

## **CASTE DISCRIMINATION: A GLOBAL CONCERN**

**A Report by Human Rights Watch for the United Nations World Conference  
Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.  
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## I. INTRODUCTION

Discriminatory and cruel, inhuman, and degrading treatment of a vast global population has been justified on the basis of caste. In much of Asia and parts of Africa, caste is the basis for the definition and exclusion of distinct population groups by reason of their descent. Over 250 million people worldwide continue to suffer under what is often a hidden apartheid of segregation, modern-day slavery, and other extreme forms of discrimination, exploitation, and violence. Caste imposes enormous obstacles to their full attainment of civil, political, economic, social, and cultural rights.

Caste is descent-based and hereditary in nature. It is a characteristic determined by one's birth into a particular caste, irrespective of the faith practiced by the individual. Caste denotes a system of rigid social stratification into ranked groups defined by descent and occupation. Under various caste systems throughout the world, caste divisions also dominate in housing, marriage, and general social interaction—divisions that are reinforced through the practice and threat of social ostracism, economic boycotts, and even physical violence.

Among the communities discussed in this report are the *Dalits* or so-called *untouchables* of *South Asia*—including *Nepal*, *Bangladesh*, *India*, *Sri Lanka*, and *Pakistan*—the *Buraku people* of *Japan*, the *Osu* of *Nigeria's* Igbo people, and certain groups in *Senegal* and *Mauritania*. The prominence of caste as a social and economic indicator for the widespread *South Asian diaspora* is also discussed. These communities share many features; features that have allowed even the most appalling practices to escape international scrutiny. In many cases, caste systems coexist with otherwise democratic structures. In countries such as India and Nigeria, governments have also enacted progressive legislation to combat abuses against lower-caste communities. Despite formal protections in law, however, discriminatory treatment remains endemic and discriminatory societal norms continue to be reinforced by government and private structures and practices, in some cases through violent means.

Lower-caste communities are almost invariably indistinguishable in physical appearance from higher-caste communities. This is not, as some would say, a black and white issue. For most outsiders then, the visual cues that otherwise accompany race or ethnicity are often completely lacking. Stark economic disparities between low and high-caste communities also get buried under a seemingly homogenous landscape of poverty. Poverty can be quite deceptive. It makes one conclude that all suffer from it equally. A closer look reveals the discrimination inherent in the allocation of jobs, land, basic resources and amenities, and even physical security. A closer look at victims of violence, bonded labor, and other severe abuses also reveals disproportionate membership in the lowest ranking in the caste order. A perpetual state of economic dependency also allows for abuses to go unpunished, while a biased state machinery looks the other way, or worse, becomes complicit in the abuse.

The language used to describe low and high-caste community characteristics in the examples that follow are striking in their similarity, despite the variation in geographic origin, with ideas of pollution and purity, and filth and cleanliness prevalent. In turn, these designations are used to justify the physical and social segregation of low-caste communities from the rest of society, their exclusion from certain occupations, and their involuntary monopoly over “unclean” occupations and tasks.

The exploitation of low-caste laborers and the rigid assignment of demeaning occupations on the basis of caste keep lower-caste populations in a position of economic and physical vulnerability. The triple burden of caste, class, and gender effectively ensures that lower-caste women are the farthest removed from legal protections. Only with the honest implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and of domestic laws designed to abolish the vestiges of various caste systems and to protect the economic, social, cultural, civil, and political rights of all, can the process of attaining economic and physical security, and human dignity, begin.

In August 2000 the U.N. Subcommission on the Promotion and Protection of Human Rights passed resolution 2000/4 on Discrimination Based on Work and Descent.<sup>1</sup> The resolution, aimed at addressing the issue of caste, reaffirmed that discrimination based on work and descent is prohibited under international human rights law. The Subcommission also decided to further identify affected communities, examine existing constitutional, legislative, and administrative measures for the abolition of such discrimination, and make concrete recommendations for the effective elimination of such practices.

In August 2001, subcommission expert R.K.W. Goonesekere presented his working paper on work and descent-based discrimination to the subcommission's fifty-third session. The paper was submitted pursuant to Subcommission resolution 2000/4. Because of time and other constraints, Mr. Goonesekere limited the paper's focus to the Asian countries of India, Nepal, Pakistan, Sri Lanka, and Japan but stated that further study of African countries in particular was warranted. The presentation of the paper, and the ensuing debate amongst subcommission experts that followed, marked the first time that caste discrimination was discussed as a major source of human rights violations worldwide by a U.N. human rights body. The subcommission also determined by consensus to extend the study to other regions of the world where work and descent-based discrimination continues to be experienced.

This important resolution underscores the notion that caste systems are inherently economic and social in their consequences and that the exclusion of lower-caste communities extends to the economic and social realms of wages, jobs, education, and land. This report discusses the manifestations of caste and descent-based discrimination and abuse in over a dozen countries. It is not meant to be an exhaustive review but an introduction to the prevalence and global dimensions of this underreported problem. It is also an appeal to governments to give close and systematic attention to the problem of caste discrimination at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and beyond. Despite the magnitude of the problem, as of this writing, caste-based discrimination had been systematically cut out of the WCAR's intergovernmental process through the actions of a handful of governments. This has occurred despite the Committee on the Elimination of Racial Discrimination's repeated affirmations that caste, as a form of descent-based discrimination, falls within the definition of racial discrimination under article 1 of the ICERD.

Concerted international attention and the commitment of resources to assist national governments in this important work are also long overdue. In many parts of the world, the success of the World Conference will turn upon its commitment to effectively addressing the issue of caste. For at least a quarter-billion people worldwide, the end of apartheid in South Africa did not signal the end of segregation and servitude in their own lives. This important conference can and should bring us closer to this important global goal.

## **II. CASTE AND THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

Caste discrimination's place in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) has been confirmed by numerous international bodies created by treaties and by the title of the conference itself. In the concluding observations of its forty-ninth session held in August/September 1996 (as it reviewed India's tenth to fourteenth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination, 1965), the Committee on the Elimination of Racial Discrimination (CERD) affirmed that "the situation of Scheduled Castes and Scheduled Tribes falls within the scope of" the convention.<sup>2</sup>

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<sup>1</sup> U.N. Subcommission on the Promotion and Protection of Human Rights, "Discrimination Based on Work and Descent," E/CN.4/SUB.2/RES/2000/4, August 11, 2000. See Appendix A.

<sup>2</sup> Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: India," CERD/C/304/Add.13, September 17, 1996.

The committee has clearly stated that the term “descent” contained in article 1 of the convention does not refer solely to race, and encompasses the situation of scheduled castes and tribes.<sup>3</sup> In March 2001, CERD’s “Concluding Observations” on *Japan’s* report noted that discrimination based on descent constitutes racial discrimination, and that “the term ‘descent’ contained in Art. 1 of ICERD has its own meaning and is not be confused with race or ethnic or national origin.”<sup>4</sup> In the same month, while reviewing *Bangladesh’s* report, the committee reaffirmed that “the term ‘descent’ does not solely refer to race or ethnic or national origin and [that it] is of the view that the situation of castes falls within the scope of the Convention.”<sup>5</sup>

Similar conclusions were drawn by the U.N. special rapporteur on racism, racial discrimination, xenophobia and related intolerance in his January 1999 report. In 1997, the Human Rights Committee noted that members of scheduled castes endured “severe social discrimination,” and suffered “disproportionately from many violations of their rights under the [ICCPR].” In reviewing *Nepal’s* report in August 2000, CERD “remain[ed] concerned at the existence of caste-based discrimination, and the denial which this system imposes on some segments of the population of the enjoyment of the rights enshrined in the Convention.” In January and February 2000, serious concerns over the treatment of Dalit children and Dalit women in *India* were also expressed by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women in their reviews of India’s periodic reports under the children’s rights and women’s rights conventions.<sup>6</sup>

Despite blockage of discussion of the issue of caste in the major intergovernmental fora of the WCAR process, several preparatory meetings for WCAR have highlighted the need to address caste-based discrimination. These include the Asia-Pacific Experts Seminar in Bangkok, the European NGO meeting in Strasbourg, the African Experts Seminar in Addis Ababa, the NGO forum in Tehran, the Asia-Pacific NGO meeting in Kathmandu, the Global Conference Against Racism and Caste-Based Discrimination in New Delhi, and various Satellite Conferences, including the Bellagio Consultation.

### III. RECOMMENDATIONS

Nationally, concerned governments must act to uphold their own constitutional principles and international treaty obligations and work toward the full enjoyment of rights by all citizens, regardless of caste or descent. Globally, the international community must take advantage of the opportunity this World Conference represents to make progress on one of the world’s most severe and forgotten abuses. Specifically,

- All governments, and in particular those of countries whose citizens suffer from caste or descent-based discrimination and abuse, should ratify and fully implement the International Convention on the Elimination of All Forms of Racial Discrimination;
- All governments should support efforts to implement the resolution on discrimination based on work and descent adopted by the U.N. Subcommission on the Promotion and Protection of Human Rights in August 2000;
- Concerned governments should extend invitations to the special rapporteur on racism to investigate caste-based discrimination and other forms of discrimination based on descent in their respective countries;

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<sup>3</sup> “Scheduled Castes” is legal parlance for “Dalits.”

<sup>4</sup> Committee on the Elimination of Racial Discrimination, “Concluding Observations of the Committee on the Elimination of Racial Discrimination: Japan,” CERD/C/58/Misc.17/Rev.3, March 20, 2001.

<sup>5</sup> *Ibid.* In August 2001, the Committee on the Elimination of Racial Discrimination considered Sri Lanka’s ninth periodic report. Despite the persistence of the problem, the report did not make any reference to caste-based discrimination in the country. See Committee on the Elimination of Racism Discrimination, “Reports Submitted by States Parties under Article 9 of the Convention: Ninth periodic reports of States parties due in 1999: Sri Lanka,” CERD/C/357/Add.3, November 20, 2000. At this writing, CERD had yet to issue its concluding observations on Sri Lanka’s report.

<sup>6</sup> See Appendices for relevant text from these and other U.N. reports.

- All governments should ensure that caste-based and similar discrimination against marginalized populations is explicitly addressed in the declaration and programme of action of the WCAR, and any follow-up plan of action thereafter;
- Dalits in South Asia, Buraku people in Japan, and other populations in similar situations should be explicitly acknowledged as groups of people who have been subject to perennial and persistent forms of discrimination and abuse on the basis of their descent;
- Concerned governments should:
  1. Establish a program and timetable to enforce the abolition of “untouchability,” segregation, or similar practices.
  2. Enact and fully enforce laws aimed at ending abuses associated with caste, such as child labor, bonded labor, land reform, manual collection of human waste, and forced prostitution or similar practices.
  3. Monitor and publicize the extent to which existing laws to end caste discrimination have been implemented.
  4. Allocate adequate funds for programs for the socio-economic and educational support of communities that have faced discrimination on the basis of caste or descent.
  5. Ensure greater participation by the affected communities in civil administration, especially the administration of justice, including in key institutions such as the police and judiciary.
  6. Ensure that all necessary constitutional, legislative, and administrative measures, including appropriate forms of affirmative action, are in place to prohibit and redress discrimination on the basis of caste, and that such measures—including those already instituted in Japan and India—are continued until discrimination is eliminated.
  7. Launch nationwide public awareness campaigns regarding legal prohibitions on discrimination on the basis of caste or descent. This campaign should explain in simple terms what actions are legally prohibited and what recourse is available to victims of discrimination and abuse.
  8. Provide political and financial support for programs of the United Nations and regional bodies to assist countries seeking to eradicate caste discrimination.
- United Nations development agencies should pay particular attention to caste violence and caste discrimination, assess the impact of their existing programs with regard to caste, and develop programs and strategies designed to curb abuse and encourage accountability.

#### **IV. BACKGROUND**

##### **“Untouchability” and Segregation**

*India’s* caste system is perhaps the world’s longest surviving social hierarchy. A defining feature of Hinduism, caste encompasses a complex ordering of social groups on the basis of ritual purity. A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that caste may vary among regions and over time. Differences in status are traditionally justified by the religious doctrine of karma, a belief that one’s place in life is determined by one’s deeds in previous lifetimes.

Traditional scholarship has described this more than 2,000-year-old system within the context of the four principal varnas, or large caste categories. In order of precedence these are the *Brahmins* (priests and teachers), the *Ksyatriyas* (rulers and soldiers), the *Vaisyas* (merchants and traders), and the *Shudras* (laborers and artisans). A fifth category falls outside the varna system and consists of those known as “untouchables” or Dalits; they are

often assigned tasks too ritually polluting to merit inclusion within the traditional varna system.<sup>7</sup> Almost identical structures are also visible in *Nepal*.<sup>8</sup>

Despite its constitutional abolition in 1950, the practice of “untouchability”—the imposition of social disabilities on persons by reason of birth into a particular caste—remains very much a part of rural *India*. Representing over one-sixth of India’s population—or some 160 million people—Dalits endure near complete social ostracization. “Untouchables” may not cross the line dividing their part of the village from that occupied by higher castes. They may not use the same wells, visit the same temples, or drink from the same cups in tea stalls. Dalit children are frequently made to sit at the back of classrooms. In what has been called India’s “hidden apartheid,” entire villages in many Indian states remain completely segregated by caste.<sup>9</sup>

“Untouchability” is reinforced by state allocation of resources and facilities; separate facilities are provided for separate caste-based neighborhoods. Dalits often receive the poorer of the two, if they receive any at all. In many villages, the state administration installs electricity, sanitation facilities, and water pumps in the upper-caste section, but neglects to do the same in the neighboring, segregated Dalit area. Basic amenities such as water taps and wells are also segregated, and medical facilities and the better, thatched-roof houses exist exclusively in the upper-caste colony. As revealed by the case study below on the earthquake in Gujarat, these same practices hold true even in times of great natural disaster.

### ***Earthquake in Gujarat: Caste and its Fault-Lines***

On January 26, 2001, a devastating earthquake rocked the northwest Indian state of Gujarat. Within days of the country’s worst natural disaster in recent history at least 30,000 were declared dead and over one million were left homeless. In the months since the earthquake, residents of the state of Gujarat have been besieged by a man-made disaster: caste and communal discrimination in the distribution of relief and rehabilitation, corruption in the handling of aid, and political squabbling that has done little to help the earthquake’s neediest victims.

Six weeks after the earthquake, Human Rights Watch visited the towns of Bhuj, Bhijouri, Khawda, Anjar, and Bhachau in Kutch, the state’s most devastated district. In all areas visited by Human Rights Watch, Dalits and Muslims lived separately from upper-caste Hindus. Several residents and survivors told us, “we are surviving the way we lived, that’s why we are in separate camps.”

While the government has allocated equal amounts of monetary compensation and food supplies to members of all communities, Dalit and Muslim populations did not have the same access to adequate shelter, electricity, running water, and other supplies available to others. This was apparent in several cities near Bhuj, including Anjar and Bhachchau, where the government had provided far superior shelter and basic amenities to upper-caste populations.

The attention is now shifting to the process of rehabilitation and reconstruction of homes. As of this writing, it remained to be seen whether the government would construct integrated housing and give effect to its 1950 constitutional abolition of “untouchability.”

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<sup>7</sup> See generally, Ainslie Embree, ed., *Sources of Indian Tradition: From the Beginnings to 1800* (New York: Columbia University Press, 1988); Pauline Kolenda, *Caste in Contemporary India: Beyond Organic Solidarity* (Menlo Park: Benjamin/Cumming Publishing Co., 1978); M. N. Srinivas, ed., *Caste: Its Twentieth Century Avatar* (New Delhi: Viking, 1996).

<sup>8</sup> A caste system amongst Bali’s predominantly Hindu population also mimics India’s caste system in structure though not in severity. While people still self-identify as belonging to particular castes, and culturally abide by certain caste norms, the extent of discrimination based on caste is unclear.

<sup>9</sup> For more on caste-based violence and discrimination in India, see Human Rights Watch, *Broken People: Caste Violence Against India’s “Untouchables”* (New York: Human Rights Watch, 1999).

*India's* caste system naturally finds corollaries in other parts of the sub-continent, including *Nepal*, *Pakistan*,<sup>10</sup> *Sri Lanka*, and *Bangladesh*. Within the Dalit community of *Nepal*, there are eight major caste groups and twenty-five identified sub-castes.<sup>11</sup> Some NGOs estimate the Dalit population at 4.5 million, or 21 percent of *Nepal's* population.<sup>12</sup> Despite their significant numbers, they continue to be victimized by reason of their caste.

*Nepal's* 1990 constitution prohibits discrimination on the basis of caste (along with religion, race, sex, and ideology). However, an exception was created for Hindu religious practices. As a result, Dalits can and most often are legally excluded from Hindu temples and rituals.<sup>13</sup> They are also often kept from entering hotels, shops, or homes, and are even excluded from cowsheds due to the belief that they will pollute the milking cows.<sup>14</sup> In a high profile case in 2000, dubbed the "Gaidakot Milk Scandal," the upper castes of the Gaidakot Multipurpose Milk Production Co-operative Institution Limited refused to sell milk from an animal raised by a Dalit. Only after protests and the intervention of NGOs and human rights organizations were Dalits allowed to sell their milk to the cooperative.<sup>15</sup>

As in *India*, the government has committed itself to developing policies aimed at the social and economic advancement of the Dalit population. In 1998, the Independent Downtrodden and Oppressed Community Council was formed with the objective of coordinating policies and supervising programs to benefit Dalits. *Nepal's* Ninth Five-Year Plan also adopted several specific policies and programs for Dalit socio-economic development in the areas of education, health, sanitation, training and skills enhancement, and employment.<sup>16</sup> On August 16, 2001, the prime minister of *Nepal* announced that the government would outlaw discrimination against lower-caste Hindus and pledged to pass new legislation to criminalize untouchability practices and enforce the pre-existing constitutional ban on caste discrimination. At this writing, specific legislation had yet to be proposed.<sup>17</sup>

Unlike *India*, which persistently argues that "the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of Article 1 of the Convention [on the Elimination of All Forms of Racial Discrimination],"<sup>18</sup> *Nepal* has provided detailed accounts of the country's problems with caste discrimination in several of its reports to CERD. In its fourteenth periodic report under ICERD, the government frankly acknowledged that, "for an overwhelming majority of people the caste system continues to be

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<sup>10</sup> According to a 1979 study, Punjabi Christians of the sweeper caste were also reportedly treated as untouchables in *Pakistan*. Historically, Punjabi Christians belonged to a low-caste Hindu group called the Chuhras. After the partition of *India* in 1947, many migrated to *Pakistan* where they took on occupations that others considered to be impure, such as sweeping and scavenging. They were regarded and treated as untouchables, as were those referred to as Musallis, untouchable converts to Islam. Sweepers were confined to live in segregated areas, such as the slaughterhouse neighborhood in Karachi. Such neighborhoods were extremely poor and squalid. Members of the sweeper and other untouchable castes were also forbidden from entering Muslim tea houses. Pieter H. Streefland, *The Sweepers of the Slaughterhouse: Conflict and Survival in a Karachi Neighborhood* (Assen, the Netherlands: Van Gorcum, 1979), pp. 13 and 15. The status of these groups in modern day *Pakistan* is unclear.

<sup>11</sup> Padmalal Bishwakarma, "Caste Discrimination and Untouchability Against Dalits in *Nepal*," paper prepared by the Society for the Liberation of Oppressed Dalit Castes, *Nepal*, for the Global Conference on Caste Discrimination, New Delhi, March 1-4, 2001.

<sup>12</sup> *Ibid.*

<sup>13</sup> U.S. Department of State, *1999 Country Reports on Human Rights Practices: Nepal* (Bureau of Democracy, Human Rights and Labor, U.S. Department of State, February 25, 2000). The Constitution describes *Nepal* as a "Hindu Kingdom," though it does not establish Hinduism as the state religion.

<sup>14</sup> D.B. "Sagar" Bishwakarma, "General Comments of Country Report for the United Nations Convention for Elimination of All Forms of Racial Discrimination," paper prepared by the Academy for Public Upliftment for the Ad Hoc Working Group on the Preparation of NGO Country Report Under the U.N. International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>15</sup> *Ibid.*

<sup>16</sup> Rajendra Kalidas Wimala Goonesekere, "Prevention of Discrimination and Protection of Indigenous Peoples and Minorities" (New York: United Nations, 2001) E/CN.4/Sub. 2/2001/16, para. 38

<sup>17</sup> "Nepal Prohibits Bias Against Untouchable Caste," *The New York Times*, August 17, 2001.

<sup>18</sup> Committee on the Elimination of Racial Discrimination, "Fourteenth Periodic Reports of States Parties Due in 1996: *India*," CERD/C/299/Add.3, para. 7, April 29, 1996.

an extremely salient feature of personal identity and social relationships and, to some extent, determines access to social opportunities.”<sup>19</sup> It further stated that:

[R]acial discrimination in the society, especially in rural areas, is still in existence. So-called untouchables cannot even enter the houses of the people of so-called higher and middle-class castes. On one hand, they are socially suppressed by the upper classes and, on the other hand, they suffer from poverty; the intensity of poverty seems to be higher in socially backward people.<sup>20</sup>

At the Asian Regional Preparatory Meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Tehran in February 2001, the Nepali government also declared that the problem of caste discrimination should be addressed at WCAR.

Within *Sri Lanka*’s majority Sinhala community, the *Rodiya* were historically excluded from villages and communities, forcing them into street begging, scavenging, and roving. Moreover, *Rodiya* could only wear caste-specific attire; were restricted from schools and public facilities; segregated at gravesites;<sup>21</sup> and made to drink out of disposable coconut shells from local teashops so as not to contaminate the glasses of others.<sup>22</sup> A history of exclusion has carried forward into present-day practices—*Rodiya* continue to reside in segregated communities with little to no interaction with upper-castes.<sup>23</sup>

According to the U.N. Subcommission on the Promotion and Protection of Human Rights’ working paper on work and descent-based discrimination:

In Sri Lanka there are two caste systems, one for the Sinhalese and the other for the Tamils. Although they both have their origin in India, the Sinhalese caste system is not linked to the Hindu varna. It was an aspect of a feudal society which divided people “according to Descent and Blood” or according to their hereditary roles and functions. The caste system was a secular hierarchy.... Social distance was practised but the notion of pollution hardly existed. As an American scholar concluded, “The absence of the Hindu concept had rendered the Sinhalese caste system mild and humanitarian when judged by Indian standards.”

The exception is the caste of *Rodiyas* or *Rodi* (meaning “filth”) from very early times. Many legends surround their origin, all agreeing that they were banished for a heinous crime and condemned to a life of begging or, more accurately, soliciting for alms. They were denied land and work and subjected to many disadvantages and degrading treatment.<sup>24</sup>

Caste differentiation occurs in both of Sri Lanka’s main Tamil communities (those descended from plantation workers of Indian origin brought to Sri Lanka by the British colonial government, as well as those with ancestors in Sri Lanka). Marriage bars persist, as do other social bans. Caste-based discrimination is sometimes applied to non-Hindus—including Tamil Christian and Muslim converts, and members of other minority groups. These tensions are exacerbated by conflict-driven displacement, which can place groups of varying caste backgrounds in closer proximity to another.<sup>25</sup>

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<sup>19</sup> Committee on the Elimination of Racial Discrimination, “Fourteenth Report of States Parties Due in 1998: Nepal,” CERD/C/337/Add.4, para. 22, May 12, 1999.

