

Annex A

WGHR Assessment of Implementation by India of UPR I Recommendations



Last updated: 18 May, 2012

S. No.	Recommendation	Response of India in its UPR II Report	Current status	Further measures required
1.	Expedite ratification of the Convention against Torture (United Kingdom France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom)	To enable ratification of the UNCAT, the "Prevention of Torture Bill 2010" was introduced and passed by the Lower House of Parliament (Lok Sabha) in May 2010. The Select Committee of the Upper House (Rajya Sabha) has made certain recommendations which are currently being examined by Government. Although India has not yet ratified the Convention, Article 21 and other Articles of the Constitution of India and the relevant provisions under the Indian Penal Code, 1860, provide for adequate safeguards. The Supreme Court of India, through its judgements, has also laid down exacting standards on this issue.	The Rajya Sabha Select Committee finalised its recommendations as well as an alternate draft of the <i>Prevention of Torture Bill</i> (PTB) in a report which was presented to the Rajya Sabha in December 2010. To date, more than a year later, the Ministry of Home Affairs has not publicly released any comment on the Committee's draft. As the Bill has been significantly altered in the Committee's draft, it has to be placed before, discussed, and passed by both Houses of Parliament. A new Bill has not been introduced in Parliament as yet.	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. In addition, there is an urgent need to address the shortcomings that remain, in spite of the Committee's suggested amendments. It is imperative that the Bill is revised with due deliberation that fully takes into account all the remaining gaps to ensure that PTB is in total conformity with CAT.
2.	Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom);	The various Ministries/ Departments involve the national civil society, as appropriate, in the formulation, implementation and assessment process relating to their respective policies, programmes and schemes. These include the process to operationalise of the recommendations of the UPR process. We will continue to involve the national civil society in this process. For e.g. with respect to the highly successful national employment programme initiative namely Mahatma Gandhi National Rural Employment Guarantee Act, 2005, it is worth mentioning that states have reported that social audit has been conducted in 91% of the Gram Panchayats. 244,000 reports on Social Audit have been uploaded on the MGNREGA website.	There were no debriefing sessions or consultations, initiated by the government, with civil society after UPR I in 2008 until early 2012. However, due to concerted civil society efforts, Gol representatives participated actively in a national workshop on the UPR organised by civil society in April 2011. The Gol upheld its commitment of posting its draft report for UPR II on the Ministry of External Affairs (MEA) website in January 2012, inviting comments from civil society. The MEA also held a number of meetings with civil society in New Delhi but very few of the recommendations made at these meetings were incorporated into the government's final UPR II report.	The government should initiate, soon after UPR II hearings, public efforts to hold regional and national broad-based consultations with civil society and independent experts on the implementation of recommendations made at UPR II. In addition, Gol's draft report for UPR III should be made available at the MEA website, for comments well before the deadline for its submission to OHCHR. The NHRC is strongly recommended to continue to consult civil society and submit its own independent reports for India's UPR III.
3.	Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);	Government has continued to energize the various institutions/ mechanisms for protection and promotion of Human Rights. Some of the legislative and other initiatives address directly the human rights challenges India faces. The judiciary has also played its part to impart new momentum through its far-reaching pronouncements. In spite of a number of serious challenges, India will continue to promote and strengthen human rights.	There is no real evidence of the government continuing to 'energise' the various institutions/mechanisms for protection and promotion of human rights. In fact, much remains to be done with regard to India's human rights institutions. For instance, most basically, at present, state-level human rights commissions are established only in 20 states, so there is not even a human rights commission in every state of the country. Of the established commissions, many are short-staffed and/or do not have a Chair. Long-standing grievances of the lack of independence, transparency in appointments, diversity, and inadequate responses of India's human rights institutions have not been addressed to date. The judiciary continues to play its role actively, but the perennial problem of lack of implementation of judicial pronouncements has not been properly tackled.	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. It is strongly recommended that the national and state human rights commissions are made to draft and submit their annual reports on time every year; and central and state governments make it a practice to table and debate the reports in Parliament and state assemblies. Concerted efforts are needed to ensure the executive branch properly implements the orders and judgments of the courts.
4.	Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals(Ghana);	Gol is engaging with domestic and international Human Rights procedures/ mechanism at various levels so as to attain internationally recognized human rights goal. Judiciary in India has also played an important role in taking cognizance of international instruments on human rights through its judgments. For e.g. in 2007, the National Commission for the Protection of Child Rights (NCPCR) was established to ensure that all legislative and administrative measures are in consonance with the child rights perspective as enshrined in the Constitution of India and the Convention on the Rights of the Child.	This is a broad recommendation which requires a sustained approach on many levels. The recent announcement by the Gol to extend a standing invitation to special procedures is a very good step. However, the continued and endemic delay in the Gol's reporting to treaty bodies, in particular to the Human Rights Committee, is an issue of concern.	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 Gol 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.

