

# Benchmarking the Draft UN Principles and Guidelines on the Elimination of (Caste) Discrimination based on Work and Descent



## NEPAL REPORT

SAMATA foundation  
Kathmandu, 2014



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on the Elimination of (Caste) Discrimination  
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Thanking you!



**Mr. Padam Sundas**  
Executive Chairperson  
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30 September 2014

## FOREWORD

Dr. Krishna B. Bhattachan<sup>1</sup>

In Nepal, there are Nepal's Indigenous peoples who have customary practices of egalitarian society and the Hindu society that has a hall mark of caste hierarchy along with the concept of purity and pollution and caste based division of labor. In the 14<sup>th</sup> century, King Jayasthiti Malla divided people of the Kathmandu Valley, who were mostly Indigenous Newars, into 64 castes but it was based more on division of labor than on hierarchy and purity but in 1854 the Civil Code of Nepal legally recognized fourfold hierarchy of "castes" with "twice born" castes at the top, followed by "liquor drinking" caste, untouchable but purification not required and untouchables at the bottom. Although the Civil Code amended in 1963 tried to undo it by recognizing equality of all "castes", practices of caste based discrimination, including untouchability continued unabated in practice. In the past, everyday life interaction depended solely on who belonged to where in the caste hierarchy. Therefore, the first question to be asked to any interaction with a stranger would be: *Tapain kasma?* (Which caste you belong to?). Once one gets the answer, whether he or she should make conversation with respect or humiliation would depend on whether he or she belongs to "high" or "low" caste. Now a days people do not ask such a question directly to know the caste status but it is for sure that most of the people behave in a discriminatory way if they know that the other person is a Dalit. We are already in the first quarter of the twenty-first century, but caste based discrimination, including untouchability, is still ubiquitously practiced in Nepal in many different ways. Caste based untouchability is nothing but one of the worst form of human rights violations and crime against humanity.

Dalit movement against caste based discrimination began in early 1950s with focus on entry in Hindu temples and later co-feasts with "high" caste people. Such a movement continued for about five decades. After the People's War waged by the Communist Party of Nepal (Maoist), in which a Dalit boy became the very first martyr, Dalit movement slowly realized importance of representation in decision making bodies and engagement in armed struggle to eliminate caste based

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discrimination with focus on untouchability. Dalit's human rights activists often rely on emotional than on knowledge based advocacy. Nepal Government started to take census data based on caste from 1991 only and the Government never provides caste and ethnic disaggregated data. Hence, it is very difficult to make sense of any Government data relating to Dalits, Indigenous peoples, Madhesis and Muslims. Research and knowledge based advocacy is slowly on the rise in Nepal. Policy makers, Dalit's human rights activists, academics, international aid agencies seek factual data on situation of the Dalits in Nepal. There is a dearth of literature on the Dalits of Nepal. It is in this back drop that the SAMATA foundation has carried out a study on **Benchmarking the Draft UN Principles and Guidelines on the Elimination of (Caste) Discrimination based on Work and Descent**.

This Benchmarking report provides very valuable information on twelve thematic areas: (1) combating segregation, (2) physical security and protection against violence, (3) access to justice and equal political participation, (4) equal employment opportunity and free choice of occupation, (5) forced, bonded and child labor, (6) health, (7) adequate food, water, and housing, (8) education, (9) public awareness raising and elimination of discriminatory customs, (10) multiple discrimination against women, (11) humanitarian and development assistance, and (12) market enterprises and financial allocations. The report clearly reveals some pervasive patterns in all twelve thematic areas. One very noteworthy and important pattern is that Nepal Government has ratified many treaties, conventions and covenants and adopted many declarations and plans of actions but the State shows utter negligence in its domestication and effective implementation. Therefore, violations of Dalits human rights occur every moment but the state machinery is unwilling and unprepared to prevent such violations, protect "victims" or "survivors" and punish the perpetrators. The challenge is how the state can be made accountable to its international commitments.

The other pattern is that the constitution, laws, regulations, policies, plans and programs do not meet international standard of human rights of Dalits as enshrined in the **United Nations Principles and Guidelines for Effective Elimination of Discrimination Based on Work and Descent**. Further common pattern is that the state's machinery and its structure, process and measures do not uphold human rights of the Dalits; hence these are unable to stop all forms of caste based discrimination, including untouchability, violence, and atrocities. Nepal Government's effort to establish a few Dalit centered institutions, namely, Neglected, Suppressed and Dalit Community Upliftment Development Committee, National Dalit Commission, and Badi Development Board, and enactment of law, namely, Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, reservation of seats in civil service, police and army, and rehabilitation of Freed *Haliya* are all positive but highly inadequate to make significant contribution in reducing caste based discrimination and inequality between Dalits and non-Dalits.

It is for sure that as long as Dalits are not liberated from caste based discrimination, including untouchability, concepts such as democracy, rule of law and development are meaningless for them. The Benchmarking report clearly shows urgency to the state to take necessary steps to stop caste based discrimination in Nepal.

## ABBREVIATIONS

AATWIN	Alliance Against Trafficking Women and Children in Nepal
ACORAB	Association of Community Radio Broadcasters
ADWAN	Association for Dalit Women's Advancement of Nepal
APF	Armed Police Force
CA	Constituent Assembly
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBD & U	Caste Based Discrimination and Untouchability
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
COCAP	Collective Campaign for Peace
COLARP	Consortium for Land Research and Policy Dialogue
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of Child
CSOs	Civil Society Organizations
CTEVT	Council for Technical Education and Vocational Training
CVICT	Centre for Victims of Torture
CWIN	Child Workers In Nepal
DANAR-Nepal	Dalit Alliance for Natural Resources, Nepal
DDC	District Development Committee
DNF	Dalit NGO Federation
DSP	Deputy Superintendent of Police
DWO	Dalit Welfare Organization
FCHVS	Female Community Health Volunteers
FEDO	Feminist Dalit Organisation
FIR	First Information Report
FNCCI	Federation of Nepalese Chambers of Commerce and Industry
FY	Fiscal Year
GoN	Government of Nepal
HIV	Human Immunodeficiency Virus
HP	Health Post
HRC	Human Rights Committee

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic Social Cultural Rights
ILO	International Labor Organization
INGO	International Non-Governmental Organization
INHURED	International Institute for Human Rights, Environment & Development
INSEC	Informal Sector Service Centre
Interim Constitution	Interim Constitution of Nepal, 2007
JMC	Jagaran Media Center
JUP	Jana Utthan Pratisthan
LANCAU	Lawyers National Campaign Against Untouchability
MoHP	Ministry of Health and Population
MoIC	Ministry of Industry and Commerce
NDC	National Dalit commission
NEGISS	Nepal Geographic Information System Society
NELS	Nepal Landslide Society
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
N-NCDMC	National Network of Community Disaster Management Committee
NNDSWO	Nepal National Dalit Social Welfare Organization
NDPS-Nepal	National Dalit Personnel Society – Nepal
NPR	Nepali Rupees
NRCS	Nepal Red Cross Society
NSDCUDC	Neglected, Suppressed & Dalit Community Upliftment Development Committee
NSET	National Society for Earthquake Technology – Nepal
NWC	National Women Commission
NWS	Nepal Woman Society
OBC	Other Backward Community
OECD	Organization for Economic Co-Operation and Development
PDRC	Professional Development and Research Center
PHCC	Primary Health Care Center
RDNN	Rastriya Dalit Network Nepal
RMNCH	Reproductive Maternal Newborn and Child Health
SAARC	South Asia Association for Regional Cooperation
SP	Superintendent of Police
UDHR	Universal Declaration of Human Rights
UPR	Universal Periodic Review
VDC	Village Development Committee
WIPAA	Women in Policy Advocacy Alliance
WOREC	Women's Rehabilitation Centre

## INTRODUCTION

The 2001 World Conference against Racism in Durban, South Africa was a watershed event for Dalits, like for many discriminated peoples and communities in the world, in two respects.

*First*, it brought recognition among the international community of the existence of caste-based discrimination in Asia, and later in the African region. Although the caste system has been studied and documented in the past by many scholars, the profile of Dalit communities in different social contexts as well as the nature, extent and forms of caste discrimination and violence practised against them has not been sufficiently studied and documented, or spoken about, or made known to the international community. It was the spark of Durban that stimulated the academics, activists, government and media milieu. Since then, there have been many observations, recommendations, principles and guidelines that have been suggested for the *effective elimination of discrimination based on work and descent globally*. This was mainly owing to the advocacy efforts done by such agencies as the international Dalit solidarity networks and the international human rights advocacy organizations jointly with Dalit activists and organizations in the affected countries.

*Second*, the WCAR, followed by later events, brought the realization, in howsoever small or great a measure, among the governments in the Asian region that this issue of caste based discrimination cannot be neglected and needs to be addressed urgently. This was largely due to the continuous rights assertions of Dalit communities, as in India, Nepal and Japan. It was also due to the awareness generated and questions raised by the international community on the prevalence of and protracted response to this issue. Hindsight tells us that the stance taken to hold the state accountable has been paying dividends gradually. However, the task still remains too important to be left incomplete and too enormous to be done singlehandedly by any one of the South and East Asian countries.

It is against this background of the progress made so far in order to attain the goal of rights and dignity for all Dalits that the gaps need to be identified for careful and critical scrutiny, the tasks listed for planning and the agenda of action formulated for action in future. Hence, a ‘benchmark’ study on the *“National Mechanisms and their Impact in addressing Discrimination based on Work and Descent in Asia”* is necessary.

Set within the overall framework of the UN mechanisms, especially the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent, this study has to be a collective endeavour of the affected countries of Asia.

The purpose of this study is the following:

- i) To have an overall understanding of the ground reality of the human rights situation of the communities affected by work and descent based discrimination;
- ii) To access information as to what extent the states Asia have addressed the issue of caste or work and descent based discrimination;
- iii) To make the Principles and Guidelines country specific and nuanced, so as to be able to contribute to strengthening the national processes by way of providing depth of perception and clear identification of discrimination practices, evolving specific and concrete action programmes and implementation mechanisms, and suggesting specific indicators of elimination of caste discrimination;
- iv) To pave the way for similar study in African countries;
- v) To support the wider, long-term objective of a South Asian Convention and Global Convention on the eradication of caste based discrimination;
- vi) To justify the Principles and Guidelines as necessary and valid, through objective official data;
- vii) To offer recommendations/proposals for addressing this issue of caste based discrimination more adequately and effectively in the affected country.

## STUDY METHODOLOGY

This study was conducted over the period of January 2013 to June 2014.

The study **objectives**, as far as Nepal was concerned, were the following:

- To obtain a broad overview of the socio-economic, political and religio-cultural context of the Dalit communities in the country;
- To identify the international and national legal standards that the Nepali state has set for itself to address the rights situation of the communities affected by caste-based discrimination and violence, and the specific policy, programmatic and budgetary measures that have been established;
- To take stock of the status of the implementation of the national standards and measures, and to identify the gaps in both the measures themselves as well as their implementation;
- To offer concrete recommendations both for implementation of national standards and measures, as far as implementation is concerned, and for advocacy efforts to make implementation possible and effective.

In other words, the focus of the research was on analysing state measures – i.e. state obligations – and *not* on status of Dalit rights, status and forms of ‘untouchability’, caste based discrimination and violence, as such. The core research questions therefore were:

- i) Are state measures in place as per the draft UN Guideline?
- ii) What is the status of national implementation of such measures?
- iii) What are the gaps in the measures or in their implementation?
- iv) What are the key recommendations to ensure the enactment and implementation of comprehensive measures in line with the Guideline?

As the draft UN Guidelines are extensive, a **sample** of 22 guidelines was chosen for in-depth research. These were guidelines chosen across the 12 major categories of guidelines, namely:

1. Combating segregation
2. Physical security and protection against violence

3. Access to justice and equal political participation
4. Equal employment opportunity and free choice of occupation
5. Forced, bonded and child labor
6. Health
7. Adequate food, water, and housing
8. Education
9. Public awareness raising and elimination of discriminatory customs
10. Multiple discrimination against women
11. Humanitarian and development assistance
12. Market Enterprises & Financial Allocations.

If a category had only one guideline, that guideline was chosen for analysis. If, however, a category had multiple guidelines, two guidelines were chosen from that category on the basis of the following criteria:

1. Does the issue *exist* or not for Dalits in the country?
2. Is the issue *relevant* for Dalits in the country in terms of strengthening state performance? In other words, the issue covered under the guideline might exist, but the state does not consider it important and so no state measures are put in place; or the issue covered under the guideline exists and state measures are in place, but there is no proper implementation.
3. Is *adequate data/info* available or not?

The study was based on **secondary data collation and analysis** alone. Official data and research from government sources was primarily used. Only if these were not available on a guideline topic, then data and studies from civil society organisations and media reports were used to supplement this data. National data sources thus included: Constitutional provisions; Laws; Executive policies; Policies on Women/Children; Government Schemes; Budget provisions; Judicial pronouncements; Development Plans; reports from Statutory bodies such as commissions, authorities, boards, etc.; Annual Reports of various government ministries and departments; Corporate principles; etc.

Certain **principles were adhered to in collecting, collating and analysing the data**. *One* was that care was taken to ensure that information on measures and their implementation for Dalit women and children was provided across the guidelines, and not just for the gender specific guidelines. *Second* is that attention was paid to the diversity within the Dalit community in the country – e.g. the different sub-castes of Dalits, or different religions of Dalits. *Third* was that only the latest data and information available was included. In some cases, however, only old data dating back a decade was available and was therefore included. *Fourth* is that each guideline was examined in relation to the others, so as to lessen the overlap in terms of data and information provided for each guideline.



## STUDY METHODOLOGY

The **framework for each analytical report on a specific guideline** was divided into 11 sections as follows:

1. *Specific Aspects covered by the Guideline*: detailing what exactly the guideline was asking a state to do
2. *International Standards & Mechanisms*: providing justification for the Guideline by linking it to the international human rights laws to which the state was signatory
3. *International Recommendations*: detailing the various recommendations by UN treaty and other bodies on considering the Nepali government's reports to treaty bodies or visits by UN representatives or recommendations issued by treaty bodies
4. *National Standards, Measures and Mechanisms*: detailing the various government laws, policies, programmes/schemes, budgetary measures and institutional mechanisms in place in fulfillment of the guideline
5. *Recommendations by National Mechanisms*: detailing any official government or commission reports on the topic of the guideline, with specific focus on addressing caste based discrimination
6. *Status of Implementation of National Measures*: detailing the status of implementation of the various government measures and how mechanisms are functioning
7. *Impact on the Beneficiaries*: examining the impact in terms of data showing a changing situation over time, good or bad, for the Dalit community after the implementation of the government measures.
8. *Gaps in Measures and/or their Implementation*: specifying any gaps both in terms of the measures themselves and the way those measures are being implemented or enforced
9. *Dalit Community Response*: providing examples of how Dalit communities and civil society organisations are responding to the issue vis-a-vis the Dalit community
10. *Wider Society Response*: providing examples of how non-Dalit or wider coalitions of civil society organisations are responding to the issue vis-a-vis the Dalit community
11. *Key Recommendations*: specifying recommendations, based on official government or civil society reports or programmes, in order for the state to ensure fulfilment of the guideline.



# EXECUTIVE SUMMARY

The Draft United Nations Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent present a comprehensive framework to eliminate caste discrimination globally. They are based on international law to which the Nepal state is signatory. While still a draft, hopes lie in the direction of a final set of Principles and Guidelines, and ultimately a Convention against Discrimination based on Work and Descent. The Principles and Guidelines identify the basic obligations that states like Nepal have to eliminate all forms of caste discrimination by upholding the principles of equality and full respect for human rights, and ensuring a just society.

## 1. Guidelines covering Twelve Priority Areas of Dalit Rights

In this report for Nepal, 22 guidelines, clustered within 12 broad categories, are benchmarked: (1) combating segregation, (2) physical security and protection against violence, (3) access to justice and equal political participation, (4) equal employment opportunity and free choice of occupation, (5) forced, bonded and child labor, (6) health, (7) adequate food, water and housing, (8) education, (9) public awareness raising and elimination of discriminatory customs, (10) multiple discrimination against women, (11) humanitarian and development assistance, and (12) market enterprises and financial allocations. Information for this study has been collected from multiple secondary sources, both government and non-government. The major findings emerging from this study are laid out below.

## 2. Status of Dalits: Pervasiveness of Caste based Discrimination, Untouchability and Violence

Nepal is a small country with significant social and cultural diversity. According to the Census of 2011, the total population of the country is 26,494,504 and Dalits represent 13.15% of the total population. The National Dalit Commission has listed 26 castes as Dalits, including 7 Hill Dalit castes and 19 Terai Dalit castes. The Hill Dalits are 1. Gandharva (Gaine); 2. Pariyar (Damai, Dargee, Suchikar, Nagarchee, Dholee, Hudke); 3. Badi; 4. Bishwokarma (Kami, Lohar, Sunar, Od, Chunanra, Parki, Tamata); 5. Mijar (Sarki, Charmakar, Bhool); 6. Poda (Deula, Pujari, Jalari); and 7. Chyame (Kuchikar, Chyamkhal). The Terai Dalits are 8. Kalar; 9. Kakaihiya; 10. Kori; 11. Khatik; 12. Khatwe (Mandal, Khang); 13. Chamar (Ram, Mochi, Harijan, Ravidas); 14. Chidimar; 15. Dom (Marik); 16. Tatma (Tanti, Das); 17. Dushadh (Paswan,

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Hajara); 18. Dhobi (Rajak, Hindu); 19.Pasi; 20. Bantar; 21.Musahar; 22.Mestar (Halkhor); 23. Sarbhang (Sarbariya); 24. Natuwa; 25. Dhandi; and 26. Dharikar/ Dhankar.

According to Nepal Human Development Report 2014, Dalits are among the poorest of the poor and one of the most vulnerable social groups in the country with no security of livelihood or life. Their socio-economic status is consistently lower than the national average: 43.6% of Hill Dalits and 38.2% of Terai Dalits are below the poverty line (national average is 25.2%). The life expectancy of Dalits is 50.8 years (national average is 59 years); 23% of Hill Dalits and 44% of Terai Dalits are landless; and the literacy rate of Dalits is 33.8% (national average is 65.9%). Dalit representation at the gazette level in the civil services is just 0.9%, while representation in judicial sector is just 2 percent. Their exclusion and deprivation is confirmed by the Nepal Multidimensional Exclusion Index 2011, which measured exclusion in income, health, education and influence/agency dimensions across the 103 different caste/ethnic groups in the country. The 32 most highly excluded groups included all 10 Madhesi (Terai) Dalit groups and all five Hill Dalit groups plus the unidentified Dalits, as well as the Muslims, nine Hill Janajati groups and six other Madhesi castes.

The UNDP Human Development Report 2014 for Nepal notes that among the four major castes and ethnic clusters-the Brahmans/Chhetris, the Janajatis, the Dalits, and the Muslims-the Brahmans/ Chhetris rank at the top with an HDI value of 0.538, followed by the Janajatis (excluding the Newars) at 0.482, the Dalits at 0.434, and the Muslims at 0.422. Moreover, the Nepal Living Standards Survey shows a clear association between caste and ethnicity, and levels of income, revealing a picture similar to that of the HDI. As a group, the Brahmans/Chhetris have the highest income per capita, followed by the Janajati and the Dalit. The per capita income of Hill Brahman is 1.7 times higher than that of the Dalit in general, and two times higher than that of the Madhesi Dalit.

Caste-based discrimination, including caste-based ‘untouchability’, is ubiquitous in Nepal. Due to caste discrimination and ‘untouchability’ in the past and the continuation of such practices in the present, Dalits face exclusion, marginalisation, oppression, discrimination and domination from the so called ‘higher’ caste people. Studies have documented hundreds of forms of caste discrimination, including ‘untouchability’, practised in both rural and urban areas. Dalits face discrimination in terms of certain acts and practices, including the denial of access to community property resources and services, entry into public places and participation in community events. In urban areas, for example, ‘untouchability’ may not be practised in public spaces like hotels and restaurants, but it is widely practised in the renting of houses to Dalits. Many Dalits experience caste discrimination with regards to their occupations, education, health and politics. Along with the changing context, the forms of discrimination have extended into policy making, government formation, political representation, constitutional appointments, and so on. Dalit women experience multiple discrimination based on the intersection of their caste, class and gender identities.

Violence and insecurity of life also distinguish the situation of Dalits. Dalit civil society organisations have noted cases such as killings, torture, abduction, disappearances, beatings,

threats, displacement, boycotts, rape, sexual abuse, trafficking and verbal abuse as some of the key forms of caste-based violence that Nepali Dalits endure. This situation is compounded by little access to justice for such rights violations.

The main demands of the Dalit movement in the country, therefore, are for the elimination of all forms of caste discrimination and ‘untouchability’, proportional representation of Dalits at all levels of decision-making bodies, land rights, protection for inter-caste marriages, gender equity and equality for Dalit women, and affirmative action for Dalits.

### 3. UN Treaties and International Obligations

Nepal is party to many UN treaties and, therefore, has agreed to implement its international human rights obligations through domestic laws, policies, budgets and programmes. These obligations include those laid out in the Universal Declaration on Human Rights (UDHR) 1948, International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) 1965 (ratified in 1971), International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 (ratified in 1971), International Covenant on Civil and Political Rights (ICCPR) 1966 (ratified in 1991), Convention on the Rights of Child (CRC) 1989 (ratified in 1990), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984 (ratified in 1991), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979 (ratified in 1991).

According to Article 9 of the Nepal Treaty Act 1990, with regard to the provisions of a treaty to which the Government of Nepal is a party, upon its ratification, accession, acceptance or approval by the Parliament, any inconsistencies with the provisions of prevailing laws will render the inconsistent provision of domestic law void for the purposes of that treaty. Moreover, the provisions of the treaty will be enforceable as the equivalent of Nepalese laws. Hence, the Nepal state has taken positive steps to ratify international treaties and adopt declarations which form the basis for the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent.

### 4. Nepal Government's Efforts in Adopting and Implementing Measures for the Elimination of Caste-based Discrimination

The Nepal government is in the process of drafting a new Constitution and 40 Dalit Parliamentarians are present in the Second Constitutional Assembly of 2013. Currently, Article 14 of the Interim Constitution 2007 ensures the right against untouchability and racial discrimination in any form, on grounds of caste, race, community or occupation. Article 13(2) also prohibits discrimination against any citizen in the application of general laws on grounds of religion, color, sex, caste, tribe, origin, language or ideological conviction or any of these. Moreover, Article 33 (d & d1) create a state obligation is to make an inclusive, democratic and progressive restructuring of the State, by ending the existing centralized and unitary structure of the State so as to address the problems including those of women, Dalit, Indigenous people, Madhesi, oppressed, excluded and minority communities and backward regions, while at the

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same time doing way with discrimination based on class, caste, language, gender, culture, religion and region; and to have the participation of Madhesis, Dalits, Indigenous peoples, women, laborers, farmers, the disabled, backward classes and regions in all organs of the state structure on the basis of proportional inclusion.

The only Dalit focused law enacted so far is the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011. The Act seeks to protect Nepali citizens from a number of crimes based on caste discrimination and ‘untouchability’, such as preventing, controlling or restricting anyone in any way from accessing or participation in any public place or private place; preventing access to public good and services; prohibiting and profession or compelling someone to carry out an occupation; preventing an inter-caste marriage; etc. The maximum punishment for such crimes is up to three years, with additional punishment applying to those accused who hold public offices.

The Act, however, has been poorly implemented by both national and local governments. Almost all cases of caste discrimination do not go through the due process of law due to the fear of negative repercussions from the ‘high’ caste perpetrators and their communities, mediation by community members and law enforcement agencies that ends in compromises in favour of ‘high’ caste people, and the reluctance of police to register the First Information Report (FIR). Even if the cases are filed, the police and judges often favour ‘high’ caste perpetrators, with the result that very few cases make it to convictions. Moreover, the few convictions that have been secured have also been sometimes on the lower side in terms of the sentence imposed, further sending a message on the non-seriousness of these crimes. Meanwhile, the ‘victims’ or survivors go through further humiliation, fear, displacement and even further victimization. There are, however, sporadic cases in which state officials have meted out justice, which indicate that if the government has the will power they can ensure access to justice to Dalits. For example, the government provided one million Nepalese rupees as compensation to the family of Manbir Sunar of Kalikot district, who was murdered after he touched the hearth of a ‘high’ caste family on 10 December 2011.

With mounting pressure from Dalit movements in the country, the Government of Nepal has established several institutional mechanisms to promote Dalit rights and development: The Neglected, Suppressed and Dalit Community Upliftment Development Committee, the National Dalit Commission and the Badi Development Board. In addition, a ‘Mechanism to Promote Dalit Rights and Eliminate Caste-Based Discrimination and Untouchability 2011’ has been created to take immediate action with regard to incidents of caste discrimination and untouchability. However, power and authority, and the budget of these government institutions are negligible and the appointments to the key positions in the institutions are highly politicized. Hence, political party affiliation often is a priority and not necessarily the common goods of Dalits.

The executive, legislative and judiciary branches of the government by and large have not been sensitive towards the plight and issues of Dalits. The Nepal government has taken few efforts to bring in Dalit targeted laws, policies, plans and programmes. The 13<sup>th</sup> Three-Year Plan aims to enable Nepal to become a developed country by 2022. The plan talks of the inclusion and participation of Dalits and marginalized communities in development. However, there is no separate budget allocated for the overall development of Dalits. Only a certain amount of the

general budget is allocated for educational and scholarship programs, etc. through the state line agencies and mechanisms. The National Housing Policy contains some specific provisions to meet the needs of Dalits in housing and basic services. Similarly, the Janata Aawas Karyakram (People's Housing Program) focuses on Terai/Madhesi Dalits in Terai districts. The second Long-Term Health Plan (1996-2016) promises to make basic free health services available to all and pledges to improve access for socially disadvantaged citizens including Dalits.

The Government of Nepal also has taken some initial positive steps, though inadequate, in terms of affirmative action (reservation) in government services and politics. Out of 45% of reserved seat, there is 9% reservation of seats in the civil service for Dalits through the Civil Service Act 1993, and 15% reservation of seats for recruitment in the police force, armed police force and Nepal army. Due to the proportional electoral system adopted for the Constituent Assembly elections, 13% (6.5% male and 6.5% female) seats of the total 335 seats have been allocated to Dalits.

Targeted government schemes have also been created in certain areas like education, bonded labor and inter-caste marriages. In education, NPR 350.00 scholarship is provided every year to each Dalit student enrolled in school; a nutritional food programme has been launched for primary school-going Dalit children; 9% scholarship seats (exemption of college fees) are reserved to Dalit students in higher education and 10% scholarship for Dalits is provided in private schools. As far as inter-caste marriages between Dalits and non-Dalits are concerned, the government provides NPR 100,000.00 as an incentive or encouragement for such marriages. Schemes for the abolishment of bonded labor (Haliya/Haruwa/Charuwa systems) have been introduced by the government in order to ensure the resettlement and proper rehabilitation of bonded Dalit laborers. In FY 2013/014, NPR 32,000,000.00 has been allocated for the rehabilitation of Freed 'Haliya' (bonded laborers) in order to provide them land and/or house and income-generating skills.

In brief, the Government of Nepal's efforts so far towards the elimination of all forms of caste discrimination are just the tip of the iceberg. Far more is required to enact measures to eliminate such discrimination and to build strong institutions capable of delivering or ensuring access to rights and entitlements for Dalits.

## 5. Major Gaps in National Measures

Though the Nepal state is party to many international conventions and covenants, it has a long way to go in order to domesticate these commitments by amending existing or introducing new laws, policies and programmes compatible with international law. The government often fails to fulfil its commitment to submit periodic reports to UN Treaty and Charter bodies in a timely manner. It has not taken visible steps in line with the many recommendations made by these bodies on the issue of caste discrimination and the situation of Dalits.

As mentioned above, the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 has not been implemented effectively. This has been due in part to caste biases in favour of 'high' castes and against Dalits, which prevent or hinder access to justice for the latter. There has also been inadequate government focus on promulgating awareness and



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information about this Act with government and police officials in the districts, let alone with Dalit communities. Implementation aside, there is also the lack of Regulations to support the effective implementation of the Act, even after three years. This creates confusion especially in the litigation process for such crimes. Moreover, the discretionary powers given to judges to pronounce punishments for such crimes means allows for lesser sentences to be given that downplay the seriousness of the crimes.

The National Dalit Commission's Bill, which would make the Commission a statutory body, has been pending since 2011. Without statutory status, the Commission is very limited in terms of its functions and ability to recommend new government safeguards for Dalit welfare as well as to monitor the existing safeguards. Similarly, the Neglected, Suppressed and Dalit Community Upliftment Development Committee and Badi Development Board are highly influenced by undue political interference and are not adequately resourced in order to meet their objectives. The mechanism for Promoting Dalit Rights and Eradicating Caste-Based Discrimination and Untouchability 2011, coordinated by the Chief Secretary of the government, remains inactive since its inception as it lacks both an adequate budget and statutory mandate.

The proclamation of an "Untouchability-free State" by the reinstated Parliament on 4 June 2006 and the declaration of a "National Day against Untouchability" (4 June) are not yet implemented by the Nepali state.

The Government of Nepal has been formulating Dalit inclusive and targeted plans and programmes without having a separate Inclusion Act. The enactment of an Inclusion Act would help in terms of establishing the principle of inclusion and what it requires into all plans and programs uniformly, besides supporting the monitoring and evaluation of government programs and schemes as regards their effective implementation.

The government has not allocated an adequate budget for the overall development of the Dalit community. At most, there is nominal budget allocated for the National Dalit Commission, Neglected Suppressed and Dalit Community Upliftment Development Committee and Badi Development Board. Moreover, there is an absence of holistic planning for Dalit development by the government, which could be matched by adequate financial allocations. The situation is even worse in the case of Dalit women: there is still little official understanding of the intersectional caste and gender discrimination they face and which requires specific plans and programmes to ensure they have equal access to resources and entitlements. This inability to comprehensively plan equity and inclusion measures for Dalits and Dalit women is supported by the lack of comprehensive disaggregated government data on different aspects of Dalits' lives, including disaggregated data on Dalit women.

Moreover, little information is publicly available on the status of implementation of legal and other provisions for Dalit rights as yet. The government monitoring and evaluation mechanisms seem to be not very effective in overseeing and evaluating neither the general nor the targeted programmes and schemes for Dalits. Hence, it is very difficult to map the real achievements of the existing government programmes related to Dalit communities.

## 6. Key Recommendations

### Legal Measures:

- The government should amend section 7 of the Caste based Discrimination and Untouchability (Offense and Punishment) Act, 2011. Currently, this section provides for the fine and punishment to the offender as ‘imprisonment for a term from Three months to Three years *or* a fine from One Thousand Rupees to Twenty Five Thousand, or both’. This allows for judges to exercise discretionary power in awarding sentences, which is often a lesser sentence. Therefore, the optional provision "or" should be deleted from the section and the sentence increased to ‘imprisonment for over five years and a monetary fine of at least NPR 100,000’.
- For effective implementation of the Caste based Discrimination and Untouchability (Offense and Punishment) Act, 2011, the government should initiate the process of formulating the Rules to the Act at the earliest. It should also produce an annual report, available to the public, on the status of implementation of this Act.
- The government should enact a strong provision to punish police officials who refuse to register FIRs in cases of caste discrimination and violence, carry out improper investigations, or prevent or discourage victims from reporting such incidents.
- The Dalit Commission should be made into a constitutional body.
- A law on inclusion and reservations for Dalits should be enacted covering both the public and private sectors. The percentage of such reservation should be according to the population of Dalit & 10% extra compensation should be provided.
- The Nepali Parliament should pass the Bonded Labor (Prohibition, Prevention and Rehabilitation) Bill, so that systematic, concrete and dynamic labor standards are in place for the abolishment of bonded labor.
- The relevant Acts and Rules related to humanitarian relief should be amended to make it mandatory for the concerned authorities to investigate any complaints of discrimination or denial of humanitarian aid distribution. Those humanitarian actors who practice discriminatory behavior during relief and rehabilitation processes should be liable for severe departmental punishment.
- The Civil Code, 1963 should be amended to incorporate provisions on inter-caste marriages that meter out a fine and punishment to persons who discourage and conspire against inter-caste marriages.

### Policy Measures:

- A comprehensive policy, strategy and plan of action should be formulated for the effective elimination of caste discrimination and untouchability, and the overall protection of Dalits from all kinds of violence and atrocities that covers both aspects of prevention and redress.

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This plan should include measures to ensure the effective implementation of the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011.

- The government should enact a policy to ensure the proportionate representation of Dalits in all state institutions related to law enforcement and development.
- The government should incorporate provisions that ensure the meaningful participation of Dalits in political parties at all levels, aside from ensuring their participation through the Political Parties Act, 2002.
- A comprehensive affirmative action policy, both preferential and remedial, must be evolved and implemented in all positions of civil service, police, army, media and the private sector.
- The current provision for free legal aid to the poor in general should be amended to specify free legal aid for Dalits as well.
- Dalit targeted planning and programmes must be restored in the coming five or three year interim plans. These plans and programmes should be developed through a process to assess the situation and needs of Dalit communities, with a separate section on Dalit women.
- The provision of one community school one Dalit teacher should be endorsed in the national education policy.
- A National Policy and Act on Disaster Management (Mitigation and Relief) should be enacted, which prohibits discrimination and mandates inclusion in disaster management, and a focus on Dalit and other marginalized communities incorporated into the humanitarian aid administration process.
- The government should make mandatory provisions for corporate houses/companies to appoint a specific board member to oversee an inclusion policy, and a senior manager to maximize the benefits of a diverse workforce. Progress towards diversity in the workplace should be reported in the annual reports of companies and made available to the public.

### **Programmatic and Budgetary Measures:**

- The government should conduct awareness campaigns particularly with regard to provisions of the Caste-based Discrimination and Untouchability Act, 2011 and to end discrimination against Dalits based on their traditional occupations. This should be coupled with regular trainings for all relevant government officials on the Act and issues of caste discrimination, untouchability and caste-based violence.
- Dalits' access to adequate housing, food, water and sanitation should be made into legal entitlements, providing a basis for individuals and groups to hold governments and other stakeholders accountable for realizing these rights. Targeted and sustainable programmes related to poverty reduction, sanitation infrastructure in Dalit residential areas, access to potable drinking water, food security and decent housing should reach all Dalits in need.



- The "People's Housing Programme" should be expanded to cover all landless Dalits in all regions of the country.
- The Freed Haliya (bonded labor) rehabilitation plan should be implemented effectively, with adequate monitoring and reporting mechanisms.
- The inter-caste marriage promotion incentive amount should be increased and distributed effectively on time.
- The existing scholarship percentage should be increased and reserved seats for Dalit students expanded in all the universities, colleges, schools and related educational institutions.
- The government should launch special programmes to encourage Dalits to work in the media, for example, by offering training to Dalits candidates in journalism, establishing scholarships, organizing job fairs to recruit them, etc.
- The government should take the initiative to modernize and commercialize the traditional occupations of Dalits. This should be accompanied by appropriate policies like tax exemptions and soft loan for Dalit entrepreneurs in order to encourage work diversification and new opportunities among the community.
- For the overall development of Dalits and the elimination of caste-based discrimination and 'untouchability', a sufficient budget should be allocated in a separate budget heading for Dalits.

#### **Mechanisms:**

- All mechanisms targeting the Dalit community should be granted autonomous powers and provided with sufficient budgets and skilled human resources.
- Budget allocations and effective guidelines should be made in order to activate the "Mechanism of Dalits Right Promotion and Elimination of Caste-Based Discrimination and Untouchability, 2011".
- The National Women's Commission should prioritise cases of Dalit women's rights violations.
- A Dalit women's empowerment and development desk should be established in the National Women's Commission, National Dalit Commission, Neglected, Suppressed and Dalit Community Upliftment Development Committee and the Badi Community Development Board.

#### **Data Measures:**

The government, especially the Central Bureau of Statistics and various ministries, should collect and provide caste, gender and region disaggregated data on all major development indicators such as education, health, employment, representation, etc.

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National institutions such as the courts, Office of the Attorney General and Police Office should maintain records of all cases involving Dalits and regularly publish and disseminate this data to the public.

The government's reports should document the status of the Dalit community in terms of access to entrepreneurship, trade, business, industries, etc.

### **Other Measures:**

- A “Rapid Response Task Force” should be formed, under the direct coordination of the concerned ministries and authorities, to immediately respond and take action in incidents of caste-based discrimination and violence.
- An atmosphere of inter-and intra-community activities focusing on social assimilation, respect and dignity among diverse communities should be created. This can be achieved through such activities as common meals, inter-caste marriages, attending funeral and wedding processes, hospitality during crisis times, blood donation and courtesy within and across caste groups.
- International aid agencies should incorporate Dalit rights as one of the conditions in all programmes and projects that render support to the Nepal Government.

# COMBATING SEGREGATION

## GUIDELINE NO: 21

**National and local governments should ensure access to public places, including community centers, hospitals, schools, places of worship, and water resources, by those from affected communities; take measures to eliminate and prevent segregation in employment, housing and education and ensure protection from violence against those who cross the boundaries of segregation.**

Caste-based discrimination including caste-based untouchability is still rampant in Nepal. Many Dalits are denied entry into public places. Even in cosmopolitan cities like Kathmandu, Dalits are prevented from renting houses by non-Dalit house owners and from entering temples. In many places Dalits have to use separate water sources and where they have to share the same water source as others, Dalits are only allowed to use it after the non-Dalits have finished. Dalits are discriminated at wedding ceremonies and religious feasts as they are required to eat separately from non-Dalit counterparts. In some places, Dalit students have to sit outside classrooms and in many places they have to drink water or have their mid-day meal/tiffin separately. Many Dalits do not dare to go against such practices of caste-based discrimination for fear of repercussion. Those who do dare may face numerous problems including violence.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that Dalits are able to lead a discrimination-free, secure life and are able to have equal access and the freedom to exercise their rights. This should include:

- **Accessing public places:** a special action plan should be developed to ensure easy access for Dalits to all kinds of public places, services, rental and benefits.
- **Preventing/eliminating segregation in employment, housing and education:** Dalits should be able to freely mix with others in the spheres of employment, housing and education without being isolated or treated differently. Anyone who tries to enforce such segregation should be charged.

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- **Ensuring protection against violence:** Dalits should be entitled to State protection if they are subjected to caste-based violence or segregation. In addition, proactive measures should be put into place by the State to change caste-based norms on segregation.

### 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- States should prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race (including caste)... to equality before the law in the enjoyment of the rights: to work, to free choice of employment; to housing; to education and training; to access any public place or service; to security of person and protection by the State against any violence or bodily harm. (*Article 5(d), ICERD*)
- Everyone has the right of access, without discrimination, to any place or service intended for the use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks. (*Article 5(e)(f), ICERD*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment. Measures should be taken against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for Dalits. (*CERD. (2002). General Recommendation 29: Descent-based Discrimination, paras. 15 & 39*)
- States should secure for everyone the right of access on an equal and non-discriminatory basis to any place or service intended for use by the general public. (*CERD. (2002). General Recommendation 29, para. 16*)
- The Committee is concerned at information on the existence of segregated residential areas for Dalits, social exclusion of inter-caste couples, restriction to certain types of employment, and denial of access to public spaces, places of worship and public sources of food and water, as well as at allegations that public funds were used for the construction of separate water taps for Dalits.... [It] recommends that, as a matter of priority, measures [be taken] to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind, and make determined efforts to ensure the practical and effective implementation of these measures. (*CERD. (2004). Concluding Observations on Nepal report 2004. UN Doc. CERD/C/64/CO/5, para. 12*)
- The Committee recommends the immediate application of the Interim Constitution and laws prohibiting caste-based discrimination and segregation in cases of denial of access to public water sources. It recommends that access to public wells be closely

monitored by the District Development Committees or by another appropriate local body. (CESCR. (2008). *Concluding Observations on Nepal State report. UN Doc. E/C.12/NPL/CO/2, para. 43*)

- The State Parties should strengthen its measures to implement the CBD & U (Offence and Punishment) Act (2011) and to eliminate all forms of discrimination against the Dalit community. It should also ensure that the National Dalit Commission can carry out its mandate effectively with sufficient resources, and that its recommendations are effectively implemented. (HRC. (2014). *Concluding Observations on Nepal State report. UN Doc. CCPR/C/NPL/CO/2, para. 9*)

#### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

##### Constitutional and legal measures

- No person shall be discriminated against as untouchable and subjected to caste-based discrimination in any form, on grounds of caste, race, community or occupation. Such discriminatory treatment shall be punishable, and the victim shall be entitled to compensation as determined by law. (*Article 14(1), Interim Constitution of Nepal, 2007*)
- No person shall, on grounds of caste or race, be deprived of the use of services, facilities or utilities available to the public or of the access to any public place or public religious sites or of the performance of any religious function. (*Article 14(2), Interim Constitution of Nepal, 2007*)
- No one shall, on the grounds of custom, tradition, religion, culture, rituals, caste, race, descent, community or occupation, commit or cause to commit the following act in public or private sphere (place) against a person by practicing caste-based discrimination or untouchability: (i) prevent, control or restrict anyone in any way from entering, attending or participating; (ii) expel anyone from a public place or public occasion or to commit social exclusion or discrimination of any kind or to impose restriction on such act or to demonstrate any other kind of intolerant behavior. (*Section 4 (2), CBD & U (Offence and Punishment) Act, 2011*)
- No one shall, on the grounds of caste, race, descent, community or occupation, deprive a person of using or enjoying public service. (*Section 4 (3), CBD & U (Offence and Punishment) Act, 2011*)
- In the course of appointing for various positions, the Government of Nepal shall appoint only on the ground of merit and no citizen shall be discriminated on the grounds of religion, color, gender, caste, tribe or any of them in the appointment of government or any other public service. (*Section 4, Civil Rights Act, 1955*)

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### Policy measures

According to the Three-Year Plan (2009/10-2012/13) in the national development plans, the policy of inclusion and participation of Dalits and marginalized communities is being institutionalized and all forms of discrimination and inequality (legal, social, cultural, linguistic, religious, economic, ethnic, physical, gender and regional) are expected to be expelled from Nepalese society.

