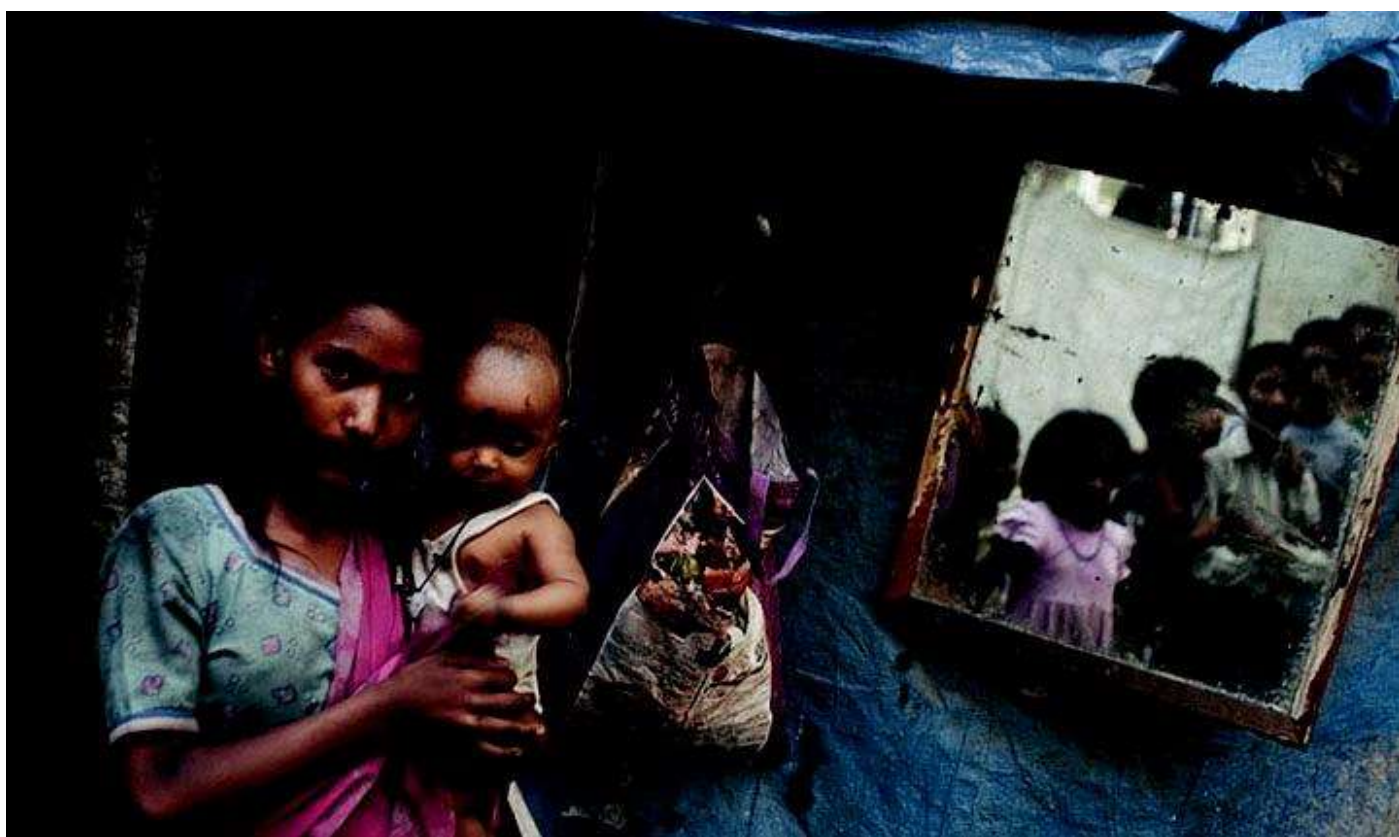


Human Rights in India

AN OVERVIEW



joint stakeholders' report
united nations
universal periodic review III

Submitted by the Working Group on Human Rights in India and the UN (WGHR)

Published by

Introduction (Methodology and Consultation Process)

1. WGHR's work in relation to UPR began in 2009 prior to India's second UPR. During the period following the adoption in 2012 of India's second UPR recommendations, WGHR has been active in preparing a monitoring tool and in supporting collective consultations across the country and including through thematic consultations that led to the formulation of a mid-term report. In 2015 WGHR organised five regional consultations and five national thematic consultations (comprising of 250 human rights organisations, CSOs, individual activists, academics and media activists) to assess the progress achieved in the implementation of recommendations given to India during the first and second cycles of Universal Periodic Review (UPR). The outcome was the "WGHR-India-Stakeholders Assessment Report 2015 on the Implementation of UPR I and UPR II Recommendations".¹

2. During July and August 2016, State Consultations for UPR III were organized in nearly 20 states across the country, including Maharashtra, Gujarat, Karnataka, Bihar, Tamil Nadu, Kerala, 8 North Eastern states, Haryana and Uttar Pradesh, in which approximately a thousand grassroots level human rights organizations, activists and state experts took part. This extensive national process culminated in a National Consultation in Manesar, Haryana bringing together 90 participants representing national human rights organisations, thematic networks and independent experts in various areas of human rights to discuss, debate and jointly agree upon the UPR III Civil Society Organization Stakeholders Report which we are submitting to the United Nations prior to 22nd September 2016.

Economic Social and Cultural Rights – Development and Poverty

1. As per UPR I Recommendation 10 and UPR II Recommendation 134, India committed to address socio-economic inequities and eliminate the gap between rich and poor. Despite being the world's fastest-growing large economy with a growth rate of 7.6 per cent in 2015-16², the average decline in the poverty ratio was recorded at 2.18 percentage points per year during the 7-year period 2004-05 to 2011-12.³

2. The poor accounted for 29.6 per cent (363 million) of the total population in 2011-2012.⁴ India's economic policies perpetuate 'exclusion' resulting in inequalities and a widening gap between urban and rural areas.⁵

¹ For WGHR's monitoring tool and Assessment report see: www.wghr.org

² India's gross domestic product (GDP) grew 7.6 per cent in 2015-16, powered by a rebound in farm output, and an improvement in electricity generation and mining production in the fourth quarter of the fiscal. Economic growth was estimated at 7.2 per cent in 2014-15. See: GDP: At 7.6%, India's growth points to fastest growing large economy, Express Economic Bureau, June 1, 2016, New Delhi <http://indianexpress.com/article/business/economy/gdp-7-9-percent-its-official-india-is-now-the-fastest-growing-economy-in-the-world/>

³ Poverty ratio in the country has declined to 21.9% in 2011-12 from 37.2% in 2004-05 on account of increase in per capita consumption. The percentage of persons below poverty line in 2011-12 has been estimated at 25.7% in rural areas, 13.7% in urban areas and 21.9% for the country as a whole. See: Poverty declines to 21.9% in 2011-12: Planning Commission, Times of India, July 23, 2013 <http://timesofindia.indiatimes.com/business/india-business/Poverty-declines-to-21-9-in-2011-12-Planning-Commission/articleshow/21276053.cms>

⁴ Defining poverty has been a controversial exercise in India. The new Niti Ayog has also not developed any poverty-related standards. See, 'A govt panel on poverty doesn't know what it is,' Hindustan Times, 11 September 2016.

The Rangarajan committee in its report submitted in 2014, which has retained consumption expenditure as the basis for determining poverty, has pegged the total number of poor in the country at 363 million or 29.6 per cent of the population against 269.8 million (21.9 per cent) by the Suresh Tendulkar committee. See: Yogima Seth Sharma, India has 100 million more poor: C Rangarajan Committee, ET Bureau July 7, 2014. http://articles.economicstimes.indiatimes.com/2014-07-07/news/51133608_1_poverty-line-consumption-expenditure-tendulkar-committee

⁵ The percentage of persons below the Poverty Line in 2011-12 has been estimated as 25.7% in rural areas, 13.7% in urban areas and 21.9% for the country as a whole. The respective ratios for the rural and urban areas were 41.8% and 25.7% and 37.2% for the country as a whole in 2004-05. It was 50.1% in rural areas, 31.8% in urban areas and 45.3% for the country as a whole in 1993-94. See: Press Note on Poverty Estimates, 2011-12, Planning Commission, Government of India, July 2013 Available at http://planningcommission.nic.in/news/pre_pov2307.pdf

3. India needs to spend USD 61.11 billion a year, or 3.77% of its gross domestic product, to tackle extreme poverty and rural distress.”⁶

4. There has been a sharp reduction in expenditure⁷ in most rural programmes to address rural poverty such as for MGNREGA⁸ which has affected the rural poor.⁹

Rights to Adequate Housing and Land¹⁰

1. In both UPR I and II, only one recommendation was made on housing¹¹; there was no recommendation on land.¹²
2. Though India has launched several schemes, including Housing for All–2022,¹³ it has not made significant progress in realizing the rights to adequate housing and land, especially for the most marginalized. This is largely because India does not recognize housing as a human right and is pursuing a macro-economic paradigm that promotes homelessness, forced evictions, land grabbing/alienation, and displacement.
3. India has the world’s largest number of homeless and landless persons.¹⁴ The national housing shortage was 18.78 million houses for urban areas¹⁵ and 40 million for rural areas; 96 per cent for low-income groups. In the absence of affordable/public housing, 13.75 million households live in inadequate settlements/‘slums’ without access to basic services.¹⁶

⁶ International Labour Organization’s (ILO) flagship report ‘World Employment and Social Outlook (WESO) 2016—Transforming Jobs to End Poverty’, May 2016

⁷ If we look at the data on amount sanctioned, it shows a similar steep decline under the NDA government, from Rs. 27,484 crore in 2013-14 to Rs17,074 crores in 2014-15. While the government might argue that this reflects falling demand, testimonies from the field reports indicate that it is the delay in payments that is turning people away from this programme. See: G. Sampath & Rukmini S, “Is the MGNREGA being set up for failure?”, The Hindu, May 31, 2015 <http://www.thehindu.com/sunday-anchor/is-the-mgnrega-being-set-up-for-failure/article7265266.ece>

⁸ “The largest public employment programmed the world has ever seen is in trouble. 2013-14, 74 million individuals in 48 million household in rural India were employment under the Mahatma Gandhi National Rural Employment guarantee act programme. But One know who will suffer if the Mode government succeeds in weakening MGNREGA- And Union Rural development Minister, Nitin Gadkari, proposed to limit MGNREGA programmed within tribal and poor areas. He also proposed to change the labor: material ratio from 60:40 to 51:49”. See: Ram Babu and Dr. A.N. Panda, “Performance Assessment Study of Mahatma Gandhi National Rural Employment Guarantee Scheme: An Overview”, Global Journal of multidisciplinary Studies Volume 4, Issue 02, January 2015, Page 211 Available online at www.gjms.co.in

⁹ The result has been a sharp decline in employment generated, which fell from 2.84 billion person-days in 2009-10 to 1.66 billion person-days in 2014-15. This was also the case with the average number of days of employment provided, which fell from 54 person-days per household in 2009-10 to just 40 person-days per household in 2014-15. Whereas seven million households completed 100 days of employment in 2009-10, it was down to only 2.5 million in 2014-15. See: Himanshu, “A decade of MGNREGA”, Live Mint, Feb 03 2016 <http://www.livemint.com/Opinion/IfCOJJUL4MrKmsJgV0LiCM/A-decade-of-MGNREGA.html>

¹⁰ This section is a summary of a longer stakeholders’ report, being submitted by Housing and Land Rights Network to the United Nations Human Rights Council, for India’s Third Universal Periodic Review. The report is available at: www.hlrn.org.in Also see, mid-term assessment of India’s UPR recommendations related to housing and land, Housing and Land Rights Network, 2015. Available at: http://www.upr-info.org/sites/default/files/document/india/session_13_-_may_2012/hlrn_india_mid-term_upr_september_2015.pdf

¹¹ The recommendation made to India in UPR I was: “Continue efforts to allow for a harmonious life in a multi-religious, multi-cultural, 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.” (emphasis added)

The recommendation in UPR II was: “Continue to implement plans adopted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums.”

¹² See Housing and Land Rights Network’s report for UPR III, Annexure I, for a table on UPR I and II recommendations relevant to housing and land, and the status of their implementation in India. Available at: www.hlrn.org.in

¹³ Pradhan Mantri Awas Yojana was launched in 2015 with the aim of constructing 20 million houses in urban areas and 30 million houses in rural areas by the year 2022.

¹⁴ According to the Socio-economic and Caste Census, 2011 (data for which was released in July 2015), 56 per cent (100.3 million) of rural households are landless, and 30 per cent (53.7 million) of rural households are landless labourers, deriving a major part of their income from manual labour. See: <http://secc.gov.in/reportlistContent>

Also see, *Housing and Land Rights in India: Status Report for Habitat III*. New Delhi: Housing and Land Rights Network, January 2016. Available at: http://hlrn.org.in/documents/Housing_and_Land_Rights_in_India_Report_for_Habitat_III.pdf

¹⁵ Report of the Technical Group on Urban Housing Shortage (2012-17) (TG-12), Ministry of Housing and Urban Poverty Alleviation, National Buildings Organisation, Government of India. Available at: http://mhupa.gov.in/W_new/urban-housing-shortage.pdf

¹⁶ Housing Stock, Amenities and Assets in Slums, Census of India 2011, Ministry of Home Affairs, Government of India. Available at: http://www.censusindia.gov.in/2011census/hlo/Slum_table/Slum_table.html

4. Displacement from rural areas resulting from large dams, mining projects, and construction of roads, ports, and industrial corridors, is rampant. Since 1947, at least 70 million people have been displaced for 'development' projects;¹⁷ the majority has not been resettled.¹⁸ Forced evictions have resulted in loss of livelihoods, education, housing, health, access to basic services, and income. For the minority that qualifies as 'eligible' for resettlement, relocation is provided in remote sites without access to basic services, livelihoods, education, and healthcare.¹⁹
5. Land ownership is highly inequitable. Fifty-six per cent of rural households do not own any land while 53.7 million households consist of landless labourers.²⁰ SC/ST, including nomadic/semi-nomadic/Denotified tribes, and women face discrimination and extreme violence while asserting claims to land. These marginalised groups have no rights to homestead land.
6. Discrimination in access to housing is widespread,²¹ especially for religious²² and sexual minorities, and single women. People living in enclaves,²³ plantation workers, migrants, sex workers, and persons with disabilities face housing rights violations.
7. Between 2008 and 2014, 30 million people were displaced from natural disasters.²⁴ Delayed/failed/exclusionary rehabilitation of disaster-affected persons is a major concern.²⁵
8. The Smart Cities Mission that plans to create 109 'smart cities' by 2020, focuses more on technology than inclusion, and is likely to promote segregation and evictions.²⁶

□ Recommendations:

- Promulgate a national right to housing law, which commits to ending homelessness and evictions and segregation and ghettoisation. Implement

¹⁷ Estimate by independent experts. Of those displaced, 40 per cent are indigenous/tribal peoples while 20 per cent are Dalits/Scheduled Castes (Planning Commission of India, 2012). See: *Housing and Land Rights in India: Status Report for Habitat III*. New Delhi: Housing and Land Rights Network, January 2016. Available at: http://hlmn.org.in/documents/Housing_and_Land_Rights_in_India_Report_for_Habitat_III.pdf

¹⁸ The National Human Rights Commission in 2012, in its submission for UPR II, stated that, "...usually those displaced are given neither adequate relief nor the means of rehabilitation." See: <http://nhrc.nic.in/Documents/Reports/UPR-Final%20Report.pdf>

¹⁹ *Forced to the Fringes: Disasters of 'Resettlement' in India*, Housing and Land Rights Network, July 2014, New Delhi. Available at: [http://hlmn.org.in/documents/Forced_to_the_Fringes_\(combined\).pdf](http://hlmn.org.in/documents/Forced_to_the_Fringes_(combined).pdf)

²⁰ Dalits own the lowest percentage of land in rural India (9.23 per cent); the average area of land owned per SC household is 0.27 hectares. The share of land owned in rural India by ST is 13.06 per cent, while the average area of land owned per ST household is 0.65 hectares. Socio-economic and Caste Census 2011, Ministry of Rural Development, Government of India. Available at: <http://secc.gov.in/reportlistContent>

²¹ See press statement with preliminary observations of the Special Rapporteur after her mission to India in April 2016. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19861&LangID=E>

²² 'Urban Rental Housing Market: Caste and Religion Matters in Access,' *Economic and Political Weekly*, June 2015.

²³ Along the India-Bangladesh border.

²⁴ Global Figures: Disaster-induced Displacement,' Internal Displacement Monitoring Centre, Geneva, 2015. Available at: <http://www.internal-displacement.org/global-figures#natural>

²⁵ For more details, see NCDHR report: *Housing and Land Rights in India: Status Report for Habitat III*. Housing and Land Rights Network, New Delhi, January 2016. Available at: http://hlmn.org.in/documents/Housing_and_Land_Rights_in_India_Report_for_Habitat_III.pdf

²⁶ An analysis by Housing and Land Rights Network, India of the 33 shortlisted Smart City Proposals reveals the absence of a focus on human rights and social justice. Cases of forced eviction for implementation of the Smart Cities Mission have been reported from different cities, including Indore (Madhya Pradesh), Kakinada (Andhra Pradesh), Dharamshala (Himachal Pradesh), and Delhi. Reportedly, 50,000 people will be evicted from 24 informal settlements as per the implementation plan of the smart city in Bhubaneswar (See: 'Slum demolition for smart city opposed,' *The Pioneer*, 24 June 2016. Available at: <http://www.dailypioneer.com/STATE-EDITIONS/bhubaneswar/slum-demolition-for-smart-city-opposed.html>)

progressive laws²⁷ and ensure that policies/schemes²⁸ adopt the human rights framework.

- Promulgate a national land reform act, ensuring land to the landless, especially SC/ST and women.²⁹ Promulgate a right to homestead law.³⁰
- Revise macro-economic policies to prevent privatization of basic services and ensure regulation of housing, land and property speculation.
- Implement recommendations of CESCR (2008) including on collecting disaggregated data on evictions.

Right to Health

1. SDG 3 calls for improving health and wellbeing of people. The Right to Health is firmly established under Article 12 of the ICESCR and has also been used to interpret India's Constitutional obligation to protect the Right to Health under Article 21 of the Constitution. Despite having 30% of the world's poorest people, out-of-pocket expenditure on health continues to be one of the highest in the world³¹. The public health budget has stagnated at 1.2% in the last few years.³²
2. De-emphasizing of provisioning of service through the public health system as a key role of the government and a tangible shift towards privatization of healthcare³³ is a failure of India's obligation to protect the Right to Health.³⁴ There has been a steady deterioration of access to determinants of health leading to the adverse health outcomes. Non availability of water even in several health centers for safe deliveries and neonatal care, malnutrition in children, adolescents³⁵ and women, including anemia, continues to be a serious challenge. Food and Nutrition Security and Sovereignty must be ensured.³⁶
3. Communicable diseases (TB, malaria, etc) continue to be a leading cause of morbidity and mortality³⁷ even as non- communicable diseases (diabetes, hypertension,

²⁷ These include the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the Real Estate (Regulation and Development) Act 2016.

