

Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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(Please use this reference in your reply)

6 April 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolution 43/36.

It is in this capacity that, **I am writing to express my support for the draft bill introduced in the California State Senate that would prohibit discrimination of individuals based on caste.** If passed, Senate Bill No. 403 introduced on 9 February by Senator Wahab, would add caste to the state's list of protected classes and update various legislative provisions in order to outlaw discrimination on the basis of caste in employment, housing, healthcare, education, business services, public and private land use, and contracting.

Given the upcoming vote on this bill, I wish to remind the California Senate of their responsibilities under international law to provide protections against caste-based discrimination, as well as to enable safe public participation for caste-oppressed individuals in all processes to develop relevant policies and laws.

Caste-based discrimination is recognised and prohibited under the International Convention on the Elimination of Racial Discrimination (ICERD), which the United States of America ratified in 1994. As Article 1(1) reflects, States drafted ICERD to incorporate a broad definition of racial discrimination. Article 1 (1) states: “in this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The Committee on the Elimination of Racial Discrimination in its General recommendation No.29¹ (2002) strongly reaffirmed “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”.

ICERD is significant for the legal justification of this draft bill as it is applicable to all forms of caste-based discrimination and provides protection from discrimination in relation to civil and political, as well as economic, social and cultural rights.

¹ Committee on the Elimination of Racial Discrimination, General recommendation No.29 (2002): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FGEC%2F7501&Lang=en

Obligations to achieve racial equality and ensure non-discrimination extend to all areas of governmental policy and influence. **As such all states must ensure that racial and ethnic groups, inclusive of those from all caste groups, enjoy the full scope of their human rights, as encompassed in ICERD article 5**, as well as other applicable human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)², which the United States of America ratified in 1992.

Passing this bill into law and adding caste to the grounds for discrimination listed in various sections of the State of California legislation would strengthen the legal framework in place to recognise and prohibit discrimination, as recognised under ICERD and other international human rights treaties. It also strengthens the adherence of the United States of America with its obligations according to international human rights law.

I wish to also highlight that State parties to ICERD have an explicit **duty to legislate effectively in order to eliminate racial discrimination**. Article 2 (d) of ICERD states that: “each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.” In relation to such duties, the 2022 Concluding Obligations of the Committee on the Elimination of Racial Discrimination for the United States of America (CERD/C/USA/CO/10-12³, para. 5), recommended that “the State party take all measures necessary to ensure the consistent application of the provisions of the Convention at the federal, state and local levels”.

Article 2 of ICERD further makes clear that the duties bestowed upon State parties to the Convention apply at the local level. Article 2 (c) states “**Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists**”. The Human Rights Committee has also highlighted the duties of local governments to implement the provisions of ICCPR. In their 2014 concluding observations on the United States of America (CCPR/C/USA/CO/4, para. 4), the Human Rights Committee, recommended the State party: “give greater effect to the Covenant at federal, state and local levels, taking into account that the obligations under the Covenant are binding on the State party as a whole.” I am highlighting these responsibilities to California State Members as duty bearers under international law, ahead of the voting on the aforementioned draft bill.

In relation to the democratic process and debate around the discrimination on the basis of caste, I also wish to highlight the **right of all to equal participation in political processes established under international human rights treaties, including ICERD and ICCPR**. Article 5 (c) of ICERD recognises the right to equal participation in “public affairs at any level”. Article 22 (a) of ICCPR also recognises “to take part in the conduct of public affairs”. This should be read in conjunction with article 2 (1) of ICCPR, which establishes that: “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and

² International Covenant on Civil and Political Rights: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
2022 Concluding Obligations of the Committee on the Elimination of Racial Discrimination for the United States of America:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FUSA%2FCO%2F10-12&Lang=en

subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

This is significant as many caste-oppressed individuals and organizations who participate in this process may risk violence in coming forward to speak about their experiences of discrimination. I am also aware that the 2022 Concluding Observations of the Committee on the Elimination of Racial Discrimination for the United States of America (CERD/C/USA/CO/10-12, para. 14) recognised growing hate speech and hate crimes against those of Asian descent. Research has indicated that caste-based discrimination is multi-faceted and highly prevalent across the United States.⁴

Hate speech, disinformation and hate crimes can impact the right to public participation, as recognised by ICERD and the ICCPR. In this regard, I would draw the State’s attention to Guidelines for States on the effective implementation of the right to participate in public affairs⁵, published by the Office of the High Commissioner on Human Rights in 2018. These guidelines recognise **that hate speech, disinformation, and hate crimes can exacerbate the marginalization and exclusion of some individuals and groups from public life and makes clear that States should take steps to address these phenomena.**

I want to especially highlight these obligations with respect to all who come forward in the discussion of this bill and call upon California State to ensure the participation of all, **including preventing and addressing any manifestations of casteist hate speech, discrimination, and hate crimes**, in relation to all public processes relevant to the draft bill proposing amendments to the Municipal Code.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned issues.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from California State will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I would be grateful if the present letter could be shared with all members of the California Senate.

⁴ Please see Equality Labs, “Caste in the United States”, available here: <https://www.equalitylabs.org/castesurvey/#key-findings>

⁵ OHCHR, 2018, “Guidelines for States on the effective implementation of the right to participate in public affairs”: https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf

Please accept, Excellency, the assurances of my highest consideration.

K.P. Ashwini

Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance