



**Promoting and protecting the rights of persons from descent-based communities: Access to justice**

**Mapping out access to justice for persons from descent-based communities in five pilot countries Bangladesh, India, Nepal, Pakistan, and Sri Lanka**

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**OUTCOME DOCUMENT**

1. **General Background**

Governments have an essential and fundamental role in establishing transparent, accountable institutions; an effective, impartial rule of law; and well-funded systems that deliver rights to everyone. When fulfilled, this role can foster social harmony and sustainable development. The realization of the rights of persons belonging to descent-based communities constitute an integral part of the development of society as a whole and within a democratic framework based on the rule of law. The law does not only set the applicable rules as to when rights are transgressed, it articulates also our norms and expectations as regards equality and the administration of justice.

It is estimated that globally, more than 260 million people are victims of exclusion, segregation, and marginalization both in the public and private spheres based on their descent. [[1]](#footnote-1) They are denied access to resources and services, leaving most living in abject poverty with little to no access to justice. Women and girls are particularly vulnerable to descent-based discrimination, owing to its multiple and intersecting forms.

Desiring to promote the realization of the principles contained in the UN Charter, States including Bangladesh, India, Nepal, Pakistan and Sri Lanka have ratified international human rights conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as well as other relevant international instruments which create legal commitments to equality as an enforceable right under national law including via these treaties. Bangladesh, India, Nepal, Pakistan and Sri Lanka have undertaken the obligation under international human rights law to treat everyone with equality in dignity and rights regardless of race, colour, religion, sex, language, political or other opinion, national or social origin, property, birth or other status.

The UN Secretary General, the High Commissioner for Human Rights, UN Human Rights mechanisms and civil society organizations have repeatedly called for action by governments and world leaders to address discrimination and create more inclusive and vibrant societies based on access to justice and the rule of law. UN Treaty bodies, Special Procedures, and the Universal Periodic Review have all raised their concerns over discrimination as a violation of human rights law, and demonstrated how discrimination intersects with descent, placing persons targeted by discrimination in a particularly marginalized position and in need of focused attention.

For example, General Recommendation No. 29 from the Committee on the Elimination of Racial Discrimination (Treaty body) concluded in 2002 that discrimination based on ‘descent’ found in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination covered caste and analogous systems of inherited status or “inherited identity.”[[2]](#footnote-2) The Office of the High Commissioner for Human Rights (OHCHR) has continuously advocated for the rights of persons from descent-based communities in order for them to enjoy their human rights as guaranteed under the Universal Declaration of Human Rights (UDHR).

According to the UN Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent (2009), discrimination based on work and descent is ‘any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birthplace, place of residence, dialect and accent that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.’ [[3]](#footnote-3)

1. **The Bangkok initiative**

In Our Common Agenda, the Secretary-General noted that “Racism, intolerance and discrimination continue to exist in all societies, as seen during the pandemic with scapegoating of groups blamed for the virus. As a start, the adoption of comprehensive laws against discrimination, including based on race or ethnicity, age, gender, religion, disability, and sexual orientation or gender identity, is long overdue.”[[4]](#footnote-4) In meeting their obligations under international human rights law States are required to establish and maintain throughout their territory, well-resourced, independent and impartial judicial and other law enforcement bodies to address complaints and translate international legal commitments to equality into actionable and enforceable rights under national law. But justice depends on availability, accessibility, justiciability and quality in order for individuals to enjoy equal rights and better protection against discrimination.

OHCHR in partnership with the International Dalit Solidarity Network (IDSN) and the Asia Dalit Rights Forum (ADRF) mapped out the path to access to justice in 5 pilot countries where descent-based discrimination is most prevalent in South Asia: Bangladesh, India, Nepal, Pakistan, and Sri Lanka. The Initiative began with collecting and compiling information on each country while examining existing judicial and non-judicial mechanisms and how accessible and efficient they are as regards persons from descent-based communities (good practices). This exercise was followed by a workshop to examine what can be done to strengthen the existing structures and mechanisms at the national level to facilitate access to justice pursuant to these countries’ obligations under international human rights law. The country-specific research papers attached offered facts and case law as illustrative of the injustice being committed against persons from descent-based communities ranging from the police refusing to file their report of allegations when victim of a crime; to their inability to defend themselves when accused of a crime due to lack of effective representation or representation before a court of law.

