Dalits have been denied services available to others as many do not have

citizenship of the country. The problems relating to Madhesi Dalits should be resolved and their proportional representation in all spheres of national life should be guaranteed.

58. The problem relating to landless Dalits should be resolved immediately, and the State should provide land and a place to live to Terai Dalits.
59. Ways should be found to resolve the issues of the Terai Dalit community relating to their language.

### Information and communications:

60. State owned media should have a policy to ensure that programmes relating to Dalit issues should be published, produced and transmitted/telecast/broadcast free of cost, and methods devised to ensure that private media also give fair coverage to Dalit issues, and to the contributions and achievements of Dalits in private and public life. In the present context when it is difficult to ensure the access of Dalit community to government and private sector publications and electronic media, opportunities should be provided to inform and educate the community.
61. The mass media should accept the responsibility to promote equality and the abolition of all sorts of caste and gender discrimination.

### Justice delivery and rehabilitation during the interim period:

62. The Dalit community suffered most – both from the State and the rebels - during the 10-year-long insurgency. The State should conduct investigations to find out the truth about the affected Dalit community during the war and make arrangements for their proper rehabilitation.
63. Provision should be made for appropriate compensation, medical treatment, psychological counselling and opportunities of livelihood for the relatives of those who lost their lives, and for disabled Dalits, and Dalit women who were sexually exploited during the conflict.
64. Investigations about missing Dalits should be conducted and the findings made public. A congenial

atmosphere should be created for them to return home with dignity including by providing appropriate compensation for the families of missing and internally displaced Dalits.

65. All Dalit Children below the age of 18 who have been forced to take up dangerous work as a result of the insurgency within and outside the country should be rescued and necessary arrangements made for their livelihood.
66. The present discrimination regarding enlisting of the Terai people in the security forces should be removed immediately, and a quota fixed and the provision implemented for proportional participation of Madhesi Dalits in Nepal Police, Nepal Army, Armed Police Force and the civil service.

## Conclusions:

This Charter reflects the experiences, views and aspirations of all Nepali Dalits. With this we break the silence and request meaningful change and restructuring of the State to end the prevailing situation of discrimination as well as for the recognition of human dignity and social, economic, cultural, and political equality.

We emphasise that until these demands are fulfilled there can be neither permanent peace nor the guarantee of human rights and social justice in the country. We would also like to add that our movement will continue until all our demands are met.

14 December, 2007



# Background Paper on Dalit Issues

- Dr. Krishna B. Bhattachan<sup>7</sup>

## Section 1: Historical Background

Caste based discrimination, including untouchability, originated in the Indian sub-continent more than two thousand five hundred years ago. Hindu religious scriptures, specially the *Manusmriti*, divided human beings in four varnas, namely, Brahman, Kshatriya, Vaisya and Sudra and their ascribed traditional roles were respectively intellectual, warrior, economic and manual work. Each varna was further divided in numerous castes and sub-castes. Varnas, caste and sub-castes are based on ascription, hierarchy, purity and pollution of water, food and body. Brahmans are at the top and Sudra at the bottom of the hierarchy. Castes and sub-castes within each varna are further hierarchically sub-divided.

Academics have provided many explanations for the emergence of varna and castes. Sacred religious scriptures such as the *Purush Sukta* of the *Rig Veda* invented, and later the *Manusmriti* reinforced, caste hierarchy and a caste-based division of labour.<sup>8</sup> Yam Bahadur Kisan, a leading Dalit scholar, has noted six reasons for the emergence of Sudras: (i) non-Aryan slaves and those vanquished in battle, (ii) Aryan non-

conformists, Aryan enemies, (iii) inter-marriage, (iv) progeny, (v) occupation, and (vi) powerlessness.<sup>9</sup> In the case of Nepal, according to Dilli Ram Dahal, "...the present Dalit population of Nepal could be the mixture of two distinct groups of people; (i) "a group of people who originally came to Nepal from India along with other Hindu caste members," and (ii) "the "made" Dalit group resulting from illegitimate sexual relations."<sup>10</sup>

The restructuring of Newar society of the Kathmandu Valley in the fourteenth century was the foundation for the expansion of caste based discrimination, including untouchability, in different parts of Nepal. King Jayasthiti Malla invited five Brahman priests from India as advisors to restructure Newar society. Based on their suggestions, the Newars were divided into 64 castes based on occupation. Although initially these 64 castes were horizontal, the process of Hinduization and Sanskritization transformed these castes into a hierarchy, giving birth to Newar Dalits such as Poda, Chyame and Kusle at the bottom and Rajopadhya at the top.<sup>11</sup>

Another important historical stage in restructuring of the state on a basis of caste discrimination, including

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<sup>8</sup> Kisan, Yam Bahadur *The Nepali Dalit Social Movement* (Lalitpur: Legal Rights Protection Center, Nepal, 2005) pages 14-24.

<sup>9</sup> Pages 25-27.

<sup>10</sup> Dahal, Dilli Ram *et al. Rastriya Dalit Rananiti Pratibedan* ("National Dalit Strategy Report"). (Kathmandu: Action Aid Nepal, Care Nepal and Save the Children (US) 2002) page 6..

<sup>11</sup> "New concepts of administration, nascent in the early Malla years, became clearly established. . . . But he [King Jayasthiti Malla] cannot be credited with introducing the caste system into Nepal, nor with single-handedly infusing hierarchy into Nepalese society, two deeds on which his fame popularly rests. The Indian caste system was in effect in the Nepal Valley from at least the beginning of the Licchavi Period, as inscriptions attest. Similarly, the complex system of subcastes that ordain Valley social behavior must be viewed as the product of centuries, of gradual accretion, not a sudden imposition by law. Significantly, Sthitimalla's own annals make no mention of these undertakings. . . . Nonetheless, Sthitimalla may well have codified the particular social patterns that had developed by his time, and thus given established local custom the force of law." Slusser, Mary Shepherd. *Nepal Mandala, A Cultural Study of the Kathmandu Valley*. Two volumes. (Princeton: Princeton University Press, 1982) p. 59 quoted in Robert I. Levy (with the collaboration of Kedar Raj Rajopadhya), *Mesocosm Hinduism and the Organization of a Traditional Newar City in Nepal* (Berkeley: University of California Press, 1991 (available on the internet at California Digital Library <http://content.cdlib.org/xtf/view?docId=ft6k4007rd&brand=eschol>) at page 44.

untouchability, was the promulgation of the *Muluki Ain* (the National or Civil Code) of 1854 by the Rana Prime Minister Jung Bahadur Rana. Caste was fundamental to the structure which it incorporated, formalized and reinforced. It also had differential punishments for the same crimes: least for Brahmans and greatest for Dalits. The caste hierarchy set out in the Code is well-known in Nepal.<sup>12</sup> It provided for four broad groups:

1. *Tagaddhari* ("Sacred thread wearing" or "Twice-born") (including Brahmans, Rajputs, Jaisis and Chetris (Kshatriyas))
2. *Matawali* (Liquor drinking) who were divided into the *Namasine* ("Unslavable") (Magars, Gurungs, Sunuwars and some Newar castes) and the *Masine* ("Enslavable") (Bhote, Chepang, Kumal, Hayu, Tharu and Gharti)
3. *Pani nachalne choi chhito halnu napanne* (Castes from whom water is not acceptable and contact with whom does not require purification by sprinkling of water), including Muslims, Dhobi, Madheska Teli, Kulu, Kasai, Mleccha, Kusle and Cudara<sup>13</sup>)
4. *Pani nachalne choi chito halnu parne* (Castes from whom water is not acceptable and contact with whom requires purification by sprinkling of water) (including the Sarki, Damai, Kami, Gaine, Sunar, Badibhad, Cunara<sup>14</sup>, Pode, Hurke and Cyamakhalak

The *Muluki Ain* mentions the Madhesi Teli as caste from whom water is not acceptable and contact with whom does not require purification by sprinkling of water but fails to mention other Madhesi Dalit castes. Of the 18 castes identified as "untouchable", the 10 at the bottom are Dalits. The main consequences of those distinctions included that the state patronized caste based untouchability and discrimination against Dalits, that it was mandatory for "high caste" people to practice caste-based

untouchability and discrimination against Dalits in everyday life, and that the life chances of Dalits were low.

King Mahendra is often credited with eliminating caste-based untouchability by amending the National Code in 1963 but, according to Yam Bahadur Viswakarma and Chakraman Viswakarma, he did not abolish it as he used "neutral terms" that helped to continue untouchability unabated.<sup>15</sup> The problem seems to have been that while the Code purported to abolish untouchability it also prohibited interference with social customs – in other words those who excluded Dalits on such grounds could continue to do so.<sup>16</sup>

The People's Movement of 1990 contributed to establishing a multi-party political system within a constitutional monarchy that helped to bring out issues of marginalized communities, including the Dalits, but, on the whole, the process of marginalization continued as usual, despite the provision against untouchability in the 1990 Constitution.<sup>17</sup> Although the Dalit movement intensified after the People's Movement of 1990, it was overshadowed by the indigenous peoples' movement. More recently, the Maoist insurgency from 1996 to 2006 has helped to reduce caste based untouchability in their areas of influence.

And after the end of the absolute rule of King Gyanendra, and the commitment of the parties to moving to a Constituent Assembly and a new Constitution, the Interim Constitution was enacted on January 15, 2007. And again the Dalit cause has been overshadowed by the 2007 Madhesi movement. After the Peoples' Movement of 2006, the reinstated House of Representatives declared Nepal as a caste based untouchability free country but the declaration is more rhetoric than reality due to weakness in its implementation. Moreover, Dalit issues did not get due attention from the CPN (Maoist) and other parties in the governing alliance, the Interim

<sup>12</sup> See Macdonald, Alexander W. "The hierarchy of the lower jat in the *Muluki Ain*", in Macdonald, *Essays on the Ethnology of Nepal and South Asia I*. (Kathmandu: Ratna Pustak Bhandar, 1984) page 282. And see the fullest account in English: Andrés Höfer, *The Caste Hierarchy and the State in Nepal: A Study of the Muluki Ain of 1854* (Kathmandu: Himal Books, 1979, 2004).

<sup>13</sup> Chudara refers to Curaute (bangle makers).

<sup>14</sup> Chunara refers to makers of wooden vessels.

<sup>15</sup> During a national conference of Dalits organized in Godavari in Kathmandu by Dalit civil society organizations with support of the Constitution Advisory Support Unit (UNDP) of UNDP in 2007.

<sup>16</sup> Miscellaneous Provisions Chapter, Item 10. John Whelpton says that on this ground the police excluded a groups of Dalits from Pashupatinath soon after the new *Muluki Ain* was promulgated and this issue was not resolved until a government declaration on access to temples in 2001 – *A History of Nepal* (Cambridge: Cambridge University Press, 2005) p. 157.

<sup>17</sup> Article 11(4).

Parliament, the Interim Government and the Government's Dialogue Team. Dalit issues were not addressed right from the 12 Point Agreement to the Interim Constitution, which incorporated positive, but inadequate, provisions, which are analysed in the Center for Human Rights and Global Justice at New York University's "Briefing Paper" in this publication.<sup>18</sup>

And even when the CA Election Act made some provision for ethnic/caste quotas, this guaranteed only something less than 13% in the 335 proportional representation seats.<sup>19</sup> Parties were only exhorted but not required to be inclusive in choosing candidates for the constituency seats. In the event, of 3,131 party candidates for the FPTP elections, 177 were Dalits of whom 27 were women. Fifty-four political parties fielded a total of 6,000 candidates to contest the election for 335 seats allotted under the PR system. Of these, 685 (or 11.41 %) were Dalits, (376 women and 309 men). Looking only at the 19 parties with the largest numbers of candidates: they put forward 2,644 candidates for the FPTP elections, of whom 108, or 4.08%, were Dalits. Of these parties' 4,090 PR candidates, Dalits were 489, or 12.16 %.<sup>20</sup> Turning to the results: taking all the elected members together there are 49 Dalits - 8.52% of the elected members, or 8.15% of the total membership. Seven of these were elected from geographical constituencies, and the rest from the party lists. Fourteen of them are from Madhes, and the rest from the Hills. None of the 26 nominated by the Council of Ministers (actually the major parties in the CA) was a Dalit. Some Dalit groups have complained that the Dalit members elected are rather more party hacks than strong personalities (though this is no doubt unfair to some). They represent their respective political parties rather than the Dalit movement. As very few proportional representation members are familiar with Dalit issues, party loyalty, discipline and use of the party whip in crucial circumstances may prevent elected Dalits raising their voices in the Constituent Assembly. Hence, there is a question about how far Dalits and non-Dalits

elected and/or nominated to the Constituent Assembly will be able to raise Dalit issues in meaningful ways. The other major concern is about how far the Constituent Assembly, where Dalits are not well represented, would be sensitive enough to come up with adequate mechanism and process for consultation with Dalits' organizations, leaders, followers and community members.

## Section 2: Who Are The Dalits?

### Definition, Identification and Recognition of "Dalit"

Dalits have been called many things. Some terms, such as "*paninachalne*" ("water polluting"), "*acchoot*" ("untouchables"), "*doom*", "*pariganit*," and "*tallo jat*" ("low caste") used in Nepali society are derogatory, and other terms, such as "*uppechhit*" ("ignored"), "*utpidit*" ("oppressed"), "*sosit*" ("exploited"), "*pacchadi pareka*" ("lagging behind"), "*bipanna*" ("downtrodden"), "*garib*" ("poor"), "*nimukha*" ("helpless"), "*simantakrit*" ("marginalized"), "*subidhabata banchit*" (disadvantaged"), "*alpasankhyak*" ("minorities"), "*banchitkaranma pareka*" ("excluded"), *Harijan* ("god's people")<sup>21</sup> are non-derogatory, though some may be considered condescending. After initial hesitation and controversy among Dalits and non-Dalits alike, use of the term "Dalit" has gained general acceptance, and has been widely used at national and international levels. A DFID and the World Bank report aptly notes, "A lingering hesitation to use the term "Dalit" or to name caste-based discrimination head-on-and a preference for euphemisms only serves to confuse issues pertaining to Dalit rights. The term "Dalit" should be accepted universally."<sup>22</sup>

It is usually said that there are 22 Dalit castes, but it has not always been the same 22 that have been identified. The *Upechhit, Utpidit ra Dalitbarga Utthan Bikas Samiti* (National Committee for the Upliftment of the Depressed, the Oppressed and Dalits Community), established by

<sup>18</sup> *Recasting Justice: Securing Dalit Rights In Nepal's New Constitution* see p.45 in this volume.

<sup>19</sup> Less because a party could have up to 10% less (or more) than the prescribed quota for any group in the proportional representation seats as actually allocated.

<sup>20</sup> These sentences on the candidates are based on Bharat Nepali, "Dalits and Women in Constituent Assembly in the Context of Creating New Nepal" on the Nepali Dalit Info website at <http://nepaldalitinfo.net/2008/04/02/422/>.

<sup>21</sup> Popularized by Gandhiji in India.

<sup>22</sup> The World Bank and DFID, *Unequal Citizens; Gender, Caste and Ethnic Exclusion in Nepal*, (Kathmandu Nepal, 2006).

<sup>23</sup> (1) Lohar, (2) Sunar, (3) Kami, (4) Damai, (5) Kasai, (6) Sarki, (7) Badi, (8) Gaine, (9) Kusule, (10) Kuche, (11) Chyame, (12) Pode, (13) Chamar, (14) Dhobi, (15) Paswan (Dusadh), (16) Tatma, (17) Batar, (18) Khatbe, (19) Musahar, (20) Santhal, (21) Satar, and (22) Halkhor. Satar and Santhal is the same indigenous nationality but they are listed as Dalits because they are treated as untouchables by some "high caste" people in some villages and towns in the eastern Terai region.

the government, identified 22 Dalit castes.<sup>23</sup> After nationwide consultation, the National Dalit Commission (NDC) defined Dalit community and caste based untouchability in its Bill for an Act in 2003. According to this, 'Dalit community' refers to communities (identified in Annex 1 of the Bill), who have been left behind in social, economic, educational, political and religious spheres and deprived of human dignity and social justice due to caste based discrimination and untouchability. "Caste-based Untouchability' refers to those communities, who have been discriminated against as water polluting, or touching whom requires purification, untouchables or ...any community that was identified as untouchable before the promulgation of the New Civil Code, 1963." Based on these definitions, NDC also tentatively identified 22 Dalit castes, including five from the Hills and 17 from the Terai (not identical to the Samiti list). A few Dalit castes such as Viswakarma, Pariyar and Sarki of the Hills and Chamar of the Terai have multiple names and some Dalit castes such as Musahar and Bantar of the Terai have single names. For example, Viswakarma has now become a common caste name that refers to those Dalits who identify themselves as Kami or Lohar or Sunar or Wod or Chunara or Parki or Tamata. Many family names of Dalits are identical with that of Bahun-Chhetris and some are identical with Vaisya and some indigenous peoples.

A full list of castes, with their sub-castes, names and traditional occupations, is in Appendix 1 of this publication.

A complication is the Newari dalits: leaders of organizations of Kusule, Kuche, Chyame and Poda have identified themselves as Newars and therefore the National Dalit Commission has dropped them from its list.<sup>24</sup>

### Diversity within the Dalits

Dalits comprise a diversified social group in terms of intensity of practices of caste based discrimination,

including untouchability, and forms of discrimination, including regional, linguistic, religious, cultural, gender and class based discrimination.