<sup>20</sup> *Ibid.*, para. 38.

<sup>21</sup> Nireka Weeratunge, *Aspects of Ethnicity and Gender Among the Rodi of Sri Lanka* (Sri Lanka: International Centre for Ethnic Studies, 1988), p. 61.

<sup>22</sup> *Ibid.*, p. 77.

<sup>23</sup> *Ibid.*, p. 77.

<sup>24</sup> Goonesekere, “Prevention of Discrimination” (New York: United Nations, 2001), E/CN.4/Sub. 2/2001/16, paras. 28-29.

<sup>25</sup> In research conducted by Human Rights Watch in Sri Lanka in 1999, displaced members of the Kuravar minority, a non-Tamil tribal group, complained that their Tamil neighbors were preventing them from using a village water supply because they were viewed as low caste or “untouchable.” Sri Lankan Tamil internally displaced persons (IDPs) in Trincomalee also



Caste differences between Indian-origin *Tamil* plantation workers also remain prominent. Higher-caste workers will often refuse to touch food offered to them by “untouchables.” “Untouchables” are also made to perform specific tasks during Hindu rituals that are particular to their low-caste status.<sup>26</sup>

Caste-based divisions of labor are central to several ethnic groups in many West African countries, including the Fulani, Mandinka, and Wolof communities. Various U.N. human rights treaty monitoring bodies have made at least passing reference to caste-based distinctions in Burkina Faso, Mali, Cameroon, and Mauritania. Outside of West Africa, caste in Burundi and Mauritius has also been noted.<sup>27</sup> While this report limits its discussion in West Africa to Mauritania, Senegal, and Nigeria, in addition to the countries mentioned above, caste systems can also be found in Guinea, Guinea Bissau, the Ivory Coast, Gambia, Sierra Leone, and Liberia.

Though caste systems exist within several ethnic groups in Senegal, this report confines itself to the Wolof community, the country’s largest ethnic group. In July 2001, a coalition of Senegalese nongovernmental organizations held a national workshop on problems faced by caste communities in the country. The one-day meeting was in preparation for the World Conference Against Racism. Among the participants was well-known sociologist Abdoulaye Bara Diop, who has written extensively on caste systems among the Wolof of Senegal. He remarked: “When we speak of castes we think of India where the caste system rigidly structures all of society. Sub-Saharan African also knows castes, among which the griot are the most well-known.” He went on to add that castes can be defined as hereditary, endogamous groups that are assigned specific occupations and governed by strict hierarchical relationships. All such characteristics can be found among the Wolof who are principally divided between the *geer* and the *neeno*.<sup>28</sup>

The Senegalese constitution proclaims the right of all citizens to equal protection of the law regardless of race, religion, sex, or origin, a reference to one’s caste background (article 1), and prohibits all acts of racial, ethnic, and religious discrimination (article 5). Despite these constitutional protections, the extent to which *neeno* castes approach the courts for legal redress on discrimination claims is negligible.

Within the Igbo communities of southeastern *Nigeria*, the marginalization of those that have been categorized as *Osu* reportedly remains largely unchecked.<sup>29</sup> The term “*Osu*” historically applied to individuals who were held to be “owned” by deities.<sup>30</sup> Like caste distinctions in other societies, the distinction of *Osu* is automatically passed on by inheritance and descent and cannot generally be overcome. *Osu*s cannot be distinguished from others on the basis of their physical appearance or their speech.<sup>31</sup>

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complained when they were forced to live in close proximity to Tamils of Indian origin, whom they considered lower caste. Human Rights Watch interviews, April 1999.

<sup>26</sup> Oddvar Hollup, “Caste Identity and Cultural Continuity Among Tamil plantation workers in Sri Lanka,” *Journal of Asian and African studies*, vol. 28, nos. 1-2 (1993), pp. 79-81.

<sup>27</sup> See Appendix D.

<sup>28</sup> “Conférence mondiale sur le racisme: Les castes, autre forme d’injustice,” *Le Soleil*, July 16, 2001, available at [http://www.lesoleil.sn/recherche/article.CFM?article\\_id=5605&article\\_edition=9337](http://www.lesoleil.sn/recherche/article.CFM?article_id=5605&article_edition=9337) (accessed August 15, 2001). Translated from French.

<sup>29</sup> Victor Dike, “The Caste System in Nigeria, Democratization and Culture: Socio-political and Civil Rights Implications,” *African Economic Analysis*, available at [www.afbis.com/analysis/caste.htm](http://www.afbis.com/analysis/caste.htm) (accessed March 22, 2001); Constitutional Rights Project, “*Osu* Caste Practice in South Eastern Nigeria,” working paper; Igwebuiké Romeo Okeke, *The ‘Osu’ Concept in Igboland: A Study of the Types of Slavery in Igbo-Speaking Areas of Nigeria* (Nigeria: Access Publishers, 1986).

<sup>30</sup> Constitutional Rights Project, “*Osu* Caste Practice in South Eastern Nigeria,” p. 2. In order to appease village deities, *Osu* were traditionally “sacrificed” or dedicated to them. They were confined to living in homes at the edge of town, so as to bear the brunt of any misfortune that might befall the village. Felicitas Aigbogun, “*Osu* Caste System in Nigeria,” working paper, p. 2. After being dedicated to a deity, a common practice was to cut off a small part of the ears or fingers of the *Osu* as an identification mark. Okeke, *The ‘Osu’ Concept in Igboland*, p. 60. It was commonly thought that any contact with an *Osu* was contaminating, and any person who touched an *Osu* automatically became an *Osu*. *Ibid.*, p. 31.

<sup>31</sup> Constitutional Rights Project, “*Osu* Caste Practice in South Eastern Nigeria,” p. 3.

Though Osu share the same legal status as other Nigerians—the Osu system was outlawed with the passage of the Osu System Law and the Laws of Eastern Nigeria in 1956 and 1963—members of the Osu community are still shunned as pariahs and denied social equality.<sup>32</sup> Mostly landless, Osu can traditionally only marry within their caste, and are buried in separate cemeteries.<sup>33</sup>

Discrimination against *Buraku*, sometimes known as *eta* (variously defined as “pollution abundant” or “unclean”) persists in *Japan*. Scholarly consensus today holds that the estimated three million Buraku who live in Japan today can trace their ancestry to those who became involved in occupations thought to be unclean during Japan’s feudal Tokugawa era in the seventeenth century. These occupations included leather-making, a task shunned by Shintoists and Buddhists who felt that anything which involved the taking of life was unclean. The then-government codified such discrimination against Buraku when it explicitly deemed certain groups distinguished by their occupations to be *eta* and *hinin* (“nonperson”). These newly formed lower castes were then further forced into specific occupations. The *etas* were forced to dispose of dead cattle or take work as hide tanners and other leather-related crafts, while the *hinin* became security guards and executioners. Beginning in the early 1700s, the Japanese government established specific rules limiting the types of clothes and hairstyles that Buraku could wear, rendering them easily identifiable. Buraku were often prohibited from entering towns at night or frequenting certain religious sites.<sup>34</sup> Their gravestones were also marked with names connecting them to slavery or cattle.<sup>35</sup>

The Buraku system was officially abolished by the Emancipation Edict of 1871, though discrimination against Buraku persists to this day. Following the edict, peasants rioted in protest at being ranked as equals to Buraku, setting fire to Buraku villages in western Japan and demanding that the edict be revoked.<sup>36</sup> In modern day Japan, many Buraku still live in segregated communities in cities around the country, including major cities such as Kyoto, Osaka, and Kobe.<sup>37</sup> Burakumin continue to be characterized as “dirty” and “inappropriate” to associate with. They are even said to be of a different descent than the majority of Japanese people even though they are racially indistinguishable from the rest of the population.<sup>38</sup>

Today, the Buraku people are the targets of verbal abuse and incitement to violence, often in the form of graffiti or messages posted on the Internet with slogans like “Kill Buraku People” or “Exterminate Buraku People.” Offensive emails are frequently sent to NGOs active on Buraku issues, such as the Buraku Liberation Movement.<sup>39</sup>

Segregation also continues to be a way of life for the Buraku people in rural areas in Japan, though in urban centers many have successfully integrated with non-Buraku communities.<sup>40</sup>

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<sup>32</sup> Dike, “The Caste System in Nigeria.”

<sup>33</sup> Jerome Njikwulimchukwu Okafor, *The Challenge of Osu Caste System to the Igbo Christians* (Onitsha: Veritas Printing and Publishing, 1993), p. 33.

<sup>34</sup> Ian Neary, “Burakumin in Contemporary Japan” in Michael Weiner (ed.) *Japan’s Minorities: The Illusion of Homogeneity* (London: Routledge, 1997), p. 55.

<sup>35</sup> International Movement Against All Forms of Discrimination and Racism and Buraku Liberation League and Buraku Liberation and Human Rights Research Institute, “Reality of Buraku Discrimination in Japan: History, Situation, Challenge,” February 2001, pp. 7-8.

<sup>36</sup> *Ibid.*, p. 10.

<sup>37</sup> “Kyoto,” *Encyclopedia Britannica Online*, <http://members.eb.com/bol/topic?eu=109591&sctn=4>, (accessed July 18, 2001).

<sup>38</sup> Leslie D. Alldritt, “The Burakumin: The Complicity of Japanese Buddhism in Oppression and an Opportunity for Liberation,” *Journal of Buddhist Ethics*, vol. 7 (2000), available at <http://jbe.la.psu.edu/7/alldritt001.html> (accessed March 28, 2001).

<sup>39</sup> Yuka Ishikawa, “Rights Activists and Rights Violations: The Burakumin Case in Japan,” paper prepared by the Buraku Liberation League for the Global Conference Against Racism and Caste Based Discrimination, New Delhi, India, March 1-4, 2001, available at <http://www.imadr.org/tokyo/ishikawareport.html> (accessed May 21, 2001).

<sup>40</sup> Buraku Liberation and Human Rights Research Institute and Buraku Liberation League, *Buraku People* (Japan: Discrimination Against Buraku People).

## Caste and Marriage

Often, rigid social norms of purity and pollution are socially enforced through strict prohibitions on marriage or other social interaction between castes. While economic and social indicators other than caste have gained in significance, allowing intermarriage among upper castes, in many countries strong social barriers remain in place against marriage between lower and higher castes.

In *India* the condemnation can be quite severe, ranging from social ostracism to punitive violence. On August 6, 2001, in the north Indian state of Uttar Pradesh, an upper-caste Brahmin boy and a lower-caste Jat girl were dragged to the roof of a house and publicly hanged by members of their own families as hundreds of spectators looked on. The public lynching was punishment for refusing to end an inter-caste relationship.<sup>41</sup> Inter-caste marriages can also lead to large-scale attacks on lower-caste communities. In May 2000 in Hardoi district in Uttar Pradesh, a police constable enraged by his daughter's marriage to a Dalit was joined by other relatives in shooting and killing four members of his son-in-law's family.<sup>42</sup> Dalits who marry high-caste persons in *Nepal* in some cases reportedly have been imprisoned by local authorities because of false cases filed against them by members of the upper-caste families. Dalits are often forbidden from performing marriage or funeral rites in public areas or, in some areas, from speaking to members of upper castes.<sup>43</sup>

In both the Tamil and Sinhala communities of *Sri Lanka*, intermarriage between upper-caste and lower-caste persons is still socially discouraged.<sup>44</sup> Matrimonial ads in Sri Lankan newspapers placed by Tamils and Sinhalese both routinely specify the caste background of the match that the family is seeking.

In *Japan* marriage remains a primary source of discrimination for Buraku people today.<sup>45</sup> Suspicions that a person is of Buraku descent often lead to private investigations into his or her family background. These background checks are easy to conduct because family registries are easily obtainable, and Buraku names are distinct and recognizable. Upon discovering that the intended bride or groom is of Buraku descent, the marriage plans are often reportedly cancelled or condemned.<sup>46</sup>

Marriages are still expected to fall along caste lines for the Wolof societies of *Senegal*; a *geer* who marries someone from the lower castes may be ostracized.<sup>47</sup> Even amongst the *neeno*, marriage within one's own caste is preferred, particularly amongst the griot community. In parts of southeastern *Nigeria*, marriage to an Osu by a non-Osu is highly discouraged and even condemned by society, while children of such a union are likely to be ostracized and mistreated.<sup>48</sup>

## Caste and Labor

Allocation of labor on the basis of caste is one of the fundamental tenets of many caste systems, with lower-castes typically restricted to tasks and occupations that are deemed too "filthy" or "polluting" for higher-caste communities.

Among the Wolof of *Senegal*, the concept of caste is founded on occupational groups, and accordingly divides Wolof Senegalese into one of four categories, each of which are either hereditary or assumed upon

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<sup>41</sup> Stephanie Nolen, "Cross-caste teen lovers brutally slain Families charged in torture, killing of Indian couple who defied ingrained tradition," *Globe and Mail* (Toronto), August 9, 2001.

<sup>42</sup> Ramdutt Tripathi, "Arrests Over India Caste Deaths," available at [http://news.bbc.co.uk/hi/english/world/south\\_asia/newsid\\_740000/740701.stm](http://news.bbc.co.uk/hi/english/world/south_asia/newsid_740000/740701.stm), May 8, 2000 (accessed May 18, 2001).

<sup>43</sup> Bishwakarma, "General Comments of Country Report for the United Nations Convention for Elimination of All Forms of Racial Discrimination."

<sup>44</sup> Weeratunge, *Aspects of Ethnicity and Gender Among the Rodi of Sri Lanka*, p. 77. See also, Oddvar, "Caste Identity and Cultural Continuity," pp.79-81.

<sup>45</sup> Ishikawa, "Rights Activists and Rights Violations."

<sup>46</sup> Buraku Liberation and Human Rights Research Institute and Buraku Liberation League, *Buraku People*.

<sup>47</sup> Sherman Lewis, "The First Senegal," available at <http://www.isis.csuhayward.edu/alss/polsci/slewis/senegal/rpt.htm> (accessed May 16, 2001).

<sup>48</sup> Constitutional Rights Project, "Osu Caste Practice in South Eastern Nigeria," pp. 23-24.

marriage.<sup>49</sup> The “superior” category of the *geer* was traditionally comprised of farmers, fisherman, warriors and animal breeders—they are still deemed society’s noblest. They traditionally can only marry within the group, and are not allowed to practice the traditional professions of the lower castes. Although the lower-caste professions are divided among three distinct castes, they are collectively termed *neeno* and are thus distinguished from the *geer*.

The *neeno* are further divided into subcastes: the *jeff-lekk* are comprised of artisans while griots and jesters constitute the *sab-lekk*. A third category of the *noole*, who are relatively few in number, make up the servants and courtesans. The artisans are further divided into four sub-castes, namely blacksmiths or jewelers, shoemakers, woodcutters, and weavers. Beneath the *neeno* is the category of *jaam* or slaves—they are deemed to be outside the caste system.<sup>50</sup> Over time, the migration of Wolofs to cities and larger towns has led to greater access to educational and professional opportunities for *neeno* castes, though serious problems remain.<sup>51</sup>

Sanitation jobs—including street cleaning and the handling of human waste and animal carcasses—are functions almost exclusively performed by Dalits in *India, Sri Lanka, Bangladesh, and Nepal*.

Dalits in *Bangladesh*—who originally migrated from India under British rule and remained after the partition of the subcontinent in 1947—work principally as municipal cleaners and domestic workers, lowly jobs that are shunned by the country’s majority Muslim Bengali population.<sup>52</sup> In the country’s capital, for example, Dalits make up the majority of the 5,500 cleaners working for Dhaka City Corporation. They live in small, squalid quarters provided by the city corporation with no gas or electricity and are paid a little over U.S. \$1 a day. Dalits also breed pigs for Dhaka’s minority Hindu and Christian population and work as vendors and rickshaw pullers.<sup>53</sup>

Indian-origin *Tamils* in *Sri Lanka* continue to face severe social discrimination. For many of the country’s minority *Tamils*, little has changed occupationally since the eighteenth century when members of lower-castes from southern India were brought to Sri Lanka as captive labor to work on plantations and as city cleaners. To this day, the traditional division of labor continues to be perpetuated.<sup>54</sup> At the bottom of the caste hierarchy in the Indian Tamil community are three untouchable castes. While *Pallas* and *Nalavas* can work on upper-caste land for wages, *Paraiyars* are predominantly engaged in “unclean” sanitation work.<sup>55</sup> Plantation laborers also remain marginalized from economic, educational, and social opportunities, and suffer from poor health care and an inability to participate in political life.<sup>56</sup>

According to the subcommission’s working paper on work and descent-based discrimination:

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<sup>49</sup> “Wolof,” *Encyclopedia Britannica*, available at <http://members.eb.com/bol/topic?idxref=517474> (accessed May 21, 2001); “Senegal Culture,” available at <http://www.lonelyplanet.lycos.com/africa/senegal/culture.html> (accessed May 21, 2000); “Senegal Overview,” available at <http://www.geocities.com/Athens/Atrium/2787/overview.html> (accessed May 21, 2001); Lewis, “The First Senegal.”

<sup>50</sup> Lewis, “The First Senegal.” See generally, Abdoulaye-Bara Diop, *La Société Wolof: Tradition et Changement. Les Systèmes D’Inégalité et de Domination*. (Paris: Karthala, 1981).

<sup>51</sup> *Ibid.* *Griots* occupied a special place within the caste system because of their traditional roles as oral storytellers, singers, and conflict mediators. *Griots* were at once celebrated for their storytelling skills and deemed polluting because of the tasks that they performed—including circumcision, funeral preparation, and midwifery. Contact with *griots*—particularly through their sweat—was seen as socially polluting. Benhill, J., Ph.D. Thesis in Anthropology, Yale University, <http://www.geocities.com/jbenhill/thesisChap2.html> (accessed July 26, 2001).

<sup>52</sup> “Bangladesh Dalit Hindus Fight for Jobs and Homes,” *Indian Express*, September 20, 2000.

<sup>53</sup> *Ibid.*

<sup>54</sup> P.P. Sivapragasam, “Indian Origin *Tamils* in Sri Lanka: An Oppressed People” (paper prepared by the National Campaign on Dalit Human Rights for the Global Conference Against Racism and Caste Based Discrimination/Occupation and Descent Based Discrimination Against Dalits, New Delhi, India March 1-4, 2001).

<sup>55</sup> Goonesekere, “Prevention of Discrimination” (New York: United Nations, 2001) E/CN.4/Sub. 2/2001/16, para. 32

<sup>56</sup> *Ibid.*

A recent allegation of discrimination based on descent is that made by Tamils of Indian origin employed mainly as tea estate workers in the hill country. With regard to wages, housing, sanitation, health and educational facilities, they were an oppressed group. Improvements have slowly been made as a result of government policies and powerful trade union action. Integration with the rest of society is more difficult owing to prejudice, but this is breaking down. There are signs of upward mobility through education and non-discriminatory laws. Caste distinctions exist among themselves and complaints have been made that workers (mostly Dalits) are kept out of trade union office by high caste supervisors.<sup>57</sup>

The Sri Lankan government's development and social welfare programs have also failed to integrate the *Rodiya* into mainstream society,<sup>58</sup> leaving many to rely on menial wage labor as sanitation workers and hospital attendants.<sup>59</sup>

Most Dalits in *India* also continue to live in extreme poverty, without land or opportunities for better employment or education. With the exception of a minority who have benefited from India's policy of quotas in education and government jobs, Dalits are relegated to the most menial of tasks as removers of human waste and dead animals, leather workers, street sweepers, and cobblers. Dalit children make up the majority of children sold into bondage to pay off debts to upper-caste creditors.

According to government statistics, an estimated one million Dalits in *India* are "manual scavengers" (a majority of them women) who clear feces from public and private latrines and dispose of dead animals; unofficial estimates are much higher. Handling of human waste is a caste-based occupation, deemed too "polluting and filthy" for anyone but Dalits. Manual scavengers exist under different caste names throughout the country, such as the Bhangis in Gujarat, the Pakhis in Andhra Pradesh, and the Sikkaliars in Tamil Nadu. Members of these communities are invariably placed at the very bottom of the caste hierarchy, and even the hierarchy of Dalit sub-castes. Using little more than a broom, a tin plate, and a basket, they are made to clear feces from public and private latrines and carry waste to dumping grounds and disposal sites. Though long outlawed, the practice of manual scavenging continues in most states.

In November 1999, after a cyclone slammed into *India's* eastern state of Orissa, killing thousands and rendering millions homeless, the government brought in two hundred Dalit manual scavengers from New Delhi, and planned to bring five hundred more from other parts of Orissa, to load animal carcasses onto hand-drawn carts and take them away to be burned. Government officials had reportedly offered local upper-caste residents more than the daily minimum wage for each animal burned but they refused, citing the decayed conditions of the carcasses and the fact that the task was beneath them: they had "some self-respect left."<sup>60</sup> As witnessed with the earthquake in Gujarat, even in times of natural disaster, the laws of "purity and pollution" prevail and the government's actions often reinforce the prejudice.

Discrimination against Buraku persists in *Japan's* economy. In a high profile case in 1998, according to Buraku civil rights groups, over seven hundred companies were discovered to have hired private investigators to unearth job applicants' Buraku origins, ethnic background, nationality, ideology, religion, and political affiliation.<sup>61</sup> After factoring in each characteristic, an applicant was ranked from "excellent" to "advisable not to hire." However, a person discovered to be of Buraku origin was not rated and consequently not hired.<sup>62</sup>

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<sup>57</sup> Ibid., para. 36.

<sup>58</sup> Weeratunge, *Aspects of Ethnicity and Gender Among the Rodi of Sri Lanka*, p. 78.

<sup>59</sup> Ibid., p. 79.

<sup>60</sup> Neelesh Misra, "Even for Money, Cyclone Survivors Won't Clear Bodies," *Associated Press*, November 12, 1999.

<sup>61</sup> Buraku Liberation and Human Rights Research Institute and Buraku Liberation League, *Buraku People*; Ishikawa, "Rights Activists and Rights Violations."

<sup>62</sup> Kenzo Tomonaga, *NGO Report in Response to the First and Second Report Prepared by the Government of Japan Concerning the International Convention on the Elimination of All Forms of Racial Discrimination* (Japan: Buraku Liberation and Human Rights Research Institute, 2000).

Already years before, in 1975, the practice of selling “Buraku lists” had been exposed. Also compiled by investigative companies, these lists included information on the names and locations of Buraku households and were marketed to private companies for the purposes of screening job applicants and to families seeking to arrange and approve marriages.<sup>63</sup> Some claim that the lists were used to counter the Buraku rights movement, which successfully campaigned for a standard job application for high school students, and for the prohibition of the discriminatory use of family registers to be legally mandated.<sup>64</sup> Such lists were reported to be in circulation as recently as 1996.<sup>65</sup>

### ***Debt Bondage and Slavery***

The poor remuneration of manual scavenging, agricultural labor, and other forms of low-caste employment often force families of lower castes or caste-like groups into bondage. A lack of enforcement of relevant legislation prohibiting debt bondage in most of the countries concerned allows for the practice to continue unabated.

