

Consultative Workshop on the UPR Process 4th and 5th April 2011 – New Delhi

REPORT

Introduction

The Consultative Workshop on the Universal Periodic Review Process (UPR) took place in New Delhi on 4th and 5th April 2011. It brought together 55 participants, including representatives from the Ministry of External Affairs (MEA), the National Human Rights Commission (NHRC), various UN agencies, diplomats and civil society.

The workshop was organised by the Working Group on Human Rights in India and the UN (WGHR), a coalition of fourteen NGOs and independent experts. WGHR is a coalition focused on ensuring better engagement of Indian civil society and government with all UN mechanisms for the promotion and protection of human rights. It is in this capacity that WGHR has organised the UPR workshop and taken the lead in working towards India's next review. WGHR will ensure that it brings in the process as many other civil society actors as possible to make the process far ranging and inclusive.

The MEA was represented by:

- Mr. Dilip Sinha – *Additional Secretary (International Organisations & Environment Diplomacy), MEA*
- Mr. Harsh Vardhan – *Joint Secretary (UN Political Division), MEA*
- Ms. Rohita Mishra – *Under Secretary (UN Economic and Social Division), MEA*
- Ms. Thelma John David – *IFS (Probationer), MEA*

The United Nations Economic and Social Division (UNES) is the division of the MEA in charge of UPR reporting¹.

The NHRC was represented by Mr. J. P. Meena, Joint Secretary at the NHRC, in charge of Administration, Coordination, Research and Projects.

The workshop fulfilled three main objectives, namely: (1) providing training and capacity building opportunity on how best to engage with the UPR process, (2) examining critical human rights issues in India today and (3) providing a forum for dialogue between various stakeholders (government, national human rights commission and civil society) on the UPR process both in terms of implementation of the recommendations made to India by the UPR in 2008 and preparation for the next UPR in 2012.

The workshop was a rare opportunity for open, constructive and in-depth dialogue and will hopefully represent a milestone towards better engagement of all stakeholders with the UPR process. This report reflects some of the main discussion points and outcomes.

I. The UPR Process

The Universal Periodic Review (UPR) is a unique human rights mechanism of the United Nations (UN) Human Rights Council aiming at improving the human rights situation on the ground of each of the 192 UN Member States. Under this mechanism, the human rights situation of all UN Member States is reviewed every four year (48 States are reviewed each year during three UPR sessions dedicated to 16 States each).

The result of each review is reflected in an "outcome report" listing the recommendations made to the State under review (SuR) including those that it accepted and which it will have to implement before the next review. The UPR is a full-circle process comprising three key stages:

¹ The UNES division was headed, at the time of the UPR Workshop by Mr. A.R. Ghanashyam (Joint Secretary) and is composed of one Deputy Secretary and two Under-Secretaries. The current Joint Secretary (UNES) is: Mr. T. S. Tirumurti.

- Review of the human rights situation of the SuR
- Implementation between two reviews (four years) of the recommendations accepted and voluntary pledges and commitments by the SuR
- Reporting at the next review on the implementation of those recommendations and pledges and on the human rights situation in the country since the previous review

India was part of the first series of States to be reviewed by the Human Rights Council in April 2008. It will be reviewed again in June 2012. As with all states under review, the Government of India submitted its national report to the Human Rights Council in March 2008. Civil society organisations also submitted a parallel report. Following India's review, the Government of India accepted 18 recommendations made to it by other states².

II. Lack of consultation and inadequate reporting by the GOI during the first UPR

In the preparation of the content of the State report, according to Human Rights Council resolution 5/1, "*States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders*". This clearly puts the onus on the State to initiate and carry out truly broad-based consultation. Civil society speakers at the workshop stated that there was no broad consultation process to prepare India's first report to the UPR. They reported that the 2008 UPR process was hurriedly organised leading to poor participation on both sides. The meeting was held with very short notice, the government prepared no documentation in advance and there was no fixed agenda to guide the content. This minimal consultation took place only in Delhi, the national capital. The government made no attempt to take the process to the rest of the country.

