



General Assembly

Distr.
GENERAL

A/HRC/8/26
23 May 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Eighth session
Agenda item 6

UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review

India *

* Previously issued under the symbol A/HRC/WG.6/1/IND/4; minor revisions have been added under the authority of the secretariat of the Human Rights Council, on the basis of editorial changes made by States through the ad referendum procedure. Annex is circulated as received.

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Introduction

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its first session from 7 to 18 April 2008. The review of India was held at the 8th meeting on 10 April 2008. The delegation of India was headed by H.E. Mr. Swashpawan Singh, Ambassador and Permanent Representative of India to the United Nations Office at Geneva. For the composition of the delegation, composed of 13 members, see appendix below. At its 12th meeting held on 14 April 2008, the Working Group adopted the present report on India.
2. On 28 February 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of India: Ghana, Indonesia and the Netherlands.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of India:
 - (a) A national report/written presentations submitted in accordance with paragraph 15 (a) (A/HRC/WG.6/1/IND/1);
 - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/1/IND/2);
 - (c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/1/IND/3).
4. A list of questions prepared in advance by Ireland, Germany, Portugal, Italy, Sweden, Denmark, Finland, the Netherlands, United Kingdom and Latvia was transmitted to India through the troika. These questions are available on the extranet of the Universal Periodic Review.

I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS

A. Presentation by the State under review

5. At the 8th meeting, on 10 April, the Ambassador and Permanent Representative of India, H.E. Mr. Swashpawan Singh of India, introduced the national report and noted that India's national report seeks to provide an overview of efforts for the realization of all human rights based on a culture of respect for diversity and pluralism.
6. India is a country of over one billion people with unparalleled pluralism. It is home to almost all religions of the world. India is also the largest democracy in the world as well as one of the most stable. The Indian delegation stated that its commitment for the promotion and protection of human rights flows from the firm belief that in a truly pluralistic society like India, growth and welfare of citizens can be ensured only through a culture of promotion and protection of human rights. India, nonetheless, remained conscious of the challenges ahead and recognized that much remained to be done before it can say with satisfaction that it has conquered poverty, ignorance and disease. India has tried to address these challenges by trying to empower the affected in an institutionalized manner and also to seek to learn from the experiences of others.
7. India was also amongst the countries that have been affected most by the scourge of terrorism. Terrorism was a direct violation of human rights, in particular the most basic rights, the right to life and liberty. India noted that it remains committed to protect its citizens by taking effective measures within the framework of the Constitution and the basic values and institutions it embodies.

8. Mr. Goolam E. Vahanvati, the Solicitor General of India, stated that India has a long tradition of promoting and protecting human rights. The Solicitor General noted that after its independence, India chose democracy as its political set up to ensure a free and independent society and human dignity, freedom and advancement. This was the first step. The second was to draft and adopt a written constitution, so as to effectuate a constitutional democracy which becomes an organic guarantee of human freedoms and rights. And thirdly in the forefront of the Constitution, they incorporated a chapter on fundamental rights contained in articles 12 to 32 of the Constitution.

9. In the Constitution of India, the three pillars of human rights are (a) the right to equality including the prohibition of discrimination in any form, (b) the six vital freedoms of citizens (including the right to speech and expression) and (c) the right to life guaranteed to all persons. These rights have been recognized to be inalienable, unalterable and part of the basic structure of the Constitution which cannot be abrogated. India's Supreme Court has interpreted the right to life as including the right to live with dignity, right to health, education, human environment, speedy trial and privacy, to name a few. The Constitutional guarantee of human rights is ensured by making fundamental the right to access the Supreme Court for enforcement of human rights. Simultaneously, the broadest possible powers have been given under article 226 of the Constitution to the High Courts in the State to issue high prerogative writs for the enforcement of human rights and for any other purpose.

10. He noted that the functioning of democratic institutions for the last six decades has been extraordinary and that equally, and if not more importantly, is the smooth and seamless transfer of power on conclusion of elections.

11. Much of the focus of governmental activity has been to improve the provision of services through grass-roots local self-governance institutions, particularly in rural areas. This is because India believes that development through decentralized democratic institutions is more equitable and accountable.