- Hill Dalits and the Madhesi Dalits have rather different experiences.
- In some regions, districts or villages, non-Dalits do not practice caste based untouchability against Dalits. For example, untouchability is non-existent in communities of the mountain region, and communities mostly untouched by the national legal codes and/or the process of Hinduization and Sanskritization.
- In communities affected by caste based discrimination, some non-Dalit communities such as Sattar/Santhal, Jhangad/Dhangad are treated as "untouchables" in the Terai region.

### Dalit Population and Distribution

According to the census of 2001, the total population of Nepal was 22,736,934 (now estimated to be 26,427,399<sup>25</sup>, 51.1% of them female. The census had no data on six Dalit castes, namely, Kakahiya, Kalar, Khatik, Kori, Pasi, and Sarvanga/Sarbaraiya. The census data are not entirely accurate because many Dalits hide their identity due to fear of backlash from "high caste" people, confusion of caste identity due to identical family names, lack of awareness among Dalits about their caste identity, and lack of representation of Dalits in technical committees, trainers, supervisors and enumerators in the Central Bureau of Statistics. Some local surveys carried out by Dalits' organizations, including Dalit NGO Federation and NNDSWO, in some selected villages revealed Dalit populations higher than in the census. The figure usually given for the census is 13% or 13.8%, or at the most 14.99%, lower than the estimation of the Dalit leaders and scholars, i.e. 20% to 25% of the total population.<sup>26</sup>

<sup>24</sup> Rajendra Pradhan and Ava Shrestha comment that "some Newar Dalit castes refuse to be called Dalit", see *Ethnic and Caste Diversity: Implications for Development* (Working Paper No. 4) (Asian Development Bank, 2005) <http://www.adb.org/Documents/Papers/NRM/wp4.pdf>, at p. 3, citing Harka Gurung, *Social Demography of Nepal: Census 2001* (Kathmandu: Himal Books, 2003). See also "In recent years many so-called Dalit groups from the Newar community have protested their inclusion in the list. The problem is do they really represent the sentiment of the concerned groups as a whole? In addition, there is a sort of ethical dilemma involved: Has anyone the right to call someone Dalit if he or she does not like it?" Danida, "Nepal Final Component Description Dalit Support" (2003) p. 54 [http://www.danidadevforum.um.dk/NR/rdonlyres/E4A558CC-2726-4E58-8717-41B4C0251F6B/0/Component\\_Dalitsupport.pdf](http://www.danidadevforum.um.dk/NR/rdonlyres/E4A558CC-2726-4E58-8717-41B4C0251F6B/0/Component_Dalitsupport.pdf).

<sup>25</sup> Census Bureau see *Nepal in Figures 2007* <http://www.cbs.gov.np/Nepal%20in%20figure/Nepal%20in%20Figures%202007.pdf>.

<sup>26</sup> Some communities may be included in one publication as janajati and in others as Dalit (e.g. Dhagar).



Table 1. Population of caste/ethnicity by sex

S.N.	Caste/Ethnicity	Male	Female	Total	%
A	Population of Nepal	11,359,378	11,377,556	22,736,934	100.0
a	Dominant Hill Caste	3,464,273	3,558,947	7,023,220	30.89
b	Indigenous Nationalities	4,090,839	4,181,136	8,271,975	36.31
c	Madhesi "High caste"	1,475,884	1,326,303	2,802,187	12.30
d	Muslim	504,325	471,624	975,949	4.29
e	Other	134,767	130,954	265,721	1.16
f	Unidentified caste/ethnic	116,569	115,072	231,641	1.02
g	Dalit	1,356,634	1,393,493	2,751,975	14.99
<b>Hill Dalit</b>					
1	Kami	432,937	463,017	895,954	3.94
1.1	Sonar	72,331	72,757	145,088	0.64
1.2	Lohar	42,270	40,367	82,637	0.36
2	Damai/Dholi	188,329	201,976	390,305	1.72
3	Sarki	153,681	165,308	318,989	1.40
4	Gaine	2,857	3,030	5,887	0.03
5	Badi	2,152	2,290	4,442	0.02
<b>Sub-Total</b>		<b>894,557</b>	<b>948,745</b>	<b>1,843,302</b>	<b>7.11</b>
<b>Madhesi Dalit</b>					
6	Chamar/ Harijan/ Ram	138,878	130,783	269,661	1.19
7	Musahar	88,041	84,393	172,434	0.76
8	Dusadh/Paswan/Pasi*	82,173	76,352	158,525	0.70
9	Tatma	39,606	36,906	76,512	0.34
10	Khatbe	38,643	36,329	74,972	0.33
11	Dhobi	38,350	35,063	73,413	0.32
12	Bantar	18,139	17,700	35,839	0.16
13	Chidimar	6,516	5,780	12,296	0.05
14	Dom	4,631	4,300	8,931	0.04
15	Mestor/Halkhor	1,848	1,773	3,621	0.02
16	Kuswadiya/Patharkatta#	286	266	552	0.00
17	Kakahiya	N/A	N/A	N/A	N/A
18	Kalar@	N/A	N/A	N/A	N/A
19	Khatik	N/A	N/A	N/A	N/A
20	Kori	N/A	N/A	N/A	N/A
21	Pasi*	N/A	N/A	N/A	N/A
22	Sarvanga/Sarbariya@	N/A	N/A	N/A	N/A
<b>Sub-Total</b>		<b>377,014</b>	<b>356,410</b>	<b>735,272</b>	<b>3.24</b>
<b>Unidentified Dalit</b>		<b>85,063</b>	<b>88,338</b>	<b>173,401</b>	<b>0.76</b>

Source : Census of 2001, Table 16: Population by caste/ethnic group and sex (HMG-N 2002:72-3).

Note: \* The Census data does not provide separate population data for Pasi, instead they are mixed with Dusadh and Paswan but the National Dalit Commission has identified Pasi as a separate Dalit caste.

# Kuswadia is listed as one of 59 indigenous nationalities of Nepal by the Nepal Government.

@Kalar, Sarvanga and Sarbariya are the same Dalit caste.

Viswakarmas, especially the Kamis, Damais/Dholis and Sarkis are distributed in all 75 districts of Nepal (Table 2). Unlike other Madhesi Dalit castes, Dhobis are widely distributed, being in 64 districts. Bantars, Mestars/Halkhors and Chidimars are the least widely distributed, being in 24, 25 and 28 districts only.

The map on page 25 indicates the distribution of Dalits in the various districts (but without distinguishing between the castes).

There is a legal definition and identification of indigenous nationalities but such definition and identification is lacking in the case of Dalits. The National Dalit Commission has never managed to get its governing law passed by the legislature. Unless a blanket caste/ethnic and linguistic survey is done, no one can be sure about how many castes, ethnic and linguistic groups exist in Nepal. Without clear definitions

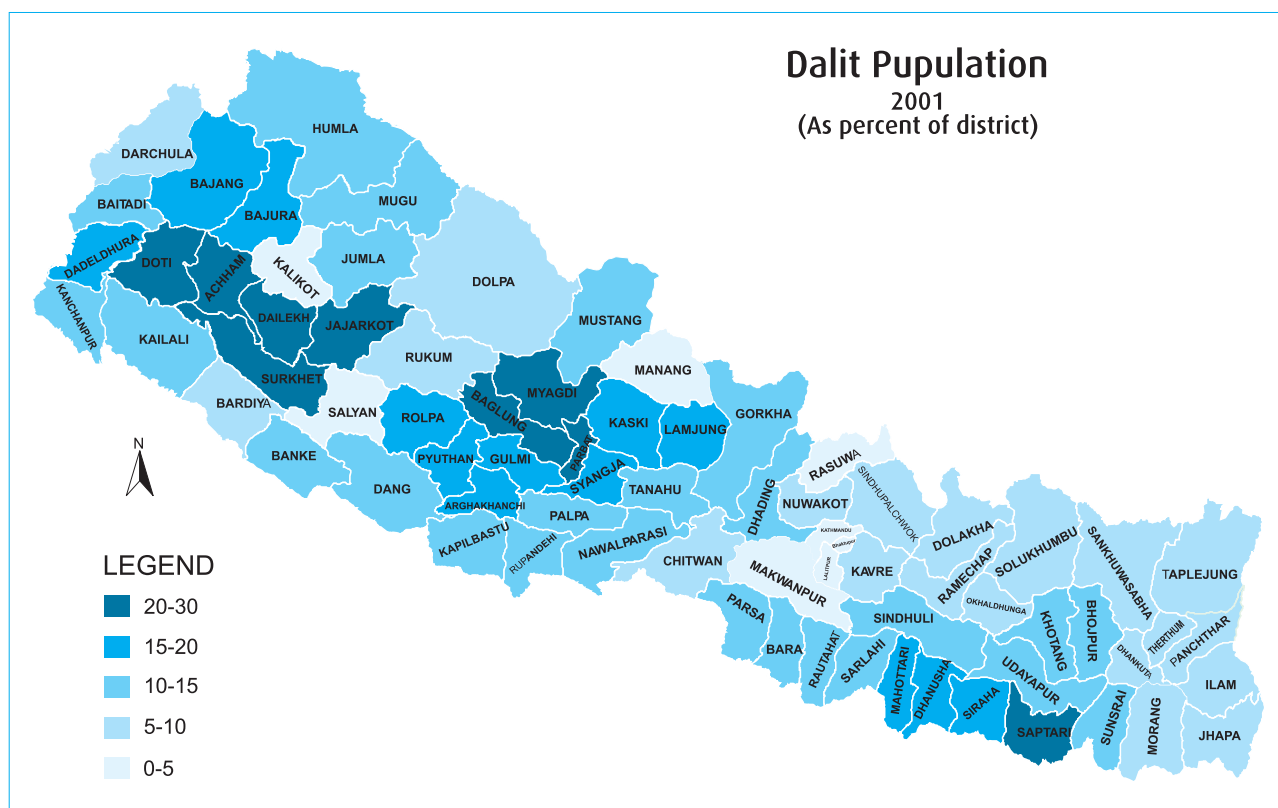
and identification of Dalits, it would be difficult to deliver both democracy and development, and also right and services, to Dalits effectively. There remain some difficulties, however. Dalits complain that the 2001 census significantly underestimates the proportion of Dalits in the population. Yet some of this is as a result of non-identification by Dalits themselves. Should people be required to identify themselves as belonging to a group from which they have been trying to escape, and identification which they have been denying, by using another name – as is possible in cities but much more difficult in rural areas? Many countries with ethnically diverse populations have wrestled with this: does the need for accurate statistics for purposes of planning outweigh the underlining of divisive identities that is involved in asking people to say in forms and in census counts what those identities are?<sup>27</sup> What happens to the people of mixed ancestry (who some think are the future)?

**Table 2 Number of districts by concentration of Dalits**

Dalit Castes	No. of Districts with 100 or more members of particular group	No. of Districts with negligible population (99 or fewer)	No. of Districts with no members of this group	Dalit Castes	No. of Districts with 100 or more members of particular group	No. of Districts with negligible population (99 or fewer)	No. of Districts with no members of this group
<b>Hill Dalits</b>				<b>Tatma</b>	<b>15</b>	<b>27</b>	<b>33</b>
<b>Viswakarma</b>				<b>Khatbe</b>	<b>9</b>	<b>24</b>	<b>45</b>
Kami	75	0	0	Dhobi	19	44	12
Sonar	57	15	3	Bantar	6	18	51
Lohar	39	29	17	Chidimar	9	19	47
<b>Damai/Dholi</b>	<b>73</b>	<b>2</b>	<b>0</b>	<b>Dom</b>	<b>11</b>	<b>19</b>	<b>45</b>
Sarki	71	4	0	Mestor/Halkhor	8	17	50
Gaine	19	37	19	Kuswadiya			
				/Patharkatta#	2	7	66
Badi	8	51	16	Kakahiya	N/A	N/A	N/A
<b>Madhesi Dalits</b>				<b>Kalar@</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
Chamar/ Harijan				Khatik	N/A	N/A	N/A
/ Ram	21	34	20	Kori	N/A	N/A	N/A
Musahar	17	24	34	Pasi*	N/A	N/A	N/A
Dusadh/Paswan/Pasi*	18	26	31				

Source: Census of 2001.

<sup>27</sup> The Draft Constitution for Kenya in 2004 said "A person may not be compelled to indicate or define that person's ethnicity or race." Had that been enacted, and the Census Bureau wanted to ask about ethnicity, a court might have been called upon to ask the question posed in the text. A relevant point would be that the identification of each person would be for statistical purposes only and no individual would as a result be identified by race for any other purpose.



### Section 3: Hardship and Humiliation

Although King Prithvinarayan Shah portrayed Nepal as a “garden of four castes and thirty six varnas”, all caste and ethnic groups, including the Dalits, have been dominated, excluded, marginalized, deprived, exploited, subjugated for centuries by “high caste” people. In the past, legal instruments supported practices of caste-based untouchability and other forms of caste-based discrimination. Such discrimination continues to exist irrespective of existence of legal provisions to support it as it is more a product of attitude of the “high caste” peoples who practice it in different forms than of legal provisions. Caste based untouchability is one of the worst form of violation of human right. Dalits’ status and role in the Nepalese society is particularly depressing and humiliating. Dalits have no dignity in the community or society they live due to untouchability and other discrimination. For non-Dalits, animals like the dog, which is considered to be inferior animal in Nepal, are touchable but Dalits are treated as untouchables.

Similarly, “higher caste” Dalits treat “lower caste” Dalits in the way non-Dalits treat the former. This is complicated

as the Kami belongs to the top of the Dalit caste hierarchy; they are not treated as untouchables by other Dalits. Doms are at the bottom of the internal caste hierarchy. Hence they practice untouchability against none. Those who are in between practise untouchability against those who are below them and they are treated as untouchables by those who are above them in the internal caste hierarchy.

Dalits want to live with dignity (something promised by the Interim Constitution Article 12 to all), like any other human being, but in reality experience humiliating treatment from “higher caste” people every day. We look in some detail at the various different types of discrimination. And in Appendix 2 there are some stories of individuals affected by their Dalit status.

#### Social Hardship Caste Based Discrimination, including Untouchability

The findings of a study on caste based discrimination, including untouchability in Nepal carried out by Krishna B. Bhattachan and others for Action Aid, Nepal identified 205 existing practices of caste-based discrimination, including untouchability, in the eight sample sites,

including four towns and four villages.<sup>28</sup> Such practices include denial by “high castes” of entry by Dalits into houses, temples, hotels and restaurants, teashops, work places, food factories, dairy farms and milk collection centres etc. Non-Dalits deny Dalits services related to milk, health, credit, training, religion and food and drink. “High caste” people deny Dalits access to common resources including drinking water sources, community forests, and crematory. “High caste” people deny kinship and other relationships including inter-caste marriages; and Dalits experience caste based untouchability in feasts, festivals, marriage processions, and funerals.

Dalit women start their day early in the morning by going to a nearby water source to fetch drinking water but they are not allowed to touch water fetched by “high caste” people, or they wait for their turn until “high caste” people have fetched water or even have to use a separate water source that is not used by “high caste” people. If Dalits somehow touch water collected by “high caste” people, they are abused verbally or physically. “High caste” people do not enter their houses and Dalits are not allowed to enter “high caste” people’s houses. “High caste” and “low caste” people do not eat food together. It is ironic that “high caste” people hire Dalits as labourers or craftsmen when they build their houses but after its completion they perform purification rituals and then Dalits are not allowed to enter their houses. Marriage between non-Dalits and Dalits or between “high caste” and “low caste” Dalits, often ends up with separation or social boycott. Many Dalits work as agricultural labourers, cobblers, blacksmiths, tailors or musicians for their “high caste” patrons or landlords but instead of wages or remuneration they get food grains during harvesting time. Dalits do not get rooms or houses to rent in towns unless they hide their Dalit identity. Dalits are not allowed to participate in politics in leadership positions.

The concluding observations of the Committee on the Elimination of Racial Discrimination, in March 2004,

include three important observations related to Dalits. “The Committee remains deeply concerned at the persistence of the de facto caste-based discrimination and the culture of impunity that apparently permeates the higher strata of a hierarchical social system. In particular, it is concerned at information on the existence of segregated residential areas for Dalits, social exclusion of inter-caste couples, restriction to certain types of employment, and denial of access to public spaces, places of worship and public sources of food and water, as well as at allegations that public funds were used for the construction of separate water taps for Dalits.”<sup>29</sup> Another observation is about ineffective implementation of laws: “The Committee is concerned at the allegations of ill-treatment and ineffective protection of and discrimination against Dalits and other vulnerable groups in society, by law enforcement officials, especially the police. The Committee stresses that prompt and impartial investigations are paramount in counteracting discriminatory attitudes and practices.”

### Educational Hardships

Dr. Bidhyanath Koirala, an expert on education and Dalits, categorized educational discrimination against Dalits.<sup>30</sup> (i) Direct discrimination which has resulted in higher dropout rates of Dalit students in education; (ii) Structural discrimination against Dalit students with no proper access to the means and materials in the schools; (iii) Silent discrimination by the School Management Committees who fail to take necessary action against school teachers, peers, management committee members and guardians who engage in caste-based discrimination in schools; (iv) Pedagogical discrimination including teachers’ use of derogatory words and examples in regard to Dalits, and failure to appreciate Dalits’ occupation, culture and skills.

Poverty prevents Dalit children going to schools or continuing their education. Dalit children who do go to school are humiliated as untouchables by “high caste” teachers and students in school, especially in the class

<sup>28</sup> Bhattachan, Krishna B. et al. *Existing Practices of Caste-based Untouchability in Nepal and Strategy for a Campaign for Its Elimination*, (Kathmandu: Actionaid, Nepal, 2003) page xiv.

<sup>29</sup> Consideration of reports submitted by states parties under article 9 of the convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. NEPAL. Committee on the Elimination of Racial Discrimination, Sixty-fourth session 23 February-12 March, 2004. CERD/C/64/CO/5, 28 April 2004, para. 12. Available on the internet <http://www1.umn.edu/humanrts/country/nepal2004.html>.

<sup>30</sup> Cited by Bhattachan, Krishna B., Tej Sunar and Yasso Kanti Bhattachan (Gauchan). *Caste based Discrimination in Nepal* (2007) (A final draft report prepared for Indian Institute of Dalit Studies (IIDS), Delhi, International Dalit Solidarity Network (IDSN), Copenhagen, in association with Nepal National Dalit Social Welfare Organization (NNDSSWO) and Dalit NGO Federation (DNF)).

rooms. In schools where government provides sweets, “Haluwa”, in the afternoon, Dalit and non-Dalit students eat sitting separately.

The literacy rate of Dalit was 17% in the census of 1991 and it had doubled to 33.8% by the census of 2001, nonetheless, it is less than the national literacy rate of 53.7% and far less than literacy rates of Bahun (74.9%), and Chhetri (82.0%).

Table 3 shows literacy rates and education by caste/ethnicity. The literacy rate among the Hill Dalits is far better (41.9%) than those of the Terai Dalits (21.1%). Among the Madhesi Dalits, the rate among the Musahars is the lowest in Nepal at 6.9%. Among all Dalit caste groups, girls’ and women’s literacy rate and education is less than that of their male counterparts. For school

**Table 3. Literacy rates and education by caste/ethnicity**

Caste/ethnicity	Literacy rate above age 6)	S.L.C. and above	Bachelor and above
Nepal	53.7	17.6	3.4
Brahaman/Chettri	67.5	24.7	5.4
Terai	41.7	16.7	2.7
Dalit	33.8	3.8	0.4
Ethnic groups	53.6	12.9	2.0
Religious minority	34.5	9.0	1.6

Source: CBS (2004) Nepal Living Standard Survey-II; GSEA Report 2005.

education, among almost all Terai Dalit groups boys are more than twice as likely to have a certain level of attainment - all this although the Government has implemented some necessary (but insufficient) programmes targeting Dalits. The number of Dalits decline as the level of education increases. The proportion of Dalits who have passed School Leaving Certificate or higher is as low as 3.8% compared to a national average of 17.6%. Nationally the percentage of person holding Bachelor’s degree or above is 3.4% but among Dalits is 0.4%, ranging from Tatma with 1.6% and the Dhobi with 1.8% to the Badi, Chamar, Bantar and Halkhor where the rate is zero.

The following Table breaks this information down by both Dalit caste and sex.

**Table 4. Percentages of Dalit caste groups (by sex) achieving certain educational status**

Dalit Caste groups	6 years & above of Schooling			Bachelor & above		
	Men	Women	Both	Men	Women	Both
<b>Dalit</b>	<b>43.7</b>	<b>24.2</b>	<b>33.8</b>	<b>0.5</b>	<b>0.7</b>	<b>0.8</b>
<b>Hill Dalit (1-5)</b>	<b>52.9</b>	<b>31.4</b>	<b>41.9</b>	<b>0.5</b>	<b>0.4</b>	<b>0.5</b>
2. Kami	53.1	31.4	41.8	0.5	0.1	0.4
3. Damai	55.0	35.0	44.6	0.4	0.1	0.3
4. Sarki	49.9	28.8	38.9	0.3	0.1	0.2
5. Badi	47.1	32.0	39.2	0	0	0
6. Gaine	62.3	32.1	47.5	0	1.1	0.5
<b>Terai Dalit</b>	<b>30.1</b>	<b>11.5</b>	<b>21.1</b>	<b>0.7</b>	<b>0.3</b>	<b>0.6</b>
1. Chamar	27.9	9.0	18.9	0	0	0
2. Musahar	9.8	3.8	6.9	0.3	0.3	0.3
3. Dusadh	28.5	8.6	19.1	0	0	0.2
4. Tatma	33.0	10.2	22.2	2	0	1.6
5. Khatwe	26.4	7.2	17.2	0.6	0	0.5
5. Bantar	35.9	10.2	23.4	0.2	0	0
7. Dom	14.9	5.2	10.3	0	0	0
8. Chidimar	34.0	14.9	25.1	0.2	0.6	0.3
9. Dhobi	46.5	19.1	33.6	2.1	0.9	1.8
10. Halkhor	38.1	21.7	30.1	0	0	0
11. Unidentified Dalits	47.6	23.9	35.5	0.7	0.2	0.6

Source: Adapted from Sushan Acharya (2007) *Social Inclusion: Gender and Equity in Educational SWAPs in South Asia Nepal Case Study*. UNICEF Regional Office for South Asia.

### Economic Hardship

The social construction of “Dalits” is primarily based on occupation or division of labour. They face economic hardship every day as their traditional occupations are of menial types and the lowest social status. Non-Dalits attribute inferior status to Dalit occupations such as tailoring, blacksmith, and cobbler. If non-Dalits do work such as tailoring, it is thought of as the “garment industry” and if they cobble shoes, it is “shoe manufacturing”. Such non-Dalits are not treated as untouchables. Dalits’ labour and products are undermined and underpaid by non-Dalits in villages and urban areas.

### “Forced”/“Bonded” Labour

Discriminatory labor practices such as *Bista*<sup>31</sup>, *Balighare*,<sup>32</sup> *Haliya*<sup>33</sup>, *Khaliya*<sup>34</sup>, *Doli*,<sup>35</sup> and *Sino Khaney/Phyakney*<sup>36</sup> etc. are prevalent in rural areas, specially in the mid- and far-western Hills and the Terai regions. Robertson and Mishra write, “The powerful custom demands that only untouchable castes or low status ethnic groups plough the land as *Haliya*.”<sup>37</sup> During peak agriculture season, “high caste” land lords use debt bondage to secure unpaid labour from Dalit labourers. The main reasons for continuation of bonded labour such as *Haliya* include feudalism, indebtedness, landlessness, debt farming, discrimination, and failure of land reform programmes.<sup>38</sup> Robertson and Mishra have noted that these practices violate the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) to which Nepal is a signatory. They are also in clear violation of the Constitution of Nepal – indeed of every Constitution the country has had (except the 1948 one, which never came into force).

For these reasons Dalits have been demanding “the establishment of a labour system that gives justice and a sense of self-esteem to Dalits and their profession,”<sup>39</sup> and “an all powerful Commission to abolish [these] social evils”<sup>40</sup> and others forced upon Dalits such as begging.

### Poverty and Economic Rights

An overwhelming majority of Dalits are among the poorest of the poor by any standard, (though there may

be some exceptions such as those whose traditional occupation is jewellery making, and those who have managed to obtain a good education, occupation or employment). Nepal South Asia Centre (NESAC), with support of the United Nations Development Program (UNDP), prepared the first ever Human Development Index (HDI) of various caste and ethnic groups of Nepal in 1998 (Table 1). The highest HDI is of Brahman with 0.441 and the lowest is of the Dalits with 0.239. The ratio of national to Dalits HDI is 1:0.7 as against 1:1.4 for the Newars and 1:1.3 for the Brahmans. Per capita income is highest among the Newars followed by Brahmans with US\$1,848 and US\$1,533 respectively. The Dalit per capita income is the lowest at US\$764. Dalits rank lowest in each of the indicators of human development. In 1996, 42.6% of the Nepalese generally lived below the poverty line but 68% of Kamis, 67% of Damais and 66% of Sarkis did so<sup>41</sup>. Among Dalits, according to the Nepal Living Standard Survey of 2003/04, Terai Dalits have the highest incidence of poverty, which is 49.2% as opposed to 44.9% for the Hill Dalits.<sup>42</sup>

### Landlessness

In the past, Nepal was a feudal country where land and power were very strongly interconnected. Now it could be described as a semi-feudal society, where land is one of the main capital assets. Those who own the most land are rich and some can make a living, but those who are landless are generally destitute. Ownership of both irrigable and dry land is highest among the “high caste” (5.63 Ropanis of irrigable and 6.64 Ropanis of dry land)

<sup>31</sup> *Bista* is a form of patron-client relations between “high caste” people and Dalits at the community level. a Dalit family is patronized by a “high caste” family as their Bista. It means the Dalit “client” must do their occupational work as and when needed by their “patron”. The “client” gets rewards, mostly in kind and occasionally in cash, for their services.

<sup>32</sup> *Balighare* is a form of forced labour in which Dalits provide their occupational services to their “high caste” masters and get food grains as “wages” during harvesting seasons.

<sup>33</sup> *Haliya* is a form of forced labour in which “high caste” people employ Dalits as agriculture labourers and provide food, clothing and shelter throughout the year, and loans as needed.

<sup>34</sup> *Khaliya* is form of labour done by Dalits for “high caste” people for food grains. Food grains for labour works are paid during harvesting seasons only.

<sup>35</sup> *Doli* is a form of labour work performed during weddings/marriages. Dalits belonging to certain Dalit caste carry the groom and the bride of “high caste” people in “Doli” during their marriage. They receive cash and kind for such labour.

<sup>36</sup> *Sino Khaney/Phyakney* is related to a practice in which it is mandatory for Dalits to dispose of dead animal. In many communities, member belonging to certain Dalit castes are forced to use carcasses as food.

<sup>37</sup> Robertson, Adam and Mishra, Shisham *Forced to Plough. Bonded Labour in Nepal's Agricultural Economy* (Kathmandu: Anti Slavery International and Informal Sector Service Centre (INSEC), 1997) p. 1.

<sup>38</sup> *Ibid*, Pages 35-40. “Debt farming” refers to loans that are made with the primary objective not of earning interest but of forcing the borrower into labour for the lender.

<sup>39</sup> Dadeldhura Declaration made by a Regional Conference on Participation of Dalits in Constitution Making Process and the Restructuring of State organized by Constitution Advisory Support Unit, UNDP from 13 to 15 June 2007 in Dadeldhura (3<sup>rd</sup> point).

<sup>40</sup> Dang Declaration On “Restructuring of State, Constituent Assembly and Constitution Making Process”, 12-13 August 2007 (2<sup>nd</sup> point).

<sup>41</sup> Gurung, Harka *From Exclusion to Inclusion: Socio-Political Agenda for Nepal* (2003: Social Inclusion Research Fund, Lalitpur, Kathmandu, 2003).

<sup>42</sup> Household Survey, TEAM Consult 1998 (Team Consult 1999) p. 278

Table 5. Incidence of poverty, 1996

Social Group	% below poverty line	Rank	Traditional occupation
<b>Caste Group</b>			
Bahun	34	2	Priestly/Politics
Yadav	40	4	Farming/Herding
Chhetri	50	7	Farming/Soldiery
Sarki (Dalit)	65	11	Artisan (Leather)
Damai (Dalit)	67	12	Artisan (Cloth)
Kami (Dalit)	68	13	Artisan (Metal)
<b>Language Group</b>			
Newar	25	1	Trade
<b>Religious Group</b>			
Muslim	38	3	Various Skills
<b>Hill Ethnic (Janajati)</b>			
Gurung	45	5	Farming/Army
Tharu	48	6	Farming
Rai	56	8	Farming/Army
Magar	58	9	Farming/Army
Tamang	59	10	Farming/Portering
Limbu	71	XIV	Farming/Army
Others	37		
Nepal	42.6		

Adapted from Table 7.24 in NESAC (1998) *Nepal Human Development Report 1998* and based on CBS, Nepal Living Standard Survey (NLSS), 1996.  
Source: Table 7 in Gurung (2003) *From Exclusion to Inclusion Socio-Political Agenda for Nepal*, Social Inclusion Research Fund, Lalitpur, Kathmandu Nepal, page 7.

and least by the Dalits (2.05 Ropanis of irrigable and 4.76 Ropanis of dry land). On the basis of one study, the percentage of Dalits who own less than 3 Ropanis of irrigable land is 70% in the mountains, 77% in the hills and 100% in the Terai.<sup>43</sup> Fifty-four per cent of Dalits in the mountains, 54% in the hills and 100% in Terai own less than 3 Ropanis of dry land.<sup>44</sup> In another study, landlessness is shown to be worst among the Madhesi Dalits of whom about 85 to 90% are landless,<sup>45</sup> while only 3 to 5% of the Musahars may have a piece of land.

Hill Dalits do own some land, and migrant Hill Dalits, who have settled beside the highways in the Hills and the Terai, own some land, but its low quality has meant it has not

helped them much to improve their living conditions. Dr. Sharma, quoting a planner, said, "There are some people who cannot sleep without keeping land registration certificates under their pillows.' If so, one needs to ask, how Dalits are sleeping without it for centuries?"<sup>46</sup>

Table 6 is based on Tek Tamrakar's study.<sup>47</sup>

Until recently, land ownership was the basic requirement to get citizenship certificates and those who have no citizenship certificates are not eligible for any benefits from the state. Out of 39,660 Dalit population belonging to all 22 Dalit castes, 14,056 (35.4%) did not have citizenship certificates.<sup>48</sup>

<sup>43</sup> *The Conditions of the Dalits (Untouchables) in Nepal: Assessment of the Impacts of Various development Interventions*. A report submitted to the United Nations Development Programme (UNDP), Nepal, page 278.

<sup>44</sup> Personal communication with Dr. Siva Sharma, an expert on labour issues, in 2007.

<sup>45</sup> Bhattachan, Krishna B., Tej Sunar and Yasso Kanti Bhattachan (Gauchan). *Caste based Discrimination in Nepal* (2007), a final draft report prepared for Indian Institute of Dalit Studies (IIDS), Delhi, International Dalit Solidarity Network (IDSN), Copenhagen, in association with Nepal National Dalit Social Welfare Organization (NNSWOW) and Dalit NGO Federation (DNF).

<sup>46</sup> Tamrakar, Tek "Dalit mahilaka samajik, arthik tatha rajnitik adhikar samrachyanka lagi arkchyan" ("Reservation for the protection of social, economic and political rights of Dalits"), Pp. 57-94. FEDO Table No. 6. Note: Data on Hudke, Kasai and Poda have not been included here as the NDC has removed them from the list of Dalit castes (see above). *Nepalma Dalit Mahila ("Dalit women in Nepal")* (Kathmandu: Feminist Dalit Organization (FEDO), 2006) page 65.

<sup>47</sup> National Dalit Commission *Citizenship and Land Ownership Status of Dalit Community in Nepal*. (Kathmandu: National Dalit Commission, 2005), page 24.

<sup>48</sup> National Dalit Commission *Citizenship and Land Ownership Status of Dalit Community in Nepal*. (Kathmandu: National Dalit Commission, 2005), page 24.

**Table 6. Dalits' access to land**

Caste	Landless (%)	Less than 5 Ropani (%)	6 to 10 Ropani (%)	11 to 20 Ropani (%)	More than 21 Ropani
<b>HILL DALITS</b>					
Kami	11.2	46.5	18.8	17.1	6.5
Damai	28.8	55.1	19.1	3.2	1.3
Sarki	7.6	47.8	24.2	16.7	3.6
Gaine	41.2	45.1	1.4	3.1	-
<b>MADHESI DALITS</b>					
Badi	21.0	31.1	13.0	4.3	4.3
Dhobi	33.3	66.7	-	-	-
Doom	44.2	11.8	-	-	-
Dusadh	33.3	55.6	-	11.1	-

In a largely agricultural and a poor country, landlessness means food deficiency; a study done by the Team Consult found that a majority of Dalit households suffer from food deficiency. The percentage is highest in the mountains with 89.66%, followed by 56.73% in the hills and 53.61% in the Terai.<sup>49</sup>

### Skill Upgrade and Modernization of Traditional Occupation

Each Dalit caste is associated with a specific traditional occupation. Because of lack of training for skill upgrading, of modernization of traditional occupations, and of cooperatives of Dalits, and because of the expanding market for industrial consumer products, Dalits' traditional

occupations have rapidly lost their markets forcing many Dalits either to resort to wage labour or to live in misery. For example, affordable ready-made clothing merchandise has made tailoring work unproductive; factory made shoes have made cobblers work unproductive; factory made agriculture tools and utensils have made blacksmiths' work unprofitable.

### Wage Labour and Wage Earnings

Due to landlessness, poverty and illiteracy, and declining significance of their traditional occupations, many Dalits resort to wage labour; 60.4% of wage labourers are Dalits, as opposed to 20.6% among the Tagadhari and 13.3% among the Matwali.<sup>50</sup>

**Table 7. Percentages of food sufficiency households by caste/ethnic groups and eco-regions**

Caste/Ethnicity	Physiographic Regions			
	Mountain	Hill	Terai	TotalN=5,162
<b>Food sufficient</b>	<b>N=3,745</b>			
Tagadhari	10.40	46.8	42.9	100.00N=1,173
Matwali	57.0	52.7	41.7	100.00N=509
Untouchable	10.3	42.4	47.2	100.00N=1,871
Other	0.00	57.0	94.3	100.00N=192
<b>Food not sufficient</b>	<b>N=1,417</b>			
Tagadhari	9.97	47.21	42.82	100.00 N=1,163
Matwali	5.91	52.76	41.34	100.00N=508
Untouchable	10.34	43.27	46.39	100.00 N=1,826
Other	0.00	5.88	94.12	100.00 N=3,686

Source: Adapted from Table A6. 8a. Frequency of Responses on Food Sufficiency by Ethnic Groups and Physiographic Region in Team Consult 1999: 4285

Note: out of 5,181 respondents, 5162 respondents answered question on food sufficiency/deficiency, of which 28.59% reported food sufficiency and remaining 71.41% (i.e. 3,686 households) reported food deficiency.

