



DURBAN REVIEW CONFERENCE AND CASTE-BASED DISCRIMINATION

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Background

Caste-based discrimination is a form of discrimination prohibited by international human rights law, which subjects an estimated 260 million people globally to discrimination on the grounds of work and descent. This form of discrimination is an entrenched human rights violation, which is mainly found in South Asian countries but also occurs in communities in Japan, Yemen, some African countries and Diaspora communities. Victims suffer a hidden apartheid of segregation, modern-day slavery and other forms of discrimination as a result of having been born into a marginalized group or caste. Caste discrimination constitutes one of the most serious and widespread global human rights challenges today, affecting large proportions of societies in many regions of the world, which continues to function as a deeply rooted system of grave human rights violations. Several human rights bodies have addressed the issue of caste-based discrimination, which due to its nature, severity and scope, should be taken into consideration not only in the Durban Review Conference and its preparatory meetings and follow-up mechanisms, but by all relevant UN human rights bodies.

Recommendations for the Durban Review Conference

While the Durban Declaration and Plan of Action (DDPA) does not refer explicitly to caste-based discrimination, it includes several provisions that recognize the importance of the problem of racism and xenophobia based on descent. Several UN bodies, in particular the United Nations Committee on the Elimination of Racial Discrimination (CERD), have repeatedly reaffirmed that caste falls under the aegis of the Race Convention (see below). The Review Conference should build on this practice by considering how to tackle the causes and consequences of this kind of discrimination and by addressing the problem of a lack of political will in some of the countries with the most engrained caste systems. States Parties are therefore encouraged to ensure that the current spaces available in the draft outcome document are maintained and to work for the inclusion of relevant language into the final outcome document (see separate paper with suggestions for concrete text inputs).

The endorsing organizations recommend the following recommendations for the Review Conference:

1. Discrimination based on work and descent should be recognized as an expression of contemporary manifestations of racial discrimination under the existing DDPA;
2. Persons affected by this form of discrimination, including the degrading practice of “untouchability”, should be explicitly acknowledged as having been subjected to perennial and persistent forms of discrimination and abuse on this basis;
3. The Review Conference should include a reference to CERD General Recommendation No. 29, thereby affirming the Committee’s interpretation of “descent” in article 1(1) of the ICERD, and should recommend this framework as a basis for framing national government policies in affected countries;
4. The Review Conference should tackle the causes and consequences of this kind of discrimination and must regret the continued lack of political will in countries with the most ingrained caste systems;
5. All States Parties should have National Plan of Action to implement the DDPA, and its implementation should be ensured by special monitoring mechanisms involving the rights holders to ensure accountability and transparency;
6. The Durban Review Conference should recommend follow-up on the work that the former Sub-commission had carried out on discrimination based on work and descent, in particular the draft principles and guidelines for the effective elimination of this form of discrimination, and promote the use of this framework;

7. Discrimination against Dalit women and children should be recognized as falling under the consideration of multiple forms of discrimination and corrective measures should be initiated at all levels accordingly in all affected countries;
8. Disaggregated data should be made available on the number of people affected by caste or descent based discrimination in all affected countries;
9. All UN agencies and other international agencies should ensure adequate focus on the issues of social equity and education with special emphasis on unique features of discrimination and exclusion, due to prevalence of this form of discrimination.

World Conference Against Racism and caste discrimination

The issue of caste-based discrimination was not addressed in the Durban Declaration and Programme of Action (DDPA) adopted by the World Conference Against Racial Discrimination, Xenophobia and Related Intolerance (WCAR) in Durban, South Africa. Nevertheless, the outcome document from 2001 refers to discrimination based on descent in several paragraphs, which with CERD's interpretation of the term and its subsequent practice would mean that caste-based discrimination should be considered as a form of discrimination to be reviewed in the Review Conference.

Despite this lack of official recognition, the issue of discrimination based on caste and related forms of discrimination reached unprecedented levels of international prominence and media exposure during the WCAR and the preceding NGO Forum, due to the high degree of organization and visibility of the Dalit caucus.

Caste, race and descent

Caste may not be race, but it does not mean that there is no discrimination on this ground. The argument that caste-based discrimination cannot be equated with racism is no reason for rejecting the consideration of this serious human rights violation by relevant UN mechanisms. The UN Committee on the Elimination of Racial Discrimination (CERD) has affirmed that the 'descent' limb of article 1 of the Convention encompasses situations of caste-based discrimination and analogous forms of inherited social exclusion. In General Recommendation XXIX on 'descent-based discrimination' adopted on 22 August 2002, the Committee:

- confirms "the consistent view of the Committee that the term 'descent' in Article 1, paragraph 1 of the Convention does not solely refer to 'race' and has a meaning and application which complements the other prohibited grounds of discrimination"; and
- reaffirms that "discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights".

Subsequent practice by CERD has affirmed this interpretation in several country reviews.¹ Other UN treaty body committees, such as the CESCR, CEDAW, CAT and the CRC have also addressed caste-based discrimination when reviewing relevant state reports, thus confirming that caste-based discrimination falls within the purview of these instruments as well. The Special Rapporteur on racism has extensively addressed discrimination on grounds of caste and other systems of inherited status as implicit in his mandate. Other UN Special Procedures have also on several occasions expressed concern about caste-based discrimination in reports and communications with governments.²

In a comprehensive study mandated by the former Commission on Human Rights (resolution 2005/109), the UN Sub-Commission on the Promotion and Protection of Human Rights has prepared draft principles and guidelines to effectively eliminate "discrimination based on work and descent", which refer to any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birth place, place of residence, dialect and accent.

¹ In the course of reviewing state party reports, CERD has expressed explicit reliance on the 'descent' limb of article 1 in order to address the situation of Dalits in India, Nepal, Bangladesh, Pakistan, Yemen, as well as the analogous situations of the Burakumin in Japan. Concluding observations have also been made by the Committee in respect of Mali, Senegal, Madagascar, Mauritania, Burkina Faso, Mauritius and Somalia.

² UN Special Rapporteurs have several times raised the issue of caste-based discrimination on issues related to minorities, violence against women, torture, housing, right to food, freedom of expression and belief, education, human rights defenders, etc.