

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

Ref.: OL AUS 2/2024  
(Please use this reference in your reply)

4 November 2024

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 52/36.

In this connection, I am writing to you in relation to the ongoing **development of an initial National Anti-Racism Framework by the Australian Human Rights Commission. In this context, I wish to highlight the importance of implementing the recommendation made by the Australian Human Rights Commission to ensure that caste is included as a protected grounds in anti-discrimination laws and policies.**

According to information received, in 2022 the Australian Human Rights Commission launched a four-year plan to develop a National Anti-Racism Framework (henceforth referred to as Framework) prompted by inter alia the lack of consistent and comprehensive national approach to anti-racism. This Framework is being designed to serve as a principal reference point to guide anti-racism initiatives, including potential actions to review and amend the anti-discrimination legal framework. Since the inception of the plan, the Commission launched a series of consultations and studies to inform the initial draft of the Framework. In December 2022, the Commission released a scoping report containing summaries of evidence-based inputs from these consultations, as well as submissions from racialised communities across the country.<sup>1</sup> The draft of the Framework will be delivered to the Federal Government on 26 November 2024.

The scoping report summarises findings drawing upon the lived experiences of racialised groups, including caste oppressed communities, collected during the consultation activities. These findings highlight that the importance of robust legal frameworks is key to provide protection from all forms of racial discrimination. Under a dedicated chapter on intersectionality within the scoping report for the Framework, the Commission noted that “greater acknowledgement of, education on, and responses to this overlap of casteism and racism, is a key component of recognising the intersectional experiences of caste discrimination within Australia’s multicultural migrant communities.” The scoping report makes recommendations on steps that should be taken in the context of the ongoing development and implementation of the Framework. The report recommends that the Australian Government reform existing anti-discrimination laws to better align with Australia’s international human rights obligations and that caste be recognised by the Government as “a protected category in anti-discrimination legislation and policy.” Caste is not currently included as a protected grounds in key anti-discrimination legislation in Australia, including the 1975 Racial Discrimination Act and the 1977 Anti-Discrimination Act.

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<sup>1</sup> National Anti-Racism Framework Scoping Report:  
[https://humanrights.gov.au/sites/default/files/document/publication/national\\_anti-racism\\_framework\\_scoping\\_report\\_2022\\_0.pdf](https://humanrights.gov.au/sites/default/files/document/publication/national_anti-racism_framework_scoping_report_2022_0.pdf)

Since the publication of the scoping report, the Commission has undertaken additional targeted scoping consultations in 2023 and commissioned a report from the Federation of Ethnic Communities' Councils of Australia (FECCA) to capture the findings of consultations with over 1,200 people with lived experience of racism from across Australia.<sup>2</sup> Consistent with the Commission's scoping report, the FECCA report identified communities with prominent caste systems as part of nine groups that are most likely affected by overlapping forms of discrimination, further highlighting the importance of implementing the recommendations to review anti-discrimination legislation and ensure caste is included as a protected grounds as part of ongoing efforts to develop and implement the Framework.

I believe that the ongoing development and adoption of the Framework are important steps towards addressing the varied forms of racism, racial discrimination, xenophobia and related intolerance, as well as any protection gaps in Australia. The significance of the Framework in protecting the human rights of communities that face racial discrimination, including people of African descent, was also raised in the report of the Working Group of Experts on People of African Descent following their country visit to Australia in December 2022 (A/HRC/54/67/Add.2, para. 68(h)).

I join the Working Group in welcoming the initiative. I wish however to emphasise, ahead of the presentation of the initial draft of the Framework to the Federal Government, the importance of implementing the recommendations of the Human Rights Commission to review anti-racial discrimination laws against international human rights law standards and recognise caste as a protected category in anti-discrimination laws and policies. Recognizing caste as a protected ground in anti-discrimination legislation, as recommended by the Human Rights Commission, would also help mitigate the wide-ranging impact of casteism, including the exercise of civil, political, social, economic and cultural rights.

In this regard, I wish to remind your Excellency's Government of its responsibilities under international human rights law to provide protection 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 Australia ratified on 30 September 1975. 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."

ICERD is significant for the legal justification of this Framework 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

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<sup>2</sup> An Anti-Racism Framework - The Perspectives of Multicultural Australia  
[https://humanrights.gov.au/sites/default/files/document/publication/an\\_anti-racism\\_framework\\_community\\_consultations\\_report.pdf](https://humanrights.gov.au/sites/default/files/document/publication/an_anti-racism_framework_community_consultations_report.pdf)

cultural rights. The Committee on the Elimination of Racial Discrimination in its General recommendation No. 29 (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.”

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), which Australia ratified on 13 August 1980.

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 Committee on the Elimination of Racial Discrimination, in its 2022 concluding observations on Australia urged that “the State party take the necessary measures to ensure full incorporation of the Convention into its legal order” (CERD/C/AUS/CO/18-20, para. 8).

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 have also highlighted the duties of local governments to implement the provisions of ICCPR. In their concluding observations on Australia in 2017, the Human Rights Committee recommended the State party to “take measures, including considering consolidating existing non-discrimination provisions in a comprehensive federal law, in order to ensure adequate and effective substantive and procedural protection against all forms of discrimination on all the prohibited grounds, including religion, and intersectional discrimination, as well as access to effective and appropriate remedies for all victims of discrimination” (CCPR/C/AUS/CO/6, para. 18).

In relation to the democratic process and debate around the Framework, 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 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.”

I want to especially highlight these obligations with respect to all who come forward and call upon the Government to ensure the participation of all, including

preventing and addressing any potential manifestations of casteist hate speech, discrimination, and hate crimes, in relation to all public processes relevant to the Framework and any amendments to the Racial Discrimination Act. Hate speech, disinformation and hate crimes can impact the right to public participation, as recognised by ICERD and the ICCPR. In this respect, I would like to draw your attention to Guidelines for States on the effective implementation of the right to participate in public affairs 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.

In this context, I also wish to note that existing reservations and interpretive declarations with regard to ICERD and ICCPR, including on the prohibition of racial violence and implementation in domestic legislation, should not restrict any further legislative provision on relevant anti-racism measures. Developing the National Anti-Racism Framework and specifying caste as a ground for discrimination, including systemic discrimination, would strengthen relevant legal frameworks to recognise and prohibit racial discrimination, in line with ICERD, ICCPR and other international human rights treaties. It would also strengthen the adherence of Australia with its obligations according to international human rights law.

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 if you could please provide:

1. 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 your Excellency's Government 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 kindly ask that this communication is transmitted to the Attorney General of Australia and the Australian Human Rights Commission, including its President and its Race Discrimination Commissioner.

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