



# Human Rights in India

## AN OVERVIEW

JOINT STAKEHOLDERS' REPORT

UNITED NATIONS

UNIVERSAL PERIODIC REVIEW (UPR)

Published by



Working Group on Human Rights  
in India and the UN

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# FOREWORD

The Universal Periodic Review (UPR) is a unique process conducted by the UN Human Rights Council, involving a review of the human rights record of all 192 UN Member States once every four and a half years. The UPR is a peer review process, whereby UN Member States monitor each others' human rights record. It provides an opportunity for all States to declare the actions they have taken to improve the human rights situation in their countries and overcome challenges. The ultimate goal of the UPR is the improvement of the human rights situation in every country.

There are three documents on which the reviews are based:

- Document 1: Information provided by the State under review, which can take the form of a 'national report'.
- Document 2: Information contained in the reports of independent human rights experts and bodies, known as 'Special Procedures', human rights treaty bodies, and other UN entities.
- Document 3: Information from 'other stakeholders' including non-governmental organizations (NGOs) and national human rights institutions.

The reviews are conducted by the UPR Working Group (consisting of the 47 members of the Human Rights Council) and take place through an interactive discussion between the State under review and other UN Member States.

The UPR assesses the extent to which States respect their human rights obligations set out in: (1) the UN Charter; (2) the Universal Declaration of Human Rights; (3) human rights treaties ratified by the State under review; (4) voluntary pledges and commitments made by the State and, (5) applicable international humanitarian law.

India was part of the first series of States to be reviewed by the Human Rights Council in April 2008. It will be reviewed again between 28 May and 1st June 2012. Following India's first review, the Government of India accepted 18 recommendations (see full list in Annex D). The second review will examine the implementation of these recommendations as well as the development of the human rights situation in the country.

The main engagement of civil society actors in the UPR process is through submission of a 'stakeholders' report',\* submitted to the Office of the High Commissioner for Human Rights (OHCHR), which then prepares a summary of all relevant stakeholders' reports (Document 3 mentioned above).

The present report is a 'joint stakeholders report' submitted by the Working Group on Human Rights in India and the UN (WGHR) to OHCHR on 28 November 2011 (deadline for submission of stakeholders' reports). Prior to India's second UPR, WGHR will be publishing another more detailed report on the human rights situation in India.

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\* Stakeholders' reports have a tight word limit of 2815 words in the case of individual submissions and 5630 words for submissions by coalitions of stakeholders. For more details, see: [www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx](http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx)



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# METHODOLOGY AND CONSULTATION PROCESS

1. This submission is made by the Working Group on Human Rights in India and the UN (WGHR), a coalition of fourteen human rights organizations and independent experts from India.<sup>1</sup> It has been endorsed by a large coalition of 86 organizations and individuals from across the country<sup>2</sup>, and is the result of an extensive consultation process involving more than 210 people, five regional and one national consultation.<sup>3</sup> WGHR also prepared a chart with an assessment of implementation of the recommendations made to India during the first UPR.<sup>4</sup>
2. As per **UPR Recommendation 2** and India's 2011 pledge,<sup>5</sup> the Government of India (GOI) committed to involve civil society in the follow-up to the UPR I but has not held any formal consultation with civil society.<sup>6</sup> MEA's oral commitment to post its draft UPR II report online<sup>7</sup> is, however, welcome.

1 See full list of WGHR members in Annex A.

2 See full list of endorsements in Annex B.

3 See report of national consultation in Annex C. The regional consultations were held in Shillong (28-30 August 2011), New Delhi (15-16 September), Ahmedabad (18-20 September), Puri (22-24 September) and Bengaluru (26-28 September). The national consultation was held in Delhi on 11th and 12th October 2011 in partnership with the National Law University, Delhi (NLUD). See map of WGHR consultations at: <http://www.wghr.org/pdf/Map%20of%20WGHR%20UPR%20consultations.pdf>

4 See full chart with assessment of implementation of the 18 recommendations made to India during the first UPR in Annex D.

5 Pledge made by India at the UN GA in February 2011 at the time of its re-election at the Human Rights Council. See *Voluntary Pledges and Commitments by India*, UN General Assembly, 25 February 2011, A/65/758, available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A%2F65%2F758&Submit=Search&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A%2F65%2F758&Submit=Search&Lang=E)

6 The MEA did, however, actively participate in the National Consultative Workshop on the UPR organised by WGHR in April 2011, where representatives from the MEA, the National Human Rights Commission (NHRC) various UN agencies, diplomats and civil society came together. Following this workshop, WGHR decided to play a role of catalyst in civil society's efforts in the run-up to India's second UPR and to build a large coalition around the UPR process.

7 See: WGHR written statement at the UN Human Rights Council, 25 May 2011, A/HRC/17/NGO/50, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/135/17/PDF/G1113517.pdf?OpenElement>





# IMPLEMENTATION OF UPR I RECOMMENDATIONS AND OVERVIEW OF HUMAN RIGHTS SITUATION

3. In **UPR Recommendation 11**, India accepted the need for a national action plan for human rights (NAP). In its response to **UPR Recommendation 13**, India stated that it had adopted a national plan for human rights education (NAP-HRE). However, there is no information available to the public of either plans being developed.

*Recommendation:*

- Prioritise the drafting of the NAP and the NAP-HRE with support of the National Human Rights Commission and civil society<sup>8</sup>

## A. Economic, Social and Cultural Rights and Right to Development

4. Though India has achieved a sustained 'growth' rate, the promise of 'inclusion' has not been fulfilled. As per **UPR Recommendations 10 and 18**, India committed to address inequity but while the average growth rate over 2007-2011 was 8.2%, poverty declined by only 0.8%.<sup>9</sup> Data indicates further marginalisation for more than three-fourths of the 1.2 billion Indians.<sup>10</sup> The national poverty rate is estimated at 37.2%.<sup>11</sup> India's economic policies<sup>12</sup> continue to perpetuate 'exclusion' and violate Fundamental Rights and Directive Principles of the Constitution.<sup>13</sup>

## RIGHT TO ADEQUATE HOUSING AND LAND

5. Majority of Indians live in inadequate/insecure housing. Major threats to housing and land rights include: forced evictions,<sup>14</sup> land grabbing, failed agrarian reform, real estate speculation, and absence of social housing<sup>15</sup> and rights-

8 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.

9 Between 2007-2011 according to: Draft Approach Paper for the Twelfth Five-Year Plan, Planning Commission, Government of India, August 2011.

10 According to the Arjun Sengupta Committee (2006) appointed by the Prime Minister, 77% of Indians live on a consumption expenditure of less than 20 rupees (around USD 0.4) a day. [1 US dollar (USD) is the equivalent of around 50 Indian Rupees (INR); exchange rate as of November 27, 2011].

11 Tendulkar Committee Report, 2009; India ranks 134 of 187 countries on the UN human development index report 2011, available at: <http://hdrstats.undp.org/en/countries/profiles/IND.html>

12 Including the Structural Adjustment Programme.

13 Including, inter alia, Articles 14, 15, 16, 17, 19, 21, 23, 24, 39, 42, 45 and 47 of the Constitution of India.

14 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 71.

15 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 70.

based legislation. This leads to multiple human rights violations including: increased homelessness and landlessness, adverse health impacts, and further impoverishment and marginalisation of the urban and rural poor.

6. The number of people displaced from ostensible 'development' projects<sup>16</sup> over the last 60 years is estimated at 60 million; only a third of whom have been resettled.<sup>17</sup> Most of the displaced are the rural poor, marginal farmers, fisher-folk; 20% are Dalits and 40% are tribals/*adivasis*,<sup>18</sup> who continue to face severe displacement threats.<sup>19</sup> Re-settlement, where provided, is on peripheries of cities/towns with inadequate housing or access to civic services, livelihoods, natural resources, healthcare, and education. Acquired land is seldom replaced with alternative land of commensurate or better quality. Climate change<sup>20</sup> and rise in disasters will increase displacement of the most vulnerable.
7. India faces an acute housing shortage,<sup>21</sup> 90% of which affects economically weaker sections.<sup>22</sup>
8. Around 13-18 million families in rural India are landless; 8 million of them lack homes of their own.<sup>23</sup> The *Indira Awas Yojana* rural housing scheme does not benefit the poorest.<sup>24</sup> Less than 2% of women hold land titles.<sup>25</sup> Land reform measures lack implementation and desired impact.<sup>26</sup>
9. Land grabbing, acute agrarian crisis and inadequate investment in rural development is forcing thousands to migrate. Cities have limited space and resources for the poor.<sup>27</sup> The *Jawaharlal Nehru National Urban Renewal Mission* focuses mainly on large infrastructure projects, largely failing to provide improved civic services for the poor. Absence of affordable housing forces many to live in overcrowded slums without tenure, security and access to basic services.<sup>28</sup> By mid-2011, India's urban slum population was estimated at 158.42 million.<sup>29</sup> Countless others are rendered homeless and face police brutality and criminalization.<sup>30</sup>

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16 Including 'city beautification,' mining, dams, Special Economic Zones (SEZs), mega events, and industrial projects. For instance, 200,000 people were displaced for the 2010 Delhi Commonwealth Games (See: *Planned Dispossession: Forced Evictions and the 2010 Commonwealth Games*, Housing and Land Rights Network, Delhi, 2011, available at: [www.hic-sarp.org](http://www.hic-sarp.org)); Over 35,000 families have already been displaced because of SEZs ('*Analysis of SEZs and Human Rights Impacts of SEZs*,' Seminar, February 2008); Also see: '*SEZs and Land Acquisition*', Citizens' Research Collective, available at: [http://www.sacw.net/Nation/sezland\\_eng.pdf](http://www.sacw.net/Nation/sezland_eng.pdf). Also see: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 31.

17 Draft Approach Paper for the Twelfth Five Year Plan, Planning Commission, Government of India, August 2011, states that only a third of those displaced have been resettled according to plan.

18 Draft Approach Paper for the Twelfth Five Year Plan, Planning Commission, Government of India, August 2011. The Special Rapporteur on the right to food, Jean Ziegler, also stated that around 40-50 per cent of the displaced in India are tribal people though they make up only eight per cent of the population (See: report of the Special Rapporteur on the Right to Food, Jean Ziegler, Mission to India, 2005, E/CN.4/2006/44/Add.2, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/119/16/PDF/G0611916.pdf?OpenElement>).

19 According to the Draft Approach Paper for the Twelfth Five Year Plan of the Planning Commission (August 2011), 90% of India's coal, 50% of minerals and most prospective dams are located in tribal regions. The Vedanta mining project, for instance, threatens to displace Kondh tribals in Odisha while destroying their livelihoods and the environment. Over 160 dams are being planned across the northeast region that will result in widespread displacement and social unrest.

20 Climate change will affect a range of human rights. Mitigation and adaptation measures to address climate change must conform to human rights standards and not discriminate against the poor and vulnerable communities, including forest dwellers, coastal communities and those living in arid regions and low-lying areas.

21 47.43 million for rural housing, of which 90% are below poverty line households (Report of the Eleventh Five Year Plan Working Group on Rural Housing, Ministry of Rural Development, Government of India, 2007) and 26.53 million for urban housing (Report of the Eleventh Five Year Plan Working Group on Urban Housing, Ministry of Housing and Urban Poverty Alleviation, Government of India, 2007).

22 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para. 30.

23 Eleventh Five Year Plan (2007-2012), Planning Commission, Government of India.

24 Ibid.

25 Almost 80% of the agricultural population owns about 17% of the agricultural land making them near-landless.

26 Eleventh Five Year Plan (2007-2012), Planning Commission, Government of India.

27 According to the National Urban Housing and Habitat Policy 2007, 80.7 million are poor in urban India.

28 A projection based on the 2011 census estimates that around 60% of Mumbai lives in slums. According to the Municipal Corporation of Delhi, in 2010, 49% of the city's population lived in slums and non-regularised settlements, and only 5% lived in planned areas (facts submitted in an affidavit to the Supreme Court of India in April 2010).

29 Ministry of Housing and Urban Poverty Alleviation, Report of the Committee on Slum Statistics/Census, National Buildings Organization, 2010.

30 *The Bombay Prevention of Begging Act, 1959* is a punitive law that is used in different parts of the country to arbitrarily arrest and detain the homeless. In August 2010, 40 'beggars' died in a 'beggars' home' in Karnataka, several of them were disabled. See Karnataka State Human Rights Commission, case n° 5978/SM-1242/2010, dated 18th September 2010, heard by Justice S.R. Nayak. Despite positive legal interventions from the Supreme Court of India and the High Court of Delhi, India's homeless population continues to rise and is excluded from most government schemes. National data on the homeless is grossly underestimated. Just in the capital city of Delhi, civil society estimates place the number of homeless at 100,000 – 150,000. The UN Committee on Economic, Social and Cultural Rights in its Concluding Observations on India in May 2008 called for disaggregated data on homelessness and forced evictions as well as the implementation of measures to check against both phenomena. See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/436/08/PDF/G0843608.pdf?OpenElement>

10. Inadequate living conditions most severely impact women, children, persons with disabilities and minorities, including Dalits and nomads.

**Recommendations:**

- Develop a rights-based national housing policy/law with focus on social housing
- Ensure that the *Land Acquisition, Rehabilitation and Resettlement Bill, Land Titling Bill, Mining Bill, and Rajiv Awas Yojana*<sup>31</sup> protect human rights
- Prevent forced evictions, real estate speculation and privatization of services
- Implement the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*

## RIGHT TO FOOD

11. Despite a number of food entitlement programmes,<sup>32</sup> food subsidy schemes,<sup>33</sup> and the required available grains, nearly 50% of the world's hungry live in India.<sup>34</sup> India also has the world's highest number of malnourished<sup>35</sup> and hungry children (46%).<sup>36</sup>
12. Since 2001, over 40 Supreme Court interim orders have treated the right to food as justiciable.<sup>37</sup> Yet, high levels of food insecurity, corruption, inefficiency and discrimination in distribution<sup>38</sup> remain.
13. India's *Public Distribution System* (PDS)<sup>39</sup> is the world's largest food subsidy programme. While being a progressive scheme, the shift from universal to targeted applicability—providing subsidised food only to Below Poverty Line (BPL)<sup>40</sup> cardholders—excluded genuinely poor households<sup>41</sup> through targeting errors.<sup>42</sup> 50% of poor rural households do not have a BPL card.<sup>43</sup> Problems of implementation include: losses during transportation, poor

31 Rajiv Awas Yojana is a new central government scheme aimed at providing tenure security and affordable housing for the urban poor. It however needs to be grounded in a strong human rights approach in order to be effective.

32 ICDS: Integrated Child Development Scheme (all children under six, pregnant and lactating mothers) and MDMS: Mid-Day Meals Scheme (all primary and upper primary school children).