The workshop focused on the specific contexts of each of the five countries with research papers (attached) providing a summary view of their political, legal, and judicial landscapes. Held in Bangkok and titled “Mapping out Access to Justice for Persons from Descent-Based Communities”, the workshop brought together legal experts, human rights defenders, and youth advocates to discuss: the challenges hampering access to justice by Dalits; formulate strategies for improving their access; examine good practices in this respect and the project as to the way forward. The workshop benefitted extensively from the active participation of the eight experts and particularly from **engagement of the** Special Rapporteur on contemporary forms of racism Ms. **Ashwini K.P.**

The format of the workshop provided for every session to be kicked off by the presentation of a country report followed by analysis and sharing of good practices by the experts. The commentaries of the experts served to launch a broader conversation involving all participants and focused on the situation on the ground. The pairing of younger researchers with more experienced specialists worked well and provided for an intergenerational cross-learning opportunity and demonstrated the need for urgent action to improve access by Dalits to justice (see Agenda attached). The nuanced discussions have enriched our understanding of the critical issues affecting access to justice by persons from descent-based communities. Some of the key observations and takeaways from the discussions include the following:

1. **Access to justice and national accountability processes in the five countries**

**Legislative Frameworks**

* India and Nepal have dedicated legislation to safeguarding the rights of persons from descent-based communities, while reflecting a robust commitment to their protection as provided for under their respective national constitutions. This commitment remains restricted to the word considering the absence of processes or accountability mechanisms to monitor implementation of the relevant legislations that could benefit Dalits’ human rights protection. When they exist, they are ineffective and little information is publicly available about their functioning,
* In contrast, Bangladesh, Pakistan, and Sri Lanka have no explicit constitutional recognition and dedicated legal provisions for the protection of the rights of Dalits. The lacunae of specific legislation in these countries underscores a critical gap in their national legal frameworks and requires urgent attention.

**Administration of justice and accountability**

* Governments of the five countries should be encouraged to prioritize transparency in their legal processes to help build confidence in the justice system. They should engage with civil society and legal scholars including those who are Dalit in open dialogue toward reinforcing the legal framework and/or bolstering implementation of existing processes.
* In all five countries, there is a glaring need for increased budgetary allocations to support human rights and access to justice mechanisms designed to promote and protect the rights of persons from descent-based communities as effective implementation of protective measures is contingent on resources.

**The Police and investigations**

* While the letter of the law in the five countries provides for non-discrimination in the admissibility of evidence, Dalits are routinely denied the opportunity even to lodge a complaint. A significant barrier lies in the frequent refusal by the police to register a victim’s First Information Report (FIR), a very important step which sets the criminal justice process in motion. This refusal can be connected to the police having accepted a bribe to drop the victim’s case; declaring the perpetrator innocent; delaying their arrival to the crime scene in order to weaken the evidence; or force Dalits to compromise under duress or threat of violence,
* Flawed legal basis, inadequate, and/or non-transparent, incomplete delayed investigations as well as rushed prosecutions, and a general neglect regarding violations of the human rights of Dalits often compromise the fairness of trials of Dalits. The Governments should allow sufficient time for thorough investigations and ensuring that justice is served without compromising due process.

**Judicial processes**

* In all five countries, and an inadequate number of overburdened courts and public prosecutors combined with deep-rooted caste bias result in high rates of acquittals in cases where Dalits are the victims and harsh enforcement when they are defendants.
* In proceedings before a court or other competent authority, alleged victims of discrimination carry the burden to prove that the allegations presented are facts from which it may be presumed that there has been discrimination (a prima facie case) instead of the respondent having to demonstrate the absence of intent to discriminate.

