

## United Nations

IDSN's lobby efforts to promote international recognition of caste-based discrimination in various UN human rights bodies in 2008, resulted in one of the most productive years in terms of quantity and quality of written submissions and other interventions. As a consequence caste-based discrimination was addressed at a number of occasions in UN sessions during the year, and states and UN experts showed increasing recognition of the issue and of IDSN's work as a whole. In addition to the strenuous efforts to secure the UN Sub-Commission study on discrimination based on work and descent in the Human Rights Council and its Advisory Committee, IDSN facilitated submissions to relevant country reviews for the Universal Periodic Review and to the UN Treaty Bodies in close cooperation with its members and associates. IDSN also followed the preparation for the Durban Review Conference securing its accreditation to the conference, and engaging with UN Special Procedures.

### UN Sub-Commission study on discrimination based on work and descent

2008 was yet another year of unfinished business in the process of securing the UN Sub-Commission study on discrimination based on work and descent under the reformed UN human rights structure. Despite the fact that the final report was submitted to the Office of the High Commissioner for Human Rights (OHCHR) by the two Special Rapporteurs of the Sub-Commission in June 2007, there was no clarification by the end of 2008 on how the pending Sub-Commission studies will be dealt with by the Human Rights Council (HRC). As highlighted by the President of the Council himself in August 2008, this gap represents one of the last outstanding matters in the institution-building phase of the HRC. It is therefore expected that Council members and the Secretariat will take up this issue in the coming year. Throughout the year IDSN did its utmost to ensure support to the study by UN member states, experts, civil society organisations and affected groups. IDSN organised meetings between diplomats and civil society representatives from national advocacy platforms, with the broadest regional and gender sensitive representation from the South possible, at each HRC session. In particular IDSN promoted the need for a comprehensive framework to eliminate caste-based discrimination, the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent (hereafter the "draft UN Principles and Guidelines"), included in the final Sub-Commission report on this topic. During the year IDSN members and the Secretariat interacted with representatives of more than 25 member states, out of which the majority are HRC members, to create more awareness about the issue and to ask for their support to the study. As an outcome of these efforts the cross-regional support base is broadening.

The status of the pending Sub-Commission studies was addressed by UN bodies three times during the year: at the 8th HRC session in June, the 9th session in September, and at the 1st session of the HRC Advisory Committee in August. Prior to that IDSN had organised a parallel event on the future of this particular study at the 7th session in March. At the 8th HRC session, the EU group considered taking the initiative of proposing a deferral of three completed Sub-Commission studies to the HRC, including the study on discrimination based on work and descent. This proposal, which intended to ensure that the finalised studies were not lost in the transitional arrangements between the former Commission and the HRC, did however not get through due to lack of clarity on the status of the pending Sub-Commission studies by member states and the HRC Secretariat.

The issue was again raised at the first session of the Human Rights Council Advisory Committee, the successor body of the former Sub-Commission, where two recommendations were made on the pending Sub-Commission studies in its final report (A/HRC/AC/2008/1/1.11). During the session Prof. Chin-Sung Chung from South Korea, one of the former Rapporteurs on the Sub-Commission study and currently a member of the Advisory Committee, argued strongly in favour of support to the study on discrimination based on work and descent.

In follow-up to these recommendations, many states expressed their support at the 9th HRC session to the referral of the Sub-Commission studies. The recommendations of the Advisory Committee will however first be formally considered at the 10<sup>th</sup> session of the Human Rights Council in March 2009. To ensure that action will indeed be taken, IDSN organised an informal meeting between groups of supportive states in November together with the French mission. It is hoped that the Council will decide to issue the completed studies as official UN documents at the 10th session in March 2009 and request to have them presented at one of its next sessions.

### **Universal Periodic Review**

With the establishment of the Universal Periodic Review (UPR) mechanism, a number of caste-affected countries were examined by the Human Rights Council in March and May 2008. These reviews have proven to be an effective way of raising general human rights concerns in an open forum, where Governments are asked to reply to critical questions asked by member states in an interactive dialogue. In advance, civil society was able to give inputs to the process by submitting alternative reports to be compiled in a summary of other stakeholders' reports. In association with national advocacy platforms, IDSN facilitated the submission of four reports on caste-based discrimination in India, Pakistan, Sri Lanka, and Bangladesh in 2008<sup>41</sup>. Despite the lack of strong recommendations in follow-up to the reviews, the result has been increased attention to the nature and scope of caste-based discrimination in these countries, especially in countries where this human rights problem has not been officially recognised.

