

ENHANCING DALITS' ACCESS TO EQUAL POLITICAL PARTICIPATION

IDSN recommendations for the second thematic session of the UN Forum on Minority Issues, 12-13 November 2009

The focus of the second thematic session of the UN Forum on Minority Issues is on "minorities and effective political participation". The Forum will consider current practices and ways to increase the effective participation of minorities including, among other issues, the impact of discrimination on the political participation of minorities; meaningful representation/representation and empowerment; obstacles to the political participation of minorities; and quotas, reserved seats or other mechanisms to ensure representation of minorities.¹



The Dalits, also known as "untouchables", are often limited from equal and meaningful political participation due to the persistence of discriminatory practices and their weak economic, social and political position in caste-affected countries such as India, Nepal, Pakistan, Bangladesh and Sri Lanka. While some governments have enacted constitutional safeguards and affirmative action to promote equal access and opportunities, e.g. reservation policies in public sector employment, implementation of such laws and programmes remains weak and insufficient. Some governments have yet to introduce legislative measures, while others are in the process of establishing systems of proportionate representation for Dalits in the restructuring of the state, as in Nepal.

International human rights instruments create binding obligations on governments to ensure non-discrimination for all in the fulfillment of civil, political, social, economic, and cultural rights. Below are some relevant references on states' international obligations to enhance Dalits' access to equal political participation as signatories to the main human rights treaties.

Building on existing principles of international human rights law, a specific set of recommendations are contained in the draft UN principles and guidelines for the effective elimination of discrimination based on work and descent, which proposes specific measures to be taken by governments to eliminate caste discrimination. These recommendations may be used as a guiding framework for governments, international institutions, UN expert mechanisms and private actors that seek to comprehensively address issues pertaining to this entrenched form of discrimination.

Finally, the lobby brief contains some action-oriented recommendations on which measures governments should take in order to meet their international obligations to respect, protect, and fulfill the human rights of Dalits. These recommendations are based on an analysis of the constitution-making process in Nepal.

For more information on caste discrimination and specific country situations, go to www.idsn.org

¹ See Concept Note: <http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/2009Forum-Concept.pdf>

International human rights obligations and caste discrimination

Discrimination based on work and descent, the UN terminology for caste discrimination, is a form of discrimination prohibited by international human rights law as proclaimed by the Universal Declaration of Human Rights and, inter alia, by the International Convention on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the International Labour Organization Convention No. 111.²

The international treaties unequivocally obligate affected governments to undertake the following³:

- Pursuant to ICERD, caste-affected governments are obligated to eliminate all forms and manifestations of direct and indirect descent-based discrimination, which, according to General Recommendation No. 29, includes caste discrimination; to ensure non-discrimination in the fulfillment of civil, political, social, economic, and cultural rights; and to take positive measures to ensure equality for Dalits and other marginalized groups.
- Pursuant to CEDAW, caste-affected governments are obligated to pursue policies to eliminate discrimination against women and to take positive measures to ensure equality for women in relation to all substantive rights guarantees to which women are entitled. These include the enjoyment of economic, social, and cultural rights, as well as civil and political rights.
- Pursuant to the CRC, caste-affected governments are obligated to protect the rights of children, including protection from all forms of sexual exploitation and sexual abuse, prostitution and other unlawful sexual practices, and child labor.
- Pursuant to the ICCPR, caste-affected governments are obligated to guarantee civil and political rights to all individuals within its territory or subject to its jurisdiction. Among other things, the ICCPR forbids the arbitrary denial of the right to life; torture or cruel, inhuman, or degrading treatment or punishment; slavery, servitude, and certain instances of forced or compulsory labor; arbitrary arrest or detention; arbitrary interferences with privacy, family, and correspondence; and unlawful attacks on honor and reputation. Further, the ICCPR mandates that Nepal allow for freedom of opinion and expression; freedom of assembly and association; the right to marry freely; freedom to take part in the conduct of public affairs, directly or through freely elected representatives; the right to vote; and the right to enjoy culture and practice religion freely. Moreover, Caste-affected governments are obligated to treat as equal all persons before the law and to provide, without discrimination, equal protection of the law.
- Pursuant to the ICESCR, caste-affected governments are obligated to guarantee certain economic, social, and cultural rights. The ICESCR also guarantees that the rights enunciated therein will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status including caste discrimination as confirmed in CESCR General Comment No. 20 on non-discrimination.
- Pursuant to its accession to CAT, caste-affected governments are obligated to prevent, prohibit, and punish acts of torture and other forms of cruel, inhuman, or degrading treatment or punishment and to ensure that victims of torture can obtain redress in the State's legal system.

² Draft UN principles and guidelines for the effective elimination of discrimination based on work and descent, paragraph 4 (A/HRC/11/CRP.3)

³ From RECASTING JUSTICE: SECURING DALIT RIGHTS IN NEPAL'S NEW CONSTITUTION. Joint Statement by New York University School of Law Center for Human Rights and Global Justice (CHRGJ), Dalit NGO Federation (DNF); and IDSN: http://idsn.org/fileadmin/user_folder/pdf/New_files/Nepal/090223-Joint_Statement-Final_ENG_PDF.pdf

Draft UN principles and guidelines for the effective elimination of discrimination based on work and descent

The draft UN principles and guidelines for the effective elimination of discrimination based on work and descent is a comprehensive legal framework developed to eliminate discrimination based on work and descent, the UN terminology for caste discrimination. Based on existing international human rights principles and obligations, the framework proposes measures that state and non-state actors should enforce to prevent and address this massive and systematic human rights problem affecting the lives of an estimated 260 million people globally.



