

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on minority issues

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11 May 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 52/36 and 52/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the adoption of the University Grants Commission Guidelines on Promotion of Equity in Higher Educational Institutions, 2026 (hereinafter "the 2026 Guidelines") and subsequent stay by Supreme Court of India on the 2026 Guidelines. The stay temporarily halts the implementation and enforcement of the 2026 Guidelines across higher educational institutions and was granted prior to the Supreme Court's full adjudication on the merits of the case.

We understand that the 2026 Guidelines seek to address systemic barriers faced by caste oppressed groups in higher education spaces, including by mandating the establishment and strengthening of equal opportunity cells, ensuring representation of marginalised communities in decision-making bodies, promoting inclusive environments, and creating monitoring and reporting obligations to ensure compliance. The 2026 Guidelines were intended to operationalise constitutional guarantees of substantive equality within universities and colleges, particularly for students from historically marginalised communities. The notification of the 2026 Guidelines on 13 January had the effect of repealing the 2012 University Grants Commission equity regulations (hereafter "the 2012 Guidelines"). Following a legal challenge to the 2026 Guidelines, the Supreme Court granted a temporary stay against the guidelines on 29 January.

We noted that the 2026 Guidelines were developed as a response to a previous petition to the Indian Supreme Court filed by two mothers whose children died by suicide following reported caste-based discrimination they were subjected to within Indian higher educational institutions. This petition highlighted significant weaknesses within the substantive provisions of the 2012 Guidelines, including the absence of both mandatory implementation committees and independent grievance mechanisms for complaints. The Supreme Court petition also highlighted that the 2012 Guidelines did not apply to faculty members and other employees and lacked protection against reprisals for those making complaints. In addition, the Supreme Court petition highlighted that these gaps resulted in inconsistent, weak and unequal implementation and enforcement of the 2012 Guidelines.

The temporary halt on the implementation of the 2026 Guidelines means that the 2012 Guidelines remain in place. Given the reported substantive weaknesses of the 2012 Guidelines, we consider that the suspension of the 2026 Guidelines could pose

significant risks to students belonging to the marginalised communities. In the absence of the 2026 Guidelines, there is a real and foreseeable risk of regression in the protection of marginalised communities, contrary to the principle of non-retrogression under international human rights law. This particularly applies to students from “Scheduled Castes”, “Scheduled Tribes”, “Other Backward Classes”, religious minorities, women, and other vulnerable groups.

We understand that the stay was granted in the context of a legal challenge to Article 3(c) of the 2026 Guidelines, in which it was argued that the definition of “caste-based discrimination” is inconsistent with Article 14 of the Constitution of India that guarantees equality before law. We further understand that submissions before the Court characterised the 2026 Guidelines, particularly the inclusion of the definition of “caste-based discrimination” in Article 3(c), as “unfair” to general category students. Concern was expressed that the exclusion of general category students from the definitional framework of caste-based discrimination contained within Article 3(c) could expose them to harassment.

We note that Article 3(c) of the 2026 Guidelines defines “caste-based discrimination” as “discrimination only on the basis of caste or tribe against the members of the scheduled castes, scheduled tribes, and other backward classes”. Within the 2026 Guidelines, Article 3(c) is complemented by a general definition of discrimination in Article 3(e). Article 3(e) defines discrimination as:

“any unfair, differential, or biased treatment or any such act against any stakeholder, whether explicit or implicit, on the grounds only of religion, race, caste, gender, place of birth, disability, or any of them. It also includes any distinction, exclusion, limitation, or preference which has the purpose or effect of nullifying or impairing equality of treatment in education and, in particular, of imposing conditions on any stakeholder or group of stakeholders which are incompatible with human dignity.”

We observe that Article 3(e)’s definition of discrimination appears to provide broad protection, which could be applied in a wide range of cases of discrimination. We consider that having this general definition of discrimination, complemented by the more specific definition of caste-based discrimination in Article 3(c), would be compatible with India’s obligations, under international human rights standards, to uphold the prohibition of racial discrimination and ensure equality before the law.

