

ANNEX I
JOINT STAKEHOLDER REPORT FROM IAMC-AHR-JTSA
27TH Session of the Working Group on the Universal Periodic Review

HOW SERIOUS IS INDIA'S HUMAN RIGHTS COMMITMENT?

An Assessment of India's Record at UPR 2008 and 2012

FINDING: *Despite extensive reporting of widespread human rights violations in India carried out by State agencies as well as non-State actors, placed on record at both UPR 2008 and 2012 by Civil Society Organizations and U.N. Treaty Bodies, the Government of India failed to acknowledge even the existence of such abuses, leave alone offer any commitment to work for their eradication.*

RECOMMENDATION: *Government of India acknowledge the existence of widespread human rights violations in India by State agencies as well as non-State actors, as reported by Civil Society Organizations and U.N. Treaty Bodies at both UPR 2008 and 2012, and make specific commitments to eradicate such violations by law enforcement and judicial action against the perpetrators.*

The year 2017 will mark the beginning of the third cycle of the Human Rights Council's (HRC) Universal Periodic Review (UPR) since its launch nearly nine years ago. Since then, the record of human rights in India has been reviewed twice under UPR: first in 2008 and the last in 2012. For 2017, India is placed among the 14 countries whose review in April-May will launch the third cycle.

In both previous cycles, one of the highest numbers of submissions from civil society organizations (CSOs) were seen in the case of India in its group. For India, the HRC received 37 stakeholder submissions for 2008 and 51 for 2012. The actual number of CSOs that made the submissions both times was much higher since quite a few were joint submissions made by two or more entities.

While certainly a record number of CSOs, not just from India but from across the world, can be expected to submit their reports with regard to human rights in India for the 2017 cycle, it would be wholly consonant with the original purpose of the UPR to begin this submission with an assessment of the influence, if any, the UPR has been able to bring on the Government of India to make amends.

Sadly, the responses of the Government of India vis-à-vis both the UPRs of the past have been far from encouraging. On both occasions the Government's reports failed even to acknowledge an overwhelming number of the many issues raised by the numerous submissions by CSOs or even the U.N. Treaty Bodies. Indeed, the Government of India ignored most questions asked of, and recommendations made to, it by several reviewing countries in both 2008 and 2012.

Most submissions, including the one made by us in 2012, reveal a state of dire emergency across the length and breadth of India, indicating that the human rights of India's "dumb millions" – to borrow Mahatma Gandhi's description – are being violated, systemically and systematically, every single day by both State agencies and non-State actors with impunity, offering little succour for the victims.

2008: CSO Report Extensive Abuses

According to the HRC summary of stakeholders' submissions in 2008, India was one of the few countries in the world steadfastly refusing to sign a slew of progressive U.N. treaties and conventions such as the ICRMW, CED, CEDAW-OP, Rome statute of International Criminal Court, Convention Against Torture, ILO Convention on Indigenous and Tribal Peoples. Submissions detailed how that Government of India was resisting implementing the recommendations of the Paris Principles with regard to the National Human Rights Commission (NHRC), an independent statutory quasi-judicial body enacted by Parliament into existence 23 years ago.

Appointments to the NHRC are made by the government which therefore make it vulnerable to political influence and, as has been seen in several cases in the past, even political control. Indeed, the NHRC cannot even investigate complaints against the Indian military against whom allegations of sweeping human rights violations ranging from abduction, rape and even murder are legion.

Submissions took note of the fact that Government of India continued to "display an unwillingness to cooperate with U.N. Special Procedures". Or that "despite the existence of laws protecting human rights, India has failed to properly implement laws and policies to protect its marginalized communities, particularly Dalits, tribal groups, religious minorities, women and children".

Also put on record was Government of India's failure to act decisively against a whole range of human rights violations. To name a few: female foeticide; segregation of Dalits, denying them access to places of worship, electricity, water, education, and medical care; systemic attack on land rights of the Adivasis (tribals), many of whom are on the "verge of extinction"; "persecution, stigmatization and marginalization" of religious minorities in the "economic, social and political spheres".

Apart from the widespread victimization of Muslims in terrorism-related cases whereby thousands of innocent Indian Muslims were named by police as accused in such cases only to be acquitted later, submissions also wrote extensively about the discrimination in Gujarat state against thousands of Muslims rendered refugees by sectarian violence in 2002 by Hindu zealots connected with the Bharatiya Janata Party (BJP), the political party of the then Gujarat Chief Minister Narendra Modi who is now India's Prime Minister. The HRC summary noted that there were "wide-scale reports of social and economic boycotting of Muslim communities in Gujarat and as many as 5,000 families are living in "relief colonies" without basic amenities or recognition from the government of Gujarat".

