

May 2020

A response to the UN Special Rapporteur on Minority Issues Call for Submissions

1. This submission is made by the National Secular Society (NSS). The NSS is a not-for-profit non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture. We have been in special consultative status with the United Nations Economic and Social Council since 2016.
2. We welcome the opportunity to submit to the UN Special Rapporteur on Minority Issues on the issue of categories of minorities. We would like to use this opportunity to raise two key issues for us in this area:
 - Caste-based discrimination, especially in the UK;
 - Global persecution of the nonreligious

1. CASTE-BASED DISCRIMINATION

SUMMARY

3. The caste system is rooted in ancient religious and cultural beliefs. It is imbued with inequality, discrimination and marginalization and is in diametric opposition to the Universal Declaration of Human Rights. We are concerned that those affected by this type of discrimination have insufficient protection.
4. The UK Government has failed to comply with the Universal Period Review recommendation in 2012 to legislate to outlaw discrimination on the grounds of caste.
5. It has declined to legislate despite receiving a reminder from the Committee on the Elimination of Racial Discrimination in 2016 and a direction from the UK Parliament to do so.
6. Instead, it purports to believe that protection should be provided through the evolution of case law, which may never happen and, even if it does, may not be adequate.
7. **We call on the UN Special Rapporteur on Minority Issues to strongly encourage the UK Government to comply with its treaty obligations in respect of caste discrimination by amending the Equality Act to outlaw discrimination on the grounds of caste.**

TIMELINE OF FAILURE TO ACT ON IDENTIFIED CASTE-BASED DISCRIMINATION (2010) AND UPR RECOMMENDATIONS (2012)

8. In 2010, a report commissioned by an outgoing Government¹ found evidence of discrimination on the grounds of caste. Despite not being a quantitative study of discrimination, the report estimated that those of low caste in Britain numbered “50,000 to 200,000 or more”.
9. The report identified caste-based discrimination in several areas, including employment, to which the Equality Act applies for other protected characteristics. Such caste-based discrimination includes: “work (bullying, recruitment, promotion, task allocation); provision of services; and education (pupil on pupil).”
10. The study found examples of the consequences of caste discrimination including: “depression, loss of self-esteem, loss of confidence, loss of employment, reduced career prospects, lower earnings, anger, detrimental effects on education, social isolation, reduced provision of personal care services, and reduced access to ... old people’s day centres”.
11. In 2012, the Universal Periodic Review (UPR) recommended that the UK “[p]ut in practice a national strategy to eliminate discrimination against caste, through the immediate adoption of the Equality Law of 2010 that prohibits such discrimination, in conformity with its international human rights obligations, including CERD’s General Recommendation 29 and recommendations of the Special Rapporteur on Contemporary Forms of Racism.”²
12. On 23 April 2013, the UK Parliament instructed the Government to amend the Equality Act to outlaw discrimination against caste, in line with the UPR recommendation³.
13. Also, in 2013, the National Secular Society was so concerned about the new Government’s equivocation over the UPR recommendation that we commissioned a legal opinion to confirm whether, as implied in the UPR recommendation, it amounted to a treaty obligation.
14. The opinion concluded that it did: “The UK is obliged in international human rights law to legislate for caste discrimination and further obliged to provide victims of such discrimination with an effective remedy. Their failure to do so, since 2002 and certainly since 2010, is a violation of Article 2 (1) and 6 of the Convention. Further, the violation cannot be justified, either in principle or on the facts, by the necessity of either further evidence gathering or consultation.” We delivered the opinion to the Senior Minister of State for Faith and Communities.
15. On 6 November 2013, Ms. Navi Pillay, United Nations High Commissioner for Human Rights, gave a keynote speech in London to a meeting on caste-based discrimination in the United Kingdom organised by the Anti Caste Discrimination Alliance, having learned that the Government would introduce legislation.
16. She said: “I would predict that the work still facing this country to tackle caste-based discrimination will be greatly facilitated by your new basis in law, to ban it.”