Caste-based discrimination is recognized and prohibited under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which India ratified in 1968. As articulated in article 1(1) of ICERD, the term “racial discrimination” includes distinctions based on “race, colour, descent, or national or ethnic origin”. As affirmed by the Committee on the Elimination of Racial Discrimination (CERD) in its general recommendation No. 29 (2002), this includes caste and analogous systems of inherited status. Article 2(1) of ICERD provides a comprehensive prohibition of racial discrimination, as defined under article 1. Article 2 is designed to be read in conjunction with article 5, which provides for equality before the law in relation to a range of rights, including to education and training. Other international human rights law standards, including the International Covenant on Civil and Political Rights, which India acceded to in 1979, also prohibit racial and other forms

of discrimination. Such international human rights obligates State parties, such as India, to take broad steps to prevent, address and remedy all forms of such discrimination. Human rights entities have consistently recommended that such steps include developing and implementing laws and policies that explicate specific grounds for discrimination. We contend that article 3 of the 2026 Guidelines, inclusive of both a general definition of discrimination and a targetted definition of caste-based discrimination, is consistent with such obligations.

We further consider that Article 3(c) defines caste-based discrimination in a manner that is consistent with historical patterns of discrimination and the lived experiences of affected communities. A number of international human rights law mechanisms have stressed the importance of such approaches to developing and implementing equality and non-discrimination standards. For example, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance stressed in her thematic report to the 59th session of the Human Rights Council that States “integrate systemic, racial and historical analysis into the development, implementation and monitoring of all responses to racism”. In this report, she also recommended that the process of defining discrimination “is grounded in the lived experiences of all affected persons and groups”.¹ CERD has also highlighted the importance of attention to the historical experiences of marginalised racial and ethnic groups. For example, in general recommendation 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, it is highlighted that attention should be paid to “structural disparities and de facto inequalities resulting from the circumstances of history that continue to deny to vulnerable groups and individuals the advantages essential for the full development of the human personality.”²

In addition, the definition of “caste-based discrimination” in Article 3(c), includes the category of “Other-Backward Classes”. We consider that this would be an advancement in equity protection vis-à-vis the 2012 Guidelines as the latter did not specify the “Other Backward Classes” as a community protected from discrimination within higher education institutions. This gap in the protection of those from “Other Backward Classes” in the 2012 Guidelines was in spite of historical realities and lived experiences, and we consider that the 2012 Guidelines may risk a significant protection gap for those from “Other Backward Classes”.

In relation to the targeting of the 2026 Guidelines towards those from marginalised communities, we note that provisions of the ICERD establish the permissibility of differential treatment for those from such communities, for as long as they are necessary to ensure substantive equality. In its general recommendation No. 14 (1993) on article 1, paragraph 1, of the Convention, CERD observes that “differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate”. As further elaborated by CERD’s general recommendation 32:

“The term “non-discrimination” does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable

¹ A/HRC/59/62.

² CERD/C/GC/32, para. 22.

justification for differential treatment. To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same. The Committee has also observed that the application of the principle of non-discrimination requires that the characteristics of groups be taken into consideration.”

Students from historically marginalised communities often enter higher educational institutions with significantly unequal access to prior educational resources, academic support, financial stability, and language proficiency. Bearing in mind these disparities, we consider that the adoption of special measures to ensure institutional equity and address discrimination against members of the “Scheduled Castes, Scheduled Tribes, and Other Backward Classes” within the 2026 Guidelines are compatible with India’s international human rights law obligations. Without such targeted measures, the structural disparities experienced by those from such communities may adversely affect classroom participation, assessment outcomes, retention, and overall educational experience.

