

Input by the International Dalit Solidarity Network to the UN Committee on the Elimination of Discrimination against Women for its General Discussion on "Access to Justice" on 1 February 2013

This input to CEDAW's General Discussion on Access to Justice has been prepared by the International Dalit Solidarity Network (IDSN)ⁱ in collaboration with its members, the National Campaign for Dalit Human Rights/AIDMAM and Navsarjan Trust in India. It was submitted to the Committee on 31 January 2013.

The submitting parties recommend the CEDAW Committee to include specific provisions on the promotion protection of women affected by caste discrimination when discussing the envisaged scope of a General Recommendation on access to justice in the context of articles 2 and 15 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW Convention).

I. Addressing barriers in access to justice for Dalit women

Women and girls affected by caste-based discrimination are particularly vulnerable to various forms of sexual violence, forced and ritual prostitution, trafficking, domestic violence and punitive violence when they seek justice for crimes committed.

Discrimination and violence against women takes a unique form when gender and caste intersect. The caste system, estimated to affect 260 million people globally, declares Dalit women to be intrinsically impure and 'untouchable', which sanctions social exclusion and exploitation. Violence against Dalit women is most often used as a means of punishment and demonstration of power by the dominant castes towards both the woman herself and her community.

Equal access to justice is a far away reality for most Dalit women. When considering cases of violence against Dalit women, sanctioned impunity on behalf of the offenders is a key problem. Police personnel often neglect or deny the Dalit women of their right to seek legal and judicial aid. Women tell of police officers refusing to intervene or to even take their statements. In many cases, the judiciary fails to enforce the laws that protect Dalit women from discrimination. In 2006 in India, the official conviction rate for Dalit atrocity cases was just 5.3%.ⁱⁱ

A recent series of tragic cases have demonstrated the brutality with which women are assaulted in India. While women from other social groups have also been the victims of rape, Dalit women are particularly vulnerable to such crimes. In the state of Haryana, for example, 17 cases of alleged rapes were registered in September 2012 alone. One Dalit rights organisation estimated that the vast majority of crimes against Dalit women are not reported due to fear of social ostracism and threats to personal safety and security.ⁱⁱⁱ

As highlighted by the Verma Committee in a recent report concerning the tragic gang rape case in New Delhi, some of the most critical challenges for India's police and judiciary are to ensure accountability of police or armed forces personnel for sexual violence; to register every case of reported rape; and to ensure that those who fail to do so face serious repercussions.^{iv}

Several studies and submissions document the challenges facing Dalit women with regard to access to justice. Although most of the documentation relates to the situation of Dalit women in India, the patterns of impunity for caste-based abuses against women are found in all countries affected by caste-based discrimination.

- [Submission to the 57th session of the UN Commission on the Status of Women \(CSW\) on violence against Dalit women in India and government failure to investigate – By Navsarjan Trust, 2011](#)
- [Violence against Dalit women](#) submitted to the UN SR on violence against women by All India Dalit Mahila Adhikar Manch (AIDMAM), October 2012

- [SCHEDULED CASTE WOMEN IN PAKISTAN - Denied a life in dignity and respect](#). Alternative report submitted by PDSN and IDSN to CEDAW for its review of Pakistan in Feb. 2013
- [Gender-violence and access to justice for the Dalit women](#) (Gujarat, India) by Navsarjan Trust, 2011
- [Atrocities Against Dalit Women and Access to Justice – A Study by Evidence](#) (2011), covering figures from 2005-2010.
- [Barriers to Justice and Scheduled Caste Women – A Research Study](#) by Minority Rights Group International undertaken by Dr. Ambedkar Sheti Vikas Va Sansodhan Sanstha, covering cases from 2004-2009.
- [CEDAW lobby brief on the situation of Dalit women by FEDO in association with IDSN – July 2011](#)
- [Dalit Women’s Right to Political Participation in Rural Panchayati Raj](#) - A study of Gujarat and Tamil Nadu by Jayshree Mangubhai, Aloysius Irudayam sj, and Emma Sydenham. Published by IDEAS, Justitia et Pax, Equalinrights (2009).
- [Dalit Women Speak Out - Violence against Dalit Women in India](#), An overview Report in Andhra Pradesh, Bihar, Tamil Nadu/Pondicherry and Uttar Pradesh by Aloysius Irudayam S.J. Jayshree P. Mangubhai and Joel G. Lee, National Campaign on Dalit Human Rights, New Delhi, March 2006

II. CEDAW observations and recommendations on promotion of the rights of Dalit women

The international treaties unequivocally obligate affected governments to eliminate discrimination. Pursuant to the CEDAW Convention, caste-affected governments are obligated to pursue policies to eliminate discrimination against women and to take positive measures to ensure equality for women in relation to all substantive rights guarantees to which women are entitled.

The CEDAW Committee and the UN Special Rapporteur on Violence against Women have expressed grave concern about human rights violations against Dalit women in country examinations (e.g. in reviews of India in 2000 and 2007; and Nepal in 2004 and 2011), thematic studies and communications.^v

In accordance with CEDAW General Recommendation 25 on Temporary Special Measures (2004), States parties may need to take specific temporary special measures to eliminate multiple forms of discrimination, including on the basis of caste, against women and its compounded negative impact on them (para. 12). In CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 (2010), the Committee has furthermore affirmed that “discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status age, class, caste, and sexual orientation and gender identity” (para. 18).