### Programmatic and budgetary measures

- There is no specific program of the Government of Nepal to eliminate or prevent continuing practices of segregation or denial of equal access to public places.
- There is no budget specifically allocated to prevent segregation so far. However, NPR 21,139,000, NPR 67,500,000 and NPR 10,000,000 was allocated in the 2013/14 financial year for the National Dalit Commission, the Neglected, Suppressed and Dalit Community Upliftment Development Committee and the Badi Community Development Board respectively.

### National mechanisms

- **Neglected, Suppressed and Dalit Community Upliftment Development Committee:** the Government of Nepal established the Neglected, Suppressed and Dalit Community Upliftment Development Committee in 1996. It later expanded and formed a "Dalit Community Upliftment District Coordination Committee" in all 75 districts of Nepal. Since its establishment, this committee has been raising media awareness to combat segregation.
- **National Dalit Commission:** the Government of Nepal established the National Dalits' Commission on 19<sup>th</sup> March 2002. Its objectives were to make high-level policies and to formulate programs to protect, promote and safeguard the interests and human rights of Dalits and to uphold justice through the overall development of Dalits.
- **Badi Community Development Board:** the Government of Nepal established the Badi Community Development Board in 2011. It is mandated to formulate and implement concrete policies and programs for the development, upliftment and protection of the Badi community. It has been working to combat the segregation of the Badi Community since its inception.
- **Mechanism for Promotion of Dalits' Rights and Eliminating CBD & U:** this mechanism was formed in 2011 under the coordination of the Chief Secretary of the Government of Nepal. It is located in the Office of the Prime Minister. It is assigned with the task of taking immediate action on incidents of CBD & U.
- **National Human Rights Commission:** the National Human Rights Commission of Nepal is an independent and autonomous constitutional body. It investigates the overall human rights violations of country and makes recommendations to the Government of Nepal regarding the appropriate punishments for perpetrators.



- **National Women's Commission:** the National Women's Commission was established on 7<sup>th</sup> March 2002 and is mandated to protect, promote and safeguard the interests and rights of women and to uphold justice through the overall development of all Nepalese women

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **A rise in the reporting of caste-based discrimination:** there were 72 caste-based discrimination cases in 2011 (*INSEC. (2013). Human Rights Year Book. Kathmandu: INSEC, pp. 6-7*) and 111 and 101 in 2012 and 2013 respectively (*INSEC. (2014). Human Rights Year Book. Kathmandu: INSEC, p. 6*). The rise in cases is evidence that people started reporting the cases on the basis of the CBD & U Act (2011).
- **Ineffective implementation of the CBD & U Act:** the SAMATA foundation has documented and played an active role in assessing 20 cases relating to CBD & U between March 2013 and July 2014. Only 5 of these cases were taken forward into formal legal procedure on the basis of the CBD & U Act (2011). Of these, only two perpetrators were penalized nominally. The rest were cleared on the pretext of there being an absence of adequate evidence. This glimpse provides a clear picture of the ineffective implementation of the CBD & U Act.
- **A lack of sufficient resources provided to the National Dalit Commission:** the lack of resources and the failure to effectively implement its recommendations is also a matter of concern. (*HRC. (2014). Concluding Observations on Nepal State report. UN Doc. CCPR/C/NPL/CO/2, para. 9*)
- **Incidents relating to segregation and untouchability practices:** one study of 7 districts in the country reported 12 incidents relating to segregation and untouchability practices occurring in 2012. (*Nepali, S.B. (2011). Human Rights Situation of Dalit in Nepal. Lalitpur: NNDSWO, p. 25*)
- **Denial of access to public wells:** concern has been raised regarding the denial of access of persons belonging to 'lower' castes to public wells, thereby directly threatening their right to an adequate standard of living and their right to the highest attainable standard of health. (*CESCR. (2008). UN Doc. Concluding Observations on Nepal State report. UN Doc. E/C.12/NPL/CO/2, para. 24*)
- **Human rights violations:** NNDSWO has monitored and tracked 78 cases related to Dalit human rights violations and caste-based discrimination in 2011. (*NNDSWP, (2012). Annual Report 2011/2012. Lalitpur: NNDSWO, p. 10*)

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- **Access to justice:** The Supreme Court of Nepal has issued 235 directive orders concerning Dalits' access to justice during the year 2010 of which 97 orders were implemented (LANCAU. (2013). *Final Evaluation of Project "Enhancing Access to Justice for Dalits"*. Kathmandu: LANCAU)

### 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **An increase in the registration of caste-based discrimination cases:** the enactment of the CBD & U Act has been instrumental in increasing the tendency of registering cases in relation to the CBD & U. 7, 11, 12, 12, 16 and 22 incidents of caste-based discrimination, including untouchability, were registered in the financial years 2007/08, 2008/09, 2009/2010, 2010/011, 2011/012, 2012/2013 respectively. (Paudel, M. S. (2014). *Jatiya Bhedbhav Ra Chhuwachhut Anusandhan Tatha Yasko Abhiyojan (Investigation and Charging in Caste-Based Discrimination and Untouchability Crime)*. Kathmandu: Juri Nepal and NDC)
- **An increase in media coverage of caste-based discrimination:** mainstream print, electronic media and social media are focusing their attention on the atrocities of CBD & U thereby creating a moral pressure on enforcing agents to implement the Act. According to media monitoring done by the SAMATA foundation, national daily newspapers covered 99 incidents related to caste-based discrimination in 2013.

### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is an absence of rules (specific procedures) with regard to CBD & U (Offence and Punishment) Act (2011) that may provide loopholes to enforcing agents. As a result, caste-based discrimination cases could be distorted and weakened.
- Perpetrators are bailed due to the current provision under the CBD & U Act that defines a maximum imprisonment of three years. In Nepal there is legal provision for releasing perpetrators on bail who are to be imprisoned for up to three years.
- The Dalit community lack representation in policy-making and decision-making positions to combat segregation.
- The National Dalit Commission does not have constitutional status as it was formed by an ad-hoc ministerial decision. It is therefore deprived of legitimate authority.
- The Three Year Development Plans do not address the issue of elimination of the segregation culture and practice that has prevailed in Nepali society for a long time.
- The Badi Community Development Board is focused only on a single sub-caste of the Dalit Community. There are, in total, 26 sub-castes of Dalits in Nepal.



- The National Human Rights Commission takes care of overall human rights - it does not have unit looking exclusively after Dalit affairs.
- Most of the survivors of caste-based discrimination are reluctant to register a FIR because they fear repercussions from "high" caste offenders. There is also reluctance shown by the police to register FIRs, a lack of information, money and legal help to pursue court cases, a lack of effort by political leaders and social activists to settle the case with mutual agreements, and a lack of faith in the justice system (*LANCAU. (2013). Final Evaluation of Project "Enhancing Access to Justice for Dalits". Kathmandu: LANCAU.*)
- There is a lack of targeted programs and budget allocation to ensure access to public places, to take measures to eliminate and prevent segregation and to ensure protection from violence against those who cross the boundaries of segregation in national institutions. The situation is deteriorated due to political instability and frequent leadership changes of within these institutions.
- The National Women's Commission may tend to generalize women's issues. This may result in lesser attention paid to Dalit women who, when compared to other women, have more severe issues with regard to caste-based discrimination, inter-caste marriage, poverty, illiteracy, lack of awareness, sexual exploitation and a lack of representation at decision making levels.

## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- A network of Dalit civil society organizations (CSOs) are carrying out advocacy to increase the provision of imprisonment under the CBD & U Act (2011) to more than 5 years and to increase the monetary fine and compensation to at least NPR 100,000.
- Dalits are asking for the Dalit budgets to be reviewed to ensure that specific budget is allocated for the elimination of CBD & U including segregation practices.
- Advocacy is being carried out to give the National Dalit Commission constitutional status.
- Dalit communities have been organizing programs to eliminate practices of segregation through workshops and seminars. These activities discourage the social segregation that is found surrounding temple entries, co-feasts and the production and selling of dairy products produced by the Dalit farmers. Access to public places and eliminating segregation have been the main issues of activism in the Dalit movement since the 1950's. (*Maharjan, R. and Dr. Kisan, Y.B. (2014). Dalan Ra Pratirodhko Itihas (History of Deprivation and Resistance) in Dalan Biruddha Pratirodh (Resistance against Deprivation). Lalitpur: SAMATA foundation, p.19*)
- To end untouchability and caste-based discrimination in Nepal, the National 10-year Strategic Plan of Action (2013) has been brought into action by the Dalit NGO Federation.

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- A 12-day campaign against CBD & U has been organized by Dalit civil society annually since 2012.
- The National Dalit Commission, the Neglected, Suppressed and Dalit Community Upliftment Development Committee and the Badi Community Development Board committed to jointly work together against CBD & U in a meeting organized by the SAMATA foundation on 19 September 2013.
- The Unified Dalit Political Struggle Committee was formed in 2009 as a collective campaign, envisioned by the Dalit wings of major political parties, to fight against all kinds of discrimination, injustice and caste-based discrimination. A common agenda and Code of Conduct have been prepared by the Committee to manage the activities effectively.
- JMC, ACORAB and AMARK have jointly launched a one-year radio program in 2014 for raising awareness about Dalit rights with a focus on access to public places, eliminating segregation and protecting Dalits from violations of their rights.
- Dalit-led CSOs including the SAMATA foundation, FEDO, NNDSWO, DWO, RDNN and ADWAN have been engaging in various activities like publishing books, fact finding, organizing campaigns/seminars on various national and international days and conducting advocacy meetings with different stakeholders to eliminate segregation practices.
- Dalit Mukti Samaj Nepal has declared "Dalit Decade", campaigning for combating segregation.
- The SAMATA foundation, JMC and COCAP alongside other Dalit and non-Dalit organizations organized a campaign against untouchability all the way from the eastern part of Nepal to the far western part.

### 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- Some human rights organizations, human rights activists and non-Dalit scholars are working jointly with Dalit organizations and movements to campaign for access to public places, the elimination of segregation and the protection of Dalit rights. Their efforts are positive but not sufficient.
- The manifestos of political parties mention their commitment to address the situation of Dalit segregation in various fields by adopting inclusionary provision.
- In comparison to the past, the media is covering Dalit issues more significantly.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- For effective implementation of the CBD & U Act (2011), the Government of Nepal should initiate the formulation of rules and specific procedures as soon as possible.
- The Government of Nepal should ensure the protection of the plaintiff immediately after the registration of FIR.
- The Government of Nepal should instruct the local police, quasi-judicial bodies and district administration office to encourage survivors of caste-based discrimination to register a FIR and provide free legal aid where necessary.
- The Government of Nepal should immediately formulate the regulation of the CBD & U Act. Local Governments should implement it effectively and other supportive laws, policies and institutional structures should be made functional to eliminate and prevent segregation practices and untouchability.
- The National Dalit Commission should be made a constitutional body.
- The National Human Rights Commission should regularly monitor violations of Dalit rights in an effective way. There should be a unit for specifically handling Dalit issues.
- Dalits should be appointed to decision-making positions where decisions are made to provide justice to Dalit communities.
- The Government of Nepal should conduct awareness campaigns particularly in regards to promoting the provisions made under the CBD & U Act (2011). In addition, the current provision of providing free Legal Aid to the poor in general should be made Dalit-specific.
- The Government of Nepal needs to produce Dalit-centric programs and allocate sufficient budget to ensure the successful implementation of sensitive, effective social activities and programs that would ensure access to public places.
- The Government of Nepal should amend the CBD & U (Offence & Punishment) Act (2011) to increase the term of imprisonment to more than 5 years and the monetary fine and compensation to at least NPR 100,000.
- Substantial budget should be allocated to combat segregation issues.
- The Government of Nepal Plans should incorporate activities for socio-cultural development through eliminating ill practices of segregation in the society.
- The National Women's Commission needs to prioritize cases of Dalit women's rights violations.

**GUIDELINE NO: 22**

**National and local governments should introduce and apply special measures to eradicate the persistence of the social and cultural stigma of impurity and pollution that de facto precludes marriages between members of affected and non-affected communities and, in some societies, gives rise to violence, collective punishment and social exclusion against couples from different communities.**

Unlike other inter-caste marriages, Dalits suffer more if they marry outside their caste. In spite of non-discriminatory provisions in the Interim Constitution (2007) and the promotion of inter-caste marriage by the Government of Nepal, an inter-caste couple, in which one of the spouses is Dalit, has to be ready to face the consequences. These include displacement from their respective communities, social boycott, torture, house burning, death threats and sometimes even death.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that Dalits and non-Dalits are able to marry without fear of violence or exclusion. This should include:

- **Eradicating ‘untouchability’ practices and socio-cultural notions of impurity-pollution that prevent inter-caste marriages:** interventions should include dispelling cultural religious myths (as per the need of modern context) and making citizens aware of their human rights and dignity in order to end discrimination and disparity.
- **Protecting those engaged in inter-caste marriages:** members of affected and non-affected communities should be protected from violence, collective punishment and social exclusion.
- **Prosecuting perpetrators:** those who enforce the social stigma of impurity and pollution that prevents inter-caste marriages should be prosecuted.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (*Article 16(1), UDHR*)
- All men and women of marriageable age have the right to marry and to found a family. (*Article 23(2), ICCPR*)
- States should prohibit and eliminate racial discrimination in all its forms and to guarantee the

right of everyone, without distinction as to race... (caste), to equality before the law, notably in the enjoyment of the right to marriage and choice of spouse. (*Article 5(iv) ICERD*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should take steps to identify those descent-based communities under their jurisdiction who suffer from caste discrimination as recognized by an inability or restricted ability to alter inherited status; and socially enforced restrictions on marriage outside the community. (*CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 1*)
- States should take resolute measures to secure rights of marriage for members of descent-based communities (e.g. Dalits) who wish to marry outside the community. (*CERD. (2002). General Recommendation 29, para. 32*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### **Constitutional and legal measures**

- No such act as to purport to demonstrate any superiority or inferiority of the person or persons belonging to any caste, tribe or origin or to justify social discrimination on the ground of caste or race or to publicize ideology based on racial superiority or hatred or to encourage caste discrimination in any manner shall be allowed. (*Article 14(4), Interim Constitution of Nepal, 2007*)
- Any marriage may be solemnized with one's consent according to one's own will and pleasure, subject to certain provisions against consanguinity in marriages. (*Number (1), Chapter Of Marriage under the National Code, 1963*)
- Except if otherwise prohibited to get marriage pursuant to prevailing law, men and women of marriageable age may conclude their marriages pursuant to this Act. (*Sec. (4) of Marriage Registration Act, 1971*)
- No one shall, on the ground of caste, race, descent or community, prevent a person of marriageable age pursuant to prevailing law from getting inter-caste marriage; or shall deny performing the naming ceremony for the person born from such marriage or compelling or causing to compel for divorce. (*Section 4(11), CBD & U (Offence and Punishment) Act, 2011*)
- The Incentive Grant Distribution Procedure of Marriage between Dalit and non-Dalit (2009) provides that any Dalit-non-Dalit couple attaining marriageable age (20 years) can claim the incentive grant of NPR 1,00,000 after completion of the procedure prescribed by the

## Chapter - I : COMBATING SEGREGATION

Government of Nepal. This is applicable to any couples married since 2009. The District Administration Office distributes the cash incentives.

### National mechanisms

- **National Dalit Commission:** monitors the events of inter-caste marriage and their compliances.
- **District Administration Office:** registers marriages according to the Marriage Registration Act (1971).
- **Village Development Committees and the Municipality:** register marriages, births, deaths and other personal events according to the Registration Act (1976).

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Government incentives are being received:** according to the record of the District Administration Office of Banke, Parbat, Dhanusha, 19 couples have received incentives provided by the Government of Nepal (*Bishwakarma, T. (2013). Incentive for Inter Caste Marriage between Dalit and Non-Dalit: Challenges and Opportunities in the Context of Nepal. Lalitpur: SNV, p. 43, retrieved on 21 August 2014 from social inclusion.org.np*). Similarly, the District Administration Office of Surkhet said that 53 couples had been able to receive incentives provided by the Government of Nepal since the implementation of the Procedure. In Makwanpur, 27 out of 35 inter-caste married couples, received incentives in the 2012/13 financial year. (*'Couples get allowance in inter-caste marriage', (21 August 2014). retrieved on 21 August 2014 from Nepal News.com*)
- **Caste-based discrimination still continues:** Sete Damai, a resident of Dailekh district, was stabbed to death on August 30, 2011 by a group of non-Dalit members when his son married a non-Dalit girl. Later on, the Government of Nepal promised to declare Sete Damai a martyr of caste-based discrimination and to provide compensation of NPR 100,000 to the victim's family.

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:



- **An increase in the practice of inter-caste marriage:** 17 inter-caste marriages were registered in just 7 districts by National Dalit Commission during the 2010/11 financial year. (NNDSWO, (2012). *Nepal ma Dalit Samudayako Manab Adhikarko Abastha. Lalitpur: NNDSWO, p. 19*)

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- Sometimes, the situation of an inter-caste marriage creates conflict between Dalits and non-Dalits and often non-Dalits will resort to intimidation, violence and death threats. Despite the existing legal provisions for inter-caste marriage, the wider society is still against such marriage practices. This is supported by the media monitoring conducted by the SAMATA foundation in 2013, according to which those in inter-caste marriages had been facing various atrocities including displacement, social boycott, physical assault, and false cases. For example, in Gorkha Mr. Jit Bahadur Sunar and Sunita Gurung were physically assaulted and displaced due to their inter-caste marriage. After legal intervention, a court finally fined NPR 10,000 to the perpetrators and provided compensation NPR 25,000 to the victims.
- There is a lack of security provision in State mechanisms for inter-caste couples. As a result they have to face the consequences that include displacement from their locality, child marriage, human trafficking, kidnapping, attempted rape and battering upon the family.
- There is no long-term action plan or special strategy for promoting inter-caste marriage.
- There is a lack of special program and sufficient budgetary allocation for the survivors of caste-based discrimination due to inter-caste marriage.
- There is a lack of legal provisions to give maximum punishment to the perpetrators of such crimes.
- There is no simplified procedure for couples to claim inter-caste marriage incentives.

## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- Dalit NGOs such as LANCAU, Dalit NGO Federation, FEDO, NNDSWO, and DWO are advocating for justice for inter-caste married couples who have survived violence.
- LANCAU Nepal provides legal support to the survivors.
- SAMATA foundation, NNDSWO, FEDO, RDN, JMC, DNF and others are supporting inter-caste married couples with material facilities, honoring in a public place, and help with difficulties such as filing a case with police, court hearings and advocating on behalf of them before, after or during marriage time.

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### 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- Some human right organizations including the organizations working on the issues of women's human rights like Maiti Nepal, WOREC, AATWIN, human rights defenders, civil society leaders, social activists and social mobilizers have supported and promoted inter caste marriage.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The Chapter of Marriage under the Civil Code (1963) should be made stronger by amending the existing provision and incorporating provisions on inter-caste marriage. This should include strong fines and punishment to those who discourage and conspire against inter-caste marriage.
- Alternative security, shelter and rehabilitation centers should be established for the security of inter-caste marriage-victim survivors.
- A special program, including security and budgetary allocations, should be made for the sustainability of inter-caste married couples and their families.
- The amount spent on the inter-caste marriage promotion incentive should be increased and distributed effectively and on time.
- Awareness raising programs should be carried out by States at the grassroots level to promote inter-caste marriage.
- The procedure to claim the inter-caste marriage incentive should be simplified.



## PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

### GUIDELINE NO: 24

**State actors should take special measures, such as devising and implementing comprehensive plans of action and creating a monitoring mechanism, to protect affected communities from physical violence, including torture, sexual violence and extrajudicial killings.**

Dalits have been humiliated and exploited by the dominant castes for a long time due to their cultural and socio-economic status. This vulnerable situation makes Dalits prone to various forms of violence against them. Even amongst Dalits, Dalit women and children are more susceptible from the view point of physical violence and sexual violence. In recent years, the number of incidences of violence against Dalits has increased. The existing laws and judicial system are inadequate for the security of Dalits.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that Dalit communities are protected from violence. This should include:

- **Devising Dalit-centric comprehensive plans of action:** to protect Dalits from various forms of violence due to CBD & U.
- **Creating a monitoring mechanism to protect Dalits from physical violence:** the formulation of Acts for the security of people is not enough - implementation should also be ensured for which monitoring mechanisms should be developed. State machineries should be accountable for duty accomplishment and Dalits, being more prone to violence, should be given more preference.
- **Protecting Dalit women:** Dalit women should be protected from sexual violence/ exploitation, sexual harassment and rape (including forced ritualized prostitution).

## Chapter - II : PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

### 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- Everyone has the right to life and no one shall be arbitrarily deprived of their life. (*Article 6, ICCPR*)
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (*Article 7, ICCPR*)
- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention, nor deprived of their liberty outside of legal procedures. (*Article 9, ICCPR*)
- Everyone has the right to security of person and protection by the State against violence or bodily harm without discrimination based on race (caste). (*Article 5(b), ICERD*)
- The State should take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women. (*Article 6, CEDAW*)
- The State should develop national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing. (*Article 4(e), Declaration on Elimination of Violence against Women*)
- Every child has the right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, malnutrition or exploitation, including sexual abuse, torture, sale or traffic in children. (*Articles 19, 35 & 37, CRC*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should pursue national strategies aimed at: (i) implementing plans of action to eliminate structural racial discrimination, including guidelines for prevention, investigation and prosecution of racist incidents. (*CERD. (2005). General Recommendation 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System. UN Doc. A/60/18, para. 5*)
- States should organize training programs for public officials and law-enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities. (*CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 25*)
- The State Parties should protect all members of society, in particular citizens belonging to marginalized and disadvantaged groups or castes, such as Dalits. The State Parties should take specific steps to safeguard their physical integrity, ensure that accountability

mechanisms are in place guaranteeing that caste is not used as a basis for abuses, unlawful detention and torture, and take steps to ensure more diverse caste and ethnic representation in its police and security forces. (*CAT. (2007). Conclusions and Recommendations on Nepal State report. UN Doc. CAT/C/NPL/CO/2, para. 26*)

- State Parties shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences of trafficking in women and children for prostitution. (*Article VIII(1) SAARC Convention on Preventing and Combating Trafficking Woman and Children for Prostitution, 2002*)

#### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

##### Constitutional and legal measures

- The State shall not discriminate against citizens or among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, Indigenous peoples (Adibasi, Janajati), Madhesi or farmers, workers, economically, socially or culturally backward classes or children, the aged and the disabled or those who are physically or mentally incapacitated. (*Article 13(2)-(3), Interim Constitution of Nepal, 2007*)
- All citizens shall be equal before the law. No person shall be denied equal protection of the laws. (*Article 13(1), Interim Constitution of Nepal, 2007*)
- No person who is arrested shall be detained in custody without informing him or her of the reasons for such arrest. (*Article 24(1), Interim Constitution of Nepal, 2007*)
- Every person shall have the right to a fair trial by a competent court or judicial body. (*Article 24(9), Interim Constitution of Nepal, 2007*)
- The CBD & U (Offence and Punishment) Act (2011) makes punishable the acts of untouchability, exclusion, restriction, expulsion, contempt or any other discriminatory act that is against humanity, to provide restitution (compensation) to the victim of such acts, to keep intact the national unity by strengthening the relationship subsisting among members of the general public and to create an egalitarian society.
- It is the objective of the State to protect the lives, property, equality and liberty of the people; and to maintain peace, law and order, and to protect and promote human rights. Internal security is a matter falling under the purview of the Ministry of Home Affairs. The Ministry is in charge of maintenance of law and order, Nepal Police and the Armed Police Force among many other departments. (*Article 34, Interim Constitution of Nepal, 2007*)

## Chapter - II : PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

- The Torture, Degrading Treatment, Punishment and Compensation Act (2012) criminalizes torture, and has been registered at the Parliament Secretariat. The Bill defines acts that amount to torture and inhuman and degrading treatment. It provides space for developing regulations for detailing compensation and witness protection and also has provisions for not accepting evidence obtained by torture and preventing extradition when there is a fear of torture. This was already provisioned in the Evidence Act of 1974 (2031BS).
- No person in detention in the course of investigation, inquiry or trial or for any other reason shall be subjected to torture. (*Sec. 3 (1), Compensation Relating to Torture Act, 1996*)
- The Human Trafficking and Transportation Control Act (2007) controls the acts of human trafficking and transportation, and protects and rehabilitates the victims of such activity by enacting law.

### Policy measures

- Nepal has adopted many security plans like the Special Security Work Plan and a sensitization campaign for the effectiveness of peace and security management (2009). However, these plans don't have Dalit-focused security provisions.
- An inclusive policy is adopted in the national security forces according to which 15% of seats are reserved for Dalits.

### National mechanisms

- **The Ministry of Home Affairs:** the Ministry and its line agencies, the National Defense Council and Central Security Committee, are responsible for delivering critical services to the citizens and maintaining security in the nation.
- **District Security Committees:** at the local level, the District Security Committees constituted under Subsection (7) of Section 6 of the Local Administration Act (1971) are responsible for maintaining peace, security and order in each district.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Awareness raising in Dalit communities:** the National Dalit Commission has conducted a mobile justice service program for Dalit communities in different districts of Nepal. The

objective was to increase access to justice for Dalit communities by making them aware of their fundamental rights guaranteed by the constitution, their legal rights and the remedial procedure.

- **There is no consistent, effective implementation of national measures:** both national and local governments do not effectively protect Dalit communities from violence. Some perpetrators were punished under the CBD & U (Offence & Punishment) Act (2011) after physically attacking Dalits. 20 cases of violence against Dalits were monitored by the SAMATA foundation in the 2013/14 financial year including the Kopila Sunar case in Nawalparasi (discrimination on water drum), the Rautahat case (mass attack upon a Dalit), the Dhading case (physical assault upon the Dalit community due to inter-caste marriage) and the Belbari case (insulted and assaulted on the basis of caste). The perpetrators of three case examples in Belbari, Gorkha and Nawalparasi were punished with a fine of NPR 15,000, 10,000 and 1,500 per perpetrator respectively.
- **Compensation to victims is inconsistent:** in the Manbire Sunar murder case, the Government of Nepal has provided NPR 1,000,000 compensation to his family in Kalikot district. Manbire, a Dalit, was murdered for touching the hearth of a non-Dalit.
- **Torture of Dalits continues:** despite the Compensation Relating to Torture Act (1996) Mahabir Bishwakarma, a police constable in the Armed Police Force, was detained and tortured by the police in Kanchanpur because he happens to be a Dalit. (AHRC. (31 July 2014). NEPAL: Dalit policeman gets torture, not justice. Retrieved on 22 August 2014 from <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-111-2014>)
- **Dalit women remain disproportionately affected by violence:** in spite of the enactment of the CBD & U Act in 2011, Dalit women remain most vulnerable. Their cases are being neglected by State agencies and lawsuits are not brought on the perpetrators. (CEDAW. (2013). *The Situation of Dalit Rural Women*. Retrieved on 22 August 2014 from <http://www.ohchr.org/Documents/HRBodies/CEDAW/RuralWomen/FEDONavsarjanTrustIDS.pdf>)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Despite legal provisions against violence, the overall substantial impact of the national measures that relate to the Guideline is not satisfactory as evidenced by the numerous cases of violence against Dalits that continue to occur.

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

Various studies have highlighted the gaps in national measures that relate to the guideline. Findings include:

## Chapter - II : PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

- The Government of Nepal does not currently provide disaggregated data on crimes committed against Dalits each year in the country.
- There is no Comprehensive Plan of Action to protect Dalits from physical violence, including torture, sexual violence and extrajudicial killings.
- The Dalit community lacks representation in the higher ranks of policy making and decision making of security mechanisms; the 15% reservation basically applies to lower ranks.
- There is no separate program or budgetary allocation to the Dalit community for security and justice.
- There is a lack of sufficient resource, infrastructure and high technology for the security mechanisms, agencies and personnel.
- In rural areas of Nepal, the police force is inadequately present and there is poor infrastructure. Therefore getting immediate access to security is problematic.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- Dalit civil society has been showing solidarity to protect the rights and dignity of the Dalit community and to tackle Dalit human rights violations. In line with this, they are engaged with collective campaigns, collective fact finding and press conferences to help inform about physical violence against Dalits and to create pressure on concerned authorities to implement the existing mechanisms. However, civil society needs to get engaged more proactively.

### 10. WIDER SOCIETY RESPONSE

Wider civil society response to physical security and violence against Dalit community is not at the pace it should be. However, the following response is being carried out by wider society in relation to the Guideline:

- Jagaran Nepal, in collaboration with WIPAA, AATWIN, NWS, Shanti Malika, and Sankalpa brought out an NGO perspective on caste violence through a national consultation process. It focuses on violence against woman, key constraints, accomplishments, shortfalls and the future direction for change that needs to happen in the domestic context in Kathmandu. ([http://www.jagarannepal.org/civil-society-perspectives-on-commission-on-the-status-of-women-\(csw\)-57th-session](http://www.jagarannepal.org/civil-society-perspectives-on-commission-on-the-status-of-women-(csw)-57th-session). Retrieved on March 20, 2014)
- CSOs like the Advocacy Forum, Maiti Nepal and WOREC advocate on issues in relation to torture/access to justice, women trafficking and domestic violence. They also provide shelter to the victims of those incidents. Although caste is not a specific focus of their interventions, though they do reach out to Dalit women.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- A comprehensive security policy should be developed for the overall protection of all kinds of violence and atrocities with specific focus on Dalits.
- A CBD & U Crime Watch Center, with adequate budget and staff, should be established in each village development committee.
- Meaningful representation of Dalit communities should be ensured in policy making, implementing mechanisms and evaluation processes.
- The inclusive policy for national security forces should be made effective across all ranks as it is currently practiced in lower ranks only.
- The CBD & U Act (2011) should include provisions for the physical security of Dalits, with various forms of caste-based violence added as extra punishable offences. Currently all cases related to Dalits are treated under CBD & U.



**GUIDELINE NO: 26**

**National and local governments should investigate, prosecute and punish perpetrators of all forms of violence and atrocities, and sanction anyone found preventing or discouraging victims from reporting such incidents, including public officials.**

In Nepal, many Dalits experience violence and atrocities, including direct and structural violence perpetrated by "high" caste people. Dalits living in rural areas suffer even more. News reports on various forms of violence and atrocities against Dalits are increasing but these are just a tip of the iceberg as most such crimes go unreported. In most incidents, both national and local governments have failed to investigate, prosecute and punish the perpetrators who commit all forms of violence and atrocities and those found preventing or discouraging victims from reporting such incidents, including public officials, go unpunished.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that perpetrators of violence against Dalits are investigated, prosecuted and punished. This should include:

- **Investigating incidents of violence and atrocities thoroughly and reliably:** investigations should use the existing mechanisms in an unbiased way by reforming traditional investigation and prosecution systems.
- **Prosecuting the perpetrators:** those who commit violence and atrocities should be punished.
- **Punishing anyone who prevents the reporting of violence and atrocities:** this includes security personnel who delay or deny the registering of a FIR, distort the cases or imply for mediation.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- Anyone whose rights are violated has the right to an effective remedy, and should be able to claim that remedy through competent judicial, administrative or legislative authorities. (*Article 2(3), ICCPR*)
- All persons are equal before courts and tribunals. In the determination of her/his rights and obligations in a suit at law, everyone shall be entitled, without discrimination, to a fair

and public hearing by a competent, independent and impartial tribunal established by law. (*Articles 2(1) & 14(1) ICCPR*)

- Everyone has the right to effective protection and remedies, through competent national tribunals, against any acts of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. (*Article 6, ICERD*)
- Victims are entitled to access the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. The needs of victims should be facilitated by avoiding unnecessary delays in the disposition of court cases and the execution of orders granting awards to victims. (*Articles 4 & 6, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- The State should ensure the prosecution of persons who commit crimes against members of descent-based communities and the provision of adequate compensation for the victims of such crimes. (*CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 23*)
- Complaints by victims of racist (casteist) acts should be recorded immediately, investigations pursued without delay and in an effective, independent and impartial manner, and files kept relating to racist (casteist) incidents. (*CERD. (2005). General Recommendation 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, para. 11*)
- Any refusal by a police official to accept a complaint involving an act of racism (casteism) should lead to disciplinary or penal sanctions, and those sanctions increased if corruption is involved. (*CERD. (2005). General Recommendation 31, para. 12*)
- States should ensure the lack of racial (caste) prejudice by judges, jury and other judicial personnel, including prejudices created by direct influence of pressure groups, ideologies and religions. (*CERD. (2005). General Recommendation 31, paras. 31-32*)
- The State Parties should intensify its efforts to end such discriminatory practices [as allegations of ill-treatment and ineffective protection of and discrimination against Dalits and other vulnerable groups in society, by law enforcement officials, especially the police]. The procedure relating to the investigation of complaints with respect to the work of the police should also be conducted and overseen by a body independent of the police. (*CERD. (2004). Concluding Observations on Nepal State report. UN Doc. CERD/C/64/CO/5, para. 15*)

#### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

##### Constitutional and legal measures

- It is the objective of the State to protect the lives, property, equality and liberty of the people; and maintain peace, law and order, and to protect and promote human rights. Internal security is a matter falling under the purview of the Ministry of Home Affairs. The Ministry is in charge of the maintenance of law and order, the Nepal Police and the Armed Police Force among many other departments. (*Article 34, Interim Constitution of Nepal, 2007*)
- While making an investigation of any case under this Act, the investigating authority may seek cooperation as per necessity from Dalit communities, local leaders, civil society or representatives of organizations working for the right and empowerment of the victim of CBD & U. (*Section 6, CBD & U (Offence and Punishment) Act, 2011*)
- If a person holding public post commits an offence pursuant to Sub-Section (1) they shall be liable to the punishment of an additional 50% of the punishment as mentioned in that Sub-Section. (*Section 7(2), CBD & U (Offence & Punishment) Act, 2011*)
- If a person hinders or obstructs in the inquiry or investigation of an offence punishable under this Act, the court may, on the basis of the report of the investigating authority, impose him/her half of the punishment prescribed to the offender. (*Section 8, CBD & U (Offence and Punishment) Act, 2011*)
- Every person shall have the right to a fair trial by a competent court or judicial body. (*Article 24(9), Interim Constitution of Nepal, 2007*)
- It shall be the duty of all concerned to co-operate in the investigation of the case pursuant to this Act. (*Section 15, CBD & U (Offence and Punishment) Act, 2011*)
- Any person who knows about a crime stipulated in Schedule 1, committed, being committed or going to be committed shall verbally or in writing inform about such crime to the nearby Police Office with the necessary information or evidence s/he possesses relating to the crime. (*Section 3(1), Government Cases Act, 1992*)
- If, any Police Office receives information regarding any crime stipulated in Schedule 1, committed, being committed or going to be committed, then Police personnel of at least Assistant Sub-Inspector level shall, as soon as possible, investigate and collect evidence. (*Section 7(1), Government Cases Act, 1992*)
- Police personnel conducting an investigation relating to any crime under this Act may arrest a person, if there is reasonable ground to suspect involvement in the crime. The person so arrested shall not be detained without giving notice explaining the cause of arrest. (*Section 14 (1), Government Cases Act, 1992*)

- No person shall be detained for more than 24 hours for investigation purpose unless otherwise provided in this Section. *(Sec. 15(1) of Government Cases Act, 1992)*
- The person produced before the court for the permission of remand pursuant to Sub-Section (2) may make an application to the court for his/her physical examination. *(Section 15 (3), Government Cases Act, 1992)*
- In the context of making a decision pursuant to Sub-Section (2) of Section 17 as to whether to file a case or not, if the study of the file suggests that a case may be filed, then the Government Attorney shall prepare the charge sheet in the prescribed format stipulating the following information and submit it to the concerned court along with evidence (exhibits) and any objects relating to the crime, and if there is any detainee, also with that charge sheet. *(Section 18 (1), Government Cases Act, 1992)*
- In the cases stipulated in Schedule 1 or 2 and in any case in which the Government of Nepal is specified in law to be a plaintiff, the Government Attorney shall plead and defend. Other than this, in the cases in which the Government of Nepal has been made defendant or it has filed a case by being a plaintiff, the Government Attorney may plead and defend if any request is made by the concerned authority. *(Section 33 (1), Government Cases Act, 1992)*
- If the Police Office denies registering the information, the crime informer can complain to the Public Prosecutor Office with the disclosure of such denial. The Public Prosecutor Office shall keep a record of the complaint and send it to the concerned Police Office for necessary proceedings. *(Section 5, Proposed Criminal Procedure Code Bill, 2011)*

### National mechanisms

- **Ministry of Home Affairs:** the Ministry and its line agencies are mainly responsible for investigating cases and taking departmental actions against staff members who are found preventing or discouraging victims from reporting incidents.
- **Supreme Court, Appellate Court and District Court:** these judiciaries punish and sanction the offender.
- **Office of the Attorney General:** the Office and its subordinate offices prosecute the cases.
- **Judicial Council:** takes action against Judges who go against of Rule of Law and Due Process of Law.
- **National Human Rights Commission:** investigates cases of human rights violations and makes implementation recommendations to the Government of Nepal based on its findings.

The above mentioned mechanisms investigate, prosecute and punish cases of violence and atrocities in relation to all Nepalese people but there are no specific mechanisms for the Dalit community. However, if the Police Office doesn't accept a FIR with respect to CBD & U, then the complainant may apply to the National Dalit Commission (NDC). The NDC follows up with the concerned Police Office in regards to registering a FIR.

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### 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by national mechanisms. However neither makes particular reference to Dalits.

- The Government of Nepal should make the process of investigation and prosecution of crimes effective by refraining from any political interventions with the police and judiciary so as to end a state of impunity for such crimes. *(NHRC. (2013). Mid-Term Report on the Implementation status of Conclusion and Recommendations of Universal Periodic Review of Nepal. NHRC: Kathmandu, p. 40)*
- The State should implement the recommendation made by NHRC by individually punishing the perpetrators who violate human rights and humanitarian laws to make them accountable and accordingly to provide the justice to the victims; *(NHRC. (2006/07). Recommendation No.1 of Yearly Report of NHRC 2006/07. Lalitpur: NHRC)*

### 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **An increase in the registration of caste-based discrimination cases:** 7, 11, 12, 12, 16 and 22 incidents of caste-based discrimination, including untouchability, were registered in the financial years 2007/08, 2008/09, 2009/10, 2010/11, 2011/12, 2012/13 respectively. *(Paudel, M.S. (2014). Jatiya Bhedbhav Ra Chhuwachhut Anusandhan Tatha Yasko Abhiyojan (Investigation and Charging in Caste-Based Discrimination and Untouchability Crime). Kathmandu: JuRI Nepal and NDC)*
- **Only some cases are going to trial:** on the basis of the CBD & U Act (2011), out of 20 cases monitored by the SAMATA foundation, 9 cases were finalized in which the perpetrators of 5 cases were fined and in the remaining 4 cases, the perpetrators were cleared.
- **Advocacy is happening in some cases to prompt the Government of Nepal to act:** in the Belbari incident where a Dalit woman was inhumanly treated, the National Human Rights Commission (NHRC) released a press release urging the Government of Nepal to find out the truth and launch a fair probe into the incident. *(NHRC. (July 24, 2013). Press release on Belbari Incident. NHRC: Kathmandu)*

### 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **Mechanisms are not working for Dalits:** though there are various government mechanisms mandated for investigation, prosecution and punishment, in the case of Dalits, those mechanisms are not working fully and their documentation is not segregated. Therefore, it is difficult to measure the impact of such mechanisms significantly in the case of Dalits.

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- The Dalit community is not sufficiently represented in law enforcement mechanisms, institutions and agencies.
- There is a lack of legal obligations and punishment provisions for anyone preventing or discouraging victims from reporting such incidents.
- There is an absence of provision of fines and punishments for those who play a vital role in derailing the complaint procedure and preventing a victim survivor from complaining in police stations.
- Due to the fact that there is not a separate procedure to deal with cases related to Dalits, and the negative caste-based attitudes of the representatives of national mechanisms that deal with investigations, prosecutions and punishments, non-Dalit perpetrators often get favored.

## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- The Dalit community has been advocating for effective implementation of the CBD & U Act (2011) with regard to registering of FIRs, impartial investigations, speedy justice, maximum fines and punishments (including imprisonment) as well as protection against physical and violence.
- Dalit NGOs, including LANCAU Nepal, Dalit NGO Federation, FEDO, NNDSWO, DWO, send fact finding mission, provide legal aid and other necessary support, including shelter, to Dalit survivors.

## 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- Occasionally Nepali media bring news and views on incidences of violence and atrocities against Dalits covering the various steps of cases like registration of FIR, prosecution and the decision of the court.



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- The Forum for Women, Law and Development has been working on the issue of women's security and justice and is always struggling to establish the rule of law in Nepal.
- The Institute for Human Rights and Communication Nepal works for protecting human rights and monitors how the Government of Nepal maintains the rule of law in the country.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The Government of Nepal should ensure proportional representation of the Dalit community in law enforcement mechanisms, institutions and agencies.
- The Government of Nepal should make strong provision to punish officials who deny registering FIRs, and are responsible for improper investigation, unlawful justice delivery, preventing or discouraging victims from reporting such incidents.
- A special procedural system should be formed with respect to investigating CBD & U and other human rights violation cases including sexual violence, physical torture and security.
- National mechanisms like courts, the Office of the Attorney General and Police Offices should maintain the records of Dalit-related cases and disseminate this information to the public.
- The CBD & U (Offence and Punishment) Act (2011) should be amended by deleting the optional provision i.e. "or" and to increase the fine up to NPR 100,000 and imprisonment up to 5 years with compensation of NPR 100,000 to victim.



