

United against all forms of Discrimination: Nepal Civil Society calling for dignity, justice and equality for all



**A Report of Nepal Civil Society
to
Durban Review Conference, 2009**

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CHAPTER I

INTRODUCTION

1.1. Background

Nepal, with a population of approximately 26 million, is one of the poorest countries in Asia, ranked by the UN at 145 out of 179 countries on the Human Development Index. For almost a decade (1996-2006) it was affected by armed conflict. Since the *Jana Andolan* (people's movement) of 2006, restoration of democracy and peace process, many things have changed. An interim government was appointed following the peace agreement. In April 2008, a Constituent Assembly was elected; the country has become a secular republic rather than a Hindu kingdom and the process of drafting a new constitution is underway. However, whilst the human rights situation improved dramatically after the end of the conflict, many serious human rights concerns still need to be addressed, including the issue of discrimination. Discrimination in Nepal has had little international exposure; there have, so far, been no visits to the country by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Some progress has been made with regards to changing of attitudes, amendment and implementation of legislation and development of institutions, but much remains to be done in order to eliminate discrimination and guaranteeing equal enjoyment of all rights. The Durban Review Conference (DRC) 2009 presents a great opportunity for Nepal and Nepalese Civil society to both influence and be influenced by the international human rights agenda.

1.2. Introduction

The common report of Nepalese civil society was developed through the joint efforts of a wide range of Nepalese civil society organisations representing indigenous peoples, Dalits, sexual and religious minorities (Muslims) and Madheshis, over a period of four months. It is essential to note the active contribution of women representatives from these organisations who have played an immense role in preparation of this report.

Nepalese civil society undertook the process of drafting a report to the DRC with great enthusiasm. In the initial stages, a "Coordination Committee of Nepalese Civil Society for the DRC" was created that resulted in a forum where the different groups came together to discuss issues of exclusion, inequality, marginalization and discrimination that they have been facing and at which they decided to draft a common report for the DRC, rather than separate reports.

The reason for taking this approach is two fold; firstly it is important that an inclusive approach is taken on issues of discrimination, thus ensuring that the removal of discrimination for one group is not at the expense of another and, secondly, some issues are relevant to all marginalised groups, for instance the effective domestication, implementation and monitoring of international treaties and laws.

The main organizations who have been involved in putting this report together are: Jana Utthan Pratisthan (JUP-Nepal), Dalit NGO Federation (DNF), Nepal National Dalit Social Welfare Organization (NNDSWO), Dalit Welfare Association (DWA), Feminist Dalit Organization (FEDO), Jagaran Media Centre (JMC), Blue Diamond Society (BDS), National Network of Indigenous Women–NNIW, NGO Federation of Nepalese Indigenous Nationalities (NGO FONIN)-Nepal, Nepal Muslim Women Welfare Society, JAGHRIT- Nepal, Dalit Welfare Organizations (DWO), National Indigenous Women's Federation (NIWF-Nepal) and Rastriya Dalit Network (RDN) Nepal. The opinions reflected in the report are solely those of the civil society organizations who drafted the different chapters.

This report contains five main chapters. Each chapter provides insights into the current situation of the respective communities in Nepal, implementation status of the DDPA, critical area of concerns, gaps and weaknesses, and recommendations designed to strengthen the Durban Outcome Document in respect of that group's particular issues.

Each chapter was prepared through broad consultation within and among the concerned stakeholders. The final draft report in which all five chapters were compiled was presented and discussed at a workshop, in which a broad range of civil society organizations participated, as well

as media organizations, Government authorities, representatives of political parties and the judicial sector.

The Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) provided technical and financial support for the preparation of the report as well as for the organization of side events to the DRC. The Office has also supported civil society to obtain accreditation and funding to participate in the DRC. OHCHR-Geneva facilitated the travel of some organizations who are part of the Coordination Committee.

CHAPTER II

DALITS

2.1 Prevalence of the Problem

Dalits are defined as "those communities who, by virtue of atrocities of caste-based discrimination and untouchability, are most backward in social, economic, educational, political and religious fields, and are deprived of human dignity and social justice."²

The Hindu caste system became embedded in the state structure of Nepal through the promulgation of the Muluki Ain (the Civil Code) in 1854. Thirteen percent of the Nepali population or 3 million people (disputed by Civil Society organizations and NDC who believe that the population is close to 20 per cent³) are defined as Dalits. The discrimination they face in Nepali society is illustrated by some of the key statistical indicators: life expectancy for Dalits is 50.8 years (national average is 59 years), literacy rate in the Dalit community is 33.8 (national average is 54), poverty rate is 46 per cent in the Dalit Community (national average is 31 per cent)⁴, representation at Gazetted level in civil service less than 1 per cent⁵ and representation in Constituent Assembly is 8.1 per cent.

2.2 Implementation status of DDPA in relation to Dalits

Nepal has taken some steps that are designed to address the discrimination against Dalits and include them in the structures of the state.

- Formation of National Dalits Commission in 2002.
- Caste discrimination crime declared a state case in July 2004 and strengthened in October 2006.
- Declaration of "Untouchability Free State" on 4 June 2006.
- Constituent Assembly elections in 2008 led to 49 Dalits being elected to the Constituent Assembly. This is the largest number of Dalit representatives in Nepal's history and is 8.6 per cent of the Assembly.⁶
- Declaration to free Haliya⁷ (5th September 2007) and agreement for resolution of Badi⁸ issue in October 2007.
- The Government's Three Year Interim Plan (2007) and the Interim Constitution⁹ both contained changes to the structure and policy of the State which were advantageous to the Dalits of Nepal

2.3 Critical Areas of concern

Untouchability

There is strong evidence that the practice of "untouchability" continues; behaviour intended to avoid bodily contact between Dalits and non-Dalits. Exclusion of Dalits from temples and

¹Caste systems involve the division of people into groups where the assignment of rights are determined by birth, are fixed and hereditary and is unequal and hierarchical, with those at the top enjoying most rights coupled with least duties and those at the bottom performing most duties coupled with no rights. The system is maintained through the rigid enforcement of social ostracism (a system of social and economic penalties) in case of any deviations. The doctrine of inequality is at the core of the caste system. www.idsn.org (retrieved on 11/3/09)

²Definition as provided by the National Dalit Commission to the Government of Nepal as part of its submission for a Bill of National Rights for Dalits.

³Demographic and Socio Economic Survey of Dalits 2004/05, NNDSWO,

⁴All figures taken from Nepal 3 Year Interim Plan 2007

⁵Civil Service Record, 2006

⁶Article 7.3 Constituent Assembly Members Election Act 2007

⁷Haliyas are Bonded labourers under the UN definition: they are bound to their employer by a loan which they, their family and often heirs to work for another.

⁸The agreement stop the use of words which are discriminatory to the Badi community (bhand, badeni and patar), provide citizenship to the entire Badi community and to set up a task force to resolve issues of life and livelihood related to the Badi community.

⁹Article 14 of the Interim Constitution of Nepal, 2006

from access to water based on the notion of “untouchability”¹⁰ continues and is regularly reported in the press.