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5.	Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);	India's programme of affirmative action is without parallel in scale and dimension in human history. In the Census of 2011, extensive data has been collated. Indian Census has always provided data/investigations of anthropological nature such as the socio-economic survey of villages, preparation of ethnographic notes on SC/ST etc. Data on weaker sections/minorities in the society is also available extensively in the public domain.	Some of the key areas where disaggregated data on caste is still 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 collected by the National Crime Records Bureau (NCRB) does not 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 labour, child labour, manual scavenging (no data available at all).	It is strongly recommended that the government monitors through its surveys/ alternative mapping exercises the current practices of caste-based discrimination (CBD) as well as economic and social conditions of communities affected by CBD, disaggregated gender wise.
6.	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil);	The Constitution of India provides for direct access to the Supreme Court and High Courts for redressal of violations of any fundamental right, for any individual or group of individuals. In addition, we have several other statutory mechanisms to address such violations including the National Human Rights Commissions and the State Human Rights Commissions. There is also a separate National Commission and State Commissions for Women which <i>inter alia</i> 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. Also India has been supportive and responsive to the various International Human Rights mechanism such as that of confidential complaint and of visits of Special Rapporteur.	There is still no move from the government to sign and ratify the CEDAW Optional Protocol.	The CEDAW Optional Protocol (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 disturbing the hierarchy of the judicial system, or being parallel to them, or indeed substituting the domestic mechanisms. Indeed, countries with strong and multiple mechanisms of redress, similar to India, have ratified the OP CEDAW for this reason. WGHR fully supports signature and ratification of the OP.
7.	Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child (to which India is a party) as well as the ILO Conventions No. 138 and 182. At the time of accession to Convention on Rights of Child, Government made a declaration to Article 32 of the Convention stating " <i>Measures would be undertaken to progressively implement the provisions of Article 32 since it is not practical immediately to prescribe minimum age for admission to each and every area of employment in India.</i> " Given the socio-economic conditions in the country, a multi-pronged strategy for elimination of child labour has been adopted, which emphasises on Legislative measures; general development programmes for the benefit of families of child labour; and project-based action in areas of high concentration of child labour. As per Child Labour (Prohibition & Regulation) Act, 1986, children below the age of 14 years are prohibited for employment in hazardous occupations/processes specified in the Act. Consequently, India has not ratified these two ILO Conventions since minimum age is fixed at 18 years. The Government is working on the modalities of ratifying these ILO Conventions, particularly on No. 182. However, it is pertinent to point out that the Government issued three notifications in the last five years, expanding the list of banned and hazardous processes and occupations in Schedule II of the Child Labour (Prohibition and Regulation) Act, 1986. The number of occupations listed in Part A now is 18 and the number of processes listed in Part B is 65. Further, the worst forms of child labour are already prohibited under various Acts such as Bonded Labour System (Abolition) Act, 1976, Immoral Traffic Prevention Act-1956, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 and Child Labour (Prohibition & Regulation) Act.	The government has not yet ratified 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.	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);	Best Practices are being included in the body of UPR – II for sharing with Human Rights Council.	India's national report for UPR II is a reiteration of existig law, policies and programmes, which do not, in themselves, constitute best practices, unless there is a clear recognition of the obstacles faced in their implementation and evidence that the Gol is moving towards overcoming these.	<i>See current status.</i>

