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Rights Groups Urge Action as Nepal's Dalits Rally

Nepal Must End Caste Discrimination by Enshrining Human Rights in Constitution

(December 10, 2009, Copenhagen, Kathmandu, Lalitpur, and New York)—Nepal's Constituent Assembly (CA) must seize its historic opportunity to ensure the human rights of all its citizens, including Dalits, in the country's new constitution, a global coalition of human rights groups said today.

As thousands of Dalits prepared to rally for their rights in the streets of Nepal to mark International Human Rights Day, the groups—the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law, the Dalit NGO Federation (DNF), the Feminist Dalit Organization (FEDO), and the International Dalit Solidarity Network (IDSN)—called on the CA to undo centuries of discrimination faced by Dalits and other vulnerable groups.

“With this year's Human Rights Day dedicated to non-discrimination, we should shine the light on Dalits, whose most basic human rights have been denied on every level,” said CHRGJ Faculty Director, Smita Narula. “The drafting of the new constitution gives Nepal an unprecedented opportunity to dismantle a caste system that continues to keep millions trapped in an unconscionable state of segregation and oppression.”

A draft of the entire constitution is expected to be finalized and released for public debate in early 2010. The groups called on the CA to draft the new constitution in accordance with Nepal's international human rights obligations to secure the rights of Dalits—a group that has faced more than 2,000 years of systematic discrimination and “untouchability” under the country's caste system. Dalits, who are among the poorest citizens of the country, are denied their most fundamental rights and face multiple forms of exploitation and abuse.

“This is a rare opportunity for Nepal to assert its commitment to human rights and the inherent dignity of all individuals,” said IDSN Coordinator, Rikke Nöhrhind. “After years of brutal civil war and centuries of caste discrimination, a constitution that affirms international human rights for all Nepalis is crucial to ensuring a successful transition to peace and democracy.”

Current proposals for the new constitution provide important protections for fundamental rights, including expansive protections against caste discrimination and an important prohibition on the imposition of occupations based on caste. However, much more comprehensive action and consultation with Dalit groups is needed. Dalit rights groups have expressed particular concern with a recommendation from one CA committee that would set a mere 3 percent quota

(“reservation”) for Dalits at the central level and a mere 5 percent at the state level. According to official estimates, Dalits comprise 13 percent of the population, but unofficial estimates put this figure closer to 20-25 percent.

“Reservations should reflect an accurate count of Dalits and should be based on the principles of gender equality and proportional representation,” said FEDO President, Durga Sob, “Equality demands no less.”

Additional details on suggested provisions and specific recommendations to address current gaps in rights protections are appended below.

Nepal’s constitutional drafting process comes at a time of unprecedented international attention to caste discrimination. In her [recent ground-breaking statement](#), the UN High Commissioner for Human Rights, Navi Pillay, proclaimed that “the time has come to eradicate the shameful concept of caste. Other seemingly insurmountable walls, such as slavery and apartheid, have been dismantled in the past. We can and must tear down the barriers of caste too.” Nepal has already begun to take the lead, promoting the [draft UN principles and guidelines](#) to end caste discrimination as “a useful tool” to “eliminate this scourge from society.”

To mark the occasion of International Human Rights Day, Dalit groups are calling on political party leaders and the Prime Minister to live up to Nepal’s promise to end caste discrimination and ensure Dalit rights in the new constitution.

“A democracy without full and equal representation for Dalits and all marginalized groups would be nothing more than a hollow victory for Nepal,” said DNF Executive Director, Tirtha Biswokarma. “Because political parties have ignored and excluded Dalits for far too long, it is vital to fully include and consult Dalits and other marginalized groups in all stages of the constitutional drafting process.”

Background and Recommendations

Nepal is at a key juncture in its constitutional drafting process, at a point when several of the CA’s Thematic Committees have already submitted their proposed constitutional language. These concept papers take promising steps toward crafting a constitution that protects fundamental rights that are of particular significance to Dalits and other marginalized groups in Nepal. The Fundamental Rights Committee has, for example, proposed a right against exploitation in the name of religion, which has often been a primary justification for the practice of “untouchability.” The Committee has also proposed a protection of individuals’ choice of spouse, to address social prohibitions on inter-caste marriages. Of significance for the human rights of all Nepalis, the concept papers also give a number of economic and social rights fundamental rights status, including the rights to food, housing, health, and water.