²⁸ Including Pradhan Mantri Awas Yojana, Smart Cities Mission, National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless, and Atal Mission for Rejuvenation and Urban Transformation.

²⁹ This should include land for agriculture, forestry, and non-farming livelihoods.

³⁰ An act to provide landless rural families with land for housing and livelihood.

³¹ Spending on medicines constitutes nearly 70% of this expenditure

³² National Health Accounts 2015

³³ Privatization of healthcare and medical education has led to focusing on lucrative secondary and tertiary healthcare services and has resulted in complete neglect of primary healthcare services, the foundational level of any healthcare system. Private hospitals that have received state land at concessional rates have to reserve a certain percentage of beds for the poor. However, this provision is not complied with. Homeless and other poor residents in urban areas are repeatedly denied admission in public hospitals, often because they do not have identity documents. This has forced homeless women to deliver on the streets. Shortage of healthcare workers, particularly in rural areas continues to be rampant.

³⁴ Clinical Establishment Act 2010 meant to regulate ...Some States have not adopted the Clinical Establishment Act and others have not formulated Rules. Further, lack of regulation of the private actors has driven up healthcare costs and also led to inappropriate and exploitative medical treatments becoming a rampant issue- e.g. TB drug resistance.

³⁵ All programmes for adolescents are on a pilot basis. Rashtriya Kishore Swasthya Karyakram-2013; Reproductive Maternal and Child Health and Adolescent Approach 2012; SABLA-2010 National Food Security Act not fully implemented

³⁶ UN Special Rapporteur on food & human rights Olivier De Schutter report. ,

UN Special Rapporteur on Health & Human Rights Mr Anand Grover's report.

³⁷ TB, particularly DR-TB has become serious public health concern which has revealed glaring gaps in the RNTCP programme to ensure treatment service for all. Unofficial estimates show that there are around 8 million people living with chronic Hepatitis C in India (Hatzakis A, Chulanov V, Gadano AC et. Al. The present and future disease burden of hepatitis C virus (HCV) infections

cancers etc.) in urban and rural areas are showing an increase even as public health care fails the poorest.

4. More than 44,000 women die needlessly every year due to pregnancy and childbirth related causes. The Maternal Mortality Rate, NMR, IMR and U-5 mortality still remain high in vulnerable populations and girls.³⁸ Mental health concerns are inadequately addressed³⁹ and only 1% of the health budget is allocated to mental health.⁴⁰
5. The TRIPS Agreement which mandated product patents also allowed flexibility in the implementation of domestic law to enact pro-poor and public health provision like compulsory licenses. This provisions has not been invoked till date to increase affordable access.⁴¹ India's new IP policy shifts away the emphasis on using IP to advance public health and interest towards an IP maximalist approach. Bio-piracy of traditional knowledge and traditional resources must be prevented.

□ Recommendations

- Increase public health budget to 5% of GDP with substantial investment in primary healthcare.
- Institutionalize public health promoted National Health Policy based on principles of Comprehensive Primary Health Care which treats health as human rights and social good rather than a commodity for exploitative profiteering

Right to Education

1. The Right of Children to Free and Compulsory Education Act, 2009⁴² was a mile stone in pursuing the purpose of education as enshrined under various national and international mechanisms⁴³.

2. However, various reports show that the ground realities have serious gaps. There are approximately 10.12 million working children in 5-14 years age group, out of school children⁴⁴, ⁴⁵ low retention rates of students⁴⁷, only 10% State owned schools being RTE

with today's treatment paradigm – volume 2 Journal of Viral Hepatitis, 2015, 22, (Suppl. S1), 26–45.) but a majority do not have access to testing and treatment services despite effective medicines being available in the market. In HIV, despite the government rolling-out a free treatment programme, there continues to be stock out of drugs and testing kits, restricted access to 2nd line treatment and no access to 3rd line.

³⁸ http://www.censusindia.gov.in/vital_statistics/mmr_bulletin_2011-13.pdf

http://www.censusindia.gov.in/vital_statistics/SRS_Bulletins/SRS%20Bulletin%20-Sepetember%202014.pdf

³⁹ Mental Health Care Bill passed by Rajya Sabha awaits implementation on the ground without the stigma & discrimination seen in society & even health care institutions. Frontline Sept 2016 issue covers the situation of those suffering from Mental Health problems and the Mental Health Bill)

⁴⁰ A new deal for mental health, The Hindu, 13 August 2016.

⁴¹ There have been several reports documenting the constant pressure by the US industry and government to dilute public health safeguards under the Indian patent law, particularly the demand for a freeze on the grant of compulsory licenses. See Compulsory licensing: India gave 'private reassurance', says US business council, India Express, 8 sMarch 2016

⁴² The Right of Children to Free and Compulsory Education Act (RTE), 2009 came into force on 1 April 2010. It entitles each child aged 6 to 14 years to free and compulsory elementary education as a fundamental right. The law is derived from the 86th Constitutional Amendment Act, 2002. See: Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Four (2013-14), Report by RTE Forum http://www.rteforumindia.org/sites/default/files/Year%204%20Stocktaing%20Report_RTE%20Forum.pdf

⁴³ For example: the UN Convention on the Rights of the Children (UNCRC), Article 26 of Universal Declaration on Human Rights (UDHR), Committee on the Elimination of Racial Discrimination (CERD), National Policy for Children, Guiding Principles of National Curriculum Framework

⁴⁴ <http://ourview.in/English/75percentofallchildrenoutofschoolareDalits-AdivasisandMuslims>

compliant, closure of government schools on grounds of rationalization⁴⁸, state and non-state occupation of schools⁴⁹ and non-implementation of RTE Act in conflict areas like Jammu & Kashmir⁵⁰, Chhattisgarh⁵¹ remain a challenge⁵².

3. Wide spread discrimination faced by children with disabilities, children infected and affected by HIV/AIDS, children of nomadic, semi-nomadic and de-notified tribes, children from LGBTQ and children from Dalit, tribal, and Muslim communities in government schools.⁵³

4. The implementation of Act has remained underfunded and total public expenditure for education, at less than 3.5 per cent of GDP is way below the 6 per cent commitment in subsequent National Education Policies.⁵⁴

5. The existing education policy which legitimises parallel education systems⁵⁵ and devoid of any curriculum of human rights education accentuates existing socio-economic disparities, discrimination and violence.

□ Recommendations:

- Expand the scope of Fundamental Right to Free and Compulsory Education Act from 0-18 years⁵⁶ ensuring equitable quality⁵⁷, inclusion and non-discrimination⁵⁸.

⁴⁵ According to Annual Status of Education Report, 2014, India achieved close to 96 per cent or above enrolment ratio in elementary schools. See: ASER 2014: ANNUAL STATUS OF EDUCATION REPORT by PRATHAM available at <http://img.asercentre.org/docs/Publications/ASER%20Reports/ASER%202014/National%20PPTs/aser2014indiaenglish.pdf>

⁴⁶ Forced evictions and relocation to remote sites outside cities result in a large number of children being forced to drop out of school, thereby violating their right to education.

⁴⁷ In 2012-13, nearly 41% female students had dropped out of the schools without completing elementary education, as against 40.3% male students. The gender gap in dropout within a year appears to be more profound in the upper primary classes (5-8). The figures are based on provisional data of Unified District Information System for Education. See: Kanchan Srivastava, "More boys than girls dropping out of schools in India", DNA, 8 Aug 2015 <http://www.dnaindia.com/india/report-more-boys-than-girls-dropping-out-of-schools-in-india-2112206>

⁴⁸ Rationalization of Schools in SC/ST areas in Andhra Pradesh - <http://www.thehindu.com/news/national/andhra-pradesh/rationalisation-process-to-close-down-govt-schools-draws-flak/article8000398.ece>

⁴⁹ Safe Schools Declaration and Guidelines - <http://www.protectingeducation.org/draft-lucens-guidelines-protecting-schools-and-universities-military-use-during-armed-conflict>

⁵⁰ "Schools in Kashmir turn into armed fortresses as students watch in muted horror"; Yasir Sameer; August 29 2016; First Post; <http://www.firstpost.com/india/schools-in-kashmir-turn-into-armed-fortresses-as-students-watch-in-muted-horror-2980890.html>

⁵¹ "Schools as Battlegrounds"; Human Rights Watch; http://www.protectingeducation.org/sites/default/files/documents/hrw_schools_battlegrounds.pdf

⁵² Even the schools are being occupied by security forces in times of conflict, which is in complete violation of the RTE Act.

⁵³ JayshreeBajoria, "Millions of Indian children are being denied school education due to discrimination", Scroll. In, May 19, 2015 • <http://scroll.in/article/728103/millions-of-indian-children-are-being-denied-school-education-due-to-discrimination>

⁵⁴ Right to Education Act: Claiming Education for Every Child, Oxfam India Policy Brief, No. 12 | March 2015 <https://www.oxfamindia.org/sites/default/files/PB-Right-to-Education-Act-Claiming-Education-120315-EN.pdf>

⁵⁵ Navodaya Schools, Kendriya Vidyalayas, Sainik Schools, Govt.-Aided Schools, CBSE and ICSE Curricula etc.

⁵⁶ Experiences has shown that ending education at 14 years leaves the children over 14 years as "nowhere children". This level of education does not make children eligible for admission into any other skill or higher education that can help them get a job. With some level of education and no further prospects, these are the children who come in conflict with the law, or get into labour, and in the case of girls also married off underage. There is a critical need to raise the level of education to which children have a right that harmonise it with the level of education that allows for children to gain admission to the next level of technical training etc.

⁵⁷ According to ASER 2014, there is a sharp decline in the number of children in standard V who can read a textbook of standard II in both government and private schools. In Government schools, the decline is from 56.7 per cent in 2007 to 42.2 per cent in 2014, and the percentage of children who can do division in standard V has declined from 41 per cent in 2007 to 20.7 per cent in 2014 in rural areas. In the case of standard V children in private schools who can read a standard II textbook, the decline is from 69 per cent in 2007 to 62.5 per cent in 2014. The percentage of children who can do division in standard V has declined from 49.4 per cent in 2007 to 39.3 per cent in 2014 in private schools. The decline in educational outcomes in private schools warrants equal attention since there is an increase in the share of private providers of schooling and education across India; Economic Survey of India: 2015-16; <http://indiabudget.nic.in/es2015-16/echapvol2-09.pdf>

- Evolve a National policy on human rights education in line with World Programme of Human Rights Education promoting cultural diversity; and age-appropriate comprehensive sexuality education⁵⁹ in curriculum.
- India should ratify the UNESCO Convention on Elimination of Discrimination in Education and promote common school system.

Militarization, Security Laws and Torture

1. The situation in conflict zones – particularly Kashmir, north-eastern states, and central Indian states⁶⁰ – remains challenging. In response the state has increased the deployment of security forces⁶¹, and intensified militarization.⁶² For example, the army has established new military camps in the northeast;⁶³ and military presence has increased in Kashmir.⁶⁴ In Chhattisgarh the government has promoted self-styled vigilante groups and started arming local *adivasi* youth.⁶⁵ However, the government continues to claim that India does not face international or internal armed conflict.⁶⁶

⁵⁸ “They Say We’re Dirty: Denying an Education to India’s Marginalized”; Human Rights Watch; April 2014

https://www.hrw.org/sites/default/files/reports/india0414_ForUpload_1.pdf

⁵⁹ 146th Recommendation of Asian and Pacific Ministerial Declaration on Population and Development: Design, ensure sufficient resources and implement comprehensive sexuality education programmes that are consistent with evolving capacities and are age appropriate, and provide accurate information on human sexuality, gender equality, human rights, relationships, and sexual and reproductive health, while recognizing the role and responsibilities of parents; http://www.un.org/en/development/desa/population/publications/pdf/policy/Compendium/Volume%20II/i_Chapter%204.pdf

⁶⁰ This includes the whole or part of the states of Chhattisgarh, Jharkand, Orissa and Maharashtra.

⁶¹ In this section, the term security forces include the armed forces, police, paramilitary, and other forces with a security mandate.

⁶² Emergency laws, such as the Armed Forces Special Powers Act, 1958 are enforced to subdue the ongoing movement for Right to Self Determination in Kashmir and States in North East India like Manipur, Assam, Tripura etc. In the central Indian states, the indigenous peoples (adivasis) are being further impoverished by the systematic alienation of their land and natural resources due to corporate and state acquisition of minerals, land and other natural resources. In Chhattisgarh, by end of 2016, there will be one lakh security forces in the Bastar region, making it the most militarized zone in the country. Continuous search, cordon and area domination operations are being carried out by security forces. During these operations they stay in villages for days often resulting in looting of houses, destruction of houses and cattle, and in some cases extreme exploitation of women. www.economicstimes.com/news/politics-and-nation/government-to-send-2000-Naga-paramilitary-men-of-naga-unit-to-fight-against-maoists-in-bastar/articleshow/40383919.cms, published in the Economic Times, 19 August 2014. Every year, more central security forces and India Reserve Battalions are sanctioned for Chhattisgarh., www.ndtv.com/india-news/17-new-battalions-for-jammu-and-kashmir-naxal-violence-hit-states-1270719, published on NDTV.com, 27 January 2016.

⁶³ Militarization has intensified in central and North East India. New Firing range for Assam Rifles is coming up in Manikpur area of Tripura, which will affect the livelihood and land rights of at least 32 villages. New military camps are established in Tawang and Pasighat in Arunachal Pradesh. Many education institutions like Manipur University continues to be occupied by Assam Rifles. Schools and colleges are often targeted for military occupation to deal with any situation, such as in conflicts in Bodoland, Assam.

⁶⁴ <http://indianexpress.com/article/india/india-news-india/kashmir-protests-violence-burhan-wani-crpf-troops-2907024/>

⁶⁵ In its judgment and order dated 05.07.2011, reported as Nandini Sundar & Ors. v. State of Chhattisgarh (2011) 7 SCC 547, Supreme Court of India directed the State of Chhattisgarh to “take all appropriate measures to prevent the operation of any group ... that in any manner or form seek to take law into private hands, act unconstitutionally or otherwise violate human rights of any person”. The Court also held that the arming and use of untrained, poorly paid, tribal youth motivated by revenge to combat Maoists was unconstitutional and violative of Article 14 and Article 21. The Court ruled that the former members of vigilante groups like Salwa Judum must be disarmed and not allowed to take part in any combat operations against Maoists. Since last two years, in spite of the Court’s clear injunction against the use of local youth and surrendered Maoists in counter insurgency, the state continued to arm and use local youth under the name of the ‘Armed Auxiliary Force’ and recently formed District reserve guards (DRG’s). Report by PTI, ‘District Reserve Group adds impetus to anti-Naxal operations in Chhattisgarh’, published in the Economic Times, dated 5 February 2016. They are being extensively used in combat operations. Rashmi Drolia, titled, ‘Mission 2016: DRG force pressed into Anti-Naxal ops in Chhattisgarh’, published in The Times of India, dated 5 February 2016. <http://m.ndtv.com/india-news/in-maoist-heartland-a-banned-vigilante-group-may-have-been-revived-to-silence-dissent-1291878>; <http://www.caravanmagazine.in/vantage/kalluri-chhattisgarh-samajik-ekta-manch-vigilante-media-freedom>; <http://indianexpress.com/article/india/india-others/chhattisgarh-salwa-judum-redux/>; <http://www.thehindu.com/todays-paper/salwa-judum-2-is-born-in-bastar/article7172167.ece>

⁶⁶ CITE: statement at CRC

2. There are many grave complaints against security forces from conflict areas of:
 - Rape and sexual assaults;⁶⁷
 - Enforced disappearances;⁶⁸
 - Extrajudicial killings;⁶⁹
 - Arbitrary arrests and detentions;⁷⁰
 - Torture;⁷¹
 - Unnecessary, disproportionate and excessive use of force.⁷²
3. Complaints of torture and extrajudicial killings have also emerged from other regions.⁷³
4. In Chhattisgarh (2015-16), there have been multiple cases of rape and sexual violence of adivasi women and an unprecedented number of encounter deaths by security forces in the name of counter insurgency operations.⁷⁴ Daily life, traditional ceremonies, festivals cannot be held by *adivasi* communities for fear of encounters and arrests.⁷⁵
5. 79 people have died and over 10,000 have been injured due to use of life threatening weapons by security forces in response to large-scale public demonstrations across

⁶⁷ "NCST report on Chhattisgarh: Complaints of Sexual Violence by Security Forces Credible", May 12, 2016. Available at <https://www.sabrangindia.in/article/ncst-report-chhattisgarh-complaints-sexual-violence-security-forces-credible>

⁶⁸ For examples from Kashmir, see "Structures of Violence" <http://www.jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir-2/>; and "Alleged Perpetrators" http://kashmirprocess.org/reports/alleged_perpetrators.pdf.

⁶⁹ <http://www.deccanchronicle.com/nation/crime/060916/naxal-killed-in-encounter-with-security-forces-in-chhattisgarh.html>; http://www.satp.org/satporgtp/countries/india/maoist/data_sheets/fatalitiesnaxal05-11.html. The Government of India has failed to conduct any impartial investigation into the case of discovery of mass graves in Tombisana High school in Imphal, Manipur in December 2014. In its Annual Report, the Working Group on Enforced and Involuntary Disappearances said that it had not received a response from the government of India to a letter asking to stop constructions on a mass grave site in Manipur. The presence of 2,700 mass unmarked graves in Kashmir was confirmed by the J&K State Human Rights Commission in 2011. However, no inquiry or investigation has been initiated and the perpetrators are yet to be held to account. 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>. CITE: SHRC investigation. A case of over 1,528 fake encounter killings was filed in 2012 by the Extrajudicial Execution Victim Families' Association, Manipur, and Human Rights Alert in the Supreme Court. In 2013, a court-appointed commission – the Justice Santosh Hegde Commission – conducted an inquiry into six of the cases mentioned in the petition, and found them all to be unlawful. The report is available at: <http://www.hrln.org/hrln/criminal-justice/reports/1501-santosh-hegde-commission-submits-report-on-manipur-extra-judicial-killings.html>. In a 2015, the Supreme Court reiterated the need for accountability in all cases of extrajudicial killings, and the case is still pending. http://supremecourtindia.nic.in/FileServer/2016-07-08_1467967629.pdf.

