

Inclusion of Dalit women in Nepal's new constitution

Submission to the UN Working Group on discrimination against women in law and practice

By Feminist Dalit Organisation (FEDO) Nepal and the International Dalit Solidarity Network (IDSN)

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This submission, which provides information on the inclusion and political representation of Dalit women in Nepal's new constitution, is submitted to the UN Working Group on discrimination against women in law and practice by the Feminist Dalit Organisation (FEDO) Nepal and the International Dalit Solidarity Network (IDSN).¹ It responds to the call for submissions by the Working Group, which is undertaking research in 2012 on discrimination against women in times of political transitions, particularly transitions which involve fundamental changes of political regime and/or of the legal system.

Discrimination against Dalit women in Nepal

Discrimination on the basis of caste is still widely prevalent in Nepalese society and a large section of the population have been subjugated, marginalized and oppressed due to their ascribed caste as per the Hindu Hierarchical system. Dalits have been considered as impure and 'untouchables' and are deprived of a dignified life and compelled in leading a degrading life. This practice has existed for centuries and results in discrimination in many areas from social life to access to legal remedies.

Caste, gender and class discrimination prevents Dalit women from enjoying their basic human rights, particularly to dignity, equality and development. Out of the Dalit population in Nepal, which makes up more than 13% of the country's population, 50 % are women. The socio-economic conditions of Dalit women are worse than Dalit men and women in general. Dalit women face multiple alienation as women, as Dalits and as Dalit women, and they face violations of their civil, political, economic, social, cultural and religious rights. Dalit women in Nepal continue to endure discrimination in many areas including education, health, employment and access to economic resources. They are discriminated against not only by people of higher castes, but also within their own communities, where men are dominant. The discrimination is systematically structured, distinctively marked, gender



Soni Badi, 25, is a sex worker from the Badi sub-caste in Nepal. She is prevented from owning land, has little access to education and other basic services. Recently Badi rights activists ensured that Badis can now use their mother's name to gain citizenship for their children. However Badi women are still dismally poor and socially excluded. Photo: Jakob Carlsen, IDSN.

¹ The Feminist Dalit Organisation (FEDO) is a national level non-governmental organization founded in 1994 to establish the rights of Dalit women by organizing and empowering them for their mainstreaming into the national development. FEDO has been working to promote Dalits' rights and to eliminate caste and gender discrimination and promote justice and equality in Nepalese society since its establishment (www.fedonepal.org). FEDO is a national associate of IDSN, an international network working for the elimination of caste-based discrimination and similar forms of discrimination based on work and descent (www.idsn.org).

biased, collectively targeted, entrenched with violence, and generationally imposed resulting in life-long disastrous effects.

Dalit women are subjected to systematic violence due to their ascribed low caste-class-gender status. Also, certain kinds of violence are traditionally reserved for Dalit women.² Not only do they face problems while seeking legal and judicial redress for violence, but also while attempting to access and enjoy their fundamental rights and freedoms. Perpetrators enjoy virtual immunity from prosecution for violence against Dalit women, because the police, who themselves often harbor caste prejudices, willfully neglect to enforce the law. Not only the police, but perpetrators and their communities use their political, social and economic power to silence Dalit women, thereby denying them access to justice.

Most Dalits are landless and have very limited access to economic resources, in particular the women. Some are even still serving as bonded laborers in exploitative labour management systems, such as the customs of *Balighare, Haliya, Charuwa, Khalo*.

Political transition in Nepal

Nepal is in the midst of a historic political transition, which provides a unique opportunity to ensure full and meaningful participation of Dalit women for the first time in the country's history. But despite Nepal's commitment to adhere to international human rights law, the human rights situation in Nepal still remains precarious. While Nepal is party to most human rights treaties, the domestic legal framework remains weak, and in most cases implementation of international instruments is deficient. Frequent changes in government; a political culture that does not value the protection of human rights; and weak governance are among the major factors affecting the human rights situation of people, particularly vulnerable groups such as Dalits, in the present context. While there has been some progress on the human rights situation in recent years, major challenges remain, especially in combating impunity, building national institutions, delivery of timely justice in line with international standards, all under the framework of Nepal's new constitution.

The United Nations Human Rights Office in Nepal (OHCHR Nepal) has worked for many years to enhance access to justice for victims of caste-based discrimination. In a report from December 2011, "Opening the Doors to Equality: Access to Justice for Dalits in Nepal", the Office sums up the challenges, lessons learned and good practices from its work in Nepal.³

An important foundation for the protection of Dalit rights in Nepal was laid in May 2011, when the Interim Parliament passed the Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act.⁴ This historic Act prohibits the practices of 'untouchability' both in the public and private sphere, and is

² Traditional harmful practices against Dalit women include extreme verbal abuse and sexual epithets, physical assault, being forced to drink urine and eat faeces, branding, pulling out of teeth, tongue and nails, and violence including murder after proclaiming witchcraft. Impunity for violence against them is rampant due to weak legal mechanisms.

