



International Dalit Solidarity Network

WORKING GLOBALLY AGAINST DISCRIMINATION BASED ON WORK AND DESCENT

Joint NGO Submission

by the IMADR Asia Committee, Human Development Organisation and the International Dalit Solidarity Network

Related to Sri Lanka for the second Universal Periodic Review session scheduled for May 2008

Caste-based discrimination in Sri Lanka:

Patterns of inequality, discrimination and social marginalisation of affected communities in contemporary Sri Lanka

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Caste-based discrimination in Sri Lanka

Introduction

In this submission IMADR Asia Committee¹, HDO² and IDSN³ provide alternative information about how caste-based discrimination is a serious human rights problem in contemporary Sri Lanka impacting the lives of the Sinhala, Sri Lankan Tamil, Indian Tamil and other ethnic and religious groups. There is no accurate information about the number of people affected by caste-based discrimination in Sri Lanka since a caste category is not included in any official data bases, including population censuses and surveys on poverty and living standards. However, on the basis of limited information available, it is estimated that 20-30% of the country's population appears to be affected by caste-based discrimination of one kind or another (Silva et al, 2007). The official UN terminology for this is "discrimination based on work and descent"⁴, which is a form of discrimination that is being increasingly acknowledged as a human rights problem subjecting approximately 260 million persons worldwide to inhuman treatment, in particular in South Asia, including Sri Lanka.

Two important initiatives have increased the knowledge and awareness about the existence of such a problem: 1) A new study documenting the various forms of work, descent and caste-based discrimination in Sri Lanka (Caste-based Discrimination in Sri Lanka: Research Project on Caste Based Discrimination in South Asia, Indian Institute of Dalit Studies 2007)⁵ and 2) a comprehensive study on discrimination based on work and descent undertaken by two Special Rapporteurs from the former UN Sub-Commission on the Promotion and Protection of Human Rights. These initiatives will form the basis for the information contained in this submission, including the draft UN Principles and Guidelines on the Effective Elimination of Discrimination based on Work and Descent (hereafter "draft P & G on work and descent") prepared pursuant to Sub-Commission resolution 2006/14⁶ which may serve as a general framework to prevent caste-based discrimination in caste-affected countries, including Sri Lanka. Under sections 2-3 and 5-7 stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review, IMADR Asia Committee, IDSN and HDO present the following recommendations to the Government of Sri Lanka on how it can effectively address

work, descent and caste-based discrimination to promote and protect those affected by this form of discrimination:

- In section 2 IMADR Asia Committee, HDO and IDSN raise concern over the legal and normative framework in Sri Lanka which do not sufficiently address work, descent and caste-based discrimination and call for adequate legal reform and state policies
- In section 3 concerning the implementation of Sri Lanka's national and international human rights obligations, the Government of Sri Lanka is urged to enforce special measures to prevent existing patterns of social exclusion based on work and descent practiced in contemporary Sri Lanka
- In section 5 IMADR Asia Committee, HDO and IDSN call for the implementation of special measures to protect and promote the rights of affected communities
- In section 6 it is recommended that the draft P&G on work and descent should be used as a general framework for fighting caste-based discrimination in Sri Lanka in accordance with international human rights standards
- In section 7 IMADR Asia Committee, HDO and IDSN propose various initiatives for technical assistance

1. Caste-based discrimination in contemporary Sri Lanka in the context of civil war

In Sri Lanka work, descent and caste-based discrimination is not as severe as in the neighbouring country India. Nor is the term Dalit – often referred to as the "downtrodden people" of India – used as a means of self identification or as a descriptive label adopted by analysts or political actors. But despite the fact that explicit caste discrimination seems to have gradually diminished for the most part in Sri Lanka, new research documents that there are continuing pockets of outcaste populations in diverse places such as Mahaiyawa in Kandy, Wilgoda in Kurunegala and IDP camps in Jaffna peninsula which affect these groups as an effect of the civil war and Tsunami (Silva et al, 2007).⁷ The relative significance of certain depressed caste communities in internally displaced persons (IDP) camps in Jaffna suggests that caste discrimination is by no means a dead issue in contemporary Sri Lanka.