A consensus was made among the local administration, local people and priest to allow Dalits to enter the Shaileshwari temple in Silgadhi, Doti. These Dalits had been forbidden to enter the temple from historic times. The Dalit community, elderly people, women and children entering the temple were attacked by non-Dalit youths. Fifty people were injured, 15 of them seriously. The youths also attacked the offices of the local organizations working for Dalit rights as well as the local administration offices and reporters who were recording the event. No arrests were made and Human Rights activists condemned the lack of security provided for the Dalits.¹¹

Research found¹² 205 different and distinct practices of caste based discrimination.

Intercaste marriage and the extreme and violent community and family reactions to it graphically illustrate the depth of feelings with regard to untouchability and purity. The families of the so-called higher caste family feel that the whole family has been polluted and that all members of the Dalit extended family should be punished.

In July 2008, 12 Dalit families in Surkhet were displaced following a dispute about an inter-caste marriage between a Dalit man and a non-Dalit girl. The relatives of the girl's family surrounded a group of Sunar (Dalit) homes threatening the families so that they fled in fear. The woman from the inter caste marriage was beaten by her family, and a local schoolteacher who tried to prevent the beating of the girl was also beaten. When the press tried to report on the incident they were also harassed by the girl's family and were prevented from taking photographs.¹³

Dalit Women

Dalit women experience double discrimination, firstly as a women who are treated as subservient in the Hindu patriarchal system, which is prevalent in the country regardless of the religious practice of the family and secondly as Dalits bearing the discrimination of the caste system. This is seen graphically in some of the key statistics, Dalit women show the lowest composite empowerment and inclusion index across Nepal's population (0.21 compared with an all Nepal female index of 0.34)¹⁴

The literacy rate of Dalit women only 24.2 per cent compared to the national female literacy rate of 42.5 per cent.¹⁵ The national female life expectancy is 58.9 years but is only 48.3 years for Dalit women.¹⁶

Dalit women have some of the lowest rates of delivery assistance in the country at less than 10 per cent receiving any trained assistance in childbirth. For rural Dalit women, access to trained delivery assistance in childbirth is half that available to other rural women.

Dalit women are frequent victims of trafficking and sex work. Women from the Badi (Dalit) community, mostly from Western and Mid Western and Far Western parts of the country, are the most marginalised group amongst the Dalit community and are looked down upon as sex workers, though many of them are not involved in prostitution.

Exclusion of Dalits in decision-making areas of Nepali Society

In spite of declarations¹⁷ by the state that Dalits would be represented at all levels of civil and political life, in proportion to their representation in the population (minimum 13 per cent), there are many examples where this has not happened and no corrective action is being taken.

¹⁰ In the Hindu caste system Dalits fall outside the four-fold caste system consisting of the Brahmin, Kshatriya, Vaisya and Sudra. Those who fall outside the caste system are considered “lesser human beings”, “impure” and thus “polluting” to other caste groups. They are known as “untouchable” and subjected to so-called “untouchability practices” in both public and private spheres. www.idsn.org (retrieved on 11/3/09)

¹¹ Source: Kantipur Daily, 2063/06/01

¹² Existing practices of Caste based Untouchability in Nepal and strategy for a campaign for its elimination, Bhattachan et al., Action Aid 2001

¹³ Gorka Patra Magazine July 8th 2008

¹⁴ Unequal Citizens, 2006, World Bank /DFID

¹⁵ Achaya 2004

¹⁶ MS Nepal 2003

Section 7(3) of the **Constituent Assembly Member Election Act 2007** has mandatory provision for all political parties to ensure proportional representation of Dalit (13 per cent). However, 8.1 per cent Dalits are represented in the current Assembly.

The **Civil Service** is one of the largest employers in Nepal. However less than one percent of the civil service are Dalits.¹⁸ The Civil Service Act, 2003¹⁹ made provisions for reservation for Dalits and other backward groups, but these requirements have not been met.

There are no Dalits in either branch of the **judicial service**. As a consequence, the administration of justice lacks credibility with the Dalit community.

The **Nepal Army** is the second largest employer in Nepal. Most Dalit cadres are engaged in technical roles, especially their traditional occupations (tailoring, shoes making, *Kukuri* making and cleaning), but are not proportionately included at senior level.

Nepal Police and Armed-Police Force: The Police Regulation²⁰ and Armed-Police Regulation²¹ made provisions for reservation for Dalits and other disadvantaged groups but these have been insufficient to ensure proportional representation.

Constitutional bodies and commissions: There is no mandatory provision for inclusion in constitutional bodies. As consequences, none of the six constitutional bodies and commissions have Dalit members.

Political parties, non-state actors and the private sector can all make, and are charged by the DDPA with making, a contribution to the removal of discrimination. However Dalits are still under represented in the staff and decision making levels of these organizations. This view was strongly expressed in consultations on the preparation of this report.

2.4 Economic Exclusion

Dalits are among the poorest members of Nepali society, with 48 per cent of Hill Dalits and 46 per cent of Terai Dalits living below the poverty line (national average is 31 per cent)²². The following issues contribute to this on going situation of poverty;

Landlessness: Nepal is currently a semi feudal society with land and power still being strongly interlinked. Those who own land are rich while those without are largely destitute. Social and religious restrictions, plus distribution of land by former kings to their supporters, historically meant that Dalits were deprived of land ownership, thus 44 percent of Terai Dalits and 15 percent of Hill Dalits are landless. This impacts on the families' ability to be self supporting and means that it is often difficult to access micro- finance initiatives as they have no equity to hold against a loan which may help them out of poverty.²³ Currently, although there has been a commitment to land reform, there are no clear policies for land reform, which includes removal of feudal institutions such as *Khalo Partha* and *Haliya* and which therefore deals effectively with land reform from a Dalit perspective.

Slavery: *Haliya*²⁴, *khalo partha*,²⁵ *Khan partha*²⁶ and *Balighare*²⁷ are some of the forms of traditional slavery still practiced in Nepal. The practices are based on caste and descent. The Nepali State has proclaimed the end of those traditions but there are no laws and bylaws to implement the declaration or to redress the consequences for the victims of the traditions.

¹⁷ See footnote 5

¹⁸ Dalit Year Book 2007. Jana Uttan Partisthan

¹⁹ Civil Service Act, 2049 and Civil Service Regulation, 2050 (Second Amendment 2064/9/1), Government of Nepal, Ministry of Law, Justice and Parliamentary Affairs, Law Books Management Board.

²⁰ Police (Twelfth Amendment) Regulation, 2064, Nepal Gazette, Close 57, Vol, 31, Kathmandu, 3 Mangsir 2064

²¹ Armed- Police Force (Forth Amendment) Regulation, 2064, Nepal Gazette, Close 57, Vol, 31, Kathmandu, 3 Mangsir 2064

²² Unequal Citizens.,2006,World Bank/DFID.

²³ Social Inclusion in Micro Finance. Man Bahadur Bishwakarma. Jana Utthan Pratisthan. September 2008

²⁴ Haliyas are Bonded labourers under the UN definition: they are bound to their employer by a loan which they, their family and often heirs to work for another.

²⁵ Various services of Dalits are supplied in the context of an ongoing relationship between a client and craftsman, a system also known as patron-client relationship. These relationships are known by different names in different parts of country such as *Bali Ghare Pratha* (Eastern Nepal), *Khalo Pratha* (Western Nepal), and *Khan System* (in Tarai).

²⁶ See note 27

²⁷ *Balighare* is a form of forced labour in which Dalits provide occupational serviced to so-called high caste in exchange for food grains.