<sup>49</sup> Team Consult *The Conditions of the Dalits (Untouchables) in Nepal: Assessment of the Impacts of Various Development Interventions*. A report submitted to the United Nations Development Programme (UNDP), Nepal. (1999)

<sup>50</sup> Ibid Table 6.



Discrimination against Dalits and women in wage earnings is widespread in both rural and urban areas. The annual household income of Dalits from wage labour is Nep. Rs.13,100 in the mountains, NRs13,920 in the hills and NRs.18,870 in the Terai.<sup>51</sup> Team Consult reported,<sup>52</sup>

...that even if the proportion of participation in wage labour is higher in the Untouchable group, the wages they receive in the wage labour market are lower than the wages other categories receive. This is so because of the lower bargaining capacity due to their lower socio-cultural and economic standing in society.

According to an ILO study,<sup>53</sup>

...Dalits received on average Rs96 (about US\$1.28) for a day's work. The mean wage for a female worker was Rs78 (about US\$1.04) as compared to Rs99 for a male worker. The mean market wage for the same kind of job was Rs105: Rs88 for a female and Rs111 for a male worker.

### Political Hardships

Nepal's politics has been controlled and dominated by one-caste (Bahun-Chhetris), one religion (Hindu), one culture (Hindu), one language (Khas Nepali), one sex (male), one region (the Hills), and one class (the elite). Without getting the politics right, the economy and social justice cannot be right. Dalits' participation and representation in politics have been fully controlled by non-Dalits, specially by Bahun-Chhetris.

### Proportional Representation of Dalits at All Levels

The Dalit movement's main demand before the People's Movement of 2006 was "reservation" of seats mainly in education including scholarships, civil service and employment. After the People's Movement of 2006 the main demand has transformed into one for proportional representation at all levels, including in the constituent assembly, and at all levels of decision making.

### Dalits' Representation at All Decision Making Levels

Dalits representation at all levels of decision making is negligible. So far only 8 Hill Dalits, all males, have become a State or an Assistant Minister and of them 5 became Ministers after 2002. A Dalit was a State Minister in the interim Council of Ministers. None has ever become a full Minister. Even during the democratic parliamentary system from 1990 to 2002, no Dalit became a Minister. The Interim Legislature-Parliament formed in 2007 had 330 members; out whom 18 (6%) were from the Dalit community.<sup>54</sup> Of these, 12 were from CPN-M, 3 from CPN-UML, 2 from People's Front, Nepal and 1 from Nepali Congress. Only 4 were Madhesi Dalits. Thirty-three percent were Dalit women. Out of 22 Dalit castes only 6 were represented: (i) Vishwakarma, (ii) Pariyar, (iii) Sarki, (iv) Paswan (Dusadh), (v) Musahar (Sada), and (vi) Ram (Chamar).

Dalit representation in central committee of all major political parties, such as the NCP (Maoists) and Nepali Congress is negligible and non-existent in CPN (UML).

There are many reasons for this situation, including Brahmanism, full control of political parties by leaders belonging to "upper" castes, and lack of substantial initiatives by political parties to eliminate untouchability and caste based discrimination, to increase participation and representation of the Dalits, and give priority to Dalit issues.<sup>55</sup> Also, there are problems within the Dalit community itself. These include lack of unity among Dalit leaders and workers, lack of ideological clarity among Dalits, lack of awareness and interest among Dalits about participation in the political process, poverty, illiteracy and low levels of education.

As mentioned earlier, the situation has improved somewhat in the elections for the CA.

### Double Discrimination against Dalit Women

Dalit women face double discrimination: as Dalits and as women. In other words they face caste based

<sup>51</sup> Ibid. Page 59.

<sup>52</sup> Ibid. Page 60-61.

<sup>53</sup> ILO *Dalits and Labour in Nepal: Discrimination and Forced Labour*. Series 5. (Kathmandu : International Labour Organization in Nepal, 2005) page 40.

<sup>54</sup> See Bhattachan, Krishna B., Tej Sunar and Yasso Kanti Bhattachan (Gauchan) (2007) (above).

<sup>55</sup> See previous footnote.

discrimination, including untouchability, and gender discrimination (within and from outside their own communities). Madhesi Dalit women face further discrimination based on region, language and culture.

Dalit women sometimes face even more discrimination than their male counterparts. For example, Dalit and non-Dalit women go to public water sources to fetch water and wash clothes. In many places non-Dalit women practice caste based untouchability against Dalit women. Similarly, “high caste” Dalit women also practice it against Dalit women belonging to “lower castes”.

Although some Dalits have adopted religions such as Christianity and Buddhism, the majority of Dalits are Hindus. Patriarchy keeps them in a subordinate position in homes and society. They, like women from other castes, play triple roles, i.e. reproductive, productive and community. They have no access to or control over resources. Although Dalit women have more mobility than their counterpart “high caste” women, they have no presence in public positions at the higher levels and it is negligible at the lower levels.

Dalit women suffer from serious forms of violence against women such as trafficking for sex work in brothels in India, domestic violence in case of inter-caste marriage between Dalit girl and non-Dalit boy or boy belonging to “higher Dalit caste,” and rape. Problems relating to such inter-caste marriage are that sometimes the “high caste” boy abandons the “low caste” Dalit girl after having sexual relations, often on the very first day of wedding, or the boy’s parents refuse to accept his Dalit bride; often the boy’s parents and/or other family members take legal action to nullify the marriage, or inflict torture and hardship on the Dalit bride.<sup>56</sup> Boycott of the newly married couple by members of the community is also common, and other problems are fake legal charges, police custody, nullifying the marriage through intimidation, battering, and expulsion from the community.

According to a report prepared by the Human Rights Watch in 2001:

In *Nepal*, Dalit women are economically marginalized and exploited, both within and outside their families. As the largest group of those engaged in manual labor and agricultural production, their jobs often include waste disposal, clearing carcasses, and doing leatherwork. Despite their grueling tasks and long hours, exploitative wages ensure that Dalit women are unable to earn a subsistence living. In some rural areas Dalit women scarcely earn ten to twenty kilograms of food grain a year, barely enough to sustain a family. Many have been driven to prostitution. One caste in particular, known as *Badi* caste, are trafficked into sex work in Indian brothels.<sup>57</sup>

Similarly the Committee on CERD commented on Badi women and girls: “The Committee notes the lack of information in the periodic report on the situation of women belonging to disadvantaged groups who are victims of multiple discrimination, and expresses concern over the situation of forced prostitution of girls and women of the Badi caste.”<sup>58</sup>

### Multiple Discrimination against Madhesi Dalits

NDC has identified 17 of the 22 Dalit castes as Madhesi Dalit castes. All Madhesis, including Brahmins, Kshatriyas, Vaisyas and Sudras, have been treated as second class citizens of Nepal. The State has discriminated against Madhesis, including Madhesi Dalits, mainly on the bases of region, language and culture in relation to recognizing Madhesis as Nepalese citizens, using languages such as Maithili, Bhojpuri and Awadhi in education, local government offices and media, in recruitment into the army, police and civil service, and representing Madhesis in decision making positions at all levels. After the People’s Movement Part 2, the Madhesi movement drew the attention of the nation to discrimination against Madhesis, but there has been concern about marginalization of Madhesi Dalits’ concerns and issues because the Madhesi movement has been led and dominated by the “high caste” Madhesis.

<sup>56</sup> See Viswakarma, Min, Bhavi rananiti tayar garna mahattwapurna khurak dieyeko chha (“Has given plenty of important foods for thoughts to prepare future strategy”), pp. 42-45, in: Bhatta, Gokarna (ed.) *Bikas tatha Sushashanko Mulprabhama Dalit mahilako Sahabhagita* (Dalit Women’s Participation in the Mainstream of Development and Good Governance) (Kathmandu: Feminist Dalit Organization, 2006)

<sup>57</sup> Caste Discrimination: A Global Concern P.21) available at <http://www.hrw.org/reports/2001/globalcaste/caste0801.pdf>.

<sup>58</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/64/CO/5, 28 April 2004, para. 16.

The Madhesi movement forced the Nepal Government to agree to change Nepal from unitary to a federal State, but the Madhesi Dalits are not sure how caste based discrimination, including untouchability, would be eliminated in the new set up.

## Section 4: The Challenges of New Nepal

### Demands for Inclusion

Caste based discrimination, poverty, illiteracy or low level of education, lack of awareness etc. all prevent Dalits improving their livelihood and social status. Discriminatory ideology, policy and practices of the State are mainly responsible for keeping them in the sorry state described earlier. One of the major demands of the Dalit movement in Nepal has been for reservation of positions in decision making positions at all levels and sectors, including political positions, the civil service, army, police, and in employment. They view this as compensation for past wrongdoings by the State against the Dalits and as a means to bridge the gap between Dalits and non-Dalits in both public and private sectors. They take it as their right rather than as generosity shown by the State to the Dalits. The recent government decision to provide for reservation of seats in the civil service, police and army is a positive step, but Dalits need both remedial and preferential affirmative action. Also, affirmative action within affirmative action is required to do justice to Dalit women, Madhesi Dalits and Dalits belonging to the lowest levels in the hierarchy of Dalit castes.

### Empowerment, Inclusion, and Integration

The Dalit movement's goal is integration of Dalits with non-Dalits at all levels through empowerment and inclusion. According to Hira Viswakarma, a leading Dalit intellectual and Dalit rights activist, "Social empowerment is a tool which enables the inclusion of a certain disadvantaged community (Dalit community in our case) into the mainstream society which ultimately leads to the total integration into such society."<sup>59</sup> Dalit individuals, groups, organizations and movements are seeking empowerment in terms of increasing access, awareness,

capability, including knowledge, skill and information, voice, organization, influence, and assets including physical, economic and financial, and human. Dalits' organizations and movement are making efforts, with support from international aid agencies, for empowerment of Dalits to fight against all forms of caste-based discrimination by non-Dalits; of Dalit women to fight against all forms of gender based discrimination; of Madhesi Dalits to fight against all forms of regional and linguistic discrimination; and of "lower caste" Dalits to fight against all forms of internal caste-based discrimination. There are efforts to persuade non-Dalits not to practice caste based discrimination including untouchability against Dalits, men not to engage in gender discrimination against Dalit women, Hill people not to practice regional discrimination against Madhesi Dalits, and "high caste" Dalits not to practice caste based untouchability against "low caste" Dalits. There are efforts, so far inadequate, for Dalits' empowerment in constitutional, legal, administrative, political, socio-cultural, economic, psychological, spiritual and emotional fields.

Dalits are seeking inclusion in terms of institutions, policies, attitudes, and incentives. Inclusion of Dalits has two aspects, one is intrinsic, i.e. within Dalit community, and other is extrinsic, i.e. within the broader environment. Intrinsic aspects of inclusion of Dalits include higher levels of self confidence such as stopping thinking of oneself as a victim, higher level of awareness about rights and responsibilities, higher level of access to and/or control over justice, information, and resources, being more proactive than reactive in advancing the Dalits' cause, and higher mobility and visibility. Extrinsic aspects include higher level of acceptance of Dalit communities in politics, government services, commercial activities, non-Dalits become more responsive to Dalits and Dalit issues, and Dalit inclusion in social, political and personal affairs.

The Dalit movement has been struggling for integration on the socio-cultural, political, legal, economic, psychological, spiritual and emotional fronts. Desired principles of integration are equal rights, equal chances, equal access, equal opportunity, equal sharing, equal results and equal obligations. According to Hira

<sup>59</sup> Power Point Presentation by Hira Viswakarma in a workshop on Organizational Assessment of Feminist Dalit Organization organized in Thaiba, Lalitpur on 3 December, 2003.

Viswakarma, the term 'integration' in the context of Dalits denotes the complete absence of a hierarchical system and full integration of Dalits into mainstream society in which social class would be completely abolished and Dalits would be just one of the many sub-castes with equal status within Nepali society.<sup>60</sup> It means absence of discrimination in the social sphere, and being no longer the lowest income group. Dalit candidates would be elected from non-Dalit constituencies, Dalit targeted institutions would be abolished as all other governmental and non-governmental institutions would take care of the issue, and marriages between high caste Brahmin and Dalit would be fully acceptable. It means Dalits and Brahmins or non-Dalits would be treated as equals.

The main challenges of New Nepal are the elimination of monarchy (achieved), and the effective implementation of secularism, federalism, and an egalitarian society.

### Elimination of Monarchy

The institution of monarchy in Nepal has its roots in Hindu religion and tradition. Hence monarchy has been contributing to the protection and promotion of the varna and caste system that discriminates against Dalits. Except those few Dalits who are loyal to the King and those who are active in political parties that openly support monarchy, the Dalit movement has been demanding elimination of monarchy if Dalits are to be emancipated from caste based discrimination, including untouchability. Dalit leaders believe that the elimination of monarchy is essential for establishment of democratic republic in Nepal, and this was achieved at the first meeting of the CA.

### Effective Implementation of Secularism

Hindu religion, society and culture created and perpetuated the condition of "Dalit" in South Asia. Though some Dalits have adopted Christianity and some Buddhism, the overwhelming majority of Dalits of Nepal remain Hindus. Controversy continues about whether Dalits could get rid of caste based untouchability and other forms of discrimination as these are one of the hallmarks of varna and caste in Hindu society. Hindu Dalits want to eliminate caste based discrimination, including untouchability, and

believe that adoption of Hindu religion as the State religion by Nepal has been responsible for continuation of caste based discrimination, including untouchability. Nepal remained a Hindu state until 2006 when the Interim Parliament declared Nepal a secular country. Later this was incorporated in Article 4 of the Interim Constitution of Nepal. It remains to be seen whether this will be carried into the new Constitution, and also what precisely "secularism" will be taken to mean in the new Nepal. One should not forget that India has been officially secular for all its independent existence but caste discrimination remains a serious problem.

### Federalism and Autonomy

Dalits have started debating the relevance of federalism to Dalit communities. Dalit intellectuals such as Ahuti and Padma Lal Viswakarma plead in favour of federalism and suggest the need for intensifying the debate to achieve clarity about how proportional representation and Dalit rights can be ensured in autonomous regions within a federal system. But many Dalits wonder about the implications of their lack of a traditional homeland with concentrations of population in specific geographical areas, especially when there is so much stress on ethnicity as a basis for the formation of the states within the federation. Dalits are scattered in all VDCs of the 75 districts (see above). There are however three possibilities for Dalits to exercise their rights to autonomy: (a) to demand non-territorial autonomy for Dalits, (b) demand territorial autonomy in the mid-west and the far-west region in the Hills for Hill Dalits, and in Siraha and Saptari in the Terai for Madhesi Dalits, and (c) demand sub-autonomy within autonomous regions based on ethnicity, language and region. However, discussions are at such a preliminary stage that most Dalit leaders and activists are more concerned about securing proportional representation in any autonomous region and federal government, and have not yet pursued these other lines of thought.

### Egalitarian society

The leaders of political parties and civil society and academics often envision equality and equity in terms of caste, ethnicity, language, religion, culture, gender,

<sup>60</sup> Preceding footnote

region and class. Left-oriented political parties envision a classless, casteless and gender equitable harmonious society and country. They believe that problems related to caste, ethnicity, language, religion, culture, gender and region are part of the class problem; once the class problem is solved, all other problems would be solved. Some Dalits believe that caste based discrimination, including untouchability, is the mother of all problems facing the Dalits. How to create a “New Nepal” where all caste, ethnic, linguistic, religious, cultural, gender, regional groups and class would be treated equally is a real challenge facing the Constituent Assembly in particular and the Nepalese people in general.

## Conclusion

The question of caste based discrimination, including untouchability, is not just one of a constitution and law, or of the state, but also of society. Constitutional and legal provisions, and policies, plans and programmes are necessary but not sufficient to eliminate such discrimination. It is equally true that people’s attitudes and practices of caste based discrimination are unlikely to go away without such provisions. The new constitution

must contain provisions necessary to eliminate caste based discrimination, including untouchability.<sup>61</sup> After promulgation of the new constitution, law, rules and regulation, policies, plans and programmes must be developed in tune with the constitution for effective implementation of such constitutional provisions to be possible.

It is not only the state but also society that must show the necessary will to eliminate all forms of caste based, gender based and region based discrimination in Nepal. Writing against caste based discrimination in the constitution, laws, plans and programmes may not be difficult but the real difficulty lies in changing the mindset and attitudes of individuals who practise caste based untouchability and other forms of discrimination in everyday life. People must first of all recognise that they have prejudices. Secondly they have to be prepared to examine those prejudices, understand where they come from, and not to rationalise them (as by insisting the reason one has no Dalit employees is because none are qualified when in reality one has made no attempt). And people must be prepared to change their behaviour, and to work together to change the behaviour of whole social groups.

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<sup>61</sup> See further the following item in this publication.



