

NHRC-India Submission to the UN Human Rights Council for India's Second Universal Periodic Review

Introduction

Any assessment of India's human rights record must begin with the acknowledgment that no other country as large and populous or as diverse, ethnically and economically, has had to tackle the challenges of development using only democratic methods. The Indian experiment is so unique that it must be judged by its own benchmarks, which are set by a powerful and activist judiciary, a free media and vigilant civil society, which are guardians of human rights in an open society run by the rule of law. However, while there have been many successes, much remains to be done, including on the eighteen recommendations made at the first UPR to the Government of India. Since the same government remains in power, these lapses are its responsibility.

2. The NHRC has continued to monitor the full range of human rights on the basis of complaints received and on suo motu cognizance. The issues it monitors and the recommendations it makes go well beyond those of the first UPR, which addressed a narrow band of problems. However, since the second UPR will assess the government's performance on those, this paper focuses on them, though placed in the wider perspective, which the UN should not ignore.

3. To prepare for this report, the NHRC has held five regional consultations and a national consultation with NGOs, academics, officials and State Human Rights Commissions (SHRCs), even though its mandate and work involve a continuing dialogue with the Central and State Governments, whose performance on human rights it evaluates, and with civil society, from which the more serious complaints are received. It did so for two reasons: given the diversity of India, to ensure that regional priorities were captured, and to focus on the points on which the UPR will concentrate.

4. Around 350 people took part in these consultations, where the local or specialized knowledge that civil society shared was invaluable. Governmental participation was patchy, nor has the NHRC received from most Ministries the action-taken report on the recommendations of the first UPR which it sought in 2010. The SHRCs contributed almost nothing, confirming that most are still inchoate, and must be strengthened.

Civil and political rights

5. India has a comprehensive framework of laws and the Government remained willing to draft new laws to respond to domestic demands or to meet international obligations. However, the implementation of laws, the weakness of new Bills and the law's delay were areas of concern, among which the NHRC will highlight some:

- An anodyne Prevention of Torture Bill was passed by the Lower House of Parliament. It has been greatly strengthened by a Select Committee of the Upper House, and it would be a travesty if the original Bill is adopted.

- The Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights. This, despite the fact that India's 2011 report on the Optional Protocol to the CRC states that "India does not face either international or non-international armed conflict situations".
- 35% of the complaints to the NHRC annually are against the police. In 2006 the Supreme Court issued seven binding directives to start reform, but little has been done, though the need is urgent.
- 9% of the complaints to the NHRC in 2010-11 were on inaction by officials or their abuse of power, confirming that laws are often not implemented or ignored.
- Custodial justice remained a problem. Jails are overcrowded and unhygienic, disease rampant and treatment poor. 67% of prisoners are under trial, either unable to raise bail or confined far longer than they should be because of the huge backlog of cases.
- There are inordinate delays in the provision of justice. 56,383 cases were pending in the Supreme Court at the end of October 2011. At the end of 2010, 4.2 million cases were pending in High Courts, and almost 28 million in subordinate courts.
- The scheduled castes and scheduled tribes remain particularly vulnerable despite laws to protect them, because of the indifference of public servants.
- The practice of bonded labour continues despite laws that ban it, and is taking new forms. The NHRC has received reports of bonded labour being used to execute defence projects in difficult areas.
- The degrading practice of manual scavenging festers on. Some States are in denial over this. The Indian Railways are the largest users of manual scavengers.
- The focal point set up in the NHRC for the protection of human rights defenders received complaints that several, including those working on minority rights and the rights of the scheduled castes and tribes, faced harassment in several States, including arbitrary detention.

Economic, social and cultural rights

6. Though, as the Government had reported at UPR 1, it has set up ambitious "flagship programmes" to provide these rights, they remain precarious:

- A massive public distribution system has not assured the right to food because malnutrition is endemic. The National Advisory Council has recommended that legal entitlements to subsidized foodgrains be extended to at least 75% of the population. This is not acceptable to the Government, which sets arbitrary ceilings on the numbers who can be declared as being below the poverty line.