⁷⁰ Amnesty International, Lawless Law: <https://www.amnesty.org/en/documents/ASA20/001/2011/en/>; Amnesty International, Still a Lawless Law: <https://www.amnesty.org/en/documents/asa20/035/2012/en/>

⁷¹ The practice of torture is widespread and routinely resorted to by the police. A study concluded that 1.8 million people are victims of police torture in India every year. From 2001-2010, 14,231 people died in police and judicial custody, largely as a result of torture. The National Crime Records Bureau (NCRB) reported 97 cases of custodial deaths during 2015 from every state of India, the highest reported from Maharashtra is 19. As per UPR 1 Recommendation No 1 and UPR 2 recommendation No 15 and its 2011 pledge, India committed to expedite ratification of the Convention against Torture (CAT). Ratification requires 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 complies with CAT. Since then there have been no efforts taken to enact this law.

⁷²

⁷³ CHITTOOR ENCOUNTER KILLINGS – FACT FINDING REPORT: May 2015 People's Watch, Madurai, Tamil Nadu. ("The fact finding team believes that this case of 20 killings of poor and innocent labourers is a case of illegal arrest, arbitrary detention, custodial torture and extra-judicial killing, with premeditated effort to allow those initially injured in the killings to die without medical attention and serious attempts to cover up the evidences.")

⁷⁴ <http://www.caravanmagazine.in/vantage/bastar>;

⁷⁵ <http://www.newindianexpress.com/cities/hyderabad/Human-Rights-Body-seeks-CBI-probe-into-Edesmeta-carnage/2013/05/30/article1611693.ece>; <http://archive.indianexpress.com/news/day-after-encounter-villagers-say-no-maoist-among-those-killed/968892/0>; <http://archive.indianexpress.com/news/sarkeguda-encounter-year-later-three-probes-but-still-no-report/1135394/0>; <http://scroll.in/article/713603/police-firing-that-killed-17-chattisgarh-villagers-three-years-ago-was-unprovoked-inquiry-suggests>

Kashmir valley in 2016.⁷⁶ Pellet guns have caused grievous injuries particularly blindness, and victims include children.⁷⁷

6. AFSPA has been further extended in Nagaland (2016) and Manipur (2015). It has also been imposed in Arunachal Pradesh along the Assam border. Despite reports of the AFSPA being lifted in Tripura, no Notification to this effect has been issued and there has been no demilitarization.
7. Journalists⁷⁸, lawyers⁷⁹ researchers⁸⁰ and activists⁸¹ highlighting violations in conflict areas are also targeted and implicated in false criminal cases.
8. Several security laws (central and state) operate in these conflict areas. Many of these also apply in the rest of the country.⁸² International and national bodies - noting that laws like AFSPA⁸³ give security forces over-broad and arbitrary powers, infringing international human rights law - have recommended their repeal or revision.⁸⁴

⁷⁶ <http://www.greaterkashmir.com/news/front-page/day-64-toll-79-injured-11-500-kashmir-continues-to-bury-its-young-2-more-killed/228177.html>

⁷⁷ For over three months, since the killing of Burhan Wani on 8 July 2016, there have been large-scale public demonstrations across Kashmir valley, with large rallies raising slogans of freedom and instances of stone pelting. In retaliation, security forces used so-called “non-lethal pellet guns” – inherently indiscriminate and arbitrary weapons - which sprayed pellets on demonstrators and bystanders, as well as fired on demonstrators. More than 79 people have died as a result, and 10,000 people are injured. Pellet guns alone have caused blindness and eye injuries in over 600 people. Security forces have attacked ambulances and hospitals. The government has also imposed a curfew that lasted over 60 days. Further impositions on the freedom of expression, assembly and association have included a 3-day ban on the printing of newspapers, cutting phones of non-government service providers for over 20 days, and blocking mobile internet for over 60 days. See: <http://www.nytimes.com/2016/07/19/world/asia/news-crackdown-in-kashmir-leaves-locals-surrounded-by-rumors.html>; <http://www.greaterkashmir.com/news/front-page/pellet-plight-1-of-2-victims-hit-in-eyes-aged-under-20/227818.html>; <http://www.thehindu.com/news/national/other-states/jammu-and-kashmir-political-crisis-curfew-lifted-from-kashmir-after-51-days/article9045150.ece>

⁷⁸ Four journalists – Santosh Yadav, Somaru Nag, Prabhat Singh and Deepak Jaiswal – were arrested on politically motivated charges since July 2015, and one journalist – Malini Subramaniam – left her home in Chhattisgarh in February 2016 after she faced attacks and police pressured her landlord. <https://www.amnesty.org.in/show/news/india-repression-of-media-and-civil-society-in-chhattisgarh-deepening>; <http://m.hindustantimes.com/india/anti-maoist-group-bastar-police-compel-journalist-to-leave-jagdalpur/story-El0sLGMc7FclyQg7JmeFiP.html>; <http://scroll.in/article/805866/not-a-single-journalist-working-without-fear-or-pressure-editors-guild-on-bastar>; <http://m.timesofindia.com/city/raipur/Yet-another-Chhattisgarh-journalist-held-in-Bastar/articleshow/51565818.cms>; <http://scroll.in/article/805596/how-journalist-prabhat-singh-became-the-target-of-chhattisgarh-police>

⁷⁹ Human rights lawyers of the Jagdalpur Legal Aid Group (all women lawyers) were forced to leave their home in Jagdalpur in February 2016 following police pressure on their landlord. The Jagdalpur Legal Aid Group (JagLAG) has been working in the Bastar region since July 2013 providing free legal assistance to Adivasi pre-trial detainees, in five districts in Chhattisgarh, many of whom are members of Adivasi communities accused of being part of Maoist armed groups.

⁸⁰ <http://m.thehindu.com/news/national/why-chhattisgarh-wants-this-researcher-out/article8410459.ece>

⁸¹ <http://m.ndtv.com/india-news/unidentified-men-allegedly-hurl-acid-like-chemical-on-soni-sori-in-chhattisgarh-1279564>

⁸² Governments at the state level are also passing, and trying to pass, regressive legislations. In April, 2015 the legislative assembly of Gujarat passed an anti-terror bill containing several provisions which violated international standards. However the President did not accord assent to the same for the fourth time. <http://indianexpress.com/article/india/india-news-india/third-President-to-return-bill-pranab-has-queries-gujarat-anti-terror-bill-sent-back/>. Stringent laws as in force in Maharashtra and Karnataka states, which infringe on human rights.

⁸³ The recommendations of first and second UPR on AFSPA, 1958 are not accepted. The AFSPA, 1958 continues to be enforced and there are no processes for repeal or review. The AFSPA, 1958 is also freshly introduced in Twelve Districts of Arunachal Pradesh, bordering Assam, despite wide objections. The Government of Tripura announced removal of AFSPA from Tripura in 2015 but no notification was issued and there is no demilitarization processes.

⁸⁴ The Justice Santosh Hegde committee, appointed by the Supreme Court in 2013, advocated for the repeal of the AFSPA. The UN Special Rapporteur on Extra-judicial killings also called for the repeal of AFSPA. The Justice J.S. Verma Committee, set up in 2013 recommended a review of the continuance of the Armed Forces (Special Powers) Act (AFSPA) to extend legal protection to women in conflict areas, and the CEDAW committee report of 2012 asked India to implement the recommendations of the Verma Committee within 2 years. When asked in December 2015, the Union Home Minister stated that as yet no decision has been taken on the recommendations of the Jeevan Reddy Committee, including to repeal AFSPA. In 2015, the former Home Minister P Chidambaram wrote a piece stating that while he was in office, he wanted the AFSPA repealed but “the Ministry of Defence and the defence forces opposed repeal, and the defence minister was unwilling to overrule them.” See: <http://indianexpress.com/article/opinion/columns/across-the-aisle-even-to-the-causing-of-death/>

9. Religious minorities too face wrongful and malicious prosecution under over-broad anti-terror laws.⁸⁵
10. People living close to international borders, such as the Indo-Bangladesh border, are subjected to torture and extrajudicial killings by the Border Security Forces.⁸⁶ Conflict related displacement also results in people living in precarious conditions.⁸⁷
11. Several people remain incarcerated for long periods of time as under-trials, and are found innocent at the end of the trial.⁸⁸
12. In most cases, security laws requires that the Executive grant sanction before a member of the security forces can be prosecuted in a civilian court. Sanction is rarely if ever granted.⁸⁹
13. Laws governing armed forces allow human rights violations by security personnel to be tried in military not civilian courts, further entrenching impunity.⁹⁰ The NHRC also has no power to enquire into a complaint against the armed forces.⁹¹

□ Recommendations:

⁸⁵ JTSA, 2012. The use of terror laws in terror prosecution has raised the average undertrial period to 3-6 years, coupled by a high rate of acquittal. Terror prosecution in Maharashtra, Quill Foundation, Forthcoming

⁸⁶ http://googleweblight.com/?lite_url=http://www.frontline.in/social-issues/compensation-for-bangladeshi-girls-family/article7645431.ece&ei=peJNE9HW&lc=en-IN&s=1&m=311&host=www.google.co.in&ts=1473523507&sig=AKOVD67gJBbwmhOSUtn4m_-0LiW5-EiR5Q

⁸⁷ Concern is about internally displaced persons living in precarious conditions in Assam. The total of the IDPs is 113,000 of which women could be a larger percentage as they have no access to mobility. For more information see: North East Network Annual Report 2014-2015, "Given the alarming situation of displacement and special vulnerabilities of women, NEN conducted a primary level need assessment in February 2015 amongst the IDPs and IDP returnees of areas of Kokrajhar affected by violence in 2012. Further, community level intervention regarding access to entitlements and justice was mapped. NEN has advocated for a state level IDP policy addressing critical gender needs of women."

⁸⁸ See from the report of the High Level Panel on Socio-Economic, Health and Educational; status of Tribal Communities in India, Ministry of Tribal Affairs, May 2014: In Chhattisgarh, for instance, the committee found that a large number of tribals have been languishing in jails for long years without their trial concluding. When the under-trial women in Jagdalpur jail were asked to explain with what offences they had been charged, the answer almost invariably was 'naxal offence'. There is of course, no such offence defined in law. Here too, after the first FIR lodged against them, there would be further FIRs filed over a period of time implicating them in various episodes of violence. Persons charged with naxal offences find it extremely difficult to get bail, and so end up spending long years in jail. Trials do not conclude in many cases because official witnesses were absent. This may happen because a member of paramilitary force cited as a prosecution witness had been repatriated with his unit and was no longer in the state. The committee also met with criminal lawyers in Dantewada courts. They assessed that over 95 percent of the cases were baseless and it was no surprise that the acquittal rate in cases where trials ended, resulted in acquittal. In reply to an RTI application, the court registers for all cases disposed of between 2005 and 2012 revealed that average rate of acquittal over these years was 95.7 percent,

⁸⁹ DENIED" Failures in accountability in Jammu and Kashmir, Amnesty International 2015

⁹⁰ http://googleweblight.com/?lite_url=http://m.thehindu.com/opinion/op-ed/actions-that-border-on-the-barbaric/article5171113.ece&ei=XdlqzHHX&lc=en-IN&s=1&m=311&host=www.google.co.in&ts=1473523888&sig=AKOVD65rSo1VhCwl09o0TOvnE822LGx3sQ; In 2010 three civilians were extra judicially executed by Indian soldiers in Machil, Kashmir and later falsely identified as militants. In 2013, a court martial prosecuting army personnel for their involvement in the Machil killings found six of them guilty and recommended life imprisonment. See "Six Army men sentenced to life in Machil fake encounter case" The Hindu 8 September 2015, available at <http://www.thehindu.com/news/national/other-states/court-martial-sentence-in-machil-fake-encounter-confirmed/article7625081.ece>; In 2012, the Supreme Court in General Officer Commanding v CBI and Anr., affirmed the authority of the Armed Forces to elect to handle allegations involving enforced disappearance within the military justice system as well as clarified when that authority should be exercised.

⁹¹ Section 19, Protection of Human Rights Act, also CITE affidavits of NHRC in recent EEVFAM case at the Supreme Court and Concluding Observations of the Human Rights Committee, India, 4th August 1997, CCPR/C/79/Add.81, para 22, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument).

- Repeal the Armed Forces Special Powers Act and Other Security Laws⁹²
- Ensure that all allegations of human rights violations are promptly and independently investigated, and that perpetrators are prosecuted in civilian courts, and victims and their families receive reparations;
- End the use of pellet guns
- Ratify the Convention against Torture,
- Ratify the Convention against Enforced Disappearances, and criminalize enforced disappearances

Death Penalty

1. By hanging Yakoob Memon (2015),⁹³ Afzal Guru (2013)⁹⁴ and Ajmal Kasab (2012)⁹⁵ India broke the undeclared moratorium after the hanging of Dhananjay Chatterjee in 2004.⁹⁶ The scope of the death penalty has been reinforced in enactments since 2012. For example, the 2013 Criminal Law Amendment Act⁹⁷ introduced the death penalty as a possible punishment for certain categories of rape.

2. The Law Commission of India in its report on death penalty in 2015 recommended to abolish “death penalty for all crimes other than terrorism related offences and waging war”.⁹⁸

3. In February 2014, the Supreme Court converted the death penalty to life sentence in many cases citing inordinate delay in executing the death sentence. It also set forth guidelines to safeguard the rights of prisoners on death row.⁹⁹

4. Despite several recommendations made to India in UPR II cycle India did not accept any recommendation or abide by any international moratorium or resolution that requires to eradicate death penalty.¹⁰⁰

⁹² Armed Forces Special Powers Act 1958 (North East India) ; Armed Forces Special Powers Act, 1990 (Jammu & Kashmir); the Unlawful Activities Prevention Act 1967, Jammu and Kashmir Disturbed Areas Act 1992; the Chhattisgarh Special Public Security Act; the National Security Act, the Punjab Disturbed Areas Act 1983; Maharashtra Control of Organized Crime Act 1999; Jammu and Kashmir Public Safety Act 1978; and sedition Sec 124A Indian Penal Code; as they are in contravention of India's international human rights obligations;

⁹³ The full text of the sentence on Yakub Memon can be accessed here:

http://supremecourtindia.nic.in/FileServer/2015-07-31_1438358472.pdf

⁹⁴ The full text of the sentence on Afzal Guru can be accessed here:

<http://www.judis.nic.in/supremecourt/imgs1.aspx?filename=27092>

⁹⁵ The full text of the sentence on Ajmal Kasab can be accessed here:

<http://www.nia.gov.in/acts/Ajmal%20Kasab%20-%20Supreme%20Court%20Judgment.pdf>

⁹⁶ Make no mistake- India needs to step up and abolish death penalty, Death Penalty News, January 4, 2016 <http://deathpenaltynews.blogspot.in/2016/01/make-no-mistake-india-needs-to-step-up.html?view=flipcard>

⁹⁷ The text of the 2013 Criminal Law Amendment Act can be accessed here: <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

⁹⁸ LAW COMMISSION OF INDIA, Report No.262, the Death Penalty, August 2015

⁹⁹ In an attempt to correct the imbalance in the law, a three-judge bench of Indian Supreme Court presided by Chief Justice P Sathasivam in January 2014 commuted the death sentence of 15 murder convicts on the grounds of delays in carrying out the executions. The judgment said, "we are of the cogent view that undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is in violation of Article 21 (Right to life and liberty) and thereby entails as the ground for commutation of sentence. Praveen Puttur, "14 others escape death penalty", DHNS, January 22, 2014.

5. India is party to the International covenant on civil and political rights (ICCPR) that require a progression towards abolition of Death Penalty. In 2014¹⁰¹, India, along with 37 other countries, voted against a UN General Assembly resolution calling for moratorium on death penalty.¹⁰²

□ Recommendations

- India should sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty and endorse the UN call for a worldwide official moratorium on the use of the death penalty, or abolish the death penalty.

Children

1. The status and condition of children in India have not seen any meaningful improvement since UPR-2¹⁰³. The vital child rights indicators like child sex ratio¹⁰⁴, under 5¹⁰⁵ and infant mortality rate¹⁰⁶ (has improved but not achieved the MDG Goals), status of birth

¹⁰⁰ Gurdhyan Singh & Aratrika Choudhuri, "Why we need to abolish the death penalty", the Tribune, Aug 26, 2015
<http://www.tribuneindia.com/news/comment/why-we-need-to-abolish-the-death-penalty/124430.html>

¹⁰¹ Resolution adopted by the General Assembly "Moratorium on the use of the death penalty" A/RES/69/186, 4 February 2015.

¹⁰² In 2007, the UNGA called on states to "progressively restrict the use of the death penalty, reduce the number of offences for which it may be imposed" and "establish a moratorium on executions with a view to abolishing the death penalty." In 2008, the GA reaffirmed this resolution, which was reinforced in subsequent resolutions in 2010, 2012 and 2014. Many of these resolutions noted that, "a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights." LAW COMMISSION OF INDIA, Report No.262, the Death Penalty, August 2015, Page: 51-52

¹⁰³ India has 49 special and local laws for children, and 78 legal provisions in the IPC, the CrPC and the Indian Evidence Act for children. There are 9 policy documents, of which 4 are specific to children. Poor implementation of the laws and gaps still remain a matter of serious concern.

¹⁰⁴ The overall sex ratio of the Country is showing a trend of improvement, whereas the child sex ratio is showing a declining trend. Child Sex Ratio (0-6 Years) declined from 927 girls per 1,000 boys in 2001 to 914 girls in 2011. The decline in Child Sex Ratio (0-6 years) during 2001-2011 in rural areas is more than three times as compared to the drop in urban India.

¹⁰⁵ Under 5 Mortality Rate has declined to 49/1000 live births in 2013 (SRS) (<http://nrhm.gov.in/nrhm-components/rmnch-a/child-health-immunization.html>).

¹⁰⁶ Infant Mortality Rate currently stands at 39 /1000 live births (Sample Registration Survey 2014). The infant mortality rate in rural India is 43 which is 17 points higher than that of Urban India (26). It has been observed that, Infant mortality among female children is higher.

registration¹⁰⁷, education¹⁰⁸, crimes against children¹⁰⁹, corporal punishment¹¹⁰, child labour¹¹¹, child marriage¹¹² continue to show disturbing trends.

2. The Government still continues with a reservation on Article 32 of the UNCRC¹¹³ & the new law on child labour¹¹⁴ is weak¹¹⁵ and flawed¹¹⁶.

¹⁰⁷ Birth registration is an absolute basic right to ensure both ESCR and CPR of children mandatory in Indian law since 1969. As per the national population policy 2000, India should have achieved universal birth registration by 2010, but has failed to achieve it universally. In 2012, the level of registration of births in the country stands at 84.4% and has gone up from 82.0% in 2010. The level of performance is disparate across states/ provinces. The extent of birth registration varies from the highest of 99 percent in Goa to the lowest of 28 percent in Manipur. (Rapid Survey on Children (RSOC) 2013-14; National Report; UNICEF; <http://wcd.nic.in/sites/default/files/RSOC%20National%20Report%202013-14%20Final.pdf>). While some states have shown very good progress, others remain behind. In Himachal Pradesh and Bihar, there have been positive instances of birth registration. The State/ UTs which have achieved 100% level of birth registration in 2007 are Arunachal Pradesh, Himachal Pradesh, Kerala, Meghalaya, Mizoram, Nagaland, Punjab, Tamilnadu, Chandigarh, Lakshadweep and Puducherry (Children in India 2012: A Statistical Appraisal, GoI, Social statistics Division, 2012)

¹⁰⁸ There is a declining trend in percentage of enrolment in government schools in rural areas from 72.9 per cent in 2007 to 63.1 per cent in 2014. According to ASER 2014, there is a sharp decline in the number of children in standard V who can read a textbook of standard II in both government and private schools. In Government schools, the decline is from 56.7 per cent in 2007 to 42.2 per cent in 2014, and the percentage of children who can do division in standard V has declined from 41 per cent in 2007 to 20.7 per cent in 2014 in rural areas.