**Effective participation**

* Dalits are not sufficiently represented in the judicial mechanisms of the five countries. Barriers to equal participation must be identified and removed, including through accessibility measures and procedural accommodations. There is a pressing need for greater representation/participation of Dalits and Dalit women within justice mechanisms and processes to ensure fair and equitable treatment.
* The politicization of National Human Rights Institutions (NHRIs), including political appointments of the members added to hardly any Dalit representation and insufficient human and financial allocations have served to severely impact NHRIs effectiveness in providing support to Dalits in accessing justice mechanisms.

**Implementation of UN Recommendations**

* Recommendations from the Universal Periodic Review (UPR), Treaty Bodies, and Special Rapporteurs are regularly not implemented by the five States. This practice results in lack of compliance by the concerned States in meeting their legal obligations under international human rights law.
* There is no evidence in the five States of preventive measures to stop the occurrence of violation of the human rights of Dalits. The Governments of the five named countries should be encouraged to prioritize legal reforms to align with international standards, including ensuring the right to due process and to a fair trial.

**Increase in violations**

Violations of the human rights of Dalits from all five countries have increased, a trend highlighted by both researchers and experts. Common factors include lack of political will, absence of participation/representation of Dalits in administration of justice institutions and mechanisms ranging from the police to the courts and to NHRIs – all staffed by persons from the dominant group who accord no importance to Dalit issues.

Increasing communal polarization in the name of nationalism is also contributing to violations of the human rights of persons from descent-based communities. Their efforts in seeking justice are often perceived as threatening and undermining to nationalism.

**Grassroots awareness and monitoring**

* It is essential that judgments and verdicts favoring Dalits reach the grassroots level to ensure awareness and accountability. Strong monitoring mechanisms are vital to upholding Dalit rights. While India is equipped with some of these mechanisms, they tend to be limited in reach and effectiveness and need to be strengthened. It would be useful for the other four countries to establish similar structures.

**Media and Civil Society**

* The media and wider civil society have often been selective in their coverage of Dalit human rights violations cases - bringing more media visibility and support to Dalit-related cases remains crucial.
* Dalit-led civil society organizations are frequently targeted with intimidation tactics and/or threats and lack the power and resources necessary to advocate effectively in the protection of their rights. Their empowerment is crucial for advancing human rights and access to justice.

**Legal Aid and Representation**

* Access to legal aid/effective legal aid remains a significant concern for persons from descent-based communities in all the five countries. Strengthening and creating legal aid systems and ensuring robust witness and victim protection programmes are essential for an effective administration of justice inclusive of all individuals, and particularly those who are marginalised.

**Regional Mechanisms**

* Establishing regional mechanisms at the South Asia level to protect the rights of persons from descent-based communities could provide a consistent approach to addressing these challenges.

**Lack of data**

* The absence of data in the 5 countries as to violations of the rights of Dalits makes it difficult to demonstrate trends as to the States’ lack of commitment to the implementation of specific international treaties for ensuring the protection of civil and political rights of Dalits, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on Elimination of Racial Discrimination (CERD), is also undermined by weak implementation.
1. **Way forward**

**Strengthening existing structures and/or establish new mechanisms to facilitate access to justice**

The Bangkok Initiative has confirmed that we must urgently find effective ways to remove the legal and practical barriers imposed on Dalits and thereby enforce their access to justice. This requires the adoption of a wide range of measures designed to implement existing legislation which already provide for non-discrimination. The country reports attached provides a synopsis of the general situation on the ground in the five countries and lay the foundation for developing guidance, which legislators and advocates can put to use in the implementation of existing laws and/or develop anti-discrimination legislation specific to Dalits’ access to justice.

OHCHR aims to assist States in meeting their core international law obligations to respect, protect and fulfil the rights to equality and non-discrimination. Over the years, OHCHR has generated trust and demand for technical support and guidance by governments and state institutions. Through partnerships with civil society and the international community, OHCHR has created important opportunities for dialogue and exchange of knowledge on key human rights concerns and challenges. In this connection OHCHR can provide assistance to any of the five States in planning reforms of national legislation consistent with international human rights standards and previous recommendations of the UN treaty bodies, special procedures and UPR process.

