

India¹'s review in the Working Group
Tuesday 8 April 2008, Afternoon 2.30 pm – 5.30 pm
Analytical summary

The Troika

The members of the Troika selected for the review of India are: Indonesia, the Netherlands and Ghana.

Presentation by India

Speaking time: 32 minutes

*Delegation introduced by H.E. Swashpawan Singh, **Ambassador/Permanent Representative of India***

*Presentation made by H.E. Mr. Goolam E. Vahanvati, **Solicitor General of India** as well as by Mrs. Manjula Krishnan from the Ministry of Women and Child Development.*

- Consultations for the preparation of the report: the delegation stated that the national report of India had been prepared through a process of wide national consultation with all stakeholders, among them the National Human Rights Commission and the National Law School in Hyderabad as well as relevant Ministries and Departments of the Government, legal experts and non-governmental organizations (NGOs).
- Legislative measures: the delegation highlighted the role of the Indian Constitution, which prohibits any form of discrimination and abolishes “untouchability” (which is considered by the delegation as not being a form of racial discrimination as it does not have racial origins). The Constitution’s chapter on fundamental rights also secures protection of minorities and the right to religion or belief. The Protection of Human Rights Act of 1993 established the National Human Rights Commission. The Right to Information Act, allows citizens to demand information on government officials and decision-making.
- Other measures: right to access to the Supreme Court, reference to outstanding case-law on interpretation of the right to life; existence of an Election Commission of India ensuring the conduct of free and fair elections; rural development programmes; women are reserved one-third of all seats in urban and local self-government; National Commission to protect the interest of minorities, Ministry of Minority Affairs and programme on minorities’ welfare; Ministries for Social Justice and Empowerment and for Tribal Affairs; support for the Declaration on the Rights of Indigenous People with the position that after independence, all people in India, including tribal people, are indigenous; comprehensive educational programme to achieve 100% coverage in primary schools; National Rural Employment Guarantee Programme to ensure the realization of the right to work. The National Human Rights Commission is an independent body headed by the chief justice, with its own independent investigation tasks. It is a recommendatory body but the Government has complied with most of its recommendations.
- Challenges: **terrorism**, which is a violation of basic human rights and should be fought internationally and in respect of human rights commitments; challenges exist due to the large size and population as well as due to the transition from a colony to a independent nation; **poverty**.
- The delegation also reiterated its commitment to freedom of speech and free media notwithstanding its occasional aberrations.
- Responses to questions that had been submitted in advance. **Women’s rights**: legislation and policies have been enacted to protect women against domestic violence, discrimination in the workplace, child marriages, trafficking and prostitution; schemes have been set up for economic and social empowerment, including programs to empower self-help groups; mobilization and protection of women in distress with the setting up of shelters; scheme for protection of trafficking and rape victims; programmes for education of girls in rural areas; prioritization of women’s health; schemes to extend micro-finance funds for women. **Children’s rights**: the Convention on the Rights of the Child has been ratified and the Government is implementing the world’s largest child-care programme; a Juvenile Justice Act has been passed in order to better care for children in difficult circumstances; legislative and

¹ India is a member of the Human Rights Council

other measures taken against child labor, including awareness programmes also in collaboration with corporate houses and industries.

Interactive dialogue

Number of countries that took the floor

42 countries took the floor during the interactive dialogue: **25 members States of the Human Rights Council** (United Kingdom, Ghana, Canada, Brazil, Mauritius, Russian Federation, Malaysia, China, Cuba, the Netherlands, Saudi Arabia, Germany, Bangladesh, France, Republic of Korea, Mexico, Nigeria, Italy, Switzerland, South Africa, Azerbaijan, Sri Lanka, Egypt, Slovenia, Qatar) and **17 non member States** (Bhutan, Singapore, Belgium, Luxembourg, USA, Algeria, Latvia, Venezuela, Iran, Nepal, Ecuador, Palestine, Syria, Sweden, Tunisia, Israel, Morocco).

Questions/issues raised and answers provided by the delegation

Torture

- Ratification of the Convention against Torture (CAT) and its optional protocol (United Kingdom, France, Mexico, Switzerland, Sweden, Nigeria)

On the issue of the ratification of CAT, the delegation responded that India having signed the Convention, it is committed to it. Also, the Penal Code contains clear provisions on torture and case-law also issued guidelines on detention that are applicable throughout India. No specific indication was given as to the State's position on the Optional Protocol.

Children's rights

- Ratification of ILO conventions 138 and 182 (Brazil, Sweden)
- Children's rights promotion measures (Brazil, China, Azerbaijan – children education in rural areas, Slovenia – corporal punishment, Israel – children with disabilities, Qatar)
- Child labor (the Netherlands – which had previously submitted questions on this, Germany, USA, Italy)

Besides the references made to children's rights in the presentation of the report, no answer was given on corporal punishment nor on the situation of children with disabilities. The delegation did not comment on the question as to whether the State will ratify ILO conventions 138 and 182.

