



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Forty-seventh session

4 – 22 October 2010

Concluding observations of the Committee on the Elimination of Discrimination against Women

India

1. The Committee considered the exceptional report of India (CEDAW/C/IND/SP.1) at its 960th meeting, on 15 October 2010 (see CEDAW/C/SR/960).

Introduction

2. During the State party's consideration of the combined second and third periodic of India (CEDAW/C/IND/2-3) at its 761st and 762nd meetings, on 18 January 2007 (see CEDAW/C/SR.761 and 762), the Committee on the Elimination of Discrimination against Women, in paragraph 68 and 69 of its concluding observations, requested the State party to submit in January 2008 a follow-up report on the impact of the Gujarat massacre on women for the consideration by the Committee later in 2008. At its fortieth session in October 2008, the Committee requested the Secretariat to send a reminder to the State party informing it that its exceptional report was overdue. In February 2009, the Chairperson, on behalf of the Committee, sent a letter asking for an indication of when its submission could be expected. The exceptional report was consequently received in July 2009.

3. The Committee expresses its appreciation to the State party for its exceptional report and for the supplementary material. The Committee however regrets that the exceptional report was long overdue, provided limited and vague information and did not address adequately all the questions posed by the Committee and that the supplementary material reached the Committee only two days prior to the dialogue.

4. The Committee is grateful to the State party for its delegation, which was headed by the Permanent Representative of India to the United Nations in Geneva, but regrets that the delegation did not include a representative from the State of Gujarat, and that the Representative of the Ministry of Women and Child development, did not take an active part in the dialogue. The Committee appreciates the dialogue between the head of delegation and the Committee members, but regrets that most responses were not precise, clear and adequate. Many questions posed were not answered.

5. The Committee notes with great concern that the dominating features in the communal violence which took place in 2002 were acts of violence, including torture,

murder, gang rape, forced nudity, parading women naked, mutilation of breasts and other body parts, insertion of wooden and metal objects into genital parts and other forms of sexual violence specifically targeted women and girls. In that context, the Committee recalls that in its general recommendation No. 19, gender-based violence against women is defined as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention, whether perpetrated by a state official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. General recommendation No. 19 sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation. Paragraph 9 of general recommendation No. 19 makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

6. The Committee, while being cognizant of the complex federal structure of the State party, underlines that the federal Government is under a legal obligation to ensure the implementation of the Convention and to provide leadership to the States and Union Territories in that context. The Committee further recalls the accountability of the state party to implement its obligations under article 2, is engaged through the activities or omission of activities of all branches of government. The decentralization of power does not in any way reduce the direct responsibility of the State party’s federal Government to fulfil its obligations to all women within its jurisdiction.

7. The Committee acknowledges the important role of robust institutions like the National Human Rights Commission and the National Commission for Minorities which investigated some of the issues in the aftermath of the 2002 massacre as well as the vibrant civil society and non governmental organizations, which have tirelessly raised, in the Supreme Court of India, issues pertaining to investigation, trial of cases and rehabilitation of victims.

Positive aspects

8. The Committee commends the State party for the establishment, in 2002, of the Commission of Inquiry headed by a retired judge of the Supreme Court and tasked with inquiring into the causes of the riots and the role and conduct of former high ranking government officials and politicians.

9. The Committee notes the establishment of a Special Cell Committee, headed by the Director-General of Police, which carried out further investigation in the 2017 cases that had been closed and notes that 15 new cases were registered based on the facts which emerged during the scrutiny and tendering of evidence of the re-opened cases.

10. The Committee notes the direction of the judiciary concerning the referral to Advocate General of cases where accused have been acquitted and the decision of the Advocate General to file appeals against all orders of acquittal before the Higher Courts.

11. The Committee notes the compensation, though inadequate, awarded to: the families of 338 women who died (half a million rupees), 326 women as assistance for injuries (40,750 rupees), 480 widows who were given widow pensions and to over 200 widows employed by the Government in its mother and child-care centres.

INVESTIGATION PROCESS

Principal areas of concern

12. The Committee is concerned about the lack of due diligence demonstrated by the State party in promptly investigating the case of violence, including sexual violence against women. The Committee notes with regret that the State party paid no notice to the reports of the National Human Rights Commission and the recommendations pertaining to the investigation, the trial and the relief and rehabilitation measures needed.

13. The Committee notes with concern that the investigations were flawed from the outset as a result of acts and omissions on the part of certain police officials through the refusal and/or failure to record first information reports (FIRs) from women victims, the intimidation of victims and witnesses, the destruction of material evidence, the inadequate recording and investigation of many cases of violence, including sexual violence. The Committee notes with concern that despite reports and petitions filed victims/witnesses and civil society groups concerning the complicity of police officials, the State party only appointed a Special Investigation Team (SIT) in 2008 upon order of the Supreme Court. The Committee also notes that the appointment of the SIT was not done with the utmost diligence as it had to be reconstituted in March 2010.