Yet more submissions wrote of widespread extrajudicial killings – murders – by police and prison officials. Various submissions drew attention to the abhorrent and widespread practice of the police killing alleged criminals in what are claimed to be shootouts with those criminals – known in India euphemistically as "encounter killings", an overwhelming majority of which are widely believed to be cold-blooded murders of unarmed citizens, which has spawned the term "fake encounter".

Yet more submissions spoke of the various patently anti-democratic and draconian laws such as the Armed Forces Special Power Act (AFSPA) and the Public Safety Act (PSA), which have both been extensively used as cover by the Indian military and paramilitary organizations to carry out massive human rights violations against the citizens of the northern state of Jammu and Kashmir as also in India's northeast, both places where secessionist insurgencies have festered for decades.

The HRC summary wrote under the AFSPA, "the normal methods of 'investigation' have been replaced by disappearances, illegal detention, custodial torture, sexual violence against women and

summary executions disguised as armed encounters". One submission wrote: "In almost every police station of India 'accused' persons are routinely beaten and abused. Investigations show that the majority of the so-called 'criminals' who are tortured and abused in the police stations are poor, belonging to the communities of Dalits, tribals and minority religions like Islam and Christianity".

The summary wrote that the "Indian criminal justice system is marked by extremely clogged courtrooms, lengthy delays at trial, and more significantly, corruption". It noted there was "virtual impunity for 'public servants' and politicians and that the culture of impunity exacerbates human rights violations as the public officials consider themselves beyond the reach of the law". While investigations of deaths in custody, are "mandatory", the approach is to "cover up... "a series of Indian laws also make it difficult or impossible to prosecute abusers employed by the state".

Most other issues raised by various submissions referred to severe threats to freedoms of religion and belief, expression, association and peaceful assembly, as also the right to participate in public and political life. The constitutional mandates for every citizen to avail her right to social security and to an adequate standard of living, including right to education, too, were being routinely violated.

2008: Government's Unsatisfactory Response

But the Government of India's response to the vast trove of information on human rights violations provided by the CSOs (as well as by reviewing countries and U.N. treaty organizations) was totally off tangent. Believe it or not, an extensive 16-page "National Report" submitted by the Government of India to the HRC ahead of the UPR session made absolutely no mention of the issues outlined above.

Detailing at length India's constitutional guarantees, affirmative legislative and executive initiatives, and even the fact of India's economic progress, the "National Report" raved how India's commitment to development had created an "infrastructure of law and commercial accounting [that] is conducive to modern business, and there is dynamism in many areas of advanced technology". But how is that relevant at all for the widespread abuse of human rights?

The only instance of human rights violations that the Government of India's "National Report" referred to was "terrorism", which, it said, "aided and abetted from outside has emerged as a serious challenge for India". It went on to say that "terrorists are the biggest violators of the most basic of human rights, the Right to Life... The very same liberties and freedoms which democracies guarantee also tragically make them most vulnerable to misuse and assault".

So, basically in the telling of the Government of India, there was no issue with extrajudicial killings by law enforcement and prison officials, torture, discrimination against Dalits, tribals and religious minorities. The only human rights violations in India were being caused by terrorists from "outside".

As if this was not enough, the Government of India, subsequent to the UPR session and in response to the recommendations made by reviewing countries thereat, virtually refused to even acknowledge many of those recommendations, opting to respond to a select few that merely required India to express its commitment to protecting human rights in a general manner.

Whereas several countries raised concerns about AFSPA as well as India's failure to ratify the U.N. Convention Against Torture and several ILO conventions, India's response to the recommendations skirted around such concerns. On AFSPA, the Government of India's delegation at the UPR, in fact,

claimed that since the Supreme Court of India had upheld the validity of the law, there was no need to repeal it. It also claimed that all instances of abuses and violations under AFSPA were “expeditiously dealt with”. This, of course, flies in the face of mounting evidence to the contrary.

2012: Damaging Indictment by NHRC

Four years later, India’s second UPR in 2012 strongly evoked a sense of déjà vu. The HRC’s summary of the CSO submissions that year was a repeat of 2008. It must raise serious doubts about the intentions of the Government of India if the years between the two UPRs recorded no action by it to mitigate the chronic abuse of the human rights of millions of citizens it is sworn to protect.

In fact, in 2012, even the NHRC, which has often courted wide criticism for controversially siding with dubious accounts of law enforcement agencies and even the government of the day, wrote a stinging submission strongly suggesting that the Government of India may not be serious about intending to bring an end to human rights violations and punishing their perpetrators.

Wrote the HRC summary: “According to NHRC, there was no evidence that India intended to ratify CED [Convention Against Enforced Disappearances]. Enforced disappearance was not codified as a criminal offence in domestic law, nor was extant provisions of law used to deter the practice.”