Unlike the Hindu caste system founded on religiously inscribed notions of purity and pollution, the caste systems in Sri Lanka have relied more on a kind of secular

ranking upheld by the state, land ownership and tenure, religious organizations and rituals and firmly-rooted notions of inherent superiority and inferiority. Much of the official backing of the caste systems has gradually eroded, and instead the state has increasingly turned a blind eye towards caste since the latter part of colonial rule. Moreover, the Liberation Tigers of Tamil Eelam (LTTE), that has established military control over pockets of northeast Sri Lanka, has imposed a ban and a kind of censorship on the caste system identifying it as an obstacle to the unified Tamil ethnic homeland it seeks to establish in the relevant parts of Sri Lanka. These developments have made caste very much a hidden entity not openly addressed by society, policy and social analysis. This has however not eliminated caste discrimination altogether. Rather caste discrimination has become underground, surreptitious and socially explosive in some instances.

In Sri Lanka, at least three separate caste systems coexist and interact with each other and with Hindu caste systems in India: the Sinhala, Sri Lanka Tamil and Indian Tamil caste systems.⁸ Although there is no uniform practice of “untouchability”, caste-based discrimination is found in varying degrees in all three caste systems. The caste system in Jaffna was traditionally the most rigid one with clearly defined patterns of inequality, discrimination and social rejection. The Sinhala caste system also has some notions of social out-casting, but the numbers of people and communities involved are dispersed and often invisible. Among the Indian Tamil plantation workers a vast majority of people is selectively drawn from some of the so-called “lowest” and most impoverished caste groups in South India. In this community caste discrimination has been infused into the plantation system and the social system involving gross exploitation of labour. The socially excluded communities of urban sanitary/health workers have been enforced through the Municipal / Urban Council administration established in the colonial era, once again using the model of the Hindu caste system.

The civil war in Northeast Sri Lanka that began in the 1980s has had multiple impacts on the Tamil caste system in general and caste-based discrimination in particular in Jaffna. Underprivileged caste groups such as Panchmar in Jaffna society are often the hardest hit by civil war and natural disasters like tsunami. Due to a unified ethnic consciousness among all groups of Tamils irrespective of caste and disregard for caste in mobilization and training of

LTTE troops and campaigns including an explicit ban on caste, caste hierarchy has ceased to be a powerful force in Jaffna society. There is, however, lack of evidence as to how far these developments have led to actual disregard of caste in the minds of people and in practices such as marriage, rituals and permanent social unions as the social and political pressures to be silent with regards to caste and to sweep it under the carpet make it difficult to undertake any empirical research on it.⁹ While many of the explicit forms of caste discrimination have disappeared since the outbreak of the civil war, many of the IDPs remaining in camps in Jaffna are of Panchamar background. This is a consequence of a combination of factors, including, lack of alternative housing, deep-rooted poverty, lack of social capital, exclusion from the local land market and security and welfare considerations of the affected people.¹⁰

2. Sri Lanka’s normative and institutional framework for the promotion and protection of human rights

The Constitution of Sri Lanka (1978) prohibits discrimination against persons by reason of his/her caste, work or descent to any disadvantage with regard to access to shops, public restaurants, and places of public worship of his/her own religion in Article 12 (2). Recognizing that social disadvantages were imposed on people based on birth or the work they perform, the Prevention of Social Disabilities Act was passed in 1957. The Act made it an offence for any person to discriminate against another on the ground of his/her caste in the matter of access to shops, public eating houses and hostels, public wells, hair-dressing salons, laundries, cemeteries, places of worship, or for purposes of education and employment. In 1971 the Act was amended to strengthen its priorities and to impose heavier punishment. Initially there were some prosecutions in the Northern part of Sri Lanka, but there was a tendency for the police not to take action against violations¹¹ and it is said to have had limited impact in terms of safeguarding the rights of depressed caste communities.¹²

With regards to the normative framework, there is more or less complete silence about caste on the part of the state, political parties and even among civil society organizations according to the aforementioned research report.

