



“NO-ONE CARES”

DESCENT-BASED DISCRIMINATION AGAINST DALITS IN NEPAL

AMNESTY
INTERNATIONAL



Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

© Amnesty International 2024

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2024

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: ASA 31/7980/2024

Original language: English

amnesty.org



Cover illustration: © Ema Anis/Amnesty International

**AMNESTY
INTERNATIONAL**



CONTENTS

1. EXECUTIVE SUMMARY	5
2. METHODOLOGY	11
3. BACKGROUND: ORIGINS OF UNTOUCHABILITY AND DESCENT-BASED DISCRIMINATION	14
4. OPPRESSION AND SYSTEMIC DESCENT-BASED DISCRIMINATION AGAINST DALITS IN NEPAL	16
4.1 SYSTEMIC DISCRIMINATION AND GENDER-BASED VIOLENCE AGAINST DALIT WOMEN AND GIRLS IN NEPAL	21
5. LEGAL STANDARDS	24
5.1 INTERNATIONAL HUMAN RIGHTS FRAMEWORK	24
5.2 CONSTITUTIONAL PROTECTIONS	28
5.3 CBDU ACT OF 2011	29
6. A CULTURE OF IMPUNITY: BARRIERS FOR ACCESSING JUSTICE FOR CASTE AND GENDER-BASED VIOLENCE AND DISCRIMINATION	32
6.1 ROLE OF POLICE HINDERS ACCESS TO JUSTICE	35
6.2 INADEQUATE STATUTE OF LIMITATIONS FOR CBDU ACT	40
6.3 LACK OF DIVERSITY IN CRIMINAL JUSTICE SYSTEM	41
6.4 LACK OF EFFECTIVE OVERSIGHT MECHANISMS AND ACCOUNTABILITY	42
7. CONCLUSION AND RECOMMENDATIONS	45

GLOSSARY

WORD	DESCRIPTION
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
CBDU ACT	Caste-based Discrimination and Untouchability (Offense and Punishment) Act, 2011
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Committee on the Rights of the Child
CSOS	Civil Society Organizations
DNF	Dalit NGO Federation
FEDO	Feminist Dalit Organization
HRDS	Human Rights Defenders
GESI	Gender Equality and Social Inclusion
IIDS	Indian Institute of Dalit Studies
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDSN	International Dalit Solidarity Network
ILO	International Labour Organisation
INSEC	Informal Sector Service Centre
MOFALD	Ministry of Federal Affairs and Local Development
NDC	National Dalit Commission
NHRC	Nepal Human Rights Commission
NNDSWO	Nepal National Dalit Social Welfare Organization
NWC	National Women's Commission
OHCHR	Office of the High Commissioner for Human Rights (UN Human Rights Office)
OP	Optional Protocol
OPMCM	Office of the Prime Minister and Council of Ministers
UNDP	United Nations Development Programme

1. EXECUTIVE SUMMARY

This report documents the experience of Dalits, especially Dalit women, with systemic caste-based discrimination in Nepal, including the practice of untouchability, and the challenges they face in accessing justice. The report uses a human rights and intersectional lens, recognizing that systemic discrimination and inequality are the cause and consequence of several human rights violations, and that racism is a system of unequal power relations, which lead to human rights violations and barriers in accessing rights.

“Untouchability” is a type of discrimination rooted in the notions of “impurity” from the Hindu caste system, and untouchability is an everyday experience for the Dalits in Nepal, which is experienced severely by Dalit women and girls.

Dalits are the so-called “lower caste” in this social hierarchy created by the caste system, which is rooted in Hinduism but is adopted by every religion. Dalits constitute around 13.8% of Nepal’s total population of nearly 29 million people. Caste-based segregation creates entrenched discrimination and violence against Dalits in Nepal, and Dalit women and girls are more exposed to this violence due to their intersecting identities.

The state of Nepal undertook several important reforms in the last 20 years,

some of which were directed towards ending caste-based discrimination, including constitutional reforms and the adoption of the specialized law called Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 (hereinafter called the CBDU Act) which aims to prohibit some forms of caste-based discrimination in public and private places. This legal statute contains gaps, some of which are documented in this report, including lack of clear rules of procedure and the lack of legislation that links the caste as an intersecting factor in laws addressing gender-based violence. More importantly, legal protections for Dalits seem to be only on paper, because every aspect of the everyday life of Nepali Dalits is dyed by entrenched discrimination.

Amnesty International heard hundreds of examples of the negative impact that the practice of “untouchability” has on the human rights of Dalits, including issues relating to lack of access to water from public water sources, examples where Dalits cannot share food at the same table with non-Dalits, and instances where Dalits cannot enter houses of non-Dalits nor access shops or worship places along with non-Dalits.

This report also highlights cases where young Dalits face caste-based discrimination because of inter-caste

relationships, which has resulted in violence and even murders. Violence against women is widespread in Nepal and the Dalit women and girls face multiple layers of discrimination because of the intersection of caste, gender, class, and other markers.

International human rights treaties that the state of Nepal has ratified oblige the government to respect, protect and fulfil the right to equality and non-discrimination on the grounds of caste and gender. These treaties also include a duty to protect people from violence and discrimination from third (non-state) parties and prevent human rights abuses, such as widespread violence and discrimination.

All of the 13 core international human rights law treaties ratified by Nepal are relevant to descent-based discrimination, since the oppressions that Dalits experience in Nepal are the cause and consequence of many other human rights violations, including violations of the rights to water, education, housing and labour rights; the right to live a life free of violence, and free from torture and other cruel, inhuman and degrading treatment; the right to life, security and integrity; and the rights of women to live a life free from discrimination and violence. However, for the sake of brevity, this report focuses on the obligations of Nepal under two treaties: the Convention on Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

The main finding of this report is the inadequate response of the state of Nepal to this systemic discrimination. The state is failing to fulfil its human rights duty to address caste-based discrimination, and the specific legislation created, namely the CBDU Act, lacks effective implementation and is insufficient to combat such an entrenched system of discrimination. The state is also not complying with its obligation to protect Dalits, in particular Dalit women and girls, against any acts of

racial and gender-based discrimination from non-Dalits (third parties). Finally, the state is not fulfilling its obligation to provide adequate access to justice, including timely and adequate reparations for any damage suffered as a result of such discrimination.

This report elaborates on the barriers Dalits, in particular Dalit women, face when trying to seek justice for caste-based discrimination and violence. As is always the case with systemic discrimination, the barriers to accessing justice for oppressed people are several, and they reinforce each other. Without being exhaustive, this report includes an analysis of the main barriers to justice, according to the experiences of survivors and the organizations accompanying them. They have all emphasized the role of the police in blocking access to justice for survivors of violence and victim's families. Other barriers also include inadequate statute of limitations for the CBDU Act, lack of accountability, lack of representation of the Dalits in the justice system, and lack of effective oversight mechanisms. Underlying these specific factors is the systemic discrimination against Dalits, particularly Dalit women and girls, which permeates every aspect of the justice system and society in general.

The second important finding of this report is that these failings have created a total distrust in the justice system and its ability to provide justice for Dalits in Nepal.

Although information on access to justice is difficult to obtain in Nepal, the data Amnesty International had access to, gathered from police annual reports, shows a concerning pattern of underreporting and lack of adequate disaggregated data regarding caste-based crimes. In a country with more than 3.6 million Dalit people, more than half of them in three provinces reported to have experienced discrimination based on their caste within the last year (according to a UN report on community perceptions, explained in Chapter 4.1). The police reports note that around 30 to 43 First Information Reports

(FIR) were filed per year under the CBDU Act. In the case of gender-based violence against women and girls, according to official data (the last Demographic and Health Survey, published in 2023), only 28% of all women aged 15 to 49 who have ever experienced any type of physical or sexual violence have sought help to stop the violence. Among Dalit women, the percentage is even lower (21.5%). Of the women who have ever experienced violence and have sought help, only 7.2% have approached the police.

This report documents how all these factors contribute to creating a “culture of impunity” in which perpetrators of racist and gender-based violence go unpunished. The discrimination and violence documented in this report – and the impunity – are not the result of random, individual acts of misconduct. Rather, they are deeply rooted in racism and patriarchy, power imbalances and structural relationships of inequality and harmful social and cultural norms that place lower value on Dalits, and on women and girls in society. The widespread normalization of violence drives and allows this culture of impunity to persist. This report also documents the role of national commissions, which is rather limited due to the absence of effective ways of working together to provide oversight to address offences of caste-based discrimination. The National Dalit Commission lacks resources to effectively monitor, investigate and provide recommendations to address caste-based discrimination.

This research was conducted in Nepal through a participatory methodology

between February and June 2023 by Amnesty International, in collaboration with local partners, including the Feminist Dalit Organisation (FEDO) and Samata Foundation. This report includes an analysis of the main obligations of the state under the international human rights framework, as well as relevant national legislation. The state and 15 experts consulted highlighted the centrality of the

CBDU Act. For that reason, this report focuses strongly on some of the gaps in effective implementation of the CBDU Act, in order to better understand the gaps that Dalits face in accessing justice in Nepal.

Amnesty International researchers conducted focus group discussions with 52 stakeholders, including community leaders, activists, and women human rights defenders, to understand their experience of caste-based discrimination. Most of them were women. Additionally, researchers conducted 21 one-to-one interviews with Dalit women survivors of caste-based violence and with members of three families of young Dalit victims, namely Angira Pasi, Ajit Dhakal Mizar and Nabaraj BK, who were killed due to caste-based violence related to their inter-caste relationships. The geographical scope of the research was Madhesh Province, covering Janakpur, Siraha, Saptari and Rupandehi in Lumbini Province and Surkhet and Jajarkot in Karnali Province; and these locations were selected with partners based on reports which confirmed widespread occurrence of caste-based discrimination in these regions.

The research was conducted in accordance with Amnesty International’s ethical standards, including by seeking informed consent and minimizing security risks to Dalit men and women who participated in the focus group discussions. Amnesty International employed research methods that would make the experience of participating in the research an empowering and positive one for survivors themselves, and the analysis and recommendations of this report have been drafted on the basis of several in-person workshops with key Dalit stakeholders.

Researchers also reviewed relevant literature, including legislation and reports from United Nations agencies and special mechanisms, civil society organizations, academics and media. Finally, researchers also met public officials and sent letters to relevant governmental offices requesting

information and their comments on the allegations, but no reply was received.

The conclusion of this report is that discrimination against Dalits is still systemic and widespread and has concrete impacts on the lives and human rights of Dalits, despite the constitutional and legal reforms, as well as the creation of policies and institutions. Culture of impunity is pervasive and reinforcing which is sending a message to society that caste and gender-based violence and discrimination are “acceptable” and “natural”. As Anita Mahara, one of the Dalit women interviewed for this report, clearly said, it seems like “no one cares”.¹

On the basis of the documented experiences of Dalit communities, and Dalit women and girls in particular, and their ideas for change, Amnesty International makes some recommendations to the state of Nepal, including:

The state of Nepal needs to create a plan for a truly transformative response to the entrenched caste and gender-based violence and discrimination in Nepal, based on human rights obligations and with an intersectional lens. This plan needs to combat the culture of impunity, including by designing measures beyond criminalization measures, including awareness-raising campaigns to combat stereotypes and prejudice and other policies directed to dismantle systemic racism and combat gender-based violence in society and within key institutions. They should include support, protection, and adequate remedies to victims and survivors and their empowerment, as well as clear measures to effectively prevent violence and discrimination. Comprehensive disaggregated data collection should be a key part of this plan, to understand the

pervasiveness of the problem and measure progress.

The state should also adopt appropriate legislative, administrative, budgetary, judicial and other actions towards the full realization of all human rights for Dalits, especially Dalit women and girls, including by taking temporary special measures to improve their situation, due to the intergenerational history of oppression and entrenched culture of caste-bias, patriarchy and discrimination. These should actively promote *substantive equality*, targeted to transform the culture and the practices of untouchability in the society, and counteract segregation, exclusion and violence against Dalits and Dalit women.

The state should provide adequate access to justice and timely reparations for Dalits, in particular Dalits women and girls, when discrimination or other human rights abuses occur, since this is also part of the state’s obligation to fulfil human rights. Such provisions should also include gender and racial-sensitive investigations, handling of evidence, effective implementation as well as prevention and monitoring of legislation and policy. Legislation prohibiting intersectional discrimination on the basis of caste and gender should be passed, as well as other appropriate measures to capture caste and gender in the delivery of justice and data collection.

In doing all this, the state must listen to the voices of Dalits and the organizations working with them, and Dalit women in particular, and design with them meaningful solutions. They should also consider mechanisms to confront caste hegemony, including through accountability and redress for the historical oppression Dalits are and have been suffering for centuries.

¹ Amnesty International interview in person with Anita Mahara (name changed for security reasons), 1 June 2023.

In addition to these broad recommendations, Amnesty International has specific recommendations for different institutions:

Recommendations to the Federal Parliament:

Review existing legislation and rules of procedure, taking into account existing barriers to reporting caste-based discrimination under the CBDU Act and other relevant legislation, including the lack of an intersectional approach to address caste and gender-based discrimination. Specifically, Amnesty International's research calls on the Federal Parliament to ensure a free and fair consultation with the Dalit community, the survivors and stakeholders to implement tangible changes in the following issues:

- To amend the short and inadequate statute of limitation which constitutes a barrier in reporting caste-based discrimination.
- To establish an independent mechanism to investigate negligence, reluctance or denial and informal mediation on the part of law enforcement officials when receiving complaints and registering FIRs related to caste-based offences and/or failing to conduct an effective and timely investigation and filing of chargesheet.
- To draft comprehensive CBDU rules to outline procedural guidance for investigation, prosecution and monitoring of cases of caste-based discrimination for effective implementation of the CBDU Act. To ensure CBDU Act and that related offences are registered, investigated, prosecuted in an effective and timely manner without requiring the Dalit survivors to produce unnecessary and unreasonable evidence at the time of registering FIR and to register them under the correct section of the CBDU Act and not any other Acts.
- To establish an oversight mechanism to

ensure the implementation status of the CBDU Act, which could be a function of the Law, Justice and Human Rights Committee of the Parliament and/or other process that will ensure that implementation reports are debated in the parliament.

- To link the CBDU Act with other laws particularly those applicable to gender-based violence, so that, caste is considered as an intersecting element in police investigation and prosecution as well as enable Dalit women and girls access better services.
- To ensure comprehensive data collection to adequately document incidents and cases of caste-based discrimination under the CBDU Act as well as incidents of caste and gender-based violence affecting Dalit women and girls.

Recommendations to the Prime Minister's Office (PMO):

- Establish an independent mechanism to investigate negligence, reluctance or denial and informal mediation on the part of police officials when receiving complaints and registering FIRs related to caste-based offences and/or failing to conduct an effective and timely investigation. The mechanism should have the power to sanction officers if evidence warrants so.
- Establish an oversight mechanism to ensure the implementation status of CBDU Act, which could involve the National Human Rights Commission (NHRC), National Women's Commission (NWC) and National Dalit Commission (NDC).
- Ensure Federal and Provincial governments provide adequate resources and necessary assistance to the local level governments to prioritize policies and programs and conduct effective campaigns against caste-based discrimination at the grassroots level.
- Strengthen the NDC in accordance with the Principles relating to the Status of National Institutions (Paris

Principles) with provisions for appointment of competent, qualified, and independent members, as well as providing adequate financial and human resources for enhancing their roles and responsibilities to enforce the laws such as CBDU Act, as well as protection and promotion of the rights of Dalits.

- Ensure the effective coordination and joint action of the multiple policies and institutions dealing with caste and gender-based discrimination in Nepal, including the National Human Rights Commission (NHRC), National Women's Commission (NWC) and National Dalit Commission (NDC).

Recommendations to the Ministry of Home Affairs:

- Ensure there is a zero-tolerance policy for actions against the CBDU Act and that related offences are registered, investigated and prosecuted in an effective and timely manner without requiring the Dalit survivors to produce unnecessary and unreasonable evidence at the time of registering FIR, and that the police correctly apply the sections of the CBDU Act and not any other Acts at the time of registering the FIR.
- Ensure that the Dalit cells in the police departments are adequately funded and implemented with human and financial resources to promptly assist survivors in a timely manner.
- Sensitize and train the police officers for the effective investigation of CBDU cases, as well as on deep-rooted mindset, bias and prejudice that perpetuates a culture of discrimination against Dalits and against Dalit women and girls.

Recommendations to NHRC:

- Take the initiative to ensure effective coordination with the NDC and NWC to collectively respond to incidents of caste and gender-based discrimination and untouchability in a timely manner.
- Train NHRC staff on the CBDU Act and

equip them to integrate action on caste-based discrimination and untouchability.

- Conduct country-wide public awareness and education campaigns designed to eliminate the practice of caste-based discrimination and prevent caste-based violence, particularly in inter-caste marriages.

Recommendations to NDC:

- Enhance joint coordination and collaboration with NHRC, NWC and other commissions to collectively address CBDU-related cases.
- Enhance knowledge and skills for effective monitoring, investigation, and reporting and submit timely recommendations to the government on CBDU related cases.
- Engage with and undertake necessary actions with the Office of the Inspector General of Police to ensure accountability in CBDU related cases.

