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RIGHTS OF PERSONS BELONGING TO NATIONAL,
ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Comments received from Governments pursuant to
Commission resolution 14 A (XXXIV)

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BARBADOS

[Original: ENGLISH]

[16 August 1979]

The Government of Barbados supports in principle the drafting of a declaration on the rights of members of minorities and is in general agreement with the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities submitted by Yugoslavia (E/CN.4/L.1367/Rev.1).

The specific comments of the Government of Barbados on the draft declaration are as follows:-

"The principles set out in Article 1 and 2 of the Draft Declaration proposed by Yugoslavia relating to the rights of national, ethnic, linguistic and religious minorities and the human rights and fundamental freedoms of members of minorities are all embodied in the Constitution of Barbados, which also guarantees the enjoyment of those rights and freedoms by all minorities.

Under the Constitution all minorities have the right to take any measures they wish which will enable them to express and develop their characteristics, traditions and customs, and they are free, if they so desire, to take part on an equitable basis, in the cultural, social, economic and political life of the country.

Minorities are expected to respect the laws and customs of the host country, which on its part ensures that its international commitments in relation to minorities are fulfilled."

CYPRUS

[Original: ENGLISH]

[13 September 1979]

The Government of the Republic of Cyprus finds itself in broad agreement with the text of the Draft Declaration proposed by Yugoslavia as it appears in document E/CN.4/L.1367/Rev.1 of 2 March 1973.

Yet the views expressed by the Representative of Cyprus, as they appear in the report of the working group (E/CN.4/L.1467, paras. 6 to 27) 1/ i.e. in paragraphs 9 and 20, continue to remain valid.

1/ Official Records of the Economic and Social Council, 1979, Supplement No. 6 (E/1979/36 - E/CN.4/L.1347), para. 320.

INDIA

[Original: ENGLISH]

[12 March 1979]

1. The Government of India is in general agreement with the conclusions and recommendations of the study prepared by Mr. Francesco Capotorti on the rights of persons belonging to ethnic, religious and linguistic minorities. 2/

2. India has a composite population with numerous religious, cultural and linguistic groups. There are Hindus, Muslims, Christians, Parsis, Sikhs, Jains etc. There are 15 languages recognized in the Eighth Schedule of the Constitution of India. Patterns of culture vary from place to place. India does not have an ethnic minority of foreign origin except in the case of Anglo-Indians who are a minority based on the racial religious as well as linguistic factors. Safeguards for the right of the minorities were provided in Indian Constitution on the recommendation of the Minority Rights Committee of the Constituent Assembly which stated:

"We wish to make it clear, however, that our general approach to the whole problem of minorities is that the state should be so run that they should stop feeling that they are oppressed, by the mere fact that they are minorities, but they have as honourable a part to play in the national life as any other section of the community. In particular we think that it is the fundamental duty of the state to take special steps to bring up those minorities which are backward to the level of general community".

3. It was agreed in the Constituent Assembly that there should be reservation in legislature in proportion to the population of minorities for the reason that if the minority communities feel that their claims for representation in legislature are overlooked, there is bound to be ill-feeling and discontent. Some of the minorities gladly surrendered their rights to reservation of seats, for they wanted neither weightage nor separate electorates but to merge themselves in the nation and stand on their own legs. An eminent member of the minority community, Mr. Frank Anthony had this to say in the Constituent Assembly:

"I believe that today the conditions are a challenge to the minorities. Every wise minority will look forward to the time sooner or later when it will take its place not under communal label or designation but as part and parcel of Indian Community".

4. The unanimity on the point that there should be no more separate electorates was described by Sardar Vallabhai Patel as "a great gain" while introducing the report of the Committee on Minority Rights in the Constituent Assembly. However, seats were reserved in the legislatures, central as well as provincial, for Anglo-Indians and the Scheduled Castes and Tribes so as to allay their fears that otherwise they may not be represented in the legislature.

5. Constitution of India provides specific safeguards in the case of religious, linguistic and cultural minorities. The rights of minorities are protected first by the fundamental rights available to all citizens and secondly by special provisions

in the constitution in their favour. Articles 14, 15, 16 and 30 (2) protect them from hostile and discriminatory state action. Articles 15, 16, 17 and 23 seek to remove the economic and social disabilities of the depressed classes. Articles 25 to 30 provide safeguards for religion, language and culture of minority groups. Besides these fundamental rights, there are a few directive principles of State Policy, (Articles 38 and 46) which are fundamental in the governance of the country and a number of other specific provisions (Articles 330, 331, 332, 333, 335, 350-A and 350-B) safeguarding specifically the social, economic, educational and cultural rights of the minorities.

