Fact Sheet
U.N. Committee on the Elimination of Racial Discrimination (CERD)
Examination of India's 15th – 19th Periodic Reports
23 February 2007 and 26 February 2007

The Committee on the Elimination of Racial Discrimination (CERD) has concluded its examination of the 15th - 19th periodic reports of India 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. Please see the following the link for access to these reports: http://ohchr.org/english/bodies/cerd/cerds70-ngos.htm

India's statements before CERD

Presenting the report on Friday, 23 February (the first of two days of hearings), H.E. Mr. Goolam E. Vahanvati, Solicitor General of India, Head of Delegation, 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 Dalit fishermen 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."

Other puzzling statements included its assertion that "there are no indigenous people in India."

The delegation also sought to undermine the significance of their 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 the 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." (Ms. Fatimata-Binta Victoire Dah, (Vice-Chairperson))
- "In some ways saying that race does not equal caste is a *straw-man* because the governing concept is not race but racial discrimination." (Mr. Patrick Thornberry).
- "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." (Mr. Mario Jorge Yutzis).
- "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?" (Ms. Patricia Nozipho January-Bardill)
- "The reason why we are talking about caste all the time is because it is difficult to know why India refuses to discuss this." (Mr. Alexei S. Avtonomov).
- "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." (Mr. Chengyuan Tang).
- "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." (Mr. Kokou Mawuena Ika Kana (Dieudonnè) Ewomsan).
- "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." (Mr. Pierre Prosper)
- "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." (Mr. Luis Valencia Rodriguez).

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 to this presentation, Committee member Prosper 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 (CERD) is a body of independent experts responsible for monitoring states' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 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 state party, addressing its concerns and offering recommendations. CERD uses supplementary information contained in non-governmental organization "shadow reports" to evaluate states' reports. India's report to CERD, eight years overdue, covers compliance with the convention from 1996 to 2006 yet does not contain a single mention of abuses against Dalits – abuses that India's own governmental agencies have documented and verified.

For more information, please contact:

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