# From Charter to Constitution

- Jill Cottrell

Many groups, during and since the *jana andolan II*, having been formulating demands – demands that reflect what they believe they need for a life of dignity, and in order to have more control over their own destinies. Some of those demands have been addressed to the Interim Government, and some of them have been framed in terms of what should be in the Interim Constitution (if necessary amended). This paper recalls that a major demand of the *jana andolan* was for a Constituent Assembly. But not everyone understands what a Constituent Assembly is: I recently met someone who reported a conversation with a taxi driver who said “Everything will be better after the Constituent Assembly; even wives who have run away will come back”. Most people have less faith in the Constituent Assembly; the purpose of this paper is to outline how the demands of various groups can be reflected in the outcome of the Constituent Assembly. The paper was written for a regional Dalit conference, and has been amended to take account of the Kathmandu Charter, so specific examples of demands reflect what Dalits want. But most of the points made could apply to other groups as well.

## What does a Constituent Assembly do?

A Constituent Assembly is – or should be – a gathering of the nation. I should like to suggest that it is a body that writes; and it writes three things, or in three different ways.

The major task of the Constituent Assembly is to write a small book: that is the Constitution of Nepal. The Constitution is a law about how the government is formed, where its power comes from, how its powers

must be exercised, and also about the rights of the people of the country. It may be the most important law in Nepal, but it must not be too big. Ideally it should be possible to print the Constitution as a pocket sized volume that individuals can carry around as a reference, on their rights and on the responsibilities of government (see the Constitution of South Africa which is about 10cm x 12 cm x 1cm).

The Constituent Assembly will also write a big book – or probably a set of books: the *Proceedings of the Constituent Assembly*. This should be a record of all the discussion in the Constituent Assembly. The significance of this is that it shows why the Constitution was written the way it was. If we take the idea of inclusion, which has been the main theme of demands since April 2006, the new Constitution will probably use this expression very frequently, and no doubt it will be defined in the Constitution. But the richness of the idea of inclusion will be hard to capture in full in a legal document like that. But in the future, people trying to understand or apply the Constitution will be able to read the full proceedings of the Constituent Assembly.

Is this of any practical value? It can indeed be. Even today Indian courts refer to the Debates of that country’s Constituent Assembly, which sat between 1946 and 1949, in order to understand fully what the founders of the nation intended in the Constitution. And not only courts, but public servants, political leaders and the people can find guidance in those proceedings.

But the Constituent Assembly will write somewhere else: on the hearts and minds of the people of Nepal. The Constituent Assembly will be a major national event;

not just a major event in the nation but of the nation. It is an occasion for redefining Nepal and what it means to be Nepali and who are Nepali. If the Constituent Assembly is a success, the working of government, the behaviour of politicians and the understanding that the people have of government and of their rights will have changed for ever.

## Demands

How does this relate to the demands of the Dalits (or the janajatis, women, persons with disability or Madhesi)? It is important that all groups that have been pressing their demands for justice, for inclusion, for more control over their own lives, and for fair government, for work, food, education or other changes to their lives, should do what is necessary to get those demands written, through the Constituent Assembly, into the Constitution and the proceedings of the Assembly and onto the hearts of Nepalis.

The sufferings of Dalits must be inscribed in the proceedings of the Constituent Assembly, so that even if the new Constitution deals very briefly with the issue of untouchability, it is perfectly clear that the intention is to end that suffering. And it must be written onto the hearts of Nepalis so that the intention of the Constitution has the support of the whole nation (because that is what will be needed to make the new Constitution effective).

Dalits – and other groups – therefore should not limit their submissions to the Constituent Assembly to simple legal proposals. It would be good to be able to make concrete suggestions about articles for the Constitution, but those proposals should be clearly arising from the realities of the Dalit situation. Even the suggestions for concrete legal provisions can be expressed more widely than you really expect will be accepted eventually. In the end the Constitution may reflect those demands more concisely – but if the full demands have been discussed and sympathetically received they will be written into the Constituent Assembly Proceedings and be used in interpreting the Constitution.

## What might be in the New Constitution?

Dalit demands have included the following:

- Fair access to water
- Fair access to education
- Dalit teachers in schools
- Syllabus and school books that do not belittle and denigrate Dalits
- Chance to work
- An end to violence against Dalit women
- Access to land for the landless
- An end to all forms of bonded labour
- A change in attitudes
- A real end to untouchability
- Fair representation in the political system, including parties, public service and public elected and appointed bodies
- Fair representation in the judiciary and fair hearing from the judiciary that must understand and be sensitive to Dalit issues
- An accurate census

Before looking at what a Constitution might say about these issues, it is important to understand the nature of a Constitution. Of course it is a law – it lays down rules which the government and everyone must follow. But it is more than this – it is the founding document of the nation, which means its people. The people must be able to see themselves in it. It should reflect a vision of the nation that all share. So though laws in general have little emotion in them, in the case of a constitution it can be quite appropriate to have some emotion, and even something a bit like poetry. Some constitutions have been a bit like manuals, of government – explaining not just what must be done, but even why.

### Water

There is no reason why the Constitution could not say that everyone has the right to access to water. Nepal has accepted the International Covenant on Economic Social and Cultural Rights, which includes the rights to a decent standard of living, and specifically mentions food. This is now interpreted as including water. It does not mean



that the Government is expected to turn a magic tap and make water flow into every home. The International Covenant includes some important ideas that can be also introduced into the Constitution. These include non-discrimination (everyone must have equal access to the rights), and progressive realisation – that is that the state (the government) has the duty to move towards full realisation of the right. And there is also the idea that the government must use the resources that it has to realise those rights. It is not expected suddenly to become rich enough to work miracles. The Constitution could include the requirement that the state should give priority to those whose need is greatest. In interpreting the Covenant other important ideas have been developed. Especially there is the idea that the most basic duty of the state is to respect the rights: this means that the state must not itself interfere with the right to access to water. Secondly the state must protect that right from interference by others – this would include the duty to protect water supplies from pollution, and over-use. There is a duty actively to fulfil the right only if people cannot do it for themselves and if measures of protection do not achieve the right. So the emphasis is on people being free to satisfy their needs themselves, with the duty of the state being to support the people in that. All this could be concisely written into the Constitution.

### **Education**

Education is another right under the Covenant. In fact there is a duty to ensure primary education immediately – not progressively. It would be possible to go further and say that the right to education includes the right that there are teachers from all communities. And the right could also include a right to a syllabus and to school books that do not portray particular groups in a derogatory light.

### ***Chance to work***

The same Covenant includes the right to work and to decent conditions of work. Many constitutions have included rights of this sort. The same principles apply: that the state must try to achieve the fulfilment of these rights – not by giving everyone jobs but by not standing in the way of people working, by reasonably protecting working rights – though positive steps to make work possible might also be an obligation in some circumstances.

### **An end to violence against Dalit women**

This is a difficult topic. Anyone can see that a statement in a Constitution that “There must be no violence against women” will probably achieve nothing. Violence against anyone is already a criminal offence. The reasons why violence against women is such a problem in many countries are complex, being concerned with culture, economic status, social attitudes including those of law enforcement agencies and other factors. The fact that it is complex does not mean it is not a suitable subject for discussion at the Constituent Assembly. The message at this point must be: Get the topic on the agenda of the Constituent Assembly. Do not accept arguments that this is nothing to do with a Constitution. Insist that it is a topic worthy of discussion and that there may be things that even a Constitution can say that are relevant to the issue.

### **Access to land for the landless**

This is another very complex issue and one that a Constitution cannot produce any magic solution to. But again this is something that it is entirely appropriate to discuss in a Constituent Assembly. The Constitution may be able to remove some obstacles to land reform: for example in some countries property rights have stood in the way of efforts to get land for the landless. Discussions on such a right must take this into account. Maybe there is something about governance that creates problems over land allocation. And if there is a federal system, the effectiveness of policies on land may depend on which level of government has the power to make decisions on this topic, and where the control of resources lies. The important thing again is to get the issue onto the agenda of the Constituent Assembly, and insist that it receives full consideration.

### **Express recognition of Dalit rights**

Dalits face psychological obstacles that communities in other countries face: that there is an expectation that Dalits will not be Chief Justice or Prime Minister or hold other public offices. It is the sort of expectation that women face in many countries. In drafting their 1996 Constitution the South African Constituent Assembly devised an interesting approach: as well as gender neutral language (not a big problem in Nepali), they went to further to clarify that when they said

that a person could be President etc. they really meant any woman as well as any man. So the Constitution says things like “the National Assembly must elect a woman or a man from among its members to be the President”.

Of course the situation in Nepal is much more complex. Not only women, and Dalits, but Madhesi and Janajatis face this type of psychological barrier in a country in which for so long almost all public offices were held by Hill Bahuns and Chhetris. But a provision which said “the House of Representatives must elect from among its members a woman or a man, who can be a Dalit, Madhesi, Janajati, Bahun or Chhettri, to be its Speaker” would perhaps be seen as too clumsy (and it would have to be repeated a number of times in the Constitution). An alternative approach would be to say that “whenever this Constitution mentions the word “individual” or “citizen” it must read as including “a woman or a man, whether Dalit, Madhesi, Janajati, Bahun, Chhettri or any other person without discrimination based on ethnicity, caste, religion, region, origin, birth, disability or any other distinction unless clearly required by the context”. A lawyer would take the view that this is not needed – because of the general principle of equality before the law - but a constitution is not just for lawyers.

Some constitutions have one or more articles that deal in some detail with the rights of women. This is so even though much of the content is essentially repeating the basic principle that women are equal in rights and respect to men. This is again because for generations other assumptions have underlain the position of women in society. It would, on similar reasoning, be possible to have an article in the new Constitution that was specifically on “Rights of Dalits”. It could spell out not just the basic principle of equality, but could also deal specifically with the issue of water, of education, with the duty of the state to work towards changes in attitudes, even perhaps of the special position of the Badi people (without perhaps identifying any group by name other than Dalits as a whole). Again – this is a topic that is worth raising – it would generate useful discussion, and it would get the whole position of Dalits onto the Constituent Assembly agenda and into the Constituent Assembly records.

## Inclusion

It is perhaps unnecessary to say a lot about this. Much of the discussion has so far concentrated on inclusion and this has led to the Interim Constitution being far more inclusive than any previous document. In theory inclusion is now achieved. It may be that the current provisions are not the best way of achieving this: the Constituent Assembly should discuss this, especially in the light of the recent elections. And new laws and practices will be needed to ensure that inclusion in the public sector is really achieved. As the CHRGI Briefing Paper suggests, firm regulation of political parties is needed also.

## Bonded labour

The *kamaiyas* have been freed many times! This is logically impossible, but the fact that it has happened shows how weak laws and constitutions can be. And other forms of traditional unequal labour relationship, like that of *haliyas*, remains. A new Constitution could be more specific on the issues in Nepal, and also should provide for some form of compensation for people who lose their “chains” but also lose their livelihoods, which is what happened to the *kamaiyas*. But drafting an effective provision – one that gives real, but reasonable rights – would not be easy. The Interim Constitution did promise compensation – but not in a legally enforceable way.

## “Empty words”

If you read the 1990 Constitution you will find some nice sounding provisions such as:

The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment.

You may be tempted to wonder why there was little sign of the State doing any of this. One possible explanation is that this is a “State policy” only – it does not create any legal right. So you could argue that it creates no legally enforceable duty. A number of countries have such provisions. Creative courts have sometimes been able to give some legal force to these provisions, but it is much more difficult than in the case of rights

that can be taken to court. The South African constitution, for example, does not have such unenforceable provisions, but it does have rights to access to housing and to health, which can be used as the basis of some sort of legal claim in the courts.

Another type of weak, or ineffectual, provision has been that which requires a law to be passed. The 1990 Constitution said that no-one must be discriminated against on the grounds of caste, and "Any contravention of this provision shall be punishable by law". But if no such law is ever passed, the provision has very little effect. Sometimes the Constitution was interpreted as though it said "there must be a law". The right to information was like this: it did not say there must be a law, but it seemed to be assumed that the right was of no effect unless there was a law, which was passed only very recently.

Some rights were "given with one hand and taken away with the other": the Constitution said that privacy is inviolable "except as provided by law". This means that a law could take away the rights.

Dalits, and other groups, preparing proposals for provisions in the new Constitution should guard against such provisions. And it would also be possible to provide for more active implementation of the Constitution. Some have suggested that the new Constitution should set up a special commission with the responsibility to ensure, as far as possible, that the Constitution is implemented. And it might also be possible to say that, if the Constitutions does need a new law, and no such law is passed, the courts should be required, as far as they can, to develop the law themselves to implement the Constitution.

## Helping Constituent Assembly Members to be Effective

There is little experience in the Dalit community about being members of parliament, and, since there has been little in the way of effective local government in recent years, there is little experience even at that level. Dalit – and other new members – will need support. That support can come in various forms. Some of it will be emotional.

The work of the Constituent Assembly may at times be stressful, and people who have come to Kathmandu to be Constituent Assembly members may feel isolated if they are far from their homes and families.

Other support will be practical. The members will need to be supplied with material to use in discussions. That material should include concrete suggestions for provisions in the new Constitution, as well as background information to support the suggestions. It will need to include material to counter anticipated objections to the situations that are made.

Women members may need extra help and support. What will happen if they have children who depend on them at home? Members of the community should be prepared to help Constituent Assembly members with child care, to rally round if a woman's family member should be sick.

One of the first things that the Constituent Assembly will do is to adopt its rules of procedure. Thought should be given to ensuring that these facilitate rather than restrict the full participation of individual members. If the Constituent Assembly can sit all night this is likely to disadvantage women. If members must use Nepali to address the Assembly, this may limit the participation of members who are not confident about speaking publicly in that language. Rules should also prohibit the use of expressions that are derogatory about any individual members or category of members.

## Responsibility of the Individual Members

A heavy responsibility will rest on the 601 members of the Constituent Assembly. Many of them will have limited understanding of the nature of a Constitution. This is natural. But it does mean that each member must accept the responsibility of trying to learn as much as possible about what a constitution is and how it works. They should also make sure that they understand the positions of their party and also the concerns of their individual communities. No member should think of himself or herself as just "voting fodder" – someone whose responsibility is to vote as the party directs.

Members must read about constitutions, and about the issues. They must take an active interest in the opportunities that will certainly be presented to learn about the work of the Constituent Assembly. They must learn to speak in public. They must familiarise themselves with the material provided by various bodies that are relevant to their concerns. They will have a particular responsibility to learn about the issues that relate to the subject committee on which they serve. In relation to the issues on which they and their community have a particular interest they must understand not just what the proposal are and what the arguments in favour are, but they must learn what the arguments against are going to be. And they must be able to decide whether those arguments against have any validity – and if so be prepared to think again, and if not be able to counter those arguments. And they must be prepared to listen – because those who do not listen will never understand what is going on, and what arguments are being made on the other side.

A particularly difficult issue for members will be the possible tension between their responsibility to party and their responsibility to their own community and other causes. It would very often be best to try to persuade their own party that a particular provision that the Dalit community wants (or the Janajatis etc., depending on their own group), or that a particular region wants, is something the party should adopt as a policy. But what happens if the party simply refuses to accept this position? There is a risk that a party might try to discipline a member who did not toe the party line. And a person who is dismissed from their party would, it seems from the Interim Constitution, lose his or her seat. But hopefully the parties will realise that every member has more than one identity. Members will not just be party members: they will be men or women, Dalits, Janajatis, persons with disability, Muslims, Buddhists, environmentalists, professionals, farmers etc. and they will all have views on what the interests of these various communities require. Dalit or Janajati or women members etc will need to work not just within their parties but in alliance across party lines. Parties should accept that this may be in the interest of the nation as a whole, and not treat it as simply disloyalty. And – parties will not be able to dismiss all Dalits, Janajatis, women and Madhesis if they choose to caucus across party lines!

## Can a Constitution be “self-executing”?

Anyone who reads the 1990 and Interim Constitutions thoughtfully may conclude that constitutions are ineffective weapons – for there are in fact a good number of fine sounding provisions about rights, including for Dalits, even in the 1990 Constitution (though it does not use the word “Dalit” specifically (see Appendix 3). If the 1990 Constitution had been fully implemented, would the condition of Dalits have still been so bad?

Even when there is the possibility of going to court, the results may be disappointing. As commented in Appendix 4, implementation of Supreme Court decisions about human rights is weak. There is especially no effective enforcement mechanism for orders to pass laws. Indeed it is not easy to devise an effective binding mechanism. The real power courts have to enforce their orders on constitutional matters is to hold individual liable for contempt of court – for which it is possible to send a person to prison. In order to do, this some person must have been ordered to carry out something which they had the capacity to do and failed to do. When “the government” is ordered to pass law, who has to act? What exactly do they have to do? How can government be ordered to make a law when that is the responsibility of the legislature? Other problems about relying on courts is that they only have the capacity to deal with a small number of cases. And they are not quick.

So legal action has its values, but is no substitute for political action. Political pressure may be necessary to ensure that even court decisions are carried out.

But there are some possibilities for drafting a constitution with more in-built mechanisms to ensure that it is implemented. The expression “according to law” should be viewed with the greatest scepticism: its effect is usually to make rights dependent on laws that may never be passed. As far as possible, courts should be able to enforce important rights without waiting for new laws. A Constitution might even give the courts power to draft directives with the force of law – if within a reasonable time government does not do so. The Constitution might create special mechanisms such as an independent commission for a period of perhaps 5 years to monitor

implementation, to give publicity to successes or failure in implementation, to make concrete proposal for new laws that are essential, and with the power to go to court to obtain orders that require the authorities (as far as possible) to do what is necessary to implement the Constitution. And the people can be given broad rights to approach effective institutions, including the courts, and bodies like the Human Rights Commission.