OHCHR provides advisory services and assistance in reviewing legislations consistent with inclusive and participatory consultation processes and public information campaigns. It can help in the strengthening of national institutions, including national human rights commissions in line with the Paris Principles to address discrimination faced by Dalits in accessing the wheels of justice starting with registering a complaint at the police station. OHCHR can also develop tailored training and refresher programmes for judicial officials and law enforcement personnel.

OHCHR assists the UN System in ensuring a more systematic integration of Dalit rights in the yearly UN Common Country Analysis allowing for independent, impartial and collective analysis of the Dalits situation in the five countries, its causes, implications and action the UN can undertake on the grounds.

OHCHR can help to build trust and solidarity among different civil society actors. It can establish and support networks of legal interlocutors among civil society – including Dalit and non-Dalit NGOs and individual human rights defenders, youth, social movement leaders, student groups, academics, women’s organisations, business sector, representatives of minority groups. There is an opportunity to strengthen national institutions, including national human rights commission in line with the Paris Principles

Currently OHCHR assists the UN System in ensuring a more systematic integration of Dalit rights in the yearly UN Common Country Analysis allowing for an independent, impartial and collective analysis of the Dalits situation in the five countries, its causes, implications and action the UN can undertake on the grounds. OHCHR offers important support to States through its flagship publication: Guidance Tool on Descent-Based Discrimination Key Challenges and Strategic Approaches to Combat Caste-Based and Analogous Forms of Discrimination offering a human rights-based approach[[5]](#footnote-5) on the realization of the rights of excluded and marginalized populations who are left behind, and those whose rights are at risk of being violated. It includes understanding how laws, social norms, traditional practices, and institutional responses positively or negatively affect the enjoyment of human rights and are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political, social, and labour rights, as well as the right to development.

This Guidance Tool is intended to usher in more concerted and system-wide action by the United Nations on the issue of discrimination based on descent. While it is focused on UN action on the grounds, it is also useful for other stakeholders that are working to address and combat descent-based discrimination. It is key to the UN System by ensuring a more systematic integration of Dalit rights in the yearly UN Common Country Analysis, allowing for an independent, impartial and collective analysis of the Dalits situation, its causes, implications and action the UN can undertake at the national level.

https//www.ohchr.org/sites/default/files/Documents/Issues/Minorities/GuidanceToolDiscrimination.pdf.

Additional insight is offered by OHCHR through - A Practical Guide to Developing Anti-Discrimination Legislation. This publication provides clear and accessible guidance on the necessary scope, structure and content of comprehensive anti-discrimination laws. It offers the foundation for creating societies where all are equal in dignity and rights and includes practical examples to assist law- and policymakers in meeting their compliance obligations under international human rights treaty law. <https://www.ohchr.org/en/publications/policy-and-methodological-publications/protecting-minority-rights-practical-guide>.



1. See, <https://www.globalforumcdwd.org> [↑](#footnote-ref-1)
2. A/HRC/11/CRP.3 18 May 2009 https://www.ohchr.org/en/treaty-bodies/cerd https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session11/A [↑](#footnote-ref-2)
3. See final report of Special Rapporteurs on the topic of discrimination based on work and descent A/HRC/11/CRP.3 available at https://digitallibrary.un.org/record/655264?ln=en [↑](#footnote-ref-3)
4. A/75/982, para. 34. The report of the Secretary-General was presented at the seventy-fifth session of the General Assembly in 2021. See also www.un.org/en/un75/common-agenda. [↑](#footnote-ref-4)
5. United Nations, “Common Understanding on the Human Rights-Based Approach”, available from http://hrbaportal.org/the-human-rights-based-approach-to-development -cooperation-towards-a-common-understanding-among-un-agencies. [↑](#footnote-ref-5)