33 Targeted Public Distribution System 35 kilogrammes (kgs)/ month of subsidised food grains and Annapurna: 10 kgs of free food grain for indigent senior citizens of 65 years or above who are not getting old age pension.

34 United Nations World Food Programme, India page, available at <http://www.wfp.org/countries/india>

35 Percentage of children under age five years classified as malnourished according to three anthropometric indices of nutritional status: height-for-age, weight-for-height, and weight-for-age, according to state, India, 2005-06: (1) Height-for-age (stunting): 48%; (2) Weight-for-height (wasting): 19.8%; and (3) Weight-for-age (underweight): 42.5% age (stunting): 48%; (2) Weight-for-height (wasting): 19.8%; and (3) Weight-for-age (underweight): 42.5% - International Institute for Population Sciences and Macro International. 2007. *National Family Health Survey 3 (NFHS-3), 2005-06 : India*. Mumbai IIPS, available at: <http://www.nfhsindia.org/nfhs3.html>

36 UNICEF, *Progress for Children: A Report Card on Nutrition*, available at: [http://www.unicef.org/publications/files/Progress\\_for\\_Children\\_-\\_No.\\_4.pdf](http://www.unicef.org/publications/files/Progress_for_Children_-_No._4.pdf)

37 *People's Union for Civil Liberties v. Union of India*, Writ Petition (Civil) No. 196 of 2001 (India).

38 See: Concluding Observations of the UN Committee on Economic Social and Cultural Rights, 2008, E/C.12/IND/CO/5, Para. 28, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/436/08/PDF/G0843608.pdf?OpenElement>; Also see: CESCR's definition of adequate food availability, apart from the possibilities for feeding oneself, also refers to the possibilities for "well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand. - General Comment 12 of the UN Committee on Economic, Social and Cultural Rights, 1999, E/C.12/1999/5, Para. 12, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/PDF/G9942012.pdf?OpenElement>

39 The PDS is a major scheme in India meant to ensure availability of selected commodities at affordable subsidized prices. It operates under the joint responsibility of the central and state governments. The state's responsibilities include the distribution of food grains to consumers through "Fair Price Shops" (FPSs), the identification of families below poverty line (BPL), the issuance of BPL cards, as well as the movement and the storage of food grains. - Ministry of Consumer Affairs, Food and Public Distribution, available at: [http://fcamin.nic.in/dfpd/EventListing.asp?Section=PDS&id\\_pk=1&ParentID=0](http://fcamin.nic.in/dfpd/EventListing.asp?Section=PDS&id_pk=1&ParentID=0)

40 The Tendulkar Committee was set up in 2009 to look into the methodology for estimating the poverty line. Using the methodology of the Committee, the Planning Commission, in an affidavit to the Supreme Court on 20.09.2011 (in the case W.P.C. (196/2001)), claims that any person who has a per capita per day expenditure of INR 26 (USD 0.5) in rural India and INR 32 (USD 0.62) in urban areas will be considered 'above poverty line.' [1 US dollar (USD) is the equivalent of around 50 Indian Rupees (INR); exchange rate as of November 27, 2011].

41 "A large proportion of manual workers' households, households belonging to Scheduled Castes and Tribes, households with little or no land, as well as households in the lowest income classes, are excluded from the PDS today." – Swaminathan, M., *The Case of State Intervention*, UN Chronicles, 2008, available at: <http://www.un.org/wcm/content/site/chronicle/home/archive/issues2008/pid/5101?print=1>

42 The Planning Commission, *Nutrition and Social Safety Net*, page 135, available at: [http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11\\_v2/11v2\\_ch4.pdf](http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v2/11v2_ch4.pdf)

43 National Sample Survey, 2004-2005.

storage, rotting grains<sup>44</sup> and illegal sale.<sup>45</sup> The draft *National Food Security Bill, 2011* (NFSB) has positive features.<sup>46</sup> However, it fails to universalise the PDS.<sup>47</sup> Tamil Nadu has introduced a successful system of quasi-universal PDS,<sup>48</sup> which should be emulated across the country.

14. Since 2001, the country has witnessed an alarming number of farmer suicides with a baseline of 15,000 each year,<sup>49</sup> primarily due to indebtedness and agrarian distress. Liberalised trade,<sup>50</sup> patenting of agricultural products, and the introduction of Genetically Modified Organisms (GMOs), especially under the draft *Biotechnology Regulatory Authority of India Bill, 2011*,<sup>51</sup> could further aggravate India's food crisis.<sup>52</sup>

#### **Recommendations:**

- Expand focus beyond welfare schemes; promote land reform and access to natural resources
- Support production and utilisation of coarse grains grown by local communities for the PDS<sup>53</sup>
- Ensure conformity of the NFSB with India's human rights obligations and Supreme Court orders
- Expand ICDS centres to counter malnourishment and provide child care as per Court's orders

## **RIGHT TO HEALTH**

15. India's healthcare infrastructure is sub-standard and inadequate, lacking doctors and hospital beds.<sup>54</sup>
16. The *National Rural Health Mission* was launched to improve availability and access to quality health care for the rural poor.<sup>55</sup> Growing privatisation of healthcare<sup>56</sup> has, however, resulted in gross disparities in service distribution between rich and poor,<sup>57</sup> and rural and urban areas. The growing neglect of primary health centres and the inability to establish 'compulsory licensing'<sup>58</sup>—particularly for essential and life saving drugs—is disturbing. The only means of addressing serious illnesses is through health insurance, available to less than 15% of the population.

44 A 2010 Right to Information (RTI) application revealed serious inefficiencies in the government's monitoring of storage facilities and distribution. In an affidavit to the Supreme Court filed in September 2010, the food ministry itself admitted that more than 67,000 tonnes of grains were rotting in the godowns of the Food Corporation of India (FCI). This quantity would be enough to feed 190,000 families during one month. See: [www.hindustantimes.com/News-Feed/India/Rotting-grain-more-than-Govt-claimed/Article1-596981.aspx](http://www.hindustantimes.com/News-Feed/India/Rotting-grain-more-than-Govt-claimed/Article1-596981.aspx). Also see: [www.hindustantimes.com/News-Feed/ColumnsSamarHalarnkar/Not-a-grain-of-truth/Article1-597806.aspx](http://www.hindustantimes.com/News-Feed/ColumnsSamarHalarnkar/Not-a-grain-of-truth/Article1-597806.aspx)

45 However, considering its adverse impacts, cash transfers should not be seen as a viable alternative to the PDS.

46 The recognition of women as heads of the household for the distribution of BPL cards and the statutory recognition of Mid-Day Meal and Integrated Child Development Schemes.

47 Rather the Bill opts for a targeted approach.

48 "The State has introduced an option for households that do not want to purchase rice from the PDS, and given them scope for buying more sugar or kerosene. There are 100,000 card holders who have exercised this option, and another 52,000 who have withdrawn from the PDS completely. As the State is buying grain from the centre at higher prices (BPL allocation at the BPL price and APL allocation at the APL price), it is incurring an additional subsidy to maintain a universal system with rice at specially subsidized low price." – Swaminathan, M., *Neo-Liberal Policy and Food Security in India: Impact on the Public Distribution System*, available at: <http://www.networkideas.org/ideasact/jan09/PDF/Madhura.pdf>.

49 National Crime Records Bureau, *Accidental Deaths and Suicides in India 2010*, available at: <http://ncrb.nic.in/>

50 "The World Trade Organization and the Post-Global Food Crisis Agenda: Putting Food Security First in the International Trade System," Briefing note 04, November 2011, available at: [http://www.srfood.org/images/stories/pdf/otherdocuments/20111116\\_briefing\\_note\\_05\\_en.pdf?utm\\_source=SRFood+Newsletter&utm\\_campaign=de320c25fb-2011-1116\\_Trade-rules-must-not-hold-back-efforts&utm\\_medium=email](http://www.srfood.org/images/stories/pdf/otherdocuments/20111116_briefing_note_05_en.pdf?utm_source=SRFood+Newsletter&utm_campaign=de320c25fb-2011-1116_Trade-rules-must-not-hold-back-efforts&utm_medium=email).

51 Raghuvansh Prasad Singh: *BRAI Bill - Bulldozing public opinion*, Business Standard, September 17, 2011, available at: <http://www.business-standard.com/india/news/raghuvansh-prasad-singh-brai-bill-bulldozing-public-opinion/449406/>.

52 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 29

53 This would cut transportation costs and support small and marginal farmers.

54 There are 6 doctors and 9 hospital beds per 10,000 people. Source: WHO, World Health Statistics 2011, available at: <http://www.who.int/whosis/whostat/2011/en/index.html>

55 National Rural Health Mission 2005-2012, Mission Document, Ministry of Health & Family Welfare, available at: [http://mohfw.nic.in/NRHM/Documents/Mission\\_Document.pdf](http://mohfw.nic.in/NRHM/Documents/Mission_Document.pdf).

56 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 38.

57 A welcome 2011 Supreme Court direction ordered private hospitals, built on subsidised government land in Delhi, to provide free treatment and hospitalisation to the poor. See: India Today, *Supreme Court Tells Private Hospitals to Provide Free Treatment to Poor*, September 1, 2011, available at: <http://indiatoday.intoday.in/story/supreme-court-tells-private-hospitals-to-provide-free-treatment-to-poor/1/149695.html>.

58 In compulsory licensing, under the World Trade Organization's (WTO) Trade Related Intellectual Property Rights Agreement (TRIPS) Agreement, the government allows a generic firm to produce a patented product without the consent of the patent owner. The Economic Times, *Natco Pharma files India's first compulsory licence plea*, Aug 2, 2011, available online at: [http://articles.economicstimes.indiatimes.com/2011-08-02/news/29842834\\_1\\_compulsory-licence-sorafenib-tosylate-natco-pharma](http://articles.economicstimes.indiatimes.com/2011-08-02/news/29842834_1_compulsory-licence-sorafenib-tosylate-natco-pharma)

17. India has the world's highest child mortality, with more than two-thirds of deaths occurring during the first four weeks after birth.<sup>59</sup> Although maternal mortality has decreased, the rate is still 230 maternal deaths per 100,000 live births.<sup>60</sup>
18. Public funding for HIV/AIDS treatment and prevention is inadequate. The government has been unable to ensure the availability of 'third-line' and improved treatment varieties.<sup>61</sup>
19. Between 2008 and 2010, 1,600 people died during clinical trials of drugs by multinational pharmaceutical companies;<sup>62</sup> compensation was paid only in few cases.<sup>63</sup> Mentally ill patients are inducted into clinical trials without their consent.<sup>64</sup>
20. Though provision of water and sanitation is claimed to be a priority, the situation is dismal. 21% of communicable diseases are related to unsafe water.<sup>65</sup> India has the largest number of people in the world who defecate in the open – 665 million.<sup>66</sup>

### **Recommendations:**

- Increase current budget allocation on health (4.4%)<sup>67</sup>
- Review regulations to prevent unethical medical trials<sup>68</sup>
- Improve access to potable water and sanitation

## **IMPACT OF TRADE AND INVESTMENT AGREEMENTS**

21. India's proposed Free Trade Agreements (FTAs)<sup>69</sup> threaten the rights to food,<sup>70</sup> health, work and development,<sup>71</sup> especially of vulnerable groups.

59 Of the 26 million children born in India every year, approximately 1.83 million children die before their fifth birthday. Causes of death include waterborne diseases such as diarrhea - one out of five children dying world wide of diarrhea is from India; respiratory diseases (of the 133 million childhood pneumonia cases around the world, India counted for 44 million); malaria; and parasitic infections. See Registrar-General of India Report on Causes of Death in India 2009 and *The Situation of Children in India*, UNICEF, 2011.

60 2008 statistics quoted in: WHO, World Health Statistics, 2011; Causes of maternal mortality include: poor health infrastructure, lack of specialists, inadequate budget, and persistent discrimination, including against economically weaker sections, minorities, persons with disabilities, Scheduled Castes and Scheduled Tribes. See: Center for Reproductive Rights and Human Rights Law Network, *Maternal Mortality in India – Using International and Constitutional Law to Promote Accountability and Change – 2011 Update*, available at : <http://reproductiverights.org/en/document/maternal-mortality-in-india-2011-update-document-download>; Also see : Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, Paul Hunt, mission to India, 2010, A/HRC/14/20/Add.2.

61 Some government policies have also deviated from the right to health approach, threatening to exacerbate discrimination of people living with HIV/AIDS. For example, the National AIDS Control Organisation has introduced line listing, which violates privacy rights.

62 Figures revealed by a RTI application.

63 22 cases out of the 668 cases that occurred in 2010 - Records of the Directorate General of Health Services.

64 See *Mental Health Care Act, 1987*.

65 World Bank, *India's Water Economy, Bracing for a Turbulent Future, 2005*.

66 "Diarrhoea: Why Children Are Still Dying and What Can Be Done," World Health Organization and UNICEF, 2009; 74% of the rural and 16.8% of the urban population does not have facility of a toilet - National Family Health Survey III, 2005-06.

67 2008 statistics quoted in: WHO, World Health Statistics, 2011, available at: [http://www.who.int/whosis/whostat/EN\\_WHS2011\\_Full.pdf](http://www.who.int/whosis/whostat/EN_WHS2011_Full.pdf). The global median for health budget is 11.5%.

68 Sandhya Srinivasan, *Ethical Concerns in Clinical Trials in India: an investigation*, February 2009, page 45, available at: [http://www.fairdrugs.org/uploads/files/Ethical\\_concerns\\_in\\_clinical\\_trials\\_in\\_india\\_An\\_investigation.pdf](http://www.fairdrugs.org/uploads/files/Ethical_concerns_in_clinical_trials_in_india_An_investigation.pdf)

69 Ongoing FTA Negotiations: European Union, Japan, EFTA (Iceland, Norway, Liechtenstein, Switzerland), New Zealand, Malaysia, Gulf Cooperation Council, BIMSTEC (Bangladesh, Myanmar, Sri Lanka, Thailand, Bhutan and Nepal), Mauritius, SACU (South Africa, Botswana, Lesotho, Namibia). FTAs signed, but under negotiation for expansion: Sri Lanka (1998), Thailand (2003), SAFTA (South Asia Free Trade Area, 2004) and ASEAN (Association of Southeast Asian Nations, 2009). FTAs under consideration and/or at various stages of development: Australia, Chile, China, Colombia, Egypt, Hong Kong, Israel, Russia, Uruguay, and Venezuela. India has also launched the process for a potential FTA with the United States through the "Framework for Cooperation on Trade and Investment." (Source: Ministry of Commerce and Industry, Department of Commerce, Government of India, available at: [http://commerce.nic.in/trade/international\\_ta.asp?id=2&trade=i](http://commerce.nic.in/trade/international_ta.asp?id=2&trade=i). Also see: Asian Regional Integration Center, <http://aric.adb.org/FTAbCountryAll.php>). These agreements include not only trade in goods but also investment, government procurement, intellectual property and competition policy.