An estimated forty million people in *India*, among them some fifteen million children, are working in slave-like conditions in order to pay off debts as bonded laborers. Due to the high interest rates charged, the employers’ control over records, and the abysmally low wages paid, the debts are seldom settled. Bonded laborers are frequently low-caste, illiterate, and extremely poor, while the creditors/employers are usually higher-caste, literate, comparatively wealthy, and relatively more powerful members of the community.

The Bonded Labour System (Abolition) Act, 1976 abolishes all agreements and obligations arising out of the bonded labor system. It aims to release all laborers from bondage, cancel any outstanding debt, prohibit the creation of new bondage agreements, and order the economic rehabilitation of freed bonded laborers by the state. It also punishes attempts to compel persons into bondage with a maximum of three years in prison and a Rs. 2,000 (U.S.\$43) fine. However, relatively few bonded laborers have been identified, released, and rehabilitated in the country.

In *Pakistan* the debt bondage system is most prevalent in the agricultural provinces of southern Punjab and Sindh. Most laborers in these areas are minority Hindus from lower castes.<sup>66</sup> In a pattern similar to that practiced in *India*, the charging of exorbitantly high interest rates ensure that loans from landowners never get repaid. While the loan agreement is often made between the landowner and the male head of the peasant household, the work to pay off the loan is performed by the entire family, including women and children.<sup>67</sup> Women have also been held in custody by landowners when bonded male members of the family leave the land or area, and have even been sold into marriage or prostitution should the male family member fail to return.<sup>68</sup> As in *India*, children often inherit their families’ debts and remain trapped in a cycle of debt bondage.<sup>69</sup>

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Dexter Filkins, “Serfs Cast Off Chains in Pakistan,” *Los Angeles Times*, August 20, 1999. According to a report by the Asian Development Bank, bonded agricultural laborers in Sindh province in Pakistan, known as Haris, hail from lower caste and “untouchable” groups of Indian origin. In lower Sindh, many live in “unregistered villages” and so have no political rights. Many are illiterate and often ignorant of the laws that are meant to protect them. Haris work as contract laborers, migrant workers, and sharecroppers. Under current systems, Haris can never receive compensation worth more than one-fourth of the crop that they have farmed. Asian Development Bank, “Sindh Rural Development Project (TA 3132-PAK) Final Report, Volume 1,” October 2000.

<sup>67</sup> Human Rights Watch, *Contemporary Forms of Slavery in Pakistan* (New York: Human Rights Watch, 1995), pp. 12-13.

<sup>68</sup> Ibid., p. 66.

<sup>69</sup> To ensure the sustainability of the practice of debt bondage, landowners in Pakistan have also been known to bribe teachers to stay at home, instead of teaching at schools attended by the children of bonded laborers. A 1999 report found that “Pakistani newspapers and education groups have documented at least 5,000 ‘ghost schools’—many of them in rural areas—where no students study because landlords often pay the teachers to stay at home.” Filkins, “Serfs Cast Off Chains in Pakistan.”

A disturbing reflection of the slavery of centuries past is the well-documented practice of tying up or chaining bonded laborers to hinder their escape. Of the 7,500 bonded laborers reported to have escaped or been released since 1995 in the southern Sindh province, human rights organizations report that “several hundred” of them were found “tied up or in chains.”<sup>70</sup> Similarly, in 1991 the Pakistani army reportedly conducted a raid that unearthed the illegal detention of 295 laborers, including 132 children, all of whom were shackled each night. Most were only given flour and chili peppers as food and had no access to plumbing facilities or medical care.<sup>71</sup> National legislation in Pakistan prohibiting these practices reportedly has done little to eradicate them. Provincial governments responsible for their enforcement have yet to establish mechanisms to put them into practice.<sup>72</sup>

According to the United Nation Development Programme’s “Nepal Human Development Report 1998,” despite legal pronouncements to the contrary, bonded labor has not been eradicated in *Nepal*. The report adds:

In the mid-western and far western hills, the debt-bonded agricultural labourers, haliyas, mainly from “untouchable” castes, work under this system. The Anti-Slavery International and INSEC<sup>73</sup> in 1996 rarely observed haliyas from among members of the high caste groups.... Their report also revealed that in the regions noted above, members of “untouchable” households were charged very high rates of interest - as high as 10 percent/month - on loans forwarded by their landlords, while members of “high caste” households were generally charged only 2-3 percent/month. Such discrimination was designed to keep alive and intensify the system of debt bondage. The “low caste” Tarai groups like Musahar, Dusadh, Dom, Chamar, etc. face a similar problem: repayment of loans is actively discouraged by the landlords (ibid.). Because the primary interest of the landlord lies in continued cultivation of his land and in regular assurance of labour supply, his lending is not directed towards earning interest in cash (NRB 1988).<sup>74</sup>

The legacy of slavery as a form of caste and descent-based discrimination in *Mauritania* is an issue the government must do more to address.<sup>75</sup> While President Maouiya Ould Sid’Ahmed Ould Taya has brought public attention to modern-day slavery practices throughout the country—and while the government purports to have implemented relevant education and agrarian reforms—its record on enforcing slavery-specific legislation, and legislation promoting the civil rights of former slaves, is weak.<sup>76</sup>

Both the Arab and Afro-Mauritanian groups have long distinguished community members on the basis of caste, and both included a caste-like designation of “slave” within these systems. To this day a former “slave”

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<sup>70</sup> Ibid.

<sup>71</sup> U.S. Department of Labor: International Child Labor Program, “Forced and Bonded Child Labor,” available at <http://www.dol.gov/dol/ilab/public/media/reports/iclp/sweat2/bonded.htm> (accessed May 16, 2001).

<sup>72</sup> U.S. Department of State, *1999 Country Reports on Human Rights Practices: Pakistan*, (Bureau of Democracy, Human Rights and Labor, U.S. Department of State, February 2000).

<sup>73</sup> Informal Sector Service Centre.

<sup>74</sup> United Nations Development Programme, “Nepal Human Development Report 1998,” available at <http://www.undp.org.np/keydoc/nhdr98/contents.html> (accessed August 15, 2001). The kamaiya bonded labor system is also prevalent in western Nepal. According to the UNDP report, kamaiyas are “mostly landless and homeless, and belong to the Tharu ethnic group.... A kamaiya is heavily burdened with debts and often remains as such for a long period. Debts are inter-generationally transferable. Frequently, therefore, a kamaiya household remains in bondage through multiple generations.” Ibid. In July 2000, the Nepali government responded to years of sustained advocacy by local NGOs and issued a decree canceling all debts arising from the illegal practice of bonded labor. The decree liberated thousands of kamaiya laborers but it remains unclear whether haliyas were affected. Many kamaiyas were forcibly driven from their homes and dispossessed of all their belongings as a result of landlord retaliation. As of February 2001, a lack of government rehabilitation services had kept many displaced laborers in makeshift camps that lacked adequate shelter, water, food, and sanitation. “On to the Next Phase of the Kamaiya Mukti Andolan,” *Spotlight*, available at <http://www.nepalnews.com.np/contents/englishweekly/spotlight/2000/nov/nov24/forum.htm>, November 24–30, 2000, (accessed May 17, 2001); Ramyata Limbu, “Lacking homes, freed peasants squat on gov’t land,” *Inter Press Service*, February 9, 2001.

<sup>75</sup> Human Rights Watch/Africa, *Mauritania’s Campaign of Terror: State Sponsored Repression of Black Africans* (New York: Human Rights Watch, 1994).

<sup>76</sup> Ibid., p. 79.

distinction—particularly for the *Haratines*, Arabic speakers of Sub-Saharan African origin—still carries significant social implications. At best, members of higher and lower castes are discouraged from intermarrying. In *Soninke* communities, members of the slave caste are also buried in separate cemeteries.<sup>77</sup> At worst, however, there is a widespread system of unpaid servitude required of communities whose members still self-identify as slaves. Though the government has long outlawed slave-like distinctions and practices, it has taken few steps to enforce these laws. A weak economy also leaves former slaves with few options other than remaining with the families of masters who owned their ancestors.<sup>78</sup> Caste systems similar to those found among the Wolof of *Senegal* can also be found among Soninke, Halpular, and Wolof Afro-Mauritians.

### **Caste and Socio-Economic Disparities**

Significant economic and educational disparities persist between lower and higher-caste communities in the countries highlighted in this report. Lower-caste communities are often plagued by low literacy levels and a lack of access to health care and education. A lack of formal education or training, as well as discrimination that effectively bars them from many forms of employment, and the nonenforcement of protective legislation, perpetuates caste-based employment and keeps its hereditary nature alive.

As of 1997, there were reportedly only two Dalit medical doctors and fifteen Dalit engineers in *Nepal*.<sup>79</sup> The life expectancy rate of Nepal's Dalits is five years short of the national average of 55.<sup>80</sup> Children face a higher incidence of malnutrition<sup>81</sup> and the general population lacks access to clean drinking water or proper health services.<sup>82</sup>

Nepal's 1998 Human Development Report revealed that development indicators closely followed caste lines. Without a single exception, the lower the caste, the lower the life expectancy, the literacy rate, years of schooling, and per capita income.<sup>83</sup> In 1999, Nepal's fourteenth periodic report to CERD also frankly and constructively highlighted the economic disparities that continue to persist between low- and high-caste populations:

[A]wareness creation, income generation, education and health facilities programmes were implemented to address the problems of the backward communities. However, the gap between so-called higher and lower castes has not narrowed. There have hardly been any changes in the society or the living standard of the poor. Consequently, the people of backward communities have felt discriminated against and could not believe that the Government was doing anything for their welfare and development. The main reasons for this are: lack of integrated programmes, weak implementation and sustainability, failure to mainstream backward communities and repressed people into the national development process, centre-oriented/based programmes rather than community-based/participatory programmes, little attention to human resource development and lack of encouragement to the development and modernization of traditional occupations and skills, lack of effective institutional mechanisms, etc.<sup>84</sup>

### **Access to Education**

High drop-out and lower literacy rates among lower-caste populations have rather simplistically been characterized as the natural consequences of poverty and underdevelopment. Though these rates are partly attributable to the need for low-caste children to supplement their family wages through labor, more insidious and

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<sup>77</sup> "Mauritania: Compensation and Benefit Legislation," *Economic Research Institute: Human Resource Codes and Laws*, available at <http://www.eri.com/codes/MAURITANIA.htm> (accessed March 22, 2001).

<sup>78</sup> *Ibid.*

<sup>79</sup> Hira Vishwakarma, "Reservations for Nepal's Dalits," *Kathmandu Post*, July 27, 1997.

<sup>80</sup> Bishwakarma, "Caste Discrimination and Untouchability Against Dalits in Nepal."

<sup>81</sup> Bishwakarma, "General Comments of Country Report for the United Nations Convention for Elimination of All Forms of Racial Discrimination."

<sup>82</sup> Bishwakarma, "Caste Discrimination and Untouchability Against Dalits in Nepal."

<sup>83</sup> See Committee on the Elimination of Racial Discrimination, "Fourteenth Report of States Parties Due in 1998: Nepal," CERD/C/337/Add.4, Annex, May 12, 1999.

<sup>84</sup> *Ibid.*



less well-documented is the discriminatory and abusive treatment faced by low-caste children who attempt to attend school, at the hands of their teachers and fellow students.

Over fifty years since *India's* constitutional promise of free, compulsory, primary education for all children up to the age of fourteen—with special care and consideration to be given to promote the educational progress of scheduled castes—illiteracy still plagues almost two-thirds of the Dalit population as compared to about one-half of the general population. The literacy gap between Dalits and the rest of the population fell a scant 0.39 percent between 1961 and 1991. Most of the government schools in which Dalit students are enrolled are deficient in basic infrastructure, classrooms, teachers, and teaching aids. A majority of Dalit students are also enrolled in vernacular schools whose students suffer serious disadvantages in the job market as compared to those who learn in English-speaking schools.<sup>85</sup>

Despite state assistance in primary education, Dalits also suffer from an alarming drop-out rate. According to the *National Commission for Scheduled Castes and Scheduled Tribes' 1996-1997 and 1997-1998 Report*, the national drop-out rate for Dalit children—who often sit in the back of classrooms—was a staggering 49.35 percent at the primary level, 67.77 percent for middle school, and 77.65 percent for secondary school.<sup>86</sup>

*Rodiya* children in *Sri Lanka* rarely study past elementary levels, if at all. Instead, their parents require them to realize their income-earning potential even as young children, and often prematurely take them out of school.<sup>87</sup> Lower-caste Tamil plantation workers of Indian origin in *Sri Lanka* also have low literacy levels. According to a Sri Lankan activist only 65 percent of plantation workers can read or write, compared to a high 90 percent national average. Higher drop out rates among children of plantation workers stems partly from the employment of these children as domestic workers, hotel workers, or sanitation cleaners.<sup>88</sup>

The Buraku of *Japan* also suffer from lower levels of higher education than the national average, and higher dropout rates than the broader society. In particular, Buraku women report lower levels of literacy, high school and university enrollment, and employment.<sup>89</sup> Special scholarship programs that bolstered national averages of Buraku education are expected to be phased out by March 2002, despite the considerable success they had in bridging the education gap between Buraku and non-Buraku.

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<sup>85</sup>National Campaign for Dalit Human Rights, *Black Papers: Broken Promises and Dalits Betrayed* (India: National Campaign on Dalit Human Rights, 1999).

<sup>86</sup> National Commission for Scheduled Castes and Scheduled Tribes, *Highlights of the Report for the Years 1996-97 and 1997-98* (New Delhi: Government of India, 1999). In a school in Dhandhuka town, Gujarat, *India*, for example, a thirteen-year-old Dalit boy was singled out among several students playing with his Brahmin teacher's scooter. The teacher told the boy's father, a manual scavenger, that he was going to expel the child from school. After much pleading on the father's part, the teacher allowed the boy to stay in school on the condition that the father sign an apology letter. As the boy re-entered the classroom, the teacher threatened the child, saying he would not allow him to study or amount to anything in life. Later that evening the boy was found dead on a railroad track, his body cut into three pieces by a train. In his pocket was found the following suicide note:

I would not have felt bad if the teacher had abused me. I would not have felt bad if the teacher had slapped me. But because he humiliated my father, I felt very bad and finally when he told me he wouldn't let me study or progress in life, I felt extremely hurt. If I am not going to be able to study and progress in life what is the meaning of living my life?

Human Rights Watch interview with Martin Macwan, Director of Navsarjan Trust, January 2, 2001. Macwan retained a copy of the suicide note after the incident.

<sup>87</sup> Weeratunge, *Aspects of Ethnicity and Gender Among the Rodi of Sri Lanka*, p. 79.

<sup>88</sup> P.P. Sivapragasam, "Indian Origin Tamils in Sri Lanka: An Oppressed People," paper prepared for the Global Conference Against Racism and Caste Based Discrimination/Occupation and Descent Based Discrimination Against Dalits, New Delhi, India March 1-4, 2001.

<sup>89</sup> Buraku Liberation League and Buraku Liberation and Human Rights Research Institute, *Reality of Discriminated-Against Buraku People in Japan and the Challenge Aiming for the Elimination of Discrimination* (Japan: Buraku Liberation and Human Rights Research Institute, 2001).

In *Nepal* the literacy rate for Dalits is appallingly low at 10 percent for men and 3.2 percent for women, compared to a national literacy rate that exceeds 50 percent. According to the government's own fourteenth periodic report under ICERD, "The lowest literacy is among the occupational castes. Women constitute more than two thirds of the illiterates."<sup>90</sup>

### ***Access to Land***

Most Dalit victims of abuse in *India* are landless agricultural laborers who form the backbone of the nation's agrarian economy. Despite decades of land reform legislation, over 86 percent of Dalit households today are landless or near landless. Those who own land often own very little. Land is the prime asset in rural areas that determines an individual's standard of living and social status. As with many other low-caste populations, lack of access to land makes Dalits economically vulnerable; their dependency is exploited by upper- and middle-caste landlords and allows for many abuses to go unpunished. Landless agricultural laborers throughout the country work for a few kilograms of rice or Rs. 15 to Rs. 35 (US\$0.32 to \$0.75) a day, well below the minimum wage prescribed in their state. Many laborers owe debts to their employers or other moneylenders.<sup>91</sup>

Indian laws and regulations that prohibit alienation of Dalit lands, set ceilings on a single landowner's holdings, or allocate surplus government lands to scheduled castes and scheduled tribes have been largely ignored, or worse, manipulated by upper castes with the help of district administrations.<sup>92</sup>

Although many of *Nepal's* agricultural laborers are Dalits, Dalits also have a startlingly low rate of land ownership—only 3.1 percent of Dalits own more than twenty-one ropanies<sup>93</sup> of land and collectively Dalits own only about 1 percent of Nepal's total cultivable land. Moreover, 90 percent of Nepal Dalits live below the poverty line, compared to 45 percent of the overall population. Their per capita income amounts to a paltry U.S.\$39.60 while the rest of Nepalese average U.S.\$210 per year.<sup>94</sup> Nepali Dalits are among the world's poorest of the poor.

### **Political Representation and Political Rights**

*India's* policy of "reservations" or caste-based quotas is an attempt by the central government to remedy past injustices related to low-caste status. To allow for proportional representation in certain state and federal institutions, the constitution reserves 22.5 percent of federal government jobs, seats in state legislatures, the lower house of parliament, and educational institutions for scheduled castes and scheduled tribes.

The reservation policy, however, has not been fully implemented. *The National Commission for Scheduled Castes and Scheduled Tribes' (1996-1997 and 1997-1998)* report indicates that of the total scheduled caste reservation quota in the Central Government, 54 percent remains unfilled. More than 88 percent of posts reserved in the public sector remain unfilled as do 45 percent in state banks. A closer examination of the caste composition of government services, institutions of education and other services, however, reveals what Dalit activists call an "unacknowledged reservation policy" for upper-castes, particularly Brahmins, built into the system. Though they represented only 5 percent of the population in 1989, Brahmins comprised 70 percent of the Class I officers in governmental services. At universities, upper-castes occupy 90 percent of the teaching posts in the social sciences and 94 percent in the sciences, while Dalit representation is only 1.2 and 0.5 percent, respectively.<sup>95</sup>

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<sup>90</sup> See Committee on the Elimination of Racial Discrimination, "Fourteenth report of States parties due in 1998: Nepal," CERD/C/337/Add.4, Annex, May 12, 1999. According to the report, "occupational castes" mostly indicate the so-called "Untouchables" of the Hills and Tarai (plains part of the country).

<sup>91</sup> Human Rights Watch, *Broken People*, p. 28.

<sup>92</sup> *Ibid.*, p. 28.

<sup>93</sup> Approximately one hectare.

<sup>94</sup> Bishwakarma, "Caste Discrimination and Untouchability Against Dalits in Nepal."

<sup>95</sup> National Campaign for Dalit Human Rights, *Black Papers: Broken Promises and Dalits Betrayed* (New Delhi: National Campaign on Dalit Human Rights, 1999).

Dalits throughout India also suffer in many instances from de facto disenfranchisement. While India remains the world's largest democracy, for many of its Dalit citizens democracy has been a sham. During elections, many are routinely threatened and beaten by political party strongmen in order to compel them to vote for certain candidates. Already under the thumb of local landlords and police officials, Dalit villagers who do not comply have been harassed, beaten, and murdered.

Police and upper-caste militias, operating at the behest of powerful political leaders in India's states, have also punished Dalit voters. In February 1998, police raided a Dalit village in Tamil Nadu that had boycotted the national parliamentary elections. Women were kicked and beaten, their clothing was torn, and police forced sticks and iron pipes into their mouths. Kerosene was poured into stored food grains and grocery items and police reportedly urinated in cooking vessels. In Bihar, political candidates ensure their majority vote with the help of *senas*, civilian militias, whose members intimidate and kill. The Ranvir Sena, a private militia of upper-caste landlords, was responsible for killing more than fifty people during Bihar's 1995 state election campaign. The sena was again used to intimidate voters in Ara district, Bihar, during the February 1998 national parliamentary elections.<sup>96</sup>

Dalits who have contested political office in village councils and municipalities through seats that have been constitutionally "reserved" for them have been threatened with physical abuse and even death in order to get them to withdraw from the campaign. In the village of Melavalavu, in Tamil Nadu's Madurai district, following the election of a Dalit to the village council presidency, members of a higher-caste group murdered six Dalits in June 1997, including the elected council president, whom they beheaded.<sup>97</sup>

Unlike India, *Nepal* does not provide for reservations of posts or quotas in political bodies, civil sector jobs, and institutions of higher learning. Though they comprise over 20 percent of the population, lower castes are dramatically underrepresented in government. Since 1958, only fourteen Dalits in *Nepal* have become members of parliament (upper house) through a system of nomination, all of them men. Only one Dalit has been elected to the House of Representatives.<sup>98</sup> Furthermore, there has been a dearth of Dalits in *Nepal*'s administrative and judicial system; and discrimination continues to persist in the *Nepal* Royal Army.<sup>99</sup> Conversely, according to an NGO study on discrimination against Dalits in *Nepal*, while Brahmins constitute only 16 percent of the population, they represent 57 percent of parliament and a staggering 89 percent of the judiciary.<sup>100</sup> The result is that a full one-fifth of *Nepal*'s population is effectively excluded.

In Sri Lanka, Indian-origin Tamils—who have resided in the country since the nineteenth century—can only become citizens through registration. They are denied the right to citizenship by descent to which the rest of the Sri Lankan population is entitled.<sup>101</sup>

### **Physical and Economic Retaliation**

A principal weapon in sustaining the low status of Dalits in *India* is the use of social and economic boycotts and acts of retaliatory violence. Dalits are physically abused and threatened with economic and social ostracism from the community for refusing to carry out various caste-based tasks. Any attempt to alter village customs, defy the social order, or to demand land, increased wages, or political rights leads to violence and economic retaliation on the part of those most threatened by changes in the status quo. Dalit communities as a whole are summarily punished for individual transgressions; Dalits are cut off from community land and

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<sup>96</sup> Human Rights Watch, *Broken People*, p. 4.

<sup>97</sup> *Ibid.*, p. 5.

<sup>98</sup> Bishwakarma, "Caste Discrimination and Untouchability Against Dalits in Nepal."

<sup>99</sup> Hira Vishwakarma, "Reservations for Nepal's Dalits," *Kathmandu Post*, July 27, 1997.

<sup>100</sup> Dalit NGO Federation (Nepal), "Nepal Alternative Country Report 2001," paper submitted to United Nations Committee for the Elimination of Racial Discrimination for Asian Regional Preparatory Meetings on the Occasion of the World Conference Against Racial Discrimination 2001, Teheran, Iran, February 17-21, 2001.