While caste-based discrimination may be considered mild in Sri Lanka, it is for the most part not recognized and addressed as a problem by the victims or by the society at large. Moreover, the rise of ethnic nationalism in Sri Lanka in recent decades has served to further sideline and silence caste issues. Caste is a tabooed subject in contemporary Sri Lanka, and state policies along with human rights discourse rarely address the it.¹³ Only a few civil society organizations appear to be sensitive and concerned about the issue of work, descent and caste based discrimination. This makes it extremely difficult to collect reliable information about all aspects of caste including discrimination¹⁴ and social rejection.

Recommendation no. 1

- The Government of Sri Lanka must seek to identify, organize and empower victims of caste-based discrimination in the same way they are dealing with other forms of inequality such as gender, social class and ethnicity. Human right instruments, international conventions and universal coverage policies of the Sri Lanka state must be more explicitly used and extended where necessary in order to address the hidden as well as explicit dimensions of social inequality in Sri Lanka.
- The Government of Sri Lanka should effectively implement constitutional legislative and administrative measures prohibiting caste-based discrimination with the involvement of affected communities in the implementation phase.

3. Implementation of Sri Lanka’s national and international human rights obligations and commitments

At the national level, special measures are needed to promote the human rights of those affected by work, descent and caste-based discrimination, including affirmative action provisions for unprivileged groups in Sri Lanka. These include sanitary workers, plantation workers, and panchamars in the North who do not have adequate access to justice and land rights. Nor do they have adequate opportunities for social and political integration, education and employment opportunities. There is considerable resistance against any form of reservation policy favouring the traditionally

underprivileged groups in contemporary Sri Lanka. Such a policy may also not be in agreement with universal coverage policies in education, health and other social services followed in Sri Lanka and there is also a strong view in the country that any kind of reservation policy will revive unnecessary caste consciousness and related conflicts in a country already divided along ethnic lines. Nevertheless, underprivileged groups must be ensured better access to resources and be provided with additional measures, where general measures do not effectively address the situation of these groups. The taking of “special and concrete measures to ensure the adequate development and protection” of marginalized groups is one that is mandated by Article 2(2) of the International Convention on the Elimination of Racial Discrimination (ICERD) and is encompassed by the international obligation to ensure *substantive* equality.¹⁵ International human rights treaty monitoring bodies state that formal equality alone – such as Sri Lanka’s universal policies - is sometimes insufficient for a state to achieve its affirmative obligation to achieve substantive equality, and this will sometimes require redistribution of resources and power.¹⁶

Human right instruments, international conventions and universal coverage policies of the Sri Lanka State must be more explicitly used and extended where necessary in order to address the hidden as well as explicit dimensions of social inequality in Sri Lanka. At the international level, the Government of Sri Lanka is bound by a number of international treaties prohibiting work, descent and caste-based discrimination including the International Convention on the Elimination of Racial Discrimination (ICERD). In 1996 CERD made its first reference to caste-based discrimination stating that the term ‘descent’ mentioned in article 1 of the Convention does not solely refer to race but also to caste and analogous systems of inherited status. In CERD General Recommendation No. XXIX the Committee affirmed that this form of discrimination falls within the scope of ‘descent-based discrimination’ in the Convention.¹⁷ The Government of Sri Lanka should follow and effectively enforce its legal provisions at the domestic level in compliance with the general and special measures contained in CERD General Recommendation no. XXIX in its national policy framework.

Recommendation no. 2

- The Government of Sri Lanka should revise and implement the legal framework to have effective national remedies in place addressing contemporary social issues, ensuring prohibition of practices of discrimination in both public and private places, and overcoming other limitations in the existing legislation.
- At national level the Government of Sri Lanka should introduce special measures to prevent existing patterns of social exclusion practiced in Sri Lanka to remove barriers to members of affected communities, including segregation of community habitat.
- At the international level the Government of Sri Lanka should follow its international human rights obligations (especially under ICERD and General Recommendation no. XXIX) and report on measures and progress to the UN treaty bodies on a regular basis. Sri Lanka is yet to undergo a full scale review of its human rights record in relation to caste-based discrimination.