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf

² See 110.61 on page 18 of the 2012 UPR recommendation on the UK, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/150/31/PDF/G1215031.pdf?OpenElement>

³ <http://www.legislation.gov.uk/ukpga/2013/24/part/6/crossheading/caste-as-an-aspect-of-race>

17. In 2014, the UK Government told the UN in the mid-term government UPR report⁴ that “the UK has changed its position to full support of ... Recommendation 110.61 ... Recommendation 110.61 enjoys the support of the UK. The UK Government intends to introduce legislation to make caste discrimination unlawful, as a specific aspect of race discrimination under s.9(5) Equality Act 2010. A public consultation process on the detail of the prospective legislation is expected later in 2014.”
18. In 2015 the National Secular Society again asked the Government to legislate. They declined to do so by stating in their reply⁵ that: “We see the development of case-law that provides protection against [caste discrimination] as helpful ...”.
19. A counter-argument to this is that there is no guarantee that there will ever be a precedent-setting case providing such protection. There could even be a precedent set that reduces protection against caste discrimination.
20. On 26 August 2016, the Committee on the Elimination of Racial Discrimination’s Concluding Observations on the UK⁶ reads as follows (emphasis in original and showing evident frustration):
- “C. Concerns and recommendations Implementation of the Convention:*
7. In particular, [the Committee] expresses concern that several provisions of the Equality Act 2010 have not yet been brought into legal effect, including Section 9(5)(a) on caste-based discrimination. ...
8. ... In particular, the State party should: (a) Invoke Section 9(5)(a) of the Equality Act 2010 without further delay to ensure that caste-based discrimination is explicitly prohibited under law and that victims of this form of discrimination have access to effective remedies, taking into account the Committee’s general recommendation No. 29 (2002) on descent;”
21. On 19 September 2016, the National Secular Society raised concerns at the Human Rights Council in a verbal statement under Item 4 that the Government had changed its mind once more and now again opposed legislation⁷. We also alerted the Council to the forthcoming public consultation process now focussing on whether legislation was necessary, rather than how it should be framed.
22. In 2017, the Government undertook a public consultation, rather later than 2014 which was when it had informed the UN it was anticipated to take place.
23. More concerning, the Government did not seek views from the consultation on “the detail of the prospective legislation” as the UN had been informed it would. The consultation was instead on “*whether* additional measures are needed to ensure victims of caste discrimination have appropriate legal protection and effective remedies under the 2010 Equality Act”⁸ (emphasis added).

⁴ See pages 7 and 78 of the UK Government’s mid-term UPR report, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418272/uk-upr-mid-term-report-2014.pdf

⁵ <https://www.secularism.org.uk/uploads/caste-discrimination-geo-caroline-dinenage-mp-september-2015.pdf>

⁶ ref CERD/C/GBR/CO/21-23

⁷ <https://www.secularism.org.uk/news/2016/09/nss-intervenes-at-un-human-rights-council-over-uk-failure-to-outlaw-caste-discrimination/>

⁸ <https://www.gov.uk/government/news/caste-discrimination-consultation>

24. The consultation questions had the effect of encouraging respondents to prefer awaiting the evolution of case law rather than back legislation, which could be quickly passed (as there is enabling legislation) and be precisely drafted. In contrast, evolutions in case law may not achieve the objectives set out in the recommendation 110.61. As noted above, the Government has no control over when case law would evolve in this area, if it ever does. Such cases are notoriously unpredictable and expensive to mount as they need to go to appeal to set a precedent.
25. Those perceived to be of low caste, and therefore the most likely to need protection, are unlikely to have the funds to mount such a challenge. It is difficult to escape the conclusion that the Government's stance amounts to a covert refusal to implement recommendation 110.61.
26. There have been several debates in Parliament in which the Government has been urged to bring forward legislation to outlaw caste discrimination.⁹
27. We deeply regret that the UK Government has shown so little concern to protect the victimised and ask that it complies with its international obligations by undertaking to immediately insert a provision to outlaw discrimination on the basis of caste into the Equality Act, something which can be achieved almost effortlessly by secondary legislation.
28. **We call on the UN Special Rapporteur on Minority Issues to strongly encourage the UK Government to comply with its treaty obligations in respect of caste discrimination by amending the Equality Act to outlaw caste-based discrimination.**

2. THE NONRELIGIOUS

29. Although the term "religious minority" is theoretically inclusive of those of no religious belief, the language and methodology surrounding the examination of religious minorities frequently results in nonreligious minorities being overlooked, despite being subject to often severe persecution and discrimination throughout the world.
30. According to the most recent Freedom of Thought report (November 2019) by Humanists International:
 - Eighteen countries outlaw 'apostasy' – leaving a religious tradition – and in 12 of them it is punishable by death.
 - People can effectively be put to death for expressing atheism in 13 countries.
 - The overwhelming majority of countries fail to respect the rights of the nonreligious. Throughout the world there are laws that deny atheists' right to identify, revoke their right to citizenship, restrict their right to marry, obstruct their access to or experience of public education, prohibit them from holding public office, prevent them from working for the state, or criminalize the expression of their views on and criticism of religion.¹⁰
31. The very term "religious minority" in itself excludes the nonreligious, who often do not consider themselves to be a "religious minority" on account of their lack of religious beliefs.