It is probably clear that the question posed at the beginning of this section is, frankly "No". A Constitution, however good it is, will require genuinely effective and independent bodies (particularly courts and commissions) to ensure that is carried out. Even if the Constitution says "a body must be appointed" someone must appoint

it – and only the courts could issue a legally binding order that this is done. And the people too must take initiatives to enforce their rights – and the rights of others.

Constitutions can be important. They may be important because they obstruct effective rights. But they can also give rights that are genuinely of value. But they will not have any effect if they remain on the paper. The rights must come alive because people insist on their rights being fulfilled – by political and by legal action. Civil servants must be trained to respect rights. Groups that have been discriminated against in the past must insist on being treated with respect. Genuine liberation for the Dalit community will be a revolution, in which the Constitution plays a part – important, but still only a part.



# Recasting Justice: Securing Dalit Rights in Nepal's New Constitution

- Center for Human Rights and Global Justice

## Introduction

The Center for Human Rights and Global Justice (CHRGJ) at New York University has kindly allowed us to include the summary which follows of their recent publication, *Recasting Justice: Securing Dalit Rights in the New Constitution* (2008).<sup>62</sup> This is the result of a very thorough project of study of the Interim Constitution, and also of the situation of Dalits in Nepal – which was the subject of an earlier CHRGJ report *The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal* (2005)<sup>63</sup>. This new report was launched by Jagaran Media Center in Nepal in April 2008 and it will be translated into Nepali.

We are very pleased to be able to broaden the range of people having access to this publication. Following discussion with the CHRGJ, we make the following small number of comments:

1. After the recent exercise in distributing citizenship certificates (2007) more Dalits have the certificates to which they are entitled. We would suggest that there are two issues here: the new Constitution should make it clear that citizenship and the evidence of it in the form of citizenship certificates are a right. Separately, it is wrong to give rights only to citizens unless there is very good reason (such as the right to vote) (see page 2).
2. The objective of the suggestion that the Constituent Assembly should “Ensure that the new constitution’s equivalent to Article 23(2) contains a similar clause prohibiting the encroachment on the religious rights

of others” is to ensure that Dalits, like others, are able to exercise their religious rights such being able to enter temples. So it should be read together with other recommendations including the immediately preceding suggestion to “Prohibit the use of religion to encroach upon all fundamental rights and freedoms of others” and the suggestion on page 10 to “Include language that explicitly prohibits exploitation in the name of religion” – because of the risk that some people would argue that their religious rights (e.g. as a Brahmin) includes treating Dalits as inferior (see page 7). So in the new Constitution it should be clear which principle is dominant (and that principle is the dignity of all).

3. While we would agree that the inclusion of economic social and cultural rights in the Interim Constitution is to be welcomed (see pages 8-9), we would note that these rights are weakened by the provision that most of them are “according to law” (Article 16(2) on basic health services, Article 17 on education, and Article 18 on social security, while the right to property (Article 19) it is subject to the existing law). The new constitution must use these sorts of formulations only when strictly necessary and provide for the new Constitution to be as much as possible “self-executing”, and include provisions that ensure that other implementing steps actually take place. It took 17 years for the Right to Information Act to be passed (and 12 years after the Supreme Court ordered that a law be passed) – people should not have to wait so long for the new Constitution to be implemented.

<sup>62</sup> The full report, Center for Human Rights and Global Justice, *Recasting Justice: Securing Dalit Rights in Nepal's New Constitution* (New York: NYU School of Law, 2008), is available on their website at <http://www.chrgj.org/projects/docs/recastingjustice.pdf>.

<sup>63</sup> The full report, Center for Human Rights and Global Justice, *The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal* (New York: NYU School of Law, 2005), is available on their website at <http://www.chrgj.org/docs/Missing%20Piece%20of%20the%20Puzzle.pdf>.

4. Consistent with the report's focus on Dalit rights, there is a suggestion that the new Constitution should: "Establish the National Dalit Commission as a constitutional body" (page 12). This is motivated by the desire to ensure that there are strong institutions to protect rights, and a concern that in the past the Dalit Commission has had inadequate statutory authority, autonomy, and sovereignty. It does not necessarily follow that the solution is to have a different body for each deprived group. Too many bodies may strain the nation's human and financial resources. Consider also the situation of a Dalit girl

who suffers some unconstitutional treatment: does she go to the Dalit Commission, the Women's Commission, the Children's Commission or the Human Rights Commission? There has been a good deal of discussion around the world on the issues of "one commission or many?", and opinion in several countries, including the UK, South Africa and Australia, has tended towards a smaller number of powerful bodies. It is certainly something that the CA should discuss.

But these minor points aside we wholeheartedly recommend this interesting report.

### Main proposals by the Center for Human Rights and Gender Justice about a New Constitution for Nepal in which Dalit Rights are protected

- Clear provisions on citizenship that do not discriminate between men and women (and recognise a person whose father OR mother was Nepali as a citizen)
- Clear and effective language on rights and equality of all, ensuring there is no room for doubt, no exceptions and no loopholes
- Ensure that the freedom to choose one's occupation is fully protected, with no possibility of exclusion on grounds that might affect the right of Dalits
- Ensure that the framing of the right to religion or to culture cannot be used to justify caste discrimination
- Ensure effective regulation of political parties including preventing them discriminating on unconstitutional grounds
- Include social and economic rights – such as food, education and health – as effective rights (albeit to be achieved progressively)
- Include effective remedies to protect rights
- Establish the National Dalit Commission as a constitutional body

Note: this list only gives an indication of the proposals. Read the full "Briefing Paper" or, even better the full report.



## Appendix 1

## Dalit castes, sub-castes, surnames and traditional occupations

Castes	"Sub-Castes"	Surnames	Traditional Occupation
Hill Dalit			
Kami			Metal work
	Kami	Agri; Acharya; Afaldhoti; Od; Kasara; Kallohar; Kalikote; Kaliraj; Gadal; Gahatraj (Gahate); Kumarki; Kaini; Koli; Koirala;	Produce Khukuri, weapons, agricultural tools etc.
	Sonar	Khadkathoki; Khapangi; Khati; Gajamer; Gajurel; Gadilee; Giri; Gotame; Gawa; Jandkami; Tamata (Tamrakar); Niraula;	Gold and silver works, jewelery
	Lohar	Nepal; Panthi; Pokharel; Paudel; Paudeli; Barailee (Baral, Baralee); Sripali; Diyalee; Dudhraj; Bhushal; Bhool; Mahilipar;	Iron works and agricultural tools
	Od	Rahapal; Rajilauhar; Sapkota; Sigaure; Sijapati; Setipar; Ramdam; Rijal; Lwagoon; Sonam; Hemchuyuri; Tiruwa;	House construction, works related to soil and timber
	Chunara	Ghatanee (Ghatne); Ghamal; Ghartee; Ghimire; Ghamchatla; Chunar; Chhista; Thagunna; Thatara; Nagarkoti; Pallaya; Parajuli; Potel; Buchebhale; Banskota;	Produce wooden utensils such as Theki, Dudhero, Madani
	Parki	Bhatta; Bhattarai; Mahar; Rasailee; Suchyuree; Sundhuwa; Setisuruwal; Setimahar; Sashankar (Sadshankar);	Produce bamboo products such as Dalo, Naglo etc.
	Tamata	Serela; Lamgade; Sob; Ruchal; Pahari; Padhyabati; Lamakarki	Produce copper utensils
Sarki			Leather works
	Mijar	Acchami; Uparkoti; Upreti; Kamar; Kisan; Koirala; Khatiwada; Giri; Gaire; Gairipipal; Gathe; Ghimioire; Chand; Gotame; Chudal;	Honorary title granted by the rulers
	Charmakar	Chuhan; Thagunna; Chhamarki; Thaurasya; Thadarai; Dale; Tolangi; Thak; Thapaliya;	Produce leather products
	Bhool	Thapa; Daulakoti; Dhaulakoti; Dabe; Dahal; Dulal; Dhamel; Dhamala; Dhanali; Payeli; Purkoti; Pulami; Paudel; Dasel; Bamarel; Bayelkoti; Bishunkhe; Bastakoti; Bogati; Bhagyal; Bheyel; Bhool; Bhurtel; Bhipal; Mangrati; Majakoti; Majaboti; Malbul; Malchok; Mudel; Ramtel; Ruchal; Raut; Roila; Roka; Lamjel; Lamsal; Sahi; Srimali; Siraute; Surkheti; Sanyel; Sanjawal; Hamal; Hitang	Produce leather products

Cont...

Castes	"Sub-Castes"	Surnames	Traditional Occupation
Damai/Dholi			Play Panche Baja musical instrument during marriage and on auspicious occasions
	Pariyar	Adhikari; Asasaya; Aujee; Kanal (Kandel);	Tailoring
	Suchikar	Katuwal; Kakrki Dholee (Mudula; Sutar;	Tailoring
	Ngarachi	Lama; Khulal); Kalakheti; Koirala; Khatiwada; Khati; Guide (Guindel); Gautam (Gotame [Siwa]); Ghale; Gurung; Cahar; Chuhan; Jairu; Thagunna; Thatal; Daude;	Play Nagara musical instrument during special occasion in temples and palace Government's messenger to inform community people by playing Dhol
	Dholi	Dhyakee; Tiwari; Trikatri; Thapa; Darnal; Das; Nagarchi; Negi; Nepal; Naubag; Chudal; Panta; Panchkoti; Pokharel;	
	Hudke	Bardewa; Bagchand; Bagdas; Baiju; Budhathoki; Budhaprithi; Bhandari; Bhattarai; Bhitrikoti; Bhusal; Magar; Mote; Mahara; Male; Rajabar; Ranapaili (Ranapal; Ranapaheli); Rana; Rai; Raingai; Raika; Ryainjhyain; Lapre; Lamghate; Luintel; Shildhar; Sunam; Sundas; Suncheuri; Sahi Samundri (Sai; Saisamundri; Samundrasai); Suji; Hingmang; Hudke; Aptarya; Ghalek; Bhedikar; Betuwa; Dharal; Retan; Bitalu; Nagarkoti; Yagne; Ghatani; Bhende Siba; Kekhure Siba; Sungure Siba; Damai Pariyar; Ratnapariyar; Achhame Pariyar; Chhinal Pariyar; Thak Pariyar; Nakadholi	Play Hudke musical instrument
Gaine	N/A	Adhikari; Kami; Kalakausik; Kala Paudel; Kalichan; Gosain; Jogi; Thakuri; Turki; Bahun; Budhathoki; Baikar; Badhyakar; Bestha; Bista; Bogatai; Bhusal (Parbate); Maheswar; Biswakarma; Bishnupad; Raisamundra; Sursaman; Setaparbat; Setichan; Kookchin Rana	Singing by playing Sarangi musical instrument
Badi	N/A	Khati; Rasailithapa; Rasaili; Lekali; Chhinal; Baral; Thakur; Rana; Kumal; Khadka; Jogi; Bote; Upadhyaya; Rijal; Singha; Shrestha; Paudel; Adhikari; Kami; Damai; Badsaha; Khan; Dhital; Niraula	Produce musical instruments such as Madal, Dholak, clay products such as Chilim, gagri (and lately associated with sex work by some women)

Castes	"Sub-Castes"	Surnames	Traditional Occupation
Madhesi Dalit			
Chamar/ Harijan/ Ram	N/A	Ram; Mochi; Harijan; Rabidas (Raidas); Chamara; Mahar; Mahara; Mehara; Raut; Bhagat; Das; Bajar; Bagh; Dhusiya; Daswatiya; Madhesiya	Leather works
Musahar	N/A	Sada; Sadaya; Rishidev; Rishikul; Raut; Tirhutiya; Madhaiya; Kharपुरia; Satnapuria; Kauchh; Gharmunta; Pachharu; Mudi; Macharu	Collect food grains from holes in the farm; animal grazing
Dusadh/Paswan/ Pasi	N/A	Paswan; Hajari; Hajara; Madhaiya (Magaiya); Kurmi; Kamhar; Paliwar; Kurna; Dar; Sarjaha (Surajiya); Panjiyar; Pakhir Daid; Suryabanshi	Godait ('Messenger') of social events; village watchmen; Kamtiya (watchmen to secure harvest)
Tatma	N/A	N/A	Weaving
Khatbe	N/A	Mandal; Tirhutia; Badaha; Kyotar; Parasa; Pokharbhinda; Hasuliya; Newar; Nanaud; Bake	Weaving clothes; spinning; carry Doli during marriages
Dhobi (Rajak)	N/A	Kanujiya; Madhaiya; Belbar; Surjaha; Tamoli; Tirhitiya; Turtuk; Dhoiba; Baitha; Rajak; Pathik; Safi; Arya	Wash clothes
Bantar (Sardar)	N/A	Rajdhani; Dhani; Sardar; Majhi; Raut; Bant	Soil work
Chidimar	N/A	N/A	Hunting birds
Dom	N/A	Kothita; Mkhaita; Talwar; Tawakait; Chachewar; Kolniyar; Sanparaya; Ghatait; Amleriya; Mahawaita; Balgachhiya; Kanoon; Bakhatiya; Modaliya; Jhojhawa; Chirniya; Bhalwait; Baisi; Baswar	Bamboo products; play musical instruments; cut umbilical cords during child birth, dig burial place; burn dead bodies
Mestor/Halkhor	N/A	Jamadar; Raut; Sariswal; Turka; Amariya; Dahaiya (Darwe); Panpuri; Bakhariya; Mahar; Mestar; Halkhor	Cleaning streets
Kuswadiya/Patharkatta	N/A	N/A	Stone products
Kakahiya	N/A	N/A	N/A
Kalar@	N/A	N/A	Begging
Khatik	N/A	Chandal; Barawa; Bhogariya; Bachara; Chaula; Khirahi; Tawada; Chamariya; Taki; Dayama; Bagadi	Deer leather work
Kori	N/A	Purbiya; Pachhimha; Chamara; Kotchamara; Dakhinaha; Bahiriyina	Weaving clothes
Pasi	N/A	N/A	Liquor production from Tadi tree
Sarvanga/Sarbariya@	N/A	N/A	Begging

Source: NDC 2003

Note: @ Sarvanga/Sarbariya and Kalar are the same caste group. Kalar is a derogatory term. Therefore, they prefer to call themselves as Sarvanga/Sarbariya.

## Appendix 2

## Scenes from Nepali Dalit Life

(extracted from the Jagaran Media website

<http://www.jagaranmedia.org.np/jagaran-media-nepal-dalit-news.php?id=28> – with permission)

## A Married Couple Forcefully Separated

SABLAKHU, TAPLEJUNG DISTRICT- In Sablakhu VDC of Taplejung district, a couple involved in an inter-caste marriage have been separated from their maternal family for two months. The girl's family went to the paternal household and forcefully took the woman away, saying that she has damaged their reputation by undergoing an intercaste marriage with a Dalit.

Two months ago, Ramila Dahal, 20, daughter of Krishna Bahadur Dahal, resident of ward number one, had a love marriage with a Dalit man, Bhupendra Rasaili, son of Nar Bahadur Rasaili, of ward number three. Bhupendra said that he took away Ramila to Danabari of Jhapa for two months and her family came and took her away when they returned back to his family. He further added that they had an affair for five years and came back to Nepal from abroad when Dahal called him for marriage.

He said, "Ramila's family could not bear the relation because I am Dalit and I am really feeling bad for that". He also added that attacks on his house show that discrimination against Dalits has not been eliminated yet.

## Dalit Women Denied Access to Harvest

AAMALCHAUR, BAGLUNG DISTRICT- According to an agreement made one and a half years ago, Dalit women are entitled to use designated public land located at Baglung, Aamalchaur VDC-3. The agreement was to be honoured for fifty years.

The local Dalit Upliftment Women's Group had planted different types of grass in this area. Now that the plants

are almost ready for harvesting, the non Dalit women have barred the Dalits from using the land. The non Dalit women chased the Dalit women when they had gone to cut the grass.

## Dalits Punished for Not Disposing of Dead Animals

LAXMIPUR, DHANUSA DISTRICT- The Yadavs of Laxmipur Bagewa- 4, Dhanusha, have restricted local Dalits for not disposing of dead animals from the village. For one week, Dalits have been forbidden to bring water from public water taps, buy goods from the market and send their children to school.

When Bharati Yadav's two oxen died, he told Ratiya Devi, a Dalit woman, to take the dead bodies from his land. Devi, whose husband was not home, said she could not drag the bodies herself. As a result, the Yadavs have prohibited the four Dalits family of the locality from many public resources. Now they are prohibited even from using public roads. Ratiya Devi used to fetch water from her relative's water tap, but now she is not allowed to. The Yadavs have announced that whoever helps her will be charged Rs 5,000. So now none helps her. These days the Dalits are forced to use the tap which is a kilometer from their village. On Thursday morning, Vijay Yadav, the tutor, sent Jayanarayan Ram, Ratiyadevi's son, back from the tutor session. Vijay Yadav told Satyanarayan that if he allowed him to study, the Yadavs would make his life even more difficult than it already is. So he told him not to come for tuition from that day onward.

The Dalits are prohibited from even going to the market which is two kilometres from the village. So they must travel twice as far to another market.

Harinarayan Yadav confesses that they have done this to the Dalits. Harinarayan says those who do not follow village tradition have no right to live in that village. The Dalits may leave if they should choose.

## Dalits Prohibited from Drinking Tea at a Local Hotel

KANCHANPUR, SAPTARI DISTRICT - Ramesh Marik, along with two guests, were denied tea at hotels run by Ramu Sah, Bablu Sah, Jugeshwar Sah and Maheshwar Sah in Kanchanpur in the Saptari district. The hotel owners did not serve them because they are from Dalit caste group.

