

## **COLLABORATION WITH UN MECHANISM**

### **SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES**

Among the various recommendations made to India during UPR I in 2008 and UPR II in 2012, India accepted recommendation no: 4 in UPR I made by Ghana to encourage enhanced cooperation with human rights bodies and all relevant stakeholders towards the attainment of internationally recognized human rights goals. India accepted recommendation no: 70 made by Lao People's Democratic Republic during UPR II to cooperate with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges. While seeking election to the Human Rights Council for the term 2011-2014, India voluntarily made pledges to the UN General Assembly and committed to continue to engage constructively in the deliberations of the Human Rights Council, its subsidiary bodies and mechanisms, including norm setting in the field of human rights. In October 2014 India was re-elected to the UN's main human rights body for the period of 2015-17. After the re-election, India again committed that its focus is to ensure that the "idea behind creating the Human Rights Council is actually implemented in practice."

### **TREATY BODIES**

As per UPR I Recommendation no: 4 and UPR II Recommendation no: 70 and its 2011 pledge, India committed to continue its constructive engagement with international human rights bodies. India has ratified many international human rights instruments. India has, however, not yet ratified several major human rights and humanitarian instruments. India has not ratified the Convention against Torture and its Optional Protocol; the Convention on the Rights of Migrant Workers and their families or the Optional Protocol to the Covenant on Economic, Social and Cultural Rights and the Convention for the Protection of All Persons from Enforced Disappearances. India is not a party to the Geneva Convention, its additional protocols and the Conventions relating to refugees and stateless persons. India has not ratified numerous ILO Conventions on the abolition of child labour; on the rights of indigenous and tribal people in Independent Countries and on the Rights of Domestic Workers. The international legal obligation undertaken by India under the various human rights conventions is not only to respect the prescribed rights and prohibitions, but also "to ensure" that they are enforced on the ground. The Vienna Convention on the Law of Treaties requires signatories to abide by the letter and spirit of the treaty even if not ratified.

### **SPECIAL PROCEDURES**

During UPR I India accepted recommendation no: 14 to extend a standing invitation to special procedures. In UPR II India accepted recommendation no: 66 made by Belgium to continue its cooperation with Special Procedures and accept requests for visits from Special Rapporteurs.

India's National Report for Universal Periodic Review III put on its website for comments of civil society states that India has in place a standing invitation to Special Rapporteurs to visit the country at a mutual convenient time. India has accepted the visits of nine Special Procedures since 2000. The Special Rapporteur on violence against women, Rashida Manjoo visited India from 22 April to 1 May 2013. Since that time a gap of three years followed until the Special Rapporteur on Adequate Housing, Ms. Leilani Farha, visited India in April 2016. As per latest information, already fourteen requests, including five reminders, from the UN seeking permission for its Special Mechanisms are pending with the Indian Ministry of External Affairs. The mandate holders who are consistently sending requests for visits but have not met with a positive response from India are: special rapporteurs on torture; the working group on enforced or involuntary disappearances; extreme poverty and human rights; independence of judges and lawyers and working group on people of African descent.

Several special procedures have received a positive response but their missions to India have not been scheduled. These are the Special Rapporteur on sale of children, child prostitutions and child pornography and the Working group on Arbitrary Detention. There also seven other Special Procedures who have made a first request for mission but have not yet received a response from India.

India accepted the recommendation no 15 in UPR I cycle in 2008 made by Switzerland to receive as soon as possible the Special Rapporteur on the question of torture but did not accept recommendation no: 69 made by Hungary during the II UPR in 2012 which said allow the visit of the Special Rapporteur on Torture, whose request had been in line with India's standing invitation issued in 2011 to all Special Procedures of the HRC. The request of the Special Rapporteur on Torture has been pending before the Government of India for 20 years. The first request was made in 1993, followed by reminders. Custodial torture remains frequent in India. Attempts were made to frame an anti-torture bill but it was not passed in the Indian Parliament. The prohibition against torture is now considered a peremptory norm in international law, meaning all states must prevent and punish all acts of torture, notwithstanding their ratification of the CAT. Contrary to all these facts, the government of India has not responded to the requests nor felt the need to explain their reluctance to accept the visit of the UN Special Rapporteur on Torture.

