

**A Final Report  
on  
Inclusion of the Dalits' Rights under the Interim  
Constitution of Nepal**



Submitted by:

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Submitted to:

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## 1. Background

Now we are in restructuring process of the state. Only one agenda of restructuring is inclusive democratic governance. The elimination of any forms of discriminations highlighting anti-discrimination and positive discrimination provisions and having the provisions of equitable representation in all process of decision making and implementing process are imperative contents of inclusive democracy. The first and foremost step to institutionalize these things under state manifesto is no doubt "Interim Constitution". It is therefore; attempt to include our voices into the interim constitution is imperative through advocacy and different means.

We should continually go ahead to make pressurize to make this constitution social justice friendly document. It is universally truth that any type of constitutions either interim or complete; are the fundamental manifesto of the land. The Constitution is a document that does illustrate the hopes and aspiration of the people at large. Since it reflects the culture, diversity and whole structure of the country, constitution-building process is considered as the most important step of the restructuring of the country. Interim constitution can pave the adequate way for ensuring inclusive democracy. Mainly since we are in the time of peace process through restructuring of state mechanisms, interim constitution has a great role to pave the way for the institutionalization of inclusive democracy. It is therefore, interim constitution in one hand is supposed to focus mainly on the fundamental rights, directive principles and interim legislative organ to substitute parliament and more importantly and in other it is supposed to specify the inclusive structure of constituent assembly.

To make our voices effective and assist to make our representation ensure under the forthcoming bodies including constituent assembly, we should frequently make our efforts. In this juncture, we had consultation with Indian Experts and academics on their constitutional experiences on our proposal for dalit rights. After a very constructive interaction among them, we just prepared a memorandum. Memorandum contains many things i.e. rights against untouchability and caste-based discrimination, right to have positive discrimination through special measures, right to have dignified life, dalit concerns in the directive principles and state polices, mandatory provision for inclusive structure of political parties and more inclusive constituent assembly. To make this document more public and generate ownership among our people, we did wide consultation with out people with the financial cooperation of Lutheran World Federation (LWF, Nepal). Before having consultation with stakeholders, Dalits' Development and Law (DDL, Nepal) translated document into Nepal and widely distributed the copies in the programme.

After the submission of the draft Interim Constitution, political parties have significant role to finalize it. They are supposed to have discussion among them and finalize it. It is therefore; we did lobby with them submitting the copy that we made and doing a very functional people's hearing programme.

## 2. Objectives

The Basic objectives of this project were given as follows:

- 2.1 Organize a "Roundtable Discussion Program" to discuss upon memorandum for dalits' rights.
- 2.2 Submit the final memorandum to the "Interim Constitution Drafting Committee", and other major Political Parties,
- 2.3 Lobby to the political parties through interaction programme for the inclusion of the provisions contained by the memorandums under interim constitution, and
- 2.4 Publish memorandum as a briefing note and disseminate widely to assist civil society to advocate for including the dalits' rights under interim constitution and
- 2.5 Generate pressure continually through different means for the inclusion of the dalit concerns into the interim constitution.

## 3. Activities

As per the objectives highlighted by the programme proposal, DDL, Nepal has completed all activities as given follows:

### 3.1 "People's Observation Programme" on Proposed Interim Constitution with Dalit Perspective (September 4 )



As currently the Interim Constitution Drafting Committee has submitted Interim Constitution to the Peace Negotiating Committee, it was imperative to have discussion to find out the positive provisions as well as weaknesses of the proposed constitution with the dalit rights

perspective. Identifying the weaknesses of the proposed interim constitution can pave the way for the further advocacy to the political parties including peace-negotiating committee. After all the proposed interim constitution is supposed to finalize by the political parties. It is therefore, still we dalit organizations and political activists still can do our level best to give pressure for strengthening our voices into the interim constitution. With a view to fulfill this objective, DDL, Nepal organized a programme at Orchid Hotel in 5 September from 14.30 to 18 with the partnership of LWF (Nepal).