## ACCESS TO JUSTICE AND EQUAL POLITICAL PARTICIPATION

### GUIDELINE NO: 30

**State actors, including all bodies of government and public corporations, should adopt specific guidelines, including a scheme of incentives and sanctions, prohibiting discrimination based on work and descent in their internal practices. National and local governments should encourage the recruitment of members of affected communities into law enforcement agencies.**

Most Dalits, who are on the lowest rung of the caste hierarchy, are still confined to the traditionally assigned roles and occupations that restrict their access to other employment opportunities. Among Dalits, very few have access to employment in government and public corporations and are still facing the practice of CBD & U. Although the Government of Nepal has reserved 9% of seats in the civil service and 15% of seats in the security forces out of 45% of reserved seat for Dalits, this provision is further confined to the initial recruiting phase only and those who could occupy their seats through reservations were viewed upon with derogation by other staffs and were looked upon as less competent.

After the Comprehensive Peace Accord (2006) Dalits started showing their significant presence on the Nepali political scene. There were 51 Dalit CA members in the first Constituent Assembly and 40 Dalit CA members in the second Constituent Assembly out of total number of 601 CA members. However, the number of Dalit CA members/Parliamentarians is not enough according to the spirit of proportional inclusion.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that government bodies and public corporations adopt non-discriminatory provisions and practices. This should include:

- **Developing specific guidelines and regulations:** these should prohibit CBD & U in internal practices, and also during monitoring.

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- **Developing a package of incentives:** these should promote non-discriminatory practices in an equitable and inclusive way. In addition, stringent punishments should be developed which should be applied against any State actor who practices CBD & U.
- **Ensuring proportional representation of Dalits:** this should be at all levels of government, i.e. executive, legislative and judicial bodies, and also in public corporations.

### 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (*Article 26, ICCPR*)
- Everyone has the right to equal treatment before tribunals and all other organs administering justice. (*Article 5(a), ICERD*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- State Parties should encourage the recruitment of members of descent-based communities into the police and other law enforcement agencies. (*CERD. (2002). General Recommendation 29: Descent based Discrimination, para. 24*)
- State Parties should pursue national strategies to promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice. (*CERD. (2005). General Recommendation 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, para. 5(d)*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- The State shall have the following obligations to ensure participation of Madhesi, Dalits, Indigenous peoples, women, laborers, farmers, disabled, and those from backward classes and regions in all organs of the State structure on the basis of proportional inclusion. (*Article 33(D1), Interim Constitution of Nepal, 2007*)

- The State should be restructured to ensure it is inclusive, democratic and progressive, ending the existing centralized and unitary structure of the State so as to address problems including those of women, Dalits, Indigenous people, Madhesi, oppressed, excluded and minority communities and backward regions, while at the same time doing away with discrimination based on class, caste, language, gender, culture, religion and region. (*Article 33(D), Interim Constitution of Nepal, 2007*)
- The economically, socially or educationally backward women, Dalits, Indigenous peoples, Madhesi communities, oppressed classes, poor farmers and laborers shall have the right to take part in the structures of the State on the basis of the principle of proportional inclusion. (*Article 21, Interim Constitution of Nepal, 2007*)
- There must be an inclusive provision that the executive committees at various levels include female members along with Dalits and those from excluded and oppressed sectors. (*Article 142(3)(c), Interim Constitution of Nepal, 2007*)
- The Local Self-Governance Act (1999) seeks to institutionalize the process of development through wider participation, including that of the Dalit communities. It requires local bodies to undertake activities for the benefit of women, backward communities and differently abled persons.
- There must be an inclusive provision that the Executive Committees at various levels include female members along with Dalits and those from the deprived and oppressed sectors. (*Section 9(c) Political Parties Registration (election purpose) Rule, 2063 B.S., 2007*)
- No one shall commit or cause to commit CBD & U. (*Section 3(1), CBD & U Act, 2011*)
- No one shall aid, abet or provoke anyone to commit CBD & U, or shall attempt to commit such an act. (*Section 3(2), CBD & U Act, 2011*)
- According to Section 7 of the CBD & U Act (2011) if a person holding public post commits an offence pursuant to Sub-Section (1), he/she shall be liable to the punishment of an additional 50% of the punishment as mentioned in that Sub-Section.

### Policy measures

- The Nepal Police Rule (1992), the Nepal Armed-Force Rule (2003) and the Nepal Army Act (2006) have a provision of 15% reservation in each.
- The Nepal Civil Service Act (1993) has a provision of reservation of 9% (2% Tarai Dalit and 7% Hill Dalit) of the seats.
- The proportional election system has been adopted for Constituent Assembly election and 13% (6.5 % male and 6.5 % female) of seats are insured for the Dalit community. (*Schedule 1, Election to the Members of the Constituent Assembly Act, 2007*)

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### National mechanisms

The Judiciary (Supreme Court, Appellate Court, District Court, Labor Court and Administrative Courts), the Ministry of Home Affairs and its line agencies, the National Dalit Commission, the National Human Right Commission, the Badi Community Development Board, the Neglected, Suppressed and Dalit Community Upliftment Development Committee and the Public Service Commission are the responsible mechanisms to address the issues of discrimination based on work and descent in internal practices.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by a national mechanism:

- The NHRC have recommended that the Government of Nepal adopt effective measures and laws to combat the trafficking in persons (especially of women and children) and the exploitation and violence against women including gender and racial discrimination (*NHRC. (September 2013), Mid-Term Report on the Implementation status of Conclusion and Recommendations of Universal Periodic Review of Nepal. NHRC: Kathmandu. p. 40*)

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. However, little information is available on the practices of discrimination within government and public posts to date. Observations include:

- **Election of Dalit CA members and parliamentarians:** 40 members from Dalit Communities were elected (2 from first-past-the-post and 38 as proportional representation) in the second Constituent Assembly (CA) held on 19 November 2013. However, the number of Dalit CA members/Parliamentarians is not enough according to the spirit of proportional inclusion.
- **Appointment of Dalits to senior positions:** Hon. Judge Ratna B. Baghchand, a Dalit, was appointed in the Appellate court as per the inclusive principle adopted by the Government of Nepal. Dr. Man Bahadur BK, Chief District Officer from the Dalit community is currently stationed at Chitwan district.
- **Mandatory representation of Dalits:** the National Women's Commission has a provision of a mandatory representation of a Dalit member.
- **An increase in Dalit inclusion in the civil service:** Dalit representation in the existing officer level civil servants (excluding the Health Service) is in 117 positions in 2012. This figure was 74 in 2006. (*Awasthi, G. D. and Adhikary, R. (December 2012). Changes in Nepalese Civil Service after the Adoption of Inclusive Policy and Reform Measures. Kathmandu: Support to Participatory Constitution Building in Nepal (SPCBN/UNDP), p. 39*)

- **An increase in Dalit inclusion in the Police Force and Army:** Two representatives from the Dalit community are employed in the capacity of SP (Mr. Govinda Ram Pariyar) and DSP (Mr. Damber BK), serving in the Nepal Police Force. In addition, there are 277 Dalit women in the Nepal Police Force and 37 in APF. Dalit representation in the Nepal Army was 6.0% in 2009 and 6.7% in 2012. Similarly, the representation in the Armed Police Force and Nepal Police Force are 3.2% and 7.7% respectively. (*Nepal Army, Nepal Police, APF and UNSCR cited in Awasthi, G. D. and Adhikary, R. (December 2012). Changes in Nepalese Civil Service after the Adoption of Inclusive Policy and Reform Measures. Kathmandu: Support to Participatory Constitution Building in Nepal (SPCBN/UNDP), pp. 32 & 42).*

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of available data on the representation of Dalits in public and political posts and their effect on lessening caste-based discrimination, there is no scope to assess the impact of national measures and mechanisms.

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is a lack of specific guidelines for all Government of Nepal officials and persons holding public posts on non-discrimination on the basis of caste in internal practices.
- There is a lack of strong inclusive provision for Dalit representation in the Political Parties' Act (2007) and the Political Party Registration (Election Purpose) Rules (2007).
- There is nominal participation of Dalits in the law enforcement agencies of Nepal, despite representation.
- There is a lack of disaggregated data of Dalit representation in judicial posts, political participation and law enforcement agencies and mechanisms.
- There is a lack of special policies, programs and strategic action plans to ensure Dalit people are included in justice delivery, law enforcement and proportionate political participation.
- The National Dalit Commission doesn't have the mandate to intervene in cases and is yet to be recognized as a statutory body and to be incorporated with directives.
- There is a lack of effective implementation of various commitments and declarations by the Government of Nepal. For example "untouchability free nation".

## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

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- The pre-preparation class of civil service examination was conducted by the NDC, DNF, PDRC, FEDO, NNDSWO and NDPS Nepal jointly with the support of a basket fund. 20 candidates from the Dalit community participated in the pre-preparation training. Out of 20, 2 candidates succeeded in being recruited as officers in the Ministry of General Administration in the 2011/12 financial year. (PDRC. (2011). *Report on preparation class of Section Officer on Public Service. Kathmandu: PDRC, p. 4*)
- FEDO has been running a program titled "Increasing Dalit Women Political Participation". Out of 22 elected CA members from the Dalit community, two of them were engaged in FEDO. (FEDO. (2013). *Annual Report 2013. Lalitpur: FEDO, p. 11*)

### 10. WIDER SOCIETY RESPONSE

At present, there are no wider civil society attempts to ensure that government bodies and public corporations adopt non-discriminatory provisions and practices.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The Government of Nepal should incorporate provisions that ensure the meaningful participation of Dalits in the structural hierarchy of political parties as well as in the exercise of power under the Political Parties Act (2002).
- A special policy, strategy and plan of action should be formed for the effective implementation of the CBD & U (Offence and Punishment) Act (2011). Similarly, penalty/punishment provisioned in the Act should be implemented strictly.
- Budget allocation and effective guidelines should be developed for the effective activation of the Mechanism of Dalits Right Promotion and Elimination of CBD & U (2011).
- The National Dalit Commission should be transformed into a constitutional body.
- Laws for fully proportional representation on the basis of population size based on caste/ethnicity, gender and region should be enacted. In addition, a monitoring mechanism should be established to monitor the implementation of the laws.



**GUIDELINE NO: 31**

**Law enforcement officials, including police, judges and prosecutors should be provided with adequate training in the prevention, investigation, and prosecution of cases involving discrimination based on work and descent.**

CBD & U is ubiquitous in Nepal. Unlike other human rights violations, CBD & U is a different type of human rights violation and it is regarded a crime by the CBD & U (Offence and Punishment) Act (2011). It is still in intangible form and is experienced at the cost of human dignity and respect. There are scores of incidences, but most of these go unreported.

The CBD & U (Offence and Punishment) Act that was passed in 2011 is weakly implemented due to entrenched traditions and the lack of familiarity, commitment and sincerity of various actors from law enforcement agencies. The prevailing situation is exacerbated by the lack of proportionate sentencing by judges and the failure to implement verdicts when delivered. In addition, victims are discouraged by the significant cost of legal proceedings. Furthermore, the police often fail to treat these crimes seriously and do not follow or fulfil proper legal proceedings. The situation is worsened by the inactive role of District Government Attorneys at the local level. Police often encourage victims to resolve cases through "mediation" processes, rather than through the criminal justice process mandated by law.

## 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to capacitate law enforcement officials to deal with cases of discrimination. This should include:

- **Organizing orientation and trainings:** officials need to be trained on prevention, investigation and prosecution of cases related to caste-based discrimination.

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- Everyone has the right to effective protection and remedies, through competent national tribunals, against any acts of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. (*Article 6, ICERD*)
- State Parties shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military personnel, medical personnel, public officials and other persons who may be involved in



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the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. (*Article 10(1), CAT*)

- All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (*Article 26, ICCPR*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should also organize training programs for public officials and law-enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities. (*CERD. (2002). General Recommendation 29: Descent based Discrimination, para. 25*)
- States should ensure where relevant that judicial decisions and official actions take the prohibition of descent-based discrimination fully into account. (*CERD. (2002). General Recommendation 29, para. 22*)
- States should encourage and facilitate constructive dialogue between the police and other law enforcement agencies and members of [Dalit] communities. (*CERD. (2002). General Recommendation 29, para. 26*)
- The Nepali State should continue to provide the police, public prosecutors, the judiciary and other relevant government bodies, as well as health-care providers, with the necessary training in domestic and sexual violence and undertake wider awareness-raising programs in all communities, including the Dalit community, specifically targeting men and boys. (*CEDAW. (2011). Concluding Observations on Nepal State report. UN Doc. CEDAW/C/NPL/CO/4-5, para. 20(d)*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following mechanisms that relate to the Guideline are already in place in Nepal. However, they do not specifically incorporate Dalit concerns.

#### National mechanisms

- **National Judicial Academy:** the National Judicial Academy has been established for the purpose of enhancing the functional capacity and professional efficiency of judges, government attorneys, employees and law practitioners working in the judicial bodies and also for undertaking study and research in the field of law and justice. (*Section 3(1), The National Judicial Academy Act, 2006*)

- **National Police Academy:** the Central Police Training Centre (CPTC) under the National Police Academy (NPA) was established at the onset of the police regulation in 1993. The NPA's prime responsibility apparently lies in developing the professional competency of senior police officers through conducting both foundation and advanced training courses. The NPA is the apex body of all Police Training Institutions in the country. (<http://npa.nepalpolice.gov.np>. Retrieved on July 10, 2014)
- **Nepal Administrative Staff College:** the Nepal Administrative Staff College has been established to provide high-level trainings to Government of Nepal officials on subjects relating to administration and management in Nepal. (*Section 3 (1), Nepal Administrative Staff College Act, 1982*)
- **National Human Rights Commission:** the NHRC investigates and makes recommendations to the Government of Nepal about cases related to human rights violations. Related trainings on human rights also are conducted.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Training for government employees is happening but does not specifically focus on Dalits:**
  - the Government of Nepal has been funding the training of judges, court officers, government attorneys, legal officers, assistant-level employees and legal practitioners annually through government grants, cooperation and coordination with various donor agencies and organizations. The trainings are aimed at capacitating government employees and generally deal with human rights issues, without any specific mention on Dalits. (*Mulmi, Shreekrishna. (n.d.). National Judicial Academy's Human Rights Training: The Nepal Experience in Human Rights Education in Asia-Pacific, p. 26 accessed on 23 August 2014 from <http://www.hurights.or.jp/archives/asia-pacific/section1/pdf/1%20-%20National%20Judicial%20Academy%27s%20Human%20Rights%20Training-%20Nepal.pdf>*)
  - According to the National Judicial Academy report 2010/11, it conducted 82 trainings, workshops, seminars and talk programs that were attended by 2,283 people. Out of the 2,283 people 617 were judges, 362 were court officers, 241 were government attorneys, 54 were legal officers, 111 were assistant-level employees, 373 were legal practitioners and 525 were other representatives from police, civil society, academia and other

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organizations/institutions. No information is provided on whether issues related to Dalits but the CBD & U Act was discussed in the trainings. (*NJA. (2010/2011). Annual report, 2010/11. Lalitpur: NJA, p. 35*)

- The Nepal Administrative Staff College also conducts training for civil service employees. It conducted 981 officer-level trainings to 22,100 participants and 326 non officer-level trainings to 7686 participants between 1982 and 2007. (*Tuladhar, S.M. (August 2007). My View of the Nepal Administrative College in Administrative and Management Review, Vol.19, No. 2. Lalitpur: NSAC, p. 39*)
- Similarly, the National Police Academy also conducts training for its staff incorporating human rights.

### 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of Dalit-centric content in various human rights trainings organized by the Government of Nepal, there is no scope to assess the impact of national measures and mechanisms. This situation can be observed in the implementation of CBD & U Act (2011) – CBD & U is still not viewed as a crime in many instances.

### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is a lack of effective and action-oriented training to law enforcement agencies on issues of caste-based discrimination, untouchability and violence.
- In training manuals there is a lack of endorsement for caste-based discrimination issues and Dalit human rights.
- There is no separate special program and budgetary allocation for capacity enhancement of law enforcement actors with respect to the CBD & U Act (2011).
- Police, prosecutors and judges lack conceptual and technical knowledge of recent crime trends and techniques for investigation, prosecution and adjudication.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- The SAMATA foundation has provided basic training for 35 Dalit human rights defenders with the expectation that their interactions with officials will support the growth of awareness on issues of CBD & U among officials. Likewise, SAMATA advocates on the existing Dalit-focused laws of Nepal, court practices surrounding CBD & U, the commitment of the Government of Nepal against CBD & U and international provisions against the CBD & U.

- NNDSWO, FEDO, DWO, LANCAU Nepal, the SAMATA foundation and other Dalit-led NGOs are conducting various awareness programs and campaigns among sectoral law enforcement officials to provide access to justice for the Dalit community.

## 10. WIDER SOCIETY RESPONSE

Although wider society has been creating pressure to incorporate human rights content in trainings for officials, at present there are no wider civil society attempts to acknowledge the need for content specifically related to Dalits and caste-based discrimination.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Dalit human rights and national/international good practices relating to CBD & U should be incorporated in training manuals.
- A special reward/incentive program should be provided to those who have worked proactively to ensure justice to Dalits under the CBD & U Act (2011).
- People from the Dalit community should be appointed in all kinds of law enforcement mechanisms, justice delivery institutions, agencies and posts.
- Trainings should be provided to enhance the capacity of the Dalit community to enable them to advocate to law enforcing agents to investigate and prosecute cases related to discrimination.

## CHAPTER IV

EQUAL EMPLOYMENT  
OPPORTUNITY & FREE  
CHOICE OF OCCUPATION

## GUIDELINE NO: 34

**National and local governments should enact equality laws that prohibit public and private employer discrimination on the basis of caste or analogous systems, take steps to remove customary constraints on leaving traditional caste-based occupations, and promote gainful alternative employment opportunities and full access to markets for members of affected communities.**

Though the Constitution of Nepal provides equal opportunities for all through the provision that every person is free to choose her/his occupation and have equal opportunity, these provisions are not sufficient. Both public and private employers continue to discriminate against Dalits and the Dalit community is still practicing customary occupations in many parts of the country, namely Haruwa/Charuwa, Balighare, Gaine and manual scavenging. In many instances, Dalit communities are still prioritized for traditional occupational jobs that they have been practicing for centuries.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to enact equality laws to prevent discrimination in employment on the basis of caste. This should include:

- **Prohibiting caste-based discrimination in employment:** Dalits should be protected against caste-based discrimination in their access to public and private sector jobs, participation in the workforce and equal opportunities for promotions. In addition, multiple discrimination against Dalit women in employment should be eliminated and employers should not be allowed to investigate the caste background of applicants.
- **Removing customary constraints on leaving traditional caste-based occupations:** Dalits should be protected against threats and violence in leaving traditional caste occupations. They should also be able to access skills training and financial support to transition into alternative work.
- **Including the Dalit community in socio-economic development:** plans and programs for socio-economic development should be made in consultation with the Dalit community.

- **Promoting gainful alternative employment opportunities and full access to markets:** Dalits should not be discriminated against in accessing markets and employment opportunities or information on alternative employment opportunities. Special measures, such as training courses or credit avenues, should be put in place to enable Dalits to access alternative employment and market opportunities.

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- The State should safeguard the right to work without any discrimination, which includes the right of everyone to the equal opportunity to gain her/his living by work which s/he freely chooses or accepts. This includes vocational guidance and training programs, policies and techniques to ensure full and productive employment. *(Articles 6 r/w 2(2), ICESCR)*
- Everyone has the right to just and favorable conditions of work, which ensure fair wages and equal remuneration for work of equal value, safe and healthy working conditions, equal opportunity for promotions, and reasonable limitation of working hours. *(Article 7, ICESCR)*
- States undertake to eliminate racial (caste) discrimination in all its forms and guarantee the right to everyone, without distinction, to equality before the law in the enjoyment of the right to work, to free choice of employment, to just and favorable conditions of work including remuneration, to protection against unemployment and to equal pay for equal work. *(Article 5, ICERD)*
- States should eliminate discrimination against women in the field of employment to ensure, among other things, the equal right to work, employment opportunities, free choice of profession and employment, right to safe working conditions, and prevention of discrimination on grounds of marriage or maternity. *(Article 11, CEDAW)*
- States should take legislative, administrative, social and educational measures to ensure the right of every child to be protected from economic exploitation and from performing any work that harms or interferes with the child's education, health or development. *(Article 32, CRC)*

## 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should take special measures to promote the employment of persons affected by descent-based discrimination in the public and private sectors. *(CERD. (2002). General Recommendation 29: Descent based Discrimination, para. 36)*



## Chapter - IV : EQUAL EMPLOYMENT OPPORTUNITY & FREE CHOICE OF OCCUPATION

- States should take all measures necessary in order to eliminate multiple discrimination, including descent-based discrimination against women, particularly in the areas of employment. (CERD. (2002). *General Recommendation 29, para. 12*)
- Develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labor market... (CERD. (2002). *General Recommendation 29, para. 37*)
- States should take measures against public bodies, private companies and other associations that investigate the descent background of job applicants. (CERD. (2002). *General Recommendation 29, para. 38*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### **Constitutional and legal measures**

- Every citizen has the freedom to practice any profession, carry on any occupation, industry and trade. (*Article 13(2)(f), Interim Constitution of Nepal, 2007*)
- No one shall be required to perform forced labor. (*Article 29(4), Interim Constitution of Nepal, 2007*)
- The State shall pursue a policy of uplifting the economically and socially backward Indigenous peoples, Madhesi, Dalit, marginalized communities, and workers and farmers living below the poverty line, by making a provision of reservation in education, health, housing, food sovereignty and employment, for a certain period of time. (*Article 35(10), Interim Constitution of Nepal, 2007*)
- No one shall, on the ground of caste, race, descent, community or occupation, prohibit or compel any one to carry on a profession, occupation or business. (*Section 4 (2) (6), CBD & U Act, 2011*)
- In sending workers for foreign employment, any institution shall provide reservation to the women, Dalit, Indigenous nationalities, oppressed classes, backward areas and people from remote areas in the number as prescribed by the Government of Nepal. (*Section 9(2), Foreign Employment Act 2064, 2007*)
- A reservation policy was introduced in the civil service of Nepal through the second amendment of the Civil Service Act (2007). The provision of the Act states that 55% of total vacant seats have to be allotted for open competition and the final 45% seats should be reserved based on gender, caste, ethnicity, backward areas, Madhesi and disability. Out of these 45% of seats, 33% are reserved for women, 27% for ethnicity, 22% for Madhesi, 9% for Dalit, 5% for disabled and 4% for backward areas.



### Policy measures

- Nepal has adopted a reservation policy so that out of 45% of reserved seats, 9% of seats in the civil service and 15% of seats in the security forces (Nepal Army, Nepal Police and Armed Police Force) for Dalits. However, there is no reservation provision in the private sector.
- In order to create employment opportunities at home and self-employment opportunities, skill enhancing and vocational training programs will be implemented, while developing the Employment Information Center as an Employment Exchange Center. *(No. 117 of Policies and Programs of Government of Nepal for the Fiscal Year 2011/12)*
- Laws relating to providing employment will be enacted for the eradication of poverty. In line with national and international commitments, programs will be implemented up to the local level for abolition of child labor. *(No. 118 of Policies and Programs of Government of Nepal for the Fiscal Year 2011/12)*
- The ministry of Labor and Employment have promulgated the Labor and Employment Policy (2005). This has been designed with the long-term goal of creating productive, non-discriminatory, exploitation-free, decent, safe and healthy work opportunities for citizens of working age by building an environment of friendly investments, in addition to building and managing a labor market that contributes to the national economy so that it can compete at the global level. *(No. 2 of Labor and Employment Policy, 2005)*

### Programmatic and budgetary measures

- The Karnali Employment Program was initiated as a scheme with a 'Ek Ghar Ek Rojgar' ('one house, one employment') goal. It is being conducted in the 5 districts of Karnali region. To achieve its goal of housing for everyone and employment per household, the program involves incentives for production, income generating, skill development and self-employment, community infrastructure and social development.
- NPR 259,610,000 has been allocated for the overall development program of Karnali region as it is the most undeveloped and deprived region.

### National mechanisms

The following institutions are responsible for the issues related with labor rights and employment:

- **Ministry of Labor and Employment:** The Ministry and its line agencies are mandated to assist in poverty reduction by creating opportunities for employment and self-employment through skilled human resources production and by creating a discrimination-free, safe and healthy environment for foreign and domestic employment.
- **Public Service Commission:** The Commission is involved in selecting meritorious candidates for various vacant posts in the civil service. It has several regional offices.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

Various Acts, policies and mechanisms ensure that workers and employees have the right to appropriate labor exercises that incorporate all marginalized communities. However, at present, national mechanisms have not made any specific recommendations that focus on the Dalit community.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Reservation provision has been addressed in foreign employment.**
- **Reservations in the civil and security forces are taking place:** implementation of the reservations for Dalits of 9% in the civil service, and 15% in the Nepal Police, Nepal Army and Armed Police Force is taking place.
- **Very few Dalits are recruited in government jobs overall:** in 2012, just 77 Dalits were recruited out of a total recruitment of 805 under the inclusive group quota through the Public Service Commission. (*Public Service Commission. (2012). 53<sup>rd</sup> Annual Report. Kathmandu: Public Service Commission, p. 65*)
- **The inclusion status of the judicial sector is imbalanced:** the composition patterns of national population by gender, caste, ethnic and other social groups are not reflected in the judicial sector. For instance, women, despite making up 51.5% of the national population, are only represented in the judicial sector by 13.9%. Brahman/Chhetri constitute 32.1% of the national population yet account for 77.6% of total judiciary staff, while the representation of Janajati in the judiciary is only 14.5% even though they constitute 36% of the total population. Similarly, other backward communities (OBCs) and Dalits are represented in the judicial sector by 4.8% and 2% respectively, although they constitute 13.8% and 13.3% of the national population. (*National Judicial Academy. (May 2013). Gender Equality and Social Inclusion Analysis of the Nepali Judiciary. Kathmandu: National Judicial Academy*)
- **Dalits are mainly still engaged in unskilled positions:** overall, 79.16% of Dalits are still engaged in primary occupations (unskilled labor) and only 1.76% of Dalits are engaged in professional occupations (skilled technicians or as managers and as professional associates). (*Central Department of Sociology/Antropology, Tribhuvan University. (March 2014). Social Inclusion Atlas of Nepal: Household Facilities and Occupation. Vol-IV. Kathmandu: Central Department of Sociology/Antropology, Tribhuvan University, p. 5*)
- **Traditional forms of labor exploitation are not completely abolished:** the Government of Nepal has declared the abolition of some traditional forms of labor exploitation. However, such traditions are not completely abolished due to the lack of proper implementation of

programs to manage and rehabilitate such bonded laborers. (NHRC. (September 2013). *Mid Term Report on the implementation of status of conclusion and recommendations of Universal Periodic Review of Nepal*. Lalitpur: NHRC, p. 22)

- **Pre-preparation classes for civil service are being conducted:** the National Dalit Commission, the Neglected, Suppressed and Dalit Community Upliftment Development Committee and the Badi Community Development Board are conducting pre-preparation classes. These classes are instrumental in helping to make members of the Dalit community competent to enter into the civil service.
- **Livelihood support is being provided for Badi communities:** currently almost 40,000 Badi live in Nepal, the majority of whom live in the Tarai districts of the mid and far western regions. In the 2009/10 financial year the Government of Nepal provided 1,400 Badi families with a one-time grant of NPR 15,000. The grant was intended for them to use to start a sustainable form of livelihood, such as a small business or the rearing of a goat or pig. Likewise, the "Urban Development and Building Construction" program is supporting a number of Badis in the construction of houses. (United Nation Resident and Humanitarian Coordinator's Office. (December 2012). *Field Bulletin, Issue 30 - The Badi Community of Nepal*. Kathmandu: UNRCHC Office, p.5)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of Dalit-centric information on Dalits' equal access to employment there is no scope to assess the impact of national measures and mechanisms. However, the fact that the overwhelming majority of Dalits continue to be trapped in low wage labor occupations, including their traditional occupations, suggests that existing employment measures are not sufficient.

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- Whilst equal opportunities in employment are legally guaranteed, little scope exists in existing measures to promote gainful alternative employment opportunities for Dalits. Hence, the continuing concentration of Dalits as wage laborers persists.
- There is no effective program or national action plan for local governments to support the Dalit community to become competent in jobs and/or for works.
- There is a lack of vocational, technical and country-specific training for improving the skills and knowledge of the Dalit community.
- There is no alternative and special employment plan for Dalits.
- Priority needs to be placed on expending special programs for ex-Kamaiyas and ex-Haliyas (Dalits)... and particularly women belonging to these groups, in the rural areas. (CESCR.

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(2008). *Concluding Observations on Nepal State report. UN Doc. E/C.12/NPL/CO/2, para. 37)*

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- Pre-preparation classes for civil service examination were jointly conducted by SAMATA foundation, NDC, DNF, PDRC, FEDO, NNDSWO and NDPS-Nepal for 20, 27 and 35 Dalit candidates in 2011, 2012 and 2013 respectively. 4 of the candidates passed the written exam in 2011 and 9 in 2012. The result of 2013 is yet to be published. Among them, 2 candidates in 2011 and 7 in 2012 succeeded to get recruited as officers in the general administration ministry. (PDRC. (2013). *Annual Report 2013. Kathmandu: PDRC, p. 18*)
- Many awareness programs are conducted by Dalit-led civil society organizations relating to non-discrimination and labor rights.
- To end untouchability and caste-based discrimination in Nepal, a National Strategic Plan of Action (2013) has been prepared by DNF.

### 10. WIDER SOCIETY RESPONSE

At present, there are no wider civil society attempts to enact equality laws to prevent discrimination in employment on the basis of caste as many non-Dalits are personally adverse to the provision of reservations for Dalits.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Laws on inclusion and reservation of Dalits should be revised and enacted more effectively.
- Proportional representation of Dalits (ensuring a 13% reservation) should be ensured in Government of Nepal mechanisms, public corporations, private and corporate sectors.
- Traditional occupations of Dalits should be modernized and commercialized by the initiation of the Government of Nepal. The State should come forward with policies like tax exemptions and soft loans for Dalit entrepreneurs.
- A Dalit upliftment policy and program should be formulated by the Government of Nepal, with a specific focus on ensuring non-discriminatory employment and access to markets.
- Job oriented technical education, capacity building programs and vocational training should be provided to Dalits to make them competent.
- Job discrimination against Dalits based on their traditional occupations should be abolished.

**GUIDELINE NO: 37**

**The State and other agencies should secure and support the full exercise of the right of affected communities to free choice of labor and other occupations traditionally withheld from them because of their caste or other kinds of social origin.**

Most Dalits are still engaged in their traditional occupations, compelled to do menial tasks and scavenging due to prevailing cultural and traditional beliefs and practices rooted in the caste system. The occupations associated with Dalits are considered to be of low status in Nepalese society. Hence, despite the skills involved in their occupations, they are not receiving fair value and social respect for their work and their economic status is thus poor. Moreover they are exploited in the name of Balighare/Khalo (traditional system where Dalits carry out their traditional caste occupations for ‘higher’ castes in return for food grains) and other systems and get only minimal payment for their work.

In recent times, due to a disregard for their arts and skills, many Dalits are giving up their occupations. In addition, lack of modernization and limited access to markets has put these occupations in danger. Globalization and the flood of cheap international products have further threatened Dalits' traditional occupations. Developing social respect for the occupations of Dalits and making them competitive in the market is a challenging issue in the Dalit economy. In respect to this context, Dalits are shifting their attention to other labor markets, including in occupations traditionally withheld from them. However, due to lack of access to education and other influencing factors, they are facing tough competition from non-Dalits.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that Dalits are able to exercise their right to free choice of labor and other occupations traditionally withheld from them because of their caste.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- The State should safeguard the right to work without any discrimination, which includes the right of everyone to the equal opportunity to gain her/his living by work which s/he freely chooses or accepts. (*Articles 6 r/w. 2(2), ICESCR*)
- Everyone has the right, without distinction as to race, color, or national or ethnic origin, to

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equality before the law, notably in the enjoyment of the right to free choice of employment. (*Article 5(e)(i), ICERD*)

- No one shall be required to perform forced or compulsory labor. (*Article 8(3)(a), ICCPR*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labor market. (*CERD. (2002). General Recommendation 29: Descent based Discrimination, para. 37*)
- States should take measures against public bodies, private companies, and other associations who investigate the descent background of applicants for employment. (*CERD. (2002). General Recommendation 29, para. 38*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- Every citizen shall have the right to employment, as provided in law. (*Article 18(1), Interim Constitution of Nepal, 2007*)
- Every worker and employee shall have the right to appropriate labor exercise. (*Article 30(1), Interim Constitution of Nepal, 2007*)
- Every worker and employee shall have the right to form and join trade unions and to engage in collective bargaining for the protection of their respective interests, as provided in law. (*Article 30(2), Interim Constitution of Nepal, 2007*)
- No one shall, on the ground of caste, race, descent, community or occupation, prohibit any one to carry on profession or business or compel any one to carry on any occupation or business. (*Section 4(6), CBD & U Act (Offence & Punishment), 2011*)

#### Policy measures

- The ministry of Labor and Employment have promulgated the Labor and Employment Policy (2005). This has been designed with the long-term goal of creating productive, non-discriminatory, exploitation-free, decent, safe and healthy work opportunities for citizens of working age by building an environment of friendly investments, in addition to building and managing a labor market that contributes to the national economy so that it can compete at the global level. (*No. 2 of Labor and Employment Policy, 2005*)



**Budgetary measures**

- There is no separate budget allocation for promoting Dalits' freedom of occupation. However, some amount of budget is allocated for the National Dalit Commission, Badi Community Development Board and the Neglected, Suppressed & Dalit Community Upliftment Development Committee.

**National mechanisms**

- **The Freed Haliya Rehabilitation and Problem Solving Committee:** one of only two existing national mechanisms that exclusively focus on Dalits' labor and occupation. It has a budget of NPR 12,300,000 for this financial year (2014/15)
- **The Neglected, Suppressed and Dalit Community Upliftment Development Committee:** the second of only two existing national mechanisms that exclusively focus on Dalits' labor and occupation. It has a budget of NPR 67,500,000 for this financial year (2014/15).
- **Ministry of Labor and Employment:** the ministry is mandated to assist in poverty reduction by creating the opportunities for employment and self-employment through skilled human resources production and by creating discrimination-free, safe, healthy environments for foreign and domestic employment.
- **Labor Court:** this court prosecutes labor-related cases and provides justice to workers through compensation.
- **District Labor office:** this office investigates and deals with the issues related to labor at the district level.

**5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS**

At present, national mechanisms have not made any recommendations relating to the Guideline.

**6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS**

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Traditional forms of labor exploitation have not been abolished:** although the Government of Nepal has declared abolition of some traditional forms of labor exploitation, such traditions are not completely abolished due to the lack of proper implementation of programs to manage and rehabilitate such bonded laborers. (*NHRC. (September 2013). Mid-Term Report on the implementation of status of conclusion and recommendations of Universal Periodic Review of Nepal. Lalitpur: NHRC, p. 22*)
- **Dalit groups are receiving various forms of support:** 1733 Haliya families had received identity cards by 2011/12. Banks and financial institutions are supposed to offer low interest



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loans, some at the rate of just 1%, to Dalits, Badis, Kamiaya, Haliya, conflict victims, single women and senior citizens. (NPC. (2013). *Nepal Millennium Development Goals, Progress report 2013*. Kathmandu: NPC, p. 83). However, the implementation of these loans by banks and financial institutions has been poor.

- **Centers are providing vocational training:** vocational training is conducted through the Center for Technical Education and Vocational Training (CTEVT) for marginalized communities, including Dalits. However, there is not disaggregated data about the Dalit trainees.
- **Traditional Dalit occupations are being displaced:** modern technology and larger entrepreneurship from non-Dalits have displaced the traditional occupations of Dalits. Though Dalits are being accepted into professions in places such as bakery and biscuit factories, pickling industries, soft drinks manufacturers, dairy products and noodle industries. However, the type of work that has been offered to Dalits includes cleaning, packaging, machine operation and portering. In the bakery and biscuit industry, generally they are denied working in such a section where flour and water is mixed due to discrimination. (Gautam, R., Upadhyaya U. and Rimal B. (May 21, 2002). *General Federation of Nepalese Trade Unions Report submission to the Anti-slavery International, UK*. Accessed on 28 August 2014 [www.gefont.org/uploads/articles/Dalits.doc](http://www.gefont.org/uploads/articles/Dalits.doc))

### 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of data, there is no scope to assess the impact of national measures and mechanisms. However, the overall data presented in the previous section however serves to indicate that little has changed in terms of Dalits moving into new forms of labor and other less menial occupations.

### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- Though inclusionary policies for Dalits are being enforced in various State measures, it is still preferred to assign Dalits to the job categories that they are accustomed to. This is also the situation in private sectors.
- There is not an inclusive law for ensuring the employment of the Dalit community in all services, sectors and workplaces.
- There is a lack of any special programs or budgetary allocations to support the Dalit community with knowledge generation and capacity building.
- There is inadequacy in proportional representation of Dalits in governmental services and no reservation provision in the private sector.

- Though the law provides liberty to right to free choice of labor, no initiation has been taken to assist the Dalit community to get acquainted with occupations other than those which they are accustomed to.

## 9. DALIT COMMUNITY RESPONSE

Though the Dalit community has been addressing the issues of CBD & U, the concern with respect to free choice of labor is less raised. However, the following response is being carried out by the Dalit community in relation to the Guideline:

- With "Promote equality and justice" as a core value and guiding principle, a National Strategic Plan of Action (2013) has been developed by DNF that paves the way for society to ensure the rights of Dalits in all respects including freedom of labor and occupation.
- LANCAU Nepal has conducted interaction programs about the modernization of traditional professions in the era of globalization. They have also looked at creating a global market vis-à-vis protecting their intellectual property and Indigenous methods.

## 10. WIDER SOCIETY RESPONSE

At present there has not been a substantive response from wider society in response to free choice of labor but the following unions have been working in support of all laborers:

- General Federation of Nepalese Trade Unions (GEFONT): GEFONT was established on 20<sup>th</sup> July 1989. It covers all three fields - agriculture, industries and services - and deals with labor rights and benefits for all workers. It has an emergency fund scheme.
- Independent Transport Workers' Union of Nepal (ITWUN): ITWUN is one of the GEFONT affiliates. It has been able to operate an Accident Fund successfully for its members.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Various trainings and programs should be conducted to enhance the competency and efficiency of Dalits to make them able to freely choose labor.
- Effective programs should be conducted for the sustainable development of all Dalits.
- Dalits should be freed from the unproductive, ineffective and less well paid occupations and alternative sustainable employment should be ensured.
- Laws on the inclusion and reservation of Dalits should be revised and enacted more effectively.
- Proportional representation of Dalits should be ensured in all types of national mechanisms and workplaces as well as in employment with service generators and providers.

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- The inclusion of Dalits through appropriate affirmative action policies should be expanded to the private sector.
- Traditional occupations of Dalits should be modernized and commercialized by the initiation of the State. The State should come forward with policies like tax exemptions and soft loans for Dalit entrepreneurs.
- A Dalit upliftment policy and program should be formulated by the Government of Nepal.
- Job discrimination experienced by Dalits based on their traditional occupations should be abolished.
- The Government of Nepal should ensure that there is no job discrimination, wage discrimination or pre-market discrimination on the basis of caste.

## FORCED, BONDED AND CHILD LABOR

### GUIDELINE NO: 38

**National and local governments, corporations, labor groups, and international labor, financial, and development organizations should collaborate to ensure concrete mechanisms for the prevention, identification and eradication of exploitative labor arrangements and the implementation of rehabilitation schemes for forced, bonded and child laborers with special attention to affected communities.**

The bonded labor system and other forms of servitude still persist. This includes the *Haliya* system, Baligare Pratha, Haruwa and Charuwa Pratha. The *Haliya* system involves those who plough the land of landlords as regular laborers (*Haliyas*). This system is a type of bonded labor and often referred to as a form of semi-slavery. In this system, if anyone takes a loan from the landlord, the entire family is bound to work as bonded laborers and this passes on for generations until the loan is paid back. The overwhelming majority (around 95%) of *Haliyas* belong to "untouchable" castes. Baligare Pratha is another unequal exchange of work and wages where a portion of grain is given to Dalit communities on a yearly basis as wages.

In Nepal, trafficking-in persons (both internal and cross-border) for sexual exploitation and other forms of labor, especially in India, is an unabated phenomenon. Unsafe and irregular contractual labor migration in the Gulf countries has often resulted in exploitative labor, bondage and engagement in dirty, difficult and dangerous work. Similarly, children from Dalit communities are still in a very vulnerable position when it comes to practices of child labor. Dalits are yet to enjoy their entitlements to full and fair rehabilitation from forced labor, to have adequate budgets set aside for rehabilitation schemes, and to have a specific focus in all rehabilitation schemes.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to protect affected communities from exploitation and forced labor. This should include:

- **Preventing, identifying and eradicating exploitative labor arrangements:** labor laws should be strictly implemented and there should be laws in place to regulate the unorganised

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sector. There should also be a strong monitoring mechanism in place for the labor sector to ensure basic rights along with a time bound action plan to eradicate all unfree labor. In addition, there should be a national survey providing up-to-date disaggregated data on the numbers of bonded, forced and child laborers.

- **Rehabilitation schemes for forced, bonded and child laborers:** they should be entitled to full and fair rehabilitation from unfree labor; to have adequate budgets set aside for such rehabilitation schemes and to have a specific focus in all rehabilitation schemes on scheduled caste laborers.