<sup>101</sup> Sivapragasam, "Indian Origin Tamils in Sri Lanka: An Oppressed People."

employment during social boycotts, Dalit women bear the brunt of physical attacks, and the law is rarely enforced.<sup>102</sup>

Since the early 1990s, violence against Dalits has escalated dramatically in response to growing Dalit rights movements. Between 1995 and 1997, a total of 90,925 cases were registered with the police nationwide as crimes and “atrocities” against scheduled castes. Of these 1,617 were for murder, 12,591 for hurt, 2,824 for rape, and 31,376 for offenses listed under the Prevention of Atrocities Act.<sup>103</sup> Given that Dalits are often both reluctant and unable (for lack of police cooperation) to report crimes against themselves, the actual number of abuses is presumably much higher.<sup>104</sup>

India’s National Commission for Scheduled Castes and Scheduled Tribes has reported that these cases typically fall into one of three categories: cases relating to the practice of “untouchability” and attempts to defy the social order; cases relating to land disputes and demands for minimum wages; and cases of atrocities by police and forest officials. Most of the conflicts take place within very narrow segments of the caste hierarchy, between the poor and the not so poor, the landless laborer and the marginal landowner. The differences lie in the considerable amount of leverage that the higher-caste Hindus or non-Dalits are able to wield over local police, district administrations, and even state governments.<sup>105</sup>

On the night of December 1, 1997, an upper-caste landlord militia called the Ranvir Sena shot dead sixteen children, twenty-seven women, and eighteen men in the village of Laxmanpur-Bathe, Jehanabad district Bihar. Five teenage girls were raped and mutilated before being shot in the chest. The villagers were alleged to have been sympathetic to a guerilla group known as Naxalites that had been demanding more equitable land redistribution in the area. When asked why the sena killed children and women, one sena member told Human Rights Watch, “We kill children because they will grow up to become Naxalites. We kill women because they will give birth to Naxalites.”<sup>106</sup>

The senas, which claim many politicians as members, operate with virtual impunity. In some cases, police have accompanied them on raids and have stood by as they killed villagers and burned down their homes. On April 10, 1997, in the village of Ekwari, located in the Bhojpur district of Bihar, police stationed in the area to protect lower-caste villagers instead pried open the doors of their residences as members of the sena entered and killed eight residents. In other cases, police raids have followed attacks by the senas. Sena leaders are rarely prosecuted for such killings, and the villagers are rarely or inadequately compensated for their losses. Even in cases where police are not hostile to Dalits, they are generally not accessible to call upon: most police camps are located in the upper-caste section of the village and Dalits are simply unable to approach them for protection.<sup>107</sup>

### **Caste and Gender**

Lower-caste women are singularly positioned at the bottom of caste, class, and gender hierarchies. Largely uneducated and consistently paid less than their male counterparts worldwide they invariably bear the brunt of exploitation, discrimination, and physical attacks. Sexual abuse and other forms of violence against women are often used by landlords and the police to inflict political “lessons” and crush dissent within the

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<sup>102</sup> Large-scale clashes between caste communities in Tamil Nadu’s southern districts in recent years, for example, have often been triggered by Dalits’ efforts to draw water from a “forbidden” well or by their refusal to perform a delegated task.

<sup>103</sup> Under the act, atrocities are defined to include forcing members of a scheduled caste or scheduled tribe to drink or eat any inedible or obnoxious substance; dumping excreta, waste matter, carcasses or any other obnoxious substance in their premises or neighborhood; forcibly removing their clothes and parading them naked or with painted face or body; interfering with their rights to land; compelling a member of a scheduled caste or scheduled tribe into forms of forced or bonded labor; corrupting or fouling the water of any spring, reservoir or any other source ordinarily used by scheduled castes or scheduled tribes; denying right of passage to a place of public resort; and using a position of dominance to exploit a scheduled caste or scheduled tribe woman sexually.

<sup>104</sup> Human Rights Watch, *Broken People*, p. 9.

<sup>105</sup> *Ibid.*, p. 4.

<sup>106</sup> *Ibid.*, p. 5.

<sup>107</sup> *Ibid.*, p. 5.

community. Lower-caste women also suffer disproportionately in terms of access to health care, education, and subsistence wages as compared to women of higher castes.

Dalit women in *India* and *Nepal* make up the majority of landless laborers and scavengers, as well as a significant percentage of the women forced into prostitution in rural areas or sold into urban brothels. As such, they come into greater contact with landlords and enforcement agencies than their upper-caste counterparts. Their subordinate position is exploited by those in power who carry out their attacks with impunity. Incidents of gang-rape, stripping, and parading women naked through the streets, and making them eat excrement are all crimes specific to Dalit women in *India*. Sexual violence is also linked to debt bondage in *India*, *Pakistan*, and *Nepal*.

According to a Tamil Nadu state government official, the rape of Dalit women exposes the hypocrisy of the caste system as “no one practices untouchability when it comes to sex.”<sup>108</sup> Like other Indian women whose relatives are sought by the police, Dalit women have also been arrested and tortured in custody as a means of punishing their male relatives who are hiding from the authorities.

Gender-specific violence is a problem of epidemic proportions among low-caste plantation workers in *Sri Lanka*.<sup>109</sup> In *Nepal*, Dalit women are economically marginalized and exploited, both within and outside their families. As the largest group of those engaged in manual labor and agricultural production, their jobs often include waste disposal, clearing carcasses, and doing leatherwork.<sup>110</sup> Despite their grueling tasks and long hours, exploitative wages ensure that Dalit women are unable to earn a subsistence living. In some rural areas Dalit women scarcely earn ten to twenty kilograms of food grain a year, barely enough to sustain a family.<sup>111</sup> Many have been driven to prostitution. One caste in particular, known as *badis*, is viewed as a prostitution caste. Many Dalit women and girls, including those from the *badi* caste, are trafficked into sex work in Indian brothels.<sup>112</sup>

Under the devadasi system, thousands of Dalit girls in India’s southern states are ceremonially “dedicated” or married to a deity or to a temple. Once dedicated, they are forced to become prostitutes for upper-caste community members, and eventually auctioned into an urban brothel.<sup>113</sup> In *Pakistan* human rights organizations report that the rape of female bonded laborers is one of the most pressing problems facing the movement to end debt bondage. Not only is it a widespread, violent problem, but there is little legal recourse.<sup>114</sup>

In *Mauritania*, women are particularly burdened by the designation of “slave.” While men are sometimes able to escape, and by law cannot be forced to return to their “masters,” women are often forced to remain as their

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<sup>108</sup> Ibid., p. 3.

<sup>109</sup> Sivapragasam, “Indian Origin Tamils in Sri Lanka: An Oppressed People.”

<sup>110</sup> Bishwakarma, “Caste Discrimination and Untouchability Against Dalits in Nepal.”

<sup>111</sup> Dalit NGO Federation (Nepal) “Nepal Alternative Country Report 2001.”

<sup>112</sup> Durga Sob, “Caste and Gender Discrimination Against Dalit Women in Nepal,” Feminist Dalit Organization. See also Human Rights Watch, *Rape for Profit: Trafficking of Nepali Girls and Women to India’s Brothels* (New York: Human Rights Watch, 1995).

<sup>113</sup> Human Rights Watch, *Broken People*, pp. 150-152. In reviewing India’s third periodic report to the U.N. Human Rights Committee, submitted under article 40 of the International Covenant on Civil and Political Rights (ICCPR) in July 1997, the Human Rights Committee regretted “the lack of national legislation to outlaw the practice of Devadasi, the regulation of which is left to the states,” and added that “it appears that the practice continues and that not all states have effective legislation against it.” The committee emphasized that the practice was incompatible with the ICCPR and recommended that “all necessary measures be taken urgently” toward its eradication. Consideration of Report by India to the Human Rights Committee, CCPR/C/79/Add.81, August 4, 1997.

<sup>114</sup> Human Rights Watch, *Contemporary Forms of Slavery in Pakistan*, p. 72. If women bonded laborers seek legal recourse after sexual assault, they are subject to a series of laws that equate rape with adultery, an offense for which they can be punished under Pakistan’s Hudood Ordinances. See Asma Jahangir and Hina Jilani, *The Hudood Ordinances: A Divine Sanction?* (Lahore: Rhot Books, 1990).

“masters” threaten to keep their children. The tenuous legal status of slave children also keeps women tied to their masters.<sup>115</sup>

### **Caste and the South Asian Diaspora**

Caste has migrated with the *South Asian diaspora* to firmly take root in East and South Africa, Mauritius, Fiji, Suriname, the Middle East, Malaysia, the Caribbean, the United Kingdom, North America, and other regions.<sup>116</sup>

Among migrant communities in *North America* and *Europe*, caste ideologies are perpetuated by families returning to India to seek out marriage partners within their own caste. U.S.-based matrimonial services, including regional conventions, are burgeoning alongside a growing population of Indian origin.<sup>117</sup> Families openly advertise their caste preference in the matrimonial sections of Indian community papers in North America and Europe (a practice quite common within India as well), as well as on Internet matchmaking sites.

In the *United States*, a rising number of caste-based groups—each with chapters throughout many major cities—also points to the importance of caste as an identifier for migrant Indian communities. Such caste-based associations in the *United States* are providing funds and political support for a resurgence of caste fundamentalism in South Asia as well.<sup>118</sup>

In *Britain* emigrant Dalits must also worship in segregated temples and have thus formed an umbrella group for low-caste temples—Guru Ravidass UK.<sup>119</sup> Twenty-two of these temples withheld (and ultimately redirected) funds raised for earthquake victims in Gujarat due to incidents of caste discrimination in the distribution of earthquake relief.<sup>120</sup>

Also in *Britain* caste tensions frequently erupt between high-caste Punjabis (*Jats*) and low-caste Punjabis (*Chamars*). Physical violence has also been known to erupt following intermarriage between the two communities.<sup>121</sup> Caste consciousness becomes especially problematic given the sizable population of both Jats and Chamars in the United Kingdom. According Sat Pal Muman, a presenter at the September 2000 International

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<sup>115</sup> Human Rights Watch/Africa, *Mauritania's Campaign of Terror*, p. 84; “Mauritania: Compensation and Benefit Legislation,” *Economic Research Institute: Human Resource Codes and Laws*, available at <http://www.eri.com/codes/MAURITANIA.htm> (accessed March 22, 2001).

<sup>116</sup> Prakash Jain of Delhi's Jawaharlal Nehru University has analyzed major clusters of the Indian diaspora. The following summary appeared in an article in the weekly magazine *India Today*:

There are approximately 15-20 million Indians across the globe. Other than Nepal, this population has emerged in five different ways. The first arose in the mid-19th and early 20th century when the British took Indian labour to raise sugar plantations in countries like South Africa, Mauritius, Trinidad, Jamaica, Guyana and Fiji. This numbers about 3.3 million. The second cluster of about 1.5 million in Sri Lanka, Malaysia and Myanmar has descended from kingani/maistry labour. The third category numbering over two lakh [200,000] is made up of free passage emigrants, largely from Gujarat, who went to Kenya, Tanzania and Zambia. The fourth group comprises workers in Saudi Arabia, UAE, Oman, Kuwait, Bahrain, Qatar and other West Asian countries, now estimated at about three million. The final group comprises around four million emigrants to the US, UK, Canada, Australia and other western countries.

Jairam Ramesh, “Ubiquitous Indians: The Indian Diaspora Living in Two Worlds is an Essential Feature of Globalisation,” *India Today*, available at <http://www.india-today.com/itoday/20000501/jairam.html>, May 1, 2000 (accessed May 16, 2001).

<sup>117</sup> Moses Seenarine, “The Persistence of Caste and Anti-Caste Resistance in India and the Diaspora,” available at <http://saxakali.com/indocarib/caste1.htm> (accessed May 14, 2001); Madhulika S. Khandelwal, “Indian Organizations in New York City,” available at [http://www.qc.edu/Asian\\_American\\_Center/aac\\_menu/research\\_resources/aacre20.html](http://www.qc.edu/Asian_American_Center/aac_menu/research_resources/aacre20.html) (accessed May 17, 2001).

<sup>118</sup> Seenarine, *Ibid*.

<sup>119</sup> Naresh Puri, “Caste Splits Earthquake Appeal,” *BBC News*, available at [http://news.bbc.co.uk/hi/english/uk/newsid\\_1190000/1190875.stm](http://news.bbc.co.uk/hi/english/uk/newsid_1190000/1190875.stm), February 26, 2001 (accessed May 17, 2001).

<sup>120</sup> *Ibid*.

<sup>121</sup> Sat Pal Muman, “Caste in Britain,” available at [http://www.ambedkar.org/Worldwide\\_Dalits/caste\\_in\\_britain.htm](http://www.ambedkar.org/Worldwide_Dalits/caste_in_britain.htm) (accessed May 17, 2001).

Dalit Human Rights Conference in London, inquiries about one's caste background are often made in privately run or Jat-run educational institutions and places of employment. In the city of Wolverhampton incidents of upper-caste Jats refusing to share water taps or make any physical contact with lower-caste persons have also been reported. At a sports competition in Birmingham in 1999 Jats reportedly refused to eat food that came from the Chamar community.<sup>122</sup>

In *Suriname*, Indians of Dalit-descent continue to be largely distinguished by their various caste-based occupations.<sup>123</sup> *Chamars* traditionally worked as drum beaters, beggars, hawkers, and shoemakers; *Pallen* as landless laborers; *Dhobis* as washers; *Collies* as porters; and *Dasis* as house servants. A higher-caste group includes *Kurmis* as cultivators, *Ahir* as cow herders, and *Chettyar* as weavers, barbers, shopkeepers, and moneylenders. The third and highest caste category consists of priests, scribes, and schoolmasters.<sup>124</sup>

In *Mauritius*, with its large concentration of people of Indian origin, social organization is based on family, kinship networks, and "to a not negligible extent, caste-based organization."<sup>125</sup> Caste-based considerations have also been reported in the political and employment sector.<sup>126</sup>

Caste distinctions play a role in both private life and political organization within *Malaysia's* minority "Indian" community although the extent of its influence on Malaysian Indian society is the subject of considerable debate.<sup>127</sup> Caste considerations are most obvious in the private sphere, particularly in the community's attitudes towards intermarriage. Many families seeking to arrange marriages place matrimonial ads that include caste requirements, and marriage brokers may be expected to take caste into account when finding suitable matches.<sup>128</sup> As one researcher observed, "Caste has, indeed, such a strong hold in marriage matters that intercaste marriages between different categories of higher caste status sometimes do not take place with parents' approval, much less between higher and lower caste members. Abolition of caste discrimination in this area remains a distant dream."<sup>129</sup> Though interactions outside the home seem to take place without much emphasis on caste, within the home contact with castes thought to be polluting may be quite limited. Some families, for example, refuse to dine with or accept food and drinks from people they suspect of being lower caste.<sup>130</sup>

Mass migration of higher and lower-caste Indians to *Bahrain*, *Kuwait*, the *United Arab Emirates*, and other Gulf states has brought with it vestiges of the caste system as well.

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<sup>122</sup> Ibid. The Chamars, traditionally a Dalit caste of leather workers in India, dominate the shoe industry in England. Ibid.

<sup>123</sup> Sandy Rao, "India's Hidden Apartheid: The Caste System and Its Continuation to the Caribbean and America," available at <http://saxakali.com/southasia/introduction.htm> (accessed May 14, 2001).

<sup>124</sup> Seenarine, "The Persistence of Caste and Anti-Caste Resistance in India and the Diaspora."

<sup>125</sup> Thomas Hylland Eriksen, "Indians in New Worlds: Mauritius and Trinidad," *Social and Economic Studies*, No. 1 (1992) available at <http://www.uio.no/~geirthe/Indians.html> (accessed May 15, 2001).

<sup>126</sup> Ibid.

<sup>127</sup> Most Malaysians of South Asian descent are Tamils whose ancestors came from South India. But the term "Indian" also includes Sri Lankans, northern Indians and people from elsewhere in South Asia.

<sup>128</sup> Wani Muthiah, "Pride and Prejudice," *The Star* (Kuala Lumpur), November 24, 1997.

<sup>129</sup> Rajakrishnan Ramasamy, *Caste Consciousness Among Indian Tamils in Malaysia* (Selangor, Malaysia: Pelanduk Publications, 1984), p. 46.

<sup>130</sup> Muthiah, "Pride and Prejudice." In the political sphere, caste was a driving force in a lengthy dispute between two prominent Malaysian Indian politicians, All Malaysian Indian Progressive Front (IPF) president Datuk M. G. Pandithan, and Malaysian Indian Congress (MIC) party president Datuk Seri S. Samy Vellu. In 1988, Pandithan, then the MIC's vice president, was expelled from the party for accusing the MIC of practicing caste-based politics that favored higher castes. "Pandithan's dilemma - to be or not to be in MIC," *Utusan Express*, January 26, 2001. In 1997, Vellu rejected Pandithan's claim that "casteism is a deep-rooted issue in Malaysia which is silently but strongly being practised." Pandithan was particularly critical of the existence of some twenty-two registered caste-based associations in Malaysia dedicated to assisting members of their own caste socially and financially. These associations sometimes impose caste-based restrictions on members, such as banning exogamous marriages. Muthiah, "Pride and Prejudice"; Ramasamy, *Caste Consciousness among Indian Tamils in Malaysia*, pp. 74-75.

## Failure to Implement Domestic and International Law

The practice of “untouchability,” other caste-based discrimination, violence against lower-caste men, women, and children, and other abuses outlined in this report violate numerous domestic and international laws. International human rights law imposes on governments a duty to guarantee the rights of all people without discrimination and to punish those who engage in caste-based exploitation, violence, and discrimination.

In its August 2000 resolution, the U.N. Subcommission on the Promotion and Protection of Human Rights urged governments to ensure that “appropriate legal penalties and sanctions, including criminal sanctions, are prescribed for *and applied to* all persons or entities within the jurisdiction of the Governments concerned who may be found to have engaged in practices of discrimination on the basis of work and descent.”<sup>131</sup>

The subcommission’s working paper on work and descent-based discrimination noted a year later, “The laws are there, but there is a clear lack of will on the part of law enforcement officers to take action owing to caste prejudice on their part or deference shown to higher-caste perpetrators.”<sup>132</sup>

Though constitutional guarantees and other national legislation banning caste discrimination suggest that various governments have successfully tackled caste-related violations, much of the legislation remains unenforced. Official condemnation alone has proven insufficient in many countries in abolishing caste-based abuses.

In *India*, for example, laws are openly flouted while state complicity in attacks on Dalit communities continues to reflect a well-documented pattern. India’s own constitutional and statutory bodies, including the National Human Rights Commission and the National Commission for Scheduled Castes and Scheduled Tribes, have repeatedly confirmed and decried the prevalence of the abuses outlined in this report. Other government authorities, however, have facilitated continued discrimination. Indeed it would be difficult to convince Dalits that, over fifty-four years after independence, the government had done anything to end the violence and discrimination that has ruled their lives. The message sent from the judiciary on caste discrimination is equally disturbing: in July 1998 in the state of Uttar Pradesh, an Allahabad High Court judge reportedly had his chambers “purified with Ganga jal,” water from the River Ganges, because it had earlier been occupied by a Dalit judge.<sup>133</sup>

The state’s failure to prosecute atrocities against Dalits is well illustrated by its manipulation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Enacted in 1989, the act provides for certain stiffer punishments for abuses against members of scheduled castes and scheduled tribes when committed by non-scheduled caste or tribe members. Its enactment represented an acknowledgment on the part of the government that abuses, in their most degrading and violent forms, were still perpetrated against Dalits despite the constitutional abolition of “untouchability” four decades earlier.

The potential of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to bring about social change, however, has been hampered by police corruption and caste bias, with the result that many allegations of caste crimes are not entered in police records. Ignorance of procedures and a lack of knowledge of the act have also affected its implementation. Even when cases are registered, the absence of special courts to try them can delay prosecutions for up to three to four years. Some state governments dominated by higher castes have attempted to repeal the legislation altogether.

In 1957 the government of *Sri Lanka* passed the Prevention of Social Disabilities Act making it an offense to deny access to various public places to persons by reason of their caste. A 1971 amendment imposed stiffer punishments for the commission of offenses under the 1957 act. According to the U.N. Subcommission’s working paper: “Initially there were some prosecutions in the North but there was a tendency for the police not to

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<sup>131</sup> U.N. Subcommission on the Promotion and Protection of Human Rights, “Discrimination Based on Work and Descent,” E/CN.4/SUB.2/RES/2000/4, August 11, 2000. See Appendix A.

<sup>132</sup> Goonesekere, “Prevention of Discrimination,” para. 26 (emphasis added).

<sup>133</sup> “LS Concerned at ‘Purifying’ Act by HC judge,” *Times of India* (Bombay), July 23, 1998.



take action against violations. In a celebrated temple-entry case, the Act was challenged as interfering with customs and ancient usages that prohibited defilement of a Hindu temple by the entry of low-caste persons. This argument was rejected by the Supreme Court and Privy Council.”<sup>134</sup>

Unlike India’s constitution, *Sri Lanka’s* 1978 Constitution does not provide for community-based affirmative action. It does however prohibit discrimination on the grounds of caste, including caste-based restrictions on access to shops, public restaurants, hotels, places of public entertainment, and places of worship of one’s own religion. Despite these constitutional prohibitions, serious problems remain.

Prohibitions on the denial of fundamental freedoms to *Nigeria’s* Osu community are part and parcel of the country’s constitution and domestic laws. Legislation abolishing the Osu system has been in force since the 1950s, and constitutional provisions prohibit discriminatory practices and promote equal implementation of legal protections.<sup>135</sup> Nigeria has also incorporated the African Charter on Human and People’s Rights into its national legislation, strengthening its commitment on paper to end discriminatory practices such as the Osu caste system. However, these laws remain largely unenforced.

According to the 1984 report of an expert to the then-U.N. Subcommittee on Prevention of Discrimination and Protection of Minorities, slavery “as an institution protected by law has been genuinely abolished in Mauritania.... Nevertheless... it cannot be denied that in certain remote corners of the country over which the administration has little control certain situations of de facto slavery may still persist.”<sup>136</sup> Still many human rights groups, including Human Rights Watch, have pointed to Mauritanian government inaction in enforcing its own ban on slave-like practices.

In their oral submission before the fiftieth session of the U.N. Subcommittee on Prevention of Discrimination and Protection of Minorities in 1998, Anti-Slavery International stated that, “the government does not have a pro-slavery policy, but its silence and inaction on this issue allow centuries-old caste servitude to continue with impunity.”<sup>137</sup> In a 1999 letter Human Rights Watch noted the following on the enforcement of laws against slavery:

The government has not taken any forceful steps to remove what it considers the “vestiges” or “after effects” (*sequelles*) of slavery. While the courts have upheld individual rights in a few cases, judges have failed to enforce systematically the laws abolishing slavery, in some cases returning “slaves” to their “masters” even though this relationship in theory has ceased to exist. Few lawyers are able and willing to appear in court to defend the rights of “slaves.” There is no law providing for the practice of slavery or forced labor to be an offense; while provisions in the 1980 law for compensation to be provided to slave-owners (but not slaves) have never been implemented, encouraging an attitude among “masters” that they need take no action to ensure substantive freedom for their “slaves.”<sup>138</sup>

The success of legislation to combat caste discrimination in *Japan* may be coming to an end. To counter various forms of discrimination against the Buraku population, the Japanese government instituted the “Law on Special Measures for Dowa Projects.” This series of reform efforts had considerable success in improving housing areas for Buraku communities and increasing education and literacy rates among Buraku children. As a

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<sup>134</sup> Goonesekere, “Prevention of Discrimination,” para. 34.

<sup>135</sup> Constitutional Rights Project, “Osu Caste Practice in South Eastern Nigeria,” pp. 16-17; Dike, “The Caste System in Nigeria.”