A per the objective of the people's observation programme, we invited the participants and representative mainly from the Interim Constitution Drafting Committee, political parties, National Assembly, Dalit NGOs, Dalit NGO Federation, Nepal Bar Associations, Media groups, Lawyers, OHCHR, National Human Rights Commission, National Dalit Commission, and other civil society. List of the main guests of the programme are given as follows;

1. Bijul Biswkarma (Ex. Parliamentarian)
2. Min Biswkarma (Member of the Interim Constitution Drafting Committee)
3. Shanti Rai (Member of the Interim Constitution Drafting Committee)
4. Tika Ram Bhattra (Nepal Bar Association)
5. DB Pariyar (Nepal Dalit Sangh)
6. DB Sagar (President, DNF)

More than 70 participants took their active participation in whole programme. Similarly there were some media representatives different media groups; mainly from Annapurna, Samacharpatra, Raajdhani and FMs. Nepal television (NTV) was also there. Samachar Patra and Annapurna have made coverage of the programme that we held (See; Annex I). The programme was completely informal. All participants were equally treated and encouraged to participate actively. Before opening the floor for discussion, Mr. Tek Tamrakar (President of DDL, Nepal) very briefly presented a concept note among the participants. The concept note was very brief highlighting the provisions enshrined by the proposed interim constitution with dalit perspective and weaknesses as well. Lastly Mr. Tamrakar left some points among the participants that are very important to be included under the interim constitution.

Focusing upon the brief note that had already presented, almost all participants spoke and expose many un-clarities, ambiguities and lacunas as well. Main lacking made clear by the participants with dalit perspective under this proposed interim constitution are given as follows:

- The scope of the enforcement of Right against untouchability has been made limited by the interim drafting committee,
- Ambiguous provision has been made concerning protective discriminatory provision,
- Reservation on private sector and political organs have totally been undermined,
- The inclusive and proportional representation in constituent assembly has not been specified and made crystal clear,

- Obliging only political parties to provide candidacy to the dalit and others for constituent assembly election is not desirable and practicable. The inclusive representation is expected rather than candidacy.
- Even the demand of people to hold the election of constituent assembly has been undermined,
- The provision to forbid political parties based on caste, community in the registration has been observed prejudiced provision by the participants,
- Basic norms of the constitutional law more specifically the way of ratification of the constitution, rule of law, separation of power/check and balance, independent judiciary, and human rights have not been adopted accordingly.
- In addition to the abovementioned lacunas, participants have mentioned some positive thing of this proposed interim constitution that are the provisions concerning socio-economic rights, right against untouchability with compensation, affirmative jurisprudence, right to social justice etc.
- The one of the recommendations of the participants to DDL and other concerned organizations is to create pressure and advocacy to the political parties for the reformation and introduction of the clear provisions under interim constitution of Nepal 2006.

### **3.2 Booklet Publication on Interim Constitution with dalit Perspective:**

With an objective to make advocacy through different level, a book let has been prepared and disseminate widely among the political parties, sister organizations of the major political parties, NGOs, civil societies and human rights defenders. Almost 15 pages long Book let mainly has mainly focused upon the provisions that dalit are raising for the inclusion into the interim constitution. Main objective behind the publication of this book let is to assist dalit activists and the human rights defenders to generate pressure for ensuring dalits' voices into the interim constitution.

The book let has been prepared relying on the national and international consultations. Main contents focused by the booklet were; preamble, citizenship, fundamental rights, directive principles and state policies, fundamental duties of the citizens, interim legislature, interim government, constituent assembly, National Human Rights Commission, national dalit commission, transitional justice etc. DDL (Nepal) is supposed to distribute these booklets among political parties, Interim constitution drafting committee, office of the high commissioner for human rights (OHCHR), National Human Rights Commission (NHRC), National Commission for Human Rights, and Civil Societies. The representatives of major political parties were given dozens of the book lets at the programme.