India was the first country to be reviewed at the 1st UPR session in April. During the interactive dialogue more than ten states expressed specific concern about the situation of Dalits in India, and asked among other things about the state's compliance with the concluding observations of The Committee on the Elimination of Racial Discrimination (CERD) to India in 2007. In a joint appeal, the National Campaign on Dalit Human Rights, the International Movement against All Forms of Racism and Discrimination, the Lutheran World Federation and IDSN appealed to the Indian Government to move away from a state of denial of the scale and seriousness of caste-based discrimination. In the appeal, the organisations pledged for constructive solutions with the assistance of the international community.

At the 2nd UPR session in May 2008 the Human Rights Council reviewed three other caste-affected countries, Pakistan, Sri Lanka and Japan. IDSN was one of the few organisations to lobby for the inclusion of caste-based discrimination in these country reviews. In the case of Pakistan, these efforts led to a change in Government position and a seemingly larger recognition of the issue. During the review, many states expressed concern about discrimination against minorities and three states raised the issue of caste-based discrimination in Pakistan. In response to these questions, the delegation denied the existence of caste-based discrimination and said that there were no Dalits in Pakistan. In the follow-up to the review, however, there was a shift in position of the Government of Pakistan towards the recognition of caste-based discrimination in Pakistan. The head of delegation said that efforts are made to eliminate discrimination wherever it exists and to give maximum support to Scheduled Castes, and that the Government encourages NGOs to highlight the issues of Scheduled Castes and seek redress for grievances.

In the Sri Lanka review, the delegation was also questioned about what the Government had done to combat caste-based discrimination. Unfortunately, the delegation did not respond to this question. In the review of Japan, many states raised questions about discrimination against minorities. Discrimination against the Buraku people, which is a form of discrimination based on work and descent, was nevertheless not explicitly referred to in the debate.

In September, IDSN submitted a joint report on caste-based discrimination in Bangladesh in association with the Bangladesh Dalit Excluded Rights Movement (BDERM) and Nagorik Uddyog for the country examination at the 4th UPR session in February 2009. The compilation of stakeholders' information (A/HRC/WG.6/4/BGD/3) prepared by

the OHCHR made extensive references to the recommendations from this NGO report, thereby giving serious consideration to the situation of Dalits in Bangladesh for the first time in UN human rights bodies.

### **Special Procedures**

Several Special Rapporteurs addressed the issue of caste-based discrimination in their annual reports, communications to/from Governments and/or thematic studies in 2008, which again illustrates the growing recognition of this issue by the UN monitoring mechanisms. Three mandates demonstrated a particular concern about the issue: the Special Rapporteur on contemporary forms of racism, the Independent Expert on Minority, and the Special Rapporteur on violence against women.

When Mr. Doudou Diène, the former Special Rapporteur on contemporary forms of racism, presented his last report to the Human Rights Council in his capacity as a mandate holder at the 7th session, he devoted an entire section to caste-based discrimination. In the annual report (A/HRC/7/19), he argued that caste-based discrimination was an implicit part of the mandate. This statement was met with strong opposition by the Indian and Nepalese Government at the session. India stated that it completely rejected his approach as “Caste was not racial in origin and that ‘descent’ as referred to in Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) only applied to racial descent”. Nepal supported this view and stated that “The caste system was peculiar to South Asia and was a product of a ‘social division of labour’ rather than race, and that there was no ‘scientific evidence’ to show that caste had anything to do with race”. In the interactive dialogue, the National Human Rights Commission of India supported the argument made by the Indian Government. It is yet to be seen how the newly appointed Special Rapporteur Mr. Githu Muigai from Kenya will react to this politically sensitive issue.

An IDSN delegation met with the Independent Expert of Minority Issues in March, where she expressed her concern about the issue and her commitment to investigate it further under her mandate. This was followed up by an invitation to IDSN in connection with the UN Forum on Minority Issues, which met for the first time in December. For this event, IDSN submitted suggestions for recommendations on Dalits’ access to education for the thematic debate. The Secretariat also invited IDSN to identify and propose a speaker to elaborate on the situation of Dalits. As a result, Ms. Meghna Guhathakurta, Executive Director of Research Initiatives in Bangladesh and active member of the newly formed Bangladesh Dalit Excluded (Communities) Rights’ Movement spoke at the Forum with funding from the OHCHR. Also Anni Namala and Vimal Thorat from India spoke about untouchability practices and discrimination against Dalit children, and the education of Dalit children.