Recommendations to UN agencies:

- Support the state of Nepal, through technical and other types of support, to comply with obligations under the international human rights instruments, including recommendations by the Treaty bodies such as the CERD Committee and the CEDAW Committee, special procedures, as well as the UPR process.
- Support civil society, in particular Dalit organizations and those working on Dalit rights with a gender and intersectional perspective, to meaningfully participate in the legal and policy discussions needed to combat caste and gender-based discrimination.
- Recommend the state to strengthen the NDC and other national commissions to remain compliant with the Paris Principles.

2. METHODOLOGY

This report is based on research conducted in Nepal between February and June 2023 by Amnesty International in collaboration with local partners including the Feminist Dalit Organisation (FEDO) and Samata Foundation. The partners were instrumental in organizing focus group discussions, one-to-one interviews with Dalit survivors, as well as contributing with their knowledge and expertise. The recommendations in this report were participatorily co-created with these partners and other national experts and survivors.

The focus of this research is the experience of Dalits, especially Dalit women, with systemic caste-based discrimination in Nepal, including the practice of untouchability, and the challenges Dalit women face in accessing justice. The

objective is to support survivors and organizations working with them in their fight against systemic discrimination, through a human rights and intersectional lens, and make concrete recommendations to the state to address this pressing issue. This lens recognizes that systemic discrimination and inequality are the cause and consequence of several human rights violations, and that racism is a system of unequal power relations, which leads to human rights violations and barriers in accessing rights. While addressing individual harm is fundamental to providing remedies and reparations to right-holders, this approach highlights the need to work

towards systemic changes of structures and laws enabling discrimination by challenging power imbalances, as certain people dominate others through historic and systemic oppressions. Tackling racial injustice within the human rights framework aims for substantive intersectional justice and equality which include direct and indirect discrimination.² Finally, the approach needs to be intersectional because people do not experience exclusion, inequality and human rights violations only based on racial grounds. Intersectionality is a recognition that structural discrimination, for example, discrimination based on gender, race, class, caste or other grounds, does not operate in isolation; individuals may suffer additional or unique forms of discrimination due to a combination of different forms of discrimination they are subjected to.

This report contains an analysis of the main obligations of the state according to the international human rights framework, as well as national key legislation. Systemic discrimination that is as entrenched as caste and gender-based discrimination in Nepal requires a holistic plan by the state which goes beyond criminalization. However, since the state and several experts consulted highlighted the centrality

² UN Human Rights Committee, General Comment 18: Non-discrimination, 21 November 1989, UN Doc. CCPR/C/21/Rev.1/Add.1, para. 7.

of the CBDU Act as the key tool developed to address caste-based discrimination, this research focuses primarily on some of the gaps in the effective implementation of the CBDU Act, in order to better understand the challenges faced by Dalit, and Dalit women and girls in particular, in accessing justice in Nepal.

The CBDU Act, however, tackles only some forms of discrimination that persist in public and private places. The crimes of assault, murder, rape and other forms of gender-based violence are adjudicated within the purview of the National Penal (Code) Act, 2017. The research also identifies barriers to access justice in three cases of caste-based murder; such crimes are not covered by the CBDU Act, nevertheless they lead to widespread systemic descent-based discrimination. Amnesty International researchers conducted focus group discussions with 52 stakeholders including community leaders, activists, women Human Rights Defenders, teachers, non-governmental organizations, media, lawyers, academics and other civil society organizations from both Dalit and non-Dalit backgrounds to understand their experience of caste-based discrimination. A majority of them were women. The focus group discussions were held in Kathmandu, Janakpur and Siraha Districts.

Amnesty International also held one-to-one interviews with 21 Dalit women survivors of violence and members of three families of young Dalit victims, namely Angira Pasi, Ajit Dhakal Mizar and Nabaraj BK, who were killed due to caste-based violence related to their inter-caste relationships.

The geographical scope of the research was focused on Madhesh Province, covering Janakpur, Siraha, Saptari, and Rupandehi in Lumbini Province and Surkhet and Jajarkot in Karnali Province. These locations and provinces were selected with partners based on reports

which confirmed widespread occurrence of caste-based discrimination in these regions.³

Amnesty International conducted a review of the CBDU Act, national policies related to caste-based and gender-based discrimination, and a literature review of reports from the United Nations agencies and special mechanisms, civil society organizations, academics and media reports.

The research was conducted in accordance with Amnesty International's ethical standards, including by seeking informed consent and minimizing security risks to Dalit men and women who participated in the focus group discussions.

Amnesty International employed research methods that would empower and positively affect survivors' participation in the research. As such, this report explores and reflects survivors' perspectives in the documentation, analysis, and conclusions. Amnesty International's research team also ensured that recommendations resulting from this research reflected the voices of the survivors to ensure that they were pertinent to their concerns.

While conducting the interviews, researchers held space for survivors to speak in a way that would be most comfortable to them, including in their preferred language, and ensured their privacy. Informed consent was collected prior to each interview. All survivors interviewed were Dalit women, although researchers also documented the issues faced by young Dalit girls. Throughout this report, survivors' real names, and in some instances, other identifying details such as family status and place names, were excluded to protect survivors' privacy,

³ UN Nepal, *Harmful Practices in Nepal: Report on Community Perceptions*, January 2020, <https://nepal.unfpa.org/sites/default/files/pub-pdf/Harmful%20Practices%20Perception%20Survey.pdf>, p. 2.

confidentiality, and safety in accordance with their wishes. In the three emblematic cases, this report uses the real names of victims and perpetrators, with their families' consent.

Most of the focus groups and in-depth interviews with survivors were conducted in English or Nepali, with translation for researchers or participants as needed. Interviews were also conducted in the Maithili language for Madhesh Province, and in that case, a local interpreter was hired, who signed a confidentiality agreement.

The Amnesty International research delegation also met with three senior police officials, including a Superintendent and Deputy Superintendent of Police, five lawyers, and two senior prosecutors, in Madhesh Province.

High-level meetings were held between Amnesty International and representatives in the Prime Minister's office, Ministry of Law and Justice, as well as with the Chairperson of National Dalit Commission (NDC) and National Women's Commission (NWC) in June 2023.

In March 2023, Amnesty International wrote to officials responsible for addressing issues raised in this report, including the Ministry of Home Affairs, the Chief Justice of the Supreme Court of Nepal and the Chairperson of the National Human Rights Commission, to request information related to this research. As of April 2024, no information was forthcoming. One challenge encountered in conducting this research was the paucity of official information available in terms of access to justice for Dalits who faced discrimination and violence in Nepal.

The report's recommendations and subsequent campaign and advocacy strategies were conceptualized along with partners and a wide range of Dalit activists using a participatory and inclusive

approach in several in-person workshops. The aim was to enable co-ownership and collective action for transformative change in the lives of Dalits, and in particular Dalit women, accessing justice in Nepal.

3. BACKGROUND: ORIGINS OF UNTOUCHABILITY AND DESCENT-BASED DISCRIMINATION

Caste-based discrimination is a global phenomenon. An estimated 260 million people worldwide disproportionately suffer from discrimination based on caste, and this affects 20-25% of the world's population including but not restricted to South Asia and its diaspora.⁴ In Nepal, descent-based discrimination manifests itself in the social hierarchy of the caste system, which is rooted in Hinduism.⁵

The caste system in South Asia is practised widely in almost all religions, including Islam, Christianity and others.⁶ According to international human rights law and standards, descent-based discrimination covers caste and analogous systems of inherited status, and states have a legal obligation to address caste-based discrimination.⁷

The caste system is perhaps the world's longest system of social hierarchy. The 2,000-year-old caste system determines the status of a person by birth; the caste status divides and classifies persons into so-called "high caste" or so-called "low caste" depending on the birth category one was born into. The caste status is inherited at birth and remains a permanent identity until death, and is passed on to generations to come; neither education nor employment, marriage, social or economic status could alter the caste status inherited at birth.⁸

In Nepal, and in South Asia more broadly, the Hindu caste system has four principal "varnas", or birth categories. The caste system is premised on the notion of purity and pollution.⁹ One's birth status determines whether one is regarded as "pure" (superior) or "impure" (inferior).¹⁰ This differentiation between individuals as

⁴ David Mosse, *Caste and development: Contemporary perspectives on a structure of discrimination and advantage*, <https://eprints.soas.ac.uk/25988/1/1-s2.0-S0305750X18301943-main.pdf>, p. 1.

⁵ Lynn Bennett, Dilli Ram Dahal, Pav Govindasamy, *Caste, Ethnic and Regional Identity in Nepal: Further Analysis of the 2006 Nepal Demographic and Health Survey*, 2008, <https://www.dhsprogram.com/pubs/pdf/FA58/FA58.pdf>, p. 1.

⁶ Special Rapporteur on Minority Issues, Report: *Minorities and Discrimination Based on Caste and Analogous Systems of Inherited Status*, 28 Jan 2016, UN Doc. A/HRC/31/56, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/56, para. 33.

⁷ UN Network on Racial Discrimination and Protection of Minorities, *Guidance Tool on Descent-Based Discrimination*, Key Challenges and Strategic Approaches to Combat Caste-Based

and Analogous Forms of Discrimination, 2017, <https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/GuidanceToolDiscrimination.pdf>, p. 1.

⁸ Amnesty International, *Decoding Discrimination based on Work and Descent Human Rights Education* online course, 2020, <https://academy.amnesty.org/learn/course/external/view/elearning/247/decoding-descent-based-discrimination>

⁹ Special Rapporteurs on the topic of discrimination based on work and descent, Final Report, 18 May 2009, UN Doc. A/HRC/11/CRP.3, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session11/A-HRC-11-CRP3.pdf>, para. 2.

¹⁰ Special Rapporteur on Minority Issues, Report, 2016 (previously cited), paras 12 and 123.

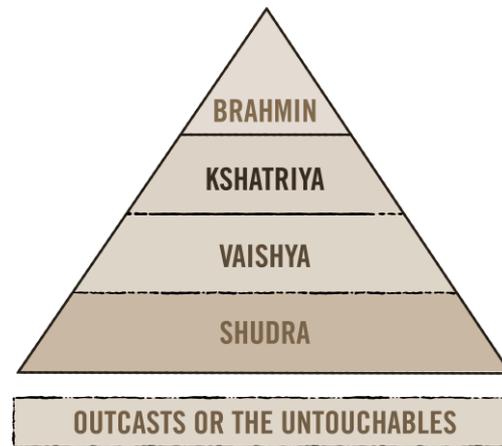
superior or inferior based on their birth leads to stigma and patterns of human rights violations.¹¹

At the top of the caste system are the *Brahmins* (whose work is historically designated as priests and teachers), followed by *Kshatriyas* (whose work is designated as rulers and soldiers), followed by *Vaisyas* (whose work is designated as merchants and traders), and at the bottom of the ladder are the *Shudras* (whose work is designated as labourers and artisans).¹² These four groups are the so-called “dominant caste”, and members of these castes are considered ritually “clean” or “pure”.¹³

A fifth category, born outside of the caste system, are the so-called “low castes” or “untouchables”, who are often considered as “lesser human beings”, “unclean”, “impure” and “polluting” to other caste groups. The so-called “low castes” are traditionally assigned to work that is regarded as ritually “unclean” and “polluting”, such as manual scavenging.¹⁴

The so-called “low castes” do not identify themselves as “untouchables”, but rather identify themselves by different names to assert their dignity as human beings. In South Asian countries, they are known as Dalits.¹⁵ The word Dalit has been accepted for general use by the Dalit community.¹⁶ The term Dalit is from the Sanskrit

language, the root word “dal” means “broken, downtrodden, or oppressed”.



 ↑ The Hindu caste system. Illustration by: Colin Foo

¹¹ Special Rapporteur on Minority Issues, Report, 2016 (previously cited), para. 29; UN News, “New UN Report: caste system violates human rights of millions worldwide”, 21 March 2016, <https://news.un.org/en/story/2016/03/525012>

¹² Professor Gavin Flood, “Religions: Hindu Concepts”, BBC, 24 August 2009, https://www.bbc.co.uk/religion/religions/hinduism/concepts/concepts_1.shtml

¹³ BBC, “Bitesize: Varnashramadharm”, <https://www.bbc.co.uk/bitesize/guides/z4848mn/revision/5>

¹⁴ Special Rapporteurs on the topic of discrimination based on work and descent, Final Report, 2009 (previously cited), para. 35.

¹⁵ UN Network on Racial Discrimination and Protection of Minorities, *Guidance Tool*, 2017 (previously cited), p. 1.

¹⁶ Office of the High Commissioner on Human Rights (OHCHR), *Opening the Door to Equality: Access to Justice for Dalits in Nepal*, 2011, <https://www.ohchr.org/en/stories/2011/12/opening-door-equality-access-justice-dalits-nepal>, p. 12.

4. OPPRESSION AND SYSTEMIC DESCENT-BASED DISCRIMINATION AGAINST DALITS IN NEPAL



My child faced untouchability when she was studying in grade V at school. She said that everyone in the school is going for an outdoor picnic on the new year day, but the head teacher said, “Saro, you are the only Mallik (Dalit) here. Stay at home. Butcher a pig and celebrate picnic at home. Better don’t go.” My daughter cried a lot. She said, “All are going, and sir doesn’t allow me to go.” After the incident, along with 3-4 Dalit women I went to question the head teacher for not permitting my child to attend the picnic. The school teacher said: “What will happen if your child doesn’t go just for one day?” I didn’t complain to the police. The leaders of my village are mostly representatives from the Yadav community (dominant non-Dalits). If we raise any issues, they start intimidating us. I should have gone to the police, but you know if we speak anything, the police and the Yadavs become one, they intimidate us.”¹⁷

Amnesty International interview with Gowri Malik, June 2023

¹⁷ Amnesty International interview in person with Gowri Malik (name changed for security reasons), 2 June 2023.

Nepal is a multi-ethnic, multilingual, multi-religious and multicultural nation. Dalits in Nepal constitute approximately 13.8% of the total population of nearly 29 million people.¹⁸ There are 125 caste/ethnic groups reported in the census 2011.¹⁹

Over the past 20 years, Nepal has experienced political change, including the abolition of its monarchy in 2008 and more recently, in 2017, its transition to a federal democratic state.²⁰ Caste has been a prohibited ground for discrimination since the 1951 Constitution, reinforced in 1990 Constitution with the prohibition of untouchability.

The current Constitution of Nepal (2015), guarantees the principles of equality and non-discrimination, respect for dignity *de jure* as well as *de facto* realization of fundamental human rights, and enshrined that compensation should be provided to victims of caste-based discrimination.²¹

In 2011, the state adopted the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 (hereinafter called the CBDU Act), which stipulates provisions to protect the right to equality, to live with human dignity, and prohibit untouchability and discrimination on the ground of caste, for example, in access to public spaces and social and economic

rights.²² On the other hand, crimes such as assault, murder, rape or other forms of gender-based violence, are penalized by the National Penal (Code) Act, 2017.



↑ Illustration by: Colin Foo

Dalits in Nepal constitute approximately 13.8% of the total population of nearly 29 million people.

Despite that legal framework, Amnesty International heard endless examples of how every aspect of everyday life in Nepali society is divided and operates based on the caste system, where untouchability and other types of violence are pervasive for Dalits. The notion of untouchability against Dalits is deeply rooted in the culture created by this caste system and continues to cause both direct and indirect forms of discrimination and human rights violations for Dalits, especially Dalit women and girls.²³

¹⁸ Samata Foundation, "Data of Dalits in Nepal", <https://samatafoundation.org/data-of-dalits/>; International Dalit Solidarity Network (IDSN), "Nepal: UN Poverty Expert says caste discrimination is "the single most important factor" explaining why Dalits are disproportionately affected by poverty", 9 December 2021, available at <https://idsn.org/nepal-un-poverty-expert-says-caste-discrimination-is-the-single-most-important-factor-explaining-why-dalits-are-disproportionately-affected-by-poverty/>; Government of Nepal National Planning Commission Secretariat Central Bureau of Statistics, *Nepal: National Population and Housing Census 2011*, 20 November 2012, <https://unstats.un.org/unsd/demographic-social/census/documents/Nepal/Nepal-Census-2011-Vol1.pdf>

¹⁹ Ministry of Foreign Affairs, Nepal Profile, available at <https://mofa.gov.np/nepal-profile-updated/>

²⁰ Special Rapporteur on Violence Against Women, Its Causes and Consequences, Report: *Visit to Nepal*, 19 June 2019, UN Doc. A/HRC/41/42/Add.2, para. 7.

²¹ Constitution of Nepal, 2015, available at <https://lawcommission.gov.np/en/?cat=87>

²² Salient features of the CBDU Act: Section 4 of the Act punishes anyone who either in the public or private sphere:

a. prevents, controls or restricts anyone from entering a place;
b. expels anyone individually or collectively from public place or public occasion;
c. commits social exclusion or discrimination of any kind;
d. deprives a person of using or enjoying public service;
e. prohibits or compels anyone to carry on profession or business;
f. deprives anyone of performing any religious act;
g. excludes any family member or prevents him/ her from entering in to the house or evicts him/her from the house or village, or compels him/her to leave the house or village,
h. prevents a person of marriageable age from getting inter-caste marriage;
i. compels anyone to divorce;
j. denies the provision of employment to anyone or discriminates in the remuneration;
k. disseminate, publishes or exhibits any materials (audio-visual, articles, pictures, posters, books, cartoons, etc.) that represents or justifies caste hierarchy, or encourages caste-based discrimination, untouchability or hatred in any manner.
²³ IDSN, *Caste Based Discrimination in UK*, July 2011, https://www2.ohchr.org/english/bodies/cerd/docs/ngos/IDSN_UK_79.pdf, p. 4.

