

Human Rights Situation of Dalit Community in Nepal

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Submitted by:

Dalit Civil Society Organizations' Coalition for UPR, Nepal

And

International Dalit Solidarity Network (IDSN)

I. Introduction

1. **Dalit Civil Society Organizations' Coalition for UPR and International Dalit Solidarity Network (IDSN)** (Annex I) presents this joint submission on Dalit issues to reflect their real human rights situation in Nepal, for the consideration by the UPR Working Group at its 23rd Session of Human Rights Council, in November 2015. This Coalition believes that the international human rights community's support in this regard will be crucial for strengthening human rights of Dalit in Nepal.
2. The Dalit community of Nepal has taken UPR mechanism as an opportunity to expose their issues to international human rights community and encourage the Government of Nepal to adopt policy measures to address them. The issues of caste based discrimination and untouchability are multi-faceted and it has adverse impacts on the socio-economic and political lives of Dalit. Despite numerous commitments of the Government of Nepal for addressing these issues, Dalits not been able to enjoy their basic human rights and freedom due to the state mechanisms, lack of resources and will power of the concerned actors.
3. This report is divided into four sections: i) Introduction, ii) Methodology, iii) Background and framework, and iv) Human rights situation of Dalit community in Nepal. Under each section it presents number of issues in connection with the enjoyment of human rights by Dalit community and provides specific recommendations to the Government of Nepal.

Who are Dalit?

4. Dalits are those communities who, by virtue of atrocities of caste based discrimination and untouchability, are most backward in social, economic, educational, political and religious fields, and are deprived of human dignity and social justice (Proposed Bill, National Dalit Commission-NDC). Dalit comprise 13.2% of the total 26494504

population of Nepal (Central Bureau of Statistics-CBS, 2011). There are 26 castes under Dalit including 7 Hill Dalit castes and 19 Tarai/Madhesi Dalit castes (NDC, 2014)¹.

II. Methodology

5. This joint submission has been prepared by the Dalit Civil Society Organisations' Coalition for UPR under the coordination of *Nepal National Dalit Social Welfare Organisation (NNSWO)* comprising of 71 organisations (see Annex 1) with the technical support of the *International Dalit Solidarity Network (IDSN)*. This document is an outcome of a series of consultative meetings and workshops held at local, regional and national levels. These consultations were organised in three phases: *firstly*, district level interactions were held in 8 strategic districts² during October-December, 2014. *Secondly*, regional level consultation workshops were held with the participation of a range of organisations and individuals working for Dalit rights including marginalised ones within the Dalit community in Pokhara, Nepalgunj and Itahari³ in March 2015. Similarly two thematic workshops followed by national consultation workshop were held in Kathmandu in March 2015.
6. This submission prepared by following the guidelines adopted by Human Rights Council is based on the primary information collected during consultations and review of different research findings on human rights issues of Dalits. The findings of these consultations have been shared among wider stakeholders including the national human rights institutions and government at a national workshop in Kathmandu.

III. Background and Framework

Scope of International Obligations

7. Nepal is a party to 24 human rights related instruments including the International Convention on the Elimination of all forms of Racial Discrimination (ICERD). Nepal Treaty Act, 1990 states that the provision of a treaty to which Nepal is a party shall prevail for the purpose of the Treaty if there is any inconsistency with Nepalese Laws and be enforceable as good as Nepalese law.⁴ However, Nepal has not submitted a CERD Report since 2004 which is negligence of the Government in promoting Dalit rights. The Government has not effectively implemented various recommendations and concluding observations received from treaty bodies on its state reports in terms of advancing Dalit rights⁵.

¹ List of Hill Dalit: Gandharva (Gaine), Pariyar (Damai, Dargee, Suchikar, Nagarchee, Dholee, Hudke), Badi, Bishwokarma (Kami, Lohar, Sunar, Od, Chunanra, Parki, Tamata), Mijar (Sarki, Charmakar, Bhoole), Pode (Deula, Pujari, Jalari) and Chyame (Kuchikar, Chyamkhal); List of Tarai Dalit: Kalar, Kakaihiya, Kori, Khatik, Khatwe (Mandal, Khang) Chamar (Ram, Mochi, Harijan, Ravidas), Chidimar, Dom (Marik), Tatma (Tanti, Das), Dushadh (Paswan, Hajara), Dhobi (Rajak, Hindu), Pasi, Bantar, Musahar, Mestar (Halkhor), Sarbhang (Sarbariya), Natuwa, Dhandi and Dharikar/Dhankar

² Baglung, Bajura, Dailekh, Darchula, Dhanusa, Kalikot, Kanchanpur and Morang,

³ In Pokhara [Central and Western Region], Nepalgunj [Mid and Far West] and Itahari [Eastern and Central] in March 2015.