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

### Slavery and forced labor

- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. (*Article 8 (1), ICCPR*)
- No one shall be required to perform forced or compulsory labor. (*Article 8 (3)(a), ICCPR*)
- Everyone has the right to work, which includes the right of everyone to the opportunity to gain her/his living by work which s/he freely chooses or accepts, under decent conditions. (*Articles 5-8, ICESCR*)
- Forced labor refers to all work or service which is exacted from any person involuntarily under the menace of any penalty. Illegal extraction of forced or compulsory labor should be a punishable offence incurring legal penalties that are adequate and strictly enforced. (*Articles 1-2, ILO Forced Labor Convention, 1930 (No. 29)*)
- States undertake to secure the immediate and complete abolition of forced or compulsory labor used as a means of... labor discipline... and as a means of racial, social, national or religious discrimination. (*Articles 1-2, ILO Abolition of Forced Labor Convention, 1957 (No. 105)*)
- State Parties commit to abolish and abandon debt bondage, serfdom, servile marriage and child servitude. (*Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956*)

### Child labor

- State Parties should take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor, which include forced and compulsory labor. (*Articles 1 & 3, ILO Worst Forms of Child Labor Convention, 1999 (No. 182)*)
- Children and young people should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to

hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law. (*Article 10(3), ICESCR*)

- The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) that entered into force in 2002, is a protocol to the Convention on the Rights of the Child. It requires States to protect the rights and interests of child victims of trafficking, child prostitution and child pornography, child labor and especially the worst forms of child labor, and to prohibit the sale of children, child prostitution and child pornography.

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should take measures to address the special vulnerability of children of descent-based communities to exploitative child labor. (*CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 42*)
- States should take resolute measures to eliminate debt bondage and degrading conditions of labor associated with descent-based discrimination (*CERD. (2002). General Recommendation 29, para. 43*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### **Constitutional and legal measures**

- No one shall be required to perform forced labor. (*Article 29(4), Interim Constitution of Nepal, 2007*)
- Every child shall have the right against physical, mental or any other forms of exploitation. Such exploitative act shall be punishable by law; and any child so treated shall be given such compensation as may be determined by law. (*Article 22(3), Interim Constitution of Nepal, 2007*)
- Helpless, orphaned, mentally retarded, conflict victim, displaced, vulnerable and street children shall have the right to get special facilities from the State for their well-ascertained future. (*Article 22(4), Interim Constitution of Nepal, 2007*)
- No minor shall be employed to work in any factory, mine or engaged in any similar other hazardous work or used in army, police or conflict. (*Article 22(5), Interim Constitution of Nepal, 2007*)
- No worker or employee shall be employed in work for more than eight hours per day or

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48 hours per week and they shall be provided one day as weekly holiday for every week. *(Section 16, Labor Act, 1992)*

- In any enterprise where work may be interrupted, no worker or employee shall be deployed in work for more than 5 hours continuously without providing an interval of half an hour for Tiffin. In any enterprise where works have to be carried out continuously without interruption, such intervals shall be provided on a rotation basis. Such intervals of half an hour shall be deemed to have been included within the daily working hours. *(Section 18, Labor Act, 1992)*
- No one shall engage or employ a person in a job without the consent of such person. *(Number 1 of Chapter On Wages under the National Civil Code, 1963)*
- Except in cases where a person doing a job agrees to work, at his or her own will, for no wages, one who engages or employs a person in a job shall give the worker or employee such wages as specified with the consent of both parties, and failing such specified wages, such wages as may be suitable according to the rate that is prevalent at that place, in consideration for that work. *(Number 2 of Chapter On Wages under the National Civil Code, 1963)*
- Except otherwise provided in the prevailing laws, no one shall compel or cause to compel forced labor. *(Section 13, Civil Right Act, 1955)*
- Every person who is serving as a bonded laborer at the time of the commencement of this Act shall, ipso facto, be freed from bonded labor after the commencement of this Act. *(Section 2(3), Bonded Labor (Prohibition) Act, 2002)*
- No one shall keep or employ any one as a bonded laborer after the commencement of this Act. *(Section 2 (4), Bonded Labor (Prohibition) Act, 2002)*
- No child, below the age of 14 years, shall be employed in the factory or mines or any other hazardous work. *(Section 14, Civil Right Act, 1955)*
- No person shall involve or use a child in immoral professions. *(Section 16(1), Children Act 1992)*
- No child having not attained the age of 14 years shall be engaged in works as a laborer, including any risky business or work referred to in the schedule. *(Section 3, Child Labor (Prohibition and Regulation) Act, 2000)*
- No child shall be engaged in works as a laborer against his/her will by way of persuasion, misrepresentation or by subjecting him/her to any influence or fear or threat or coercion or by any other mean. *(Section 4, Child Labor (Prohibition and Regulation) Act, 2000)*

### Policy and programmatic measures

- There are no specific measures targeting Dalits on bonded, forced or child labor, except for rehabilitation of Freed *Haliyas*.



- The Labor and Employment Policy (2005) was designed with the long-term goal of creating productive, non-discriminatory, exploitation-free, decent, safe and healthy work opportunities for citizens of working age by building an environment of friendly investments, in addition to building and managing a labor market that contributes to the national economy so that it can compete at the global level. (*No. 2 of Labor and Employment Policy, 2005*)
- The National Master Plan on Child Labor (2004-2014) emphasizes the need to eliminate the root causes of poverty as a way of addressing the problem of child labor. The main areas of intervention include policy and institutional development, education and health, advocacy, networking and social mobilization, legislation and enforcement, income and employment generation, and prevention, protection and rehabilitation.
- The National Plan of Action on Trafficking of Women and Children (2011) identifies priority areas against trafficking with the objective of controlling human trafficking and transportation by implementing human rights related international commitments made by Nepal as well as its corresponding national legislation.
- The Three Year Plan (2011-2014) looks at child development holistically by creating a child-friendly environment and by protecting and promoting the fundamental rights of children. The strategies include expanding and improving the quality of child-related services, ensuring continuity of rescue and rehabilitation services to children at risk, making legal, policy and institutional provisions to increase the access of children from targeted groups to services, and improving the cooperation and coordination between government offices, NGOs and community level stakeholders. The Plan also promotes children's participation at all stages of the planning cycle.

### **Budgetary measures**

- The Freed *Haliya* Rehabilitation Committee has a budget of NPR 32,000,000 and has been allocated for rehabilitation of freed *Haliya* and *Kamaiya*. (*Lutheran World Federation. (2014). Annual Report 2013. Kathmandu: LWF, p.14*)
- The Child Labor Abolition and Reform Project allocated NPR 73,000,000 to abolish the prevailing child labor in the country.

### **National mechanisms**

- **Ministry of Labor and Employment:** the ministry and its line agencies are mandated to assist in poverty reduction by creating opportunities for employment and self-employment through skilled human resources production and by creating a discrimination-free, safe, healthy environment for foreign and domestic employment.
- **Labor Court:** the court prosecutes labor-related cases and provides justice to workers through compensation.

The above mentioned measures are holistically for all Nepalese with a specific focus on marginalized communities but Dalit-centric measures are yet to be the focal point of those measures.

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### 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by national mechanisms:

- An awareness-raising program for local communities to eliminate child labor.
- The establishment of a restitution center with holding capacity to protect children found at the time of labor inspections.
- All mechanisms that are working on the issue of child labor have to run with the coordination of the child labor elimination program.
- Guardians who are facing the problem of child labor due to poor conditions have to be provided with an exemptible loan and possible self-income programs. (*Government of Nepal, (2010). Child Labor Monitoring Report. Kathmandu: Government of Nepal, p.8*)

### 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **The enforcement of the Labor Act has been inadequate:** this law specifically prohibits forced or bonded child labor, but child labor exists in many sectors including the carpet industry, entertainment sector, stone quarrying and brick kilns. (*Lutheran World Federation. (2014). Annual Report 2013. Kathmandu: LWF, p.14*)
- **Traditional forms of labor exploitation have not been abolished:** although the Government of Nepal has declared abolition of some traditional forms of labor exploitation, such traditions are not completely abolished due to the lack of proper implementation of programs to manage and rehabilitate such bonded laborers. (*NHRC. (September 2013). Mid Term Report on the implementation of status of conclusion and recommendations of Universal Periodic Review of Nepal. Lalitpur: NHRC, p. 22*)
- **The Haliya system is still functioning:** after the abolishment of the Haliya system on 6 September 2008, Haliyas in search of appropriate jobs often have to travel far to find work. The Freed Haliya's sustainable livelihood is still in jeopardy as they do not have specified alternative employment, and the land proposed by the Government of Nepal is yet to be distributed. (*Human Rights Treaty Monitoring Coordination Centre, (May 2013). Shadow report of Nepal on International Covenant on Civil and Political Rights 2013. Lalitpur: INHURED International, pp. 34-35*) However, in a survey of 12 districts, about 45% of Haliya are still at work due to the lack of alternative livelihood opportunities, and another 41% due to their inability to repay loan. (*KC, Bal Kumar, Subedi, Govind and Suwal Bhim Raj. (2013). Forced labor of Adults and Children in the Agricultural sector of Nepal. Kathmandu: ILO Series No. 11, p. 106*)

- **Dalit groups are receiving various forms of employment support:** 19,054 Freed *Haliyas* are listed by the Government of Nepal and their verification, categorization and distribution of identity cards are in progress. 1733 *Haliya* families had received identity cards by 2011/12. Banks and financial institutions offered low interest loans, some at the rate of just 1%, to Dalits, Badis, Kamaiya, *Haliya*, conflict victims, single women and senior citizens. (NPC. (2013). *Nepal Millennium Development Goals: progress report 2013. Kathmandu: NPC, p. 83*).
- **The Freed *Haliya* Rehabilitation Draft Bill has been approved:** the Government of Nepal has approved the three years Freed *Haliya* Rehabilitation Draft Bill as per the recommendation of the central task force and submitted it to the Finance Ministry. It is now being processed.
- **3.14 million children are still working:** despite the existence of child labor laws, data from 2008 reveals that 3.14 million children, (about 40.4%) of the child population in the 5-17 year age group, are working children. Among these working children, almost 51 % fall into the category of child labor. Within the child labor category, 0.62 million children have been identified as being engaged in what is called hazardous work and 17.5% children belong to Dalit community. (ILO; Central Bureau of Statistics, Government of Nepal child labor report: based on data drawn from the Nepal Labor Force Survey (2008)/International Labor Organization, International Program on the Elimination of Child Labor (IPEC), Central Bureau of Statistics of Nepal. Kathmandu: ILO, 2012. 1 v.)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of effective implementation of State mechanisms, budgetary and programmatic measures and Dalit-centric programs, there is no scope to assess the impact of national measures and mechanisms. However, based on a desk review of various research and studies done by different organizations, the knowledge base on child labor has been enhanced. (BK, Dr. M. B. and Bista, P. (2012). *The Status of Child Labor and Its Measures. Kathmandu: Nepal Government Ministry of Labor and Employment, p. 36*) But the knowledge based on caste and child labor with specific reference to Dalit children is absent.

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is a lack of special plans for the promotion of Dalit economic rights, supportive programs and budgets to ensure the end of forced and bonded labor.
- Dalit community centric inclusive provision is lacking in the present Labor Act (1992).
- The special programs for ex-Kamaiyas and ex-*Haliyas*, Dalits,... and particularly women belonging to these groups, need to be expanded in rural areas as a matter of priority.

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(CESCR. (2008). *Concluding Observations on Nepal State report. UN Doc. E/C.12/NPL/CO/2, para. 37*)

- There is a lack of adequate disaggregated data on the presence of Dalits in forced, bonded and child labor. This is necessary in order to facilitate equity measures for their liberation and rehabilitation.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- A rally program demanding for rehabilitation was organized by the National Land Rights Forum (NLRF) in joint conjunction with National Dalit Network, Haliya Mukti Samaj Mahasangh, Dalit Bhumihiin Kisan Sangh and Dalit NGO Federation.
- Due to the continuous pressure of a campaign jointly organized by RDN, NNDSWO, Haliya Mahasangh and *Haliya* representatives, the Government of Nepal abolished the *Haliya* system on 6 December 2008. The ‘Baitadi movement’ against ‘*Haliya Pratha*’ (‘bonded labor’) is one of the important contributions of Dalit civil society.
- Freed *Haliyas* are today organized under an umbrella organization, the Rastriya Mukta *Haliya* Samaj Mahasangh. A delegation of nine members from Rastriya Mukta *Haliya* Samaj Mahasangh met with the Vice-President of the National Planning Commission and requested fair allocation of budget for Freed *Haliya* in the 2014/15 financial year.
- RDN Nepal organized the first national level *Haliya* conference in Dadeldhura district in 2005 and frequently campaigns against the *Haliya* practices.
- A written petition has been filed by former *Haliyas* (namely Dambare Kami, Mohan Lal Sarki, Bhim Parkee, Ramesh Ram Kohli and Sanju Nepali) at the Supreme Court seeking speedy rehabilitation of former *Haliyas* and implementation of the 5-point agreement between the Government of Nepal and freed *Haliya* that included providing 10 katthas of land to each *Haliya* in the Terai and 10 ropanis of land to a *Haliya* family in the hills. (*Republica. (June 29, 2014). Freed Haliya move SC for speedy rehabilitation. Kathmandu: Republica. Accessed on 27 August 2014 from [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=78009](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=78009)*)
- There are some organizations working in the sector of child rights through various advocacy initiatives. However, there are no Dalit-led CSOs particularly working on the issues of child labor.

### 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- Civil society leaders, journalists and human rights activists have demanded for immediate

effective rehabilitation of Freed *Haliya* through press conferences and meetings with the concerned authorities of the Government of Nepal.

- The Office of the High Commissioner for Human Rights - Nepal, the ILO and the National Dalit Commission have expressed their concern at the government's failure to rehabilitate freed *Haliyas* and the slow implementation of the 5 point agreement. They cautioned the Government of Nepal about the appalling conditions that freed *Haliyas* are living in without any access to food, shelter, clothing, health and education and the risk that they have of falling back into the vicious cycle of exploitation. (*Ekantipur. (September 6, 2010). Freed Haliyas freed to receive injustice. Accessed on 28 August 2014 from <http://www.ekantipur.com/the-kathmandu-post/2010/09/05/nation/freed-haliyas-freed-to-receive-injustice/212425>.)*)
- NGOs like CWIN also extend direct support in the form of residential care, emergency support, educational support and support for capacity building to girls at risk. These initiatives cater to the needs of survivors of torture and physical abuse, sexual abuse and exploitation, trafficking, labor exploitation, girls affected by armed conflict and street girls.
- The Child NGO Federation-Nepal (CNFN) is an umbrella organization of 100 NGOs working in the child sector in Nepal; it deals with various issues related to children in general. (*<http://www.cnfnepal.org/intro.php>. Accessed on 20 March 2014.*)

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The Government of Nepal must be responsible for the actual settlement of bonded and child labor. They should stop lingering in the implementation of their agreements and the rehabilitation process should be initiated immediately.
- The Freed *Haliya* Rehabilitation Modality and Action Plan should be implemented in a speedy manner in accordance with the suggestions given by the task force under the leadership of the Joint Secretary of the Ministry of Land Reform and Management.
- The existing Labor law should be amended to cover formal and informal workplaces and endorsing inclusive provision of the Dalit community.
- A long term action plan should be formed for effective labor administration, implementation and monitoring.
- Systematic, concrete and dynamic labor policy and labor legislation should be enacted for the actual abolishment of bonded labor.
- The budget allocated for the rehabilitation of Freed *Haliya* should be increased. There should also be budget allocated to address the issues of other forced, bonded and child labor.



## CHAPTER VI

## HEALTH

## GUIDELINE NO: 40

**National, local and international health officials and practitioners should ensure equal treatment for members of affected communities including access to sanitation facilities and medical insurance and treatment at hospitals.**

Historically, Dalits have been socially, economically, and politically discriminated against within Nepal. This discrimination has led to intergenerational poverty, which is an important determinant of access to health care. The life expectancy of Dalits is lower - 50.8 years compared to the national average of 59 years. Infant mortality is much higher - 116.5 per 1000 live births compared to the national average of 75.2. Under-5 mortality is also much higher - 171.2 per 1000 compared to the national average (104.8 per 1000). The nutritional status of Dalits is poor and therefore they are more vulnerable to infectious diseases. Health awareness among Dalits is also low. Because of illiteracy, ignorance and other socio-economic factors, their living conditions are unhygienic, contributing to their poor health. Dalits continue to face deprivation and discrimination in regards to their access to natural resources like water. Consequently, Dalits cannot easily access clean drinking water and suffer from many water-borne diseases. Dalits have to depend upon the goodwill of non-Dalits to access public water resources. Dalit households also have less access to sanitation facilities within their homes or localities.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that Dalits are able to have equal access to health care as a basic human right. This should include:

- **Equal access to sanitation facilities:** entitlements to adequate sanitation facilities for Dalits should be ensured on par with other communities. Equal access to a safe sanitation complex in case of inadequate space in home should be guaranteed and special attention should be paid to the sanitation needs of Dalit women and children.
- **Equal access to medical insurance:** entitlement to free or affordable medical insurance should be ensured along with access to information about medical insurance. Dalits

should also be provided with medical insurance cards and receive reimbursements for hospital fees.

- **Equal access to and enjoyment of medical treatment at hospitals:** there should be a 13% reservation in the health sector for Dalits in both education and jobs. Dalits should also be able to access the highest attainable standard of medical treatment by adequately trained professionals at affordable prices and be given equal treatment by healthcare professionals. There should also be equal and adequate distribution of medical supplies in healthcare centres near Dalit localities.

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- Everyone has the right to an adequate standard of living for her/himself and her/his family, including adequate... housing (and sanitation), and to the continuous improvement of living conditions. (*Article 11(1), ICESCR*)
- Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. To this end, the State must create the conditions which would assure to all medical service and medical attention in the event of sickness. (*Article 12, ICESCR*)
- States should take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure equal access to healthcare services. (*Article 11(1), CEDAW*)
- States should take all appropriate measures to eliminate discrimination against women in rural areas and access to adequate living conditions, particularly in relation to... sanitation; and access to adequate health care facilities, including family planning. (*Articles 14(2)(b) & (h), CEDAW*)
- States undertake to eliminate racial (caste) discrimination and to guarantee the right to public health, medical care, social security and social services. (*Article 5 (e)(iv), ICERD*)
- All children have the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States shall ensure that no child is deprived of his/her right of access to such health care services. (*Article 24 (1), CRC*)

## 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should ensure equal access to health care and social security services for members of descent-based communities, and should involve affected communities in designing and



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implementing health programs and projects. (CERD. (2002). *General Recommendation 29: Descent Based Discrimination, paras. 40 & 41*)

- Only by addressing stigma (such as that attached to caste identity) will States be able to fully realize the human rights to water and sanitation, and ensure non-discrimination or the prohibition of inhumane and degrading treatment. Comprehensive and holistic measures to prevent, address and provide for redress in cases of stigma and to punish the perpetrators where stigma results in the violation of human rights are indispensable. (*Special Rapporteur on Right to Safe Drinking Water and Sanitation. (2012). Stigma and the realization of the human rights to water and sanitation. UN Doc. A/HRC/21/42, para. 80*)
- The Government of Nepal should intensify efforts in providing basic services to vulnerable or marginalized groups or communities particularly providing quality health and education services and creating more employment opportunities (Myanmar); and step up efforts to achieve the effective realization of economic, social and cultural rights for the marginalized and vulnerable groups by ensuring that they are provided with adequate access to food, health, education and fair employment (Malaysia). (*Working Group on UPR. (2011). Report of the Working Group on the Universal Periodic Review: Nepal. UN Doc. A/HRC/17/5, paras. 106.41 & 106.46*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- Every person shall have the right to live in a healthy environment. (*Article 16(1), Interim Constitution of Nepal, 2007*)
- Every citizen shall have the right to basic health services free of cost from the State, as provided in law. (*Article 16(2), Interim Constitution of Nepal, 2007*)
- The State shall pursue a policy of uplifting the economically and socially backward Indigenous peoples, Madhesi, Dalit, marginalized communities, and workers and farmers living below the poverty line, by making a provision of reservation in... health... for a certain period of time. (*Article 35(10), Interim Constitution of Nepal, 2007*)
- In using their professional knowledge and skills, health professionals should not discriminate against any person on grounds of religion, race, sex and social caste, tribe or any other matter. (*Rule No. 139(1)(c), Nepal Health Professional Council Rules, 1999*)
- Each employee must attend his/her office regularly during the time appointed by the Government of Nepal and must not remain absent from the duty without having prior sanction of leave as far as possible. (*Section 52 Nepal Health Service Act, 1997*)

- An employee must remain in discipline and perform his/her duties with honesty and promptness. (*Section 53(1), Nepal Health Service Act, 1997*)

### Policy measures

- The National Health policy (1991), the National Ayurvedik Health Policy (1995), and the Second Long-Term Health Plan (1997–2017) have been formed to regulate the entire health sector of Nepal. However, there is no Dalit-specific provision.
- In 2007, the Government of Nepal endorsed health care as a basic human right in the Interim Constitution. This was quickly followed by a policy of free health care, which expanded incrementally. Free, universal care (covering a range of basic services) has been available at primary health care centers, health posts and sub-health posts since 2009 and all women are entitled to free deliveries. Targeted free care for the poor and vulnerable is also available at district hospitals. Since 2007/08, the Government of Nepal has underpinned its commitment for health care to be free at the point of delivery by increasing the budget allocation by 24%. (*Daniel et al. (n.d.) Health is Wealth: Health Care Access for Dalit communities in Saptari, Nepal. Lalitpur: SAMATA foundation, p. 13*)
- The Government of Nepal enforced the Nepal National Sanitation Policy and Guidelines for Planning and Implementation of the Sanitation Program in 1994. The policy envisages the holistic attributes of sanitation and states that sanitation should not be understood just as latrine construction alone, but as a package of activities and services related to personal, household and environmental hygiene and recognizes sanitation as a basic citizen right. However, it does not address Dalits separately.
- The Three-Year Plan Approach Paper (2010/11-2012/13) reinforces the Government of Nepal's commitment towards the attainment of Open Defecation Free (ODF) status through the promotion and use of household toilets, and implementation of the program in the form of a campaign.

### Programmatic measures

- The Government of Nepal enforced the Sanitation and Hygiene Master Plan (2011) to maintain uniformity and standards in program approaches to hygiene and sanitation. The Master Plan aims to unify stakeholders through the formation and mobilization of WASH Coordination Committees at Central, Regional, District, Municipality and VDC levels. It also aims to fulfil resource gaps in the sector through cost sharing, resource pulling/pooling arrangements and co-funding arrangements at local levels. The ultimate goal is to achieve universal coverage by 2017.
- The Nepal Health Sector Program - Implementation Plan II (2010-2015) aims to improve the well-being of the people of Nepal, especially the poor and excluded, and aims to reduce the socio-cultural barriers that affect access to basic health care.

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- The Thousand Golden Day Program under the Nutritional Special Program is running in 15 districts, which includes a focus on nutrition for pregnant women and children under two years of age.
- Financial assistance of up to NPR 100,000 is provided for the treatment of cancer, heart disease and kidney disease for targeted groups (poor people including Dalits) that is paid to hospitals directly.
- The free valve transplantation program also assists heart patients belonging to category of poor in transplanting heart valves (there is a maximum of 500 annually).

### National mechanisms

- **Ministry of Health and Population:** the Ministry and its line agencies are responsible for making the necessary arrangements and formulating policies for effective delivery of curative services, disease prevention, health promotion activities and the establishment of a primary health care system... It plays a leading role in improving the health of the people including mental, physical and social well-being, for overall national development with the increased participation of the private sector and non-governmental institutions in the implementation of programs. (*Ministry of Health and Population. (27 October 2013). Digital Library. Accessed on 28 August 2014 from <http://elibrary-mohp.gov.np/>*)
- **Nepal Medical Council:** this is a regulatory body for the regulation of the performance of medical officers and formulates appropriate rules to guide medical institutes. There is no special provision as regards non-discrimination in medical service provisioning.
- **Department of Water Supply and Sewage (DWSS):** the DWSS, under the Ministry of Urban Development (MoUD), has regional offices in the 5 Development Regions for monitoring the supply of water and sanitation facilities.
- **Ministry of Federal ,rs and Local Development:** this Ministry also works on water and sanitation in all 75 districts through its District Technical Offices.
- **National Sanitation and Hygiene Steering Committee (NSHSC):** this committee comprises related Ministries and has been formed as the directing body for sanitation and hygiene. Under this are Water Supply, Sanitation and Hygiene Coordination Committees which have been formed at all levels, from central to VDC, as part of the "Total Sanitation Promotion Movement".

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by a national mechanism:

- On the social front, particularly in education and health, the Eastern and Central Tarai clearly needs attention. The districts from Saptari to Parsa could receive more emphasis, since they

also have significant Dalit populations. (UNDP. (2014). *Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential*. Kathmandu: National Planning Commission & UNDP, p.70)

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Regular caste-based discrimination in accessing healthcare:** in the absence of special measures to address discriminatory access to and use of health services, caste-based discrimination has been reported by Madhesi and Hill Dalit respondents. Evidence in hill areas included complaints relating to the mistreatment of Dalits by health outreach workers, delayed treatment through preference given to other castes, and not being given free supplies. Data from Madhesi Dalit respondents was more detailed, more emotive, and indicated more regular discrimination at health facilities and within the wider society. Treatment and medicines which were believed to be available at health facilities were not received, and outreach services were also reported to be withheld from Dalit patients, e.g. home visits by female community health volunteers (FCHVs), which were provided to other caste groups. Dalits from both Hill and Terai areas reported that they have to wait longer than others at facilities, are often the last to be treated, and, as a result, often have to return home without treatment. Reluctance by service providers to have physical contact with Dalits results in lack of physical examinations along with discourteous and limited verbal communication (Ministry of Health and Population. (2012). *Voices from the Community: Access to Health Services*. Kathmandu: MoHP, pp. 34-35)
- **Discouragement of Dalits in accessing health services:** Dalits are discouraged by others from accessing routine services resulting in non-use of services, in part due to self-exclusion. Similarly, the lack of assistance to Dalits by non-Dalits, withholding services provided to others from Dalits, longer waiting time for Dalits in receiving treatment and unwillingness to physically touch Dalits impacted in delayed use of services, substandard quality of care and higher morbidity and mortality among Dalits. (Ministry of Health and Population. (2012). *Voices from the Community: Access to Health Services*. Kathmandu: MoHP, p. 35)
- **Systemic weaknesses in the health care system:** by examining the Nepal Health Sector Program - Implementation Plan II and the formal and informal structures of the health system, it was revealed that both Dalits and non-Dalits are disadvantaged in accessing health services due to systemic weaknesses of the health care system and the limited implementation of policies such as NHSP-IP II. The policy addresses the importance of ensuring that services reach marginalized communities such as Dalits, but the implementation fails to effectively reach the populations it intends to serve. (Daniel et al. (n.d.) *Health is Wealth: Health Care Access for Dalit communities in Saptari, Nepal*. Lalitpur: SAMATA foundation, p. 41)

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- **Reductions in maternal and child mortality:** Nepal has made impressive progress in health, in particular achieving significant reductions in both maternal and child mortality rates. However, progress at the national level masks worsening disparities, especially in maternal health across wealth quintiles, social groups and geographic location. Overall, around 22% of the population still lacks access to basic health facilities. Across social groups, it is generally Dalits from the Terai (plain areas) and Muslims who face worse in terms of health care utilization and outcomes. (*Department for International Development. (15 March, 2010.) Increased access to basic healthcare in Nepal. Accessed on 31 August, 2014 from <http://reliefweb.int/report/nepal/increased-access-basic-healthcare-nepal>*)
- **Free health care is being made available:** after 2009, essential health care was made free for all at Health Posts (HP), Sub Health Posts (SHP) and Primary Health Care Centers (PHCC). As per the provision, 22 drugs at SHP, 32 drugs at PHCC and HP and 40 drugs at district hospitals are provided free of cost. Three additional free drugs are also provided for health facilities that have birthing centers. Moreover, institutional deliveries have also been made universally free of charge at all public hospitals. The Government of Nepal has already institutionalized the provision of free health care services and free drugs to Health Facilities below the district level. With pool funding and the government's own resources (technical, physical, financial and administrative), free health services have been institutionalized as per the commitment of the Government of Nepal to providing minimum health care to people. No disaggregated data is available, however, to assess the extent to which these services are reaching Dalit communities. (*Department of Health. (2012). Report on Evaluation of Essential Drug Procurement and Distribution Program Under Free Health Services. Kathmandu: DoH, p. 34*)
- **Political instability is a major source of health policy implementation failure in Nepal:** when the Government of Nepal changes, the strategies and priorities of health policy implementation also changes and funds for the health service shift from one place to another. (*ESP cited in Paudel, N.R. (n.d.) Health Policy Design and Implementation in Nepal: A Policy Discussion. Kathmandu: Public Administration Campus, p. 23*)
- **Health posts are not functioning properly:** they are affected by several problems such as inadequate funding, lack of trained staff, absenteeism and chronic shortages of equipment, medicines, and vaccines. This has a significant negative impact on Dalits' enjoyment of their right to health. (*Pariyar, B.M. (02 October 2009.) Accessed on 31 August 2014 from <http://www.usnepalonline.com/dalit-issue/caste-based-health-discrimination-in-nepaln/all-pages.html>*)
- **A large number of people still do not have access to sanitation:** this is due to various financial, technical, geographical, poor planning and cultural barriers. Dalits are among those who do not have easy and adequate access to sanitation services. According to the Nepal Living Standard Survey (NLSS) 2010/11, less than 25% of the Terai Janajatis, Hill and Madhesi Dalits have access to sanitation services. (*South Asian Conference on Sanitation-V (2013). Nepal Country Paper on Sanitation. Kathmandu: SACOSAN, p. 11*)



## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- General improvements in health statistics:** overall in Nepal, life expectancy has increased to 62 years (61.8 among men and 62.2 among women), and infant and child mortality rates have gone down to 64 and 91 per 1000 live births respectively. Trained health workers have reached 37% of expectant mothers to deliver babies. HIV/AIDS and sexual disease awareness programs have led to the use of preventive and curative methods. There is also an increasing involvement of the private sector in providing health facilities, especially in urban areas. Government health services are being expanded from national to community levels through institutions like hospitals, primary health care centers, health posts, and sub health posts. Health services based on Ayurveda, natural and herbal cures, homeopathy, and Yunani are also expanding in the country. However, the level of health services available in the country is far from satisfactory as evidenced by the fact that only 70% of the population has access to basic healthcare services. Moreover, no information is available to indicate any change in the health conditions of Dalits. Anecdotal information in the field along with reports indicating the presence of caste discrimination in accessing treatment in health care centers suggests that little change has occurred. (*Government of Nepal. (2004). National Human Rights Action Plan. Kathmandu: GoN, p. 2*)
- An increase in the proportion of people receiving free treatment:** the proportion of clients receiving free care at public health facilities increased from 29% in 2009 to 82% in 2011. Dalits were recorded as benefitting most from free outpatient services. (*Prasai, D. P. (2013). A Review of Studies on Nepal's National Free Health Care Program. Kathmandu: MoHP, p. ii*)
- A continued lack of household toilet facilities:** despite various health measures, over one-third (38.17%) of Nepalese households do not have a toilet in their houses. There is no disaggregated data available on the status of toilet facilities within Dalit households. (*Central Bureau of Statistics. (2011). National Report on National Population and Housing Census. Kathmandu: CBS: p. 2*)
- Drinking water sources remain varied:** tap/piped water is the main source of drinking water for only 47.78% of total households. Tube wells/hand pumps are the main source of drinking water for about 35% of households, whilst spouts, uncovered wells/kuwas and covered wells/kuwas are the main source for 5.74%, 4.71% and 2.45% respectively. There is no exact data about the Dalit community. (*Central Bureau of Statistics. (2011). National Report on National Population and Housing Census. Kathmandu: CBS: p. 2*)

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

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- CBD & U issues have not been incorporated into existing laws and plans related to health and sanitation.
- There is a lack of strong provision in health-related Acts, rules and directives for fines and punishments for health officials and practitioners who practice unequal treatment on the basis of CBD & U.
- There is a lack of disaggregated data about the real health condition of the Dalit community.
- The Dalit community is not meaningfully represented at policy and decision making levels regarding health and sanitation.
- There is a lack of separate and special programs, policies and sufficient budget allocations for health and sanitation programs for the Dalit community.
- There is a lack of health insurance for Dalits.

### 9. DALIT COMMUNITY RESPONSE

At present, the Dalit community has not made any concrete response in line with the above-mentioned Guideline. However, many Dalit-led organizations are working on health rights and addressing the health and sanitation issues they face including:

- FEDO is conducting a program focusing on the equal access of Dalit women to health services. It aims to ensure a better future for vulnerable Dalit women by improving their access to basic health services in the Dailekh, Surkhet, Bardiya and Kapilbastu districts of Nepal.
- DWO is conducting projects on health and sanitation with the objectives of eradicating malnutrition, increasing the standard of life for mothers and their children, and strengthening health awareness.

### 10. WIDER SOCIETY RESPONSE

At present, there are no wider civil society attempts to address the issues of discrimination in accessing health and sanitation with regard to Dalits. However, there are many I/NGOs who focus on WASH-related activities and the installation of physical infrastructures.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Existing Acts and rules regarding health and sanitation should be amended to prohibit CBD & U practices from being carried out by health officials during treatment at hospitals. This should include putting into place severe fines and punishment provisions for those health professionals who do practice CBD & U.



- Meaningful participation of the Dalit community should be ensured at all levels and mechanisms of health and sanitation institutions.
- The Government of Nepal should run special programs and allocate sufficient budget to provide better health and sanitation for the Dalit community.
- The health sector review (the most pragmatic accountability mechanism in most focal countries) should be strengthened to make it more inclusive, transparent and strategic in its operations. The outcome and recommendations should be shared with the Head of State and parliament, and compliance in implementing recommendations should be improved.
- Accountability of citizens should be improved through expanding social accountability approaches, monitoring human rights treaty obligations, partnering with the media and having parliamentary oversight.
- All sources of information should be considered when reviewing progress on ensuring Dalits' right to health. There should also be an increase in the quality of preparatory work through health appraisals that feed findings and clear recommendations into the review.
- The alignment and integration of all support for Reproductive, Maternal, Newborn and Child Health should be increased behind a single national plan and monitoring framework that builds upon and strengthens the existing system.
- There should be investment in building the capacity of CSOs, the media and parliamentarians to better monitor and use evidence for advocacy and to hold governments to account on RMNCH commitments.
- The Government of Nepal should be obligated to provide health insurance for Dalits.
- Resourced hospitals, including qualified health professionals, should be established in the rural areas of Nepal.

**GUIDELINE NO: 41**

**Development and financial assistance to ensure adequate hygiene and sanitation should be provided by national and local governments and international development and humanitarian organizations.**

The Interim Constitution of Nepal (2007) incorporates health as a fundamental right of all citizens, so that all should live without suffering from disease and polluted environments. The Government of Nepal is party to many international treaties and conventions which seek to ensure the provision of basic health and sanitation services to people on an equal footing. Concerning health and hygiene, Dalits are in a vulnerable situation. They suffer from chronic and severe diseases due to a lack of targeted health and sanitation government programs for Dalits and also due to rampant poverty which means that Dalits do not have the money to be able to afford access to health and sanitation.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure Dalits have access to adequate hygiene and sanitation. This should include:

- **Encouraging targeted development and financial assistance:** this should include special drives to ensure there are necessary amenities in all Dalit localities and raising health awareness among the community.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- Everyone has the right to an adequate standard of living for her/himself and her/his family, including adequate... housing (and sanitation), and to the continuous improvement of living conditions. (*Article 11(1), ICESCR*)
- Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. To this end, the State must create and work towards the improvement of all aspects of environmental and industrial hygiene. (*Article 12, ICESCR*)
- States should take all appropriate measures to eliminate discrimination against women in rural areas and ensure access to adequate living conditions, particularly in relation to... sanitation; and access to adequate health care facilities, including family planning. (*Articles 14(2)(b) & (h), CEDAW*)
- States undertake to eliminate racial (caste) discrimination and to guarantee the right to public health, medical care, social security and social services. (*Article 5 (e)(iv), ICERD*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

- The following recommendation that relates to the Guideline has been made by an international mechanism:
- States should ensure equal access to health care and social security services for members of descent-based communities, and should involve affected communities in designing and implementing health programs and projects. *(CERD. (2002). General Recommendation 29: Descent Based Discrimination, paras. 40 & 41)*

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- Every person has the right to live in a healthy environment. *(Article 16 (1), Interim Constitution of Nepal, 2007)*

#### Policy measures

- Basic health services will be well defined and be rendered free of cost in nine remote districts. The Model Health Program, the Integrated Women's Health Improvement and Reproductive Health Program, the Integrated Child Reform and Nutrition Program, the Backward Area Health Reform Program, and the Marginalized and Senior Citizen Health Program will be effectively run. *(Government of Nepal. (2011/12). Policies and Programs of Government of Nepal. Kathmandu: GoN)*
- The Government of Nepal enforced the Nepal National Sanitation Policy and Guidelines for Planning and Implementation of the Sanitation Program in 1994. The policy envisages the holistic attributes of sanitation and states that sanitation should not be understood just as latrine construction alone, but as a package of activities and services related to personal, household and environmental hygiene and recognizes sanitation as a basic citizen right.
- The Three-Year Plan Approach Paper (2010/11-2012/13) reinforces the Government of Nepal's commitment towards the attainment of Open Defecation Free (ODF) status through the promotion and use of household toilets, and implementation of the program in the form of a campaign.

#### Programmatic and budgetary measures

- The Government of Nepal enforced the Sanitation and Hygiene Master Plan (2011) to maintain uniformity and standards in program approaches to hygiene and sanitation. The Master Plan aims to unify stakeholders through the formation and mobilization of WASH Coordination Committees at Central, Regional, District, Municipality and VDC levels. It also aims to fulfill resource gaps in the sector through cost sharing, resource pulling/pooling arrangements and co-funding arrangements at local levels. The ultimate goal is to achieve universal coverage by 2017.

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### National mechanisms

- **Ministry of Health and Population:** the Ministry and its line agencies are responsible for making the necessary arrangements and formulating policies for effective delivery of curative services, disease prevention, health promotion activities and the establishment of a primary health care system... It plays a leading role in improving the health of the people including mental, physical and social wellbeing, for overall national development with the increased participation of the private sector and non-governmental institutions in the implementation of programs. (*Ministry of Health and Population. (27 October 2013). Digital Library. Accessed on 28 August 2014 from <http://elibrary-mohp.gov.np/>*)
- **Department of Water Supply and Sewage (DWSS):** the DWSS, under the Ministry of Urban Development (MoUD), has regional offices in the five Development Regions for monitoring the supply of water and sanitation facilities.
- **Ministry of Federal Affairs and Local Development:** this Ministry also works on water and sanitation in all 75 districts through its District Technical Offices.
- **National Sanitation and Hygiene Steering Committee (NSHSC):** this committee comprises related Ministries and has been formed as the directing body for sanitation and hygiene. Under this are Water Supply, Sanitation and Hygiene Coordination Committees which have been formed at all levels, from central to VDC, as part of the "Total Sanitation Promotion Movement".

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by a national mechanism:

- Health and empowerment programs need to focus specifically on the lower economic classes, disadvantaged castes and ethnic groups (especially Dalits and Muslims) and women. Programs backed by social mobilization need to proactively provide incentives to encourage... use of basic health facilities and improved sanitation. (*UNDP. (2014). Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential. Kathmandu: National Planning Commission & UNDP, pp.70-71*)

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

In the absence of targeted measures to improve access to hygiene and sanitation for Dalits, there is no scope to assess their implementation. However, the following data provides a glimpse of the overall situation in the country in relation to the Guideline. Findings include:

- **Drinking water sources remain varied:** tap/piped water is the main source of drinking water for only 47.78% of total households. Tube wells/hand pumps are the main source

of drinking water for about 35% of households, whilst spouts, uncovered wells/kuwas and covered wells/kuwas are the main source for 5.74%, 4.71% and 2.45% respectively. There is no exact data about the Dalit community.

- **Over one third of houses do not have access to a toilet in their house:** more than one third (38.17%) of the total households do not have toilet in their houses. (*Central Bureau of Statistics. (2011). National Report on National Population and Housing Census. Kathmandu: CBS, p. 2*)
- **Dalits have less access to water and sanitation:** there are disparities between Dalits and others in terms of water and sanitation indicators in the country. For example, while approximately 85% of general households have access to potable drinking water, it is only 78% in the case of Dalits; moreover, while 41.7% of households use modern toilets, it is only 18.5% for Dalits. (*Feminist Dalit Organization, (2014). Health and WASH Situation of Dalits in Nepal. Kathmandu: FEDO*)
- **Free health care is being made available:** after 2009, essential health care was made free for all at Health Posts (HP), Sub Health Posts (SHP) and Primary Health Care Centers (PHCC). As per the provision, 22 drugs at SHP, 32 drugs at PHCC and HP and 40 drugs at district hospitals are provided free of cost. (*Department of Health. (2012). Report on Evaluation of Essential Drug Procurement and Distribution Program Under Free Health Services. Kathmandu: DoH, p. 34*)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **There is progress in improving access to sanitation:** along with the sanitation movement of the country, there is progress in access to sanitation and ‘open defecation free’ declarations are encouraging. (*Ministry of Urban Development. (2013). Global Sanitation Fund Program in Nepal-Progress Report- October 2013. Kathmandu: MoUD, p. 3*)
- **Access to quality public health services has increased:** due to continued, planned, policy relating to improving health programs, human resource development, supply of medical instruments and institutional working, access to quality public health services has increased. Extra health services have contributed through the community, private and local sectors and due to the success and quality of the national vaccination program and other reforms in the health section the average age of Nepalis has dropped to 66.3 years. (*Government of Nepal. (2010/11-2012/13). Three Year Planning (2010/11-2012/13). Kathmandu: GoN. p. 185*)
- **A large number of people still do not have access to sanitation:** this is due to various financial, technical, geographical, poor planning and cultural barriers. Dalits are among those who do not have easy and adequate access to sanitation services. According to the Nepal Living Standard Survey (NLSS) 2010/11, less than 25% of the Tarai Janajatis, Hill and

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Madhesi Dalits have access to sanitation services. (*South Asian Conference on Sanitation-V. (2013). Nepal Country Paper on Sanitation. Kathmandu: SACOSAN. p.11*)

### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is a lack of special Dalit-focused and Dalit-friendly provisions in the laws related to health services.
- There is a lack of special programs and budgetary allocations for the Dalit community to increase their access to and understanding of health, sanitation and hygiene.
- There is no strong mechanism to coordinate, supervise and evaluate health service management and service delivery.
- There is a lack of sufficient human health resources and infrastructure in rural areas of Nepal.

