

PRELIMINARY ASSESSMENT OF THE IMPLEMENTATION OF THE RECOMMENDATIONS MADE TO THE GOVERNMENT OF INDIA IN ITS FIRST UNIVERSAL PERIODIC REVIEW



OCTOBER 2011

This chart presents a brief assessment of the government's implementation of the recommendations that came out of India's first Universal Periodic Review in 2008. The recommendations and the responses of the Government of India have been lifted verbatim from the Report of the Working Group on India (UN document: A/HRC/8/26/Add.1, dated 25 August 2008). The current status of implementation and further measures required have been compiled by the Working Group on Human Rights in India and the UN (WGHR). This is not an exhaustive account of implementation, but provides a preliminary assessment and identifies gaps to the extent possible. To note, several recommendations are very broad, and require extensive and long-term measures for implementation which are too lengthy for a chart. These have been commented on very briefly. This assessment has been prepared as a background document to assist discussions at the national workshop on India and the UPR held in Delhi on 4 and 5 April 2011 and has been updated for the UPR regional and national consultations organised by WGHR between August and October 2011.

S. No.	Recommendation	Response of India	Current status:	Further measures required:
1.	Expedite ratification of the Convention against Torture (United Kingdom France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom);	The ratification of the Convention against Torture is being processed by Government of India.	Domestic legislation (The Prevention of Torture Bill 2010) was drafted by the government and passed by the Lok Sabha (Lower House of Parliament) in May 2010 without any open consultation. Human rights groups held that the Bill did not conform to CAT and launched a campaign aimed at rectifying this. Consequently, in August 2010, the Rajya Sabha (Upper House) referred the Bill to a Parliamentary Select Committee. The Committee took into consideration submissions by human rights experts and drafted an alternate Bill that more closely aligns with the Convention.	<i>The Select Committee has to present its re-drafted Bill to the Rajya Sabha. As the Bill has been totally altered, it has to be placed before and passed by both Houses of Parliament. It is crucial that there is no dilution of the Bill as amended by the Select Committee. Any dilution will stand foul of India's obligations under CAT and undermine meaningful ratification.</i>
2.	Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom);	Government of India accepts this recommendation	There have been no debriefing session or consultations with civil society after the first UPR in 2008. However, government representatives attended and participated actively in a national workshop on the UPR organised by civil society in April 2011. During the workshop, the government said it would consider posting the draft of its UPR II national report on the website of the Ministry of External Affairs (MEA) and invite comments from civil society. As of now, there is no official information on whether the government is holding regional or national consultations in the run-up to UPR II.	<i>The government should initiate public efforts to hold regional and national broad-based consultations on the UPR with civil society. As discussed at the UPR workshop, the government should also post a draft version of its national report on the MEA website well before the deadline for submission and invite comments from civil society.</i>
3.	Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);	Government of India accepts this recommendation	This is a broad recommendation which requires a sustained approach on many levels, including at the levels of the judiciary and the national and state human rights institutions.	<i>In brief, WGHR suggests that any further action to "energize" existing mechanisms is geared towards strengthening institutional responses. Close attention should be given to the appointment procedures to ensure independence and autonomy of these institutions, in line with India's pledge at the UN GA regarding the independence of national human rights institutions.</i>
4.	Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals(Ghana);	Government of India is committed to continue its constructive engagement with international human rights bodies and relevant stakeholders in its pursuit of realization of all human rights for all.	This is a broad recommendation which requires a sustained approach on many levels. The recent announcement by the GOI to extend a standing invitation to special procedures is a very good step. However, the delay in the GOI's reporting to treaty bodies, in particular to the Human Rights Committee, is an issue of concern.	<i>In brief, WGHR recommends that the government strengthens the level and quality of engagement with both domestic and international human rights bodies, and increases consultation on human rights issues with all relevant stakeholders. The GOI should submit all its reports to treaty bodies in time, in line with India's pledge at the GA to cooperate with UN treaty bodies. It should submit its long overdue report to the Human Rights Committee at the earliest.</i>
5.	Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);	Extensive disaggregated data, including on caste, are available in the public domain.	Some of the key areas where disaggregated data on caste is missing are: (i) crimes committed against SC and ST women; (ii) position of employment in the private sector and entrepreneurship; and (iii) access to health and civic amenities. Regarding crimes against SCs and STs, the existing data don't reveal the true nature and extent of violence as many crimes against SCs don't fall under the NCRB's official category of "crimes against SCs". For example, there is no official disaggregated data on: custodial violence, illegal detention, torture, violence against women other than rape, bonded labor, child labor, manual scavenging (no data available at all).	<i>It is strongly recommended that the government monitors through its surveys the current practices of caste-based discrimination (CBD) as well as economic and social conditions of communities affected by CBD, disaggregated gender wise.</i>