No additional information was provided on the question of child labor.

Special Rapporteurs' visits – standing invitations (Switzerland, Latvia)

*Although the delegation does not agree to the concept of **standing invitations** of Special Rapporteurs, they said that India is open to visits and has been inviting Special Rapporteurs whenever approached. The delegation declared that The Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the Right To Health were recently in India and the Special Rapporteur on Toxic Waste will visit the country soon.*

Enforced disappearances (ratification of the Convention) (Nigeria)

The delegation stated that the ratification process is being considered at the national level.

Communal violence Bill (United Kingdom)

No answer was given on this question.

Police action/police force and impunity

- Armed Forces Special Service Act of 1985 (United Kingdom, Canada, Germany)
- Excessive use of police force and police impunity (Canada)
- Police/Government corruption (USA)
- Impunity (Belgium, Republic of Korea)

On the 1985 Act, the delegation responded that all laws, including special laws that are design to help in the fight against terrorism, are always subject to judicial reviews and the Constitutionality of the 1958 Act has been upheld by the Constitutional Bench of the Supreme Court. Armed forces are held responsible for human rights violations and special trainings are carried out.

As for Canada's comment that armed forces would function with impunity, the delegation held that such comment is totally off the mark. No specific answer was given on Government corruption.

On the impunity issue, the delegation held that there is no impunity in India.

Dalits and caste-based discrimination (United Kingdom, Canada – requested disaggregated data on caste-related segregation, as follow-up to CERD's recommendations, Singapore, Belgium, the Netherlands, Luxembourg, Germany – special concern on violence against Dalit women, USA, France, Italy, Azerbaijan)
In responding to Canada's and Germany's mentioning of the CERD in this respect, the delegation stated that it does not recognize caste discrimination as racial discrimination.

Also, the delegation said that statistics on scheduled castes and tribes are available.

Civil society

- General question on civil society's role (Saudi Arabia, Iran)
- Limitations to civil society's role (Canada – asking about the Foreign Contribution Regulation Bill 2006)

On the Foreign Contribution Regulation Bill 2006, the delegation explained that Foreign Contribution Regulation Bill 2006 aims at consolidating the law and regulating the acceptance and utilization of foreign aid for bona fide activities in order to prohibit the use of the same for any activities that would be detrimental to the national interest.

Women's rights

- Women's rights promotion and discrimination (Brazil, China, the Netherlands, Italy, Slovenia – inequality of property rights in marriage and gender perspective in UPR, France)
- Violence against women (USA, Republic of Korea)

No specific answer was given on women's rights promotion and discrimination, nor on violence against women.

Inequalities (Azerbaijan)

No specific answer was given on this issue.

Sexual orientation (Sweden)

On the question posed by Sweden regarding homosexuals, the Indian delegation specified that this is an offence in the country, as a sexual offence against the order of nature.

Measures to combat extreme poverty (Brazil)

No specific answer was given on this issue.

Vulnerable groups' protection (Russia, France, South Africa)

No specific answer was given on this issue.

Internally displaced persons (Azerbaijan)

See answer given on religious minorities and religious violence.

National Human Rights institutions and programmes (Malaysia, Belgium, France, Azerbaijan)

No additional information was provided on this issue.

Role of the judiciary in the promotion of Human Rights (Syria)

As for Syria's question on the role of judiciary in protecting human rights, the delegation responded that the judiciary is the watchdog of human rights and that no court in the world is as accessible as the Indian ones.

Plan of Action on Human Rights in India (Mexico)

No specific answer was given on this issue.

Minorities (Saudi Arabia, South Africa)

See answer on religious minorities

Protection of Migrants (Indian communities abroad) (Morocco)

No specific answer was given on this issue.

Indigenous and tribal peoples

- Indigenous peoples (Republic of Korea)
- Tribal communities (United Kingdom, France)

On the Republic of Korea's question on indigenous people, the delegation held that tribes are in 'forest areas' and no land can be diverted from forest use and populations resettle without approval of the forest survival committee and the approval of the Supreme Court.

Right to food (Luxembourg, South Africa)

No specific answer was given on this issue.

Progressive realization of human rights (Nigeria, Algeria)

The delegation declared that schemes for rehabilitation and reemployment and community development for those who will be affected by economic development are being implemented by providing opportunity through education. The aim is to achieve 100% primary education by 2010.

Promotion of social and cultural rights (Ecuador, Palestine)

No specific answer was given on this issue.

Freedom of opinion and expression (USA)

No specific answer was given on this issue.