CHRGJ, DNF, FEDO and IDSN expressed particular support for the Fundamental Rights Committee’s proposal to include a right for the Dalit community to inclusive and proportional participation in all state organs—a right that is essential to empowering the Dalit community in Nepal. Despite these promising first steps, serious gaps in rights protections remain and should be addressed now before it is too late.

In support of realizing the rights of all the people of Nepal, CHRGJ, DNF, FEDO, and IDSN call on the CA to resolve all gaps in rights protections, including those listed below:

- **Right to an Effective Remedy:** International human rights law guarantees the right to an effective remedy for human rights violations. This guarantee is of particular significance for Dalits in Nepal and other caste-affected countries where past experience has shown that guaranteeing rights on paper is insufficient without strong enforcement mechanisms.

In keeping with Nepal’s obligations under international human rights law, the new constitution should:

- o *Explicitly provide for a constitutional right of all individuals, both citizens and non-citizens, to claim a remedy when their rights have been violated and to petition an independent court to have a law declared unconstitutional;*
- o *Ensure the financial autonomy of the National Human Rights Commission and the National Dalit Commission in order to guarantee their effectiveness and independence as constitutional bodies.*

- **States of Emergency:** Past state of emergency declarations have dramatically escalated human rights abuses in Nepal, particularly against Dalits and other marginalized communities. International human rights law strictly limits the circumstances in which a state of emergency can be declared, and provides that a number of rights must be protected even in these times.

In keeping with international human rights law, the new constitution should clearly define the circumstances in which the government can declare a state of emergency by:

- o *Indicating that any derogation measures must be limited to the extent strictly required by the exigencies of the situation;*
 - o *Ensuring that any measures enacted during a state of emergency do not involve discrimination on any ground;*
 - o *Guaranteeing that, at a minimum, the following rights are protected at all times, even in emergencies: the right to life; the right to be free from torture and cruel, inhuman or degrading treatment; the right to be free from slavery and forced servitude; the right to be free from imprisonment for the inability to fulfill a contractual obligation; the right not to be subjected to retroactive criminal laws and penalties; the right to recognition everywhere as a person before the law; and the right to freedom of thought, conscience and religion.*
- **Right against Torture:** The practice of torture in Nepal is notoriously widespread. Dalits are particularly vulnerable to torture and cruel, inhuman or degrading (CID) treatment in both custodial and non-custodial settings. International human rights law broadly prohibits torture and CID treatment under all circumstances. In addition, it specifically condemns torture or CID for any reason based on discrimination on any ground.

In keeping with Nepal's obligations under international human rights law, the provision on "Right against Torture" should:

- o *Prohibit torture and CID treatment in all situations, not only those of detention or law enforcement;*
- o *Provide that complicity with, or participation in, torture or CID are also punishable;*
- o *Clarify that victims of torture or CID are entitled to file a complaint, to have their cases promptly adjudicated, and to receive fair and adequate compensation.*

About the Groups

CHRGJ

The Center for Human Rights and Global Justice (www.chrgj.org) brings together and expands the rich array of teaching, research, clinical, internship, and publishing activities undertaken within New York University (NYU) School of Law on international human rights issues. In its work on caste discrimination, the CHRGJ collaborates extensively with IDSN and with Dalit NGO partners throughout South Asia. In early 2010, the CHRGJ will release a statement and recommendations to the CA that analyzes the proposed provisions under international human rights law, to help inform how the new constitution can better protect human rights, including Dalit rights.

DNF

The Dalit NGO Federation, Nepal (www.dfnepal.org) is an umbrella organization of 300 Dalit NGOs in the country. DNF coordinates the efforts of Nepalese NGOs in the fight against caste-based discrimination.

FEDO

The Feminist Dalit Organization (www.fedonepal.org) is an issue-based organization that works in 45 districts of Nepal. It aims to promote the rights of Dalit women in the areas of human rights and legal reform, domestic violence, economic and political empowerment, health, education, and in the constitution-making and peace-building process.

IDSN

The International Dalit Solidarity Network (www.idsn.org) is a network of international organizations, Dalit solidarity networks, and national Dalit coalitions in caste-affected countries. IDSN advocates for the eradication of caste discrimination before the United Nations, the European Union, and other multilateral bodies.