Ethnic Minority - the Anglo-Indians

6. An Anglo-Indian, according to Article 366 (2) of the Constitution means a person, whose father or any other male progenitors in the male line is or was of European descent who is domiciled within the territory of India, and is/was born within such territory of parents habitually resident therein and not established there for temporary purposes only. They are an extremely small community. Article 331 of the Constitution empowers the President to nominate not more than two members of the Anglo-Indian community to Lok Sabha (the House of People) if in his opinion it is not adequately represented. Similarly, Governors of States can nominate one Member to State Legislatures. The implementation of the safeguards is reviewed by the special officer - Commissioner for the Schedules Castes and Scheduled Tribes, under Article 330 (2) and incorporated in his annual reports.

Religious Minorities - Freedom of Conscience

7. India is a secular state and articles 25 to 30 of the Constitution protect religion and religious practices from State interference. The Supreme Court has been liberal in its approach and interpretation of constitutional provisions in the field of rights of minorities. The freedom of conscience guaranteed under article 25 has been held by the Court to include, not merely the right to entertain any particular religious beliefs, but also to exhibit these beliefs by such over acts, as are enjoyed or sanctioned by one's religion and further to propagate those beliefs for the edification of others. But that freedom is subject to the interests of public order, morality, health etc., and the same does not authorize anyone to outrage the religious feelings of others.

Linguistic Minorities - Cultural and Educational Rights

8. The minorities have the right to conserve their language, script and culture under article 29 (1) and to establish and administer educational institutions of their choice under article 30 (1). The Supreme Court has consistently upheld the fundamental rights of the minorities in respect of their educational institutions and has ensured that the ambit and scope of the rights is not whittled down. The view of the Supreme Court is: the minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the constitution. In a recent case of St. Xaviers Schools vs. State of Gujrat (AIR 1974 SC 1389) reliance was placed on the majority opinion 1935 of the Permanent Court of International Justice in a matter relating to minority schools in Albania.

9. Following recommendations of the State Reorganisation Commission India was divided into linguistic states. Constitutional safeguards have been provided in article 350A to linguistic minorities in all States for the provision of adequate facilities for instruction in the mother tongue at the primary level of education.

10. Under article 350B, a Commissioner for Linguistic Minorities has been appointed to investigate all matters relating to safeguards provided under the Constitution and to report to the President upon those matters. In addition to the safeguards provided in the Constitution and the laws in force, in order to mitigate any feeling of inequality and discrimination among the minorities, the Government of India set up in January 1978 a Minorities Commission to safeguard the interests of minorities.

11. The Minorities Commission consists of a Chairman and four other Members. The functions of the Commission are as follows:

- (i) to evaluate the working of the various safeguards provided in the Constitution and in laws passed by the Union and State Governments for the Protection of Minorities;
- (ii) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards and the laws;
- (iii) to undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the minorities;
- (iv) to look into specific complaints regarding deprivation of rights and safeguards of the minorities;
- (v) to conduct studies, research and analysis on the question of avoidance of discrimination against minorities;
- (vi) to suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the Central or the State Governments;
- (vii) to serve as a national clearing house for information in respect of the conditions of the minorities; and
- (viii) to make periodical reports at prescribed intervals to the Government.

12. Other constitutional provisions are in article 345 under which states can by law adopt the regional language as their official language, in article 347 which enables the President to direct in appropriate cases the use also of minority languages for specified purposes and in article 350 which entitles every person to make a representation for the redress of any grievance to any office or authority in any of the languages used in the Union or in a State. The Governments of four Hindi-speaking states and the Union Territory of Delhi are making provisions for receiving representations in offices and courts in Urdu and for sending replies in Urdu.

13. Under the scheme for development of modern Indian languages, the central government gives financial assistance to voluntary organizations for bringing out publications like encyclopaedias, dictionaries, books of knowledge and books of scientific interest. Grants are given for holding literary conferences, seminars, and exhibitions for the development of Indian languages. Assistance is also given by way of purchasing copies of printed publications. State Governments are given special

help for the production of university-level books in regional languages. A taraqui-e-Urdu (Urdu Promotion) Board has been set up for the production of education literature in Urdu-language. A scheme for publication of such books in Sindhi is also in operation. These two languages are not a majority language in any of the Indian states.