### 9. DALIT COMMUNITY RESPONSE

At present, the Dalit community has not made any concrete response in line with the above-mentioned Guideline but has been advocating for issues related to development of infrastructure and budget allocation in a few districts.

### 10. WIDER SOCIETY RESPONSE

At present, wider society has been working for the overall reformation of health and sanitation but there have not been any specific or significant responses towards the Dalit community.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- A special program and separate budgetary allocation should be made for the improvement of the sanitary and hygiene conditions of Dalits, especially for those who are living in the rural areas of Nepal.
- The health service sector should be made inclusive by including Dalits in the planning and decision making process.
- The Government of Nepal should create specific programs to ensure Dalits have access to potable drinking water, sanitation, hygiene and clean and healthy environments.
- All sanitation programs and action plans should be amended to include specific provisions for Dalits in order to prioritize hygiene and sanitation programs in their areas.



## ADEQUATE FOOD, WATER AND HOUSING

### GUIDELINE NO: 42

**National and local governments should take all necessary measures to eliminate discriminatory practices that cause affected communities to suffer from inadequate food, water, sanitation, clothing and housing.**

Due to the CBD & U that is deeply entrenched in Nepalese society, problems of hunger, malnutrition, starvation and homelessness are common in Dalit communities. Most of the Dalit community reside in isolated places and are situated in vulnerable areas. Dalits are discriminated against mostly in accessing water resources and from entering into non-Dalit houses. Due to the lack of adequate food, pure drinking water and adequate housing, most Dalits are prone to various kinds of diseases, ultimately resulting in untimely death.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure non-discrimination in accessing basic requirements for life. This should include:

- **Ensuring Dalits have access to basic necessities:** this access should be without facing ‘untouchability’, discrimination and/or violence, ensuring entitlements to equal rations in public distribution shops, as well as food security at all times.
- **Ensuring non-segregation housing in specific areas**

### 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- Everyone has the right to an adequate standard of living for her/himself and her/his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. (*Article 11(1), ICESCR*)

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- The human right to water forms part of the right to an adequate standard of living, and is indispensable for leading a life of human dignity. It is a pre-requisite for the realization of other human rights” (CESCR. (2003). *General Comment 15: The Right to Water. UN Doc. E/C.12/2002/11*)
- States undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without discrimination, to their social, economic and cultural rights, including housing. (*Article 5(e), ICERD*)
- Every child has the right to a standard of living adequate for the child's development. States shall take measures to assist parents to implement this right and shall, in case of need, provide material assistance and support, particularly with regard to nutrition, clothing and housing. (*Article 27(1) &(3), CRC*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should take steps to identify those descent-based communities under their jurisdiction who suffer from caste discrimination and private and public segregation, including in housing and access to public sources of food and water. Further, States should undertake to prevent, prohibit and eliminate practices of segregation against Dalits in housing, and take measures against discriminatory practices of local authorities or private owners with regard to access to housing by Dalits. (*CERD. (2002). General Recommendation 29: Descent based Discrimination, paras. 1, 15 & 39*)
- The committee urges that specific measures be implemented with a view to enhancing the participation of the lower castes in the production, distribution and consumption of food. (*CESCR. (2008). Concluding Observations on Nepal State report. UN Doc. E/C.12/NPL/CO/2, para. 42*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### **Constitutional and legal measures**

- The State shall pursue a policy of establishing the right of all citizens to education, health, and housing, employment and food sovereignty. (*Article 33 (h), Interim Constitution of Nepal, 2007*)
- The State shall pursue a policy of providing socio-economic security including land to the

economically and socially backward classes including the landless bonded labors, tillers and Haruwa-Charuwa. (*Article 33(i), Interim Constitution of Nepal, 2007*)

- Every citizen shall have the right to food sovereignty, as provided in law. (*Article 18 (3), Interim Constitution of Nepal, 2007*)
- For the overall direction and administration of food, water and housing, the Nepal Water Supply Corporation Act (1989), the Food Act (1966), the Water Resources Act (1992), the Drinking Water Regulation (1998), the Black Marketing Act (1975), the Consumer Protection Act (1998) and the Essential Commodities Control (Authorization) Act (1961) exist and are functional in the country. However, these Acts do not consider the consequences that arise due to caste-based discrimination.

### Policy measures

- The National Shelter Policy (1996), the Waste Management Policy (1996), the Local Infrastructure Development Policy (2004), the National Food Security and Nutritional Plan (2007) and the Sanitation and Hygiene Master Plan (2011) are operational in the country, but those policies and plans do not specifically address any issues of Dalits or caste discrimination.
- The 13<sup>th</sup> three-year plan envisaged an exemption in the registration fee in the purchase of land in the name of women, Dalits, or marginalized community members. For the rehabilitation of Haliya (ex-bonded laborers), the double ownership provision upon land is rejected. (*Nos. 8, 10 & 10.7, 13<sup>th</sup> Three-year Development Plan 2013-2016*)
- The Three-Year Interim Plan (2007/08-2009/10) has accepted food security as the fundamental human right and also seeks for necessary policies and programs to promote food security (including accessibility of food, access to food, utilization of food and food stability in Nepal).

### Programmatic measures

- The Government of Nepal has continued its Social Security Allowance program for elderly citizens. This includes elderly Dalit citizens through local institutions.
- The People's Housing Program is especially run across the Terai region of Nepal and one of the target groups is poor Dalits. During this financial year (2014/15) it aims to construct 1,762 houses. (*Ministry of Finance. (2014/15). Budget Speech 2014/15. Kathmandu: GoN.*)

### National mechanisms

- **The Ministry of Commerce and Supplies:** the Ministry is the lead government institution responsible for regulating and managing the overall supply system. It is therefore responsible for managing the food supply system in the country. The Ministry is responsible for formulation of trade, commerce and supply policies, and for the implementation, monitoring and supervision of related activities.

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- **The Ministry of Land Reform and Management, the Ministry of Water Resource and the Ministry of Commerce and Supply:** these Ministries and their line agencies are the major mechanisms that administer land, food and water. Likewise the Department of Water Supply and Sewerage, the Nepal Water Supply Corporation, and the Nepal Food Corporation are working on those areas.
- **Ministry of Local Development:** this is a lead Ministry with respect to local infrastructure development and maintenance, activities related to the development of Indigenous peoples, Dalits and Janajatis and the social security program (old age allowance). It has responsibility for enhancing the access of socially and economically disadvantaged groups, regions and communities to services and facilities and also for the empowerment of women, Dalits, Indigenous people, Madhesi, Muslims, disabled people and the ultra-poor.
- **Nepal Food Corporation:** the NFC has been maintaining the National Food Reserve Stock (buffer stock) since the 2008/09 financial year according to directions from the Government of Nepal. The Food Reserve Stock is there to supply food quickly during emergencies caused by calamities such as earthquakes, floods, landslides, fires etc.

### 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by a national mechanism:

- The High Level Scientific Land Reform Commission recommended the State to provide land to landless, squatter and economically-deprived Dalit communities as a high priority. Such land allocation should be in a safe place if intended for residential purposes. The State should ensure social justice for Dalits, especially landless and bonded labor communities, with a post-land reform program. (*High Level Scientific Land Reform Commission. (2010). Report of High Level Scientific Land Reform Commission. Kathmandu: GoN, p.47*)

### 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

In the absence of data on the basic livelihood-related rights for Dalits, the implementation of national measures and mechanisms that relate to the Guideline can be assumed from the various data on the situation of Dalits in these areas today. Observations include:

- **25% of Nepalis are food-poor:** a recent National Planning Commission (NPC) report in 2013 suggests that 25% of Nepalis are food-poor. Needless to say, the majority of those who suffer are from excluded social groups: 35% Dalits in Nepal are reported to be food-poor, which is nearly three times higher than the number of Brahmins. (*Bishwokarma, K. (n.d.) Social Exclusion and Food Insecurity. Accessed on 1 September 2014 from [http://www.aidmonitor.org.np/inner.php?do=views\\_detail&id=360](http://www.aidmonitor.org.np/inner.php?do=views_detail&id=360)*)
- **Social exclusion and food insecurity are linked:** households spending more than 75%

of their expenditure on food are more likely to suffer food insecurity. 39% of Dalit households, according to the 2013 National Planning Commission report, fall under this category. Social exclusion and food insecurity are thus mutually inclusive, as is evident in the case of Nepali Dalits. (*Bishwokarma, K. (n.d.) Social Exclusion and Food Insecurity. Accessed on 1 September 2014 from [http://www.aidmonitor.org.np/inner.php?do=views\\_detail&id=360](http://www.aidmonitor.org.np/inner.php?do=views_detail&id=360)*)

- **1309 houses are currently being constructed under the People's Housing Program:** the houses are not meant only for Dalits. No data is available on how many Dalits have benefitted from this program to date.
- **Various water projects have been implemented by district committees:** 50 drinking water projects along with some drinking water reserve tanks and toilets have been constructed in several districts by the coordination of related district development committee and district Dalit coordination committees. (*Neglected, Suppressed and Dalit Community Upliftment Development Committee. (2012/2013). Progress report of Neglected, Suppressed and Dalit Community Upliftment Development Committee. Kathmandu: NSDCUDC*)
- **Caste discrimination continues to negatively affect access to water:** in the absence of specific measures to ensure non-discriminatory access to basic livelihood resources, caste discrimination against Dalits continues. For example, in the village of Dadeldhura in the Karnali region, the administration installed water-pipes and taps for all villagers, but the non-Dalit community blocked water from flowing into Dalit households' taps. When the Dalit community made a complaint to the district drinking water office, nobody listened to them. They were compelled to go to another village to fetch water taking more than 5 hours resulting in health issues for the Dalit women. This daily discriminatory practice against Dalits which causes water scarcity in farming also harms their food production. (*Shanker, I.M. (13 June 2012). Life like hell in the place like. Accessed on 2 September 2014 from <http://reliefweb.int/report/nepal/thousands-families-denied-access-safe-water-nepal>*) Persons belonging to the lower castes are also denied access to public wells, thereby directly threatening their right to an adequate standard of living and their right to the highest attainable standard of health. (*CESCR. (2008). Concluding Observations on Nepal State report. UN Doc. E/C.12/NPL/CO/2, para. 24*)
- **Less than 10% of Dalits have sanitation coverage:** overall sanitation coverage in urban areas is 91%, while the number drops to 55% in rural areas, with less than 10% coverage among Madhesis and Dalits. (*United Nations Development Program. (2013). Annual Report 2013. Lalitpur: UNDP, p.4*)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of institutional regulating mechanisms, there is no scope to assess the impact of national measures and mechanisms.

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### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- The Land Use Policy (2012) has no supporting legislation or regulatory framework.
- There is a lack of punishment provision in laws, policies, rules and regulations with regard to the unequal distribution of water and food by national mechanisms.
- There is a lack of special measures, policies, programs and action plans for ensuring non-discriminatory access for Dalits to food, water, sanitation, clothing, land and housing.
- The "People's Housing Program" run by the Government of Nepal is insufficient in comparison to the number of beneficiaries it is obligated to address.
- The percentage of land holders in the Dalit community is yet to be documented by the Government of Nepal.
- The practice of untouchability is still rampant, even today, and negatively affects access to water sources due to a lack of effective monitoring mechanisms.
- There is no law in place to ensure the right to food, which would include provisions for the non-discriminatory distribution of food and quality control.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- DANAR –Nepal is engaged to ensure the rights of the Dalit community to natural resources such as land, water and forest and to assist for building the vision of an inclusive, equitable and prosperous society. DANAR explores the hidden issues of exclusion and raises voice for inclusive development and makes government bodies and other development agencies aware of their roles and responsibilities for inclusive development and sustainable peace.
- DWO is engaged thematically on climate change and disaster response and supports the victims of calamities caused by climate change and disaster.
- Some Dalit CSOs have also been working for the better livelihood of Dalit communities with the slogan of "Right to Food."

### 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- COLARP is engaged in research and policy advocacy relating to land for the poor and the landless.



## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Access to adequate housing, food, water and sanitation need to be established as legal entitlements, providing a basis for individuals and groups to hold the Government of Nepal and other stakeholders accountable for realizing these rights.
- Access to basic food, water, sanitation and housing services need to be prioritized for the most marginalized groups of people, with Dalits as one of these groups, in all related policies.
- A time-bound plan of action should be developed to ensure that adequate and discrimination-free housing, water, food and sanitation facilities are provided to all Dalit households.
- Existing water, housing and food related laws should be amended and punishment provision should be endorsed where CBD & U is committed against Dalits in the name of these basic needs.
- Provisions of inclusion should be strictly followed and existing policies, acts, rules, regulations and national mechanisms related to food, housing, water and sanitation must be amended to make them Dalit-friendly.
- The "People's Housing Program" should be expanded to all landless Dalit people.
- Effective sustainable programs (to reduce poverty, build sanitation infrastructure in Dalit residences, ensure access to pure drinking water and supply necessary food in situations of drought along with a proper housing plan) should be ensured for all needy people from the Dalit community.
- The existing Neglected, Suppressed & Dalit Community Upliftment Development Committee should be made a leading, capable and resources institution for the overall sustainable development of the Dalit community. It should comprise of Dalit experts covering all sectors of development and be freed from any political influence as an independent statutory body.
- The Government of Nepal should be responsible for providing access to adequate food to eliminate hunger, malnutrition and starvation.
- A "State Privileged Identity Card" scheme should be initiated and distributed to families living below the poverty line. The cardholders should be given privileged access to health, education and public supply system services.

**GUIDELINE NO: 44**

**Governments should ensure that the ministries, district administration and local bodies develop comprehensive mechanisms and programs for enhancing mandatory and increased access to development programs and budgets for affected communities.**

Dalits have been facing discrimination in different forms and dimensions for centuries, dispossessed from all very basic and necessary rights. They are rejected socially, denied free access to water sources, and kept out of discussions and debates. This includes discussions around funeral or birth rites, wedding ceremonies, community feasts or cultural programs, community meetings and trainings, non-formal educational classes and income-generating activities. Dalits, especially women, are often subjected to physical assault and many other forms of abuse in various social settings. Because of this, Dalits still remain outside the mainstream Nepalese society. The magnitude of exclusion of Dalits is reflected by many indicators including the Human Development Index, which lists Dalits as the lowest out of all listed groups. Various other development indicators also suggest that they have the lowest annual per capita income, expenditure, savings and investment.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to enhance Dalit access to development programs and budgets with regard to adequate food, water, and housing. Dalits should be entitled to be brought into the mainstream of national development to uplift the Dalit community from the vulnerable economic status they are in, caused by exclusion from utilization of resources and participation in development processes on the basis of CBD & U practices.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- States should undertake all necessary measures for the realisation of the right to development and shall ensure, among other things, equal opportunity in access to basic resources, food, housing, employment... (*Article 8(1), Declaration on the Right to Development, 1986*)
- States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from. (*Article 2(3), Declaration on the Right to Development, 1986*)

- Everyone has the right to an adequate standard of living for her/himself and her/his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. (*Article 11(1), ICESCR*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should organize training programs to improve the political policy-making and public administration skills of public officials and political representatives who belong to descent-based communities. (*CERD. (2002). General Recommendation 29: Descent based Discrimination, para. 30*)
- The Government of Nepal should establish special units to monitor the implementation of programs to protect and promote the full enjoyment without discrimination of their economic, social and cultural rights by disadvantaged and marginalized groups, in particular Dalit, Madhesi and Indigenous communities, and especially women within these groups. (*CESCR. (2008). Concluding Observations on Nepal State report. UN Doc. E/C.12/NPL/CO/2, para. 32*)
- The Nepali State should consider, as a priority, the adoption of the relevant statutory law to enable the National Dalit Commission to carry out its mandate effectively... (*CERD. (2004). Concluding Observations on Nepal State report. UN Doc. CERD/C/64/CO/5: para. 11*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- The State shall have the obligation to ensure progressive political, economic and social transformation in the country. (*Article 33(b), Interim Constitution of Nepal, 2007*)
- The State is committed to make inclusive, democratic and progressive restructuring, by ending the existing centralized and unitary structure of the State so as to address the problems including those of women, Dalit, Indigenous people, Madhesi, oppressed, excluded and minority communities and backward regions, while at the same time doing way with discrimination based on class, caste, language, gender, culture, religion and region. (*Article 33(d), Interim Constitution of Nepal, 2007*)
- The State shall strive to have participation of Madhesi, Dalit, Indigenous peoples, women, laborers, farmers, disabled, backward classes and regions in all organs of the State structure on the basis of proportional inclusion. (*Article 33(d1), Interim Constitution of Nepal, 2007*)

## Chapter - VII : ADEQUATE FOOD, WATER AND HOUSING

- The Government of Nepal shall carry out an administrative function at central, regional, zonal, district, and local level to maintain good governance within the country. (*Section 3 (1), Good Governance (Management and Operation) Act, 2008*)
- Every person holding public office shall comply with the official or professional code of conduct as prescribed during the tenure of his/her office. Departmental action shall be taken against any person violating such code of conduct and a record shall be maintained by the concerned authority. Furthermore in case any matter concerning to the non-compliance or violation of the official or professional code of conduct has been criminalized by the prevailing laws, shall not prevent from initiating proceeding according to law against such person. (*Section 23 (4) & (5), Good Governance (Management and Operation) Act, 2008*)

### Policy measures

There are a few policy measures that incorporate all Nepalese citizens, but Dalit-centric policy measures are still lacking.

- The Three Year Interim Plan (2007-10) has explicitly adopted the principle of decentralization as a means to enhance people's participation in the local governance process. In order to materialize its mission of people's participation, special focus should be laid upon the demand-driven, targeted, community-focused and specific goal-oriented schemes that will increase the access of people from disadvantaged groups including Dalits.
- The 13th three-year plan (2013-16) set by the National Planning Commission (NPC) has the long-term perspective of transforming Nepal from having "least developed" country status to being a "developing" country within the next ten years. This plan sets its goal to bring down the number of people below the poverty line to 18%. However, no specific mention is made about Dalit poverty levels.
- Dalits, landless people, squatters, freed Kamaiyas and Haliyas as well as other backward communities will be targeted and provided with land on lease for farming. (*Office of the Prime Minister and Council of Ministers. (2014). Policies and Programs of the Government of Nepal for Fiscal Year 2014/15. Kathmandu: GoN, p. 3*)

### Programmatic and budgetary measures

- The People's Housing Program has been continued into the current financial year (2014/15). Under this program, 1762 citizen houses will be constructed for disadvantaged and marginalized citizens from communities such as Dalit, poor Musalman, Chepang, Badi, Kusunda, Gandharwa, Raji and Lodh. (*Ministry of Finance, (2014/15). Budget Speech 2014/15. Kathmandu: GoN.*)
- The Poverty Alleviation Fund (PAF) is a targeted program for the poor, started in 2004. Its target is to specifically reach poor households below the poverty level in a community. PAF aims to empower socially excluded and disadvantaged poor households.
- There is no separate budget allocation in the heading of the Dalit community. Some amount

of budget is allocated to government structures such as the Neglected, Suppressed and Dalit Community Upliftment Development Committee (NPR 67,500,000) and the Badi Development Board (NPR 10,000,000).

### National mechanisms

- **Ministry of Physical Infrastructure and Transport:** the main aim of the Ministry and its line agencies is to bring important infrastructural development under the umbrella of a single Ministry and to harmonize the policies and bring efficiencies and effectiveness in the provision of infrastructural services. (*Ministry of Physical Infrastructure and Transport website accessed on 2 September 2014 from <http://www.mopit.gov.np/>*)
- **Ministry of Urban Development:** the Ministry is responsible for maintaining and regulating infrastructure and supplying sufficient water to all citizens, managing sanitation and ultimately constructing beautiful cities.
- **Ministry of Finance:** responsible for all economic and financial affairs of the country.
- **National Planning Commission (NPC):** the advisory body for formulating development plans and policies in the country under the directives of the National Development Council (NDC).
- **District Development Committees (DDCs), Village Development Committees (VDCs), and Municipalities:** as per the mandate and spirit of the Local Self-Governance Act (1999) these are recognized as local bodies and are responsible in delivering services to people at the local level.
- **Neglected, Suppressed and Dalit Community Upliftment Development Committee:** established by the Government of Nepal in 1996, it later expanded and formed a "Dalit Community Upliftment District Coordination Committee" in all 75 districts of Nepal. Since its establishment, it has been supporting the development of Dalits.
- **Badi Community Development Board:** established by the Government of Nepal in 2011 it is mandated to formulate and implement concrete policy and programs for the development, upliftment and protection of the Badi community.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by a national mechanism:

- Health and empowerment programs need to focus specifically on the lower economic classes, disadvantaged castes and ethnic groups (especially Dalits and Muslims) and women. Programs backed by social mobilization need to proactively provide incentives to encourage school attendance and use of basic health facilities and improved sanitation. (*UNDP. (2014). Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential. Kathmandu: National Planning Commission & UNDP, pp.70-71*)

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### 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **The Dalit community is lagging behind national average poverty levels:** though official data show that there has been a reduction in poverty among the Nepalese, the Dalit community is lagging behind. The percentage of Hill Dalits and Terai Dalits living below the poverty line are 43.63% and 38.16 % respectively whereas the national average is 25% (*Central Bureau of Statistics. (2010-11). Poverty in Nepal, Nepal Living Standards Survey III. Kathmandu: CBS. p. 10*)
- **Poverty varies significantly across different castes and ethnic groups:** the poverty incidence or poverty headcount rate for Nepal is 25.2%. However Hill Brahmans have a low incidence of 10.3% compared to 43.6% for Hill Dalits and 38.2% for Tarai Dalits. The poverty incidence among Hill and Tarai Janajatis is 28.3% and 25.9% respectively. (*UNDP. (2014). Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential. Kathmandu: National Planning Commission & UNDP, p.18*)
- **Expenditure on Dalit issues is very low:** around NPR 521.40 million in foreign aid has been received for Dalit issues over the past 9 years or so. However, only about NPR 12.70 million has been spent, implying a very low (2.4%) absorptive capacity. (*KC, S. (December 18, 2012). 'Impact of Local Governance and Dalit participation in Nepal', in Social Sciences and Humanities Studies Academic Blog. Accessed on 3 September 2014 from [http://visitskc.wordpress.com/2012/12/18/impact-of-local-governance-and-dalit-participation-in-nepal/#\\_ftn1](http://visitskc.wordpress.com/2012/12/18/impact-of-local-governance-and-dalit-participation-in-nepal/#_ftn1)*)

### 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of targeted measures and mechanisms towards Dalits, there is no scope to assess the impact of national measures and mechanisms.

### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- Although there are some special provisions and national mechanisms for Dalits (e.g. the National Dalit Commission and Neglected, Suppressed & Dalit Community Upliftment Development Committee), all mechanisms are not in the position to work freely due to a lack of autonomous power and insufficient budgets.
- There is a lack of special policies, programs and sustainable development roadmap for the development of the Dalit community.



- The Dalit community lack adequate representation in decision making and program implementing structures of Nepal.
- There is no separate budget or budgetary provisions for Dalits to support their socio-economic development on par with the general Nepali population.
- There is a lack of obligatory provisions to make enforcing agents comply with development initiatives taken by the Government of Nepal.

## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- The integrated intervention response by Dalit CSOs for empowerment, inclusion and people's mobilization plus continued advocacy for distinct recognition of Dalit issues and special Dalit development programs has been crucial to influence policies and better the economic, social and cultural rights of Dalits.

## 10. WIDER SOCIETY RESPONSE

At present, wider civil society has been focusing their priority on promoting and advocating for the realization of the human right to food in Nepal, improving access to safe water, hygiene and sanitation, and ensuring equal participation in mainstream development processes. However, there are very few efforts for the upliftment of the Dalit community specifically.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The provision of zero tolerance towards the non-fulfillment of duties by government authorities should be endorsed in the existing legal system so as to make government authorities liable towards the performance of their duties and responsibilities vis-à-vis government initiatives for the development of Dalits.
- A special inclusive policy, program and sustainable development roadmap should be made for the development of Dalit community. The roadmap should be developed in coordination with CSOs.
- The mechanisms that target the Dalit community should be delegated autonomous power with sufficient allocation of budget and equipped with skillful human resources.
- A constitutional guarantee should be made to ensure representation of the Dalit community in the decision making and program implementing agencies of Nepal.
- A strong monitoring mechanism should be formed for proper supervision of the practice of public officers and authorities.

## CHAPTER VIII

## EDUCATION

## GUIDELINE NO: 46

**National and local governments should take all necessary measures to ensure equal access to free, quality primary and secondary education for children from affected communities, as well as equal opportunity to receive tertiary education. Effective special measures should be enacted for affected communities in admissions to public and private higher education institutions.**

Dalits were excluded from educational opportunities for centuries on the basis of Hindu myth. It has not been long that Dalits have been given the opportunity to read and write.

However, the children of Dalit families are vulnerable and often discriminated against, including in school. Due to economic backwardness their access to education is very poor and a huge numbers of Dalit children of school age are not admitted into schools. In many cases, families prefer their children to work at home rather than letting them to go to school. The parents are usually unable to buy uniforms, books and stationery for their children. As a result, the dropout rate of Dalit children is very high. This is an indicator that shows Dalit children are missing the opportunity to have a quality education.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that Dalits have equal access to education, do not face discrimination in education, have the freedom to exercise their rights, and increase their access to education. This should include:

- **Ensuring equal access to free, quality education at primary and secondary level:** Dalit children should be entitled to free education in schools with adequate infrastructure and facilities. Teachers should regularly attend classes and teach using methods that support children to critically reason and address different learning needs. There should be freedom from discrimination in schools and effective motivational programs and activities for Dalit students. In addition, there should be recruitment of Dalit teachers.

- **Ensuring equal opportunity to receive tertiary education:** educational institutions should be discrimination-free, providing scholarships, hostel facilities and other measures to ensure admission of Dalit students. There should be special coaching classes to support entry into tertiary education and access to educational and vocational information and guidance.
- **Providing special measures for admission to public and private higher education:** there should be a quota system and subsidies in admission fees and/or provision of free admission for Dalit students.

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- Everyone has the right to education. Primary education shall be free and compulsory for all. Secondary education shall be available and accessible to all by every appropriate means. Tertiary education shall be equally accessible to all, on the basis of capacity. (*Article 13, ICESCR*)
- Each State Party which has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all. (*Article 14, ICESCR*)
- States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education. (*Article 10, CEDAW*)
- Every child has the right to education and State Parties shall make primary education free and compulsory for all; develop different forms of secondary education, including general and vocational education, and make them available and accessible to every child, including financially accessible; make tertiary education accessible to all on the basis of capacity by every appropriate means; encourage regular attendance at schools and the reduction of dropouts. (*Article 28, CRC*)
- Everyone has the right, without distinction based on race (caste), to equality before the law in the enjoyment of the rights to education and training. (*Article 5(e)(v), ICERD*)
- State Parties shall eliminate discrimination in education that has the purpose or effect of nullifying or impairing equality of treatment in education and in particular (a) depriving any person/s of access to education; (b) limiting any person/s to education of an inferior standard; (c) maintaining separate educational systems or institutions for persons (subject to Article 2); or (d) inflicting on any person/s conditions which are incompatible with human dignity. (*Articles 1 & 3, UNESCO Convention against Discrimination in Education, 1960*)

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### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should adopt special measures in favour of Dalit communities in order to ensure their enjoyment of rights to... education; combat multiple discrimination faced by Dalit women in education; prevent, prohibit and eliminate practices of segregation in education. *(CERD. (2002). General Recommendation 29: Decent-based Discrimination, paras. 6, 12 & 15)*
- States with Dalit communities should ensure that public and private education systems do not exclude children on the basis of descent; reduce school dropout rates for all children, in particular for Dalit children and, within that, Dalit girls; combat discrimination and harassment of Dalit students. *(CERD. (2002). General Recommendation 29, paras. 44-46)*
- Governments should remove known barriers to the enrolment and retention in school of young and teenage girls belonging to all castes that are discriminated against. *(Special Rapporteur on the Right to Education. (2006). Girls' Right to Education. UN Doc. E/CN.4/2006/45, paras. 80–85 and 140).*
- The Nepali State should strengthen its efforts to achieve universal provision of quality education for girls at each level of the education system in urban, rural and remote areas and to provide access to education to girls with disabilities through the improvement of infrastructures and the provision of support systems, with special attention to girls from Dalit, Indigenous and other disadvantaged groups. *(CEDAW. (2011). Concluding Observations on Nepal State report. UN Doc. CEDAW/C/NPL/CO/4-5, para. 28(a))*
- Social sector policies need to recognize the caste and ethnic dimensions of human development. Clear and ongoing caste and ethnic inequalities are revealed in different educational achievements and earnings. This strengthens the argument for deliberate strategies to increase inclusiveness by providing educational and economic opportunities for disadvantaged ethnic and caste groups such as Dalits and Muslims. *(UNDP. (2014). Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential. Kathmandu: National Planning Commission & UNDP, p.66)*
- On the social front, particularly in education and health, the Eastern and Central Tarai clearly needs attention. The districts from Saptari to Parsa could receive more emphasis, since they also have significant Dalit populations. *(UNDP. (2014). Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential. Kathmandu: National Planning Commission & UNDP, p.70)*

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

### Constitutional and legal measures

- Every community shall have the right to get basic education in its own mother tongue, as provided in law. (*Article 17, Interim Constitution of Nepal, 2007*)
- Every citizen shall have the right to get free education up to the secondary level from the State, as provided in law. (*Article 17(2) Interim Constitution of Nepal, 2007*)
- The State shall pursue a policy of uplifting the economically and socially backward Indigenous peoples, Madhesi, Dalit, marginalized communities, and workers and farmers living below the poverty line, by making a provision of reservation in education...for a certain period of time. (*Article 35(10), Interim Constitution of Nepal, 2007*)
- The education of the primary level of Community Schools shall be free and the Government of Nepal shall provide textbooks free of cost to the students enrolled in such schools. (*Section 16 (D)(1), Education Act, 1971*)
- The fees to be charged for a student studying in Lower Secondary and Secondary level are prescribed, provided that free education in Community Schools shall be given to Dalits, Janajatis girls and other students who are below the poverty line. (*Section 16 (D)(2), Education Act, 1971*)
- The Government of Nepal may arrange scholarships as prescribed to the students enrolled at Lower Secondary Education and Secondary Education. (*Section 11(o), Education Act, 1971*)
- An institutional school shall provide free scholarships to students who are poor, disabled, female, Dalits or from Indigenous tribes in such a way that such scholarship shall not be less than 10% of the total number of the enrolled students in such a school. (*Section 16(J) (1) Education Act, 1971*)
- The Education Act 1971 (8<sup>th</sup> amendment) promulgated that primary education would be free and books would be provided by the Government of Nepal. Certain fees were supposed to be provided for lower secondary and secondary school students who were poor, Dalit, from ethnic groups or female. The management of privately run schools were also obliged to provide 10% free scholarships to poor students.
- Institutional schools shall make scholarships available to at least 5% of the total number of students to those belonging to poor, disabled, female, suppressed and ethnic classes. (*Rule No. 151(2), Education Rules, 2002*)
- Community school shall make provisions for providing free education to students living below the poverty line, ethnic and Dalit community students and female (girl) students. (*Rule No. 152(1), Education Rules, 2002*)
- Notwithstanding anything contained in these Rules, if the Government of Nepal has taken a specific policy regarding to Dalits (down trodden classes), suppressed classes of people,

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Janajatis and women, the grant may also be distributed, on such basis. (*Rule No.6(2)(5), University Grants Commission Work Management Rule, 2003*)

- No one shall be discriminated on the basis of Religion, Caste, Creed, race, Gender and Faith for any post or receiving degree, Bachelor's Degree, Intermediate, Master's or any educational Degree or study or facility. (*Section 12, Nepal Sanskrit University Act, 1986*)
- Among the scholarships provided by the Government of Nepal, the scholarship as prescribed shall be secured for poor, women, differently abled, Indigenous tribes and Dalits including for people from remote areas as prescribed. (*Section 3(a), Scholarship Act, 1964*)
- 9% of educational scholarships are guaranteed for the Dalit community. (*Rule No. 10A(1)(e), Scholarship Rule, 2003*)
- Out of the 33% reservation to be provided for women, 3% shall be reserved for Dalit community women. (*Rule No.10A (3), Scholarship Rule, 2003*)
- Out of the 20% reservation to be provided to the Madhesi community, 3% shall be reserved for people from Madhesi Dalit communities. (*Rule No. 10A (4), Scholarship Rule, 2003*)

### Policy measures

- Free basic education will be gradually be made qualitative, useful and compulsory. In accordance with the objective of the School Sector Reform Program, legal and structural improvements will be made and the syllabus modified so as to improve the quality and extend equitable access to integrated secondary education comprising Classes 9 to 12. (*Government of Nepal, (2011/12). Policies and Programs of Government of Nepal. Kathmandu: GoN*)
- Physical infrastructure of public schools will be improved. The construction of girls' toilets in every school will be intensified. The scholarship in nursing program awarded to the girls from disadvantaged, Muslim and Dalit communities in Terai districts will be continued. Academic quality will be improved through student-friendly teaching methods to align target group and physical disability. (*Government of Nepal, (2011/12). No. 83 of Policies and Programs of Government of Nepal. Kathmandu: GoN*)
- Beside these, the policies formulated by the Government of Nepal regarding the improvement of national educational level are the Special Education Policy (1996), the Human Resources Development for Ministry of Education Training Policy (2005), the National Centre for Educational Development: Training Policy (2005), the Open and Distance Learning (ODL) Policy (2006), the Non-Formal Education Policies (2006) and the Technical Education and Vocational Training Skill Development Policy (2007).

### Programmatic and budgetary measures

- The 'Literate Nepal Campaign' program (2014-15) will be observed as part of 'Illiteracy Elimination Year'. Provision will be made for students pursuing higher education in technical disciplines to serve in specified areas for a certain duration. Dalit and Muslim girls as well



as children of endangered ethnicities will be further encouraged for the study of technical education. (*Government of Nepal, (2014/15). Policies and Programs of Government of Nepal. Kathmandu: GoN, p. 9*)

- The School Sector Reform Plan (SSRP) is the Government of Nepal's 7-year strategic plan, running from 2009/10–2015/16, for achieving the Education for All (EFA) goal. The program is being implemented through a sector-wide approach. The SSRP aims to (i) expand access and equity, (ii) improve quality and relevance, and (iii) strengthen the institutional capacity of the entire school education system to improve system performance. Some other programs such as the Second Higher Education Project (SHEP), the Community School Capacity Development Program, and the Sishu Vikash Program are also in operation and contributing to achieve the EFA goals.
- The following are some of the programmatic and budgetary measures taken as initiatives by the Government of Nepal to achieve a 100% literacy rate: the Informal Education and Literacy Campaign Nepal (NPR 99,89,50,000), the School Sector Reform Plan (NPR 39,39,74,000 at Center level and NPR 22,00,84,50,000 for District level), Education for All (NPR 23,01,29,000), the Food Program for Education (NPR 50,62,53,000), the Enhancement Vocational Education and Training plan (NPR.1,053,070,000), the skill development project (NPR 150,345,000) and the Conflict Affected Education Program (NPR 78,200,000). (*National Planning Commission, (2013/14). Yearly Development Program of Government of Nepal 2013/14. Kathmandu: NPC*)
- The Government of Nepal has developed the provision of scholarships for Dalit students for higher education, which is distributed through the Neglected, Suppressed & Dalit Community Upliftment Development Committee.
- The Student Scholarship Bank, under the higher secondary education Board (HSEB), will take the exam and those students who pass the exam are recommended to different private colleges for free education in higher secondary levels.
- The Government of Nepal has provided a building - the "Social Development Hostel" - containing 33 rooms for the capacity of 66 Dalit students. It is located in the Bijeshari, Kathmandu. However, there is no budgetary allocation or other support for the management of the hostel. According to hostel sources, they earn monthly NPR 10,000 by renting some rooms and maintain the basic expenditure of the hostel.

### National mechanisms

- **Ministry of Education:** the Ministry is the apex body of all educational organizations and it is responsible for the overall development of education in the country. Under the Ministry, various central, regional, district, local and autonomous agencies are functioning to achieve their objectives and goals under the Ministry of Education. Currently there are 1053 Education Resource Centers, 32,130 schools, 29,089 Early Childhood Development/ Pre-Primary Class centers, 9 universities and 3 libraries existing in the education sector. (*Ministry of Education. (2010). A glimpse 2010. Kathmandu: GoN, pp. 22-23*)

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- **Council for Technical Education and Vocational Training (CTEVT):** constituted in 1989 (2045 BS), CTEVT is a national autonomous apex body of the Technical and Vocational Education and Training (TVET) sector committed to the production of technical and skillful human resources required by the nation. (*CTEVT website accessed on 4 September 2014 from <http://www.ctevt.org.np/>*).

### 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by national mechanisms:

The High Level National Education Commission (1998) recommended the following for Dalits:

#### 1. *Construction of an educational environment:*

- Through government modes of communication, there must be good management of broadcasting and telecasting awareness messages based on discrimination.
- Every school should conduct the Dalit awareness program. Through this program they should build the educational cultural heritage of the Dalit community, conduct programs against untouchability in the non-Dalit community and produce programs that can foster a favorable environment for Dalit education.
- Priority should be given to appoint Dalit teachers in schools and then women should be given opportunity.

#### 2. *Reformation of curricula/course books:*

- Dalit issues contained in courses and books should be presented in a positive way, admiring Dalits who have made valuable contributions in history. Course books that raise awareness about untouchability, hierarchy and discrimination must be included in course content giving examples where caste-based discrimination is against the law and should be declared as a crime that is punishable.
- Teachers and local educated persons from Dalit communities should be involved in the making of Dalit-related courses and elements to be taught in school.

#### 3. *Preparation training for the change:*

- Preparation training for change should be taken as a campaign to provide training to teachers, schools, school management committees and public representatives. The campaign should aim to eradicate the practice of untouchability that is prevalent in the present context of the democratic humanitarian community where school-based programs are carried out. During the period of training, activities such as interactions, campaigns, literature competitions and publicity expansion should be practiced on a wide scale. Apart from this, educational

trainings must mandate course content regarding untouchability and discrimination in different places.

#### 4. *Special provision in school:*

- Dalit students should be provided higher education where the policy of reservation must be applied to those who have completed the minimum requirements.
- To encourage Dalit children, provision of free scholarships should be made and books must be distributed freely.
- District scholarship funds should be established and through that mechanism, scholarship distribution should be made to Dalit students from the district.
- A certain quota/reservation should be ensured in private and government schools for Dalit students.
- Scholarship provision should be made in higher-level education for brilliant Dalit students.

#### 5. *Special financial incentive:*

- Reservation for obedient and talented students from the Dalit community and other special financial support should be managed by the State.
- A Dalit education fund should be established in all universities and their affiliated colleges and utilized at both university and college level.
- A Dalit community saving program should be run under the school and a policy of learning and earning to Dalit students should be conducted in the community and in schools.

#### 6. *Protection and preservation of Dalit skills:*

- A Dalit business training center must be organized in each district. Through these centers short-term skill development training should be given for both Dalit and non-Dalit students.
- To preserve the skills of Dalits, a Dalit skill development academy should be established at the national level.