The 2020, a UN report entitled “Harmful Practices in Nepal: Report on Community Perceptions” revealed that 97% of respondents stated that caste-based discrimination occurred in their community. Nearly half of the respondents confirmed that Dalits would be denied access to the houses of non-Dalits in their communities.²⁴ More than half of the Dalits that participated in the survey (54%) reported to have experienced discrimination based on their caste. This included being denied entry into the house/kitchen of those perceived as higher caste families (74%); being restricted from using communal water taps/tube wells (52%); and being denied entry into village temples (50%). The majority of those who had experienced discrimination stated that they had never filed a case in the ward office or police station against the alleged perpetrators. The lack of reporting was most commonly explained (70%) by not wanting to cause problems in the community in which they lived. However, it was significant that more than 23% stated that they did not know how to report the incident to the authorities.²⁵

The findings of the UN survey in Province 2, Karnali Province and Sudurpaschim Province, resonates with the experiences of the Dalit women and stakeholders that Amnesty International researchers interviewed. The Dalit women shared their lived experience of direct forms of untouchability and caste-based discrimination:

“There is untouchability in my village. There is a shopkeeper who does business here. He is from the Batala caste. He practices untouchability. He asks us not to enter the house. When

we go to his shop, he tells us “Well, there is no space here now, you’ve got to stay outside”. I have told them not to treat us or speak to us like that in discriminating ways. Caste is not written on people’s foreheads. We have similar red blood. Once the wife of the shopkeeper scolded us and shouted at us by saying, “you lower caste Badi do not come to my shop”. I told her that if you really didn’t want Badis to purchase goods, you should not have set up this shop, you should have stayed at home. When I asked such questions, then the shopkeeper and his wife stopped talking to us.”²⁶

Amnesty International interview with Tina Badi, June 2023

The practice of untouchability not only prohibits Dalits from touching anything, including persons or possessions or public sources of water such as wells and taps, but the Dalits are also prohibited from touching food or eating together at the same table as the non-Dalits and entering any public places such as the temples.

A study by the Indian Institute of Dalit Studies in Nepal found 205 distinct practices that enforce untouchability on Dalits, including denying or restricting access to water, temples, public offices, health services, cremation grounds and dominant caste villages. Discriminatory treatment in schools, educational institutions and restaurants, as well as denial of social interaction at religious festivals and weddings, are also common.²⁷

²⁴ UN Nepal, *Harmful Practices in Nepal, 2020* (previously cited), p. 8. Note that this was a community perception survey covering a total sample size of 4,000 households across 16 districts in three provinces.

²⁵ UN Nepal, *Harmful Practices in Nepal, 2020*, (previously cited), p. 3.

²⁶ Amnesty International interview in person with Tina Badi (name changed for security reasons), 13 June 2023.

²⁷ Indian Institute of Dalit Studies (IIDS), *Caste based discrimination in South Asia: A study on Nepal*, 2008, https://idsn.org/wp-content/uploads/user_folder/pdf/Old_files/asia/pdf/RR_Nepal.pdf, p. III. Of the 205 distinct practises of untouchability, 54 are related to denial, which includes 10 related to entry, 14 to services, 6 to access to common resources, 10 to kinship and other relationships and 14 to participation. Out of the 205

“I don’t like to attend weddings of non-Dalits. I attended a marriage ceremony where our seating was arranged in the animal sheds on the edges of the field. The non-Dalits comfortably enjoyed the seating inside the house and in the compounds of the houses. Such thing is still prevailing.”²⁸

Amnesty International interview with Sita Badi, June 2023

Dalits in Madhesh Province experience a high level of social exclusion, which is reflected in all human development indicators, including life expectancy, adult literacy, per capita income, educational attainment, as well as the overall human development index in which Dalits in Nepal continue to rank at the bottom.²⁹

Amnesty International researchers heard from every person interviewed about the negative impact that the practice of “untouchability” has on the human rights of Dalits. One of the most common forms of caste-based discrimination reported was

the denial to access public sources of water. They explained that this is based on the commonly held belief that the Dalits will “pollute” the water because they are “impure”, and therefore, non-Dalits prohibit them from touching and accessing public sources of water, such as village wells or taps. Dalits can only collect, and drink water when non-Dalits decide to give them water.³⁰

The caste bigotry and associated prejudice do not spare anyone in Nepal.³¹ Dalits from all walks of life, from students to elected Dalit parliamentarians, face difficulties renting rooms or flats due to their caste identity. Dalit officers are often transferred to difficult and non-desirable departments. The monetary value of property owned by Dalits is less than that of others.³² Even during humanitarian relief distribution and other support programs launched by the government, for example, during COVID-19 relief, Dalit communities were left behind, as the relief materials distributed were inadequate, and in some instances, the Dalits faced ill-treatment and caste-based discrimination.³³

existing practices of caste-based discrimination, 9 are related to forced or discriminatory labour, 20 to dominance, 20 to inhuman treatment, 3 to social boycott, and 18 to attitudinal untouchability. Out of the 205 existing practices of caste-based discrimination, 81 are discrimination in different fields. It includes 18 related to occupation, 11 to educational institutions, 10 to political rights, 14 to government policy and programs, 7 to government and NGO offices, 13 to development programs and donors, and 8 to religious and cultural activities. This Nepal study is a part of the South Asian study on “Caste-based Discrimination in South Asia”, facilitated by the IIDS, New Delhi, with support of IDSN, Copenhagen, Denmark. The partner organizations of the Nepal study are the Nepal National Dalit Social Welfare Organization (NNSWOW) and the Dalit NGO Federation (DNF). The general objective of the study is- firstly, to review the status and conditions of Dalits as revealed by various secondary sources, and secondly, to document empirical evidence of caste-based untouchability in Nepal. The study relies heavily on secondary sources and supplement information collected from primary sources. Fieldworks were carried out in eight districts. Tools of data collection include field work, focus group discussions, observation, key informant interviews, and case studies. Draft report was discussed in a national consultation workshop organized in Kathmandu and the final report was disseminated in a regional seminar organized in Kathmandu, Nepal.

²⁸ Amnesty International interview in person with Sita Badi (name changed for security reasons), 12 June 2023.

²⁹ International Labour Organisation (ILO), *Dalits and Labour in Nepal: Discrimination and Forced Labour*, 2005, https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-kathmandu/documents/publication/wcms_112922.pdf, p. 95.

³⁰ Amnesty International interviews in person with 21 Dalit women held on 1, 2, 3, 4, 5, 6, 12, 13, 14 of June 2023 in Madhesh, Lumbini and Karnali Province. See also Rojita Adhikari, “I will fight until I die’: Nepal’s celebrated Dalit activist on her lifelong battle for equality”, *The Guardian*, 11 September 2023, <https://www.theguardian.com/global-development/2023/sep/11/nepal-celebrated-dalit-activist-on-her-lifelong-battle-for-equality>; “I had to run to my home which is 25 minutes away to drink water during the school break because as a Dalit I was not allowed to touch the water in school. Many times, I had to leave my classes because I was thirsty. Dalits are not allowed to touch the tap or pond by themselves.”

³¹ Elisha Shrestha and Aditi Aryal, “Discrimination against Dalits continues to stain Nepal’s social fabric”, *Kathmandu Post*, 3 June 2020,

<https://kathmandupost.com/national/2020/06/03/discrimination-against-dalits-continues-to-stain-nepal-s-social-fabric>

³² Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February, Lahan.

³³ Dalit Civil Society Organizations’ Coalition for UPR, IDSN, and DNF, *Joint Stakeholder Submission of Non-governmental Organization on UPR*, October 2020, available at <https://idsn.org/wp-content/uploads/2021/01/Dalit-NGO-Federation-and-IDSN-UPR-Report-2020.pdf>, p. 5. See also, Chandan Kumar Mandal, “Dalit communities suffered financial hardship, job loss, discrimination during Covid-19 pandemic”, *Kathmandu Post*, 17 October 2020, <https://kathmandupost.com/national/2020/10/17/dalit-communities-suffered-financial-hardship-job-loss-discrimination-during-covid-19-pandemic>

In an interview with Kathmandu Post, a national daily newspaper in Nepal, Tulasa Sunar, a Dalit, Deputy Chief of Gaumukhi Rural Municipality in Pyuthan District explained that: *“People still deny me entry into their homes and refuse to eat with me. The Dalits are not allowed to enter some houses or eat together with non-Dalits. Whatever the legal provisions, the practice of untouchability is very much alive.”*³⁴

As reported by Dalit organizations, besides the direct practices of untouchability and caste-based discrimination, the discrimination continues to manifest in new and indirect ways. The caste system perpetuates a form of segregation and oppression against Dalits and severely limits every aspect of their lives, including their everyday experience in accessing land, education, livelihood, marriage, place of worship, security and health and the right to citizenship, as in the case of Madhesi Dalits who reside in the Madhesh Province in Nepal.³⁵

There are intersecting forms of this discrimination that affect particularly certain groups. For example, Madheshi Dalits are situated in the lowest rung of the society, and they are far behind in all social indicators in comparison to other Dalits (namely Hill Dalits) as well as other caste groups. Madheshi Dalit women are particularly vulnerable as they face discrimination that intersects with caste,

gender, class and language, as most do not speak Nepali.³⁶

DISCRIMINATION FACED BY DALITS IN NEPAL:



CANNOT MARRY OUTSIDE THE CASTE



CANNOT SHARE GOODS OR SERVICES



CANNOT EAT AT THE SAME TABLE



Illustration by: Colin Foo

DEATH DUE TO INTER-CASTE MARRIAGES

An extreme example of the level of violence and discrimination that Dalits face in Nepal, especially young Dalits, are murders due to inter-caste relationships and marriages. The CERD Committee raised serious concerns years ago about the widespread inter-caste violence and called on the state to ensure Dalits are able to safely marry non-Dalits.³⁷

Despite legal provisions in the CBDU Act providing protections for inter-caste marriage, and several legal and policy

³⁴ Province 5 Bureau, “Casteism is so deeply entrenched, not even law can deter it”, Kathmandu Post, 19 June 2019, <https://kathmandupost.com/province-no-5/2019/06/19/casteism-is-so-deeply-entrenched-not-even-law-can-deter-it>

³⁵ New York School of Law Center for Human Rights and Global Justice, *Recasting Justice, Securing Dalit's Rights in Nepal's New Constitution*, 2008, <https://chrj.org/wp-content/uploads/2016/09/recastingjustice.pdf>, p. 3. Also note page 10 of the same publication, which highlights Section 8 of the Citizenship Act that requires the presentation of certain documentation likely to create obstacles for Terai (Madheshi) Dalit community members and others who have historically lacked access to land rights, have been excluded from censuses, or otherwise do not have the documents necessary for citizenship.

³⁶ The situation of Madheshi women are documented here: <https://samatafoundation.org/the-just-futures-initiative-at-samata-foundation/> and here: Dalit Civil Society Organizations' Coalition for UPR, IDSN, and DNF, *Joint Stakeholder Submission of Non-governmental Organization on UPR, 2020* (previously cited), p. 10. Also see page 15: Land certificate would enable obtainment of citizenship, without which makes Dalits stateless since most of them do not possess a land certificate, so they face an additional hurdle to getting citizenship and vital registrations.

³⁷ CERD Committee, Concluding Observations: Nepal, 29 May 2018, UN Doc. CERD/C/NPL/CO/17-23, para. 13.

measures to support inter-caste marriages between a Dalit and a non-Dalit made by the Government of Nepal,³⁸ the deep-seated caste-based bias and prejudices of non-Dalits towards Dalits continue to negatively impact inter-caste couples, resulting in incidents of resistance, disapproval, criticism, boycott, social exclusion and in some cases, in threats, violence and killings of young Dalits.³⁹

Impunity for these murders and other violent attack is widespread.⁴⁰ In very few cases the families of the victims could access justice only because of the sustained pressure of civil society and the family.⁴¹

“Marriage is a big question. Dalits cannot marry dominant caste non-Dalits. Marriage is difficult between the Dalits, but not with the non-Dalits (Chhetris or Bahuns or Brahmins). Non-Dalits will dominate us; how can marriage be possible there?”⁴²

³⁸ The General Code of Nepal provisions related to marriage (Chapters 16 and 17) stipulate that anyone who attains marriageable age (18 years) is legally free to marry a person of his or her own choice. There are no provisions which prohibit anyone entering into an inter-caste marriage. The marriage registration system was introduced under the Marriage Registration Act, 1971, to ensure the right to marriage with free choice. This act allows interested couples to register their marriage in the District Administration Offices – regardless of their castes – and acquire legal recognition of the marriage by obtaining a marriage certificate. See further: Government of Nepal, Periodic Report submitted to CERD Committee, 20 February 2017, UN Doc. CERD/C/NPL/17-23.

³⁹ Rojita Adhikari, “Nepal to investigate Dalit killings following arranged marriage dispute”, The Guardian, 13 June 2020, <https://www.theguardian.com/global-development/2020/jun/13/nepal-to-investigate-dalit-killings-following-arranged-marriage-dispute>.

⁴⁰ Pradip Pariyar, “Asia Democracy Research Network Issue Briefing: The inadequacy of Nepal’s Democracy for Marginalised Peoples”, East Asia Institute, 30 June 2020, https://www.eai.or.kr/new/en/etc/search_view.asp?intSeq=21332&board=eng_issuebriefing

⁴¹ Amnesty International, “Nepal: District Court’s historic verdict a welcome step for justice for Dalit community”, 7 December 2023, available at <https://www.amnesty.org/en/latest/news/2023/12/nepal-district-courts-historic-verdict-a-welcome-step-for-justice-for-dalit-community/>. Press release welcoming the conviction of 26 individuals who killed Nawraj BK, a 21-year-old Dalit male who was murdered by the relatives of his girlfriend who belong to a so called “dominant caste”. Five friend that were with him were also murdered.

⁴² Amnesty International interview in person with Prathima Badi (name changed for security reasons), 13 June 2023.

4.1 SYSTEMIC DISCRIMINATION AND GENDER-BASED VIOLENCE AGAINST DALIT WOMEN AND GIRLS IN NEPAL

Gender-based violence against women and girls in Nepal is pervasive and occurs in both the private and the public spheres throughout the country.⁴³ It manifests itself in physical, sexual, psychological and economic forms.⁴⁴

According to the last Demographic and Health Survey (2022), 23% of women in Nepal aged 15–49 have experienced physical violence since age 15, and 8% have experienced sexual violence at some stage in their lives.⁴⁵ New forms of violence, like acid attacks and cybercrimes, are also evident.⁴⁶ A 2020 UN report highlights that violence against women and girls is on the rise in Nepal.⁴⁷

The entrenched oppressions described because of caste in Nepal are worsened by the also long-standing sociocultural traditions, norms and practices of

⁴³ UN Women, Toolkit for Developing Legislation and Policies on Gender-Based Violence Against Women and Girls in Nepal, 2020, https://un.org.np/sites/default/files/doc_publication/2020-11/Handbook%20on%20GBVAVG%20laws_FINAL.pdf, p. 8.

⁴⁴ UN Women, Toolkit for Developing Legislation and Policies on Gender-Based Violence Against Women and Girls in Nepal, 2020 (previously cited), p. 8. Gender-based violence against women and girls also takes the form of trafficking and harmful practices, including child marriage, dowry, witchcraft accusations and persecution and *chhaupadi*, which is a traditional practice where menstruating women during their periods are made to stay out of their houses in a hut.

⁴⁵ Ministry of Health, Nepal Demographic Health Survey, 2022, <https://dhsprogram.com/pubs/pdf/FR379/FR379.pdf>, p. 447. Women’s experience of physical violence varies from a low of 15% in Gandaki Province to a high of 37% in Madhesh Province.

⁴⁶ Government of Nepal, National Planning Commission and UNDP, Nepal Human Development Report 2020: Beyond Graduation: Productive Transformation and Prosperity, 2020, <https://www.undp.org/nepal/publications/nepal-human-development-report-2020>, p. 38.

⁴⁷ Government of Nepal, National Planning Commission and UNDP, Nepal Human Development Report 2020, 2020 (previously cited), p. 38.

patriarchy. Their intersection, together with age, ethnicity/indigenous status, class, employment and ownership of assets (including land), religion or belief and marital status, among others, create a unique experience of oppression and discrimination for Dalit women and girls. During interviews with Amnesty International, Dalit women spoke about several painful lived experiences, including the feeling that the animals belonging to non-Dalits were treated better than them. They also talked about the cows and animals of Dalits not being allowed to drink water from the public pond as the animals belonging to Dalits owners are also considered “impure”.⁴⁸

“There is a road in front of my house. My daughter splashed the water on the road after washing her hands. The non-Dalits walking on the road got angry, started abusing and beating my daughter and me while saying “you are a Dalit, why did you throw water on the road”. I had injuries on my leg and neck for 15 days. Everybody in the village pressurized me to reconcile. I did not agree. I submitted a complaint in the police station, but it was not registered. The police called the non-Dalits to reconcile and settle the case. The discussion concluded that as we were to live in the same village, the matter should be resolved with reconciliation.”⁴⁹

Amnesty International interview with Aradana Pasi, June 2023

The UN Special Rapporteur on Violence Against Women and Girls, following her visit to Nepal in 2019, also noted that Dalit women endure extreme forms of poverty,

humiliation, and the denial of social and economic rights and that their vulnerable economic status, combined with the patriarchal values, exposes them to various forms of violence.⁵⁰ Dalit women and girls are particularly vulnerable to gender-based violence both within the family and in society.⁵¹ The gender-based violence is likely to cause or result in death or physical, sexual, psychological, or economic harm or suffering to women, and is often accompanied by threats of such acts, harassment, coercion and arbitrary deprivation of liberty.⁵²

According to FEDO, a leading Dalit women’s organization in Nepal, Dalit women are worse off than Dalit men and their non-Dalit counterparts, since they have no control over land, housing or money; they are forced into demeaning jobs; and they are largely under-represented at all levels of decision-making.⁵³

Among Dalit women, the Badi Dalit women, a sub-category of Dalits, are subject to historical stereotypes, stigma and remain most vulnerable to trafficking.⁵⁴ Amnesty International’s interviews with seven Badi Dalit women confirmed that they continue to face extreme forms of discrimination by the non-Dalits, including demeaning and

⁵⁰ Special Rapporteur on Violence Against Women, Report: *Visit to Nepal*, 2019 (previously cited), para. 66.