- The official estimate that 27.5% of the population was below the poverty line in 2004-05 grossly understates the incidence of poverty. The expert committee set up by the Planning Commission put the figure at 37.2%. Other committees set up by Ministries peg it even higher.
- Over 90% of the workforce is in the unorganized sector, has no access to social security, is particularly vulnerable in the cities, and is therefore driven into permanent debt, often leading to conditions of bonded labour.
- The National Rural Employment Guarantee Scheme guaranteed 100 days of work a year to any rural household that needed it. Government data showed that 56 million households applied, 55 million were given work but on average received half the wages guaranteed. The Scheme has not therefore made enough of an impact, very large sums of money have been siphoned off, and it does not provide long-term employment or build permanent assets.
- Public spending on health continues to be abysmally low, at about 1% of GDP, despite Government's commitment to raise it to 2-3%. The public health system is riddled with problems; vast numbers in the villages get little or no medical care. A performance audit by the Auditor General and an evaluation done for the Planning Commission have both found serious deficiencies in the National Rural Health Mission.
- The current National Family Health Survey reports that "the percentage of children under age five years who are underweight is almost 20 times as high in India as would be expected in a healthy, well-nourished population and is almost twice as high as the average percentage of underweight children in sub-Saharan African countries." A huge programme called the Integrated Child Development Services was set up in 1975, but an evaluation done in 2011 for the Planning Commission found that 60% of the annual budget for supplementary nutrition was being diverted. (A study done for the NHRC confirms this.)

The quality of education, particularly in the villages, is dismal; the infrastructure is appalling, teachers are absent, para-teachers are poorly trained. Learning levels and literacy are both very low.

- The Indira Awas Yojana, set up to provide rural housing, requires that an applicant have a plot of land. Millions of landless are excluded. The scheme does not give enough to build a house, and there is some evidence that those who take the money end up in debt. An evaluation done for the Planning Commission found that there was no quality control, including in seismic zones. Neither is there an insistence that toilets be built. The safety of residents and sanitation remain serious concerns.
- The NHRC, which monitors human rights in 28 representative districts across India, finds in its field visits that none of the flagship programmes function well.

- Rapid growth, the development of infrastructure and the expansion of mining industries, have all led to massive displacements of populations, often without their informed consent. The NHRC's monitoring finds that usually those displaced are given neither adequate relief nor the means of rehabilitation.
- The denial or the abuse of, or the inability to access, their rights hit the most vulnerable the hardest – women, children, the scheduled castes and tribes, and the minorities.

Implementation of Recommendations in UPR 1

7. The NHRC's assessment of how far the Government has responded to the recommendations made in UPR 1, which follows, should be read in the context of these larger failures.

8. On Recommendation 1, the Prevention of Torture Bill, 2010 was weak. If the Act eventually adopted dilutes the revisions made by the Select Committee, it will call into question the Government's commitment to the Convention against Torture.

9. On Recommendation 2, Government has not involved civil society in the follow-up to UPR 1, but some Ministries do consult it in the formulation and implementation of their programmes.

10. On Recommendation 3, to energize "existing mechanisms to enhance the addressing of human rights challenges", the record is uneven because:

- The Central Government has continued to let the National Commissions function independently, but given them no added powers or greater resources;
- the State Human Rights Commissions are mostly moribund;
- very few Human Rights Courts have been set up.

11. On Recommendation 4, the Government has taken a belated step to "encourage enhanced cooperation with human rights bodies" by issuing a standing invitation to Special Procedures mandate-holders, in response to Recommendation 14, so it should not be difficult for it to act on Recommendation 15, which asked it to receive the Special Rapporteur on the question of torture.

12. The Government's decision is welcome, but it still sends delayed reports or none to treaty bodies, and its apathy on Recommendations 2 and 3 (both of which it accepted) reflects a reluctance to engage "relevant stakeholders".