5. Achievements, best practices, challenges and constraints in eliminating caste discrimination in Sri Lanka

Welfare state policies: The welfare state policies of the Sri Lankan state from 1930s onwards have assumed that universal coverage in providing free education, free health care and subsidized food rations will serve all deserving communities irrespective of caste, ethnicity, religion and gender. The Government has thus showed a considerable resistance against any form of reservation policy favoring the traditionally underprivileged caste groups in contemporary Sri Lanka. Consequently, no reservations of any kind have been introduced by the state in order to address hereditary disadvantages of deprived caste groups. Although such a policy may not be in agreement with universal welfare policies, there is a need for special measures to protect and promote the rights of underprivileged caste groups by policy makers and development actors in government and civil society organizations. For instance, the problems faced by Panchamar IDPs in welfare centres on the Jaffna peninsula, the social and economic backwardness of many Urban / Municipal Sanitary Workers

and their families in urban centres, plantation workers and the poverty and social exclusion of caste groups like Rodiyas and Kinnaras in Sinhala society display such a need.¹⁸ Special efforts are needed to expand educational facilities serving the underprivileged groups, prevent existing patterns of social exclusion practiced in some social institutions by some of the urban schools.

Gender discrimination: Women may be seen as a especially vulnerable group with ethnic, caste, class and gender discriminations simultaneously impacting on them.¹⁹ Unemployment rates are particularly high among women and some have responded to this situation by joining the stream of migration to the Middle East. Women in IDP communities too have shown remarkable ingenuity and resilience in dealing with their difficult circumstances complicated by war, repeated displacements and loss of family members due to war and related disasters.

Denial of caste discrimination: The absence of a common name referring to all disadvantaged so-called low caste communities across the ethnic divide may be one obstacle to the development of a common identity and interaction among the affected people in different ethnic communities. In most instances the remaining depressed caste communities tend to deny, ignore and sweep under the carpet the problems they face rather than recognizing them and dealing with them in an open manner. Strategies such as overseas migration, migration to cities or new settlements within Sri Lanka, giving up caste occupations and name change for the purpose of denying out-caste status are pursued at the individual and household level, as opposed to state level, in order to evade hereditary caste discrimination in selected communities.²⁰

Recommendation no. 3

- Special measures are needed to protect and promote the rights of affected communities; problems are caused not by universal coverage policies themselves but discriminations at the point of delivery of services. As the existing policy framework and legal measures are not adequate to tackle any discrimination based on work and descent at the point of delivery of services, the Government of Sri Lanka must provide such a service to meet the needs of disadvantaged groups and take affirmative action to make such improvements a reality for affected communities.

6. Key national priorities to improve the human rights situation of affected groups in Sri Lanka

The key national priorities to improve the situation of affected groups like Sanitary Workers, Panchamars, Potters in villages in Sri Lanka should seek guidance from the international framework established in the draft UN principles and guidelines on discrimination based on work and descent as referred to above. The draft P&G serve as a guiding framework prescribing general and specific measures for the effective elimination of such form of discrimination by caste-affected governments and other relevant actors such as UN agencies, national human rights institutions and civil society. In UN terminology discrimination based on work and descent is defined as “any distinction, exclusion, restriction, or preference based on inherited status such as caste [...] that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.