Disregard of traditional skills: Dalits of Nepal are historically artistic and skillful groups of people. A number of Dalits are engaged in their traditional work still, but the new generation are resistant to taking up these skills because of the discrimination and feudal attitudes that goes along with them. Methods of production are more in keeping with a subsistence economy and competition in the face of cheap imported goods is difficult. However recent studies have shown²⁸ that with some assistance to modernize these traditional skills, Dalits are able to considerably increase their incomes and economic well-being. Programmes to support this modernization should be supported by the State.

The **Private Sector** is a large employer in Nepal but there are no mandatory inclusion policies and laws. If this sector is, as the Government intends, to grow and help Nepal to improve its economic position in the future, it is vital that inclusion and representation laws are made applicable to this sector as well.

The Chief of the Milk processing center in Baitadi District (Far West) has asked Dalits no to bring their milk to the center as he believes that people will not buy the milk if they know that it has been supplied by Dalit farmers. Similar practices have taken place in Kailali district where Dalit farmers could not sell their milk for even half the agreed price. Thus the practices of untouchability impacts even on the ability of Dalits to make a living.²⁹

2.5 Education

The literacy rate of Dalits is 33.8 percent, well below the national level of 54 percent, and is low also in comparison with other groups. The Education Act and Scholarship Act has provided some funding and reservation of places for Dalits students. However, there is a lack of seriousness and flexibility in identifying ways in which Dalit students could become more successful in the education sector. Where Scholarships have been created, they have then been changed arbitrarily, e.g. in January 2009 the MBBS scholarship provision for Dalit students was reduced from 15 per cent to nine per cent by a decision of the Cabinet in February 2009. This decision was reversed following protests from Dalit Students.

Dalit students who have passed SLC and above are only 3.8 per cent compared with 17.6 per cent national average and only 0.4 per cent of Dalits have bachelor level qualifications (national average 3.4 per cent)³⁰

At a picnic organized by the Jeevan Primary School, Kerabari, Gorkha, the Dalit students were made to sit separately to eat lunch. Teachers and members of the School management Committee were present. Twelve students protested at this treatment and were subsequently expelled for violating school discipline.³¹

Health service

Life expectancy of Dalits is 50.8 year (the national average is 59) and the infant mortality rate for children under five years (per thousand) of Dalit children is 116.5 (the national average is 75.2)³². A Dalit child is twice as likely to die in its first year than the child of a so called higher caste mother.³³ However, in spite of these low figures, no special health provision or programme has been instituted for the Dalit community.

Diagnosis and health care are dependant on being able to touch your patient. However, particularly in rural Nepal where the idea of touching a Dalit is still steeped in ideas of religious impurity, untouchability is still a major influence on health outcomes. A World Bank (2001) study found that caste discrimination was one of the major reasons why Dalit women did not seek health care.³⁴ Immunisation rates for Dalit children are 20 per cent below the national average.³⁵

²⁸ Socioeconomic Strength of Dalits Caste Based Occupation, Purna Bahadur Neplali, Dalit Solidarity. Volume 9 Issue 4 October to December 2008. Jana Utthan Pratisthan.

²⁹ Jagaran Media Center. Dalit Human Rights Year Book 2008. Draft

³⁰ Nepal Three Year Interim Plan 2007

³¹ Jagaran Media Centre, Dalit Human Rights Year Book 2008 (draft)

³² Unequal Citizens,2006, World Bank/DFID

³³ Ibid

³⁴ Ibid

³⁵ Nepal Human Development Report 2004 UNDP

2.6 Weaknesses in Implementation of the DDPA in Nepal

- From a Dalit perspective, the principle weakness of the DDPA is its failure to mention the discrimination based on caste or to use the word Dalit in the declaration. The National Human Rights Commission has not taken untouchability based violations seriously and has no Dalit Commissioners. In addition, the absence of caste from the DDPA has made it difficult for Nepal to attract international attention for this deep rooted and widespread form of discrimination.
- Within Nepal, the principal weakness is the failure of the State to back all its declarations of intent with suitable legislation, e.g. the NDC is not established by statute but simply by a decision of the Cabinet; the declaration of an untouchability free state has not been backed by specific legislation; the provisions are only contained in the Amended civil Code. Where legislation³⁶ has been enacted, there is a widespread disregard for the law (impunity) and because judges, who largely come from the so called higher castes, have a high degree of flexibility in sentencing, even where cases are taken punishments is not severe enough to act as any kind of deterrent.

Arjun Damai of Mahendranagar-10, Kanchanpur was tied by a rope and beaten to death by Ganesh Bista because he touched water at a hotel. A case against the perpetrator has been filed but no action has been taken. This case occurred in 2008.³⁷ Untouchability is a criminal offence under the State cases Act.

- In addition, there is no specific Dalit focused programme, including training for state officials, to ensure that they are aware of the DDPA and understand their role as custodians of the law in the elimination of discrimination. The Government has not carried out its obligations to ensure public understanding of the DDPA.

2.7 Recommendations to the Durban Review Conference

- Urges that the Outcome Document includes a section devoted to the protection and promotion of the rights of those suffering from caste-based discrimination (Dalits).
- Urges that the Outcome Document includes recommendations of the Special Rapporteurs (pursuant to UN declaration 2006/14) on work and descent based discrimination.
- Urges that the Outcome Document places stronger obligations on States to make the community aware of the progress they are making to meet the DDPA and strengthen the implementation.
- Urges that the Outcome Document requires States to demonstrate that they have included the provisions of the DDPA in any new constitution.
- Urges that the Outcome Document should make clear that any special rights/provisions to improve representation should not only be confined to the State sector.

³⁶ The Eleventh Amendment to the Civil Code made the practice of untouchability a punishable offence however there has been only the imposition of nominal fines, not custodial sentences, and in very few cases.

³⁷ Jagaran Media Center. Dalit Human Rights Year Book 2008(draft)

CHAPTER III

INDIGENOUS PEOPLES

3.1 Background

In Nepal, the term “indigenous peoples” means “a tribe or community having its own mother tongue and traditional rites and customs, distinct cultural identity, distinct social structure and written or unwritten history “. There are 59 indigenous groups recognized by the state in 2002. However, there are more than 55 other indigenous peoples who are yet to be recognized³⁸. According to the Census of 2001, there are 103 caste /ethnic groups and 91 mother tongues. The indigenous peoples of Nepal comprise 37.19 per cent of the total population. The indigenous peoples are severely under-represented in governance, private sectors and civil society institutions and are discriminated on the base of ethnicity, language, culture and religion since centuries.

3.2 Implementation Status of DDPA

Some of the recent initiatives taken by the government:

- Ratification of ILO Convention 169³⁹. A task force of concerned line Ministries and indigenous organizations was subsequently formed to develop a comprehensive action plan to propose revision of laws and implementation of policies and programs to recognize the rights of indigenous peoples, including in the areas of land and natural resources, culture, governance and education.
- Constituent Assembly Members Act guarantees quota for Marginalized groups including indigenous peoples in the Constituent Assembly⁴⁰. As a result, there are, 218 out of 601 members are from indigenous communities in the Constitution Assembly.
- Declaration of Secular and Federal Democratic Republic State⁴¹
- NFDIN Act 2001 and establishment of the National Foundation for the Development of Indigenous Nationalities, 2002
- National Human Rights Action Plan that focuses on upliftment of marginalized groups including indigenous people.
- Nepal government supported and approved the United Nations Declaration on the Rights of Indigenous Peoples
- Special Rapporteur on the Situation of Human Rights Fundamental Freedom of Indigenous Peoples, Pro. James Annay visited Nepal in November 2008.
- Historically marginalized landless communities *Kamaiyas* were officially freed from bonded labour in 2002⁴² but most were without access to land or economic means. In July 2007, the Government committed to establish a timetable for the allocation of land and other support

³⁸ The National Foundation for Development of Indigenous Nationalities (NFDIN) has received list of application submitted by different indigenous groups for their recognition

³⁹ In August 2007, Nepal became the first country in Asia to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples.