*(High Level National Education Commission. (1998). Report of High level National Education Commission 1998. Kathmandu: MoE, pp. 161-162)*

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

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- **Dalit children are enrolling in pre-school education:** out of a total enrolment of 1,053,054 in 2012/13 in Early Childhood Developments (ECDs) and Pre-Primary Classes (PPCs), 192,516 (18.3%) were Dalits. Among the Dalit students enrolled, 96,298 were girls and 96,218 were boys. (*Ministry of Education. (2012/13). Flash I Report (2012-13). Kathmandu: GoN, p. 11*)
- **Dalit enrolment in secondary schools is gradually increasing:** the total secondary level (grade 9-12) enrolment was 1,265,563 in 2012/13. Out of this, 632,572 were girls and 632,991 were boys. On average, the share of Dalit enrolment in total enrolment at the secondary level was 10.6%. When compared to the previous school year (10.5%), the share of Dalit enrolment increased by 0.1%. The Dalit enrolment at the higher secondary level was 7.6%, which is also higher than in the previous year (6.8%). (*Ministry of Education. (2012/13). Flash I Report (2012-13). Kathmandu: GoN, pp. 45, 99-102*)
- **The literacy rate of Dalits is still considerably lower than higher castes:** the literacy rate of Brahman and Chhetri averages at 87%, while for the Dalit community it is only 47.35%. (*United Nations Development Program. (2009). Nepal Human Development Report 2009. Lalitpur: UNDP, p. 1*)
- **Low educational achievements translate into limited economic and political opportunities:** previous Nepal Human Development Reports have emphasized that among the three components of the human development index (HDI), differences in educational attainment largely explain inequalities between high and low HDI values for caste and ethnic groups in Nepal. This is underscored by the low educational attainment of Dalits in general and Madhesi Dalits in particular, and of the Muslims. Low levels of education as well as social and economic exclusion translate into limited opportunities in economic and political spheres. (*UNDP. (2014). Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential. Kathmandu: National Planning Commission & UNDP, p.18*)
- **Dalit children are receiving education scholarships:** in 2013/14 the number of Dalit students receiving a scholarship in primary level from the Government of Nepal was 1,129,203. The number of Dalit students receiving the scholarship in secondary level (9-10) was 83,733. (*National Planning Commission, (2013/14). Yearly Development Program, 2013-14. Kathmandu: NPC, p. 106*)
- **The number of Dalit scholarships distributed is less than the target:** since 1994 the Government of India has distributed scholarships to Dalits in primary schools in certain districts at an amount of NPR 400 annually. However, while the number of students for targeted Dalit scholarship was 1,306,088 in 2012, the achieved result was only 1,200,816 (92%). (*Ministry of Education. (2013). Status Report 2012. Kathmandu: MoE, p. 23*)
- **The proportion of Dalit teachers still remains low:** despite a government commitment to the principle of inclusion, in 2012 the proportions of Dalit teachers at primary, lower secondary and secondary levels were 4.5%, 3.1%, and 3.6% respectively. (*Ministry of Education. (2013). Flash I report 2012-13. Kathmandu: MoE*)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **The literacy rate of Dalits is still considerably lower than the national average:** the overall literacy rate for the population aged 5 years and above has increased from 54.1% in 2001 to 65.9% in 2011. Male literacy rate is 75.1% compared to female literacy rate of 57.4%. The highest literacy rate is reported in Kathmandu district (86.3 %) and lowest in Rautahat (41.7%). (*Central Bureau of Statistics. (2011). National Report on National Population and Housing Census. Kathmandu: CBS*). However, the Dalit literacy rate is only 33%. (*DWO website accessed on 4 September 2014 from <http://dwo.org.np/dalit.php>*).
- **The school drop out rate of Dalit children is still high:** despite the above educational measures, Dalit children continue to drop out of school, especially the higher classes. In 2012, the share of Dalit enrolment at the primary level was 20.3% (21.7% in the last school year). At lower secondary level, Dalit enrolment was 14.6% (14.6% in the last school year). At secondary level this figure was 10.6% (10.5% in the last school year) and at higher secondary level, Dalit enrolment was 7.6% (6.8% in the last school year). (*Ministry of Education. (2012/13). Flash I report 2012-13. Kathmandu: MoE*)

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is a lack of comprehensive disaggregated data available on Dalit male and female access, retention and achievements in education at all levels.
- There is currently no measure in place to check discrimination against Dalit children in schools and in higher educational institutions.
- The scholarship is nominal and in relation to scholarship management, irregularities were reported. (*Shivakoti, R. K. (May 2013). Implementation of Marginalized Group Education Scholarship. Lalitpur: SIRF/ SNV Nepal, p.7*)
- There has been inadequate effort in the Government of Nepal's policies and programs to retain Dalit children in schools and minimize the rate of drop out among them.
- There has been a lack of effective implementation of policies, programs, rules and regulations relating to education.
- There are a lack of effective monitoring and implementing mechanisms surrounding the scholarship scheme conducted by the Government of Nepal.
- There is not a conducive environment to address the special needs of Dalit students with regards to, among other things, physical infrastructure, accessibility of schools from



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settlement, quality of teachers and caste-based discriminatory activities. (*My Republica website accessed on 4 September 2014 from [http://www.myrepublica.com/portal/index.php/images\\_2010/rss.php?action=news\\_details&news\\_id=76711](http://www.myrepublica.com/portal/index.php/images_2010/rss.php?action=news_details&news_id=76711)*).

- The scholarship programs of the Government of Nepal and Neglected Suppressed and Dalit Community Upliftment Development Committee should be transparent and the priority should be given to needy Dalits within the Dalit community.
- The Dalit community is not adequately represented in schools.
- The Dalit community lacks representation at the education policy-making level.
- There is not enough accessibility to private institutions.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- The Professional Development and Research Centre (PDRC) works to increase the access of marginalized, young Dalits to quality higher education (100+ students received financial support, 10 PDRC students geared up for higher studies, 4 PDRC students finished college and 10 students were rewarded with scholarships). Through the different programs it equips students with academic competencies, professional skills and financial support. (*Professional Development and Research Centre. (2013). Annual Report 2013. Kathmandu: PDRC, p.8*)
- NNDSWO has conducted a scholarship program for 556 students in 15 districts (including 347 girls) in 309 schools (4 in primary, 31 in lower secondary, and 274 in secondary). (*Nepal National Dalit Social Welfare Organization, (2012). Annual Report 2011/2012. Lalitpur: NNDSWO. p. 27*)
- DWO runs various campaigns to raise awareness of the importance and need for child education. Door to door campaigns have been carried out by DWO to ensure that all members of society in targeted communities are being reached through their efforts to increase awareness and enrolment of children.
- ADWAN Nepal has distributed scholarships to 1271 students. A girls' hostel has also been constructed in Gorkha and Baglung districts.

### 10. WIDER SOCIETY RESPONSE

At present, wider civil society has been working in the education sector, but their programs are preliminarily focused on geographical regions, socio-status and gender, rather than on the Dalit community specifically.



## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Meaningful inclusive provision should be ensured in the existing laws, regulations and all kinds of State mechanisms, agencies and local bodies related to education.
- Gender and caste disaggregated data should be made available each year on learning outcomes at all major levels of education in order to track issues beyond access to and retention in education.
- A Government Order or Advisory should be issued on non-discrimination in schools, and mechanisms should be created to address all forms of discrimination.
- The recommendation of the High Level National Education Commission should be adopted perfectly to ensure better and quality educational development of the Dalit community.
- The provision of one Dalit teacher per school should be endorsed in national education policy.
- The dropout rate of Dalit students should be reduced. A special monitoring and evaluation agency should be established at the national level comprising of Dalit experts from the fields of socio-economics and law for the effective implementation of the free education program and accurate distribution of government incentives.
- The existing scholarship percentage should be increased and the reservation seat for the Dalit community should be expanded and ensured in all the universities, colleges, schools and related educational institutions.
- The provision of scholarships in private and public schools should be made easily accessible without undergoing tedious procedure and should be focused on the needy Dalit community. This should be monitored by the Government of Nepal.
- The Neglected Suppressed and Dalit Community Upliftment Development Committee should be made more competent and resourced with sufficient budgetary allocation. It should also be freed from making a recruitment center of single party political cadre by political intervention.

**GUIDELINE NO: 48**

**National and local governments should review and eliminate language in school textbooks that conveys or encourages stereotypical and prejudicial beliefs, attitudes, and actions against members of affected communities and ensure that the content of education and curricula reflect the contributions of affected communities and emphasize the need to eliminate discrimination based on work and descent through, among other things, inclusion of human rights education.**

Curricula and textbooks of school and college education should be human rights friendly. The content of education should not encourage stereotypical and prejudicial beliefs, attitudes, and actions which creates injustice and a discriminative society. In the case of Dalit communities, there is a need to eradicate several prejudicial beliefs that result in their being called untouchable, lower caste, uneducated, ugly, and so on. The Government of Nepal has yet to take up this issue of curriculum and textbook development to promote equity and inclusion, including the prohibition of subject matters and language related to higher and lower, humiliation, domination and caste-based discrimination.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure non-discriminatory educational curricula, quality education and human dignity. This should include:

- **Reviewing school textbooks to eliminate the language that causes stereotypical and prejudicial beliefs, attitudes, and actions:** a review of the language in all textbooks should be carried out, thereafter eliminating all language that conveys or encourages stereotypical and prejudicial beliefs, attitudes and actions against Dalits. It should also be ensured that the textbooks used in the classroom have content, language and images that are gender-sensitive, and critical of social hierarchies and inequalities of all kinds.
- **Giving equal credence and acknowledgement to the contribution of Dalits in the curricula:** the content of education should be monitored and reflect the contributions of Dalits in society.
- **Ensuring that human rights is included in the content of education and curricula:** it is important to inculcate in all students that all human beings are equal and discrimination in any form is not acceptable. Human rights content should specifically focus on Dalit human rights.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- State measures in the fields of teaching, education, culture and information can help in combating prejudices which lead to racial discrimination and promoting understanding, tolerance and friendship among nations and racial or ethnical groups. (*Article 7, ICERD*)
- The education of a child shall be directed (among other things) to the development of respect for human rights and fundamental freedoms, the development of respect for the child's own cultural identity, language and values, the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and Indigenous persons. (*Article 29, CRC*)
- Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups. (*Article 5(1), UNESCO Convention against Discrimination in Education, 1960*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- Governments should review all language in textbooks that conveys stereotyped or demeaning images, language, names or opinions concerning caste-discriminated communities and replace them with language, etc. that speaks to the inherent dignity and equality of all human beings. (*CERD. (2002). General Recommendation 29: Descent-based Discrimination, para. 48*)
- The State should take action to ensure that certain caste groups are not stigmatized in the curriculum or in school activities. (*Special Rapporteur on the Right to Education. (2005). Conclusion and Recommendations (Accessibility to Education): Report on Girls' Right to Education. UN.Doc. E/CN.4/2006/45, para. 140*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- Every community shall have the right to get basic education in its own mother tongue, as provided in law. (*Article 17(1), Interim Constitution of Nepal, 2007*)
- No such act as to purport to demonstrate any superiority or inferiority of the person or persons belonging to any caste, tribe or origin or to justify social discrimination on the ground of caste or race or to publicize ideology based on racial superiority or hatred or to

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encourage caste discrimination in any manner shall be allowed. (*Article 14 (4), Interim Constitution of Nepal, 2007*)

- The social objective of the State shall be to establish and develop a healthy social life on the foundation of justice and morality, by eliminating all types of economic and social inequalities and by establishing harmony amongst the various castes, tribes, religions, languages, races, communities and denominations. (*Article 34 (5), Interim Constitution of Nepal, 2007*)
- The State shall pursue a policy of strengthening the national unity by maintaining the cultural diversity of the country by developing healthy and cordial social relations amongst the various religions, cultures, castes, communities, denominations, origins and linguistic groups, based on equality and co-existence, and through the equal development of their languages, literatures, scripts, arts and cultures. (*Article 35 (3), Interim Constitution of Nepal 2007*)

### Policy measures

- The National Curriculum Framework (2007) emphasizes the development of a strong sense of non-discrimination towards others despite their caste, ethnicity, religion, language, gender, class, and disability, and to develop a positive outlook towards work and respect for labor. In addition, it focuses on understanding the essence of human rights, social justice and democracy and bringing them into practice accordingly. It intends to develop attitudes to respect individual differences in terms of gender, disabilities, social, economic, geographical, ethnic and cultural variations and to be active in building an inclusive society by being aware of social evils like racial untouchability. (*Ministry of Education and Sports. (2007). National Curriculum Framework-2007. Kathmandu: GoN, pp. 41-42*).
- The National Policy on Children (2012), the Three-Year Interim Plan of Nepal (2010/11-2012/13) and the Three-Year Human Rights Action Plan (2010/11-2012/13) all speak about Human Rights Education. (*Pant, D.P. and Adhikari, P.R. (2013). Human Rights Education in Nepal's School Curricula and Textbooks. Kathmandu: INSEC, p. C*).

### Budgetary and programmatic measures

- NPR 26,567,000 was allocated for the Curricula Development Centre. (*National Planning Commission, (2013/14). Annual Development Program, 2013/14. Kathmandu: GoN, p. 121*). The budget was meant to develop the overall curricula and textbooks at school levels rather than only including Dalit human rights issues in textbooks and curricula.
- The National Dalit Commission was allocated a budget of NPR 50,000 in 2012/13 to conduct consultations with concerned stakeholders about the inclusion of information on CBD & U in the textbooks and curricula. (*National Dalit Commission. (2012/13). Program and Budget 2012/13. Kathmandu: NDC*)

### National mechanisms

- **The Ministry of Education:** the Ministry is responsible for educational planning and management, as well as in improving service delivery systems across the country.
- **National Curriculum Council (NCC):** this high-level council approves all curricula and guides the detailed developmental work of the Curriculum Development Centre (CDC) by setting operational and administrative policy.
- **Curriculum Development Center:** the center is responsible for the maintenance, transmission and renewal of the school education curriculum.
- **Janak Education Material Center Limited:** the center produces and distributes school textbooks throughout Nepal.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by national mechanisms (*Ministry of Education. (1998). Report of High level National Education Commission, 1998. Kathmandu: GoN, pp. 161-162*):

- Dalit issues contained in courses and books should be presented in a positive way, admiring Dalits who have made valuable contributions in history. Course books that raise awareness about untouchability, hierarchy and discrimination must be included in course content giving examples where caste-based discrimination is against the law and should be declared as a crime that is punishable.
- Teachers and local educated persons from Dalit communities should be involved in the making of Dalit-related courses and elements to be taught in school.
- A Dalit business training center must be organized in each district. Through these centers short-term skill development training should be given for both Dalit and non-Dalit students.
- To preserve the skill of Dalits, a Dalit skill development academy should be established at the national level.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Human rights content has been included in various courses and textbooks:** human rights content is included in Social Studies, Civic and Moral Education. Language-related textbooks (in both English and Nepali) also have human rights content. However, there are very few lessons that deal with human rights by giving direct lesson titles such as “Human

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Rights”, “Child Rights” or the rights of the particular groups. (Pant, D.P. and Adhikari, P.R. (April 2013). *Human Rights Education in Nepal's School Curricula and Textbooks. Kathmandu: INSEC, p. E)*

- **Teachers do not feel that human rights content has been adequately included:** although human rights content has been largely incorporated in the school level curricula and textbooks, 72.5% of teachers viewed that human rights contents were not adequately included. Nepal's teachers and students are highly positive towards human rights education. Teachers gave highest priority to the right to life along with higher priority to economic, social and cultural rights, rather than to civil and political rights. (Pant, D.P. and Adhikari, P.R. (2013). *Human Rights Education in Nepal's School Curricula and Textbooks. Kathmandu: INSEC, p. 47)*
- **Students' receipt of textbooks is improving:** in 2012/13, the average percentage of primary school students who received full sets of textbooks within the second week of the academic session was 72.1% (compared to 69.4% in the last school year) At lower secondary level this figure was 73.0% (68.5% in the last school year) and at secondary level it was 74.2% (59.9% in the last school year). (Ministry of Education. (2013). *Flash I Report (2012/13). Kathmandu: GoN. p.7)*

### 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of a review of the impact that the curriculum and human rights education has had in terms of supporting the end of stereotypes and prejudicial beliefs regarding Dalits there is no scope to assess the impact of national measures and mechanisms. However, the continuing problems of caste discrimination and untouchability in the country suggest that much greater efforts are required in the area of curriculum and textbook development, with specific content on Dalit rights, in order to ensure the elimination of caste discriminatory attitudes and practices.

### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- The policies, programs, rules and regulations relating to education are not being implemented effectively. Moreover, there is a lack of an effective education policy that addresses contemporary national needs. (Government of Nepal. (2004). No. 2.2.1.1 of *National Human Rights Action Plan-2004. Kathmandu: GoN)*
- There is a lack of timely availability of free textbooks provided by the Government of Nepal.
- There is a lack of endorsement of Dalit rights education in the national educational curricula.
- There is a lack of Dalit representation in the Curriculum Development Centre.



## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- Dalit-led organizations like PDRC, NNDSWO, DWO and the SAMATA foundation frequently lobby government mechanisms to endorse Dalit human rights provision and the contribution of the Dalit community in the national curricula and textbooks.

## 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- INSEC fights for the endorsement of human rights education and value in national educational curricula and textbooks.
- The National Campaign for Education-Nepal is a coalition of I/NGOs, teachers community, education journalist and grass root organization and advocating for access to quality education for all people of Nepal. It also works in favor of inclusion of Human rights in the curricula in general. However, their role and support has not yet been significant for endorsement of Dalit human rights in national, educational curricula and textbooks.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The national educational curricula and textbooks should include a specific focus on Dalit human rights and issues of CBD & U.
- Representation of the Dalit community should be ensured in all national educational mechanisms, agencies, councils and committees.
- Existing legal mechanisms and educational programs should be made Dalit-friendly and inclusive.
- The provisions of the CBD & U (Offence and Punishment) Act (2011) should be included in the national curriculum.
- Shadow educational curricula should be developed by CSOs, in order to showcase models of inclusive curricula.
- Education Policy should be reviewed and a respectable, accessible, quality and applicable curricula should be developed to replace the derogatory, humiliating and caste-based discriminatory language in the current curricula of schools and college textbooks.
- The Government of Nepal should identify and develop activity-based modules to promote diversity, equity and social inclusion in classrooms and schools, and these should be included in teacher training modules. Time should be allocated within the school schedule for such processes and activities.

## CHAPTER IX

## PUBLIC AWARENESS RAISING & ELIMINATION OF DISCRIMINATORY CUSTOMS

### GUIDELINE NO: 49

**National and local governments should take specific measures to raise awareness, both among the public and among government officials, teachers and media, on discrimination based on work and descent, such as through internal training and public campaigns. Areas of attention should include not only the print and broadcasting media but also alternative avenues of information dissemination, such as local oral information through theatre, songs, etc. as well as information via the internet.**

In principle, Nepal has already restricted untouchability and caste-based discrimination in 1963, ratified a number of international human rights instruments, established a National Human Rights Commission and a National Dalit Commission to protect and promote human rights, declared Nepal as a ‘Secular’ and ‘Untouchability Free’ State, and ensured that Dalit rights are included in the Interim Constitution of Nepal. Despite these measures, more than 13.1% of the total population is still treated as untouchable (although Dalit activists' claim that this figure is around 20%). They are victimized through different forms of severe atrocities and discriminatory practices. Existing information technology is yet to be used to raise awareness of the extent and illegality of caste discrimination and violence, as well as to highlight the existing provisions and good practices that ensure the rights of Dalits. Likewise, training for government officials and employees as well as media practitioners on issues of equity, inclusion and non-discrimination still needs to be enacted.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure awareness of caste-based discrimination among (i) the public, (ii) government officials, (iii) teachers, and (iv) media practitioners. This should include:

- **Carrying out internal trainings**

- **Organizing public campaigns to raise awareness**
- **Using all mediums of information dissemination:** this should include print and broadcasting media, as well as oral information (e.g. theatre/songs, internet).

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- States have a duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary (...) to ensure that all persons (...) are able to enjoy all those rights and freedoms in practice. (*Article 2, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly, 1999*)
- States should adopt immediate and effective measures, particularly in the fields of (...) culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating this Convention. (*Article 7, ICERD*)
- With a view to promoting human rights and to countering racialism, the mass media should contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories. (*Article 2(3), UNESCO Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, 1978*)
- The mass media has an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings, and economic and social progress. (*Article IV, UNESCO Declaration on Fundamental Principles concerning Contribution of the Mass Media*)

## 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by an international mechanism:

- The State should take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination. (*CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 20*)

#### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

##### Constitutional and legal measures

- There are many Acts related to information and communication including the Press and Publication Act (1991), the National Broadcasting Act (1993), the Radio Act (1957), the Press Council Act (1991), the Nepali Language Publication Corporation Act (1964), the Right to Information Act (2007) and the National News Agency Act (1962). However, none of these have any clear provisions regarding raising awareness about CBD & U, or even about non-discrimination in general.

##### Policy measures

- In the Three-Year Plan (2009/10-2012/13) the Government of Nepal expressed that all forms of discrimination and inequality (legal, social, cultural, linguistic, religious, economic, ethnic, physical, gender and regional) will be ended from society.
- An integrated information and communication policy will be formulated by reviewing the long-term policy of the information and communication sector. In order to ensure timely flow of information on government works and activities at a national and international level, the Department of Information will be developed into an information dissemination center. Training programs will be conducted to enhance the capacity and expertise of media persons. However, no mention is made about information on CBD & U. (*Government of Nepal, (2011/12). No. 105 of Policies and Programs of Government of Nepal for the Fiscal Year 2011/12. Kathmandu: GoN*)
- A long-term Policy of Information and Communication Sector (2003) exists in Nepal, but there is no Dalit-focused provision.

##### Programmatic and budgetary measures

- The National Dalit Commission conducts various awareness programs through preparation and printing of banners, posters and hording boards and the *Ghumti Nyayeeek Sewa* (Mobile Justice Service) Program. It conducts programs to inform Dalit rights and empowerment in villages and transmits social awareness programs through various FM radios. (*National Dalit Commission. (2012/13). Program and Budget 2012/13. Kathmandu: NDC*)
- The Neglected, Suppressed and Dalit Community Upliftment Development Committee conducts TV/radio programs on the need to eliminate CBD & U.
- The Badi Development Board conducts skill development, awareness trainings and consultations for Badi community. (*Badi Development Board. (2013/14). Summary of Current Expenditure Prediction 2013/14. Kathmandu: BDB*)
- The Ministry of Information and Communication produces and broadcasts educational and awareness-generating audio-visual programs and Public Service Announcements. However,

nothing is mentioned about messages on non-discrimination. (*Ministry of Information and Communication website accessed on 7 September 2014 from <http://www.moic.gov.np/pdf/Approved-Program-2070-71-final.pdf>*)

- The Neglected, Suppressed and Dalit Community Upliftment Development Committee has allocated NPR 2,300,000 under the heading of conducting TV/radio programs, while the 3 Board has allocated NPR 3181000 for skills development and awareness trainings and consultations. (*Badi Development Board. (2014). Summary of Current Expenditure Prediction-(2013/14). Kathmandu: BDB*)
- For the financial year 2012/13, the National Dalit Commission has allocated budget for various awareness programs, including NPR 300,000 for an awareness program through the preparation and printing of banners, posters and hording boards; NPR 100,000 for Mobile Justice Service; NPR 333,000 for conducting the programs of informing Dalit rights and empowerment in villages and NPR 150,000 for the transmission of social awareness programs through various FM radios. (*National Dalit Commission. (2013). Program and Budget 2012/13. Kathmandu: NDC*)

### National mechanisms

Aside from the Dalit-specific mechanisms mentioned above, the following mechanisms operate for all Nepalese citizens:

- **Ministry of Information & Communications (MoIC):** the Ministry covers postal services, telecommunications, broadcasting, Press & Information and Film Development with objectives to develop and expand the information & communication sector and the dissemination of information and communication technology.
- **National Information Commission (NIC):** NIC is an independent institution established pursuant to Section 11 of the Right to Information Act (2007). This provision clearly mandates protection, promotion and implementation of right to information to the National Information Commission.
- **Press Council Nepal:** the Council is a statutory body set up by Government of Nepal to promote the standards of a free press in a democratic society and to advise the government on matters relating to the development of healthy and credible journalism in the country.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by a national mechanism:

- State agencies have rigorously been violating human rights due to the lack of human rights knowledge, skill and awareness. As such the State's concerned agencies should necessarily manage human rights education and trainings and conduct the necessary schemes and programs about human rights at a public level through formal and informal education. (*NHRC. (2006/07). Recommendation No. 7 of Yearly Report of NHRC 2006/07. Lalitpur: NHRC*)

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **The National Human Rights Commission has organized various advocacy programs:** programs including interactions, workshops, and discussions have been organized to advocate for equality and non-discrimination by the National Human Rights Commission. *(NHRC. (2013). Mid Term Report on the implementation of status of conclusion and recommendations of Universal Periodic Review of Nepal. Lalitpur: NHRC, p. 20)*
- **Various awareness-raising programs have been organized:**
  - The National Dalit Commission has conducted various awareness programs including the preparation and printing of banners, posters and hording boards, carrying out the Mobile Justice Service, conducting programs to inform Dalit rights and empowerment in villages and transmitting social awareness programs through various FM radios.
  - A documentary related to status of the Badi community is being filmed, initiated by the Badi Development Board.
  - The Neglected, Suppressed and Dalit Community Upliftment Development Committee has run a two days of awareness training for the district vice chairperson of the Neglected, Suppressed & Dalit Community Upliftment Development Committee. It also produces the radio/TV program called ‘Voice of Dalit’ that is being broadcasted by Radio Nepal every Saturday (8.30 to 8.45) and by ABC television over 24 episodes in a year. *(Neglected, Suppressed and Dalit Community Upliftment Development Committee. (2012/13). Progress report,-2012/13. Kathmandu: NSDCUDC)*

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **There has been an increase in awareness of Dalit human rights:** due to various awareness-raising programs, there has been an increment in awareness of Dalit human rights, as well as a rising level in the sensitization among Nepalese society of Dalit issues. *(DWO website, Accessed on 8 September 2014 from [http://www.dwo.org.np/pdf/Annual\\_Report\\_2009\\_DWO.pdf](http://www.dwo.org.np/pdf/Annual_Report_2009_DWO.pdf))* However, there is no evidence to suggest declining rates of caste discrimination and violence as a result.

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:



- Awareness programs are not constitutionally mandatory. Hence, the incorporation of such programs depends upon individual interest within public broadcasting institutions.
- The Government of Nepal does not formulate effective policies and programs that specifically target the eradication of traditional stigma related to caste-based discrimination through public media.
- Sufficient budget has not been allocated by the Government of Nepal to raise awareness of caste-based discrimination and to eradicate it.
- There is a lack of meaningful Dalit representation in all kinds of mass media and related governmental mechanisms.
- There is a lack of any comprehensive plan relating to awareness provision in connection to eradication of CBD & U.
- There are no provisions for compulsory training sessions across the country to expose the police and all government bureaucrats to human rights, and in particular to caste equality and the right to non-discrimination.

## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- DNF, NNDSWO, FEDO, JMC, JUP, DWO, LANCAU, SAMATA foundation and ADWAN are some of the leading Dalit led social/development organizations, working for the rights and justice of Dalit communities, conducting various types of awareness program throughout Nepal through their networks.
- In 2011, a total of 58 interactive sessions on human rights education were conducted focusing on the provisions of the newly passed CBD & U (Offence and Punishment) Act (2011). In communities where the cases of CBD & U were reported, initiatives were taken by district human rights activists to get justice for the victims and end discrimination from society. Through these sessions, a total of 2,712 people from communities (1500 male and 1212 female) have been oriented and networked with district level networks. (*Nepal National Dalit Society Welfare Organization. (2011/12). Annual Report 2011/12. Kathmandu: NNDSWO*)
- A “12 Days National Campaign against Caste-Based Discrimination” took place from 24 May-4 June 2013 during which Dalit Civil Society organized a series of activities to sensitize the wider society and stakeholders about the State commitments and laws for combating caste-based discrimination. It also promoted collective action among key actors to end CBD & U.
- Various awareness-raising programs like audio-visual activities, distribution of posters and pamphlets and interactive programs were organized by Dalit-led civil society throughout the country during the 100 days campaign in last quarter of 2011. (*WFTO website accessed on 3 September from [http://www.wfto.com/index.php?option=com\\_content&task=view&id=1566&Itemid=314](http://www.wfto.com/index.php?option=com_content&task=view&id=1566&Itemid=314)*)

## 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- Some movie makers have featured the issue of CBD & U as a storyline which brings positive messages to society. For example *Bato Muniko Phul* is a feature-length movie with a story of CBD & U.
- Online news, social media, Nepali newspapers (in both Nepali and English) and magazines are supporting communication and information deliverance on social injustices like caste-based discrimination and physical attacks upon the Dalit community.
- The Federation of Nepali Journalists (FNJ) is a professional representative body of more than 8,000 media persons working in all areas of modern media - print, electronic and online - across the country. However, its role towards Dalit issues is not proactive.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Awareness of CBD & U should be made constitutionally mandatory. In line with this, a long term awareness action plan should be prepared to ensure that information about CBD & U and other stereotyped discriminative practices is disseminated.
- Law enforcement officials, Hindu religious priests and teachers from community schools should be made more aware about all kinds of human-respecting and promoting laws, practices, international provisions and good practices on redressing CBD & U.
- Existing laws, rules, plans and policies related to mass media and information technology should be amended to incorporate awareness provisions in regard to the elimination of CBD & U.
- There should be separate and sufficient budget allocations for awareness programs to eliminate CBD & U.
- Social media should be extensively used to generate awareness and share information on the status of efforts to eradicate caste discrimination in the country.
- Compulsory, intense and regular courses on equity and non-discrimination should be established in order to create a culture that rewards respect for human rights and professional conduct, especially among police and government officials.
- All police departments should be sensitised on the rationale for and provisions under the CBD & U Act, and under national and international human rights standards regarding non-discrimination. This can be achieved in collaboration with CSOs.

## GUIDELINE NO: 51

**Governments should take special measures to promote due representation in the mass media of affected communities, and carry out sensitization campaigns and awareness raising programs with media representatives. It is recommended that governments and other relevant institutions encourage media outlets to profile and publicize abuses faced by descent-affected communities, as well as promoting tolerance and positive examples of combating descent based discrimination.**

Though CBD & U still exists in Nepali society to a large extent, often this fails to be highlighted sufficiently by the mass media. On the one hand, the Dalit community often does not raise these issues and keeps tolerating abuses due to various reasons including a lack of consciousness with regard to their rights, intimidation by non-Dalits, and fear of breaching social norms. On the other hand, there is a need to sensitize the media about the issues of caste discrimination, untouchability and violence. The mass media can play a pivotal role to end these practices because it is a mirror of society that reflects and discloses hidden matter and information and disseminates facts, ideas and opinions through digital platforms. The mass media should bring the news of Dalit human rights violation cases to the masses, letting the public and State actors know about such incidents, thus creating pressure on enforcing agents to implement the law.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that the media give equal access to Dalit stories and promote a non-discriminatory society. This should include:

- **Representing affected communities in the mass media:** this should include due representation of Dalits, and support to make the media instrumental for increasing the public awareness and collecting the views, information and attitudes towards Dalit issues.
- **Carrying out sensitization campaigns and awareness raising programs:** media personnel should give equal weighting to Dalit rights violation cases and bring forth the news in a sensible and empathetic manner.
- **Encouraging media outlets to cover abuses faced by descent-affected communities, as well as positive examples of combating descent-based discrimination:** stories should illustrate and demonstrate both ill practices and exemplary impacts of interventions to eradicate caste discrimination.

### 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

## Chapter - IX : PUBLIC AWARENESS RAISING & ELIMINATION OF DISCRIMINATORY CUSTOMS

- Everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds through any media...The exercise of the right can be legally restricted to respect the rights or reputations of others, or for protection of national security or of public order, or of public health or morals. (*Article 19 (2)-(3), ICESCR*)
- States should adopt immediate and effective measures, particularly in the fields of (...) culture and information, with a view to combating prejudices which lead to racial (caste) discrimination and to promoting understanding, tolerance and friendship among racial (caste) or ethnic groups, as well as to propagating human rights principles and standards. (*Article 7, ICERD*)
- The mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings, and economic and social progress. (*Articles 2 (3) and 4, UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, 1978*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by an international mechanism:

- States should consider introducing special measures to ensure due representation in the mass media of members of disadvantaged groups, including Dalits. (*CERD. (2002). Concluding Observations on Nepal State report. UN Doc. CERD/C/64/CO/5, para. 21*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- Economically, socially or educationally backward women, Dalits, Indigenous peoples, Madhesi communities, oppressed classes, poor farmers and laborers shall have the right to take part in the structures of the State on the basis of the principle of proportional inclusion. (*Article 21, Interim Constitution of Nepal, 2007*)
- There are many Acts related to information and communication including the Press and Publication Act (1991), the National Broadcasting Act (1993), the Radio Act (1957), the Press Council Act (1991), the Nepali Language Publication Corporation Act (1964), the Right to Information Act (2007) and the National News Agency Act (1962). However, they

do not have any clear provisions regarding the representation of Dalit communities and do not mention any provision to raise awareness and sensitization of the issues of Dalits or marginalized communities.

### Policy measures

- A long-term Policy of Information and Communication Sector (2003) exists in Nepal, but there is no Dalit-focused provision to ensure their representation in the media.
- An integrated information and communication policy will be formulated by reviewing the long-term policy of the information and communication sector. In order to ensure timely flow of information on government works and activities at a national and international level, the Department of Information will be developed into an information dissemination center. Training programs will be conducted to enhance the capacity and expertise of media persons. *(Government of Nepal. (2011/12). No. 105 of Policies and Programs of Government of Nepal for the Fiscal Year 2011/12. Kathmandu: GoN)*

### Programmatic measures

- The Nepal Press Institute runs local programs including periodic “Meet the Press” events, three-month-long basic journalism courses, production and distribution of features, and advocacy and lobbying on social development issues. However, the basic course is for professional orientation for journalists and doesn’t address Dalit related issues. *(Nepal Press Institute website accessed on 9 September 2014 from [http://npiktm.org/lobbying\\_advocacy.php](http://npiktm.org/lobbying_advocacy.php)).*

### National mechanisms

- **Ministry of Information & Communications (MoIC):** the Ministry covers telecommunications, broadcasting, Press & Information and Film Development with the objectives of developing and expanding the information and communication sector.
- **National Information Commission (NIC):** NIC is an independent institution established pursuant to Section 11 of the Right to Information Act (2007). This provision clearly mandates protection, promotion and implementation of right to information to the National Information Commission.
- **Press Council of Nepal:** the Council is a statutory body set up to promote the standards of a free press in a democratic society and to advise the Government of Nepal on matters relating to the development of healthy and credible journalism in the country.
- **Nepal Press Institute:** the Institute promotes the development of independent media, free access to information, human rights and pluralism of thoughts and ideas by making its services available to all sections of society and upholding the ideals of press freedom, human rights and democracy.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **The media has not been paying proper attention to Dalit issues or Dalit representation:** until a few years ago, there were less media houses and less coverage of Dalit issues. The issues were basically with regard CBD & U. Extensive research conducted in Kavrepalanchok district in 2010 revealed that the media has not been paying proper attention to Dalit issues or Dalit representation. CBD & U is still being practiced in Nepali society even though it has been made punishable by law. (*Charmakar, R. (July 7, 2011). 'A deafening silence'. Accessed on 9 September 2014 from <http://www.ekantipur.com/the-kathmandu-post/2011/07/07/oped/a-deafening-silence/223729.html>*)
- **Specific sensitization and awareness-raising programs are not conducted with media representatives:** though the national mechanisms conduct trainings for the professional development of media personnel, those mechanisms do not specifically conduct sensitization campaigns and awareness-raising programme with media representatives. There is therefore no scope to review the implementation status of those mechanisms and measures. However, due to adoption of inclusionary provision of the State mechanisms and the movements of various CSOs, coverage of Dalit issues in leading newspapers is increasing.
- **Dalit media personnel are very low in number:** out of the mainstream newspapers of Nepal, 14 out of 1153 staff are Dalit. (*Bishwakarma, J.B. (2013). Dalit in Nepali Media. Kathmandu: Martin Chautari, p. 43*)
- **Total coverage of Dalit issues in mainstream newspapers was 2,332 in 2009.** (*Jagaran Media Centre cited in Bishwakarma, J.B. (2013). Dalit in Nepali Media. Kathmandu: Martin Chautari, p. 25*)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **Stereotypes and cultural practices are being challenged by the media:** the media increasingly has been covering news related to the Dalit community. This coverage is opening up to question the discriminatory stereotypes regarding Dalits while it informs the nation on the situation of the community. Stereotyped beliefs and cultural practices slowly are being broken in the process. (*Media monitoring of 2013/14 by SAMATA foundation*)



## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- Special measures to promote due representation of affected communities in the mass media, and to carry out sensitization campaigns and awareness raising programmes with media representatives on caste-based discrimination, are missing.
- Inclusive practice is not fully followed in the mass media, and most of the editors in leading newspapers are non-Dalits. (*Bishwakarma, J.B. (2013). Dalit in Nepali Media. Kathmandu: Martin Chautari, p. 43*)
- There is a lack of long-term action planning to provide sensitization and awareness-raising programs on CBD & U for media representatives because untouchability is not realized as a crime by the society and government of Nepal.
- Due to unwillingness of bureaucracy and political parties for implementation of the RTI Act, information is not easily accessible to the public. (*Annual Report, National Information Commission, Recommendation No. 1, 2011/12 p. 32*)
- Effective policies and programmes are not being formulated by the Government of Nepal to eradicate traditional stigma related to caste-based discrimination.
- Sufficient budget has not been allocated by the Government of Nepal to the different awareness programmes relating to caste-based discrimination.

## 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- DWO publishes Dalit Aawaj (Voice of Dalit) magazine. The publication gives information about resources available for Dalits in local government bodies.
- The Jagaran Media Center (JMC) was established by Dalit journalists who sought to challenge caste-based discrimination embedded in Nepali society with media awareness. At present, the center runs the “Katuwal Radio Magazine” program on CBD & U and the other rights of Dalit through 15 FM radio stations. It also produces the “Sajha Pahal” programme. In addition, the programme of “Beli Bistar” that is based on CBD & U is running on the News 24 TV channel.
- FEDO is producing the “*Sarokar*” programme on NTV once every 15 days.
- ‘Nepaldalitinfor’ is a social media site that generally discusses multi-dimensional Dalit issues.

## 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

*Chapter - IX : PUBLIC AWARENESS RAISING & ELIMINATION OF DISCRIMINATORY CUSTOMS*

- Some social media and national daily papers occasionally publish news on Dalits.
- The Federation of Nepali Journalists (FNJ) is a professional representative body of more than 8,000 media persons working in all areas of modern media - print, electronic and online - across the country. It sensitizes the media about rights-based approaches through various activities. However, its role towards Dalit issues is not proactive.
- Martin Chautari (MC) conducts research focused on media, education and livelihoods with crosscutting themes of gender and social inclusion.

**11. OVERALL RECOMMENDATIONS**

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- A report on the status of representation in the media (by caste, gender, etc.) is needed in order to understand the situation and to think of solutions aimed at fighting exclusion and discrimination.
- Proportionate representation of Dalits in the media should be encouraged, for example by encouraging media outlets to open diversity departments. Targeted expenditure and investment are also means that can be used to encourage the process of Dalits' inclusion in the media sector.
- A comprehensive legislative framework on non-discrimination and representation should be developed that covers all aspects of broadcasting and printed news dissemination, including reasonable content guidelines and cross-media ownership laws.
- The Government of Nepal should launch special programs to encourage Dalits to work in the media; e.g. by offering training to Dalit candidates in journalism, establishing scholarships, organizing job fairs to recruit them, etc.
- The Government of Nepal should launch separate programs for sensitization and awareness-raising regarding Dalit human rights for mass media.
- A long-term awareness action plan should be prepared for informing the mass media about the CBD & U (Offence and Punishment) Act (2011) and other discriminative laws and legislations.

## MULTIPLE DISCRIMINATION AGAINST WOMEN

### GUIDELINE NO: 53

**National and local governments should collect, analyze and publicly provide disaggregated data on the situation of women affected by (caste) discrimination based on work and descent.**

Women's rights are human rights and gender justice is integral to social justice. Nepal is party to numerous international treaties on women's rights and has passed many progressive laws in response to these international commitments. Though a number of national institutions have mandates to promote gender equality and the Interim Constitution of Nepal (2007) includes provisions that support gender equality and social inclusion, the situation of women who face multiple inequalities based on their gender and also their caste is not taken into account. Hence, there is a lack of disaggregated data available on the situation of Dalit women in the country today.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to collect, analyze and publicize disaggregated data on caste and gender. This should include:

- **Making caste and gender disaggregated data publically available:** data should be on all major areas of Dalit women's lives, not least education, health, employment, land, housing and violence.
- **Ensuring data can be disaggregated to compare caste and gender:** data should be disaggregated to the extent that it provides an analysis of the status of Dalit women in relation to other caste women, Dalit men and other caste men.

### 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

## Chapter - X : MULTIPLE DISCRIMINATION AGAINST WOMEN

- States Parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. (*Article 2, CEDAW*)
- The 2001 World Conference against Racism in Durban, South Africa, established a focus on the intersections between gender and racial (caste) discrimination.
- The Committee on the Elimination of Discrimination against Women has explicitly recognized intersectionality as a basic concept for understanding the scope of State obligations to eradicate discrimination against women. This entails States Parties undertaking specific measures to prohibit and eliminate intersectional discrimination, for which disaggregated data is necessary. (*CEDAW. (2010). General Recommendation 28: The Core Obligations of States Parties under Article 2 CEDAW, para. 18*)
- The Committee on Economic, Social and Cultural Rights specifically recognizes the need to remedy the multiple discrimination some groups (like Dalit women) experience that is cumulative and has a unique impact on individuals. Again, for this, disaggregated data on different aspects of social, cultural and economic rights is necessary. (*CESCR. (2009). General Comment 20: Non-discrimination in Economic, Social and Cultural Rights, paras. 9-10, 17*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- States should provide disaggregated data for the situation of women affected by descent-based (caste) discrimination. (*CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 13*)
- States are requested to describe, in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial (caste) discrimination, of rights under ICERD. Data which has been categorized by race (caste), and which are then disaggregated by gender within those racial (caste) groups, will allow the States to identify, compare and take steps to remedy forms of racial (caste) discrimination against women that may otherwise go unnoticed and unaddressed. (*CERD. (2000). General Recommendation 25: Gender related Dimensions of Racial Discrimination, annex V, para. 6*)
- States should collect, compile and disseminate data according to race (caste) and gender. Data is often collected only according to the racial characteristics of a population or only on the basis of gender, leaving racial discrimination against women unnoticed. States should be encouraged to collect the data necessary to determine the extent to which marginalized women are subject to intersectional subordination. Multilateral organizations, governmental entities, and NGOs should disaggregate all information and data in terms of both race (caste)

and gender and their intersections, focusing on issues that are particularly relevant to women of disadvantaged racial (caste) groups. (*UN Secretary General. (2001). Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference: Contribution by the Special Rapporteur on Violence against Women, on the subject of race, gender and violence against women. UN Doc. A/CONF.189/PC.3/5, para. 202(b)*)

- The Committee notes the lack of information in the periodic report on the situation of women belonging to disadvantaged groups who are victims of multiple discriminations, and expresses concern over the situation of forced prostitution of girls and women of the Badi caste. ... the Committee requests the Nepali State to include in its next report the measures taken in this regard, including specific action taken to eradicate forced prostitution of Badi girls and women... (*CERD. (2004). Concluding Observations on Nepal report. UN Doc. CERD/C/64/CO/5, para. 16*)

#### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

##### Constitutional and legal measures

- No discrimination of any kind shall be made against a woman by virtue of her sex. (*Article 20(1), Interim Constitution of Nepal, 2007*)
- Every citizen shall, subject to this Act, have the right to information. Every citizen shall have access to the information held in the public bodies except in a number of justified circumstances that limit the dissemination of information such as where the information jeopardizes sovereignty, integrity, national security, public peace, stability and international relations of Nepal... directly jeopardizes the harmonious relationship subsisted among various castes or communities and which interferes on individual privacy and security of body, life, property or health of a person. (*Section 3(1-2), Right to Information Act, 2007*)

##### National mechanisms

- **Central Bureau of Statistics (CBS):** CBS is the central agency for the collection, consolidation, processing, analysis, publication and dissemination of statistics. Its main objective is to avail data to government agencies for the formulation of national plans and policies. It also produces national account estimates to measure the economic growth of the country. However, it does not collect and provide disaggregated data on the situation of women affected by caste discrimination.
- **National Dalit Commission (NDC):** the NDC has included a program of study and observation of the status of Dalit women in various prisons. The budget allocated to this is NPR 50,000.

