



Caste-based discrimination in India

Joint NGO submission by the International Movement against All Forms of Discrimination and Racism (IMADR) and the Lutheran World Federation (LWF) in association with the National Campaign on Dalit Human Rights (NCDHR) and the International Dalit Solidarity Network (IDSN)

related to India for first Universal Periodic Review session scheduled for April 2008

Members and associates of the International Dalit Solidarity Network	
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Joint NGO submission by IMADR, LWF, NCDHR and IDSN on caste-based discrimination in India for the UPR session in 2008

Introduction

This joint NGO report submitted by the International Movement against All Forms of Discrimination and Racism (IMADR) and the Lutheran World Federation (LWF)¹ in association with the National Campaign on Dalit Human Rights (NCDHR)² and the International Dalit Solidarity Network (IDSN)³ focuses specifically on caste-based discrimination related to the Government of India's implementation of its national and international obligations to protect and promote the human rights of approximately 167 million Dalits in India.⁴ In UN terminology, this form of discrimination is known as "discrimination based on work and descent."⁵ This report is based on the shadow reports submitted to CERD in February 2007, other human rights reports, recommendations by UN treaty bodies, and resolutions by relevant UN bodies.⁶ The submission follows the suggested guidelines for "relevant stakeholders" wishing to provide information to the Universal Periodic Review prepared by the OHCHR.

1. National consultations in India with civil society

The government authorities of India have not invited civil society to participate in any broad national consultation as otherwise suggested in the General Guidelines for the preparation of information under the UPR.

2. India's normative and institutional framework for the promotion and protection of human rights

The Constitution of India provides for the protection and promotion of the social, economic, educational, cultural and political rights of Dalits (termed 'Scheduled Castes' in India). The Constitution emphasizes 'safe-guards' for Scheduled Castes (SCs) under the 'Special Provisions Relating to Certain Classes' in Part XVI of the Indian Constitution. In addition, many articles in Part III (Fundamental Rights), IV (Directive Principles of State Policy), IX, IX A and in the fifth schedule include constitutional provisions for Scheduled Castes.⁷ Although the Constitution of India prohibits any forms of discrimination based on caste, the problem is the non-implementation of these provisions as explained below.

3. Implementation of India's national and international human rights obligations and commitments

The 1950 Indian Constitution abolished the practice of "untouchability" in all its forms, and a number of laws and special measures have since been adopted to address caste discrimination and abuses. While these laws and policies are welcome, they have been implemented sporadically and often not at all. Although the Indian Constitution provides legal measures to advance the enjoyment of rights by members of scheduled castes and scheduled tribes (SC/ST), the Dalits of India still suffer various forms of *de facto* segregation and discrimination.⁸ According to a report prepared by the National Commission of Scheduled Castes and Scheduled Tribes in India, the Protection of Civil Rights Act 1955, the Indian Penal Code and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 have proved inadequate in curbing the atrocities on the members of Scheduled Castes (SCs) and Scheduled Tribes (STs) in spite of their deterrent penal provisions, especially offences committed on the grounds of caste.⁹ There are in all 23 acts which constitute atrocities and are punishable under the Prevention of Atrocities Act

¹ Both IMADR and LWF have ECOSOC consultative status and the organisations are international associates of IDSN.

² NCDHR is a national advocacy platform led by Dalit human rights activists with support from a range of movements, organisations and individuals to protect and promote the human rights of Dalits in India.

³ IDSN is an international lobby and advocacy network working for the elimination of caste-based discrimination globally.

⁴ See Annex 2 for an explanatory note on the population of Dalits in India under "Who are Dalits?" (p. 1)

⁵ As recognised by the Commission on Human Rights in resolution 2005/109 and the Sub-Commission on the Promotion and Protection of Human Rights in resolution 2004/17, 2005/22 and 2006/14.

⁶ See Annex 1 for a list of references

⁷ See Annex 2 for a comprehensive list of constitutional safeguards according to sectors (pp. 6-7)

⁸ "Hidden Apartheid", CERD shadow report (2007) prepared by Human Rights Watch and the Centre for Global Justice and Human Rights (CHRGJ)

⁹ Report, National Commission for SC and ST, Government of India, New Delhi, 1999-2000 & 2000-2001, p. 207

(henceforth POA Act)¹⁰ It is the responsibility of the Central Government to place annual reports before the Parliament on the progress of the implementation of the POA Act. However, even though the POA Act came into force on 30th January 1990, the Ministry of Social Justice and Empowerment have placed only five annual reports on the table of Parliament so far.¹¹

