

## **United Nations**

### **Draft Principles and guidelines for the elimination of caste discrimination**

The draft UN Principles and Guidelines for the effective elimination of discrimination based on work and descent<sup>1</sup> (hereafter 'draft UN Principles and Guidelines') remained the cornerstone of IDSN's international lobby work throughout 2010. Published by the UN Human Rights Council in 2009 after almost two years of intense lobbying by IDSN and other organisations, this is the first instrument to propose general and specific measures for state and non-state actors to address caste discrimination. The draft UN Principles and Guidelines have been welcomed by some caste-affected countries as well as a number of high ranking UN human rights officials, including the High Commissioner for Human Rights, Navi Pillay, and two Special Procedures mandate holders who are calling for endorsement and follow-up by the Human Rights Council.

While this support is extremely important, the process to secure follow-up action on the guidelines by the Human Rights Council remains a challenge. Throughout the year, IDSN continued its efforts to secure broad support and action for a resolution on the draft UN Principles and Guidelines, through communication and meetings with governments and UN officials. While IDSN is encouraged by the support from a number of governments as well as several independent UN experts, the fact remains that broad cross-regional support is essential for progress. Unfortunately for the many millions of victims of caste discrimination, the negative attitude of one particular caste-affected country, India, remains a significant obstacle to this process.

The struggle for an international framework to address caste discrimination did not go unnoticed by high ranking government officials. In his response to a call from DSN-UK, Alan Duncan, UK Minister of State, made the following remark about the UN process: "The UK is currently working with EU partners to discuss ways for the EU to combat discrimination on the basis of work and descent as part of the EU's human rights policy. We believe that for international action to be effective, initiatives led by a country from the affected region would have a far greater chance of success".

Whereas consistent interventions were made on caste discrimination by the EU and its member states in UN bodies, a more pro-active role by the European Union in the UN Human Rights Council on the draft UN Principles and Guidelines is still pending further work by the EU Working group on Human Rights (COHOM), a body which in 2010 took a considerable interest in this human rights issue.

IDSN continues to encourage all relevant state and non-state actors to support and make use of the draft UN Principles and Guidelines in its current format by taking immediate, concrete steps to implement the measures contained therein. The guidelines have been translated to Bangla and consultation on the draft UN Principles and Guidelines was held in Dhaka with participation from civil society and government. In Nepal preparations for a similar, joint consultation is ongoing.

### **Human Rights Council**

IDSN provided governments with regular input on issues relating to caste discrimination prior to and during HRC sessions. Such input took the form of specific recommendations to be considered during relevant agenda items at HRC sessions as well as other kinds of information on caste discrimination, including briefing papers on discrimination of Dalits during relief efforts following the floods in Pakistan<sup>2</sup> and on the situation of Dalits in Bangladesh<sup>3</sup> with policy recommendations.

Together with its international and regional associates, IDSN facilitated interventions and meetings between Dalit activists, state delegations, UN experts, and the OHCHR in connection with HRC sessions in 2010 – particularly at the 13th session in March and the 15th session in September. The vast majority of government representatives were sympathetic and displayed a very good understanding of this human rights issue that affects 260 million people. IDSN remains hopeful that caste discrimination will be addressed by the Human Rights Council in 2011.

In December, IDSN representatives met with the President of the Human Rights Council, Sihasak Phuangketkeow,

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**“In terms of issues, I think the council’s agenda does not yet reflect all the substantive issues that need to be addressed. Discrimination on the basis of descent or work, for example, is still missing from the non-discrimination agenda. There are approximately 260 million people in the world that suffer such discrimination. For these men and women, it is impossible to escape grinding poverty because the society they grew up in does not allow them to take their fate into their own hands and improve themselves,”** Dutch Minister of Foreign Affairs, Mr Maxime Verhagen, at the 13th session of the UN Human Rights Council

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Ambassador of Thailand, who expressed his interest and sympathy for the cause.

In the course of March, September and December, IDSN teams held altogether more than 50 bilateral meetings with government representatives of permanent missions to the UN in Geneva.

The Dutch Minister of Foreign Affairs, Mr Maxime Verhagen, made a strong statement on caste discrimination at the 13th session of the UN Human Rights Council (HRC) pointing out that discrimination on the basis of descent or work was still missing from the non-discrimination agenda.

In April, IDSN issued a position paper on the interrelations between caste, descent and race arguing that the debate on whether caste is similar to race is unproductive and that it is time to move beyond semantics. Caste – and related discrimination and exclusion – is a unique phenomenon that warrants separate and distinctive treatment in the UN human rights system.