⁵¹ As reported by Special Rapporteur on Violence Against Women, Report: *Visit to Nepal*, 2019 (previously cited), para. 66 and Dalit Civil Society Organizations’ Coalition for UPR, IDSN, and DNF, *Joint Stakeholder Submission of Non-governmental Organization on UPR*, 2020 (previously cited), p. 14.

⁵² UN Women, *Toolkit for Developing Legislation and Policies on Gender-Based Violence Against Women and Girls in Nepal*, 2020 (previously cited), p. 8.

⁵³ Feminist Dalit Organisation (FEDO) Nepal, “Major Achievement for the Dalit Right Movement in Nepal in 2011: The adaptation of a national law criminalizing caste-based discrimination”, input to the study on political transitions by the UN Working Group on discrimination against women in law and practice, 7 August 2012, available at https://www.ohchr.org/sites/default/files/documents/issues/women/WG/PublicPoliticalLife/IDSN_1.pdf

⁵⁴ ILO, *Dalits and Labour in Nepal: Discrimination and Forced Labour*, 2005 (previously cited), p. 47. See also Special Rapporteur on Violence Against Women, Report: *Visit to Nepal*, 2019 (previously cited), para. 50.

⁴⁸ Amnesty International Focus Group Discussions with Dalit women, 16 February 2023 in Jakapur and 18 February 2023 in Lahan.

⁴⁹ Amnesty International interview in person with Aradana Pasi (name changed for security reasons), 5 June 2023.

defiling attitudes and behaviours, as well as verbal and physical assaults.⁵⁵

“If we talk about women from our Badi community, I feel very sad. My heart aches a lot. Even amongst the Dalits we are suppressed.”⁵⁶

Amnesty International interview with Badi Dalit woman, June 2023

The fact that caste and gender-based violence often goes unreported further perpetuates a culture of invisibility, silence, and impunity and, in many instances, places the burden of shame and stigma on the Dalit survivors rather than on the non-Dalit perpetrators.⁵⁷

Human rights activists expressed concern that police outside of Kathmandu frequently refuse to register cases of gender-based violence, including rape cases involving Dalit women. These groups reported that police often preferred to use mediation rather than initiating criminal investigations.⁵⁸ This practice can result in serious human rights violations, such as in the case of Angira Pasi.

THE CASE OF ANGIRA PASI

In May 2020, the body of Angira Pasi, a 12-year-old Dalit girl was found hanging from a tree in Rupandehi District in Nepal. Birenda Bhar, a 25-year-old non-Dalit dominant caste man was accused of raping Angira Pasi. The residents caught Birenda Bhar and presented him before the ward chairperson Amar Bahadur Chaudhary instead of lodging a police complaint and registering an FIR. The ward chairperson decided that Angira Pasi should marry Birenda Bhar because she would otherwise be considered unsuitable for marriage.⁵⁹ The mother and aunt of Birenda Bhar reportedly abused Angira Pasi, saying that she belonged to the low caste so she would not be allowed into their house and beat her up.⁶⁰ Two days later, Angira Pasi was found hanging from a tree. The National Human Rights Commission investigated and publicized the incident as a serious offence.⁶¹ The police initially refused to register a complaint from the victim's family. However, the Area Police Office, Butwal, received the complaint after pressure from civil society.⁶² Then the police detained Birenda Bhar, his mother and his aunt as suspects in Angira Pasi's death. On 12 September 2021, the Rupandehi District Court convicted Bhar of murder and sentenced him to 18 years' imprisonment.⁶³

Amnesty International researchers met with the mother and sister of Angira Pasi who continue to live in pain and fear. Birenda Bhar appealed his conviction and the appeal trial is pending before the High Court. The mother of Angira Pasi fears that justice would not be served, and that the accused could be acquitted.

⁵⁵ Amnesty International interviews in person with Badi Dalit women, 12 and 13 June 2023, Karnali Province.

⁵⁶ Amnesty International interviews in person with Badi Dalit women, 12 June 2023, Karnali Province.

⁵⁷ Special Rapporteur on Minority Issues, Report, 2016 (previously cited), para. 97.

⁵⁸ US Department of State, *2022 Country Report on Human Rights Practices in Nepal*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/nepal>

⁵⁹ Sona Khatik, “Nepal's Defiant Dalit Journalist”, by Subina Shrestha, “What's behind caste violence in Nepal?: Witness Documentary”, Al Jazeera English, 7 November 2022, <https://www.youtube.com/watch?v=On08I9Qr4ss>; Al Jazeera Witness Docs (@AJWitness), Twitter Post, 22 November 2022, <https://twitter.com/AJEnglish/status/1596123890543366145>

⁶⁰ Abha Lal, “Supposed ‘suicides’ point towards police incompetence”, The Record, 2 June 2020, <https://www.recordnepal.com/supposed-suicides-point-towards-police-incompetence>

⁶¹ Kathmandu Post, “Rights commission expresses concern over death after rape incident in Rupandehi”, 29 May 2020, <https://kathmandupost.com/national/2020/05/29/rights-commission-expresses-concern-over-death-after-rape-incident-in-rupandehi>

⁶² Kathmandu Post, “Rights commission expresses concern over death after rape incident in Rupandehi”, 29 May 2020 (previously cited).

⁶³ US Department of State, *2022 Country Report on Human Rights Practices in Nepal* (previously cited).

5. LEGAL STANDARDS

5.1 INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The Government of Nepal is party to 13 international human rights instruments including optional protocols.⁶⁴ Under international human rights law, states have the obligation to respect, protect and fulfil the rights contained in the treaties they ratified.

In the case of descent-based discrimination, it is important to understand that the state is not only obliged to refrain from discriminating against Dalits. **Under the obligation to protect, the state needs to prevent and address human rights abuses by third parties.** For example, CERD states parties need to protect against violence and bodily harm inflicted by any individual, group, or institution. States must also be diligent in protecting Dalits from segregation in practice, from being impeded from accessing water or food, or entry into any private or public places.⁶⁵

Under *the obligation to fulfil*, states parties must take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realization of all human rights for Dalit people, especially Dalit women and girls, including by taking temporary special measures to improve their situation, due to the intergenerational history of oppression and entrenched culture of caste-bias and discrimination. Adequate access to justice and timely reparations for Dalits when discrimination or other human rights abuses occur are also part of the state's obligation to fulfil human rights.

All of the treaties ratified by Nepal are relevant to descent-based discrimination, since the oppressions that Dalits experience in Nepal, as documented in this report, intersect with, can cause or compound with many other human rights violations, including the rights to water, education, housing and labour rights, the right to live a life free of violence, and free from torture and other cruel, inhuman and degrading treatment, the right to life, security and integrity, and the right of women to live a life free from discrimination and violence.⁶⁶

However, for the sake of relevance and brevity, this report focuses on the state's

⁶⁴ Nepal is party to CERD (1971), ICCPR (1991), ICESCR (1991), ICCPR-OP (1998), CEDAW (1991), CAT (1991), CRC (1990), OP-CRC-AC (2007), OP-CRC-SC (2006), CRPD (2010). The state has also acceded to the following list of individual complaints and inquiry procedures: ICCPR-OP1 (1991), OP-CEDAW, Article 8 (2007), CAT, Article 20 (1991) and OP-CRPD, Article 6 (2010).

⁶⁵ CERD Committee, Concluding Observations: Nepal, 2018 (previously cited), para. 13.

⁶⁶ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

obligations under two treaties that are primarily related to discrimination and violence against Dalits, especially Dalit women and girls. They are the Convention on Elimination of Racial Discrimination (CERD) and the Convention on Elimination of Discrimination Against Women (CEDAW).⁶⁷

5.1.1 STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE RIGHT TO EQUALITY AND NON-DISCRIMINATION ON THE BASIS OF CASTE

On 30 January 1971, the Government of Nepal ratified CERD, which includes the prohibition of caste-based discrimination. This ratification obliges Nepal to uphold the principle of non-discrimination and prohibits “any distinction, exclusion, restriction, or preference based on race, colour, *descent*, or national or ethnic origin”.⁶⁸

In August 2002, the CERD Committee issued its General Recommendation XXIX on descent-based discrimination.⁶⁹ Caste is cited under the ambit of descent-based discrimination, and states parties are recommended to take all “*steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, especially on the basis of caste*”. States were also recommended to take several legal measures to protect victims of caste discrimination, including prohibiting such discrimination in the Constitution, reviewing and amending legislation, resolutely implementing legislation and other measures that are

already in force, formulating and putting into action comprehensive national strategies, including “special measures” to ensure their full enjoyment of human rights.⁷⁰

The CERD Committee also recommended states educate the public on the importance of affirmative action programmes to address the situation of victims of descent-based discrimination and conduct periodic surveys of the reality of descent-based discrimination and provide disaggregated information.⁷¹ The CERD Committee emphasized the multiple forms of discrimination against women members of descent-based communities and recommended states to take them into account, especially in all the programmes and policies adopted, since they are more vulnerable to violence, including sexual exploitation and forced prostitution. States should also take all measures necessary to protect their personal security, employment and education. The Committee also urged states to prohibit and eliminate practices of segregation, including in housing, education and employment and secure everyone’s access on an equal basis, to any place or service intended for use by the general public. States must also “take measures against any dissemination of ideas of caste superiority and inferiority or which attempt to justify violence, hatred or discrimination against descent-based communities and take strict measures against any incitement to discrimination or violence against the communities.”⁷² Finally, there are several recommendations for states on how to fulfil their obligations in relation to access to justice, civil and political rights; economic and social rights, with particular emphasis on the right to education.

⁶⁷ For Nepal’s Treaty Bodies Reporting Status, including CERD and CEDAW, see: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/count ries.aspx?CountryCode=NPL&Lang=EN

⁶⁸ CERD, Article 1.

⁶⁹ CERD Committee, General Recommendation 24 on Article 1 of the Convention, 1 November 2002, UN Doc. Annex A, A/54/18.

⁷⁰ CERD Committee, General Recommendation 24, 2002 (previously cited).

⁷¹ CERD Committee, General Recommendation 24, 2002 (previously cited), para. j.

⁷² CERD Committee, General Recommendation 24, 2002 (previously cited), para. s.

State obligations under CERD require states parties to take action to end racial discrimination in all its forms. This includes the duty to change state institutions, laws, policies, and practices that created or perpetuate racial discrimination. Furthermore, under CERD, racial discrimination, including on the basis of descent, is prohibited not only when it is direct (explicit), but also when it is indirect (when seemingly neutral measures lead to discriminatory results). The state obligations under CERD also include the adoption of special measures aimed at attaining substantive racial equality, which “may be undertaken by legislation, regulations, tax initiatives or special incentives to private entities like schools or businesses”.⁷³

In addition, the CERD Committee, in its general comments, has unpacked the scope of the state parties’ obligations under the Convention and the meaning and scope of special measures under CERD (General Comment 32). As recognized by the United Nations Network on Racial Discrimination and Protection of Minorities,⁷⁴ these temporary special measures sometimes are needed to improve the situation of marginalized groups.⁷⁵ These are often referred to as “affirmative measures”, “affirmative action” or “positive action”, and can include, for example, quotas to remedy the disproportionate under-representation of caste-affected groups in school, designated scholarships for minorities, and investment of additional

resources into education in regions where caste-affected communities reside.

Affirmative action may also include policies to increase public employment opportunities and representation in governance for representatives of descent-based communities.⁷⁶ Temporary special measures taken for the sole purpose of securing adequate advancement of certain marginalized groups or individuals requiring such protection may be necessary to ensure such groups or individuals’ equal enjoyment or exercise of human rights and fundamental freedoms.⁷⁷

In most cases, without special measures, these communities cannot be freed from entrenched institutional discrimination prevalent within the police and other state institutions. The requirement of “limited duration” of special measures means that such measures should not lead to the maintenance of separate rights for different groups and that they shall not be continued after the objectives for which they were taken have been achieved.⁷⁸

5.1.2 STATE OBLIGATIONS TO PREVENT AND ELIMINATE GENDER-BASED VIOLENCE AND DISCRIMINATION AGAINST WOMEN AND GIRLS

On 22 April 1991, the Government of Nepal ratified CEDAW. As the gender-specific treaty, CEDAW recognizes that discrimination of women based on gender

⁷³ Gay McDougall, “The International Convention on the Elimination of All Forms of Racial Discrimination”, United Nations Audiovisual Library of International Law, https://legal.un.org/avl/pdf/ha/cerd/cerd_e.pdf p. 4.

⁷⁴ UN Network on Racial Discrimination and Protection of Minorities, *Guidance Tool*, 2017 (previously cited).

⁷⁵ CERD, Article 1(4), CEDAW, Article 4(1) stipulates: “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”

⁷⁶ CERD Committee, General Recommendation 32: The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination, 24 September 2009, UN Doc. CERD/C/GC/32, para. 12.

⁷⁷ CERD, Article 1(4) and CEDAW, Article 4(1). See also CERD Committee, General Recommendation 32, 2009 (previously cited), para. 18.

⁷⁸ On the concept and practice of affirmative action, see UN Commission on Human Rights Sub-Commission on the Protection and Promotion of Human Rights, Report: The concept and practice of affirmative action, 19 June 2000, UN Doc E/CN.4/Sub.2/2000/11, para. 24.

is inextricably linked with other factors that affect women, including caste, and that states parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.⁷⁹

Pursuant to CEDAW, women are entitled to equal rights in political and public life; the opportunity to participate in government; equality in education, employment, health care; economic and social benefits; equal protection under the law; and equality in marriage and family relations.

Moreover, the Convention affirms that women's enjoyment of their fundamental rights cannot be restricted on the basis of culture and tradition, and it provides the overarching framework for non-discrimination and equality; in particular, substantive equality that not only emphasizes equality in access and opportunity, but also in results, which can be brought about by temporary special

measures.⁸⁰ General Recommendation 25 (1999) of the CEDAW Committee calls upon member states to transform the underlying causes of inequality in “opportunities, institutions and systems”, and to transform dominant “paradigms of power”.⁸¹

CEDAW requires states to take all appropriate measures to “eliminate discrimination against women by any person, organization or enterprise” and “modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.⁸² The obligation to eliminate gender-based discrimination and violence against women is of an immediate nature and delays cannot be justified on any grounds, including on economic, cultural or religious grounds.

CEDAW also recognized violence against women as a form of gender-based discrimination,

which results from the historically unequal power relations between women and men, and which “seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁸³ Gender-based violence against women and girls is “*violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.*”⁸⁴ States are responsible for preventing and prosecuting gender-based violence by state actors,⁸⁵ and have a “due diligence” obligation “*to take all appropriate measures to prevent as well as to investigate,*

⁷⁹ CEDAW Committee, General Recommendation 28: The Core Obligations of States Parties under Article 2, 16 December 2010, UN Doc. CEDAW/C/GC/28, para. 18. See also CEDAW Committee, General Recommendation 33: Women’s Access to Justice, 3 August 2025, CEDAW/C/GC/33, para. 8; CEDAW Committee, General Recommendation 30: Women in Conflict Prevention, Conflict and Post-Conflict Situations, 1 November 2013, CEDAW/C/GC/30 para. 36, and CEDAW Committee, General Recommendation 25 on Temporary Special Measures, UN Doc. HRI/GEN/1/Rev.7, para. 12. In its country reviews, the CEDAW Committee highlighted that caste-based discrimination is not a gender-neutral phenomenon and often addressed the multiple levels of discrimination and exploitation suffered by women and girls from descent-based communities. In its review of India, the CEDAW Committee noted with concern that Dalit women and women from scheduled tribes face multiple barriers in gaining access to justice, owing to legal illiteracy, lack of awareness of their rights and limited accessibility of legal aid. The CEDAW Committee was also concerned with the financial, cultural and physical barriers faced by Dalit women and women from scheduled tribes in gaining access to gynaecological and maternal health services and the escalation of caste-based violence, including rape, against women and girls: See further, CEDAW Committee, Concluding Observations: India, 24 July 2014, UN Doc. CEDAW/C/IND/CO/4-5. In its review of Bangladesh, the CEDAW Committee also the multiple forms of discrimination suffered by Dalit women with regards to access to education, employment and health care, housing, protection from violence and access to justice: CEDAW Committee, Concluding Observations: Bangladesh, 22 March 2011, CEDAW/C/BGD/CO/7, para. 37. For further analysis see: UN Network on Racial Discrimination and Protection of Minorities, *Guidance Tool*, 2017 (previously cited).

⁸⁰ CEDAW, Articles 5, 7, 8, 10, 11, 12, 13, 15, 16.