⁴⁰ Section 7 (3) of Constituent Assembly Members Act, state that “while enlisting the candidates, the Political Parties must prepare the closed list pursuant to Schedule-1 thereby ensuring the proportional representation of Women, Dalits, Oppressed tribes/ Indigenous tribes, backward region. Madhesi including others groups on the basis of the population per cent as referred to in Schedule-2. While so enlisting the candidacies of women, the same must be done as per the principle of inclusiveness thereby ensuring proportional representation of, Dalits, Oppressed tribes/ Indigenous tribes, backward region. Madhesi including others groups. While nominating candidates from Madhesi, the closed list of candidates must be prepared thereby ensuring proportional representation of Dalits, and indigenous tribes including other group on the basis of the per cent of population. The concerned Political Party must submit the closed list of the candidates so prepared to the Commission in such format as referred to in Schedule-1 within the time limit as specified by the Commission.”

⁴¹ According to the Article 4 (1) of the Interim Constitution Nepal is secular and federal democratic people still have not tested real flavor of secular state as Hindu ceremonies, rituals, symbols and sacred sites are promoted and protected by the government and most of the National holidays are related Hindu festivals. Similarly, federalism based on ethnicity/caste, language and region have been denied by the Interim Constitution.

⁴² Labour Prohibition Act 2002

measures. These are positive developments, but concrete progress to implement commitments and recommendations is necessary, as most *Kamaiyas* remain in debt-bondage to landowners. Former bonded labourers must be ensured appropriate assistance and rehabilitation.

- In August 2007, Nepal became the first country in Asia to ratify ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples. A task force of concerned line ministries and indigenous organizations was subsequently formed to develop a comprehensive action plan and to propose the revision of laws and implementation of policies and programmes to recognize the rights of indigenous peoples, including in the areas of land and natural resources, culture, governance and education.
- On 10 February 2009, the Government promulgated the Public Service Ordinance. As a result, nine public service sectors including Nepal Army, Armed Police Force, development committees, health service, local development bodies and community schools are required to allot at least 45 percent reservation/quotas including 20 percent seat for women, 32 percent for ethnic community, 28 percent for Madheshis, 15 percent for Dalits and 5 percent for backward regions while recruiting new positions. In the past, the Government has already introduced such a reservation policy in Public Service Commission and Nepal Police.
- The government has formed a 9 member Task Force to study and to review indigenous peoples' existing schedule⁴³
- To some extent, the NGOs/INGOs have played a major role in the upliftment of indigenous peoples in Nepal. Their development programs focus on awareness raising, education, health and sanitation and capacity enhancement.

3.3 Critical Areas of Concern

Non-recognition of language and culture of indigenous peoples

Paragraph 19 of the DDPA recommends that state examine, in conformity with relevant international human rights, norms and standards, their Constitution, laws and legal system and policies. However, the Interim Constitution of Nepal continues to incorporate discriminatory provisions such as declaration of Nepali as the official language⁴⁴ and the cow as the national animal⁴⁵ which are against the spirit and rights of indigenous peoples.

Having Nepali as the official language has created obstacles in accessing education, government services, as well as information.⁴⁶ This policy also erodes the existence and importance of other languages and, the ultimately identity of indigenous peoples. Only 13 out of 91 languages of indigenous nationalities are believed to be safe from the threats of extinction and 40 indigenous languages are living dead⁴⁷. The policy has also contributed to increase educational inequality between Nepali speakers and non-Nepali speakers⁴⁸. Similarly, the Interim Constitution of Nepal and Education Act, 2028, have some discriminatory provisions that restrict children from being trained in their own mother tongue and restricts their right to choose their medium of education⁴⁹. Less than 26 per cent of indigenous children complete the full cycle of primary education as they are first introduced in second language-Nepali; 0.2 per cent of Indigenous Nationalities⁵⁰; six

⁴³ Meeting of Council of Minister 18 March 2007

⁴⁴ Article 5 (2) of the Interim Constitution of Nepal 2007

⁴⁵ Article 7 (2) of the Interim Constitution of Nepal 2007

⁴⁶ See Discriminatory Laws Against Women, Dalits, Ethnicity, Religious and Persons with disability: An updated Study 2009, Forum for Women, Law and Development (FWLD)

⁴⁷ Subba Chaitanya, Rai Janak and Grung Thapa, Savitree (2008) "Nepal Federation of Indigenous Nationalities (NEFIN)-Janajati Empowerment Project (JEP) Review of Achievements and Impacts (2004-2008)", p. 47

⁴⁸ According to the Census 2001, less than 26 per cent of indigenous children complete the full cycle of primary education as they are first introduced in second language-Nepali; 0.2 per cent of Indigenous Nationalities; 6 million (46.4 per cent of indigenous population) are illiterate and about 44 per cent indigenous peoples have never attended schools.

⁴⁹ Discriminatory Laws Against Women, Dalits, Ethnicity, Religious and Persons with disability: An updated Study 2009, Forum for Women, Law and Development (FWLD)

⁵⁰ Gurung, 2007. Social Exclusion to Inclusion: A Socio-Political Agenda for Nepal

million (46.4 per cent of indigenous population) are illiterate and about 44 per cent indigenous peoples have never attended schools. As the exams to join civil services are conducted in Nepali, it has restricted the representation of the indigenous peoples in the civil services. For instance, representation of hill indigenous peoples is very nominal in the civil services- 1.28 per cent in the judiciary, 1.7 per cent in constitutional bodies and commissions, 12.50 per cent in public administration, 13.58 per cent in the legislature, 0.6 per cent in education, 5.31 per cent in culture and 1.61 per cent in civil society⁵¹.

Similarly, Nepali laws penalize slaughtering, killing, administering poison or beating cows/bullocks and attempting to do so is considered a sin,⁵² which can be considered serious violation of socio-cultural rights of Nepalese indigenous peoples. Such laws are deliberately discriminatory against indigenous peoples, who do not consider cows/bullocks to be sacred animals and do not consider the slaughtering of cows/bullocks a sin. Instead eating beef is a part of their religion, functional for cultural and rituals practices.

In March 2006 Kippa Bhoteni, a resident of Htiya VDC of Sankhuwasabha district, was arrested for killing a cow and eating the meat and put in custody for three months. In her religion, cow/bullock slaughter is allowed.

Non-recognition of Indigenous Peoples' Rights to land and natural resources

Access to land and natural resources is the key issue of indigenous peoples of Nepal. The dominant groups have expropriated common property resources, such as land, habitats, water and other natural resources that were once communally owned by indigenous peoples.⁵³ In Nepal 40.5 per cent of indigenous peoples are dependent on agriculture, land and natural resources for subsistence⁵⁴.

