

TREATY BODY MONITOR

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 70TH SESSION INDIA, 15TH - 19TH REPORT

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Background

India last came before the Committee on the Elimination of All Forms of Racial Discrimination (the Committee) in 1996. The Committee's concluding comments after that session covered a range of issues, including the National Security Act and the situation of minorities in Kashmir.¹ Particular focus was also given to India's claim that the situation of scheduled castes and tribes does not fall within the scope of the Convention. The Committee argued that the term "descent" mentioned in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) does not refer solely

¹ CERD A/51/18 (1996)

to race and asked the State party to reconsider its position. In the intervening years, the debate over the applicability of Article 1 to caste has continued. In 2001, the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was surrounded by discussion of this issue and India maintained its position. The following year, the Committee released General Recommendation 29 on “Article 1(1) and descent”.² In this comment, the Committee stated that “discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as caste.” India had not made moves to alter its position since this Recommendation. It was in this context that India came before the Committee on 23 and 26 February 2007, with the applicability of caste to Article 1 expected to be a core issue.

Information submitted to the Committee

The State report

On 26 January 2006, India submitted a document covering its 15th, 16th, 17th, 18th and 19th periodic reports to the Committee.³ Considering that this report covered a period of ten years, it was comparatively short. It dealt with each of the substantive articles of the Convention by describing relevant efforts made by the State to fulfil its obligations, particularly through legislative provisions. It provided little information on the results of these efforts and few statistics. The report devoted several short paragraphs to the applicability of Article 1 to caste. In these paragraphs, India reiterated its position. Further, it argued that since the Indian Constitution prohibits discrimination on the basis of race and on the basis of caste separately, the two are separate concepts and should not be conflated. Therefore, it concluded that issues relating to caste do not fall within the remit of CERD.

Shadow reports

The Committee received 11 shadow reports from national and international NGOs. A majority of the NGOs focused exclusively on caste-based discrimination, particularly examining the rights of Dalits.⁴ As well as providing detailed information on the various forms of caste-based discrimination, these NGOs also highlighted the specific forms of discrimination faced by Dalit women⁵ and the effects of caste-based discrimination in the aftermath of the tsunami⁶. Several NGOs rebutted India’s argument on the applicability of Article 1.⁷ The joint report from Human Rights Watch and the Center for Human Rights and Global Justice noted that caste had been included in the investigations of the Special Rapporteur on ‘contemporary forms of racism, racial discrimination, xenophobia and other related intolerance’. The National Campaign on Dalit Human Rights urged India to “do away with semantics” as it is “in the interest of the whole nation that this issue gets addressed”.

Other NGO submissions raised the issue of racial abuse against denotified and nomadic tribes,⁸ the vulnerability of the Jarawa tribe of the Andaman Islands,⁹ the denial of minority rights in Indian Jammu and

² General Recommendation No. 29: Article 1, paragraph 1 of the Convention (Descent). 1st January 2002.

³ CERD/C/IND/19, 26th January 2006.

⁴ The Asian Legal Resource Centre, the National Campaign on Dalit Human Rights, the Center for Human Rights and Global Justice with Human Rights Watch, Tamil Nadu Women’s Forum, Matoshri Ramabai Centre for Dignity and Rights of Dalit Women, Timothy Gill of the Asian Human Rights Commission on behalf of Dalit Network Netherlands.

⁵ National Campaign on Dalit Human Rights, Matoshri Ramabai Centre for Dignity and Rights of Dalit Women, the Center for Human Rights and Global Justice with Human Rights Watch, Tamil Nadu Women’s Forum.

⁶ Timothy Gill of the Asian Human Rights Commission on behalf of Dalit Network Netherlands, the National Campaign on Dalit Human Rights.

⁷ Asian Legal Resources Centre, the National Campaign on Dalit Human Rights, the Center for Human Rights and Global Justice with Human Rights Watch.

⁸ The Resist Initiative International.

Kashmir, the Punjab and Nagaland,¹⁰ the *Armed Forces Special Powers Act*¹¹ and violations of indigenous peoples' rights, particularly in the Northeast¹².

The list of issues

The Country Rapporteur (the Rapporteur) then submitted a list of issues to the State prior to the plenary. Reflecting the majority of the NGO submissions and the anticipated significance of the debate surrounding caste, the list of issues was dominated by caste issues. Some 20 of the 23 paragraphs referred to caste-based discrimination, and a majority of these referred specifically to discrimination against Dalits. The Rapporteur also posed questions concerning the *Armed Forces Special Powers Act*; the *Prevention of Terrorism Act*; the status of converts from Hinduism; the status of refugees; the land rights of indigenous communities; and the lack of data provided by India on representation of minorities in Government.

