

Parallel Meeting on the occasion of the 7th session of the Human Rights Council

**Unfinished business for the HRCAC:
Adoption of Draft Principles and Guidelines for the Effective
Elimination of Discrimination Based on Work and Descent?**

**12th March 2008 at 13:30-15:00
E2064+2066, Palais des Nations**

The parallel meeting, which was held on the occasion of the main session by the Human Rights Council, was hosted by the International Movement against All Forms of Discrimination and Racism (IMADR), with the Lutheran World Federation (LWF), Pax Romana/ICMICA MIIC and FORUM-ASIA as co-hosts and the International Dalit Solidarity Network (IDSN) as an associate with the purpose to ensure adoption of the draft principles and guidelines on discrimination based on work and descent.

Background: A final report prepared pursuant to Sub-Commission resolution 2006/14 on discrimination based on work and descent by Special Rapporteurs Prof. Yokota and Prof. Chung, including the draft UN principles and guidelines on the effective elimination of discrimination based on work and descent, have been finalized and should according to resolution 2006/14 be handed over “to the Sub-Commission or its successor body, or in the absence of either, to the Council”. Since no consideration of the pending mandates have been made so far by the Human Rights Council as part of the institution-building phase, the draft principles and guidelines on discrimination based on work and descent are left in a vacuum following the closing of the Sub-Commission along with a number of other mandates. How do we ensure that the unfinished business will be dealt with adequately by the HRCAC?

1. Introduction and presentation on substantive issues by Mr. Peter N. Prove, Assistant to the General Secretary for International Affairs and Human Rights, Lutheran World Federation (LWF)

Mr Peter N. Prove welcomed the participants on behalf of the organising organisations.

Going through the history of the issue, Mr. Prove remarked that IDSN and many of its partners have been working nearly eight years to bring caste-based and analogous forms of discrimination to the attention of the international community and to bring specific focus to this issue affecting so many people and communities all over the globe.

It is worth noting that at the time of the drafting of the Universal Declaration on Human Rights, proposals were made to include caste-based discrimination as a specific form of discrimination to be covered under the declaration. The proposal in fact came from the Indian government. Unfortunately, the proposal made then doesn't exactly match the position of the government of India today.

Much of the work over the past years has focused on addressing the issue within the comprehensive framework for the protection of human rights. Different treaty bodies have taken up caste-based discrimination in different ways, such as CERD, the Committee on the Rights of the Child, CEDAW and the Committee on Economic, Social and Cultural Rights. In 2002, CERD issued its general recommendation no. 29 on the elimination of discrimination based on work and descent.

After a series of working papers by the Sub-Commission on the Promotion and Protection of Human Rights, a decision by the then Commission on Human Rights in 2005 mandated a three year study in which two members of the Sub-Commission set out to develop a set of principles and guidelines to address the issue. The two rapporteurs, Prof. Chung and Prof. Yokota, have in 2007 completed the final report including the draft principles and guidelines for the elimination of discrimination based on work and descent. But due to the UN reform process, the Sub-Commission no longer exists. What will happen to the report and principles

and guidelines now? Will they disappear or will they be taken forward to serve as a framework for international attention?

The principles and guidelines is not an instrument introducing new normative standards and human rights obligations on states. It is a compilation of existing human right standards from international treaties, declarations and recommendations related to discrimination based on work and descent and recommendations on how to prevent this form of discrimination in caste-affected countries.

2. How can the draft UN principles and guidelines on the elimination of discrimination based on work and descent promote the human rights of 260 million Dalits by Ms. Gay McDougall, *Independent Expert on Minorities*

Ms. McDougall thanked for the opportunity to address an issue that no doubt represents an important challenge to the international community - a challenge that needs to be put before the international community in as many ways as possible. Ms. McDougall's own involvement goes back to her tenure on the Sub-Commission and the work that began there much before the study by Professor Chung and Yokota. Subsequently it was dealt with on CERD which had a much better attitude than the Sub-Commission. A courageous battle was fought through a two and a half years process leading up to and during the Durban conference. An attempt was made to give the issue prominence but the attempt was not as successful as it should have been. All groups and communities kept the battle going and not too long after Durban, groups succeeded in getting the CERD general recommendation no. XXIX – a significant step forward.

Another tremendous step forward was the Sub-Commission's decision to put together a team of professors to develop the study of caste-based discrimination and the principles and guidelines. Ms. McDougall is as many others in disorientation and dismay about the loss of the Sub-Commission. The challenge is to continue the battle to press forward the principles and guidelines and incorporate them in other places within the UN architecture as needed. The authors of the study should continue to be involved in taking the issue forward. A future mechanism for effective monitoring and reporting on discrimination based on work and descent needs to be built. Options to explore the creation of a more permanent mechanism addressing discrimination based on work and descent should use the structures that exist, such as the Committee on Economic, Social and Cultural Rights (CESCR), where a willing set of experts could consider incorporating these principles and guidelines in a thematic debate about the socio-economic impact of discrimination based on work and descent similar to the debate in the Committee on the Elimination of Racial Discrimination (CERD) in 2002 which lead to the adoption of General Recommendation no. XXIX. She also suggested putting them before other relevant UN agencies, such as the UNDP.

