India: UN Finds Pervasive Abuse Against Dalits

After Review by UN Anti-Discrimination Body, Government Should Move From Talk to Action

(New York, March 12, 2007) The Indian government should take immediate steps to implement the recommendations of a United Nations committee that found persistent violence and discrimination against Dalits, or so-called "untouchables," international human rights organizations said today.

The organizations include Human Rights Watch, the Center for Human Rights and Global Justice at New York University School of Law, and the International Dalit Solidarity Network.

On March 9, the UN Committee on the Elimination of Racial Discrimination (CERD) issued its Concluding Observations regarding India's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee's report found that "*de facto* segregation of Dalits persists" and highlighted systematic abuse against Dalits including torture and extrajudicial killings, an "alarming" extent of sexual violence against Dalit women, and caste discrimination in post-tsunami relief.

The Committee called for effective measures to implement laws on discrimination and affirmative action, and sought proper protection for Dalits and tribal communities against acts of "discrimination and violence." The Committee has given India a year to respond to four of its recommendations, including its recommendations on how India can end widespread impunity for violence against Dalits, and Dalit women in particular.

"The UN Committee's concluding observations confirm that India has failed to properly protect Dalits and tribal communities," said Brad Adams, Asia Director of Human Rights Watch. "This is a prime opportunity for India to give its own policies on discrimination some meaning. Laws need to be implemented, and those who violate them must be prosecuted."

The Concluding Observations were issued following two days of hearings in Geneva on February 23 and 26 between Committee members and the Indian delegation. During the hearing, Committee members uniformly took issue with the Indian government's refusal to acknowledge that caste-based discrimination is covered by the Convention and is an issue of international human rights concern.

In particular, the Committee called on the Indian government to:

- Introduce mandatory training on the application of India's Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for police, judges and prosecutors, and take disciplinary measures against those who fail to implement this law.
- Ensure the protection of witnesses and victims to caste-based crimes and ensure their immediate access to effective remedies.
- Prosecute and punish perpetrators of sexual violence and sexual exploitation of Dalit women, and sanction anyone found preventing or discouraging victims from reporting such incidents, including public officials.
- Eradicate the social acceptance of caste-based discrimination through public education and awareness campaigns.
- Ensure equal access to health care, safe drinking water, and other public services.

- Investigate all alleged cases of discrimination against Dalits in post-tsunami relief and compensate or retroactively grant benefits to victims of such discrimination.
- Take effective measures to reduce dropout rates and increase enrollment rates among Dalits at all levels of schooling by providing scholarships and by ending classroom segregation.
- Ensure proper enforcement of reservations or quotas to counter the under-representation of Dalits and tribal communities in government and public services.
- Adopt measures to enhance Dalits' access to the labor market, including by extending the reservation policy to the private sector.
- Repeal the Armed Forces Special Powers Act that, while providing the armed forces with widespread powers to search, arrest and shoot suspects, leading to allegations of human rights abuses, has immunity provisions under which troops cannot be prosecuted unless authorized by the Central Government.

The Concluding Observations reflect the Committee's disappointment with India's presentation before the Committee on February 23 and 26. Despite India's Solicitor General Goolam Vahanvati's claim to the Committee that the government is "deeply conscious and concerned about caste and is fully committed to tackling this at every level," the Indian delegation resorted to a semantic debate on the difference between caste and race to support its erroneous assertion that the Convention only covers race-based discrimination.

Citing India's extensive laws and policies to end caste-based discrimination, none of which have been faithfully implemented, the Indian delegation also questioned the credibility of the Committee's sources of information. These sources included reports of India's own governmental agencies and numerous reports by Indian and international nongovernmental organizations, including "Hidden Apartheid," which the NYU Center for Human Rights and Global Justice (CHRGJ) along with Human Rights Watch produced as a "shadow report" ahead of CERD's review of India's periodic report.

In its Concluding Observations, "the Committee reaffirm[ed] that discrimination based on the ground of caste is fully covered by article 1 of the Convention." It cited its position expressed in General Recommendation No. 29, "that discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights."