⁴ Nepal Treaty Act, 2047 (1990) Clause 9 (1)

⁵ Please find a link to a compilation of all recommendations made by international human rights mechanisms on caste-based discrimination: <http://idsn.org/caste-discrimination-and-human-rights/>

Therefore, **we recommend to the Government of Nepal to:**

- Uphold its international human rights obligations, submit the reports to Treaty Bodies including CERD after wider consultation with stakeholders in a timely manner;
- Implement the recommendations made by Treaty Bodies, specifically, the recommendations made since Nepal's first UPR; CCPR and CESCR 2014 and CRC OP 2012 and CEDAW 2011.
- Develop a National Plan of Action with adequate resource allocation to eliminate caste based discrimination and untouchability and empower the Dalit community.

Constitutional and Legal Framework

Constitution Making Process

8. The Interim Constitution 2007 has ensured the Right against Untouchability and Racial Discrimination (Article 14) as fundamental rights. Currently, Nepal is in a political transition, striving to write a new constitution through the second Constituent Assembly (CA) while the first CA demised without delivering the constitution in the given tenure. The drafting of a new constitution has remained entangled.

Therefore, **we recommend to the Government of Nepal to:**

- Ensure that the constitution is promulgated by this second CA and enshrines the rights of the Dalit community.

Existing Laws

9. The Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 is the main law that has criminalized the act of caste based discrimination and untouchability in any form anywhere. However, the implementation is very weak. Still there are number of laws that contain discriminatory provisions against Dalit.

Therefore, **we recommend to the Government of Nepal to:**

- Strengthen its measures to effectively implement the Caste-based Discrimination and Untouchability (Offence and Punishment) Act and to eliminate all forms of discrimination against the Dalit community, as recommended by the Human Rights Committee (CCPR) in 2014. In particular, by sensitizing law enforcement officials, investigating and prosecuting those responsible for discrimination against Dalits and conducting awareness-raising campaigns on the rights of Dalits, as recommended by the Committee on Economic, Social and Cultural Rights (CESCR) in 2014.

Institutional and Human Rights Infrastructure

10. There is the National Human Rights Commission (NHRC), National Women Commission (NWC), National Dalit Commission (NDC) and the National Muslim Commission (NMC). The NDC has still to receive a statutory mandate despite the recommendation by first UPR to make it a statutory body and resourceful. However, still it lacks essential capacity, resources and independent status to effectively fulfil its mandate of monitoring the cases of caste-based discrimination and untouchability across the country and providing policy recommendations to the government. It is highly appreciated that there is a statutory provision to include at least one Dalit woman in the

NWC⁶. Other than this, the NHRC has lacked any Dalit representation since its establishment. The government has not equally implemented the recommendations of these national human rights institutions.

Therefore, **we recommend to the Government of Nepal:**

- Immediately take steps to pass the bill of the National Dalit Commission which is pending in parliament and ensure that the NDC will be a constitutional body with the promulgation of new constitution;
- Equip the NDC with adequate resources and capacity, as recommended by the CCPR and CESCR in 2014;
- Ensure the inclusion and representation of Dalits in the NHRC;
- Implement the recommendations made by the NHRIs with due respect and priority.

IV. Human Rights Situation of Dalit Community in Nepal

1. Right to Equality and Non-Discrimination (*Caste Based Discrimination and Untouchability*) and Access to Justice

11. The first UPR provided a number of recommendations, “that cases of caste-based discrimination be reported, investigated, perpetrators prosecuted and victims of such violence are compensated”. The ‘Caste Based Discrimination and Untouchability (Offence and Punishment) Act 2011’ is much appreciated and attributed as the result of the first UPR cycle of Nepal which has criminalised any act of caste-based discrimination and untouchability. Beside this, no significant progress has been observed with regards to the implementation of the UPR recommendations particularly addressing the issues of caste based discrimination and untouchability.
12. The Interim Constitution ensures Right to Freedom (Article 12), Right to Equality (Article 13), Right against Untouchability and Racial Discrimination (Article 14). Any discriminatory treatment on the grounds of caste, ethnicity, sex, colour, race, political opinion, etc. is outlawed and the victim of any such discrimination is entitled to compensation. However, in practice Dalits are facing entrenched discrimination based on caste in every sphere of their life (*Annex II*).
13. After the enactment of the Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 altogether 4 people from the Dalit community have been killed⁷ due to caste-based atrocities. The Police deny, in many cases, filing FIR’s on cases of caste-based discrimination and untouchability. Rather, they compel to make agreement between victims and perpetrators which further victimises Dalits and discourage them to seek justice. Impunity, converting case (*the case of caste based discrimination is converted into other cases*), and creating counter case are widely observed while dealing the cases of caste based discrimination (*Annex II*).