Ramesh took his guests for tea, but the hotel owners did not even allow them to sit at the table outside the hotel. Ramesh commented that he was heckled and berated. His brother in law works in the municipality of Itahari. Reporting to correspondent he said, "The country has been declared an untouchability-free-zone years ago and the Dalit Movement has been launched for years but there is no change in the condition of the Dalits."

The Mariks' had gone to the Area Police Office in Kanchanpur to file a complaint. Afterwards, the Police Inspector ordered the Assistant Police Inspector to follow through.

Ramesh reported that when he went to Ramesh Shrestha to file the application, Mr. Shrestha discouraged him by saying that it was a trifle matter and would be better to forget it. Again Mr. Marik went to the police office to meet Krishna Shrestha, the sub inspector. Krishna Shrestha told him to come the following day to file the complaint, despite there being plenty of time left in the day to follow through with the paperwork. When Mr. Shrestha was later questioned, he questioned the legitimacy of the untouchability law in the country, saying there were no other cases registered in the country.

## Dalit Family Thrown Out of Rented Room

HETAUDA, MAKWANPUR DISTRICT- A Dalit family was thrown out of their rented room at Chinaquarter 01, Hetauda. Chandraman BK, 45 years old, and his wife,

Krishnamaya BK, 42 years old, were made to leave the premises after the passing away of their landowner. The landowner's wife, along with her relatives, threw them out, claiming the house will turn impure if they continued to allow Dalits to live there.

When Chandraman was out searching for a new place, the lock was destroyed and their belongings were thrown out in the streets.

## Dalit Woman Alleged to be a Witch is Fed Excreta

SAPTARI DISTRICT- Dev Narayan Yadav, Jagi Yadav, Rajendra Yadav and others accused Tara Devi, a Dalit and widowed woman, of the Saptari district of killing a woman there by casting evil spirit upon her. After a show of public ridicule, the men force her to eat human excreta on the 12 June 2008. Then she was banned from her village.

## A Dalit Tailor Finds Hard to Survive

BAITADI, Far Western Region- Krishnaram Rana, a Dalit resident of Gwalek-6, has been carrying the traditional occupation of tailoring. He sews clothes for the whole year, but collects grains once in a year as the charge from the villagers. This way of leading life hardly solves his eight member family expenses.

Mr. Rana said that he has no other alternative source of income. Except a four-room house and a small piece of land, he owns nothing. Though, he processes the skill of sewing, there is very less respect and earning from the job.

Owing to his poverty, neither he was able to get education nor could educate his children. He sews cloths for the eighty families of Gwalek, Nagarjun and Dehimandu VDC, but receives very less amount of grains for the working. Nobody pays in cash for his works.

"If I would have paid in cash, I should have used the money in income generating business, but it's hard for that to happen in this village", he said reproachfully.

## Dalit Student Deprived of Education

SAPTARI DISTRICT, 10 May 2008- Though there is the provision of free education to Dalit student up to the secondary level, the Dalit students of Nanda Uma Secondary School, Odraha VDC-2 have been told to attend their class only after bringing Rs. 250 as the new admission fee. Since then, the Dalit students are tilling lands at the nearby district- Udaypur, for generating money.

The District Education Office sends Rs 500 for each Dalit student from grade 6-10. When our correspondent asked the school administration, they denied to respond.

Khusilal Paswan, Manju Kumari Paswan, and Durgi Paswan of grade 6, 8, and 9 respectively, and dozens of others have left going to the school because of the same reason. Manju Paswan who passed the exam of grade five, quit going to the school when her mother was unable to provide her the admission fee.

"It's hard to feed them, how am I supposed to pay for their schooling?", Saguni Paswan, father of Hari Narayan Paswan, one of the victim student, responded. Saguni wants his children to complete up to the S.L.C level.

Khusilal's father Bokailal knew about the free education for the Dalit students, but none spoke for them when the problem arose. His attempts turned void when the teachers paid no heed to his voice.

## Maoists Thrash Dalits for Using Local Well

SAPTARI- 4 November 2007- Maoist cadres attacked and severely beat up five Dalits in Malahun of Saptari for drinking water from a local well on Friday evening. The victims were Devnath Ram, Saini Ram, Sunar Ram, Charu Ram, and a woman who is still not identified.

Shivram Chaudhary led the group of 6-7 Maoists that conducted these attacks. The injured were taken to the hospital at Lahan by the police officials. A hospital source informed that the condition of Saini Ram is getting worse.

"Drinking water from a local tube-well isn't a crime; where is our mistake?", comments Devnath, one of the victims.

## A Dalit Child Beaten for Touching Water

BAJURA, FAR WESTERN REGION. Bhuwan Sarki, a nine-year-old child of Dhanjit Sarki was allegedly beaten by Non dalit Padam Karki, aged 25. Bhuwan's family is the resident of Badhu Village Development Committee-9, Bajura and belongs to the Dalit community.

Padam reasoned that he thrashed the boy because the latter touched his water filled from the local water tap.

The local water tap is entitled for everyone, Dalits as well as Non dalits. But Dalits should be at the last of the row to fetch up water.

"My little son was beaten merely for being a Dalit, even the villagers are supporting the perpetrator", lamented the child's father.

They haven't filed a case at the local police office as they believe that it will turn more traumatic to them afterwards.

## Dalits and particularly Dalit Women Discriminated against in Wages

PANCHTHAR DISTRICT. Mr. Nar Bahadur Siwa and his wife Chandramaya Siwa, Dalits and residents of Chokmagu VDC-9, are agricultural workers. Both of them do the same sort of works, but they are paid less than their non Dalit co-workers. Rangalal Khanal, a non Dalit agricultural worker as well gets more wage than Dalits.

As Dalits of the place are really poor, they can hardly manage their hand to mouth problem, for which their little scale of land is unable to provide. So, they have to depend on laboring on others land.

Mrs. Siwa said that her husband gets Rs.50 if paid in cash and 4kg if paid in grains, and she gets Rs. 30 if paid

in cash and 2kg if paid in grains, but the non Dalits men get Rs. 75 if paid in cash and 6 kg if paid in grains, and women get Rs. 50 in cash and 4 kg if paid in grains.

Not only the Dalit couple, other nine Dalit families of the village are also facing same sort of treatment. And every year, the money they borrow to sustain their lives is mounting.

"I have fallen ill because of hard toiling in others' fields, and haven't effective working skill in our traditional occupation, i.e., tailoring. Now, my wife is hardly managing to feed the whole family", lamented Jeet Bahadur Siwa, aged 57.

## No Cooking Utensils for Dalit Members

POLYANG- TANUHU DISTRICT, 15 February 2008. Buldi Goat Development Committee (BGDC) had organized a program to distribute goats to the locals on 11 February 2008. The guests of the program had to return without having tea and snacks because the Dalit organizers weren't provided with cooking utensils.

When the organizers asked for the cooking utensils available at the Buldi Multipurpose Cooperative Agency, the Vice-President Urmila Khanal posed a bitter question "Why the guests need to be fed?", told Harimaya Biswokarma, Chairperson of BGDC.

She further added that when they asked for the hall to organize a meeting sometime back, they were asked for money. Since then, they have been organizing their meetings elsewhere. The hall is provided for free of cost to Non-Dalit people.

There are 50 members in BGDC, and all of them are from the Dalit community. 40 BGDC members are also the members of Buldi Multipurpose Cooperative Agency,

the agency which denied hall and cooking utensils to its Dalit members.

## Dalit Student Prevented from Worshipping

DIMAN, Saptari District, 11 February 2008. His belonging to Dalit community prevented Sanjay Kumar Biswas Ram, a ninth grader Dalit student of Janata Secondary School, from worshipping Saraswoti on Shree Panchami (Day when the goddess of education, Saraswoti, is remembered) together with a priest.

According to the rules of the school, the best student of the senior class should assist the priest in worshipping the goddess, the local parents of the students told.

Though Sanjay Kumar Biswas Ram is the best student, he didn't get the chance to do so, as he is from Dalit community. Instead, a Non-Dalit girl, Nirmala Shah, from same grade was selected to assist the priest this year.

## Dalit Milkmen Face Boycott

MAISTHAN, Mahottari District, 23 January 2008- After six months, milkmen stopped taking milk from Dalit milkmen stating hindrances to sell it in the market. Milk collected from the Dalit families isn't usable in the market.

Eighteen Dalit families of Maisthan Village Development Committee have been rearing buffaloes through the Poverty Alleviation Fund (PAF) Program. If they can't sell their milk, they can't pay back their loans. Dalit families are finding it hard to meet their family expenses as they have no alternative source of income other than selling milk.

Hoteliers of Bardibas stopped taking milk collected from Dalits when customers stopped drinking tea at their hotels.

## Appendix 3

## What have the recent Constitutions of Nepal said about Dalits?

The table below compares the 1990 Constitution of Nepal and the Interim Constitution in terms of their provisions specifically mentioning caste, or Dalits, or that are relevant to Dalits.

1990 Constitution	Interim Constitution	Comment
<p><b>Preamble:</b> we are further inspired by the objective of securing to the Nepalese people social, political and economic justice long into the future; and</p> <p>Whereas, it is expedient to promulgate and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal</p>	<p><b>Preamble:</b> Having determined upon the progressive restructuring of the state in order to resolve the existing problems of the country relating to class, caste, region and gender;</p> <p>Expressing our full commitment to democratic norms and values including a system of competitive multiparty democratic rule, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, independence of the judiciary and concepts of the rule of law;</p>	<p>Similar sentiments, more fully expressed in Interim Constitution.</p> <p>One function of a Preamble is to reach out to the people and make them feel that the Constitution is for them.</p> <p>From a legal point of view: the courts might look at a Preamble for a sense of the spirit of the document. But one should not rely on the Preamble to have legal effect.</p>
<p><b>Article 8 Citizenship at the commencement of the Constitution</b></p> <p>At the commencement of this Constitution, the following persons who have their domicile in Nepal shall be deemed to be citizens of Nepal:</p> <p>(a) any person who is a citizen of Nepal by virtue of Article 7 of the Constitution of Nepal (1962) or section 3 of the Nepal Citizenship Act, 1964.</p> <p><b>Article 9 Acquisition and Termination of Citizenship after the Commencement of the Constitution</b></p> <p>(1) A person who is born after the commencement of this Constitution and whose father is a citizen of Nepal at the birth of the child shall be a citizen of Nepal by descent.</p>	<p><b>Article. 8:</b></p> <p>(2) At the commencement of this Constitution, the following persons who have their domicile in Nepal shall be deemed to be citizens of Nepal by descent:</p> <p>(b) Any person whose father or mother was a citizen of Nepal at the birth of such person.</p>	<p>Citizenship could previously be passed only through a man to his children not by a woman. This is a problem for those who cannot establish their fatherhood (and for Badi community members who may be engaged in prostitution, or other in a similar position, this creates particular difficulties). This was changed in the Interim Constitution</p>
<p><b>Article 12 Right to Freedom</b></p> <p>(1) No person shall be deprived of his personal liberty save in accordance with law, and no law shall be made which provides for capital punishment.</p>	<p><b>Article. 12</b></p> <p>Adds:</p> <p>(1) Every person shall have the right to live with dignity</p> <p>Otherwise is essentially the same as the</p>	<p>Dalits have not experienced freedom to engage in any occupation despite the 1990 Constitution. This shows the limits of constitutional provisions without proper enforcement.</p>

Cont...



1990 Constitution	Interim Constitution	Comment
<p>(2) All citizens shall have the following freedoms:</p> <p>(a) freedom of opinion and expression;</p> <p>(b) freedom to assemble peaceably and without arms;</p> <p>(c) freedom to form unions and associations;</p> <p>(d) freedom to move throughout the Kingdom and reside in any part thereof; and</p> <p>(e) freedom to practise any profession, or to carry on any occupation, industry, or trade.</p> <p>For some there is an exception for any act "which may jeopardize the harmonious relations subsisting among the people of various castes, tribes, religions or communities"</p>	<p>1990 Constitution with the same exceptions.</p>	<p>The limitations may seem desirable - but can all too easily be used to restrict fair discussion of grievances. It would be preferable for them to be restricted to those which are really necessary in a democratic society.</p>
<p><b>Article 11 Right to Equality</b></p> <p>(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.</p> <p>(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion (dharma), race (varna), sex (linga), caste (jât), tribe (jâti) or ideological conviction (vaicârik) or any of these.</p> <p>(3) The State shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe, or ideological conviction or any of these.</p> <p>Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.</p>	<p><b>Article 13: Right to Equality:</b></p> <p>(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws.</p> <p>(2) There shall be no discrimination against any citizen in the application of general laws on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these.</p> <p>(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these.</p> <p>Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, indigenous ethnic tribes, ...</p>	<p>Dalits are mentioned for the first time in the Interim Constitution in the provision about special measures (affirmative action) for disadvantaged groups - though the language used in 1990 would also have covered them</p>
<p><b>Article 11</b></p> <p>(4) No person shall, on the basis of caste, be discriminated against as untouchable,</p>	<p><b>Article 14 Right against Untouchability and Racial Discrimination:</b></p> <p>(1) No person shall, on the ground of</p>	<p>Interim Constitution is much fuller - but in reality adds little.</p>

Cont...

1990 Constitution	Interim Constitution	Comment
<p>be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.</p>	<p>caste, descent, community or occupation, be subject to racial discrimination and untouchability of any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.</p> <p>(2) No person shall, on the ground of caste or tribe, be deprived of the use of public services, conveniences or utilities, or be denied access to any public place, or public religious places, or be prevented from performing any religious act.</p> <p>(3) No person belonging to any particular caste or tribe shall, while producing or distributing any goods, services or conveniences, be prevented from purchasing or acquiring such goods, services or conveniences; or no such goods, services or conveniences shall be sold or distributed only to members of a particular caste or tribe.</p> <p>(4) No one shall be allowed to purport to demonstrate superiority or inferiority of any person or a group of persons belonging to any caste, tribe or origin; or to justify social discrimination on the basis of caste and tribe; or to disseminate ideas based on caste superiority or hatred; or to encourage caste discrimination in any form.</p> <p>(5) Any act contrary to the provisions of clauses (2), (3) and (4) shall be punishable in accordance with law.</p>	
<p>No equivalent</p>	<p><b>Article 21 Right to Social Justice:</b> Women, Dalits, indigenous ethnic groups, Madhesi communities, oppressed group, the poor farmers and labourers, who are economically, socially or educationally backward, shall have the right to participate in state structures on the basis of principles of proportional inclusion.</p>	<p>This provision is in the rights chapter of the Interim Constitution. But it would be hard for any individual to claim that it had been breached.</p>
<p><b>Article 20 Right against Exploitation</b> (1) Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any contravention of this provision shall be punishable by law; Provided that nothing herein</p>	<p><b>Article 29 Right against Exploitation:</b> (1) Every person shall have the right against exploitation. (2) No person shall be exploited in the name of custom, tradition and practice, or in any other way (3) No person shall be subjected to human trafficking, slavery or bonded labour. (4) No person shall be subject to forced labour. Provided that nothing in this clause shall prevent the</p>	<p>Clause (2) of the Interim Constitution strengthens the protection - though it probably adds nothing to other provisions.</p>

1990 Constitution	Interim Constitution	Comment
shall be a bar to providing by law for compulsory service for public purposes.	enactment of a law requiring citizens to be engaged in compulsory service for public purposes.	Note that the proviso requires a law - custom that involves labour for community services would not be enough.
No equivalent	<p><b>Article 33 Responsibilities of the State:</b> The State shall have the following responsibilities:</p> <p>(d) To carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes, Madhesi, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, gender, culture, religion and regional discriminations,</p> <p>(d1) To enable Madhesi, Dalits, indigenous ethnic groups, women, labourers, peasants, the physically impaired, disadvantaged classes and disadvantaged regions to participate in all organs of the State structure on the basis of proportional inclusion,</p> <p>(e) To formulate a common minimum programme for socio-economic transformation to eliminate all forms of feudalism and implement it gradually,</p> <p>(f) To pursue a policy of adopting scientific land reform programmes by gradually ending feudalistic land ownership,</p> <p>(i) To adopt a policy of ensuring socio-economic security and provide land to the economically backward classes, including the landless, bonded labourers, tillers and shepherds</p>	These come in a chapter of the Constitution that cannot be used as the basis of a legal claim.
<p><b>Article 25 Directive Principles of the State</b> (1) It shall be the chief objective of the State to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspects of national life, including social, economic and political life, while at the same time protecting the lives, property and liberty of the people. (2) The fundamental economic objective of the</p>	<p><b>Article 34 Directive Principles of the State:</b> (4) The fundamental economic objective of the State must be to give priority and protection to making the national economy independent, self-reliant and progressive by preventing the concentration of available resources and means of the country within a limited section of society, by making arrangements for equitable distribution of economic gains based on social justice, by making such a provision as will prevent economic inequality and exploitation of any caste, gender, tribe, origin or individuals, and by giving priority and encouragement to national private and public enterprises. (5) The social objective of the State shall be to establish and develop a healthy social life on the foundation of justice and morality, by eliminating all types of economic and social inequalities and by establishing harmony among diverse caste, tribe, religion, language, race, community and religious groups.</p>	These are also not legally enforceable rights.

Cont...