The draft P&G underline that discrimination based on work and descent is a form of discrimination prohibited by international human rights law.²¹ As an overarching principle the draft P&G establish that all states, including Sri Lanka, have a duty to make sincere efforts to dispel the prejudicial beliefs that constitute, support and reinforce discrimination based on work and descent, including notions of “untouchability”, pollution and caste superiority or inferiority, as well as to prevent actions taken on the basis of such beliefs. The principles and guidelines suggest the specific measures to be implemented for the effective elimination of this form of discrimination, including all necessary legislative, administrative, budgetary and judicial measures and appropriate forms of affirmative action and public education programmes to prevent, prohibit and provide redress for discrimination based on work and descent in both public and private spheres; and ensure that such measures are respected and implemented by all State authorities at all levels.²²

Recommendation no. 4

- The draft P&G should serve as a guiding framework for the consideration of effective measures to be taken by the Government of Sri Lanka in the fulfillment of its international human rights obligations.

7. Capacity-building and technical assistance through bilateral, regional and international cooperation in Sri Lanka

The following initiatives are recommended to effectively eliminate work and decent based discrimination, i.e. caste-based discrimination in Sri Lanka:

- Technical support and assistance, involving UN experts and international institutions of expertise, to identify suitable legal reform, policies and programmes to tackle discrimination based on caste, work and descent.
- Technical and institutional support to establishing transparent and accountable monitoring mechanisms on the implementation of anti-discrimination and affirmative action legislation;
- Technical and capacity building support to a nationwide programmes addressing specific target groups as well as the public in general
- Technical support to strengthen the National Human Rights Commission for the effective monitoring of human rights violations against vulnerable groups;
- Technical support for development of guidelines for planning and implementation of development planning and budgeting with a view to secure those affected by caste, work and descent base discrimination to implement their social, political and cultural rights are reflected in planning and reporting for Millennium Development Goals and other national plans for achievement of development goals across the socio-economic and cultural rights spectrum.
- Initiate research on caste-based discrimination and its impact on poverty and social conflict, caste and human right violations and the impact of economic liberalization on patterns of caste inequalities.

Annex 1: List of references

1. Human rights reports

- Caste-based discrimination in Sri Lanka: Research Project on Caste Based Discrimination in South Asia, Indian Institute of Dalit Studies (2007)
- “Making things worse” commissioned by the Dalit Network Netherlands (2007):
 - http://www.ohchr.org/english/bodies/cerd/docs/ngos/tsunami_report.pdf

2. International legal standards

2.1. International treaties

- 2.1.1. International Convention on the Elimination of Racial Discrimination
CERD General Recommendation no. XXIX
- 2.1.2. International Convention on the Elimination of All Forms of Discrimination against Women
- 2.1.3. International Covenant on Civil and Political Rights 1966 and its optional protocols
- 2.1.4. International Covenant on Economic, Social and Cultural Rights
- 2.1.5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
- 2.1.6. Convention on the Rights of the Child 1989 and its optional protocols

2.2. UN Commission on Human Rights and the Sub-Commission on the Protection and Promotion of Human Rights

- 2.2.1. UN draft principles & guidelines on discrimination based on work and descent
- 2.2.2. Sub-Commission resolution 2006/14: Discrimination based on work and descent
- 2.2.3. Commission on Human Rights resolution 2005/109: Discrimination based on work and descent
- 2.2.4. Sub-Commission resolution 2005/22: Discrimination based on work and descent
- 2.2.5. Sub-Commission resolution 2004/17: Discrimination based on work and descent
- 2.2.6. Prevention of discrimination and protection of indigenous peoples: Working paper by Mr. Goonesekere on the topic of discrimination based on work and descent, submitted pursuant to Sub-Commission resolution 2000/4

2.3. ILO standards

Forced Labour Convention, 1930 (No. 29); Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111); Worst Forms of Child Labour Convention, 1999 (No. 182); Worst Forms of Child Labour Recommendation, 1999 (No. 190)

ILO Global Report 2007: Discrimination at Work in Asia

http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=6815

¹ IMADR: The International Movement Against All forms of Discrimination and Racism – Asia Committee

² The Human Development Organisation (HDO) is a national NGO from Sri Lanka which has been involved in lobby and advocacy campaigns on human rights issues of the plantation community, laying the foundation for action for a 'Dalit' movement in Sri Lanka starting November 2000

