



**International Convention
On the Elimination
Of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventieth session
19 February – 9 March 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

INDIA

1. The Committee considered the fifteenth to nineteenth periodic reports of India (CERD/C/IND/19) submitted in one document at its 1796th and 1797th meetings (CERD/C/SR.1796 and 1797), held on 23 and 26 February 2007. At its 1809th meeting (CERD/C/SR.1809), held on 6 March 2007, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by India and the opportunity thus offered to reengage in a dialogue with the State party. It also welcomes the answers the delegation gave in response to some of the Committee's questions and expresses the hope that the dialogue with the State party will be pursued in a constructive and cooperative spirit.

B. Positive aspects

3. The Committee notes with appreciation the comprehensive constitutional provisions and other legislation of the State party to combat discrimination, including discrimination based on race and caste.

4. The Committee welcomes the special measures adopted by the State party to advance the equal enjoyment of rights by members of scheduled castes and scheduled tribes, such as reservation of seats in Union and State legislatures and of posts in the public service.

5. The Committee welcomes the establishment of institutions responsible for the implementation of anti-discrimination legislation such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) and for the monitoring of acts of

discrimination and violence against members of scheduled castes and scheduled tribes, including the Ministry of Social Justice and Empowerment, the Union and State Parliamentary Committees on Social Justice, the Ministry of Tribal Affairs, and the National Commissions on Scheduled Castes and on Scheduled Tribes.

6. The Committee notes with appreciation the declaration of the Indian Prime Minister before the Dalit Minority International Conference in New Delhi on 27 December 2006 that “the only parallel to the practice of ‘Untouchability’ was Apartheid in South Africa.” Such a declaration underlines the renewed commitment to address the discriminatory practice of “Untouchability”.

7. The Committee welcomes the fact that the State party hosts an important number of refugees of different national and ethnic origins, including Tibetan, Sri Lankan and Chakma, as well as Afghan and Myanmar refugees under UNHCR care.

C. Concerns and recommendations

8. The Committee takes note of the State party’s position that discrimination based on caste falls outside the scope of article 1 of the Convention. However, after an extensive exchange of views with the State party, the Committee maintains its position expressed in General Recommendation No. 29 “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.”¹ Therefore, the Committee reaffirms that discrimination based on the ground of caste is fully covered by article 1 of the Convention.

9. The Committee regrets the lack of information in the State party’s report on concrete measures taken to implement existing anti-discrimination and affirmative action legislation, as well as on the *de facto* enjoyment by members of scheduled castes and scheduled and other tribes of the rights guaranteed by the Convention. (arts. 2 and 5)

Notwithstanding the above mentioned legal position of the State party, the Committee invites it to include in its next periodic report detailed information on measures taken to implement anti-discrimination and affirmative action legislation, disaggregated by caste, tribe, gender, State/district and rural/urban population. The State party should also provide disaggregated data on the percentages of the Union, State and district budgets allocated for that purpose and on the effects of such measures on the enjoyment by members of scheduled castes and scheduled and other tribes of the rights guaranteed by the Convention.

10. The Committee notes with concern that the State party does not recognize its tribal peoples as distinct groups entitled to special protection under the Convention. (arts. 1 (1) and 2)

¹ CERD, 61st session (2002), General Recommendation No. 29: Article 1, paragraph 1, of the Convention (Descent), preamble.

The Committee recommends that the State party formally recognize its tribal peoples as distinct groups entitled to special protection under national and international law, including the Convention, and provide information on the criteria used for determining the membership of scheduled and other tribes, as well as on the National Tribal Policy. In this regard, the Committee refers the State party to its General Recommendation No. 23.²

11. The Committee is concerned that the so-called denotified and nomadic tribes, which were listed for their alleged “criminal tendencies” under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual Offenders Act (1952). (art. 2 (1) (c))

The Committee recommends that the State party repeal the Habitual Offenders Act and effectively rehabilitate the denotified and nomadic tribes concerned.