The NGO briefing

At the first briefing, eight NGOs gave presentations¹³ addressing caste-based discrimination¹⁴, the experience of indigenous or tribal peoples and other issues.¹⁵ In the context of caste, the Committee was prompted to question the Indian delegation on the efficacy of the National Human Rights Commission, and on whether any legislation is being enacted to abolish bonded labour.¹⁶ One NGO also requested that the Committee appoint a body to monitor implementation of its recommendations, particularly in the States most affected by caste-based discrimination, such as Bihar and Kerala.¹⁷ With regard to the rights of indigenous and tribal peoples, several organisations referred to the abuse and impunity caused by the *Armed Forces Special Powers Act*, and called for the Indian Government's recent internal review on this Act to be made public.¹⁸ The Forest Peoples Programme and United NGOs Mission Manipur asked the Committee to initiate an urgent action response to protect the indigenous peoples of the North East.¹⁹

There was then an opportunity for Committee members to question NGOs. Mr Thornberry asked whether India was resisting UN engagement with caste issues when it interacted with other UN bodies and mechanisms. NGOs responded that India was resistant across the board.²⁰ Mr Thornberry then asked whether India was drafting legislation on forest or tribal peoples, and whether it had introduced anything equivalent to a native or aboriginal title for property. The Forest Peoples Programme responded that no native title existed.

⁹ Survival International

¹⁰ Minority Rights Group International

¹¹ United NGOs Mission Manipur and the Forest Peoples Programme,

¹² United NGOs Mission Manipur and the Forest Peoples Programme, National Network for Human Rights Treaty Monitoring in India.

¹³ Due to the large number of NGOs wishing to participate in the briefing, one NGO briefing was organised before each of the two sessions. Both briefings were organised by the Anti-Racism Information Service (ARIS). They were well attended by both NGOs and members of the Committee. The eight NGOs who spoke were Ambedkar Centre for Justice and Peace, National Network on Human Rights Treaty Monitoring in India, Forest Peoples Programme, United NGO Mission Manipur, Centre for Human Rights and Global Justice/Human Rights Watch, National Campaign on Dalit Human Rights.

¹⁴ Ambedkar Centre for Justice and Peace, National Network on Human Rights Treaty Monitoring in India, Centre for Human Rights and Global Justice/Human Rights Watch, National Campaign on Dalit Human Rights

¹⁵ National Network on Human Rights Treaty Monitoring in India, Forest Peoples Programme, United NGO Mission Manipur,

¹⁶ Centre for Human Rights and Global Justice/Human Rights Watch

¹⁷ Ambedkar Centre for Justice and Peace

¹⁸ National Network of Human Rights Treaty Monitoring, Forest Peoples Programme, United NGO Mission Manipur

¹⁹ The Committee includes in its regular agenda preventive measures, which include early-warning measures aimed at preventing existing situations from escalating into conflicts and the urgent procedure to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. More information about this can be found at: <http://www.ohchr.org/english/bodies/cerd/early-warning.htm>

²⁰ Centre for Human Rights and Global Justice/Human Rights Watch, National Campaign for Dalit Human Rights, Ambedkar Centre for Justice and Peace

The United NGO Mission Manipur added that any legislation will not help while there are so many deficiencies in the process of implementation. Although several other Committee members asked questions, there was little time left for responses, and NGOs used this time to reiterate the importance of addressing caste-based discrimination.

At the second briefing, five NGOs gave presentations.²¹ All five addressed Dalit rights. Mr Sicilianos, the Country Rapporteur, asked NGOs to clarify the issue of religious conversion in relation to caste. He was told that many Dalits tried to convert to other religions to escape their caste, but that seven States had now made laws requiring individuals to have official permission to convert. Mr Thornberry asked what the added value of clear recommendations from the Committee would be to NGOs on the ground. He was told that CERD recommendations would facilitate campaigning and put pressure on the Indian Government, particularly since India may be driven to cooperate by the incentive of a permanent seat on the Security Council. Mr Tang asked what forces uphold the caste system in India. NGO responses pointed to ideas entrenched in the culture, discrimination reinforced by the State and the disproportionate power of high caste Hindus in the Indian State and media.

Themes and issues

India's delegation was headed by Mr Swashpawan Singh, Ambassador of India to the UN. He was accompanied by a high level delegation, including Mr Goolam E Vahanvati, Solicitor General of India, and Professor Dipankar Gupta, Professor of political sociology at Jawaharlal Nehru University.²² The delegation's main presentation began with an extensive contribution from the Solicitor General. He listed legislation designed to ensure equality in India, and then gave a detailed legal argument outlining India's position on the non-applicability of Article 1 to caste-based discrimination. This was followed by a speech by Professor Gupta on the nature of caste and the sociological differences between caste and race. It is unusual to include an academic in a State delegation and the theoretical nature of Professor Gupta's presentation emphasised this.