With regard to the Prevention of Torture Bill 2010, a legislation that aimed to criminalize torture by law enforcement authorities and was passed by the lower house of Indian Parliament, the NHRC wrote that it was referred to a Select Committee in the Upper House of Parliament, which “strengthened” its provisions. However, the NHRC said “if the Bill eventually adopted diluted the revisions proposed by the Select Committee, India’s commitment to the CAT [Convention Against Torture] would be called into question. Eventually, the law never passed. Torture is rampant.

The NHRC’s submission exposed the utter lack of sincerity on the part of the Government of India on curbing human rights violations. It said that the Government had given the NHRC “no additional powers or greater resources; the State Human Rights Commissions were mostly moribund; and few human rights courts had been set up. The HRC summary further noted: “The NHRC reported that there was still no national action plan for human rights. There was little progress in strengthening human rights education and almost none of the States in India had given education priority.”

The Government of India had also not moved an inch on the recommendation made by several countries in 2008 that it provide disaggregated data on “caste and related discriminations. NHRC believed such data was essential in key areas of: crimes committed against women and children from the Scheduled Castes and Scheduled Tribes; violence against women other than rape; bonded labour, child labour and manual scavenging; custodial violence, illegal detention and torture”.

The NHRC called out the Government’s inaction on various fronts. “India’s reports were delayed or it had not reported to treaty bodies,” The HRC summary noted quoting NHRC. “NHRC was unaware of a follow-up process to the UPR... With respect to civil and political rights, NHRC stated that the implementation of the law, the weakness of new Bills and the law’s delay were areas of concern.”

Indeed, continuing its damaging indictment of the Government’s failures, the NHRC submitted that while in 2006 India’s Supreme Court issued seven binding directives for police reforms “little had been done, although the need was urgent. Custodial justice remained a problem. Jails were

overcrowded and unhygienic, disease rampant and treatment poor. NHRC indicated that 67% of prisoners were pre-trial, unable to raise bail or confined far longer than they should be because of the huge backlog of cases... 35% of the complaints to the NHRC annually were against the police..."

The NHRC also called out the Government's attempts to silence whistle-blowers. Wrote the HRC summary: "The focal point set up in the NHRC for the protection of human rights defenders received complaints that several, including those working on minority rights and the rights of the scheduled castes and tribes, faced harassment in several States, including arbitrary detentions."

A most damaging of the NHRC's assertions was on AFSPA, which the Government of India steadfastly defended in its "National Report" in 2008, as noted in the previous section. "NHRC reported that AFSPA remained in force in Jammu and Kashmir and the North-Eastern States, conferring impunity that often led to the violation of human rights, despite India reporting in 2011 that it did not face international or non-international armed conflict situations," the HRC summary said in 2012.

"NHRC reported," the HRC further wrote, "that in the areas controlled by the Naxal movement [armed Maoist insurgency termed Left-Wing Extremism, or LWE, by the Government] human rights have become even more parlous: governance and the rule of law rarely functioned. Villagers were the victims of Naxal violence, and collateral damage in the counterinsurgency operations."

A stunning revelation was that "bonded labour continued and was taking new forms. NHRC had received reports of bonded labour being used to execute defence projects..." On manual scavenging, which is barred by law, the NHRC said that not only had the "degrading practice continued. Some States were in denial over this. The Indian Railways were the largest users of manual scavengers."

2012: CSOs Detail Huge Gaps

We have already written of the Prevention of Torture Bill 2010 and how it was given a burial. But even that draft was hopelessly weak or vague on several counts. A submission by the International Commission of Jurists (ICJ) suggested that the law incorporate "provision for criminal liability for public officials and superior and commanding officers". Several submissions demanded that India codify both enforced disappearances (ED) and extrajudicial killings as offences under criminal law.

Many others wrote submissions nearly identical to the submissions on 2008, because clearly the Government of India had made little or no effort in addressing those issues. India's refusal to invite U.N. Special Procedures and Special Rapporteurs or signing and ratifying various U.N. conventions and treaties, such as OP-CEDAW to various ILO conventions was once again brought on record.

Amnesty International bluntly wrote AFSPA "granted security forces, in specified areas of armed insurgency, powers to shoot to kill in situations where they were not necessarily at imminent risk". It spoke of nearly 800 extrajudicial killings in the north-eastern Manipur state during 2007-10, and of 2,700 "unmarked graves" in Jammu and Kashmir. In West Bengal, the Border Security Force, a paramilitary, "had been responsible for extrajudicial killings at the Indo-Bangladesh border".

On torture, quoting a study one submission said "1.8 million people were victims of police torture and ill-treatment in India every year... the practice of torture was widespread; perpetrated in all forms of custody; condoned in conflict areas; and was a common technique for criminal

investigations. Successful prosecution for torture was extremely low". Another said the police were being "increasingly militarized in conflict areas and given charge of counterinsurgency operations".