70 "The deepening of the trade liberalization path will not result in farmers in developing countries being able to compete on equal terms with producers in industrialized countries, unless wages and agricultural prices in the South are repressed at very low levels to compensate for a much lower productivity per active laborer. This will inevitably result in more violations of the right to food." - Report of the Special Rapporteur on the right to food, Olivier De Schutter mission to the World Trade Organization, March 9, 2009, available at: <http://www.srfood.org/images/stories/pdf/otherdocuments/11-reportmissiontowtosummary-en.pdf>. Also see: 'How India's Free Trade Agreements Will Undermine our Right to Food,' available at: <http://www.forumagainstitas.net/PDF/Right%20to%20Food%20and%20FTAs.pdf>

71 The Hindu, *FTA will hurt livelihoods in India, Europe: civil society*, December 10, 2010, available at: <http://www.thehindu.com/news/national/article942068.ece>

22. They create legally binding obligations on the government, severely affecting livelihoods related to agriculture, fisheries and manufacturing. FTAs' demands in trade, services, investment and intellectual property rights impact ability to access affordable healthcare, education, water and sanitation.<sup>72</sup> The EU-India FTA, for example, would cut tariffs to zero for key sectors that support many producers and workers, thus exposing them to highly competitive international markets. Clauses in the FTA involving investment protection, especially related to land expropriation, could become an obstacle to land reforms.

**Recommendation:**

- Ensure that trade and investment agreements meet India's constitutional and international commitments to human rights and environmental standards

## RIGHT TO WORK AND LABOUR RIGHTS

23. India's economic policies are steadily eroding rights, working conditions and living standards for the majority of the labour force, 92%<sup>73</sup> of which belongs to the unorganized/informal sector, including rising migrant labour and construction workers.<sup>74</sup>

24. Major challenges include: (i) erosion of real wages due to continuous price rise and failure to compensate for inflation; (ii) absence of basic services and social security;<sup>75</sup> and (iii) difficulty to unionise<sup>76</sup>. Several progressive labour laws,<sup>77</sup> including on minimum wages and child labour exist but are not implemented. The concept of 'flexible labour' further threatens rights and implementation of laws.

25. The *Mahatma Gandhi National Rural Employment Guarantee Act, 2005* (MNREGA)—which guarantees 100 days of work<sup>78</sup> to every rural household—is a progressive measure. Corruption and inadequate implementation, however, remain challenges.

**Recommendations:**

- Promote freedom of association and social audit, increase transparency, and provide social security for the unorganised sector

## RIGHT TO EDUCATION

26. In a significant development, the right to education (RTE) was made a fundamental right in the Constitution.<sup>79</sup> The *Right of Children to Free and Compulsory Education Act, 2009* guarantees the right to free and compulsory education to every child between 6 and 14.<sup>80</sup> Although progressive, implementation of the Act remains a challenge because of inadequate financial allocations and lack of effective enforcement mechanisms.<sup>81</sup> The *Child Labour*

72 The EU-India FTA and acquisition and mergers by Multi-National Corporations (MNCs) of several major Indian generic medicine producers are a cause of concern as they make the use of existing TRIPS flexibilities more difficult, thus restricting access to low-cost, high-quality generic medicines. The government should rather facilitate the access and affordability of medicines, essential diagnostics and medical devices.

73 457 million in 2004-05 according to the National Sample Survey Organization (NSSO); See: Concluding Observations of the Elimination of Discrimination against Women: India, 2007, CEDAW/C/IND/CO/3, para 44.

74 Construction workers, including women and children are most numerous in this segment and among the worst exploited. Three specific laws that apply to them but are not implemented are: *Building and Other Construction Workers Act, 1996*, *Contract Labour (Regulation and Abolition) Act, 1970* and *Interstate Migrant Workmen Act, 1979*.

75 This includes compensation for injury, health, maternity and retirement benefits.

76 This is due to hostility and failure of the state to respect freedom of association.

77 *The Trade Unions Act, 1926*, *The Payment of Wages Act, 1936*, *The Employees' State Insurance Act, 1948*, *The Minimum Wages Act, 1948*, *The Employees' Provident Funds and Miscellaneous Provisions Act, 1952*, *The Maternity Benefit Act, 1961*, *The Payment of Bonus Act, 1965* and *The Payment of Gratuity Act, 1972*.

78 Unskilled manual work.

79 India is one of the few countries where the right to education is a fundamental right. The eighty-sixth constitutional amendment made education a fundamental right (Article 21A) in 2002.

80 The constitutional amendment and the RTE Act came in to force in April 2010.

81 The Act empowers the National Commission for the Protection of Child Rights (NCPCR) and the State Commissions for the Protection of Child Rights (SCPCRs) with the responsibility to monitor the RTE. However, only 18 states have set up SCPCRs (some of which are not yet functional). It is thus difficult for the NCPCR to keep a vigilant eye on millions of classrooms across India and protect children from corporal punishment, discrimination, lack of quality education and teachers with the meagre infrastructure at its disposal.

(*Prohibition and Regulation*) Act, 1986, contradicts the RTE as it allows children under 14 to work in certain occupations.<sup>82</sup>

27. In response to **UPR Recommendation 9** on the need for India to review its reservation to article 32 of the Convention on Rights of the Child, GOI admitted the undesirability of child labour but claimed it was unrealistic to entirely ban it.<sup>83</sup>
28. 81 million children are still out of school.<sup>84</sup> Government schools have severe shortcomings,<sup>85</sup> including entrenched discrimination, which affects enrolment<sup>86</sup> and retention.<sup>87</sup> Schools are also not disability-inclusive.<sup>88</sup>
29. The *Sarva Shiksha Abhiyan*, the government's flagship programme aimed at universal primary and elementary education, while positive, has not yet achieved targets.<sup>89</sup> The *Mid Day Meal Scheme (MDMS)* aims at enhancing enrolment, retention and attendance, while improving nutritional levels.

#### **Recommendations:**

- Ensure greater enrollment and retention in schools; improve access<sup>90</sup> and quality of schools
- Enhance the impact of the MDMS by creating a better management structure, addressing 'caste bias' and improving food quality
- Amend the *Child Labour Act* to ban all forms of child labour and ensure equal education for all

## **B. Militarisation and Security Laws/Apparatus**

30. Due to historical and political reasons, there are insurgency movements in the Northeast of India (Nagaland, Manipur, Assam, Meghalaya, Arunachal Pradesh) and Jammu and Kashmir (J&K). In spite of the decrease in insurgency related violence<sup>91</sup>, the state's response to these political issues has remained mainly militaristic, accompanied by draconian security laws, leading to widespread human rights violations.
31. Central India (Chhattisgarh, Andhra Pradesh, Jharkhand, Orissa and West Bengal) is home to impoverished communities of indigenous peoples (*adivasis*). With corporate acquisition and privatisation of land, mineral and other resources — primarily affecting the already marginalised *adivasis*<sup>92</sup> — strong resistance movements, both popular

82 The listing of occupations as 'hazardous' and 'non-hazardous' leaves many unsafe forms of work sheltered behind the assumption that they are 'safe'.

83 India's 2008 UPR report speaks of sequential/progressive eradication, but this is not borne out by the law, or by enforcement.

84 Statement by Human Resource Development Minister Kapil Sibal - The Hindu, *8 million children still out of school*, April 1, 2011, at: <http://www.thehindu.com/education/article1591845.ece>. Enrolment of girls is at 48%.

85 Short comings include: (i) lack of trained teachers; (ii) perpetuation of multi-grade teaching (one teacher for many classes); (iii) lack of minimum school infrastructure (this includes lack of toilets for girls and classrooms for all grades); (iv) failure to provide quality education to children of 'excluded' households.

86 Only 19.7% of enrolment is reported from Scheduled Castes and 11% from Scheduled Tribes. – UNICEF, *The Right to Education Factsheet*, available at: [http://www.unicef.org/india/education\\_6145.htm](http://www.unicef.org/india/education_6145.htm)

87 Drop out rate is 50% before class 8. Source: Planning Commission, Eleventh Five Year Plan 2007-12, Vol. II. Social Sector, *Education*, Government of India, 2008.

88 Promises of 'inclusion' in education remain a lip service in the absence of infrastructure and support. Only 1.38% of disabled children has been reported by the District Information System For Education 2008-09. For example, only 47.5% of schools have ramps for access. - District Information System for Education 2008-09, available at: <http://www.dise.in/>; Also see: Concluding Observations of the Committee on the Rights of the Child: India, 2004, CRC/C/15/Add.228, para 57.

89 Targets were universal primary education (five years of schooling) by 2007 and universal elementary education (eight years of schooling) by 2010.

90 The government should promote inclusive schools for children with disabilities.

91 Unofficial estimates place the concentration of troops in Kashmir at half a million making it one of the most militarized zones in the world. Ministry of Home Affairs' Annual Report (2009-10) states that the number of insurgency related incidents and casualties have progressively reduced between 2004 and 2010 in J&K and that the "*overall security situation in the state has shown perceptible improvement*". The report also reveals that the situation in Northeastern states has improved with reduction in the levels of violence and casualties, available at: [http://mha.nic.in/pdfs/AR\(E\)0910.pdf](http://mha.nic.in/pdfs/AR(E)0910.pdf). A ceasefire is effective in Nagaland since 1997 and a major insurgent group, United Liberation Front of Asom (ULFA) operative in Assam, has also declared ceasefire since early 2011. Also, recent estimates by the Intelligence Bureau and a census conducted by J & K Police declare that only 119-200 militants are operative in Kashmir, which is the lowest in the past two decades. Asian Age, *Intelligence Bureau: Militants in Kashmir Valley just 200, time to strike*, available at: <http://www.asianage.com/india/intelligence-bureau-militants-kashmir-valley-just-200-time-strike-374>; Also see: Indian Express, *119 militants active in Kashmir, lowest in 20 years*, June 6 2011, available at: <http://www.indianexpress.com/news/119-militants-active-in-kashmir-lowest-in-2/799806/>

92 The state has launched a major military and paramilitary offensive against the Maoists, with Dantewada in Chhattisgarh as its epicentre. Jairam Ramesh, the Minister of State for Rural Development, while recognizing the economic undercurrents of the Maoist insurgency has stated: "The long-festered socio-economic concerns of the weaker sections of society must be addressed meaningfully if the influence of Naxal groups is to be countered effectively."

protests as well as Maoist ('Naxalite') insurgencies, have grown. The Supreme Court strongly condemned the state-sponsored counter-insurgency militia *Salwa Judum* — spearheaded by 'Special Police Officers' (SPOs) — and directed the disbandment of SPOs in Chhattisgarh.<sup>93</sup> Grave human rights abuses have been inflicted on the population by security forces, SPOs and even by the 'Naxalites'. Violating the spirit of the Court's order, SPOs have been reabsorbed into the Chhattisgarh Auxiliary Armed Force through law.<sup>94</sup>

32. In all these conflict areas, several special security laws operate,<sup>95</sup> which violate national and international human rights guarantees, provide extensive powers (to arrest, detain without trial and "shoot to kill" on suspicion) to security forces and exempt them from prosecution in absence of executive sanction, spawning a culture of impunity.
33. This military approach and the ongoing conflicts contradict GOI's position at the UN, that "*India does not face either international or non-international armed conflict.*"<sup>96</sup>
34. The *Armed Forces Special Powers Act (AFSPA)* has come under severe criticism both domestically<sup>97</sup> and internationally<sup>98</sup> for contravening international human rights law.<sup>99</sup> While upholding the constitutionality of AFSPA, the Supreme Court laid down guidelines, which are routinely violated.<sup>100</sup> Sections of the government are calling for re-examining the law, which is opposed by the army.<sup>101</sup>

#### **Recommendations:**

- Implement the relevant recommendations of treaty bodies, including the repeal of AFSPA, and ensure impartial investigation of all human rights violations and justice to the victims

## **RIGHT TO LIFE, LIBERTY AND SECURITY**

### **Torture**

35. As per **UPR Recommendation 1** and its 2011 pledge, India committed to expedite ratification of the Convention against Torture (CAT). Ratification is to be preceded by the enactment of a domestic law. *The Prevention of Torture Bill, 2010 (PTB)* was referred to a Parliamentary Select Committee of the Upper House in August 2010. Considering representations from human rights groups, the Committee substantially revised PTB, which now partially<sup>102</sup>

93 *Nandini Sundar & Ors. v. State of Chhattisgarh, Supreme Court, Writ Petition (C) No.250 of 2007, July 2011, Para 75.*

94 Sec 11 (3), *Chhattisgarh Auxiliary Armed Police Act, 2011.*

95 These include: The *Armed Forces (Assam & Manipur) Special Powers Act, 1958*, and the *J&K Armed Forces Special Powers Act, 1990*, *J&K Public Safety Act, 1978 (PSA)*, *Chhattisgarh Special Public Security Act, 2005 (CSPSA)*, *Nagaland Security Regulation Act, 1962*, *Unlawful Activities (Prevention) Act, 1967 (UAPA)*, and *Enemy Agents Ordinance, 1948.*

96 See India's 2011 National Report on the Option Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, available at: [www.nic.in](http://www.nic.in)

97 By government appointed Committees: The "Jeevan Reddy Committee" and the Administrative Reform Commission (ARC), available at: <http://www.hindu.com/nic/afa/afa-part-iv.pdf>) and civil society.

98 By UN human rights bodies: Human Rights Committee (1997), CEDAW (2007), CERD (2007) and CESCR (2008), available at: [www.wgcr.org/pdf/compilation-AFSPA.pdf](http://www.wgcr.org/pdf/compilation-AFSPA.pdf) and international NGOs: Amnesty International, available at: <http://www.amnesty.org/en/library/asset/ASA20/022/2009/en/014577cc-00bc-40c7-9177-8571efc0950a/asa200222009en.html> and Human Rights Watch, available at: <http://www.hrw.org/news/2008/08/17/india-repeal-armed-forces-special-powers-act>.

99 AFSPA works in conjunction with the Disturbed Area Acts of J & K and Assam (1990 & 1955 respectively).

100 These guidelines include: (a) The army cannot act as a substitute for state civil authorities, but is strictly required to act with their cooperation to maintain public order. (b) The power of arrest of a person without warrant under Sec. 4 is to be read with Sec. 5 which requires the detainee to be handed over to the nearest police station with 'least possible delay', which under the CR.P.C means within 24 hours. (c) In conducting search and seizure, armed forces are bound by the same rules as the civilian authorities under the Code of Criminal Procedure. (d) The court interpreted the search and seizure powers under Sec. 4(d) to mean that the armed forces have to turn the seized property over to the local police. See *NPMHR v. Union of India, 1997, S.C.* Also see: <http://www.hrdc.net/sahrdc/hrfeatures/HRF168.htm>.