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9.	Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);	Response at S.No. 7 above applies to this issue as well.	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 <i>Right to Free and Compulsory Education Act, 2009</i> . The logical corollary to this far-reaching change in the legal regime is for the Gol 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.	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);	The central vision of the 11th Plan (2007-2012) is to trigger a development process which ensures broad-based improvement in the quality of life of the people in an inclusive manner. It includes several inter-related components, including rapid growth that reduces poverty and creates employment opportunities, access to essential services in health and education, equality of opportunity, empowerment through education, environmental sustainability, recognition of women's agency and good governance. In fact, there is now a mandatory requirement that all Cabinet proposals should specifically mention how 'equity' will be served by the proposal under discussion. As can be seen from our UPR – II, several policies and programmes have been put in place to address such inequities.	While it is true that the Gol 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 11th Plan (2007-2012) remains obsessed with the 'growth at all costs' approach. The government must consider revisiting the current model of development. The alternative is to achieve growth through social justice which has never been given any serious consideration. Unless a radical rethinking takes place, that places the realisation of human rights as a primary objective of government policies, there is every likelihood that economic and social inequities will grow in the coming years.
11.	Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico);	India has always taken into account the recommendations made by the treaty bodies and special procedures and, in accordance to our socio economic conditions, we have strived to implement these recommendations. While the National Human Rights Commission (NHRC) is in the process of drafting a National Action Plan for Human Rights, various Ministries have fully integrated human rights issues in their own National Plans in their respective spheres. For e.g. India has a National Action Plan for Children. This has led to focus on promotion and protection feeding into the overall national commitment to protect and promote of human rights.	The 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. The NHRC's stakeholders' report for UPR II states that the NHRC "has started to draft a plan, on which it will consult civil society and other stakeholders". The Gol report for UPR II as well as its Annexure I containing the action taken report on UPR I Recommendations make no mention of the NAP. There has clearly been no forward movement on the NAP for many years. Regarding the NAP for Children, referred to in India's UPR II report, there is an existing plan dated 2005 which set numerous targets to be achieved by 2010. Most of these targets have not been achieved.	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. A new NAP for Children will also have to be drafted with new targets.
12.	Ratify the Convention on Enforced Disappearances (Nigeria);	India has signed the Convention for Protection of all Persons from Enforced Disappearance. Government is studying the extent of changes in the domestic laws that would be required to bring domestic legislation compatible with the Convention. The Constitution, however, continues to provide strong protection in such matters and guarantees the right to approach the higher courts by way of Habeas Corpus petitions. Indian courts have also been awarding compensation in such cases even though our domestic laws do not have any such provision.	Since UPR I, there have been no signs of a process of ratification, including any visible discussions on an enabling legislation, 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 <i>Convention on Enforced Disappearances</i> .
13.	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);	The National curriculum for school education of National Council of Educational Research and Training (NCERT) has included the human rights education component in social science subjects. In order to create human rights education sensitivity and skills amongst the teachers in schools, a module for teacher training programme has also been prepared by the taskforce of the NHRC for this purpose. NHRC has continued to play an active role in raising all round human rights literacy and awareness including month-long internship programmes for University students and programmes focussed on public servants especially police in collaboration with the Administrative Training Institutes and Police Training Institutions. Human rights education, as indeed every aspect of our policies and schemes, is sensitive to gender and Scheduled Castes and Scheduled Tribes and Other Backward Classes.	There is no official proof of a national action plan of action for human rights education being in place. Moreover, 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 and colleges. is urgently required.

