

Statement by Navanethem Pillay, High Commissioner for Human Rights

National Human Rights Commission

New Delhi, 23 March 2009

Distinguished Members of the National Human Rights Commission and State Commissions,

Dear Colleagues,

Ladies and Gentlemen,

I would like to sincerely thank the Government of India for its kind hospitality during my visit, and the National Human Rights Commission for organizing this important gathering.

I am very pleased to be with you today and to share some thoughts on the occasion of my first visit to India as High Commissioner for Human Rights. I feel a profound affinity with this great country and its people not only because my ancestors hailed from here, but also because, as a non-white South African who grew up under the apartheid regime, I, too, have endured oppression and multiple forms of discrimination. I, too, have known poverty and the unrelenting bite of prejudice and brutality.

Thanks to the leadership and inspiring determination of Mahatma Gandhi and Nelson Mandela, both of our peoples were able to shed colonialism and the repressive rule of the few. We leaped out of the crippling disadvantage of dependence and successfully pursued our dream of self-reliance.

In India and South Africa we truly stand on the shoulders of those two giants. They taught us that ideals and aspirations can prevail over the constraints of seemingly immutable circumstances, violence and oppression. We owe them the formidable, empowering change that has transformed geopolitics, the landscape of social relations, and our very lives. We owe them our trust in the power of dreams to reinvent reality and make the world a more just and hospitable place for all.

Their vision and legacy has inspired and now permeates a thick grid of human rights laws, institutions, mechanisms, global advocacy campaigns, and grassroots networks. Indeed, there is a direct correlation between the ideals that sustained the freedom movement in India, and those that in 1948 were enshrined in the Universal Declaration of Human Rights. Such ideals continued to bolster the quest for liberty and rights of oppressed people all over the world.

Dear Colleagues,

Today, the strength of India's democratic and legal institutions, as well as that of a highly engaged civil society and a free press, rests on solid foundations. Indeed, India

must be proud of its national protection system, which includes the National Human Rights Commission. The Commission has played a prominent leadership role among national institutions at the regional and international level.

Together with state-level commissions and specialized bodies on women, caste, and tribal issues, this Commission is a catalyst in providing redress and sensitizing administrative and law enforcement bodies on human rights. The National Action Plan it is developing should provide a framework for bringing a rights-based approach to all government policies and programmes.

In this context, I wish to also commend the adoption of the landmark Right to Information Act of 2005 which increases accountability and transparency through the disclosure of information requested by rights holders regarding the conduct of government.

For its part, India's judiciary strives to enforce human rights, to provide relief to individuals, and ensure that government implements constitutionally guaranteed rights, including economic, social and cultural rights, as well as women's rights.

In groundbreaking judgments, the Supreme Court of India has interpreted the right to life to include nutrition, clothing and shelter. In another case concerning the issues of inadequate drought relief and chronic hunger and under-nutrition, the Supreme Court has directed the government to implement food relief programmes to halt starvation, supply schools with mid-day meals, and provide subsidized grain to millions of destitute households.

I am also impressed with the *Vishaka v. State of Rajasthan* case which, I am sure, is well known to many of you, as it encapsulated and addressed some of the challenges of multiple forms of discrimination, as well as violence against women. Let me simply recall here that in *Vishaka v. State of Rajasthan*, the Supreme Court reversed the judgment of a lower tribunal which had acquitted the five aggressors of a rape victim because the tribunal did not find it credible that upper caste men would sexually abuse a lower caste woman. The woman appealed to the Supreme Court which ruled in her favor on the ground that the local government had neglected to protect her constitutional rights. Crucially, the case engendered legislative changes benefitting working women and promoted greater enforcement of women's rights.

Yet despite all these gains, the challenges that India faces, as is the case in many other countries, are manifold. Some of these challenges concern execution; some are rooted in structural national problems; others yet can be ascribed to the responsibilities (and public expectations) that pertain to an influential global player such as India. Allow me to expand on these topics.

Challenges in Execution

Economic liberalization and rapid economic growth have transformed many sectors of Indian society, but benefits and dividends have not always been shared equally. Poverty is still a grinding reality for millions of people in India. Deep, widespread and longstanding asymmetries in power, participation and wealth are now exacerbated by the global economic crisis. These inequalities are also compounded by the

persistence of gaps in the implementation of the higher courts' decisions, of the recommendations of the NHRC, and of national laws and policies that promote and protect human rights and seek to support the most vulnerable. Such gaps are reflected in the work of the NHRC and human rights defenders in various states where the administration of justice and economic development has produced uneven results.