101 In J&K, AFSPA has been at the centre of a debate between the Chief Minister and various quarters of the government and the army. The former wants it removed from some parts of the state, while some sections of the government, opposition and the army are resisting. The Chief Minister is however, offering to amend the Code of Criminal Procedure Code in order to offer immunity to the armed forces in case AFSPA is removed, which creates more problems than it solves, as it would provide perpetual and overarching immunity to all armed forces in all areas in the state.

102 There remain certain areas of concern in the draft Prevention of Torture Bill: (a) It introduces death penalty for those causing death by torture (Sec 4(2) of the revised Bill); (b) The definition of torture is restrictive and doesn't encompass the full range of the CAT definition (Sec 3); It also defines cruel, inhuman or degrading treatment or punishment narrowly; (c) There is a two-year statute of limitation starting from the date when the offence was committed, after which the complaint becomes time barred; (d) The compensation scheme under Sec. 4 does not take moral damage into account; (e) The Bill has no provision codifying non-refoulement; (f) There are no provisions for prevention of torture; (g) The Bill does not recognize state responsibility for prevention of torture committed by private individuals; (h) There is no provision excluding evidence obtained by torture; (i) Prohibition of incommunicado detention or detention in secret places is absent.



complies with CAT. The PTB must prohibit cruel, inhuman or degrading treatment and punishments.<sup>103</sup>

36. Custodial torture and violence remain an entrenched and routine law-enforcement strategy across India. Police practices include assault, physical abuse, custodial rape, threats, psychological humiliation, as well as deprivation of food/water/sleep and medical attention. A study concluded that 1.8 million people are victims of police torture in India every year.<sup>104</sup> Most torture cases go unreported because victims fear persecution. From 2001-2010, 14,231 people died in police and judicial custody, largely as a result of torture.<sup>105</sup>
37. The practice of torture is even more widespread and condoned in conflict areas, where it is routinely and violently practiced, leading to physical and mental disability or impotence.<sup>106</sup> A communication of the International Committee of the Red Cross with US officials confirmed the widespread use of torture in Kashmir.<sup>107</sup>

### **Recommendations:**

- Adopt the *Prevention of Torture Bill* after addressing its shortcomings, and then immediately ratify CAT

### **Enforced disappearances and extra-judicial killings**

38. As per **UPR Recommendation 12** and India's 2011 pledge,<sup>108</sup> GOI committed to ratify the Convention on Enforced Disappearances (CED), stating that ratification was 'underway', but there are no visible signs of a process of ratification.
39. Enforced disappearances<sup>109</sup> and extrajudicial killings remain entrenched in conflict areas,<sup>110</sup> reinforced by extraordinary powers of arrest, detention and immunity available to the security forces. In Manipur, 789 extra-judicial executions were documented between 2007 and 2010.<sup>111</sup> In Kashmir, justice evades well-known cases of extra-judicial killings<sup>112</sup> and enforced disappearance.<sup>113</sup> A People's Tribunal established the presence of 2,700 mass unmarked graves,<sup>114</sup> confirmed by the J&K State Human Rights Commission (SHRC) in 2011.<sup>115</sup> In West-Bengal, the Border Security Force (BSF) has been responsible for extra-judicial killings at the Indo-Bangladesh border.<sup>116</sup>

103 See *Prithipal Singh Etc v. State of Punjab & Anr Etc*, Criminal Appeal No. 528 of 2009, Supreme Court of India, Criminal Appellate Jurisdiction, 4 November 2011, para 7. The Supreme Court held that in view of "the provisions of Art 21 of the Constitution of India, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise... The State must protect victims of torture ill treatment as well the Human Rights defender fighting for the interest of the victims... Therefore the State must ensure prohibition of torture, cruel, inhuman or degrading treatment to any persons particularly at the hands of any State agency/police force."

104 People's Watch, *Torture and Impunity in India*, National Project on Preventing Torture in India (NPPTI), November 2008, available at: [www.peopleswatch.org/preventing\\_torture.php](http://www.peopleswatch.org/preventing_torture.php).

105 National Human Rights Commission Annual Reports, 2001-2010 (quoted in Asian Centre for Human Rights, *Torture in India*, 2011, p1).

106 Common methods of torture in Kashmir and the Northeast include: assault, placement of an iron rod on the legs on which many persons sit, placement of a burning stove between the legs and administration of electric shocks to the genitals.

107 See report in the Guardian available at: <http://www.guardian.co.uk/world/2010/dec/16/wikileaks-cables-indian-torture-kashmir>

108 UPR I Recommendation 12: Ratify the Convention on Enforced Disappearances; India's 2011 Pledge: "India remains committed to ratifying the Convention on Enforced Disappearances."

109 Human Rights Alert submitted four cases of enforced disappearances to the Working Group on Enforced Disappearances between 2010 and 2011. It is believed that 8,000 to 10,000 people have been subject to enforced disappearances in Kashmir. See Association of Parents of Disappeared Persons' statement, available at: <http://www.disappearancesinkashmir.com/>

110 The National Crime Records Bureau Report 2010, reveals higher incidence of police firing and resultant civilian casualties and injuries for all conflict zones, with J&K ranking the highest under each category followed by Uttar Pradesh and Chhattisgarh, National Crime Records Bureau Report (2010), page 567.

111 Fact-finding report by Human Rights Alert.

112 See: Kashmir Observer, *Machil Killings Exhumed*, May 2010, available at: [http://www.kashmirobsvser.net/index.php?option=com\\_content&view=article&id=4689:machil-killing-victims-exhumed-three-held-so-far&catid=15:top-news&Itemid=2](http://www.kashmirobsvser.net/index.php?option=com_content&view=article&id=4689:machil-killing-victims-exhumed-three-held-so-far&catid=15:top-news&Itemid=2).

113 Chairperson of the Association of Parents of Disappeared Persons, Parveena Ahangar's 16 year old son was picked up by soldiers and is since disappeared. Police investigations accused three Army men for the disappearance, following which the State government sought sanction for prosecution from the Union Home Ministry in 1997. The sanction was denied on the ground of 'improper investigation'. See: Tehelka Magazine, Umar Baba, *Screams from the Valley*, Vol 7, Issue 52, January 01, 2011, available at: [http://www.tehelka.com/story\\_main48.asp?filename=Ne010111SCREAMS\\_FROM.asp](http://www.tehelka.com/story_main48.asp?filename=Ne010111SCREAMS_FROM.asp)

114 International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir (IPTK), Buried Evidence, available at: <http://www.kashmirprocess.org/reports/graves/BuriedEvidenceKashmir.pdf>.

115 While confirming the presence of such graves, the SHRC took suo moto cognizance of the matter and ordered the state government to conduct an investigation for ascertaining the identity of the buried.

116 MASUM, *BSF Enjoy Impunity*, available at [http://www.masum.org.in/rabiul\\_aug2011.htm](http://www.masum.org.in/rabiul_aug2011.htm); Also See Human Rights Watch, MASUM, Odhikar report, "Trigger Happy: Excessive Use of Force by Indian Troops at the Bangladesh Border," 2010, available at <http://www.hrw.org/reports/2010/12/09/trigger-happy-0>.

### Recommendations:

- Ensure that enforced disappearances and extrajudicial killings are codified as offences under criminal law<sup>117</sup>
- Ensure that the legal process of investigation, accountability and justice is followed<sup>118</sup>
- Ratify CED

### Arbitrary arrest and detention

40. Arbitrary arrest and detention in conflict zones is largely carried out through the use of special laws<sup>119</sup> like the *Chhattisgarh Special Public Security Act, 2005* (CSPSA),<sup>120</sup> and preventive detention laws like the *J&K Public Safety Act, 1978* (PSA).<sup>121</sup>
41. 147 persons were detained under CSPSA in 2010.<sup>122</sup> A large number of *adivasis* have been arbitrarily arrested in Central India and languish in jail.<sup>123</sup> A person booked under PSA can be detained for up to two years<sup>124</sup>, with the possibility of reinstating those charges on expiry of the said period. After the 2008 and 2010 protests in Kashmir,<sup>125</sup> there have been numerous arrests under PSA<sup>126</sup>, including arrest and torture of minors and their aides suspected of stone-pelting.<sup>127</sup> The *J&K Juvenile Justice Act, 1997* puts the age of minority at below 16, which contravenes both national<sup>128</sup> and international law.<sup>129</sup>

### Excessive powers, use of force and sexual violence

42. AFSPA empowers the armed forces to 'shoot to kill', arrest, demolish structures, and conduct warrantless searches on mere suspicion. Measures are being taken to further enhance powers of the armed forces. For instance, a new law seeks to widen the scope for deployment of BSF for counter-insurgency and 'anti-Naxal' operations with additional powers of 'search, seizure and arrest'.<sup>130</sup>

117 The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions specifically call for the codification of the offence of extra-legal, arbitrary and summary executions. Similarly, codification of enforced disappearance as a criminal offence is required of state parties under the International Convention for the Protection of All Persons from Enforced Disappearance, 2006.

118 See: *Andhra Pradesh Civil Liberties Committee v. The Government of Andhra Pradesh & Ors*, A.P High Court, W.P.No. 15419/2006. The court ruled in 2009 that "whether an alleged perpetrator is named or not", the case "shall be recorded and registered as FIR and shall be investigated". It further held that "a magisterial enquiry (inquest) is neither a substitute nor an alternative" to recording an First Information Report (FIR) and conducting an investigation "into the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender". The AP Police Association (APPA) has appealed this judgement to the Supreme Court, where it is pending decision.

119 The UN Working Group on Arbitrary Detentions has opined that the use of preventive detention laws by the Indian government should conform to international standards and obligations of the Government of India and that India should consider bringing domestic law in line with International law (mainly referring to PSA). Opinion no.45/2008 (India) adopted on 26 November 2008, Opinions adopted by the Working Group on Arbitrary Detention, Human Rights Council Thirteenth Session, 2 March 2010, A/HRC/13/30/add.1, paras. 51 & 53, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf>

120 Sec 8(4), CSPSA., Detailed analysis of the act by Peoples Union for Democratic Rights, available at: [http://cpjc.files.wordpress.com/2007/07/memo\\_on\\_chhattisgarh\\_bill.pdf](http://cpjc.files.wordpress.com/2007/07/memo_on_chhattisgarh_bill.pdf)

121 Amnesty International, *A Lawless Law: Detentions under the Public Safety Act, 2011*, available at: <http://www.amnesty.org/en/library/asset/ASA20/001/2011/en/cee7e82a-f6a1-4410-acfc-769d794991b1/asa200012011en.pdf>

122 RTI application filed by People's Union for Civil Liberties (PUCL), Chhattisgarh unit.

123 An RTI application filed by Chhattisgarh Mukti Morcha revealed the presence of 2,499 detainees in Chhattisgarh (including Kanker and Jagdalpur districts). Most of these detainees are *adivasis*.

124 In 2011, the J&K Cabinet has approved certain amendments to the PSA.

125 The 2010 protests were primarily in reaction to a series of teenager killings by the paramilitary and the police.

126 A person booked under PSA can be detained for up to two years, with the possibility of reinstating those charges on expiry of the said period Sec. 18, J&K Public Safety Act, 1978.

127 For example, 334 persons were booked under PSA in J&K between January and February 2010. Data provided by the J&K Home Department in response to an opposition legislator's question in the Legislative Assembly in March, 2010. Moreover, estimates place administrative detentions in Kashmir over the past two decades between 8000 to 20000 in Kashmir, See Amnesty International, *A Lawless Law: Detentions under the Public Safety Act, 2011*, available at: <http://www.amnesty.org/en/library/asset/ASA20/001/2011/en/cee7e82a-f6a1-4410-acfc-769d794991b1/asa200012011en.pdf>, page 12; For more details see: Asian Centre for Human Rights' report, *Juveniles of Jammu and Kashmir: Unequal Before Law and Denied Justice in Custody*, 2011 (It studies 51 representative cases), available at: <http://www.achrweb.org/reports/india/JJ-J&K-2011.pdf>

128 India's *Juvenile Justice (Care and Protection) Act, 2000* sets majority at 18.

129 Convention on the Rights of the Child, 1989. For more details see: Asian Centre for Human Rights' report, *Juveniles of Jammu and Kashmir: Unequal Before Law and Denied Justice in Custody*, 2011 (It studies 51 representative cases), available at: <http://www.achrweb.org/reports/india/JJ-J&K-2011.pdf>

130 The *Border Security Force (Amendment) Bill, 2011*. At present, counter-insurgency and 'anti-Naxal' operations, 'require state police personnel, who have the power of "search, seizure and arrest" to accompany them.'

43. The police is being increasingly militarised in conflict areas and given charges of counter-insurgency operations.<sup>131</sup> Paramilitary forces are being intensely trained by the army for operations in Central India.<sup>132</sup>
44. Disproportionate force is routinely used<sup>133</sup> to suppress protest.<sup>134</sup> For example, in Chhattisgarh, peaceful protests by *safai karamcharis*<sup>135</sup> and *anganwadi*<sup>136</sup> teachers were met with disproportionate force and tear gas shelling.<sup>137</sup> In Kashmir, the use of lethal force against unarmed protestors waist-above is widespread. In 2010, paramilitary and police forces killed 110 unarmed protestors and 800 others were injured.<sup>138</sup> The use of supposedly ‘non-lethal’ weapons like ‘tear gas launchers,’ ‘pellet guns’ and custodial torture have caused serious injuries, disability<sup>139</sup> and even death.<sup>140</sup>
45. Sexual assault by security forces is widespread<sup>141</sup> but rarely are cases of rape investigated or punished.<sup>142</sup> For example, in Assam, a deaf and dumb woman was raped by the paramilitary in 2011 in front of her husband.<sup>143</sup> National Human Rights Commission (NHRC) stated: “because no appropriate action was taken so far to punish the culprits involved in previous incidents, the crimes have been repeated again and again in the district.”<sup>144</sup>

## LEGAL IMMUNITY

46. Special security laws<sup>145</sup> and Section 197 of the Criminal Procedure Code (Cr.P.C) grant immunity to public servants and members of the armed forces for acts committed in the discharge of their official duty. Alleged crimes can be prosecuted only with previous sanction of the state or central government. In practice, such sanction is almost never granted, leading to a culture of impunity for human rights abuses. Recent official data confirms that sanction is almost never granted for crimes committed by the armed forces.<sup>146</sup> Moreover, NHRC doesn’t have regular investigative powers over offences committed by armed forces, further exacerbating their lack of accountability.<sup>147</sup>

131 The Ministry of Home Affairs' Annual Report (2009-10) states that the role of the state police in counter militancy/terrorism operations in J&K has "progressively increased with commendable results."