*Chapter - X : MULTIPLE DISCRIMINATION AGAINST WOMEN***5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS**

At present, national mechanisms have not made any recommendations relating to the Guideline.

**6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS**

In the absence of specific measures to document and collect disaggregated data on the situation of Dalit women, there is no scope to assess their implementation.

**7. IMPACT OF NATIONAL MEASURES AND MECHANISMS**

In the absence of specific measures to document and collect disaggregated data on the situation of Dalit women, there is no scope to assess their impact.

**8. GAPS IN NATIONAL MEASURES AND MECHANISMS**

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- The National census report published by the Central Bureau of Statistics provides information on all Nepalese citizens in general and some disaggregated statistics in terms of geographical regions such as development regions, urban and rural areas. The data are not disaggregated in terms of Dalit women. Hence, it does not provide any information on Dalit women in terms of their education, social and cultural status vis-à-vis non-Dalit women, Dalit men or non-Dalit men.
- Similarly, various government agencies have disclosed their progress reports using a gender perspective but lacking the disaggregated data of Dalit women.
- The National Dalit Commission and the Neglected, Suppressed & Dalit Community Upliftment Development Committee are the mechanisms with specific focus on the overall development of Dalit community, but they also do not have disaggregated data about Dalit women.
- The absence of disaggregated data of Dalit women in the reports of various national mechanisms shows a lack of accountability amongst policy makers.

**9. DALIT COMMUNITY RESPONSE**

The following response is being carried out by the Dalit community in relation to the Guideline:

- Due to their engagement in various movements and programs, the Dalit community has produced reports that mention the status of Dalit women in a descriptive form. They are currently trying to build a database on the situation of Dalit women. However, the Government of Nepal is a step behind in validating the findings and data.



- There are reports that show the general situation of Dalit women in comparison to Dalit men, and non-Dalit men and women. For example, according to the lobby brief of FEDO and the International Dalit Solidarity Network, socio-economic conditions of Dalit women are worse than Dalit men and women in general. Dalit women in Nepal continue to endure discrimination in many areas including education, health, employment and access to economic resources but there is no practice of putting forth the results in data base. (*Lobby brief on Dalit women in Nepal for the examination of Nepal at the 49<sup>th</sup> CEDAW session, 20 July 2011*)

## 10. WIDER SOCIETY RESPONSE

At present, there are no wider civil society attempts to produce disaggregated data on Dalit women. However, wider CSOs like Maiti Nepal and WOREC Nepal have been focusing on women's issues including female trafficking and violence against women.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- It should be made mandatory for all national mechanisms including the Central Statistics Bureau to disaggregate, analyze and publicize data on Dalit women.
- New surveys into emerging areas, like migration patterns, should be disaggregated by caste and gender in order to reveal new issues arising for Dalit women and help plan specific provisions to address these issues for them.
- Civil society should initiate the production of a shadow census that can be used as a comparison document and reference material by the Government of Nepal.

**GUIDELINE NO: 54**

**National and local governments should take into account the situation of women and girls of affected communities in all measures taken to address (caste) discrimination based on work and descent, and explicitly create provisions tailored to ensure the rights of women and girls affected by discrimination based on work and descent wherever possible.**

Nepalese society is still based on patriarchal structure and culture. The situation of women is subordinate, oppressed. Discrimination and violence on the basis of gender is common. Among them, Dalit women face the worst conditions and oppression. They are not only the victim of gender discrimination but also the victim of caste-ism. They are vulnerable to multiple rights violations including violence, sexual exploitation, being labeled as untouchable and stigmatization as Boksi (witches). Dalit women suffer from triple discrimination – they are oppressed by the dominant castes (as are Dalit men), by the design of the Hindu patriarchal system and by Dalit males. These women are also vulnerable to serious health issues, sex trafficking, domestic violence, and suffer from social, political, and economic powerlessness.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure the rights of Dalit women and girls. This should include:

- **Ensuring that the unique situation of Dalit women is considered:** all laws, policies, programs and budgets for women and for Dalits should take into account the unique situation of Dalit women who face discrimination and violence based on their caste and gender.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- States agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. (*Article 2(f), CEDAW*)
- Intersectionality is a basic concept for understanding the scope of the general obligations of States. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as... caste. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States must legally recognize such intersecting forms of discrimination and

their compounded negative impacts on the women concerned and prohibit them. They also need to adopt and pursue policies and programs designed to eliminate such occurrences, including, where appropriate, temporary special measures. *(CEDAW. (2010). General Recommendation 28: The Core Obligations of States Parties under Article 2 CEDAW. UN Doc. CEDAW/C/GC/28, para. 18)*

- States condemn racial (i.e. caste) discrimination and segregation, and undertake to pursue by all appropriate means and without delay a policy of eliminating racial (caste) discrimination in all its forms and promoting understanding among all races (castes). *(Articles 2 & 3, ICERD)*
- Recognizing that some forms of racial (caste) discrimination have a unique and specific impact on women, gender factors or issues should be taken into account which may be interlinked with racial (caste) discrimination... A systematic and consistent approach is required to evaluate and monitor racial (caste) discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their human rights on grounds of race, descent (caste)... *(CERD. (2000). General Recommendation 25: The Gender Related Aspects of Racial Discrimination. UN Doc. A/55/18, annex V, para. 3)*
- The Beijing Declaration and the Platform for Action (1995) notes that violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race (caste), sex, language or religion that perpetuate the lower status accorded to women. Moreover, it acknowledges that certain groups of women, such as women belonging to minority groups, are particularly vulnerable to violence. Therefore, the Platform for Action calls for governments and non-governmental organizations to take special measures to eliminate violence against women in particularly vulnerable situations. *(The Beijing Declaration and the Platform for Action (1995) paras. 116, 118 & 126(d))*

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- “Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example, women belonging to an ethnic or religious minority (or scheduled caste). Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying... State measures should be taken to prevent, diminish and eliminate conditions and attitudes which cause or perpetuate substantive, multiple discrimination, as well as specific measures to attenuate or suppress conditions that reproduce this discrimination. *(CESCR. (2009). General Comment 20: Non-Discrimination in Economic, Social and Cultural Rights. UN Doc. E/C.12/GC/20, paras 9-10 & 17)*

## Chapter - X : MULTIPLE DISCRIMINATION AGAINST WOMEN

- States should take into account, in all programs and projects planned and implemented and in measures adopted, the situation of women members of the communities as victims of multiple discrimination, sexual exploitation and forced prostitution. (CERD. (2002). *General Recommendation 29: Descent Based Discrimination, para. 11*)
- States should take all measures necessary in order to eliminate multiple discrimination, including descent-based discrimination against women, particularly in the areas of personal security, employment and education. (CERD. (2002). *General Recommendation 29, para. 12*)
- States should consider issues of political representation, personal security, employment and education, in line with general recommendations XXV (2000) on gender-related dimensions of racial discrimination and XXIX (2002) on descent-based discrimination, in taking measures to eliminate multiple discriminations against women who belong to vulnerable groups (like Dalits). (CERD. (2004). *Concluding Observations on Nepal report. UN Doc. CERD/C/64/CO/5, para. 16*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- No discrimination of any kind shall be made against women by virtue of sex. (*Article 20(1), Interim Constitution of Nepal, 2007*)
- No woman shall be subjected to physical, mental or any other kind of violence; and such acts shall be punishable by law. (*Article 20(3), Interim Constitution of Nepal, 2007*)
- Sons and daughters shall have the equal right to ancestral property. (*Article 20(4), Interim Constitution of Nepal, 2007*)
- The State shall pursue a policy of making a special provision, based on positive discrimination, for women and Dalits. (*Article 33(d1), Interim Constitution of Nepal, 2007*)
- The economically, socially or educationally backward women, Dalits, Indigenous peoples, Madhesi communities, oppressed classes, poor farmers and laborers shall have the right to take part in the structures of the State on the basis of the principle of 'proportional inclusion'. (*Article 21, Interim Constitution of Nepal, 2007*)
- In selecting candidates, political parties shall take into account the principle of inclusiveness and in enlisting candidates pursuant to Sub-clause (b), political parties shall ensure proportional representation of women, Dalits, oppressed communities/Indigenous peoples, backward regions, Madhesi and other classes, as provided in law. (*Article 63(4), Interim Constitution of Nepal, 2007*)
- The fundamental economic objective of the State shall be to transform the national economy

into an independent, self-reliant and progressive economy by preventing the economic resources and means available in the country from being concentrated within a limited section of the society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as to eliminate economic inequalities and prevent economic exploitation of any caste, sex, class, origin or individual, and by giving priority and encouragement to national enterprises, both private and public. (*Article 34(4), Interim Constitution of Nepal, 2007*)

- A number of discriminatory practices against women have been criminalized through several legal amendments, such as making accusations of witchcraft, sex selective abortions, sexual harassment and marital rape. Amendments have also legalized abortion within the first 12 weeks of pregnancy and expanded the definition of “rape” so that different levels of punishment are mandated according to the gravity of the crime, which takes into account factors such as the victim’s age and physical and mental health. Additional punishment for the crime of rape of women by persons with HIV/AIDS or while in custody/prison is also mentioned in the criminal code.

### Policy measures

- The three year Human Rights National Plan of Action (2010/11-2012/13) emphasizes the importance of launching different programs for the poor, deprived and marginalized and the sexual and gender minority communities. However, there are no specific mentions of Dalit women. (*National Planning Commission. (2010/11-2012/13). Three years Human Rights National Plan of Action (2010/11-2012/13). Kathmandu: GoN*)
- The Three Year Interim Plan (2011-2013) has incorporated special provisions for women and disadvantaged groups under the heading of “Gender Mainstreaming and Inclusion” and “Empowerment of women and gender equality”.
- The National Plan of Action against Gender-Based Violence (2012/13-2016/17) states that gender-based violence will be controlled and that security and protection will be provided to women and child victims of violence. This plan of action has set the objectives to undertake legal and institutional reforms for ending gender-based violence. However there is again no specific mention of Dalit women.
- The Woman Empowerment Action Plan (2004) focused on three major concerns - women and poverty, women and economy, and women and human rights. There is again no specific mention of Dalit women.
- The National Plan of Action for implementing the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) (2004) has been framed to implement women's human rights and other provisions outlined in CEDAW successfully and effectively. This plan of action mainly focuses on amending the legal provisions which are discriminatory against women and enact new laws in line with the convention when deemed necessary by studying and reviewing the prevailing laws. Again there is no specific mention of Dalit women.

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### Programmatic and budgetary measures

The Woman Development Program (NPR 42,442,000) and the Woman Empowerment Program (NPR 58,865,000) are conducted by the Government of Nepal (*National Planning Commission. (2013/14). Yearly Development Program FY 2013/14. Kathmandu: GoN, p. 323*). Their objectives include:

- Empowering Mukta Kamlari (free female bonded laborers)
- Increasing the access of women in public service
- Awarding brilliant female officers
- Running a campaign to address poverty among women
- Reviewing the National Action Plan of Elimination of All Forms of Discrimination against Women (2004) and the Beijing Action Plan (2004)
- Formulating the National Gender Policy

These provisions and budgetary allocations are meant to benefit all Nepalese women, including Dalit women, but it doesn't mention any special female-focused provisions for Dalit women.

### National mechanisms

- **Ministry of Women and Social Welfare:** the Ministry and its line agencies - the National Woman Commission, the National Human Right Commission and the National Dalit Commission - are the major mechanisms for the protection and promotion of women's rights. Apart from the NDC, other mechanisms are not serious towards Dalit women.
- **Ministry of Women, Children and Social Welfare:** the Ministry is the focal ministry for the policy, planning, programming, overall development and coordination of all activities relating to women, children and social welfare including senior citizens, orphans, helpless women and disabled and handicapped people. It has two Divisions: the Policy, Planning and Administration Division, and the Women, Social Welfare and Child Development Division.
- **Department of Women and Children:** this department is the implementing wing of the Ministry of Women, Children and Social Welfare. Its mandate is to empower women, especially those who are economically poor, socially deprived or otherwise put at a disadvantage. Enabled by a structure that stretches out across the country, it runs the Women Development Program - a national priority intervention targeted on the intersection of poverty and discrimination.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.



## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Dalit women continue to lie at the bottom of development:** in the absence of planning and programs that specifically target Dalit women, they continue to lie at the bottom of most development indicators, as evidenced by organizations working with Dalit women on the ground. There is still a large development gap between Dalit women and Dalit men, as well as between these women and other caste women. Dalit women are socially, economically and politically excluded and suffer from caste and gender based discrimination and domestic violence. The literacy rate for Dalit women is only 34.8% compared to 54.5% for the total population of women in Nepal. Only 11.8% of Dalit girls are enrolled in secondary or higher level of education. About 49.1% of Dalit women encounter violence and only 4.4% of the incidents are reported to the police. (*Feminist Dalit Organization. (2014). Annual Report 2013. Lalitpur: FEDO, p. 1*)
- **Dalit women are not well represented in politics:** there are just 22 female Dalit Constituent Members in the Second Constituent Assembly. They represent 3.66% of the Assembly.
- **Violence against women is still rampant:** domestic violence, sexual assault, sexual harassment in public places and work places, and dowry-related violence against women remains rampant. This includes such violence against Dalit women. (*International Institute for Human Rights, Environment and Development INHURED International. (May 2013). Shadow Report on ICCPR, May 2013. Kathmandu: INHURED International*)
- **A high proportion of CBD & U and human rights violation cases are against Dalit women:** according to media monitoring done by the SAMATA foundation from April 2013-June 2014, 17 out of 60 cases related to CBD & U and Dalit human rights violations were against Dalit women.

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of targeted measures and mechanisms towards Dalit women, there is no scope to assess their impact.

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- Planning and special budget allocations are done separately for Dalits and for women, without any recognition of the multiple identities and consequent vulnerabilities that Dalit women face. Specific strategies are required to overcome them.

## Chapter - X : MULTIPLE DISCRIMINATION AGAINST WOMEN

- Few government measures currently exist that acknowledge and address the intersectional discrimination that Dalit women face and which contribute to their lower development levels and lesser enjoyment of rights than Dalit men and other caste women.
- There is no special policy or action plan for Dalit women in Nepal
- There has been little comprehensive research about the overall situation of Dalit women, because of which policy makers are less aware of human rights violations against Dalit women.
- There is minimal representation of Dalit woman in decision-making, policy-making and development processes.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- FEDO is a national-level NGO working against caste and gender based discrimination. It strives to establish the rights of Dalit Women and the Dalit community as a whole by organizing and empowering them. It tries to bring Dalit women into the mainstream of development by helping to enhance their voice and agency.
- ADWAN has been working for the educational enhancement of Dalit children for a long time. It also is fighting to protect Dalit women from multiple discrimination.
- The Unified Fighting Strategy against CBD & U has been formed through the collaboration of the National Dalit Commission, the Neglected, Suppressed and Dalit Community Upliftment Development Committee and the Badi Community Development Board. They have been jointly organizing various awareness programs at the national level with regard to the human rights of Dalit women.
- The National Strategic Plan of Action (2013) has been brought in by the Dalit NGO Federation (DNF) to end untouchability and caste-based discrimination in Nepal. Dalit women's issues have been incorporated into the plan.
- Jagaran Media Center is raising its voice against multiple discrimination of Dalit women using the media.

### 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- The Women NGO Federation was formed by a team of various organizations to protect and promote women's rights and dignity. It deals with the women's issues at a national level. To be the part of the Women NGO Federation, member organizations must be focusing on women's issues. (*Women NGO Federation website accessed on 20 March, 2014 from <http://www.womenngofederation.org/aboutus.php>.*)

- A number of national and international organizations have also formed alliances and networks. These include the National Network Against Domestic Violence (NNADV) and the Alliance Against Trafficking in Women & Children (AATWIN). These networks have been involved time and again on advocacy for policy formulation, exerting pressure on public authorities to deliver justice to survivors of violence. Their initiatives have contributed to bringing some positive results such as formulation of the Domestic Violence (Crime and Punishment) Act (*Shrestha, N.T. (December 2013). Policy Brief on Combating Gender Based Violence in Nepal. Kathmandu: ESP*)
- Maiti Nepal, WOREC Nepal, Shakti Samuha and various gender rights-based organizations are working on issues of multiple discrimination against women, which include those of Dalit women.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- Meaningful participation should be ensured so that Dalit women are able to be involved in all levels of mechanisms and development processes.
- A Dalit Women Empowerment Development Desk should be established in the National Woman Commission, the National Dalit Commission, the Neglected, Suppressed & Dalit Community Upliftment Development Committee and the Badi Community Development Board.
- There should be greater convergence between the Ministry of Women and Social Welfare and the Dalit development mechanisms to ensure that complementary and comprehensive schemes are planned and implemented to specifically address Dalit women's rights.
- A high-level research team should be established to find out the real situation of Dalit women and their livelihood, comprising experts from the Dalit community. On the basis of research findings, effective programs and sufficient budgetary allocations should be made for the eradication of the existing discrimination of Dalit women.
- Awareness programs should be launched and budgetary allocations should be made for educating and capacitating Dalit women to claim their rights.

## CHAPTER XI

HUMANITARIAN AND  
DEVELOPMENT ASSISTANCE

## GUIDELINE NO: 57

**Governments and international organizations should develop measures to tackle exclusion and discrimination in all development and disaster recovery programs, such as social equity, audits and caste analysis frameworks. Appropriate ‘affected community inclusion tools’ should be developed and applied effectively in the planning and monitoring of programs. Agencies should provide training on discrimination based on work and descent to their staff and should take responsibility to monitor and counter untouchability practices. Members of affected communities should be fully involved in the decision-making, planning and evaluation of programs, and agents involved should actively seek to employ members of affected communities in recovery or development operations.**

Epidemics, landslides, floods, fires, thunderstorms, accidents (caused by natural phenomenon), earthquakes, cold waves, structural collapse, boat capsizing (due to natural phenomenon), frost, sedimentation and drought are the major natural disasters in Nepal. Unfortunately, many Dalits reside in vulnerable areas that are prone to some of these disasters. In such cases, Dalits are likely to be affected the most due to their vulnerable settlements and low economic conditions. However, during disaster relief and rehabilitation activities, they are least focused upon and prioritized. Even during and after disasters, there is the likelihood that they will be excluded from response and recovery efforts due to caste-based discrimination that still has a strong grip in Nepalese society. The situation is worsened due to negligible participation of Dalit people in disaster recovery mechanisms and committees. Further, being a least developed country, Nepal lacks sufficient resources to provide adequate assistance to disaster victims despite being a country at high risk of natural disasters.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure the distribution of disaster relief funds and controlling discriminative practices. This should include:

- **Tackling exclusion and discrimination in all development and disaster recovery programs:** appropriate measures to challenge exclusionary and discriminatory practices post-disasters should be developed. This includes creating social equity audits and caste analysis frameworks and using ‘community inclusion tools’ when planning and monitoring programs.
- **Providing training to staff involved in humanitarian operations:** training should focus on the nature and manifestations of caste discrimination, social equity tools, and how to ensure inclusion of affected Dalits in programmatic interventions.
- **Fully involving Dalits in decision-making, planning and evaluation processes of humanitarian programs:** it is important to ensure that Dalit communities are included in community decision making around disaster mitigation, relief and recovery efforts, as well as the evaluations of such programs.
- **Employing Dalits in recovery operations as well as in development programs:** suitably qualified Dalits should be proactively sought for employment in all programs.

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- The principle of the right to life with dignity, liberty and security underpins all humanitarian interventions in disasters and internal conflicts. (*Article 3, UDHR*)
- States Parties shall take special and concrete measures to ensure the adequate development and protection of certain racial (caste) groups, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. (*Article 2(2), ICERD*)
- The Sphere Project, an initiative of NGOs and the Red Cross and Red Crescent movement in 1997, aims to produce an operational framework for accountability in disaster assistance efforts. Its Humanitarian Charter ‘Protection Principles’ and ‘Core Standards’ articulate a rights-based and people-centered approach to humanitarian response. This means ensuring a balanced representation of vulnerable people in discussions with disaster-affected populations and specifying the responsibility to ensure humanitarian assistance reaches the most excluded and vulnerable people. Caste and discrimination are seen as factors contributing to such vulnerability. (*Sphere Project. (2011). Humanitarian Charter and Minimum Standards in Humanitarian Response. Retrieved October 2013 from www.SphereProject.org*)
- After the World Conference on Disaster Risk Reduction (DRR) in early 2006, many organizations adopted the Hyogo Framework for Action (2005-2015). The Framework for Action specifies that cultural diversity, age and vulnerable groups should be taken into account when planning for DRR. (*Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, International Strategy for Disaster Reduction, A13(e)*)

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- The United Nations Framework Convention on Climate Change (1992), which the Government of Nepal ratified on 2 May 1994, sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. It recognizes that the climate system is a shared resource whose stability can be affected by industrial and other emissions of carbon-dioxide and other greenhouse gases. While particular vulnerability is mentioned vis-à-vis countries, no mention is made about particular vulnerabilities of specific social groups like Dalits within these countries. (*United Nations Framework Convention on Climate Change, 1992*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendations that relate to the Guideline have been made by international mechanisms:

- Social, political, cultural, economic, conflict and natural environment factors can increase people's susceptibility to disasters; changes in the context can create newly vulnerable people. Vulnerable people may face a number of factors simultaneously. The interplay of personal and contextual factors that heighten risk should be analyzed and programs should be designed to address and mitigate those risks and target the needs of vulnerable people. (*Sphere Project. (2011). Humanitarian Charter and Minimum Standards in Humanitarian Response, p.67*)
- The State should organize training programs to improve the political policy-making and public administration skills of public officials and political representatives who belong to descent-based communities. (*CERD. (2002). General Recommendation 29: Descent based Discrimination, para. 30*)

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- Every person has the right to live in a healthy environment. (*Article 16(1), Interim Constitution of Nepal, 2007*)
- The Natural Calamity (Relief) Act (1982), the Disaster Rescue and Relief Standard Act (2007), the Local Disaster Risk Management Planning Guidelines (2011) and the Local Self Governance Act (1999) regulate and supervise disaster management and recovery programs. There are no specific Dalit-targeted or Dalit-centric provisions in any of the above-mentioned Acts; nor is non-discrimination mandated in relation to disaster management programs.
- Under the Natural Calamity (Relief) Act (1982), Natural Disaster Relief Committees are established at the central, regional, district and local levels. They are responsible for preparing



plans on disaster preparedness, response and recovery and monitoring and ensuring their implementation, stockpiling relief and rescue materials, collecting and disseminating relief materials and funds during emergencies, and coordinating relief works.

### Policy measures

- The 2009 National Strategy for Disaster Risk Management (NSDRM) outlines the Government of Nepal's vision for making Nepal a disaster resilient country. It provides strategic guidance on crosscutting issues such as human rights and protection, gender and social inclusion, decentralization and local self-governance and humanitarian security. It recommends the implementation of disaster management by mainstreaming these in all sectoral plans and programs, without any specific mention of the issues of caste and non-discrimination.
- The Local Disaster Risk Management Plan (LDRMP) and District Disaster Management Plan (DDMP) guidelines, which were developed and approved considering the main spirit and thrust of NSDRM, also ensure participation and social inclusion. They were approved under the existing power granted by the Local Self-Governance Act (1999).

### Programmatic and budgetary measures

In the absence of specific measures for Dalits, the following general programs operate across the country:

- The People's Dam Program (Jantako Tatbanda Karyakram) is being conducted under the Disaster Control Program (River Control). Under this program, 89 km of dams were constructed in 2013, thus protecting infrastructure, human residences and cultivated land. The budget allocation for the Disaster Control Program (River Control) was NPR 1,584,464,000 in the financial year 2013/14.
- Under the Residence/Cultivated Land and City Protection Program, risky hill areas, cultivated land and residential areas of the inner Terai region are protected. NPR 55,000,000 was allocated for the Residence/Cultivated Land and City Protection Program in the financial year 2013/14. No disaggregated data is available on the communities who accessed entitlements under these two programs. (*Government of Nepal, (2014). Yearly Development Program, 2013/14. Kathmandu: GoN, p. 51*)

### National mechanisms

The Government of Nepal doesn't have any mechanisms with specific focus on Dalit prioritization during humanitarian assistance. However the following mechanisms have been established to rescue all Nepalese people during natural calamities:

- **Nepal Disaster Risk Reduction Consortium (NRRC):** launched by the Government of Nepal in May 2009, the NRRC is a unique institutional arrangement, bringing together financial institutions, development partners, the Red Cross/Red Crescent Movement, and the UN in partnership with the Government of Nepal. It bridges the spectrum of development

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and humanitarian partners, uniting to support the Government of Nepal in developing a long-term Disaster Risk Reduction Action Plan that builds on the National Strategy for Disaster Risk Management. The founding members of the Consortium are the Asian Development Bank, the International Federation of the Red Cross and Red Crescent Societies, the United Nations Development Program, the UN Office for the Coordination of Humanitarian Affairs, the UN International Strategy for Disaster Reduction and the World Bank. There are no special Dalit-targeted or Dalit-centric provisions, or mandates regarding non-discrimination in the working of this consortium. (*Government of Nepal (2009). Disaster Risk Reduction in Nepal Flagship Programs. Kathmandu: GoN, p. vii*)

- **Ministry of Home Affairs:** the Ministry has been coordinating preparedness and rehabilitation initiatives pursuant to the responsibilities given by the Work Division Regulation 2064 of the Government of Nepal to oversee the overall activities on disaster response in Nepal.
- **National Emergency Operations Centre (NEOC):** NEOC sits under the direct coordination of the Ministry of Home Affairs and is a coordination and communication point for disaster information across Nepal, including government agencies and other response and recovery stakeholders such as UN agencies, INGOs and NGOs. (*Ministry of Home Affairs website accessed on 25 October 2013 from <http://www.moha.gov.np/en/divisions-more/national-emergency-operation-center-neoc-25.html>*)
- **“Working Groups” for disaster management:** following the devastating 1993 floods in the south-central part of the country, Nepal established three “Working Groups” for disaster management. This is a globally accepted effective mechanism that can help to address identified gaps in response and to enhance the quality of humanitarian action by ensuring greater predictability and accountability, while at the same time strengthening partnerships between NGOs, international organizations, the International Red Cross and Red Crescent Movement and UN agencies. (*Government of Nepal. (2011). Nepal Disaster Report, 2011. Kathmandu: GoN, p. 23*)

### 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

### 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Most districts have disaster preparedness plans but most villages do not:** 67 of the 75 districts have disaster preparedness plans in place. In order to implement these plans, the District Natural Disaster Relief Committee (DNDRC) has been streamlined and empowered to strengthen disaster relief reduction (DRR) efforts and enhance emergency response capacity. However, only about 66 out of 3913 Village Development Committees (VDCs)

in the country have prepared disaster management plans including prioritization of hazards. None of these plans refer to vulnerable and marginalised communities such as Dalits. (*Government of Nepal. (2009-2011). National progress report on the implementation of the Hyogo Framework for Action (2009-2011). Kathmandu: GoN*)

- **Village disaster management committees and strategies need to be up-scaled:** at the local level, the 3-year interim plan (2008-2010) planned to enhance the engagement of local bodies and communities in disaster prevention works. With support and initiation from NGOs, disaster management committees have been formed in some villages. In high-risk areas, there are some Village Development Committees who have preparedness strategies in place with large-scale community participation. This needs to be up-scaled. However, the inclusion of vulnerable communities like Dalits is missing in such plans. (*Government of Nepal. (2009-2011). National progress report on the implementation of the Hyogo Framework for Action (2009-2011). Kathmandu: GoN*)
- The existing ad hoc mechanism to provide relief material through the District Administration Office has not been effective. (*My Republica website accessed on 23 September 2014 from [www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=81702](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=81702)*)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **Dalits are being hit the hardest by disasters:** in spite of all the mechanisms, policies and preventive measures, Nepal faces various kinds of natural calamities as well as epidemics, and Dalits living in the outskirts, in poor quality housing are more exposed to natural calamities. They are yet to feel any difference from the abovementioned mechanisms. For example, the diarrhea epidemic in Rukum district hit Dalits the hardest: although Dalits only comprised 6% of the district's population, 52% of the dead were from this community. (*Kathmandu Post, cited in Diarrhea outbreak in Nepal. Accessed on 23 September 2014 from [www.bmsworldmission.org/news-blogs/archive/diarrhoea-outbreak-nepal](http://www.bmsworldmission.org/news-blogs/archive/diarrhoea-outbreak-nepal)*)

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is no comprehensive national policy or Act that includes established principles of non-discrimination and social inclusion related to the administration of humanitarian aid and its delivery process for disaster risk reduction and disaster management.
- There is a lack of disaggregated data available on the beneficiaries of disaster management interventions. This makes it impossible to be able to assess the extent to which Dalits are being included as beneficiaries.

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- The Government of Nepal lacks long-lasting and sustainable programs for shifting the Dalit community to safe areas as an alternative residential settlement. This would help to protect them from disasters, as their settlements are generally more vulnerable.
- The preparedness policies and mechanisms of the Government of Nepal are not scientifically sound, nor are the assistance measures adopted by the Government of Nepal during and after disasters. The existing legal regime fails to provide for the establishment of early warning systems or development projects in disaster-prone areas. Moreover, there is no effective deployment of rapid response due to the lack of emergency operation centers on standby with adequate foods and other necessities. All this has a strong impact on vulnerable Dalit communities.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- Dalit-led CSOs like DWO, NNDSWO and FEDO have been conducting awareness programs on disaster preparedness to protect Dalits and minimize their risk after disasters.

### 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- NRCS, NSET, NEGISS, N-NCDMC and NELS are the major CSOs working in the field of natural disasters. However, none of them have any specific focus on ensuring the social inclusion of Dalits in disaster relief works.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- A comprehensive national policy and Act on disaster management (mitigation and relief) should be enacted. Inclusive provisions should be made in the Act and the principle of non-discrimination should be made mandatory in all relief efforts. All State mechanisms related to disaster management should include the Dalit community humanitarian aid administration processes should be made Dalit-focused, as they are more vulnerable to disasters.
- Long lasting and sustainable programs should be conducted by the Government of Nepal to shift the Dalit community to safe areas as an alternative residential settlement.
- The Government of Nepal should establish an early warning system with a monitoring and advisory capacity to identify hazards and notify all vulnerable populations of threatening disaster situations.
- The Government of Nepal authorities, through community wealth/resource mapping exercises

like infrastructure audits, should assess the livelihood patterns, specific vulnerabilities and needs of people in Dalit localities. This would enable the authorities to set up mechanisms and direct warning signals, and would help in devising needs-based employment generation programs for those Dalits recovering from disasters.

- State agencies should collaborate with CSOs to develop tools based on the participatory methods and principles of social equity audit. These should be used to monitor and audit the extent of social equity and inclusion of Dalits in disaster response and risk reduction programs.
- Dalits should be represented in institutional decision-making processes and consultations on disaster management at all levels, from local government level to the national level, as well as in specific programs run by international agencies that cover their localities.
- The relevant government departments and international organizations should take active initiatives to provide training to their staff on caste discrimination, calling on support from local Dalit CSOs.
- There should be a Dalit-focused relief fund under the office of the Prime Minister to give due recognition to the disproportional impact that disasters have on the Dalit community.
- Budget allocation should be made sufficient enough to support integrated and coordinated disaster management that ensures emergency response both in terms of pre-disaster preparedness plans and post-disaster humanitarian assistance.

**GUIDELINE NO: 58**

**States should investigate all alleged cases in which Dalits have been denied assistance or benefits equal to those received by other people, or cases in which they have been discriminated against during the relief, rehabilitation and development processes, and compensate or retroactively grant such benefits to the Dalit victims.**

Many Dalits live in settlements in unsafe areas prone to disasters such as floods, landslides, and epidemics. In disaster situations, discrimination against Dalits may prevent them from securing their entitlements under disaster relief and rehabilitation measures, which makes recovery from the impact of disasters far more difficult. However, despite the inadequacy of government relief and the exposure of rehabilitation and development processes (see previous guideline), no efforts have been taken to investigate the extent of caste-based discrimination in disaster relief and recovery, and development processes.

**1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?**

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure that Dalits are not discriminated against in relief, rehabilitation or development processes. This should include:

- **Investigating cases of caste discrimination:** any caste-based discrimination and/or the denial of equal benefits during (a) relief, (b) rehabilitation, and (c) development processes should be investigated swiftly and diligently.
- **Taking steps to compensate or retroactively grant benefits to Dalit victims:** those who have been denied equal benefits during (a) relief, (b) rehabilitation, and (c) development processes should be compensated or given benefits.

**2. INTERNATIONAL MEASURES AND MECHANISMS**

The following international measures and mechanisms relate to the Guideline:

- The right to receive humanitarian assistance is derived from a number of legal norms and rules that are part of international law. More specifically, international humanitarian law contains a number of relevant provisions on access to assistance and on the protection of objects indispensable to the survival of the civilian population. (*1977 Additional Protocols to 1949 Geneva Conventions*)
- The Sphere Project, an initiative of NGOs and the Red Cross and Red Crescent movement in 1997, aims to produce an operational framework for accountability in disaster assistance efforts. Its Charter states the requirement to ensure people's access to impartial humanitarian assistance in proportion to need and without discrimination. (*Protection Principle 2*)



- The Sphere Project Charter lays down the responsibility of humanitarian actors to assist people to claim their rights, access available remedies from the government and provide them with information on their entitlements and available remedies. This includes assisting affected people in securing the documents they need to demonstrate their entitlements. (*Protection Principle 4*)
- Efficient and equitable distribution methods for humanitarian assistance should be planned in consultation with the affected population. Vulnerable individuals or households should not be omitted from distribution lists and can access both the information and the distribution itself. A grievance process should be established to address any concerns arising during registration or distribution. (*Sphere Project Minimum Standards in Shelter, Settlement and Non-Food Items, Non-Food Items Standard 1, guidance note 5*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

At present, international mechanisms have not made any recommendations relating to the Guideline.

### 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

#### Constitutional and legal measures

- The Nepal Natural Calamity (Relief) Act (1982), the Local Disaster Risk Management Planning Guidelines (2011), the Disaster Rescue and Relief Standards (2007), the Soil and Water Conservation Act (1982), the Nepal Building Act (2007) and the Environmental Protection Act (1996) exist. However, there is no provision in any of these laws or standards/guidelines regarding the investigation of cases concerning denied assistance or to compensate or retroactively grant benefits to any victims of disasters, including Dalits.

#### National mechanisms

- **Ministry of Home Affairs:** the Ministry is the leading mechanism of disaster management. Several other ministries like the Ministry of Forest and Soil Conservation, the Ministry of Water and Energy, the Ministry of Physical Planning and Works, the Ministry of Environment, the Ministry of Local Development and the Ministry of Health and Population are linked to disaster management. Likewise several departments like the Department of Water, the Induced Disaster Prevention Department, the Department of Mines and Geology, the Department of Hydrology and Meteorology, the Department of Soil Conservation and Watershed Management, the Department of Irrigation, the Epidemiology and Disease Control Division and the Central Natural Disaster Relief Committee (CNDRC) also are responsible for disaster management. However, these mechanisms have no mandate to investigate cases of deprivation, denial and discrimination during relief, rehabilitation and humanitarian assistance.

## Chapter - XI : HUMANITARIAN AND DEVELOPMENT ASSISTANCE

### 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

### 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

In the absence of targeted measures and mechanisms to investigate cases of deprivation, denial and discrimination during relief, rehabilitation and humanitarian assistance, there is no scope to assess their implementation.

### 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

In the absence of targeted measures and mechanisms to investigate cases of deprivation, denial and discrimination during relief, rehabilitation and humanitarian assistance, there is no scope to assess their impact.

### 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- There is no separate division for lodging complaints in terms of deprivation and discrimination during relief distribution.
- Without specific grievance redressal mechanisms mandated under law, disaster management authorities and committees are not obliged to investigate cases where humanitarian relief has been denied.
- There is a lack of inclusive provision for Dalit community members in humanitarian relief committees.
- There is no Dalit-focused relief fund under the office of the Prime Minister.

### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- Dalit CSOs and the DNF are advocating for disaggregated data to be made available so that it is possible to assess the number of Dalit beneficiaries during relief, rehabilitation and development processes.
- Dalit community organizations are taking up cases of discrimination during humanitarian assistance, if such news is reported.

## 10. WIDER SOCIETY RESPONSE

The following response is being carried out by wider society in relation to the Guideline:

- Different governments, INGOs and UN agencies such as the World Food Program (WFP), UNICEF, the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Department of Humanitarian Affairs (UNDHA) have played a significant role by channeling items including food, medicines, clothing and temporary settlement materials during major disasters in the country. However, all major CSOs working in the field of natural disaster relief lack the mechanisms to investigate if the real victims of disasters receive the assistance that they distribute and whether discriminatory behavior is practiced during humanitarian assistance.

## 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The Acts and Rules related to humanitarian relief should be amended to make it mandatory for concerned authorities to investigate any complaints of discrimination or denial of humanitarian aid distribution. Those humanitarian actors who are found to practice discriminatory behavior during relief and rehabilitation processes should be liable for severe departmental punishment.
- A separate division within the Ministry of Home Affairs should be urgently created to investigate complaints that relate to deprivation and discrimination during relief distribution.
- Inclusive provision should be ensured at all levels of State mechanism related to disaster management and humanitarian grant relief.
- A special investigation team should be formed to look into disaster management and humanitarian grant relief processes including members of the Dalit community.

## CHAPTER XII

MARKET ENTERPRISES AND  
FINANCIAL ALLOCATIONS

## GUIDELINE NO: 59

**International financial institutions and private companies should affirm the unacceptability of discrimination based on work and descent within their own organizations as well as within their sphere of influence including suppliers and business partners with special focus on equal access to markets and services and actively implementing anti-caste laws; and such entities should incorporate caste and gender analyses as well as anti-discrimination policy measures into their corporate social development strategies.**

Dalits have been systematically excluded from the all type of business under the caste system. They have been treated as laborers and not as owners of enterprises. Therefore, opportunities towards entry into or ownership of businesses and enterprises have been limited. Despite the absence of official data, it can be stated that Dalit communities have less access to the business and corporate sector. Dalit people are mostly very poor, as statistics show, and are concentrated in wage labor occupations. Moreover, some businesses like hotels or meat and liquid related businesses do not employ members of the Dalit community due to the difficulty in acceptance from the non-Dalit community of Nepal.

### 1. WHAT IS REQUIRED TO FULFILL THE GUIDELINE?

To fulfill the Guideline, the Government of Nepal should make special provisions in the existing laws, policies, programs and budgetary allocations to ensure equal rights and opportunities for Dalits in the private sector. This should include:

- **Affirming the unacceptability of caste discrimination:** companies and institutions should instate a specific policy on anti-discrimination that relates both to employees and to engagement with partners. It should ensure all company procedures are non-discriminatory.
- **Actively ensuring non-discrimination and equal access to markets and services:** the responsibility for non-discrimination and equal opportunities should be assigned to a senior manager. Grievance redress mechanisms should be put in place to deal with issues of caste

discrimination and there should be staff trainings on non-discrimination. There should also be affirmative action measures in place to ensure Dalits' *de facto* equal access to markets and services.

- **Incorporating caste and gender analyses and anti-discrimination measures into corporate social development measures:** employee diversity should be actively ensured within the company/institution, with special focus on caste and gender. The corporate social responsibility policy of the company should place specific emphasis on engaging with Dalit communities.