The Special Rapporteur on Violence against Women, Ms. Yakin Ertürk, received a number of cases from Dalit women in India, as a result of the work in the Dalit women’s working group. The cases have been communicated to the Government of India and will be included in her next annual report to the HRC in 2009.

### **UN Treaty Bodies**

In the context of IDSN’s work, the main events under the UN treaty body system were the examination of India before the UN Committee on Economic, Social and Cultural Rights (CESCR) in May, and the preparation for the review of Pakistan by the UN Committee on the Elimination of Racial Discrimination (CERD) in late 2008.

The CESCR examined the Government of India’s implementation of the International Covenant on Economic, Social and Cultural Rights in Geneva on 7-8 May. The National Campaign on Dalit Human Rights (NCDHR) submitted a comprehensive shadow report and engaged together with IDSN and other civil society organisations in raising the issue of caste discrimination, with a focus on impunity and non-implementation of laws. Given the large involvement of civil society organisations before and during the examination, the Committee was well informed

of the lack of progress in the realisation of the objectives of the Covenant. The Committee expressed grave concern about the manner in which the Indian delegation responded to the issues raised by the Committee. There was almost a systematic refusal to speak about the challenges faced by the state in the implementation phase, which has also been the case in other Treaty Body reviews. In paragraph 14 of the Concluding Observations, the Committee stated the following: The Committee notes with concern the lack of progress achieved by the State party in combating the persistent de facto caste-based discrimination that continues to prevail in spite of the legal prohibitions in place, most notably the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Committee is particularly concerned by the low rate of prosecution of crimes against persons belonging to scheduled castes and scheduled tribes, and that discriminatory attitudes and prejudices in the enforcement of the law, especially by the police, is a serious obstacle in the victims' access to justice.

For the CERD review of Pakistan, which will take place in February 2009, a suggestion for inputs to the List of Issues and a comprehensive shadow report were prepared by IDSN in association with organisations under the newly formed Pakistan Dalit Network. The shadow report, which was a joint collaboration between several national as well as international organisations, included information about the general human rights situation in Pakistan and sections on discrimination against marginalised groups and minorities, including scheduled caste Hindus.

### **Durban Review Conference**

Members and associates of IDSN have since the World Conference against Racism (WCAR) in Durban in 2001 worked to promote international support and recognition of caste discrimination internationally. Despite heavy civil society pressure at the WCAR there was, however, no reference to caste discrimination in the final outcome document, the Durban Declaration and Programme of Action (DDPA). The WCAR nevertheless marked the occasion on which caste discrimination first made its way into the international human rights agenda. It was therefore logical for the network to raise similar concerns in the context of the Durban Review Conference (DRC), which is scheduled to take place in Geneva in April 2009. The preparatory process leading up to the review conference has however been influenced by a lot of scepticism from many states and international organisations due to the so-called "hijacking" of the agenda by certain regional groups.

When IDSN was accredited for the Durban Review Conference at the 2nd PrepCom session in October 2008, the issue once again got the prompt attention of member states – this time in support of the cause. The Indian Government objected to the application of IDSN, NCDHR and a total of 33 Indian Dalit organisations stating that organisations working for the elimination of caste discrimination should not be allowed to participate in the DRC. At the 2nd Preparatory Committee meeting in October, France on behalf of the European Union argued against this objection and managed after heated negotiations to secure the participation of IDSN and NCDHR in the DRC.

During the two PrepCom meetings in April and October respectively, IDSN took part in a number of joint statements together with NCDHR, The International Movement Against All Forms of Discrimination and Racism (IMADR), FORUM-ASIA, and The Lutheran World Federation (LWF). IDSN also provided written input to the contribution by the EU on specific wording and suggested paragraphs in October. As a result, there is one reference to "discrimination based on work and descent" in paragraph 131 based on the contribution by the EU in the 2008 version of the draft outcome document. There are also several references to discrimination based on descent, which includes caste discrimination as affirmed in CERD General Recommendation 29.

Despite the unprecedented attention given to the issue of caste discrimination following the dispute over IDSN's accreditation for the DRC, not much can be expected in terms of actual results and substance from the process. Nevertheless, several missions now know what IDSN stands for and were ready to extend their support to IDSN against the objections made by the Government of India, which is a positive development compared to the first Durban conference.