132 As per People's Union for Civil Liberties (PUCL) Chhattisgarh, about 54,543 hectares of forest land are being used as an army training camp in Narainpur, where training is being imparted in jungle warfare. For further details see: [http://www.telegraphindia.com/1110414/jsp/frontpage/story\\_13853082.jsp](http://www.telegraphindia.com/1110414/jsp/frontpage/story_13853082.jsp).

133 For example, in the Northeast, public hearings challenging mega projects have been disrupted and protestors tortured and beaten.

134 The United Nations Code of Conduct for Law Enforcement Officials, 1979, is hardly ever respected in these regions.

135 *Safai karamcharis* are workers involved in public cleaning work.

136 *Anganwadi* teachers are those working in ICDS centres.

137 By the Special Task Force and armed forces.

138 Divisional Commissioner Kashmir confirmed that 110 protestors were killed during incidents spreading through only a few months. See: Hindustan Times, *Valley victims accept compensation, quietly*, February 20, 2011, available at: <http://www.hindustantimes.com/Valley-victims-accept-compensation-quietly/H1-Article1-664528.aspx#>

139 Both physical and mental disabilities; Psychological disorders, particularly "Post-Traumatic Stress Disorder (PTSD)", have been reported. - Arooj Yaswi & Amber Haq, *Prevalence of PTSD Symptoms and Depression And Level of Coping Among the Victims of Kashmir Conflict*, Journal of Loss and Trauma, Vol 13, 2008, p471-480.

140 For example in Kashmir, Wamiq Farooq (13 years) was killed by a tear gas shell fired by police, while he was out playing. Yawar Ibrahim (13 years) was seriously injured in his head by a tear gas shell, when he was on his way to buy butter. He is now speech impaired and the lower half of his body is completely paralyzed.

141 For example in West Bengal (Sunamukhi village), six women were raped and tortured by the police in 2010 with one beaten to death. In Chhattisgarh, six women raped by members of Salwa Judum still await justice from the Court and many other complaints of sexual violence in Central India are yet to be probed.

142 In the 2010 rape and murder cases in Shopian (Kashmir), the investigation lacks credibility and appears more like a cover up.

143 Deobari Basumatary was raped by the paramilitary force in front of her husband in Kokrajhar, Assam. See: The Sentinel, *Jawans 'gang rape' physically impaired woman in Kokrajhar district*, September 11, 2011, available at: <http://www.sentinelassam.com/mainnews/story.php?sec=1&subsec=0&id=89475&dtP=2011-09-13&ppr=1>

144 See: Justicia, *Gang Rape by Indian Army soldiers in front of husband at Indo-Bhutan border*, September 18, 2011, available at: <http://www.justicia.in/gang-rape-by-indian-army-in-front-of-husband-at-indo-bhutan-border/>

145 These include: *The Armed Forces (Assam & Manipur) Special Powers Act (AFSPA) 1958*, and the *J&K Armed Forces Special Powers Act 1990*, *J&K Public Safety Act 1978 (PSA)*, *Chhattisgarh Special Public Security Act 2005 (CSPSA)*, *Nagaland Security Regulation Act 1962*, *Unlawful Activities (Prevention) Act 1967 (UAPA)*, and *Enemy Agents Ordinance 1948*.

146 In response to a RTI application by the Jammu and Kashmir Coalition of Civil Societies, the J&K State Home Department revealed that from 1989 to 2011, the government of J&K sought sanctions for prosecution under section 7 of AFSPA in only 50 cases. Out of these, sanction for prosecution is awaited in 16 and has been declined in 26 cases, while in 8 cases sanction has been 'recommended', without elaborating on what 'recommended' status entails. Thus in effect, not a single unequivocal sanction has been granted in all the 50 cases.

147 *The Protection of Human Rights Act, 1993*, Sec 19, available at: <http://nhrc.nic.in/Publications/HRAActEng.pdf>  
See: Concluding Observations of the Human Rights Committee, India", 4th August 1997, CCPR/C/79/Add.81, para 22, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument).

## MILITARISM AND DENIAL OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR)

47. Militarisation has also led to denial of ESCR with the security apparatus increasingly used to implement the government's 'development' agenda. In the Northeast, development sites such as dams are manned by armed forces to suppress protest. For example, the Mapithel Dam area is one of the most militarised zones in Manipur. Security forces beat and tortured 40 women forces during protests against construction of the dam. Public hearings are controlled through cash payments and heavy militarisation.<sup>148</sup>
48. Occupation of hospitals and schools by the army and paramilitary is common. The Supreme Court has acknowledged the practice and ordered security forces to vacate schools in Chhattisgarh since 2007, however nothing much has been done.<sup>149</sup>
49. Agricultural land, particularly in border districts, is occupied by armed forces for camps or temporary shelters, denying farmers access to their lands and affecting their livelihood. In Central India, the tribal population living in forests has been forcefully displaced by security forces, including that of 645 villages in Dantewada.<sup>150</sup> The number of people displaced due to armed conflict is estimated at 650,000,<sup>151</sup> with the following break-up, Kashmir: 265,000;<sup>152</sup> Northeast: 208,000<sup>153</sup> and Central India: 148,000.<sup>154</sup>

## C. Access to Justice

50. In a significant legislative development, India enacted the *Right to Information Act, 2005*. This Act has given citizens across India the ability to procure information on issues vital to their lives, thereby also promoting their access to justice and a culture of transparency and accountability in administration.<sup>155</sup>
51. Proper implementation of the many progressive laws and schemes, however, demand that the many structural and functional problems in the justice system be addressed.

## BARRIERS TO ACCESS TO JUSTICE<sup>156</sup>

### Regressive laws

52. The *Police Act, 1861* and the *Prisons Act, 1894* are two of the oldest statutes in force. Despite countless recommendations for their repeal and replacement with legislation in harmony with the current democratic, constitutional framework, they continue to operate.

148 The phenomenon is particularly acute in Arunachal Pradesh.

149 See: *Nandini Sundar and Ors v. State of Chhattisgarh*, Supreme Court, Writ Petition (C) No.250 of 2007, paras 18, 25, 26 ; Also see: *Ibid* Interlocutory Appeal No.7 of 2011, order dated 18/11/2011.

150 As studied by the People's Union for Civil Liberties, Chhattisgarh; About 40,000 paramilitary forces are posted in Bastar, who have started military training camps, which has caused displacement.

151 Internal Displacement Monitoring Centre, available at: [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/90E174CA3D9CF14CC1257790002402F2?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/90E174CA3D9CF14CC1257790002402F2?OpenDocument). The majority of those displaced from conflict have been living in displacement for years, as they have not been able to find a durable solution to their displacement – be it sustainable return, local integration, or settlement elsewhere in India [(United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), Guiding Principles on Internal Displacement, 1998; United Nations General Assembly (UN GA), Framework on Durable Solutions for Internally Displaced Persons, 9 February 2010)].

152 *Ibid*, 250,000 Kashmiri Pandits displaced from the Kashmir Valley since 1990 (Reuters AlertNet, 19 June 2010); about 15,000 people in Poonch district of J and K state who were cut off from their land and livelihoods by border fencing in 2009 (The Hindu, 20 December 2009).

153 *Ibid*, 47,000 people displaced by Bodo-Muslim and Bodo-Santhal violence in 1993, 1996 and 1998 and staying in camps in Kokrajhar and Bongaigaon districts of Assam state (ACHR, 6 June and 19 November 2009); 125,000 people displaced by Bodo-Muslim violence in 2008 staying in camps in Darrang and Udalguri districts of Assam state (ACHR, 6 August 2009; AITPN, June 2009); 4,000 people displaced by violence between Khasis and Nepali-speakers in 2010 in the Assam-Meghalaya border region (Nepal News, 21 May 2010); 31,703 Brus displaced from Mizoram state to Tripura state in 1997 and 2009 (PTI, 15 August 2010).

154 *Ibid*, 40,000 *Adivasis* living in displacement at the end of 2009, of whom half were staying in camps in Chhattisgarh and half were scattered across Andhra Pradesh (AI, 27 May 2010, p.167); 8,000 *Adivasis* living in displacement in West Bengal (AI, 27 May 2010, p.167); more than 100,000 people displaced from Chhattisgarh since June 2009 (Deccan Chronicle, 12 June 2010). As of 2011, in Chhattisgarh, about 14,000 people are living in camps. See details furnished by the government of Chhattisgarh in *Nandini Sundar & Ors v. State of Chhattisgarh*, Supreme Court, Writ Petition (C) No.250 of 2007. The Supreme Court had ordered the petitioners in the case to prepare a rehabilitation plan, the starting point of which was to conduct a survey but the state government is refusing to act on it.

155 For more information on the RTI Act and the many challenges in its implementation, see: [www.righttoinformation.info](http://www.righttoinformation.info)

156 This topic is discussed at length in the UPR submission of the Commonwealth Human Rights Initiative (a member of WGHR), Access to Justice in India.

53. Several other legislations violate the Constitution and international human rights law, such as *Land Acquisition Act, 1894*; *Bombay Prevention of Begging Act, 1956*; India's colonial sedition provisions;<sup>157</sup> and the *Mental Health Act, 1987*<sup>158</sup>.

### Violations by the police and resistance to reform

54. A majority of complaints brought before NHRC between 2008-2009 involve police violations.<sup>159</sup> Police are regularly accused of beatings, torture, abduction, rape, deaths in custody and extra-judicial killings through fake 'encounters'. They have a reputation for corruption, non-registration of cases<sup>160</sup> and arbitrary arrests. Procedural safeguards are routinely violated.<sup>161</sup> Socially and economically disadvantaged sections are most vulnerable to police brutality and corruption.<sup>162</sup>

55. The 2006 Supreme Court judgment with guidelines on police reform and orders to pass new police acts is a step forward.<sup>163</sup> However, less than 20 states have taken measures to implement the Court's directives and the new acts being passed are proving even worse.<sup>164</sup>

### Inadequate legal aid and assistance

56. The *Legal Services Authorities Act, 1987*, gave a statutory base to the fundamental right to legal aid.<sup>165</sup> However, there remains a serious lack of awareness amongst litigants on free legal aid services, which often doesn't reach the most needy.<sup>166</sup> Other problems include: (i) acute underutilisation of funds (example, 87.33% underutilization in Madhya Pradesh);<sup>167</sup> (ii) lack of an implementation structure; and (iii) lack of experienced lawyers. The legal aid services are promoting alternative resolution approaches for women's/family law issues that tend to compromise women's statutory rights in the name of expediency and efficiency.

### Lack of witness protection programme

57. To date, India lacks a law or a scheme for witness protection.<sup>168</sup> To fill this gap, the Supreme Court has developed principles of witness protection<sup>169</sup> none of which encompass all aspects. Such measures are particularly important

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157 Including Section 124 A of the Indian Penal Code (IPC).

158 The Act allows arrest without warrant of persons with disabilities.

159 See: National Human Rights Commission, Annual Report 2008-2009, p. 186, available at: [www.nhrc.nic.in/Documents/AR/Final%20Annual%20Report-2008-2009%20in%20English.pdf](http://www.nhrc.nic.in/Documents/AR/Final%20Annual%20Report-2008-2009%20in%20English.pdf). Also see: Concluding Observations of the Human Rights Committee: India, 1997, CCPR/C/79/Add.81, para 23.

160 This trend is particularly acute in the case of women reporting domestic violence.

161 For example, the mandatory need to produce arrested persons before a magistrate within 24 hours and guidelines on arrest.

162 See: Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 14; Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 26

163 *Prakash Singh and Others v. Union of India and Others* (2006) 8 SCC 1.

164 A total of 13 states have passed new Police Acts since the Prakash Singh judgment, and only a handful more have draft Bills waiting to be passed. Alarming, the new acts give statutory sanction to many bad practices (including executive control of the police, the curtailing of existing legal safeguards, and the dilution of accountability). The independence of new accountability mechanisms is diminished in many states through politicised composition, weakened powers, or in extreme cases, refusal to establish these bodies (See: *Complaints Authorities: Police Accountability in Action*, Commonwealth Human Rights Initiative, 2009, available at: [http://www.humanrightsinitiative.org/publications/police/complaints\\_authorities\\_police\\_accountability\\_in\\_action.pdf](http://www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf)).

165 Right recognized under articles 21 (right to life) and 39A of the Constitution. Article 39A provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

166 According to a study conducted by the Centre for Social Justice in seven states (Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar, Orissa and Uttar Pradesh) only 20% of litigants were aware of free legal aid services and 52.2% of surveyed litigants had to pay money to lawyers appointed by the State Legal Services Authority, available at: [http://www.centreforsocialjustice.net/access\\_to\\_justice.html](http://www.centreforsocialjustice.net/access_to_justice.html); Legal aid rarely reaches persons living with physical, mental and multiple disabilities living in custodial institutions like mental asylums, 'beggars' home' and other state institutions for women and children.

167 Data obtained in response to an RTI application regarding the utilization of funds for the year 2009-2010. Under-utilization of funds amount to the following in other states: Jharkhand (53.87%), Uttar Pradesh (44.8%) and Orissa (35.16%).

168 See: *Supreme Court, NHRC v. State of Gujarat* (2003): "... no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses". Over 560 witnesses have been given central paramilitary protection by the Supreme Court before, during, and after the trial, following the impleadment application by Citizens for Justice and Peace (CJP).

169 *Neelam Katara v. Union of India* (judgment dated 14.10.2003), Bimal Kaur Khalsa AIR 1988 P&H 95 (protection of witness from media).

in communal violence cases where conviction is low mainly because witnesses tend to turning hostile due to fear of reprisals.

### Lack of independence of public prosecutors

58. This is a major concern given the appointment of public prosecutors by the executive, especially since victims often depend entirely on them.<sup>170</sup> This phenomenon, together with section 197 Cr.P.C leads to a culture of entrenched impunity that pervades all institutions. The tendency to allow perpetrators off-the-hook, despite proven involvement in mass and individual crimes, has been most apparent in cases such as the Bhopal Gas tragedy verdict,<sup>171</sup> and cases of mass targeted crimes: Delhi 1984,<sup>172</sup> Gujarat 2002,<sup>173</sup> Odisha 2008<sup>174</sup>.

