

COMMISSION ON HUMAN RIGHTS

THIRD SESSION

COMMENTS FROM GOVERNMENTS ON THE DRAFT INTERNATIONAL  
DECLARATION ON HUMAN RIGHTS, DRAFT INTERNATIONAL  
COVENANT ON HUMAN RIGHTS AND THE QUESTION  
OF IMPLEMENTATION

1. COMMUNICATION RECEIVED FROM INDIA

1st May 1948

Sir,

I have the honour to refer to your letter No. SOA-17/1/01/JH, dated the 9th January 1948, and to forward herewith a note containing the comments of the Government of India on the Draft Declaration on Human Rights, the Draft Covenant on Human Rights, and the Question of Implementation contained in Annexes A, B and C of the Report of the Commission on Human Rights - Second Session.

/GOVERNMENT

GOVERNMENT OF INDIA'S COMMENTS

Covenant on Human Rights Annexure B of document E/600.

Article 1. Substitute "civilised nations" by "principles of law recognised by Members of the United Nations".

Article 2 (a). It will not be possible to guarantee all rights in part II of Covenant to persons other than citizens of State. Government of India do not favour application of Article 17, 18, 19 and 20 to persons other than citizens of State.

Article 8. Reference to conscientious objectors should in our view be omitted altogether. Specific exclusion of conscientious objectors from compulsory military service laws as contemplated in Article 8 (3) (a) may rather tend to encourage conscientious objection in time of war and in any case experience of last two wars shows that number of conscientious objectors was not too large and did not require any special protection. We also think that Article 8 3(c) should be omitted as such a provision might be interpreted to justify exactions of labour often made from backward communities under pretext of communal services.

Article 9. The list of cases justifying arrest should be treated as illustrative and not exhaustive.

Article 10. Should not apply to contractual obligations undertaken by any individuals towards State.

Article 11. The principle of this Article is most important condemning as it does restriction on movements and residential segregation within a State. As at present drafted however it leaves loophole to governments to apply such restrictions and segregation in "general interests" which is a wide term. Government of India is strongly of the view that this Article should be redrafted as to leave no manner of doubt and would therefore suggest that expression "for specific reasons of security or in the general interest" should be substituted by "for specific purpose of security in a state of emergency or for prevention of epidemics".

Article 12. This article should read as "No alien legally admitted into the territory of a State shall be expelled therefrom except in accordance with procedure prescribed by law".

Article 13. To clause (2) may be added a sentence "Such public trials may be dispensed with when considerations of security or public morals are involved".

Article 14. Clause (2) is vague and seems unnecessary to provide for and may be omitted. Cases like war crimes can be dealt ad hoc by victorious powers whenever they arise in future.

Article 15. The meaning and purpose of this Article are not understood. It may be omitted.

/Article 24.

Article 24. Clause (2) is in our opinion inappropriate. It ignores the fundamental fact that in States with Federal constitution it is Federal Government which always speaks for the whole country in foreign affairs and binds the State as a whole to treaty obligations. If this clause stands Governments may avoid their obligations undertaken by Covenant on the ground that they had no jurisdiction over the federal units in particular matters. In our view the only sound proposition tenable in international law is that an acceding state should bind the state as a whole irrespective of its internal constitution and Article 24 should be amended to give effect to it.

Article 25. For the same reasons we strongly object to this Article in its present form. If it is allowed to remain the benefits of Covenant may be denied to persons in colonies where they are in most need of its application. This Article should also be amended so as to make it clear that ratification by metropolitan power binds not only metropolitan territory but all other territories such as colonies, trust territories and protectorates for administration of which such metropolitan power is responsible.

2. IMPLEMENTATION: We agree with conclusion of working group on implementation subject to the following comments:

(a) The Standing Committee idea is a very good one and should be tried for the purpose not of arbitration but conciliation. A single Standing Committee however will not be adequate and should be supplemented by regional committees.

(b) While Government of India have no objection to establishment of an International Court of Human Rights they consider that we need not set up such Court in hurry. We should first try the machinery of Standing Committee with regional committees and watch the results.

(c) We have no objection to individuals and associations petitioning Secretary-General but suggest that Standing Committee should take notice only of such complaints regarding violation of human rights as affecting a community or a body of persons generally and not of individual grievances which it is open to individual to agitate before the Court of Justice in his own country.

(d) Nothing will be achieved by having an implementation clause in Covenant if our suggestion of a Standing Committee only for the time being is accepted.

E/CN.4/82/Add.7  
Page 4

3. These are our provisional comments on more important Articles of Covenant and on question of the implementation. We reserve our right to make further comments and suggestions through our Representative at the forthcoming session of Human Rights Commission.
  4. We generally agree with Draft Declaration subject to such modifications as may be necessary in the light of our comments on Covenant.
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