

JOINT NGO SUBMISSION BY THE DALIT SOLIDARITY NETWORK UK AND THE INTERNATIONAL DALIT SOLIDARITY NETWORK

RELATED TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR 13TH UNIVERSAL PERIODIC REVIEW SESSION SCHEDULED FOR MAY-JUNE 2012

I. Executive summary

This report is prepared jointly by the Dalit Solidarity Network UK (DSN-UK)ⁱ and the International Dalit Solidarity Network (IDSN)ⁱⁱ for the Universal Periodic Review (UPR) of the United Kingdom of Great Britain and Northern Ireland (UK) at the 13th session in the second UPR cycle. The report focuses specifically on caste-based discrimination in the UK, where an estimated 250,000 Dalits live. It draws on the findings of independent research reports, studies, cases, and recommendations of the UN human rights bodies.ⁱⁱⁱ

The UPR was developed to review States' fulfilment of their obligations under international human rights treaties, universal human rights standards, and voluntary commitments on human rights. In resolution A/HRC/RES/16/21 the Human Rights Council decided that the second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under Review (SuR). This report will therefore include information about developments in the SuR in relation to the process to prohibit caste discrimination in the UK since the first review (section II). Information on the implementation of human rights will be considered in section III, followed by recommendations and questions to be asked in the interactive dialogue.

II. Developments in the UK

Prohibiting caste discrimination in the UK

Since the first review of the UK in April 2008, an increasing number of reports and cases have demonstrated the fact that caste discrimination exists in the country and needs to be outlawed. Furthermore, the UN Committee on the Elimination of Racial Discrimination (CERD) has recommended the UK Government to prohibit caste discrimination in 2003 and 2011. Despite clear evidence and growing pressure from the public and political sphere over the last years, the government has hesitated to take any decision on whether or not to outlaw caste discrimination in the UK.

Despite evidence that caste discrimination exists in the UK, the Government is still reticent to invoke the clause outlawing caste discrimination in national legislation. In 2005 the Labour Government announced a two-stage overhaul of the UK's equality framework, leading to a new Single Equality Act. The Single Equality Act was to consolidate and harmonise a complex raft of equality legislation prohibiting discrimination on various grounds.^{iv} Since 2005, Dalit organisations have campaigned for the inclusion of 'caste' as a discriminatory characteristic in the Single Equality Bill. In 2010 the Government responded to this pressure and decided to investigate the problem further. At a historic meeting in the House of Lords on 4 February, it was decided to amend section 9(5)(a) in the Equality Act 2010 "so as to provide for caste to be an aspect of race". The decision allowed the introduction of secondary legislation by order of a Minister, if there was evidence of caste discrimination in the UK. The Government therefore commissioned independent research in March 2010 to assess the existence the caste-based discrimination; the nature, extent and severity of caste prejudice, discrimination and harassment in Britain; and the implications for Government policy before enforcing the amendment.

The study, which was published in December 2010, concluded that the current provisions in the Equality Act 2010 would not sufficiently cover caste discrimination and harassment as effectively as caste-specific provisions would. The report recommended that "extending the definition of race to include caste would provide further, explicit protection" and that "non-legislative approaches are less likely to be effective in the private sector and do not assist those where the authorities themselves are discriminating. Relying on the Indian community to take action to reduce caste discrimination and harassment is problematic."^v

III. Promotion and protection of human rights on the ground: implementation of international human rights and national legislation

Caste discrimination in the UK

Evidence shows that caste discrimination manifests itself in different forms in the UK. Dalits face discrimination in the sectors of employment, healthcare, education, provision of goods and services and politics, and in access to Hindu temples.^{vi} While individuals of Dalit origin and their descendants no longer pursue the culture-specific menial ('polluting') occupations traditionally associated with their caste status, the 'untouchability mindset' persists in the form of direct and indirect discrimination in the UK (as per completion of this report in end November 2011).

Caste groups maintain their communities intact due to traditionally arranged marriages within particular castes, which have led to the continuation and development of communities along strict caste lines. The report "No Escape: Caste Discrimination in the UK" by DSN-UK in 2006 was the first national study to document the problem, and it found that one in every two Dalits identified themselves and were identified by their caste. Many of the respondents in the study observed that within the Indian community, caste is their identity. 85% felt that Indians actively practiced and participated in the caste system. The study furthermore documented that ancestry is identified in a number of ways, including on the basis of name (although names may be changed), place of origin, former occupation, family members' occupations, place of worship, education, social circle and on the basis of community knowledge.

