

HUMAN RIGHTS COUNCIL

21st session, 10-28 September 2012

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

Item 6: Universal Periodic Review

Follow up to second UPR of India (13th UPR session): The Indian Government's Experience and Continuing Challenges in addressing Caste Based Discrimination

1. Introduction

India was reviewed for the second time by the Universal Periodic Review (UPR) mechanism of the Human Rights Council on 24 May 2012. The report of the UPR working group (A/HRC/21/10) includes a total of 169 recommendations to the Government of India (GOI). Out of these recommendations, ten are specifically related to caste discrimination and the situation of Dalits.

In India, the Dalits - officially known as Scheduled Castes ("SCs") – constitute 167 million people according to the 2001 national census. A central feature of caste discrimination is the "untouchability practices" stemming from the notion that different caste groups are considered to be "impure" and "polluting" to other caste groups. Consequently, the caste system leads to social exclusion and systematic denial of basic rights of Dalits at all levels in society.

India has a strong range of constitutional provisions and laws that not only ban caste discrimination and "untouchability", but have preventive measures on the discrimination and violence that erupts out of caste-based discrimination. However, effective implementation remains a chronic problem. UN human rights bodies, such as the Treaty Bodies and Special Procedures, have expressed serious concerns and made extensive recommendations on the need for effective measures to address this concern.² Similar concerns were expressed by a range of states during the second UPR of India at the 13th UPR session.

2. UPR recommendations on caste-based discrimination in India (UPR II)

During India's second UPR on 24 May 2012, caste-specific *recommendations* were made by a cross-regional group of states: Thailand, Japan, Ghana, USA, Czech Republic, Germany, Norway, and the Holy See. In addition, Chile, Canada, Luxembourg, Italy, Hungary, Denmark, and Slovenia asked *questions* or made *observations* related to caste and manual scavenging in advance of the review or during the interactive dialogue.³ Thus, a total of 14 states made interventions with explicit recognition of the challenges faced by the Dalit community in India's second UPR.⁴

3. Government of India's responses to UPR recommendations

When India was first reviewed in 2008, only two recommendations related to the issue of caste discrimination, and the GOI did not accept any of these two. It was therefore refreshing to see a proactive response from the GOI regarding the Universal Periodic Review of 2012. The Head of Delegation, Mr. Goolam Essaji Vahanvati, Attorney

¹ The statement is supported by the National Campaign on Dalit Human Rights (NCDHR) India and the International Dalit Solidarity Network (IDSN).

² Such as recommendations by Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD), Special Rapporteur (SR) on violence against [women](#), its causes and consequences; SR on the situation of [human rights defenders](#), SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; SR on [adequate housing](#) as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; SR on the right to food; SR on torture and other cruel, inhuman or degrading treatment or punishment; SR on freedom of religion or belief; and the Independent Expert on minority issues. For a complete list of references see: www.idsn.org/uncompilation

³ [Download a compilation of caste-related observations and recommendations by states during India's second UPR](#)

⁴ The caste-specific observations focused, among other things, on the need for effective monitoring and implementation of laws to protect Scheduled Castes and Scheduled Tribes, access to justice and impunity, disaggregated data on caste, human rights education, child labour and drop-out rates, freedom of religion, the effectiveness of national institutions, violence against women, human rights defenders, and manual scavenging.

General, said during the review process that “India accepted all positive suggestions and constructive criticism in the right spirit and drew attention to a unique addition to the Indian UPR — the evolution of fundamental rights through judicial pronouncements over the years”.⁵

It is heartening to note that the GOI has begun to explore the issue of caste-based discrimination evidenced by the pre-UPR consultations in India. Hopefully this commitment will result in effective consideration and monitoring of the caste-specific recommendations by the GOI in the next UPR cycle, including the recommended mid-term assessment by the State under Review. In this process, the GOI is recommended to ensure full and meaningful participation of civil society.

4. Recommendations on follow up to UPR II recommendations

In response to the UPR II, the National Campaign for Dalit Human Rights (NCDHR) in India has prepared a balance sheet with suggestions on follow up to all caste-specific recommendations in the Report of the Working Group.⁶ In response to the specific recommendations, the following observations should be taken into consideration:

- 1) Effective monitoring and implementation of laws to protect and promote Dalit rights, and strengthening access to justice (e.g. WGR 138.47 (Germany)⁷, WGR 138.75 (Ghana)⁸, WGR 138.73 (Japan)⁹, 138.71. (Thailand)¹⁰ and WGR 138.72. (USA)¹¹:
 - On a priority basis, the GOI should design, develop and implement a National Action Plan to eliminate all forms of discrimination, including caste- and gender-based discrimination. Furthermore, the GOI should appoint a High-Level Committee to review the implementation of the SCs and STs [PoA] Act 1989 Act and Rules, assess the realization of its objectives, take appropriate and speedy action for strengthening of the Act, and conduct of periodic reviews/meetings/submission of the reports under the Act and Rules.¹²
 - National and State Governments should enact equal opportunity and equality laws and other measures that prohibit discrimination in capital market, labour hiring, work place, private enterprises, etc.¹³
 - Disaggregated data on caste- and gender-based discrimination should be collected.
- 2) Human rights education (e.g. WGR 138.163 (Japan)¹⁴):

⁵ <http://www.thehindu.com/news/national/article3453285.ece>

⁶ [NCDHR Balance Sheet on UPR II Recommendations \(May 2012\)](#)

⁷ *Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons (Germany).*

⁸ *Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled tribes and minorities are well achieved (Ghana).*

⁹ *Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes (Japan)*

¹⁰ *Continue its efforts to eliminate discrimination against and empower marginalized and vulnerable groups particularly by ensuring effective implementation of relevant laws and measures through proper and active coordination among line ministries, national and state governments; by extending disaggregated data to caste, gender, religion, status and region; and by increasing sensitization and reducing discriminatory attitudes among law enforcement officers through human rights education and training (Thailand)*

¹¹ *Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens (United States of America)*

¹² See [Proposed Amendments for effective monitoring and implementation of the SC/ST Act](#). Recommendations by the National Coalition for Strengthening of the SC/ST Act (2012):

¹³ The Unorganised Workers Social Security Bill should be adopted without any further delay. Equal attention should be given to Dalit women domestic workers. The recent ILO Convention on domestic workers and rules, 2011 should be given due consideration for subsequent ratification.

¹⁴ *Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far (Japan)*

- Human Rights education should be integrated into the present curriculum. Right to Education (RTE) should have special provisions in addressing issues related to discrimination in educational institutions especially in Government schemes like midday meal scheme and Sarva Shiksha Abhiyan.
- 3) Harmful practices and violence against women (e.g. WGR 138.85 (Chile)¹⁵, 138.88. (Liechtenstein)¹⁶, 138.87. (Holy See)¹⁷ and 138.41. (Canada)¹⁸):
 - The Government of India should evolve and implement a comprehensive strategy to address impunity and ensure criminal justice for Dalit women. Dalit women should enjoy equal access to and share of common property resources, in particular water resources, and provide budgetary support to create common property for their own. The practice of manual scavenging and traditional harmful practices like the *jogini* and *devadasi* systems should be eliminated, and rehabilitation policies and programmes for alternative livelihood and sustenance should be enforced.
 - 4) Reservation policies and freedom of religion (e.g. WGR 138.118 (Holy See)¹⁹, 138.48. and 138.49. (Germany)²⁰, and 138.50. (Netherlands)²¹):
 - Reservation measures must be extended to Dalits of all faiths, especially to Dalit Christians and Muslims, who are presently excluded from the reservation benefits owing to religion-based discrimination. Follow up and implementation of recommendations by the UN Special Rapporteur on freedom of religion.
 - 5) Protection of human rights defenders, incl. Dalits and Adivasis (e.g. WGR 138.43. (Czech Republic)²², 138.68. (Norway)²³ and 138.67. (Spain)²⁴):
 - The GOI must enact a law and promote appropriate Legal Protection Mechanisms for the protection of the Rights of Dalit human rights defenders. These mechanisms do not exist at present and should include targeted actions in favour of Dalit human rights defenders.
 - 6) Cooperation with UN human rights mechanisms (e.g. 138.65. (Slovenia)²⁵, 138.66. (Belgium)²⁶, and 138.70. (Lao People's Democratic Republic)²⁷:

¹⁵ Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honour killings (Chile)

¹⁶ Strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls (Liechtenstein)

¹⁷ Continue to promote the rights of women in their choice of marriage and their equality of treatment independently of caste and tribe or other considerations (Holy See)

¹⁸ Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures adopted for rape cases (Canada)

¹⁹ Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other caste (Holy See)

²⁰ Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities (Germany); and Reconsider laws and bills on religious conversion in several Indian states in the light of freedom of religion or belief in order to avoid the use of vague or broad terminology and discriminatory provisions (Germany).