III. Recommendations to the CEDAW Committee for its General Discussion on Access to Justice

The CEDAW Committee is urged to take into consideration the following recommendations, when discussing the envisaged scope of a General Recommendation on access to justice in the context of articles 2 and 15 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW Convention):

1. States parties should enact and implement measures to increase protection from caste-based crimes and to tackle impunity and discrimination in access to justice for Dalit women. Such measures can include police and judicial training and monitoring, legal assistance for prosecution of crimes, strengthening laws against domestic violence and other forms of violence against

women, awareness campaigns to help prevent exploitation, and investing resources into education for women and girls affected by caste-based discrimination. Particular attention should be paid to combating intersecting forms of discrimination in the sectors of education, employment, health care, access to land and personal security.^{vi}

2. States parties should take measures to increase participation of women from caste-affected communities at all levels of political governance as well as in other decision-making structures. Proportional representation of caste-affected women elected into parliaments, legislatures and local governance systems should be mandated. Gender discrimination within caste-affected communities should be challenged through programmes of dialogue and sensitisation of men.
3. States parties should take into account the situation of Dalit women and girls in all measures taken to address discrimination, and should explicitly create provisions tailored to ensure the rights of Dalit women and girls wherever possible. They should collect, analyze and publicly provide disaggregated data on the situation of women affected by caste discrimination.^{vii}
4. States parties should establish institutions and specialized agencies to prevent and monitor cases of discrimination and violence against women, and should empower them with powers, funds and infrastructure to enquire into the complaints of atrocities against women, with a focus on particularly disadvantaged and marginalised women.^{viii}
5. States parties should ensure that the law enforcement agencies and the judiciary who form the criminal justice system are sensitized to address the issue of caste and gender based discrimination against Dalit women in accordance with international human rights law. The officials who neglect their duty to protect the rights of the Dalit women should be punished with enhanced criminal measures.

IV. Specific references to caste in international human rights instruments and soft law frameworks

For a comprehensive overview of references to caste discrimination by UN human rights bodies (treaty bodies, Special Procedures, and the UPR mechanism) see www.idsn.org/UNcompilation

- CEDAW General Recommendation No. 25 on Temporary Special Measures (2004), para. 12: “Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, **caste** or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”
- CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 (2010), para. 18: “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status age, class, **caste**, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”
- CERD General Recommendation No. 29 on descent-based discrimination (2002), preamble and paras. 11-13: “Strongly reaffirms that discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as **caste and analogous systems of inherited status** which nullify or impair their equal enjoyment of human

rights". Measures of a general nature (Multiple discrimination against women of descent-based communities):

11. To take into account, in all programmes and projects planned and implemented, and in measures adopted, the situation of women members of the communities, as victims of multiple discrimination, sexual exploitation and forced prostitution.
 12. To take all measures necessary in order to eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education.
 13. To provide disaggregated data for the situation of women affected by descent-based discrimination.
- CESCR General Comment No. 20 on Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) (2009), para. 26: "The prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status. States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against dissemination of ideas of superiority and inferiority on the basis of descent."
 - The draft UN Principles and Guidelines for the effective elimination of discrimination based on work and descent, published by the UN Human Rights Council in 2009 (A/HRC/11/CRP.3), furthermore recommend specific measures to be taken by governments to prevent and eliminate caste-based discrimination, including multiple forms of discrimination against Dalit women in para. 53-54.

ⁱ IDSN is an international network that works on a global level for the elimination of caste discrimination and similar forms of discrimination based on work and descent. Members include national Dalit platforms in caste-affected countries; Dalit Solidarity Networks in seven European countries; and international associates, among others (www.idsn.org)

ⁱⁱ See *Crimes in India 2006* (2007) National Crimes Record Bureau,.

ⁱⁱⁱ For more information on the Haryana rape cases, see the case summary and related articles collected by IDSN in 2012

^{iv} Statement by UN High Commissioner for Human Rights (25 Jan 2013): India: Pillay praises groundbreaking report on violence against women

^v For a comprehensive, regularly updated overview of UN bodies' recommendations on caste discrimination, incl. by CEDAW and the UN SR on VAW, see: www.idsn.org/UNcompilation

^{vi} *Recommendations No. 1-2 are taken from the Joint Declaration and Recommendations on good practices and strategies to eliminate multiple forms of discrimination against Dalit women -- an outcome of the International Consultation on Good Practices and Strategies to Eliminate Caste-based Discrimination, held by IDSN in Nov 2011*

^{vii} These recommendations are contained in the draft UN Principles and Guidelines for the effective elimination of discrimination based on work and descent para. 53-54, published by the UN Human Rights Council in 2009 (A/HRC/11/CRP.3):

^{viii} Recommendations No. 4-5 are taken from the report Barriers to Justice and Scheduled Caste Women – A Research Study by Minority Rights Group International undertaken by Dr. Ambedkar Sheti Vikas Va Sansodhan Sanstha, covering cases from 2004-2009.