

HUMAN RIGHTS COUNCIL
17th session, 30 May – 17 June 2011

**Written statement submitted by the International Movement Against All Forms of
Discrimination and Racism (IMADR), a non-governmental organization in special
consultative status with ECOSOC¹**

Item 3: Promotion and Protection of Human Rights

Discrimination based on work and descent

The issue of discrimination based on work and descent, also known as caste-based discrimination, has been addressed by an increasing number of UN human rights bodies over the last years. Nevertheless, the UN Human Rights Council (HRC) has failed to take action to comprehensively address the issue, despite the fact that it is estimated to affect approximately 260 million persons globally.

IMADR and IDSN welcome the progress and observations made by various UN human rights bodies this year, but call on the HRC to recognise that more needs to be done by the world's leading human rights body to ensure enhanced human rights compliance, implementation of laws, justice for victims, and access to basic services for the rights of the millions of affected persons around the world.

Discrimination based on work and descent has been defined as “any distinction, exclusion, restriction, or preference based on inherited status such as caste” by two experts of the former UN Sub-Commission on the Promotion and Protection of Human Rights.² This form 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. Affected communities include the Dalits in South Asia (e.g. India, Nepal, Bangladesh, Pakistan, and Sri Lanka), the Buraku community in Japan, the Al-Akhdam community in Yemen, low caste groups in Africa such as the Osu in Nigeria, and the Diaspora community in e.g. the United Kingdom.

Various observations have been made by UN human rights bodies in 2011 alone. They demonstrate that while this form of discrimination has existed for centuries, it is still practiced in many different forms in modern-day society. Furthermore, government responses and civil society mobilisation vary considerably from country to country. Below are some examples:

- After her visit to India in January 2011, the Special Rapporteur on the situation of human rights defenders, Mrs. Margaret Sekaggya, raised particular concern for the situation of Dalit human rights defenders and noted widespread deficiencies in the State's implementation of laws to protect human rights defenders.³
- Later that month, Nepal received 20 questions and recommendations on the situation of Dalits and caste-based discrimination during the 10th session of the Working Group of

¹ The statement is supported by the International Dalit Solidarity Network (IDSN), which is an international network of organisations working to eliminate discrimination based on work and descent www.idsn.org

² Draft UN principles and guidelines for the effective elimination of discrimination based on work and descent, paragraph 1 (A/HRC/11/CRP.3)

³ Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, New Delhi, 21 January 2011

the Universal Periodic Review.⁴ The Government acknowledged the challenges faced by the country and responded positively to many of the recommendations, although it remains to be seen how they will be implemented.

- In February 2011, CERD expressed serious concern at the “persistent and continued social-economic exclusion of descent-based communities such as the Al-Akhdam”, and recommended the Government of Yemen to “strengthen its efforts to improve the welfare of all marginalized and vulnerable descent-based groups, particularly the Al-Akhdam, in the fields of education, access to health, housing, social security services and property ownership” (CERD/C/YEM/CO/17-18).
- During the 16th session of the HRC, the Independent Expert on minority issues, Ms. Gay MacDougall, moderated a side event on discrimination based on work and descent organised by IMADR and IDSN on 16 March. She also presented her annual report in which she introduced a UNDP resource guide on marginalised communities, including Dalits, prepared in collaboration with the OHCHR. The resource guide is an example of how the issue of discrimination based on work and descent can be mainstreamed into development programming by UN agencies.

Despite these developments, the Human Rights Council has hesitated to take action on the follow-up to the publication of a comprehensive study on the issue, including a set of draft UN principles and guidelines. Two years ago, the final report on discrimination based on work and descent was published by the Human Rights Council in May 2009 (A/HRC/11/CRP.3). This was a result of a decision to publish all completed and submitted reports by the former UN Sub-Commission on the Promotion and Protection of Human Rights (A/HRC/10/117). Since then, the HRC has not taken any steps to follow-up on the findings of the study, which is the first comprehensive study on discrimination based on work and descent. The report included a set of draft UN principles and guidelines to eliminate discrimination based on work and descent. This framework constitutes a strong tool to encourage specific anti-discrimination legislation and relevant policy measures for governments and their agencies, UN and other international agencies, educational institutions, non-governmental organizations and the private sector.

The decision to publish the Sub-Commission reports did however not include a provision that referred the published reports back to the UNHRC for its consideration. Therefore, in order for the UNHRC to give due consideration to the issue of “discrimination based on work and descent”, IMADR and IDSN calls upon the members of the HRC to ensure that the issue is addressed comprehensively for the first time in the Council. One option could be to propose a panel discussion on ‘good practices to effectively eliminate discrimination based on work and descent’ at the 19th session of the Human Rights Council. The HRC should try to ensure that follow-up action is taken as a result of this discussion. We recommend the HRC to mandate the Office of the High Commissioner for Human Rights (OHCHR) to support the preparation and follow-up to this event.

In a panel discussion on good practices, we suggest that the following questions are discussed:

1. What are the good practices of governments, UN agencies, and civil society organisations in effectively eliminating discrimination based on work and descent?
2. What type of special measures could state and non-state actors take to address *de facto* discrimination against persons affected by this form of discrimination?

⁴ Draft report of the Working Group on the UPR - Nepal (A/HRC/WG.6/10/L.3)

3. How can impunity of violence against affected communities be addressed in law?
4. What would be the added value of a comprehensive legal framework such as the draft UN principles and guidelines for the effective elimination of discrimination based on work and descent to enhance protection of persons affected by this form of discrimination?
5. How can the provisions of this draft framework be mainstreaming into relevant policies?

During the 13th session of HRC, IMADR organized the side-event focusing on the special measures taken by the Japanese Government to solve the problem of Buraku discrimination in Japan, for the purpose of evaluating achievements and challenges of these initiatives taken in Japan for the past three decades upto 2002, in reference to the UN Draft Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent. CERD recommended the Japanese Government concerning the special measures for Buraku problem in its Concluding Observations (CERD/C/JPN/CO/3-6) of April 6, 2010. Para 19-(f) recommended to “take into account general recommendation No. 32 (2009) on special measures, including the recommendation that special measures are to be terminated when equality between the beneficiary groups and others has been sustainably achieved.”

We urge the HRC to recognise the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent as an important international framework and instrument to effectively elimination this form of discrimination.

We appeal to relevant Governments and their agencies, UN and other international agencies, and non-state actors to endorse the principles and guidelines immediately. They are based on existing international human rights principles and obligations and constitute a strong tool to encourage specific anti-discrimination legislation and relevant policy measures. They can therefore, in their existing format, be promoted and applied by multiple stakeholders as a guiding framework on how to effectively eliminate caste-based discrimination.

We call on the UN Special Procedures to make use of the draft principles and guidelines on discrimination based on work and descent in their work; urge States to endorse them; ensure the consideration of affected communities when gathering information and making statements; and consider how to follow up on UN recommendations related to caste-based discrimination in such coordinated efforts.

Likewise, we recommend all UN treaty bodies to take into consideration, when relevant, the root-causes and effects of discrimination based on work and descent when elaborating list of issues and recommendations in reviews of affected states. This aspect may also be addressed in the preparation and formulation of general comments, for instance in the case of the upcoming CEDAW discussion on women in armed conflict and post conflict situations during the 49th session in July.