

**COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN
37TH SESSION (NEW YORK, 15 JANUARY TO 2 FEBRUARY 2007)**

INDIA (COMBINED 2ND and 3RD PERIODIC REPORTS)

Information Submitted to the Committee

On 18 January 2007, India submitted its combined 2nd and 3rd periodic reports¹ under the *Convention on the Elimination of All Forms of Discrimination against Women* (the Convention). It also provided written responses² and an annex to the responses³ to the list of issues and questions⁴ raised by the Committee on the Elimination of Discrimination against Women's (the Committee). During the session, the State party also submitted additional statistics on the events in Gujarat⁵ at the request of the Committee.

The first part of the report describes developments in areas of concern and recommendations from the Committee's 22nd session in 2000. While presenting a comprehensive overview of the relevant initiatives, programmes and legislative developments, this section does not provide a substantive assessment of their impact, particularly with regard to discrimination at work, violence against women, sex selection and the National Commission for Women (NCW). Similarly, the statistics and case law included, notably on violence against women, education and equality before the law, focused exclusively on illustrating the Government's measures. Furthermore, in some important areas, such as caste discrimination, trafficking of persons and ratification of the Optional Protocol to the Convention, the report only provides very brief answers. The second part of the report highlights new developments since 1997, notably providing a critical assessment of the impact of adopted measures and of challenges ahead in the areas of literacy, education, employment, health care and special measures for the advancement of women from marginalised groups. However, this section lacks such an assessment with regard to many other crucial issues, such as gender stereotyping, exploitation and trafficking of women, rural women, and equality before the law. The State party provided examples of cases where the judiciary has invoked or relied on principles of the Convention, information which is rarely included in State party reports. The final part of the report focuses on the implementation of the *Beijing Declaration and Platform for Action* and the Madrid International Plan of Action on Ageing 2002. Overall, the report seemed to focus more on the Government's strategies and plans, rather than on what has actually been achieved.

The Committee's list of issues and questions focused on the events in Gujarat; violence against women; trafficking and exploitation of women; stereotypes and discriminatory cultural practices; participation of women in public and political life; education; employment; health; and the situation of rural women. These questions often repeated concerns expressed by the Committee in its previous recommendations that were not or insufficiently addressed in the report. Once again, the answers focused essentially on

¹ <http://daccessdds.un.org/doc/UNDOC/GEN/N05/572/16/PDF/N0557216.pdf?OpenElement>.

² <http://www.un.org/womenwatch/daw/cedaw/cedaw37/responses/cedaw.c.ind.q.3.add.1%20single.pdf>.

³ http://www.un.org/womenwatch/daw/cedaw/cedaw37/responses_annexes/India_Replies%20to%20Q.%2022%20and%2028.pdf.

⁴ <http://daccessdds.un.org/doc/UNDOC/GEN/N06/467/90/PDF/N0646790.pdf?OpenElement>.

⁵ In 2002, incidents of communal violence took place in the State of Gujarat. According to information from the Government of Gujarat, 1054 persons died and more than 2500 persons were injured, with over 200 persons missing.

describing the measures adopted by the Government, without providing an overview of their impact. In some cases, notably on the question of the application of guarantees of equality and non-discrimination in the private sphere and the ratification of the Optional Protocol, the responses were very brief. The Committee notably requested further information on the issue of stereotypes and discriminatory cultural practices, which were consistently cited in the State party report as the main obstacles to progress in achieving *de facto* equality. Unfortunately, the State party only provided a relatively short answer, focusing essentially on gender mainstreaming in national education.

The National Alliance of Women (NAWO) submitted the only shadow report on India and organised a parallel event to present its main conclusions. The report commented on all articles of the Convention, but concentrated essentially on violence against women and the situation of vulnerable women, such as minority, *dalit*, tribal and rural women. It noted a worrying trend in socio-economic indicators for all women, and argued that pervasive gender-based violence and legislative lacunae in this area prevents real equality between men and women. NAWO was also particularly concerned with India's reservation with regard to the application of the Convention's provisions in the private sphere, the lack of a provision on discrimination against women in the Indian Constitution and the persistence of discriminatory provisions in personal laws.