12. The Committee notes with concern that the State party has not implemented the recommendations of the Committee to Review the Armed Forces (Special Powers) Act (1958) to repeal the Act, under which members of the armed forces may not be prosecuted unless such prosecution is authorized by the Central Government and have wide powers to search and arrest suspects without a warrant or to use force against persons or property in Manipur and other north-eastern States which are inhabited by tribal peoples. (arts. 2 (1) (c), 5 (b), (d) and 6)

The Committee urges the State party to repeal the Armed Forces (Special Powers) Act and to replace it “by a more humane Act,” in accordance with the recommendations contained in the 2005 report of the above Review Committee set up by the Ministry of Home Affairs. It also requests the State party to release the report.

13. The Committee notes with concern that, despite the formal abolition of “Untouchability” by Article 17 of the Indian Constitution, *de facto* segregation of Dalits persists, in particular in rural areas, in access to places of worship, housing, hospitals, education, water sources, markets and other public places. (arts. 3 and 5)

The Committee urges the State party to intensify its efforts to enforce the Protection of Civil Rights Act (1955), especially in rural areas, including by effectively punishing acts of “Untouchability”, to take effective measures against segregation in public schools and residential segregation, and to ensure equal access for Dalits places of worship, hospitals, water sources and any other places or services intended for use by the general public.

14. The Committee is concerned about reports of arbitrary arrest, torture and extrajudicial killings of members of scheduled castes and scheduled tribes by the police, and about the frequent failure to protect these groups against acts of communal violence. (arts. 5 (b) and 6)

The Committee urges the State party to provide effective protection to members of scheduled castes and scheduled and other tribes against acts of discrimination

² CERD, 51st session (1997), General Recommendation No. 23: *Indigenous Peoples*.

and violence, introduce mandatory training on the application of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) for police, judges and prosecutors and take disciplinary or criminal law measures against police and other law enforcement officers who violate their duty of protection and/or investigation in relation to crimes against scheduled castes and scheduled and other tribes.

15. The Committee is concerned about the alarming number of allegations of acts of sexual violence against Dalit women primarily by men from dominant castes, in particular rape, and about the sexual exploitation of Dalit and tribal women who are being trafficked and forced into prostitution. (art. 5 (b))

The Committee urges the State party to effectively prosecute and punish perpetrators of acts of sexual violence and exploitation of Dalit and tribal women, sanction anyone preventing or discouraging victims from reporting such incidents, including police and other law enforcement officers, take preventive measures such as police training and public education campaigns on the criminal nature of such acts, and provide legal, medical and psychological assistance, as well as compensation, to victims. The State party should also consider adopting victim-sensitive rules of evidence similar to that of Section 12 of the Protection of Civil Rights Act (1955) and establishing special court chambers and task forces to address these problems.

16. While taking note of the mass influx of refugees in India, the Committee is concerned that the State party has not acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and that it has not yet adopted any specific refugee legislation. (art. 5 (b))

The Committee recommends that the State party consider acceding to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and enact a comprehensive legal framework governing the treatment of refugees.

17. The Committee notes with concern reports that Dalit candidates, especially women, are frequently forcibly prevented from standing for election or, if elected, forced to resign from village councils or other elected bodies or not to exercise their mandate, that many Dalits are not included in electoral rolls or otherwise denied the right to vote, and that public service posts reserved for scheduled castes and scheduled tribes are almost exclusively filled in the lowest category (e.g. sweepers). The Committee is also concerned that scheduled castes and scheduled and other tribes are underrepresented in the Union, State and local governments and legislatures, as well as in the public service. (arts. 5 (c) and 2 (2))

The Committee recommends to the State party to effectively enforce the reservation policy; to ensure the rights of members of scheduled castes and scheduled and other tribes to freely and safely vote and stand for election and to fully exercise their mandate if elected to their reserved seats; to apply the reservation policy to all categories of public service posts, including the highest, and to extend it to the judiciary; to ensure adequate representation of scheduled castes, scheduled and other tribes and ethnic minorities in Union, State and local

governments and legislatures; and to provide updated statistical data on such representation in its next periodic report.