In the case of standard V children in private schools who can read a standard II textbook, the decline is from 69 per cent in 2007 to 62.5 per cent in 2014. The percentage of children who can do division in standard V has declined from 49.4 per cent in 2007 to 39.3 per cent in 2014 in private schools. The decline in educational outcomes in private schools warrants equal attention since there is an increase in the share of private providers of schooling and education across India; Economic Survey of India: 2015-16; <http://indiabudget.nic.in/es2015-16/echapvol2-09.pdf>

¹⁰⁹ There is a significant rise of 5.3% in crimes against children in 2015 against 2014. According to data compiled by NCRB for 2015, 8,800 cases of rape on children were registered across the country under the Protection of Children Against Sexual Offences Act (POCSO). According to estimates, 2015 witnessed 94,172 cases of crimes against children of which 76,345 were either related to sexual offences or involved kidnapping. The year also saw an increase of 5.3% in crimes against children as compared to 2014, when the figure was 89,423. National Crime Records Bureau data, 2015: Slight dip in rape, crime against women <http://indianexpress.com/article/explained/national-crime-records-bureau-data-2015-slight-dip-in-rape-crime-against-women-3004980/s>.

¹¹⁰ India reaffirmed its commitment to prohibit corporal punishment in all settings during the second cycle of UPR in 2012. The Right to Education Act and some of the state laws protect children from corporal punishment in schools. The Juvenile Justice Act, 2015 contains a provision¹¹⁰ identifying corporal punishment as crime against children. However, measures to deal with corporal punishment in all settings are very inadequate.

¹¹¹ Data on child labour continues to be a challenge. Under reporting on child labour obfuscates the gravity of the problem. A 2015 report by the International Labour Organization (ILO) put the number of child workers in India ages 5 to 17 at 5.7 million, out of 168 million globally (Nita Bhalla, "Parliament passes controversial child labour bill," Reuters, July 27, 2016. <http://in.reuters.com/article/india-children-labour-idINKCN10619V>). On the contrary, according to GOI there are 4.3 million working children in the age group pf 5-14 years. While according to Census 2011 there are 10.12 million working children (main+ marginal worker) according to in the age group 5 – 14 years, the government claims that there are 4.3 million working children in all its public pronouncements and claiming a reduction in the number of working children. This is because they are not counting the children in marginal work, which they did in 2001.

In the year 2014, only 1027 cases of violations were reported under Child Labour (Prohibition and Regulation) Act, out of which only 792 cases went for prosecution resulting into 754 cases for conviction. (Government of India, Ministry Of Labour and Employment, Lok Sabha, Unstarred Question No.1285, Answered on 01.12.2014, Conviction under Child Labour Laws. <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=6668>

¹¹² Census 2011 data shows an alarming 103 million girls (30.2%) of all married women, were married before they had turned 18. (Sagnik Chowdhury, "30% women married under age 18", Indian Express, May 31, 2016, New Delhi <http://indianexpress.com/article/explained/child-marriage-women-india-census-data-2011-2826398/>)

The National Policy for Children, 2013, does not address the issue of child marriage specifically. The only mention of married children is found in the section on education and development, where the Policy talks about tracking, rescuing and rehabilitating out of school children, including married children and ensuring them access to their right to education. Registration of Marriages is still not compulsory in all states

¹¹³ GOI argues "... that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party"

¹¹⁴ The Child Labour (Prohibition and Regulation) Amendment Act, 2016

¹¹⁵ The weak definition of hazardous occupations and the reduction in the number listed as hazardous occupations will prove detrimental to all efforts to curb child labour. There were 16 occupations and 65 processes listed as hazardous in the 1986 law. The 2016 amendment reduces them to 3 occupations and 29 processes that are in the Factories Act, which covers only the organized sector.

¹¹⁶ Section 3 of the Bill outlines the circumstances under which child labour is legal permitting children to work in order to help their family, or their "family enterprises" or "as an artist in an audio-visual entertainment industry". Further, since the Bill does not define the hours of work or the site of work in the so-called "family enterprises", and most occupations are not hazardous, children may be engaged range of family based activities - weaving, pottery, bidi or even to a plastic sheet near a garbage dump or even a home-based brothel as is common among many communities in the country. Is that what the government means when it says - *striking a balance between the need for education for a child and the reality of the socio-economic condition and social fabric in the country...* (PIB release 16 May 2015) as long as they work "outside of school hours or during vacations". By implication, this law restricts children to traditional caste-based occupations, reinforces caste based occupations and perpetuate

3. The new Juvenile Justice (Care and Protection)¹¹⁷ Act includes a regressive provision of waiver of 16-18 year olds into the adult criminal justice system for serious offences & has led to the lowering of standards for dealing with children in conflict with the law¹¹⁸.
4. Child trafficking¹¹⁹ is still widespread in India¹²⁰. In absence of efficient mechanisms¹²¹ and due to poor implementation¹²², it continues to be a major human rights violation.
5. Although included in finance bill¹²³ at national level, children's budgeting needs to be adopted throughout the country as per General Comment 19¹²⁴. Despite the recognition, the share of the budget for children is inadequate¹²⁵ lower than 5% of the total national budget¹²⁶ and continues to decline¹²⁷. A large section of vulnerable children¹²⁸ continue to suffer due to problems of accessibility, discrimination¹²⁹, poor implementation and lack of financial resources.¹³⁰

□ Recommendations:

social injustice as most family based occupations in India are caste based, and children are already engaged in them. The law legalises this.

¹¹⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015

¹¹⁸ In the absence of proper tools of assessment, training and infrastructure, children are already being subjected to arbitrary treatment.

¹¹⁹ Till 2013, there was no legal framework to define trafficking holistically. Prior to 2013, There was no comprehensive legal framework to cover trafficking of children for labour, begging, pornography etc. Trafficking was defined only in terms of trafficking for prostitution under Immoral Trafficking Prohibition Act, 1956 (ITPA). The inclusion of Section 370 in the Indian Penal Code through Criminal Law Amendment Act 2013, has expanded the definition of human trafficking in keeping with the Palermo Protocol. This also applies to children. Apart from the earlier law, the Immoral Traffic (Prevention Act), 1956 which is long awaiting amendment, The Juvenile Justice (Care and Protection of Children) Act 2015 prohibits sale and procurement of all children upto the age of 18 years for any purpose, making it a cognizable and non-bailable offence.

¹²⁰ Women and children from India are trafficked across 18 countries with new purposes for their being trafficked being added every day; Child Trafficking in India. HAQ: Centre for Child Rights and CACT. 2016

¹²¹ The Ministry of Home Affairs (MHA) is the nodal agency for the implementation of the ITPA 1956 and other human trafficking initiatives, through its Anti-Trafficking Cell. The Ministry of Women and Child Development (MWCD) continues to be the nodal ministry for tackling this crime with respect to children and is also responsible for inter-ministerial coordination. The United Nations Office of Drugs and Crime (UNODC) Regional Office for South Asia (ROSA) has been involved in initiatives to address human trafficking in collaboration with the Government of India, particularly the MWCD and the MHA. Since the child victims of trafficking are children in need of care and protection under JJ Act, their responsibility vests with the Child Welfare Committee (CWC) set up under the juvenile justice system and also the mechanisms laid down in the Integrated Child Protection Scheme (ICPS). Both of these are the responsibility of the central MWCD and the departments in charge of women and children in the states. In addition, the National Commission for Protection of Child Rights (NCPCR) has undertaken some initiatives to address child trafficking. Each year questions are asked in Parliament on issues concerning trafficking. District task forces are there for tracking trafficking but these mechanisms should devolve up to the village/sub district levels by engaging Local Self Governance units respectively.

¹²² However, most of the AHTUs are non-functional and they lack dedicated and trained staffs and their roles are also not clearly defined.

¹²³ Government of India's 22 Ministries have identifiable schematic budget heads addressing children through 82 schemes presented as a special budget statement (Statement 22) on children.

¹²⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/162/31/PDF/G1616231.pdf?OpenElement>

¹²⁵ The concern of inadequacy of financial resources towards children has also been resonated by the concluding observations made by the UNCRC on 13 June 2014, based on India's report presented to the Committee on 3 June 2014 in Geneva. The Committee noted *"The budgetary allocations do not adequately take into consideration child protection needs. There is also mis-management of allocated resources, a problem which is exacerbated by a high level of corruption and the lack of effective monitoring and evaluation systems"*. (full document available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en)

¹²⁶ According to the government's own admission in India's third and fourth combined periodic report on the Convention on the Rights of the Child *"many of the outcome indicators for children point to the disadvantaged status of children, the proportion of Child Budget in the Union Budget seems inadequate"* (http://wcd.nic.in/crc3n4/crc3n4_1r.pdf)

¹²⁷ Share of financial resources for children has fallen to an all-time low of 3.26% in the 2015-16 budget since the introduction of fiscal federalism in 2015. (*Politics, Paise or Priorities: Where do Children Fit into the Union Budget 2015-16?* HAQ: Centre for Child Rights, New Delhi <http://haqcr.org/new-at-haq/politics-paise-or-priorities-where-do-children-fit-into-the-2015-16-union-budget/>)

¹²⁸ Children with disabilities (physical as well as mental), children from tribal community or from religious and traditional minorities, migrating children etc. etc.

¹²⁹ *"They Say We're Dirty: Denying an Education to India's Marginalized"*; Human Rights Watch; April 2014 https://www.hrw.org/sites/default/files/reports/india0414_ForUpload_1.pdf

¹³⁰ *"This Is How the Finance Minister Turned A Blind Eye To India's Children In This Budget"*; Yasmin Farhana and Shailabh Kumar; March 2 2016; <http://www.youthkiawaaz.com/2016/03/problems-with-union-budget-2016-17-allocation-for-children/>

- The current Juvenile Justice Act must be reviewed and brought in line with the principles of the Constitution of India, UNCRC and General Comment No. 10¹³¹.
- Following the adoption of General Comment 19¹³² on public budgeting for the realization of children's rights¹³³, Government of India needs to examine and bring in standards using this as a guideline.
- Taking the SDG Goal 5 ahead, the GoI must bring in adequate measures to ensure gender equality and non-discrimination at all levels.

DALIT RIGHTS

1. Caste based discrimination in India triggers intergenerational poverty wherein the Scheduled Castes are frequently confined to hereditary, low-income employment, and deprived access to agricultural land¹³⁴ and credit, battling high levels of indebtedness, and labour bondage with no access to income generating assets.

2. The discrimination is seen rampant in educational structures^{135 136 137 138} which manifests itself in skewed literacy¹³⁹, enrolment, and drop rate^{140 141} and impediment^{142 143 144} in the access to health services¹⁴⁵, gravely impacting health indicators^{146 147 148 149 150} amongst Dalits.

¹³¹ Children's Rights in Juvenile Justice (2007); CRC/C/GC/10;

<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

¹³² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/162/31/PDF/G1616231.pdf?OpenElement>

¹³³ Article 4 of the UNCRC

¹³⁴ It is very shocking fact that while in 1991, 70% of the total Dalit households were landless or near landless (owning less than one acre) which increased to 75% in 2000. (as per the India chronic poverty report: IIPA 2011).

¹³⁵ At primary and higher level

¹³⁶ Prejudice against and harassment of Dalits are equally prevalent in institutions of higher education. The caste bias manifests itself in the way teachers ignore Dalit students and unjustly fail them in exams and in the unwillingness of the university administration to assist and support Dalits. Reportedly, as a grave consequence of this harassment, a disproportionate number of Dalit students have committed suicide in some countries. (Source- Special Rapporteur on Contemporary Forms of Racism.

3. They are systemically denied access to basic fundamental rights¹⁵¹ despite protective measures and institutional arrangements. Impunity continues as a result of ineffective

(2013). Report to Human Rights Council on Racism and Implementation of the Durban Declaration and Programme of Action. UN Doc. A/HRC/23/56, para. 46)

¹³⁷ In 2012, 41 independent monitoring institutions submitted reports to the Ministry of Human Resource Development detailing instances of discrimination and untouchability during the midday meals in 186 schools across the states of Rajasthan, Madhya Pradesh, Orissa, Uttar Pradesh and Gujarat. SC children were routinely segregated from other children while eating. Additionally, many children or their parents often refuse food cooked by SC cooks. There are also cases where Dalit students are served from a distance, and several students bought their own plates for fear of utensils being touched by Dalit classmates¹³⁷ (Source- Vishnoi, A. (2012, 26 Nov). 'Report says caste, gender discrimination rampant', Indian Express)

¹³⁸ In January 2012, 25 Dalit children from Karandipatana village in Kendrapada district, Orissa were forced to obtain school leaving certificates and get admitted into another school after facing abuse and threats from dominant caste villagers, as part of a continuing land dispute in the village (Source- Times of India. (2012, 19 Jan). 'Dalit children 'ousted' from school in Kendrapada')

¹³⁹ Despite Government of India's focus on promoting education amongst SC, according to 2011 census, literacy rate amongst SCs continues to be lower than that of other castes, (66.1%). Further it records lower literacy levels amongst SC women (56.5%) as compared to SC men (75.2%).

¹⁴⁰ According to an NSSO survey, nearly two-thirds of male dropouts from school and college said that they were needed to supplement the household income while nearly half the female dropouts said that they were needed for domestic chores. The same survey also showed that attendance rates in educational institutions were about 50% in the poorest 10% families but rose to nearly 70% in the richest 10 per cent. Poverty is thus the biggest barrier to pursuing education, and poverty levels are highest among Dalits and Adivasis. Besides this, these groups also face social discrimination and sometimes, abuse. At a public hearing organized by the People's Trust and CRY in Salem, Tamil Nadu, a young Dalit girl, who dropped out of school, said students like her were often taunted and abused by teachers as well as students (Source- Enrol and dropout, education is a one-way street for Dalits, Times of India, 24 January 2016, <http://timesofindia.indiatimes.com/home/sunday-times/deep-focus/Enrol-and-dropout-education-is-a-one-way-street-for-dalits/articleshow/50701654.cms>)

¹⁴¹ The Ministry of Human Resource Development (MHRD) statistics for the year 2007–08 for school education show that nearly 72.2 per cent of the girls and 66.6 per cent of the boys among the Dalits drop out of school during the period of entry beginning with class 1 till they reach class 10

¹⁴² A national study on health services found that caste identity was important in accessing resources such as anganwadi services both as health service provider and recipient. Caste discrimination was reported in these services from almost all the study villages. In some instances, separate anganwadis in the 'upper' and 'lower' caste localities were a practical solution without, however, resolving the issue (Source- C. Sathyamala et al. (2012). 'Public Report on Health Some Key Findings and Policy Recommendations', Economic and Political Weekly 47(21), pp.43-54)

¹⁴³ A study undertaken in Vizianagaram district of Andhra Pradesh revealed that around 77.2% of respondents had no information regarding the structure and functioning of the Village Health and Sanitation Committees (VHSCs). A majority (75%) of the Dalit respondents said that the VHSCs do not give any importance to Dalit issues. While 55% of men interviewed said that VHSC members did come and inquire about the health-related issues of Dalits, only 4.3% of women said that this was true. Moreover, 74.4% of respondents said that there was hardly any participation by the Dalit community in the VHSCs (Source- Sesharatnam, P. and P. Chittibabu. (2012). 'Still some way to go: Communitisation of Health Services among Dalit Community'. Andhra Pradesh: People's Action for Rural Awakening)

¹⁴⁴ Out of the 44 VHSC members interviewed, only 29 members said importance is given to the health issues of SCs. Only 36 (81.1%) knew that Rs.10, 000/- is allocated for Village Health Fund and has to be used for the implementation of the village health plan. Only 1 VHSC member said that there are activities in the plan to create awareness among Dalits on health and sanitation (Source- Sesharatnam, P. and P. Chittibabu. (2012). 'Still some way to go: Communitisation of Health Services among Dalit Community'. Andhra Pradesh: People's Action for Rural Awakening).

¹⁴⁵ Many evaluation studies of the RSBY national medical insurance scheme do not provide details on the number of SCs receiving the benefits of RSBY. In a recent study of RSBY implementation in Chhattisgarh, though, it was noted that SCs (who represent 12.8% of the population in the state) formed 17.03% of RSBY registered households and 14.57% of households who had undergone hospitalization. This number was attributed to greater initiatives taken to cover a large section of SC and ST below poverty line households in enrolments under the scheme. (Council for Tribal and Rural Development. (2012). 'Evaluation of 'Rashtriya Swasthya Bima Yojana scheme' in Chhattisgarh', submitted to State Nodal Agency RSBY Chhattisgarh. Raipur: CTRD)

¹⁴⁶ Despite achieving a significant improvement in the IMR over the period 2000–10, the available figures of IMR by social groups for the year 2005–06 indicate that it is highest at 66.4 among the Dalits.

¹⁴⁷ With only 39.7% of the Dalit children having been immunised in 2005–06, the ratio was less than the national average by 4 percentage points.

¹⁴⁸ Both Dalits and Adivasis show a comparatively high prevalence of TB than Others, with the figures being 531 per lakh population for Dalits, 659 per lakh population for Adivasis, and 423 per lakh population for others in 2005–06.

¹⁴⁹ As per 2005/6 NFHS survey, about 58.3% of SC women suffered from anaemia compared to 51.3% among non - SC/ST women. Malnutrition of the mother impacts the health outcomes of children. About 21% of SC children under 4 years of age suffered from malnutrition-compared with 13.80% of other's children respectively. Nearly 72% of children from SC suffer from anaemia, compared to 63.8% among others. High level of malnutrition among the SC results in high morbidity and mortality. In 2005-06, IMR was 66.4 for SC - much higher compared to 49 for other respectively.

¹⁵⁰ The incidence of malnutrition is the highest among Adivasis (54.5%), followed by Dalits (47.9%), and other social groups (36.3%). The likelihood of Dalit children being malnourished is about 1.4 times higher than that of children belonging to other social groups even after controlling for education and the health of mothers.

