

CERD 74TH SESSION - PAKISTAN

Suggestions for inputs to the List of Issues (October 2008) submitted by the International Dalit Solidarity Network (IDSN)

CASTE-BASED DISCRIMINATION IN PAKISTAN

Background information

When the Government of Pakistan (GoP) is going to be reviewed by the Committee on the Elimination of Racial Discrimination (CERD) at its 74th session in February/March 2009, the Committee Members are urged to take into consideration the situation of the “lower caste” Hindus in Pakistan. This part of the population, officially known as “Scheduled Castes”, is the single largest group falling victim to caste based discrimination including the practise of “untouchability” and the poorest of the poor in Pakistan.

New research on caste-based discrimination in Pakistan (“Long Behind Schedule”: A study on the plight of Scheduled Caste in Pakistan, 2007) provides the first systematic documentation on the status of “lower caste” Hindus in Pakistan, their socio-economic problems, legal and constitutional protections, and the issues of discrimination on the basis of caste, religion and lower status in contemporary Pakistan.¹ The study focused on Pakistan’s “lower caste” Hindus, although caste issues also play a role within the 160 million Muslim population. Hindus and Christians in Pakistan, as religious minorities, already suffer discrimination in an Islamic society. For the Scheduled Castes there is double discrimination, because they are discriminated against within the Hindu community by the Hindus themselves. Official statistics claim that Scheduled Castes consist of 0,25% of Pakistan’s total population which amounts to approximately 330,000 persons (Pakistan Census Report 1988). This number, however, has been widely contested; representatives of Scheduled Castes claim that numbers have deliberately been understated and that the divide between upper and lower caste Hindus is not comprehensive, thus suggesting that numbers may be as high as 2,000,000.

Today, human rights defenders are under increasing threat in Pakistan, despite the change in Government. The Special Rapporteur on the situation on human rights defenders expressed grave concern about this situation in her report from 2007 (A/HRC/7/28/Add.1) This is in relation to all human rights issues, including descent-based discrimination. It is absolutely crucial that this aspect of transition is reflected in the Committee’s review of Pakistan, both the potential threats to safety and fundamental rights but also the opportunities that this new process brings to minorities and marginalized communities in Pakistan.

CERD General Recommendation XXIX

CERD General Recommendation XXIX on descent-based discrimination (2002) recommends under article 1, paragraph 1 of the Convention that States parties take measures of a general and specific nature to address this form of discrimination. The GoP, as an affected country and a signatory to the Convention, should recognize this form of discrimination takes place in the country and should seek guidance from this framework in order to prevent human rights violations in the country as an effect of caste-based discrimination.

Generally in the 15th-20th periodic state report (CERD/C/PAK/20) presented by the Government of Pakistan there is very little information on the implementation of the national laws, policies and programmes. The Committee Members are therefore asked to take note of the following information and questions when preparing the List of Issues for the examination of Pakistan at the 74th session of CERD.

Questions based on the state report (15th-20th periodic report)

¹ The national study was undertaken by PILER, a non-governmental, non-profit institution, which started as an initiative of individuals from the trade unions, academia and professionals from various fields of life who were concerned about the plight of working people in Pakistan. The study was part of a regional research project on caste-based discrimination in South Asia conducted by the Indian Institute for Dalit Studies (IIDS) in association with the International Dalit Solidarity Network (IDSN), and funded by the Danish development agency DANIDA. The focus of this study was on Pakistan’s Scheduled Castes residing in lower districts of Sindh and Southern Punjab in Pakistan. Download the study: www.idsn.org

Economy (p. 4)

The state report does not mention the exclusion of marginalized communities economically and socially. Scheduled Castes in Pakistan are the worst victims of discrimination on the basis of caste, descent and occupation and are in a dually disadvantageous position as they are Hindus, and also "lower castes". They are socially and physically excluded from the mainstream as they are compelled to segregated housing and are denied social, political and economic rights. Apart from being treated as "untouchables" and humiliated in public, the practice of "untouchability" is demonstrated to make sure that Scheduled Castes live in separate colonies, they are served in separate crockery, and they cannot sit inside with upper castes. "Untouchability" is obvious in all private and public spheres of life.