From a civil society perspective, India's State report suffered in its substance and relevance due to the lack of substantive consultation. The 2008 State report does not go beyond a listing of the constitutional, legal and institutional instruments, which have been established to protect and promote human rights. While this is needed, one of the objectives of the UPR is to assess the challenges faced by states in implementation of their human rights obligations. In India's first state report, there was no mention or analysis of the problems, gaps, and challenges in state response and implementation, which is the ultimate test of how far the Indian state is realising its human rights obligations and commitments.

Consulting civil society will provide the government with first-hand information of gaps in implementation at the ground level. It was pointed out by one speaker that other states (the United Kingdom as one example) have used the UPR process to openly and honestly recognize the gaps in human rights protection and seek advice on how to address these gaps. This is particularly important for India, as there are many serious gaps in human rights protection in the country.

III. Overview of the human rights situation in India

The presentations by expert speakers on the situation of human rights in India provided broad overviews of key human rights concerns in the country today. Many of these are linked to the recommendations made to the government during India's first review. One speaker spoke at length of the exclusion of the most vulnerable – Dalits, adivasi communities, the rural poor – being perpetuated by the current economic growth model. Participants were reminded that the vast majority of India's working population are employed in the informal sector as "flexible labour". As a result of this, the vast majority of India's working population has been reduced to further poverty – about 77% (850 million) of the working people of India subsist on Rs. 20 per day. With no social protection, their rights are totally denied to them. The "social cost" of India's growth was also discussed, particularly the mass displacement of millions of families due to purported "development" projects. With the displacement, traditional livelihoods are being destroyed on an unprecedented scale.

It was mentioned that there is an urgent need for the State to acknowledge and address current human rights violations, including: large-scale displacements resulting from development projects and communal violence; enforced disappearances in conflict areas; deaths through encounters; the

² Documents pertaining to India's first review, including a chart prepared by WGHR on the status of implementation of the 18 recommendations can be found at: www.wghr.org/universalperiodicreview.html

widespread use of torture and increasing attacks against human rights defenders. The curtailing of human rights in the state's response to terrorism, and the need to interrogate this response and its impact on human rights, was also discussed.

IV. Main topics addressed by stakeholders

All the stakeholders – MEA, NHRC, and civil society – were united in their commitment to a more inclusive and participatory UPR process, beginning with a planned and effective process of consultation. There was also discussion on reviving the drafting of a national action plan on human rights; and strong appeals to the Government of India to issue a standing invitation to UN Special Procedures to conduct country visits to India.

Wide-ranging views and commitments were expressed by the main stakeholders on these topics in the course of the workshop. These are summarised below.

A. On effective and inclusive consultation as part of the UPR process

The MEA welcomed the opportunity to interact with civil society and to have a constructive and meaningful exchange during the workshop. The Ministry encouraged holding more such interactions amongst all stakeholders, stating that: *“they can go a long way in making the process wide ranging and genuinely inclusive”*. The MEA representatives at the workshop clearly stated the genuine and serious commitment of the Government of India (GOI) to the UPR process. There is a strong willingness from the MEA to engage with civil society in the run up to the June 2012 review, including in the preparation of the national report for the second cycle of the UPR. To note, MEA representatives did request all participants to bear in mind the shortage of staff in the Ministry and the challenges this poses in drafting the state report for the UPR and inviting Special Procedures for country visits.

The NHRC echoed the inclusive spirit of the MEA. Mr. Meena, the NHRC representative, shared his expectation that from now on, the entire UPR process should be *“much more open, transparent, and inclusive”* and that all the stakeholders will find ways to contribute to the process. Mr. Meena reiterated that one way to achieve this goal is to hold consultations well in advance to avoid the same pitfalls as during UPR I.

After pointing to the numerous gaps in the first UPR, **civil society representatives** called for a new era of genuine collaboration and dialogue with the government towards implementation of the recommendations of the first UPR and preparation for the second UPR.

Following on from this collaborative and action-oriented spirit, **all the stakeholders** stated firm commitments in preparation for effective consultation and a more collaborative UPR process.

COMMITMENTS MADE BY STAKEHOLDERS

The Ministry of External Affairs will:

- Consider posting the draft national report for India's second UPR on the MEA website to receive comments from all relevant stakeholders.