We further wish to highlight that targeted measures to ensure institutional equity within higher education institutions, as mandated by the 2026 Guidelines, are an integral part of the broader framework of equality measures, including reservations. We emphasise that measures to ensure institutional equity within higher education institutions, as mandated by the 2026 Guidelines, constitute a necessary corollary to, and operate in conjunction with, reservation policies, forming part of a broader framework required to dismantle structural discrimination. In this regard, we recall that special measures, including India’s system of reservations, are expressly contemplated under articles 1(4) and 2(2) of ICERD. As the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance highlighted in her 2024 thematic report to the General Assembly, special measures are crucial to the achievement of substantive equality and remedying historical inequalities. The report of the Special Rapporteur also highlighted how special measures without broader policy measures: “are less likely to achieve their aim of improving equality and may lead to perpetuation of the isolation, segregation, stereotypes or stigma of the intended beneficiaries of such positive actions”.³ In this regard, the report stressed that special measures should be used in conjunction with a suite of other anti-racial discrimination and equality measures.

In addition, we wish to comment on an assertion made before the Supreme Court that the 2026 Guidelines do not contain explicit safeguards to address intentionally false complaints. Bearing in mind the importance of historical analysis as highlighted above, claims about the risks of intentionally false complaints need to be critically examined within the dynamics of caste oppression and domination. In addition, the mistrust of those from marginalised communities that appear to underlie the contention that intentionally false complaints are a likely outcome of the 2026 Guidelines, may reflect deeply entrenched racial and ethnic stereotypes. Moreover, we observe that the possibility of misuse of human rights protections cannot be invoked to dilute human rights protections and does not undermine the legitimacy of those standards. Any such misuse would be an implementation issue not a normative one, and, in our view, the

³ A/79/316, para. 59.

hypothetical potential for misuse would not undermine the normative legitimacy of the 2026 Guidelines. We underscore that unsubstantiated concerns regarding misuse cannot justify the dilution of protections designed to address entrenched and systemic discrimination.

We observe that the 2026 Guidelines appear to improve on the 2012 Guidelines in relation to the accountability and enforcement mechanisms for caste-based discrimination within universities. The 2012 Guidelines were criticised for lacking both mandatory independent grievance mechanisms for complaints and time limits for handling complaints. The 2026 Guidelines make it mandatory for institutions to set up equal opportunity centres, multi-member equity committees, equity squads and ambassadors for monitoring vulnerable campus spaces, 24-hour equity helplines and online complaint portals. They also establish national oversight of the implementation of the guidelines and a time limit for addressing complaints. We observe that these provisions are aligned with the right to accountability and access to remedy for instances of racial discrimination, inclusive of caste-based discrimination, as enshrined in international human rights law, including article 6 of ICERD. Article 6 of ICERD states that “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions.”

We emphasise that States have an obligation to progressively realise equality guarantees and to refrain from measures that may result in retrogression, particularly where such measures disproportionately affect historically disadvantaged groups. We consider that the 2026 Guidelines provide a regulatory basis for institutional accountability for ensuring freedom from racial discrimination including caste-based discrimination, and upholding equality and inclusion. Their suspension risk creating ambiguity and inconsistency across institutions, which could allow administrations to deprioritise or dismantle equity-related structures. The stay on the 2026 Guidelines, without effective interim measures that ensure protection for all affected communities, could increase the risk of impunity for those enabling discriminatory practices. In light of the above, we are concerned that the continued suspension of the 2026 Guidelines, in the absence of adequate interim protections, may undermine India’s international obligations to ensure equality and non-discrimination in access to higher education.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we 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 observations.
2. Please comment on any adverse human rights implications foreseen, particularly for marginalised communities, related to the Supreme Court’s stay on the 2026 Guidelines.
3. Please comment on any steps taken by your Excellency’s Government to ensure that effective interim measures are adopted to protect all marginalised students and staff, including those from “Other Backward Classes” from discrimination during the pendency of the case.

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.

We would be grateful if the present letter could be shared with all relevant ministries, parliamentary committees, and stakeholders involved in the development and consideration of the 2026 Guidelines.

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

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

Nicolas Levrat

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