14. From 1979, candidates appearing in Indian Administrative Service and related examinations have been granted the option to answer the question papers in any of 15 languages specified in the Eighth Schedule of the Constitution.

The Scheduled Castes and Scheduled Tribes

15. The scheduled Castes are the depressed sections of the majority community who have suffered for long under various social handicaps. Article 341 (1) of the Constitution empowers the President to specify castes, races or tribes or parts of or groups within castes, races, or tribes as scheduled castes. The criteria adopted is that he should suffer from social handicaps based on the practice of untouchability. The framers of the Constitution were determined to eradicate the scourge of untouchability and to improve the economic and social position of the untouchables.

16. The Scheduled Tribes, also known as aboriginals, are those backward sections of the Indian population who still live in their tribal ways and observe their own customs and cultural norms. They have remained backward because they mostly live in inaccessible regions and have thus been cut off from the main currents of national life. The main problem here was to evolve ways and means of their gradual assimilation in general life of the country without undue and hasty disruption of their way of life.

17. According to 1971 Census about 22 per cent of the country's population comprised of the Scheduled Castes and Scheduled Tribes. Their number is about 80 million and 38 million, respectively. The Constitution provides a number of safeguards for Schedules Castes and Scheduled Tribes either specially or by way of insisting on their general rights as citizens with the object of promoting their educational and economic interests and removing the social disabilities which the Schedules Castes were subjected to. The main safeguards are:

- (i) the abolition of "untouchability" and the forbidding of its practice in any form (Art.17);
- (ii) the promotion of their educational and economic interests and their protection from social injustice and all forms of exploitation (Art.46);
- (iii) the throwing open by law of Hindu religious institutions of a public character to all classes and sections of Hindus (Art.25);
- (iv) the removal of any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public (Art.15);
- (v) the curtailment by law, in the interests of any scheduled tribe, of the general rights of all citizens to move freely, settle in, and acquire property (Art.19 (5));

- (vi) the forbidding of any denial of admission to educational institutions maintained by the State or receiving aid out of State funds (Art.29);
- (vii) permitting the State to make reservation for the backward classes in public services in case of inadequate representation and requiring the State to consider the claims of the scheduled castes and tribes in the making of appointments to public services consistently with efficiency of administration (Art.16 and 335);
- (viii) special representation in the Lok Sabha and the State Vidhan Sabhas to scheduled castes and tribes until 25 January 1980 (Arts.330, 332 and 334);
- (ix) the setting up of Tribes Advisory Councils and separate departments in the states and the appointment of a Special Officer at the centre to promote their welfare and safeguard their interests (Arts. 164 and 338 and Fifth Schedule);
- (x) special provision for the administration and control of Scheduled and Tribal areas (Art.244 and Fifth and Sixth Schedules); and
- (xi) prohibition of traffic in human beings and forced labour (Art.23);
- (xii) grants-in-aid from the Union to certain States for the purpose of promoting the welfare of scheduled tribes and raising the level of administration of the scheduled areas to that of the administration of the rest of the area of the State (Art.275);
- (xiii) exemption to Government from the need to consult Public Service Commissions (Art.320);
- (xiv) power of the Central Government to give directions to the states for drawing up and execution of schemes specified as essential for the welfare of Scheduled Tribes in the States (Art.339 (2)).

18. The Untouchability (Offences) Act, 1955 provides penalties for preventing a person, on the ground of untouchability, from entering a place of public worship, for enforcing any kind of social occupational, professional or trade disabilities and the like. The offences under this Act are cognizable and onus of proving innocence is on the accused. For enlarging the scope and making the penal provisions more stringent, the Untouchability (Offences) Act, 1955 has been amended. The amended Act now known as the Protection of Civil Rights Act aims at plugging the loopholes in the principal Act. The States have been empowered to impose collective fines on the inhabitants of any area where such people are involved in or found to have abetted the commission of untouchability offences. The Representation of People Act 1951, has also been amended to provide that the persons convicted of any offence under the provisions of Civil Rights Act, 1955 would be disqualified from contesting elections to the Parliament and the State Legislatures.