### **3.3 People's Hearing Programme on Major Political Parties, Dalit Rights and Interim Constitution (August 18):**

As the third stage of the programme project on dalits' rights under Interim Constitution, Dalits' Development and Law (DDL, Nepal) has organized a "People's Hearing Programme

on major Political Parties, Dalits' Rights and Interim Constitution at 18<sup>th</sup> of August 2006 in Orchid Hotel, Kathmandu. Before this half-day interaction programme, DDL, Nepal already organized a "Roundtable Discussion Programme on Dalits Issues and Interim Constitution with the genuine participation of dalit rights defenders, human rights activists, political activists, NGO workers, and national and international human rights organizations. Subsequently the final document was submitted to the Interim Constitution Drafting Committee. The round table discussion was held with a view to have further discussion and finalize the draft of the interim constitution of Nepal with dalit perspective that was made with the wide consultation with a leading Indian NGO National Campaign for Dalits' Human Rights (NCDHCR) as mentioned above.



The main objectives of this third stage programme were to make aware dalit rights defenders concerning the recommendation of the major political parties namely, Nepali Congress (NC), Nepal Communist Party (United Marxist and Leninist), Nepali Congress (Democratic) and Nepal Communist Party (Maoist) and make pressure to them to include the major agendas of dalit community within the interim constitution of Nepal. It is therefore, making very brief assessment (See; Annex II); a paper was prepared by me and distributed widely in the programme. It was very comparative assessment of the recommendations for the interim constitution of the political parties. The paper included mainly the recommendations submitted to the interim constitution drafting committee by the major political parties and their recommendations on preamble, fundamental rights, directive principles and state policies, constituent assembly, interim legislature, interim government, and human rights watch body with dalit perspective.

Main guests of the programme were the central committee representatives of the above-mentioned political parties. The name lists of the main guests of the programme are:

- Mr. Gopal Pahadi (Member, Central Committee, NC),
- Mr. Chabilal Biswakarma (Alternative Member, UML),

- Mr. Dr. Minendra Rijal(Member, Central Committee, NC(D) and
- Mr. Tilak Pariyar (Member, Central Committee of Maoist Party

The participant mainly made the target to the main guests and asked many questions focusing on their recommendations submitted to the interim constitution drafting committee.

Equally there were other participants as the guests mainly from the sister organization of the major political parties, NGOs and civil societies. The guests of the programmes were;

- Mr. Bijual Biswakarma (Ex. Parliamentarian)
- Mrs. Rajan Biswakarma(Vice President of Nepal Dalit Organization)
- Mr. Shambhi Hajara Paswan (Nepal Dalit Organization (Democratic)
- Mr. Dalbir Biswakarma (Society for Liberation of Disadvantaged Community)
- Mr. Min Bahadur Biswakarma( Member of the Interim Constitution Drafting Committee)
- Mrs. Durga Sob (Ex. Member-secretary of National Commission for dalit),
- Mrs. Shasi Rijal (Lutheran World Federation, Nepal), and
- Mr. Desh Bahadur Sarki (Ex. Member of the National Dalits' Commission).

Altogether 65 participants took their active participation. The programme was started at 14.30 PM and finished at 18.30 PM. Before opening the floor for discussion, I highlighted the recommendations of the major political parties submitted to the major political parties with dalit perspective and put five questions and basics for further discussions. More differently we opened the follower after highlighting the assessment study of political parties. The participant mainly asked the political parties for making consensus on right to have positive discrimination through reservation, 20 per cent seats for constituent assembly, same numbers seats for interim legislature and most importantly referendum to through out the king. These were the main contents that rose by the participants.

Responding to the questions and quarries made by the participants, the representative of the major political parties acknowledged the weaknesses on endorsing de-facto equality oriented constitutional provisions under interim constitution. At the same time, they made commitment to have integration upon the agendas concerning dalit rights in Nepal.

### **3.4 Submission of the Final Memorandum (July 30)**

Most recently 30 July 2006, Dalits, Development, and Law, Nepal has submitted a final memorandums with dalit perspective to the Convener of the Interim Constitution Drafting Committee in its office. To submit the final memorandums referring the documents i.e. Concluding Remarks and General Recommendation XXIX of the Committee on the elimination of Racial Discrimination (CERD), the draft memorandum prepared with the wide consultation of the National Dalit Rights Campaign, academics, ex. Judges and human rights defenders of India, we were there representing all sectors of dalit movement in Nepal. The final memorandum has also submitted the name list of dalits represented in the "Round Table



Interaction Programme on Interim Constitution and Dalit Concerns" organized in Orchid Hotel by DDL, Nepal in cooperation of Lutheran World Federation, Nepal (LWF) at 28<sup>th</sup> July.