12. India has taken an important initiative for the empowerment of women by reserving one-third of all seats for women in urban and local self-government, thus bringing over one million women at the grassroots level into political decision making.

13. India stated that it considers and accepts a free media as one of the most vital pillars of democracy and a valuable guardian for the protection of human rights.

14. The delegation noted that India has guaranteed human rights to all persons in India and this includes a commitment to secularism and the protection of minorities. India has secured their right to practice and preserve their religious and cultural beliefs as a part of the Chapter on Fundamental Rights. An array of legislative and executive measures has been taken for the effective implementation of safeguards provided under the Constitution for the protection of the interests of minorities.

15. India has been deeply conscious of the need to empower the Scheduled Castes and Scheduled Tribes and is fully committed to tackle any discrimination against them at every level. The Constitution of India abolished "untouchability" and forbids its practice in any form. There are also explicit and elaborate legal and administrative provisions to address caste-based discrimination in the country. The caste system, which is unique to India, is not racial in origin, and therefore, caste based discrimination cannot be considered a form of racial discrimination.

16. The inclusion of India's scheduled tribes in the rubric of "indigenous people" is often posed in multilateral forums. India stated that at independence, after the departure of the colonizers, all its people, including its tribal people, were considered as indigenous to India. This position has been clarified on various occasions, including while extending India's support to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples at the Human Rights Council and the General Assembly.

17. India noted that it is conscious of the need to empower the disadvantaged. Education has been a priority programme. This was an essential building block for development. Elementary education has been declared to be a fundamental right. For the last seven years, India has implemented a novel and comprehensive educational programme known as *Sarva Shiksha Abhiyan* (Education for All). The goal was to achieve 100 per cent coverage in primary schools. India has implemented a Mid-day Meal Scheme which feeds more than 120 million children every day. Most importantly, India was now among the few countries to have a nationwide employment guarantee act. The right to work was being significantly realized with the National Rural Employment Guarantee Programme. It provided a legal entitlement that only a handful of countries offer their citizens. It should not only provide employment but also check distress migration and most importantly, create productive assets for the community. More than 30 million rural families already had a "job card".

18. Major institutional mechanisms have been set up to make human rights secure and enforceable. Under the Protection of Human Rights Act 1993, a powerful and independent National Human Rights Commission has been working with an exemplary record for over a decade. Another revolutionary change has been the enactment of the Right to Information Act. This enabled citizens to seek and demand the right to information about the governmental officials and decision making which has led to transparency, accountability and openness in the governmental process.

19. Regarding terrorism, India stated that during the last more than two decades, terrorism has claimed the lives of thousands of innocent men, women and children in its country. The international community should recognize that terrorism is a direct violation of human rights, in particular the most basic rights, the right to life and liberty. While India's commitment to protecting its citizens was of paramount importance it will achieve this in conformity with a commitment to human rights.

20. India has actively participated in deliberations on human rights in international forums for the promotion and protection of human rights and fundamental freedoms for all. India played a leading role in the historical struggle for decolonization and abolition of apartheid. India was among the very few selected countries who were members of the former Commission of Human Rights throughout the 60 years of its existence.

21. The Indian delegation noted that in order to further strengthen the protection of human rights in India, the Parliament passed the Protection of Human Rights Act in 1993 to establish a National Human Rights Commission (NHRC). The State Human Rights Commissions have been set up in 18 states. The independence of the NHRC is expected to be the same as that of the Supreme Court of India. The NHRC of India was one of the most Paris Principles compliant national institutions in the world. Though the Commission was a recommendatory body, the reports of the commission are placed in the Parliament with the action taken report by the Government. In case the Government

disagrees, it provides reasons thereof in the action taken report. The experience has been that 95 per cent of recommendations have been generally complied with. The NHRC is playing a major role in the drawing up of a National Action Plan for Human Rights, which will cover issues such as the right to health, education, food security, housing, custodial justice and trafficking in women and children. The Commission's role was complementary to that of the judiciary. The Supreme Court has referred a number of important matters to the Commission for monitoring while the Commission has also taken specific cases of violations of human rights to the courts. The guidelines developed by the Commission on the treatment of mentally ill persons held in prisons and child rape cases have been adopted by the Delhi High Court and commended for adoption.