Themes and Issues

Legal Framework

In response to the Committee's questions about the status of the Convention in domestic law, the delegation insisted that while the Convention does not have official domestic legal standing, the judiciary has invoked principles of the Convention in a number of instances. The Committee also expressed concern about the constitutional provisions on equality and non-discrimination, questioning their compliance with the definitions contained in the Convention and worrying about the fact that they only apply to State actors. The delegation replied that certain fundamental rights, such as the right to life, applied both to State and non-State actors, a policy that was deemed unsatisfactory by the Committee.

Committee members extensively and persistently focused on India's declaration on the Convention, which states that it will abide by the provisions in article 5(a) and 16(1)⁶ in conformity with its policy of non-interference in the personal affairs of any community without its consent. The Committee claimed that this declaration, particularly with regard to community control over personal affairs, undermines the intention of the Convention. It was particularly concerned that this declaration meant that community leaders, who are more prone to traditional views of women, would be making decisions with regard to women's rights under these laws. The delegation insisted that it was important to respect the federal and secular nature of the Indian system and communities' freedom to administer their own institutions, but the Committee was adamant that there is a difference between the right to practice one's religion and customs and the universal right of women to enjoy their human rights on an equal basis with men. It stressed that there was a lot of room for the Government to act and still remain within personal religious frameworks. On the issue of registration of marriages for example, it pointed

⁶ Article 5(a) concerns the need to modify the social and cultural patterns of conduct of men and women to eliminate sex role stereotyping and prejudice. Article 16 (1) focuses on the need to eliminate discrimination against women in all matters relating to marriage and family affairs.

out that administrative registration did not interfere with the religious institution of marriage. The delegation, perhaps not understanding the Committee's argument for greater governmental responsibility, indicated that it would consider adopting new federal legislation at the initiative of communities. In the same line, it urged greater support from civil society, including NGOs, to persuade the Government to adopt gender-sensitive bills and referred to numerous progressive initiatives undertaken by the Supreme Court instead of focusing on the federal Government's actions.

Implementation

The Committee expressed repeated concern at gaps in the implementation of the Convention, something which was also recognised by the State party in its periodic report. The Committee therefore probed the delegation on measures taken to address this problem, citing in particular the case of child marriages. It stressed that the State party needed to take action beyond simply recognising the problem and blaming it on a lack of education, by establishing comprehensive mechanisms for the proper implementation of the Convention. Ironically, the delegation did not provide specific details on how to address this problem comprehensively, instead limiting itself to describing measures adopted in the education sector. However, it stressed that all the Government's efforts in a number of areas had been aimed at bridging this gap.

In light of this discussion, the Committee on repeated occasions urged the State party to ratify the Optional Protocol. It stressed that this would offer complementary protection to victims and additional assistance to the State, which would be particularly useful given the delegations' own admittance of the difficulty of monitoring women's rights in such a large country. Responding to this argument, the delegation stressed that the Indian structure has a series of checks and balances, as well as extensive legal recourse, which ensure full protection for victims. As a result, India's stand towards the Optional Protocol would remain the same.

Institutional and National Machinery

The Committee probed the delegation about the review of the 10th National Plan of Action and the timeframe for the new National Plan of Action. The delegation indicated that the 10th plan was not finished yet and as a result no comprehensive review had been undertaken. However, there had been a mid-term review, and mid-course reorientations were not uncommon for these plans. It also stressed that results from these reviews were taken into account when designing the next plan, which was intended to start in April 2007. The Committee also asked about the NCW's complaints and investigation mechanisms for individual victims, as well as its follow-up powers. Another concern was the fact that the NCW's mandate did not refer to the rights referred to in international instruments, but rather relied on Constitutional rights. The delegation provided an overview of the NCW, indicating that in 2005, over 10 000 complaints had been received. Reacting to the delegation's indication that the NCW had investigatory powers, the Committee stressed that it was the Government's primary responsibility to prosecute perpetrators. Strangely however, it did not react to the delegation's explanation that family situations could often be resolved through counselling, a practice that is often denounced by NGOs as discriminatory towards women.