⁹ <https://www.secularism.org.uk/uploads/caste-discrimination-briefing-1.pdf>

¹⁰ <https://fot.humanists.international/>

32. In UK equality legislation, the protected characteristic referring to this classification is always stated as “religion or belief”, which is intrinsically more inclusive of those who hold nonreligious beliefs and worldviews. In addition, Article 18 of the Universal Declaration of Human Rights makes it clear that the right to freedom of thought, conscience and religion includes the right to have no religious beliefs. The Special Rapporteur overseeing issues relating to Article 18 is rightly called the Special Rapporteur on Freedom of Religion or Belief in recognition of this. Therefore, language in discussions around the nonreligious as a minority group should be similarly inclusive.
- 33. We call on the UN Special Rapporteur on Minority Issues to ensure the nonreligious are included in consideration of minority issues by replacing the term “religious minority” with “religion or belief minority” or similar.**
34. We would also like to highlight our concern that human rights violations experienced by the nonreligious are often sidelined or go ignored because of the specific vulnerabilities of nonreligious people that religious communities may not have.
35. First, nonreligious people tend not to form large, cohesive communities like religious people. A nonreligious person may indeed be completely alone, with no community support from others who have no religion. Therefore, “community-based” approaches common to assisting religious minorities may be less effective when assisting the nonreligious. Instead, support for nonreligious should focus on the individuals, rather than group affiliation.
36. It must be stressed that nonreligious people are found within every nation, and within every community within that nation. Despite not usually having as strong community affiliations as religious people, nonreligious people represent a considerable number of individuals throughout the world. The frequent lack of community affiliation, barriers to effective means of expressing their lack of religiosity (for example, many states will not accommodate ‘nonreligious’ as an identity in censuses and other official records), and reluctance to express their lack of religion through fear of social stigma, discrimination or persecution, means that nonreligious people are often unseen and unheard, despite their considerable number and global distribution.
37. Second, nonreligious frequently do not have as strong a sense of their beliefs as an “identity” that religious person may have. For example, Christians often has a strong sense of identity via their place of worship, observance of festivals and rituals, symbols, religious texts and other elements of their religion. Religious affiliation may also be strongly tied to family, tribal or ethnic identity. But a nonreligious person often does not engage with such identity-building elements – they simply do not believe in a deity or deities. Other aspects of their lives (such as their work, their family or personal interests) may therefore play a more important role than their philosophical beliefs in building a sense of identity. This comparatively weak engagement with non-belief as “identity” can render nonreligious people ‘invisible’, and therefore more vulnerable to human rights abuses.
38. Although there are specific labels used to describe nonreligious people, including “atheist”, “humanist” and “agnostic”, many nonreligious prefer not to use these labels. Again, this may be rooted in the de-prioritisation of their philosophical beliefs and worldviews as part of their core identities. This can add greater complications to defending the rights of nonreligious.

39. Finally, nonreligious people are usually from religious backgrounds. In countries where conservative religious affiliation is the norm, this puts the nonreligious at exceedingly great risk because they may not only face persecution by the state, but even from their own families and local communities if they are viewed as having renounced their faith. This puts the nonreligious in an extremely isolated position, adding to their vulnerability.
40. These issues are compounded if a nonreligious person is a “minority within a minority”, i.e. they are a nonreligious person from a minority national, ethnic, religious or linguistic background. They may also have other characteristics that increase their marginalisation – for example, if they are female, LGBT+, and/or disabled. An intersectional approach, which recognises the many different circumstances that may lead to an individual being persecuted, oppressed or discriminated against, is essential when defending the rights of the nonreligious.
41. **We call on the UN Special Rapporteur on Minority Issues to formally recognise the special circumstances of the nonreligious, and to ensure that nonreligious people who face human rights abuses throughout the world are afforded equal attention and protection as members of religious communities.**

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