



## Key facts and recommendations for the UK UPR on 4 May 2017

### Dalit Solidarity Network UK

1. There is clear evidence of caste discrimination amongst the South Asian diaspora in the UK. This has affected Christians, Hindus, Muslim and Sikh communities, even though in principle some of these religions are totally opposed to it.

2. In 2012 the Universal Periodic Review (UPR) recommendation 110.61 to the UK stated:

‘Put in practice a national strategy to eliminate discrimination against caste, through the immediate adoption of the Equality Law of 2010 that prohibits such discrimination, in conformity with its international human rights obligations, including CERD’s General Recommendation 29 and recommendations of the Special Rapporteur on Contemporary Forms of Racism’.

3. The Enterprise and Regulatory Reform Act 2013 amended section 9(5) of the Equality Act 2010 to provide that the Government “must by order amend this section so as to provide for caste to be an aspect of race”. It is over three years since Parliament placed duty on the government to activate section 9(5).

4. In July 2013 the government published a timetable setting out steps including a public consultation in 2014 to lead to the enactment of caste legislation in the summer of 2015. Further research by the Equality and Human Rights Commission was published in spring 2014. The planned public consultation never happened.

5. In the 2014 mid-term government report for the UPR UK Government stated that:

***‘Recommendation 110.61 enjoys the support of the UK. The UK Government intends to introduce legislation to make caste discrimination unlawful, as a specific aspect of race discrimination under s.9(5) Equality Act 2010<sup>173</sup>. A public consultation process on the detail of the prospective legislation is expected later in 2014’.***

6. In 2015/2016 the government stated that its position was under review in light of the Employment Appeal Tribunal’s decision in Chandhok & Anor v Tirkey [2014] UKEAT 0190\_14\_1912, which found that caste discrimination may in certain cases already be unlawful under the Equality Act 2010<sup>1</sup>.

7. However, *‘Employment tribunal cases do not create authoritative precedents - they only decide the case on the merits for the individual claimant. There is no guarantee that individual suffering caste discrimination will achieve the same outcome in a future case. Moreover, Tirkey was not determined on grounds of race discrimination (with the “ethnic origins” component incorporating caste), but on grounds of indirect religious discrimination. It cannot be said to have created a precedent by which caste discrimination is protected in UK law’<sup>2</sup>. Anti-caste discrimination legislation remains a necessity.*

8. In August 2016, during the UK review under Convention on the Elimination of Racial Discrimination (CERD), the Committee expressed ‘concern that several provisions of the Equality Act 2010 have not yet been brought into legal effect, including section 9 (5) (a) on caste-based discrimination’. It recommended to ***‘invoke section 9 (5) (a) of the Equality Act 2010 without further delay to ensure that***

<sup>1</sup> See briefing paper: [The Equality Act 2010: caste discrimination](#), 2015, pp. 5

<sup>2</sup> [CERD, Call for Evidence](#), The Odysseus Trust, 2015, pp.3, para 14 .

***caste-based discrimination is explicitly prohibited under law and that victims of this form of discrimination have access to effective remedies, taking into account the Committee's general recommendation No. 29 (2002) on descent'***

9. In July 2016, after 3 years with no movement from the Government to advance the legislative process, Dalit Solidarity Network UK sent a pre-action letter to the Government. This urged them to accept the will of Parliament and implement the caste discrimination legislation.

10. In their response to DSN-UK's letter the Government stated that they would as per the original timetable – now introduce a public consultation.

11. On 2 September 2016 the government announced that a public consultation would be issued on the issue of caste and the Equality Act 2010 to decide whether additional measures are needed to ensure that victims of caste-based discrimination can access appropriate remedied and legal protection. Yet, **5 months later neither a timetable nor the terms of the consultation have been clarified.**

12. Concerns by pro-legislations groups have been expressed about the draft terms of the consultation as they seem to suggest the focus will be NOT on 'how the legislation should be implemented, BUT whether the 'legislation should be implemented'. This is a fundamental change from the original position as published in July 2013.

13. Dalits here in the UK still await justice for their communities and the right to be treated without discrimination in the public sphere.

#### **RECOMMENDATIONS**

1. The UK Government should immediately issue a timetable to undertake the consultation, ensure it is completed within the 12 week timeframe and that the Government will ensure that it hears the voices of the Dalit communities, who have waited for too long to attain some legal protection against this specific type of discrimination.

2. Without any further delay the Government should enact the provision to include caste in the Equality Act 2010, outlawing caste discrimination, *in accordance with its international obligations and recommendations under the ICERD and UPR.*

3. The UK Government should formulate and put into action a comprehensive national strategy with the participation of members of affected communities, including special measures to eliminate discrimination against members of descent-based groups.

4. In this process, the UK Government should support the adoption of 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<sup>3</sup>.

5. The UK Government should support awareness-raising programmes to educate the general public on the situation of victims of descent-based discrimination. Such awareness campaigns could target schools, work places, the public sector, etc.

#### **Dalit Solidarity Network UK**

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<sup>3</sup> 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.