#### Recommendation:

- Create an Independent Directorate of Prosecution

## DISCRIMINATION IN ACCESS TO JUSTICE

### Women

59. Discrimination against women is systemic in India, embedded in socio-cultural norms. Family laws are codified with reference to religion and custom rather than constitutional rights.<sup>175</sup> Despite piece-meal legal reform, women have unequal succession, guardianship rights, and no right to matrimonial property. The state justifies this inequality as being essential to respect minorities and cultural diversity. As per **UPR Recommendation 17**, India was requested to withdraw its reservations to CEDAW Article 5 and 16, undertake modification of customs that subordinate women, and review its refusal to interfere in religion-based family law. GOI should reform religion-based family laws to bring parity between spouses in divorce, matrimonial property, guardianship, and succession.<sup>176</sup>

60. Violence against women is highly pervasive and perpetrated with impunity. Reports indicate that every 60 minutes two women are raped, and every six hours a young married woman is found beaten to death, burnt or driven to suicide. Women are also targeted on account of their caste, sexuality, disability, and other status. Targeted violence of Dalit women,<sup>177</sup> stigma, systemic persecution, and violence against lesbians, transgenders, and women with disability occurs with impunity. Sexual violence is not fully addressed by penal law.<sup>178</sup> A comprehensive law must include all forms of sexual assault, in aggravated and non-aggravating circumstances, and include reform in procedure and

170 In the Gujarat genocide carnage cases of 2002, public prosecutors were found by the Supreme Court of India to be acting more like defence counsel and their close allegiance to political parties in power was acknowledged and criticized. See: 2004 SOL Case No. 295, *Zahira Habibullah Shaikh & Anr v. State of Gujarat & Ors*.

171 Not only were the more serious and criminally indicting sections of the law deliberately omitted from the charge sheet by India's apex court, despite the Central Bureau of Investigation urging their inclusion, powerful men from the multinational's Board of Directors were let off the hook. This despite the evidence that showed criminal inaction of a high level manifest in not just the plant's design but also in allowing exposure to a poisonous and toxic gas.

172 In the 1984 Delhi massacre of over 3,500 Sikhs, following the assassination of former Prime Minister Indira Gandhi by two of her bodyguard who happened to be Sikhs, there has been a shocking level of complicity in the non-punishment of perpetrators. Twenty-five years later, the politically powerful masterminds and police officers guilty of dereliction of duty remain unpunished. Barely 20 persons have been convicted for the massacre of 2,733 people (the official death toll).

173 The genocidal carnage in Gujarat in 2002 is still being prosecuted though several efforts have been made to undermine the justice effort underway. An investigation into criminal culpability at the highest level (the case is SLP 1088/2009, *Zakia Ahsan Jafri & Anr v. State of Gujarat & Ors*) has been probed and will now be addressed by the Indian Supreme Court.

174 See paragraph 73.

175 See: Concluding Observations of the Human Rights Committee: India, 1997, CCPR/C/79/Add. 81, para 17, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument)

176 These changes should be introduced as well through a secular marriage and family law by way of an option. It is recommended that a law on matrimonial property be enacted to entitle women equal share in assets acquired during the period of marriage. See: Concluding Comments to India from the Committee on the Elimination of Discrimination against Women, CEDAW/C/IND/CO/3, 2007, para 55.

177 Data from the National Crime Records Bureau (NCRB). Atrocities against Dalit women include: Verbal abuse and sexual epithets, naked parading, pulling out of teeth, tongue and nails, and violence, including murder. Dalit women are also threatened by rape as part of collective violence by higher castes. See: Concluding Observations of the Elimination of Discrimination against Women: India, 2007, CEDAW/C/IND/CO/3, para 29.

178 The offence of rape, is the only significant offence and suffers from a narrow definition that criminalises only penile penetration of the vagina – despite advocacy for comprehensive reform spanning two decades. Rape prosecution requires medico forensic investigation, such as the two-finger test, that is irrelevant to the determination of rape (as reiterated by judicial pronouncements), and demeaning to women. The legal investigation and process subjects the victim-survivors to moral scrutiny and judgement, without securing victim or witness protection. As a result, sexual violence is rarely reported, and survivors who report often cannot assist prosecution through the length of long, hostile and demeaning proceedings.

rules of evidence.<sup>179</sup> There is no reparative justice for sexual violence in peace times or during riots, or conflicts<sup>180</sup> or any law on sexual abuse of children.

61. Violence against women (and men) in the name of 'honour' is a serious concern, where family members, or community leaders ostracise and kill young couples, often with the collusion of the police.<sup>181</sup>
62. The targeting of middle-aged and elderly single women as 'witches', leading to social stigma, displacement, economic boycott, torture and murder must be addressed through a national law on witch-hunting.<sup>182</sup>
63. The *Protection of Women from Domestic Violence Act, 2005* provides protection to women victims of domestic violence,<sup>183</sup> through a mechanism of protection officers and support services. However, due to low appointment of such offices, inadequate orientation to new machinery and police, lack of support services and shelter, and poor budgetary allocations,<sup>184</sup> the Act has not been effectively implemented.<sup>185</sup>
64. The law on sexual harassment at the workplace lacks enactment, despite 1997 Supreme Court guidelines on the issue.<sup>186</sup>
65. India ranks among the worst countries in tackling human trafficking,<sup>187</sup> impinging on the most disadvantaged socio-economic strata.<sup>188</sup> Child trafficking is endemic.<sup>189</sup> Despite ratifying the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol), India is still to bring its law in conformity with international standards<sup>190</sup> against trafficking. The *Immoral Traffic (Prevention) Act, 1956* covers trafficking for prostitution alone, contrary to the Trafficking Protocol, which requires States to address trafficking into all forms of forced labor, slavery and servitude. Police led raid and rescue operations undermine the rights of victims<sup>191</sup>, who may be prosecuted for soliciting or engaging in sex work in public places,<sup>192</sup> even if they are coerced. The Act undermines sex workers' ability to claim protection by the law, while the absence of safeguards has

179 See: Concluding Comments to India from the Committee on the Elimination of Discrimination against Women, CEDAW/C/IND/CO/3, 2007, para 23, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/98/PDF/N0724398.pdf?OpenElement>

180 Although sexual violence is integral part of sectarian violence – involving targeting of one community by another, there is no special rules of evidence or procedures to redress mob sexual violence; See: Concluding Observations of the Committee on the Elimination of Discrimination against Women: India, 2007, CEDAW/C/IND/CO/3, para 24.

181 People's Union for Democratic Rights Report, '*Courting Disaster: A report on Inter-Caste Marriage, Society and the State*' 2003 (New Delhi); AALI Report, National Consultation on Women's Right to Chose, if, when, and who to Marry: Report and Recommendations, Lucknow (2003). A special law to address honour based crimes is needed, and changes are sought in the *Special Marriage Act*, a secular civil marriage law codified without reference to religion, to allow young people fleeing their hometown to marry easily.

182 See: Concluding Comments to India from the Committee on the Elimination of Discrimination against Women, CEDAW/C/IND/CO/3, 2007, para 26-27, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/98/PDF/N0724398.pdf?OpenElement> ; Studies suggest that although disguised as superstition, this practice is a means to divest single women of productive resources and land, or to punish those who transgress social norms, or refuse sexual advances. 'Witch-hunting' impacts the most marginalised women, and official crime records, although under-reported, show a prevalence in 13 states in India. See: 2nd NGO Shadow Report to CEDAW coordinated by NAWO, at pages 16-17, available at: <http://www.nawoindia.org/Second-NGO-Shadow-Report-on-CEDAW.asp>.

183 Under the Act domestic violence includes abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. It provides protection to the wife or female live-in partner or his relatives, extends its protection to women who are sisters, widows or mothers.

184 *Staying Alive*, Fourth Monitoring and Evaluation report 2010 on the Protection of Women from *Domestic Violence Act, 2005*, Lawyers Collective Women's Rights Initiative, page 51

185 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 67.

186 *Vishaka and Ors v. State of Rajasthan* AIR 1997 SC 3011. The proposed bill has been widely critiqued for non-inclusion of domestic workers, and a penalty provision against complaints found to be false or malicious. Given the widespread nature of the problem and the silence that surrounds it, such a provision would deter complaints and be used for retribution.

187 A Report on Trafficking in Women and Children in India 2002-2003, NHRC – UNIFEM – ISS Project. Also see: The Hindu, *India among worst ranked countries in tackling human trafficking*, June 16, 2010, available at: <http://www.thehindu.com/news/article458420.ece>

188 Scheduled Tribes, Scheduled Castes, Other Backward Castes, ethnic minorities, tribal communities, undocumented migrant workers, stateless people or people in refugee camps.

189 Children are being trafficked for a number of purposes within and outside India. See: HAQ: Centre for Child Rights, *Still Out of Focus, Status of India's Children 2008*. <http://www.haqcrc.org/publications/status-indias-children-2008>

190 See: Concluding Observations of the Human Rights Committee: India, 1997, CCPR/C/79/Add.81, para 31 & Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, E/C.12/IND/CO/5, para 27 & 66.

191 Zeenews, *Sex workers' abuse during raids a concern in Pune*, April 16, 2011, available at: [http://zeenews.india.com/news/maharashtra/sex-workers-abuse-during-raids-a-concern-in-pune\\_700338.html](http://zeenews.india.com/news/maharashtra/sex-workers-abuse-during-raids-a-concern-in-pune_700338.html)

192 Offences under the *Immoral Traffic (Prevention) Act, 1956* include soliciting and engaging in sex work in public places. These provisions are not directed at trafficking but are meant to safeguard public decency and morality. Almost all convictions are against sex workers, including those who may have been trafficked.

intensified violence and exploitation by brokers, agents and the mafia.<sup>193</sup> Relief and compensation for victims are non-existent. Recently, the Supreme Court directed the Central and State Governments to provide voluntary and effective rehabilitation to sex workers, in accordance with their right to live with dignity.<sup>194</sup>

## Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI)

66. Until recently, homosexuality was criminalised by the law punishable with a maximum of life sentence, by section 377 of the Indian Penal Code (IPC), leading to multiple levels of stigma, discrimination, and violence, without recourse to the law.<sup>195</sup> In 2009, homosexuality was de-criminalised by the Delhi High Court.<sup>196</sup> Discrimination however continues<sup>197</sup> and the judgement is under appeal in the Supreme Court by conservative sections of society. The state has abdicated its role to defend the judgement, relegating defence of human rights of the LGBTI to civil society.

## Children<sup>198</sup>

67. India has 12 special laws for children apart from legal provisions in the penal and criminal codes. The *Juvenile Justice (Care and Protection) Act, 2000*<sup>199</sup> is the only law in the world based on a preventative approach to juvenile justice.<sup>200</sup> However, poor implementation of the law, lack of support structures,<sup>201</sup> low conviction rates and inadequate resources lead to derailment of justice. Children's ages are often falsified and they are tried in adult courts or sent to adult prisons, and child victims find themselves further victimised in non-child sensitive judicial processes. While children's courts were established by the *Protection of Child Rights Act, 2005*, Delhi was the first state to open such facilities for speedy trials in 2011. Protection of children still continues to receive only 1.26% of the national budget.

## Scheduled Castes (SCs)<sup>202</sup> and Scheduled Tribes (STs)

68. SCs<sup>203</sup> (also known as 'Dalits') and STs<sup>204</sup> (India's tribal population) have long been targets of acute discrimination and violence, therefore requiring a special law to guarantee increased protection. The *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*<sup>205</sup> seeks to provide such protection. However, weak implementation<sup>206</sup> and

193 National Network of Sex Workers and Layers Collective HIV/AIDS Unit (WGHR member), *Sex Workers Meet Law Makers*, 2011. Available online at: <http://www.lawyerscollective.org/files/Report%20Sex%20workers%20meet%20Law%20makers.pdf>

194 *Budhadevkarmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, Supreme Court of India.

195 Naz Foundation International (NF) and Centre for Media and Alternative Communication (CMAC), *My Body is Not Mine - Stories of Violence and Tales of Hope, Voices from the Kothi community in India*, 2007; People's Union for Civil Liberties (Karnataka), *Police Violence Against Transgender Community*, Bangalore, September-December 2005 (2nd edition) and 2003 (1st edition); Human Rights Watch, *Epidemic of Abuse – Police Harassment of HIV/AIDS Outreach Workers in India*, Vol.14, No. 5 (c), July 2002; PUCL (Karnataka), *Human Rights Violations against Sexual Minorities in India*, February 2001; 'Less than Gay: A citizens report on the status of homosexuality in India' ABVA, 1991 (New Delhi). The threat of criminality routinely exposed the transgender and gay men to abuse, violence, extortion, and blackmail. Same sex desiring women experience compulsory heterosexuality, through marriage under family-community pressure, stigma and criminal charges for exercising choice, eviction, violence and report a high rate of suicide. See *Rights in Intimate Relationships: Towards an Inclusive and Just Framework of Women's Rights and the Family* (a resource book by Partners for Law in Development), 2010 (New Delhi) see pages 62-72. See also: Devaki Menon, coordinator of a lesbian support group, Sahayatrika (Kerala), in *India Today*, 25 December 2002.

196 *Naz Foundation India v. Government of National Capital Territory of Delhi and others*, (2009) 160 DLT 277.

197 Stigma and discrimination are common in the family, in housing, employment and other areas of public sphere. Reports of persecution of workplace, eviction, harassment and murder continue with impunity. See: The Hindu, *Mystery shrouds death of AMU professor*, April 8, 2010, available online at: <http://www.thehindu.com/news/national/article391265.ece>

198 For a more detailed analysis of the situation of children, please refer to the UPR stakeholders' joint report of the NGO child rights coalition.

199 Amended in 2006.

200 It identifies two sets of children: those "in need of care and protection" and those "in conflict with the law".

201 For example, the *Juvenile Justice Act* requires setting up Juvenile Justice Boards and Child Welfare Committees in all districts.

202 For a more detailed analysis on the situation of Scheduled Castes in India, please refer to the UPR stakeholders' report initiated by the National Campaign on Dalit Human Rights (NCDHR), on behalf of a large coalition.

203 Scheduled Castes account for around 166.6 million people in India, representing 16.23% of the total population (2001 Census).

204 The tribal population of India is 84.3 million, constituting 8.2% of the total population (2001 Census).

205 Than those available under the Constitution (Article 21, 17 and 46), Indian Penal Code 1869, *Protection of Civil Rights Act, 1955*. It defines 'atrocities' for the first time, enhances punishment for the offences and addresses various crimes affecting social disabilities, property, malicious prosecution, political rights and economic exploitation. It also defines legislation under various mechanisms to enforce the act in its later spirit which includes mechanisms for prevention, Special Courts, Special Public Prosecutors, investigation by Dy.S.P, State and District Level Vigilance and monitoring committees, Special Officers, Nodal Officers etc.