18. The Committee is concerned about the persistence of social norms of purity and pollution which *de facto* preclude marriages between Dalits and non-Dalits; it is also concerned about violence and social sanctions against inter-caste couples and the continuing practices of child marriage and dowry, and *devadasi* whereby mostly Dalit girls are dedicated to temple deities and forced into ritualised prostitution. (art. 5 (d) (iv) and 5 (b))

The Committee urges the State party to effectively enforce the prohibition of child marriage, the Dowry Prohibition Act (1961) and State laws prohibiting the practice of *devadasi*. The State party should punish such acts and acts of discrimination or violence against inter-caste couples and rehabilitate victims. Furthermore, it should conduct training and awareness raising campaigns to sensitize police, prosecutors, judges, politicians, teachers and the general public as to the criminal nature of such acts.

19. The Committee notes that the State party does not fully implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples. It is also concerned that large scale projects such as the construction of several dams in Manipur and other north-eastern States on territories primarily inhabited by tribal communities, or of the Andaman Trunk Road, are carried out without seeking their prior informed consent. These projects result in the forced resettlement or endanger the traditional lifestyles of the communities concerned. (art. 5 (d) (v) and 5 (e))

The Committee urges the State party to fully respect and implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples, in accordance with ILO Convention 107 on Indigenous and Tribal Populations (1957). The State party should seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects and provide adequate compensation and alternative land and housing to those communities. Furthermore, it should protect tribes such as the *Jarawa* against encroachments on their lands and resources by settlers, poachers, private companies or other third parties and implement the 2002 order of the Indian Supreme Court to close the sections of the Andaman Trunk Road that run through the *Jarawa* reserve.

20. The Committee is concerned about reports that Dalits are often denied access to and evicted from land by dominant castes, especially if it borders land belonging to such castes, and that tribal communities have been evicted from their land under the 1980 Forest Act or in order to allow private mining activities (art. 5 (d) (v) and 5 (e) (i) and (iii)).

The Committee recommends that the State party ensure that Dalits, including Dalit women, have access to adequate and affordable land and that acts of violence against Dalits due to land disputes are punished under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989). The State party should also ensure that tribal communities are not evicted from their lands

without seeking their prior informed consent and provision of adequate alternative land and compensation, that bans on leasing tribal lands to third persons or companies are effectively enforced, and that adequate safeguards against the acquisition of tribal lands are included in the Recognition of Forest Rights Act (2006) and other relevant legislation.

21. The Committee notes with concern that Dalits who convert to Islam or to Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programmes, unlike converts who become Buddhists or Sikhs. (arts. 5 (d) (vii) and 2 (2))

The Committee recommends that the State party restore the eligibility for affirmative action benefits of all members of scheduled castes and scheduled tribes having converted to another religion.

22. The Committee is concerned about reports that Dalits were denied equal access to emergency assistance during the post-tsunami relief, while noting that, according to the State party, those allegations merely concern isolated cases. (arts. 5 (e) and 2 (1) (a))

The Committee recommends to the State party to investigate all alleged cases in which Dalits were denied assistance or benefits equal to that received by caste fishermen or cases in which they were otherwise discriminated against during the post-tsunami relief and rehabilitation process and to compensate or retroactively grant such benefits to the victims of such discrimination.

23. The Committee notes with concern that very large numbers of Dalits are forced to work as manual scavengers and child workers and are subject to extremely unhealthy working conditions and exploitative labour arrangements, including debt bondage. (art. 5 (e) (i) and (iv))

The Committee recommends that the State party effectively implement the Minimum Wages Act (1948), the Equal Remuneration Act (1976), the Bonded Labour (System) Abolition Act (1976), the Child Labour (Prohibition and Regulation) Act (1986) and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act (1993). The State party should also adopt measures to enhance Dalits' access to the labour market, e.g. by extending the reservation policy to the private sector and issuing job cards under the National Rural Employment Guarantee Scheme to Dalit applicants, and report on the effects of the measures taken on the employment and working conditions of Dalits in its next periodic report.

