

PRELIMINARY ASSESSMENT OF THE IMPLEMENTATION OF THE RECOMMENDATIONS MADE TO THE GOVERNMENT OF INDIA IN ITS FIRST UNIVERSAL PERIODIC REVIEW



This chart presents a brief assessment of the government's implementation of the recommendations that came out of India's first Universal Periodic Review in 2008. The recommendations and the responses of the Government of India have been lifted verbatim from the Report of the Working Group on India (UN document: A/HRC/8/26/Add.1, dated 25 August 2008). The current status of implementation and further measures required have been compiled by the Working Group on Human Rights in India and the UN (WGHR). This is not an exhaustive account of implementation, but provides a preliminary assessment and identifies gaps to the extent possible based on public information available from civil society and government sources. To note, several recommendations are very broad, and require extensive and long-term measures for implementation which are too lengthy for a chart. These have been commented on very briefly. This assessment has been prepared as a background document to assist discussions at the national workshop on India and the UPR to be held in Delhi on 4 and 5 April 2011.

S. No.	Recommendation	Response of India	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);	The ratification of the Convention against Torture is being processed by Government of India.	Domestic legislation (The Prevention of Torture Bill 2010) has been drafted by the government. The Bill was passed by the Lok Sabha (Lower House) in May 2010. Once the Bill came to the Rajya Sabha (Upper House) in August 2010, it was referred to a Parliamentary Select Committee in August 2010 for further scrutiny, following civil society campaigning that the Bill did not conform to the UN Convention against Torture (CAT). The Select Committee submitted its report in December 2010 in which it pointed out several gaps in the Bill, and has also drafted an alternate Bill based on consultation and input received from civil society and human rights groups. The Committee's alternate Bill more closely aligns to CAT than the original Bill drafted by the government.	<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 compromise India's obligations under CAT and undermine meaningful ratification.</i>
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);	Government of India accepts this recommendation	There have been no follow-up consultations after the first review in 2008. The government has not announced the holding of follow-up consultations with civil society on the implementation of the recommendations adopted in 2008 or on preparations for the next UPR cycle. The government can also take proactive steps to help increase awareness and knowledge of the UPR process with civil society.	<i>Public efforts by the government to initiate and hold broad-based consultations on the UPR with civil society beginning this year, well in advance of India's next review. It is recommended that these consultations are held in all the regions and are not limited only to Delhi.</i>
3.	Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);	Government of India accepts this recommendation	This is a broad recommendation which requires a sustained approach on many levels.	<i>In brief, WGHR suggests that any further action to "energize" existing mechanisms is geared towards strengthening institutional responses.</i>
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);	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.	<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.</i>
5.	Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);	Extensive disaggregated data, including on caste, are available in the public domain.	General population data is reported in the public domain, but this is not disaggregated on the basis of castes and tribes, nor does it go into issues of discrimination. There is reporting on the extent of crimes committed against Scheduled Castes (SC) and Scheduled Tribes (ST), but this does not include crimes against SC and ST women. There is no proper analysis of this reporting, and no mention of the extent of crime complaints which are not registered by the police. There is superficial reporting on the implementation of special protective legislation in place for these communities. There is absolutely no disaggregated data on the basis of caste regarding education, health, civic amenities, employment, entrepreneurship, and other important social indicators.	<i>The government can consider conducting periodic surveys to identify the extent of caste-based discrimination, to collect disaggregated information on the geographical distribution, and economic and social conditions in full of communities affected by caste-based discrimination, including a gender perspective. The government can also consider providing disaggregated data for the situation of women affected by caste-based discrimination.</i>
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 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).	<i>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.</i>

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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 (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.	<i>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 better functioning of Child Welfare Committees, proper rehabilitation of rescued children, and prosecution of the accused employers.</i>
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);	Government of India accepts this recommendation	WGHR has no information on this.	<i>WGHR has no information on this.</i>
9.	Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);	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 Convention on the Rights of the Child, particularly paragraph 2 (a), in accordance with its national legislation and international obligations.	The government has not indicated willingness to review the reservation to Article 32.	<i>In recent years, India has adopted economic policies geared to move the country towards becoming an economic 'super power'. The statement of the government that it remains committed to "progressively implement" Article 32 of the CRC is welcome. There is, however, no indication on the part of the government that it will review its reservation to Article 32.</i>
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);	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.	<i>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.</i>
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);	Government of India accepts this recommendation	The National Human Rights Commission (NHRC) is tasked with drafting the national action plan for human rights. To date, the NHRC has not circulated a draft of an action plan. The development of national action plan for human rights has been pending since the NHRC's inception in 1993.	<i>WGHR strongly recommends that the NHRC monitors the implementation of recommendations made by UN treaty bodies and special procedures. The NHRC also needs to expedite the development of a national action plan for human rights. The finalisation of this plan, however, has to be based on broad-based consultations with civil society across India.</i>
12.	Ratify the Convention on Enforced Disappearances (Nigeria);	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.	There are no signs of a process of ratification. Since India signed the Convention, there have been no efforts to codify enforced disappearance as a domestic criminal offence, although the occurrence of enforced disappearances is widely known in Kashmir and other conflict areas. The present law is not being used to penalize those implicated in enforced disappearances, even when the perpetrators are named. In cases which progress through the legal system after herculean efforts, the government does not grant sanction to prosecute security forces personnel.	<i>The Government of India has not taken any measures so far that demonstrate it is honouring its commitments under the Convention.</i>

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13.	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);	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.	<i>The development of a national policy and action plan for human rights education in schools and universities 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.</i>
14.	Extend standing invitation to special procedures (Latvia, Switzerland);	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.	A standing invitation has not been issued as yet. Over the years, more than twenty requests by Special Procedures mandate holders for a country visit to India have been left unanswered by the government.	<i>WGHR strongly recommends that the government extend a standing invitation to special procedures at the earliest. The government has been widely commended for allowing the UN Special Rapporteur on Human Rights Defenders to visit India in January 2011. This new and welcome spirit of openness will be amply reinforced through the granting of a standing invitation.</i>
15.	Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);	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.	To date, as far as we are aware, the Special Rapporteur on torture has made two requests for a country visit to India, in 1995 and 2007. There has been no response as yet from the government.	<i>WGHR strongly recommends that the Special Rapporteur on torture is invited to visit India at the earliest. Custodial torture remains endemic in India.</i>
16.	Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);	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.	<i>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.</i>
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);	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 reservations to articles 5 (a) and 16 (1) of CEDAW. There has been no follow-up on these recommendations to date.	<i>As stated by the CEDAW Committee in 2007, the GOI is strongly recommended to withdraw its reservations 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.</i> <i>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 vs. Ashwani Kumar (2006) 2 SCC 578).</i>
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).	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.	<i>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.</i>