14. The Committee notes with concern that the State party has not taken any initiatives to properly supervise the conduct of the investigations to ensure its fairness and that it was the National Human Rights Commission which petitioned the Supreme Court to that effect and same resulted in an order directing the State party to reopen 2017 cases.

15. The Committee is concerned that those police officials responsible for the unlawful and motivated closure of the 2017 cases were not adequately held accountable for their wrongful and unlawful obstruction of the course of justice. The Committee is also concerned that criminal actions have not been taken in all cases against those police officials who either actively participated in the riots or failed in their duty by refusing to provide assistance to women and girls in need. The Committee notes that in some cases, only disciplinary actions have been taken and many more have not even been suspended from duty. The Committee further notes that the State party has not taken adequate measures to sanction the unlawful participation of other government officials in the riots and/or their participation in perverting the investigations and/or the course of justice.

16. The Committee is concerned about the inadequate measures taken by the State party to encourage women victims of violence, including sexual violence, to report which has resulted in the gross underreporting when compared to the magnitude of violence perpetrated against women, including sexual violence. The Committee notes the failure of the State party to ensure the safety and security of the women, to provide an enabling and conducive environment, including adequate trauma counselling. The Committee is concerned that as a result, the blame was unfairly placed on the victims for their failure to file reports, even when they were in hospitals or in camps and in a state of shock and trauma. The Committee takes note of reports that even medical personnel were, at times, also biased in a large number of cases leading to lack of medical evidence.

17. The Committee regrets that in the aftermath of the riots, the Government of Gujarat only constituted a three-member Women's Cell composed of women with no expertise whatsoever in trauma counselling and management.

18. The Committee is concerned about the lack of due diligence by the State party as demonstrated by the Commission of Inquiry set up in March 2002 in submitting its first report on the causes of the Godhra riots only in 2008. The second report regarding the role of various political parties has not yet been submitted.

Recommendations

19. The Committee calls upon the State party to urgently discharge its responsibility to act with due diligence to investigate all crimes including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without further delay. In that respect, the Committee urges the State party to:

- a) Act upon the recommendations contained in the 2002 report of the National Human Rights Commission, most of which still remain valid;
- b) Investigate promptly, thoroughly and impartially all reports of cases of police officials suspected of participating in crimes of violence against women as well as of being complicit in the obstruction of justice through sabotage of investigations with a view to holding those found guilty accountable, regardless of their post and position and to take without delay all necessary measures to ensure that perpetrators of such acts are effectively punished;
- c) Ensure scrutiny of evidence by impartial officers of high moral and professional integrity in the 1851 cases filed as “A” summary cases, closed for lack of sufficient evidence, but which can be reopened as and when evidence becomes available;
- d) Ensure that the Special Investigation Team (SIT) is purged of all Gujarat police officials suspected of bias and conduct investigations into complaints of destruction of records and tampering with evidence; and
- e) Put in place measures to build confidence for victims, witnesses and survivors, including the principle of diversity, to help them come forward to fight their case and seek justice.

JUDICIAL PROCESS**Principal areas of concern**

20. The Committee notes with concern that the recommendation of the National Human Rights Commission and other independent fact-finding teams for the need to establish special courts outside the State of Gujarat to ensure fair trial was not retained by the State party. The Committee further notes that it was following petitions filed by the National Human Rights Commission and victims/witnesses supported by civil society groups that two cases have been relocated outside the State of Gujarat, one of which has already yielded positive results, namely resulting into a full conviction after a full acquittal before the Gujarat trial courts. The Committee notes with regret that up to now the State party has taken no initiatives to establish special courts and is placing the onus on the victims and civil society groups to take the necessary initiatives and seize the Supreme Court.

21. The Committee is concerned about reports on the lack of gender sensitivity, hostile behaviour and lack of impartiality on the part of some public prosecutors and judges in the trial courts.

22. The Committee is concerned that, despite legal provisions in the criminal justice laws of the State party, women victims and witnesses have been expressly denied legal representation before the trial courts.

23. The Committee notes with concern the lack of adequate measures to protect women victims/witnesses throughout the judicial process. The Committee is of the opinion that the protection, mainly granted on a group basis by the posting of teams of State Reserve Police and Central Industrial Security Force for protecting entire areas/localities, is inadequate. It

is alarmed by reports that despite some measures taken by the State party to protect victims and witnesses, latter continue to face harassment, threats and intimidation. The Committee is further concerned that some influential accused persons charged with serious offenses of sexual violence who have been granted bail are living in the same locality as the victims and witnesses and are still trying to obstruct the course of justice and that petitions have had to be filed recently before the Supreme Court by some victims/witnesses. The Committee also notes with concern that whenever granted, victims/witnesses protection is immediately removed after completion of the case.