⁶ Section 5.2, National Women Commission Act 2006

⁷ (i) Sete Damai, Dailekh district Toli VDC ward no. 2 died [2011 August] by the attack of non-Dalit while his son got married with non-Dalit girl; (ii) Man Bire Sunar, Kalikot district, Jubitha VDC ward 4, died [2011 December] by the attack of non-Dalit in the accusation of touching of hearth; (iii) Shiva Shankar Das, Saptari district Pansera VDC was killed [2012 June] by feeding poison while he got married with non-Dalit girl; (iv) Ram Bahadur Sharki, Bardia district, Bakalbhar, died by the attack of non-Dalit in the accusation of touching a glass.

14. The Government of Nepal has taken initiatives to provide incentives for inter-caste⁸ marriage since 2009 by recognising it as a good tool to promote assimilation and reduce caste-based discrimination in society. However, the government has not been providing such incentives in a decentralised and accessible manner. In many cases, the couple who gets married regardless of caste are physically attacked and socially boycotted and face inhuman treatment in the society⁹. The couple and the family of an inter-caste marriage are socially boycotted and displaced, murdered (*See Sete Damai, Shiva Shankar Das*) and imposed fines by the community¹⁰. Dalit also face discrimination in terms of religious and ritual practices, particularly inter-caste married couples or their family.
15. The Government of Nepal has developed its fourth Human Rights National Action Plan for five years. It has addressed the issues of Dalits under Inclusive Development. The Ministry of Federal Affairs and Local Development (MoFALD) has been designated as the lead agency to implement the Plan. Likewise, NDC has been presented as one of the key responsible agencies. The executive body of the NDC often remains vacant for long periods of time and lacks essential capacity and resources for implementing the Plan. The local bodies and line agencies of the government are unaware and hesitant to talk about the contents and implementation of the Plan¹¹.
16. It is appreciated that ‘Caste Based Discrimination and Untouchability Elimination and Dalit Rights Promotion Mechanisms’ have been formed under the Office of the Prime Minister. However, it is almost non-functional.
17. It is appreciated that the Government of Nepal has criminalized caste-based discrimination and untouchability through legislation. However, though there are some ‘substantive errors’. Rampant impunity and poor implementation of the Act has remained a challenge to access to justice for Dalits. The ‘caste attitude’ of law enforcement authorities and institutions, *inter alia*, and political influence have fuelled impunity (*Annex II*). In doing so, cases of caste-based discrimination and untouchability have been converted into other cases of libel and slander, battering and public offence by the police and the court.
18. The government declared Nepal an untouchability free nation in 2006 but in practice caste-based discrimination and untouchability practices are rampant and increasing all over the country. Barriers for Dalits in accessing justice include pressure on victims [Dalits] for forceful negotiation in the name of social harmony, security threats to victims and witnesses, undue political influence, difficulty in collecting tangible evidence, not supportive attitude/behaviour of the non-Dalit community, a lack of Dalit representation in law enforcement agencies, and economic dependency of Dalits.

⁸ Inter-Caste Marriage: A marriage between different caste groups of different social hierarchy is inter-caste marriage. The marriage between the caste group belonging to upper caste and lower caste (untouchable or Dalit) is still unacceptable in Nepali society but legally it is not a problem for legally eligible age group of male and female.

⁹ Out of 107 cases related to caste based discrimination and untouchability monitored during 2014: Physical assault due to caste prejudice 23, Verbal abuses and untouchability 57, Social boycott and forced for displacement 5, Denial of and atrocities against inter-caste marriage 15, Negation/restriction in accessing natural resources (water and forest) 3, Labour exploitation or forced labour 1, Seizing of land and property 2, and Prejudices in government offices while providing serve to Dalit 1

¹⁰ Jit Bahadur Sunar, Gorkha district, Lapu VDC ward no. 8 was fined by the community [relatives of the bride] on the case of inter-caste marriage.

¹¹ District interaction on UPR and Human Rights of Dalit organized by NNDSWO in Morang

19. Dalits are discriminated at work including at government offices¹². Human Rights Defenders who raise caste-based discrimination and untouchability issues including the victims and witnesses face threats and security challenges.
20. Despite the Government's decision, people from the Dalit community who attempt to acquire citizenship using their surname [different than the caste name] including children of Badi women and inter-caste married couples are harassed and discouraged by the authorities.