⁸¹ CEDAW Committee, General Recommendation 25: Temporary Special Measures, para. 10.

⁸² CEDAW, Articles 2(e) and (f).

⁸³ CEDAW Committee, General Recommendation 19: Violence Against Women, 1992, UN Doc. A/47/38, para. 1.

⁸⁴ CEDAW Committee, General Recommendation 19, 1992 (previously cited), para. 1.

⁸⁵ CEDAW Committee, General Recommendation 35, 26 July 2017, UN Doc. CEDAW/C/GC/35, paras 21, 22, 23.

prosecute, punish and provide reparation for acts or omissions **by non-state actors** which result in gender-based violence against women.”⁸⁶ Furthermore, the obligation of states to prevent and respond to acts of violence against women with “due diligence” has become part of customary international law.⁸⁷

According to UN Women, it is crucial that legislation and policies that want to combat gender-based violence go beyond mere criminalization and prosecution of perpetrators and encompass (i.e. support) protection, remedies to victims/survivors and their empowerment, as well as the prevention of violence. Such provisions should also include gender-sensitive and adequate investigations, legal proceedings and handling of evidence, prevention, effective implementation and monitoring of legislation and policy.⁸⁸

5.2 CONSTITUTIONAL PROTECTIONS

In Nepal, the prohibition of discrimination has been incorporated into the constitution since last century. The 1951 Constitution of Nepal stipulated caste as a prohibited ground of discrimination. The 1990 Constitution prohibited untouchability and caste-based discrimination.⁸⁹ The 2007 Interim Constitution of Nepal enshrined that compensation should be provided to victims of caste-based discrimination.⁹⁰

⁸⁶ CEDAW Committee, General Recommendation 19, 1992 (previously cited), para. 9; See also CEDAW Committee, General Recommendation 35 (previously cited), para. 24(b).

⁸⁷ CEDAW Committee, General Recommendation 35 (previously cited), para. 2.

⁸⁸ UN Women, *Toolkit for Developing Legislation and Policies on Gender-Based Violence Against Women and Girls in Nepal*, 2020 (previously cited), p. 8.

⁸⁹ Article 11 (4) of 1990 Constitution states that: “No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities.”

⁹⁰ The 2007 Interim Constitution of Nepal ensured multiple rights including Article 12 on right to freedom, Article 13 on right to equality and Article 14 on right against untouchability and racial discrimination, and any discriminatory treatment on the grounds

The current constitution of Nepal, promulgated on 20 September 2015 and based on widespread consultations, guaranteed the principles of equality and non-discrimination, respect for dignity *de jure* as well as *de facto* realization of fundamental human rights.⁹¹ It also includes an obligation to align national laws to the standards required in the international treaties the country ratified, in accordance with Article 47 of the 2015 Constitution.

The 2015 Constitution enshrined caste-based discrimination and untouchability as a “severe social offence”, prohibiting any form of discrimination in public and private places, as well as guaranteeing the right to compensation for the victims (Article 24).⁹² Further, a special set of rights were enshrined which guaranteed the Dalits’ rights to participation, education, housing, health, social security, and livelihood opportunities (Article 40).⁹³

of caste, ethnicity, sex, colour, race, political opinion, etc, outlawed and the victim of any such discrimination entitled to compensation.

⁹¹ Constitution of Nepal, 2015.

⁹² CBDU Act, 2011, Article 24: Right against untouchability and discrimination:

(1) No person shall be subjected to any form of untouchability or discrimination in any private and public places on grounds of his or her origin, caste, tribe, community, profession, occupation or physical condition.

(2) In producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services or facilities nor shall such goods, services or facilities be sold, distributed or provided only to the persons belonging to any particular caste or tribe.

(3) No act purporting to demonstrate any person or community as superior or inferior on grounds of origin, caste, tribe or physical condition or justifying social discrimination on grounds of caste, tribe or untouchability or propagating ideology based on untouchability and caste-based superiority or hatred or encouraging caste-based discrimination in any manner whatsoever shall be allowed.

(4) No discrimination in any form shall be allowed at a workplace with or without making untouchability on the ground of caste.

(5) Any act of untouchability and discrimination in any form committed in contravention of this Article shall be punishable by law as a severe social offence, and the victim of such act shall have the right to obtain compensation in accordance with law.

⁹³ CBDU Act, 2011, Article 40: Rights of Dalit:

(1) The Dalit shall have the right to participate in all bodies of the State on the basis of the principle of proportional inclusion. Special provision shall be made by law for the empowerment, representation and participation of the Dalit community in public services as well as other sectors of employment.

(2) Provision of free education with scholarship, from primary to higher education, shall be made by law for the Dalit students. Special provision shall be made by law for the Dalit in technical and vocational education.

The 2015 Constitution also stipulates specific protection within various other rights including caste as a prohibited ground of discrimination (Article 18), the right against exploitation (Article 29), the right to social justice (Article 42) and inclusion (Article 51 (j)).

5.3 CBDU ACT OF 2011

On 24 May 2011, following two years of discussion, the Government of Nepal passed the CBDU Act to prohibit a specific set of offences (as listed in Section 4 of the Act) which constitute caste-based discrimination and untouchability against Dalits in public and private spheres. The Act was amended in 2018, elaborating the rights and enhancing the penalties in the event of a violation.⁹⁴

Section 4 of the Act criminally proscribes a wide range of conduct rooted in caste-bias and prejudice. It is important to note that crimes such as assault, murder and rape are penalized under the Nepal Penal (Code) Act, 2017, which applies to everyone under the state jurisdiction.

(3) Special provision shall be made by law in order to provide health and social security to the Dalit community.

(4) The Dalit community shall have the right to use, protect and develop their traditional occupation, knowledge, skill and technology. The State shall accord priority to the Dalit community in modern business related with their traditional occupation and provide skills and resources required therefore.

(5) The State shall once provide land to the landless Dalit in accordance with law.

(6) The State shall, in accordance with law, arrange settlement for the Dalit who do not have housing.

(7) The facilities conferred by this Article to the Dalit community must be distributed in a just manner so that the Dalit women, men and Dalit in all communities can obtain such facilities proportionately.

⁹⁴ Government of Nepal, National Report of Nepal to Universal Periodic Review, 3 November 2020, UN Doc: A/HRC/WG.6/37/NPL/1, para. 27.

THE CBDU ACT, 2011

The Section 4 (2) (a) of Act stipulates as illegal: any act of untouchability or discrimination, in public or private place that prevents controls or restricts any one from entry, attendance and participation and Section 4 (2) (b) stipulates as illegal: any individual or collective exclusion or restriction from a public place or public occasion or any other intolerant behaviour.

Section 4 (3) of the Act stipulates no one shall be deprived of using or enjoying public services.

Section 4 (4) of the Act stipulates no one shall be deprived of organising public occasion or performing any act organised publicly.

Section 4 (5) of the Act stipulates no one shall instigate or provoke or abet to commit untouchability or discrimination.

Section 4 (6) of the Act stipulate no one shall be prohibited from carrying on profession or business or compel to carry on any occupation or business.

Section 4 (7) of Act stipulate that no one shall be deprived to perform any religious act.

Section 4 (8) stipulates that no one shall prevent anyone from selling or distributing any goods, services or facilities.

Section 4 (9) of the Act stipulates no shall produce, sell or distribute goods or services or facilitates only to person belonging to certain caste or race or prevent or obtain from a person belonging to a certain caste or race.

Section 4 (10) of the Act stipulates that no one shall prevent a person from entering a house or evict from home or village or compel a person to leave house or village.

Section 4 (11) of the Act stipulates no one shall prevent inter-caste marriage or deny to performing naming ceremony of the child born of such inter-caste marriage and no on shall compel or dissolve any inter-caste marriage.

Section 4 (12) of the Act stipulates that no one shall disseminate or publish or exhibit audio-visual material, article, picture, figure, cartoon, poster, book or literature or by any electronic means anything that denotes hierarchical supremacy or justice social discrimination on grounds of caste or race or transmit views based on untouchability or caste-supremacy or hatred or instigate caste-based discrimination.

Section 4 (13) of the Act stipulates that no one shall deny anyone to provide employment or discriminate in remuneration.

A person who commits the offence referred to in sub-sections (2), (3), (4), (5), (6) or (7) of Section 4 shall be liable to the punishment of imprisonment for a term from three months to three years and a fine from fifty thousand rupees (USD 358) to two hundred thousand rupees (USD 1501). A person who commits the offence referred to in sub-sections (8), (9), (10), (11), (12) or (13) shall be liable to the punishment of imprisonment for a term from two months to two years and a fine from twenty thousand rupees (USD 150) to one hundred thousand rupees (USD 750).⁹⁵

The then Prime Minister Sher Bahadur Deuba in 2011 announced that: “*effective from this day, the practice of untouchability and discrimination will be considered a crime punishable by a severe sentence. The lowest rank, Dalits, will be free to enter any temple or religious structure. It is our duty and responsibility to end this system that is discriminatory to our brothers and sisters.*”⁹⁶ According to the CBDU Act, every person is equal in terms of rights and human dignity, and any act of untouchability, exclusion, restriction, expulsion, contempt or any other discriminatory act, is against humanity.

The CBDU Act not only prohibits a range of untouchability practices but also guarantees the Dalits’ rights as stipulated under Article 2, including: the right to equal treatment from court; the right to equal protection in services and facilities provided by government agencies; the right to equal access to public services; the right to make movement and reside within and outside Nepal; the right to equal

participation in cultural activities; the right to marry and choose their bride or bridegroom; the right to assemble peacefully and organise; the right to select employment and to work; the right to an equal salary for equal work; the right to have equal access to public places; and right to get prompt judicial remedies, compensation against untouchability and discrimination.⁹⁷

To date, both the Government of Nepal and the Dalit stakeholders consider the CBDU Act as a significant legal development.⁹⁸ However, the implementation gaps are significant, as we will analyse in the next chapter.

One significant ingredient in this implementation gap, was the lack of rules for procedures to enable implementation. In 2016, a Public Interest Litigation, *Shyam Bishwokarma for JuRI-Nepal v. Government of Nepal*, was brought before the Supreme Court of Nepal for immediate formulation of CBDU rules as a matter of public concern. The parties pleaded that while the CBDU Act lists provisions, it is important for the government to formulate CBDU rules stipulating procedures to enable comprehensive implementation of the Act. The parties argued that rules will enable victims to understand the procedures to file a complaint and register a FIR, and the rules will also instruct the police about the procedures in investigation, evidence gathering in

⁹⁵ CBDU, 2011, available at <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/09/The-Caste-Based-Discrimination-and-Untouchability-Offence-and-Punishment-Act-2068-2011.pdf>

⁹⁶ Associated Press, “Nepal prohibits bias against untouchable caste”, New York Times, 17 August 2011, <https://www.nytimes.com/2001/08/17/world/nepal-prohibits-bias-against-untouchable-caste.html>

⁹⁷ CBDU Act, 2011, p. 3.

⁹⁸ Yam Bahadur Kisan, Ram Bahadur Charmakar, Prakash Nepali, *Nepal: Access to Justice for Dalits*, Samata Foundation, 2015, https://samatafoundation.org/wp-content/uploads/2020/09/Equity-Watch-2014_Nepal_Access-to-Justice-for-Dalits_English-1.pdf, p. 37. See also Forum for Women Law and Development, Center for Reproductive Justice, Saathi, Visible Impact and Yoshan, “Written Submission on behalf of Civil Society Organisations to the CERD Committee for the General Discussion on Racial Discrimination and Right to Health”, June 2022, available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/cerd/discussions/right-health/2022-08-05/submission-racial-discrimination-and-right-to-health-cso-forum-for-women-law-and-development-and-others.pdf>, p. 1.

prosecution and monitoring issues of caste-based discrimination in a comprehensive manner.⁹⁹

In 2016, the Supreme Court of Nepal ordered the Government of Nepal to pass CBDU rules without further delay.¹⁰⁰ In 2017, the Government of Nepal finally adopted the CBDU Rules, which stipulated procedures to receive complaints for offences under the CBDU Act. Dalit organizations reported that the CBDU Rules fall short to support effective implementation of the Act, including rules for the police investigation and prosecution which is a major barrier in accessing justice.¹⁰¹

THE INTERSECTIONALITY GAP: GENDER AND CASTE IN NEPAL'S LEGISLATION

The CBDU Act does not include provisions of gender-based violence against women and girls. Nepal has adopted other gender-responsive legislation and policies which formally protect women's rights, explicitly prohibit gender-based discrimination and guarantee the rights of women to be protected from any act(s) of violence or exploitation on any grounds.¹⁰² However,

Nepal's approach to discrimination, as reflected in its constitution and legislation, does not provide for an integrated approach to provide sufficient protection for women and girls, especially those facing multiple and intersecting forms of discrimination, as the laws are not integrated to penalize intersectional discrimination that manifests in direct and indirect forms in the public and private spheres.¹⁰³

Currently, the CBDU Act and its provisions are standalone and any offence of gender-based violence are adjudicated independently of the CBDU Act. The public prosecutor explained that in cases of gender-based violence such as rape, unless the women victim mentions her caste was a factor motivating the crime, the cases are not investigated and prosecuted on caste lines.¹⁰⁴ In contrast, states are required to exercise due diligence by putting in places policies to unearth any discriminatory motive that fully or partly motivate a crime, especially in the investigation phase.

Centering the intersectional approach in laws and policy planning and implementation is most important to alleviate caste and gender-based violence as it is rooted in systemic and structural inequalities, and racialized misogyny which places the marginalized Dalit women in a precarious position.¹⁰⁵

⁹⁹ *Advocate Shyam Kumar Bishwakarma et.al. Vs. Right Honourable Prime Minister, Government of Nepal, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu et.al.*, Supreme Court, Decision No. 9636, 8 July 2016, available at <https://supremecourt.gov.np/web/assets/downloads/sampadan/fr om%20amnesty%20nepal/Advocate%20Shyam%20Kumar%20 Bishwakarma%20et.al.%20Vs.%20Right%20Honourable%20Pri me%20Minister.%20Government%20of%20Nepal.%20Office%20of%20the%20Prime%20Minister%20and%20Council%20of %20Ministers.%20Singha%20Durbar.%20Kathmandu%20et%20 al.%20.pdf>, pp. 7, 8.

¹⁰⁰ *Advocate Shyam Kumar Bishwakarma et.al. Vs. Right Honourable Prime Minister*, 2016 (previously cited).

¹⁰¹ DNF Nepal and others, "Nepal Civil Society Groups' Alternative Report to UN CERD Committee", February 2018, available at <https://idsn.org/wp-content/uploads/2018/07/CERD-Nepal-2018-alternative-report-Dalit-situation-.pdf>, p. 6.

¹⁰² For example: Domestic Violence (crime and control) Act 2009, Human Trafficking and Transportation Act 2007, Witchcraft related accusation (crime and punishment) Act 2014, the National Strategy and Plan of Action for Gender Empowerment and Ending Gender Based Violence 2018, National plan of action against trafficking of women and children

2012, National strategy to end child marriage 2012, the National Action Plan on Ending Child Marriage, and the country Civil and Criminal Code 2017. For a full development of legislation and policy, see UN Women, *Toolkit for Developing Legislation and Policies on Gender-Based Violence Against Women and Girls in Nepal*, 2020 (previously cited), p. 24.

¹⁰³ CEDAW Committee, Concluding Observations: Nepal, 14 November 2018, UN Doc. CEDAW/C/NPL/CO/6. For example, the CEDAW Committee called for the state of Nepal to adopt comprehensive anti-discrimination legislation that includes a definition of discrimination against women, encompassing elements of direct and indirect discrimination and multiple and intersecting forms of discrimination in the public and private spheres, and guarantees effective remedies for victims.

¹⁰⁴ Amnesty International interview in person with Public Prosecutor, 1 June 2023, Madhesh Province.

¹⁰⁵ Luna K C and Crystal Whetstone, "Women, Peace and Security and Increasing Gendered Risk in the Era of Covid-19: Insights from Nepal and Sri Lanka", 18 July 2022, available at <https://academic.oup.com/isagsa/article/2/3/ksac036/6645835>

6. A CULTURE OF IMPUNITY: BARRIERS FOR ACCESSING JUSTICE FOR CASTE AND GENDER-BASED VIOLENCE AND DISCRIMINATION

Despite the international human rights framework applicable in Nepal, the CBDU Act being in force for more than 13 years, and all other constitutional and legal protections, Dalits in Nepal are *de facto* prevented from exercising their rights, as documented in this report, and the social stigma and violence against them has not stopped with these legal provisions. Dalit women and girls experience this discrimination more profoundly, as their gender intersects with their caste to compound a more extreme experience of oppression and vulnerability to violence.

This chapter analyses the state of Nepal's failure to comply with its international human rights obligations to assure everyone within their jurisdiction with effective protection, through the competent national tribunals and other state institutions, against any acts of racial discrimination which violate their human rights and fundamental freedoms, as well as the right to seek just and adequate

reparation for any damage suffered as a result of such discrimination.¹⁰⁶ This chapter also includes an analysis of the state's failure to fulfil its obligation to prevent and investigate non-state actors engaging in gender-based violence against Dalit women and girls.¹⁰⁷

As is always the case with systemic discrimination, the barriers to accessing justice for oppressed people are several, and they reinforce each other. Without being exhaustive, this report includes an analysis of the main barriers according to survivor's experiences and the organizations accompanying them. In the first place, they have all emphasized the role of the police in hindering access to justice for survivors of violence and victim's families instead of fulfilling their legal obligation to open the door to justice. Other barriers raised include an inadequate

¹⁰⁶ CERD, Article 6.