The Indian media had engaged in a debate on the merits of internationalising the issue of caste discrimination focusing on the draft UN Principles and Guidelines – a framework that the Indian government opposes – but had also included the question of equating caste with race. IDSN pointed out that several UN human rights bodies and experts have confirmed that caste discrimination falls under the scope of the UN race convention (ICERD), as this convention includes discrimination based on descent. IDSN aligns itself with this position. Nevertheless, IDSN considers caste to be distinct from the concept of race, although both types of discrimination produce comparable forms of political, economic and social exclusion. States have a duty to protect the rights of citizens against all forms of discrimination, including caste discrimination, regardless of the ground on which discrimination is exercised.

## Special Procedures

The UN Special Procedures under the Human Rights Council system remain an effective way to provide substantive inputs on the situation in caste-affected countries and to enable communication with affected governments. In 2010, IDSN focused part of its UN work on UN Special Procedures. The Special Rapporteurs and Independent Experts of

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**“I can’t think of another issue in the human rights arena that involves so many people, that remains unaddressed in the Human rights council. I am bewildered about how this is possible.”** Peter Prove, IDSN Council Member, December 2010

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the Human Rights Council continued to express concern in their monitoring work about the prevalence of caste discrimination.

IDSN values the contribution of the Special Procedures mandate holders very highly and will continue to consider it an important priority to provide them with relevant information on caste discrimination. IDSN representatives had regular contact with a number of Special Rapporteurs and Independent Experts and met with them and their staff on numerous occasions when travelling to Geneva.

In June, the mandate holders gathered in Geneva for their 17th annual meeting. On this occasion, IDSN issued an appeal to the Special Rapporteurs and Independent Experts commending them for the attention they have paid to the issue of caste discrimination and calling on them to support and refer to the draft UN Principles and Guidelines in their work.

Two mandate holders have already done so. In October 2009, the Special Rapporteur on contemporary forms of racism, Mr Githu Muigai, publicly endorsed the draft UN Principles and Guidelines. A year later, he made another strong intervention on caste discrimination, expressing serious concern about the continuing existence of the caste system and describing caste discrimination as a form of “societal” structural racial discrimination. This happened at the 8th session of the intergovernmental working group that monitors the implementation of the Durban Declaration against racism. Mr Muigai urged states to review and redesign legislation that may discriminate various groups, including victims of inherited status systems, i.e. Dalits. He also reiterated his support for the position on caste discrimination expressed by the UN Committee on the Elimination of Racial Discrimination (CERD) in 2002.

The Independent Expert on Minority Issues, Gay Mc Dougall, became the second mandate holder to express support for the draft UN Principles and Guidelines. In her annual report to the Human Rights Council (A/HRC/13/23), presented at its 13th session in March, Ms McDougall called these guidelines “an important contribution to the global struggle to combat discrimination on the grounds of work and descent which often affects members of minority groups.” As the convenor of the UN Forum on Minority Issues in December, she enabled Dalit activists to highlight obstacles to their full participation in economic life. Towards the end of the year, the Independent Expert paid an informal visit to India where she met members of various minority groups, including Dalit activists.

Following their joint visit to Bangladesh in December 2009, two Independent Experts – on water and sanitation and on extreme poverty – presented a report (A/HRC/15/55) containing numerous references to the Dalit issue at the 15th session of the Human Rights Council. Ms Catarina de Albuquerque and Ms Magdalena Sepúlveda noted that pervasive discrimination against Dalits ‘keeps them poor, uneducated, in terrible living conditions and in

menial jobs.’ They also urged the government of Bangladesh to ‘explicitly recognize the discrimination experienced by Dalits and take more concrete steps to redress it, including through the enforcement of existing laws and the establishment of a special commission with a mandate to address concerns particular to Dalits.’

In the latter part of the report, Ms de Albuquerque analysed the particular issues relating to Dalits under her water and sanitation mandate. She expressed concern about discrimination against sweepers who clean out sewers and septic tanks without protective gear and who are predominantly Dalits. The sweepers have no access to water or safe sanitation in their own community. The Independent Expert called on the government to ‘adopt an explicit policy to address the situation of Dalits, and to eliminate discrimination against them; and to take special measures to improve the situation of sweepers.’ In August, IDSN prepared a briefing paper on Bangladesh<sup>5</sup> with policy recommendations and disseminated it widely to government officials and other stakeholders.

The Special Rapporteur on contemporary forms of slavery, Ms Gulnara Shahinian, made numerous references to caste

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**“Most probably, humankind has never devised a more comprehensive system of keeping a section of society under perpetual subjugation amidst inhuman conditions. It has never devised a worse way of dehumanising fellow human beings and reducing them to being mere labour force devoid of any dignity leave aside rights. everything said and done, when it comes to committing atrocities on people, the caste system has proved itself to be far more clinical in brutalising its victims than race and not less.”** Asian Human Rights Commission, 8 September 2010

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**“While the practice of slavery is illegal, deeply embedded discriminatory attitudes form part of the basis of slavery in mauritania. The country’s stratified, caste-based society means that even those who are former slaves or descendents of former slaves still live under the shroud of their “slave class” and are ostracized from society.”** Gulnara Shahinian, UN Special Rapporteur on contemporary forms of slavery in a report on Mauritania, September 2010

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in 2010. Her report on domestic servitude (A/HRC/15/20), presented at the 15th session of the Human Rights Council, underlined the intrinsic link between domestic servitude and caste discrimination. The report noted that in South Asia, Dalits and certain indigenous communities make up the vast majority of people in domestic bonded labour, a form of domestic servitude. Moreover, many Dalit women in India still have to engage in manual scavenging.