Therefore, we recommend to the Government of Nepal to:

- Adopt the principles of equality and non-discrimination as the key guiding principles and fundamental rights of the new constitution. The preamble of the new constitution must acknowledge past historical injustices based on caste against Dalits.
- Regularise employment incentives and ensure physical security for inter-caste married couples and their family. Also, provide incentives to those families who accept Dalit brides and / or bridegrooms;
- Process all cases of caste based discrimination and untouchability according to the Principle of Zero tolerance in the justice delivery system and punish law enforcement agencies (Police, government attorney and judge) who deny following the due process of laws.
- Train all law enforcement agencies and authorities on the Caste Based Discrimination and Untouchability (Offence and Punishment) Act 2011 and ensure effective implementation of existing laws;
- Amend the existing Evidence Act, 1974, specifically stating that the burden of proof is to be borne by the defendant on the cases related to caste discrimination and untouchability in order to address the widespread use of proverbs and derogatory terms towards Dalit that takes away their dignity.
- Amend the Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 by increasing imprisonment and monetary fines as well as compensation to the victim. Similarly, the provision of fines and imprisonment should be made mandatory. For that existing provision, "Or" needs to be replaced by "And".
- Conduct awareness/sensitization programmes and campaigns against caste-based discrimination and incorporate caste-based discrimination and untouchability in all training curricula of the government.
- Establish protection mechanisms of human rights defenders and enhance their capacity to effectively work for the protection and promotion of human rights of all including Dalits.
- Effectively functionalize the Caste Based Discrimination and Untouchability Elimination and Dalit Rights Promotion Mechanisms formed under the Office of the Prime Minister and expand it to all districts. Also, capacitate with resource, the Neglected, Suppressed and Dalit Upliftment Development Committee and Badi Development Board.

¹² Bina B.K. of Patan Municipality-11, for instance, who passed Teachers' Service Commission exam but couldn't get rented room in the village of non-Dalits where she was deployed and now she is attending in District Education Office at district headquarter of Baitadi.

- Ensure that people from the Dalit community can get citizenship using their surname [different than caste name] without any hindrance.

2. Economic, Social and Cultural Rights of Dalit

a. Right to Education

21. The Government of Nepal has ensured free primary education to all children below 5 years including free text books and Rs. 400 a year to all Dalit students. Beside this, the Neglected, Suppressed and Dalit Upliftment Development Committee has been providing scholarships to selected Dalit students for higher studies. Likewise private schools¹³ need to provide free scholarship to 10% of all students in the school; however it is not in implementation. Although it is 'free' up to secondary level, school education is still unaffordable for Dalit children until and unless those households who are below the poverty line are provided with economic upliftment opportunities. The improper and untimely distribution of scholarship schemes by the schools further excludes Dalit children from being properly benefitted.
22. The literacy rate of Dalits (6 years and above) is 52.4% compared to the national average of 65.9% and it is 34.5% for Tarai/Madhesi Dalit. Only, 24.7% of Hill Dalits and 11.8% of Tarai/Madhesi Dalits complete 8th grade which is far behind the national average (41.7%). Dalits comprise only 1.6% of those with a SLC and above; and only 0.8 % of those with a Bachelors' degree¹⁴. The low educational status has a multifaceted impact in the socio-economic and political life of Dalits. Similarly, the literacy rate of Dalit women is 45.5%. Women from Musahar and Dom community are at the bottom with literacy rates of 17.4% and 17.9%¹⁵.
23. The low educational status of Dalits has remained one of the major barriers for their human development¹⁶. It is evident that there is an inverse relationship between education levels and incidences of poverty¹⁷ i.e. the lower the education, the higher the incidence of poverty. This is attributed to the high incidences of poverty among the Dalit community.
24. Children from the Dalit community face discrimination at schools by teachers and peers. Due to a discriminatory mindset, teachers provide less care for Dalit children, Dalit children not being permitted to drink water; rude manner of addressing them; putting Dalit children in separate lines, etc. Ultimately, their learning achievement becomes low which leads them to dropout.

b. Access to Land and Natural Resources and Extreme Poverty

25. Land is the main asset for determining an individual's social status and standard of living in Nepali society. Dalits' land holdings are small; and the landlessness among Dalits is extreme –36.7% Hill and 41.4% Madhesi Dalit are landless¹⁸. Landlessness has made Dalits economically vulnerable and dependent upon landlords. Such dependency is often exploited by the landlords, allowing for many abuses against Dalit. Most Dalit victims of

¹³ The Education Act

¹⁴ Nepal Social Inclusion Survey (NSIS) 2012, Central Department of Sociology/Anthropology, Tribhuvan University, Nepal

¹⁵ National Census 2011, Central Bureau of Statistics, Nepal

¹⁶ Nepal Human Development Report 2009, UNDP

¹⁷ Poverty in Nepal, CBS 2012

¹⁸ NSIS

violence and discrimination are agricultural and occupational labourers who are generally landless. The root causes of *Haliya*¹⁹, *Balighare/Khalo*²⁰, *Charuwa*, *Haruwa*,²¹ etc. systems are associated with the issue of landlessness and small holding.

