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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF
DISCRIMINATION**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 January 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Caste-based discrimination in India

1. The tsunami that hit countries around the Indian Ocean on 26 December 2004 brought misery to all living along their coasts. India was no exception. However, in India, the suffering of Dalit – so-called 'untouchable' – communities affected by the disaster has been exacerbated due to caste-based discrimination in the provision of relief supplies and other assistance. The world is unaware and the Government of India has not acknowledged that relief operations are being carried out with caste as a determining factor.

2. Places such as Kadapakuppam and Pattipulam of the Kachipuram district in Tamil Nadu have received no relief whatsoever. This is despite 175 families in Kadapakuppam and 280 families in Pattipulam having felt the brunt of the disaster. Despite complaints by villagers in these two places, at the time of writing no government officials or aid agencies have gone to the assistance of these people. Likewise, in Pannanthittu village of Tamil Nadu's Chidambaram Thaluka, all 150 families affected by the tsunami have been denied aid and. Villagers in MGR Thattu, meanwhile, protest that they are being discriminated against, as little relief has been provided to them.

3. Caste-based discrimination has also been evident in relief operations elsewhere. When burying the dead, Dalits have been brought in to handle the bodies, as 'traditionally' they have been obligated to do. Community kitchens, established to distribute food to victims, were divided into two: one for caste Indians and one for Dalits, as upper castes would not consume food prepared by Dalits. It is a sad reality that even in times of extreme necessity caste prejudices dominate social exchanges.

4. The tsunami relief operations in South India are indicative of persistent caste discrimination throughout the country. In the state of Maharashtra massive evictions from tribal lands in Nasik District have been witnessed in the recent past. If the claim for land by the Maharashtra State Farming Cooperation deprived the basic right of the tribal community in Maharashtra, in West Bengal, the eviction from Bellilious Park was because of the apprehension that the presence of Dalits would pollute the shrine atmosphere of the upper caste in the locality. In West Bengal even the High Court affixed its seal of approval for the eviction ignoring the basic legal virtue of fair hearing of *audi alteram partem*. However evictions do not remain as the one and only form of discrimination. The forced labour of manual scavenging and carrying of night soil, slave practices in granite quarries in Karnataka and Tamil Nadu, denial of education in Orissa, starvation deaths in Maharashtra, Bihar and Kerala are all shocking realities for the Dalits in India, and their position in the caste societal structure.

5. The caste system is a powerful tool for social segregation. It runs deep in the minds of Indians and has implications in everyday life. It weakens the human urge to excel and liberate since there is little chance of rising above one's status at birth. Despite caste being a violation of international human rights standards and domestic law prohibiting caste-based discrimination it continues to exercise a debilitating influence on the lives of millions in India daily.

6. The Constitution of India provides certain safeguards against caste discrimination. However, the constitutional remedy is often inaccessible to Dalits and lower castes, therefore literally taking away the equality quotient of human rights in terms of implementation. Considering India's vastness and its limited resources and poverty, the possibility of a victim, who is otherwise deprived of basic standards of living, approaching a constitutional court is most

unlikely. Compounded by the burden of expenses in litigation and the immense time it takes for reaching a final verdict, such legal attempts are rarely taken by victims.

7. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 criminalises atrocities committed against members of the Dalit community and other lower castes. The rules formulated in accordance with the legislation also provide for protection to the lower castes and are more preventive in nature. However, the law and rules are limited. They do not address the root cause: the caste system itself. In cases where compensation is awarded, the amount of damages is far below international standards.

8. Section 153A of the Indian Penal Code, which provides for punishment for instigating acts of enmity between groups based on religion, race, place of birth, residence and language all but unenforceable since the burden of proof in criminal trials is so high. The chances of a probable conviction are low.

9. The national and state-level human rights commissions do not have any authority to take affirmative action when receiving a complaint, be it of caste-based discrimination or otherwise. The powers of these institutions are not legally enforceable. Sections 12 and 13 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act limit the authority of the rights commissions to receipt of complaints, inquiries and inspection. They can then chose to either refer the matter to the appropriate authority for further action or provide advice to the government. This limitation makes the institutions incapable of protecting human rights. Their orders are limited to recommending the government collect a fine from a perpetrator and disburse an amount to the victim. If the perpetrator is not an employee of the government, the possibility that the order will be implemented is low. Even when the perpetrator is a government employee the order is often not executed. This makes a mockery of the system and discourages victims from approaching these institutions.

10. India has limited its ratification of international covenants to the key instruments. It has opted out of protocols giving authority to independent committees to receive individual complaints. Hence, victims of human rights violations in India must find redress within the country, where the remedies are inadequate or unachievable.

11. The Asian Legal Resource Centre therefore recommends the Commission to pressure the Government of India to

- a. Acknowledge that caste-based discrimination is deeply institutionalised in India and must be stopped.
- b. Make appropriate amendments to existing domestic laws so as to incorporate and implement the spirit of international conventions, particularly the Convention against Racial Discrimination.
- c. Provide effective remedies and adequate compensation for cases of caste discrimination under domestic legal mechanisms.
- d. Stop forthwith any illegal actions through its agencies directed against lower castes and Dalits in India.

e. Withdraw forthwith its reservations made to international conventions so that anyone can approach international bodies for redress of grievances on failures of domestic law-enforcing agencies to uphold their rights.

f. Take immediate steps through committed actions to educate the public and judicial bodies on caste-based discrimination and attendant rights violations.