¹⁰⁷ CEDAW Committee, General Recommendation 19 (previously cited), para. 9; See also CEDAW Committee, General Recommendation 35 (previously cited), para. 24(b).

statute of limitations for the CBDU Act, gaps in the compensation process, lack of representation of the Dalit communities in the justice system and lack of effective oversight mechanism and accountability.¹⁰⁸ Underlying all these specific factors is the systemic discrimination against Dalits, and Dalit women and girls in particular, which permeates every aspect of the justice system and society in general. Efforts by the state of Nepal to combat this pervasive form of discrimination and violence have been grossly insufficient.

All these barriers have created a total distrust in the justice system and its ability to provide justice for Dalits in Nepal.

Information regarding access to justice for Dalit people, and Dalit women and girls in particular, is difficult to obtain. The available police data for the last five years indicates that the total number of CBDU-related incidents registered as First Information Reports (FIR) and prosecutions completed are as follows: for the year 2019/20 a total of 43 FIRs were registered; for the year 2020/21 a total of 30 FIRs were registered; for the year 2021/22 a total of 39 FIRs were registered; for the year 2022/23 a total of 15 FIRs were registered; and for the year 2023/24 a total of 27 FIRs were registered.¹⁰⁹

In a country with more than 3.6 million Dalit people,¹¹⁰ these numbers are derisive. According to a representative community

perception survey for the Provinces 2, Karnali and Sudurpaschim (2020), more than half of Dalit participants reported to have experienced discrimination based on their caste within the last year.¹¹¹ This context provides a clear indication that Dalit people do not go to the police to raise complaints and/or when they go, those complaints are not properly registered, with very few exceptions.

There is no breakdown of data available indicating the nature of CBDU incidents investigated, whether the incidents impacted Dalit women for example, or the geographical location and so on, thereby making it impossible to have a clear picture of the problem and the possible solutions.¹¹²

The report of the Attorney General's Office from 2022-2023 indicates the list of cases that resulted in convictions, acquittals and the rest of the cases under subjudice. For example, at the District Court level of the 52 CBDU cases, 15 ended in conviction and 12 resulted in acquittals. At the High Court level, of 44 cases, 10 resulted in convictions and 19 ended in acquittals.¹¹³ There is no information available on the nature of cases, including offences, gender of survivor, province, age, and other elements, as well as reasons for conviction or acquittals, and if convicted, the sentencing awarded.

In the case of gender-based violence against women and girls, according to official data, only 28% of all women aged

¹⁰⁸ Amnesty International Focus Group Discussions 15 February 2023, Kathmandu, 17 February 2023, Janakpur, and 18 February 2023, Lahan.

¹⁰⁹ Annual Reports of the Nepal Police, available at https://www.nepalpolice.gov.np/media/filer_public/9e/4f/9e4f97b3-f7d6-42f2-8843-e9b1e4affeca/fy_2079-80_annual_infographics_-_ne.pdf.

Similarly, the state of Nepal included the following numbers for previous years in its 2021 UPR submission: "Total 25, 22 and 45 cases were filed in the district courts in FY 2016/17, 2017/18 and 2018/19 respectively": Government of Nepal, National Report of Nepal to Universal Periodic Review, 3 November 2020 (previously cited), at para. 27.

¹¹⁰ According to the 2011 Census, quoted by Samata Foundation, "Data of Dalits in Nepal" (previously cited). See also IDSN, "Nepal: UN Poverty Expert says caste discrimination is "the single most important factor" explaining why Dalits are disproportionately affected by poverty", 2021 (previously cited).

¹¹¹ UN Nepal, *Harmful Practices in Nepal*, 2020 (previously cited), p. 3. This report has findings of a community perception survey covering 1,800 households from the least developed areas of Nepal. The survey measured community perceptions and the findings referred to here were from the Dalits respondents, 54% of them said they experienced caste-based discrimination in the last 12 months.

¹¹² In January 2023, Amnesty International sent letters to the Government of Nepal requesting data from government sources, however no response was forthcoming.

¹¹³ Annual Reports of the Office of the Attorney General, available at <https://ag.gov.np/storage/postFile/Annual%20Report%2007980-1706021784.pdf>. The remaining cases are subjudice or being heard in court.

15 to 49 who have ever experienced any type of physical or sexual violence have sought help to stop the violence.¹¹⁴ Among Dalit women, the percentage is even lower (21.5%).¹¹⁵ Of the women who have ever experienced violence and have sought help, only 7.2% have approached the police, and only 0.4% have approached a lawyer.¹¹⁶



Dalit women and girls face multiple layers of discrimination because of the intersection of caste, gender, class, and other markers.

 ↑ *Illustration by: Colin Foo*

Impunity is exacerbated by the low level of awareness among women and girls of their rights and the mechanisms available for gaining access to justice and seeking remedies; the normalization of violence and the social stigma attached to reporting violence; the lack of targeted financial support and legal aid; the limited capacity to guarantee full and effective investigation of cases; and the limited number of cases that lead to convictions of the perpetrator and reparation to the victim and are effectively implemented.¹¹⁷

¹¹⁴ Ministry of Health, *Nepal Demographic Health Survey 2022, 2023*, <https://dhsprogram.com/pubs/pdf/FR379/FR379.pdf>, p. 447.

¹¹⁵ Ministry of Health, *Nepal Demographic Health Survey of 2022, 2023* (previously cited), p. 478.

¹¹⁶ Ministry of Health, *Nepal Demographic Health Survey 2022, 2023* (previously cited), pp 478-9. The proportion of women seeking help from the police increased from 3% in 2016 to 7% in 2022.

¹¹⁷ UN Women, *Toolkit for Developing Legislation and Policies on Gender-Based Violence Against Women and Girls in Nepal, 2020* (previously cited), p. 12; CEDAW Committee, Concluding Observations: Nepal, 2018 (previously cited), paras 10(a) and (b); Special Rapporteur on Violence Against Women, Report: *Visit to Nepal, 2019* (previously cited), para. 8; and UN Special Rapporteur on Violence, Preliminary observations and recommendations on the official visit to Nepal, 29 November 2018, <https://www.ohchr.org/en/statements/2018/11/united-nations-special-rapporteur-violence-against-women-its-causes-and>

All these factors contribute to creating a “culture of impunity”. A culture of impunity is created whenever perpetrators of racist and gender-based violence are systematically not held accountable. The prevalence of impunity undermines the criminal justice system and the administration of justice.¹¹⁸ As noted by the UN Human Rights Office (OHCHR), the failure to hold persons to account for serious crimes erodes public faith in the ability of rule of law institutions to enforce the law fairly and without political bias.¹¹⁹

Amnesty International’s research around the world has documented that the consequences of this culture of impunity are perverse, since it reinforces the idea that perpetrators will not be held accountable for their actions, sending a message of tolerance and acceptability to society, creating despair among survivors and victims and guaranteeing the continuation of the cycle of violence and discrimination. Impunity also reinforces the control mechanism for oppressed people, intensifying their subordination and sense of powerlessness as survivors of such violence. Women and girls are particularly vulnerable to this vicious cycle.¹²⁰

The pervasive culture of impunity is also an indicator of the failure of the state of Nepal to fulfil its human rights obligations, by adopting systemic measures to achieve substantive equality, that go beyond the criminalization of discrimination on paper. Despite all the efforts, substantive equality is far from achieved for Dalit people, caste-based discrimination is entrenched in Nepal, as well as discrimination on the basis of gender, and systemic racism has not been dismantled, as documented in

¹¹⁸ Yam Bahadur Kisan and others, *Nepal: Access to Justice for Dalits*, Samata Foundation, 2015 (previously cited), p. vi.

¹¹⁹ OHCHR, *Opening the Door to Equality: Access to Justice for Dalits in Nepal, 2011* (previously cited), pp 56, 6.

¹²⁰ Confirmed by Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February, Janakpur, and 18 February 2023, Lahan, and Amnesty International interviews in person, 1, 2, 3, 4, 5, 6, 12, 13, 14 of June 2023.

this report and in several others from civil society and the UN system, referenced throughout this report. Much more needs to be done to transform the culture and the practices of untouchability in Nepali society, and to counteract the naturalization of violence and exclusion against women and against Dalits. Dalit organizations have also reported the lack of meaningful mechanisms to centring the voices of Dalit people and the organizations working with them in the design of the solutions.¹²¹

6.1 ROLE OF POLICE HINDERS ACCESS TO JUSTICE

During this research, survivors and organizations, lawyers and other supporting experts have consistently raised the central role the police should have as front-line officers in accessing justice to combat discrimination and violence and how this institution is failing to comply with this obligation in Nepal in relation to caste and gender-based offences. As developed below, Amnesty International's findings indicate police officers are reluctant to register an FIR when survivors reach out to them. If they do, they request unreasonable requirements in terms of evidence of the offence from survivors, and in some cases, officers wilfully neglect to comply with their duty to carry out an effective investigation.

6.1.1 RELUCTANCE OR DENIAL TO REGISTER FIR

According to FEDO there is a tendency for Dalits to tolerate caste-based discrimination or avoid seeking justice due to stigma and fear of repercussions from

non-Dalits, and this highlights the imbalanced power relations between the Dalits and non-Dalits in caste-based Nepali society.¹²²

This pattern of underreporting is acknowledged by the Government of Nepal as being a direct consequence of community pressure to maintain social harmony by ignoring or dismissing caste-based crimes.¹²³

FEDO also highlighted that underreporting of crime by Dalits is linked to reluctance or denial on the part of police to register complaints of the Dalit victims which undermines their trust in the criminal justice system.¹²⁴

FEDO mentioned that the complaints by Dalit women are only registered by the police as FIRs after pressure from activists, CSOs and media publicity. And even after registering the FIR, the cases are often not investigated in a timely and effective manner.¹²⁵

Amnesty International's research confirmed this. Consistently, survivors and grassroots organizers who support survivors in accessing justice referred to reluctance and denial on the part of police to register FIRs in cases of untouchability and caste-based discrimination as the main reason why Dalits do not have access to justice. Women consistently reported that if they go by themselves to the police, reports are not registered.¹²⁶

¹²¹ Amnesty International interviews in person with Dalit organisations, 15 February 2023, Kathmandu.

¹²² Amnesty International interviews in person, 14 February 2023.

¹²³ UN Nepal, *Literature Review on Harmful Practices in Nepal*, January 2020, <https://nepal.unfpa.org/sites/default/files/pub-pdf/Literature%20Review%20on%20Harmful%20Practices%20n%20Nepal.pdf>, p. 16. See also OHCHR, *Opening the Door to Equality: Access to Justice for Dalits in Nepal*, 2011 (previously cited), p. 57.

¹²⁴ Amnesty International interviews in person, 14 February 2023.

¹²⁵ Amnesty International interview in person with FEDO, 14 February 2023.

¹²⁶ American Bar Association and Center for Human Rights, *Challenges for Dalits in South Asia's Legal Community*, June 2021, <https://www.icdrintl.org/wp-content/uploads/2021/06/ABA-Center-for-Human-Rights-Nepal-Dalit-Defenders-Report.pdf>, p.

For example, Raju Paswan, secretary of INSEC, a leading organization working on Dalit rights raised similar concerns:

“If a victim goes to the local area police, they are told to go to the district police station. At the district police office, the police officials discourage the registration of the case. Dalits are told: “Okay, we will keep your complaint, leave now”, but they don’t register the case. The victims’ families say: “We are victimized, we have been discriminated against, so, please register our complaint”, but the police fail to act.”¹²⁷

Amnesty International interview with Raju Paswan, Secretary of INSEC, June 2023

The actors in the criminal justice system are not free of caste-bias. The institutional racism purporting caste-based allegiance within the police, as well as their exposure to political and societal interference and pressure by non-Dalit perpetrators and the communities supporting them to defend the *status quo*, is widely documented.¹²⁸ These factors could explain, in part, their reluctance to fulfil their obligation to register and properly investigate complaints of caste-based discrimination. As such, there are no provisions for accountability in the CBDU Act and the police are also not held accountable for not complying with their duty to promptly register and investigate CBDU cases,¹²⁹ reinforcing the culture of impunity mentioned.

11. Also confirmed by Amnesty International interviews in person with Dalit women, 1, 2, 3, 4, 5, 6, 12, 13 and 14 June 2023.

¹²⁷ Amnesty International interview in person with Raju Paswan, Secretary of INSEC, 1 June 2023, Janakpur.

¹²⁸ Parbat Portel, “Society discourages Dalits from seeking legal recourse against caste-based discrimination”, Kathmandu Post, 2023 (previously cited).

¹²⁹ FEDO, “Study on Dalit Women Specific Recommendations Received from the UPR, CEDAW and CERD, and their Implementation Status”, https://idsn.org/wp-content/uploads/2022/10/English_UPR-CEDAW-latest_CERD-V5-12022.pdf, p. 29.

Amnesty International interviews with NDC noted that the police, as front-line officers responsible for registering CBDU-related cases, do not automatically resort to setting the criminal law in motion and repeatedly demand intervention from NDC to appeal to the police to register and subsequently prosecute the cases.¹³⁰

6.1.2 EVIDENCE DEMANDED AT THE TIME OF REGISTRATION OF AN FIR

In the context of Nepal, it is a mandatory legal requirement to register an FIR, which initiates criminal proceedings, as in an investigation and prosecution leading to judicial redress. A complaint from the survivor/victim is necessary for the police to register the FIR.

Amnesty International’s research confirmed that in CBDU-related cases, at the time of registration of FIR the Dalit victims are required to produce evidence of untouchability practices or of the discrimination they faced.¹³¹ In some incidents, Dalits reported being ruthlessly beaten by police officials to deter them from registering the FIR or pursuing further investigation.¹³² This account was more consistently raised in the Madhesh Province.¹³³

¹³⁰ Amnesty International interview in person with NDC Chairperson, 4 June 2023.

¹³¹ Amnesty Focus Group Discussions with lawyers 15 February 2023 in Kathmandu, also raised in Amnesty International interviews in person with Dalit women, 1, 2, 3, 4, 5, 6, 12, 13 and 14 June 2023, Kathmandu. As evidence, the Dalits are required to produce corroborating witnesses or any audio or video recordings to prove that he/she was subject to untouchability practice.

¹³² Amnesty International interviews in person, 1 June 2023, Janakpur.

¹³³ Amnesty International interviews in person, 1 June 2023, Janakpur. Also, raised in Amnesty International Focus Group Discussions held on 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan. It was explained to Amnesty International researchers that as evidence the Dalits are required to produce corroborating witnesses or any audio or video recordings to prove that he/she was subject to untouchability practice.

This demand, on the part of the police that Dalit victims must produce evidence, was also documented by OHCHR in 2011: “[W]hen prima facie evidence that a crime has been committed exists, the police are obliged to register a case of caste-based discrimination *ex officio*, even when no formal complaint is registered by a victim. However, the police usually require victims to provide direct testimony before they will consider registering a case, and even when a victim does come forward, the proper registration of the case by the police remains a challenge.”¹³⁴

“In our experience of working with Dalits on CBDU-related offences, the police officials don’t register the cases easily. On receiving complaints, they should investigate effectively by going to the crime scene, meeting the victim’s family and other witnesses to understand the facts of the case. Rather, the police officials weaken the case by informing the non-Dalit perpetrators prior to filing the FIR. Due to this approach of the police, when the case goes to courts, the perpetrators escape and are released from the charges.”

Amnesty International interview with Raju Paswan, Secretary of INSEC¹³⁵

According to the Samata Foundation, it is difficult for the Dalits to gather evidence in cases of untouchability caste-based discrimination as they are faced with abuse, threats, and social alienation by the non-Dalits, although it is the duty of the state apparatus to investigate and identify the perpetrators.¹³⁶

The Chairperson of the National Dalit Commission (NDC), a state institution, told Amnesty International that, although the Dalit Commission monitors incidents of caste-based crimes, it is the responsibility of the Nepal Police as responsible authority to instruct front-line officers to promptly investigate and gather evidence.¹³⁷

6.1.3 WILFUL NEGLIGENCE AND LACK OF INVESTIGATION

According to a 2015 report by the Samata Foundation, the majority of incidents affecting Dalits that are prohibited under the CBDU Act include the use of derogatory language against Dalits and preventing the use of public places and utilities. They also raised concerns that incidents of grave nature, such as physical assault, rape, and other ill-treatment, are rarely reported leading to underreporting since such incidents are covered up at the local level by informal mediation by non-Dalits under the pretext of maintaining communal harmony.

Amnesty International research with stakeholders also confirmed that the lack of disaggregated official data available makes it difficult to ascertain the actual numbers of incidents of caste-based offences, the actual numbers of CBDU-related cases registered, charge-sheeted and prosecuted, as well as the gender aspect relating to how many Dalit women and girls were victims.¹³⁸ In some provinces, the lack of awareness among the police regarding the CBDU Act is another reason for hampering justice and effective implementation of the CBDU Act.¹³⁹

¹³⁴ OHCHR, *Opening the Door to Equality: Access to Justice for Dalits in Nepal*, 2011 (previously cited), p. 53.

¹³⁵ Amnesty International interview in person with Raju Paswan, Secretary of INSEC, 1 June 2023, Janakpur.