"The Indian delegation's arrogant rejection of well-documented abuses against Dalits before UN experts in Geneva mirrors India's systematic denial of Dalit rights at home," said Professor Smita Narula, faculty director of the Center for Human Rights and Global Justice. "India once again squandered an opportunity to enlist the support of experts in its efforts to ensure equality in law and practice for its citizens."

Comprised of independent experts from around the world, the Committee was led in its review by Mr. Linos-Alexander Sicilianos of Greece. On December 27, Indian Prime Minister Manmohan Singh likened the practice of untouchability in India to apartheid in South Africa. "After this statement," Siciliano said, "I sincerely feel that the official position [of the Indian delegation…] is simply untenable." The Committee formally noted its appreciation for the prime minister's remarks in their Observations.

Committee members characterized India's position as a "broken record," a "step backwards," and cautioned that India should not "confuse growth with development." Sicilianos reminded the government that "change cannot be achieved by legislation alone." The Committee also highlighted its concern over "abuses at the local level" for which "radical measures" were necessary. The Indian government's position left Committee members asking why India did not choose to view the review as "an opportunity rather than a threat." Committee members also noted that caste-based discrimination was not unique to South Asia, but also existed in many parts of Africa. [*A fact sheet with key quotes and statements by the Indian government and Committee members at the CERD hearings is inserted below.*]

The Committee's sharp rebuke to the Indian government has been matched by growing scrutiny both inside and outside the country. On February 1, 2007 the European Parliament passed a resolution voicing strong concern about the plight of Dalits in India and urging the government to engage with relevant UN bodies, including CERD.

"Instead of sidestepping its responsibilities, India should welcome assistance from the international community to eliminate caste-based discrimination," said Rikke Nöhrlind, coordinator of the International Dalit Solidarity Network. "The fact that the European Parliament strongly urged its own institutions to address caste discrimination in all EU-India relations reflects growing worldwide concern about India's 'hidden apartheid.'"

More than 165 million people in India continue to be subject to discrimination, exploitation and violence simply because of their caste. In India's "hidden apartheid," untouchability relegates Dalits throughout India to a lifetime of segregation and abuse. Caste-based divisions continue to dominate in housing, marriage, employment and general social interaction—divisions that are reinforced through economic boycotts and physical violence.

"Hidden Apartheid," which was produced as a "shadow report" ahead of CERD's review of India's periodic report, documents India's systematic failure to respect, protect and ensure Dalits' fundamental human rights. Severe violations persist in education, health, housing, property, freedom of religion, free choice of employment and equal treatment before the law.

The report also documents routine violations of Dalits' right to life and security of person through state-sponsored or sanctioned acts of violence, including torture. Dalit women face multiple forms of discrimination and are frequent targets of sexual abuse. State and private actors enjoy virtual impunity for these crimes.

The CERD concluding observations are available at
http://www.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd_c_ind_co_19.doc

Hidden Apartheid and related materials are available at
http://hrw.org/english/docs/2007/02/13/india15303.htm and www.chrgj.org

For more information, please contact:
NYU Center for Human Rights and Global Justice
In New York, Jayne Huckerby (English): + 1 212 203 6410
In New York, Smita Narula (English, Hindi, Urdu): +1 917 209 6902
In New York, Jeena Shah (French): + 1 732 447 3615

Human Rights Watch
In London, Brad Adams (English): +44 20 7713 2767 (office), +44 7908 728 333 (mobile)
In Mumbai, Meenakshi Ganguly (English, Hindi): +91 22 2639 5824

International Dalit Solidarity Network
In Copenhagen, Rikke Nöhrlind (English, Danish): + 45 29 70 06 30
In Utrecht, Gerard Oonk (English, Dutch); +31-30-2321340

U.N. Committee on the Elimination of Racial Discrimination's Examination of India's Reports
23 February 2007 and 26 February 2007

On February 26, 2007 the Committee on the Elimination of Racial Discrimination (CERD) concluded its examination of India's 15th - 19th periodic reports on its implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or Convention). A number of NGO reports were submitted to assist the Committee in its review of India's record to uphold Dalits' human rights. These reports can be accessed here: http://ohchr.org/english/bodies/cerd/cerds70-ngos.htm