³ IDSN is an international lobby and advocacy network working for the elimination of caste-based discrimination globally www.idsn.org

IDSN members are a) National Advocacy Platforms in South Asia and b) Dalit Solidarity Networks in Europe and the US. National platforms include: The National Campaign on Dalit Human Rights – India; The Dalit NGO Federation – Nepal; Human Development Organization – Sri Lanka; and emerging national advocacy platforms Pakistan Dalit Network – Pakistan and Bangladesh Dalit Human Rights - Bangladesh. Dalit Solidarity Networks include: The Dalit Solidarity Network – UK; The Dalit Solidarity Platform – Germany; The Dalit Network – Netherlands; The Dalit Solidarity Network – Denmark; The Dalit Solidarity Network – Sweden; The French Dalit Collectif – France; The Dalit Solidarity Forum – USA; Dalit Solidarity Platform – Belgium. International associates of IDSN include: Human Rights Watch; The International Movement Against all Forms of Discrimination and Racism; The Lutheran World Federation; Anti-Slavery International; The Minority Rights Group International; The Asian Human Rights Commission; The Robert F. Kennedy Foundation; ICMICA/Pax Romana; FORUM-ASIA; The World Council of Churches; The Commonwealth Human Rights Initiative; Franciscans International; and the Centre for Human Rights & Global Justice

⁴ As recognised by the Commission on Human Rights in resolution 2005/109 and the Sub-Commission on the Promotion and Protection of Human Rights in resolution 2004/17, 2005/22 and 2006/14.

⁵ The research team consists of Kalinga Tudor Silva, P.P. Sivapragasam, P. Thanges, Sasikumar Balasundaram, P. Kotikabade, and A.S. Chandrabose. The researchers are attached to the University of Peradeniya, Open University of Sri Lanka and Human Development Organization

⁶ The draft P&G on work and descent have been submitted to the OHCHR as part of the final report prepared by the Special Rapporteurs but they are not yet considered an official UN document as of December 2007. In the final report the Special Rapporteurs recommend the Human Rights Council to adopt the draft P&G with necessary amendments and submit them to the General Assembly, and to include discrimination based on work and descent among the studies to be conducted by the Human Rights Council.

⁷ Caste-based Discrimination in Sri Lanka: Research Project on Caste Based Discrimination in South Asia, Indian Institute of Dalit Studies 2007, p. 20

⁸ Ibid. p. 83

⁹ Caste-based Discrimination in Sri Lanka: Research Project on Caste Based Discrimination in South Asia, Indian Institute of Dalit Studies 2007, p. 43

¹⁰ Ibid. p. 4

¹¹ Prevention of discrimination and protection of indigenous peoples (E/CN.4/Sub.2/2001/16) p. 11: Working paper by Mr. Goonesekere on the topic of discrimination based on work and descent, submitted pursuant to Sub-Commission resolution 2000/4

¹² Caste-based discrimination in Sri Lanka: Research Project on Caste Based Discrimination in South Asia (2007) p. 19

¹³ Ibid. p. 3

¹⁴ Ibid. P. 20

¹⁵ See, e.g. ESCR Committee, General Comment No. 16, para. 15, E/C.12/2005/4 (Aug. 11, 2005) (stating that “the application of the principle of equality will sometimes require that States parties take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination”)

¹⁶ See, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee, General Recommendation No. 25, (2004) para. 8.

¹⁷ CERD General Recommendation no. XXIX (2002)

¹⁸ Ibid. p. 85

¹⁹ Ibid. Chapter Seven: Conclusions and recommendations p. 75-76

²⁰ Ibid. p. 20

²¹ As proclaimed by the Universal Declaration of Human Rights and, inter alia, by the ICCPR, ICESCR, ICERD, ICEDAW, CRC and the International Labour Organization Convention No. 111 and CERD General Recommendation no. XXIX.

²² Final report including draft P&G prepared by Special Rapporteurs Prof. Yokota and Prof. Chung pursuant to Sub-Commission resolution 2006/14.