

**SUBMISSION FOR THE UNIVERSAL PERIODIC REVIEW
(13TH SESSION 2012)
OF THE HUMAN RIGHTS COUNCIL
CHILD RIGHTS AND YOU – CRY (INDIA)
28 NOVEMBER 2011**

SECTION 1: INTRODUCTION - THE METHODOLOGY AND THE BROAD CONSULTATION PROCESS

Children constitute more than forty per cent of India's population and are prone to many vulnerabilities arising out of their age and non participation in the affairs of the State and Communities. They are also vulnerable as they cannot have any network or pressure group of their own as any child is never a child forever as he/she grows up to become an adult after eighteen years of age. Also, the networks and lobby groups of marginalized sections of the society are represented by adults and the negotiations on human rights of sections of the society like women, dalits, tribals, religious minorities are not able to address specific children issues. The national and international human rights instruments that function on the principle of inclusion and affirmative action and positive discrimination do not specifically mention children, and their problems get either lost altogether or inadequately addressed due to aggregation with the issues of other marginalized groups. This necessitates submission to the Human Rights Council from an organisation working specifically for children's rights.

Process – CRY had consultative process leading up to the preparation of this submission, where it had a meeting for brainstorming on the content and then a draft was prepared. It was then circulated within the organisation to all State Managers who got inputs from the NGO partners that are supported by CRY across 22 States in India. Based on these inputs and feedback from CRY's Management Committee this report was finalized.

SECTION 2: THE CURRENT NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE COUNTRY

- a. Incomplete Ratification of UNCRC – India had ratified the UNCRC in 1992 with a reservation on the Article 32 of the UNCRC where the Government of India said that it will ban all forms of child labour progressive manner and in accordance to the resources available. Nineteen years thence it still holds on to the reservation.

In the light of the Children's Right to Free and Compulsory Education Act, 2009, through which all children in the age group of 6 to 14 years have a right to education, the Government of India must amend its core legislation on Child Labour – Child Labour Prohibition and Regulation Act, 2006 to bring it in conformity with the Children's Right to Free and Compulsory Education Act, 2009 and thus not allow for any form of child labour without any distinction of 'hazardous' and 'non-hazardous' labour. There are instances where children are combining school and work and thus are not seen as a violation of the Children's Right to Free and Compulsory Education Act, 2009, but from a child rights perspective the well-being of the child get seriously compromised in such circumstances.

- b. India's ratification of the UNCRC and non-conformity of Indian Laws with respect to Child Labour

In the light of India having ratified the UNCRC, it should accept the principles of evolving capacities of the child and best interest of the child and recognize that all children up to the age of eighteen years must attend regular school and their involvement in any form of labour be made illegal by law. This would mandate an amendment in the Merchant Shipping Act, 1958, Motor Transport Workers Act, 1961, Apprentice Act, 1961, Bidi and Cigar Workers Act, 1966, Plantation Labour Act, 1961 and Factories Act, 1958 to bring the minimum age to allow work as eighteen years.

- c. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – India was under the process of ratification at the time of last UPR in 2008 and is still in the process of ratification.

The Prevention of Torture Bill, 2010 introduced by the Ministry of Home Affairs seeks to provide punishment for torture committed by public servants or with their consent.

The Prevention of Torture Bill, 2010 that is not in conformity with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The definition of torture (a) is inconsistent with the definition of torture in the Convention against Torture, (b) requires the intention of the accused to be proved, (c) does not include mental pain or suffering, and (d) does not include some acts which may constitute torture.

There is no independent authority to investigate complaints of torture, and no provision for granting compensation to torture victims has been made.

This has serious implications for children if they are the ones who face torture at the hands of government officials. Even as children have right to lodge complaints and seek redress before a court or other relevant authority without parental consent and also to give testimony in court, in civil and criminal cases, Section 118 of the Indian Evidence Act states that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving answers to those questions by virtue of tender age.

Unless a special provision is made for children in the Prevention of Torture Bill, 2010 for children, they will not be able to get justice as the acceptance children's competency to testify and report is not uniformly established by law.

Mandatory admission of the reporting by the relevant authority - it should be mandatory for the police to admit and file all such reporting of torture and initiate immediate and appropriate action, failing which, the Prevention of Torture Bill, 2010 should have provisions for appropriate punishment while giving adequate redressal time and space for the concerned government official also.

The Corporal Punishment is now banned in the Schools but incidences of torture of children are still rampant at other places like Children Homes, Observation Homes, Hospitals and other institutional set ups which have interface with children and/or have residential care for children. These should be sought to be addressed by the Prevention of Torture Bill, 2010.

The Armed Forces Special Power Act, 1958, currently imposed in some States of India is also not in conformity with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and thus should be looked into from a child rights perspective. Due to AFSPA, 1958, children of those States of India have to face problems in availing services for their well-being and also a violation of the rights bestowed on them through Constitution of India and ICCPR and ICESCR.

SECTION 3: THE IMPLEMENTATION AND EFFICIENCY OF THE NORMATIVE AND INSTITUTIONAL FRAMEWORK

India has the Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006–No. 43 of 2006] for implementation of the framework for the promotion and protection of Human Rights. Apart from making statements for setting up the Commissions and enlisting the powers and duties of the Commissions it does not make any mention of Human Rights of people in India.