These discrepancies and shortcomings in implementation have emerged in the course of the Universal Periodic Review process (UPR) conducted by the Human Rights Council, the pre-eminent intergovernmental body which is mandated to promote and protect human rights. The UPR is a mechanism that allows for the examination of all UN Member States' records regarding human rights. It is based on information provided by governments, intergovernmental bodies and civil society. India underwent such review in April 2008. Remarkably, a group of 200 Indian nongovernmental organizations forwarded a joint submission for the UPR, underscoring the significance of the review and its potential to mobilize public opinion towards spurring positive change.

I urge India to pay heed to the recommendations that stemmed from the UPR. It should also welcome the visits of independent experts, known as special rapporteurs, who can help the government identify and address pitfalls in implementation, as well as structural obstacles standing in the way of human rights.

The country's protection toolbox could also benefit from the ratification of the optional protocols to human rights treaties, such as CEDAW and CRC, which establish "complaint procedures." These are mechanisms that can be used by individuals to report their human rights concerns by engaging those international bodies which are the custodians of human rights treaties and which monitor their implementation. I urge India to accede to such important instruments.

Moreover, India should repeal those dated and colonial-era laws that breach contemporary international human rights standards. These range from laws which provide the security forces with excessive emergency powers, including the Armed Forces Special Powers Act, to laws that criminalize homosexuality. Such legal vestiges of a bygone era are at odds with the vibrant dynamics and forward thrust of large sectors of the Indian polity.

Structural National Problems

As the Supreme Court has pointed out, India is "a country of people with the largest number of religions and languages living together and forming a nation." This diversity—and its potential for igniting competing claims and even strife—makes closing protection gaps and leveling the implementation playing field all the more important.

Although India enjoys an array of laws and institutions designed to combat all forms of discrimination, religious and caste-based prejudices remain entrenched. In many states long-standing grievances of minorities, lower castes, or the poor have turned into violence.

Of particular concern is caste-based discrimination which is still deplorably widespread, despite efforts by the government and the judiciary to eradicate this practice. I note that in 2006, Prime Minister Manmohan Singh strongly condemned the practice of “untouchability” and compared it with apartheid. Moreover, Dalits, as well as tribal peoples, continue to live in abject poverty. Policies and measures that have been established to ensure relief for these groups, their access to justice, and accountability for perpetrators of abuses against them, have neither sufficiently alleviated their conditions, nor have they satisfactorily curtailed the climate of impunity that enables human rights violations. This is an area where India can not only address its own challenges nationally, but show leadership in combating caste-based discrimination globally.

Both internal and external terrorist threats have led to counter-terrorist measures that put human rights at risk. The horrific terrorist attack in Mumbai has also polarized society and risks stoking suspicions against the Muslim community. It is imperative to counter violent religious extremism of any kind by insisting on peaceful coexistence, tolerance and acceptance of diversity.

In the past two decades, hundreds of cases of disappearances have been reported in Kashmir. These cases must be properly investigated in order to bring a sense of closure to the families who for far too long have been awaiting news—any news.

I am aware of the landmark report by the Sachar Committee on the socio-economic status of the Muslim minority, and I encourage the Government to follow up on its important recommendations. An important step in this direction would be the adoption of a new Equal Opportunities Bill. The legislation would establish an ombudsman system to deal with grievances of “deprived groups” in line with the Sachar Committee recommendations, and would be a first step towards establishing a broader system to uphold equality of opportunity for women and other groups.

Finally, let me point out that progress in women’s rights must be defended. Sixty years ago, as the drafters of the Universal Declaration of Human Rights got down to work, it was the Indian delegate, Hansa Mehta, who ensured that women’s equal entitlement to human rights would not be merely subsumed under the “rights of all men” catch-all expression. She knew that a gender-implicit reference might be interpreted to the exclusion of women.

Since then, the space for women’s rights in India has expanded in law and practice. Thanks to the vigorous advocacy of women’s groups, in 2005 India adopted the innovative Protection of Women from Domestic Violence Act, which recognizes marital rape as a form of domestic violence. While criminal law has still not been amended to enable women to file rape cases against husbands or sexual partners, victims are given access to new remedies, including protection orders or injunctions against abusers. There is, however, pressure on the part of conservative groups to undermine the applications of the Act. Such pressure must be resisted. At the same time, women’s vehicles of recourse, as well as the menu of available remedies, must be widened.