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6.	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil);	The Constitution of India provides for direct access to the Supreme Court and High Courts for redressal of violations of any fundamental right, for any individual or group of individuals. In addition, we have several other statutory mechanisms to address such violations including the National Human Rights Commissions and the State Human Rights Commissions. There is also a separate National Commission and State Commissions for Women which inter alia have a mandate to address cases of violations of women rights. There exists, therefore, effective legal and constitutional framework to address individual cases of violations within India.	There is still no move from the government to sign and ratify the CEDAW Optional Protocol (OP).	<i>WGHR fully supports signature and ratification of the CEDAW Optional Protocol (OP). The OP provides mechanisms to enhance state compliance to CEDAW. It is a remedy available where justice remains wanting despite exhaustion of all domestic remedies, and not prematurely or in substitution of domestic remedies. The recommendations of CEDAW under the OP typically provide structural solutions, and cannot be viewed as being parallel to or substituting the domestic mechanisms available for addressing discrimination against women.</i>
7.	Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child (to which India is a party) as well as the ILO Conventions No. 138 and 182 (which India is yet to ratify). India fully recognizes that the child has to be protected from exploitation of all forms including economic exploitation. Towards this end, Government of India has taken a wide range of measures including prescribing minimum age of 14 years for employment in hazardous occupations, as domestic helps, at eateries as well as in certain other areas. Regulatory provisions regarding hours and conditions of employment have also been made. Recently, a National Commission for the Protection of Child's Rights has been set up for speedy trial of offences against children or of violation of child's rights. The present socio-economic conditions in India do not allow prescription of minimum age for admission to each and every area of employment or to raise the age bar to 18 years, as provided in the ILO Conventions. Government of India remains committed to progressively implement the provisions of Article 32 of the Convention on the Rights of the Child, particularly paragraph 2 (a), in accordance with its national legislation and international obligations.	The government has yet to ratify ILO Conventions No. 138 and 182. Not only is there is very poor implementation of the law in the newly prescribed 'hazardous' sectors, but the current child labour law itself stands in direct violation of the Constitution and a child's fundamental right to education. The National Commission for the Protection of Child Rights is a Commission, not a court; and hence does not have the power to conduct speedy trials.	<i>Current inconsistencies within all child-related laws need to be addressed immediately. The government needs to invest in child labour elimination programs, better child tracking systems, inter-departmental coordination and convergence of services, legislative provisions to regulate placement agencies and other such measures. There needs to better functioning of Child Welfare Committees, proper rehabilitation of rescued children, and prosecution of the accused employers.</i>
8.	Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society (Mauritius);	Government of India accepts this recommendation	WGHR has no information on this.	<i>WGHR has no information on this.</i>
9.	Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child. India fully recognizes that the child has to be protected from exploitation of all forms including economic exploitation. Towards this end, Government of India has taken a wide range of measures including prescribing minimum age of 14 years for employment in hazardous occupations, as domestic helps, at eateries as well as in certain other areas. Regulatory provisions regarding hours and conditions of employment have also been made. Recently, a National Commission for the Protection of Child's Rights has been set up for speedy trial of offences against children or of violation of child's rights. The present socio-economic conditions in India do not allow prescription of minimum age for admission to each and every area of employment. Government of India remains committed to progressively implement the provisions of Article 32 of Convention on the Rights of the Child, particularly paragraph 2 (a), in accordance with its national legislation and international obligations.	The government admits child labour is undesirable, but claims poverty and ignorance perpetuate it. It also admits child labour-related laws are poorly enforced. Current official thinking holds it is "not realistic" to ban all child labour.	<i>The legal scenario has changed as being at school and not at work is now a Fundamental Right for all children (Art. 21A) backed by a powerful "Right to Free and Compulsory Education Act, 2009". The logical corollary to this far-reaching change in the legal regime is for the GOI to revisit its earlier declaration and follow it up by amending "The Child Labour (Prohibition and Regulation) Act, 1986" in order to make it fully compliant with the new Fundamental Right.</i>
10.	Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria);	India is committed to the realization of the right to development of all its people and is pursuing this by providing an environment for inclusive and accelerated growth and social progress within the framework of a secular and liberal democracy.	While it is true that the government is aware of the urgent need for inclusive development, the government has not addressed the root causes that are responsible for exclusion. This is leading to deepening growing economic and social inequities even while a strong economic growth rate is sustained.	<i>The root causes of exclusion are embedded in the current economic growth model. The government must consider revisiting the current model. The alternative is to achieve growth through social justice which has never been given any serious consideration.</i>
11.	Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico);	Government of India accepts this recommendation	The National Human Rights Commission (NHRC) has been tasked with drafting a national action plan for human rights (NAP). In 2008, the NHRC stated that the NAP was under preparation and that a draft would be circulated to members of the NHRC core group of NGOs for comments. However, the process seems to have been abandoned, with no visible outputs.	<i>WGHR strongly recommends that the NHRC monitors the implementation of recommendations made by UN treaty bodies and special procedures. It is strongly suggested that the government requests the NHRC to prioritise the drafting of a NAP. The finalisation of this plan, however, has to be based on broad-based consultations with civil society across India.</i>