## 2. INTERNATIONAL MEASURES AND MECHANISMS

The following international measures and mechanisms relate to the Guideline:

- The UN Global Compact is aimed at the development, implementation and disclosure of responsible corporate policies and practices. Companies are asked to voluntarily align their operations and strategies with 10 principles in the areas of human rights, labor, environment and anti-corruption. Businesses should uphold the elimination of both direct and indirect discrimination in respect of employment and occupation, including the terms of employment. (*Principle 6, UN Global Compact, 2000*)
- Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address any adverse human rights impacts with which they are involved. (*Office of the High Commissioner for Human Rights. (2011). UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. UN Doc. HR/PUB/11/04, principle 11*)
- In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) a policy commitment to meet their responsibility to respect human rights; (b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and (c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (*OHCHR. (2011). UN Guiding Principles on Business and Human Rights, principle 15*)
- Multinational enterprises should be guided throughout their operations by the general principle that governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination. This is without prejudice to the measures to ensure hiring of local workers or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment. (*ILO. (2006). Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Geneva: ILO, para. 22*)
- The Rev. Sullivan and the UN Secretary General unveiled the Global Sullivan Principles in 1999. They are designed to increase the active participation of corporations in the

## Chapter - XII : MARKET ENTERPRISES AND FINANCIAL ALLOCATIONS

advancement of human rights and social justice at the international level. Corporations who sign up to the principles commit to supporting universal human rights, particularly those of their employees, the communities within which they operate, and parties with whom they do business. They agree to promote equal opportunity for their employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs, and to operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse. (*Global Sullivan Principles, 1999, principles 1-2*)

- The Ethical Trading Initiative (ETI) is an alliance of companies, trade unions and voluntary organizations working in partnership to improve the lives of poor and vulnerable workers by adopting a code of labor practice (regarding wages, hours of work, health and safety, etc.) that they expect all their suppliers to work towards. Its code mentions that there shall be no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation. (*Ethical Trading Initiative. The ETI Base Code, para. 7.1*)
- The employment, classification, promotion, and assignment of persons on the staff of the International Monetary Fund (IMF) shall be made without discriminating against any person because of sex, race, creed, or nationality... The IMF supports an inclusive work environment, where different perspectives are shared and respected and employees feel able to contribute without fear of discrimination, harassment or disparagement. (*International Monetary Fund. (2004 & 2013). Diversity Annual Reports 2004 & 2013. Retrieved Nov. 2013 from <<www.imf.org/external/np/div/index.asp>>*)
- Similarly, the World Bank is committed to inclusion and diversity in their hiring and employment policies, but does not mention the principle of non-discrimination based on caste. Its guidelines for evaluators of global and regional partnership programs include sensitivity to the beliefs, manners, and customs of the social and cultural environments in which they work, including issues of discrimination and gender inequality. (*Independent Evaluation Group. (2007). Sourcebook for Evaluating Global and Regional Partnership Programs: Indicative Principles and Standards. Washington DC: IEG-World Bank, para. 8.2*)

### 3. RECOMMENDATIONS MADE BY INTERNATIONAL MECHANISMS

The following recommendation that relates to the Guideline has been made by an international mechanism:

- The Commission and the European External Action Service should include, where relevant, a ‘caste-based discrimination clause’ in all trade and association agreements... The EU should also promote non-discriminatory and inclusive policies and procedures in business operations with caste-affected countries, including affirmative action for Dalits and similarly affected people in the labor market and the private sector. (*Committee on Development. (2013). Motion for Resolution, European Parliament. B7-0507/2013, paras. 17-18*)



## 4. NATIONAL MEASURES AND MECHANISMS

The following measures and mechanisms that relate to the Guideline are already in place in Nepal:

### Constitutional and legal measures

- All citizens have the freedom to practice any profession and carry on any occupation, industry or trade. (*Article 12(3)(f), Interim Constitution of Nepal, 2007*)
- In producing or distributing any goods, services or facilities, no person belonging to a 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 or distributed only to persons belonging to a particular caste or tribe. (*Article 14(3), Interim Constitution of Nepal, 2007*)
- No one shall, on the ground of caste, race, descent, community or occupation, prohibit any one to carry on any profession or business or compel any one to carry on any occupation or business. (*Section 4(6), CBD & U (Offence and Punishment) Act, 2011*)
- The Industrial Enterprises Act (1992) mentions about rendering necessary cooperation in formulating and implementing policies, laws and regulations pertaining to the industrialization of the country and maintaining coordination between the policy level and the implementation level of the industrial policy. No mention is made about principles such as non-discrimination.
- The Consumer Protection Act (1997) is an umbrella Act aimed at protecting the rights of the consumer as well as restricting unfair trade practices. Section 6 of the Act assures and recognizes 6 rights of the consumer out of 8 rights recognized globally. Non-discrimination is not one of these rights.

### Policy measures

- The Industrial Policy (2011) and Micro-Enterprise Policy (2008) aim to bring positive changes to the overall economic, business and social sectors of the country by means of rapid industrial development doing away with the weaknesses of the past. It is expected that, through these policies, the activities of industrial development will increase, there will be a huge increase in employment opportunities and the level of people's income will be increased. As a result, the industrial sector will be at the forefront of contributing to the economy of the country. Some tax exemption provisions are also made for industries that contribute to the nation through productivity as well as providing employment opportunities. However, there is no beneficial provision and supportive measure for the Dalit community.

### Programmatic and budgetary measures

- The Micro-Enterprise Development Program for Poverty Alleviation is operating in 45 districts and there are plans to expand this program to 5 more districts. 30% of Dalit

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communities are envisaged as the target group of program. The Government of Nepal has allocated NPR 442,181,000 for this program. (*Government of Nepal. (2013/14). Yearly Development Program of Nepal, 2013/14. Kathmandu: GoN, p. 82*)

### National mechanisms

- **The Ministry of Industry and Commerce, the Department of Commerce, the Department of Industry, the Department of Cottage and Small Industry, the Industrial Promotion Board, the Export Promotion Board and the Industrial Enterprise Development Institute:** these are all national-level mechanisms whose function is to accelerate and implement the policies, rules & regulations of the Government of Nepal to enhance the economy of Nepal through industrialization. Likewise the District Office of Cottage and Small Industry and the Domestic and Small Enterprise Training Centers work at the local level and these play a very important role in effective implementation. However, there is no special provision for Dalit entrepreneurs to be developed and encouraged.
- **Federation of Nepalese Chambers of Commerce and Industry (FNCCI):** FNCCI was established in 1965 and is an umbrella organization for Nepalese commerce and industries. The Federation's main activities include advocacy and lobbying on behalf of its members and providing them with information, advice, arbitration and training. It also organizes trade fairs. These associations are often organized along the lines of caste or community, because specific groups have traditionally engaged in certain professions.

## 5. RECOMMENDATIONS MADE BY NATIONAL MECHANISMS

At present, national mechanisms have not made any recommendations relating to the Guideline.

## 6. STATUS OF IMPLEMENTATION OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the implementation of national measures and mechanisms that relate to the Guideline. Observations include:

- **Dalit beneficiaries of the Micro-Enterprise Development program are not measured:** the Micro-Enterprise Development Program aims to ensure that 30% of their target group are from Dalit communities. However, the Government of Nepal does not have any data about how many Dalits have benefited from this program.
- **There is no disaggregated data about the Dalit entrepreneurs:** in 2013/14, 212,786 industries (business, trade and commercial affairs) were registered with the Government of Nepal. However, there is no disaggregated data to show how many are run by Dalit entrepreneurs. (*Government of Nepal. (2013/14). Yearly Development Program, 2013/14. Kathmandu: GoN, p. 80*)

## 7. IMPACT OF NATIONAL MEASURES AND MECHANISMS

Various assessments have been made regarding the impact of national measures and mechanisms that relate to the Guideline. Observations include:

- **The Micro-Enterprise Development Program has had positive benefits for women and Dalits:** one study found an increase in the participation of women in household and economic decisions after participation in the Micro-Enterprise Development Program (MEDEP). In addition, the access of women and socially excluded people (such as Dalits, Janajatis and other Terai castes) to all public services and resources increased. The empowerment levels of Dalits and other caste Terai persons, especially women, have also been improved as a result of their participation in MEDEP and they have been able to seek services from others. (*United Nations Development Program. (2014). Impact Assessment of Micro-Enterprise Development Program. Accessed on 24 September 2014 from [www.np.undp.org/content/dam/nepal/docs/reports/UNDP\\_NP\\_Impact%20Assesment%20of%20MEDEP.pdf](http://www.np.undp.org/content/dam/nepal/docs/reports/UNDP_NP_Impact%20Assesment%20of%20MEDEP.pdf), p. vi*)

## 8. GAPS IN NATIONAL MEASURES AND MECHANISMS

Various gaps have been highlighted in the national measures and mechanisms that relate to the Guideline. Findings include:

- The Dalit Community lacks representation in policy and decision making bodies related to market enterprise, business and finance institutions.
- Dalit entrepreneurs lack supportive and special provisions regarding credit, investment, tax exemptions and subsidies.
- There are not sufficient or effective budgetary allocations for the encouragement of Dalit people in market enterprise and corporate affairs.
- There is a lack of vocational and technical training with regard to business and investment provided for the Dalit community.
- There is no caste disaggregated data to show the extent of employment of Dalits in the private sector in terms of entrepreneurship, trade, business, industries, etc. Nor is there information available on how many companies have anti-discrimination policies or have incorporated corporate social responsibility (CSR) measures targeting Dalits.
- Most international financial institutions and private companies have still not explicitly affirmed the unacceptability of caste discrimination within their own organizations or within their spheres of influence, including suppliers and business partners; nor have they adopted and made public strong anti-discrimination policies that would ban caste discrimination in their workplaces.

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### 9. DALIT COMMUNITY RESPONSE

The following response is being carried out by the Dalit community in relation to the Guideline:

- The SAMATA foundation is organizing series of SAMATA lecture programs to promote debate and action on the topic of affirmative action in the private sector.
- To end CBD & U in Nepal, a National Strategic Plan of Action (2013) has been devised by the Dalit NGO Federation (DNF) to alleviate poverty. One of the core values and guiding principles of this plan of action is to support inclusiveness in all spheres.

### 10. WIDER SOCIETY RESPONSE

At present, there are no wider civil society attempts to ensure that companies incorporate caste and gender analyses as well as anti-discrimination policy measures into their corporate social development strategies.

### 11. OVERALL RECOMMENDATIONS

In light of the above analysis, the following recommendations would ensure better implementation of the Guideline in Nepal:

- The Industrial Enterprises Act (1992), the Industrial Enterprises Development Institute Act (1996), the Industrial Policy (2011) and the Micro-Enterprise Policy (2008) should be amended with the endorsement of inclusive provision for the Dalit community.
- The Government of Nepal's reports should document the status of the Dalit community regarding their access to entrepreneurship, trade, business, industry etc.
- Political instability, industrial insecurity, unfavorable labor relations, minimal availability of energy and weak industrial infrastructures should be reformed. In addition, the lack of competent human resources and lack of capacity to adopt new technology should be addressed.
- All inter-governmental organizations, including international financial institutions, should ensure that development or assistance projects that they support take into account the socio-economic situation of Dalits.
- International Financial Institutions should incorporate a disaggregated analysis (that includes caste and gender) into their CSR strategies and poverty and social assessments in order to ensure equal benefits to Dalits. Prior to approval of projects and in ongoing projects, these institutions should consult with Dalit CSOs and academics to investigate the effect of their proposed policies and programs on caste discrimination. They should ensure equal access and enjoyment of basic entitlements, and seek ways to strengthen Dalit communities in new and ongoing projects through anti-discriminatory and pro-Dalit measures.

- Companies should support and implement the UN Norms on Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights, the Global Compact, OECD Guidelines for Multinationals and other Enterprises, the IDSN Ambedkar Principles and principles contained in the ILO Tripartite Declaration.
- Companies should affirm and ensure the unacceptability of caste discrimination within own organizations as well as within their spheres of influence including suppliers and business partners, with special focus on equal access to markets and services and labor rights, and actively contribute to implementing all anti-caste laws.
- Companies should develop and implement an affirmative action plan (setting targets wherever possible), including training opportunities for Dalit employees and potential recruits.
- Companies should appoint a specific board member to oversee the policy areas, and a senior manager to maximize the benefits of a diverse workforce and report on progress in annual reports that are open to scrutiny from the public.
- All corporate support to community development programs and other charitable activities should include the active participation of Dalits in planning and implementation, to ensure that they receive at least an equal share of the benefits.
- Multinational and transnational companies must voluntarily adopt effective affirmative action measures to ensure that Dalits are recruited and employed in their Nepalese subsidiaries.

## ANNEX I

A/HRC/11/CRP.3

18 May 2009

HUMAN RIGHTS COUNCIL

Eleventh session

2 – 19 June 2009

## DRAFT PRINCIPLES AND GUIDELINES FOR THE EFFECTIVE ELIMINATION OF DISCRIMINATION BASED ON WORK AND DESCENT

### PREAMBLE

*Bearing in mind* the commitment to the principles and obligations under the Charter of the United Nations, including the Preamble and Articles 1, 2, 13, 55, and 56, to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Recalling* that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and nations, to respect for the equal freedom and dignity of all human beings, and their entitlement to the rights and freedoms specified therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status,

*Recalling also* the International Convention on the Elimination of All Forms of Racial Discrimination, which seeks to eliminate discrimination based on race, colour, descent, national or ethnic origin,

*Taking into account* General Recommendation 29 of the Committee on the Elimination of Racial Discrimination, which confirms the Committee's consistent view that the term 'descent' in article 1, paragraph 1 of the Convention applies not only to race but also other forms of inherited status and strongly condemns discrimination based on work and descent as a violation of the International Convention on the Elimination of All Forms of Racial Discrimination, and the Committee's concluding observations addressed to States parties to the Convention,

*Affirming* the condemnation of discrimination in the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Noting* that the World Summit 2005 Outcome emphasized the responsibilities of all States, in conformity with the Charter of the United Nations, to respect human rights and fundamental freedoms of all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,



*Taking into account also* International Labor Organization Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, and its accompanying General Recommendation No. 111,

*Affirming* the UNESCO Convention on Cultural Diversity, and on Discrimination in Education,

*Affirming also* the principles set forth in the United Nations Global Compact, to the end of eliminating discrimination in respect of employment and occupation,

*Highlighting* that discrimination based on work and descent exacerbates poverty and constrains progress toward achieving the Millennium Development Goals,

*Reaffirming* the importance of universal education expressed in the Millennium Development Goals,

*Noting* with grave concern the persistence of discrimination based on work and descent in many regions as reported by the Special Rapporteurs on Discrimination based on Work and Descent of the Sub-Commission on the Promotion and Protection of Human Rights, and by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance of the Human Rights Council,

*Aware of* the Organisation for Economic Cooperation and Development's Guidelines on Companies

*Taking note of* the Kathmandu Dalit Declaration, the Ambedkar Principles, and the Sullivan Principles,<sup>1</sup>

*Commending* the efforts of governments to eliminate discrimination based on work and descent through national constitutional and other legislation and other measures,

*Respecting and attaching the highest importance to* ongoing efforts by affected communities, and international and regional organizations to eliminate discrimination based on work and descent,

*Strongly condemning* discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status, as a violation of human rights and international law,

*Confirming* the need for the concerted efforts of not only States but also regional and international bodies, donors, local authorities, political parties, private sector actors such as companies, schools, social, cultural and religious institutions, other non-governmental organizations (NGOs) and the media in order effectively to eliminate discrimination based on work and descent in their sphere of influence,

*Recommends* the following principles and guidelines for the effective elimination of discrimination based on work and descent.

## SCOPE AND APPLICATION

1. The principles and guidelines concerning discrimination based on work and descent apply equally to all States and to all local, national, sub-regional, regional, and international governmental and non-governmental bodies.

## DEFINITION

2. Discrimination based on work and descent is any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birth place, place of residence, dialect and accent that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life. This type of discrimination is typically associated with the notion of purity and pollution and practices of untouchability, and is deeply rooted in societies and cultures where this discrimination is practiced.
3. Special measures taken for the sole purpose of securing adequate advancement of affected groups and 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 discrimination based on work and descent, provided, however, that such measures do not, as a consequence, 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.<sup>2</sup>

## PRINCIPLES

4. Discrimination based on work and descent is a form of discrimination prohibited by international human rights law as proclaimed by the Universal Declaration of Human Rights and, inter alia, by the International Convention on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the International Labor Organization Convention No. 111.<sup>3</sup>
5. Discrimination based on work and descent and other forms of discrimination are not only human rights violations but also major obstacles to achieving development. Inequalities inevitably diminish development gains and are among root causes of armed conflicts. Ineffective allocation of human resources due to discrimination based on work and descent distorts the labor market and affects the efficiency of an economy.
6. In addressing the problem of discrimination based on work and descent, special care should be taken to address the situation of women, children, the sick or disabled, the aged and people living below the poverty line.<sup>4</sup>

7. All States have a duty to acknowledge the existence of discrimination based on work and descent, to take all necessary constitutional, legislative, administrative, budgetary, judicial and educational measures to eliminate and prevent discrimination based on work and descent in their respective territories and to respect, protect, promote, implement and monitor the human rights of those facing discrimination based on work and descent. All persons of affected communities have the right to enjoy, on an equal footing with others, all civil, political, economic, social and cultural rights, including but not limited to:<sup>5</sup>
- The right to physical security and life and the right to be free from violence;
  - The right to equal political participation;
  - The right to fair access to justice;
  - The right to own land;
  - The right to equal access to public and social services;
  - The right to freedom of religion;
  - The right to marriage on free will
  - The right to education;
  - The right to cultural identity;
  - The right to equal opportunity and free choice of employment;
  - The right to equal, just and favorable conditions of work;
  - The right to be free from forced or bonded labor;
  - The right to be free from cruel, inhumane or degrading treatment;
  - The right to health;
  - The right to adequate food, water, sanitation, clothing and housing;
8. All States have a duty to make sincere efforts to dispel the prejudicial beliefs that constitute, support and reinforce discrimination based on work and descent, including notions of untouchability, pollution and caste superiority or inferiority, as well as to prevent actions taken on the basis of such beliefs.
9. Regional and international bodies, including United Nations bodies and regional intergovernmental bodies, and national and international civil society, including private sector actors such as corporations, schools, hospitals, labor unions, agricultural associations and media practitioners, should provide assistance to efforts toward the effective elimination of discrimination based on work and descent.

## GUIDELINES<sup>6</sup>

### GENERAL

10. National and local governments should take all necessary constitutional, legislative, administrative, budgetary and judicial measures, including appropriate forms of affirmative actions and public education programmes, to prevent, prohibit and provide redress for discrimination based on work and descent in both public and private spheres; and ensure that such measures are respected and implemented by all State authorities at all levels.
11. National and local governments should take specific and effective measures to implement laws regarding discrimination based on work and descent including affirmative action.
12. National and local governments should take proper measures to protect affected communities against acts of discrimination and violence, and measures to end impunity for violence against members of affected communities.
13. National and local governments should establish time-bound programmes to enforce the abolition of untouchability and segregation. Legal and judicial mechanisms should be established and enforced including by effectively punishing acts of “untouchability.” Governments should introduce and apply special measures to address the persistence of social norms of purity and pollution.
14. National and local governments should explicitly prohibit by law discrimination based on work and descent, and explicitly provide for criminal and civil remedies in cases of violation. Criminal and civil sanctions should explicitly apply not only to direct violations but also to complicity or aiding and abetting by other actors, including but not limited to corporations and public officials.
15. National and local governments should repeal all existing laws and regulations that directly or indirectly discriminate on the basis of work and descent, including but not limited to laws restricting voting or land ownership rights based on caste or analogous systems.
16. National and local governments should adopt comprehensive plans of action, including specific budgetary measures and create an office to implement and coordinate such plans of action, for the effective elimination of discrimination based on work and descent.
17. National human rights institutions and specialized institutions should be given power to specifically address the problems faced by affected communities. Governments of affected countries should ensure that, where they exist, national human rights institutions and specialized commissions can act independently and effectively in protecting the interest of people affected by discrimination based on work and descent by providing adequate financial, statutory and personnel support. Where such institutions and specialized commissions do not exist, they should be established. Governments should, unless better solutions are found, implement

the recommendations of specialized commissions, national human rights institutions and other relevant commissions on measures to eliminate discrimination based on work and descent; and inter governmental agencies, including UN human rights bodies and agencies, should take note of such recommendations and where necessary provide technical assistance in support of their implementation.

18. In order to achieve not only de jure but also de facto equality and non-discrimination for those facing discrimination based on work and descent, national and local governments should take positive measures to improve the conditions of affected communities, such as special measures for the purpose of securing adequate advancement of affected groups and individual 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 in education and employment.<sup>7</sup>
19. Governments should ensure that timely reporting is submitted to all relevant United Nations treaty bodies, giving disaggregated data on discrimination based on work and descent.

## **SURVEY AND RESEARCH**

20. National and local governments should conduct regular surveys and other appropriate research in the social, political, economic, cultural and criminal justice fields, including the attitudes of the general public towards the affected communities, and utilize the resulting data, including disaggregated data for the situation of women, to develop effective measures for the elimination of discrimination based on work and descent. The surveys and research should present information on the situation of those affected by discrimination based on work and descent, and a review of the effectiveness of existing measures and proposals for the elimination of such discrimination. Research institutions and universities should also be encouraged to independently conduct such surveys and research.

## **COMBATING SEGREGATION**

21. National and local governments should ensure access to public places, including community centers, hospitals, schools, places of worships, and water resources, by those from affected communities; take measures to eliminate and prevent segregation in employment, housing and education and to ensure protection from violence against those who cross the boundaries of segregation.
22. National and local governments should introduce and apply special measures to eradicate the persistence of social and cultural stigma of impurity and pollution that de facto precludes marriages between members of affected and non-affected communities and, in some societies, gives rise to violence, collective punishment and social exclusion against couples from different communities.

## PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

23. National and local governments should prohibit harmful practices of child marriages and dowry, and those forbidding the remarriage of widows, the dedication of girls to temple deities and forced, ritualized prostitution and create local law enforcement task forces for the effective implementation of the prohibition.<sup>8</sup>
24. State actors should take special measures, such as devising and implementing comprehensive plans of action and creating a monitoring mechanism, to protect affected communities from physical violence, including torture, sexual violence and extrajudicial killings.
25. Particular attention should be given to the situation of women and girls, including under domestic violence laws, and to sexual violence, sexual exploitation and trafficking committed against women and girls of affected communities.
26. National and local governments should investigate, prosecute and punish perpetrators of all forms of violence and atrocities, and sanction anyone found preventing or discouraging victims from reporting such incidents, including public officials.
27. National and local governments should encourage victims and witnesses to report such acts to the competent authorities and protect them from acts of retaliation and discrimination, and ensure that complaints under relevant acts and other criminal law provisions are properly registered. National and local governments should make public information on the number and nature of complaints registered, the convictions and sentences imposed on perpetrators, and the remedies and assistance provided to victims of such acts.

## ACCESS TO JUSTICE AND EQUAL POLITICAL PARTICIPATION

28. Judicial, legislative, and law enforcement bodies should take specific and concrete measures to ensure equal protection of the law for affected communities.
29. National and local governments should take all necessary steps to ensure equal access to judicial remedies for affected communities, including the provision of legal aid or other kinds of support to public interest organizations representing the interests of those subject to discrimination based on work and descent.
30. State actors, including all bodies of government and public corporations, should adopt specific guidelines, including a scheme of incentives and sanctions, prohibiting discrimination based on work and descent in their internal practices. National and local governments should encourage the recruitment of members of affected communities into law enforcement agencies.
31. Law enforcement officials, including police, judges and prosecutors should be provided with adequate training in the prevention, investigation, and prosecution of cases involving discrimination based on work and descent.



32. National and local governments should take specific measures to ensure equal rights to political participation for affected communities, including rights to participate in public elections, and to equal opportunity to run and be elected to public office.
33. National and local governments should consider the introduction and implementation of a reservation policy to all categories of public service posts, including the judiciary in order to ensure adequate, effective and meaningful, not symbolic, representation at all levels of governments and legislatures and maintain and release statistical data on such representation.

## **EQUAL EMPLOYMENT OPPORTUNITY AND FREE CHOICE OF OCCUPATION**

34. National and local governments should enact equality laws that prohibit public and private employer discrimination on the basis of caste or analogous systems, take steps to remove customary constraints on leaving traditional caste-based occupations, and promote gainful alternative employment opportunities and full access to markets for members of affected communities.
35. National and local governments should enact and enforce legislation guaranteeing decent work, a living wage and labor rights for affected communities.<sup>9</sup> National and local governments should ensure the complete eradication of manual scavenging<sup>10</sup> and other unhealthy working conditions, in accordance with international standards.
36. The government should adopt measures to enhance affected communities' access to the labor market by introducing or extending reservation policies to the public and private sectors, which should effectively counter the impact of market liberalization and globalization.
37. The State and other agencies should secure and support the full exercise of the right of affected communities to free choice of labor and other occupations traditionally withheld from them because of their caste or other kinds of social origin.

## **FORCED, BONDED AND CHILD LABOR**

38. National and local governments, corporations, labor groups, and international labor, financial, and development organizations should collaborate to ensure concrete mechanisms for the prevention, identification and eradication of exploitative labor arrangements and the implementation of rehabilitation schemes for forced, bonded and child laborers with special attention to affected communities.

## **HEALTH**

39. National and local governments should take all necessary measures to ensure the highest attainable standard of physical and mental health, equal access to healthcare and a safe health environment for members of affected communities. Governments should pay special attention to child malnutrition and high maternal mortality rates in affected communities.

40. National, local and international health officials and practitioners should ensure equal treatment for members of affected communities including access to sanitation facilities and medical insurance and treatment at hospitals.
41. Development and financial assistance to ensure adequate hygiene and sanitation should be provided by national and local governments and international development and humanitarian organizations.

## ADEQUATE FOOD, WATER, AND HOUSING

42. National and local governments should take all necessary measures to eliminate discriminatory practices that cause affected communities to suffer from inadequate food, water, sanitation, clothing and housing.<sup>11</sup>
43. National governments and local authorities should ensure affected communities due entitlement to land and protect against forced eviction.
44. Governments should ensure that the ministries, district administration and local bodies develop comprehensive mechanisms and programmes for enhancing mandatory and increased access to development programmes and budgets for affected communities.
45. Donor agencies have an obligation to help governments ensure effective outreach in providing food, water and housing to affected communities on an equal footing with other parts of the population.

## EDUCATION

46. National and local governments should take all necessary measures to ensure equal access to free quality primary and secondary education for children from affected communities, as well as equal opportunity to receive tertiary education. Effective special measures should be enacted for affected communities in admissions to public and private higher education institutions.
47. National and local governments should take effective measures to reduce dropout rates and increase enrolment rates among children of affected communities at all levels of public and private schooling, by providing scholarships or other financial subsidies, combating classroom segregation, harassment and discrimination against pupils of affected communities and ensuring non-discriminatory access to such schemes, including through provision of adequate equipment, staffing and quality of teaching in public schools, as well as adequate means of physical access to schools for children living in dominant caste neighbourhoods and armed conflict areas. Governments should take all necessary measures to remove obstacles, including child labor, which keep children from regular full time education. Governments should also pay particular attention to the need of providing adequate education to children and adults who are unable to read and write because of lack of formal education.

48. National and local governments should review and eliminate language in school text books that conveys or encourages stereotypical and prejudicial beliefs, attitudes, and actions against members of affected communities and ensure that the content of education and curricula reflect the contributions of affected communities and emphasize the need to eliminate discrimination based on work and descent through, among other things, inclusion of human rights education.

## **PUBLIC AWARENESS RAISING & ELIMINATION OF DISCRIMINATORY CUSTOMS**

49. National and local governments should take specific measures to raise awareness both among the public and among government officials, teachers, and media practitioners on discrimination based on work and descent, such as through internal training and public campaigns. Areas of attention should include not only the print and broadcasting media but also alternative avenues of information dissemination, such as local oral information through theatre, songs, etc. as well as information via internet.
50. National and local governments should, wherever necessary, review or enact libel, slander, and hate speech laws to explicitly prohibit and punish libellous and slanderous speech or speech inciting discrimination, hatred, or violence based on work and descent.
51. Governments should take special measures to promote due representation in the mass media of affected communities, and carry out sensitization campaigns and awareness raising programme with media representatives. It is recommended that government and other relevant institutions encourage media outlets to profile and publicize abuses faced by descent-affected communities, as well as promoting tolerance and positive examples of combating descent based discrimination.
52. The media, religious, educational and cultural institutions and other parts of civil society, and international organizations should contribute to correcting the spread of negative images of affected communities, and endeavour to build the capacity of those communities, as well as recognize the contributions of affected communities to the development of society.

## **MULTIPLE DISCRIMINATION AGAINST WOMEN**

53. National and local governments should collect, analyze and publicly provide disaggregated data on the situation of women affected by discrimination based on work and descent.
54. National and local governments should take into account the situation of women and girls of affected communities in all measures taken to address discrimination based on work and descent, and explicitly create provisions tailored to ensure the rights of women and girls affected by discrimination based on work and descent wherever possible.

## **PARTICIPATION OF AFFECTED COMMUNITIES**

55. Any measures taken for the effective elimination of discrimination based on work and descent should be made on the basis of genuine and informed consultations with affected communities. Procedural mechanisms of those measures should be set up to ensure that the affected communities' interests are adequately represented.

## **HUMANITARIAN AND DEVELOPMENT ASSISTANCE**

56. All States should recognize and take measures to address the special problem of increased discrimination based on work and descent in situations of humanitarian crises, such as internal conflicts, wars, or natural disasters.
57. Governments and international organizations should develop measures to tackle exclusion and discrimination in all development and disaster recovery programmes, such as social equity audits and caste analysis frameworks. Appropriate 'affected community inclusion tools' should be developed and applied effectively in the planning and monitoring of programmes. Agencies should provide training on discrimination based on work and descent to their staff and should take responsibility to monitor and counter untouchability practices. Members of affected communities should be fully involved in decision-making on and the planning and evaluation of programmes, and agents involved should actively seek to employ members of affected communities in the recovery or development operations.
58. States should investigate all alleged cases in which members of affected communities have been denied assistance or benefits equal to that received by other people, or cases in which they have been discriminated against during the relief, rehabilitation and development processes, and compensate or retroactively grant such benefits to the victims of affected communities.

## **MARKET ENTERPRISES AND FINANCIAL ALLOCATIONS**

59. International financial institutions and private companies should affirm the unacceptability of discrimination based on work and descent within own organizations as well as within the sphere of influence including supplies and business partners with special focus on equal to markets and services and actively to implementing anti-caste laws; and such entities should incorporate caste and gender analyses as well as anti-discrimination policy measures into their corporate social development strategies.

## **INTERNATIONAL COOPERATION**

60. International, regional and sub-regional bodies should provide support for the effective elimination of discrimination based on work and descent, through financial, technical and legal assistance. Inter-governmental bodies, including financial institutions, bilateral donors and diplomatic organizations including embassies, should ensure that the development assistance

projects which they support are consistent with efforts to eliminate discrimination based on work and descent. Regional and international human rights institutions and procedures, as well as international civil society, should monitor and support efforts to eliminate discrimination based on work and descent. Humanitarian organizations should recognize affected communities as being at special risk of rights violations and deprivations, and prioritize the distribution of aid accordingly.

61. All international organisations, including United Nations agencies, should pay particular attention to discrimination based on work and descent and seek to prevent and address the multiple forms of human rights violations resulting from this form of discrimination. It is recommended that all agencies include analyses of the situation of affected communities in their country and regional strategies, and develop policies, strategies and instruments to address work and descent based discrimination as well as operational guidance to staff.

## **RESPONSIBILITIES OF STATES WITH DIASPORA COMMUNITIES**

62. Governments of the countries with diaspora communities where discrimination based on work and descent is practiced should take effective measures to prevent such discrimination.

## **INTERPRETATION**

63. These principles and guidelines for the effective elimination of discrimination based on work and descent shall not be interpreted as limiting, altering, or otherwise prejudicing the rights of individuals recognized under international human rights law, humanitarian law, or immigration and refugee laws.

## **IV. CONCLUSIONS AND RECOMMENDATIONS**

64. The problem of discrimination based on work and descent continues to exist today in many parts of the world. This problem was not a part of the major human rights agenda of the international community until the beginning of this century. The problem of caste-based discrimination should be 'descent-based discrimination, including discrimination against the Buraku, has been taken up by the respective States concerned only as a specific human rights issue peculiar to each State. These forms of discrimination had not been regarded as having common features and similar historical, political, economic and social contexts. However, since the Sub-Commission decided in August 2000 to take up this topic as an important human rights issue of the day and appointed Special Rapporteurs successively up to today, the various studies they have conducted have revealed that the issue is broader than caste-based discrimination in South Asia but has existed and continues to exist in parts of Africa, Latin America and the Middle East, and in some countries of Western Europe (particularly among the diaspora communities). As a result of deliberations and dissemination of information on this topic by the Sub-Commission in parallel with other similar efforts by the Human Rights Committee of the International Covenant on Civil and Political Rights, the Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Commission's (now, the Human Rights

Council's) Special Rapporteur on contemporary forms of racism and racial discrimination and the International Labor Organization (ILO), the issue of discrimination based on work and descent is regarded as a specific and important human rights issue to be properly addressed by the international community.

65. It should be emphasised that each State in South as well as East Asia where such discrimination has been felt as an acute and urgent human rights issue has taken certain legislative, administrative, budgetary and positive measures to address the issue. Nevertheless, this type of discrimination still persists even in those States where certain corrective measures have been taken, because: (a) legislative, administrative, budgetary and positive measures are not seriously, vigorously and effectively carried out; (b) such measures are often incomplete or insufficient to effectively eliminate such discrimination; and (c) discrimination of this kind is deeply rooted in social customs, beliefs, rituals and behaviour which distinguishes affected individuals and communities from the majority or dominant individuals or groups on the basis of impurity and pollution and, unless the attitudes, modes of behaviour or value systems of ordinary citizens drastically change, eradication of such discrimination is difficult.
66. In order to eliminate such discrimination, it is essential that Governments, central as well as local, take all possible effective measures vigorously to achieve this goal. But also, all actors in society, which include business companies, schools, universities, institutes, religious groups and organizations, hospitals, newspapers and broadcasting networks, non-governmental organizations and other welfare and humanitarian organizations, trade unions and employers' organizations, internet operators, and UN bodies and agencies as well as other universal and regional international organizations, should take steps immediately and effectively to eliminate all discriminatory acts, social, psychological or physical.
67. On the basis of the foregoing observations and conclusions, the Special Rapporteurs recommend as follows:
  - a) The Human Rights Council should include the topic of discrimination based on work and descent among the studies to be conducted by an expert or experts appointed by the Council.
  - b) The Human Rights Council should adopt the draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent included in Chapter II of this report, with necessary amendments and improvements, and send the revised Principles and Guidelines to the General Assembly for adoption.
  - c) The Human Rights Council should request, pending the adoption by the General Assembly, all organs and agencies of the United Nations as well as its Member States to give due consideration to the draft Principles and Guidelines in the formulation and implementation of their policies and operations.
  - d) The Human Rights Council should request, pending the adoption by the General Assembly, all other international and regional organizations, international and national non-governmental



organizations, national human rights institutions, companies, religious institutions, schools, universities, welfare and humanitarian organizations, trade unions and employers' organizations, newspapers and broadcasting networks and internet operators, to give full consideration to the Principles and Guidelines in the course of their activities.

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**(Endnotes)**

- 1 Kathmandu Dalit Declaration, adopted at the International Consultation on Caste-Based Discrimination Establishing Dalit Rights in the Contemporary World; the Role of Governments, the United Nations and the Private Sector, on December 1 2014; the Ambedkar Principles; employment and additional principles on economics and social exclusion formulated to assist all foreign investors in South Asia to address caste discrimination (2005); the Global Sullivan Principles on Social Responsibility (1999).
- 2 The definition of discrimination based on work and descent is modelled on Article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It accordingly supports and encourages consistency with existing international law on the subject of discrimination, and should be read as such. Likewise, paragraph 2 is modeled on Article 1.4 of ICERD and is intended to explicitly allow for the possibility of special measures, such as affirmative action, taken solely for the purpose of and to the extent necessary for the equal enjoyment of human rights and fundamental freedoms of groups and individuals affected by discrimination based on work and descent. In practice, discrimination based on work and descent is usually embedded in a discernible context of religious, moral, or cultural beliefs about the relative worth of a certain group of persons, as well as notions of purity, pollution, and untouchability. While such a context is not necessary for identifying discrimination based on work and descent, its existence should give reason for greater concern that discrimination based on work and descent is taking place. In addition, actors should recognize that in most situations the effective elimination of discrimination based on work and descent will be impossible with the eradication of the background context of prejudicial beliefs and attitudes, and organize their efforts accordingly.
- 3 This paragraph reaffirms that discrimination based on work and descent is prohibited by international law. At the most general level, this form of discrimination in the protection and promotion of human rights and fundamental freedoms is inconsistent with the goal, proclaimed in the Preamble to the Universal Declaration of Human Rights (UDHR) and underlying every major instrument of international human rights law, of universal respect for, and observance of, human rights and fundamental freedoms for all. But discrimination based on work and descent is also clearly prohibited by Article 1.1 of ICERD, as confirmed by the Committee on the Elimination of Racial Discrimination's General Recommendation 29, A/57/18 at 111 (2002). In addition, discrimination based on work and descent is inconsistent with the specific provisions prohibiting discrimination and protecting equality in, inter alia, the UDHR (see, e.g., Articles 1, 7, 10, 21, 26), the International Covenant on Civil and Political Rights (ICCPR) (see, e.g., Articles 4, 20, 24, 26), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see, e.g., 2, 7, 10, 13), the International Labor Organization Convention (ILO) No. 111 (Articles 1.1 and 3) and Recommendation No. 111, as well as the ICERD.
- 4 This principle reflects both the (1) reality of heightened risk for women and girls, children, the sick or disabled and the aged in contexts of discrimination based on work and descent; and (2) the recognition by international law of risks of this sort. Especially women and girls, as well as children of both sexes, face heightened risk and multiple discrimination in societies in which discrimination based on work and descent is practiced. International law has recognized the increased need for protection of human rights and fundamental freedom of women and girls and children through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). For example, the Preamble to CEDAW, emphasizing the interdependence of the elimination of discrimination against women and the elimination of other forms of discrimination. The non-discrimination article CRC (Article 2) clearly indicates that the protection and promotion of the rights of the child shall be pursued without distinction in status.
- 5 The phrase "including but not limited to" recognizes that international law affords affected communities a greater range of rights than listed in this paragraph, viz. the full range of human rights and fundamental freedoms now protected by international law. The purpose of the list is to identify areas of particular risk now faced by affected communities, based on sociological research and documentation, summarized, inter alia, in the Progress report of the Special Rapporteurs on the topic of discrimination based on work and descent, A/HRC/Sub.1/58/CRP.2\* (2006), Chapter III. This list should therefore be treated as an open-ended, rather than a rigid, category, to which further rights may be added as requiring special attention. The rights enumerated in the list are recognized by international law, such as the UDHR (Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 20, 22, 23, 25, 26, 27), ICCPR (Articles 6, 7, 8, 10, 14, 25, 26), ICESCR (Articles 7, 10, 11,

12, 13), ICERD (Article 5(a), (b), (c), (d) (v) and (ix), (e) (i), (iii), and (iv)), CRC (Article 32), as well as standards of conditions of employment and education as provided by the ILO Fundamental Conventions (No.s 29, 105, 87, 98, 100, 111, 138, 182) as well as the 1998 ILO Declaration on Fundamental Principles and Rights at Work. A number of these rights are considered non-derogable (derogation from ICCPR Articles 6, 7, 8.1 and 2, 11 is disallowed by ICCPR Article 4). The right to physical security and to live free from violence and the right to be free from forced labor should be read to include the peremptory norms against torture and slavery. (On the peremptory norm against slavery, see ILO, Forced Labor in Myanmar (Burma), Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labor Organization to examine the observance by Myanmar of the Forced Labor Convention, 1930 (No. 29), Official Bulletin (Geneva), 1998, Series B, special supplement, para. 538). The ILO on Fundamental Principles and Rights at Work binds member states regardless of their ratification of the eight Fundamental Conventions. The particular relation between these rights and legal obligations of states and other actors will depend on further factors such as

state ratification of treaties, as well as the development of doctrine and jurisprudence by national and international courts and treaty bodies, including development in the recognition of norms as customary international law.

Principle 6 also reflects the general approach of these Principles and Guidelines: the central problem in contexts of discrimination based on work and descent is that there are certain universal rights and freedoms which are wrongfully being denied to a descent-based community. Thus, the particular mention of terms such as “descent,” “work and descent,” or “discrimination” is not necessary for a right or duty recognized by international standards to merit special attention in efforts to eliminate discrimination based on work and descent.

In line with Principle 1, Principle 6 places an emphasis on the equal protection and promotion of rights for women and girls pursuant to CEDAW, as well as the protections required for children pursuant to CRC. In addition to the CRC, ILO Convention No. 182 imposes an obligation in particular to prohibit and eliminate certain forms of child labor, including those involving slavery or slavery-like practices (Article 3(a)) and carried out in circumstances likely to harm the health, safety and morals of the child (Article 3(d)). ILO Convention No. 138 provides that no child shall enter the labor market before completion of compulsory schooling and, in any case, shall not be less than secondary education at 14 or 15 years of age (Article 2).

- 6 These Guidelines articulate specific measures to be taken by states and other actors in order to implement the Principles. They are based on sociological documentation and research on the specific obstacles faced by affected communities as summarized, inter alia, in the Progress report of the Special Rapporteurs on the topic of discrimination based on work and descent, A/HRC/Sub.1/58/CRP.2\* (2006), Chapter III.
- 7 This Guideline emphasizes the need for states, including those which have specific legislation prohibiting discrimination based on work and descent, to ensure that the elimination of such discrimination is not merely formal or in language. While explicit legislation is often necessary and strongly encouraged (see Guidelines 5 and 6), it has not proven sufficient. Assessments of the progress made by countries that explicitly prohibit human rights violations against affected communities have shown that these prohibitions often prove ineffective in the absence of diligent enforcement. The rest of the Guidelines should be read to conform with and support this general Guideline.
- 8 This guideline draws on concluding observations to governments of caste affected countries by the Committee on the Elimination of Racial Discrimination, in particular the concluding observations on India CERD/C/IND/CO/19 (2007) paragraph 18. The guidelines 16, 17, 24, 27, 37 and 50 also take some parts of the same document, CERD/C/IND/CO/19 (2007), respectively from para.s 15, 26, 17, 23, 25 and 22.
- 9 The ILO Protection of Wages Convention No.95 guarantees payment in legal tender, cash, fair reasonable, direct, adequate and timely.
- 10 “With regard to the practice of manual scavenging and the fact the Dalits are usually engaged in this practice due to their social origin...the Committee noted in its previous observation that the Tenth Five-Year Plan (2002-07) refers to a nationwide programme for the total eradication of manual scavenging by 2007...In this context, the Committee strongly urges the Government to take decisive action.” India Observation C.111 of ILO Committee of Experts on manual scavenging.
- 11 Affected communities are likely to suffer high and disproportionate levels of poverty due to discriminatory practices; such barriers and practices should be addressed including by expanding access to adequate sources of income and employment for the affected communities. In residential areas in which access to food, clothing and housing is typically provided through communal resource arrangements such as village wells and ponds, community grazing grounds, village forests and public roads, national and local governments should monitor and facilitate affected communities’ access to these common resources and ensure that their access is not blocked through prejudicial or punitive measures by other residents.





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