

INDIA

Follow-up

State Reporting - Action by State Party

CERD A/51/18 (1996)

Annex IX

Preliminary comments of the Government of India on the concluding observations adopted by the Committee on the Elimination of Racial Discrimination* on the tenth to fourteenth periodic reports of India presented during the forty-ninth session of the Committee

1. The Government of India appreciates the recognition by the Committee in section C of the efforts made by it to implement in full the Convention.
2. There is however a clarification which needs to be noted. The Terrorist and Disruptive Activities (Prevention) Act (TADA) referred to in paragraph 12 of the observations applied to all parts of the country and not just to the north- eastern states or the state of Jammu and Kashmir. Following an open and nationwide debate, TADA was allowed to lapse.
3. The Committee has identified in section D its principal subjects of concern. Given below are some comments which may assist the Committee in a fuller appreciation of the concerns raised:
 - (a) With reference to paragraph 14, the Government of India would like to reiterate that the concept of "race" in India as recognized under the Constitution is distinct from "caste". Communities which fall under the definition of scheduled Castes and scheduled Tribes do not come under the purview of Article I of the Convention, nor is "race" an element in the determination of Scheduled Castes and Scheduled Tribes under the Indian Constitution. Nevertheless, the Government of India remains willing to provide information to the Committee on its efforts to eradicate discrimination against Scheduled Castes and Scheduled Tribes or any other matter Committee Members may request;
 - (b) The observations in paragraph 15 have not been fully comprehended. Like the rest of the country, the Indian state of Jammu and Kashmir is multi-ethnic and multi-religious. Its population comprises Muslims (Sunnis, Shias, Gujjars and Bakarwals), Hindus, Buddhists and Sikhs. No segment of the population of India including Jammu and Kashmir has been subject to any form of discrimination whatsoever on account of their national or ethnic origin or in ways contrary to the basic provisions of the Convention;
 - (c) The setting up of the National Human Rights Commission (NHRC) of India as an

* CERD/C/304/Add.13. See also paras. 339-373 of the present report.

independent and statutory body is a step towards the strengthening of the efforts of India's civil society for the promotion and protection of human rights. The activities of the NHRC have been internationally acclaimed, as recognized by the Committee itself in paragraph 7 of its observations;

(d) In view of the interest of the Committee (para. 17) in information on the role and functions of the National Commission on Scheduled Castes and Scheduled Tribes and the National Commission on Minorities, information will be made available in the next Report together with any other information the Committee may require. These specific statutory bodies referred to, however, are not concerned with issues related to "race";

(e) With reference to paragraph 18, the Government reiterates its willingness to provide any information the Committee may wish to have. As the Committee itself has noted in paragraph 8 of its comments, the plurality of newspapers and mass media and their awareness of human rights problems play an important role in the implementation of the Convention;

(f) With regard to paragraph 19 of the observations, it is stated that the report of India contained concrete information on the legal provisions in force prohibiting the incitement of racial discrimination and hatred on the part of any individual or organization. Any such act would be an infringement of the law and liable for action in Indian courts. Any further specific information required will be provided;

(g) With regard to paragraph 21, the National Security Act and the Public Safety Act have been enacted to deal with the challenge posed by the phenomenon of terrorism. These Acts will continue to be utilized by the Government to combat terrorism and to protect all Indian citizens from this menace;

(h) Regarding the observations in paragraph 22, all Indian citizens above the age of 18 have access to full and equal enjoyment of political rights. Free and fair parliamentary elections conducted by an independent Election Commission have been held in Jammu and Kashmir in May 1996 and elections to the State Assembly are to be held in September 1996;

(i) Regarding paragraph 23, it has been the consistent policy of the Government of India to remove all forms of exploitation of or discrimination against its citizens, in particular of those elements which are disadvantaged because of social or economic backwardness. These efforts will continue and constitute an important element in the Common Minimum Programme of the Government. India's efforts in this regard have been recognized by the Committee itself in paragraph 5 of its observations. No specific cases of such discrimination as referred to in paragraph 23 have been brought to the attention of the Government by the Committee;

(j) The Committee's observation in paragraph 24 is not immediately clear. If the reference is to representation in political life, this does not depend on the size of communities but on that of the electorate. If the reference is to employment in government services, a policy of affirmative action is being followed under the Constitution and the law in respect of Scheduled Castes and Scheduled Tribes and other economically or socially backward segments of the population.

4. The Government has noted the suggestions and recommendations of the Committee. The suggestions contained in paragraphs 27 and 31 are already being implemented and the Government assures the Committee that it will continue to do so.