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14.	Extend standing invitation to special procedures (Latvia, Switzerland);	India has extended a standing invitation to Special Procedures in September 2011 in accordance to our voluntary pledges and commitments made to the HRC in May 2011.	WGHR very much welcomes the significant step taken by the GoI to extend a standing invitation to special procedures. It also commends the government's openness and support during the visit of the UN Special Rapporteur (SR) on the situation of human rights defenders in January 2011 and the visit of the SR on extrajudicial, summary or arbitrary executions in March 2012. The visit of the SR on sale of children, child prostitution and child pornography – initially scheduled for April 2012 – has been postponed.	WGHR urges the GoI 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 torture (3); Working Group on enforced or involuntary disappearances (2); SR on racism (2) as well as mandates on economic, social and cultural rights such as the SR on adequate housing. The visit of the SR on sale of children should be rescheduled at the earliest.
15.	Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);	Since we have extended a Standing Invitation to the Special Procedures, we will schedule this visit depending on mutual convenience.	The Special Rapporteur on Torture made a request in 1993, followed by reminders in 2007 and 2010. As far as we are aware, there has been no response as yet from the government.	Given the fact that custodial torture remains endemic in India, and torture prevention legislation appears to be a standstill, it is crucial for the government to allow the SR on torture to visit India without further delay and demonstrate the same openness that was shown to the SR on human rights defenders and the SR on extrajudicial executions.
16.	Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);	Women related issues and gender perspective has been fully integrated into India's policies in various spheres and in the follow-up to the UPR process. A detailed account of all our policies, including gender budgeting, and legislative developments has been given in the UPR II report. It will be seen that all policies have strong gender perspective.	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.	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);	India is working towards making registration of all marriages compulsory. This direction comes from the Supreme Court which in its judgment in the case of Seema v. Ashwini Kumar (2006) directed that registration of marriages of all persons, irrespective of their religion, who are citizens of India should be made compulsory in their respective States. In this context, 19 States have already taken necessary legislative measures for compulsory registration of marriages. Mandatory registration of the wife in all property owned or acquired by the husband is another progressive step taken by many State Governments. Further, government financed asset ownership schemes have women's ownership of assets. Accordingly, in housing schemes like the Indira Awaas Yojana (IAY) or the Rajiv Gandhi Gramin LPG Vitrak (RGGLPGV) Scheme, the allotment is done in the name of the female member of the households or in the joint names of husband and wife. Further, the amendment of the Hindu Succession Act in 2005 was an important legal reform which will contribute towards economic empowerment of women, giving daughters equal rights in the ancestral property.	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.	The issue of equal rights to property accumulated during marriage remains unanswered. GoI must provide clarity on the steps it has taken to ensure that women have an equal share to matrimonial property. The schemes outlined by GoI pertain to assets provided by the state to households, and does not answer the recommendation in question. Likewise, the question of compulsory registration of marriage is not related to joint ownership of matrimonial property. It is important to mention however, that there are divergent views regarding the merits of compulsory registration of marriage, which in the context of India, will adversely impact women whose marital status is unclear. It is of great concern that the government's report links marriage registration to citizens, and not persons – this is inconsistent with the marriage laws that are not limited to citizens alone. It must be mentioned that the CEDAW Committee in 2007, has strongly recommended withdrawal of India's declarations to articles 5 (a) and 16 (1) of CEDAW, and called for the review its policy of non-interference in personal laws. It is clarified here that the <i>Special Marriage Act, 1954</i> is a secular law, not a personal law. This recommendation needs to be reiterated to allow equality within marriage and family, including in relation to matrimonial property. .
18.	Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia).	Constitutional guarantees, legislation, judicial pronouncements, policies and programmes and civil society have strived to address the issue of providing its diverse population fundamental rights, justice, welfare, protection, human rights, affirmative action, inclusive economic growth and all requirements to lead a life of dignity and prosperity as well as promoting the unity and integrity of the Nation. In spite of a number of serious challenges, India remains deeply committed to human rights and has taken significant strides towards these goals. Our recent efforts have been documented in the UPR – II report.	This is a broad recommendation which requires a sustained approach on many levels. India's UPR II report fails to outline such a sustained approach. What is required, in addition to a listing of laws, policies and programmes, is an honest recognition of the tremendous human rights realisation gaps that exist in the country.	The extensive range of measures needed to fulfill this recommendation require a comprehensive 'indivisibility of human rights approach' at all levels of government. Given India's disturbing socio-economic realities, a sustained effort to implement economic, social and cultural rights, including the right to food, housing, education and health, is required. Details of measures needed to achieve this enormous task are too extensive to be summarized here.