As already mentioned, a group representing multi sectors of dalit movement more specifically the representation of dalit NGO federation, the representation of the National Commission for Dalits, Nepal Dalit Association (sister organization of Nepali Congress) and the representative of LWF, Nepal submitted the memorandum to the convener of the interim constitution drafting committee Honorable Ex. Justice of Supreme Court Laxman Prasad Aryal. Name list of groups who submitted the memorandum are;

- Mrs. Rajan Biswarkarma(Vice-president of Nepal Dalit Association)
- Mr. Hari Bahadur Gandhari(Ex. Member Secretary of National Commission for Dalits)
- Mrs. Dipa Sunar (Advocate, Legal Aid Center, Dalit NGO Federation)
- Mrs. Shasi Rijal (Advocacy Coordinator of LWF)
- Mr. Tek Tamrakar (Advocate and Coordinator of DDL, Nepal)
- Mr. Mohan Sashankar(Advocate and Acting GS of DDL, Nepal)

In the submission programme, I just highlighted the contents of the memorandum and the advocacy coordinator of LWF Mrs. Shasi Rijal also requested him to do level best to include more things from this report within the interim constitution. Very positively, convener assured us to use maximum of this memorandum. Separately we met other members of the committee and recommended to go through the memorandum and draft a constitution respecting the end of people's movement that is inclusive and complete democracy. The names of the other members whom we met are; Mrs. Puspa Bhusal, Mr. Sindhunath Pakurel, Mr. Agni Kharel, Mr. Hairhar Dahal, Mrs. Shanti Rai, Mrs. Chhatra Gurung, Mr. Chandi Lal Srestha and Mrs. Shusila Karki.

### **3.5 Roundtable Discussion (July 28):**





As per the project proposal, most crucial programme was round table discussion among dalit activists, national and international human rights defenders, and the representatives of political organizations. At 28<sup>th</sup> July 2006, a "Round Table Interaction on Interim Constitution and Dalit' Concerns" was organized in the hotel Orchid from 1.00 PM to 5.30 PM. We had estimated 50 to 60 participants in the interaction programme. Unexpectedly numbers (altogether 78) of participants were in the programme representing UN agencies; OHCHR, political parties, NGOs, civil societies, university students, and human rights organizations. Altogether 76 participants took their respective and active participation in the whole programme (See: Annex: IV).

Non-formally I highlighted the contents of the memorandum explaining the objective of our mission. Then we encouraged the respective participants to make their creative comments and recommendations on the basis that we provided them the copy of draft memorandum already. Taking active and genuine participation, all participants made their recommendations. In fact we found energetic and creative recommendations. The main recommendations came from the participants for the inclusions within the interim constitution are;

- Citizenship certificate to the Tarai dalits
- Protection of the couples who got inter-caste marriage
- Land rights,
- Referendum to root out king
- Equitable representation in Interim legislature, interim government and other interim bodies, etc.

The information about the programme was widely disseminated by the electronic media i.e. Kantipu FM, Sagarmath FM before the programme. After the programme also, we found wide dissemination by all electronic media. At the main while, the "government news, Rising Nepal and Gorakhapatra" gave more space publishing the detail information on the interaction programme.

### **3.6 Translation**

As I have already mentioned there was a memorandum in English produced with the wide consultation of Indian academics, dalit rights defenders, constitutional experts, and the members of Indian commission for schedule castes and tribes and the journalists. National Campaign organized the wide consultation for Dalit Human Rights (NCDHR) a prominent dalit NGO of India.

It was urgent to translate into Nepali and put for public legitimacy among our people in Nepal. Mere producing with academics is no doubt a practical thing. It is therefore, we translated into Nepal in simple way and provided to the all participants of the interaction programme. Expectedly DDL, Nepal found very creative comments and recommendations.