¹⁵¹ 'Discrimination and Social Exclusion: A Study on the Development Experience of Dalits in Karnataka' found that 13.7% of Dalit children from 50 villages had been asked to sit separately from dominant caste children in the classrooms and nearly 33% of parents reported that their children had been frequently given the task of cleaning classrooms and the school grounds (Source- The Hindu. (2012, 22 Oct.). 'Study reveals discrimination in Karnataka schools').

implementation of SC/ST (Prevention of Atrocities) Amendment Act, 2015¹⁵² ¹⁵³ ¹⁵⁴ ¹⁵⁵ ¹⁵⁶ and violation of PCR rights¹⁵⁷.

4. Dalit women particularly face barriers to justice, public policy and service and are victims of brutal instances of violence¹⁵⁸.

5. Moreover, Dalit community constitutes majority of casual wage labourers¹⁵⁹ ¹⁶⁰, having limited access to organised labour force¹⁶¹ ¹⁶² ¹⁶³ ¹⁶⁴ despite affirmative action¹⁶⁵ ¹⁶⁶ ¹⁶⁷.

¹⁵² In 2013, there were 46,114 cases registered under the POA Act. The number increased to 47,064 in 2014 and the percentage of pending cases has increased from 79.9 % in 2011 to 85.3% in 2014 according to the NCRB data.

¹⁵³ As per National Crime Records Bureau (NCRB) data, a total of 1,88,991 crimes against SCs were registered under different laws from 2011 to 2014. Overall, the year 2014 witnessed an increase of 19.4% in total crimes committed against SCs over the previous year, while the year 2013 witnessed an increase of 17.1% in total crimes committed against SCs over the previous year (Source- National Crime Records Bureau, 2011-2013. New Delhi).

¹⁵⁴ In 2014, the NCRB reported 2233 registered rapes of SC women—an average of 6 rapes per day. Moreover, the number of registered rapes of SC women has risen steadily over the years, from 1089 in 2003 to 2073 in 2013, marking a 47.5% increase over the past decade. One study of 500 Dalit women and girls who had experienced violence revealed that less than 1% of incidents of violence ended in convictions of the accused.¹⁵⁴ For 2014, the conviction rate for rapes of SC women stood at 34.9%, though this has to be understood against the backdrop of the high pendency rate of 81.6% for rape cases. The vulnerability of SC women is further exacerbated by their marital status. Widowed women face harassment, evictions, sexual exploitation and abuse from family members and other villagers. (Source- National Crimes Records Bureau 2014, Crimes in India 2014. Delhi: NCRB accessed online: <http://ncrb.gov.in/CD-CII2013/home.asp>.)

Police also routinely sexually abuse Dalit women during police raids as a means of exerting pressure on their male family members to surrender, give false evidence, retract their complaints, or silence their protests regarding police mistreatment. According to prison statistics in 2013, Dalits make up 22% of prisoners, almost one in four. Their proportion in population is about 17% according to Census 2011.

¹⁵⁵ Official statistics also show that over 2,500 women have been killed under the suspicion of practicing witchcraft in the past 15 years. All have been poor and most have been from marginalized scheduled caste and scheduled tribe communities and either owned property or rejected the sexual advances of dominant men in the community. The former UN High Commissioner for Human Rights, Navi Pillay, has noted that, "An estimated 90% of manual scavengers are Dalit women who face multiple vulnerabilities and discrimination based on their caste and gender, and who are often exposed to violence and exploitation." (Source- UN High Commissioner for Human Rights Navi Pillay, 2013 (31 Jan.). 'Pillay applauds Indian movement to eradicate 'manual scavenging'', OHCHR News, available online: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E) (Source- Paul, S., 2012. Witches of India: Women without Defence, available at: <https://worldpulse.com/node/50282>.)

¹⁵⁶ State protective and monitoring mechanisms like State Vigilance and Monitoring Committees SVMCs remain only on paper. The finding of a study conducted by NCDHR (Justice under Trial) reveals the prevalence of power based justice delivery in the special courts (Section 14 of the SC/ST PoA Act provides for a Court of Session to be a Special Court to try offences under the SC/ST PoA Act in each district for speedy trial) and the poor legal awareness that obviates these communities to access justice. The criminal judicial system as basic institution for justice delivery is severe disappointment for the Dalits/Adivasis due to the power centeredness and expensive justice administrative system. (Source- Several states are yet to constitute the SVMCs and others meeting less than 10% of the required frequency could be one of the main cause for impunity which needs to be strictly addressed (Source- Tamil Nadu has conducted only four out of 38 mandatory meetings of SVMCs – Info accessed under RTI – Ltr No. 5634/PA-1/RTI No.56/2016-2 dated 14.06.2016 – <http://hrf.net.in/1129-2/>))

¹⁵⁷ The PCR Act attempts to eradicate 'untouchability' and restore the rights of victims of 'untouchability' in public life but leaves the private sphere untouched despite evidence to the contrary (Source- Kumar Tiwari, S. (2013). 'Impact of Laws on the Abolition of Untouchability in India: A Critical Study.' In Proceedings of 6th International Business and Social Sciences Research Conference, 3-4.01.2013, Dubai).

¹⁵⁸ When it comes to crime against Dalit women, on an average, everyday 3 Dalit women are raped, 2 Dalits are murdered & 2 Dalits Houses are burnt in India, 11 Dalits are beaten and on weekly average, 13 Dalits are murdered and 6 Dalits are kidnapped or abducted.

¹⁵⁹ A majority of them are working as casual wage labourers—51.2% in the case of Dalits and 42.5 per cent in the case of Adivasis during the year 2009–10, with abysmally low and irregular incomes.

¹⁶⁰ Of the total rural SC workers, more than 60% are wage labourers and there is significant discrimination of SCs in hiring and wage payments (Source- Chandrapal. Action Points for Development of SCs and STs, Planning Commission. Retrieved 04.11.2013 from <<planningcommission.nic.in/plans/ stateplan/scp.../82ACTIONPOINTS.doc>>.(para. 27 ,

¹⁶¹ Their access to regular salaried jobs is limited with only 14% of the Dalits and workers are employed in regular salaried jobs as compared to more than 19% from other caste groups.

¹⁶² A study among Dalit journalists revealed that many of these journalists stated that caste-based discrimination and antagonism against them is pervasive in the mainstream media, both print and electronic. They say this phenomenon is more rampant in Hindi and other language media than in the English media (Source- Ashraf, A. (2013, 13 Aug.). 'Dalits in the Media feel the Sting of Caste Discrimination,' Firstpost).

¹⁶³ In the most sought after civil services, IAS, [IPS](#) and [IFS](#), the proportion of SC officers was below the mandated quotas. Out of 3,251 directly recruited [IAS](#) officers, SC officers made up only 13.9% (Reply of Minister of State in the Prime Minister's Office, V. Narayanasamy to the Rajya Sabha question no. 3040, answered on 20-11-2012).

¹⁶⁴ There were 25,037 'backlog' posts for SCs lying vacant in 73 government departments and bodies. These are positions reserved for SC members that have not been filled over the years and thus have accumulated. They include both direct recruitment and promotion-based positions. Out of these, 4,518 positions were vacant because no candidate was available for

6. Policy measures such as, SCSP¹⁶⁸ are not effectively implemented.^{169 170 171}
7. Dalits are critically vulnerable and discrimination continues in relief, response and rehabilitation processes^{172 173174175}. The disaster management mechanisms are caste-blind and government policies fail to recognise and address the multiple vulnerabilities experienced by Dalits.
8. Despite the innumerable atrocities perpetrated by dominant caste Dalits are increasingly asserting their citizenship rights^{176 177 178}.

□ Recommendations

- Adequate measures to guarantee and monitor the effective implementation^{179 180} of SC/ST (Prevention of Atrocities) Amended Act 2015¹⁸¹.

promotion (Source- Reply of Minister of State in the Prime Minister's Office, V. Narayanasamy to the Rajya Sabha question no. 3040, answered on 20-11-2012).

¹⁶⁵ As a part of affirmative action policy enshrined in the Indian Constitution, 15 % and 7.5 % of central government posts are reserved for Dalits and Adivasis respectively. In context of Dalits, only 10.15 % posts were filled in group A, in Group B it was 12.67 %, in Group C it was 16.15 % and in Group D it was 21.26 %. The figures for Adivasis were even lower at 2.89 %, 2.68 %, 5.69 % and 6.48 % for the four groups respectively.

¹⁶⁶ There is a lack of a comprehensive employment anti-discrimination framework that adequately addresses the myriad ways in which discrimination operates. The existing legal protections against such discrimination include constitutional provisions mandating equality and a handful of criminal statutes. There is no umbrella anti-discrimination employment statute to regulate the private sector in India (Source- Sinoy, D. 'Courting Substantive Equality: Employment Discrimination Law in India'. Retrieved Nov. 2013 from <<www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/).

¹⁶⁷ The Indian Constitution prohibits discrimination in employment and commits to promoting the economic interests of SCs. In particular, Article 16(2) allows for 15% reservation for SCs to enable their participation in government services, educational institutions and political bodies. From this mandate, derives India's elaborate quota system for public jobs, places in publicly funded colleges and elected assemblies for communities marginalized on the basis of caste or tribal status.¹⁶⁷ In addition, section 3(1) (v) Prevention of Atrocities Act punishes discrimination in access to employment on the basis of caste, such as wrongfully dispossessing an SC person from their land. Section 4(I), (IV) and (viii) of the PCR Act prohibits interference with the right to access water and other public services on the basis of untouchability. India also has numerous state and national-level social welfare schemes in place, including programmes to provide financial assistance and access to housing, water and sanitation, livelihood development training, legal aid and scholarships.

¹⁶⁸ Schedule Caste Sub Plan

¹⁶⁹ In order to bridge the gap between the Dalits/Adivasis and other castes, the government of India crafted a policy called the scheduled Caste Sub Plan and Tribal Sub Plan. This year, 2016-17, the allocations for SC under the Union Budget 2016 is only 7.6% when the due amount under SCSP (Scheduled Caste Sub plan) budget should be 16.8% which should amount to Rs.91,301 and 8.6% under TSP (Tribal Sub Plan) which should amount to Rs.47,300 Crs. Thus denying a total of Rs 75,764 crore (Source- Union Budget 2016-17-The Dalit Adivasi Perspective; http://www.ncdhr.org.in/Dalitsinnews/Final_Budget_Watch_2016-17_Union.pdf)

¹⁷⁰ Funds are often not allocated under the SCSP in proportion to the population of SCs in the state/country. Moreover, a large amount of funds under SCSP are being allocated for general programmes and schemes, which are not specifically designed for SCs with fixed, realistic targets. (Dalit Arthik Adhikar Andolan-NCDHR. (2013). Scheduled Caste Sub Plan & Tribal Sub Plan: Union Budget Watch 2012-13. New Delhi: DAAA

¹⁷¹ The bulk of SCSP funds are more for social services (e.g. education, health) that are 'survival in nature'. Large funds are not being allocated for economic sectors that are 'developmental in nature' (e.g. entrepreneurship, employment, land) and would ensure that Dalits obtain access to productive resources for their long-term development and empowerment (Source- Dalit Arthik Adhikar Andolan. (2013). Scheduled Caste Sub Plan & Tribal Sub Plan: Union Budget Watch 2012-13. New Delhi: DAAA)

¹⁷² <http://www.ncdhr.org.in/resources/publications/daaa-publication/NDW.pdf>

¹⁷³ http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Key_Issues/Disaster_response/EqualityInAid_web_version.pdf

¹⁷⁴ http://ndma.gov.in/images/ndma-pdf/DM_act2005.pdf

¹⁷⁵ <http://nationaldalitwatch-ncdhr.blogspot.in/p/synthesis-of-ndw-ncdhr-flood-studies.html>

¹⁷⁶ http://roundtableindia.co.in/index.php?option=com_content&view=article&id=8762%3Athe-kabali-has-roared-why-bapsa-was-the-real-winner-of-the-jnu-student-polls&catid=129%3Aevents-and-activism&Itemid=195

¹⁷⁷ <http://scroll.in/article/814104/what-justice-can-we-expect-gujarat-dalits-returning-from-una-rally-are-beaten-vehicles-attacked>

¹⁷⁸ <http://www.bbc.com/news/world-asia-india-35349790>

¹⁷⁹ Ensuring access to legal aid, impunity is eliminated, and special fast track courts and prosecution of officer found guilty of by the High Power Committee¹⁷⁹ to be automatically prosecuted under Section 4 of Atrocities Act. Strict measures to be taken against the negligent officer.

¹⁸⁰ Set up high-power committees for the sensitisation, enforcement and monitoring of government line departments on protective provisions of the PoA Act to end the impunity currently enjoyed by perpetrators and officials and enforce punitive action for those denying the due benefits and relief to SC/ST women.

¹⁸¹ The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Amended Act, 2015

- Proportionate budgetary allocation for development of Dalit community¹⁸² and enactment of a comprehensive legislation on Schedule Caste Sub Plan¹⁸³.
- Enact, implement and monitor, Rohit Act, 2016^{184 185 186}.

Tribal Rights

1. Tribal communities in India face widespread breach of constitutional guarantees and protective legislations such as the Panchayat Raj Extension to Schedule Areas (PESA) Act 1996¹⁸⁷ and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.¹⁸⁸

2. The Constitution entrusts the State Governors the task of ensuring 'peace and good governance' in Fifth Schedule areas. However, Governors have been neglecting their constitutional duties to uphold the provisions.¹⁸⁹

3. Development-induced displacement¹⁹⁰ by acquisition of land by the State without 'land for land' rehabilitation. In India's North East alone, more than 200 mega dams are still being pursued without recognizing rights of indigenous peoples¹⁹¹. Similarly, 30 major, 135 medium,

¹⁸² http://www.ncdhr.org.in/Dalitsinnews/Final_Budget_Watch_2016-17_Union.pdf

¹⁸³ http://www.ncdhr.org.in/resources/publications/others/FINAL_Draft%20SCP%20%20TSP%20LEGISLATION.pdf

¹⁸⁴ *SC/ST Eradication of Caste Based Discrimination and Promotion of Inclusive and Equitable Learning Campuses in Educational Institutions at all levels*

¹⁸⁵ <http://www.ncdhr.org.in/resources/publications/daaa-publication/Institutional%20Exclusion%20in%20Education-2.pdf>

¹⁸⁶ http://mhrd.gov.in/sites/upload_files/mhrd/files/SCSP-TSPReport_0.pdf

¹⁸⁷ PESA Act 1996, under which a Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.

¹⁸⁸ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, is a paradigm shift of Governance where people/ Gram Sabha shall determine the nature and extent of forest rights. It has been recognised as a historic legislation to undo historic injustice made to the forest dwellers by the State has been acknowledged. Through observation of the process of implementation of FRA in Odisha there are rampant violations reported from the scheduled areas.

¹⁸⁹ PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts by Institute of Rural Management, Anand Commissioned by Ministry of Panchayati Raj Government of India New Delhi.

¹⁹⁰ Also see section in this report on 'Right to Housing and Land'.

¹⁹¹ "Mapithel Dam: Stop violating international standards", Imphal Times, 11 April 2015

<http://www.imphaltimes.com/it-articles/item/2502-mapithel-dam-stop-violating-international-development-standards>

"Construction of Hydro-electricity dam in North Eastern Region Towards Economic Development", Samit Chowdhury and Swarnali Das, Meghalaya Times, 16 February 2012

<http://meghalayatimes.info/index.php/writer-s-column/3260-construction-of-hydro-electricity-dam-in-north-eastern-region-towards-economic-development>

Fact Sheet on Mega Dams in Manipur, Peoples Goals for Development Justice, June 26, 2015

<http://peoplesgoals.org/devjustice/campaigns/manipur/fact-sheet-on-mega-dams-in-manipur/>

'Top Mega Dams of NE India', NE Live, Jul 25, 2016, by [Moupee Debroy](#)

<http://www.nelive.in/north-east/business/top-mega-dams-ne-india>

and 3000 small dams, were granted approval for construction, including raising the height of the Sardar Sarovar Dam in Madhya Pradesh. These dams already submerged vast tract of indigenous peoples' agriculture land, wetlands and forest¹⁹². The implementation of the Forest Rights Act has been poor, often contrary to its empowering provisions.¹⁹³

4. Number of laws, policies and programs implemented by the Ministry of Environment and Forests potentially dilute protective legislation (FRA, PESA) and violate rights of tribals.¹⁹⁴

□ Recommendations

- Ensure effective implementation of protective legislation, the PESA and Forest Rights Act.
- Ensure lawful acquisition of land with the consent of people and village bodies as prescribed in various laws.¹⁹⁵
- Enact law to ensure effective implementation of Tribal Sub-Plan (TSP), focusing on the development rights of Tribal.¹⁹⁶
- The Government of India should ratify ILO Convention No. 169 on Indigenous Peoples.

Persons with Disabilities

1. The census of 2011 does not reflect the actual numbers of persons with disabilities in India. According to WHO 15% percent of the world population are persons with disabilities and in contrast Indian census states it as only 2.21.¹⁹⁷ India spends only a meagre of 0.0009% of its GDP on disability which is not proportionate to the population.¹⁹⁸

"Petroleum Minister Releases Hydrocarbon Vision 2030 for North-East", Press Information Bureau, Ministry of Petroleum & Natural Gas, Government of India, 9 February 2016
<http://pib.nic.in/newsite/printrelease.aspx?relid=136255>

Union Government releases Hydrocarbon Vision 2030 for North-East February 10, 2016
<http://currentaffairs.gktoday.in/union-government-releases-hydrocarbon-vision-2030-north-east-02201630359.html>

Manipur Hydro Power Policy, 2012, the 24th October, 2012

http://manipurgovtpress.nic.in/uploads/EOG_264_29-10-2012.pdf

¹⁹² An Assessment of Dams in India's NE seeking Carbon Credits under CDM of UNFCCC by Jiten Yumnam published by the International Rivers, USA, March 2012

<http://www.internationalrivers.org/resources/an-assessment-of-dams-in-ne-india-seeking-carbon-credits-from-clean-development-mechanism>

¹⁹³ Manthan, Report of the National Committee on National Forest Rights Act, 2010 (A Joint Committee of MoEF and MoTA, Government of India).

¹⁹⁴ Notable ones are the Compensatory Afforestation Act, 2016, the proposal for privatization of forests, notification of Village Forest Rules in the states of Maharashtra and Madhya Pradesh, promotion and strengthening of the Joint Forest Management, plantation in land occupied and used by tribals for livelihoods.

¹⁹⁵ The Panchayat Raj Extension to Schedule Areas (PESA) 1996, Forest Right Act (FRA) 2006, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) 2013, Samata Judgement 1997 and the Supreme Court directions on 18th April, 2013 on Niyamagiri Hills of Odisha.

¹⁹⁶¹⁹⁶ Citizen's Report on Second year of NDA Government -2016; Wada Na Todo Abhiyan.