26. Dalits comprise the poorest community in Nepal, in terms of all poverty measures – income, consumption and human development. A total of 42% of Dalits fall below the poverty line which is 17 percent higher than that of the national average (25.2%)²². The average per capita consumption in Nepal is 34,187. Madhesi Dalits have the lowest level of consumption with per capita of NRs. 23,106 followed by Hill Dalit 25,298 per annum. Whereas, among the Dalits of both Hill and Madhesi origin, every two in five persons are poor²³.
27. The issues of Freed Haliya have not been addressed with adequate resources and sustainable rehabilitation although the Freed Haliya Rehabilitation Committee is working in this regard. The Badi Development Board has been working since 2012 for the upliftment of the Badi community; however, it has not been able to produce significant results due to a lack of adequate resources. Likewise, the Neglected, Suppressed and Dalit Upliftment Development Committee is also working for the development of Dalits, however, it has limited interventions and result with a limited mandate and resources.
28. There is null representation of Dalits in all planning and executive bodies that guide overall development process of Nepal. Thus, they are excluded from the very planning process and development outcome.

c. Livelihood and Employment

29. A large proportion of Dalits are depending on elementary occupations (as per ILO definition) for their livelihood. This indicates that they have been excluded from better employment opportunities. The lower status of education and discrimination become barriers to obtain better jobs for Dalits. For instance, 42.5% Tarai/Madhesi Dalits earn their livelihood from elementary occupations.²⁴ Among males, one out of twelve is

¹⁹ **Haliya:** The word Haliya comes from Halo which means a plough, a person ploughing the field is called Haliya. Some times the person is called Hali too. The difference between these two words are not much, however, where the person works as wage labour ploughing the field and does not have bondage is called Hali and the person with bondage is called Haliya. The word Haliya is in use in the mid and far western part of the country and Hali in the western and central hilly regions (NNDSWO).

²⁰ **Balighare:** Balighare is a very traditional system of paying wages not in the form of cash but in the form of crop or kind. This system does not pay enough in comparison to the work done and has been found to be very exploitative in economic terms and very humiliating in the social term. The main victims of this system are Dalits. The Dalit households who provide services would go to those families who used their services and collect certain amount of grain (mostly maize, millet and sometimes rice). This system prevails throughout the country.

²¹ **Charuwa:** In the Terai or Madhesh areas both Haruwa and Charuwa are used synonymously and sometime pronounced together. Though Charuwa means wanderer in practice it is understood as semi bondage labour. In the Terai region when a person or a particular family is very poor and does not own any means of production for livelihood then the male member of the family or the whole family would bondage itself with a landlord who then agrees to use the labour of the family to cultivate crops in the field. In return they would be provided with a shelter and a certain amount of grain for very basic subsistence living. Please see also Haruwa (NNDSWO).

Haruwa: The word Haruwa means defeated. This is also a kind of semi slavery system present in the Terai/Madhes area of Nepal and used simultaneously with Charuwa. Haruwa are mostly landless without having proper means of production. Most of the Haruwa are not necessarily Dalits; they could be indigenous people such as Gharti, Bhujel, Tamang of the hill and Tharu of Terai (NNDSWO).

²² The Nepal Living Standards Survey (NLSS), 2010

²³ Nepal Living Standard Survey 2010

²⁴ NMSII

engaged in professional/technical jobs, whereas it is half for females. Among women, one out of twenty five is now engaged in such jobs. Women from Madhesi Dalits have a figure of only 0.8% compared to their hill counterparts²⁵.

30. The Dalit community has *de facto* been denied the right to earn a livelihood by running business of their own interest i.e. tea-shop, dairy, small hotels. Still, trading animal milk produced by Dalits include challenges.

d. Traditional Occupational Skills of Dalit

31. Dalits serve others as semi-bonded labourers. Most Dalit groups employ their own traditional occupational skills such as iron work, gold smith, tailoring, shoemaking, bamboo crafts, etc. Such inherent occupational skills are the only way that many Dalits are able to survive. Unfortunately, most of these skilful people are not receiving fair value and social respect for their work. Dalits are often exploited in the name of *Balighare*, *Khalo*, etc. systems and get only minimal payment (mostly in kind/grains) for their works.
32. Lack of modernization and limited access to markets and having no patent rights for their inherent skills has put Dalits' traditional occupations in danger. Developing social respect for these occupations of Dalit, making them competitive in the market and protecting patent rights is a major concern for ensuring the livelihood rights of Dalits.