22. The Indian delegation, in regard to women and children, stated that a bill to prevent sexual harassment at the work place is on the anvil. The National Policy for Empowerment of Women 2001 aims at bringing about advancement, development and empowerment of women in all spheres of life. The National Commission for Women was constituted with the mandate to safeguard women's rights. Thirty per cent of all wage employment is reserved for women. Mobilization of women through Self-Help Groups for income generation activities has been successfully adopted in programmes such as Swayamsidha through which 70,000 Self-Help Groups have been formed, with 1 million members. The Government has initiated gender budgeting as a tool for gender mainstreaming in all sectors with the objective of making budgets more gender responsive. To provide protection for women in distress, over 565 home shelters and short stay homes and help lines are being operated. A Scheme for Prevention of Trafficking and Rescue, Rehabilitation of Victims of Trafficking for Commercial Sexual Exploitation has been launched. On the anvil was a new scheme for relief and support to rape victims. Special measures to improve the educational status of women include a pronounced gender focus in the *Sarva Shiksha Abhiyan* - universalization of elementary education. The health needs of women received special priority in the National Rural Health Mission.

23. India was implementing the world's largest child care programme - the Integrated Child Development Services, where supplementary nutrition is provided to over 78 million women and children and preschool education to 32 million children, as well as support and rehabilitation to those children. The Commission for Protection of Child Rights was set up in March 2007 to ensure effective implementation of child rights. The Government has adopted a multi-pronged sequential approach to eliminate the problem of child labour. The Action Plan of the National Policy on Child Labour 1987 included strict enforcement of the Child Labour Act 1986 and the prohibiting of employment of children in hazardous occupations and as domestic help. The National Child Labour Project (NCLP) Scheme was in operation in 250 high child labour endemic districts in the country and the spread is proposed to be increased in the coming years. Other initiatives include extensive awareness and sensitization programs of various stakeholders strict enforcement measures. An important measure taken very recently was the collaboration with corporate houses to clean supply chains for eliminating child labour. A beginning has been made with the garment industry for an action plan to enable eliminating child labour and at the same time provide gainful employment to their families.

B. Interactive dialogue and responses by the State under review

24. During the interactive dialogue, 42 statements were made by the following delegations.

25. While welcoming the fact that India is a party to a number of international human rights instruments, the United Kingdom of Great Britain and Northern Ireland noted that India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or its Optional Protocol. It recommended that India ratify both instruments at the

earliest opportunity. The United Kingdom asked for additional information on (a) reports of attacks against persons from religious or other minorities, in particular in Orissa State; (b) steps to implement treaty body recommendations on the Armed Forces Special Powers Act; (c) anti-conversion legislation; and (d) the communal violence crimes bill. It welcomed the involvement of civil society in the national preparatory process for the UPR session and recommended that they be fully involved in the follow-up to UPR.

26. Ghana commended India for the laudable measures taken to ensure a country-wide balance in the enjoyment of human rights of its large population, including the implementation of the National Child Labour Project, the adoption of the National Charter for Children and a National Plan of Action for the Girl Child. Ghana encouraged India to continue strengthening existing institutions working to protect human rights. Ghana welcomed India's cooperation with Human Rights Council mechanisms and treaty bodies and recommended an enhanced cooperation with said bodies and relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals.

27. Canada recognized that India is a highly diverse country facing many challenges. It raised issues concerning the Armed Forces (Special Powers) Act (AFSPA), the situation of civil society and the situation of Dalits. Canada referred to reports of torture and abuse by and impunity of police and security forces acting under the AFSPA. Canada spoke about the commitment of the Prime Minister and the studies undertaken to reform the AFSPA and asked what measures had been taken to repeal or reform this Act. Canada referred to India as a model where civil society and democracy flourishes and the press actively reports on human rights abuses. However, it mentioned allegations about the use of the Foreign Contributions Regulations Act in limiting civil society's work on sensitive issues and referred to reports that Amnesty International had to downsize its work on account of this Act. With reference to the follow-up of the 2007 concluding observations on India adopted by CERD, Canada recommended that India begin providing disaggregated data on caste and related discrimination.