Ms. McDougall committed herself to see how she could give expression to the principles and guidelines through her mandate. Ultimately, the issues needs a special mandate, but until then she suggested to meet with all relevant mandate holders. In June, the treaty body chairs will be gathered and they should be approached about putting the issue on the agenda of their treaty bodies in 2009, so that it can filter down through the system. Ms. McDougall proposed holding another parallel event to help mandate holders and chairs of treaty bodies think about how they might incorporate the principles and guidelines in their ongoing work.

3. UPR and discrimination based on work and descent: Documenting caste-based discrimination in states reviewed by the UPR mechanism (1st and 2nd sessions)

Japan: by Mr. Tomonaga, *Chief Director of the Buraku Liberation and Human Rights Research Institute*

Mr. Tomonaga gave an account of the dialogue with the Government of Japan on behalf of the Buraku Liberation League and the International Movement Against all forms of Discrimination and Racism (IMADR)– a dialogue they have been engaged in since the beginning of the 1980s when they visited the Japanese mission to the UN. They took up the issue in some of the working groups under the Sub-Commission, and the Japanese government admitted that such discrimination was taking place and made it clear that Japan would like to solve this problem in the realm of the international community. It was in relation to this effort that the mandate on discrimination based on work and descent was set up in the Sub-Commission.

Today the Japanese government is asked to make an effort to the effect that the principles and guidelines will be adopted in the next session of the Human Rights Council. The new minister in the mission of Japan has expressed the will to cooperate in any way he can and to continue the dialogue. The Buraku Liberation League and IMADR has an interest in continuing this dialogue too.

India: *by Mr. Vincent Manoharan, General Secretary for the National Campaign on Dalit Human Rights (NCDHR)*

Mr. Manoharan spelled out the present situation of Dalits generally but with special reference to India in order to help understand why it is essential that the principles and guidelines are adopted. Furthermore, an account of the situation of Dalits is important in relation to the upcoming UPR review for several caste-affected countries.

Worldwide there are 260 million Dalits who are socially excluded and discriminated against with regards to their economic, social and cultural rights. However the Indian constitution clearly outlaws caste-based discrimination and the Government of India claims that the current mechanisms are sufficient to tackle the problem. Several provisions and pieces of legislation meant to protect Dalit rights in different aspects is in place, but implementation is lacking. At the same time as the Indian government has set up a number of human rights commissions and bodies, Dalits are facing various forms of exclusion. Dalits continue to work in degrading and dangerous jobs such as manual scavengers and sweepers. Atrocities are committed against Dalits and they are perpetrated in many different forms. Any claim of rights by Dalits is seen as a disturbance of order and is often suppressed with violence. The National Human Rights Commission does take a note of these issues and does issue recommendations to the government, but to no avail. In spite of the fact that India has a good criminal justice and justice delivery system, it is not functioning when it comes to caste-based discrimination.

On the international scene, CERD examined the Indian Government's implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in February 2007, but the position of the Government remains the same: caste-based discrimination does not fall under the convention. Despite the CERD Committee's reference to article 1 and the general recommendations no XXIX, the Indian government refuses to address the problem. India is not responding to the concluding remarks of the CERD Committee.

Mr. Manoharan stressed that as Dalit human rights defenders, he and others have a strong interest in the adoption, strengthening and implementation of the principles and guidelines, but that their future is uncertain.

In relation to the UPR review the issue of caste-based discrimination needs to be taken up. Issues within caste-based discrimination, such as bonded labour and rights of the child, are also highly relevant for scrutiny undertaken by the treaty bodies.

Running from pillar to post on the question of caste-based discrimination, Dalits have succeeded in promoting the development of the principles and guidelines. However, much action is still needed on all levels, so that Dalits can live in dignity. Rights cannot be secured straight away, but there is no justification for the continued killing and harming of Dalits. A caste-mindset continues to occupy the minds of those in the judicial system and government. The whole question of implementation of national Indian legal standards as well as international legal standards remains essential.

Pakistan: *by Mr. Sono Khangharani, Chief Executive Officer, Thardeep Rural Development Programme (TRDP) and Pakistan Dalit Network*

Mr Khangharani thanked for the opportunity to address the overlooked issue of caste-based discrimination in Pakistan. Pakistan came into being in 1947 at which time Muhammad Ali Jinnah said that the minority-majority relations would cease to exist. All citizens would be treated equally in the new state of Pakistan. This statement made Dalits, the so-called 'scheduled castes', hope for a future in Pakistan, and it was in this context that five million Dalits decided to stay in Pakistan in 1947. Unfortunately, history has been cruel. Whenever a new ruler has come to power, basic human rights provisions have been suspended and the

police not allowed to do their duties. So Dalits were deprived of their rights. Because of the situation in the country and the different army regimes, most Hindus from the 'upper castes' left for India and the Muslim-dominated population took over land and resources. The atrocities and injustice started again. Dalits only had the option of doing sanitary work, brick fabrication and the other jobs no one else wanted. Dalits were left behind due to economic oppression and untouchability practices, as well as forced conversion to Islam. Different Dalit groups tried to take up the issue, but saw no venues to express their frustration and were asked to keep quiet.