e. Right to Food

33. The National Food Corporation has maintained a national food reserve stock (buffer stock). However, Dalit people do not have access to this, particularly in remote areas.
34. Dalit are most vulnerable in terms of the right to food. The food sufficiency mean value (percent) is extremely low for Dalits compared to an average 77%. The food sufficiency for Hill Dalits and Tarai/Madhesi Dalits is 56.0% and 53.7% respectively, which indicate that up to 46% of Tarai/Madhesi Dalits do not consume adequate amounts of food (i.e. two meals a day throughout the year)²⁶. The lack of access to agricultural land and employment opportunities result in extreme poverty and put Dalits in the lowest food sufficiency status which violates their right to food and ultimately right to life.

f. Right to Health and Sanitation

35. The second Long-term Health Plan of Nepal, 1997 to 2017, stipulated to make essential healthcare services available in all districts to 90% of the population within 30 minutes of walking time. Despite this target, overall, only 58% of households can access such facilities in Nepal. However, just 39.7% of Hill Dalits have access to health facilities within 30 minutes of walk. In Nepal, 55.5% people cannot afford medical treatment from their own household income which is much critical among Dalits. 60.5% Hill Dalits and 66.1% Tarai/Madhesi Dalits cannot afford medical treatment from their own household income.²⁷
36. Discrimination in access to health services is another major issue in enjoying the right to health – 43% of Tarai/Madhesi Dalits and 14.6% of Hill Dalit experience discrimination

²⁵ Lama Mukta S. and Arun Kumar Lal Das. 2014. **Dalit Women: Updates on Selected Social and Economic Indicators from Census 2011**. Paper presented in National Conference of Dalit Women. Feminist Dalit Organization (FEDO).

²⁶ NMSII

²⁷ Nepal Social Inclusion Survey (NSIS) 2012, Central Department of Sociology/Anthropology, Tribhuvan University, Nepal

when receiving medical treatment in local health services. On average, 72% of women experience problems in accessing health service. The figure for Dalit women is higher than the national average with 79 and 85% respectively for Hill and Tarai/Madhese Dalit women.²⁸

37. Child marriage and early pregnancy have worsened the health problems for Dalit women. The girls who get married before 15 years of age ranges up to 62% among Dalit groups. This, along with other, has worsened the maternal health and other health problems such as prolapsed uterus, early pregnancy, sexual violence and exploitation.
38. The access to drinking water of Nepalese people has significantly increased though it is as low as 47.8% in overall. The situation of Tarai/Madhese Dalits is worst in this regard. Just 14.1% of Tarai/Madhese Dalit have access to safe water.²⁹ The practice of untouchability is directly related to water. The water touched by Dalit is considered impure in the society. Due to these practices, the majority of Dalit households face discrimination or restrictions even violations while collecting water from common water sources. There are a number of such severe incidences from every corner of the country which are also reported in the newspapers.
39. The Dalit population also has very minimal access to improved toilet facilities. The situation is particularly poor for Tarai/Madhese Dalit, of whom just 5.5% have access to improved toilet facilities whereas it is 30.6% for Hill Dalit compared to 41.7% of national average.³⁰

g. Social Security

40. The Government has made some provisions for the social security of people including senior citizen allowance. However, it has not been implemented in an integrated manner and there is no clear legal framework for implementing it from a human rights based approach. The procedural limitation and size of the amount is also a barrier in realizing existing provisions.

h. Right to Budgetary Allocations and Access to Resources

41. The government has started a gender responsive budget at the national level. The gender equality and social inclusion (GESI) responsive budget formulation and its auditing guideline are also developed for local bodies of the government by MOFALD. Currently, national plan encompasses provisions for Dalit issues in the GESI chapter. However, the resource allocation is not ensured and lacks proper monitoring. The guidelines developed have not been implemented properly. Large sections of Dalits are unaware of these provisions. Their participation in budget process and decision-making is neglected. This ultimately violates their social and economic rights.

