

**Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on violence against women, its causes and consequences**

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Excellency,

We have the honour to address you in our capacities as Working Group on the issue of discrimination against women in law and in practice ; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 32/4, 34/6, 34/35 and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **information on a pattern of discrimination and violence against Dalit women and girls across India, and the failure of State authorities to effectively respond to various forms of gender-based violence against these groups.**

According to the information received:

Over the last ten years, reported crimes and gender-based violence against Dalits in India have increased by 51%. Recent years have marked particularly high spikes in crime against Dalits – ranging from rape, murder, beatings, and violence, in many cases in connection to land matters – which increased by 29 percent from 2012 to 2014. Official statistics from the National Crime Records Bureau have shown an increase of 5.5% in the number of reported crimes against Scheduled Castes between 2015 (38,670) and 2016 (40,801). Various forms of gender-based violence are particularly prevalent in Uttar Pradesh, Bihar, Andhra Pradesh, Telangana and Maharashtra, which cumulatively account for 42% of the total Dalit population in India.

According to national statistics, the two most reported crimes committed against members of the Dalit minority are (i) assault on woman with intent to outrage her modesty, comprising sexual and physical assault, sexual harassment, stalking, forced disrobing, voyeurism and (ii) rape (Indian Penal Code offence classifications). However, the national figure for incidence of rapes of non-Dalit women in India in 2016 was 38,947, in contrast to 2,541 reported rapes of Dalit women. This variance appears to indicate disproportionately low registration of crimes against Dalit women in comparison with crimes reported against non-Dalit women, bearing in mind that given the social stigma and penalty associated with

reporting sexual crimes against women, these numbers may only represent a fraction of potential occurrences.

The violence Dalit women face is borne from multiple and intersecting forms of discrimination, such as gender, caste, and poverty. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 (PoA Act) was introduced to tackle the high level of discrimination and violence directed against Scheduled Castes and Scheduled Tribes. Its additional amendment, 'The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015' which came into power on 26 January 2016, introduced new offences and expanded the number and types of acts against Dalit women and girls.

Despite new legislation, the Supreme Court ruled at the end of 2016 that in multiple cases the concerned authorities have failed to comply with the provisions of the PoA act, weakening the effective implementation of the legislation. It is alleged that in many incidents of gender-based violence police have failed to protect the individuals being attacked, have not arrested individuals in connection with assaults, and have not investigated violence against Dalit minority women and girls to the fullest extent possible under the PoA act and other relevant legislation.

On 20 March 2018, in its criminal appeal no. 416, the Supreme Court laid down a restrictive interpretation to the PoA Act. The ruling indicates that anticipatory bail should now be allowed if the accused is able to prima facie prove that the complaint against him is malafide. The Court also ruled that public servants can only be arrested with the written permission of their appointing authority, which may result in less indictment and delay in prosecution. Lastly, while the original Act refers to the automatic filing of a First Incident Report upon a complaint, the ruling now provides for a preliminary inquiry with a view to checking whether the case falls within the parameters of the Act, which may also delay prosecution and adversely impact the ability of Dalits to mount successful claims against assailants.

The pattern of discrimination and gender based violence against Dalit women and girls can be illustrated by two cases that were brought to our attention:

In June 2017, in the province of Maharashtra, a 50 year-old Dalit woman who was out with her son looking for her husband was assaulted by a group of around 20 dominant caste villagers, with whom she previously had an argument over land rights issues. Reportedly, the group violently assaulted the young boy until he lost consciousness. The group also physically assaulted the woman, forcefully tore off her clothes, pinched and bit her breasts and raped her with a stick. They dragged her in public around the village, shining a torch on her naked body and kicked her for two hours. The perpetrators told her that they wanted to teach her a lesson for

her behaviour toward the dominant caste community and they wanted all Dalits in the village to see the consequences of a Dalit woman challenging the dominant caste community over land. When her daughter-in-law tried to intervene, they threatened and assaulted her. The police took the woman and her son to hospital for a medical examination. The police officers registered a First Incident Report (FIR) but omitted references to a number of relevant sections of the PoA Act. As a result, the police arrested 20 perpetrators, but they were released on bail after one month. None of the perpetrators has been prosecuted to-date. Reportedly, the woman received some compensation but insufficient vis à vis the gravity of the violation.

