

**PRESS RELEASE****Constructive Engagement Still Elusive at India's Second Universal Periodic Review at the UN**

**New Delhi, May 29, 2012** – India's human rights record was reviewed by the UN Human Rights Council (HRC) under the mechanism of the Universal Periodic Review (UPR) on 24 May 2012 in Geneva. The review was marked by a general lack of acceptance of human rights challenges in the country and a mere reiteration of domestic laws, policies and Constitutional provisions by the Government of India (GoI). Regrettably, the answers of the government did not address critical issues related to gaps in implementation of laws and enjoyment of rights, with India's Attorney General (who led the government delegation) stating in his opening address that, "*India has the ability to self-correct*". According to Miloon Kothari, Convenor of the Working Group on Human Rights in India and the UN (WGHR): "*By employing a defensive and largely self-righteous position at the HRC, GoI has, at least in its initial response at the HRC, once again lost the opportunity to constructively engage with the UN human rights system and in accepting the enormous human rights challenges it is faced with.*"

Of the eighty countries which participated in India's UPR – a peer-review process of the human rights record of all UN member states – many reiterated the recommendations made during India's first UPR in 2008 to ratify the UN *Convention against Torture* (CAT) and the *Convention against Enforced Disappearances* (CED). GoI accepted both recommendations four years ago but they have remained unfulfilled. On the question of **torture**, GoI referred to the *Prevention of Torture Bill* (PTB), which is pending before Parliament, without commenting on the non-compliance of the PTB with CAT's definition of torture. WGHR regrets that GoI left many questions unanswered, including desisting from commenting on the ratification of CED.

WGHR is also disturbed that India dodged the recommendations for repeal and review of the *Armed Forces Special Powers Act* (AFSPA) by referring to the Supreme Court's upholding of its constitutionality and by citing Army's human rights cell as a redressal mechanism. Ms. Vrinda Grover, human rights lawyer and member of WGHR, expressed serious concerns at GoI's misleading response to the HRC, which camouflaged the systematic impunity enjoyed by armed forces for human rights abuse in the Northeast of the country and Kashmir: "*The refusal and reluctance of GoI to squarely address the issue of impunity under AFSPA, in spite of numerous recommendations by international bodies, government appointed committees and UN Special Rapporteurs is unacceptable in a country that proclaims to be the largest democracy in the world.*"

Strong recommendations were made to India on the need to impose a *de jure* moratorium on the **death penalty**. The government's response, that simply cited its *de facto* policy of awarding death penalty in the 'rarest of rare cases', is also deeply unsatisfactory in light of statistics that show an increase in the number of death sentences awarded by the courts.

There were recurring concerns by many states on the enjoyment of the **right to freedom of religion and belief, anti-conversion laws and targeting of religious minorities**. Surprisingly, while GoI has initiated a *Communal Violence Bill* to address the issue of violence against religious minorities, it expressed uncertainty before the HRC for the need for such a law. The Indian government's insistence at the international level that existing laws and judicial decisions are sufficient to deal with egregious violations such as torture and attacks on religious minorities is very disappointing, when new laws on these issues are being debated at the national level.

On the multiple recommendations it received on the need to ratify the *Optional Protocol* (complaint mechanism) to the *Convention on the Elimination of Discrimination against Women* (CEDAW), India once again stated that its domestic legal remedies were adequate to address **gender-based discrimination**. Many states also recommended withdrawal of GoI's reservation to Article 16 of CEDAW – which guarantees non-discrimination in all matters relating to marriage and family life – and emphasized the need to enact a comprehensive **anti-discrimination law**. WGHR deeply regrets the fact that GoI did not engage substantially with recommendations made on issues relating to women, including maternal mortality, pre-natal sex selection, infanticide, sexual and gender-based violence, political participation of women, sexual harassment at the workplace, early/child marriage, harmful traditional practices, honour crimes, and trafficking.

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Sadly, Gol failed to use the UPR as an opportunity to demonstrate its commitment to bridge the gap between the law and the grim statistics on various forms of gender-based violence. Its tendency to rely upon domestic law repeatedly to explain the multiple challenges to the attainment of gender equality is disquieting, especially when access to justice remains a barrier for many, and several domestic laws are inconsistent with the universal standards on sex equality.

WGHR, however, welcomes Gol's positive shift on the issue of **homosexuality**, which was raised by many countries. The government affirmed its support of the High Court of Delhi judgment decriminalizing homosexuality and stated that it would take a sensitive view of the matter that has been appealed in the Supreme Court.

The **human rights of children** received significant attention at the HRC. States repeatedly raised issues related to child mortality, child labour, child sexual abuse and trafficking. Many governments stressed the need for a reduction of the excessively high rates of maternal and child mortality and urged the fulfillment of the Millennium Development Goals in that regard. It was also recommended that India ratify the *Third Optional Protocol* (establishing a communications procedure) *to the Convention on the Rights of the Child*. A notable number of states also reiterated the need to ban all forms of child labour. The Gol stated that it was "fully conscious of issues pertaining to child labour" but that there was "no magic wand to address it". This stand is oblivious to the fact that the legal scenario in the country has changed as being at school and not at work is now a fundamental right for all children from 6 to 14 backed by a powerful *Right of Children to Free and Compulsory Education Act*. The logical corollary of this change is for Gol to revisit its stand and amend the *Child Labour (Prohibition and Regulation) Act*.

Given the scale of **poverty** and large-scale denial of socio-economic rights in India, the insufficient attention given to economic, social and cultural rights at the UPR – with the exception of health and education – was disturbing. WGHR hopes, however, that references by member states to the need for more attention to housing for low-income groups and reduction of slums; more focus on poverty alleviation; removal of rural and urban inequities; and improvement of access to water and sanitation, will be turned into recommendations by the HRC before the adoption of the outcome document on Wednesday 30 May, 2012

On the critical issue of the **right to adequate and nutritious food**, it is disturbing that Gol has dismissed the need to universalise the Public Distribution System, which operates on the basis of an unrealistic poverty line and excludes genuinely poor rural households due to targeting errors, corruption, inefficiency and discrimination in distribution. Gol has also failed to respond to concerns about the **rights of peasants and farmers**, the issue of unprecedented numbers of farmers' suicides and the endemic malnourishment that still persists in the country, as recently acknowledged by the Prime Minister himself.

Overall, WGHR regrets that Gol desisted from responding to most of the substantial comments, questions and recommendations by states. According to Miloon Kothari: "*It remains to be seen whether Gol will take a constructive view and accept the many recommendations it will receive from the Human Rights Council on 30 May and engage in a genuine dialogue, including cooperation, with the UN between the second and third UPR. The opportunity also still exists, prior to the final adoption of India's report in September 2012, for Gol to begin a process of serious consultations with civil society and independent actors – including human rights institutions – at home. It is only when such steps, consistent with a democratic mode of governance, are taken that the UN will be convinced that Gol is serious about fostering an atmosphere that will contribute to an improvement in the adverse human rights situation on the ground.*" ■

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*The Working Group on Human Rights in India and the UN – a national coalition of fourteen human rights organisations and independent experts – works towards the realisation of all civil, cultural, economic, political and social human rights in India, and towards holding the Indian government accountable to its national and international human rights obligations. For information on WGHR, please visit: [www.wghr.org](http://www.wghr.org)*