<sup>136</sup> Marc Bossuyt, “Slavery and Slavery-like Practices” (New York: United Nations, 1984) E/CN.4/Sub. 2/1984/23, paras. 38-39.

<sup>137</sup> Anti-Slavery International, “Persistence of slavery in Mauritania and repression of anti-slavery activists,” oral statement to U.N. Subcommittee on Prevention of Discrimination and Protection of Minorities (delivered by Abdel Nasser Ould Othman Sid’ Ahmed, translated from French original) August 1998.

<sup>138</sup> Human Rights Watch, letter to John Rosenbaum, Assistant USTR for Trade and Development, Office of the U.S. Trade Representative, May 14, 1999. See also Kevin Bales, *Disposable People: New Slavery in the Global Economy* (Berkeley: University of California Press, 1999).

case in point, from 1963 to 1997, the enrolment of Buraku children in high school and public vocational schools rose from 30 percent to 92 percent, while university and junior college rates rose from 14.2 percent to 28.6 percent.<sup>139</sup> With the Special Measures set to lapse in March 2002, civil rights activists in Japan worry that that progress will be halted and have urged the government to consider the need for further such legislation.<sup>140</sup>

## V. CONCLUSION

Discrimination based on occupation and descent affects some 250 million people worldwide. The elimination of caste-based discrimination and related human rights abuses, too long neglected, must become a global priority. Despite the existence of significant constitutional protections and progressive legislation, in many countries the reality for many millions remains unchanged. The solution lies in concerted international attention to assist national governments in this important and long overdue work. The spirit of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance demands no less than a concerted pledge of international action.

## VI. ACKNOWLEDGMENTS

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<sup>139</sup> Buraku Liberation League and Buraku Liberation and Human Rights Research Institute, *Reality of Discriminated-Against Buraku People in Japan and the Challenge Aiming for the Elimination of Discrimination* (Japan: Buraku Liberation and Human Rights Research Institute, 2001), p. 60.

<sup>140</sup> Buraku Liberation and Human Rights Research Institute and Buraku Liberation League, "Buraku People," (Japan: Discrimination Against Buraku People).

## APPENDICES

### Appendix A: Discrimination based on work and descent: Sub-Commission on Human Rights resolution 2000/4, E/CN.4/SUB.2/RES/2000/4, 11 August 2000

#### The Sub-Commission on the Promotion and Protection of Human Rights,

Affirming that, as declared in article 2 of the Universal Declaration of Human Rights, everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Aware that discrimination based on work and descent has historically been a feature of societies in different regions of the world and has affected a significant proportion overall of the world's population,

Acknowledging the constitutional, legislative and administrative measures taken by relevant Governments to abolish practices of discrimination based on occupation and descent,

Concerned, however, at the persistence of discrimination based on work and descent in such societies,

1. Declares that discrimination based on work and descent is a form of discrimination prohibited by international human rights law;
2. Requests Governments concerned to ensure that all necessary constitutional, legislative and administrative measures, including appropriate forms of affirmative action, are in place to prohibit and redress discrimination on the basis of work and descent, and that such measures are respected and implemented by all State authorities at all levels;
3. Urges Governments concerned to ensure that appropriate legal penalties and sanctions, including criminal sanctions, are prescribed for and applied to all persons or entities within the jurisdiction of the Governments concerned who may be found to have engaged in practices of discrimination on the basis of work and descent;
4. Decides to entrust Mr. Goonesekere with the task of preparing, without financial implications, a working paper on the topic of discrimination based on work and descent, in order to:
  - (a) Identify communities in which discrimination based on occupation and descent continues to be experienced in practice;
  - (b) Examine existing constitutional, legislative and administrative measures for the abolition of such discrimination; and
  - (c) Make any further concrete recommendations and proposals for the effective elimination of such discrimination as may be appropriate in the light of such examination;
5. Decides to continue consideration of this question at its fifty-third session under the same agenda item.

17th meeting

11 August 2000

[Adopted without a vote. See chap. V.]

## Appendix B:

### **Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Working paper by Mr. Rajendra Kalidas Wimala Gooneskere on the topic of discrimination based on work and descent, submitted pursuant to Sub-Commission resolution 2000/4. E/CN.4/Sub.2/2001/16 14 June 2001.**

#### **INTRODUCTION**

1. At its fifty-second meeting the Sub-Commission for the Promotion and Protection of Human Rights in resolution 2000/4 declared that discrimination based on work and descent is a form of discrimination prohibited by international human rights law and decided to entrust Mr. Rajendra Kalidas Wimala Gooneskere with the task of preparing, without financial implications, a working paper on the topic of discrimination based on work and descent in order:

(a) To identify communities in which discrimination based on occupation and descent continues to be experienced in practice;

(b) To examine existing constitutional, legislative and administrative measures for the abolition of such discrimination; and

(c) To make any further concrete recommendations and proposals for the effective elimination of such discrimination as may be appropriate in the light of such examination. The present report is submitted in accordance with that decision.

2. The Universal Declaration of Human Rights states “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (art. 1). In article 2 it is expressly stated that everyone is entitled to all the rights and freedoms without distinction of any kind “such as race ... national or social origin, property, birth or other status”.

3. Like other forms of discrimination, therefore, any distinction, exclusion, restriction or preference based on work and descent which has the purpose or effect of nullifying or impeding the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms contravenes the spirit and letter of international human rights law.

4. The International Covenant on Civil and Political Rights recognizes that all persons are entitled to the equal protection of the law “without any discrimination” (art. 26). The International Convention on the Elimination of All Forms of Racial Discrimination specifically prohibits discrimination based on “descent” which the Committee on the Elimination of Racial Discrimination (CERD) has interpreted to mean not solely race but tribal or caste distinctions as well. In its General Recommendation XIV CERD stated that “in seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent or national or ethnic origin”.

5. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone “to gain his living by work which he freely chooses or accepts” (article 6, para. 1).

6. The International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111) calls on States to “eliminate discrimination based on race ... national extraction or social origin”, in the matter of employment or occupation. The United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education of 1960 asserts the principle of non-discrimination in education based on “race ... national or social origin, economic condition or birth”.

7. Discrimination based on work and descent is a long-standing practice in many societies throughout the world and affects a large portion of the world’s population. Discrimination based on descent manifests itself most notably in caste- (or tribe-) based distinctions. These distinctions, determined by birth, result in serious violations across the full spectrum of civil, cultural, economic, political and social rights. Likewise, the nature of a person’s work or occupation is often the reason for, or a result of, discrimination against the person. Persons who perform the least desirable jobs in a society are often victims of double discrimination, suffering first from the nature of

the work they must perform and suffering again by the denial of their rights because they perform work that is unacceptable. In most cases, a person's descent determines or is intimately connected with the type of work they are afforded in the society. Victims of discrimination based on descent are singled out, not because of a difference in physical appearance or race, but rather by their membership in an endogamous social group that has been isolated socially and occupationally from other groups in the society.

## **I. COMMUNITIES WHERE DISCRIMINATION BASED ON WORK AND DESCENT IS EXPERIENCED**

8. Instances of discrimination based on work and descent have been identified in many different social and cultural contexts. The manifestations of such discrimination commonly include prohibitions on intermarriage between socially or occupationally defined groups; physical segregation of communities; restrictions upon access to resources including land, water and other means of production; social prohibitions regarding physical contact such as sharing food or utensils; restrictions on access to education or segregation in educational facilities; restrictions on access to religious buildings and restrictions on participation in religious ceremonies. The most widespread discrimination on the basis of work and descent occurs in societies in which at least a portion of the population is influenced by the tradition of caste, including the Asian countries of Bangladesh, India, Nepal, Pakistan and Sri Lanka.

### **A. India**

“We must say that the National Human Rights Commission as well as the UN General Assembly should recognize that caste, as an institution itself, is a source of gross violation of human rights. Therefore it must be treated on a par with the existence and operation of racism and apartheid. The caste system and the equally obnoxious practice of untouchability must be taken seriously by the Indian and international communities and administrative bodies.” – Interim Observations and Recommendations of the Jury of the National Public Hearing on Dalit Human Rights Violations, Chennai, April 2000. **1**

9. In 1937, Dr. B.R. Ambedkar, a learned and respected Indian leader and advocate of the rights of untouchables - or Dalits, as he called them - and himself an untouchable, announced that he had made a momentous decision to renounce the religion of his birth, Hinduism, because he traced a great social injustice in contemporary Indian society, namely the caste system, to Hindu scriptures. Mahatma Gandhi, the spiritual leader of India, who was moved by the plight of the untouchables, was himself not prepared to blame Hinduism for the appalling discrimination against millions of Indians by other Indians. In a response to Dr. Ambedkar, the Mahatma said: “Caste has nothing to do with religion. It is a custom whose origin I do not know and do not need to know for the satisfaction of my spiritual hunger ... The law of Varna teaches us that each one of us earns our bread by following the ancestral calling. It defines not our rights but our duties. It also follows that there is no calling too low and none too high. All are good, lawful and absolutely equal in status.”**2**

10. The Mandal Commission on the reservation of government jobs for Scheduled Tribes and Other Backward Classes in its 1980 report said of the caste system: “The social ranks and their respective duties, ordained by God for humanity, were intended to remain fixed and unmovable. Like the limbs of the body they cannot properly exchange either their place or function.”**3**

11. The debate as to whether caste is or is not derived from Hindu scriptures need not detain us because 85 per cent of India's 1 billion people remain Hindu. Only a few million followed Dr. Ambedkar and became Buddhists. Lesser numbers became converts to Christianity and Islam. India is a stratified or compartmental society not based on class but on descent or occupation. It has been so for many thousand years. Dr. Ambedkar, as Minister of Law and Chairman of the Drafting Committee of the Constituent Assembly, was responsible for the many provisions in the Constitution intended to fulfil the promise in the preamble to secure to all citizens justice and equality of status and opportunity.

12. Besides untouchables, there are other underprivileged segments of Indian society who are grouped as Scheduled Tribes and Other Backward Classes and they number many millions. Scheduled Tribes are distinguished by tribal characteristics such as social, religious, linguistic and cultural distinctions. In addition,

they are concentrated in certain geographical areas. While they are officially recognized as deserving of special treatment, the policy towards them is to effect improvements of their conditions while at the same time preserving their distinctiveness and giving them a measure of autonomy. In the case of Other Backward Classes there is the initial difficulty of identifying the persons who fit the description.<sup>4</sup>

13. They appear to include all religious minorities who are economically poor and lacking in educational opportunities. The Mandal Commission report identified 3,743 sub-castes as being socially and educationally backward, and found that Other Backward Classes constituted 52 per cent of the population. That was in addition to the Scheduled Castes/Tribes, which constituted a separate category of 22.5 per cent of the population. Dalits estimate that they constitute 19 per cent of the population, or 160 million people. The present study does not include Scheduled Tribes and Other Backward Classes as the discrimination against them, where it exists, cannot strictly be said to be based on work or descent.

14. Those who suffer discrimination based on descent or work have received different names. Official terms were “untouchables”, “depressed classes” or “scheduled castes”. For Gandhi, they were “Harijans” or “people of God” rather than “untouchables”. Today they are known as Dalits, or “oppressed people” or “broken people”.

15. Hindu society recognizes a caste hierarchy of four classes or varnas: Brahmins (priests and scholars); Kshathriyas (rulers and soldiers); Vaishyas (merchants and farmers); and Sudras (servant class). The Sudras, the lowest caste, are seen as persons who exist to serve the higher castes or “twice born”. Servility is their badge and with it loss of dignity. According to some researchers there were upper Sudras and lower Sudras, depending on the work they performed. Artisans, carpenters, barbers, washermen and the like belonged to the former while those engaged in unclean work such as sweepers, scavengers, cobblers, cremation workers, hide and leather workers, agricultural labourers, toddy tappers belonged to the latter. Those considered to be at the lower end of the Sudras are not in fact Sudras but are untouchables who are outside the caste system or “outcastes”, or they constitute a distinct fifth caste.

16. In the mind of the upper castes untouchables are polluted by their work and polluting to others by contact which must therefore be avoided at all costs. A corollary is pointed out by the Mandal Commission: “The real triumph of the caste system lies not in upholding the supremacy of the Brahmin, but in conditioning the consciousness of the lower castes in accepting their inferior status in the ritual hierarchy as part of the natural order of things.”<sup>5</sup>

17. Untouchability conveys “a sense of impurity and defilement. It implies certain socio-religious disabilities. It includes customs, practices sanctioned by the rigid Indian caste system whereby persons belonging to the Scheduled Castes were debarred from entering Hindu temples, public places, streets, public conveyances, eating places, educational institutions, etc.”<sup>6</sup> There are other disadvantages - segregation in colonies in the village, denial of land rights, low wages for manual work, denial of access to services, e.g. by barbers and washermen, to health care and education. Untouchables belong to castes which have the lowest ritual standing and often the most depressed economic condition.

18. In the course of time occupations may have changed and many Dalits are now engaged in agriculture as landless labourers, as this activity has been opened to all. But this is not so in the case of other occupations to which access is not permitted by caste traditions. It is not merely the indignities heaped on Dalits that make them an oppressed people. Because of the social ostracism and economic deprivation they suffer, they often fall prey to the most serious forms of persecution in their society, including killings, mutilation, rape, arson, destruction of property and other forms of violence (sometimes regrettably by State agents) when they assert their rights.

19. The Government of India has taken several steps to prohibit the practice of untouchability. First, and most importantly, the Government has recognized the existence of the problem. Second, the Government has made determined efforts to deal with it. The \*\*\*\* Men who tap the sap of palm trees, used for drinking and the brewing of spirits. Constitution of India in its Bill of Rights (Part III), besides guaranteeing to all citizens the basic civil and political rights and fundamental freedoms has special provisions that are directed at the practice of caste

discrimination: (a) Article 15 prohibits subjection to a disadvantage based on caste with respect to access to shops, public restaurants, etc. or to the use of wells, roads and public places maintained out of State funds; (b) Article 16 prohibits discrimination on the ground of caste or descent in respect of employment under the State; (c) Article 17 abolishes untouchability and prohibits its practice in any form; (d) Article 23 prohibits forced labour and discrimination on the ground of caste when imposing compulsory service for public purposes; (e) Article 29 (2) prohibits denial of admission to any educational institution on the ground of caste; (f) There are also positive duties imposed on the State to redress imbalances due to past injustices against untouchables. Article 15 (4) permits the State to make special provisions for the advancement of any socially and educationally backward class of citizens, including Scheduled Castes; (g) Article 16 (4) permits the State to reserve appointments for members of backward classes not adequately represented in the State services.

20. Articles 15 (4) and 16 (4) recognize beneficial discrimination or protective/compensatory/preferential discrimination, or simply affirmative action. Indeed, in the governance of the country the State is enjoined by a directive principle of State policy (art. 46) to “promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation”. But it is important to note that in the implementation of these provisions the efficiency of the administration is not to be sacrificed (art. 355).

21. Other provisions in the Constitution addressing caste discrimination are:

(a) Article 325 which prohibits disfranchisement on the ground of caste; (b) Articles 330 and 333 which provide for reserving of seats for members of Scheduled Castes and Scheduled Tribes in Union and state legislatures according to the Scheduled Caste population in each constituency; (c) Article 338 which mandates the appointment of a National Commission for Scheduled Castes and Scheduled Tribes. The Commission has been appointed and investigates and monitors all matters relating to the safeguards provided for Scheduled Castes; (d) Article 341 which makes possible the legal identification of Scheduled Castes or untouchables by means of lists prepared for each state and union territory. The list, when published by the President, is final as to the castes or groups within castes deemed to be Scheduled Castes. The current state and union lists, when totalled, contain more than 1,000 castes but, given the fact that the same castes appear in the different state lists, the estimate given of 76 Scheduled Castes is probably correct.

22. To bolster the constitutional provisions, India has passed several laws:

(a) The Protection of Civil Rights (Anti-Untouchability) Act, 1955, strengthened by an amendment in 1973, punishes offences that amount to the observance of untouchability, such as prohibiting entry to temples or insulting someone on the basis of his caste; (b) The Bonded Labour (Abolition) Act, 1976 aims at the release of labourers (usually Dalits) who work in slave-like conditions in order to pay off a debt due to a high caste employer, by cancelling any outstanding debt and prohibiting the creation of new bondage agreements; (c) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This important law was needed because of the high incidence of recurrent acts of violence against helpless Dalits throughout the country. Eighteen atrocities are listed, including violence against women, dispossession of a Dalit of his land, mischief by fire and destruction of property. Penal Code offences carrying a punishment of 10 years’ imprisonment if committed against a member of a Scheduled Caste are punishable by imprisonment for life. The offences are cognizable and non-bailable. There are special courts to provide speedy trials and special prosecutors to conduct cases. In 1999 rules were enacted under the Act to strengthen the investigation process and make provision for payment of compensation to victims; (d) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. A special law was considered necessary to deal with the most distressing discrimination based on work and descent. There are an estimated 800,000 people, mainly women, who are engaged in cleaning dry latrines using the most primitive methods. The law itself describes this as a “dehumanizing practice” and is intended to make it obligatory to convert dry latrines into water-seal latrines. For the implementation of the Act the National

Commission for Safai Karamcharis was appointed. In its 1997 report the Commission found that manual scavengers are “totally cut off from the mainstream of progress and are still subjected to the worst kind of oppression and indignities”. What is more pathetic is the fact that manual scavenging is still largely a hereditary occupation. Safai Karamcharis are no doubt the most oppressed and disadvantaged section of the population.<sup>7</sup> There is unfortunately evidence that manual scavengers are considered untouchable by other untouchables;<sup>8</sup> (e) Land reform laws to redistribute land to the landless.

23. It is an impressive list of the actions that have been taken by the Government of India. That improvements have taken place cannot be doubted and credit should probably go to the National Human Rights Commission, the National Commission for Women, the Scheduled Castes and Scheduled Tribes Commission and the National Commission for Safai Karamcharis. A micro-level study in the States of Karnataka, Gujerat, Andra Pradesh and Orissa has led a scholar to conclude that: “Like other institutions, caste- and untouchability-based discrimination in the Indian society has undergone change. The practice of untouchability and resultant discrimination has reduced in the public sphere, like panchyat offices, schools, use of public roads, public transport, health and medical services, services of shops (for buying goods) and services rendered by the tailor, barber, eating places and tea shops in large villages and urban areas. But even here discrimination in various subtle forms prevail.”<sup>9</sup>

24. If in urban areas it is more the hidden or invisible discrimination that a Dalit would encounter, in rural areas where three fourths of the Dalits live open discrimination in all its forms is fairly widespread. The overall picture is depressing. In school education there is a marked literacy gap between the Scheduled Castes and the rest of the population. It is reported that reserved quotas in the universities are not filled, especially in the technical and professional courses. There is reportedly poor representation of Scheduled Castes in teaching posts and caste clustering. There has been inadequate distribution of lands among the Scheduled Castes promised under the Ceiling of Land Acts. The shame of bonded labour remains for millions, including a large number of children. The hideous occupation of manual scavenging continues except in a few states. If reports are to be believed no real effort has been made to improve the conditions of work for these wretched people who out of sheer necessity find that it is their lot to clean dry latrines.

25. The reservation of quotas in government employment and education has run into the vexed problem of having to determine whether caste alone should be the test or whether caste should be combined with economic need. Quota reservations in state employment are being filled in lower category jobs such as sweepers, peons and clerks. In the absence of quotas there is hardly any representation in the defence forces, scientific establishments and the judiciary. The Scheduled Castes have not benefited from the economic progress made in the country in the 50 years since independence because there has been no policy in the allocation of resources. In the rapidly growing private sector there does not seem to be any opportunities for advancement for members of Scheduled Castes.

26. At the same time atrocities are being committed almost daily against Dalits and they go unpunished. These have been researched and documented, mainly by Dalit organizations, in several publications in horrifying detail.<sup>10</sup> The laws are there, but there is a clear lack of will on the part of law enforcement officers to take action owing to caste prejudice on their part or deference shown to higher-caste perpetrators. The Supreme Court in *State of Kerala vs. Appu Balu* said: “More than 75 per cent of the cases under the (SC/ST) Act are ending in acquittal at all levels.”<sup>11</sup> What is frightening is that the atrocities committed - murder, rape, mutilation, arson, etc. - are not only isolated acts but could even be acts of mass savagery committed by militia groups employed by the higher castes.<sup>12</sup> The inability of the police and courts to deal with these crimes has had a backlash effect on young Dalits who also themselves have formed armed groups or Naxalites.

27. The present situation in India could not have been better expressed than in the words of the National Scheduled Caste and Scheduled Tribes Commission: “The task ahead is clearly, therefore, to focus on the basic needs and requirements of SCs/STs and give them the social dignity and the economic capability to come at par with other sections of the society and become part of the mainstream which had been the charter visualized by the Constitutional makers 50 years ago. Such a strategy would not only control the feeling of alienation, frustration and rising military and civil strife but would also make the SCs/STs active partners in nation building.”



## **B. Sri Lanka**

28. In Sri Lanka there are two caste systems, one for the Sinhalese and the other for the Tamils. Although they both have their origin in India, the Sinhalese caste system is not linked to the Hindu varna. It was an aspect of a feudal society which divided people “according to Descent and Blood”<sup>13</sup> or according to their hereditary roles and functions. The caste system was a secular hierarchy. The stratification took into account as many caste and sub-caste groups as there were feudal services and functions or temple services to perform in a disputed hierarchical order. There were no non-untouchables in the Indian sense. Social distance was practised but the notion of pollution hardly existed. As an American scholar concluded, “The absence of the Hindu concept had rendered the Sinhalese caste system mild and humanitarian when judged by Indian standards.”<sup>14</sup>

29. The exception is the caste of Rodiyas or Rodi (meaning “filth”) from very early times. Many legends surround their origin, all agreeing that they were banished for a heinous crime and condemned to a life of begging or, more accurately, soliciting for alms. They were denied land and work and subjected to many disadvantages and degrading treatment. They were a despised lot; even in the middle of the nineteenth century they suffered “untouchability with a vengeance”. They were always a small community of about 500 families living mainly in the central highlands in their own colonies of huts devoid of amenities.

30. During 150 years of British rule when caste distinctions were not officially recognized, there was a high degree of mobility from low caste groups to positions of social standing through entry into professions, business and politics. Desertions from traditional caste occupations were easily achieved through education, and caste became a status concept.<sup>15</sup>

31. In the case of the Rodi the process has been much slower. Through the efforts of the Backward Communities Development Board, Rodi children were able to attend village schools. Government land was given to them for cultivation. While official sympathy was shown to the Rodi the prejudices of villagers were not easily overcome; however, there is no evidence of any atrocities committed against the Rodi. Farming and casual labour have provided some opportunities but they have not been completely emancipated from the economic point of view: for many Rodi the old life outside the social system has continued.<sup>16</sup>

32. The caste system of the Tamils, who are mostly Hindus, is also occupation based. Tamils have high and low caste groups which show a stronger concept of pollution and social distance. At the bottom of the caste hierarchy are three castes of untouchables who suffer social disadvantage more than others. While Pallas and Nalavas (descendants of former slaves) can work on upper caste land for wages or rent garden land from them, Paraiyars engage mainly in so-called unclean work.