Aside from the question relating to the applicability of Article 1, neither of these opening submissions referred to the Country Rapporteur's list of issues. As the chair of the Committee thanked the delegation for these submissions, he reminded them that they had been sent a questionnaire and said he felt sure that this helped the delegation prepare their answers. The Country Rapporteur's statement then provided a comprehensive legal rebuttal to India's position on caste, and went on to deal with discrimination against indigenous or tribal people and refugees. The first day closed with the Committee asking a series of questions, which were overwhelmingly dominated by the subject of caste and the applicability of Article 1.

On the second day of the session, India was given the opportunity to respond to both the Country Rapporteur's statements and the Committee's questions. The Solicitor General first rebutted the Country Rapporteur's legal argument and then proceeded to briefly address a selection of the questions raised by the Committee. Professor Gupta then took the floor to continue his theoretical exploration of caste and list a variety of steps India has taken to ensure caste equality. Manjeev Singh Puri then took the floor to specifically answer other questions to other issues raised by the Committee. There followed a heated interchange between the Committee and Professor Gupta regarding the Professor's comments on race and the status of NGOs. Finally, although he was left with very little time to speak, Dr Sundeep Khanna provided some clear information on institutions that combat discrimination in India, such as the National Commission on Minorities and the National Commission on Scheduled Castes and Scheduled Tribes. In his closing

²¹ Mathoshi Ramabai Centre for Dignity and Rights of Dalit Women, Birmingham Buddhist Group, National Campaign for Dalit Human Rights, Ambedkar Center for Justice and Peace, Ambedkarite Movement for Dalit Education in India.

²² Also included in the delegation: Dr Sundeep Khanna (Additional Secretary of the Ministry of Social Justice), Manjeev Singh Puri (Joint Secretary in Ministry of External Affairs) and Dr Narinder Singh (Head of the Legal division in the ministry of External Affairs).

comments, the Country Rapporteur expressed regret that Dr Khanna could not have spoken at the beginning of the session as he addressed the issues in a constructive manner.

Implementation of the Convention

India's Solicitor General gave an overview of the constitutional provisions designed to ensure equality in India.²³ He added that the individual's right to approach the Supreme Court²⁴, and the High Court's ability to enforce fundamental rights²⁵, guarantee that the constitutional right to equality is realised, and that there could be no greater defence against discrimination. The Country Rapporteur responded that the Committee was aware that discrimination has been abolished by law, but that it was concerned by the extensive evidence provided by NGOs, UN mechanisms and the National Human Rights Commission that discrimination continues to exist despite legal provisions.

Caste

The applicability of Article 1

The Solicitor General outlined India's legal position in his first statement. He began by noting that the 1969 *Vienna Convention on the Law of Treaties* provides that treaties should be interpreted according to "the ordinary meaning to be given to the terms of the treaty in their context".²⁶ He cited the Encyclopaedia Britannica, Wikipedia and the Indian Constitution to argue that "the ordinary meaning" of the term "racial discrimination" refers to discrimination based on race and therefore cannot logically include caste. He added that there was no genetic difference between people of different castes. The Solicitor General then looked to the intent of the founders of the Convention in order to establish "the terms of the treaty in their context". He argued that the Convention was written in the context of apartheid, and that various recitals of the Convention confirm that this dominated the intent of the writers. Thus he claimed that caste, being unique to India, could not have been in their minds. Secondly, the Solicitor General again quoted the *Vienna Convention* to argue that in order to establish the ordinary meaning of the words "racial discrimination", we must take into account the subsequent application of ICERD.²⁷ To this end, he stated that until 1996 the Committee had never suggested that caste was implied as coming under the term "descent". Thirdly, the Solicitor General argued that "descent" has a clear meaning in the Indian Constitution and was related to commitments to eliminate feudalism and the Zamindari system.

The Country Rapporteur's list of issues had stated that, according to the *travaux preparatoires* of the Convention, it was India who had originally proposed including the word "descent" in 1965. The Solicitor General's statement also addressed this point. He argued that although India intended to include the word "descent", there was nothing to indicate that it intended to include the meaning 'caste'. He proposed that instead, the Indian delegation had been attempting to find an expression to replace the term "national origin", which other States had found problematic at the time. He argued that deriving any other meaning would involve taking the words out of context.

The Country Rapporteur's oral statement responded to these legal arguments directly. He opened by stating that since Robert's dictionary defines descent as "a person's genealogical line"²⁸, the ordinary meaning of discrimination based on descent would logically include any discrimination that is transmitted through generations. He observed that this principle recalls the language of the *Universal Declaration of Human*

²³ This included references to "equality of status and opportunity", "equal protection before the law", Articles 14 to 17, 330, 325 and 333 of the Indian Constitution

²⁴ The right to approach the Supreme Court is provided for in Article 32 of the Indian Constitution.

²⁵ The High Court's right to enforce fundamental human rights is provided for in Article 226 of the Indian Constitution.