Recommendations

24. The Committee recommends that the State party strengthen its efforts to ensure that justice be done and be seen to be done, that the perception of vindictiveness and efforts to shield the accused persons rather than to seek the conviction of the guilty be eliminated. In that respect, the Committee urges the State party to:

- a) Be proactive and to take all necessary measures and initiatives to ensure that the rule of law is upheld and justice is delivered instead of awaiting for directives from the Supreme Court upon petitions filed by third parties;**
- b) Establish special courts outside the State of Gujarat for the trial of pending cases, where appropriate, and intensify measures to expedite the trial of pending cases, since justice delayed is justice denied;**
- c) Ensure that women victims and witnesses have access to legal representation in order to ensure access to justice and avoid secondary victimization and ensure that legal aid representatives have been duly trained on gender-based violence;**
- d) Restore transparency and accountability in the judicial process through measures that ensure dignified conduct of public prosecutors, lawyers and judges towards victims/witnesses in the courtroom and ensure that the selection of the latter reflect the pluralism and diversity of the State party;**
- e) Strengthen measures aimed at the protection of victims and witnesses during and after the trial, to ensure their confidentiality, to avoid their presence in the court proceedings with the accused, and to that end, to consider the possibility of conducting trials through electronic and video recording and to raise awareness about the possibility for victims and witnesses to avail themselves of such protective measures;**
- f) Implement gender-sensitive training on violence against women for public officials, particularly law enforcement personnel, the judiciary and health-service providers and to ensure that they are sensitized and can respond effectively to all forms of violence against women.**

LEGAL REFORM

Principal areas of concern

25. The Committee notes the statement by the delegation that consultations are on-going with regard to a possible amendment of relevant legislation relating to rape. The Committee also notes the information provided in the supplementary material that amendments are being proposed to the Indian Penal Code and the Criminal Procedure Code through the Criminal Law (Amendment) Bill, 2010, which redefines and broadens the definition of rape to cover sexual assault in a broader manner by proposing to amend Section 375 of the Indian Penal Code. However, the Committee notes with concern that the State party did not provide more detailed information about the content of such amendments or a timeline for

their enactment and it remains seriously concerned about the narrow definition of rape in the current Penal Code.

26. While noting the information provided in the supplementary material in respect of the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, the Committee regrets that the State party did not provide detailed information on the current content of the proposed Bill, including whether the concerns expressed by the Committee during the consideration of the State party's previous periodic report in 2007 have been taken into account and incorporated in the Bill.

Recommendations

27. The Committee reiterates its previous recommendations (CEDAW/C/IND/CO/3, paras. 23 and 25) and urges the State party to:

- a) Accelerate its efforts to widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women;**
- b) Expeditiously enact the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 with the incorporation of: sexual and gender-based crimes, including mass crimes against women perpetrated during communal violence; a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centred procedural and evidentiary rules, and ensure that inaction or complicity of State officials in communal violence be urgently addressed under this legislation;**
- c) Consult widely with women's groups in its process of reform of laws and procedures relating to rape and sexual abuse;**
- d) Provide information on the status and content of the amendments to the legislation relating to rape as well as the proposed Communal Violence Bill, in its next report.**

REHABILITATION, COMPENSATION AND RESETTLEMENT

Principal areas of concern

28. While noting that some information has been provided in the supplementary material, including in respect of some monetary compensation, the Committee expresses its serious concern that gender-specific measures have not been taken by the State party to rehabilitate and compensate women victims of the Gujarat massacre and their families. The Committee is further concerned that the support services for the victims are to a large extent developed and funded by local civil society organizations and aid agencies and not by local, state and national governments.

29. The Committee takes note of the information provided in the exceptional report and supplementary material with regard to assistance provided in the relief camps as well as annexure D with some details of facilities provided to the internally displaced persons. However, the Committee expresses its concern at the limited information and data on the access of the internally displaced families living in 86 colonies to public amenities, such as food ration, safe water, shelter, healthcare facilities and schools for children. In this respect, the Committee expresses its concern at information that most colonies are not equipped with proper and secure housing, safe water supply, electricity, roads and sanitation facilities and that the lack of safe drinking water and poor living condition as well as overcrowding has led to the outbreak of different diseases. The Committee is alarmed that the health needs of women IDPs, including reproductive and mental health needs are not met due to the lower availability and accessibility to health care services.