Before the unification of Nepal, in the eastern Kirat region, Kirati tribes (Rai and Limbu) used to have Kipat- a system of land tenure with specific rights and regulations and a system of local self-governance. This right was legally abolished by the Land Act 1964. This act converted Kipat land into Raikar- land that can be sold- and distributed other immigrants in the name of birta, guthi, Jagir etc by the state. Now many Kipat holder indigenous peoples hold no more land and have become landless.

The indigenous peoples of Nepal have not been included in the decision making and implementation processes for the hydro-electric projects and others⁵⁵. Some development projects, including Kulekhani⁵⁶ and the expansion of national parks and community forests, has displaced many indigenous peoples from their ancestral lands and territories and has denied their rights to natural resources.

Indigenous Women

According to the Census of 2001 female population comprise 50.03% of the total population. Out of 50.03% female population, indigenous women comprise 36.7%. Indigenous women of Nepal have been victims of multiple discriminations. Gender discrimination against indigenous women exist among Hindu families of indigenous nationalities. All indigenous women of Nepal have been intensively oppressed due to continuing racial, linguistic, cultural and religious discrimination in the last 234 years. It is unfortunate to the nation that indigenous women are deprived from non-

⁵¹ Govinda Neupane, 2000

⁵² See Chapter on Quadrupeds of the Country Code of Nepal, 1963

⁵³ For example, in the eastern part of Nepal Kirati indigenous peoples used to have Kipat a land tenure system that governed the whole resources -land, forest, water and other natural resources.

⁵⁴ Nepal: Reading in Human Development, 2006

⁵⁵ Arun III is a mega hydro-electricity project located in the north-east side of Nepal, i.e., in Sankhuwasabha district. Nepal government has recently signed on the MoU with an Indian state owned company Sutlej Vidhut Nigum without FPIC of IPs of that region. Similar case is in Likhu.

⁵⁶ Kulekhani hydro project started in 1977 has displaced thousand of Tamang indigenous people of Kulekhani and Budhichhaur villages from their land without proper compensation and now are living without electricity facilities or those who can pay only have access to electricity- a case study of LAHURNIP. In that before the execution of this hydro-project, according to the case study, they were not consulted neither got chance to have a voice in the decision making process.

formal and basic and primary education in their respective mother tongues and subsequent lack of access to development due to denial of right to information.

Political Exclusion

The Interim Constitution has banned political organisations based on ethnicity⁵⁷. However, the Election Commission have registered Shiva Sena⁵⁸, a religious group and other groups. Some indigenous leaders who made attempts to register their parties with the Election Commission were rejected.

Similarly, the 218 CA members represent Indigenous People in the Constitution Assembly, who are either elected on the ticket of or nomination by the political party, represent the views of the political party and fail to represent the views of the Indigenous People.⁵⁹ They do not represent their ethnic organizations and are not accountable for ethnic groups. Therefore, critical issues of IPs, such as right to self determination⁶⁰ and ethnic autonomy based on caste/ ethnicity, language, culture and region, are yet to be reflected in the Constitution making process.

Non-Recognition

Many distinct indigenous groups have not yet been recognized as indigenous peoples. According to the NFDIN source, there are more than 55 IPs who have applied for their recognition and enlistment in the official schedule. Lack of recognition means that these indigenous peoples are not included in the indigenous 'quota. when considering/enrolment in the army, police, education system, scholarship programs, mother tongue education, representation at the decision-making level⁶¹ and by donor agencies. They are strongly demanding their identity-based rights.

Gaps, Weaknesses, and Problems in implementation of DDPA

- There is lacking of political willingness in terms of concrete action to back up their commitments⁶². Nepal government has not fully respected and implemented 20 point agreements made with indigenous peoples in August 2007 for example- Indigenous Commission, at least one representation of 59 indigenous groups in the Constitution Assembly, information in mother tongue etc.
- Failure to ensure full and effective participation of indigenous peoples in the design, implementation and monitoring of MDG-related programmes and projects that concern or may affect them.
- The government of Nepal has not yet come up with concrete policies, measures and programs in line with the paragraph 22 (a)⁶³. The only institutional mechanism set up, NFDIN, has limited authority and budget and only focuses on socio-cultural, language development and protection. It cannot cover all the goals set under the DDPA. Further more, this institution is not like a Constitutional Body that has autonomy to take decision in indigenous affairs and issues.

⁵⁷ The Article 142 (4) "The Election Commission shall not register any political party if any Nepali citizen is discriminated against in becoming a member of the political party on the basis of religion, caste, tribe, language or gender or if the name, objectives, symbol or flag of such political party is of a character that may disturb the country's religious or communal unity or divisive in character, or if the constitution or rules of such party have the objective of protecting and promoting a partyless or single party system of government"

⁵⁸ A political party based on Hindu Philosophy and advocates for Hindu state.

⁵⁹ Very recently, the CERD Committee has strongly raised issue concerning the participation of indigenous peoples' freely chosen representatives in Nepal's constitutional preparation process. The letter of CERD Committee issued on 13 March 2009 to the Nepal government through the permanent representative of Nepal states that "...Nepal's new constitution is currently being drafted by a Constitution Assembly in which indigenous peoples may only formally participate if they were chosen by political parties and act in strict conformity with the manifestos of those parties."

⁶⁰ Right to Self-determination as defined in ICCPR Article -1: "All the people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"

⁶¹ In CA, Judiciary, legislative, bureaucracy, civil society etc.

⁶² 20 point agreements made with NEFIN

⁶³ That support institutional mechanisms to promote the accomplishment of the objectives and measures relating to indigenous peoples agreed in the DDPA

- Para 117 of the DDPA⁶⁴ is yet to be implemented. The Three Year Interim plan (2007-2010) aims to promote and protect indigenous peoples' rights in broad and, in particular, their economic, social and cultural rights. However, the participation of indigenous peoples is negligible, and most are not aware of the provisions, such as allocation of specific budget for indigenous people in local planning, which includes empowerment programs, scholarship programs etc.

3.4 Recommendations to DDPA

- Urges that the Outcome Document includes effective mechanisms to evaluate and monitor the status of implementation of DDPA in each country (if possible) or at the regional level.
- Urges that the Outcome Document requires States to include the provisions of the DDPA, ILO 169, United Nations Declaration on the Rights of Indigenous Peoples and other international instruments and issue of ethnic autonomy with right to self-determination in the new constitution.
- Urges that the Outcome Document calls for States to ensure indigenous peoples' access to common properties/resources/land in the face of long years of expropriation by high caste groups, by recognizing indigenous peoples' "traditional right of ownership and usage" over the natural resources laid down in the ILO Convention 169.
- Urges that the Outcome Document calls on States to respect, honor and implement international instruments and agreements.
- Urges that the Outcome Document refers to the establishment of a special Indigenous Peoples Desk within UN agencies at country level.
- Urges that the Outcome Document places obligations on States to make the community aware of the progress they are making in relation to implementing the DDPA.
- Urges that the Outcome Document places obligations on the State to ensure proportional representation of indigenous peoples, including women in all sectors of governance.
- Urges that the Outcome Document calls to the State to recognize and ensure identity based rights of indigenous peoples and indigenous women
- Urges that the Outcome Document calls to the State to end one language policy and should adopt multi-lingual policies in state affairs.
- Urges that the Outcome Document calls on UN agencies and other partner organizations of the UN to identify and implement an effective and appropriate intervention related MDG that recognizes and promotes the key issues of indigenous peoples.