²⁶ Article 31 of the Vienna Convention on the Law of Treaties

²⁷ Article 31.3.b

²⁸ Le Grand Robert Dictionnaire

Rights, which states that “all human beings are born free and equal.” Turning to his study of the *travaux préparatoires* of the Convention, he noted that when discussing Article 1(4) of the Convention, India specifically referred to scheduled castes on two occasions. He illustrated that India had mentioned caste with reference to the Convention in order to ensure that Indian special measures for promoting equality for scheduled castes would be permitted under Article 1(4). Therefore, caste was not, as the Solicitor General had implied, absent from the minds of the drafters of the Convention.

The Rapporteur turned to the Solicitor General’s own logic to show that the terms “race” and “descent” were not intended to be synonymous. He reminded the Indian delegation that India had previously argued that because the Indian Constitution mentions “race” and “caste” separately, “race” and “caste” are separate concepts. Therefore, by the same logic, the fact that ICERD mentions “race” and “descent” separately means that they too must be understood as separate concepts. He contested the Solicitor General’s claim that subsequent application of the Convention has not included caste, and referred the Indian delegation to reports on countries such as Japan and Sri Lanka. He clarified that the title of the Convention should not be seen to reflect the entire scope of the Convention, and in fact the title of the Durban Conference²⁹ better reflects the Convention’s scope. Finally, he quoted the Prime Minister of India’s recent statement that “the only parallel to the practice of untouchability was apartheid”. He concluded, “After this statement, I sincerely feel that your official position is untenable.” Mr Sicilianos’ statement was praised by members the Committee.³⁰ Mr Lindgren Alves commented that he would like to see it reproduced in writing and added to the Committee’s recommendations on caste.

On the second day, the Secretary General responded to Mr Sicilianos’ legal arguments. He reiterated his case that India’s suggestion of the word “descent” during the *travaux préparatoires* was only intended to solve problems with the term “national origin”. He examined the quotations from the Indian delegation in 1965 referring to caste, and claimed that Mr Saxena had specifically qualified his statements by saying that these castes were of the “same racial stock and ethnic origin as their fellow citizens.” He argued that this meant that instead of advancing the Country Rapporteur’s arguments, the Indian delegation’s references to caste during the *travaux préparatoires* had in fact “demolished them.” He asserted that it was unacceptable for Mr Sicilianos to accuse India of having held an intention that it never held and “preposterous” for him to imply that this intention was shared by other participants in the deliberations “without an iota of evidence”. The Secretary General finally returned to the question of the “ordinary meaning” of the term “descent”. He said that Mr Sicilianos had attempted to give the word a “special meaning”. He referred to the decision of the Permanent Court of International Justice (1923-46) on the legal status of Eastern Greenland, in which it was stated that “if it is alleged by one of the parties that some unusual or exceptional meaning is to be attributed to it, it lies on that party to establish its contention.”³¹

The Committee did not engage extensively with this technical legal debate between Mr Sicilianos and the Solicitor General. The only member to contribute to the legal debate was Mr Thornberry, who argued that terms develop an autonomous meaning within international law and that this must be considered when looking for the “ordinary meaning” of the terms “race” and “descent”.

Running parallel to the legal debate, Professor Gupta was leading a sociological debate on the nature of caste, which the Committee addressed repeatedly. He began by arguing why race and caste are different. He claimed that whereas racist ideologies involving “thinking in blocks” of large similar communities, caste revolves around differences in tiny details. He then stated that when fighting racial discrimination, one uses policies of affirmative action based on quotas. He contrasted this with policies used to fight caste discrimination, which he claimed do not use quotas. He argued that India does not use quotas for castes as it wishes to abolish caste entirely, rather than representing it within institutions. In this way, policies fighting caste discrimination aim to create fraternity, rather than compensate particular communities. Committee

²⁹ “World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance” 2001.

³⁰ Ms Dah, Mr Yutzis, Mr Thornberry, Mr Rodriguez, Mr Lindgren Alves.

³¹ Judgment of April 5th, 1933 (Series A./B., Fascicule No. 53) : XXVIth session 1933.

member Mr Lindgren Alves reminded Prof. Gupta that the Committee was not suggesting that caste and race are synonymous, but that caste falls under the term “descent”, so the sections of his argument referring to race were redundant.