³ Opening the Doors to Equality: Access to Justice for Dalits in Nepal:

http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2011_12_07_Opening_the_Door_to_Equality_E.pdf

⁴ Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act, 2011:

<http://nepal.ohchr.org/en/resources/Misc/100%20Day/Substantive%20materials/Act%20in%20Eng-Nep/Book%20eng..pdf>

the first in the world to criminalise such practices in the private sphere. While the passing of the law is a great achievement, it is however only the first step to ensuring effective protection of Dalits rights. Effective implementation is the main challenge, and in the past the government has failed in implementing many of the commitments intended to ensure Dalit rights.

Political participation of Dalit women – good practices and lessons learnt

Dalit women are generally underrepresented at the political and decision-making level of the state machinery. Since its establishment in 1994, FEDO has therefore been active in promoting equal political participation and representation of Dalit women, in particular during the current constitution-making phase in Nepal.

Some of the key challenges for ensuring effective inclusion of Dalit women in Nepal include:

- Low public awareness of the low status of Dalit women
- Low literacy rates and education opportunities for Dalit women
- Lack of mainstreaming of Dalit women's issues in the government and state institutions
- Patriarchal cultural values
- Caste-based system
- Transitional phase for the government and consequent unstable political system
- Delay of Constituent Assembly elections
- Frequent bandhs (general strikes) which means the closure of public amenities making FEDO program delivery and communications difficult at times, particularly to more remote areas of Nepal



Dalit women demonstrate during the National Conference of Dalit Women in May 2011. The women requested the government to make special provisions for them in the new constitution. Photo: FEDO/IDSN

FEDO's methods of work include the formation of Dalit women group and conduct of awareness raising program on various issues, incl. economic and leadership development activities. FEDO has found that the group formation of Dalit women and their mobilization in different activities have been particularly effective in helping Dalit women to speak up for their rights.⁵ This is an innovative and successful approach, which provides an opportunity for Dalit women to have time to talk about their problems and find solutions together. The most important change that this practice has brought to Dalit women life is building leadership capacity through which they can

collaborate with like-minded organizations and agencies (see good practice case).

To ensure a strong voice of the Dalit women's movement in Nepal's political transition, FEDO has furthermore been pivotal in formulating memoranda and demands for the political inclusion of Dalit

⁵ [Good practice case: Mobilisation of Dalit women in Nepal – FEDO](#) (submitted for the IDSN consultation in Nov 2011)

women, such as the Kathmandu Declaration on the Issues of Dalit Women and Nepali Dalit Women's Charter for New Nepal Building Process (2007).⁶ A key recommendation from Dalit women is that there should be provisions for proportional opportunity for the Dalit women in the public sector (e.g. government services, employees' administration) as well as in the private sector in the new constitution.

FEDO's recommendations for effective inclusion of Dalit women in Nepal's political transition⁷

1. The new Constitution of Nepal must fully guarantee the right to equality and non-discrimination in line with international human rights law.
2. The new Constitution must ensure compulsory, proportional representation of Dalit women at all levels of the state (parliament, government, judiciary, administrative mechanism, local authorities and social organizations, etc). For example, there should be at least 20% reservation for Dalit community in the women's quota and 50% reservation for Dalit women in the Dalit's quota should be ensured until the status of Dalit women reach the level of other ethnicities and communities of the society. While allocating rights, there should be special emphasis on the Madheshi Dalit women, *Badi*, *Gandharwa* as well as Dalit women, and amongst them the single Dalit women and the disabled Dalit women who are the most backward.
3. The policies adopted by the government for the inclusion of Dalit women must be developed for Dalit women, and in consultation with them, to specifically address the issues and challenges that affect them.
4. The Government must adopt stronger policies to provide financial, social and legal support to couples of inter-caste marriages and protect them from violence perpetrated by private actors.
5. The Government should develop a National Action Plan to eliminate caste-based discrimination, which establishes specific provisions for the inclusion and promotion of Dalit women's rights.
6. The Interim Parliament should commit to pass the law which mandates the National Dalit Commission as a full statutory body. In the Commission, the provision of proportional representation of the Dalit women must be ensured. In addition, a separate mechanism to look into the issues of Dalit women must be developed.
7. There should be provision for birth registration of the children of the *Badi* women engaged in forced prostitution where the children's fathers are unascertained; and the Supreme Court's order of issuing citizenship certificates in the name of the mother should be implemented. In addition,

⁶ For example, FEDO organised a National Conference on Dalit women in Kathmandu in May 2011, which resulted in the formulation of a number of demands and recommendations on the inclusion of Dalit women in the new constitution. In the outcome document, the Kathmandu Declaration on the Issues of Dalit Women, the women appealed to the Government, Constituent Assembly, political parties, and other stakeholders to promulgate a progressive constitution based on proportional inclusive principles ending ethnic, class, gender and all types of discrimination, among other things (see the list of demands in the [Kathmandu Declaration on the Issues of Dalit Women, 2011/04/14](#)). See also FEDO's [Nepali Dalit Women's Charter for New Nepal Building Process \(2007\)](#)

⁷ These recommendations were prepared for the CEDAW review of Nepal in July 2011

the *Badi* Development Board must be constituted immediately for resolving the issues of the women from the *Badi* community.