The National Human Rights Commission will:

- Track the implementation of the 2008 UPR recommendations with both the MEA and the Ministry of Home Affairs to ensure that follow-up actions are taken on all the recommendations.³
- Organise a national consultation and two regional consultations with civil society to help the NHRC draft its strategy on the follow-up of UPR I and in preparation of its report for UPR II.
- Help to ensure that the outcome of the first UPR becomes a public document; with a request to involve civil society in the process of dissemination particularly at the grassroots level.

³ The NHRC has already been informed that the UPR recommendations have been circulated to each concerned Ministry. Status papers are being collected on the actions taken and the NHRC will very soon be apprised of what progress has been made.

As the main representative of civil society at the workshop, WGHR will:

- Present an interim report to the Human Rights Council in June 2011 on the status of implementation of the 18 recommendations.
- Facilitate and participate in a broad participatory process to draft a civil society parallel report for UPR II.
- Organise five regional consultations (North-East, East, West, South and North) in the run-up to UPR II, with a final national consultation to take place in Delhi in December 2011 in which civil society's parallel report will be finalised. These consultations will be for civil society, but government representatives will also be invited. Civil society will also consider drafting subject specific reports on some of the main human rights issues.
- Work towards translation of the outcome of the first UPR, particularly the 18 recommendations, into as many regional languages as possible. WGHR will seek the help of the MEA for translation.

B. On country visits by UN Special Procedures

Civil society representatives repeatedly highlighted the importance of allowing UN Special Procedures to make country visits to India. Recommendation n° 14 of the 2008 UPR asks the Indian Government to “*extend standing invitation to special procedures*” and recommendation 15 specifically calls the GOI to “*Receive as soon as possible the Special Rapporteur on the question of torture*”.

While civil society very much welcomed the openness and collaboration demonstrated by the GOI during the visit of the UN Special Rapporteur on human rights defenders in January 2011, it also noted that some crucial mandate holders (for ex. SR on Torture, SR on Extrajudicial, Summary or Arbitrary Executions, SR on Sale of Children, SR on Racism and WG on Arbitrary Detention) have made numerous requests for country visits and have not yet received any response for the GOI. A chart with all the pending requests for country visits to India is attached (Annexe 1). WGHR called the GOI to extend a standing invitation to special procedures or, at the very least, respond positively to the nine Special Procedures who have made requests for country visits.

When asked why the GOI has not yet issued a standing invitation to special procedures, **the MEA representatives** pointed out that the UNES division of the MEA has a very small team and that possible “procedural” issues due to shortage of staff could be holding back the extension of a standing invitation.

The NHRC was unequivocal in its position on visits of special procedures in stating that “*the government should not hold back and should invite Special Rapporteurs to the country and let them make their reports on which government can take follow-up actions*”. The NHRC appealed to civil society to help raise awareness on the positive aspects of country visits by special procedures. While there might still be some hesitations by some bureaucrats to invite special procedures, civil society should help clear these doubts by creating an atmosphere where it will become clear that such visits are meant to be constructive and are helpful towards creating a better human rights situation in the country.

C. On the national action plan on human rights

The NHRC has been tasked with drafting a national action plan for human rights (NAP). In 2008, the NHRC stated that the NAP was under preparation and that a draft would be circulated to members of the NHRC core group of NGOs for comments. However, the process seems to have been abandoned, with no visible outputs. It is strongly suggested that the GOI and the NHRC prioritise the drafting of a NAP.

During the workshop, **WGHR** committed to contributing to reviving the process by drafting its own suggested NAP, which will then be submitted to the NHRC and other relevant agencies for their perusal. ■

Pending requests by UN Special Procedures to make country visits to India*

Mandate Holders	1st request	2nd request	3rd request	4th request	5th request
SR on Torture	1993	2007			
SR on Extrajudicial, Summary or Arbitrary Executions	2000	2005	2006	2008	
SR on Sale of Children	2004	2008	2009		
WG on Arbitrary Detention	2004	2005	2006	2007	2009
WG on Enforced or Involuntary disappearances	2005				
SR on Racism	2006	2008			
SR on Adequate Housing	2008				
SR on Indigenous People	2008				
IE on Water	2009				

* Source: OHCHR website, <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsf-m.htm#india>
 Update: February 2011

This chart reflects that more than twenty requests by ten Special Procedures Mandate Holders for a country visit to India have been left unanswered by the Indian government.