In light of India's federal system, the Committee addressed the relation between federal and State machinery in the implementation of the Convention, stressing the need to improve coordination in this regard. Committee members used the example of the NCW and its relation to State Commissions on women's rights to illustrate their concerns. While once again emphasising the need to respect India's

federal structure and the responsibilities of State Governments, the delegation also recognised the need to improve coordination between federal and state-level entities, including the NCW.

Vulnerable Groups

The Committee addressed a broad range of issues with regard to vulnerable groups, including rural, minority, poor and *dalit* women. It notably inquired about measures taken to ensure that large industries and macro-economic developments do not impact rural and poor sectors of population, a question that was already included in the State party report. The delegation underlined the Government's emphasis on capacity-building for women, pointing to the development of women's skills through vocational training institutes that train around 55 000 women per year. The delegation also highlighted the National Rural Employment Guarantee Scheme, which created five million jobs in 2005, 40 per cent of which were allocated to women. In light of these measures, it expressed its confidence that the situation of rural and poor women would improve in the future. Several Committee Members also focused on micro-credit schemes supposed to lift women out of poverty, pointing to some of their inadequacies, such as the inaccessibility to the poorest women. The delegation recognised these problems and acknowledged the need to focus on these groups in the future, but emphasised that many women have successfully used these mechanisms to reach a certain level of empowerment.

The delegation was much more succinct on questions concerning tribal, minority and *dalit* women. Despite several questions on the situation of Muslim women, notably regarding the National Minority Commission's report on Muslim women, the delegation's answers remained general, stressing that Muslim women were increasingly becoming aware of their rights. The delegation did provide statistics on education focusing specifically on *dalit* and tribal girls and described in detail the 73rd and 74th Constitutional Amendments aimed at increasing the participation of *dalit* and tribal women in decision-making. Generally, the Committee argued that India should focus more on the impact of structural discrimination and move beyond sensitisation and awareness-raising measures.

Violence against Women

Committee members welcomed the expansion of the concept of lack of consent and proactive Supreme Court decisions in this area, but persisted that there was still room for improvement, especially with regard to rape cases. The Committee underscored the importance of a comprehensive definition of rape, including all kinds of non-consensual sexual acts and was particularly concerned that marital rape was not included in this definition, given the prevalence of child marriages. The Committee also urged the Government to address other forms of violence than domestic violence, such as dowry death and witch-hunting, a practice elaborated on in the NGO shadow report. The Committee called on the Government to apply a life-cycle approach to violence against women, a suggestion that was enthusiastically welcomed by the delegation. Despite this relative openness and its recognition that the definition of rape needed to be expanded, most of the delegation's answers remained too general. It stated that the issue of violence against women was being addressed through legislation, policies and support measures, which were constantly strengthened and reiterated its concern that implementation, which it defined as the responsibility of State Governments, remained the main problem. It further indicated that the Federal Government is working to sensitise State Governments and once again called for support from civil society in this respect.

Committee members persistently probed the delegation on the events in Gujarat, noting that the State party only provided information on this situation after the Committee included more questions in its list of issues, despite previous requests that such information be included in the periodic report. The

Committee emphasised the need for disaggregated statistics, commenting that State figures did not appear reliable in the face of numbers put forward by other sources. Committee members focused extensively on the delivery of justice, applauding actions to investigate the events, but inquiring about the Federal Government's role in this regard and the impact of and follow-up to these investigations. They also repeatedly expressed disappointment at the Government's failure to recognise the specific crimes committed against women and the specific discriminatory thrust of some of the violence in Gujarat. The delegation commended the role of civil society in Gujarat and provided extensive information of the status of investigations. It explained that the Supreme Court had set up a committee that decided to re-open 200 cases because of insufficient previous investigations. Once again, it referred to the federal structure in India, arguing that it was difficult for the Federal Government to get involved, since law and order was the responsibility of individual States.