¹⁹⁷ Global report on disability, by WHO

¹⁹⁸ Moushumi Das Gupta, "Union budgets since 2008 show India spends 0.0009% of its GDP on disability", Hindustan Times October 19, 2013

2. India signed and ratified the UNCRPD in 2007 by which it was bound to modify the domestic laws and harmonize the four disability-specific legislations.¹⁹⁹ The rights of persons with disabilities bill of India 2014 has many inadequacies.²⁰⁰ Anti-discrimination provisions of Indian constitution do not directly prohibit discrimination on grounds of disability.²⁰¹ Disabled persons remain the most marginalized. Scores of Indian laws disqualify persons with disabilities from marrying, inheriting, voting and deprive legal status for persons with psychosocial and cognitive disabilities in particular.²⁰²

3. Limited rights guaranteed by the Persons with Disabilities (PWD) act of 1995 and other disability specific legislations have not been implemented in full.²⁰³ Only 49.50% of disable population identified by the 2011 census have disability certificates.²⁰⁴ National crime records bureau does not maintain data with regard to sexual assaults on women with disabilities.²⁰⁵ Certain laws prevent disabled people from contesting elections including panchayat raj act of many states. Office of the chief commissioner and other state commissioners lack the ability to punish the perpetrators.²⁰⁶

□ Recommendations

- Amend laws to ensure compliance with United Nations Convention on the Rights of Persons with Disabilities (CRPD).s
- Ensure that the obligations on accessibility of public places including private owned public utility spaces, services and transportation are implemented in a time bound manner.

Religious Minorities

1. The status of Religious Minorities in India, mainly Muslims and Christians worsened after the last UPR in 2012.s²⁰⁷ Data released by the Indian Ministry of Home Affairs in February 2014 reveals a steep 30 per cent rise in the number of communal violence incidents as compared to 2012. This is evident from the large scale targeted violence against Muslims in Uttar Pradesh²⁰⁸ in September 2013... The mounting attacks include physical attacks,

¹⁹⁹ The Mental Health Act 1987, Rehabilitation Council of India Act 1992, Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and the National Trust Act 1999 with the letter and spirit of the UNCRPD.

²⁰⁰ A hurried disabilities Bill will serve no purpose", TNN, Feb 18, 2014. <http://timesofindia.indiatimes.com/city/hyderabad/A-hurried-disabilities-Bill-will-serve-no-purpose/articleshow/30579944.cms>

²⁰¹ Recalling attention to Discrimination faced by disabled citizens and need for administrative and legal framework to address their requirement. (Private Member Bill introduced by Ms. Brinda Karat, Member of Rajya Sabha on 26 August 2010)

²⁰² Intellectual disability, autism, cerebral palsy and multiple disabilities (Harmonization of Indian laws with UNCRPD, Rajiv Raturi, HRLN)

²⁰³ Glimpses of PWD Act implementation by NHRC 2013

²⁰⁴ annual Report of Ministry for Social Justice & Department of Disability affairs

²⁰⁵ Human Rights Watch Report "Treated worse than animals" December 3, 2014

²⁰⁶ Annual Report of Ministry for Social Justice & Department of Disability affairs

²⁰⁷ John Dayal (edited), "100 Days Under the New Regime: The State of Minorities", A Report by ANHAD, 2014 Over 600 incidents of targeted religious minorities have taken place from May to September 2014 in several parts of the country, but especially which have seen, or will soon see, by-elections or elections to the Legislative Assemblies. In the first few weeks of the new government, by its own admission, A total of 113 communal incidents have taken place in various parts of the country during May-June in which 15 people were killed and 318 others were injured, Minister of State for Home Affairs, Mr. Kiren Rijju told the Rajya Sabha. The extent of fear experienced can be adjudged from the remarks of a senior man of the police establishment, Julio Ribeiro who said in an article to a major national daily, "As a Christian, I am suddenly a stranger in my own country." <http://indianexpress.com/article/opinion/columns/i-feel-i-am-on-a-hit-list/>

²⁰⁸ According to official statistics submitted by the state government to the Supreme Court in September 2013, at least 44 persons were killed, 97 persons injured and 41,829 people displaced across Muzaffarnagar and Shamli districts. According to district administration riots displaced 51,000 people - 27,198 from Muzaffarnagar and the rest from Shamli - from 150 villages. Muslims have been the worst sufferers of communal orgy that swept

lynching, murder after fuelling beef hysteria²⁰⁹, Love Jihad²¹⁰, 'GharWapsi'²¹¹ and false tests of patriotism.²¹²

2. The attack on minorities in the name of trading in and consuming of beef, using of dormant Cow Protection Laws,²¹³ ²¹⁴ is also an attack on the livelihoods of both Muslims and Dalits²¹⁵. Places of worship of Muslims and pastors and churches²¹⁶ of Christian community were targets of mob violence and state impunity²¹⁷ across the country. Armed militias of right wing organisations²¹⁸ by conducting armed training camps have further accentuated threats to the security of religious minorities.²¹⁹

3. Criminal cases²²⁰ where minorities are victims are left to collapse.²²¹ The continuance of Part (iii) of Article 341 of the Constitution effectively denies millions of Dalits the Rights to

Muzaffarnagar. The real truth about the Muzaffarnagar riots. See: <http://indiafacts.org/the-real-truth-about-the-muzaffarnagar-riots-part-1/>

²⁰⁹ These attacks have happened under the guise of cow protection

²¹⁰ Hindu right-wing campaign against what they say is Muslim conspiracy to convert Hindu girls into Islam.

²¹¹ In December 2014, Hindu hardliner group the Rashtriya Swayamsevak Sangh (RSS) announced plans to forcibly "reconvert" at least 4,000 Christian families and 1,000 Muslim families to Hinduism under what it calls the 'GharWapsi' (returning home) programme in Uttar Pradesh on Christmas day as part of a so-called 'GharWapsi' (returning home) programme. According to RSS, "Christmas was chosen as the day for conversion because the event is a "shaktipariksha" (test of strength) for both religions. If their religion is better, they can stop them. It is a test for both of us. If they come to us on Christmas, it is the biggest rejection of the faith."

²¹² These false and coercive steps include compelling persons to utter slogans like 'Bharat Mata ki Jai' (Hail to the Mother)

²¹³ Such laws exist in at least 28 Indian States. See: The economics of cow slaughter <http://www.thehindu.com/opinion/op-ed/the-economics-of-cow-slaughter/article7880807.ece>

²¹⁴ Angered By The Gau Rakshak Now PM must apply the same principle to all crime — including communal crime <http://indianexpress.com/article/opinion/columns/narendra-modi-gau-rakshak-cow-vigilantes-beef-ban-cow-slaughter-gujarat-dalit-2964523/>

²¹⁵ Ironically profits from beef exports are controlled by the high caste Hindus and Jains (vegetarians)

[1] 95% of beef traders are Hindus, says former chief justice of Delhi high court

<http://timesofindia.indiatimes.com/india/95-of-beef-traders-are-Hindus-says-former-chief-justice-of-Delhi-high-court/articleshow/49866811.cms>

[2] Out of six largest meat suppliers in India four are Hindus <http://muslimmirror.com/eng/out-of-six-largest-meat-suppliers-in-india-four-are-hindus/>

[3] BJP got Rs 2.50 cr in donations from firms exporting buffalo meat <http://timesofindia.indiatimes.com/india/BJP-got-Rs-2-50-cr-in-donations-from-firms-exporting-buffalo-meat/articleshow/50195323.cms>

[4] Meat production doubled in Gujarat in 10 years <http://www.thehindu.com/news/national/other-states/meat-production-doubled-in-gujarat-in-10-years/article5872923.ece>

[5] India on top in exporting beef <http://www.thehindu.com/news/national/india-on-top-in-exporting-beef/article7519487.ece>

[6] Can India afford to ban export of beef? <http://www.dnaindia.com/money/report-can-india-afford-to-ban-export-of-beef-2131979>

²¹⁶ In March 2016 alleged right-wing activists attacked and vandalized a Church Situated in Kachana colony in Raipur in Chhattisgarh injuring five people including two women. A group of youth stormed the prayer hall, raising "Jai Sriram" slogans, and began attacking the worshippers. According to eye witnesses, around 15 people on 8-9 bikes arrived at the spot while the Sunday prayer was going-on in the church, a red-coloured small room situated at the end of the road which further had just barren fields. Ishita Mishra, "Raipur church vandalised during Sunday service" TNN | Mar 7, 2016

²¹⁷ 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

²¹⁸ Ayodhya: Video allegedly showing Bajrang Dal workers receiving 'self-defence' training in weapons goes viral-The video of a mock drill purportedly showed some volunteers wearing skull caps at the camp held in Karsevakpuram — the VHP workshop in Ayodhya.

<http://indianexpress.com/article/india/india-news-india/bajrang-dal-self-defence-video-ayodhya-ram-naik-vhp-karsevaks-camp-2817657/>

²¹⁹ Ayodhya: Bajrang Dal leader arrested over holding weapons training camp <http://indianexpress.com/article/india/india-news-india/mahesh-mishra-faizabad-bajrang-dal-chief-held-over-holding-weapons-training-camp-2819283/>

²²⁰ [1] Examples of Sikhs in 1984, Gujarat 2002, Muzaffarnagar 2013 explained in the footnotes detail how the criminal justice system is abused. Gang rape acquittal: <http://indianexpress.com/article/india/india-news-india/shamli-district-burhana-police-2013-muzzafarnagar-riots-4-acquitted-in-gangrape-case-after-victim-family-turn-hostile-husband-says-we-were-threatened/>

[2] Acquittals due to witnesses turning hostile- Feb 2016 <http://indianexpress.com/article/india/india-news-india/muzaffarnagar-case-families-of-boy-woman-killed-in-2013-riots-turn-hostile/>
<http://indianexpress.com/article/india/india-news-india/three-more-muzaffarnagar-riots-cases-end-in-acquittal/>

[3] Even Gujarat 2002 cases after the present Regime came to power have taken a unique turn.

<https://www.sabrangindia.in/indepth/gulberg-massacre-conspiracy-tell-tale-mobile-call-records-february-2728-2002>

[4] Gulberg Massacre Conspiracy: The Telltale Mobile Call Records of February 27/28, 2002 <https://www.sabrangindia.in/indepth/judge-buys-police-sit%E2%80%99s-claim-private-firing-ahsan-jafri-triggered-gulberg-society-massacre>

Freedom of Faith and Belief. Anti-conversion laws enacted by many Indian states have prompted grave insecurities²²² among the religious minorities.²²³ Youth from India's religious minorities, both Muslims and Christians have been falsely implicated in terror related cases and after acquittal they receive no reparation nor are law enforcement held accountable for wrongful or malicious prosecution.²²⁴

□ Recommendations

- Enact the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2013²²⁵ approved by the Indian Cabinet in December 2013.²²⁶
- Formulate a national policy for dignified reparation of all individuals acquitted in terror related cases.

Refugees

1. India has 187,482 refugees and 3784 asylum seekers which are directly assisted by the government of India and UNHCR²²⁷. "There are 23,500 refugees and asylum seekers in

[5] Judge Buys Police, SIT's Claim That Private Firing by Ahsan Jafri Triggered the Gulberg Society Massacre

²²¹ [1] In Dadri Lynching Case, Victim Mohd Akhlaq's Mother, Wife Face Charges <http://www.ndtv.com/india-news/police-case-ordered-against-family-of-mohd-akhlaq-lynched-in-dadri-1431453>

[2] Running on fast track, 10 witnesses turning hostile, the Punjab and Haryana high court granting bail to mastermind Aseemanand and the Centre not challenging it before the Supreme Court is all that has been happening in the Samjhauta blasts trial. Most of the killed commuters on the train on February 18, 2007 were from Pakistan who were headed home. See: Is Samjhauta Express blasts trial turning towards acquittal?, Hindustan Times, Chandigarh, Aug 24, 2015 <http://www.hindustantimes.com/chandigarh/is-samjhauta-express-blasts-trial-turning-towards-acquittal/story-MPKdm24AddyhuAGDLQLKBK.html>

[3] Sohrabuddin Sheikh fake encounter case: NEW DELHI: In a huge relief to BJP president Amit Shah, the Supreme Court today upheld the clean chit given by the subordinate courts to him in the Sohrabuddin Sheikh fake encounter case and rejected the plea for its revival. "Rejected," said a bench comprising Justices SA Bobde and Ashok Bhushan while questioning the locus standi of former bureaucrat and social activist Harsh Mander for pursuing the case in which the victim's brother Rubabuddin Sheikh had preferred to withdraw the petition. <http://www.ndtv.com/india-news/sohrabuddin-case-supreme-court-upholds-clean-chit-to-bjp-chief-amit-shah-1438977>

²²² As the US State Department's "International Religious Freedom Report 2014" shows (especially in the "Government Practices" section), "anti-conversion" laws, at the state level, have been used by state and local authorities to harass religious minority populations - usually with trumped-up charges. International Religious Freedom Report for 2014, Available at <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2014&dlid=238494#wrapper>

²²³ Effectively, these laws target Christian and Muslim communities and provide opportunities for both local officials and Hindu supremacist organizations to harass and intimidate them. The anti-conversion laws, passed by a number of states, ironically titled the Freedom of Religion Act, violate freedom of religion guaranteed by the Indian constitution. But the same laws do not address forcible conversions to Hinduism such as 'Ghar Wapsi' ceremonies. See: Hate and Targeted Violence against Christian in India – Report 2014 by Evangelical Fellowship of India & Alliance Defending Freedom India.

²²⁴ <http://muslimmirror.com/eng/gyarah-saal-salakhon-ke-peeche-mufti-abdul-qayyums-jail-book-released/>

'[1] Gyarah Saal Salakhon Ke Peeche ' -Mufti Abdul Qayyum's jail book release

[2] A Classic Case of the Abuse of Power: Malegaon 2006 blasts <https://sabrangindia.in/article/classic-case-abuse-power-malegaon-2006-blasts>

²²⁵ Sunil Prabhu, "After fierce debate, anti-communal violence bill is dropped. Here's why," NDTV, February 05, 2014.

<http://www.ndtv.com/cheat-sheet/after-fierce-debate-anti-communal-violence-bill-is-dropped-heres-why-549881>

²²⁶ India wilfully abdicated its responsibility to enact a national legislation in compliance with Article V²²⁶ of the International Convention on the Prevention and Punishment of the Crime of Genocide, 1948. India has ratified the Genocide Convention in 1958.²²⁶ This wilful abdication of state responsibility for more than five decades has seen the 1984 Anti-Sikh Riots, the 2002 Gujarat massacre, killings of Christians in Kandhamal, Orissa²²⁶ in 2008 and many other continuing struggle for justice within the inadequate conceptual frame of Indian law.²²⁶

²²⁷ UNHCR India Fact Sheet 2013, Available at www.unhcr.org

Delhi registered with the United Nations High Commission for Refugees (UNHCR), consisting of more than 11,000 from Burma, 9,000 Afghans,²²⁸ and the 7,000 Tibetans".²²⁹ After 2012 India has witnessed steady influx of Rohingya Muslim refugees roughly about 5,500 from Myanmar.²³⁰

2. India has not yet ratified the 1951 Convention on the Status of Refugees and its Protocol²³¹ and it does not have any a national framework or legal procedure governing refugees. The refugees are simply treated as foreigners as decided by the administrative authorities. The Foreigners Act of 1946 (Act) and the Foreigners Order of 1948 (Order)²³² dealing with a "foreigner" affirmatively give the Indian government the power to restrict movement inside India and to control the opportunity to associate, as well as the ability for refoulement, or "return," refugees. The Refugee Convention bars all of these actions.²³³

3. The Refugee and Asylum Seekers (Protection) Bill, 2006 shas not seen the light of the day.²³⁴ However the Supreme Court of India has held in cases that Article 21 of Constitution protects life and personal liberty of all persons. So aliens of Indian Territory shall not be deprived of those rights except according to procedure established by law.²³⁵

□ Recommendations

- Accede to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.
- Implement a national legal framework for determination of refugee status, protection from refoulement of asylum seekers and treatment of refugees.

²²⁸ There are 9,000 odd Afghan refugees in Delhi, ninety per cent of whom belong to Hindu or Sikh faiths that are religious minorities of Afghanistan, the rest ten per cent belong to Hazaras, Pashtun and other communities. See: Maina Sharma, "Refugees in Delhi", Working Paper No 229, Summer Research Internship 2009, Centre for Civil Society. http://ccs.in/internship_papers/2009/refugees-in-delhi-229.pdf

²²⁹ Devjyot Ghoshal, "Refugees Eke Out a Hard Life in India", The Atlantic, Oct 1 2013 <http://www.theatlantic.com/international/archive/2013/10/refugees-eke-out-a-hard-life-in-india/280132/>

²³⁰ M.A.R. Fareed "Rohingya exiles struggle to survive in India", Aljazeera, 06 Jan 2014. Available at <http://www.aljazeera.com/indepth/features/2014/01/rohingya-exiles-struggle-survive-india-201416143243337187.html>

²³¹ Veerabhadran Vijayakumar, "A Critical Analysis of Refugee Protection in South Asia", Refugee, Vol.19.No.2 (January 2001) p.7.

²³² The treatment of refugees falls under India's Registration of Foreigners Act of 1939, the Foreigners Act of 1946, and the Foreigners Order of 1948. None of these Acts distinguish between undocumented migrants and refugees. As a result India has no official procedural mechanism in place to protect refugees living within its borders. Rather, such grossly vital decisions are left in the hands of sometimes ill informed, bureaucratic minds who have no knowledge of the humanitarian principles of refugee law and of the consequent responsibilities that lie with such decision making processes. See Maina Sharma, 2009 Op cit.

²³³ H. Knox Thames, "India's Failure to Adequately Protect Refugees", www.wcl.american.edu & Country Report on India from the US Committee for Refugees.

²³⁴ J. Venkatesan, "Magistrate: How Can Court Become Party To Persecution Of Refugees?", The Hindu, September 21, 2011 (Daily), Available at www.thehindu.com/news/national/article2471121.ece

²³⁵ In Louis De Raedt Verses. Union of India, 3 S.C.C. (1991) P 554

Nomadic, Semi-nomadic and De-Notified Tribes (NT-DNTs)²³⁶

1. As per the Renke Commission Report, 2008 there are nearly 1500 nomadic and semi-nomadic and 198 De-notified tribes, comprising 150 million NT-DNT in India. The Indian Constitution however does not officially recognize²³⁷ the NT-DNT communities in India which has led to paralysis of policy paradigm further leading to denial of citizenship rights, social protection, and affirmative development action programs²³⁸.

²³⁶ **DNT** - These are communities (or 'tribes') that, during the British regime, due to specific administrative as well as law and order reasons, were 'notified' as being 'born criminal' by the British Government under a series of laws starting with the Criminal Tribes Act of 1871. These laws were enacted as crime was considered a 'hereditary profession' and the enactment of the law and its entry into the working of police training as well as in the public arena slapped the brand of being 'born criminals' on the entire population of these communities. After Independence, this Act was repealed in 1952, and the communities were 'de-notified', hence the name.