## 4. Achievements

As per our recommendations provided to the Interim Constitution Drafting Committee, we have found some provisions under "Proposed Interim Constitution of Nepal 2006" for the protection of dalit rights. The major provisions are given as follows:

### Fundamental Rights

1. Protective provision under right to equality: As a proviso, interim constitution has proposed for special measures through law to dalit, women and others for their upliftment (Article 14(3)).
2. Right against untouchability has more specifically mentioned as a separate provision.
  - a) Provision has clearly mentioned to forbid untouchability and discrimination based on work and descent in public places. More positive aspect of this provision is compensation that has been mentioned to be provided to the victim of such practices.
  - b) This article specifying under sub-article says; Discrimination in public places more specifically in religious temples shall be punishable.
  - c) Provision further says; no one shall be restricted on the basis of caste to produce, sell, purchase and distribute any services and productions. And lastly this provision has mentioned that no propagandas on ideas or theories of superiority of one caste, which attempt to justify or, promote racial hatred and discrimination in any form shall be encouraged (Article 15, 1,2,3,4).
3. Free secondary level education has been mentioned as a fundamental right under right to education (Article 18).
4. Right to employment and social security to the non-employees, disabled, senior aged people, orphans and other disadvantaged has also been enshrined (Article 19).
5. Right to Social Justice: In this article Interim constitution has proposed that there shall be a right of the socially, economically and educationally disadvantaged communities i.e. dalit, Madhesi and indigenous communities for their participation in the different wings of governance (Article 22).
6. Right against exploitation. Any forms of exploitations on the form of social practices, customs and usages shall be prohibited.

### State Duties:

1. Progressive restructuring of the state eliminating all forms of discrimination and guaranteeing the right to self-determination through the election of constituent election shall be the major duty of the state (Article 33(C)).

**State Policies:**

1. State shall introduce temporary reservation policy on education, health and employment to the socially and economically backward dalits, madhesies to uplift their socio-economic status (Article 9).
2. State shall adopt special and affirmative action policy to the dalits, madhesis, landless people and minorities (Article 13).

**Constituent Assembly (Article 65)**

1. Election of constituent assembly shall be hold by direct election system.
2. There shall be constituent assembly people's Awareness Committee to generate awareness among people and collect the recommendations of the people for new constitution (Article 87).

**National Human Rights Commission (Article 136)**

1. There shall be a NHRC as a constitutional body to protect and promote the human rights of the people.
2. There shall be diversification and a representation of women in its composition.

**Local Government (Article 143)**

1. The socially and economically backward communities shall be taken into consideration while distributing the resources.

**Political Parties (Article 145)**

1. All political parties shall adopt inclusive ness in nomination of their candidates for the election of constituent assembly (Article 147).
2. There shall be the nomination of the candidates ensuring one-third representation women and the representation of dalits, peasants and indigenou.