28. Brazil noted the challenges facing and achievements of India. It asked several questions regarding (a) the measures taken to promote the empowerment of women and the main policies taken to mainstream gender into national plans, (b) the concrete measures implemented to combat extreme poverty and (c) the evaluation of the strategy to end child labour. Additionally, Brazil proposed that India consider signing and ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women as well as ILO Conventions No. 138 concerning Minimum Age for Admission to Employment and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

29. Bhutan expressed appreciation for India's national report and, in particular for the broad consultative process undertaken towards its formulation. It mentioned that as a neighbour, Bhutan has drawn inspiration from India's commitment to pluralism and tolerance and benefited from its experience in the establishment of a flourishing democracy, independent judiciary, free press, and vibrant civil society. Bhutan asked that additional information be provided on the valuable lessons that could be shared from India's experience of managing national elections.

30. Mauritius commended India for its long democratic tradition which pervades all sections of the population down to the grassroots level in the Panchayats. It encouraged India to share with the international community its best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of the Indian society.

31. The Russian Federation stated that India is a democratic State, which over the last 60 years has demonstrated its commitment to the goals and ideals of democracy. It understood that not all problems have been resolved and that questions remained regarding the situation of vulnerable groups in India's population. It was impressed by the efforts of the Government to improve the human rights situation, including to eliminate discrimination and poverty, and to protect the rights of women and children. The delegation noted the support of India for the United Nations human rights mechanisms and its support for the work of OHCHR, including annual financial contributions. It stated that the Indian report reveals that one of the key elements is the national human rights institution, and thanked the Indian delegation for its explanations regarding the work on independent investigations of complaints against human rights violations. The Russian Federation expressed the view that India's experience was innovative as regards ensuring transparency in the work of the Government at every level and requested India to provide information on the scope and results of the 2005 law on the Right to Information.

32. Malaysia congratulated India on putting in place an institutional, legislative and administrative framework aimed at improving the human rights situation of its people. It also noted the establishment of various institutions/national commissions which act as "watch dogs", dealing with issues such as women rights, minorities, scheduled castes and tribes, backward classes and children rights. Additional information was requested on the implementation of their recommendations.

33. China noted with appreciation that India has a well established national system to guarantee human rights and also stated that it fully understood the pluralistic, multifaceted and multicultural nature of Indian society as well as appreciating the special protection measures taken to protect the rights of minorities and other vulnerable groups. China stated that with these measures India has not only achieved great progress in the field of human rights but has also accumulated a rich experience to be shared with other countries. As a developing country, China stated that it is faced with many similar challenges and that for this reason it would like to exchange views and experiences with India on the following issues. China noted that India has already taken many positive measures to guarantee the rights of women and children and asked whether women participated in the formulation of those measures and how India intended to increase women's participation in decision-making. With respect to the National Rural Employment Guarantee Programme and its present achievements, China asked how India intended to further implement this programme.

34. Cuba welcomed the exhaustive national report and commended India for the impressive work carried out in promoting and protecting both civil and political rights as well as social, economic and cultural rights and the right to development. Cuba stated that it had no question or recommendation but rather it came here to listen and learn from India.

35. Singapore congratulated India for its important successes in sustaining a path of high rate of economic growth, which has resulted in lifting hundreds of millions of people out of poverty. It stated that, in doing so India has also made great strides in advancing their most basic human rights - the rights to food, housing and health. Singapore asked for complementary information on steps being taken to address caste-based discrimination.

36. Belgium commended India for the advancements made, in particular regarding the justiciability of certain social and economic rights in the context of the right to life. Regarding caste-based discrimination, in particular against Dalit women, Belgium wanted to know what actions were being taken to implement anti-discriminatory legislation and the role of the National Commission on Human Rights was in that regard. Belgium recommended that there be

disaggregated data on caste-based discrimination so as to allow for targeted planning to improve the situation of the Dalits.