India's statements before CERD

Presenting the report on Friday, February 23 Goolam E. Vahanvati, Solicitor General of India, stated that India is "fully committed" to the issue of caste discrimination, but nonetheless refused to accept that information on caste discrimination was part of its reporting obligations under the Convention. As a result, the delegation did not respond to a number of the questions sent in advance by the Committee, which specifically requested information on the situation of Dalits (or so-called untouchables) in India. The delegation squarely rejected the Committee's 1996 determination that the plight of Dalits falls squarely under the prohibition of descent-based discrimination and indicated that this was the "settled" and "unequivocally clarified" position of India.

In rejecting the Committee's 1996 position, and the additional arguments of Committee members in the session (see below), the delegation relied heavily on a presentation by Professor Dipankar Gupta, who argued on sociological grounds that caste does not equal race. Additional arguments of the delegation sought to draw a distinction between the government's policy on caste and "individual bigotry," arguing that caste discrimination was a social problem, that the state did not support it, and that it could only be eliminated by a "change in social attitudes and values."

On Monday, February 26, at the second and last hearing, the Indian Solicitor General began by stating that "Our country is deeply conscious and concerned about caste and is fully committed to tackling this at every level…" This statement of India's commitment, however, was quickly followed by its refusal to address the issue under the Convention: "These issues need to be and are being addressed under appropriate multilateral human rights instruments, which does not include this Convention."

In response to a question about discrimination against Dalits in post-Tsunami relief efforts, which has been extensively documented in the new report "Making Things Worse," commissioned by the Dalit Network Netherlands, the Indian delegation responded: "These are isolated cases."

The delegation also sought to undermine the significance of its own Prime Minister's statement on December 27, 2006 that "The only parallel to the practice of 'untouchability' was Apartheid in South Africa." The delegation stated that in drawing this parallel, the Prime Minister was dealing with social discrimination and not racial discrimination, and that "…there is no way we will allow our country to be referred to as a country which practices racial discrimination in any form."

Key Statements and Questions from CERD Experts During the Hearings

The Committee, led by Country Rapporteur, Mr. Linos-Alexander Sicilianos, strongly rejected the government's position that caste is not a form of "descent-based" discrimination covered by the Convention:

> "The Prime Minister's statement equating untouchability with apartheid "is a historical statement… after this statement… I sincerely feel that the official position [of the Indian delegation] explained just now is simply untenable."

Country Rapporteur Sicilianos, along with other Committee experts, highlighted that they agreed that caste did not equate to race, but added that that was an irrelevant question given that the Convention covers discrimination on the basis of race as well as descent, among other categories. While acknowledging the prohibition of untouchability under the Constitution and related laws, Country Rapporteur Sicilianos emphasized that in practice such discrimination still exists adding that, "The persistence of this practice has been deplored and widely documented by NGOs, the UN, and other international institutions." In particular, he highlighted the persistence of:

- Extrajudicial punishments of inter-caste marriages, lynching of couples or their relatives, rape, and other forms of punishment.
- The practice of manual scavenging with severe repercussions for the health of Dalits, including anemia, diarrhea, skin diseases, respiratory, and trachoma.
- Double discrimination against Dalit women on the basis of caste and gender, including the practice of forced prostitution in the so-called *devadasi* (divine prostitution) system.
- The practice of "untouchability" leading to de facto discrimination in housing, schools, public services, public places, or to the prohibition of Dalits' use of shared water resources.
- The de facto denial to Dalits to own property, as well as displacement of Dalits without compensation.
- De facto discrimination concerning the exercise of political rights by Dalits despite the reservations of the quota system.
- Police abuse against Dalits or failure of the police to protect Dalits from acts of looting, sexual assault, rape or other inhuman treatment.