Freedom of religion/religious minorities and religious violence (United Kingdom, USA)

Minorities, said the delegation, enjoy special status and the right to choose their own institutions and to keep their own religious structure. The Anti-Conversion law is designed to check and regulate 'forced conversions'.

*On religious minorities and religious-based violence, the delegation held that the underlying cause is the long-standing opposition of Hindus to Christians' demands to be categorized as a "scheduled" tribe. Disturbance resulted in victims and destruction of property, however the situation is now under control and the Government has ordered a judicial probe. Also, the 2142 persons who were living in **relief camps** have been all provided a rehabilitation package, especially to those whose houses have been damaged.*

Human rights education (Bangladesh, Azerbaijan – especially among security forces and police)

On human rights education, there is a new scheme (which started in 2005), called 'National legal literacy mission' to make ordinary and disadvantaged people aware of their legal rights.

Right to information 2005 law (Egypt, Russia)

No specific answer was given on this issue.

Right to health (Venezuela)

No specific answer was given on this issue.

Right to development (Iran)

No specific answer was given on this issue.

Recommendations and answers provided by the delegation

NOTE: Though the delegation declared that it will consider the suggestions in due time, some of the recommendations were responded to during the interactive dialogue. Thus, the delegation only directly responded to two recommendations.

The **UK, Mexico, Nigeria, Switzerland and Sweden** recommended that India ratify both the CAT and its optional protocol as soon as possible. The **UK** also recommended that civil society be involved in the follow-up to the session.

Ghana recommended that the Government cooperate with all stakeholders in the pursuit of human rights goals.

Brazil and the Netherlands recommended that India consider the ratification of ILO conventions 138 and 182; **Brazil** also recommended the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Belgium and Luxembourg recommended the delegation to provide detailed statistics on castes in order to carry out detailed analysis and better planning in order to solve the problem of discrimination against Dalits. *The delegation said that statistics on the position of scheduled castes and tribes are available.*

Mexico recommended that the National Action Plan for Human Rights mentioned in the State's report, be drafted as to define targets and indicators for purposes of assessments.

Italy recommended the strengthening of human rights education instruments in order to tackle caste-based discrimination.

Latvia and Switzerland recommended that the delegation consider extending invitations to all Special Procedures of the Human Rights Council. **Switzerland** recommended in particular that India authorize the Special Rapporteur on torture to visit the country.

On the visits by Special Procedures, although the delegation does not agree to concept of standing invitations of Special Rapporteurs, it said that India is open to visits and has been inviting Special Rapporteurs whenever approached. The delegation declared that The Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the Right To Health were recently in India and the Special Rapporteur on Toxic Waste will visit the country soon.

Concluding statement

Speaking time: 5 minutes

The delegation was satisfied by the debates and reiterated that suggestions made during the discussion will be given serious consideration.

States that made solely welcoming statements

The following countries made welcoming statements and did not raise any substantial issues/questions.

Mauritius; Cuba; Nepal; Sri Lanka (also highlighted India's achievements despite the separatist insurgencies in the Northeast); Tunisia.

Human Rights mentioned in the NGOs reports but not raised during the review

Human Rights Defenders, Enforced Disappearances (except for the convention), Detention Conditions, Counter-Terrorism (pre-trial detention, torture and ill-treatment), Extra-judicial executions, Targeted killings, Arbitrary arrests and detentions, International Humanitarian Law, Refugees.

Human Rights mentioned during the review but on which India did not give a response

Ratification of the Optional Protocol to CAT; Ratification of ILO conventions 138 and 182; Communal violence Bill; Government corruption; Women's rights promotion and discrimination; Violence against women*; Inequalities; Measures to combat extreme poverty; Vulnerable groups' protection; Corporal punishment against children**; Children with disabilities **; National Human Rights institutions and programmes***; Plan of Action on Human Rights in India; Protection of Migrants (Indian communities abroad); Right to food; Promotion of social and cultural rights; Freedom of opinion and expression; Right to information 2005 law; Right to health; Right to development.*

** Note: the delegation did not respond to other States' questions on these issues although it had previously talked about them during the presentation of the report and of the answers to the questions it has received in advance.*

*** Note: **other** aspects of children's rights (notably child labor) were addressed during the presentation and the provision of the answers to the questions it has received in advance.*

**** Note: the delegation had talked about some of these issues during the presentation but did not provide the clarifications asked by other States during the interactive dialogue.*

Speaking times

India

- Opening Statement: 32 minutes
- Answering questions: 26 minutes
- Final remarks: 5 minutes

Other States

Generally, member States spoke for 3 minutes and non-members for 2 minutes.

However, France, a member of the Council, only took 1 minute to make its intervention, while Germany (also a member) took 4 minutes.

Disclaimer: this summary is by no means exhaustive as it is just an indication of the discussion that took place during the review and should therefore not be quoted as an official document of the UPR process.