Despite India's international legal obligations to protect Dalit human rights, the Government of India has failed to enforce existing anti-discrimination measures and affirmative action legislation to live up to these obligations.¹² Several UN human rights treaty bodies, in particular CERD and CEDAW, have repeatedly urged the Government of India to implement the serious concerns raised in their concluding observations and to ensure full implementation of these international treaty obligations at domestic level.¹³ In 1996 CERD made its first reference to caste discrimination stating that the term 'descent' mentioned in article 1 of the Convention does not solely refer to race but also to caste and analogous systems of inherited status. In CERD General Recommendation No. XXIX the Committee affirmed that the situation of Dalits fall within the scope of 'descent-based discrimination' in the Convention.¹⁴ The Government of India has, however, consistently failed to effectively implement its obligations under international law to promote and protect Dalit human rights and in some cases avoided the question of caste discrimination arguing that it does not fall under the scope of the international conventions, such as the ICERD.¹⁵

The following summarizes the concerns raised in previous UN treaty body recommendations and CERD General Recommendation no. XXIX related to the non-implementation of domestic legal obligations:

- Despite the formal abolition of "Untouchability" by article 17 of the Indian Constitution, *de facto* abolition segregation of Dalits persists, in particular in rural areas, in access to places of worship, housing, hospitals, education, water sources, markets and other public places which includes burial grounds and other common property resources in the villages.¹⁶
- India should provide effective protection to Dalits against acts of discrimination and violence to prevent acts of arbitrary arrests, degrading and inhuman treatment and torture and extrajudicial killings of Dalits.¹⁷
- While *de jure* equality has been realised in many spheres, *de facto* equality remains limited at domestic level for women in particular. India should develop a coordinated and comprehensive plan to prosecute and punish perpetrators of acts of sexual violence of women and ensure that Dalit women have access to adequate and affordable justice delivery mechanism, land, labour, education, health, housing etc.¹⁸
- India should effectively enforce the reservation policies in the public sector and also evolve a positive discrimination policy to be followed by the private sector.¹⁹
- India should investigate alleged cases in denial of access to relief and rehabilitation measures of the Government immediately after any natural disasters like the Tsunami, cyclone, earth and fire.²⁰
- Effective measures should be taken to ensure that Dalits who are victims of acts of violence and discrimination have access to effective remedies and to ensure that complaints are registered under the POA Act 1989 and other criminal law provisions are ensured through investigation, arrest of perpetrators, prosecution, conviction, and victims compensated and rehabilitated.²¹
- India should provide statistics and analysis based on disaggregated data on caste, gender, tribe and ethnicity to UN treaty bodies.²²

¹⁰ Ibid. pp. 207-209

¹¹ Annual Report on POA 2005 by Government of India, <http://socialjustice.nic.in/schedule/arpoa05.pdf>

¹² For an overview of India's international obligations, see "Hidden Apartheid" p. 2

¹³ In particular CERD Concluding Observation February 2007 and CEDAW Concluding Observation January 2007

¹⁴ CERD General Recommendation no. XXIX

¹⁵ As it was the case during the last examination of India by CERD in February 2007

¹⁶ CERD (2007) Concluding Observation no. 13 and CERD General Recommendation no. XXIX "General measures"

¹⁷ CERD (2007) Concluding Observation no. 14

¹⁸ CEDAW (2007) Concluding Comment no. 12 and 21 and CERD (2007) Concluding Observation no. 15 and CERD General Recommendation no. XXIX "Multiple discrimination against women"

¹⁹ CERD (2007) Concluding Observation no. 17

²⁰ CERD (2007) Concluding Observation no. 22

²¹ CERD (2007) Concluding Observation no. 20

²² CEDAW (2007) Concluding Comment no. 15 and CERD (2007) Concluding Observation no. 9

Recommendation no. 1

- *The Government of India should enforce and effectively monitor its legal provisions at domestic level to prevent atrocities against Dalits in support of recommendations previously issued by UN treaty bodies; implement the general measures contained in CERD General Recommendation no. XXIX in its National Policy Framework of Governance; and follow the recommendations issued by national human rights institutions documenting consistent patterns of gross human rights violations against Dalits in India.*

4. International and national cooperation with human rights mechanisms in India

With the National Human Rights Commission (NHRC) as an apex human rights institution in India, there has been efforts for inclusion of the civil society through an institutionalized NGO Coordination Committee at national level. In a comprehensive report on the Prevention of Atrocities against SCs and STs prepared by the NHRC, the institution makes 150 recommendations on how to enhance the implementation of provisions to prevent discrimination against such groups.²³ However, many of the recommendations produced by the NHRC have not been followed by the Government of India. The constitutional mandate of the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women and other commissions should be expanded to ensure that their recommendations become binding on union or state governments, public sector units and financial institutions. Moreover, the institutions should have powers to undertake corrective measures, including action taking on erring officials is vested in them²⁴; incorporate analysis of caste discrimination and disabilities with regards to women; and take necessary additional steps to support Dalit women and communities in ensuring and accessing their rights and entitlements.