Caste remains invisible in much of British society, but steps out from the shadows when a marriage is arranged, a child is born or a new professional or business opportunity emerges in the Indian Diaspora community. In a recent court case, an Indian couple became the first in Britain to claim 'caste' discrimination, saying they were forced from their jobs following their marriage.^{vii} The couple, who belong to different caste groups, has claimed unfair constructive dismissal and cited caste discrimination as the grounds in a case, which was first heard at the Employment Tribunal in August 2011. The 10 day hearing ended with the tribunal judge re-listing the case for a further 15 days – now scheduled for March 2012.

Discrimination on the grounds of caste remains outside existing anti-discrimination provisions in the UK. In 2010 a study was undertaken by the National Institute of Economic and Social Research (NIESR) with the purpose to identify whether caste discrimination and harassment exists in relation to aspects covered by the UK Equality Act 2010, i.e. employment, education and the provision of goods and services.^{viii} The report concluded that evidence of caste discrimination and harassment of the type covered by the Act in relation to work (bullying, recruitment, promotion, task allocation); provision of services; and education (pupil on pupil bullying) exists.^{ix} The study also identified evidence suggesting caste discrimination and prejudice which may fall outside the Equality Act 2010 in relation to voluntary work, harassment, demeaning behaviour, and violence. The Government has yet to respond to the findings of the commissioned report, although they have had considerable time to do so.

At a meeting at the House of Lords in January 2011 the Minister for Equalities, Lynne Featherstone MP stated that the Government would respond in due course and that response would be 'proportionate and

reasonable'. She continued that 'legislation has not been ruled out'. To date (November 2011, 11 months after the Report was published there has been no response.

Several other studies and scholars have investigated the problems of caste discrimination in the UK. It has been estimated that at least 250,000 Dalits live in the UK, but the exact number is unknown. The absence of data points to the need for introducing detailed research by the government and disaggregated data in any future census.

UK response to recommendations by UN human rights mechanisms

Human rights mechanisms have on a number of occasions addressed the issue of caste discrimination in the UK, calling for the UK Government to amend its legislation, including the UN Committee on the Elimination of Racial Discrimination (CERD), the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the UN Sub-Commission on the Promotion and Protection of Human Rights.

The UN Committee on the Elimination of Racial Discrimination (CERD) has twice recommended the UK Government to enact a prohibition against caste discrimination in 2003 and in 2011 to invoke Clause 9(5)(a) of the Equality Act, recalling CERD General Recommendation 29 on "descent" in article 1(1) of the Convention (2002). In this General Recommendation, the Committee reaffirms that descent-based discrimination encompass discrimination on the basis of caste and analogous systems of inherited status as a violation of the Convention.^x In the 2003 Concluding Observations, the Committee recommends the UK Government that "a prohibition against such discrimination be included in domestic legislation" and requests information on this issue in the next periodic report.

In the combined 18th and 19th reports submitted in 2010, the UK Government briefly responds to CERD's recommendation from 2003 but does not provide any substantial information as requested by the Committee. During the 2011 review of the UK Government at the 79th CERD session, the UK delegation said that there was "no consensus" on the evidence that caste discrimination exists, and that the Government had not yet taken a decision on the findings of the government-commissioned report from 2010.

In conclusion of this review, CERD called on the State party to prohibit caste discrimination in the Concluding Observations issued at its 79th session (CERD/C/GCR/CO/18-20):

"30. While noting the assertion of the State party that there is no evidence in the State party of the existence of caste-based discrimination to any significant extent in the fields covered by the Convention, the Committee has received information from nongovernmental organizations and from recent research studies commissioned by State party institutions that such discrimination and harassment in violation of the rights to work, to education and to the supply of goods and services does exist in the State party (article 2).

Recalling its previous concluding observations (CERD/C/63/CO/11 para. 25) and its General Recommendation 29 (2002) on descent, the Committee recommends that the Minister responsible in the State party invoke section 9(5)(a) of the Equality Act 2010 to provide for "caste to be an aspect of race" in order to provide remedies to victims of this form of discrimination. The Committee further requests the State party to inform the Committee of developments on this matter in its next periodic report."

Furthermore both the UN Special Rapporteur on contemporary forms of racism and the UN Sub-Commission on the Promotion and Protection of Human Rights have taken note of the existence of discrimination on the basis of work and descent – the UN terminology for caste discrimination – in the UK diaspora communities. In his annual report to the Human Rights Council in June 2011 (A/HRC/17/40), the UN Special Rapporteur on contemporary forms of racism identified amendment of the UK Equality Act 2010 as a “good practice”, presupposing that this amendment would be enforced. He recommends governments to enact specific legislation to outlaw direct and indirect discrimination against affected groups in accordance with the general measures contained in CERD General Recommendation 29.