Next, Professor Gupta argued why caste and descent are different. He claimed that “descent” denotes genetically transmitted traits, and since caste members are supposed to marry outside their own lineage, castes can have no genetic characteristics. Ms Dah questioned this distinction. She argued that even if caste was not transmitted genetically, if it is not possible to escape your parents’ caste then it must be a matter of descent. Prof. Gupta responded that this idea of wishing to escape your caste was based on the language of race. He said that many members of racial groups try to escape their race, such as black people in the USA who straighten their hair in order to “pass” as white people. However, caste members are proud of their identity and would not wish to “pass” as coming from another caste. Mr Prosper stated that he took exception to Professor Gupta’s suggestion that any black person that straightens their hair is trying to “pass” as white. In response, Prof. Gupta insisted that he had not invented the term “passing” and it was well documented. Ms Dah further challenged Prof. Gupta’s distinction between caste and descent by asking what the caste identity would be of a child with parents from different castes. Prof. Gupta again accused her of using the language of race. He said that in societies which suffer from racial discrimination, such as the USA, children are considered be of mixed race and are identified according to their percentage of each race, with terms such as “tar baby” or “yellow boned”. However, a child of parents with different castes has no caste at all and is therefore free of caste. Mr Lindgren Alves stated that in his country (Brazil) people do not consider themselves half white and half black, but are proud of their identity. When the Professor next took the floor, Mr Lindgren Alves interrupted his speech in an agitated manner to ask him to step down as he was wasting the Committee’s time.

Prof. Gupta went on to discuss the differences between “caste” and “ethnicity”. He suggested that the term “ethnic” is used to describe outsider groups. He gave the example of the USA, alleging that everyone who is not WASP³² in the USA is considered to be “ethnic”. He argued that in India, castes are not considered to be outsider groups, but are part of society. Mr Prosper was offended by Prof. Gupta’s allegation that the definition of “ethnic” is “non-WASP”, and Mr Thornberry declared, “we are all ethnic”.

Finally, Prof. Gupta argued that the dynamics of the relationships between caste groups were being misunderstood by the Committee. He argued that the idea that the caste system is based on clear hierarchy is wrong and that this idea was invented by the Brahmins. He added that instead of understanding caste as a hierarchy, the Committee should understand that all caste members believe that their own caste is the most important one, and that consequently a lot prejudice can also be found amongst untouchables. Therefore, he said that there was no such thing as one caste ideology, as opposed to racial ideologies which involve clear hierarchies. Mr Prosper and Mr Thornberry both asked whether Prof. Gupta denied that certain castes bore the brunt of discrimination in India. Mr Gupta did not respond to this question.

Despite several Committee members’ strong objections to the Professor’s comments on race,³³ the Committee stressed that they were keen to engage in constructive dialogue with the delegation as a whole, and expressed their desire for India to see CERD as a helpful tool, rather than a threat.³⁴

Legal protection

In addition to the Constitutional provisions protecting the rights of scheduled castes, listed by the Secretary General, Dr Khanna listed a variety of legislative and institutional measures. He said that Indian lawmakers have commissioned a variety of committees to monitor implementation of legal protection; that the Prime Minister has established a group of Ministers to deal with Dalit affairs; and that special police stations and

³² White Anglo-Saxon Protestant

³³ Mr Prosper, Mr Lindgren Alves, Mr Cali Tzay.

³⁴ Mr Lindgren Alves, Mr Thornberry, Ms January-Bardill, Mr Avtonomov

courts have been set up exclusively for members of scheduled castes to lodge their complaints. In response to questioning from Committee member Mr Valencia Rodriguez, he assured the Committee that the National Commission for Scheduled Castes had “sweeping powers”. The Secretary General also drew attention to the *Protection of Civil Rights Act (1955)*, the *Bonded Labour (Abolition) Act (1976)* and the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989)*. He added that Dalit rights were promoted by the National Legal Services Authority, which provides free legal aid and education on rights.

In response, the Country Rapporteur argued that there is a gap between legal provisions for the rights of scheduled castes and the reality on the ground. On this point, Mr Yutzis noted that discussing the realities of the situation would have been easier if the Indian delegation had provided disaggregated data according to caste. Nevertheless, the experience of scheduled castes was discussed at length by the delegation and the Committee. The main elements addressed were: atrocities against Dalits; poverty; political rights; employment rights; land rights; double discrimination against Dalit women; and discrimination against Dalits in the aftermath of the tsunami.