19. In the Lok Sabha, out of 542 seats, 73 seats are reserved for scheduled castes and 38 for scheduled tribes. In the lower houses of state legislature out of 3997 seats, 540 seats are reserved for scheduled castes and 282 for scheduled tribes. In the services, for the scheduled castes, reservation is 15 per cent of the vacancies for which recruitment is made by open competition on an all-India basis and 16 $\frac{2}{3}$ per cent of the vacancies to which recruitment is made otherwise. For the scheduled tribes, the reservation is 7 $\frac{1}{2}$ per cent in both cases. Similar reservation is made for promotion. The state governments also have framed rules for reservation of posts for these classes and taken steps to increase their

representation in the state services. The scheme of reservation is also being followed in the public sector undertakings and in voluntary agencies receiving grants from Government.

20. The responsibility for investigating all matters relating to the safeguards provided in the Constitution for Scheduled Castes and Scheduled Tribes is vested with a Special Officer appointed by the President. He is known as the Commissioner for Scheduled Castes and Scheduled Tribes. The Commissioner investigates all matters relating to the safeguards provided for the scheduled castes and scheduled tribes under the Constitution and reports to the President upon the working of these safeguards every year. The report is laid before both houses of Parliament and all political parties take keen interest in the debates on this report.

21. However, considering the magnitude of the problem, it has been felt that instead of having a single officer reporting on the safeguards, it will inspire greater confidence if matters relating to the scheduled castes and scheduled tribes are entrusted to a commission consisting of persons of eminent status. Accordingly, the Government have set up a Commission for the Scheduled Castes and Scheduled Tribes consisting of a chairman and four members. The Government have since introduced the constitution (6th amendment) bill to give constitutional status to the Commission for Scheduled Castes and Scheduled Tribes and the Minorities Commission.

22. In addition a 30-member Standing Committee of the Parliament consisting of 20 members from Lok Sabha and ten from Rajya Sabha has been constituted to examine the implementation of the constitutional safeguards for the welfare of the scheduled castes and scheduled tribes. This Standing Committee is successor to three parliamentary committees set up by Government of India in 1968, 1971 and 1973.

23. The Government are of the view that the real protection of these weaker sections lies in their improved economic standards. In the sixth plan, a new strategy has, therefore, been adopted for the uplift of the scheduled castes and scheduled tribes. Greater emphasis will be placed on the role of the general sector for providing a major thrust to the development of backward classes. Programmes in the Rural Development sector will be of a catalytic nature and will be supplemental to the general sector programmes. The scheduled castes will be largely benefited by the minimum needs programme. In this programme priority will be given to scheduled castes and scheduled tribes and for this purpose general norms will be relaxed for meeting the special requirements of backward classes and tribal areas.

QATAR

[Original: ENGLISH]

[23 July 1979]

After the consideration of the documents of the thirty-fifth session of the Commission on Human Rights, concerning the rights of persons belonging to national, ethnic, religious and linguistic minorities by the competent authorities, the Government of the State of Qatar has no comments to submit on the subject matter.

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SAN MARINO

[Original: ITALIAN]

[3 July 1979]

The Secretariat of State for Foreign Affairs of the Republic of San Marino does not have any comment to make about the contents of this draft declaration (E/CN.4/L.1367/Rev.1).

SEYCHELLES

[Original: ENGLISH]

[10 July 1979]

The Government of Seychelles has no comments to make on the draft Declaration
h is proposed by Yugoslavia (E/CN.4/L.1367/Rev.1).

TUNISIA

[Original: FRENCH]

[12 September 1979]

The principles set out in the draft Declaration (E/CN.4/L.1367/Rev.1) do not raise any objection on the part of the Government of Tunisia.

In accordance with the terms and provisions of the Tunisian Constitution, the rights of individuals belonging to the minorities referred to are solemnly proclaimed, on an equal footing with the rights and duties of all citizens, to whom the Constitution guarantees full respect for the values constituting their individuality in the exercise of freedom of conscience, opinion and association.

The Tunisian Constitution also deals in its provisions with the protection of minorities in the exercise of freedom of worship.

Moreover, in its day-to-day policy, the Tunisian administration attaches great importance to the maintenance of constitutional values entirely for the benefit of the individual, without any consideration of a discriminatory character.

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