²¹ Reconsider current local legislation on freedom of religion, that uses vague or broad terminology and discriminatory provisions, and impedes the possibility for conversion of faith for those who wish to do so (Netherlands)

²² Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes (Czech Republic)

²³ Implement the recommendations made by the Special Rapporteur on the rights of human rights defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women's and children's rights, defenders of minorities rights, including Dalits and Adivasi, and right to information activists (Norway)

²⁴ Adopt the recommendations of the Special Rapporteur on the situation of human rights defenders and the necessary measures to its recognition and protection, guaranteeing that the human rights violations are timely, effectively and independently investigated (Spain)

²⁵ Implement Treaty Body recommendations and develop a National Action Plan to eliminate all forms of discrimination (Slovenia)

²⁶ Continue cooperating with Special Procedures and accept in particular requests for visits from Special Rapporteurs (Belgium)

²⁷ Continue cooperating with the United Nations and other international organisations and share good experience and practices with other countries in order to overcome the remaining challenges (Lao People's Democratic Republic)

- The GOI should be commended for extending a standing invitation to UN Special Procedures, and cooperating constructively with a number of rapporteurs over the last few years. However, the GOI should strengthen its follow-up to the visits and communications sent by the UN Special Procedures.²⁸ Furthermore, GOI is overdue in its reporting several to treaty bodies.²⁹

5. Continuing challenges

In the spirit of a constructive dialogue as a result of the UPR, the GOI is recommended to reconsider its position on some of the continuing challenges which persist, in order to achieve full recognition of caste-based discrimination as an international human rights concern.

- (1) The GOI, as before, continues to harp on certain aspects of its governance system, that is, India is the largest democracy in the world and that it still faithful to its democratic tradition and process. Accordingly, it claims to have produced several progressive laws relating to social reforms and that these are quite sufficient to deepen democracy and address human rights concerns. What is missed out in this claim is the difference between *de jure* legislation and *de facto* implementation of laws to protect and promote the rights of the most vulnerable groups, as noted by several states during the UPR II.
- (2) Dichotomy between the GOI's domestic position and UN position: India has the strongest legal and executive infrastructure to deal with caste based discrimination and violence.³⁰ Despite these exemplary efforts, the GOI continues to maintain a defensive position on the issue of caste-based discrimination at the UN, instead of engaging in a constructive dialogue on ways to tackle these enormous challenges and share its good practices in this regard.

6. Urgent need for Global Leadership:

In the current atmosphere of fragile governments across the southern nations, India – being a prominent force in South Asia and the world – should re-consider its international position on caste-based discrimination. It is not simply a domestic issue which affects India, but a major global issue which is prevalent in all South Asian countries. At the same time caste-analogous discrimination is affecting communities in Japan, Yemen, Africa, and the diaspora. The complex, yet unique nature of the form of discrimination is interrelated with many forms of human rights violations, which are prohibited by a range of international human rights instruments.

The GOI should therefore take up its responsibility by fully committing to addressing this issue under international human rights law and make effective use of human rights mechanisms like the UPR to prevent and address it. Given its population, size, economic power, and geo-strategic position, India may present itself as a model for other countries, especially in South Asia, in flagging off caste-based discrimination as an issue to be addressed nationally and globally. This is the main challenge ahead.

²⁸ Since the first UPR, four visits have been undertaken (freedom of religion in 2008; toxic waste in 2010; human rights defenders in 2011; and summary executions in 2012), and one confirmed visit has been postponed (sale of children). The GOI has still not responded to the request for follow-up information by the SR on freedom of religion. According to the [compilation of UN information](#), two other visits by the mandate holders on adequate housing and arbitrary detentions have been agreed in principle. Still, seven mandate holders have requested visits to India, including the SR on torture, racism, water and sanitation, trafficking, and violence against women.

²⁹ The GOI is overdue in its reporting several to treaty bodies, including CERD (since 2010), CESCR (since 2011), HR Committee (since 2001), CEDAW (since 2011), and CRPD (since 2010) as reflected in the [compilation of UN information](#). Most alarming is the serious reporting delay to the Human Rights Committee, especially given the many concerns expressed about the impairment of civil and political rights in India. Furthermore, the GOI has not responded to the specific follow-up requests by CERD, which were due in 2008, which included two subject matters related to caste discrimination: a) Acts of sexual violence and exploitation against Dalit and tribal women, and the right of ownership by members of tribal communities over lands traditionally occupied by them; and b) Complaints about acts against members of scheduled castes (SC) and scheduled tribes (ST).

³⁰ E.g. the constitutional provisions such as Article 14 that prohibits “untouchability”, the Protection of Civil Rights (PCR) Act, 1955 that ensures punitive action for “untouchability” practices, the Scheduled Caste/Schedule Tribe Prevention Of Atrocities Act 1989 (POA 1989), the Special Courts enacted to deal with atrocity cases, and budget policies, which ensure special allotment of financial resources, such as the Special Component Plan for Dalits and Tribal Sub Plan for Adivasis