33. While the numerically powerful Vellala or farmer caste is not inclined to loosen its dominant position in society over all other castes, upward mobility could not be prevented after American missionary schools were established in the nineteenth century and education was opened to all without caste distinction.<sup>17</sup> Descent is still important in Tamil society and prejudice is more openly shown. It is manifested publicly in acrimonious disputes over temple entry. Only a small number of temples are open to non-Vellala worshippers.

34. Recognizing that social disadvantages were imposed on people based on the accident of birth or the work they perform, the Prevention of Social Disabilities Act, 1957 was passed in 1957. The Act made it an offence for any person to discriminate against another on the ground of his caste in the matter of access to shops, public eating houses and hostels, public wells, hairdressing salons, laundries, cemeteries, places of worship, or for purposes of education and employment. In 1971 the Act was amended to strengthen its priorities and to impose heavier punishment. Initially there were some prosecutions in the North but there was a tendency for the police not to take action against violations. In a celebrated temple-entry case, the Act was challenged as interfering with customs and ancient usages that prohibited defilement of a Hindu temple by the entry of low-caste persons. This argument was rejected by the Supreme Court and Privy Council.<sup>18</sup>

35. The 1978 Constitution prohibits discrimination on the ground of caste (art. 12 (2)) and prohibits subjecting a person by reason of his caste to any disadvantage with regard to access to shops, public restaurants, etc. and

places of public worship of his own religion. There are no affirmative action provisions as in India. Discrimination based on descent and work may not have disappeared, but there are no signs that it is a problem.

36. A recent allegation of discrimination based on descent is that made by Tamils of Indian origin employed mainly as tea estate workers in the hill country. With regard to wages, housing, sanitation, health and educational facilities, they were an oppressed group. Improvements have slowly been made as a result of government policies and powerful trade union action. Integration with the rest of society is more difficult owing to prejudice, but this is breaking down. There are signs of upward mobility through education and non-discriminatory laws. Caste distinctions exist among themselves and complaints have been made that workers (mostly Dalits) are kept out of trade union office by high caste supervisors. The citizenship laws enacted after independence rendered Indian Tamils, who numbered about 1 million, stateless, and they were denied voting rights. Subsequent laws based on agreements between the Governments of India and Sri Lanka have enabled them to acquire citizenship by registration without any distinction being made between them and others who are citizens by descent.

### **C. Nepal**

37. Nepal has predominantly Hindu population and a caste system similar to that of India. About 21 per cent of the population of 22 million constitute the service castes (untouchables/Dalits) who are engaged in traditional occupations with low status value. They range from artisans and singers to castes doing unclean work like scavenging and removing dead animals. What unites them is that they are subject to hurtful discrimination - segregation, exclusion from public institutions such as hostels, restaurants and milk cooperatives, or denied free access to water, schools and temples, on the one hand, and deprived of rights, facilities and opportunities given to others to improve their conditions, on the other.

38. Untouchability was declared illegal in 1963 but the practice was not made punishable until the onset of multi-party democracy in 1990. The Constitution of 1990 guarantees the fundamental rights of the people and makes any discrimination against untouchables punishable by law. The National Code that prohibited Dalits from entering temples and religious sites was declared invalid by the Supreme Court in 1993. The Government is committed to implementing policies aimed at the advancement of Dalits. Thus, the "Independent Downtrodden and Oppressed Community Council" was formed in 1998 with the objective of coordinating policies and supervising programmes to benefit Dalits. The Ninth Five-Year Plan adopted several specific policies and programmes for the socio-economic development of the Dalits, including in education, health, sanitation, training and capability enhancement, and employment.

39. While these winds of change are appreciated, Dalits complain that untouchability has not been eliminated, that there is unequal distribution of resources, that many of them lack agricultural land and that they remain economically and socially depressed. The Government has acknowledged that "for an overwhelming majority of people the caste system continues to be an extremely salient feature of personal identity and social relationships and, to some extent, determines access to social opportunities".<sup>19</sup> At the Asian Regional Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Tehran in February 2000, the Government, whilst again admitting the problem of caste discrimination, declared that the issue should be addressed at the World Conference.

### **D. Japan**

40. Japanese feudal society, which started 400 years ago and lasted till 1867, left a class structure that placed "humble people" at the bottom. They consisted of eta (extreme filth) and hinin (non-human). The eta were assigned such duties as disposing of dead cattle, leather production, being security guards and sweeping while hinin made their living as security guards, executioners and performers.<sup>20</sup> The Buraku, as they are now known, were subjected to intense prejudice and discrimination, forbidden to marry or have physical contact with common people as such contact was seen as "polluting" the higher classes. They were an outcast population confined to living in hamlets, now officially classified as Dowa districts. The people of a Dowa district consist of the original eta and hinin people and others who have moved there. The official figures are 4,442 Dowa districts with a total population of 1.2 million Burakumin, but the unofficial figures are 6,000 and 3 million, respectively. The discrimination is not only against those who work in traditional occupations.

41. Beginning with the Emancipation Edict, 1871, many laws have been enacted addressing the Buraku issue. Article 14 of the Constitution of 1946 states: "All people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." But a government report in 1965 conceded that the Burakumin are "placed in such an inferior position economically, socially and culturally that their fundamental human rights are grossly violated even in present-day society and that, in particular, their civil rights and liberties which are assured to all people as a principle of modern society are not guaranteed in reality". The State's responsibility to solve the Buraku problem was accepted and special laws were passed in 1969, 1982 and 1987. The Law for the Measures for Promotion of Human Rights Protection, 1996, established a committee to analyse the extent of Buraku discrimination and make recommendations for human rights education and relief measures for victims.<sup>21</sup> The Law on the Promotion of Human Rights Education and Human Rights Awareness-Raising, 2000 was the result of a national campaign for the enactment of a fundamental law for Buraku liberation.

42. It is admitted that the living standard of Buraku people has improved, but discrimination in marriage and employment continues. Particularly hurtful is the use of derogatory terms in speech and writing. Also a matter of concern in the printing of lists of Buraku households with the names of the occupants, drawn up after private investigation and made available to big companies to prevent the employment of Burakumin. Government has enacted laws against such activities but the practice continues.<sup>22</sup>

### **E. Pakistan**

43. Swat is an area of northern Pakistan which had a system of stratification of unequal social groups (qoum) that can be compared to the Hindu caste system, except that the people are Sunni Muslims. The concept of ritual pollution is absent, its place taken by notions of privilege and shame. The population of the area is about 500,000 and the people are dependant on subsistence agriculture. The groups are such as are to be found in an agricultural community, and at the bottom are despised people - sweepers, washermen, barbers and those who work with the guts of animals. There is pollution by occupation but caste status by birth does not prevent change of occupation. In ritual activities there is equality but in everyday situations a distinction exists.<sup>23</sup>

44. In Sindh Province there are about 1.8 million persons living in bondage as agricultural workers, the majority of whom are Dalits originally from India. A large number of Dalit families work in the brick kiln industry, also under conditions of total bondage. Bonded families are virtual prisoners and not permitted to leave until the debt is paid. In 1992 the Bonded Labour (Abolition) Act was passed but observers note that even when the national police take action state prosecutors fail to file charges.

## **II. VIOLATIONS AGAINST WOMEN AND CHILDREN**

45. In addition to suffering discrimination on the basis of work and descent, Dalit women and girls also suffer gender discrimination. Women in Dalit communities in Asia are poorly educated and subjected to gruelling labour and many forms of violence, including trafficking and prostitution. Dalit women are consistently subjected to physical abuse and sexual exploitation by higher caste landlords. Women are raped, mutilated and murdered during caste violence. Dalit women do not regularly report incidents of sexual assault because of entrenched biases at every stage of the process.

46. Most girls and women in India's and Nepal's urban brothels are from lower caste, tribal or minority communities. The practice of devadasi involves the marriage or dedication of a pre-pubescent low-caste girl to a deity or temple. Once dedicated, the girls are unable to marry; their role is to serve as prostitutes to the higher caste men in the village. Some states in India have passed laws prohibiting the practice of dedication but they are reportedly not well enforced.

47. India has tried to remedy discrimination against women by adopting a constitutional amendment in 1993 that provided for one third of all panchayat, or village council, seats and village chief positions to be reserved for women and also reserved a percentage of those for women from the lowest rungs of the caste system. In Nepal the Constitution requires that 5 per cent of candidates put up by national parties be women, and in local government 5

per cent of the seats are reserved for women. It would appear, however, that Dalit women are not represented at the national or local level.

### **III. CONCLUDING REMARKS**

48. The people described in this paper are estimated to number 250 million. It is a staggering number by any account. They have inherited a life of burdens and few rights, a life of continuous discrimination, a life without dignity. What wrongs have they committed? The world may have changed around them but not for them. They are ruled by traditions which are hundreds, and sometimes even thousands of years old, traditions that cannot be justified today. It is sometimes said that they are not a race as understood in the international instruments. But they are in fact a race of broken people with commonalities that bring them together. They speak in many tongues but with one voice to ask for social justice and good governance that will end the miseries in their daily lives. They are a people subject to violations of their human rights. It is the responsibility of the respective States to endeavour, not merely the passing of remedial laws, but by positive State action, to ensure that these violations do not go unpunished. The strict enforcement of the law can assist the other ongoing educational processes in society to bring about attitudinal changes in the direction of tolerance, compassion and justice.

49. The focus of this paper has been countries in Asia. At the time the resolution was discussed in the Sub-Commission it was mentioned the problem was not limited to Asia alone and that it existed in some parts of Africa and perhaps in South America. The author has not been able to include in this paper the situation in these other areas because of constraints of time and lack of access to relevant material.

50. This paper, which is introductory in nature, will hopefully demonstrate that there is a serious problem of human rights violations arising from work and descent. The many complaints of discrimination voiced at the United Nations General Assembly, the Human Rights Committee, CERD and the Sub-Commission itself merit further study, with the assistance of the Governments of the countries concerned.

### **Notes**

1 Dalit Human Rights Violations. vol. I, 314. The Jury consisted of the following eminent persons: Justice K. Punniah, former Judge, Andhra Pradesh High Court; Justice H. Suresh, former Judge, Bombay High Court; Dr. Mohini Giri, former Chairperson, National Commission for Women; Justice Amir Das, former Judge, Patna High Court; Dr. Vasanthi Devi, former Vice-Chancellor, MS University, Tirunelveli; Ms. Kumud Pawde, Dalit Writer; Ms. Sona Khan, Advocate, Supreme Court; Ms. Rani Jethmalani, Advocate, Supreme Court; Dr. R.K. Nagak, Founder and Director, NISWASS.

2 Dr. Ambedkar's address, Gandhi's articles published in the Harijan and Dr. Ambedkar's reply are published in Annihilation of Caste (3rd ed.), 1987.

3 Quoted in Rev. Dr. James Massey's paper, "Reflections and Remarks - Occupation and Descent-Based Discrimination: Identification of Affected Communities in Various Countries" presented at the Global Conference against Racism and Caste-Based Discrimination, New Delhi, March 2001.

4 Mark Galanter, Competing Equalities - Law and the Backward Classes of India, 1984.

5 See note 3 above.

6 Mathew and Chacko, The Law on the Abolition of Untouchability. Indian Social Institute, New Delhi, 1996.

7 See Human Rights Watch, Broken People: Caste Violence against India's "Untouchables", March, 1999.

8 Broken Promises and Dalits Betrayed: Black Paper on the Status of Dalit Human Rights, National Campaign on Dalit Human Rights, 2000.

9 Professor Sukhdeo Thorat, "Hindu social systems and human rights of untouchables: Theory and Evidence on Violation", paper presented at the Global Conference against Racism and Caste-Based Discrimination, New Delhi, March 2001.

10 In addition to the publications cited in the present report, organizations such as Human Rights Watch, Global Action for Dalits and the National Campaign on Dalit Human Rights have also received from individuals compilations of atrocities committed in various states.

11 1993 Cr. L.J. 1029.

12 See Frontline, 26 February and 12 March 1999.

13 Robert Knox, An Historical Relation of Ceylon, 1681.

**14** Ryan, *Caste in Modern Ceylon*, 1953, p. 17. E/CN.4/Sub.2/2001/16

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**15** A.P. Kannangara, “The Rhetoric of Caste Status in Modern Sri Lanka” in Peter Robb, *Society and Ideology*, 1995.

**16** M.D. Raghavan, *Handsome Beggars - The Rodiyas of Ceylon*, 1957.

**17** Michael Banks, “Caste in Jaffna” in *Aspects of Caste in South India, Ceylon and North-West Pakistan*, E.R. Leach (ed.), 1960.

**18** *Suntharalingam vs. Herath* 72 NLR 54, 74 NLR 457.

**19** Report of Nepal under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/337/Add.4), para. 22, May 1999.

**20** International Movement against All Forms of Discrimination and Racism (IMADR), *History of Buraku Discrimination in Japan*, 2001.

**21** See an account of the laws in Emily A. Su-lan Reber, “Buraku Mondai in Japan: Historical and Modern Perspectives and Directions for the Future”, *Harvard Human Rights Journal*, vol. 12 (1999), p. 298.

**22** In general see also Kenzo Tomonaga, “A Critique Based on the Present State of Discrimination Against Buraku People” in the Counter-Report to the Fourth Periodic Report by the Government of Japan (Buraku Liberation and Human Rights Research Institute 1998).

**23** This account is based on Frederick Barth, “The System of Social Stratification in Swat, North Pakistan” in Leach, *op. cit.*

## Appendix C:

### **Comments by U.N. human rights treaty bodies, and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, on caste and descent-based discrimination in India, Japan, Bangladesh, and Nepal.**

#### **Concluding observations of the Committee on the Elimination of Racial Discrimination: INDIA: 17/09/96. CERD/C/304/Add.13**

2. The Committee ... regrets that the report and the delegation claim that the situation of the scheduled castes and scheduled tribes does not fall within the scope of the Convention.

14. Noting the declaration in paragraph 7 of the report, reiterated in the oral presentation, the Committee states that the term “descent” mentioned in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention. It emphasizes its great concern that within the discussion of the report, there was no inclination on the side of the State party to reconsider its position.

23. It is noted that although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the scheduled castes and tribes, and although social and educational policies have been adopted to improve the situation of members of scheduled castes and tribes and to protect them from abuses, widespread discrimination against them and the relative impunity of those who abuse them point to the limited effect of these measures. The Committee is particularly concerned at reports that people belonging to the scheduled castes and tribes are often prevented from using public wells or from entering cafés or restaurants and that their children are sometimes separated from other children in schools, in violation of article 5 (f) of the Convention.

26. The Committee recommends that the State party continue and strengthen its efforts to improve the effectiveness of measures aimed at guaranteeing to all groups of the population, and especially to the members of the scheduled castes and scheduled tribes, the full enjoyment of their civil, cultural, economic, political and social rights, as mentioned in article 5 of the Convention. ...

27. The Committee recommends that special measures be taken by the authorities to prevent acts of discrimination towards persons belonging to the scheduled castes and scheduled tribes, and, in cases where such acts have been committed, to conduct thorough investigations, to punish those found responsible and to provide just and adequate reparation to the victims. In this regard, the Committee particularly stresses the importance of the equal enjoyment by members of these groups of the rights to access to health care, education, work and public places and services, including wells, cafés or restaurants.

31. The Committee recommends a continuing campaign to educate the Indian population on human rights, in line with the Constitution of India and with universal human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination. This should be aimed at eliminating the institutionalized thinking of the high-caste and low-caste mentality.

#### **Concluding observations of the Committee on the Elimination of Racial Discrimination: Nepal. 21/08/2000. A/55/18, paras.289-306. (Concluding Observations/Comments)**

3. Factors and difficulties impeding the implementation of the Convention

In light of the multi-ethnic and multicultural society of the State party, the Committee notes that the existence of certain traditional customs, i.e. the caste system, and social attitudes are obstacles to efforts to combat discrimination

....

#### 4. Concerns and recommendations

....

The Committee expresses concern about the absence in the report of disaggregated data on the population, including by age, sex, nationality, ethnic origin, religion, including caste, and language. The Committee recommends that the State party provide these data in subsequent reports.

....

The Committee remains concerned at the existence of caste-based discrimination, and the denial which this system imposes on some segments of the population of the enjoyment of the rights enshrined in the Convention. The Committee reiterates its previous recommendation that the State party provide information in its next periodic report on the implementation of practical and substantive measures to eradicate the practice of the caste system, including measures for the prevention of caste-motivated abuse and the prosecution of State and private actors responsible for such abuse. Moreover, the State party is encouraged to implement, inter alia, affirmative measures to advance and protect persons subjected to caste-based discrimination.

#### **Concluding observations of the Committee on the Elimination of Racial Discrimination: Japan. 20/03/2001. CERD/C/58/Misc.17/Rev.3.**

4. The Committee welcomes the legislative and administrative efforts made by the State party in order to promote the human rights and the economic, social and cultural development of some ethnic and national minorities, in particular the: i) 1997 Law for the promotion of Measures for Human Rights Protection; ii) 1997 Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture; and iii) the series of Special Measures Laws for Dowa projects with the aim to eliminate discrimination against Burakumi.

7. While taking note of the State party's point of view on the problems involved in determining the ethnic composition of the population, the Committee finds that there is a lack of information on this point in its report. The State party is recommended to provide in its next report full details on the composition of the population as requested in the reporting guidelines of the Committee and, in particular, information on economic and social indicators reflecting the situation of all minorities covered by the scope of the Convention, including the Korean minority, Burakumin and Okinawa communities. The population on Okinawa seeks to be recognised as a specific ethnic group and claims that the existing situation on the island leads to acts of discrimination against it.

8. With regard to the interpretation of the definition of racial discrimination contained in article 1 of the Convention, the Committee considers, contrary to the State party, that the term "descent" has its own meaning and is not to be confused with race or ethnic or national origin. The Committee therefore recommends the State party to ensure the protection against discrimination and the full enjoyment of the civil, political, economic, social and cultural rights contained in article 5 of the Convention of all groups, including the Burakumi community.

23. The State party is also invited to provide in its next report further information on the impact of: (i) the 1997 Law for the promotion of Measures for Human Rights Protection and the work and powers of the Council for Human Rights Promotion; ii) 1997 Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for their Traditions, and; iii) the Law Concerning Special Government Financial Measures for Regional Improvement Special Projects and envisaged strategies to eliminate discrimination against Burakumi after the law ceases to apply, i.e. in 2002.

#### **Concluding observations of the Committee on the Elimination of Racial Discrimination: Bangladesh. 22/03/2001. CERD/C/58/Misc.26/Rev.3.**

11. With regard to the interpretation of the definition of racial discrimination contained in article 1 of the Convention, the Committee considers that the term "descent" does not solely refer to race or ethnic or national origin and is of the view that the situation of castes falls within the scope of the Convention. The Committee therefore recommends the State party to include in its next report relevant information about the enjoyment of the rights contained in article 5 of the Convention by all groups, including castes.

**Report by Mr. Glélé-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1997/73. E/CN.4/1998/79, 14 January 1998.**

## **V. REPLIES TO ALLEGATIONS TRANSMITTED TO GOVERNMENTS BY THE SPECIAL RAPPORTEUR**

(B) INDIA: COMMUNICATION DATED 20 DECEMBER 1996 AND REMINDER DATED 18 AUGUST 1997

57. The Special Rapporteur was informed of the situation of the untouchables in India in communications from three organizations, namely, the Ambedkar Centre for Justice and Peace, the World Council of Churches and the Dalit Liberation Education Trust (E/CN.4/1997/71). He communicated these allegations to the Indian authorities, which replied to him on 30 September 1997.

Reply from the Indian Government

58. In substance, the Indian Government rejects the allegations that it tolerated untouchability and closed its eyes to the human rights violations of protected castes. The reply contains a list of the measures taken in this regard with a view to curbing discrimination between castes and maintains that a practice that is so old cannot be eliminated rapidly.

Special Rapporteur's observations

59. In view of the discrepancy between the facts alleged and the reply of the Indian Government, the Special Rapporteur would like to visit India in order personally to evaluate the actual situation in cooperation with the Government and the communities concerned. The country's authorities will be contacted with a view to arranging this mission.

....

**Report by Mr. Glélé-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26. E/CN.4/1999/15. 15 January 1999.**

## **III. CONTEMPORARY MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE 74 - 100**

F. The question of the untouchables in India

88. In 1996 the Special Rapporteur's attention was drawn to the situation of the Dalits or untouchables in India (E/CN.4/1997/71, para. 127). Given the complexity of the question, the Special Rapporteur consulted the Indian Government, undertook documentary research and studied the position of the Committee on the Elimination of Racial Discrimination on the question. The basic question was whether the age-old caste system in India, which had produced several million untouchables, could be regarded as racial discrimination.

89. In its appearances before the Committee on the Elimination of Racial Discrimination and its communications to the Special Rapporteur, the Indian Government has consistently held that the caste system is not a hierarchical system based on race. The following five paragraphs, which are taken from the Indian Government's communication of 30 September 1997, illustrate this position.

90. History has made India home to people of diverse origins. Over the millennia, the assimilative character of the Indian civilization combined with the process of intermingling of inhabitants after waves of immigration has resulted in a composite society. A variety of racial sources have therefore contributed to the "mix" that is the



hallmark of the Indian people today. The fusion of these diverse racial elements over centuries has meant that Indian society is neither racially nor ethnically homogenous. Categorical distinctions of “race” or “national or ethnic origin” have ceased to exist and race itself as an issue does not impinge on the consciousness or outlook of Indian citizens in their social relations. Today India is a mosaic of different groups who seek identification in terms of language, religion, caste or even regional characteristics, rather than race, colour or ethnic origin.

91. The term “caste” denotes a “social” and “class” distinction and is not based on race. It has its origins in the functional division of Indian society during ancient times. A hierarchical arrangement is the principal characteristic of this social institution in which certain privileges or disabilities are enjoined on its members from birth and are not supposed to change during a person’s lifetime. Each caste group is functionally dependent on the other caste groups and has a well-defined role in a social set-up based on a symbolic relationship between persons belonging to different castes. Racial hierarchy appears as an aberrant adjunct to the main structure of society, while the multi-segmented and intricately ranked social grouping of castes has been the central principle of a functional organization of Hindu society. Further, there is ample evidence of persons belonging to different castes having the same racial characteristics.

92. Communities which fall under the category of “Scheduled Castes” are unique to Indian society and its historical process. They comprise persons who were excluded from the caste system and subjected to severe discrimination in ancient India. These persons were treated as “untouchables” and social and physical contact with them was shunned by the dominant castes.

93. The first enumeration of the former “untouchable” communities was carried out during a census in 1931 under British rule. Based on the definition evolved for the purpose at that time and reports of several commissions and committees since independence, the criterion generally followed for the specification of communities as Scheduled Castes has been “extreme social, educational and economic backwardness arising out of the traditional practice of untouchability”.

94. “Race” has thus never been a factor in the process of identification and determination of the communities which constitute Scheduled Castes. Persons who belong to the Scheduled Caste communities are today considered different from others because of their social, economic and educational backwardness, not because they belong to a separate “race”.