The draft UN principles and guidelines are contained in the final report on the topic of discrimination based on work and descent, which was published by the Human Rights Council on 18 May 2009 ([A/HRC/11/CRP.3](#)). The report was prepared by two Special Rapporteurs of the UN Sub-Commission on the Promotion and Protection of Human Rights pursuant to Sub-Commission resolution 2006/14 with the mandate of the Commission of Human Rights (resolution 2005/109).⁴

The guidelines propose general and special measures to be taken to address this human rights violation on specific issues, including recommendations on how to enhance Dalits' access to justice and equal political participation (in paragraph 28-32).

Access to justice and equal political participation

28. Judicial, legislative, and law enforcement bodies should take specific and concrete measures to ensure equal protection of the law for affected communities.

29. National and local governments should take all necessary steps to ensure equal access to judicial remedies for affected communities, including the provision of legal aid or other kinds of support to public interest organizations representing the interests of those subject to discrimination based on work and descent.

30. State actors, including all bodies of government and public corporations, should adopt specific guidelines, including a scheme of incentives and sanctions, prohibiting discrimination based on work and descent in their internal practices. National and local governments should encourage the recruitment of members of affected communities into law enforcement agencies.

31. Law enforcement officials, including police, judges and prosecutors should be provided with adequate training in the prevention, investigation, and prosecution of cases involving discrimination based on work and descent.

32. National and local governments should take specific measures to ensure equal rights to political participation for affected communities, including rights to participate in public elections, and to equal opportunity to run and be elected to public office.

33. National and local governments should consider the introduction and implementation of a reservation policy to all categories of public service posts, including the judiciary in order to ensure adequate, effective and meaningful, not symbolic, representation at all levels of governments and legislatures and maintain and release statistical data on such representation.

⁴ Read more about the draft UN Principles and Guidelines here: <http://idsn.org/international-advocacy/un/un-principles-guidelines/>

Action-oriented recommendations

Ensuring equal access for Dalits to political participation⁵

In order to meet their international obligations to respect, protect, and fulfill the human rights of Dalits, affected governments should take appropriate measures to:

- Ensure access to citizenship, including through ensuring that Dalits receive citizenship certificates.
- Protect the right to equality and non-discrimination for all persons by requiring formal and substantive equality, prohibiting discrimination on any ground, repudiating “untouchability” and racial discrimination, and providing for “special provisions” to ensure real equality in the enjoyment of all rights, including employment and education.
- Secure the right of Dalits to meaningfully participate in State structures and decision-making, including the drafting of the new constitution and national development activities, on the basis of proportional inclusion.
- Prohibit registration of political parties that exclude Dalits in membership, leadership or nomination for political positions.
- Guarantee fully all freedoms to Dalits, including freedom of religion and the right to marry freely a person of one’s choosing, and ensure that there are no unlawful or undue restrictions on these civil and political rights which prevent their implementation in practice.
- Ensure Dalits’ economic, social and cultural rights, by guaranteeing their justiciability and by specifically ensuring education and cultural rights; the right to a clean environment; the right to the highest attainable standard of physical and mental health and free basic health services, along with the underlying determinants of health, such as water and safe and adequate housing; rights regarding employment, labor and social security, that inter alia ensure the right to food, prohibit bonded and forced labor, and guarantee the right to freely choose or accept employment, just and favorable work conditions, and reasonable wages; and the right to property, including through ensuring entitlement to tenure or comparable redress in cases where Dalits’ land tenure has been compromised by previous discrimination.
- Guarantee Dalits’ children’s rights by guaranteeing the right to his or her identity and name, as well as the right to be nurtured, to basic health and social security; prohibiting all exploitation of children, including work or services that endanger their well-being, physical or mental health, or development; and affirming that the best interests of the child is the primary consideration in all actions concerning the rights of children.
- Ensure the rights of Dalit women by prohibiting discrimination and violence against women; requiring all appropriate measures to modify the social and cultural patterns of conduct of men and women; and guaranteeing property rights, reproductive rights and rights concerning family relations.
- Ensure Dalits’ right to be free from torture and other cruel, inhuman or degrading (CID) treatment or punishment by prohibiting all acts of physical and mental torture and CID treatment irrespective of the perpetrator and ensuring that all such acts will be punishable by law and by appropriate penalties which take into account their grave nature.
- Realize constitutional rights and protections by ensuring that Dalits’ rights are implemented and enforced and that law enforcement, the judiciary and government commissions treat untouchability as a serious crime.

⁵ From RECASTING JUSTICE: SECURING DALIT RIGHTS IN NEPAL’S NEW CONSTITUTION. Joint Statement by New York University School of Law Center for Human Rights and Global Justice (CHRGJ), Dalit NGO Federation (DNF); and IDSN: http://idsn.org/fileadmin/user_folder/pdf/New_files/Nepal/090223-Joint_Statement-Final_ENG_PDF.pdf