Following a country visit to Mauritania in late 2009, Ms Shahinian presented her report at the same HRC session. It mentioned numerous examples of caste-based slavery in Mauritania’s stratified society, including that of the Haratine, the ethnic group mostly associated with slavery in the country. They are members of a ‘slave caste’ and consequently suffer discrimination, marginalisation and exclusion. In her concluding recommendations, the Special Rapporteur urged Mauritania’s Minister of Justice to consider introducing a law against discrimination based on caste or ethnic slavery.

Three other mandate holders – the Special Rapporteurs on education, health and adequate housing respectively – referred to caste discrimination in reports and communications in 2010. All in all, 13 mandate holders have made such references over the past few years. The comments on caste discrimination made by these UN experts can be found in our compilation of References to caste-based discrimination in reports by thematic Special Rapporteurs (2005-2010)<sup>6</sup>.

## **Office of the High commissioner for Human rights (OHCHR)**

IDSN and individual members continued to raise awareness about the need for caste sensitive programming in UN agencies and international institutions, and engaged specifically with the OHCHR. IDSN maintains close relations with OHCHR staff.

Following High Commissioner Pillay's strong expression of support for the draft UN Principles and Guidelines in 2009, her office has taken commendable initiatives in its work particularly at country level. The thematic priorities of the OHCHR's strategic management plan for 2010-2011 are all highly relevant for the fight against caste discrimination; they include countering discrimination; combating impunity and strengthening accountability, the rule of law and democratic society, pursuing economic, social and cultural rights and combating inequalities and poverty.

Caste discrimination is mentioned several times in the plan's section on the Asia/Pacific region. A thematic priority is to "counter discrimination, with a particular focus on women and caste." IDSN has recommended that activities be reviewed and expanded to fully address the Dalit human rights issues in all relevant thematic areas. IDSN is also currently discussing training on UN human rights mechanisms for Dalit constituencies with the office.

The High Commissioner herself addressed the issue of descent-based discrimination during a visit to Japan in May. While praising the Japanese government for its efforts to combat 'forms of work and descent-based discrimination, such as those faced by the Burakumin', Ms Pillay also urged it to adopt a comprehensive law on discrimination. Such a law should provide better protection for minority groups, including the Buraku community.

On the UN Human Rights day on 10 December, the National Dalit Commission of Nepal (NDC) and the Office of the UN High Commissioner for Human Rights in Nepal (OHCHR-Nepal) issued a joint publication "Speak up Stop Discrimination – observations on the untouchability bill". While welcoming the draft bill, the two bodies call for improvements and point out a number of shortcomings that have to be addressed to strengthen the current bill. IDSN commends the OHCHR in Nepal for its work and shares Information from this office to its members and broader constituency.

On UN Human Rights Day, and under the banner "Speak up Stop Caste Discrimination", IDSN issued a special statement with an account of activities by Dalit activists in the run-up to this day. Dalit activists have been mobilising through marches and awareness raising activities from activism in Nepal, a march in India, and human chains in Bangladesh to an exhibition in the UK to highlight the plight of Dalits.

## **UN treaty bodies and UPR**

In 2010, few reviews were scheduled for countries affected by caste discrimination.

In February the Government of Japan was reviewed by the UN Committee on the Elimination of Racial Discrimination (CERD). In its concluding observations, the Committee urged Japan to consider specific legislation against direct and indirect racial discrimination. Such steps would be particularly relevant to the Buraku community, which suffers similar forms of descent-based discrimination as the Dalits of South Asia. The Committee also recommended Japan to set up a government agency to deal with Burakumin discrimination cases and to do more to improve the living conditions of the Buraku communities. Although the government maintains the position that discrimination against the Burakumin does not constitute racial discrimination, the Japanese delegation did elaborate on steps taken to eliminate discrimination against them. Prior to the review, a report with inputs from a large number of NGOs had urged the government to consider the views and recommendations expressed by CERD as well as the UN Special Rapporteur on Racism.

In 2010, the IDSN secretariat updated its comprehensive overview of UN treaty body recommendations on caste discrimination (1996-2010)<sup>7</sup>, and circulated this compilation to a wide range of governmental, UN, EU, and NGO stakeholders.

Towards the end of the year, the preparations for the Universal Periodic Review of Nepal in early 2011 started in cooperation with civil society coalitions and Dalit organisations in Nepal.