- Citing evidence from NGOs, UN treaty bodies and the National Commission for Human Rights, the Country Rapporteur listed types of **atrocities** regularly committed against Dalits and other scheduled castes, including extra-judicial executions, rape, persistent police abuse against Dalits and the failure of the police to protect Dalits from inhuman treatment. Prof. Gupta suggested that Mr Sicilianos may not have all of his facts correct regarding the victims of atrocities. He suggested it is not simply the case that atrocities are committed against untouchables because they are untouchables. Instead, he argued that since all castes are proud of their identity, they will all be angry when someone breaks the caste rules, whichever caste the offender is from. Following on from Mr Sicilianos’ references to impunity for those who committed crimes against Dalits, Ms Dah asked whether it was possible to ensure legal cases were dealt with more quickly. She suggested that ‘peoples’ courts’ reduce the burden on the traditional court system, and asked whether this alternative system might be made more widespread. The Country Rapporteur also asked the Indian delegation whether it was going to implement the recommendations of the National Human Rights Commission on atrocities against scheduled castes. These questions were not answered.
- On the subject of **poverty** amongst scheduled castes, Prof. Gupta argued that although the rate of poverty is higher amongst scheduled castes, poverty is pervasive throughout India. He added that literacy had improved faster amongst scheduled castes than amongst any other group. In response, the Country Rapporteur argued that extreme poverty and high rates of anaemia and other diseases were acute amongst the scheduled castes. Committee member Mr Nouredine Amir was also of the view that endemic poverty and disease amongst scheduled castes must be addressed directly.
- The Country Rapporteur noted the repression of Dalit’s **political rights**. Mr Valencia Rodriguez followed up on this by asking for details regarding the representation of minority groups in governmental bodies and State agencies. Prof. Gupta responded that great strides have been made in the field of political rights. He said that voter turnout was higher amongst scheduled castes than any other group, and stated that 14% of members of parliament are now from scheduled castes.
- Mr Sicilianos introduced a discussion on the continuing discrimination against scheduled castes in **employment**, particularly evident in the continuing practice of manual scavenging and bonded and child labour. Prof. Gupta assured the Committee that child labour is linked to poverty rather than caste and is present wherever poverty is present. He noted that in his studies of East Uttar Pradesh, he had found that child labour also occurs amongst Brahmins.
- The Country Rapporteur also raised the issue of the denial of Dalit **land rights**. He noted that Dalits are frequently displaced without compensation. Prof. Gupta argued that farmers and landowners are

reluctant to allow anyone other than them to own property. He suggested that these landowners not only attempt to deny land rights on the grounds of caste, but even attempt to stop the men that marry into their families from having rights to their land.

- Mr Sicilianos addressed reports of “double discrimination” against Dalit **women**, particularly mentioning forced prostitution and rape. Mr Prosper expanded on this line of questioning, stating that dramatic action was required to curb the problem of sexual violence against Dalit women. He asked how education was addressing this issue; whether there was a campaign to teach the victims and vulnerable about their rights; and whether there were campaigns to help victims with trauma. He suggested that a task force should be set up to deal with this issue; that some high profile prosecutions could have symbolic value; and that victim-sensitive rules of evidence or even a special court could be introduced to deal with these cases. Ms January-Bardill noted CEDAW’s comments on the plight of Dalit women, and advised the Indian delegation to examine the Committee’s General Recommendation 25, which asks States to consider the cross-sections between racial and gender discrimination. She recommended that they address this in their next report. Manjeev Singh Puri argued that all information on women had already been submitted to CEDAW and suggested that if the Committee was interested, it could access the information on CEDAW’s website.
- The Country Rapporteur referred directly to the shadow report submitted on discrimination against Dalits in the aftermath of the **tsunami** and asked the delegation for more information on this issue.³⁵ Mr Cali Tzay followed up on this, asking whether Dalit behaviour after the tsunami showed that Dalits have internalised the discrimination against them and now separate themselves from the rest of the community. Manjeev Singh Puri responded that it could not have been the case that any one community was excluded from the rehabilitation programme after the tsunami. He added that Bill Clinton had visited the affected areas and written in the Washington Post that the programme provided homes for Dalits who had not even lost their homes as a result of the tsunami. He concluded that any isolated cases of exclusion must be exceptions to the rule.

Indigenous or tribes peoples

The applicability of Article 1

When questioned on issues pertaining to indigenous or tribal people in India, Manjeev Singh Puri argued that this too was outside ICERD’s remit. He argued that according to ILO Conventions of 1957 and 1989, the term “indigenous peoples” describes peoples in independent countries who are regarded as indigenous because they descend from the populations which inhabited the land at the time of conquest or the establishment of State boundaries, and still retain some or all of their own social, economic, cultural and political institutions. He claimed that by this definition, the descendants of the entire population of India at the time of independence are indigenous. Accordingly, he argued that the Declaration on the Rights of Indigenous Peoples was clearly not intended to apply to situations such as India’s. He concluded therefore that the situation of tribal or so-called indigenous populations in India is not relevant to the Committee’s work.

The Committee contested this argument. Committee member Mr Alexei Avtonomov argued that the terms “tribal” and “indigenous” do not necessarily have the same meaning in the ILO Conventions. Therefore, even if the entire population of India were indigenous, the Committee could still take an interest in tribal groups, which are ethnically specific. Mr Cali Tzay urged the delegation to provide more information on these groups. Mr Kemal was of the view that the concept of “indigenous” is relative and there is clear evidence of physical distinctions between the tribal groups and the rest of the population. Further, he argued that it would

³⁵ Timothy Gill of the Asian Human Rights Commission on behalf of Dalit Network Netherlands.

simply be more productive for the Committee to be able to address this issue. Mr Thornberry noted that the jurisprudence of the Committee has covered both “indigenous” and “tribal groups”, and that the Committee has also been willing to use the term “traditional communities” if this enabled them to deal with a vulnerable group.