⁶⁴ Urges the State to provide financial resources to anti-racism education and to media campaigns promoting the values of acceptance, tolerance, diversity and respect for the culture of indigenous peoples in the case of indigenous peoples' case, there is no case of media campaigns programs

CHAPTER IV

MADHESIS

4.1 Prevalence of the problem

Madhesi⁶⁵ are inhabitants of the Terai plains area of Nepal who speak languages other than Nepali and do not originate from the hills. The Terai occupies 23 per cent of the land area and contains 48.5 per cent of the population of Nepal⁶⁶, comprising more than 35 caste groups, 25 ethnic nationalities and 17 Dalit communities.

Madhesi are traditionally and culturally different from hill communities, which are why they are considered as pro-Indian, due to their social and cultural similarity. Consequently, during the Monarchy, the state policies went against Madhesi, depriving them from access to citizenship, education, land holding.⁶⁷ Further marginalization of Madhesi started with the state sponsored migration policy, when hill groups were given incentives in terms of cash and fertile land to settle in the Terai.⁶⁸ The main victims of such demographic invasion have been the ethnic nationalities who have been uprooted and converted into different form of bonded labors. Other victims are the landed gentry of Madhesi who lost much of their land assets. Restoration of multiparty democracy in 1990 did not result in much change in policy.

4.2 Implementation Status of DDPA

The 2007 Interim Constitution of Nepal has made some improvement to the status of Madhesi by adopting the following items.

- Accepts all the Madhesi languages as the national languages of Nepal.⁶⁹
- Guarantees non-discrimination among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these and gives assurances to make special provisions by law for the protection, empowerment or advancement of Madhesi and other communities.⁷⁰
- Prohibits “untouchability” and racial discrimination.⁷¹
- Under the fundamental rights section, it guarantees social justice for women, Dalit, indigenous tribes, the Madhesi community and other “backward groups” to enjoy the rights to participate in the state mechanisms on the basis of proportional inclusive principles.⁷²
- The Interim Constitution promotes positive discrimination by provisions of law for the protection, empowerment or advancement of the interests of women, Dalit, ethnic tribes, Madhesi and others backward communities.⁷³

4.3 Critical Areas of Concern

Language

Language is the major factor for excluding as well as discriminating against Madhesi as outsiders. State monolinguals have contributed to Madhesi marginalization, be it from not benefiting from Nepali-language education, facing disadvantages in entrance exams and job applications or being

⁶⁵ The term Madhes itself is derived from the Sanskrit word ‘Madhyadesh’ that refers to the Gangetic plain and the Vitri Madhes area bordering India on the southern side and spreading north up to the foothill of Siwalik range. The Terai refers to the plains south of the strip of hills and is geographically and culturally distinct from the hills.

⁶⁶ CBS population census in 2001

⁶⁷ Fredrick Gage, Question of National Integration in Nepal, Cambridge 1975,p.92

⁶⁸ The National Population Censuses Report of 1952/54 shows that only 6 percent of the Terai population was of hill origin whereas it was 32 percent in 1991 and 36.31 percent in 2001-- Population of Nepal 2001, Caste and Ethnicity, Mother Tongue and Religion, VOL.1-5, CBS/GON

⁶⁹ Article 5 of the Interim Constitution of Nepal

⁷⁰ Article 13(3) of the Interim Constitution of Nepal

⁷¹ Article 14(3) of the Interim Constitution of Nepal

⁷² Article 21 of the Interim Constitution of Nepal

⁷³ Article 33 of the Interim Constitution of Nepal

unable to join in national debates. Consequently Madhesis are excluded in political representation and access to developmental resources. Due to non recognition of other languages in the Terai, the most effected sector is education. The literacy level of the Madhesis in Terai (including inner Terai) is only 38.4 percent.. The literacy rate of Terai castes (including Muslims and excluding Janjatis and Dalits) is only 35.2. The average literacy rate of Terai origin groups population living in the Terai is 26.4 per cent⁷⁴.

Issue of statelessness (Citizenship issue)

Acquisition of land assets is linked to citizenship issues. Already perceived as Indians, the absence of birth certificates and other documents to prove their Nepali origin made it almost impossible for Madhesis to acquire citizenship. Local officials often demanded land ownership titles before granting citizenship, which trapped Madhesis in a vicious cycle, because they could not get land titles without citizenship certificates. Fluent Nepali speaking was another criteria for citizenship⁷⁵ what Madhesi could not.. Madhesis, particularly 'Madhesi Dalits', have no citizenship certificate and those who have, are treated discriminately as second class citizen in own country.

Under-representation in state structures

Madhesis are under-represented in all sectors. They occupy less than 12 percent of the posts in influential areas, including the judiciary, executive, legislature, political parties, industry and civil society, and less than five percent in international organizations and multilateral donor projects. The security forces are most actively discriminatory, in particular the army, which has no senior Madhesi officers.

Employment in the civil service

In 1991 Madhesi community accounted for 32 percent of the population but occupied only 8.4 percent of positions in the civil service⁷⁶. This indicates that Madhesi people have been highly discriminated against in the civil service. This can be attributed to both their limited access to higher education and also to traditionally exclusionary and discriminatory state norms, values and practices.

Representation in the Judiciary

About eight percent of judges in the country are from Madhesi communities. Participation of judges from Madhesi communities at the Appellate Court is 14.9 per cent, which could be considered a 'high level of participation' compared to 3.7 percent at district courts⁷⁷.

Political Exclusion

In the Tarai, a much larger number of people were represented by a single senator because, as a result of which Parliament did not address the issues affecting the Tarai. There is very low representation of Madhesi communities in the central committees of most of the national political parties. Of major parties, Nepali Congress has 7.9 percent Madheshis, Communist Party of Nepal (UML) 5.8 percent, Nepali Congress Democratic 16.7 percent, and Jan Morcha Nepal 2.3 percent.

Migration - Changing demographic profile

Since the 1950s, with the malaria eradication programs, clearing of forests and land resettlement schemes, the *Pahadi* proportion of the population in the Terai has increased five-fold. In 1981, the population growth in Himal and Pahad together was 3.5 per cent whereas in the Terai it was 7.8 per cent due to heavy migration from the hills. The policy of the government is promoting migration from the hills to Terai and reducing the overall proportion of Madhesis in the Terai as it fears that India would use Madhesis to increase control or take over Nepal; encouraging hill migration was a move to keep Madhesis as sympathetic to India, in check.

Violence against women

⁷⁴ Dr Devendra Chhetry, entitled 'Educationally Disadvantaged Ethnic Groups of Nepal', conducted under MIMAP Project of APROSC and IDRC, in December 1996

⁷⁵ Frederick Gaige, 'Regionalism and National Unity in Nepal', 1975, University of California Press PP:92

⁷⁶ Research on Social Exclusion by JAGHRIT Nepal, 2007

⁷⁷ Bulletin of Judicial Council 2001, vol. ii

Different forms of violence against women exist in Madhesi communities, including as a result of 'witchcraft' accusations and related to dowry disputes. Dalit women face three-pronged discriminations as women, as Dalits and as Dalit women. The dowry tradition is strong in Nepal and with greater prevalence in Muslim communities. The killing of brides because of defaults on dowry payments is rare, but does occur. More common is the physical abuse of wives by the husband and the husband's family to obtain additional dowry, or to force the woman to leave the house or accept forceful divorce to enable the son to remarry.