In July 2017, in the province of Uttar Pradesh, a 10 year-old Dalit girl who was on her way back to school was assaulted by a 30 year-old man from the same village. As the young girl was urinating into his field, the man grabbed her from behind, covered her mouth to prevent her screaming and dragged her towards some bushes where he forcibly ripped her dress and attempted to rape her. The young girl managed to free her mouth from his hand and screamed for help. A labourer working in the field heard the screams and stepped in to rescue her. The young girl, her father, the labourer and a teacher from the girl's school went to the police station to file a complaint, but reportedly, the police refused to register the case. Instead, police officers compelled the young girl to meet with the perpetrator and pressured her to accept money from him instead of registering a criminal case against him. The girl's father refused to accept any money and threatened to report the officer in-charge unless he registered the case. Finally, the officer registered the First Incident Report and took the girl to a Magistrate to make a statement. The police failed to refer the girl for a medical examination. As there was no medical report, she was denied compensation. The case was referred to the State Commission for Scheduled Castes but no action was taken. Criminal proceedings on this case remain outstanding.

While we do not wish to prejudge the accuracy of the information received, very serious concern is expressed at the persistent high prevalence of discrimination and violence, including sexual violence, against scheduled caste minorities in India, and in particular against Dalit women and girls as evidenced by the above-mentioned cases, which appear to occur in a context of weak enforcement of existing legislation.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please indicate what actions have been taken to effectively address discrimination and violence against schedule caste minorities, in particular violence against Dalit women and girls, and to ensure effective implementation of the existing national legislative framework protecting them against human rights violations based on their social status and gender-based discrimination, as well as preventing recurrence of such violations.

3. Please indicate what measures have been taken to guarantee Dalit women and girl victims of gender-based violence have access to justice and ensure that victims are able to lodge complaints in a safe and enabling environment without fear of intimidation, harassment or threats. Please provide detailed information concerning any measures taken to provide an effective remedy, including reparation to the Dalit women and girls who are victims of gender-based violence.

4. Please provide updated information on the total number of reported cases of violence against Scheduled Castes and Scheduled Tribes in 2017, and indicate for how many of these cases criminal proceedings have been launched and the number of convictions. In particular, please provide specific information and statistics on those cases of violence, including sexual violence, involving Dalit women and girls as victims.

5. Please describe any criminal penalties that are established for law enforcement officers who neglect or intentionally decide not to investigate and/or prosecute complaints filed by individuals regarded as “low caste”. Please also indicate whether any training and capacity building for law enforcement to handle cases of gender-based violence has been planned.

6. Please provide detailed information on any measures taken to provide members of Scheduled Castes and Scheduled Tribes with an effective access to justice, as provided in under international human rights law, in light of criminal appeal no. 416.

We would appreciate receiving a response within 60 days. Your Excellency Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that the existing legislation be duly enforced to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Alda Facio

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**Annex**  
**Reference to international human rights law**

In connection with the alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In light of the above-mentioned allegations of human rights violations affecting Dalit women and girls, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the International Covenant on Civil and Political Rights, ratified by India on 10 April 1979, and the United Nations 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".

Moreover, we would like to refer to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Art.3). Article 4 (c & d) of the same instrument notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

The Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against

women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government in 1993), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

Moreover, we wish to recall General recommendation No. 35 on violence against women of the Committee on the Elimination of All forms of Discrimination Against Women.

We would also like also to recall your Excellency's international obligations under Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, which provides that States Parties undertake "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law" especially with regard to "(b) [t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution".

Furthermore, we recall the 2016 thematic report of the Special Rapporteur on minority issues to the Human Rights Council on "Minorities and discrimination based on caste and analogous systems of inherited status" (A/HRC/31/56), where she stated that caste-based discrimination confines Dalits in South Asia to certain occupations associated with their caste, which often involve the most menial tasks, including, inter alia, handling of human waste and animal carcasses and recommended that criminal penalties should be established for law enforcement officers who neglect or intentionally decide not to investigate and/or prosecute complaints filed by individuals regarded as "low caste".

Finally, in her visit report to India (A/HRC/26/38/Add.1), the previous Special Rapporteur on violence against women, its causes and consequences, voiced concerns with regard to the investigation of cases and the prosecution and punishment for crimes committed against women (Paragraph 62). She further recommended that the Government of India: "Ensure that police stations are equipped with sufficient and trained human and financial resources to handle all cases of violence against women and establish specific gender mechanisms, where possible (paragraph 78 k ii)"; and "Design and launch a comprehensive training and awareness-raising programme for police

officers charged with the responsibility of filing complaints of violence against women, including First Information Reports and domestic incident reports (paragraph 80)".