Therefore, we recommend to the Government of Nepal to:

- Standardize the scholarship amount to Dalits with due priority given to girls by considering the minimum needs of the students and strengthening monitoring mechanisms for efficient use and effective distribution of scholarship schemes and adopt policy measures to ensure employment to Dalits who attain a certain level of education;

²⁸ Nepal Demographic Health Survey 2011

²⁹ NMSII

³⁰ National Census, 2011, CBS

- Provide land to landless Dalits and ensure equal access of Dalits to natural resources and inclusion of Dalits in natural resource management committees;
- Expand the governments “People's Housing Programme” covering all landless Dalits and all other affected by the disaster across the country;
- Strengthen its efforts to achieve universal provision of quality education for girls at each level of the education system in urban, rural and remote areas, with special attention to Dalit girls, as recommended by CEDAW 2011;
- Schools and education institutions need to be declared discrimination free zones;
- Devise and implement free medical service and health insurance policy for all including Dalits who are unable to bear health service from their household income and are below the poverty line. Discrimination in accessing health services needs to be addressed through effective monitoring and prosecution of the offenders;
- Take immediate step to appoint at least one Dalit teacher including Dalit women at each level of schooling;
- Take immediate steps to provide land to landless Dalits and guarantee employment for landless Dalits [though living for centuries/generations] who do not have citizenship certificates and cannot own land due to their lack of citizenship certificates;
- Ensure that the planning and executive bodies are inclusive with respect to Dalits and that the government and development agencies allocate adequate resources for the economic empowerment by considering their poverty gaps;
- Ensure that the issues of freed Haliyas addressed with sustainable rehabilitation.

3. Right to Participation and Representation of Dalit

42. It is appreciated that the second CA has owned decisions made by the first CA which are progressive towards advancing Dalit rights. However, the voices of CA members from Dalit and marginalized community have been further marginalized in the CA which may hinder addressing their issues in the new constitution.
43. Despite constitutional guarantees of proportional representation for Dalits, they have not experienced such in reality. The Government of Nepal has recently appointed 169 judges in the judiciary sector but none of them are from Dalit despite reservation quotas³¹. In the Cabinet there is no representation of Dalits.
44. The Constituent Assembly Act 2007 has provisioned that proportional representation of Dalits in the CA will be ensured; however, there is only 7% representation³². There is null representation in political appointments including the National Planning Commission (NPC).
45. Dalits have poor representation in the civil service of the government i.e. only 1.94% whereas it is 62.58%, 19.55% and 15.93%, for Brahman/Chhetri, Indigenous nationalities, and Madhesi respectively³³. Despite reservation quotas, it has not helped

³¹ The Civil Service Act, 1993

³² Though it should be at least 13% to be proportional.

³³ According to the Civil Service Record (Office), 2063

much to increase the participation of Dalits in the state bureaucracy due to their poor socio-economic condition and discriminatory practices.

Therefore, **we recommend to the Government of Nepal to:**

- Ensure proportional political representation of Dalits plus additional compensation quota at all levels of state structures including executive, legislative, judiciary, bureaucracy, security forces, political and diplomatic appointments, constitutional bodies and private sectors;
- Adopt fast track methods or group recruitment provision for Dalits in civil and security services of the state in order to ensure the proportional representation in the civil and other government agencies;
- Ensure the inclusion of Dalits in all stages of government planning from local to national level; specific measures needs to be enacted to ensure the participation and inclusion of Dalits;
- Ensure inclusion of Dalits [including women, Tarai/Madhesi Dalit] in proportion to their population in all political parties from local to central committees' vital positions through the amendment of Political Party Registration Act.

4. The Issues of Dalit Women³⁴

46. Nepalese society still is based on a patriarchal structure and culture. Dalit women are underprivileged, underrepresented and exploited in all spheres of society. The socio-cultural, political, economic and educational status of Dalit women is at the bottom in all indicators as well as in social stature. Dalit women's literacy rate is 45.4% whereas it is 52.7% for Dalit men. Women from Musahar and Dom community are at the bottom with 17.4% and 17.9% literacy rate.
47. The Government of Nepal has enacted some progressive laws in response to international human rights treaties and commitments such as CEDAW (*Annex III*). Dalit women suffer triple discrimination – for being woman, being Dalit and being Dalit woman. In many cases, Dalit women have faced multiple forms of abuses and atrocities³⁵; and they are stigmatized as *Boksi* (witchcraft), tortured due to the dowry system, *Chhaupadi Pratha* (stay in separate shed during menstruation period), sexually exploited, and suffer from untouchability and domestic violence. These women are also vulnerable to serious health issues, sex trafficking, and suffer from social, political, and economic powerlessness.
48. The Three Year Interim Plan (2011-2013) has incorporated special provisions for women and disadvantaged groups under the heading of “Gender Mainstreaming and Inclusion”,

³⁴ Please find in Annex III. all issues raised and recommendations made by international human rights mechanisms on Dalit women in Nepal