In an expanded working paper, made by two experts of the former UN Sub-Commission on the Promotion and Protection of Human Rights in 2004 (E/CN.4/Sub.2/2004/31), it is noted that discrimination based on work and descent continues, to a greater or lesser extent, to affect diaspora communities whose original cultures and traditions include aspects of inherited social exclusion. In the UK, this relates to intermarriage between castes, commensality (i.e. the act or practice of eating/drinking together), access to places of worship, employment conditions, discrimination in access to political participation, and the role of the media.

IV. Implementation of accepted UPR recommendations

In the course of the Universal Periodic Review of the UK in 2008, the issue of caste discrimination was not raised. In the Report of the Working Group (A/HRC/8/25), the only accepted recommendations relevant in this context are recommendations no. 9 by India and no. 23 by Egypt.

9. Set up a strategic oversight body, such as a Commission on Violence Against Women to ensure greater coherence and more effective protection for women (India)

In the UK Government’s response to the recommendation (A/HRC/8/25/Add.1), it accepts this recommendation and explains that the Equality and Human Rights Commission was established in 2007 to promote equality, diversity, and human rights, and to provide coherent, accessible advice and support for individuals on all discrimination issues, including violence against women. However, despite the Commission’s mandate to promote equality in the UK, it has so far not actively supported the work to eliminate caste-based discrimination. The Commission may also assist the UK Government in developing and implementing a comprehensive national strategy to eliminate caste discrimination with the participation of affected communities, in accordance with the provisions in CERD General Recommendation 29. Such an action plan could take guidance from the Draft UN Principles and Guidelines on the effective elimination of discrimination based on work and descent, which is a framework proposing general and special measures to be taken by governments to eliminate this problem.^{xi}

Recommendation:

- *The UK Government should extend the mandate of the Equality and Human Rights Commission to provide advice and support for individuals that experience caste discrimination; conduct formal investigations where there is evidence of unlawful discrimination on the basis of caste; and promote support awareness raising initiatives to prevent caste discrimination in e.g. the employment and education sectors.*
- *The UK Government should develop and put into action a comprehensive national strategy, with the support of the Equality and Human Rights Commission, and enact affirmative action programmes to educate the general public on the situation of victims of caste-based*

discrimination, including the law against caste discrimination when adopted, targeting the judiciary, schools, work places, the public sector, etc.

23. To enhance the programmes aimed at addressing socio-economic inequalities, from a human rights perspective in fulfilment of its obligations under the International Covenant on Economic, Social and Cultural Rights. (Egypt)

In the UK Government's response to the recommendation (A/HRC/8/25/Add.1), it accepts the recommendation and states that it has implemented it, and will keep the matter under review.

As a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UK Government is responsible for preventing and addressing caste discrimination which constitutes a violation of article 2 of the Covenant, as affirmed in CESCR General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights.^{xii} In the General Comment, the Committee reaffirms that the prohibited ground of birth (para. 2.2. of the ICESCR) includes descent, especially "on the basis of caste and analogous systems of inherited status".

Recommendation:

- *The UK Government should take steps to prevent, prohibit and eliminate caste-based discriminatory practices and act against dissemination of ideas of superiority and inferiority on the basis of caste in fulfillment of its obligations under the ICESCR, as recognized in CESCR General Comment No. 20.*
- *The UK Government should immediately invoke Clause 9(5)(a) of the Equality Act to legislate for prohibition against caste discrimination, as recommended by the UN Committee on the Elimination of Racial Discrimination (CERD) in 2003 and 2011,^{xiii} in order to effectively address socio-economic inequalities and discrimination based on caste.*

V. Recommendations

The Government should, without further delay, trigger the power already included in the Equality Act 2010 in accordance with its obligations under the International Convention on the Elimination of Racial Discrimination (ICERD), and as recommended by CERD Committee in their review of the UK in August 2011..

The Government has had considerable time to consider the findings of the commissioned report and give a 'reasonable and proportionate' response to the evidence that caste-based discrimination exist in the UK (as per the completion of this report in end November 2011). The continuing delays by the Government ignore the sufferings and abuse of people in the UK who experience caste discrimination and go against the will of the UK Parliament, which has declared caste discrimination to be unacceptable.