NT and Semi-Nomadic Tribe - A nomad may be defined as 'one who is constantly on spatial movement.' A group (or society) of constantly moving (or migrating) people is nomadic, and the lifestyle and symbolic system the nomads have is known as nomadism. Here, people eke out their livelihood by migrating from one site to another within a specific territorial zone. The fact that people move should not be interpreted as meaning that they journey from one eco-zone to another, or, to put in empirical terms, the nomads from the Himalayas travel to central India. As a lifestyle, nomadism is always adapted to a habitat. Nomads have a specialized knowledge of an area and their economy is suited to that. Nomads are journeyers in a habitat; they process the resources that they find there. In other words, they are not parasites on nature.

²³⁷ The Indian Constitution does not mention the De-notified or Nomadic Tribes. It confines itself to the Scheduled Castes, the Scheduled Tribes and the Backward Classes. The De-notified & Nomadic Tribes have thus been largely out of focus of the social sector management except in a couple of States like Maharashtra and Gujarat. Further, the affirmative action program of the State is based on socio-economic backwardness of the settled communities; it has failed to include specificities of nomadism, stigmatization and criminalization within its ambit. As a result, it has also been painfully observed that even though a large number of these Tribes and Communities are in the lists of SCs, STs and BCs/OBCs, they have not been able to take advantage of the affirmative action programmes launched by the Union and the States from time to time due to non-inclusion of nomadism, stigmatization and criminalization. It is also important to note that about 16 percent (9 communities) of Nomadic tribes and 3 percent (2 communities) of De-notified communities do not belong to any of the existing constitutionally designated categories – SC, ST or OBC. Source: 2008 Renke Commission Report, 2008 available at [http://socialjustice.nic.in/writereaddata/UploadFile/NCDNT2008-v1%20\(1\).pdf](http://socialjustice.nic.in/writereaddata/UploadFile/NCDNT2008-v1%20(1).pdf)

²³⁸ Data on NT-DNT Communities based on the study by National commission for Semi-nomadic, Nomadic and De-notified Tribe, (Renke commission, June, 2008) in 11 states:

- **Caste certificate:** Around 50% of DNT communities and 61% of Nomadic Communities do not possess Caste Certificates.
- **Death certificate:** Around 55.2% DNT Communities and 81.8% NT Communities do not possess Death Certificates. Death Certificates are required for widow pension/compensation and other social security schemes.
- **Birth certificate:** Around 47.8% DNT Communities and 60% of NT Communities do not possess Birth Certificates.
- **BPL Cards:** Only 23 percent De-notified and 6 percent Nomadic communities report availability of BPL cards.
- **Voter ID Cards:** It is interesting to note that more than 80 percent De-notified community men and women and two thirds of Nomadic community men and women possess voter identity card (I.D.).
- **Access to Drinking water (unsafe):** Around 18% of DNT Communities and 46% of NT Communities have access to unsafe drinking water.
- **Access to health care services:** Around 61.2% DNT Communities and 54.5% of NT Communities do not have access to health services.
- **Access to Child Birth Services:** About 50 percent of the communities said that child birth happens at home attended by traditional Dai.
- **Access to Immunization services:** A substantial gap, about 30 % of both communities, not serviced by ANM suggest under coverage and absence of immunization services for children born in these communities.
- **Access to burial ground:** Around 28.4% of DNT Communities and 25.5% of NT Communities do not have access to burial grounds.
- **Access to Toilets:** Around 76% DNT Communities and 33.7% NT Communities still practice open defecation.
- **Access to Schools:** Only 42 percent of the De-notified communities and 28 percent of the Nomadic communities report that children are attending schools. Issue emerging among these communities is that more than half (58%) the De-notified communities and more than one fourth (72%) of the Nomadic communities saying that their children are not going to school.
- **Availing Hostel Facilities:**

DNT Communities (14148 boys and girls) –

Primary schools	1 (Male)	1 (Female)
Upper primary schools	5 (Male)	7 (Female)
Secondary schools	3 (Male)	4 (Female)
Higher secondary schools	3 (Male)	4 (Female)

NT Communities (4340 boys and girls) -

Primary schools	224(Male)	4(Female)
Upper primary schools	220 (Male)	
Secondary schools	3 (Male)	
Higher secondary schools	4 (Male)	

2. Human rights situation of NT-DNT is appalling and deplorable. They are subjected to atrocities everyday by the police, civic and revenue administration, and civil society²³⁹. Media

The table above highlights negligible number of children, out of 14148 boys and girls of school going age, availing hostel facilities in case of De-notified communities. In contrast, out of 4340 boys and girls of school going age among nomadic communities, quite a few are availing hostel facilities. If the facilities for education are provided, parents of these communities would utilize hostel facility for their children. Strengthening, increasing the capacity, targeting, etc., would definitely help in better utilization of hostel facilities by the De-notified and Nomadic communities.

- **Access to Employment:** About 25 percent of the families among De-notified and about 60 percent among Nomadic communities do not get wage employment for all seven days. None of them reported getting employment through NREGP/ PMGSY, and old age or widow pensions.
- **Access to Food:** About 21 percent of communities say that they get one meal a day or go without food during some of the months in a year. About one third of families of Nomadic community and one fourth of De-notified community do not possess any type of ration card. Importantly, though these communities get less than two meals a day, no meals during some of the months and report non availability of wage employment for 4-6 months.
- **Housing Rights:** About 89 percent of the De-notified communities and 98 percent of the Nomadic and semi-Nomadic communities reported that none of the families in the community own land. Majority (81 %) of De-notified communities did not know the status of their residential locations. Only 11 percent of the Nomadic communities and 8 percent of the De-notified communities have habitations on public land. Living conditions – nature of habitation: Tent/Jhuggis (57%) are the most common type of habitation where communities reside in poor living conditions. They are deprived of basic amenities, such as toilets, water, electricity, etc.
- **Minimum, Maximum and average debt per family:** Only about half the communities visited – both among De-notified (49 %) and Nomadic (48 %) – could estimate incidence of indebtedness in their respective communities. Among those who could estimate indebtedness, about 45 percent of the De-notified communities and 39 percent of the Nomadic communities said that all the families in their habitation were in debt. Of those who could estimate, 53 percent of Nomadic communities and 47 percent of the De-notified communities said more than half of the families were in debt. The debt ranges from Rs. 7,542 to Rs. 28,349/-. The maximum amount of debt is Rs. 5 Lakhs among De-notified communities. During the discussion, the communities shared instances of distressed borrowings to buy provisions, meet social exigencies, loss in their trading activities, repair of their dwellings, etc. Much of the time debt increases owing to their inability to repay, resulting in accumulation of interest. Low income, lack of opportunities for wage employment, heavy interest rates and low social and economic status has pushed these communities into deep abyss of debt and hardship. It can be seen in the figure below that the dependence on money lender is high with about 60 percent of De-notified communities and nomadic communities mentioning this as their primary source of credit. Fewer percentages of the communities, 6 percent of De-notified and 11 percent nomadic, access micro-credit.
- **Children working for repayment of loan:** An equal proportion of boys from De-notified and Nomadic communities (about 15% each) and 6 percent girls among both De-notified and Nomadic communities are working in return of loan. Further, 58 percent of children among De-notified communities and 49 percent among Nomadic communities are engaged in economic activities, instead of attending schools.
- **Incidence of Bonded Labour:** Among De-notified communities, 4.5 percent said that their traditional occupation had been bonded labour.
- **Incidence of Child Marriage:** Early marriages are common as reported in the communities. The lowest minimum age reported was 8 years for women and 10 years for men among De-notified communities and 7 years for men and women, respectively, in Nomadic communities. Highest age at marriage for men and women in De-notified communities and Nomadic communities reported was 18 and 15 years for men and women, respectively. About 8 percent women in De-notified communities and 7 percent in Nomadic communities have had their first child at the age of 14 years.
- **Sexual Harassment of Women:** About 16 percent of the De-notified communities and 9 percent of the Nomadic communities' women reported sexual harassment by other castes.
- Communities were also asked about the laws of the land that affect them adversely. About 37 percent Nomadic and 23 percent De-notified communities report Forest Conservation Act. Other Acts affecting the community are Wild Life Protection Act 1972, Habitual Offenders Act, Anti Beggary legislation (Bombay Prevention of Begging Act, 1959 adopted by different States), Prevention of Cruelty to Animals Act, 1960, and Excise Act, 1944.

²³⁹ **Police Action:** About 8 percent of the De-notified community and 4 percent of the Nomadic community families faced police action in the last one year. It is important to note that 88 percent of women from Nomadic communities have faced investigation.

MAN	DNT		NT	
	No	%	No	%
Arrest	342	7.5	86	8.9
Imprisonment	234	5.1	4	0.4
Enquiry	1199	26.3	468	48.6
Weekly / monthly / periodic reporting	25	0.5	110	11.4
Verbal abuse	614	13.4	50	5.2
Seeking bribe	1456	31.9	0	0.0
Fines	62	1.4	90	9.4
Forced labour	20	0.4	18	1.9
Illegal Confinement	4	0.1	7	0.7

Women	DNT		NT	
	No	%	No	%
Arrest	35	1.6	0	0
Imprisonment	56	2.5	0	0
Enquiry	558	24.9	464	87.7

is one of the major enhancers of stigma wrongly attributed to them while reporting crime in their daily columns.²⁴⁰

□ Recommendations:

- Repeal the Habitual Offenders' Act, 1952²⁴¹ and the Prevention of Begging Act 1959²⁴² for de-criminalization of the NT-DNT.
- A Social protection framework focusing on access to entitlements, land and housing rights, livelihood, education and health of NT-DNT Communities should be framed. Create awareness among law enforcement agency and state machineries.²⁴³
- The Government of India should create a permanent statutory body, Commission for NT-DNT along with a working group in Niti Aayog and other Human Rights Institutions.

Freedom of Assembly, Association and Expression

1. The Indian government routinely uses Section 144 of the Code of Criminal Procedure to prevent peaceful public gatherings, restrict protests and stifle people's movements.²⁴⁴ The

Weekly / monthly / periodic reporting	18	0.8	5	0.9
Verbal abuse	236	10.5	5	0.9
Physical harassment	466	20.8	15	2.8
Seeking bribe	835	37.3	9	1.7
Fines	9	0.4	20	3.8
Forced labour	25	1.1	6	1.1
Illegal Confinement	0	0	5	0.9

Source: Renke Commission Report, 2008.

It is important to note that these are official statistics provided by the Renke Commission. Due to the criminal stigma attached to the NT-DNT Communities, the actual number of cases of police atrocities, illegal detention, harassment, forced labour and sexual violence etc is much larger and mostly go unreported since the police refuse to register their cases.

²⁴⁰ <http://www.thehindu.com/todays-paper/tp-national/bawariyas-never-spare-young-women/article8939899.ece>

<http://www.thehindu.com/news/national/other-states/turnaround-in-pardhis-eviction-case/article5234186.ece>

<http://archive.indianexpress.com/news/three-years-on-pardhi-community-driven-out-of-village-waits-for-justice/663999/>

²⁴¹ The Habitual Offenders' Act, 1952 is similar in spirit to the repealed Criminal Tribes Act of 1871 and should be abolished as a first step towards de-criminalisation of DNTs and prevention of atrocities by police.

²⁴² The Prevention of Begging Act 1959: Amend definitions relating to criminalization of their profession. The Bombay Prevention of Begging Act 1959: Amend this and similar laws in urban areas all over the country that target street performing nomadic communities such as acrobats, tight rope walkers, dancers and singers.

²⁴³ This has also manifested in what Kiran Bedi, a well-known former police officer and now Lieutenant Governor of Pondicherry, tweeted recently: "Ex-criminal tribes are known to be very cruel. They are hardcore professionals in committing crimes. Rarely caught and/or convicted". — Kiran Bedi (@thekiranbedi) August 2, 2016, Years After Independence, There Are Still Tribes That Are Considered 'Born Criminal' Aug 10, 2016 Available at <http://www.deccanchronicle.com/nation/current-affairs/110816/kochi-activists-call-for-removal-of-kiran-bedi.html>

²⁴⁴ Full text of section 144. Dissent is often criminalized, for instance the authorities imposed section 144 at the Mapithel dam site in Manipur to prevent protests by affected communities. Data from BPRD shows another instance of increasing criminalization of peaceful protesters. 10,353 people were arrested for participation in agrarian protests in 2015 as compared to 3,500 in 2014. Increasingly, public spaces are off limits for peaceful protests because of frequent and over-broad use of laws such as section 144. Authorities also demand protest organisers to obtain prior police permission or clearance for the right to assemble, impinging on the right to peaceful assembly.

authorities use excessive force during anti-government protests, especially in conflict-zones such as Jammu and Kashmir.²⁴⁵

2. The government's regulatory regime for civil society organizations is discriminatory compared to the corporate sector.²⁴⁶ The Foreign Contribution Regulation Act (FCRA) and its rules impose restrictions on funding for non-governmental organisations that in practice threatens their rights to freedom of expression and association.²⁴⁷ In 2015, the UN Special Rapporteur on Freedom of Peaceful Assembly and Association, Maina Kiai analyzed the FCRA and said it appeared to "contravene the Union of India's obligations under the ICCPR." The National Human Rights Commission remains silent on this issue.

3. The authorities use broadly-worded laws such as sedition for speech that is critical of government actions, including on social media.²⁴⁸ Other overbroad and vaguely worded laws such as criminal defamation and hate speech laws are used to harass and prosecute those expressing dissenting, unpopular, or minority views. There are increased attacks on journalists; especially those covering corruption and exposing government wrong-doing.²⁴⁹

4. Indian authorities resorted to blocking access to mobile Internet services across the country during political unrest.²⁵⁰ In 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue said such action is a violation of article 19 of the ICCPR.²⁵¹

□ Recommendations:

- Amend or repeal the provisions of FCRA that restrict freedom of association in violation of India's international human rights obligations.
- Respect the right of civil society organisations to have unimpeded access to legitimate funding for their work, including from sources abroad.

Human Rights Defenders

1. The dangers faced by HRDs²⁵² throughout India continue unabated. The UN Special Rapporteur on Human Rights Defenders, after her visit to India in 2011²⁵³, pointed out that

²⁴⁵ State response to end violent street protests in Kashmir which began in July 2016 led to over 70 protesters being killed and hundreds more injured. The federal paramilitary unit, Central Reserve Police Force, told the Jammu and Kashmir High Court that it had used 1.3 million pellets in 32 days, admitting that "it was difficult to follow the standard operating procedure given the nature of the protests." Indian security forces have been using pellet guns as a nonlethal option for crowd control since 2010 in Kashmir. Use of pellet guns to control protesting crowds in 2016 led to 10 deaths and caused blindness or serious eye injuries to over 100 people.

²⁴⁶ Multiple regulatory laws, and tedious registration and reporting requirements. Organizations with human rights in their name are particularly targeted.

²⁴⁷ Examples such as Teesta, Greenpeace India, INSAF, Lawyers collective.

²⁴⁸ Examples Amnesty, JNU

²⁴⁹ CPJ statistics and Impunity Index. Chhattisgarh is another example of journalists being hounded out of Bastar.

²⁵⁰ MediaNama has tracked 13 blanket bans on mobile Internet services in India since September 2015.

<http://www.medianama.com/2016/07/223-right-to-internet-un-resolution/>. The Software Freedom Law Centre has tracked 30 incidents on Internet being cut off in since 2013. <http://sflc.in/internet-shutdown-tracker-india-2013-2016/>

²⁵¹ http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

²⁵² Human Rights Defender Alert-India documented a total number of 104 cases of HRDs in the country in 2015 for advocacy and filing urgent appeals. The break-up of these cases is - 11 cases of killings, 60 cases in the category of physical assault, physical and verbal threats, 33 cases of illegal arrest or detention or false/fabricated, 47 cases under the category of harassment and ill treatment 11 cases of reprisals against Journalists, Writers and 24 cases of attacks on RTI activists. Available at www.hrdaindia.org

²⁵³ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to India (10–21 January 2011) <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>

“HRDs are often labelled as “Naxalites” (Maoists),²⁵⁴ “enemies of the State”²⁵⁵ “militants”, “anti-nationalists” and “members of underground” and their rights to freedom of expression, peaceful assembly, association and movement is unlawfully restricted.” Defenders in conflict areas face abuses by the security forces including extrajudicial killings, torture and rape.²⁵⁶

2. A disturbing new trend is the targeted killings of HRDs using Right to Information Act.²⁵⁷ Journalists,²⁵⁹ writers²⁶¹, students²⁶², film makers²⁶³ and lawyers providing legal aid to HRDs²⁶⁴ were not only targeted with threats or physical attacks by the non-state actors²⁶⁵ but illegally arrested²⁶⁶, evicted, restricted to travel abroad²⁶⁷ even killed²⁶⁸ by the state authorities. Antiquated, colonial-era laws like sedition has been used against the defenders.²⁶⁹

²⁵⁴ Dr GN Saibaba, wheelchair-bound professor of English at Delhi University's Ram Lal Anand College was arrested by a Maharashtra Police on May 9, 2014, for his alleged links with Maoists. The Supreme Court granted bail to him in April 2016 saying Maharashtra government has been “extremely unfair” to him especially looking at his medical condition. <http://indiatoday.intoday.in/story/delhi-university-professor-saibaba-arrested-for-maoist-links-gets-bail/1/634645.html>. Also see <http://www.thehindu.com/news/national/saibaba-gets-bail/article8432772.ece>.
<http://hrdaindia.org/wp-content/uploads/2015/07/2015-06-19-HRDA-UA-South-Maharashtra-Dr.-Saibaba.pdf>

²⁵⁵ Kanhaiya Kumar <http://goo.gl/TPWsJ4>, S.A.R Geelani <http://goo.gl/xHjU1N>,

²⁵⁶ Ms. Ruisoting Aimol, alias Mary, Chairperson of “Aimol Numeis' Waar” a women's rights organisation, was killed on 31 May 2015 during an indiscriminate firing by the 20 Battalion of Assam Rifles E-Coy in village Aimol Satu, under Tengnoupal Police Station in Chandel District of Manipur. Three more WHRDs identified as ST Larti Aimol (48 years), S. Sangkaisin Aimol (49 years) and S. Rangnu Aimol (46 years) were brutally assaulted by the Assam Rifles personnel using their rifle butts and sticks.