On 6 November 2007, a 22-year-old Hasrun Idrisi, in Nepalgunj, was beaten and set on fire by her husband, his brothers, sister and mother as she could not pay to her mother in-law money as a dowry.

Child marriage is rampant because of dowry, which involves 'buying of groom' through cash and kind. There are frequent media reports that the killings of female fetuses is on the increase. The existing legal framework addressing violence against women is insufficient, and in addition to address specific forms of violence against Madheshi women.

Gaps and Weaknesses

- DDPA recommendation 'I –(37) could not be implemented seriously leaving more than 10% Terai/Madhesh population stateless in their own land depriving them of citizenship certificates
- DDPA recommendation in 'I - (1) in Programme of Action'78 has yet to be implemented and inclusion of Madhesh in the decision making in investments is minimal. On one hand Nepal being the first country to ratify ILO 169, while on other it is facilitating migration of 1500 families in Kailali, one of the far-Western districts of Terai/Madhes. Thus changing demographic profile of the districts.
- Implementation of constitutional provision to end all forms of discrimination violence against women is weak.

4.4 Recommendations to DDPA

- Urges that the Outcome Document includes that the States recognizes languages used and spoken by marginalized communities as official languages. This will result in usage of local languages in the local government system and mother tongues as the mediums of instruction in schools;
- Urges that the Outcome Document includes recommendations to the States for implementing policies of affirmative action for ensuring inclusion of marginalized groups in the decision making at all levels of government including mass media to promote social, political and cultural pluralism.
- Urges that the Outcome Document requests that States takes strong steps to implement properly the existing laws and formulates specific law to deal with gender based and domestic violence.
- Urges that the Outcome Document requests the States to address the issues in relation to discrimination or additional qualification requirement of marginalized groups in acquiring citizenship
- Urges that the Outcome Document to request the States to address sponsored demographic aggression and restore the natural rights of marginalized communities on natural resources under the ILO/UN convention of 169.

⁷⁸ Urges States in their national efforts, and in cooperation with other States, regional and international organizations and financial institutions, to promote the use of public and private investment in consultation with the affected communities in order to eradicate poverty, particularly in those areas in which victims of racism, racial discrimination, xenophobia and related intolerance predominantly live"

CHAPTER V

RELIGIOUS MINORITIES- MUSLIMS

5.1 Introduction

Muslims are a religious minority in Nepal and are one of the marginalized communities. According to the 2001 census, the population of Muslims is 4.2 percent of the total population. Ninety-five percent of the Muslim population reside in the southern plains areas of Nepal known as the Terai, whereas five percent live in hill and mountain districts. The Muslims in Nepal have their own separate attire, language and culture. The Interim Constitution of Nepal recognized the Muslim community for the first time in 2007.

5.2 Implementation Status of DDPA in relation to Muslim

- In 2006, Muslim community, which did not have any separate identity as a religious minority, was recognized as a religious minority
- In 2007, a few Madarasas - Muslim religious schools, were given government recognition as formal schools.
- In 2008, 17 Muslims were elected/nominated to the Constituent Assembly.
- In 2008, the State expressed commitment to establish a Muslim Commission.

5.3 Critical Areas of Concern

An issue of identity

The Muslims have their separate identity due to their religion, culture and language, which is why Muslims face discrimination. The Constitution and legal provisions have in the past hindered the independent development and identity of Muslims. The tendency of the State to define Muslims as extreme Islamists rather than as a community is the main reason that the Muslim community lags behind socially, economically and politically.

Discrimination on the basis of religion

There have been several attacks against the Muslim community and its religious sites. Similarly, there have been periodic attacks against Muslim belief and practices. The day of 1 September 2004 remains in the memory of Muslim community as a Black Day. On this day, many Mosques were burnt. Holy Qurans were also burnt and the houses and shops of Muslims were robbed, vandalized and set on fire after the killing of 12 Nepalese workers in Iraq. This is a clear example of discrimination on the basis of religion that the Nepali Muslims have been facing.

Gender based violence against Muslim women

Lack of education, leadership and participation in decision-making processes are some of the critical areas of concern for Muslim women. Like other communities, gender-based violence and domestic violence are among the other problems faced by Muslim women. On one hand, there is no specific law to deal with such cases of violence. On the other, the patriarchal structure of Muslim society makes them more vulnerable to gender-based and domestic violence. Their own language 'Urdu' is not used in court or Government offices, which reduced their access to justice as it is hard for them to make a statement or file a complaint with police (First Information Report) against violence.

Representation

Participation of the Muslim community in decision making of state and non-state bodies is very low. There is not a single Muslim Minister. Employment of Muslims, particularly female Muslims, in the civil service is minimal. No Muslims chairs the 23 different committees of the Constituent Assembly. The Muslim community thus doubts that the new Constitution will enshrine the rights of Muslims. Representation of Muslims within the UN agencies is also negligible.

Economic Situation

Around 78 percent of Muslims live below the poverty line. Some 41 percent of Muslims are landless. Because of non-recognition of all *Madrassa* education as formal schools, even qualified Muslims are being deprived of employment. The private sector also has not paid any attention to

the economic growth of Muslims. Their businesses and professions do not flourish because they are limited by their traditional skills and production.

Education

Only 22-26 percent Muslim are educated. There is no reservation for Muslims in scholarship programs. There is no provision of separate quotas for Muslims to get jobs in public service sectors. Muslims have been deprived of every opportunity for scholarship up to University level. The education of Muslim women is mostly limited to *Madrasas*. Students, mostly Muslim girls, who finish grade five in non-recognized *Madrasas*, cannot be enrolled in grade six in formal school but have to start at a lower level. Due to this, most Muslim girls do not have the recognized education that is required to get employment in government and non-government sectors. There should be a provision to establish *Madrasa* Boards to develop a joint curriculum, including Islamic education and modern education, produce qualified and competent professionals and organize all *Madrasas* in order to secure legal status and uniformity in all academic activities with cooperation of the Education Ministry.

Health Service

The average life expectancy of Muslims is 49 years. Children of Muslim community suffer from mal-nutrition due to widespread poverty. There is a lack of health posts and doctors in Muslim settlements. The existing health service does not address the culturally sensitive issues of Muslims, including those affecting Muslim women.

Gaps and Weaknesses

- The government of Nepal does not recognize legally the marriage and divorce of Muslims that takes place accordance to the Islamic religion and social tradition. The State dose not recognizes Muslim family law for marriage, property rights or divorce.
- No efforts have been put by the Government to introduce special economic, social, or educational plans in accordance with the traditional norms, values and culture of the Muslim community.
- The Muslim people, especially Muslim women, do not fully enjoy the right to health as the state has failed to introduce a health policy and programme in accordance with the traditional norms, values and culture of Muslim.
- The commitments made by the political parties for the upliftment of Muslims have not been implemented.
- The State was not sincere in its commitment to form a Muslim Commission - the process of establishing the Commission is being delayed.