- *The UK Government should, without any further hesitation, immediately adopt the amendment to prohibit caste discrimination in the Equality Act 2010 in accordance with its international obligations under the ICERD, and as specifically recommended by CERD in 2003 and 2011.^{xiv}*
- *The UK Government should put into action a comprehensive national strategy with the participation of members of affected communities to eliminate caste discrimination, in accordance with the provisions in CERD General Recommendation 29.*

- *The UK Government should take steps to identify caste-based communities under their jurisdiction who suffer from caste discrimination and include caste-based data in any future census, in accordance with CERD General Recommendation 29.*
- *The UK Government should conduct periodic surveys on the reality of caste-based discrimination and provide disaggregated information in their reports to the Committee on the geographical distribution and economic and social conditions of caste-based communities, including a gender perspective, in accordance with CERD General Recommendation 29.*
- *The UK Government should endorse the Draft UN Principles and Guidelines on the effective elimination of discrimination based on work and descent as a guiding framework on how to comprehensively address caste discrimination, and support an initiative in support of the Draft UN Principles and Guidelines on the effective elimination of discrimination based on work and descent in the UN Human Rights Council.^{xv}*

VI. Questions to be asked in the interactive dialogue

- What concrete steps does the Government plan to take to invoke section 9(5)(a) of the Equality Act 2010 to provide for “caste to be an aspect of race” in order to provide remedies to victims of this form of discrimination as recommended by CERD in 2011? ^{xvi}
- Does the UK Government plan to adopt any special measures in favour of caste-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to public functions, employment and education, in accordance with CERD General Recommendation 29 on descent and CERD General Recommendation 32 on special measures?
- How does the UK Government intend to use, follow up, and disseminate information on the findings and conclusions of the Government-commissioned study?
- Which organisations and stakeholders has the UK Government had subsequent representations and/or meetings with to discuss caste-based discrimination in the UK?
- How does the UK Government intend to ensure a regular and meaningful dialogue with stakeholders in the future?

ⁱ DSN-UK is a network of nearly 100 individuals, Dalit community organisations, faith bodies and international NGOs. Members include CasteWatch UK in Coventry, Association for Community Cohesion in London and the Federation of Ambedkarite and Buddhist Organisations UK (FABO). (www.dsnu.org)

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

ⁱⁱⁱ See Annex 1 for a list of references

^{iv} A table of the protected characteristics and issues covered by the Equality Act can be found on: http://www.equality.salford.ac.uk/cms/resources/uploads/File/equality_act/equality-act-2010-briefing%20just%20table.pdf

^v “Caste discrimination and harassment in Great Britain” by Hilary Metcalf and Heather Rolfe, National Institute of Economic and Social Research, p. 65 published December 2010

^{vi} Savio Lourdu Mahimaidass & Dr Nidhi Sadana, *No Escape: Caste Discrimination in the UK, Dalit Solidarity Network UK Report*. Dalit Solidarity Network UK, London, 2006, pp.1-24.

^{vii} <http://www.whatsonsanya.com/news-17636-indian-couple-vijay-amardeep-begraj-put-caste-system-to-test-with-english-law.html>

^{viii} The study entailed a literature review, discussions with organisations and experts with an interest in caste issues and interviews with 32 people who believed they had been subject to caste discrimination and harassment in work, education or the provision of goods and services.

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^x The CERD General Recommendation 29 on "descent" in article 1(1) of the Convention (2002) reaffirms that caste-based discrimination falls within the scope of the Convention and constitutes an effective framework to improve analysis and reporting on governments' performance.

^{xi} The draft UN Principles and Guidelines is an outcome of a Sub-Commission study on discrimination based on work and descent, the UN terminology for caste-based discrimination. They were published by the Human Rights Council in May 2009 (A/HRC/11/CRP.3). Although still a draft, DSN-UK and IDSN recommend that governments endorse them as a guiding framework to comprehensively eliminate discrimination based on work and descent.

^{xii} In paragraph 29 of the CESCR General Comment No. 20, which was adopted by the Committee at its 42nd session in May 2009, the Committee reaffirms that "the prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status." The Committee recommends States parties to "take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against dissemination of ideas of superiority and inferiority on the basis of descent."

^{xiii} CERD Concluding Observations 2003 (CERD/C/63/CO/11 para. 25), and CERD Concluding Observations 2011 (CERD/C/GBR/18-19, para. 30).

^{xiv} CERD Concluding Observations 2003 (CERD/C/63/CO/11 para. 25), and CERD Concluding Observations 2011 (CERD/C/GBR/18-19, para. 30).

^{xv} The draft UN Principles and Guidelines is an outcome of a Sub-Commission study on discrimination based on work and descent, the UN terminology for caste-based discrimination. They were published by the Human Rights Council in May 2009 (A/HRC/11/CRP.3). Although still a draft, DSN-UK and IDSN recommend that governments endorse them as a guiding framework to comprehensively eliminate discrimination based on work and descent.

^{xvi} CERD Concluding Observations 2003 (CERD/C/63/CO/11 para. 25), and CERD Concluding Observations 2011 (CERD/C/GBR/18-19, para. 30).