95. The Indian Government also indicates that constitutional, legislative and institutional measures have been taken to prohibit discrimination based on membership in a caste with regard to access to public places and provision of goods and services and to abolish untouchability (Constitution, arts. 15 and 17). The Constitution also guarantees equality before the law (art. 14) and equal opportunity of access to public employment, although the State is permitted to (a) make reservations concerning appointments or posts in favour of any backward class of citizens and (b) institute reservations in matters of promotion for Scheduled Castes and Tribes (art. 16).

96. A National Commission on Scheduled Castes and Scheduled Tribes was also established, one of its goals being: (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law; (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes; (c) to participate in and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any state.

97. According to the 1991 census, 138.2 million persons belonged to the Scheduled Castes (16.48 per cent of the estimated population of 846.3 million at the time) and 67.8 million to the Scheduled Tribes (0.08 per cent of the population).

98. The organizations representing the untouchables or Dalits recognize the progress achieved on their behalf since India’s independence, but point out that the group’s situation continues to be difficult. According to these organizations, while the average literacy rates in India (for men and women, respectively) were 63.8 per cent and

39.42 per cent in 1992, among Dalits the averages were only 29.7 per cent and 18.05 per cent). / Thiagara, Henry. The Indian Socio-Economic Pyramid, Dalit Liberation Education Trust./ There are currently about 115 million Dalit child labourers, 20 million of whom work under dangerous conditions. Additionally, in 1996 more than 1,200 Dalit children died from malnutrition in Maharashtra state. / Varhade, Yogesh. Statement made to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Working Group on Indigenous Populations, fifteenth session, 28 July-1 August 1997, Ambedkar Center for Justice and Peace./ According to several sources, the Dalits are most often the victims of forced relocation, arbitrary detention and summary execution in India. The Dalit Liberation Education Trust asserts that, "every hour two Dalits are assaulted, every day three Dalit women are raped, two Dalits are murdered, two Dalit houses are burnt in India". / Dalit Liberation Education Trust. Statement to the Working Group on Minorities of the Commission on Human Rights, 26-30 May 1997./

99. In the rural areas especially, the practice of untouchability is said to be very much alive and is reflected in segregated housing, with the Dalits forced to live at least 1/2 km from the rest of the villagers, and in the prohibition for them to use the wells, the shared water source. Segregation also reportedly exists in the schools, public services and public places (shops, hairdressers and public transport; in restaurants, dishes used by Dalits are sometimes separated from those used by the higher castes).

100. Given, on the one hand, the above-mentioned information, particularly as it relates to the constitutional provision cited by the Indian Government in its communication of 30 September 1997 - "Under article 366, the Scheduled Castes are defined as 'castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of the Constitution'" - and given, on the other hand, the fact that the Committee on the Elimination of Racial Discrimination, in its concluding observations on India's periodic reports, stated, "the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention on the Elimination of Racial Discrimination" (CERD/C/304/Add.13, para. 14), the Special Rapporteur believes that specific attention should be given to the situation of the untouchables in India; a field mission might be envisaged for that purpose, with the agreement of the Indian Government.

#### **Concluding observations of the Human Rights Committee: INDIA. 04/08/97. CCPR/C/79/Add.81**

5. ... The persistence of traditional practices and customs, leading to ... discrimination against members of the underprivileged classes and castes and other minorities ... constitute impediments to the implementation of the Covenant.

8. The Committee also welcomes the establishment of the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women in 1992, and the National Commission for Minorities in 1993. These commissions have initiated some improvements, in particular in the levels of education and in the representation of the various groups concerned within elected bodies and other authorities.

10. The Committee has noted that positions in elected bodies are reserved for members of scheduled castes and tribes ....

15. The Committee notes with concern that, despite measures taken by the Government, members of scheduled castes and scheduled tribes, as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, *inter alia* inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the de facto perpetuation of the **caste** system entrenches social differences and contributes to these violations. While the Committee notes the efforts made by the State party to eradicate discrimination:

it recommends that further measures be adopted, including education programmes at national and state levels, to combat all forms of discrimination against these vulnerable groups, in accordance with articles 2, paragraph 1, and 26 of the Covenant.

**Concluding Observations of the Committee on the Elimination of Discrimination Against Women: INDIA. 01/02/2000. A/55/38, paras.30-90**

52. The Committee considers that ... such social practices as the **caste** system ... present major obstacles to the implementation of the Convention.

68. ... Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment.

69. The Committee urges the Government to implement existing legislation prohibiting such practices as ... caste-based discrimination. ...

74. The Committee is concerned with the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act of 1989.

75. The Committee urges the Government to enforce laws preventing discrimination against Dalit women and prohibiting the devadasi system. It urges the Government to introduce affirmative action programmes in such areas as education, employment and health so as to provide life chances to Dalit women and girls and create an environment conducive to their progress. ...

**Concluding Observations of the Committee on the Rights of the Child: INDIA: 23/02/2000. CRC/C/15/Add.115**

9. Given such a diverse and multicultural society, the Committee further notes that the existence of traditional customs (i.e. the **caste** system), and societal attitudes (e.g. towards tribal groups) is an obstacle to efforts to combat discrimination, and compounds, inter alia, poverty, illiteracy, child labour, child sexual exploitation, and children living and/or working on the streets.

12. The Committee notes that insufficient efforts have been made to implement legislation and decisions of the courts and the commissions (i.e. the National Human Rights Commission, the National Commission for Women, and the Scheduled Castes and Scheduled Tribes Commission); and to facilitate the work of such institutions with respect to children's rights.

30. In the light of article 2 of the Convention, the Committee is concerned at the existence of caste-based discrimination and discrimination against tribal groups, despite these practices being prohibited under the law.

31. In accordance with article 17 of the Constitution and article 2 of the Convention, the Committee recommends that the State party take steps to ensure states abolish the discriminatory practice of "untouchability", prevent caste- and tribe-motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses. Moreover, in compliance with article 46 of the Constitution, the State party is encouraged to implement, inter alia, affirmative measures to advance and protect these groups. The Committee recommends the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the 1993 Employment of Manual Scavengers Act. The Committee encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat caste-based discrimination. In line with the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.13), the Committee stresses the importance of the equal enjoyment by members of these groups of the rights in the Convention, including access to health care, education, work, and public places and services, such as wells.

56. ... There is serious concern regarding the striking disparities in terms of access to education, attendance at primary and secondary levels and drop-out rates between: different states, rural and urban areas, boys and girls, the affluent and poor, and children belonging to scheduled castes and tribes. ...

74. The Committee notes the Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children. However, in view of the scale of the problem, the Committee is concerned about the sexual abuse and exploitation of children especially those belonging to the lower castes and from poor urban and rural areas ...

#### **Fourteenth report of States parties due in 1998: Nepal. 12/05/99. CERD/C/337/Add.4. (State Party Report)**

##### F. Caste and ethnicity

20. The people of Nepal are socially segmented along lines of caste and sub-caste and ethnic and sub-ethnic groups. According to the 1991 census, there are more than 60 such groups, along with 20 major language groups. Many groups are endogamous, perform distinct rites de passage and maintain various types and degrees of commensal and other forms of group exclusiveness.

21. The caste system was recreated/defined in the time of the late King Jayasthiti Malla. He mentioned four main castes, Brahmin, Chhetri, Vaishya and Shudra, and 16 sub-castes in each main caste. Further, he divided the castes on the basis of the division of labour in the country. The caste system was primarily hierarchical. Brahmin was identified as the highest caste and Shudra was the lowest. He described the system in his book, Human Behavioural Science, in the 1930s. Since then, members of the Shudra were identified as untouchable; they could not enter the houses of higher caste people and water touched by them was considered impure by the upper castes. The Brahmins had the most power; their duties were to guide, direct and create awareness of social values in society, perform ritual activities, etc. Punishments for the same crime were also different according to whether it was committed by a Brahmin, a woman or a person belonging to a lower caste. Deep social rifts and distance separated the high caste groups from those caste groups regarded as untouchables.

22. Racial discrimination in Nepal was legally abolished by the enactment of the National Code, 1963 (Muluki Ain), but it persists in rural areas. For an overwhelming majority of people, the caste system continues to be an extremely salient feature of personal identity and social relationships and, to some extent, determines access to social opportunities. Therefore, the human development indicators for occupational castes (so-called lower castes) are lower than for other castes. The caste system is weakening considerably in urban areas, workplaces and areas of high migration. There are also instances of a household or an individual having gone up in caste, even in the rural, indigenous areas, on account of the acquisition of wealth/income, learning or the adoption of particular modes of life.

##### G. Social development trends

25. There has been a significant improvement in the education sector over the years. The adult literacy rate has increased from 24 per cent in 1981 to 40 per cent in 1996. The lowest literacy is among the occupational castes. Women constitute more than two thirds of the illiterates. The net enrolment ratios are 70 per cent for the primary level, 45 per cent for the lower secondary level and 36 per cent for the secondary level. However, Nepal still lags far behind in general, technical and vocational education.

## II. SPECIAL MEASURES RELATING TO SPECIFIC ARTICLES OF THE CONVENTION

### A. Article 2

27. That all citizens have equal rights is a principle of the Constitution of the Kingdom of Nepal, 1991 and all branches of government are devoted to giving it concrete form. Article 11 of the Constitution stipulates that all citizens are equal before the law and entitled to the equal protection of the law in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination. Article 11 (2) of the Constitution states that there shall be no discrimination in the application of general law on grounds of religion, race, sex, caste, tribe, ideological conviction or any of these. However, special legal provisions may be made for the protection and advancement of the interests of women, children, the aged, or those who are physically or

mentally disabled or those who belong to a class which is economically, socially or educationally backward. Similarly, article 11 (4) provides that no person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision is to be made punishable by law.

28. The Muluki Ain (hereinafter referred to as National Code) has prohibited any sort of discrimination on the basis of caste, any denial of access to public places or public utilities, and provides for a punishment of one year's imprisonment or a fine of 3,000 rupees or both for violators of this provision.

29. Section 3 of the Civil Liberties Act (Nagarik Adhikar Ain), 1954 deals with equality before the law and equal protection of the law; section 4 prohibits any restrictions against any citizen on the basis of religion, race, sex, caste, or any of these in appointment to the civil service. The Act has provided for positive discrimination in favour of the socially or culturally backward ethnic groups.

....

33. The Compensation Act on Torture, 1997 states that each and every citizen, irrespective of caste, religion, ethnicity, colour and race, has the right to claim compensation from the Government for cruel, inhuman or degrading treatment received during any trial, investigation or inquiry. The Social Welfare Act, 1992 has provisions for taking the necessary steps to protect and promote the interests of socially backward communities.

....

38. The attempt/campaign to eradicate racial discrimination started with a popular movement in 1951 and ended legally with the promulgation of the Civil Liberties Act, 1954 and the National Code in 1963. However, racial discrimination in the society, especially in rural areas, is still in existence. So-called untouchables cannot even enter the houses of the people of so-called higher and middle-class castes. On one hand, they are socially suppressed by the upper classes and, on the other hand, they suffer from poverty; the intensity of poverty seems to be higher in socially backward people.

Efforts to promote the welfare and development of backward communities

40. .... In fiscal year 1997/98, the Ministry of Women and Social Welfare has provided financial assistance for socially disadvantaged communities/castes (Badi, Mushar, Ghanghar, Dome, Dushar, Raute, Satar, Dhimal, Chhamar, Damai, Kami, Sharki, Tharu, Sunuwar, Khatwe and Kumal) to promote their traditional technology. However, programmes to raise the status of repressed people and backward communities were not addressed in national policies and programmes in an integrated way.

....

42. In addition, awareness creation, income generation, education and health facilities programmes were implemented to address the problems of the backward communities. However, the gap between so-called higher and lower castes has not narrowed. There have hardly been any changes in the society or the living standard of the poor. Consequently, the people of backward communities have felt discriminated against and could not believe that the Government was doing anything for their welfare and development. The main reasons for this are: lack of integrated programmes, weak implementation and sustainability, failure to mainstream backward communities and repressed people into the national development process, centre-oriented/based programmes rather than community-based/participatory programmes, little attention to human resource development and lack of encouragement to the development and modernization of traditional occupations and skills, lack of effective institutional mechanisms, etc.

....

49. His Majesty's Government of Nepal has been continuing the scholarship programmes for the students of socially backward communities. In addition, all students of those backward communities and occupational castes get NRs. 25 for 10 months of the year as motivation.

....

C. Article 4

55. As mentioned above, no discrimination exists in Nepal, either in terms of legal provisions or of policy and programme measures. The National Code prohibits any sort of discrimination on the basis of caste, any denial of

access to public places and public utilities, and provides for the punishment of violators of this provision. The Civil Liberties Act, 1954 prohibits any restrictions against any citizen on the basis of religion, race, sex, caste, or any of these in appointments to the civil service and the Constitution stipulates that all citizens are equal before the law.

....

57. In Nepal, no news item, article or other reading material is censored which may jeopardize the harmonious relations subsisting among the people of various castes, tribes or communities.

....

#### 1. Civil and political rights

....

63. Irrespective of race, caste, religion, creed, ethnicity or colour, every person who has his/her domicile in Nepal is eligible for citizenship by birth in Nepal, by having one parent who was born in Nepal, or by naturalization by virtue of section 6 of the Nepal Citizenship Act, 1964 (art. 8). A foreign woman who marries a Nepalese citizen is also eligible for citizenship.

64. The Constitution guarantees civil rights. All citizens have equal rights before the law and have the following freedoms:

- (a) Freedom of opinion and expression;
- (b) Freedom to assemble peacefully and without arms;
- (c) Freedom to form unions and associations;
- (d) Freedom to move throughout the Kingdom and reside in any part thereof; and
- (e) Freedom to practise any profession or to carry on any occupation, industry or trade (article 12.2 of the Constitution).

65. These freedoms may be exercised with the following provisos:

- (a) Nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations among the peoples of various castes, tribes or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence or on any act which may be contrary to decent public behaviour or morality;
- (b) Nothing in sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of the Kingdom of Nepal;
- (c) Nothing in sub-clause (c) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations among the peoples of various castes, tribes or communities which may instigate violence, or which may be contrary to public morality;
- (d) Nothing in sub-clause (d) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations among the peoples of various castes, tribes or communities;
- (e) Nothing in sub-clause (e) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specified industries, businesses or services, or to impose any condition or qualification for carrying on any industry, trade, profession or occupation.

66. Every person shall have the freedom to profess and practise his/her own religion as handed down to him/her from his/her forefathers and every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts (article 19 of the Constitution).

## Right to marriage and choice of spouse

67. The legal age for marriage without parental consent is 21 years for males and 18 years for females whereas with parental consent the marriage age is 18 years for males and 16 years for females. The free will of the prospective spouses is given due importance; however, in some cases, prospective spouses might face social obstructions if the man and woman come from different social standings/castes/ethnic groups.

68. According to the prevailing laws, a man and woman who have attained the marriageable age may register their marriage at the District Administration Office and are given a Certificate of Registration of Marriage duly signed by the concerned authorities.

## 2. Economic, social and cultural rights

69. Article 17 of the Constitution states that all citizens have the right to property subject to existing laws which cover the right to acquire, own, sell and dispose of such property.

70. To develop a healthy social life by eliminating all types of economic and social inequalities and establishing harmony amongst the various castes, tribes, religions, languages, races and communities is the social objective of the State. The State is also directed to pursue a policy of mobilizing the natural resources and heritage of the country in a manner useful and beneficial to the interests of the nation. Article 25 of the Constitution envisages the principal objective of the State as to promote conditions of welfare on the basis of the principles of an open society by establishing a just system in all aspects of the national life, including social, economic and political life, while at the same time protecting the life, liberty and property of the people. The State's fundamental economic objective is to transform the national economy into an independent system by preventing the country's available resources and means from being concentrated within a limited section of society, and by making arrangements for an equitable distribution of economic gains on the basis of social justice.

....

## III. CONCLUSION

101. The equality of rights of citizens is a principle of the Constitution. All branches of current legislation are devoted to giving it a concrete form. Article 11 of the Constitution stipulates the equality of all citizens before the law and equal protection of the law as stipulated in the International Convention on the Elimination of All Forms of Racial Discrimination. Article 11 (2) of the Constitution states that there shall be no discrimination against any citizen in the application of general law on ground of religion, race, sex, caste, tribe or ideological conviction or any of these. However, special legal provisions may be made for the protection and advancement of the interests of women, children, the aged, those who are physically or mentally disabled or those who belong to a class which is economically, socially or educationally backward.

- “Occupational castes” mostly indicate the so-called “Untouchables” of the Hills and Tarai (Plains part of the country).

**Appendix D:**  
**Comments by U.N. human rights treaty bodies on caste in Africa.**

**Burkina Faso**

**Initial reports of States parties due in 1992: Burkina Faso. 15/07/93. CRC/C/3/Add.19. (State Party Report)**  
*Committee on the Rights of the Child*

14. Article 1 of the Constitution stipulates: “All inhabitants of Burkina Faso are born free and equal before the law”. Discrimination of any kind, in particular discrimination based on race, ethnic group, religion, colour, sex, language, caste, political opinion, property or birth, is prohibited.

85. Legislation in Burkina Faso prohibits all discrimination based on race, ethnic group, region, colour, sex, language, religion, caste, political opinion, wealth and birth (Constitution, art. 1). Children belonging to a minority or an indigenous group enjoy the same rights as all citizens of Burkina Faso and all foreigners.

**Eleventh periodic report of States parties due in 1995: Burkina Faso. 13/03/97. CERD/C/279/Add.2. (State Party Report)**  
*Committee on the Elimination of Racial Discrimination*

8. The provisions of the Constitution recognize and protect civil, political and economic rights:

Article 1, paragraph 3: “Discrimination of any kind, particularly based on race, ethnicity, region, colour, sex, language, religion, caste, political opinion, wealth and birth, is prohibited.”

12. Any discrimination in marriage based on race, colour, religion, ethnicity, caste, social origin or wealth is prohibited; strict equality exists between the spouses. Opposition to marriage on grounds of race, caste, colour or religion is prohibited. The Personal and Family Code currently in force in Burkina Faso seeks to modernize and standardize the marriage regime by eliminating all forms of discriminatory marriage, particularly forced marriage, the betrothal of young girls and levirate (“formal” marriage with the widow of one’s brother).

**Concluding Observations of the Committee on the Elimination of Racial Discrimination: Burkina Faso. 21/08/97. CERD/C/304/Add.41. (Concluding Observations/Comments)**

C. Positive aspects

6. It is noted with appreciation that the prohibition of discrimination on any ground, in particular of race, ethnic origin, colour, religion or caste, is contained in the Constitution, which makes it an excellent basis for the implementation of the Convention in Burkina Faso.

**Summary record of the 1236th meeting: Bosnia and Herzegovina, Burkina Faso, Israel, Poland. 05/12/97. CERD/C/SR.1236. (Summary Record)**  
*Committee on the Elimination of Racial Discrimination*

Mr. DIACONU (Country Rapporteur on Burkina Faso)

15. Burkina Faso was undergoing changes similar to those that had taken place almost everywhere in Africa during the 1990s. Under the 1991 Constitution, racial discrimination of any kind, particularly based on race, ethnicity, region, colour, sex, language, religion, caste, political opinion, wealth and birth, was prohibited. The Constitution was based on a pluralist concept; 13 political groups had taken part in the legislative elections in May 1997, and 4 political parties were represented in the new Parliament. Given that there had been seven political parties represented in the former Government, formed after the 1993 elections, he would like to know whether more than one party was represented in the current Government.



## **Burundi**

### **Summary record of the 1239th meeting : Burundi. 25/08/97. CERD/C/SR.1239. (Summary Record)** *Committee on the Elimination of Racial Discrimination*

57. The delegation of Burundi agreed wholeheartedly with the Committee that ethnicity should not be institutionalized. As to whether there was discrimination in education and whether Hutus were being victimized through the system, he explained that prior to Burundi's accession to independence, education was provided by white European missionaries. Any blame for subsequent discrimination in education should therefore be laid at their door. During the colonial era, a school had been established for the education of the princely and royal caste which had never identified itself with either Tutsis or Hutus. After the dissolution of the caste, its members had alternated between association with the Tutsis and the Hutus depending on which of the groups had held political power. After independence the schools had still been run by the clergy and missionaries until the accession of President Bagaza to power but even then there had been no discrimination whatsoever between Tutsis and Hutus. However, during the Bagaza regime a system designed to discriminate in favour of Tutsis had been developed - and that was indeed one of the reasons for the overthrow of that regime. The successive regimes in Burundi were, therefore, not responsible for discrimination in schools. Such discrimination no longer existed. If the Committee sent a delegation to Burundi it would be a perfect opportunity to determine the true situation.

## **Cameroon**

### **List of Issues: Cameroon. 17/12/98. E/C.12/Q/CAMER/1. (List of Issues)** *Committee on Economic, Social and Cultural Rights*

#### Article 6. The right to work

11. What measures, legislative or otherwise, has the State Party adopted to ensure that the right to work is provided to all in Cameroon without any discrimination as to colour, sex, caste, ethnic group, creed and social or economic status?

## **Mali**

### **Summary record of the 571st meeting: Mali. 05/10/99. CRC/C/SR.571. (Summary Record)** *Committee on the Rights of the Child*

#### Mrs. DIARRA THIERO (Mali)

5. In Mali, as in other African countries, castes had traditionally played a specific role as social regulators. However, there was no problem with respect to discrimination against children or for that matter any other members of specific castes in Mali, as members of castes were well received and socially integrated in Malian society. The Constitution established that all people were born free and equal.

19. Mr. BALLO (Mali) said he was unaware of any problems posed by the caste system in Mali, which was a domestic tradition rather than a form of discrimination. Each person had a job to do and that job was determined by marriage and family relationships. While there was no legal discrimination, other practices were also part of the caste tradition, which could not be legislated against.

39. Mrs. OUEDRAOGO agreed with the delegation's comments on the role of parents in supervising children's access to films and television programmes, which was particularly important in connection with the private video showings which often took place in villages throughout the subregion. Regarding excision, she agreed that a law would be premature in the context described by the delegation, but welcomed the Government's political will to combat that practice. She noted that there did not appear to be a problem of discrimination against castes in Mali. Regarding violence, she had been pleased to hear that police officers and gendarmes received training relating to

the Convention, and asked whether there were plans to institute such training in police and gendarmerie training schools.

**Summary record of the 570th meeting: Mali. 09/11/99. CRC/C/SR.570. (Summary Record) *Committee on the Rights of the Child***

Mrs. OUEDRAOGO

42. What measures were being adopted to end the practice of early marriage? Were marriages still arranged at birth? There were some reports of discrimination on grounds of caste. What action was being taken by the Government in that connection? Furthermore, how was the principle of the child's best interests translated into practice in daily life? More specifically, what was the social situation and legal status of children born out of wedlock? She emphasized that although Malian law punished abortion, a distinction had to be drawn between theory and practice, and she asked about the numerous cases of illegal abortions, especially among teenagers.