³⁵ Study carried out by FEDO reveals that 98.2% of 1513 sampled Dalit women suffer from physical and mental violence. Among them 9% Hill and 12% of Tarai Dalit women are victim of sexual violence. Dalit women are highly at risk of sexual violence. Dalit women are highly affected by domestic, sexual and mental violence. In every 10, six Dalit women are unsafe within their homes. About 49.1% of Dalit women encounter violence and only 4.4% of the incidents are reported to the police. 24% of women are victim of inter-caste marriage where 90% cases are registered appealing to save their lives. 38% Dalit women have been victim of violence during 2065-2071 which is only upon the basis of published news. One can imagine the rate is higher including unpublished victims. Study carried out by FEDO reveals that 98.2% of 1513 sampled Dalit women suffer from physical and mental violence. Among them 9% Hill and 12% of Tarai Dalit women are victim of sexual violence. Dalit women are highly at risk of sexual violence.

and “Empowerment of Women and Gender Equality”, National Plan of Action against Gender-Based Violence (2012-2017) states that gender-based violence will be controlled and security and protection will be provided to women and child victims of violence. The government has been implementing various programmes; however, they do not specifically target Dalit women. There is a lack of disaggregated data regarding the status of Dalit women which has been a main challenge in tracking the progress of Dalit women.

Therefore, we recommend to the Government of Nepal to:

- Ensure that Dalit women will be given first priority in all programmes formulated targeting women putting priority in combating multiple forms of discrimination against Dalit women, and the adoption of legal provisions and comprehensive programmes, including public education and awareness raising campaigns involving the mass media as well as religious leaders, as recommended by CEDAW 2011;
- Dalit Women Help Desks should be established in District Administration Offices including in the National Woman’s Commission and the National Dalit Commission;
- Ensure that complementary and comprehensive schemes are planned and implemented to specifically address Dalit women’s rights;
- Allocate resources for Dalit women’s development in proportion to their population in the Gender Responsive Budget of Government of Nepal;

5. The Issues of Tarai/Madhese Dalit

49. Tarai/Madhese Dalit community have been deprived of their human dignity and face discrimination based on caste in all spheres of social and political life. They are at the bottom in all human development and development indicators.
50. The issue of land ownership and citizenship are intertwined. Many Tarai/Madhese Dalit have not got a right to vote and participate in political life and in decision making bodies due to lack of citizenship. Access to modern toilet is about 42 percent of households in Nepal. For Madhese Dalits, it is only 5.5% of households.
51. Tarai/Madhese Dalit have been categorised as Dalits but they are excluded from the Madhese category in all reservation and representation quotas. Although there are a number of Tarai/Madhese based parties, they are not inclusive.
52. Still, people from the Dom community need to take their own glass/plate while having tea or food in teashop/hotels in their locality. They even face discrimination in public vehicles³⁶;
53. Within the Dalit community too, certain groups are in worse situations. They have not been empowered even to access the available opportunities. For instance, Musahar, Dom, etc. in Tarai/Madhese and *Badi* in hill (who are also in a minority within Dalits) are much more excluded.

Therefore, we recommend to the Government of Nepal to:

- Ensure the right to a decent life by providing citizenship certificates and land to landless Dalits by enacting special measures;

³⁶ They cannot pay bus fare hand-to-hand, they need to give and take without touching the person, NNDSWO field study

- Ensure special development programmes targeting Madhesi Dalit for their economic upliftment;
- Ensure inclusion of Tarai/Madhesi Dalits in the Dalit and Madhesi category proportionately.

6. The Issues of Children, Senior Citizens and Persons with Disability of Dalit Community

54. The malnutrition among Dalit is high as 33.9% children of Hill Dalit and 36.3% of Tarai/Madhesi Dalit are underweight. Under-five mortality is also much higher than the national average.
55. Discrimination against children from Dalit community at schools is rampant particularly in Tarai/Madhesi and mid and far west of Nepal. The extreme poverty put children into child labour which is one of the major causes of low enrolment and high dropout in school.
56. Senior citizens face more discrimination based on caste, they are in entrenched poverty, lack access to health facilities and do not have access to shelter. Many senior citizens from the Dalit community do not have citizenship certificates because of which they do not get social security schemes. There is no specific policy addressing the issues of senior citizens.
57. Person with disabilities are facing multiple forms of discrimination. They have no opportunities for education. They, being Dalits, are also excluded in terms of receiving identity cards and social security schemes.

Therefore, we recommend to the Government of Nepal to:

- Ensure that children from the Dalit community have a good environment for their development and receive education without discrimination;
- Ensure that a first priority is provided to Dalit children in all programmes targeting children;
- Immediately enact policy to address the issues of senior citizens, particularly the most marginalised and excluded Dalit senior citizens;
- Ensure that all persons with disabilities, including Dalits, are given first priority in accessing services, receiving education, and identity cards and accessing adequate social security schemes.