Annex X

COMMENTS OF STATES PARTIES ON THE CONCLUDING OBSERVATIONS ADOPTED BY THE COMMITTEE

Fifteenth to nineteenth periodic reports of India

The following comments were sent on 30 July 2007 by the Permanent Representative of India to the United Nations concerning the concluding observations adopted by the Committee following the consideration of the fifteenth to nineteenth periodic reports submitted by the State party:⁴⁴

"The Government of India thanks the Committee for the opportunity for a free and frank exchange of views during the consideration of India's fifteenth to nineteenth periodic reports at its Seventieth Session held on 23 and 26 February 2007. The points made in the Concluding Observations had been raised earlier by the Country Rapporteur and were fully responded to by the Government of India, during the presentation of its report. We would, therefore, request that copies of the responses of the Government of India be made part of the official records of the proceedings of the Seventieth Session of the Committee and be posted on the website as well. These include:

- (i) Statement made by Solicitor General of India - 23 February, 2007
- (ii) Statement made by Permanent Representative of India - 23 February, 2007
- (iii) Statement made by Permanent Representative of India - 26 February, 2007
- (iv) Statement made by Solicitor General of India - 26 February, 2007
- (v) Points made by Professor Dipankar Gupta - 23 and 26 February, 2007
- (vi) Replies by the Indian delegation on various specific issues raised by the Committee and the Country Rapporteur - 26 February, 2007
- (vii) Concluding Remarks by Permanent Representative of India - 26 February, 2007

"India has been deeply conscious of and is concerned about her Scheduled Castes and is fully committed to tackle any discrimination against them at every level and discuss the same at appropriate multilateral fora.

"The Constitution of India abolished 'untouchability' and forbids its practice in any form. There is a National Commission for Scheduled Castes, established in accordance with relevant provision of the Constitution of India, with functions that include enquiring into

specific complaints with respect to deprivation of rights and safeguards of scheduled castes. In addition, there are explicit and elaborate legal and administrative provisions to address caste-based discrimination in the country and the Government has been taking a number of measures for the effective implementation of these provisions.

"Caste-based discrimination is, however, not a form of racial discrimination and hence not covered by the International Convention on Elimination of All Forms of Racial Discrimination. This has been the position of the Government of India and we would like to reiterate this so that it is clearly noted in the official records of the Committee.

"The Government of India's position has been substantiated on several grounds including the detailed references made in response to the Committee's request (paragraph 2 of document CERD/C/IND/19 - list of issues) and to the 1965 *travaux preparatoire* of the Convention. These have not been refuted by the Committee in its Concluding Observations. In addition, detailed expositions based on sociology as to why caste could not be covered under race were also brought to bear in support of the Indian position.

"Firstly, in terms of the ordinary meaning of the expression 'racial discrimination' it is well accepted that the Indian caste system cannot be said to be racial in origin.

"Secondly, the reference to Scheduled Castes by the Indian Delegation during the *Travaux Preparatoire* of 1965 was for the limited purpose of protecting the special measures constitutionally sanctioned in the Indian Constitution for the historically disadvantaged Scheduled Castes. It had no relation to the definition of racial discrimination nor did it have anything to do with the word 'descent'. In view of the above, the use of the expression 'descent' cannot be used to assert that the term 'descent' as used in Article 1 (1) has a special meaning and that it must be taken as including caste-based discrimination.

"Thirdly, CERD is a specific Convention on elimination of racial discrimination. One of the main reasons for the context for adoption of the Convention was the practice of apartheid. This is clear from the various recitals of the Convention, which include references to (i) the United Nations condemnation of colonialism and the practices of segregation and discrimination associated therewith, (ii) the rejection of any doctrine of superiority based on racial differentiation as scientifically false, morally condemnable, socially unjust and dangerous, and (iii) the manifestation of racial discrimination then in evidence in some parts of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation. Caste was not even in the contemplation of the participants to the deliberations on the Convention.

"The Committee has also made observations regarding Scheduled Tribes in India as part of its concern for indigenous people. However, we regard the entire population of India at independence, with the departure of the colonizers, and their successors to be indigenous, consistent with the definitions in the ILO Conventions.

"Thus, in the context of India, the situation of her Scheduled Tribes is not covered

under the mandate of CERD. This is being reiterated to make clear the position of the Government of India in the records of the CERD Committee. Nonetheless, we need to clarify that the Government of India is deeply conscious of and fully committed to the empowerment of her Scheduled Tribes and we would be willing to discuss these issues and offer information at appropriate multilateral fora. There are also special provisions in the Constitution in this regard along with specific legal and administrative mechanisms including a National Commission on Scheduled Tribes."

Note

44/ For the text of the concluding observations, see paragraphs 159 to 193 above. The comments refer to the unedited version of the concluding observations.