¹³⁶ Parbat Portel, “Society discourages Dalits from seeking legal recourse against caste-based discrimination”, Kathmandu Post, 2023 (previously cited).

¹³⁷ Amnesty International interviews in person with NDC Chairperson, 14 June 2023.

¹³⁸ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

¹³⁹ Amnesty International interview in person with NDC Chairperson, 14 June 2023.

An OHCHR report in 2011 already noted that the police usually settle the case through informal mediation, instead of initiating criminal proceedings and asking for an apology from the perpetrator, and they suggest a nominal financial compensation. Such processes are not established by law and, as such, are against the rule of law. But they found such informal mediations are applied by the police in a number of cases, including those that fall outside of the scope of the CBDU Act, like rape or other gender-based violence.¹⁴⁰

The local and district police officers also engage to informally “mediate” in some cases using direct or indirect power, both of which are a misuse of their position.¹⁴¹ The reluctance to register CBDU cases, resorting to community-level mediation in an impromptu manner, and such mediation itself, are all inherently problematic as they fail to recognize the nature of caste-based discrimination and untouchability as a crime and undermine efforts to reinforce the seriousness of this crime, and this pattern has been well-documented by organizations.¹⁴²

Dalit lawyers, in conversation with Amnesty International, noted another issue that hinders access to justice: If cases are registered, police fail to register FIRs under the CBDU Act but register under other laws, which have the effect of qualifying the offence as a less serious crime and diluting the discriminatory motive. Such acts of wrongly classifying the crimes hinder the collection of data on caste-based discrimination, which is necessary to

assess the effectiveness of existing laws.¹⁴³ For example, as Samata Foundation’s National Peoples’ Hearing on Access to Justice for Dalits identified, the widespread and systematic failure to register crimes properly under the CBDU Act is not limited to non-registration FIRs, but caste-based offences were often diluted and registered under other Acts such as the Libel and Slander Act, 1959, to downplay the caste-based offence from a severe social offence to a less serious crime.¹⁴⁴

Not recognizing the gravity of caste-based crimes, which is a crime against the state, and acting with an intention to dilute the severity of caste-based discrimination by resorting to filing caste-based crimes as libel or slander, demonstrates wilful negligence to purposefully not register and investigate complaints by Dalits, as well as a lack of awareness on the part of the police regarding the significance and application of the CBDU Act.¹⁴⁵ The National Peoples’ Hearings also identified that police investigation was weak and oriented towards statement collection rather than full investigation.¹⁴⁶

Amnesty International has been closely following the emblematic case of Ajit Dhakal Mijar, a young Dalit male. The case raises concerns around police failures to conduct a thorough, impartial, fair, and timely investigation into the mysterious circumstances of his death.

¹⁴⁰ UN High Commissioner for Human Rights, Report on human rights situation and the activities of her office, including technical cooperation in Nepal, 16 February 2011, UN Doc. A/HRC/16/23, available at

https://nepal.ohchr.org/en/resources/Documents/English/reports/HC/2011_02_16_HRC_16_23_Annual_Report_E.pdf, pp.55, 56, 57, 58.

¹⁴¹ Yam Bahadur Kisan and others, *Nepal: Access to Justice for Dalits*, Samata Foundation, 2015 (previously cited), p. 37.

¹⁴² American Bar Association and Center for Human Rights, *Challenges for Dalits in South Asia’s Legal Community*, June 2021 (previously cited), p. 11.

¹⁴³ Amnesty International Focus Group Discussion with lawyers, 15 February 2023, Kathmandu.

¹⁴⁴ Yam Bahadur Kisan and others, *Nepal: Access to Justice for Dalits*, Samata Foundation, 2015 (previously cited), p. 34.

¹⁴⁵ Yam Bahadur Kisan and others, *Nepal: Access to Justice for Dalits*, Samata Foundation, 2015 (previously cited), p. 34.

¹⁴⁶ Yam Bahadur Kisan and others, *Nepal: Access to Justice for Dalits*, Samata Foundation, 2015 (previously cited), p. 34.

THE EMBLEMATIC CASE OF AJIT DHAKAL MIJAR

On 14 July 2016, Ajit Dhakal Mijar, an 18-year-old young Dalit male who was in an inter-caste relationship with a non-Dalit girl belonging to a “dominant caste”, was found dead in a suspicious manner by hanging from a tree. The girl’s family did not approve of the relationship. Ajit’s death was recorded as suicide by the police, and his corpse was declared as unidentified and buried by the police authorities in a rushed manner.

Ajit’s father found certain anomalies relating to a post-mortem report produced by law enforcement, which raised his suspicions that the death of his son was not suicide but murder. Ajit’s father requested to exhume Ajit’s body, which confirmed his suspicion and he refused to perform final rites for his son until he obtains justice. Ajit’s corpse has been preserved in a morgue at the teaching hospital in Maharajgunj for the last eight years.

The Dhading District Court and the Bench of Patan High Court passed verdicts to acquit all three accused named in this case. At the time of writing this report, Ajit’s case is pending at the Supreme Court of Nepal, challenging the lower courts’ verdicts and seeking to reopen the case citing negligence on the part of the police investigation and prosecutorial evidence.¹⁴⁷

Amnesty International interviewed Ajit’s father and his lawyer, who claimed that the police showed wilful negligence in their failure to effectively investigate Ajit’s cause of death. Ajit’s father said the police showed allegiance to the non-Dalit suspects and covered up the actual cause of Ajit’s death. They both claimed that an autopsy or post-mortem was not conducted in the first place, but a forged post-mortem report was produced as evidence. They further claimed that if the Apex court directed a post-mortem it would have revealed the facts as to whether Ajit died by hanging himself or by murder.¹⁴⁸

Allegations against police regarding wilful negligence of duty in handling caste-based discrimination prompted Nepal’s Parliamentary Committee on Law, Justice and Human Rights to require a Dalit cell in every police station since 2020.¹⁴⁹ This has resulted in the creation of 86 Dalit-specific police cells across the country, each charged with reporting, investigating and coordinating with the victims of crimes of caste-based discrimination and untouchability and against the Dalit community.¹⁵⁰ Dalit activists reported that across all provinces, evidence of the Dalit desk could only be found on paper labels. They noted that the effective functioning of a Dalit police cell requires resources, guidelines, defined terms of reference and effective monitoring, which are lacking right now.¹⁵¹ Amnesty International’s researchers visited three district-level police stations in Madesh Province and discovered that the Dalit desk was not functional except for a placard labelled “Dalit desk”.¹⁵²

Amnesty International’s findings are consistent with complaints raised by Nepal civil society groups in their report to the CERD Committee, which indicated the failure on the part of the police to register and follow up FIRs with a prompt, impartial, thorough and effective investigation by visiting the crime scene, collecting evidence, taking statements from the witnesses and suspects. The police delays lead to last-minute submission of

¹⁴⁷ Bal Krishna Sah, “Ajit’s corpse awaiting justice at Teaching Hospital morgue for seven years”, *The Himalayan*, 11 June 2023, <https://thehimalayantimes.com/kathmandu/ajits-corpse-awaiting-justice-at-teaching-hospital-morgue-for-seven-years>

¹⁴⁸ Amnesty International interview in person with Haribhakta Dhakal Mijar, 4 June 2023, Kathmandu, and also reported by Bal Krishna Sah, “Ajit’s corpse awaiting justice at Teaching Hospital morgue for seven years”, *The Himalayan*, 2023 (previously cited).

¹⁴⁹ Binod Ghimire, “Parliamentary committee directs formation of Dalit cell in Nepal Police”, *Kathmandu Post*, 3 June 2020, <https://kathmandupost.com/national/2020/06/03/parliamentary-committee-directs-formation-of-dalit-cell-in-nepal-police>. The idea of a Dalit police cell is taken from the Ministry of Women and Children’s initiative for a women’s cell, which is directly supported by efforts linked to gender-responsive budgeting and accompanied by allocation of funds targeted to addressing women’s issues.

¹⁵⁰ Prakash Dhulakoti, “86 ‘Dalit cells’ in police”, *Kantipur*, 21 February 2021, <https://ekantipur.com/news/2023/02/21/167698409580664144.html> (translated by partners).

¹⁵¹ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

¹⁵² Amnesty International research fieldwork to police stations on 1, 2, 3 June 2023 in Madhesh Province.

investigation reports to the Government Attorney's Office, resulting in weak or incomplete charge sheets.¹⁵³

The CERD Committee, in its concluding recommendations in May 2018, recommended that: "law enforcement officials who fail to formally record complaints as First Information Reports be sanctioned" and that the state "consistently investigate, prosecute caste-based discrimination, provide victims with appropriate remedies and widely disseminate to the public and to law enforcement officials anti-discrimination laws and related complaint mechanisms".¹⁵⁴

During the third cycle of the UN Universal Periodic Review (UPR) in 2021, targeted recommendations were made to Nepal to focus on the role of the police in the effective investigation and prosecution of caste-based crimes.¹⁵⁵

Currently, in Nepal, there is no independent and external oversight mechanism for police accountability (such as an independent police complaints commission or a special investigative unit) to receive and investigate complaints from Dalit victims regarding the police's action or inaction in such cases. Amnesty International research reveals that there has been little change in the situation on the ground.

The role of police in enabling access to justice is compounded by the absence of sensitization and training of government officials concerning the gravity of untouchability offences and the lack of accountability when government officials

fail to effectively enforce decisions related to caste discrimination.¹⁵⁶ To build capacity in the Nepali Police, the NDC is designing a syllabus on handling caste-based crimes. Additionally, NDC is working together with the Inspector General of Police to improve access to justice for the Dalits.

The reluctance or refusal to register complaints and initiate investigation, and the preference on the part of the police to encourage and/or resort to informal mediation, contribute to widespread impunity for perpetrators for both CBDU-related offences as well as serious criminal offences such as caste and gender-based violence.

6.2 INADEQUATE STATUTE OF LIMITATIONS FOR CBDU ACT

"The statute of limitation is not sufficient. The investigation and filing of the charge sheet is not possible in such a short period of time."¹⁵⁷

Amnesty International interview with public prosecutor in Madhesh Province, June 2023

Section 10 of the CBDU Act stipulates that: "[A] case shall have to be filed for the offence pursuant to this Act within three months from the commission of the offence." However, this three-month time frame is not only grossly inadequate but also defeats the purpose of the CBDU Act, which aims to tackle untouchability and caste-based discrimination. Even in 2011, OHCHR warned that the current statute of limitations of three months is insufficient,

¹⁵³ DNF Nepal and others, "Nepal Civil Society Groups' Alternative Report to UN CERD Committee", 2018 (previously cited), p. 20.

¹⁵⁴ CERD Committee, Concluding Observations: Nepal, 2018 (previously cited), para. 12.

¹⁵⁵ Human Rights Watch, "Submission to the Universal Periodic Review of Nepal", July 2020, available at <https://www.hrw.org/news/2020/07/15/submission-universal-periodic-review-nepal>

¹⁵⁶ The link between the need for training for effective investigation and prosecution to ensure accountability is elaborated in OHCHR, *Opening the Door to Equality: Access to Justice for Dalits in Nepal*, 2011 (previously cited), pp. 87, 88, 89.

¹⁵⁷ Amnesty International interview in person with Public Prosecutor, 1 June 2023, Madhesh Province.

and a flexible statutory limitation that corresponds to the seriousness of the crime is required for the victim to access justice.¹⁵⁸

Amnesty International's interviews with stakeholders confirmed that, in Nepali society, untouchability and caste discrimination are often perceived as a social matter that has to be settled within the local community or village, and the limitation period of three months is totally insufficient for a Dalit survivor to seek judicial redress by registering FIRs, especially given the existing societal norms that outright discourage and deny the Dalits justice.¹⁵⁹ Nepal civil society groups have reported that the three-month statute of limitations is restrictive and inadequate and contributes to ineffective implementation of the CBDU Act¹⁶⁰. The social prejudice against the Dalits by the non-Dalit perpetrators and the reluctance on the part of police to file a complaint hinder access to justice for Dalits, and therefore, the existing statute of limitations stipulating three months in many ways sets the CBDU act to fail.¹⁶¹

The CERD Committee, in its concluding recommendations in May 2018, categorically recommended that the statute of limitations be extended as part of several recommendations to improve access to justice for racially discriminated communities.¹⁶²

Amnesty International's research findings confirmed that although incidents under CBDU Act must be reported to the police,

under-reporting is the norm in cases of untouchability and caste-based discrimination. This is due to stigma, fear of repercussions including threats to life and livelihood by the non-Dalits, as well as lack of trust in the police due the deeply entrenched institutional caste-bias and prejudice. The majority of the police come from non-Dalit backgrounds and they are perceived as safeguarding the interests of the non-Dalits. Dalit women reported that their complaints are not taken seriously by the police, unless they go with others and exercise significant pressure.¹⁶³

In the light of barriers documented by Amnesty International's researchers, the limitation period needs to be extended to a flexible period to ensure that there is a realistic timeframe to investigate caste-based offences in a fair and adequate manner.

6.3 LACK OF DIVERSITY IN CRIMINAL JUSTICE SYSTEM

“The police are terrified of the non-Dalits. Police hear us, Dalits, but then they are influenced immediately after threats by non-Dalits and do what the non-Dalit says. Police from our castes should be there. If police from our community will be there, they will listen to us. They will understand that such things happen in our society. They will do something for us [and take action] against it. Voice is raised

¹⁵⁸ OHCHR, *Opening the Door to Equality: Access to Justice for Dalits in Nepal*, 2011 (previously cited), p. 48.

¹⁵⁹ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

¹⁶⁰ DNF Nepal and others, “Nepal Civil Society Groups’ Alternative Report to UN CERD Committee”, 2018 (previously cited), p. 20.

¹⁶¹ DNF Nepal and others, “Nepal Civil Society Groups’ Alternative Report to UN CERD Committee”, 2018 (previously cited), p. 20.

¹⁶² CERD Committee, Concluding Observations: Nepal, 2018 (previously cited), para. 12.

¹⁶³ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, 18 February 2023, Lahan, and 17 and 18 February 2023, Siraha, respectively. Also identified in Special Rapporteur on Minority Issues, Report, 2016 (previously cited), paras 60 and 61. Also reported in Yam Bahadur Kisan and others, *Nepal: Access to Justice for Dalits*, Samata Foundation, 2015 (previously cited), p. 23.

everywhere but it isn't heard. No one cares.”¹⁶⁴

Amnesty International interview with Anita Mahara, June 2023

According to the 2011 census, Pahadi Bahun-Chhetri men (Khas-Arya, belonging to the so-called high caste) make up 14.44% of the population of Nepal but 85.44% of the judges in the country.¹⁶⁵

Judges from one ethno-linguistic community and one gender make decisions on over 85% of cases.

For the years 2017/18, the Judicial Council Secretariat noted that there were 394 judges at the Supreme Court, High Court, and District Court level.¹⁶⁶ There have never been any Dalit judges in the Supreme Court. There have only ever been three Dalit judges in all seven high courts, and one Dalit district judge, out of 77 district courts.¹⁶⁷ Dalit representation in high-ranking positions in the Nepal Police is also limited. Out of a total of 65,500 posts in Nepal Police, only 9.45% are held by Dalits,¹⁶⁸ even though Dalits in Nepal constitute approximately 13.2% of the total population. Most of these positions are in low ranks.

“The Dalit representation is very weak in the police department, and it is even weaker in the Madhesh Province. Those from Dalit community belong to lower ranks in the police such as Inspector or Assistant Sub Inspector. There are very few Dalit representatives in rank of

¹⁶⁴ Amnesty International interview in person with Anita Mahara (name changed for security reasons), 1 June 2023.

¹⁶⁵ Raksha Ram Harijan, “Caste Apartheid in the Judiciary”, The Record, 23 April 2019, <https://www.recordnepal.com/caste-apartheid-in-the-judiciary>

¹⁶⁶ Raksha Ram Harijan, “Caste Apartheid in the Judiciary”, 2019 (previously cited).

¹⁶⁷ Pradip Pariyar, “The inadequacy of Nepal’s Democracy for Marginalised Peoples”, 2020 (previously cited).

¹⁶⁸ Dr. Manbahadur B.K., “The Quest for Inclusion in Public Administration”, Nepal Press, 25 May 2021, <https://www.nepalpress.com/2021/05/08/52913/> (translated by partners).

Deputy Superintendent of Police. During capacity building trainings, the police pretend as if they have understood everything, but they are the one who create obstacles for the implementation. Nepal Police not wanting to understand, and implement is a major obstacle in implementing the CBDU Act.”¹⁶⁹

Amnesty International interview with NDC Chairperson

6.4 LACK OF EFFECTIVE OVERSIGHT MECHANISMS AND ACCOUNTABILITY

The Government of Nepal has established a series of mechanisms and policies at the ministerial level to support the rights of Dalits. The Office of the Prime Minister and Council of Ministers (OPMCM) is the leading government agency responsible for the promotion of human rights related activities, including governance reform and effective implementation of relevant human rights treaties.

The OPMCM established a high-level mechanism under the convenorship of its Chief Secretary on “Promotion of Dalits’ Rights and Eradicating Caste-Based Discrimination and Untouchability”.¹⁷⁰ However, Dalit stakeholders claim that the high-level mechanism is almost non-functional, as it has never been convened.¹⁷¹

There are also other ministries which have direct line responsibilities to ensure the

¹⁶⁹ Amnesty International interview in person with NDC Chairperson, 4 June 2023, Kathmandu.