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12.	Ratify the Convention on Enforced Disappearances (Nigeria);	India signed the Convention for Protection of All Persons from Enforced Disappearance on the day it opened for signature last year. The process of its ratification is underway.	Although the GOI stated that the process of ratification was “underway”, there are no signs of a process of ratification, despite large-scale enforced disappearances in the country. The government is also yet to undertake an attempt to codify enforced disappearance as a criminal offence in domestic law. Existing provisions are not being used to penalize those implicated in enforced disappearances. In cases where initial progress is made, the government does not grant the required sanction to prosecute security forces personnel.	<i>The government should expedite the process of ratification of the Convention on Enforced Disappearances. Echoing recommendations by UN treaty bodies and national commissions, WGHR also joins the demand of civil society for the repeal of the Armed Forces Special Powers Act.</i>
13.	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);	Government of India recognizes the role of human rights education in combating discrimination. India has adopted a National Action Plan for Human Rights Education to promote awareness about human rights among all sections of the society. Specific target groups, such as schools, colleges and universities, have been identified and human rights education has been made part of curricula. Government officials, armed forces, prison officials and law officers are also being sensitised to the protection of human rights. Regular training programmes are organized by the National Human Rights Commission as well as State Human Rights Commissions. Awareness campaigns are also run by NGOs.	There is no official proof of a national action plan of action for human rights education being in place. The government did not respond to the evaluations after the UN decade for human rights education, as well as after the implementation of the first phase of the UN World Programme on human rights education in 2010.	<i>The development of a national policy and action plan for human rights education in schools is urgently required. The Ministry of Social Justice and Empowerment needs to incorporate human rights education as a component in all its special schools and hostels.</i>
14.	Extend standing invitation to special procedures (Latvia, Switzerland);	India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.	The GOI has announced in September 2011 that it was extending a standing invitation to special procedures. WGHR very much welcomes this significant step. The government already demonstrated commendable openness and support during the recent visit of the UN Special Rapporteur (SR) on the situation of human rights defenders to India.	<i>WGHR urges the GOI, nevertheless, to ensure that there are regular visits of Special Rapporteurs to India, including in priority mandates that have made repeated requests. For example, Working Group on Arbitrary Detention (5 requests); SR on Extrajudicial, Summary or Arbitrary Executions (4); SR on Sale of Children (3); and SR on Racism (2).</i>
15.	Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);	India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.	The Special Rapporteur on Torture made a request in 1993, followed by reminders in 2007 and 2010. As far as we are aware, there has been no response as yet from the government.	<i>Given the fact that custodial torture remains endemic in India, it is crucial for the government to allow the Special Rapporteur on Torture to visit India and demonstrate the same openness that was shown to the SR on human rights defenders</i>
16.	Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);	Government of India accepts this recommendation	Although the government has accepted this recommendation, no consultations or reviews with civil society organisations to discuss the process of integrating a gender perspective have been organised following India’s first review.	<i>It is crucial to integrate a gender perspective in the UPR process, so that women’s concerns are well represented, and thereby addressed. WGHR strongly recommends that the government prioritises the holding of consultations with civil society organizations, and women’s groups in particular, at the earliest.</i>
17.	Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee’s general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia);	With regard to Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered will not invalidate the marriage particularly in India with its variety of customs, religions and level of literacy.	It must be noted that this recommendation is tied to India’s declarations to articles 5 (a) and 16 (1) of CEDAW. There has been no follow-up on these recommendations to date.	<i>As stated by the CEDAW Committee in 2007, the GOI is strongly recommended to withdraw its declarations to articles 5 (a) and 16 (1) of CEDAW, and also review its policy of non-interference in personal laws. It is clarified here that the Special Marriage Act 1954 is a secular law, not a personal law. Thereby, the policy of non-interference does not apply to the Act. <i>On compulsory registration of marriages, it is agreed that it is undesirable, because it would exclude women whose marital status is not clear such as live-in and common law partners. We express concern and call the government’s attention to the spate of state level regulations pursuing compulsory registration of marriages that has been underway (in accordance with the Supreme Court judgment, Seema vs. Ashwani Kumar (2006) 2 SCC 578).</i></i>
18.	Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one-fifth of the world’s population to be well fed, well housed, well cared for and well educated (Tunisia).	The Constitution of India seeks to secure to all its citizens “justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (of status and of opportunity); and to promote among them fraternity assuring the dignity of the individual and the unity and integrity of the Nation”. Legislative and administrative measures of the Government of India are guided by this objective. In this context, the Government of India accepts the recommendation made.	This is a broad recommendation which requires a sustained approach on many levels.	<i>The extensive range of measures needed to fulfill this recommendation require a comprehensive “indivisibility of human rights approach” at all levels of government. Given India’s disturbing socio-economic realities, a sustained effort to implement economic, social and cultural rights, including the right to food, housing, education and health, is required. Details of measures needed to achieve this enormous task are too extensive to be summarized here.</i>