At international level, the Government of India has systematically failed to cooperate effectively with the UN Special Procedures in any consistent manner. The UN Special Rapporteur on Contemporary Forms of Discrimination, Mr. Diène has extended his request to visit India several times, but the invitation has not yet been accepted by the Government.²⁵ Moreover, the Government of India has not responded to the request for the cooperation and submission of information in the form of questionnaires to the Special Rapporteurs from the Sub-Commission conducting a comprehensive study on discrimination based on work and descent.²⁶

Recommendation no. 2

- *At national level the Government of India should follow up on the existing recommendations presented by national human rights commissions and expand the constitutional mandate to ensure that the recommendations are implemented.*
- *At international level the Government of India should fully cooperate with UN human rights bodies, in particular the Special Rapporteurs and extend invitations for country visits.*

5. Achievements, best practices, challenges and constraints in eliminating caste discrimination in India

Achievements and best practices: The statement made by Indian Prime Minister Dr. Manmohan Singh at an international conference in December 2006 in which he compared the untouchability practice in India to apartheid in South Africa was a milestone in the recognition of the social discrimination against Dalits in many parts of India²⁷. The Prime Minister said that caste injustices was “modern India’s failure that millions of Dalits were still fighting prejudice” and that Dalits “faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general.” This public statement, recognising the *de facto* discrimination against Dalits in India, should be followed up by effective measures at national level to implement the constitutional safe-guards protecting Dalits from discrimination. The existing constitutional provisions, special legislation and affirmative actions programmes have provided some

²³ NHRC “Report on Prevention of Atrocities Against SCs and STs”

²⁴ The National Commission for SC/ST has made these recommendations in their many reports to the government. See other recommendations in Annex 2 “National Commissions” (p. 9)

²⁵ Annual Report 2006 (E/CN.4/2006/16) (p. 5)

²⁶ For references to the UN study on discrimination based on work and descent, see the footnote above

²⁷ The Guardian, UK, 28 December 2006 – reporting the Prime Minister of India’s inaugural address on the occasion of the International Conference on Dalits and Minorities in New Delhi, 27-28 December, 2006.

space and confidence for Dalits and have made them more assertive of their rights. Some of the positive gains of the affirmative action policy has resulted in the fact that a small percentage of Dalits have become literate and reservation policies in public service have secured employment for some Dalits. The reservation policies have also allowed for greater political participation of Dalits in the parliament and national assemblies, however the inclusion of Dalits in social, economic, political spheres is still inadequate.²⁸

Constraints: Existing legislation and special measures protecting the rights of Dalits needs to be effectively implemented and monitored. Moreover, the non-availability of disaggregated data on some areas of the caste-based discrimination prevents in-depth analysis and targeted planning which may contribute to discrimination against Dalits in the right to land, housing, health, education and employment. The continued implementation gap result in non-sensitized attitude against Dalits in the media, among public officials and the judiciary. It also amounts to alienation in the market domain and access to resources which effectively contributes to the prevalence of bonded and child labour.^{29 30} The lack of expanded constitutional mandates of the national human rights commissions only adds up to the rising disparities in addressing the challenges of caste-based discrimination. There is a repeated denial of caste based discrimination akin to racial discrimination at the UN CERD, CEDAW and other bodies while measures are being taken in the country to address this aspect. This restricts the UN procedures and resources to support the national measures to make them more effective.

Challenges: Severe violations persist in access to education, health, housing, and property, and freedom of religion, free choice of employment, and equal treatment before the law as established by UN treaty bodies and documented in human rights reports.³¹ Another challenge is that Dalits are often restricted by poverty as they are some of the most marginalized groups economically and socially in India.³² The Government of India should therefore ensure that Dalits in India, especially Dalit Women, also are able to reach the Millennium Development Goals (MDGs) adopted by the UN General Assembly.