Legal protection

Despite India’s claim that indigenous or tribal people did not fall within the Committee’s remit, their situation was still discussed during the plenary. Notably, the Indian delegation made no reference to indigenous or tribal groups in their initial submissions, despite the fact that the list of issues referred to them on several occasions. When questioned by the Country Rapporteur, the delegation said that India had recently prepared a Draft National Tribal Policy and was in the midst of consulting on it, and that State governments already had a number of schemes aimed at helping scheduled tribes, including study abroad programmes. Once again, the Committee questioned the efficacy and implementation of these programmes, and expressed concerns regarding the realities on the ground. The key areas of discussion centred on: the definition of “scheduled tribes”; lack of access to justice; land rights; internal displacement; the concept of “born criminals”; and forced religious conversions.

- The Country Rapporteur noted that the President is empowered to declare that particular tribal communities are “**scheduled tribes**.”³⁶ He, Mr Thornberry and Mr Avtonomov were all concerned that since there are no clear criteria indicating which groups qualify for this definition, several groups are excluded.
- Mr Sicilianos expressed his concern regarding **access to justice** for indigenous and tribal peoples. He suggested that in some States, the judiciary is not sufficiently impartial when dealing with tribal groups. He asked for comments on reports that the National Commission on Scheduled Tribes had only been allocated eight officers to deal with 84 million people. Dr Sundeep Khanna replied that he was responsible for providing staff to this Commission, and in fact it has a large staff spread across six regional offices, contrary to Mr Sicilianos figure of eight staff. There was also some debate between the Committee and the delegation regarding the *Armed Forces Special Powers Act*. This is addressed more adequately below.
- Mr Thornberry reminded India of its ILO obligation to recognise the right of ownership of indigenous or tribal people to the **land** they have traditionally inhabited.³⁷ He noted that since India submitted its report³⁸, it has introduced a *Forest Rights Act*³⁹ to deal with forest people who have a long history in an area, termed “forest dwellers” under the *Act*. Mr Thornberry was concerned that including “forest dwellers” might undermine the rights of tribal people by affording rights to any number of groups who have moved into the forests to exploit its resources. Dr Sundeep Khanna explained that this law provides a framework for affording forest rights. However, the Government is still in the process of framing the rules which must accompany the *Act*. He also confirmed that the term “forest dweller” could include any Indians who live in the forest. The Country Rapporteur questioned the delegation on reports of violations of the right to land of the Jarawa tribe in the Andaman and Nicoban Islands. Manjeev Singh Puri responded that the building of the Andaman trunk road has been specifically delayed to examine the needs the Jarawa tribe.
- The Country Rapporteur referred to an NGO report that described extensive **internal displacement** of indigenous peoples.⁴⁰ The Indian delegation did not respond to this point.

³⁶ Article 342 of the Indian Constitution.

³⁷ ILO 107, Article 11.

³⁸ March 2006.

³⁹ December 2006.

⁴⁰ National Network for Human Rights Treaty Monitoring in India.

- Mr Sicilianos was particularly concerned about a report received by an NGO⁴¹ regarding certain groups considered to be “**born criminals**”, and he asked for more information on this. Manjeev Singh Puri responded that this idea was based on a piece of legislation from the colonial era,⁴² which has since been revoked.
- The Country Rapporteur asked the delegation to provide comments on reports that some Hindu fundamental groups are carrying out **forced conversions** of tribal people. Prof Gupta confirmed that unfortunately some Hindu groups do engage in this activity.

Refugees

The Country Rapporteur opened discussion on refugees on a positive note, welcoming the fact that India has hosted 160,000 Tibetan, Myanmarese and Afghan refugees under UNHCR care. However, he expressed concern that India still has not ratified the *1951 Convention Relating to the Status of Refugees*. Mr Singh Puri responded that he did not believe the 1951 Convention was appropriate for India. He reminded the Committee that since its birth India has hosted millions of refugees, usually in mass influxes, including 10 million from what is now Bangladesh. He argued that the Refugee Convention is not designed for developing countries who accept large influxes of refugees, and that it mainly applied in Europe in response to individual cases of asylum. He supported this by stating that all those countries that have not ratified the Refugee Convention are developing countries. In his concluding comments, the Country Rapporteur refuted the idea that the Refugee Convention was only applicable in Europe.