24. The Committee is concerned about reports that members of scheduled castes and scheduled and other tribes are disproportionately affected by hunger and malnutrition, infant, child and maternal mortality, sexually transmitted diseases, including HIV/AIDS, tuberculosis, diarrhoea, malaria and other water borne diseases and that health care facilities are either unavailable in tribal areas or substantially worse than in non-tribal areas. (art. 5 (e) (iv))

The Committee recommends that the State party ensure equal access to ration shops, adequate health care facilities, reproductive health services, and safe drinking water for members of scheduled castes and scheduled and other tribes

and to increase the number of doctors and of functioning and properly equipped primary health centres and health sub-centres in tribal and rural areas.

25. While noting the constitutional guarantee of free and compulsory education for all children up to the age of 14 and the rapid growth of the literacy rate among Dalits, in particular girls, the Committee remains concerned about the high dropout rate among Dalit pupils at the primary and secondary levels, reports of classroom segregation and discrimination against Dalit pupils, teachers and mid-day meal cooks, and the poor infrastructure, equipment, staffing and quality of teaching in public schools attended by Dalit and tribal children. (art. 5 (e) (v))

The Committee recommends that the State party take effective measures to reduce dropout and increase enrolment rates among Dalit children and adolescents at all levels of schooling, e.g. by providing scholarships or other financial subsidies and by sensitizing parents as to the importance of education, combat classroom segregation and discrimination against Dalit pupils and ensure non-discriminatory access to the Mid-Day Meal Scheme, adequate equipment, staffing and quality of teaching in public schools, as well as physical access by Dalit and tribal pupils to schools in dominant caste neighbourhoods and armed conflict areas.

26. The Committee notes with concern allegations that the police frequently fail to properly register and investigate complaints about acts of violence and discrimination against members of scheduled castes and scheduled tribes, the high percentage of acquittals and the low conviction rate in cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), and the alarming backlog of atrocities cases pending in the courts. (art. 6)

The Committee urges the State party to ensure that members of scheduled castes and scheduled and other tribes who are victims of acts of violence and discrimination have access to effective remedies and, to that effect, encourage victims and witnesses to report such acts and protect them from acts of retaliation and discrimination; ensure that complaints under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) and other criminal law provisions are properly registered and investigated, perpetrators prosecuted and sentenced and victims compensated and rehabilitated; and establish and make operational special courts trying atrocity cases as well as committees monitoring the implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in all States and districts, as mandated by the Act. In this regard, the State party is invited to include in its next report information on the number and nature of complaints registered, the convictions and sentences imposed on perpetrators, and the remedies and assistance provided to victims of such acts.

27. The Committee notes with concern that caste bias as well as racial and ethnic prejudice and stereotypes are still deeply entrenched in the minds of wide segments of Indian society, particularly in rural areas. (art. 7)

The Committee recommends that the State party strengthen its efforts to eradicate the social acceptance of caste-based discrimination and racial and

ethnic prejudice, e.g. by intensifying public education and awareness raising campaigns, incorporating educational objectives of inter-caste tolerance and respect for other ethnicities, as well as instruction on the culture of scheduled castes and scheduled and other tribes, in the National Curriculum Framework, and ensuring adequate media representation of issues concerning scheduled castes, tribes and ethnic minorities, with a view to achieving true social cohesion among all ethnic groups, castes and tribes of India.

28. The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
29. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards Articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.
30. The Committee notes that the State party has not made the optional declaration provided for in Article 14 of the Convention, and invites it to consider doing so.
31. The Committee strongly recommends that the State party ratify the amendments to Article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.
32. The Committee recommends that the reports of the State party be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly translated into Hindi and, to the extent possible, other official languages of India, and publicized.
33. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonised Guidelines on Reporting, recently approved by the international human rights treaty-bodies (HRI/MC/2006/3 and Corr.1).
34. Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 12, 15, 19 and 26 above, within one year of the adoption of the present conclusions.
35. The Committee recommends to the State party that it submit its twentieth and twenty-first periodic reports in a single report, due on 4 January 2010.