¹⁷⁰ Besides coordination and harmonization of human rights related affairs of various line agencies, it oversees the status of compliance with the reporting obligations of Nepal to UN treaties.

¹⁷¹ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

rights of Dalits are respected, protected and fulfilled. The Ministry of Federal Affairs and Local Development (MoFALD) is the focal point on Dalits and Indigenous peoples issues. In 2009, the MoFALD adopted the Gender Equality and Social Inclusion Policy, which focuses on developing Dalits and Indigenous Peoples by formulating programs and plans, including proportional participation and strengthening of Dalits and Indigenous Peoples, among other excluded groups.¹⁷²

The National Action Plan on Human Rights, under the aegis of the MoFALD, addresses the issues of Dalits in its chapter on inclusive development. However, as noted by the Dalit stakeholders, there is little awareness about the contents and the implementation of the plan among the local bodies and respective agencies.¹⁷³

The Ministry of Home Affairs also has a very important role to play in the protection and promotion of the human rights of all people, including Dalits and Indigenous people. The Nepal Police are responsible for maintaining law and order in the country, and also responsible for overseeing the situation of caste-based discrimination, conducting investigations, and bringing perpetrators to justice.¹⁷⁴ The Ministry of Law, Justice and Parliamentary Affairs has an important role in revising legislation in conformity with international standards in order to ensure the rights of Dalits and Indigenous peoples.¹⁷⁵ The Ministry of Women, Children and Social Welfare is the agency charged with

protecting the rights of women, children, senior citizens, and persons with disabilities. It is mandated to take legal, policy and programmatic measures for the empowerment of these groups and people.¹⁷⁶

Dalit activists note that there is a lack of effective coordination between the above-mentioned ministries, and this remains a significant problem.¹⁷⁷ Delivering an address at a Dalit rights meeting in 2020, Mr Pawan Bhatta, Deputy Chief of the National Human Rights Commission, said: “Caste-based discrimination will come to an end if there will be coordination, collaboration and discussion between government, Dalit communities and support by the stakeholders of human rights”.¹⁷⁸

The Dalit stakeholders informed Amnesty International that there is an urgent need for effective coordination between the various ministries, as well as the national commissions. Currently, in Nepal, there are multiple national institutions, such as the National Human Rights Commission (NHRC), National Women’s Commission (NWC) and National Dalit Commission (NDC), each with varied but intersecting mandates.¹⁷⁹

The NHRC, in its Sixth Strategic Plan, 2021-26, approved seven priority areas including addressing the rights of women and children, ending caste-based discrimination, protecting the rights of female migrant workers, ending human trafficking and transportation, and the

¹⁷² The Gender Equality and Social Inclusion Section (GESI) under the Federal Affairs Division of the MoFALD operates and coordinates programs relating to social inclusion of excluded groups including Dalits and Indigenous peoples. The MoFALD’s GESI Policy, 2009 was formulated with the objectives of motivating MoFALD entities to implement social inclusion through institutional efforts and programs. See further: Government of Nepal, Periodic Report submitted to CERD, 2017 (previously cited), paras 33 and 92.

¹⁷³ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan

¹⁷⁴ Government of Nepal, Periodic Report submitted to CERD Committee, 2017 (previously cited), para. 34.

¹⁷⁵ Government of Nepal, Periodic Report submitted to CERD Committee, 2017 (previously cited), para. 35.

¹⁷⁶ Government of Nepal, Periodic Report submitted to CERD Committee, 2017 (previously cited), para. 36.

¹⁷⁷ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

¹⁷⁸ Dalit Civil Society Organizations’ Coalition for UPR, IDSN, and DNF, *Joint Stakeholder Submission of Non-governmental Organization on UPR, 2020* (previously cited), p. 30.

¹⁷⁹ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, and 18 February 2023, Lahan.

rights of sexual and gender minorities.¹⁸⁰ NHRC has regional offices in provinces, as well as staff, resources, opportunities for capacity building, and well-defined criteria for members. Dalit stakeholders opined the NHRC could do more in addressing caste-based discrimination in coordination with NWC and NDC.¹⁸¹

Amnesty International interviewed the chairpersons of the NWC and NDC and both highlighted the need for effective coordination with the NHRC and expressed their desire for the three commissions to work together on combating discrimination against Dalits and Dalit women and girls in particular.¹⁸² Both the Chairpersons of NWC and NDC mentioned that, although NDC and NWC were constitutional commissions, both faced a number of limitations compared to the NHRC, which is better resourced and has more staff and capacity, particularly with its offices in the provinces. On the contrary, both NDC and NWC have no budget provisions for establishing offices in provinces yet. This means that NWC and NDC are limited in their effectiveness in supporting Dalit women.¹⁸³

In discussion with Amnesty International, stakeholders noted that NDC is yet to be made a statutory body. Therefore, it lacks the 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.¹⁸⁴ Despite these limitations, there are high expectations for both the NWC and NDC to deliver on par with NHRC.

Except for the NDC, no other constitutional commissions, including the NHRC, have had Dalit representation.¹⁸⁵ In speaking with Amnesty International, the Chairperson of the NWC expressed her sadness that her commission is not yet diverse.¹⁸⁶

Dalit activists observe that these commissions often overlook the specific concerns of Dalit women, due to the predominant influence of dominant caste women, those from the general category, and Dalit men; the minimal representation of Dalit women in these commissions further constrains their agendas.¹⁸⁷

¹⁸⁰ Government of Nepal, Periodic Report to CEDAW Committee, 3 August 2023, UN Doc: CEDAW/C/NPL/7, para. 102.

¹⁸¹ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

¹⁸² Amnesty International interviews in person with Chairpersons of NDC and NWC, 4 June 2023.

¹⁸³ For example, Amnesty International interview in person with NWC Chairperson, 4 June 2023, noted about securing rights of Badi Dalit women and that NWC remains committed to working with elected Dalit women leaders to develop a special program to build the capacity, because only if Dalit women are empowered, then can raise their issues.

¹⁸⁴ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

¹⁸⁵ Dalit Civil Society Organizations' Coalition for UPR, IDSN, and DNF, *Joint Stakeholder Submission of Non-governmental Organization on UPR*, 2020 (previously cited), p. 8.

¹⁸⁶ The NWC Chairperson noted that it was the decision of the Constitutional Council which is beyond her control, and that the Chairperson and three other members all belong to dominant caste.

¹⁸⁷ Amnesty International Focus Group Discussions, 15 February 2023, Kathmandu, 16 and 17 February 2023, Janakpur, and 18 February 2023, Lahan.

7. CONCLUSION AND RECOMMENDATIONS

Caste-based discrimination against Dalits in Nepal is still systemic and widespread, as the experiences documented in this report show. This discrimination has historical roots in the caste system, which permeates every aspect of social and cultural life in Nepal still today. Dalits feel its effects every day, including suffering segregation, exclusion, and violence because of the practice of “untouchability”. Women and girls suffer from intersecting forms of violence and discrimination, which are also based in patriarchy.

The state of Nepal has not contested this. In its engagement with the international treaty-monitoring bodies and during the Universal Periodic Reviews, Nepal has acknowledged the continuing presence of caste-based discrimination on its territory and pledged to combat it.

Constitutional and legal reforms, as well as the creation of policies and institutions, have been a significant step forward. However, there is a gap in national legislations since none of them addresses gender and caste-based violence from an intersectional perspective, and the CBDU act and rules of procedures have several shortcomings.

In any case, the efforts made by the state are still inadequate and insufficient, and they seem to exist only on paper but do not translate into real changes in the lives and

the human rights of Dalits, and Dalit women and girls in particular.

The state is failing to protect Dalits, in particular Dalit women and girls, from discrimination and violence, and failing to fulfil its obligations to provide effective, timely and meaningful access to justice for survivors. In fact, impunity is the norm, even if untouchability and caste-based discrimination and other serious offences have been prohibited and criminalized.

Impunity is pervasive for several reasons, including inadequate statute of limitations for the CBDU Act, lack of representation of the Dalits in the justice system, lack of effective oversight mechanisms and accountability.

The most consistent reason raised by everyone interviewed for this research was that Dalits do not trust the police and the justice system in general. The limited government-level data and statistics available (which demonstrate the derisively low numbers of recorded caste-based incidents, being discrimination so pervasive) confirm their distrust is well-founded, including for Dalit women confronting violence. According to the CBDU Act, the police should be the entry point in accessing justice to combat discrimination and violence and instead, as documented in this research, the police officers are reluctant to register a First Information Report (FIR) when survivors reach them, and if they do, the police

request unreasonable requirements from survivors in terms of evidence of the offence and in some cases officers wilfully neglect to comply with their function to investigate.

All the above has created a “culture of impunity” for human rights violations related to racism and patriarchy in Nepal, and the state is not doing enough to counteract this. In fact, the inactions or the limited actions of the state, including failing to hold public officers accountable and closing the trust deficits, are reinforcing this culture of impunity and are sending a message to society that caste and gender-based violence and discrimination are “acceptable” and “natural”. As Anita Mahara, one of the Dalit women interviewed for this report, clearly said, it seems like “no one cares”.¹⁸⁸

On the basis of the documented experiences of Dalits, and Dalit women and girls in particular, and their ideas for change, Amnesty International makes the following recommendations to the state of Nepal:

RECOMMENDATIONS

The state of Nepal needs to create a plan for a truly transformative response to the entrenched caste and gender-based violence and discrimination in Nepal, based on human rights obligations and with an intersectional lens. This plan needs to combat the culture of impunity, including by designing measures beyond criminalization measures, including awareness-raising campaigns to combat stereotypes and prejudice and other policies directed to dismantle systemic racism and combat gender-based violence in society and within key institutions. They

should include support, protection, and adequate remedies to victims and survivors and their empowerment, as well as clear measures to effectively prevent violence and discrimination. Comprehensive disaggregated data collection should be a key part of this plan, to understand the pervasiveness of the problem and measure progress.

The state should also adopt appropriate legislative, administrative, budgetary, judicial and other actions towards the full realization of all human rights for Dalits, especially Dalit women and girls, including by taking temporary special measures to improve their situation, due to the intergenerational history of oppression and entrenched culture of caste-bias, patriarchy and discrimination. These should actively promote *substantive equality*, targeted to transform the culture and the practices of untouchability in the society, and counteract segregation, exclusion and violence against Dalits and Dalit women.

The state should provide adequate access to justice and timely reparations for Dalits, in particular Dalits women and girls, when discrimination or other human rights abuses occur, since this is also part of the state’s obligation to fulfil human rights. Such provisions should also include gender and racial-sensitive investigations, handling of evidence, effective implementation as well as prevention and monitoring of legislation and policy. Legislation prohibiting intersectional discrimination on the basis of caste and gender should be passed, as well as other appropriate measures to capture caste and gender in the delivery of justice and data collection.

In doing all this, the state must listen to the voices of Dalits and the organizations working with them, and Dalit women in particular, and design with them meaningful solutions. They should also consider mechanisms to confront caste

¹⁸⁸ Amnesty International interview in person with Anita Mahara (name changed for security reasons), 1 June 2023.

hegemony, including through accountability and redress for the historical oppression Dalits are and have been suffering for centuries.

In addition to these broad recommendations, Amnesty International has specific recommendations for different institutions:

Recommendations to the Federal Parliament:

Review existing legislation and rules of procedure, taking into account existing barriers to reporting caste-based discrimination under the CBDU Act and other relevant legislation, including the lack of an intersectional approach to address caste and gender-based discrimination. Specifically, Amnesty International's research calls on the Federal Parliament to ensure a free and fair consultation with the Dalit community, the survivors and stakeholders to implement tangible changes in the following issues:

- To amend the short and inadequate statute of limitation which constitutes a barrier in reporting caste-based discrimination.
- To establish an independent mechanism to investigate negligence, reluctance or denial and informal mediation on the part of law enforcement officials when receiving complaints and registering FIRs related to caste-based offences and/or failing to conduct an effective and timely investigation and filing of chargesheet.
- To draft comprehensive CBDU rules to outline procedural guidance for investigation, prosecution and monitoring of cases of caste-based discrimination for effective implementation of the CBDU Act. To ensure CBDU Act and that related offences are registered, investigated, prosecuted in an effective and timely manner without requiring the Dalit survivors to produce unnecessary and unreasonable evidence at the time of

registering FIR and to register them under the correct section of the CBDU Act and not any other Acts.

- To establish an oversight mechanism to ensure the implementation status of the CBDU Act, which could be a function of the Law, Justice and Human Rights Committee of the Parliament and/or other process that will ensure that implementation reports are debated in the parliament.
- To link the CBDU Act with other laws particularly those applicable to gender-based violence, so that, caste is considered as an intersecting element in police investigation and prosecution as well as enable Dalit women and girls access better services.
- To ensure comprehensive data collection to adequately document incidents and cases of caste-based discrimination under the CBDU Act as well as incidents of caste and gender-based violence affecting Dalit women and girls.

Recommendations to the Prime Minister's Office (PMO):

- Establish an independent mechanism to investigate negligence, reluctance or denial and informal mediation on the part of police officials when receiving complaints and registering FIRs related to caste-based offences and/or failing to conduct an effective and timely investigation. The mechanism should have the power to sanction officers if evidence warrants so.
- Establish an oversight mechanism to ensure the implementation status of CBDU Act, which could involve the National Human Rights Commission (NHRC), National Women's Commission (NWC) and National Dalit Commission (NDC).
- Ensure Federal and Provincial governments provide adequate resources and necessary assistance to the local level governments to prioritize policies and programs and conduct effective campaigns against caste-based discrimination at the grassroots

- level.
- Strengthen the NDC in accordance with the Principles relating to the Status of National Institutions (Paris Principles) with provisions for appointment of competent, qualified, and independent members, as well as providing adequate financial and human resources for enhancing their roles and responsibilities to enforce the laws such as CBDU Act, as well as protection and promotion of the rights of Dalits.
- Ensure the effective coordination and joint action of the multiple policies and institutions dealing with caste and gender-based discrimination in Nepal, including the National Human Rights Commission (NHRC), National Women's Commission (NWC) and National Dalit Commission (NDC).

Recommendations to the Ministry of Home Affairs:

- Ensure there is a zero-tolerance policy for actions against the CBDU Act and that related offences are registered, investigated and prosecuted in an effective and timely manner without requiring the Dalit survivors to produce unnecessary and unreasonable evidence at the time of registering FIR, and that the police correctly apply the sections of the CBDU Act and not any other Acts at the time of registering the FIR.
- Ensure that the Dalit cells in the police departments are adequately funded and implemented with human and financial resources to promptly assist survivors in a timely manner.
- Sensitize and train the police officers for the effective investigation of CBDU cases, as well as on deep-rooted mindset, bias and prejudice that perpetuates a culture of discrimination against Dalits and against Dalit women and girls.

Recommendations to NHRC:

- Take the initiative to ensure effective coordination with the NDC and NWC to

collectively respond to incidents of caste and gender-based discrimination and untouchability in a timely manner.

- Train NHRC staff on the CBDU Act and equip them to integrate action on caste-based discrimination and untouchability.
- Conduct country-wide public awareness and education campaigns designed to eliminate the practice of caste-based discrimination and prevent caste-based violence, particularly in inter-caste marriages.

Recommendations to NDC:

- Enhance joint coordination and collaboration with NHRC, NWC and other commissions to collectively address CBDU-related cases.
- Enhance knowledge and skills for effective monitoring, investigation, and reporting and submit timely recommendations to the government on CBDU related cases.
- Engage with and undertake necessary actions with the Office of the Inspector General of Police to ensure accountability in CBDU related cases.

Recommendations to UN agencies:

- Support the state of Nepal, through technical and other types of support, to comply with obligations under the international human rights instruments, including recommendations by the Treaty bodies such as the CERD Committee and the CEDAW Committee, special procedures, as well as the UPR process.
- Support civil society, in particular Dalit organizations and those working on Dalit rights with a gender and intersectional perspective, to meaningfully participate in the legal and policy discussions needed to combat caste and gender-based discrimination.
- Recommend the state to strengthen the NDC and other national commissions to remain compliant with the Paris Principles.

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/Amnesty



[@Amnesty](https://twitter.com/Amnesty)

“NO-ONE CARES”

DESCENT-BASED DISCRIMINATION AGAINST DALITS IN NEPAL

Amnesty International’s report highlights that, despite constitutional and legal reforms, such as Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 (CBDU Act), and policies and institutions, the inter-generational history of oppression, untouchability and caste-based discrimination against Dalits, and the Dalit women and girls, is still systemic in Nepal. The culture of impunity is pervasive and reinforces the message to society that caste and gender-based violence are “natural” and “acceptable”.

Amnesty International calls on the Government of Nepal to ensure effective measures are in place to prevent caste-based discrimination and violence, as well as protect and provide adequate remedies and reparations to victims and survivors. Barriers to reporting under CBDU Act are addressed and the police to undergo sensitization and training for effective investigation of CBDU cases and to ensure there is a zero-tolerance policy for actions against the CBDU Act. The state should also adopt appropriate legislative, administrative, budgetary, judicial and other actions towards full realization of all human rights for all Dalits.

Amnesty International urges the Government of Nepal to listen to the voices of Dalits, the Dalit women in particular, and the organizations working with them, to create a truly transformative plan to address entrenched caste-bias, stereotypes, and prejudice to dismantle systemic racism and combat caste and gender-based violence in Nepal based on human rights obligations and with an intersectional lens. Comprehensive disaggregated data collection and awareness-raising campaigns in society and within key institutions should be a key part of this plan.