## **Mauritania**

**Summary record of the 1341st meeting: Mauritania. 12/08/99. CERD/C/SR.1341. (Summary Record) *Committee on the Elimination of Racial Discrimination***

Mr. OULD MERZOUG (Mauritania)

23. Turning to the issue of slavery in Mauritania, he said that all African societies in the pre-colonial era had been marked by inequalities due to the traditional rigid class hierarchy and the caste system, and Mauritania had been no exception. However, a caste system had existed within each of Mauritania's communities - Arab, Pular, Soninké and Wolof. For example, one community had 12 castes, divided into three main groups: freemen, trades people such as fishermen or weavers, and slaves, who had often been captured in war. There was thus no racial dimension to slavery. It was a fallacy to believe that the Arabs had been the masters and the blacks the slaves. In fact, the Arab community had adopted the social structure of the other communities in Mauritania, which existed nowhere else in the Arab world. Members of the Arab community in Mauritania had been prominent in the fight against the slave trade.

24. The traditional social structure which he had just described had been destroyed by colonialization. The schools and jobs created by the colonial authority had principally benefited the lower castes in society, partly because the higher castes were more hostile to attempts to convert them to Christianity. As the colonial era had drawn to its close after the Second World War, new political associations had been formed which had challenged the traditional social structure and sought the advancement of the poorest groups. Independence from colonial rule in 1961 and the effects of new production methods and equipment, the market economy and the drought of the 1970s and 1980s had dealt the final blow to the traditional caste system. The nomadic population had been forced to become sedentary, and the former aristocrats and those they had exploited had moved into the shanty towns together. The formal abolition of slavery in 1980 had been important less as a legal measure -since slavery no longer existed in practice - than as a symbol of the religious authorities' commitment to the fight against social inequality and an attempt to change the outdated attitudes which still persisted in some remote rural areas. A field survey commissioned by the Government, in which it had invited the President of the Anti-Slavery Society to participate, had confirmed that slavery no longer existed in Mauritania.

## **Mauritius**

**Initial report: Mauritius. 14/10/94. E/1990/5/Add.21. (State Party Report) *Implementation of the International Covenant on Economic, Social and Cultural Rights***  
Economic and Social Council, Substantive session of 1995

48. Promotion in the public service is a matter for the Public Service Commission (PSC), which is a constitutional body under the Constitution operating within the parameters laid down in its regulations (PSC Regulations). The regulations which are made by the PSC under the Constitution ensure that appointment or promotion in the public

service are made within the spirit of the Constitution, i.e. there is no discrimination in regard to sex, race, **caste**, place of origin, political opinions, colour or creed. Of course, in certain specific areas the requirements are restricted to either male or female candidates, depending on the nature of the duties required. For example in a girls college, the need will be for a female matron.

357. The Constitution of the Republic of Mauritius guarantees the right of every Mauritian citizen to take part in the cultural life which he or she considers pertinent and to manifest his or her own culture. In fact, chapter II of the Constitution of the Republic of Mauritius provides for the protection of the fundamental rights and freedom of the Mauritian citizen, namely:

- Protection of freedom of conscience, of thought, religion and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance;
- Protection of freedom of expression, i.e. freedom to hold opinions and impart ideas and information without interference with his correspondence;
- Protection of freedom of assembly and association, i.e. no person shall be hindered in the enjoyment of his right to assemble freely or associate himself with other persons for the protection of his interest;
- Protection of freedom to establish schools;
- No religious denomination and no religious, social, ethnic or cultural association or group is prevented from establishing schools at its own expense;
- Protection from discrimination on the basis of race, caste, place of origin, political opinion, colour or creed.

**Initial reports of States parties due in 1994: Mauritius. 07/03/95. CAT/C/24/Add.3. (State Party Report)**  
*Committee Against Torture*

33. Section 7 (5) provides that an offender shall not be surrendered to a foreign State where the Minister has reasonable grounds for believing that:

- (a) The request of his surrender, although purporting to have been made in respect of an offence for which, but for this section, he may be liable to be surrendered to that State, was made for the purpose of prosecuting or punishing him on account of his race, caste, place of origin, nationality, political opinions, colour, or creed; or
- (b) If the offender is surrendered to that State he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, caste, place of origin, nationality, political opinions, colour or creed.

**Initial report of States Parties due in 1992: Mauritius. 02/10/95. CRC/C/3/Add.36. (State Party Report)**  
*Committee on the Rights of the Child*

19. With respect to fundamental rights and freedoms, all Mauritian citizens are equal before the law. Discrimination based on religion, ethnicity, colour, caste, political opinion, disabilities, etc. is not permitted. A law to remove discrimination on the basis of sex will soon go to Parliament. The problem of discrimination is dealt with in section 16 of chapter 2 of the Constitution. Moreover, the Mauritian Constitution recognizes the best interest of the child as the primary guiding principle in family matters. All legislation is enacted in the best interest of the child.

**Third periodic reports of States parties due in 1990: Mauritius. 15/10/95. CCPR/C/64/Add.12. (State Party Report)**  
*Human Rights Committee*

Advocacy of national, racial or religious hatred

2.2 The Public Gathering Act 1991 has added the offence of “stirring up racial hatred” to the Criminal Code. It reads as follows:

“Section 282

- (1) Any person who, with intent to stir up contempt or hatred against any section of the public distinguished by race, caste, place of origin, political opinions, colour or creed -
  - (a) publishes or distributes any writing which is threatening, abusive or insulting;

- (b) uses in any public place or at any public meeting or procession any gesture or word which is threatening, abusive or insulting; or
- (c) broadcasts any matter which is threatening, abusive or insulting,
- shall commit an offence and shall, on conviction, be liable to a fine not exceeding Rs 25,000 and penal servitude not exceeding 10 years.

#### Article 26

1. Section 16 of the Constitution, which provides protection from discrimination, only makes reference to “race, caste, place of origin, political opinions, colour or creed”; no mention is made of “sex”.

#### **Summary record of the 40th meeting: Mauritius. 30/11/95. E/C.12/1995/SR.40. (Summary Record) Committee on Economic, Social and Cultural Rights**

##### Mr. BOOLELL (Mauritius)

7. It was worth noting two recent developments that would have a major impact on how Mauritius implemented the Covenant. In August 1995, section 16 of the Constitution of Mauritius had been amended so as to dispel any doubts regarding possible discrimination on the ground of gender. As a result of the amendment, any law found to be discriminatory on the basis of gender would be declared null and void. The Constitution stipulated, *inter alia*, that no law should make any provision that was discriminatory either of itself or in its effect. It was understood that discriminatory meant different treatment for different persons wholly or mainly on the basis of their respective descriptions by race, caste, place of origin, political opinion, colour, creed or sex. The word “sex” had been added to fill the lacuna in the original version of section 16.

29. Mr. SIMMA asked whether section 16 (4) (c) of the Constitution could be construed as meaning that if, in the future, owing to some fundamentalist pressure, a Muslim, Hindu or other law discriminating against women for religious reasons was enacted, it would be acceptable.

30. Mr. BOOLELL (Mauritius) replied that no discrimination on the ground of religion, caste, or sex would be constitutional and that any law allowing such discrimination was unlikely to survive in view of the terms of sections 1, 3 and 16 of the Constitution.

#### **Summary record of the 1476th meeting: Mauritius. 28/03/96. CCPR/C/SR.1476. (Summary Record) Human Rights Committee**

42. Mr. BÁN observed that Mauritius had clearly made considerable strides in the field of human rights since the previous report: the Constitution had been amended in substantial points, the death penalty had been abolished and a series of anti-discrimination laws had been adopted. He wondered in that connection whether the amendment of section 16 of the Constitution would now set aside section 242 of the Criminal Code, which did not provide for equal treatment of men and women. Also, he would like an explanation of the terms “race, caste, place of origin”, as they were used in section 16 of the Constitution.

#### **Summary record of the 1477th meeting: Mauritius. 08/04/96. CCPR/C/SR.1477. (Summary Record) Human Rights Committee**

##### Mr. SEETHULSINGH (Mauritius)

4. Responding to a question concerning traditional customs which affected women’s rights to which reference had been made in the second report, he stated that rapid economic growth was leading to the gradual disappearance of cultural traditions which tended to discriminate against women. Moreover, the existence of a caste system similar to that in India was an unfortunate accident of history and although it was legitimized in the 1968 Constitution, it was never really practised.

**Concluding observations of the Committee on the Elimination of Racial Discrimination: Mauritius. 27/09/96. CERD/C/304/Add.19. (Concluding Observations/Comments)**

10. With regard to article 2 of the Convention, the adoption in July 1991 of section 282 of the Criminal Code, which makes it an offence to publish or distribute any threatening, abusive or insulting writings, to use in public any threatening, abusive or insulting gestures or to broadcast threatening, abusive or insulting matter, with intent to stir up contempt or hatred against any part of the population distinguished by race, caste, place of birth, colour or creed, is noted with appreciation.

**Twelfth periodic report of States parties due in 1995: Mauritius. 03/01/96. CERD/C/280/Add.2. (State Party Report) *Committee on the Elimination of Racial Discrimination***

10. Under section 3 of the Constitution it is specifically provided that all citizens shall have access to human rights and fundamental freedoms without discrimination by reason of race, place of origin, political opinion, colour, creed or sex. This provision is further reinforced by section 16 which provides that no law shall be discriminatory on the ground of race, caste, place of origin, colour, creed or sex.

23. In the framework of its continuing policy aimed at the elimination of all forms of discrimination, the Government in July 1991 enacted section 282 of the Criminal Code (annex 4) to make it an offence for any person who with intent to stir up contempt or hatred against any section or part of any section of the public distinguished by race, caste, place of origin, colour or creed:

- (a) Publishes or distributes any writing which is threatening, abusive or insulting;
- (b) Uses in any public place or at any public meeting or procession any gesture or word which is threatening, abusive or insulting; or
- (c) Broadcasts any matter which is threatening, abusive or insulting.

**Appendix E:**  
**Final Declaration of the Global Conference Against Racism and Caste-based Discrimination: Occupation and Descent-based Discrimination Against Dalits, 1-4 March, 2001, New Delhi, India.**

**A conference in preparation for the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance**

The Global Conference Against Racism and Caste-based Discrimination was convened in New Delhi, 1-4 March 2001, and included representatives and victims from India, Nepal, Bangladesh, Pakistan, South Africa, Japan, Sri Lanka, the Netherlands, Denmark, Germany, Hong Kong SAR, the United Kingdom, and the United States.

The participants of the Global Conference strongly condemn caste (occupation and descent based) discrimination and the practice of untouchability, which is the source of immense human suffering and the cause of gross human rights violations and of dehumanizing and degrading treatment of 240 million people.

We, the participants of the Global Conference, have listened to disturbing testimonies from victims of caste-based discrimination who have suffered extreme violence, abhorrent conditions of work, degradation, exclusion and humiliation. We have also heard from experts, activists, academics, and grassroots leaders about their work to end caste-based discrimination. We appeal to governments and the international community to end this crime against humanity, and we strongly endorse the following declaration.

**Preamble**

1. **Taking note of** the concluding observation of the United Nations Committee on the Elimination of All Forms of Racial Discrimination (CERD) “that the situation of scheduled castes and scheduled tribes falls within the scope of the Convention on the Elimination of All Forms of Racial Discrimination,” and that the term “descent” contained in Article 1 of the Convention does not refer solely to race, and encompasses the situation of scheduled castes and scheduled tribes, as cited on September 17, 1996, in the document CERD/C/304/Add.13,
2. **Affirming** that caste as a basis for the segregation and oppression of peoples in terms of their descent and occupation is a form of apartheid and a distinct form of racism affecting victims equally irrespective of religion.
3. **Asserting** that Untouchability is a Crime against Humanity,<sup>141</sup>
4. **Recognizing** that caste-based practices – distinction, exclusion and restrictions on social and occupational mobility – which lead to a negation of humanity and the inability to exercise all human rights are affecting at least 240 million persons in South Asia and millions of others in East Asia and West Africa,
5. **Recognizing** that the 52<sup>nd</sup> United Nations Sub-Commission on Human Rights, given their concerns over caste-based discrimination, passed a unanimous resolution calling for a working paper on occupation- and descent-based discrimination,
6. **Recalling** conclusions drawn by the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Committee on the Rights of the Child (CRC), the United Nations Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance and the Human Rights Committee that

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<sup>141</sup> Untouchability is the subjugation and denial of the basic human rights of people labeled as “impure,” a practice sanctified by religious tradition.

Dalit men, women and children endure severe forms of discrimination, violence and exploitation because of their caste status,

7. **Committed** to the inclusion of caste-based discrimination on the agenda, the declaration and the programme of action of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Forms of Intolerance (WCAR), to be held at Durban, South Africa, from August 31-September 8, 2001,
8. **Calling attention to** the proceedings of the Bellagio Consultation, the European NGO preparatory meeting, and the Asian and African expert meetings in preparation for the WCAR which specifically address the problem of caste discrimination,
9. **Encouraged** by the solidarity expressed by non-governmental organizations in the WCAR preparatory and expert meetings and taking note of the consensus reached in the Asia-Pacific NGO Declaration in Tehran for inclusion of caste-based discrimination in the agenda of the WCAR and the Declaration and Programme of Action,
10. **Taking note** of governments' obligations to uphold universal standards of human rights under the UN treaties and covenants,
11. **Commending** those governments that are supporting the inclusion of discrimination based on caste on the agenda of the WCAR,
12. **Noting** that many countries have recognized that certain communities, such as Dalit people s in India, Nepal, Pakistan, Sri Lanka, and Bangladesh, Buraku people in Japan, and other communities in Senegal, South Mauritania and other countries, face caste-based discrimination,
13. **Recognizing** that governments have undertaken constitutional, legislative, and policy initiatives, as well as set up administrative bodies to combat discrimination based on caste and race, but also that, due to lack of political will, these efforts have been insufficient and are being diluted, subverted, and not properly implemented,
14. **Noting** that women - especially Dalit women - represent the most oppressed sections of all societies, and that they face multiple forms of discrimination, including caste-based, religious and patriarchal ideology and practices;
15. **Taking note of** the support of some public leaders, the media, non-governmental organizations, and concerned citizens from various walks of life who have condemned the existence and perpetuation of caste-based discrimination,
16. **Strongly condemning** the attempts of the government of India to oppose the inclusion of caste-based discrimination in the agenda of the WCAR, and urging other governments to support the inclusion of caste-based discrimination in the WCAR agenda,<sup>142</sup>
17. **Denouncing** governments – particularly India- that refuse to comply with or recognize their legal obligations as defined by the CERD,<sup>143</sup>

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<sup>142</sup> The Human Rights Commission of Sri Lanka does not subscribe to this section of the declaration.

<sup>143</sup> The Human Rights Commission of Sri Lanka does not subscribe to this section of the declaration.

**The participants of the Global Conference adopt the following:**

**PROGRAMME OF ACTION**

*The participants of the Global Conference Against Racism and Caste-based Discrimination call upon Governments to:*

I. Measures at the national level

1. **Enforce and implement** an effective and time-bound program to abolish untouchability and similar practices in all spheres.
2. **Enact and enforce** laws related to compulsory primary education and the elimination of child labor, bonded labor, manual scavenging, caste-bound free labor, the devadasi system or temple prostitution, and other similar practices.
3. **Ensure** that all necessary constitutional, legislative, and administrative measures, including appropriate forms of affirmative action, are in place to prohibit and redress discrimination on the basis of caste, and that such measures - including those in Japan and India - are continued until discrimination is eliminated.
4. **Monitor and publicize** the extent to which existing laws have been implemented.
5. **Monitor and analyze** educational syllabi and textbooks that perpetrate caste-based oppressions and exclusion, and glorify worldviews that have contributed to the continued existence of a system of “hidden apartheid.” Implement alternatives that emphasize human rights education at the school and university levels.
6. **Allocate** adequate funds for and effectively implement programs for the socio-economic empowerment of communities discriminated against on the basis of caste or descent.
7. **Ensure** full proportional representation based on percentage of national population size of Dalits, Buraku, and other groups excluded on the basis of caste in all sections of society including police, judiciary, public service, media, and private industry.
8. **Urge** statutory and constitutional bodies such as national human rights commissions, commissions on women, race, minorities, and other relevant groups, as well as the Asia-Pacific Coordinating Committee of National Institutions, the African Coordinating Committee of National Institutions, and the International Coordinating of National Institutions, to take up the issue of caste-based discrimination and to support its inclusion in the WCAR.
9. **Urge** national and state governments to take all measures to combat caste-based discrimination against women.
10. **Urge** governments not to deny passports to people wishing to attend the WCAR in Durban, particularly Dalit activists.

II. Measures at the United Nations level

11. **Demand** that the WCAR agenda specifically address caste-based discrimination and that the WCAR Platform for Action identifies concrete measures for ending this form of discrimination;
12. **Demand** that the caste system be included in the WCAR documents as a major source of discrimination.



13. **Call** upon the WCAR to underline the necessity for States to adopt immediate concrete measures to eradicate the widespread discrimination and persecution targeting Dalits, Burakumin, and other communities facing discrimination on the basis of caste or descent.
14. **Call** upon CERD and the Special Rapporteur on Racism, Racial Discrimination, Xenophobia, and Related Forms of Intolerance to reaffirm their position that caste-based discrimination comes under the purview of the CERD and to state that caste should be addressed in the WCAR.
15. **Call** for a declaration by the United Nations that untouchability constitutes a crime against humanity.
16. **Call** for intensified efforts at educating the public about the extent of caste discrimination and about the contributions of Dalit culture and history.
17. **Urge** the appointment of a United Nations Special Rapporteur on caste discrimination.
18. **Declare** April 14 (Dr. B. R. Ambedkar's birthday) as the International Day of Dalit Solidarity.
19. **Recommend** that United Nations development agencies pay particular attention to caste violence and caste discrimination, assess the impact of their existing programs with regard to caste, and develop programs and strategies designed to curb abuse and encourage accountability.

**Appendix F:**  
**Asia-Pacific NGO Declaration for the World Conference Against Racism, Racial Discrimination,  
Xenophobia and Related Intolerance**

**Preamble**

i. We, the representatives of Asian and Pacific Non-Governmental Organisations and other national, regional and international civil society organisations, meeting in Tehran, Iran, during February 18-19, 2001 and in Kathmandu, Nepal during April 27-29, 2001 in preparation for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerances, to be held in South Africa in accordance with the UN General Assembly Resolution 52/111,

ii. Reaffirming that all human rights are universal, indivisible, interdependent and inalienable, irrespective of distinction of any kind such as race, class, colour, sex, gender, language, national or ethnic identity, caste, descent, occupation, 'untouchability' religion, social origin, disability, sexual orientation, diverse gender identities, age and other factors,

iii. Recognising that all human beings are born free and equal in dignity and rights, and have the capacity to contribute constructively to the development and well-being of their societies and, that all human societies, including those of the Asia Pacific region, are based on the shared values of tolerance, solidarity and pluralism,

iv. Noting with concern, the persistence and increasing spread of various forms of racism, racial and ethnic discrimination, xenophobia and related intolerance in all continents and regions of the world,

v. Declare that racism is an ideological construct that assigns a certain social group to a position of power over others on the basis of a notion of superiority, dominance and purity. It is 'scientifically false, morally condemnable, socially unjust and dangerous' and politically harmful;

vi. Further declare that racism is the basis of gross violations of human rights and occurs in the form of unjust exploitation, it renders people stateless, creates refugees, leads to marginalisation, exclusion, pauperisation, militarism, ethnic cleansing, cultural annihilation and genocide, suppression and destruction of indigenous cultures, constitutes a threat to peace and development of all human societies and, therefore, must be addressed with all appropriate resources and means, including legal mechanisms;

vii. Consider that the roots of many contemporary manifestations of racism and racial discrimination can be located in the legacy of colonialism which created historical injustices based on ideologies of superiority, dominance and purity;

viii. Recall that some of the worst manifestations of racism and racial discrimination have been caused by colonialism, foreign domination and militarisation and express grave concern regarding the continued occupation of Palestine;

ix. Call on the forthcoming World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerances to specifically mention within its scope and ambit new manifestations of racism and racial discrimination including growing tendencies of religious intolerance and caste-based discrimination as evidenced in different parts of the world and include the same as a manifestation of xenophobic and racist tendencies.

....

**Caste and Racism**

40. Caste is a historically entrenched, false ideological construct which often has religious and ideological sanction, and which allows for the treatment of some people as inferior. Casteism and racism operate at personal, social and structural levels.

41.Caste is descent and occupation based and hereditary in nature, determined by one's birth into a particular caste. Caste and descent-based discrimination affects nearly 240 million people in the Asia Pacific region, for example Dalits in India and Nepal and Burakamin in Japan, irrespective of the faith that they practice.

42."Untouchability" (the subjugation and denial of the basic human rights of people labelled as "polluted" or "impure") is the most insidious manifestation of caste-based discrimination in the Asia Pacific region, specifically in India, Sri Lanka, Bangladesh, Pakistan and Nepal. Caste-based discrimination de facto denies access to public services including housing, education, health, land, employment, social services and other resources normally available to citizens of a country as a right. We assert that Untouchability is a Crime Against Humanity.

43.The grave lack of legal protection in some countries for persons who suffer caste-based discrimination places restrictions on their enjoyment of rights as well as on their social and economic mobility and makes them more vulnerable to all forms of violence.

44.Even though states enact laws to protect the rights of marginalized communities, it is the states themselves who often violate these laws;

45.Caste as a basis for the segregation and oppression of peoples in terms of their descent and occupation is a form of apartheid and in its practical manifestation and nature of discrimination is a distinct form of racism affecting victims equally irrespective of religion. Casteism pre-dates racism and is a distinct form of racism.

46.The apartheid nature of caste discrimination manifests itself in the segregation of housing settlements and cemeteries, denial of access to common drinking water, restaurants, temples, tea stalls ('two-cup' system), restrictions on marriage and other insidious measures designed to prevent social interaction and mobility.

47.Any attempt made by members of these communities to struggle for equal rights is met with extreme violence such as the burning of homes, stripping and parading, mainly of women, rape, murder and social and economic boycott. The perpetrators of these crimes frequently enjoy police impunity, while the victims, who are mostly women, are often falsely accused and imprisoned.

48.There is a clear inter-sectionality between race, class and gender. Dalit women represent the most oppressed sections of South Asian societies, and face multiple forms of discrimination.

49.In spite of the fact that some governments have undertaken constitutional, legislative and policy initiatives, as well as set up administrative bodies to combat discrimination based on caste and other factors, due to a lack of political will and entrenched prejudices, these efforts have been ineffective and seriously inadequate in enabling social and economic mobility of these oppressed communities.

50.Caste-based practices - distinction, exclusion and restrictions on social and occupational mobility - lead to a negation of humanity and the inability to exercise all human rights.

51.Hence, the NGO community of Asia-Pacific is committed to the inclusion of caste-based discrimination on the agenda, the declaration and the programme of action of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Forms of Intolerance (WCAR), to be held at Durban, South Africa, from August 31-September 8, 2001,

52.The Asia-Pacific NGO community strongly condemns the attempts of the governments of India and Japan to oppose the inclusion of caste-based discrimination in the agenda of the WCAR in spite of the assertion by the UN Committee for the Elimination of Racial Discrimination that caste discrimination is a form of racial discrimination. We urge other governments, as an urgent matter of basic justice, to support the inclusion of caste-based discrimination in the WCAR agenda, despite the pressure exerted by India in particular, which is home to hundreds of millions of persons facing caste-based discrimination.