30. The Committee takes note of some information in the supplementary material on the provision of educational material for children in the relief camps, but regrets the lack of sufficient information on the government sponsored schools for girls in all colonies. The Committee is alarmed at the information that many Muslim children's educational certificates were destroyed during the Gujarat riot attacks and the government has not replaced the certificates neither facilitated the resumption of the children's education.

31. While noting the information provided in the exceptional report and supplementary material on some economic assistance as well as other measures taken by the State party, the Committee expresses its concern at the fact that these measures were mainly in forms of relief support and thus inadequate to enable economic rehabilitation of the affected communities and rebuilding of basic infrastructure destroyed during the riots.

32. The Committee is further concerned at the information that due to remote location of the colonies there is no scope for self-employment for women who had worked prior to displacement and female residents of the relief colonies are unable to take up employment outside camps on account of safety concerns.

33. While noting that some information has been provided in the supplementary material on the State party's resettlement measures in place, the Committee regrets the lack of disaggregated data on the approximately 5,000 Muslim families displaced by the violence in Gujarat. It also notes with great concern that eight years after the Gujarat violence, the displaced persons are still living in the temporary and makeshift colonies in remote and abandoned areas with poor access to livelihood and employment.

34. The Committee is concerned that no measures have been taken to reintegrate women victims of the Gujarat massacre and their families back into the society where they originally belong. The Committee also notes with concern that the State party has not provided information on a timeline for the resettlement process, including steps towards the closing of the 86 colonies in different parts of Gujarat. The Committee is alarmed at the information that the state government, in eight years, has not taken any measures to construct new houses or allocate land in secure locations for the internally displaced women and their families. The Committee notes with serious concern that this situation may lead to further devastation and re-victimization of the victims. The Committee is also concerned at the State party's lack of differentiation between relief measures and long-term rehabilitation.

Recommendations

35. **The Committee urges the State party to:**

a) Take immediate, effective and gender-specific measures to rehabilitate and compensate women victims of violence, including sexual violence, and their families in Gujarat. Such measures should include prompt reparation, including compensation, medical care, trauma counselling, and sustained rehabilitation, commensurate with the harm suffered and sufficient to enable them to rebuild their lives, as well as the establishment of additional support services for these victims, including the provision of further government funding for such services;

b) Take all necessary measures to ensure that the internally displaced families living in all colonies have access to public services, such as safe drinking water, shelter, healthcare facilities and schools for children, that all colonies are equipped with clean water supply, electricity, roads and sanitation facilities and that a plan be created for guaranteeing the right to education, health and employment for women and children in all colonies;

- c) Strengthen its efforts to enable economic rehabilitation of the riot affected women and their families by providing long-term jobs and other means of sustainable economic empowerment, including business capital;
- d) Strengthen and sustain its measures taken for the resettlement and rehabilitation, including long-term rehabilitation for women victims and their families willing to stay in the colonies and to that effect ensure ownership of the land and housing or, alternatively;
- e) Take appropriate measures, as well as provide the means, to allow women victims and their families willing to return to their original homes, to return, in safety and with dignity and to take effective and adequate measures to rebuild the basic infrastructure destroyed during the riots, including through the allocation of further budgetary and human resources to that effect. The State party shall endeavour to facilitate the safe reintegration of returned families. Special efforts should be made to ensure the full participation of returned victims and their families in the planning and management of their resettlement, reintegration and rehabilitation programs. The State party has the duty and responsibility to assist returned victims and their families to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of following the massacre. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

RECONCILIATION

Principal areas of concern

36. The Committee notes that the State party has expressed its decisiveness to ensure that a massacre like Gujarat will never happen again. However, the Committee is concerned at the lack of information provided on any initiatives and/or programmes in place or envisaged to promote truth and reconciliation in Gujarat. The Committee is concerned that a situation where minority women are living in separate colonies might deepen the divide between the ethnic groups in Gujarat and that the Government has taken no measures to integrate women into their previous locations in order to facilitate a gradual closing of the colonies.

Recommendations

37. The Committee calls upon the State party to:

- a) Consider developing, coordinating and establishing a truth and reconciliation commission in Gujarat;
- b) Take appropriate measures to ensure that this process is conducted on the basis of robust engagement and effective leadership, and with the full involvement of women, so as to lead to meaningful reconciliation, genuinely embraced and accepted by both communities;
- c) Take appropriate measures to ensure long-term integration of the affected communities into the previous communities with a view to closing all the relief colonies.

Follow-up to concluding observations

38. The Committee reminds the State party that its combined fourth and fifth periodic report under article 18 of the Convention is due in 2010. The Committee

requests the State party to provide written information on the steps undertaken to implement the recommendations contained in the present concluding observation either in a supplementary report to its combined fourth and fifth periodic report or as a separate submission within one year at the latest, that is by October 2011.