5.4 Recommendations to DDPA

- Urges that the Outcome document requests the State to ensure education to Muslims on the basis of their traditional structure and culture. All *Madrasas* should be recognised as formal schools and be managed by a board like other government schools.
- Urges that the Outcome Document requests the State to respect the separate religious and cultural identity of religious minorities
- Urges that the Outcome Document places obligation on the State to ensure proportional representation of indigenous peoples, including women, in all sectors of governance.
- Urges that the Outcome Document requests the State to respect and implement agreements made with religious communities, including for the establishment of an independent Commission working for the rights of the religious minorities.

CHAPTER VI

LESBIAN, GAY, BISEXUAL, TRANS GENDER/THIRD GENDER AND INTER SEX

6.1 Prevalence of the Problem

The Lesbian, Gay, Bisexual, Trans Gender/Third Gender and Inter Sex (LGBTI) are known as a sexual and gender minority in Nepal who, on the basis of sexual orientation and gender identity, have been subjected to discrimination, are deprived from opportunities, and have not been able to enjoy human rights, including economic, social and cultural rights.

The issues related to sexual health and human rights of LGBTI have been made public in Nepal only since 2001. The population of LGBTI in Nepal is estimated around 2.5 million.⁷⁹ However, the 2001 census has failed to incorporate the complete statistics of LGBTI.

The current legislation, policies and the Interim Constitution of Nepal are silent on the issues of these communities. The Ordinance to make the public services inclusive does not include reservations for LGBTI. Also, these communities have not been included in the tenth plan and the poverty alleviation program.

The representation of LGBTI in government offices, the judicial sector, Commissions and local agencies is nil. There is no evidence of quotas being reserved for individuals belonging to these communities in any governmental or private institutions yet.

Since the LGBTI also fall under Dalits, Janajatis and come from backward regions, they are doubly victimized. They have not been provided special reservations in the education, health and employment sectors by the government. They do not have access to the reservations provided to Dalits, Janajatis and backward regions.

So far, only two persons with Third Gender/Trans Gender background have been able to acquire citizenship certificates according to his/her identity. To date, the current law does not recognize same sex relationships in Nepal.

6.2 Implementation Status of DDP in relation to LGBTI

- The Declaration of “World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance” does not address the issues of LGBTIs. The term ‘gender’ only denotes male and female in the Declaration. However, the first session of the Preparatory Committee of Durban Review Conference, held from 19 to 23 January 2009, condemned all forms of discrimination and other human rights violations based on sexual orientation.
- The Supreme Court of Nepal issued a directive on December 21, 2007 to the government of Nepal which stated that the LGBTI community is natural and should not be subjected to discrimination. The Supreme Court ordered the government to issue citizenship certificate to the ‘Third Gender’ according to their identity and scrap or amend all discriminatory laws, and form a seven-member committee to do research into same sex marriage.
- Three key political parties of Nepal, the CPN (Maoist), Nepali Congress and CPN-United, addressed the rights of LGBTI in their election manifestos. But many more parties have included affirmative language in terms of LGBTI rights in their version of the constitution submitted to the CA.
- The government of Nepal allocated a budget of NRs 2.5 million for LGBTI for the fiscal year 2008/09.
- The selection of one person representing LGBTI in the Constituent Assembly has proven to be a milestone in itself.
- The level of violence against LGBTI by police and other security forces personnel has gone down dramatically since the Supreme Court ruling in Dec 2007.

⁷⁹ Blue Diamond Society that works for rights of LGBTI in Nepal

6.3 Critical areas of Concerns

Non-recognition of identity

The main challenge in Nepal is to explain the meaning of LGBTI and problems concerning the community to each and every person of the society as well as to policy makers. Although according to estimates the LGBTI cover 10 percent of the total population, the policy makers have failed to pay attention to this.⁸⁰ The 2001 census has failed to incorporate statistics on LGBTI. Due to the lack of identification, special plans and programs have not been made for LGBTI and to address their problems. The term “sex” addresses only males and females universally. In Nepal as well, the legislations, policies and rules, documents, declarations, treaties and agreements and the Constitution do not mention keeping the issues LGBTI separate from male and female as well or discrimination based on sexual orientation and gender-identity. So far, only two ‘Third Gender’ individuals have been able to acquire citizenship certificate according to their identity.

Violence and discrimination against LGBTI

The LGBTI are facing discrimination as suffer from familial, social and political discrimination time and again and undergo tremendous mental stress.

Manisha, who is an transgender (male to female) who was recently attending a training outside the country, was detained at the Immigration counter in Nepal as well as in the destination country as the passport gives her status as male. At the embarkation counters, the officials gathered together to discuss her identity and teased her. She felt that it was the biggest embarrassment she faced. Non-recognition of third gender by the State and non-issuance of citizenship and passport revealing this status results in discrimination.

Since those meting out sexual and domestic violence and injustice LGBTI are not punished, **impunity** is on the rise.

Bhumika, a transgender who was born as a boy, always felt comfortable with girls in her school as her behaviour was like “girls”. However, all the boys in the school used derogatory language to tease her. Teachers also forced her to behave like a “boy”. While studying in Class 8 she was warned that she needed to change her behaviour or face restriction from school. As she could not change her behaviour, she was expelled from school and could not continue her education. Bhumika is lucky that she has family support, however. Many like her face problems at home, including domestic violence, which at times results in their expulsion from home.

Discrimination in employment

The Government has not been able to make provisions for employment, appropriate salary and social security for LGBTI. Due to the lack of employment and income sources, LGBTI are being compelled to leave the country to find work in India, join the Hijra community in India, or become involved in the sex trade.

Discriminatory health service

Due to the lack of knowledge about health problems faced by LGBTI among the medical personnel, they mistreat LGBTIs, or do not provide any treatment at all. So many LGBTI do not seek health care when they are sick or have health problems. Many health professionals still believe that homosexuality and trans-sexuality are mental disorders.

Gaps and Weaknesses

- There is a lack of positive legislation for LGBTI and the Interim Constitution is also silent. Since the issues of this community are not incorporated into different treaties, agreements and declarations, there is no international protection for this community.
- Assistance from donor organizations to promote the human rights of this community and to introduce advocacy programs is also minimal. The political parties and politicians in the country are not committed to the advancement of this community.

⁸⁰ Blue Diamond Society that works for rights of LGBTI in Nepal

- The State has not included the LGBTI in the tenth five-year plan and poverty alleviation program for improvement in financial status.
- The critical situation of this community still remains unknown as adequate study and research has not been done.

6.4 Recommendations to the Durban Review Conference

- Urges that the Outcome Document requests that the States use of terms ‘Sex, Gender and Sexual Orientations and Gender Expression’ in Constitutions, legislation, policies and plans should be gender neutral. The term gender should denote male/female and third gender.
- “Durban Review Conference, Preparatory Committee’s first session on 19 to 23 January condemns all forms of discrimination and other human rights violations based on sexual orientation.” Urges that this is also reflected and mentioned in the forthcoming Outcome Document of the Durban Review Conference
- Urges that the Outcome Document requests that the States provide citizenship certificates to third genders in accordance to their gender identity.
- Urges that the Outcome Document requests the States not to discriminate on the basis of sexual orientation and gender identity in salary, social security and employment.
- Urges that the Outcome Document requests the States to ensure that discrimination and violent activities carried out solely on the grounds of an individual being a member of sexual and gender minorities should be prohibited and punishable by law.
- Urges that the Outcome Document requests the States that the LGBTI community, like other minorities, should not be left out of the quota/reservations given on the basis of positive discrimination in the health services, education, scholarships and employment by the State.
