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Universal Periodic Review

Joint written statement* submitted by the Habitat International Coalition, the Asian Centre for Human Rights, the Commonwealth Human Rights Initiative, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

India: Hope of a more inclusive second UPR**

The “Working Group on Human Rights in India and the UN” (WGHR) – a national coalition of 14 NGOs and independent experts from India – would like to commend the Government of India for its commitment towards an inclusive second Universal Periodic Review (UPR) process.

1. National workshop on the UPR

During a high-level national workshop on the UPR held in New Delhi in April 2011, the Indian Ministry of External Affairs (MEA) committed to:

- Making the UPR process wide ranging and genuinely inclusive;
- Engaging constructively with civil society and all other relevant stakeholders in the run-up to India’s second review (June 2012), including in the preparation of its national report;
- Considering to post on its website its draft national report and invite comments from all stakeholders.

This national workshop was the first time various stakeholders (Government of India [GOI], National Human Rights Commission, NGOs and civil society) came together to openly discuss the UPR process, both in terms of implementation of the 18 recommendations made to India through its first UPR, and preparation for its second review.

2. India’s first UPR

India’s first UPR in 2008 lacked any serious form of consultation with NGOs and civil society. The government held only minimal consultation, hurriedly organised and barely advertised, leading to weak participation. As a consequence, India’s national report suffered in its substance and relevance.

WGHR welcomes the commitment of the MEA to make significant changes in the run-up to India’s second UPR.

3. Status of implementation of recommendations made to India during first UPR

WGHR’s mid-term assessment (see chart on WGHR’s website¹) points out that, while some progress has been made in a few areas, much more needs to be done at the national policy and legislative levels – if India is to comply with the 18 recommendations prior to its second cycle. The GOI must note and address the factors of identity, which block people’s fair and equal access to rights.

Below is a short list of further measures required from the GOI on some select recommendations, for which implementation is possible through specific action, achievable in the shorter term.

** Working Group on Human Rights in India and the UN (WGHR), an NGO without consultative status, also shares the views expressed in this statement.

¹ Available at: www.wghr.org/universalperiodicreview.html

Ratifications

On Recommendation n° 1: Expedite Ratification of the Convention against Torture (CAT) – Domestic legislation (The Prevention of Torture Bill, 2010) was drafted by the government and passed by the 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 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. The re-drafted Bill is yet to be passed by both Houses. It is crucial that there is no dilution of the Bill as amended by the Select Committee. Any dilution would undermine meaningful ratification of CAT.

On Recommendation n° 6: Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – Since 2008, there has been no move from the government to sign and ratify the CEDAW Optional Protocol (OP). WGHR stresses that recommendations of CEDAW under the OP provide structural solutions, and cannot be viewed as being parallel to or substituting domestic mechanisms. Therefore, the GOI should seriously consider signing and ratifying the CEDAW OP, which will provide mechanisms to enhance state compliance to CEDAW.

On Recommendation n° 12: Ratify the Convention on Enforced Disappearances – 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. Echoing recommendations by UN treaty bodies and national commissions, WGHR joins the demand of civil society for the repeal of the Armed Forces Special Powers Act.

Invitations to special procedures

On Recommendation n° 14: Extend standing invitation to special procedure – Shortage of staff within the MEA was put forth as one of the reasons making it difficult for India to extend a standing invitation to special procedures. In the minimum, the government should receive an average of two special procedures per year, which would be manageable even for a small team. The GOI demonstrated commendable openness and support during the recent visit of the UN Special Rapporteur (SR) on the situation of human rights defenders to India. However, as many as nine other Special Procedures remain waiting for a positive response from India for country visits. Among them, some have already made numerous requests: 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).

On Recommendation n° 15: Receive as soon as possible the Special Rapporteur (SR) on the question of torture – The SR on torture made a request in 1993, followed by a reminder in 2007. Given the fact that custodial torture remains endemic in India, it is crucial for the GOI to allow the SR to visit India and demonstrate the same openness that was shown to the SR on human rights defenders.

Follow-up process to the UPR

On Recommendation n° 2: Fully involve civil society in the follow-up to the UPR – During the national workshop on the UPR, the GOI expressed its willingness to engage with all stakeholders. WGHR will prepare a suggested “roadmap” to aid the government demonstrate this willingness by planning and executing its preparation for the second UPR in widest possible consultation with all stakeholders.

On Recommendation n° 16: Fully integrate a gender perspective in the follow-up process to the UPR – It is crucial to integrate a gender perspective in the UPR process so that women’s concerns are well represented and thereby addressed. There have been no government attempts so far to integrate a holistic gender perspective. This will be addressed in the roadmap that WGHR will prepare.

Declaration on article 32 of the CRC

On Recommendation n° 9: Review the declaration to Article 32 of the Convention on the Rights of the Child (CRC) – The GOI 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. However, 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.

Nation action plan for human rights

On Recommendation n° 11: Take into account recommendations made by treaty bodies and special procedures in developing a national action plan for human rights – 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. It is strongly suggested that the government requests the NHRC to prioritise the drafting of a NAP.

Disaggregated data on caste

On Recommendation n° 5: Maintain disaggregated data on caste and related discrimination – Some of the key areas where disaggregated data on caste is missing are: (i) Crimes committed against Scheduled Castes and Scheduled Tribes women; (ii) Employment in the private sector and entrepreneurship; and (iii) access to health and civic amenities. It is strongly recommended that the GOI 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.

4. Role of civil society in the run-up to the second UPR

WGHR, along with other major human rights organizations, is committed to assisting the government in the run-up to the second UPR. It will also organise civil society consultations across the country, leading to a joint stakeholder submission in December 2011.

Conclusion

Signatory organizations to this statement and WGHR request India to:

- Take concrete measures to implement the recommendations of the first UPR before the next review;

- Address and not repeat the gaps and shortcomings of the previous UPR process, with the aim of enabling a comprehensive view of the human rights situation in India.
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