India's response to communications, an important part of the work of UN Special Rapporteurs, is also unsatisfactory. For example, Mr. Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report (Communications: May 1, 2011 to February 28, 2016) has expressed regret at not having received responses to his communications and reiterated that he views replies to his communications as an essential feature of Government cooperation with his mandate. He considers responses to his communications as an important part of the cooperation of Governments with his mandate and urges the authorities to comply with Human Rights Council resolutions 24/5 (2013), 21/16 (2012) and 15/21 (2010).

India's response to country mission and thematic reports of UN Special Rapporteurs is often hostile and unconstructive often accusing the Rapporteurs of having exceeded their mandates. The response to the report of Rashida Manjoo, the UN Special Rapporteur on violence against women when she presented her report to the Human Rights Council in 2014, was particularly harsh and unhelpful. The United Nations Human

## SPECIAL PROCEDURES

Rights Council's (UNHRC) Special Rapporteur on minority issues, Ms. Rita Izsák-Ndiaye presented her report on caste-based discrimination at the UNHRC on 15th March 2016. India objected to the report of the Special Rapporteur on minority issues on 28 January 2016 by saying that the report "was a breach of the SR's mandate". India pointed out that when Izsák-Ndiaye's 'mandate' was extended on March 2015, caste was not covered as per the categories of minorities. The Special Rapporteur pointed out that a "guidance note" of the UN secretary general on racial discrimination and the protection of minorities in March 2013 "explicitly recommended that the UN should focus attention on caste-based discrimination and related practices". The Special Rapporteur further argued from the report that, the SR's report notes that "CASTE DISCRIMINATION AND CASTEISM" directly affect the health of the discriminated, citing an Indian study which "demonstrated stark disparities between Dalit and non-Dalit women in terms of life expectancy and access to prenatal and postnatal care".

## REPORTING OBLIGATIONS

India's reporting record with UN Treaty Bodies is dismal. India's reports are overdue for periods ranging from four to over twenty years. The most egregious is the long overdue report to the Human Rights Committee (HRC). India last submitted a report to the HRC in 1995. India last submitted a report to the Committee on the Elimination of Racial Discrimination in 2006; to the Committee on Economic, social and cultural rights in 2008 and to the Committee on the Rights of the Child in 2012 and to the Committee on the Elimination of Discrimination against Women in 2012.

## RECOMMENDATIONS

**Fulfil India's obligations under all the international human rights treaties that it has ratified, and amend all national laws and regulations that are not in full compliance with these treaties.**

**India should sign and ratify the remaining human rights treaties and Optional Protocols**

**The implementation of several the international human rights treaties, that India has ratified, have been made conditional by declarations and reservations. India should, in the interest of respecting the object and purpose of the relevant treaties, withdraw these declarations and reservations.**

**India should follow the regular reporting deadlines consistent with the spirit of engagement undertaken by it in each of the treaties.**

**In keeping with the spirit of India's open invitation to the Special Procedures, India should ensure regular visits of SRs to India, including, with priority, mandates that have already made repeated requests, including the SR on torture whose request to visit has been pending since 1993.**

**Strengthen co-operation with the UN Special Procedures, including the communications procedure.**

**Fully cooperate and constructively interact with the UN treaty bodies, including timely submission of reports and implementation of concluding observations.**

**India should ratify all outstanding human rights treaties including the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its Optional Protocol; the Optional Protocol to the Covenant on Economic, Social and Cultural Rights and the International Convention for the Protection of All Persons from Enforced Disappearance, without making any reservation or declarations.**

**Accede to the Rome Statute of the International Criminal Court without making any declaration amounting to a reservation and implement it effectively into national law.**

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Status of Reporting to UN Treaty Bodies: India

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