Country Rapporteur Sicilianos then stated (emphasis added):

- We would like to know more about the *measures undertaken to implement* the recommendations of the National Police Commission and the Supreme Court's guidelines, with particular attention to protection of Dalits from torture.
- According to information from different sources, there is a *clear tendency towards impunity* of police or other state officials for alleged abuse of Dalits.
- *Access to justice* and *right to remedies* for Dalit communities continues to be problematic.
- To conclude this chapter of my presentation… I would like to underline the *important gap between the provisions of the Constitution* and the laws prohibiting caste-based discrimination *and practice, real life on the ground*.
- In this respect and in order to reduce this gap, my question is *whether the State party intends to incorporate the recommendations of the 2004 report of the National Human Rights Commission* on atrocities against Scheduled Castes.
- Human rights education at large and political empowerment and education of Dalits, in particular, are most important measures to be taken.

Some relevant comments of other Committee experts include (unofficial transcript):

- "For many countries who know this kind of social hierarchies, the Indian position today can be seen as a step backwards."
- "In some ways saying that race does not equal caste is a *straw-man* because the governing concept is not race but racial discrimination."
- "We don't have disaggregated data. We haven't got the information required to answer some of our questions… There is tremendous growth in India, but we shouldn't confuse growth with development."
- "If India is really committed to social cohesion… is it not conceivable that you may use every single instrument at your disposal to assist you? Why see [the Convention] as a threat? Can you not use the [Convention] to assist you in achieving social cohesion?"

- "The reason why we are talking about caste all the time is because it is difficult to know why India refuses to discuss this."
- "I think this is a real question of discrimination, in particular with regard to the Dalits… I would like the Indian delegation to explain how they intend to resolve these problems at the legal level in particular. There are abuses of power at the local level and if radical measures are not taken then such problems cannot be resolved."
- "In African societies, we are also aware of this problem. No society can say that it is based on fairness. Ideology tries to justify such unfair orders, which is very important with caste. If you look at the authorities, they tend to belong to the higher castes. This is also in Africa."
- "Change cannot be achieved by legislation alone… We've received disturbing reports on the manner and magnitude of offenses [of sexual violence against Dalit women]. Dramatic action is needed to curb or cure this problem."
- "I didn't hear one new thing in everything that was said today [Monday]… It was just the broken record again… It was India that "managed to get its argument accepted that apartheid [in South Africa] was a matter of concern to the international community and a violation of human rights."

A number of Committee experts took specific exception to the presentation by Professor Gupta, which included comments that essentially claimed that Indian society is not constructed around and does not function on the basis of caste, adding that the problems of child labor and other social problems were the result of poverty affecting many castes and not just Dalits. Other comments included:

- "Unlike race when black marries white, the child is half black and half white, [when this happens] in caste, this means that the child has no caste, not half of each."
- "You have been talking to NGOs… please listen to academics."
- "Scheduled Castes [Dalits] are not disenfranchised."

In response, a Committee member asked: "You seemed to present a case where everyone is discriminating against everyone and therefore it is all equal [without acknowledging] that one group is being oppressed. Do you see that one group is getting the brunt of it and there is a true disenfranchised group of people?"

In his concluding comments, Country Rapporteur Sicilianos reminded the Indian delegation that much of the information the Committee consulted in preparation for its review came from information contained in India's own governmental agency reports, adding that "[The Committee] would have liked to hear more from the government on specific efforts that are being undertaken."

Background

The UN Committee on the Elimination of Racial Discrimination is a body of independent experts responsible for monitoring states' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by India in 1968. It guarantees rights of non-discrimination on the basis of "race, colour, descent, or national or ethnic origin." In 1996 CERD concluded that the plight of Dalits falls squarely under the prohibition of descent-based discrimination. As a state party to ICERD, India is obligated to submit periodic reports detailing its implementation of rights guaranteed under the convention. During the review session CERD examines these reports and engages in constructive dialogue with the government delegation, ultimately offering recommendations in the form of Concluding Observations. CERD uses supplementary information contained in NGO "shadow reports" to evaluate states' reports. India's report to CERD, eight years overdue, covered its compliance with the convention from 1996 to 2006 yet did not contain a single mention of abuses against Dalits – abuses that India's own governmental agencies have documented and verified. State reports and all non-governmental organization "shadow reports" can be found on the Office of the United Nations High Commissioner for Human Rights' website: http://www.ohchr.org/english/bodies/cerd/cerds70.htm.