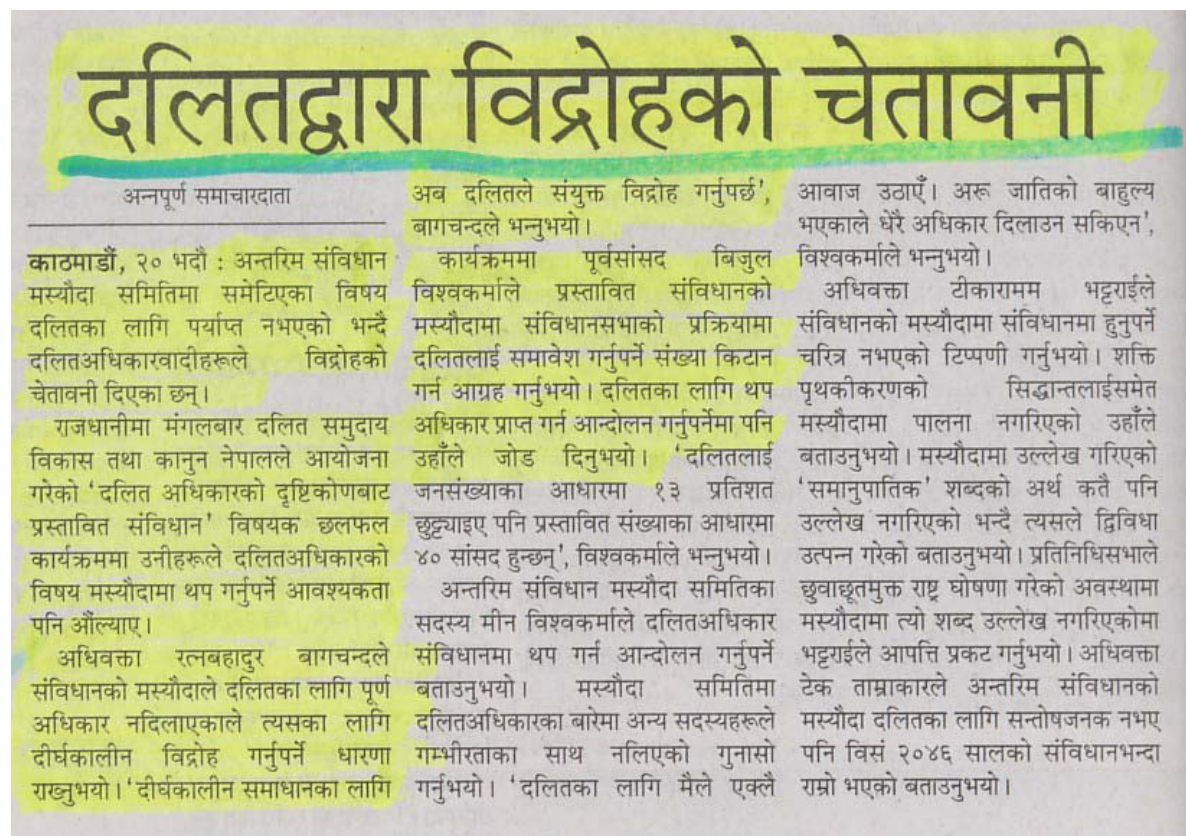
**Commission (Article 160)**

There shall be the commissions for Dalit, women, Janjaties, Madhesis, peasants and workers for the protection and promotion of their rights. Law shall determine the functions and duties of such commission.

## Annexes

### Annex I:

News Published in ANNAPURNA



### Annex IV: An Assessment of the major Political Parties and their recommendations on Interim Constitution with Dalit Rights Perspective

Subject	Nepali Congress	Nepal Communist Party (UML)	Nepal Communist Party (Maoist)	Nepali Congress (Democratic)
Preamble		Establishment of the Inclusive Democracy	Having proportional representation of all castes and classes in elected constituent assembly	
Fundamental Rights	Rights concerning dalit, madhesi, ethnic/ indigenous and other disadvantaged community and extend the rights of all classes.	a) Rights to minorities. b) Untouchability shall be considered as a heinous crime.	a) Right against untouchability and exploitation b) Right to education, health, housing, work c) Right to have special measures to dalit eliminating all traditional more specifically <i>Manuism</i> thought on the basis of caste.	

Subject	Nepali Congress	Nepal Communist Party (UML)	Nepal Communist Party (Maoist)	Nepali Congress (Democratic)
Directive Principles	Special Arrangement shall be introduced for dalit and other disadvantaged groups on opportunities.	It shall be the fundamental directive principle of the state to introduce special programmes to dalits, disadvantaged groups and those who are under the poverty line.		State policies and principles shall be determined according to the norms of inclusive democracy and federal structure
Economic Policy			Progressive land reformation shall be executed eliminating feudal structure and landless more specifically <i>Kamaiyas</i> shall be provided land.	
Constituent Assembly	In addition to the direct election system, the proportional representation shall be ensured of dalit, women and other marginalized community.	To ensure the inclusive structure of the constituent assembly, proportional electoral system shall be adopted.	The representation of women, disabled and other disadvantaged groups shall be ensured on the basis of population.	On the basis of special opportunities, dalit and other disadvantaged shall be prioritized in providing candidacy.
Interim Legislature			Reasonable representation of dalits and other disadvantaged groups shall be ensured in the formulation of interim legislature.	
Monarchy	Constituent assembly will decide about monarchy	Since the mandate of people's movement is republic state, to collect the people's opinion on monarchy, Referendum and election of constituent assembly shall be done simultaneously.		Referendum or constituent assembly will decide about monarchy
Dalits' Commission		There shall be a provision under interim constitution about to enact a special law to regulate commissions on dalit, women and others.		