Another empowering factor has been vibrant activism, especially by young women and newer constituencies, against attempts to constrain their sexuality and conduct on

the basis of obscenity laws. Not surprisingly, also on this topic, advocates of traditional values and anti-secular forces have engineered a significant backlash against women. This phenomenon is not unique to India. Here -- as elsewhere -- urgent countermeasures are required to bolster the rights, participation, and position of women in society.

India's economic growth has drawn many women from all backgrounds into the public and economic sphere, thus contributing to their visibility, economic empowerment and participation. I commend initiatives such as SEWA, the Self-Employed Women's Association. SEWA's network of women's cooperatives, pursuing the Gandhian ideal of self-help and self-sufficiency, should be an inspiration to those who seek efficient and just ways to promote women's entrepreneurship and resourcefulness.

We must now ensure that the current financial and economic crises are not used as pretexts to undercut gains in women's empowerment that make a society grow as a whole. There are already indications that in some countries recession is hitting harder those sectors where women are the predominant component of the workforce. Measures to respond to the economic downturn must not crowd out women's interests. Rather, they should strengthen women's participation through farsighted policies and public investment in areas where women's skills could either be brought to fruition or retooled. Crucially, such measures must take into account women's ideas and initiatives to alleviate hardship and jumpstart recovery.

Responsibilities of a Global Player

As the largest democracy in the world, India plays a commensurate role on the international scene. With influence, of course, come responsibilities. An immediate opportunity for powerful advocacy is fast approaching in the human rights calendar. In less than a month the Durban Review Conference on racism, racial discrimination, xenophobia and related intolerance will take place in Geneva.

I have called for participation of all UN Member States in this important world conference. I have appealed to all States never to lose sight of the overall goal of the conference, that is, an assessment of implementation of the Durban Declaration and Programme of Action to combat racism and intolerance (DDPA) which States adopted by consensus in 2001.

Stepping up efforts and accelerating the pace of compliance with the DDPA is of paramount importance. The goal of attaining discrimination-free societies must override differences and reconcile diverse perspectives. As the Chair of the Asian Group within the Human Rights Council, India must exercise all its leverage to ensure that the outcome of the review conference is successful.

As it acts in its influential regional capacity, India should, at the same time, exercise its independent and individual judgment as a leading member of the Human Rights Council whenever appropriate and necessary.

I encourage India to speak out on its own, as well as in concert with others, whenever the human rights agenda that it cherishes and seeks to pursue domestically becomes of

concern elsewhere. I urge India to continue to support freedom and rights wherever they are at stake, and particularly regarding the alarming situations in its own region, such as those in Sri Lanka and Myanmar.

Ladies and Gentlemen,

The years to come are crucial for sowing the seeds of an improved international partnership that, by drawing on individual and collective resourcefulness and strengths, can meet the global challenges of poverty, discrimination, conflict, scarcity of natural resources, recession, and climate change.

Allow me now to briefly illustrate my Office's own contribution to fighting these threats and work for the universal affirmation of all human rights.

If the Human Rights Council is the premier intergovernmental body for the promotion and the protection of human rights, the Office of the High Commissioner for Human Rights, as part of the United Nations Secretariat, is the leading international advocate and independent champion.

As the UN Secretary-General noted, since its creation in 1993, the Office of the High Commissioner has grown to become a powerful engine for change. It has expanded dramatically, elevated the profile of human rights all over the world, provided expertise for capacity building to States and within the United Nations system, and preserved the autonomy of judgement and scope of action that are indispensable to human rights work and advocacy.

Today, OHCHR is in a unique position to assist governments and civil society in their efforts to protect and promote human rights. The expansion of our field offices and presence in 50 countries, as well as the increasing and deepening interaction with UN agencies and other crucial partners in government, international organizations and civil society that my Office has undertaken, are important steps in this direction. With these steps we can more readily strive for practical cooperation leading to the creation of national systems which promote human rights and provide protection and recourse for victims of human rights violations.

Dear Colleagues,

Let me conclude by emphasizing that I intend to seek every opportunity to work closely with India on national, regional and global human rights concerns and priorities. In this pursuit, I will be guided by Mahatma Gandhi's appeal to responsibility and initiative. To put it in his immortal words: "We must be the change we wish to see."

Thank you.

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