Mr Sicilianos was further concerned that India has no national policy on the treatment of refugees other than the *1946 Foreigners Act*, which does not distinguish between refugees and other foreigners. He asked why no specific legislation had been enacted concerning refugees. Mr Singh Puri replied that despite the absence of any such legislation, refugees enjoy full legal rights in India. According to Mr Singh Puri, India upholds the principle of non-refoulement⁴³, and when Angelina Jolie visited India as a representative of UNHCR she commented on the excellent treatment of refugees in India. In his concluding comments, the Country Rapporteur stressed that even if India did not ratify the Refugee Convention, it could still create some kind of specific legal framework to protect the rights of refugees in India.

Mr Sicilianos finally requested more information on the status of the Burmese refugee population, following reports that Burmese refugees in India were not assisted at all by the Indian Government but relied solely on UNHCR. Mr Singh Puri responded that UNHCR was dealing with the Burmese refugees, and he did not provide any further information.

The Armed Forces Special Powers Act

The Country Rapporteur questioned the delegation on the *Armed Forces Special Powers Act (AFSPA)*, referring extensively to the shadow report presented by the Forest Peoples Programme and the United NGO Missions Manipur. From this information, he suggested that the *AFSPA* has created a climate of impunity through which the Indian authorities violate the rights indigenous or tribal communities, often by committing violent acts against them. He noted that a review committee established by the Indian Government had already recommended that the Act be repealed. He put it to the delegation that the shadow report

⁴¹ The Resist Initiative International.

⁴² The National Tribes Act.

⁴³ ‘Non-refoulement’ is the principle of international law that forbids the expulsion of a refugee into an area where s/he might be again subjected to persecution. It is enshrined in the “Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S.150, Art. 33.” and the “Protocol Relating to the Status of Refugees, 4 October 1967, 606 U.N.T.S. 267”.

recommended that the Committee initiate an early-warning measure or urgent procedure⁴⁴ on this issue. Finally, he asked the delegation to comment so that the Committee could decide whether to take up this recommendation. India defended the *AFSPA*, with the Solicitor General arguing that it had been upheld by the Supreme Court in the case of the *Naga Peoples Movement for Human Rights vs. the Union of India*.

The Role of information submitted by NGOs

A number of comments were made by the Indian delegation regarding the credibility of the information submitted to the Committee by NGOs. The first of these comments were made by Professor Gupta, who suggested that the reason the Committee was “misunderstanding” the nature of the caste system was because they had been “talking to NGOs”. Mr Singh Puri supported him and proposed, “with all due respect to the expertise and independence of the Committee members” that the Committee introduce a procedure to regulate and validate all information submitted by NGOs. He added that this was particularly necessary in “times of the internet” when sources of information are unclear.

The Committee defended the role of NGOs in the ICERD process. Mr Yutzis argued that throughout the Committee’s history, NGO contributions have been very helpful to its work. Further, Mr Yutzis highlighted that the independence and expertise of the Committee means that it is fully capable of determining what it believes to be accurate and reliable information, in the same manner as it applies itself to the analysis of States’ reports, which neither require any form of prior validation. Mr Sicilianos informed the delegation that the information received had come from dozens of different NGOs representing millions of Indian people. Moreover, he noted that the information had been consistent throughout the NGO submissions and was supported by information from UN treaty bodies, special procedures and other UN mechanisms.

Other Issues

Mr Avtonomov asked India whether it was going to make a declaration under Article 14⁴⁵ and ratify the Committee’s amendment to Article 8 concerning the financing of the committee. Regarding Article 14, Mr Singh Puri argued that India already had effective legal and Constitutional framework to address human rights violations and therefore it had no need to make this declaration. The Indian delegation did not respond to Mr Avtonomov’s question regarding Article 8.

Conclusions and next steps

As the session ended, both the Country Rapporteur and the Indian delegation took one more opportunity to reiterate their positions on the applicability of Article 1 to caste-based discrimination. Both positions remained unchanged. Although the Committee appreciated the efforts India had made in fighting caste-based discrimination, it regretted not having received more information on these efforts.

Time constraints and the dominance of the debate on the applicability of Article 1 meant that the examination ended with many questions left unanswered. In his concluding statement, the Country Rapporteur commented that the Committee had only received a small part of the information it required and that this mainly came from Mr Khanna in the delegation’s final submission. He expressed his hope that the Indian Government would continue to pursue a constructive dialogue with the Committee.

⁴⁴ The Committee includes in its regular agenda preventive measures, which include early-warning measures aimed at preventing existing situations from escalating into conflicts and the urgent procedure to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention. More information about this can be found at: <http://www.ohchr.org/english/bodies/cerd/early-warning.htm>

⁴⁵ Article 14 recognises the competence of the Committee to receive and consider communications directly from individuals or groups of individuals within its jurisdiction.

TREATY BODY MONITOR STAFF

Meghna Abraham, Program Manager, Information Program

Gareth Sweeney, Human Rights Officer, Information Program

Eléonore Dziurzynski, Communications Officer, Information Program

AUTHOR OF THE INDIA REPORT

Hannah Klein, Intern

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