- **How does the GoP intend to ensure that Scheduled Caste peasants are given their due share of agricultural productions, so that labourers are not subjected to bonded labour?**
- **How does the CoP provide housing and shelter to Scheduled Castes?**

General political structure (p. 5)

Whereas the state report mentions that 10 seats have been reserved in the National Assembly for minorities, the political reality is that the marginalization of Scheduled Castes in Pakistan is obvious within the mainstream political process. None of the major political parties have given any importance to Scheduled Castes representation when deciding on awarding party tickets during general elections or elections for local government. Muslims mainly occupy the political space of the country irrespective of what party and area they belong to. However, almost all major political parties have their minority wings, which are dominated by upper caste Hindus, and middle class Christians, leaving Scheduled Castes and the poor sections of Christians to have an insignificant role in it. Indifferent attitude of the major political parties towards scheduled castes is reflective from the party policies and actions throughout the country. The study shows that there was only a single Schedule Caste member, Partab Bhil, in the National Assembly and none in the Senate and the provincial assembly of Punjab.

State and political parties must ensure the presence of Scheduled Caste representatives in the National Assembly, provincial assemblies and the Senate. For the past 34 years, the reserved seats for religious minorities have not increased in conjunction with the increase in the population, though the general seats usually occupied by the majority population have been increased three-fold over the same period. To make the political system more inclusive, it should be mandatory for all political parties, through amendments in the Political Parties Act, to allot a certain percentage of party tickets and party positions to Scheduled Caste representatives.

- **To what extent has the GoP taken measures to secure that Scheduled Castes are granted meaningful participation in the political process?**
- **How will the GoP ensure that women can take their assigned seats in the Assembly and the Senate?**

Constitutional, Legal and Administrative Framework (p. 19)

In the state report (p. 20) it is stated that: *"The preamble of the constitution not only aims at outlining the basic objectives of the Islamic Republic of Pakistan and the protection of all factions of the society but also attempts to define the minority subjects of Pakistan. It says "wherein adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures. Where both the elements that constitute a minority according to the preamble of the Constitution of Pakistan, also falls within the purview of the definition of the term "race", as has been defined in the Article 1 of CERD. So, any and almost all the protections provided for in Pakistan's constitution, in fact are granted to all the minority races living in the country, and any race/minority group can benefit from the same."*

However, while the GoP has constitutional safeguards and have enacted laws intended to reverse some of the effects of discrimination based on caste, it has not made a serious effort to fully implement or enforce those laws. Contrary to the fundamental democratic principles contained in the Constitution, much legislation and many policies in Pakistan are discriminatory in nature, which deprive citizens of equal rights. The majority of the discriminatory laws have been introduced during military regimes with some policies also adopted by so-called democratic governments. There is hardly any affirmative action aimed at uplifting Scheduled Castes

from their present backward situation. Until any direct and indirect efforts have not been taken by the government, it would be considered to be half hearted and bear no results.

A new census has been scheduled to take place in Pakistan. However, no efforts have been made to ensure accuracy of the data for minorities and Scheduled Castes in 2008. Moreover the government has failed to provide a segregated data on the socio-economic conditions of these marginalized groups without which it is impossible to assess and redress issues concerning food security; employment; living conditions; civic facilities; per capita income enjoyed by schedule caste; and religious minorities.

- **Does the GoP intend to take measures of a general and specific nature to protect those discriminated against on the basis of caste in accordance with CERD GR XXIX?**
- **Will the GoP include disaggregated data on caste and other minorities and pay adequate attention to their representation in the national census?**

Practical Availability of these Rights (p. 21)

In the state report (p. 21) it is mentioned that: *“A citizen can move to any court of competent jurisdiction in case his /her fundamental rights are infringed. However, low literacy and lack of awareness of one’s rights does hamper resort to such action. Also approaching the judiciary through a lawyer is an expensive proposition, in terms of time, effort, finances and physical distance. Courts, however, also take suo-moto action on the infringement of fundamental rights. The situation is remedied to an extent through steps taken both by the Government and the civil society. The process of democratization and the introduction of measures for the protection and promotion of human rights in Pakistan have reinforced the capacity of the Government and state organs to implement the provisions of ICERD.”*

The marginalized sections of Pakistan have suffered the most in the circumstances arising out of the Constitution being made dysfunctional through the imposition of martial laws, emergencies and amendments. In this period, the judiciary was tamed through the abuse of power and denial of any independence which rendered it unable to help enforcement of rights guaranteed to citizens in the Constitution. The court procedures remained blind to caste, religious and racial discrimination. Citing the caste of an applicant or petitioner and respondent is a common practice in the official court documents and remains checked.

At the national level, the GoP should reinforce a quota system in the judiciary, the police and other law enforcement departments for Scheduled Castes must be established if the state and other actors are sincere in bringing this group out of the present state of denial and deprivation.

The current threats against human rights defenders is a major obstacle to the enjoyment of the provisions under the ICERD. We would suggest to include the safety and protection of human rights defenders in all reports and communications to UN mechanisms, including CERD. The independence of judiciary also remains a crucial issue, for the protection of all human rights in Pakistan, in particular civil and political rights.