Submissions spoke of the urgent need for India to bring in police reforms. Remember that Supreme Court of India had already, in 2006, issued seven binding guidelines for police reforms. As part of the process to bring justice to victims of police violence, submissions urged India to "vigorously investigate and prosecute officials who order, commit or tolerate human rights violations, including torture, custodial killings, faked armed encounter killings, and enforced disappearances".

Our own submission called out the amendments to the Unlawful Activities Prevention Act (UAPA), brought about in the wake of terrorists attacks in the city of Mumbai in November 2008, that, said the HRC summary, "reintroduced elements of earlier anti-terrorism legislation that had been broadly condemned". We had suggested, as the HRC noted, "revising the definition of terrorism to be consistent with international law; ensuring that police training in counterterrorism operations included respect for due process, non-discrimination, and humane treatment".

Indeed, the submission by IAMC-AHR-JTSA in 2012 was a detailed exposition on the architecture of human rights abuses against Indian Muslims by police and other law enforcement agencies across India, with regard to the cases of terrorism. By citing numerous cases our submission established beyond doubt how the police frame innocent Indian Muslims in terror cases, mostly on fabricated or non-existent evidence, leading to their incarceration for years, sometimes longer than a decade.

Our submission had made detailed recommendations on the urgent need for the government to end this horrendous illegality; provide rehabilitation by way of employment as well as financial damages to the victims; prosecute police officers implicated in such frame-ups; and much more.

2012: Government Ignores All

Of course, the Government of India responded to the numerous submissions by the CSOs as well as to the one by the NHRC in much the same way it had done in 2008. One, it refused to even acknowledge that such submissions had indeed been made. And two, it fully ignored their contents, avoiding to accept that all the human rights violations and abuses listed therein indeed existed.

Its "National Report" patted the government on its back for taking a large number of legislative and executive initiatives over the years to ameliorate the grievances of the masses. It is ironic though that while it highlighted the existence of the "autonomous" NHRC saying that it "reflects our continuing commitment for effective implementation of human rights", it failed to address the issues the NHRC brought to UPR to express its deep dissatisfaction with the Government's record.

Once again, the only violation of human rights that the Government of India recognized was the "brunt of terrorist activities over the last three decades from across the border". It dwelt at length on the LWE, calling it an "internal challenge", saying that "through a combination of development and security related interventions" it can solve the LWE problem. Once again, it totally ignored the intense reporting, by the NHRC as well as other independent CSOs, of the widespread abuse by police and the paramilitaries of the human rights of the common citizens in the LWE affected areas.

Even more stunningly, the Government's "National Report" claimed that AFSPA had "been considered necessary to deal with serious terrorist and insurgency militancy situations". Contrary to

all evidence, and without citing any corroborating data, it claimed that “an analysis of the ground realities shows that the violence levels and the fighting ability of terrorists have reduced over the years” with the use of AFSPA. It bluntly said that “as long as deployment of armed forces is required to maintain peace and normalcy, AFSPA powers are required”. Once again contrary to all evidence and public experience, it claimed that “the investigations of violations [of AFSPA] are carried out swiftly and in a transparent manner and exemplary punishments are meted out to those involved”.

Even the lone data it provided reveals a lot about the government’s intentions in those inquiries. It wrote that between 1994 and 2011, it had received 1,429 complaints against the personnel of the Indian Army and the paramilitary forces, and found 1,332 of them to be false complaints. Of course, it failed to mention that none of those inquiries had ever included independent investigators.

The Government’s claims, in fact, are so without any relation to the reality and actual experiences on the ground. For example, it claims that Indian courts have been awarding compensation to victims of illegal detention, that “no person accused of any offence can be compelled to be a witness against himself”, that “an arrested person must be produced before the nearest magistrate within 24 hours of his arrest”, among others. The report could well be talking about another country.

Indeed, the 22-page “National Report” goes on about a variety of issues, ranging from housing and sanitation to education and health, without ever once acknowledging that massive human rights violations against hundreds of India’s millions are being carried out on a daily basis as was reported to the UPR in 2012. In the interest of brevity, it may not be possible to quote at length from it.

But at least once para from it must be quoted to show how facetious the Government’s efforts were at UPR in 2012. As we note above, the NHRC lamented the Government’s utter inaction in spreading human rights education. The “National Report”, however, blissfully claims that the “NHRC has continued to play an active role in raising all round human rights literacy and awareness...”

RESOLUTION

So that UPR 2017 does not become an exercise in futility where once again the Government of India refuses to acknowledge the existence of widespread human rights abuse and violations in India, it must be first and foremost urged to accept that indeed such abuse and violations are rampant in India and that it has a most crucial role to play in eliminating them, and that playing such a role would require it to make sweeping changes in law and its execution, not the least by way of institutionalizing checks and balances that prevent the perpetrators from continuing as before.