Only 12 States have State Human Rights Commission. NHRC has still not been able to draft a National Action Plan for Human Rights.

- a. The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). It was also provisioned that all the States to have State Commissions for Protection of Child Rights. But, till date only 11 States and 1 Union Territory has State Commission.
- b. The NCPCR and SCPCR do not have independent functioning with limited or no mechanisms for carrying out independent investigations and have to depend on the investigative agencies under the executive for investigation, thus limiting and curbing its capacity to function as Ombudspersons for children and child rights. Therefore, we recommend that National and State Commissions for children are set up as Constitutional bodies accountable to the legislature with no influence from the executive.
- c. After the enactment of the Children's Right to Free and Compulsory Education Act, 2009, it was mandatory for the States to have State Rules. But till 15 March 2011, only 11 States had notified State Rules thereby seriously impeding the implementation of the provisions of the Act.
- d. The RTE Act 2009 does cater to children below six years of age and between fourteen and eighteen years. There is a need for the Act to cover these age groups as well.

SECTION 4: KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS THAT THE STATE SHOULD UNDERTAKE

a. Portrayal of children in Media – Exploitative and Degrading Portrayal

In mid-December 2008 the Committee on Petitions of the upper house of Parliament (Rajya Sabha) focused its 132nd report on a petition regarding the alleged misuse of the right to freedom of speech and expression by both print and electronic media and the need to restrict this under Article 19 [2] of the Constitution. Giving its opinion on a variety of media issues the Committee came out in favour of statutory regulations to cover the media – both print and electronic – in the larger interests of society.

According to the Committee, “Self-regulation is an ideal situation but it may not be effective to regulate the media, particularly in the scenario of growing competition amongst the channels for supremacy in the business of ratings. The Committee is, therefore, in favour of having statutory regulations in place covering the print and electronic media, in the larger interest of the society, on the model of the Press Council of India vested with more powers. The Committee understands that the Government has proposed to put in place the Broadcasting Regulatory Authority of India (BRAI) under an Act of Parliament and a new Content Code to be issued thereunder. The Committee expects the Government to address all the issues raised by it, while going ahead with the proposed legislation. The Committee hopes that the proposed Broadcasting Services Regulation Bill will incorporate the views of all concerned and the same introduced in Parliament without further delay.”

We wish to bring to the notice of Human Rights Council that BRAI should be put in place immediately under an Act of Parliament that should address the issues of exploitative and degrading portrayal of children in media – news and entertainment.

b. Missing Children

According to a Hindustan Times¹ report, 60,000 children were missing in India in 2010. According to our observations, a high percentage of children missing belong to poor, marginalised communities living in slums, resettlement or unauthorised colonies.

After an analysis of the situation present in the three states, the following glaring gaps can be identified:

- High level of discrepancy in the official numbers of missing children collected from police stations and those through RTIs. This could be attributed to the fact that the police might want to show a low percentage of the crimes being committed in their districts.
- The relatively small number of FIRs lodged lies in the way such cases are handled at police stations

¹ Hindustan Times (2011), ‘7 children go missing every hour’, <http://www.hindustantimes.com/7-children-go-missing-every-hour/Articles1-664869.aspx> (Accessed on 19/07/011)

- The time lag in information dissemination to other police stations in other districts/states, even when the complaint is filed on time. And no effective linkages with other district- and state-databases.

In a public hearing organized in Delhi by CRY the main recommendations of the jury are enumerated below and we would like bring to the notice of Human Rights Council:

- The Standard Operation Procedures on Tracing Missing Children to be simplified and translated to be shared with partner organisations and community members. Additionally, provide a critique of the SOP, get it modified and have all the States of India adopt it.
- Make it a mandate for all police stations to put up the protocol on the notice boards for the general public. Missing children progress report should be made transparent as well.
- There is need for a centralized database that should be managed by NCRB with inputs being received from the district to the state. The NHRC has made a committee that has raised the issue of missing children. Protocols and information on missing children should be put together in a systematic manner.

c. Malnutrition of Children

Life, health and certainty of food access and consumption should be seen as a right and governance imperative arising out of the constitution of India. The Prime Minister of India has declared malnutrition to be ‘national shame.’

With the high rates of inflation since 2008, especially food price rise, the poor have been becoming more and more vulnerable to food insecurity and are theoretically under constant risk of health failure, morbidity and mortality. Children are at a higher risk as their capacity to absorb nutritional or health shock is less.

There is no mention of agricultural production in The National Food Security Bill Hence the result is a Bill that only covers the territory marked for the food ministry — the public distribution system (PDS). The Bill has restricted the meaning of food to food grains. Thus, it has confined its objective to removing hunger though two successive National Family Health Surveys in 1998-99 and 2005-06 (NFHS II and III) have established malnutrition and anaemia as two chronic problems in the country, responsible for the spiraling mortality and morbidity rates among children below six years and mothers.

Among the many omissions in the government draft are the definitions of a child, of malnutrition and of severe child malnutrition. The Ministry’s draft of the Bill has no provisions for ‘appropriate therapeutic foods’ and special care at nutrition rehabilitation centre for severely acute malnourished children.

We recommend that the Food Commission under the National Food Security Bill be established with independent authority to ensure implementation through strict monitoring and accountability mechanisms.