- **How will the GoP take effective steps to ensure the safety and protection of human rights defenders?**
- **What steps will be taken by the GoP to reinstate the independence of the judiciary in Pakistan?**
- **What measures will the GoP take to end the practice of citing the caste of an applicant or a petitioner in the official court documents?**

Overview of some Legal and Practical Measures which give Effect to the Provisions of the Convention (p. 22)

While the GoP states in the state report that it is willing to try to reverse some of the effects of discrimination, it has not made a serious effort to fully implement or enforce those laws. In fact, nothing has been done to discourage discrimination based on caste and race. One example is the extensive problem with bonded labour in Pakistan. A report by Anti-Slavery International (1996) documented that bonded labour is prevailing in Pakistan despite the 1992 Act, and large numbers of labourers, including children, continue to be put into bondage in exchange for loans. The Government has failed to fully implement the National Policy and Plan of Action (2001) for the abolition of Bonded Labour and Rehabilitation of freed bonded labourers (an extension of the 1992 Bonded Labour System Abolition Act) created to address the needs of released bonded labourers’ children, the majority of whom are Scheduled Castes. A fund was created as part of the

plan of action and six years later a substantial portion of it remains unused and held by government functionaries, as the released bonded labourers continue to live under inhumane conditions in camps on the outskirts of Hyderabad.

Another example involves the Government of Pakistan's failure to implement the six percent quota reserved for Scheduled Castes in government services positions. A job quota was imposed for the Scheduled Castes in Pakistan from 1956 until 1998. In effect, several educated Dalit youths were appointed to some government jobs and were enrolled in the Pakistan Army for the first time. However, this provision was only partially implemented and it was removed in 1998. Since then President Musharraf, the federal and Sindh Public Service Commissions have been allocating more seats based on merits to Scheduled Castes, but there is still poor representation of Scheduled Caste in the political sphere. The government report fails to provide any data on this, which indicates that the Scheduled Castes and minorities were not properly represented in the government jobs or senior public services in Pakistan.

- **Does the GoP intend to fully implement the National Policy and Plan of Action (2001) for the abolition of Bonded Labour and Rehabilitation of freed bonded labourers?**
- **Will the GoP restore the six percent job quota for Scheduled Castes in the government services positions?**

Social, Economic and Cultural Development of Minorities (p. 30)

In the state report (p. 30) it is mentioned that: *"Articles – 20, 21, 25, 26, 27, 28, and 36 of the Constitution of Pakistan provide full protection to all citizens of Pakistan without any discrimination of colour, creed, culture, language or gender."*

However, social, economic and cultural development cannot be promoted until the end of pervasive discriminatory practices in the country. Apart from being treated as "untouchables" and humiliated in public, the practice of "untouchability" is demonstrated to make sure that Scheduled Castes live in separate colonies, they are served in separate crockery, and they cannot sit inside with upper castes. "Untouchability" is obvious in all private and public spheres of life. Moreover, the Scheduled Caste population in Pakistan is overwhelmingly rural in nature. As in rural areas no industry or other business centres are located, most of the population depends on agriculture for their livelihood, and by working on share cropping conditions, they are vulnerable to bonded labour and other exploitations by the landlords. Vulnerable and marginalized groups of the population such as women, children, religious minorities, Scheduled Caste, bonded labourers also make the majority of illiterate population within the rural districts.

- **How does the GoP intend to pay adequate attention to affected communities in all assessments, including data collation, planning, and implementation of any human rights, development and humanitarian programmes?**

Ministry of Minorities Affairs (p. 30)

It is declared in the state report (p. 19) that a Ministry of Minority Affairs has been established in 2004 with the following functions:

- i) Safeguarding the rights of minorities;
- ii) Protection of minorities against discrimination;
- iii) Implementation of Pakistan's obligations in respect of minorities under various international agreements;
- iv) Policy and legislation with regard to Evacuee Trust Property Board

Nevertheless, in Balochistan, NWFP provinces and at Federal level, no minority persons have been assigned to the portfolios of Minority Affairs. No person from the category of Scheduled Castes has been taken as a Minister in the provincial / federal government during the last 61 years, except Jogindar Nath Mandal. The problem of deprived people such as Scheduled Castes is that they are kept unheard and excluded from political participation.

Moreover, the GoP has failed to form any Enquiry or Permanent Commission for minorities according to the Paris Principles to investigate and provide remedies against the gross and systematic human rights violations against racial, ethnic and religious minorities.