13. On Recommendation 5, the Human Development Report 2011 of the Planning Commission has some disaggregated data, but not on caste and related discrimination, though from its experience the NHRC believes this is essential, not least in key areas such as :

- crimes committed against women and children from the Scheduled Castes and Scheduled Tribes;
- violence against women other than rape;
- bonded labour, child labour and manual scavenging;
- custodial violence, illegal detention and torture.

14. On Recommendation 6, ignoring a request from the NHRC, the Government has taken no steps to sign and ratify the Optional Protocol to CEDAW.

15. On Recommendation 7, which asked the Government to consider signing and ratifying ILO Conventions 138 and 182, it claims that, though it accepts the spirit of the Conventions, it cannot ratify them because socio-economic conditions make it difficult to prohibit the employment of children. This is an argument now even less tenable after the passage of the Right to Education Act in 2009. India now has a law that makes it compulsory for children to be at school till they are 14, and another that lets them work.

16. Despite this absurdity, the Government has not acted on Recommendation 9, which asked it to review its reservation to Article 32 of the CRC. The NHRC has seconded this recommendation but received no response. Child labour therefore flourishes, the right to education will languish.

17. On Recommendation 8, while the NHRC shares with other NHRIs its experience in the promotion and protection of human rights, it is not aware if the Government has any programmes to do so, though it accepted this recommendation.

18. On Recommendation 10, the Government accepts the need for inclusive development, but the implementation of the flagship programmes through which it addresses “economic and social inequities” has not been encouraging. These programmes, which take the poor as targets rather than as agents of change, are well-meant but not well-conceived, have been lavishly funded but have also been looted by the corrupt. The intended beneficiaries get a small proportion of their supposed entitlements.

19. On Recommendation 11, accepted by the Government, there is still no national action plan for human rights. Since the Government has ignored its requests, the NHRC has started to draft a plan, on which it will consult civil society and other stake-holders.

20. On Recommendation 12, there is no evidence that the Government intends to ratify the Convention on Enforced Disappearance. Enforced disappearance is not codified as a criminal offence in domestic law, nor are extant provisions of law used to deter the practice. The NHRC received 341 complaints of disappearance in 2010, 338 so far in 2011; these are by no means comprehensive but still significant numbers, which underline the need for the Government to act.

21. On Recommendation 13, there has been little progress on strengthening human rights education (HRE). Education is primarily the responsibility of the States in India,

and almost none has given this priority. The NHRC works with schools, colleges, universities and NGOs to promote HRE, and has made recommendations to the Second Phase of the World Programme for HRE on the possible target groups and thematic issues for India.

22. On Recommendation 16, which the Government accepted, the NHRC is not aware that it has had a formal follow-up process to the UPR; the question of integrating a gender perspective in it does not therefore arise. This should be corrected after UPR 2. Gender budgeting is, however, now an integral part of the budgetary process.

23. On Recommendation 17, to amend the Special Marriage Act and give equal rights to property accumulated during marriage, there have been no developments.

24. Recommendation 18 asked the Government to continue its efforts “to guarantee a society... well fed, well housed, well cared for and well educated”. The NHRC’s overview of the state of human rights in India will show that these efforts have met with very limited success.

The Naxal movement

25. The spread of this violent left-wing extremist movement is a cautionary tale. It claims to speak for, and recruits from, the adivasis, forest-dwelling tribals who have suffered years of such neglect and exploitation that some of them have been alienated enough to join a movement that calls for the violent overthrow of democracy. Estimates are that 200 out of the 600 districts in India are affected, though the Government puts the figure at around 60 districts; even so this means that perhaps 120 million people are affected. Belatedly, the Government is trying to bring the fruits of development to these areas, but the violent opposition of the Naxals, who destroy even schools and attack officials, means that in the areas they control, human rights have become even more parlous: governance and the rule of law rarely function. The villagers are the victims of Naxal violence, and collateral damage in the counter-insurgency operations. It will be an immense challenge for a democracy to defeat a movement that respects no human rights, through means that safeguard and do not violate the rights of the citizens it must protect.