206 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 19 & 59.



low conviction rates (29.32%) are disturbing,<sup>207</sup> as is police refusal to register cases under this Act.<sup>208</sup>

69. Despite the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*, more than 770,000 'manual scavengers' in India<sup>209</sup> (including more than 80% Dalit women) continue to be forced to clean human excrement with their bare hands for little or no wages, even in the public sector.<sup>210</sup> A number of manual scavengers have been assisted under the *National Scheme of Liberation and Rehabilitation of Scavengers* but many are still to be rehabilitated.<sup>211</sup>
70. Under the *Scheduled Caste Sub Plan*,<sup>212</sup> funds ought to be allocated for the welfare and development of SCs in proportion to their population. However, huge diversions were discovered in 2010 and 2011, both at the union and state levels, where money earmarked for SCs was used for general infrastructure projects.<sup>213</sup>
71. Despite protective laws and constitutional provisions, the rights of indigenous peoples/tribals<sup>214</sup> to self-determination, land<sup>215</sup>, and culture, continue to be seriously violated. Funds allocated under the *Tribal Sub Plan* are diverted or unspent.<sup>216</sup> Tribals also face: (i) denial of control over their development, based on their values, needs and priorities; (ii) political under-representation and lack of access to social and other services; and (iii) marginalization resulting from mega projects exploiting their lands and natural resources, and causing large scale evictions and loss of livelihoods.

## Persons with disabilities

72. Despite the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, all major issues e.g. accessibility, education, employment, health etc. continue to remain neglected. Where established, state disability commissions have not been effective. There is a lack of proper planning and implementation of disability programs and schemes. Rights of people with psychosocial and high support needs<sup>217</sup> continue to be ignored. 100 civil laws in the country<sup>218</sup> deprive legal status for persons with psychosocial and cognitive disabilities. A widespread shift from a charity to a rights based approach is required. The process of formulation of a new law in consonance with international standards<sup>219</sup> is a good initial step.

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207 This conviction rate is the fourth lowest in comparison to over 20 other legislations of a similar nature.

208 Between 1995 to 2010, 638,725 cases of atrocities are reported to have been committed against SCs/STs. Of these, 67.16% (against SCs) and 79.83 % (against STs) were not registered under the Act.

209 Annual report of the Ministry of Social Justice and Empowerment (Government of India 2009), The highest number of manual scavengers was in Uttar Pradesh (2,13,975), followed by Madhya Pradesh (81,307), Maharashtra (64,785), Gujarat (64,195), Andhra Pradesh (45,822) and Assam (40,413). Also see: Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 23.

210 A large number of 'manual scavengers' are still employed in the Indian railways. In the recent case of *Safai Karamchari Andolan & Ors v. Union of India & Ors*, Writ Petition (C) No. 845 of 2011, the petitioner noted that the 1993 Act was not being implemented effectively and that manual scavengers were being employed in the military engineering services, the army, public sector undertakings and particularly at the Indian Railways. The Ministry of Railways has chosen to deny the existence of manual scavenging in the Indian Railways entirely, most recently in the affidavit dated 21.3.2011 filed before the Court. However, the Court ordered a change of the toiletry system in the trains, raising public awareness on public hygiene, and prohibited manual carrying of human excreta.

211 Annual Report of the Ministry of Social Justice and Empowerment, 2009.

212 Also known as Special Component Plan.

213 During the Financial Year 2011-12, the central government has allocated Rs. 30,551 crore (USD 5,964,455) instead of Rs. 55,121 crore (USD 10,760,702) [1 crore equals 10,000,000; exchange rates in USD as of December, 2011.] The Delhi government spent money from the SCP for the 2010 Commonwealth Games (for more information see [www.hic-sarp.org](http://www.hic-sarp.org)), Madhya Pradesh used the money for large dams and Uttar Pradesh spent the money for the construction of engineering and medical colleges.

214 The UN Declaration on the Rights of Indigenous Peoples is applicable to India's Scheduled Tribes, including adivasis and other tribal and indigenous communities.

215 See: Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 19.

216 A 2007 study conducted in seven states reveals that the guidelines of the Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs, and Planning Commission on implementation of the Scheduled Caste and Tribal Sub Plans (SCSP and TSP) are not being followed. It also states that funds to the tune of 60-65% are being allocated in 'indivisible' sectors like irrigation, industry, roads and bridges which have only 10-15% coverage of SC and ST areas and even less percentage of actual beneficiaries. Source: *Livelihood Options and Asset Creation in SCSP and TSP Schemes and Impacts among SCs and STs*, Planning Commission, November 2007.

217 Intellectual disability, autism, cerebral palsy and multiple disabilities.

218 Including the Constitution.

219 United Nations Convention on the Rights of Persons with Disabilities 2007, ratified by India in 2007.

## Religious minorities

73. Religious minorities in India (mainly Muslims and Christians) face severe discrimination.<sup>220</sup> A number of Muslim men have been falsely implicated in terrorist cases.<sup>221</sup> Dalit Christians and Dalit Muslims face discrimination on accounts of both religion and caste. Through systematic mobilisation of hate and divisive politics, communal pogroms against minorities have been masterminded in complete impunity.<sup>222</sup> In 2008, mobs torched Christian homes in Kandhamal (Orissa), killing at least 38 people.<sup>223</sup> In Gujarat, over 5000 families still live as IDP's in 89 camps as a result of the 2002 carnage.<sup>224</sup> The *Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011*, seeks to protect the victims of this violence from institutional bias and hold public servants and those in position of superior or command responsibility criminally liable.<sup>225</sup>

## Refugees

74. India counts more than 184,821 refugees<sup>226</sup> but has not yet ratified the 1951 *Convention on the Status of Refugees* and its Protocol and does not have a domestic law either. The status of refugees (simply treated as foreigners) remains arbitrary and ad hoc, decided by the administrative authorities. The *Refugee and Asylum Seekers (Protection) Bill, 2006*, should be adopted at the earliest.

## HUMAN RIGHTS DEFENDERS

75. Human rights defenders are key to India's vibrant civil society. However, they have faced increased threats and harassment in the past few years.<sup>227</sup> As highlighted by the Special Rapporteur on human rights defenders in 2011,<sup>228</sup> they and their families face surveillance,<sup>229</sup> are threatened, arbitrarily arrested<sup>230</sup> and detained<sup>231</sup>, falsely charged, their offices raided and files stolen,<sup>232</sup> and in extreme cases even tortured and killed. They are also mislabeled as

220 See Sachar Committee Report on the social, economic and educational status of Indian Muslims, available at: <http://minorityaffairs.gov.in/sachar> and Ranganath Mishra Commission report, available at: [minorityaffairs.gov.in/ncrm](http://minorityaffairs.gov.in/ncrm)

221 See for example: Seven men falsely implicated by the police in the 2006 Malegaon bomb blasts. – The Hindu, *Malegaon blasts accused want dignity back*, November 17, 2011, available at: <http://www.thehindu.com/news/states/other-states/article2633599.ece>

222 See: Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, mission to India, 2009, A/HRC/10/8/Add.3, para 63

223 See: Report of National People's Tribunal on Kandhamal, 22-24 August 2011, New Delhi. Available at: [www.nationalsolidarityforum.org](http://www.nationalsolidarityforum.org). As reported, only 24 people have been recently convicted by the court in the case. See: Indian Express, *Court convicts 24 people for Kandhamal riots*, October 1, 2011, available at: <http://www.indianexpress.com/news/court-convicts-24-people-for-kandhamal-riots/854050/>

224 The High Court of Gujarat has asked the government of Gujarat to implement the Prime Minister's relief package, however, those that were not enumerated by the state government in the first stage have been totally left out. These 5000 "families live in makeshift colonies hastily constructed by NGOs and community organization, on the outskirts of towns and villages, both literally and symbolically, on the margins of society". See: Centre for Social Justice and Anhad, *The Uprooted: Caught between Existence and Denial*, 2007. For more information see *The Wretched: A profile*, Act Now for Harmony and Democracy & Antarik Visthapit Hak Rakshak Samiti, 2008.

225 See: Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, mission to India, 2009, A/HRC/10/8/Add.3, para 67

226 United Nations High Commissioner for Refugees (UNHCR) 2011, available at: <http://www.unhcr.org/pages/49e45b156.html>

227 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 12 & 50.

228 See: Statement of the Special Rapporteur on the situation of human rights defenders following her visit to India in 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10660&LangID=E>

229 For example, tapping of phones, surveillance of emails and tracking of activities of human rights defenders on social networking sites. In his annual report, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, expressed deep concern "by actions taken by States against individuals communicating via the Internet, frequently justified broadly as being necessary to protect national security or to combat terrorism. While such ends can be legitimate under international human rights law, surveillance often takes place for political, rather than security reasons in an arbitrary and covert manner. For example, States have used popular social networking sites, such as Facebook, to identify and to track the activities of human rights defenders." 26 April 2011, A/HRC/17/27, para. 54, available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

230 See for example case of arbitrary arrest on 25 November 2011 in Orissa of Abhay Sahu, the leader of POSCO Pratirodh Sangram Samiti (PPSS). – First Post, *Anti-POSCO leader Abhay Sahu arrested*, November 26, 2011, available at: <http://www.firstpost.com/india/anti-posco-leader-abhay-sahu-arrested-140774.html>; Pohang Steel Company (POSCO) from South Korea is setting up a steel plant at Paradeep, Odisha, with a total investment of US \$12 billion. The proposed plant and port will adversely affect 11 villages and hamlets. According to the local leadership of the movement against POSCO, more than 4000 families and a population of around 22,000 will be affected by the project. Since POSCO launched the project, villagers have been opposing the project, and calling for the protection of their land and the forest where they have been living for generations.

231 See for example, case of human rights defender Gautam Navlakha from Peoples' Union for Democratic Rights (PUDR) detained by the police at Srinagar airport on 28 May, 2011 and denied entry into J&K. For details: [www.pudr.org/old/index.php?option=com\\_content&task=view&id=283&Itemid=60](http://www.pudr.org/old/index.php?option=com_content&task=view&id=283&Itemid=60)

232 For example, the house of reputed human rights defender Kavita Srivastava (General Secretary, People's Union for Civil Liberties) was raided by the Chhattisgarh police on 3rd October, 2011. – See *PUDR condemns the raid on the house of Kavita Srivastav, a noted human rights activist and General Secretary of People's Union for Civil Liberties*, available at: <http://www.pudr.org/content/pudr-condemns-raid-house-kavita-srivastav-noted-human-rights-activist-and-general-secretar-0>

'Naxalites/Maoists',<sup>233</sup> 'militant sympathizers', or 'anti-national'. Defenders in conflict areas face these problems even more acutely; passports are denied and colonial sedition laws are used against them.<sup>234</sup> A new worrying trend is the targeting of activists seeking implementation of progressive laws/schemes like RTI and MNREGA.<sup>235</sup> Some have even been murdered.<sup>236</sup>

76. The stringent provisions under the *Foreign Contribution Regulation Act, 2010* could threaten the functioning of human rights organizations, especially those critical of the government.<sup>237</sup>

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233 See for example case of human rights defender Arun Ferreira (activist working on the rights of tribals, slum dwellers and poor farmers) first arrested in 2007 on charges, among others, to be a Naxalite, tortured in prison, acquitted of all eight cases lodged against him in September 2011, released from the Nagpur central jail on 27 September 2011, seized outside the prison gate by a group of men in civil clothes moments after his release, and finally arrested in a fresh case. See: [www.freebinayaksen.org/?p=2697](http://www.freebinayaksen.org/?p=2697)

234 Sec 124 (Sedition) and Sec 122 (waging war against the state) of Indian Penal Code, *The Prevention of Seditious Meetings Act, 1911*. For example: The well known doctor and human rights activist Binayak Sen from the Peoples Union for Civil Liberties (PUCL) has been imprisoned for years under *the Unlawful Activities Prevention Act*, for fabricated accusations of having Maoist connections.

235 NDTV, *Activist beaten to death for exposing NREGA scam in Jharkhand*, available at: <http://www.ndtv.com/article/india/activist-beaten-to-death-for-exposing-nrega-scam-in-jharkhand-89038>

236 Since 2010, 12 RTI activists have been murdered. See: *RTI Activists: Sitting Ducks of India 2011* report, Asian Centre for Human Rights' (member of WGHR), available at: <http://www.achrweb.org/ihrrq/issue3-4/India-Sitting-Ducks-2011.pdf>

237 For example: Sec 12(6) provides for the expiry of the *Foreign Contribution Regulation Act, 2010* certificate after 5 years, after which permission to receive foreign funds has to be sought again from the Central Government.



# HUMAN RIGHTS INSTITUTIONS

77. As per **UPR Recommendation 3**, GOI accepted to strengthen existing mechanisms for the protection of human rights. India has eight national<sup>238</sup> and over 180 state human rights institutions (N/SHRIs), charged with protecting and promoting human rights. Although these institutions have great potential, systemic impediments affect the functioning of many.<sup>239</sup> Moreover, a number of state commissions are yet to be set up<sup>240</sup> and some lack chairpersons.<sup>241</sup>

### *Recommendations:*

- In order to strengthen N/SHRIs, ensure:<sup>242</sup>
  - (i) Diversity, plurality and transparency in appointment of members
  - (ii) Independence of institutions, notably by ensuring that they don't have government servants on deputation in senior positions
  - (iii) Independent mechanism for handling complaints
  - (iv) Effective collaboration between various N/SHRIs

238 National Human Rights Commission (NHRC), National Commission for Women, National Commission for the Protection of Child Rights, National Commission for Scheduled Castes, National Commission for Schedules Tribes and National Commission for Minorities, Central Information Commission, and Central Commissioner for Persons with Disabilities.

239 See: Report and Recommendations of the Session of the Sub-Committee on Accreditation, International Coordinating Committee of National Institutions for the promotion and protection of Human Rights, 2011, available at: <http://nhri.ohchr.org/EN/WhoWeAre/News/Lists/News/DispForm.aspx?ID=38&ContentTypeId=0x0104006A3D2D731523E24B9C932DE5D6E5EDFF>

240 For example, State Commissions for the Protection of Child Rights have been established in only 12 states.

241 For example, the position of Chairperson is vacant in 6 of the 20 State Human Rights Commissions (Assam, Gujarat, Himachal Pradesh, Madhya Pradesh, Manipur and Rajasthan). See: [www.nhrc.nic.in](http://www.nhrc.nic.in)

242 See also: recommendations in the Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, as she concludes her visit to India, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10660&LangID=E>

# COLLABORATION WITH UN MECHANISMS

## TREATY BODIES

78. As per **UPR Recommendation 4** and its 2011 pledge, GOI committed to continue its constructive engagement with international human rights bodies. However, one major cause of concern remains GOI's delays in reporting to treaty bodies, especially to the Human Rights Committee (report pending since 2001).

## SPECIAL PROCEDURES

79. As per **UPR Recommendations 14** and its 2011 pledge, GOI announced<sup>243</sup> that it was extending a standing invitation to Special Procedures, a very significant and welcome step. GOI already demonstrated commendable openness and support during the recent visit of the Special Rapporteur (SR) on human rights defenders.

