

Minority Rights Group International's Submission to CERD on India

With specific attention to Article 5

19th February 2007

This submission will consider political exclusion with relevance to conflict prevention in India. A copy of MRG'sⁱ recent study '*Minority Rights and Conflict Prevention: Case study of Conflicts in Indian Jammu and Kashmir, Punjab and Nagaland*' is attached.

Issues of concern

MRG is deeply concerned about the failure of India in granting empowerment and protection of minorities and in extending participation and representation in practice and draws attention to the effect that political exclusion can and has had in causing conflict in India. In each of Indian Jammu and Kashmir, Punjab and Nagaland the denial of minority rights, in particular the political exclusion of minorities has been a major factor in causing conflict and escalation of violenceⁱⁱ.

India's past and present ethnic conflicts can be explained in terms of centralization of power by the central governments and the denial of democratic rights and power-sharing agreements guaranteed in the Constitution and buttressed by promises made by the Indian Governmentⁱⁱⁱ. In **IJK**, it was renegeing on the Delhi agreement and the gutting of Article 370 of the Constitution; in **Punjab**, crass political interference, manipulation and use of religious polarization weakened inter-ethnic accommodation; in **Nagaland**, forced integration, lack of implementation of Article 371 (A) of the Indian Constitution and militarization led to the conflict.

Segregation among different communities has been increased by the failure of the Indian Government to guarantee and fully implement in a non-discriminatory manner the right to participate in elections^{iv} and to take part in the conduct of public affairs through representation, in particular at local level, as granted by article 5 paragraph (c) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In each of these cases the governments have successively failed to replicate the strategies that have had a positive effect in Tamil Nadu: empowerment and protection of minorities

as well as extension of their participation and representation both vis-à-vis the central government and also within the state itself^v.

The fact that the Indian Constitution and legislation provide the right to take part in elections and to participate actively and passively in political affairs without distinction^{vi} does not guarantee adequate or appropriate implementation.

The wide gap between existing laws and the reality of minorities deserves attention and thus, MRG supports the Committee on the Elimination of Racial Discrimination requesting the Government of India to provide more detailed information on every kind of measure - beyond the legislatives - taken to ensure the right of every citizen to vote and access to polls freely^{vii}, mentioning specifically the implementation of the rights contained in article 5(c) CERD disaggregated by caste, gender, religious, ethnic and indigenous group, including their representation at the central, state and local levels.

In accordance with the recommendations of the Independent Expert on minority issues, MRG reaffirms the right of minorities to participate effectively in decision-making on local or national issues and development plans that affect them or the regions in which they live^{viii}. MRG also emphasises that political exclusion of minorities^{ix} will need to be addressed to overcome and prevent future ethnic, religious and linguistic conflicts.

MRG strongly recommends the Committee on the Elimination of Racial Discrimination to emphasize the necessity for:

1. Separation of powers and non-interference:

The central state government must fulfil its constitutional and international obligations and promote genuine autonomy where granted at the state level, permitting minorities space for taking the decisions that affect them or the regions in which they live. To uphold this commitment, there should be explicit constitutional provision for separation of powers and non-interference of the central government.

2. Full, free and effective political participation and representation of minority communities:

Electoral systems and methods of governance should provide for political participation and representation of all communities (including the smallest and most marginalised) at central, state and local levels. To ensure inclusiveness incentives for political parties and democratic institutions that appeal to all communities across ethnic, religious and linguistic lines should be provided (including for those minorities within a concrete region that belong to communities which conform a majority at national level). Consultative and complaints mechanisms are also needed to help promote minorities concerns and ensure accountability of decision making.

3. Anti-discrimination:

There should be effective anti-discrimination legislation and mechanisms to challenge discrimination at all levels. This should be accompanied special measures where minorities have been excluded.

ⁱ *Minority Rights Group International (MRG), an international non-governmental organization with consultative status with the United Nations Economic and Social Council, works to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote co-operation and understanding between communities.*

ⁱⁱ *Chada, M., Minority Rights and Conflict Prevention: Case study of Conflicts in Indian Jammu and Kashmir, Punjab and Nagaland, Minority Rights Group International, August 2006, pages 2, 8 [in relation to IJK], 10-11 [in relation to Punjab] and 13 [in relation to Nagaland].*

ⁱⁱⁱ *Chada, M., Minority Rights and Conflict Prevention: Case study of Conflicts in Indian Jammu and Kashmir, Punjab and Nagaland, Minority Rights Group International, August 2006, page 5.*

^{iv} *Chada, M., Minority Rights and Conflict Prevention: Case study of Conflicts in Indian Jammu and Kashmir, Punjab and Nagaland, Minority Rights Group International, August 2006, pages 8-9 [in relation to IJK], 11 [in relation to Punjab] and 12 [in relation to Nagaland].*

^v *Chada, M., Minority Rights and Conflict Prevention: Case study of Conflicts in Indian Jammu and Kashmir, Punjab and Nagaland, Minority Rights Group International, August 2006, page 13.*

^{vi} *Periodic Report submitted by India under article 9 of the Convention on the Elimination of all Forms of Racial Discrimination (CERD/C/IND/19, 29 March 2006, paragraphs 73-74) in relation to articles 330 and 332 of the Indian Constitution.*

^{vii} *Questions put by the Rapporteur in Connection with the Consideration of the 15th to 19th Periodic Reports of India CERD/C/IND/19, paragraphs 12 and 13.*

^{viii} *Report of the Independent Expert on minority issues, Human Rights Council 4th Session, 2 February 2007, A/HRC/4/9, paragraph 105 (d).*

^{ix} *A “minority” is a group of people who believe they have a common identity, based on culture/ethnicity; language or religion, which is different from that of a majority group around them. A minority is often, but not always, defined as such with reference to, their position within a country, but can also be defined with reference to a wider (e.g. regional) or narrower area (e.g. by province). What matters is whether the minorities lack power – i.e. the ability to affect the decisions that concern them. It is those minorities that minority rights are designed to protect.*