Economic and Social Rights

The Committee also addressed issues relating to education, employment and health. It expressed concern at the continued presence of serious gender gaps in education and stressed the responsibility of the Federal Government in ensuring that there are no major disparities across regions in this regard. The delegation referred to the 86th Constitutional Amendment, which aims to increase access to education. It pointed out that there had been a dramatic increase in access to primary education, particularly within the rural population, and stressed that this included an 18 per cent increase in girls' access to education. With regard to employment, the Committee wondered about the status of the draft bills on sexual harassment and social security for the unorganised sector. The delegation indicated that both of these drafts were in advanced stages of finalisation, adding that women's groups had made suggestions on the bill on sexual harassment. On the issue of health, the Committee addressed a range of issues from the rate of maternal mortality, access to contraception and HIV/AIDS. The delegation recognised the problem of maternal mortality and described the array of measures relating to health and more particularly HIV/AIDS envisaged in the 11th National Plan of Action, such as free comprehensive primary care facilities and adequate budgetary provisions for women's health.

Conclusions and next steps

The main positive steps announced by the State were mostly taken under the National Common Minimum Programme, which specifically includes the empowerment of women as one of its goals. The measures include plans to reserve one third of seats in local government bodies for women, the *National Employment Guarantee Act*, which promotes the employment of poor and rural sectors of the population, the extension of the concept of lack of consent in rape cases, the adoption of the *Protection of Women from Domestic Violence Act*, as well as a range of measures in education providing greater incentives and facilities to increase enrolment.

The Committee repeatedly commented on the lateness of the report, requesting an explanation from the delegation. Generally however, the dialogue was constructive and the Indian delegation appeared to make an effort to answer all of the Committee's questions. On several occasions, the Committee noted that the type of statistics provided during the discussion should have been included in the State party's report. However, despite the apparent efforts of the delegation, the Committee often noted that more information was available on the commitments and plans made by the Government than on progress in their operationalisation or the impact of measures already in place. Many of the Committee's questions repeated the list of issues and questions, but elicited repetitions of the points raised in the State party's report. Furthermore, the delegation very often referred to court cases and initiatives by the Supreme

Court instead of looking at Governmental efforts on women's rights as specifically requested by the Committee.

In its Concluding Comments,⁷ the Committee expressed concern that the State party had not addressed a number of its previous recommendations from its 22nd session in 2000. These included the need to make the Convention apply to non-State actors, to develop a national and comprehensive plan of action on gender-based violence, to enforce laws on discrimination against *dalit* women and to increase women's participation in the judiciary. The Committee also urged India to review its reservations on the Convention, particularly with regard to non-interference in the personal laws of communities and work towards modifying prejudicial personal laws and discriminatory social and cultural patterns of conduct. Additionally, the Committee recommended that India take steps to remove structural barriers to the *de facto* realisation of women's equality, notably by increasing links between the Central and State Governments. Addressing the insufficiencies of the State part report, the Committee urged India to include appropriate and disaggregated data in its next report and conduct impact assessments of its reforms and programmes. On the question of violence, the Committee asked India to widen the definition of rape, include gender-based crimes in the forthcoming Communal Violence Bill and take comprehensive action to eliminate all forms of violence, not only domestic violence. The Committee also urged greater efforts to increase women's access to education and health services. Finally, expressing disappointment at the delegation's answers on the events in Gujarat, the Committee requested a follow-up report to be submitted in January 2008 addressing specifically the impact of the events on women. During its 35th session in 2004, the Committee on the Rights of the Child addressed many similar issues to the Committee, focusing specifically on discrimination faced by girls, but also on pre-natal sex selection, the formation of women's self-help groups, discriminatory provisions in religious and personal law and the problem of child marriages.

⁷ http://www.un.org/womenwatch/daw/cedaw/cedaw37/concludingcommentsAU/India_Advance%20unedited.pdf.