²⁵⁷ Data compiled by the Commonwealth Human Rights Initiative shows that Maharashtra has recorded the highest number of attacks 60 on RTI activists since the law was passed a decade ago, followed by Gujarat (36), UP (25) and Delhi (23). When it comes to murders, Gujarat and UP come second with 6 each, followed by Karnataka and Bihar with 4 murders each. When it comes to a count of activists attacked, killed or harassed, Gujarat comes second with 36, followed by UP at 25 and Delhi at 23. Available at <http://timesofindia.indiatimes.com/India/Maharashtra-most-unsafe-for-RTI-activists-10-killed-in-10-years/articleshow/48840985.cms>

²⁵⁸ Mr. Jawahar Lal Tiwary, an RTI activist was brutally murdered in village Bangara Nizamat in Muzaffarpur district of Bihar. His mutilated body (cut into five pieces) was found on 14th August 2015 in the Diara belt of Gandak river in Sohassa village under Deoria police station of Bihar. From 2012 to 2015 he filed more than 30 RTI queries in various local and district level administrations and exposed around 10 scams related to food grain distribution and corruption and embezzlement of public money meant for the flood victims of Bihar through filing RTI applications. Human Rights Watch, “India: New Killing of ‘Right-to-Information’ Activist”, September 10, 2015 <https://www.hrw.org/news/2015/09/10/india-new-killing-right-information-activist>

²⁵⁹ According to the 2015 annual report of Reporters Without Borders, “India was among the three most dangerous countries for journalists in 2015, with nine reporters losing their lives during the year”.

²⁶⁰ <http://indianexpress.com/article/india/india-news-india/bihar-raideo-ranjan-press-council-seeks-special-law-to-protect-scribes-2800866/>

²⁶¹ Mr. Huchangi Prasad, a 2nd year student of Masters in Journalism at Davangere University, Karnataka and a young student Dalit writer, activist of BVS was brutally attacked on 21st October 2015 by a group of unidentified persons in Davangere in Central Karnataka. He was allegedly from a right wing group. Mr. Huchangi Prasad was targeted for his critical views against the caste system and Hinduism carried in his book “Odala Kichhu” in Kannada. <http://www.thehindu.com/news/national/karnataka/young-dalit-writer-targeted-in-davanagere/article7793036.ece>

²⁶²

²⁶³ Social activist and documentary film maker Mr. Debaranjan Sarangi was arrested on March 18, 2016, by the Odisha police in Raygada district of Odisha on the basis of a non-bailable warrant issued against him in a previous case related to a protest and agitation against Utkal Alumunia Company in Raigada district which took place in the year of 2005. On August 9, 2015, the police of Malkangiri district of Odisha, allegedly registered a false case against him on a complaint of a woman in Malkangiri district under sections 294/341/323/354/354-B/506(ii) of the IPC (relating to molestation of a woman). He had already taken anticipatory bail in his 2015 Malkangiri case from High Court. For details see: <http://hrdaindia.org/wp-content/uploads/2015/08/2015-08-21-HRDA-UA-East-Odisha-HRD-Mr.Debaranjan-Sarangi.pdf>

²⁶⁴ <http://indianexpress.com/article/india/india-news-india/chhattisgarh-police-direct-owners-to-evict-jagdalpur-legal-aid-group-journalist-of-accommodation/>

²⁶⁵ Soni Sori <http://goo.gl/ztvTmi>

Malini Subramniam <http://hrdaindia.org/wp-content/uploads/2016/02/2016-02-19-HRDA-UA-CHHATTISGARH-Ms.pdf>

Bela Bhatia <http://hrdaindia.org/wp-content/uploads/2016/03/2016-03-27-HRDA-UA-EAST-CHHATTISGARH-Ms.Bela-Bhatia.pdf>

²⁶⁶ <http://www.ndtv.com/india-news/jharkhand-activist-dayamani-barla-gets-bail-after-spending-two-months-in-jail-508200>

3. Tribal HRDs²⁷⁰ and HRDs working on issues of natural resources, land, environment, business and human rights, caste, have faced increasing risks of arrests under fabricated cases²⁷¹, torture²⁷², killings²⁷³ and excessive use of force on peaceful protests²⁷⁴.

4. The National Focal Point on HRD at the National Human Rights Commission (NHRC) has no specific powers. NHRC failed to provide relief in a single HRD case out of 225 cases filed by HRDA since January 2015²⁷⁵. India refused to adopt UN General Assembly resolution on human rights defenders in November 2015 calling for a separate domestic law to protect human rights defenders.²⁷⁶

<http://www.thehindu.com/features/magazine/democracy-needs-their-song/article4675905.ece>

<http://www.thehindu.com/news/national/other-states/journalists-house-in-bastar-attacked/article8210352.ece>

<http://www.ndtv.com/india-news/journalist-pushp-sharma-sent-to-judicial-custody-for-fabricating-rti-reply-1406875>

<http://scroll.in/article/813495/why-are-authorities-harassing-outlook-and-narada-journalists-instead-of-examining-their-stories>

²⁶⁷ Tribal environmental rights activist, author and human rights defender, Mr. Gladson Dungdung was illegally prevented from boarding an early morning Air India flight AI 115 to London on April 9, 2016 at IGI Airport Delhi. Mr. Gladson Dungdung was to travel to London where he was reportedly going to attend a workshop on environmental history and politics of South Asia, to be held at the University of Sussex on May 10, 2016. The defender, also an adivasi author was being targeted for his work on adivasis, ownership rights over the natural resources, adivasi identity, human rights, ecology and against unjust development processes. MEA Curtails Freedom of Movement: Tribal Rights Activist Gladson Dungdung Offloaded at Delhi Airport, Sabrangindia, May 9, 2016 Available at <https://www.sabrangindia.in/article/mea-curtails-freedom-movement-tribal-rights-activist-gladson-dungdung-offloaded-delhi>
<http://indianexpress.com/article/india/india-others/greenpeace-campaigner-offloaded-at-delhi-from-flight-headed-to-london/>
<http://indianexpress.com/article/india/india-news-india/kudankulam-nuclear-plant-protest-sedition-supreme-court-of-india-section-124a-3024655/>

²⁶⁸ In June 2015 Mr. Jagendra Singh a journalist based in Shahjahanpur, Uttar Pradesh died of burn injuries, eight days after he alleged in a video that he was set on fire by a group of police and supporters of Uttar Pradesh Minister for Dairy Development, Mr. Ram Murti Verma. 40-year-old local journalist Mr. Sandeep Kothari from Balagahr, Madhya Pradesh was burnt to death by three persons, suspected to be closely linked to sand mafia. He was abducted on June 19, 2015 and his body was found after two days lying near railway tracks at Sindi town in Wardha district of east Maharashtra. For details see: www.hrdaindia.org

²⁶⁹ Sec 124 (Sedition) and Sec 122 (waging war against the state) of Indian Penal Code, The Prevention of Seditious Meetings Act, 1911. For example: Tamil folk singer and member of the cultural wing of Makkal Kalai Ilakkiya Kazhagam or People's Art and Literary Association, Mr. S Kovan was arrested illegally under sedition charges of by Tamil Nadu police from Tiruchi on 30 October, 2015 for the lyrics of two songs he had penned for making direct remarks on the Chief Minister of Tamil Nadu Ms. J Jayalalithaa on her party and its liquor policies.

²⁷⁰ <http://www.catchnews.com/national-news/arunachal-two-killed-as-2-group-clash-in-tawang-1462189299.html>

<http://www.thehindu.com/news/national/for-dayamani-the-fight-is-for-mango-mahua-bears/article5845530.ece>

<http://www.financialexpress.com/india-news/arunachal-pradesh-two-killed-6-injured-in-police-firing-over-lama-lobsang-gyatso-release/247321/>

²⁷¹ <http://hrdaindia.org/wp-content/uploads/2016/03/2016-03-18-HRDA-UA-EAST-CHHATTISGARH-Dr.Saibal-Jana.pdf>

²⁷² <http://hrdaindia.org/wp-content/uploads/2016/07/2016-07-16-HRDA-UA-SOUTH-TAMIL-NADU-Piyush-Manush.pdf>

²⁷³ <http://hrdaindia.org/wp-content/uploads/2015/09/2015-09-08-HRDA-UA-South-Karnataka-HRD-Prof.-MM-Kalburgi.pdf>

²⁷⁴ <http://goo.gl/wVvRH3> , <http://goo.gl/qGXSJ0>

²⁷⁵ As per the report submitted by AiNNI to GANHRI SCA review of NHRC India review in November 2016 and AiNNI's submission to Asian NGO Network on National Human Rights Institutions (ANNI). Only 74 cases out of 104 cases filed by HRDA were registered by the NHRC. All these cases were directly filed with the Focal Point on HRD at the NHRC. 7 more cases were registered out of these 104 cases, not HRDA as complainant but HRDA members who have also filed the same complaint circulated by HRDA. 23 cases were not registered by the NHRC. In no case, there has been any compensation or persecution recommended by the NHRC till date.

²⁷⁶ India's Explanation of Position on the adoption of draft resolution A/C.3/70/46/Rev.1 on Human Rights Defenders at the Third Committee at the 70th session of the United Nations General Assembly on 25th November, 2015: "India is a party to the International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966. By becoming Parties to these Covenants, India has undertaken an obligation at the international level to protect the civil and political rights and progressive realization of economic, social and cultural rights. Furthermore, the fundamental and legal rights guaranteed by the Indian Constitution and relevant laws are equally available and applicable for all including providing for the human rights defenders. We are of the view that adoption of this resolution does not necessitate a new and separate domestic legal regime to protect human rights defenders".

□ Recommendations

- Enact a law, in compliance with international standards, for the protection of human rights defenders.
- Ensure that Focal Point on HRDs be made a full member of the Commission with powers as recommended by the UN SR on HRDs.

National Human Rights Institutions

1. India has nine national²⁷⁷ and over 180 state human rights institutions (N/SHRIs) entrusted with protecting and promoting human rights. Most of them lack compliance in law and practice with the Paris Principles²⁷⁸ on the status of national human rights institutions adopted by the UN General Assembly in December 1993. Despite their inherent potential, these institutions face systematic impediments in matters related to patterns of appointments,²⁷⁹ composition²⁸⁰, pluralism,²⁸¹ transparency²⁸², mandate²⁸³ and powers²⁸⁴ which affect their effective functioning.

2. As per UPR I Recommendation 3, GOI accepted to strengthen existing mechanisms for the protection of human rights but in UPR II it did not accept the observations and

²⁷⁷ National Human Rights Commission (NHRC), National Commission for Women (NCW), National Commission for the Protection of Child Rights (NCPCR), National Commission for Scheduled Castes (NCSC), National Commission for Scheduled Tribes (NCST), National Commission for Minorities (NCM), National Commission for Safai Karamcharis (NCSK), Central Information Commission (CIC), and Chief Commissioner for Persons with Disabilities (CCPD).

²⁷⁸ The Paris Principles, drafted at an international NHRIs workshop in Paris in 1991 and adopted by the United Nations General Assembly in 1993 are a set of international standards which frame and guide the work of National Human Rights Institutions (NHRIs). The internationally agreed Principles define the role, composition, status and functions of national human rights institutions. NHRIs must comply with the Principles which identify their human rights objectives and provide for their independence, broad human rights mandate, adequate funding, and an inclusive and transparent selection and appointment process. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsquidingtheworkofNHRI.aspx>

²⁷⁹ NHRIs are seen as an extended hand of the government. The pattern of appointing former and serving officers from the Indian Police Service (IPS) in the NHRC and officers from the Indian Administrative Service (IAS) as members of the state human rights commissions (SHRCs) has set a dangerous precedence which has negatively affected the neutrality of these human rights institutions. By appointing a retired bureaucrat, the government can potentially undermine the independence of a statutory institution that is vested with the responsibility of monitoring the protection and promotion of human rights.

Swagata Raha & Archana Mehendale, "When rights panels become retirement parks", The Hindu, June 1, 2013.

²⁸⁰ There are vacancies in several of these commissions and several commissions are headed by policemen who more often are the perpetrators of human rights violations. One member of the NHRC is a policeman. The West Bengal SHRC is headed by a senior police official. Several other SHRCs too have policemen on board like Meghalaya, Rajasthan etc. See footnote 3.

²⁸¹ According to the Asian Centre for Human Rights, the NHRC's composition does not reflect the plurality as required under the Paris Principles. Although the chairpersons of the NCM, NCW, NCST and NCSC are included as statutory members, they are already busy with their respective commissions, essentially resulting to a lack of effective representation in the NHRC from the minorities, women, STs, and SCs. Available at <http://www.achrweb.org/theme/nhri.html>

²⁸² The appointment of former Supreme Court judge Cyriac Joseph and former police chief SC Sinha as members of the National Human Rights Commission (NHRC) violated the transparency norm prescribed by the apex court in the P J Thomas case. Opposition member Sushma Swaraj stressed on the need to appoint "such persons who have earned a reputation in the field of human rights". Manoj Mitta, "Two NHRC appointments in 2013 violated SC norms", TNN, Jul 26, 2014

²⁸³ According to a report on Performance and Legitimacy of NHRIs by ICHRP (2004), the Indian government established its National Human Rights Commission, but the government has tied its hands by not allowing it to investigate into allegations of human rights violations made against public servants and the state army. Shiva Acharya, "National Human Rights Institutions (NHRIs) and their role in the Policy Making Process: A look at the Impact of the Equality and Human Rights Commission (EHRC) in the United Kingdom in the Context of Diminishing Power", By. School of Global Studies, University of Gothenburg, Fall 2013, Page 15

²⁸⁴ NHRC) chairman Justice H L Dattu pointed out that over 600 recommendations made by the rights watchdog have not been acted upon by the Centre and state governments and critics often term it as a "toothless" body. It is for Parliament to decide whether to confer NHRC with some kind of contempt powers to make authorities implement its recommendations. See: Shikha Sharma, "CJI wants more teeth for NHRC: CJI T S Thakur," The Indian Express, 11 December 2015 <http://indianexpress.com/article/india/india-news-india/cji-wants-more-teeth-for-nhrc/>

recommendations of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), Sub-Committee on Accreditation (SCA) made in 2011.²⁸⁵

3. The SCA recommended that the NHRC advocate²⁸⁶ to amend the PHRA 2006 to remove the anomalies because the amended act of 2006 does reflect the pledges made by the Government of India in 2011 to the UN General Assembly before presenting its candidature to the Human Rights Council for the term 2011-2014.²⁸⁷

□ Recommendations:

- Amend the Protection of Human Rights Act, 1993 in accordance with the Paris Principles thus ensuring transparent appointment system, diversity and pluralism and ensure civil society representation in the N/SHRC²⁸⁸.
- Adhere and comply with the observations and recommendations of ICC-SCA review of 2011.

Collaboration with the UN Human Rights System

1. As per UPR I Recommendation 4 and UPR II Recommendation 70 and its 2011 pledge, GOI committed to continue its constructive engagement with international human rights bodies. India has not yet ratified several major human rights conventions.²⁸⁹

2. India's reporting record with UN Treaty Bodies is dismal. With the exception of reports submitted in accordance with India's obligations under the CRC and CRPD, India's reports are overdue for periods ranging from five to ten years.²⁹⁰ The most egregious is the long overdue report to the Human Rights Committee. India last submitted a report to the HRC in 1995.²⁹¹

²⁸⁵ The recommendations were related to Composition, Appointment, relationship with Civil Society, Complaint Handling Function and Annual Reports of NHRCI. ICC Sub-Committee on Accreditation Report – May 2011, page 1 -15 Available at [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf)

²⁸⁶ ICC Sub-Committee on Accreditation Report – May 2011, page 14 Available at [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf)

²⁸⁷ India announced it "will continue to abide by its national mechanisms and procedures to promote and protect the human rights and fundamental freedoms of all of its citizens". <http://www.amnesty.org.au/news/comments/119/> also see: file:///D:/WGHR/Indias-Pledge-at-the-UN-General-Assembly-2011_2007_chart.pdf

²⁸⁸ Refer to the AiNNI's submission to GANHRI-SCA for NHRC review in 2016.

²⁸⁹ UNCAT, 1951 UN Convention relating to the Status of Refugees, ICRMW, CED, CEDAW-OP and ICCPR OP1 and OP 2, the Rome Statute of the International Criminal Court, ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries and the Additional Protocols II to the Geneva Conventions.

²⁹⁰ Reports to CRC submitted in 2014 and CRPD in 2015.

²⁹¹ For a complete overview of India's status of reporting to UN treaty bodies see:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=IND&Lang=EN

Special Procedures

2. As per UPR I Recommendations 14 and its 2011 pledge, GOI announced²⁹² that it was extending a standing invitation to Special Procedures mandate holders. 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.

3. 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.²⁹³ In addition three visits have been planned for 2017 but no dates are available.

4. A “guidance note”²⁹⁴ 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”. Regardless, India objected²⁹⁵ to the report of the Special Rapporteur on minority issues, Rita Izsák²⁹⁶ presented to Human Rights Council on 28 January 2016 by saying that the report “was a breach of the SR’s mandate”.

□ Recommendations:

- 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 II Recommendation 69), whose request to visit has been pending since 1993; the Working Group on Arbitrary Detention; SR on Toxic Waste; SR on Extreme Poverty and SR on the Independence of Judges and Lawyers.
- The government must spare no efforts to bring its obligations to UN Treaty bodies up to date.

CONCLUSION

During India’s second Universal Periodic Review (UPR) in May 2012, a total of 169 recommendations were made to India to better comply with its human rights obligations and commitments. India made some progress by initiating a number of progressive policy

²⁹² India extended a standing invitation to Special Procedures Mandate Holders during the 18th Session of HRC in September 2011, in keeping with our Voluntary Pledges and Commitments made to the HRC in May 2011.

²⁹³ The list can be seen at the following website (accessed on 17 September 2016):

<http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=IND>

²⁹⁴ GUIDANCE NOTE OF THE SECRETARY-GENERAL: On Racial Discrimination and Protection of Minorities, March 2013 Available at <http://www.ohchr.org/Documents/Issues/Minorities/GuidanceNoteRacialDiscriminationMinorities.pdf>

²⁹⁵ On March 15, 2016 India’s permanent representative to the UN in Geneva, Ajit Kumar said that the report “was a breach of the SR’s mandate”. The senior Indian diplomat pointed out that when Izsák-Ndiaye’s ‘mandate’ was extended on March 2015, caste was not covered as per the categories of minorities. See: Devirupa Mitra, “Stung by UN Report on Caste Discrimination, India Cries Foul”, March 25, 2016 <http://thewire.in/25909/stung-by-un-report-on-caste-discrimination-india-hits-back/>

²⁹⁶ Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/013/73/PDF/G1601373.pdf?OpenElement>

initiatives including legal amendment especially for the protection of the rights of women and children. At the same time lack of implementation of policies and laws to protect marginalized communities, particularly Dalits, tribal groups, religious minorities posed major challenge for India to realise human rights for India's most vulnerable sections. Reports of human rights abuses by armed groups in regions like Jammu and Kashmir, north-eastern states, Maoists affected central Indian states, attacks on human rights defenders along with reported incidents of communal violence, restrictions on the free speech and expression, right to protest, police abuses including use of torture and extrajudicial killings continued to persist all over the country. Through the stakeholder's report WGHR hopes that the third cycle of the UPR will highlight the need for more concerted action on the part of India to implement all the UPR recommendations and meaningfully engage with civil society in the UPR follow-up process to build a just society.