### *Recommendation:*

- The government should ensure regular visits of SRs to India, including, with priority, mandates that have already made repeated requests, including the SR on torture (**UPR Recommendation 15**)

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<sup>243</sup> Announcement made in September 2011.

## CONCLUSION

80. The situation of persistent human rights violations across the country presents manifold challenges. A number of progressive legal and policy initiatives have been taken by GOI. The lack of implementation, however, of these measures due to bureaucratic inertia, lack of adequate allocation of resources, contradiction between economic policies, 'development priorities' and national and international human rights commitments, continue to act as obstacles to the realisation of human rights for India's most vulnerable. WGHR hopes that the second cycle of the UPR will highlight the need for more concerted action on the part of India to meet its human rights obligations.

# ANNEX A

## List of WGHR Members

### Organisations

ActionAid India | [www.actionaid.org/india](http://www.actionaid.org/india)

Asian Centre for Human Rights | [www.achrweb.org](http://www.achrweb.org)

Citizens for Justice and Peace | [www.cjponline.org](http://www.cjponline.org)

Commonwealth Human Rights Initiative | [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

FIAN India | [www.fian.in](http://www.fian.in)

HAQ: Centre for Child Rights | [www.haqcrc.org](http://www.haqcrc.org)

Housing and Land Rights Network | [www.hic-sarp.org](http://www.hic-sarp.org)

Human Rights Alert

India Alliance for Child Rights

Lawyers Collective | [www.lawyerscollective.org](http://www.lawyerscollective.org)

Multiple Action Research Group | [www.ngo-marg.org](http://www.ngo-marg.org)

National Campaign on Dalit Human Rights | [www.ncdhr.org.in](http://www.ncdhr.org.in)

Partners for Law in Development | [www.pld-india.org](http://www.pld-india.org)

People's Watch | [www.peopleswatch.org](http://www.peopleswatch.org)

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### Independent experts

Ms. Vrinda Grover | *Lawyer*

Dr. Rajkumar | *Advisor to human rights organisations*

Prof. Babu Mathew | *Visiting Professor, National Law University, Delhi*

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### Advisers

Ms. Indira Jaising | *Member, UN Committee on the Elimination of Discrimination against Women*

Mr. Anand Grover | *Special Rapporteur on the right to health, UN Human Rights Council*

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### Convener

Mr. Miloon Kothari | *Former Special Rapporteur on adequate housing, UN Human Rights Council*

## ANNEX B

### Endorsements

*List as of 28 November 2011, more expected before India's UPR II*

#### List of organisations endorsing this report

- 1 AccessAbility
- 2 Ahimsa Group-PKFoundation
- 3 AICCTUC & Orissa Lokaadhikar Manch
- 4 All India Christian Council
- 5 Andhra Pradesh Civil Liberties Committee
- 6 Association for Advocacy and Legal Initiatives
- 7 Association of Parents of Disappeared Persons
- 8 Bachpan Bachao Andolan
- 9 Banglar Manabadhikar Suraksha Mancha
- 10 Barak Human Rights' Protection Committee
- 11 Bhartiya Jan Sewa Ashram
- 12 Borok People's Human Rights Organisation
- 13 Center for Mountain Dalit Rights
- 14 Centre for Organization Research & Education
- 15 Centre for Social Equity and Inclusion
- 16 Centre for Social Justice
- 17 Civil Society Women's Organisation
- 18 Centre for the Sustainable use of Natural and Social Resources
- 19 Dalit Bahujan Front
- 20 Darshan
- 21 DICE Foundation
- 22 EKTA, Madurai
- 23 FIAN, Rajasthan
- 24 Forum Against Oppression
- 25 Goti Mukti Andolan
- 26 HOPE
- 27 Human Rights Law Network
- 28 Humanity Welfare Organisation Helpline
- 29 Impulse NGO Network
- 30 Indraprastha Public Affairs Centre (IPAC)
- 31 Institute of Human Rights Education
- 32 Jagori
- 33 Jal Jungle Jamin Surakhya Manch



- 34 Jammu & Kashmir Coalition of Civil Societies
- 35 Jan Sahas & Garima Abhiyan
- 36 Jana Unnayan Samiti Tripura
- 37 Jananeethi
- 38 Janhit Vikas Trust
- 39 Justice and Peace Commission
- 40 Koshish Charitable Trust
- 41 Lesbians and Bisexuals in Action
- 42 Mahila Samakhya
- 43 Manab Adhikar Sangram Samiti
- 44 Mountain Children Foundation
- 45 Mphasis
- 46 National Centre for Advocacy Studies,
- 47 National Dalit Movement for Justice
- 48 Nirantar
- 49 North East Network
- 50 People's Union for Civil Liberties, Andhra Pradesh
- 51 People's Union for Civil Liberties, Chhattisgarh
- 52 People's Union for Civil Liberties, Jharkhand
- 53 People's Union for Civil Liberties, Karnataka
- 54 People's Vigilance Committee on Human Rights
- 55 Peoples' Democratic Forum
- 56 Phoenix Organisation for Woman and Child
- 57 PRASHANT – A Centre for Human Rights, Justice and Peace
- 58 RAJAGIRI
- 59 Rashtriya Jagriti Seva Sansthan, Jaunpur
- 60 Right to Food Campaign, Jharkhand
- 61 Right to Food Campaign, Odisha
- 62 SASVIKA
- 63 Sewaratham
- 64 Shahri Adhikar Manch Begharon Ke Saath (SAM-BKS)
- 65 Social Awareness For Democratic Art and Research (SAFDAR)
- 66 South India Cell for Human Rights Education and Monitoring (SICHREM)
- 67 St Xavier Social Service Society (SXSSS)
- 68 Tarshi
- 69 Tarun Chetna Sansthan
- 70 TEDS Trust
- 71 The Hunger Project
- 72 The SUN

- 73 Vanvasi Chetna Ashram
- 74 Women's Research and Action Group
- 75 World Vision India

### **List of experts endorsing the report in their individual capacity**

Organisations are listed with the names of experts for the purpose of identification rather than endorsement of the report by their institution.

- 1 Aasha Ramesh | *Women's Activist and Gender Consultant*
- 2 Arun Kumar | *Indian Council of Trade Union*
- 3 Farrukh Faheem | *Delhi University*
- 4 Irengbam Arun | *Journalist*
- 5 Nandini Sundar | *Delhi School of Economics*
- 6 Rajpal | *Social Activist*
- 7 Sheila Jayaprakash | *Advocate*
- 8 Sudhamani N | *Independent Consultant*
- 9 Sumit Baudh | *Advocate, Voices Against 377*
- 10 Swagata Raha | *Independent Consultant on Human Rights Law*
- 11 Wajahat Ahmad | *Islamic University of Science and Technology*

## ANNEX C

# Overview of WGHR national and regional consultations on the UPR

## 1. Consultative workshop on the UPR process (April 2011)

WGHR organised a national consultative workshop on the Universal Periodic Review (UPR) process in New Delhi on the 4th and 5th of April 2011. It brought together representatives from the Ministry of External Affairs, the National Human Rights Commission (NHRC), various UN agencies, diplomats and civil society.\*

The workshop achieved three main objectives, namely:

- Provided training to all the actors on how best to engage with the UPR process;
- Examined contemporary and critical human rights issues in India;
- Provided a first of its kind forum for dialogue between various stakeholders (government, national human rights institutions and members of civil society) on the UPR process both in terms of implementation of UPR I recommendations and preparation for UPR II.

## 2. Regional UPR consultations (August-September 2011)

In order for the WGHR stakeholders' report to reflect the current human rights challenges in the country as precisely as possible, WGHR held a series of five regional consultations with civil society actors across India from 28 August to 28 September 2011. These consultations aimed at creating a broad and inclusive movement around the UPR process and gathering precise information that would feed into WGHR's stakeholders' report.

Apart from training participants on the UPR process, the regional consultations aimed at gathering testimonies, documentation and information on the most pressing human rights challenges in each region. In order for the consultations to be as effective as possible, WGHR chose a thematic approach, where a series of five themes were suggested to the participants as basic framework for group discussions. The given themes were:

1. Access to Justice
2. Economic, Social and Cultural Rights (ESCR) & the Right to Development
3. Discrimination
4. Militarisation & Security Legislation and Apparatus
5. Human Rights Defenders

The groups conducted discussions on these themes looking at how they affect constituencies most vulnerable to human rights abuse. These constituencies include: (1) Dalits, (2) Indigenous People, (3) Economically Most Disadvantaged, (4) Women, (5) Children, (6) Religious or other Minorities, (7) Persons with Disabilities, (8) Lesbian, Gay, Bisexual, Transgender and Intersex (LGBT).

Further details about the regional consultations held:

### North-Eastern Consultation

- Place: Shillong (Meghalaya)
- Dates: 28-30 August, 2011

\* For full report on the consultation, see: [www.wghr.org/pdf/Report%20on%20UPR%20Workshop.pdf](http://www.wghr.org/pdf/Report%20on%20UPR%20Workshop.pdf)

- States covered: Meghalaya, Assam, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Sikkim and Tripura

### **Northern consultation**

- Place: New Delhi
- Dates: 15-16 September, 2011
- States covered: Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu & Kashmir, Punjab, Haryana and Delhi

### **Western consultation**

- Place: Ahmedabad (Gujarat)
- Dates: 18-20 September, 2011
- States covered: Gujarat, Rajasthan, Madhya Pradesh, Maharashtra and Goa

### **Eastern consultation**

- Place: Puri (Odisha)
- Dates: 22-24 September, 2011
- States covered: Bihar, Jharkhand, Chhattisgarh, West Bengal and Odisha

### **Southern consultation**

- Place: Bengaluru (Karnataka)
- Dates: 26-28 September, 2011
- States covered: Andhra Pradesh, Karnataka, Tamil Nadu and Kerala

## **3. National consultation (11th and 12th October 2011)**

In collaboration with the National Law University, Delhi (NLUD), WGHR organized a two days National Consultation on the UPR at the NLUD campus. It brought together more than 60 participants from across the country; representatives from each of the UPR regional consultations, WGHR members, and representatives from the National Human Rights Commission, the National Commission for Protection of Child Rights and UNICEF.

WGHR's national consultation aimed at the following objectives: (i) consolidate the findings from the regional consultations, (ii) establish national patterns of human rights violations, (iii) prioritize the most pressing human rights issues, and (iv) continue a constructive engagement and dialogue between civil society and National Human Rights Institutions around the UPR process.

At the national consultation, consensus was reached that the final WGHR Stakeholders' report should focus on three main themes:

- ESCR and the Right to Development
- Militarisation and Security Laws/Apparatus
- Access to Justice

The final WGHR stakeholders' report reflects the highlights of the main outcomes of the regional and national consultations.

## WGHR Assessment of Implementation of UPR I Recommendations

S. No.	Recommendation	Response of India	Current status:	Further measures required:
1.	<b>Expedite ratification of the Convention against Torture (United Kingdom, France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom);</b>	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.	<b>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);</b>	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 it 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.	<b>Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);</b>	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.	<b>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);</b>	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.	<b>Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);</b>	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>

S. No.	Recommendation	Response of India	Current status	Further measures required
6.	<b>Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil);</b>	<b>Response of India</b> 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).	<b>Further measures required</b> 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.
7.	<b>Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);</b>	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.	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 be better functioning of Child Welfare Committees, proper rehabilitation of rescued children, and prosecution of the accused employers.
8.	<b>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);</b>	Government of India accepts this recommendation	WGHR has no information on this.	WGHR has no information on this.
9.	<b>Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);</b>	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 the 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.	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.
10.	<b>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);</b>	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.	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.
11.	<b>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);</b>	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.	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.

S. No.	Recommendation	Response of India	Current status	Further measures required
12.	<b>Reaffirm the Convention on Enforced Disappearances (Nigeria);</b>	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.	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.
13.	<b>Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);</b>	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.	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.
14.	<b>Extend standing invitation to special procedures (Latvia, Switzerland);</b>	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.	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).
15.	<b>Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);</b>	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 1983, followed by reminders in 2007 and 2010. As far as we are aware, there has been no response as yet from the government.	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
16.	<b>Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);</b>	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.	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.
17.	<b>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);</b>	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.	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.  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 v. Ashwani Kumar (2006) 2 SCC 578).
18.	<b>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).</b>	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.	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 to extensive to be summarized here.

## **ANNEX E**

### **List of Abbreviations**

<b>AFSPA</b>	The Armed Forces (Assam and Manipur) Special Powers Act, 1958
<b>BSF</b>	Border Security Force
<b>CAT</b>	The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
<b>CED</b>	International Convention for the Protection of All Persons from Enforced Disappearance, 2006
<b>CEDAW</b>	Committee on Elimination of Discrimination Against Women, 1979
<b>CERD</b>	Committee on the Elimination of All Forms of Racial Discrimination, 1969
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>Cr.P.C</b>	Code of Criminal Procedure
<b>CSPSA</b>	The Chhattisgarh Special Public Security Act, 2005
<b>FTAs</b>	Free Trade Agreements
<b>GOI</b>	Government of India
<b>HIV/AIDS</b>	Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
<b>HRC</b>	Human Rights Council
<b>ICDS</b>	Integrated Child Development Scheme
<b>J&amp;K</b>	Jammu and Kashmir
<b>MDMS</b>	Mid Day Meal Scheme
<b>MEA</b>	Ministry of External Affairs
<b>MNREGA/NREGA</b>	Mahatma Gandhi National Rural Employment Guarantee Act, 2005
<b>NGOs</b>	Non-Governmental Organizations
<b>NHRC</b>	National Human Rights Commission
<b>PSA</b>	J&K Public Safety Act, 1978
<b>PUCL</b>	People's Union for Civil Liberties
<b>RTE</b>	Right of Children to Free and Compulsory Education Act, 2009
<b>RTI</b>	Right to Information Act, 2005
<b>SEZs</b>	Special Economic Zones





## The Working Group on Human Rights in India and the UN (WGHR)

is a national coalition of fourteen human rights organizations and independent experts from India. WGHR works towards the realization of all civil, cultural, economic, political and social rights in India and aims at holding the Indian government accountable for its national and international human rights obligations. At the national level, WGHR seeks to engage with relevant human rights, government, parliamentary, judicial and academic institutions. At the international level, WGHR seeks to facilitate Indian civil society's engagement with the United Nations' human rights instruments and mechanisms.

[www.wghr.org](http://www.wghr.org)

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### Members

ActionAid India | Asian Centre for Human Rights | Citizens for Justice and Peace | Commonwealth Human Rights Initiative | FIAN India | HAQ: Centre for Child Rights | Housing and Land Rights Network | Human Rights Alert | India Alliance for Child Rights | Lawyers Collective | Multiple Action Research Group | National Campaign on Dalit Human Rights | Partners for Law in Development | People's Watch

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