In the last few years that situation has changed. Now Dalits try to support the election of a new democratic government. As an example, Dalits have fought against the separation of the electorate which would have led to the election of 'upper castes'.

Pakistan is an Islamic country and according to Islamic law no one is being discriminated against. But reality is different and there are many rights that Dalits do not enjoy.

Mr. Khangharani ended by saying that efforts are taken to link up to international forums and bring back to Pakistan elements that can be used to continue the fight. But he fears that there is no one in Pakistan who is ready to listen.

Sri Lanka and Japan: *by Ms. Nimalka Fernando, President of the International Movement Against All Forms of Discrimination and Racism (IMADR)*

Ms. Nimalka related the issue of discrimination based on work and descent and broader human rights protection to the context of the UPR for Japan. A joint report has been prepared by 51 civil society organisations and there are several key issues addressed. One central problem is the lack of a national human rights institution in Japan. In relation to the Buraku population the absence of a national human rights institution means that victims of discrimination cannot seek legal redress through any individual procedures. Also lacking is a framework to address the human rights violations of children and minority groups such as migrants, the Buraku population and foreigners. However, some best practices are mentioned in the joint report with reference to a few specific cases.

Often people ask why another document and piece of paper is needed. The draft principles and guidelines are important exactly because of the nature and dimensions of the discrimination taking place. A continued expansion of the issue and the space available is needed when it comes to untouchability. It should be dealt with within such a framework, i.e. the draft Principles and Guidelines, but also the under the UPR review.

In Sri Lanka, civil society has given special attention to the discrimination of Tamil Dalits. They have been in Sri Lanka for more than 60 years, but are still facing social exclusion and are caught up in a long struggle to get citizenship. The provisions are there, but the process of obtaining it is extremely longwinded. Those problems should come under review in the UPR as an issue of ethnicity, race and minority. A certain mindset that says that the worker's child should become a worker prevails. When children of plantation workers want to obtain higher education, for the large part it is simply not available. No investment has gone in to education for plantation workers and there is no upwards social mobility. Such is the ideological framework when the government is developing legislation.

The gains of globalization and economic growth are extremely important to keep in mind when looking at caste-based discrimination. The World Bank has shown that the development of five percent of the population is frozen. They are poverty stricken and in need of state welfare systems. These facts are being put forward not by groups such as the Tamil Tigers, but by the World Bank. The Sri Lankan government may say there is no caste-based discrimination and that the right constitutional provisions are in place, but the reality on the ground is that even in the Sinhalese community there is caste-based discrimination. When looking at the migration patterns in Sri Lanka, it is the 'lower castes' who move in order to earn money as a way to overcome caste-based discrimination.

There is currently a danger that the UPR mechanism will overshadow the treaty body examination. Governments should not be allowed to use the UPR to get out of treaty body examinations, a focus is needed on both. Independent experts are an important source of knowledge when the examining

governments could have reasons for not asking critical questions. Ukraine among others will be examining Sri Lanka, yet at the same time Ukraine is exporting arms to Sri Lanka.

Ms. Fernando concluded by saying that governments should be asked to be courageous in facing the caste-based discrimination taking place in South Asia.

4. Discussion: How can the draft UN Principles and Guidelines effectively contribute to the elimination of caste-based discrimination against 260 million people worldwide?

Several participants brought up the draft principles and guidelines in relation to the Durban review conference. Governments are required to live up to their responsibilities and the Durban review conference is an opportunity to remind them of this obligation.

But participants were also reminded of the failures of the Durban conference to deal with caste-based discrimination and the need to analyse how this can be prevented from happening again. The political background to the failure of the Durban conference was brought forth as an example of why it is important to build awareness about caste-based discrimination in a number of different forums such as various UN agencies. ILO, UNESCO and WHO were mentioned as important actors to involve. Finally, it was mentioned that the events around the last Durban conference did help to nurture the ground for achievements such as the CERD general recommendations, and hence the situation in 2008 is more conducive than in 2001.

The meeting concluded with a tribute to Ms. Atsuko Tanaka-Fox from IMADR's UN Office in Geneva who sadly passed away in late August 2007. Mr. Peter N. Prove said she was the back bone of the work in the UN to eliminate caste-based discrimination and that she is missed immensely. Gratitude was expressed to IMADR for making her work available to this cause.