1990 Constitution	Interim Constitution	Comment
<p>State shall be to transform the national economy into an independent and self-reliant system by preventing the available means and resources of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as will prevent economic exploitation of any class or individual, and by giving preferential treatment and encouragement to national enterprises, both private and public .</p> <p>(3) The social objective of the State shall be to establish and develop, on the foundation of justice and morality, a healthy social life, by eliminating all types of economic and social inequalities and by establishing harmony amongst the various castes, tribes, religions, languages, races and communities.</p>		
<p><b>Article 26 State Policies</b></p> <p>(2) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.</p> <p>(10) The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment.</p>	<p><b>Article 35: State Policies</b></p> <p>(3) The State shall pursue a policy of strengthening the unity of the nation by maintaining the cultural diversity of the country through the promotion of healthy and harmonious social relations, on the basis of equality and coexistence, among people of various religions, cultures, castes, communities, sects, origins, languages and linguistic groups, and by assisting in the equal promotion of their languages, literatures, scripts, arts and cultures,</p> <p>(10) The State shall pursue a policy which will help to uplift the economically and socially backward indigenous ethnic groups, Madhesis, Dalits, including marginalized communities, and workers and farmers living below the poverty line by making provisions for reservations in education, health, housing, food security and employment for a certain period of time.</p> <p>(14) The State shall pursue a policy of making special provision on the basis of positive discrimination for the minorities, landless, squatters, bonded labourers, persons with disability, backward communities and sections, and the</p>	<p>These are also not legally enforceable rights.</p>

Cont...

1990 Constitution	Interim Constitution	Comment
	<p>victims of conflict, including women, Dalits, indigenous tribes, Madhesis and Muslims.</p> <p>(15) The State shall pursue a policy of providing a minimum required piece of land for settlement to the liberated bonded labourers having determined their exact numbers.</p>	
No equivalent	<p><b>Article 63 Formation of Constituent Assembly</b></p> <p>(4) The principle of inclusiveness shall be taken into consideration by political parties while selecting candidates pursuant to sub-clause (a) of clause (3) [geographical constituencies], and, while making the lists of the candidates pursuant to sub-clause (b), the political parties shall ensure the proportional representation of women, Dalits, oppressed communities/indigenous groups, backward regions, Madhesis and other groups, in accordance with the law.</p>	This required the Constituent Assembly Election Act in order to be effective. It resulted in 49 Dalits or 8.15% of the total membership of the CA.
No equivalent	<p><b>Added by 5th Amendment - new Clause (4A) to Article 144:</b></p> <p>In order to give the Nepal Army a national character and make it inclusive, enlisting of Madhesi, indigenous ethnic groups, Dalits, women, and people from backward and other regions into the armed forces on the basis of the principles of equality and inclusiveness shall be ensured by law.</p>	This new provision requires a law in order to have effect.

## Appendix 4

## Protecting the rights of Dalits in the Courts

- Ankit Dhakal<sup>64</sup>

It is very important that the rights given by the Constitution – to Dalits or any other persons – should be enforced. This means that if there is any breach of the rights, action must be taken by complaining to the Human Rights Commission, or other body with powers to deal with such claims, or the courts. There have been a number of cases before the courts of Nepal about the rights of Dalits. Some of these could be called “Public interest litigation” (PIL). PIL aims at protecting the fundamental rights of the citizen equally irrespective of their poverty, illiteracy and social standing.

The Supreme Court of India developed a particular form of public interest litigation that we are looking here. The procedure adopted by the court differs from ordinary courts procedure in a number of ways:

- Cases can be started informally – by a letter to the court, and sometimes judges have even started cases themselves after reading about some injustice in the press
- Concerned organisations, such as NGOs, have been able to bring cases on behalf of marginalized groups, even though the NGOs themselves have no legal interest in the problem
- The court has set up committees, or commissioner individuals to investigate issues and report to the courts – in ordinary cases the parties and the courts must take the initiative to prove the facts
- The court will order the public body concerned to report back to the court on progress made.

These relaxations of normal court rules can only be used where human rights are at stake, and only where the rights of the disadvantaged are concerned. Wealthier sections of the community are expected to follow the usual rules. (But some take the view that some of the recent cases are more concerned with the interests of the middle classes.)

Some of the famous PIL cases have included the cases about the blinding of “under trial” prisoners in Bihar, the state of

protection homes for women, and various environmental cases like mining in the Doon Valley and the diesel buses in Delhi.

A very recent case before the Indian Supreme Court was not a PIL case. It concerned the use of the word “chamar” when referring to a Dalit. In the box is an extract from an account of this in *The Hindu* of August 20 2008. This also shows the importance of laws to enforce the principles of the Constitution, and how important it was for the Dalit affected to take the initiative to insist on his rights.

NEW DELHI: The Supreme Court has deprecated the practice of upper castes denigrating the Scheduled Castes and the Scheduled Tribes and said “this is a disgrace to our country.”

“Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections who have been historically downtrodden. The SC/ST communities in our opinion are also equal citizens, and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by this court,” said a Bench consisting of Justices Altamas Kabir and Markandey Katju.

The Bench was dealing with a criminal appeal whether the use of the word ‘Chamar’ (an SC name) was an offence attracting the provisions of The Scheduled Castes and The Schedules Tribes (Prevention of Atrocities) Act, 1989.

Writing the judgment, Justice Katju said: “In the age of democracy, no people and no community should be treated as being inferior. However, the truth is that in many parts of our country persons belonging to the SC/ST are oppressed, humiliated and insulted. This is a disgrace to our country.”

The Bench said: “The caste system is a curse on our nation and the sooner it is destroyed the better. In fact, it is dividing our country at a time when we must all be united as Indians if we wish to face the gigantic problems confronting us -

<sup>64</sup> Ankit Dhakal is a Nepali student at the National Law School in Bangalore, India. He was an intern with UNDP for a few weeks in 2007. This section is based on research he did in that capacity. Case names were added by Binda Magar of UNDP.

poverty, unemployment, price rise, corruption, etc. The 1989 Act is a salutary legislative measure in that direction.”

“In our opinion, calling a member of the Scheduled Caste ‘Chamar’ with intent to insult or humiliate him in a place within public view is certainly an offence under Section 3(1) (x) of the Act. Whether there was intent to insult or humiliate [a person] by using the word ‘Chamar’ will, of course, depend on the context in which it was used.”

The 1990 Constitution provided for the Supreme Court of Nepal to provide remedies for breaches of human rights, including by a procedure similar to the Indian PIL. The following issues have arisen in public interest litigation regarding the rights of Dalits in Nepal:

- Social discrimination.
- Rights of dalit women, especially of Badi women.
- Discrimination against dalits in connection with using public places and facilities.
- Discrimination against dalits in connection with equal access to natural resources.
- Discrimination in marital life.
- Discrimination in the field of social, religious and traditional practices.
- The need for effective legal framework against the discrimination against Dalits.
- Discrimination in connection with the place of residence (denial of residence on the basis of one belonging to the Dalit community).

## Enforcement of Rights of Dalits through Directive Principles of State Policy

Directive principles of state policy are provisions which are not enforceable in any court, but seek to direct the state towards attaining certain values that are considered necessary in society<sup>65</sup>. One of such values is the elimination of all kinds of socio-economic and political discrimination operating. It is the responsibility of the government to uphold these directive principles of state policy in every field, and the judiciary should seek to implement them wherever it is possible. As will be seen

in the cases below, the Supreme Court has time and again emphasized the importance of directive principles of state policy in bringing about equality among the citizens.

## Some Cases regarding Rights of Dalits before the Supreme Court

### Reservation in Medical Studies under T. U. for Dalits, women and other backward classes :

It was decided by Tribhuvan University that for M.B.B.S and other medical studies, a reservation of 45% was necessary for Dalits, women and other backward classes (such that, 10% to dalits, 15% to other backward classes and 20% to women) and the remaining 55% was to be open for general competition. This was challenged on the basis that it was against the right to equality incorporated in the Constitution and was thus against Article 11, 12 and 16 of the constitution.

The court decided that although the reservation of medical seats was aimed at bringing substantive equality among the citizens, it could not be considered valid, because according to Article 11 (3) and 24 (2) of the 1990 Constitution it was necessary to first pass legislation before reservation could be declared.

However, the court directed the government to pass legislation in this field keeping in mind the Directive Principles of State Policy.

Case: Praddosh Chhetri vs. HMG/Nepal, NKP 2061, Vol. 7, p. 901.

### Discrimination in Public Water Sources:

Public interest litigation was filed seeking the abolition of separate public water sources for different castes, and the recognition of their right to access water from such sources, on the basis that discrimination was against the right to equality under Article 11 of the constitution. It was also against Article 26 (2) of the constitution which dealt with Directive Principles of State Policy, which sought to strengthen social relations among the various communities.

<sup>65</sup> See Appendices 2 and 3.

### Citizenship according to Surname of the Dalits :

Public interest litigation was filed against the practice of issuing citizenship to Dalits according to their respective professions, and not according to their surnames. This has led to discriminatory practices which prevent the Dalits from seeking other professions, seeking place of residence as tenants and has contributed to various forms of social exclusion.

The Court held that this practice of issuing citizenship to the Dalits on the basis of their profession and not their surnames was clearly discriminatory as they were not treated like other citizens of the country.

### The Court directed the Government

- to ensure that citizenship is given to Dalits according to their respective surnames and not on the basis of their profession.
- to correct the citizenship of the Dalits according to their surnames, treating them equally with other citizens in every respect.

Case: DNF vs. Office of Prime Minister and Council of Ministers, Writ No: 3021/061, Decided on 15 May 2006.

### Child with no known father entitled to be assumed to be Nepali

The children of Badi women who are compelled by their caste status to work as prostitutes (as indeed of other prostitutes) often find themselves in difficulty in claiming their citizenship certificates because their father are unknown. This was so especially under the 1990 Constitution which passed citizenship through the father only.

The Supreme Court ruled that such children were entitled to citizenship under Article 9(2) of the constitution which said that "Every child who is found within the kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent".

Case: *Tek Tamrakar for Pro-Public vs. Cabinet Secretariat*, HMG/Nepal, Writ No: 121/060, Decided on September 15, 2005.

### No entry to Dalits in Sanskrit Hostel :

A PIL action was filed against the criteria for eligibility to stay in Tindhara Sanskrit hostel as students. According to the rules of the university hostel one needed to have

performed *bartabandha* (which is performed only by the higher castes and not by Dalits) to enter the hostel, among other requirements.

The Supreme Court held that this criterion for entering the hostel was clearly against the right to equality under article 11 of the Constitution.

The Court directed the university only to adopt criteria for entering the hostel that did not violate the right to equality under the Constitution of Nepal.

Case: *Dil Bahadur Bishwakarma vs. HMG/Nepal and Council of Ministry*, Writ No: 44/062, Decided on 19 January 2006.

### "Muluki Ain could not limit Constitution and narrow meaning of "discrimination"

The *Muluki Ain* (National Code) of 1963 provided for the punishment of people who committed acts of discrimination on the basis of "untouchability". But an "Explanation" attached to this provisions said that practices that were traditional in temples and public places were not "discrimination".

The Supreme Court held that this "Explanation" was contrary to the Constitution Article 11(4), and it was not justified by Article 19(2) of the 1990 Constitution about the rights of religious denominations, and that the "Explanation" was legally of no effect.

Case: *Man Bahadur Biswakarma vs. HMG/Nepal*, NKP 2049, Vol. 12, p. 1010. <sup>66</sup>

The reader of these summaries may get the impression that the Supreme Court has made a great contribution to the rights of Dalits. But there is a serious problem in implementation of Court orders; this applies not just to cases involving Dalits, but all sorts of cases protecting rights. The National Judicial Academy carried out a study of implementation of Supreme Curt orders and the conclusions were not encouraging.

Explanations for the failures to implement directives are many including:

- Orders not being made widely available
- Absence of any department in office of Attorney-General to deal with such directives
- Absence of any implementation mechanism at the office of the Prime Minister
- Lack of awareness on part of government about directives.

<sup>66</sup> See Ram Krishna Timalnsena, *Some Landmark Decisions of the Supreme Court of Nepal* (Kathmandu: Supreme Court, 2003) at p. 223.

<sup>67</sup> Taken from INSEC, *Human Rights Yearbook 2008* (English Edition) (Kathmandu: INSEC, 2008), at p. 76-7.



## Appendix 5

## What do other Constitutions say about previously exploited and excluded groups?

It is not only in South Asia that Dalits are found, but it is there that the caste system was ingrained in society<sup>68</sup>. And it is there that one might expect to find specific provisions in constitutions about Dalits.

In the Constitution of India we find a clear statement that untouchability is abolished, and various provisions saying that everyone is equal, and that there must be no discrimination including on the basis of caste:

**Right to Equality**

**14. Equality before law** — The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth** —

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to —
  - (a) access to shops, public restaurants, hotels and places of public entertainment; or
  - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

**16. Equality of opportunity in matters of public employment.**

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
  - (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
  - (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause

<sup>68</sup> This is not the place to explore the geographical dimensions of caste. Pakistan, Bangladesh and Sri Lanka also have caste issues – though there is a great deal of denial. And in western countries also there are now many stories of caste discrimination among immigrant communities.

(4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

**17. Abolition of Untouchability**—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

## Right against Exploitation

### 23. Prohibition of traffic in human beings and forced labour —

- (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

### 29. Protection of interests of minorities —

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections** — The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

### 243D. Reservation of seats —

- (1) Seats shall be reserved for —  
(a) the Scheduled Castes; and  
(b) the Scheduled Tribes,  
in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:  
Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:  
Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.
- (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

- (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens

**325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex** — There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

**330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People** —

- (1) Seats shall be reserved in the House of the People for —
- (a) the Scheduled Castes;
  - (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and
  - (c) the Scheduled Tribes in the autonomous districts of Assam.
- (2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.
- (3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.

*Explanation* — In this article and in article 332, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.

**331. Representation of the Anglo-Indian Community in the House of the People** — Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

**332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States** —

- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State.
- (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.
- (3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

**335. Claims of Scheduled Castes and Scheduled Tribes to services and posts** — The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters or promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

**338. National Commission for Scheduled Castes —**

- (1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.
- (2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice- Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.
- (3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.
- (4) The Commission shall have the power to regulate its own procedure.
- (5) It shall be the duty of the Commission—
  - (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
  - (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
  - (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;
  - (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
  - (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes ; and
  - (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

- (6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.
- (7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.
- (8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely :-
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) requisitioning any public record or copy thereof from any court or office;
  - (e) issuing commissions for the examination of witnesses and documents;
  - (f) any other matter which the President may, by rule, determine.
- (9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

**341. Scheduled Castes —**

- (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

- (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

## Constitution of Sri Lanka

### Right to equality

12. (1) All persons are equal before the law and are entitled to the equal protection of the law.
- (2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds: Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any public corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office: Provided further that it shall be lawful to require a person to have sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.
- (3) No person shall, on the grounds of race, religion, language, caste, sex or any one such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.
- (4) Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.

## The Constitution of Bangladesh

This has a somewhat similar provision. It also provides:

29. Equality of opportunity in public employment.
- (1) There shall be equality of opportunity for all citizens

in respect of employment or office in the service of the Republic.

- (2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.
- (3) Nothing in this article shall prevent the State from -
1. making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic;
  2. giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination;
  3. reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

## The Constitution of Pakistan

### 22. Safeguards as to educational institutions in respect of religion, etc.

- (3) Subject to law:
- (b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.
- (4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

### 26. Non-discrimination in respect of access to public places.

- (1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.
- (2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

**27. Safeguard against discrimination in services.**

- (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.

Provided that, for a period not exceeding [forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan

In other countries we would not find provisions about caste specifically. But there are provisions about specific communities and groups that have suffered from discrimination or deprivation in the past. One clear example is South Africa where in the past blacks were seriously discriminated against and suffer poverty, landlessness and other problems still. There are many provisions in the South African Constitution specifically intended to remedy these past injustices.

**Republic of South Africa**

1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:
- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.

**Equality**

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.  
(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

**Human dignity**

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

**Freedom of expression**

16. (1) Everyone has the right to freedom of expression, which includes -

- (2) The right in subsection (1) does not extend to -  
(a) propaganda for war;  
(b) incitement of imminent violence; or  
(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

**Freedom of trade, occupation and profession**

22. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

**Property**

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.  
(4) For the purposes of this section -  
(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources;  
(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.  
(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.  
(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).  
(9) Parliament must enact the legislation referred to in subsection (6).

**Housing**

26. (1) Everyone has the right to have access to adequate housing.  
(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

## Procurement

217. (1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from

implementing a procurement policy providing for -

- (a) categories of preference in the allocation of contracts; and
  - (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- (3) National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.

## Appendix 7

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## India

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## Appendix 8

### Dalit Organisations involved in the Regional and National Conferences

1. Nepal National Dalit Social Welfare Organization (NNDSWO)
2. Dalit NGO Federation (DNF)
3. Feminist Dalit Organization (FEDO)
4. Dalit Welfare Organization (DWO)
5. National Dalit Confederation (NDC)
6. Dalit NGO Federation (DNF-Nepal)
7. Human Rights Coordination Committee (HRCC)
8. Jana Utthan Pratisthan (JUP)
9. Jagaran Media Center (JMC)
10. Lawyers National Campaign Against Untouchability (LANCAU)
11. Legal Rights Protection Society (LRPS)
12. Ram Samaj Kalyan Manch (RSKM)
13. Association of Dalit Journalists in Nepal (ADJON)
14. Rastriya Dalit Network (RDN)
15. Gandharva Kala Kendra (GKK)
16. Dalit Women Development and Upliftment Center (DWDUC)







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