6. Key national priorities to improve the human rights situation of Dalits in India

The key national priorities to improve the situation of Dalits in India should seek guidance from the international framework established in the draft UN principles and guidelines on discrimination based on work and descent (hereafter 'draft P&G') prepared by two Special Rapporteurs from the Sub-Commission on the Promotion and Protection of Human Rights since 2004.³³ The draft P&G serve as a guiding framework prescribing general and specific measures for the effective elimination of such form of discrimination by caste-affected governments and other relevant actors such as UN agencies, national human rights institutions and civil society. In UN terminology discrimination based on work and descent is defined as "any distinction, exclusion, restriction, or preference based on inherited status such as caste [...] that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise 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".

The draft P&G underline that discrimination based on work and descent is a form of discrimination prohibited by international human rights law.³⁴ As an overarching principle the draft P&G establish that all states, including India, 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. The principles and guidelines suggest the specific measures to be implemented for the effective

²⁸ See Annex 2 (pp. 3-5) and NCDHR's shadow report submitted to CERD

²⁹ See NCDHR's shadow report prepared to CERD 2007 (link above)

³⁰ ILO Factsheet "Discrimination at Work in Asia", Global Report 2007, p. 1

³¹ See "Hidden Apartheid" by Human Rights Watch and the Centre for Human Rights and Global Justice (link above)

³² See Annex 2 "Poverty" p. 5 and IDSN factsheet "Caste an Eye"

³³ The draft P&G have been submitted to the OHCHR as part of the final report prepared by the Special Rapporteurs but they are not yet considered an official UN document as of November 2007. In the final report the Special Rapporteurs recommend the Human Rights Council to adopt the draft P&G with necessary amendments and submit them to the General Assembly, and to include discrimination based on work and descent among the studies to be conducted by the Human Rights Council.

³⁴ As proclaimed by the Universal Declaration of Human Rights and, inter alia, by the ICCPR, ICESCR, ICERD, ICEDAW, CRC and the International Labour Organization Convention No. 111 and CERD General Recommendation no. XXIX.

elimination of this form of discrimination, including all necessary constitutional, legislative, administrative, budgetary and judicial measures and appropriate forms of affirmative action 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.³⁵

Recommendation no. 3

- *The draft Principles and Guidelines should serve as a guiding framework for the consideration of effective measures to be taken by the Government of India in the fulfillment of its international legal obligations.*
- *Following the Special Rapporteurs' recommendations, states should endorse the UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent and include the topic of discrimination based on work and descent among the studies to be undertaken by the Council.*

7. Capacity-building and technical assistance through bilateral, regional and international cooperation in India

The following initiatives should be taken to address the non-implementation of India's national and international legal obligations:

- Technical support and assistance, involving UN experts and international institutions of expertise, to identify and remove barriers in the justice administration system to tackle the persistent pattern of impunity for atrocities against Dalits, including training of police, judges, prosecutors and other personnel in the administration of justice and enhancement of criminal law measures against law enforcement officers who violate their duty of protection in relation to crimes against Dalits;
- Technical support for addressing the pervasive problems of violence, harassment and sexual abuse against Dalit women including effective measures to prosecute and punish perpetrators of acts of sexual violence and exploitation of Dalit women;
- Technical and institutional support to establishing transparent and accountable monitoring mechanisms on the implementation of anti-discrimination and affirmative action legislation;
- Technical and capacity building support to a nation-wide programmes addressing specific target groups as well as the public in general, sensitizing such groups towards abolishing all forms of discrimination against Dalits;
- Technical support for the curriculum development and educational planning to reflect a full human rights' perspective on caste discrimination, including in educational material and teaching methodologies;
- Technical support for developing a mechanism to correct the discrepancies in data collection by several constitutional bodies and government agencies on the exact number of human rights violations on Dalits;
- Technical support to review recommendations of the National Human Rights Commission contained in its report on the Implementation of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 and to set up planning and monitoring mechanisms for their implementation;
- Technical support for development of guidelines for planning and implementation of development planning and budgeting with a view to secure full inclusion of Dalits (to implement their social, political and cultural rights); taking into consideration the need for disaggregated data and caste sensitive analysis and for mainstreaming and inclusion of Dalits in the development process as well as provision of and full implementation of special measures monitored against specific time bound plans and benchmarks; and reflected in planning and reporting for Millennium Development Goals and other national plans for achievement of development goals across the socio-economic and cultural rights spectrum.

³⁵ Final report including draft P&G prepared by Special Rapporteurs Prof. Yokota and Prof. Chung pursuant to Sub-Commission resolution 2006/14.