REFERENCES

UN recommendations - Dalit women in Nepal

Several recommendations have been made by the UN human rights bodies on the promotion of Dalit women's rights in Nepal; many of them are however yet to be implemented.

Nepal went through the Universal Periodic Review Process (UPR) in January 2011. During the UPR examination, a total of 24 states made observations and recommendations on the situation of Dalits, many of which related to the vulnerability of women and children. On this basis, the Government of Nepal has made several commitments for the improvement of human rights situation and establishment of rule of law.⁸

Several UN Treaty Bodies have addressed the human rights situation of Dalit women in Nepal.⁹ In 2011, the CEDAW Committee made several specific recommendations to prioritize combating multiple forms of discrimination against women from various disadvantaged groups, including Dalit women (para. 40 in the Concluding Observations).¹⁰ The Committee urged, among other things, the State party to take specific measures to increase the "very low" political representation of Dalit and indigenous women at national and local level both in the public and private sectors. In 2004, CEDAW expressed also strong concerns about Nepal's poor record regarding discrimination against women (Concluding Comments A/59/38/SUPP).

Similar concerns have been expressed by the Committee on the Elimination of Racial Discrimination (CERD) in 2004 (CERD/C/64/CO/5), and the Committee on Economic, Social, and Cultural Rights (CESCR) in 2001 (E/C.12/1/Add.66) and in 2008 (E/C.12/NPL/CO/2). In 2005, the Committee on the Rights of the Child (CRC) made some very critical observations on Dalit children (CRC/C/15/ADD.261).¹¹

In 2004, CEDAW confirmed in General Recommendation 25 that protection from discrimination under the Convention also encompasses grounds such as age, class, caste, race and ethnicity.¹² In CEDAW General

⁸ Read about the outcomes of the UPR of Nepal: <http://idsn.org/international-advocacy/un/universal-periodic-review/upr-nepal/>

⁹ A comprehensive overview of UN observations and recommendations on caste discrimination and the situation of Dalits in Nepal can be found on the following link (prepared and updated by IDSN in July 2012): www.idsn.org/UNcompilation

¹⁰ Read relevant extracts from the CEDAW Concluding Observations (2011) on Dalit women in Nepal: <http://idsn.org/international-advocacy/un/un-treaty-bodies/nepal/cedaw-concluding-observations-nepal-2011/>

¹¹ See all references here: www.idsn.org/UNcompilation

¹² In the General Recommendation 25 on temporary special measures, the Committee stated that "Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them."

Recommendation 28 on the Core Obligations of States Parties under article 2 (2010) the CEDAW Committee underlined that the non-discrimination provision of the Convention encompasses the basic concept of intersectionality, including on the basis of caste. In this General Recommendation, the Committee furthermore stated that “States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and General Recommendation No. 25.”

General recommendations to governments – Good practices and strategies to promote and protect Dalit women’s rights

Source: [IDSN Report on Good Practices and Strategies to Eliminate Caste-Based Discrimination \(2012\)](#) (pp-19-21)

- *Recognise Dalit women as a distinct category and disaggregate data on caste and gender in census reports, action and progress reports on the implementation of all laws, policies and programmes.*
- *Present a periodic white paper in Parliament on the status and rights of Dalit women.*
- *Establish special services for women survivors of violence. Provide immediate relief and a long-term package of adequate rehabilitation for survivors and their families.*
- *Identify areas in which Dalit girls are employed as child labourers, and constitute rehabilitation schemes with incentives to pull them back into education.*
- *Encourage educational institutions to adopt equal opportunities policies coupled with affirmative action for Dalit girls.*
- *Ensure non-discriminatory health services and facilities to ensure Dalit women’s equitable access to adequate nutrition, including health and maternity benefits.*
- *Ensure basic amenities and facilities for Dalit women, especially electricity, water and sanitation.*

Good practice cases

- [Good practice case: Mobilisation of Dalit women in Nepal – FEDO](#) (submitted for the IDSN consultation in November 2011)
- IDSN Report on Good Practices and Strategies to Eliminate Caste-Based Discrimination in Nepal, including good practice cases (based on the International Consultation 2011): www.idsn.org/ICreport
- OHCHR report (Dec 2011): Opening the Doors to Equality: Access to Justice for Dalits in Nepal: http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2011_12_07_Opening_the_Door_to_Equality_E.pdf
- IDSN Database on good practices to eliminate caste discrimination (case examples): <http://www.delicious.com/idsn/good%20practice>