37. Considering the prohibition of child labour, the Netherlands recommended that India review its reservation to article 32 of the Convention on the Rights of the Child and ratify ILO Conventions No. 138 and 182. It also sought additional details on how the recommendations of the Committee on the Elimination of Racial Discrimination on scheduled classes were being implemented. As a member of the troika it assured the Council and the State under Review that it would do its utmost to obtain a meaningful outcome of the exercise.

38. Saudi Arabia stated that India is known as a country of tolerance and pluralism and that the Constitution of India is a comprehensive document which provides for the promotion and protection of civil and political rights as well as economic social and cultural rights. Saudi Arabia took note of the activities reflected in India's report and mentioned the work of the National Human Rights Commission in preparing a national plan for human rights and of India's commitment to ensuring the independence of all bodies working in the area of human rights and to promoting human rights on the basis of effective dialogue and cooperation. In January 2006 a new Ministry for minorities was created to take account of these problems and this programme has 15 points and asked how this programme contributed to improving the situation of minorities, and of the role played by civil society.

39. While congratulating India for the important constitutional and legislative measures taken to combat discrimination, Luxembourg endorsed Belgium's recommendation on disaggregated data. It asked for additional information on (a) statistics on jurisprudence related to discriminatory acts, (b) how recommendations from treaty bodies on scheduled castes and tribes were being implemented, (c) measures being taking to tackle discriminatory treatment in favour of males, including foeticide, and (d) right to food of the peasant population.

40. Germany asked India to provide complementary information on (a) how recommendations made by the Committee on the Elimination of Racial Discrimination and CEDAW on Dalits and scheduled castes were being followed up on, (b) what the position of the Government was regarding the recommendation of several treaty bodies to repeal the Armed Forces (Special Powers) Act of 1958, and (c) what concrete steps were being taken to implement national laws abolishing child labour.

41. The United States of America expressed its satisfaction to see a nation as diverse as India engaged in the UPR process. It asked for further details on (a) freedom of religion and expression and on the promulgation of state anti-conversion laws, (b) actions being undertaken to combat police and government corruption, (c) implementation of child labour laws, (d) crimes against women, including domestic violence, dowry-related deaths, honour crimes and sex-selective abortion of unborn girls, and (e) the social acceptance of caste-based discrimination.

42. Algeria congratulated India for the participatory approach adopted in the preparation of the national report. While noting that the economic growth being experienced by India has led to a widening of the gap between rich and poor, it asked whether any innovative approaches were being taken to ensure that this economic development was not detrimental to the enjoyment of human rights by all sections of the population. Algeria stated that it is aware of the fact that the high growth rate of India over recent years has not trickled down sufficiently to the poor, thus increasing social stratification between the richer segments of society and the destitute. Algeria recommended that India review new ways of reversing this worrying trend undermining the fundamental economic rights of vulnerable groups and that it share its findings with us in Africa where poverty is rife.

43. Bangladesh indicated that, as a neighbour, it understood the situation in India and also shared a common history. As a vibrant democracy achieving remarkable economic prosperity in recent years, there are high expectations of India. Bangladesh noted the establishment of a Ministry of Minority Affairs and also highlighted the commendable work of the National Human Rights Commission. In view of the consideration being given to the establishment of a national human rights institution in Bangladesh, the work of the India NHRC is being followed with great interest and Bangladesh is looking forward to emulating its good practices. Bangladesh asked how the Government of India is reconciling the needs to provide general education in view of its National Action Plan devoted to the provision of human rights education.

44. France commended India's commitment to human rights and pluralism. It raised a question and made a recommendation relating to the ratification of the Convention against Torture. It also asked what means were available to and what analysis might be drawn from the work of the National Human Rights Commission of India and the National Commissions dealing with Women, Minorities, Scheduled Castes and Scheduled Tribes. Lastly, regarding the most vulnerable communities and their integration, it wished to know what would be the results of any stock-taking of their integration.

45. The Indian delegation expressed its gratitude to all who actively participated in the dialogue and found it interesting and productive.

46. Regarding the Convention against Torture, the delegation noted that India is a signatory and is committed to its objectives. The Indian Penal Code also has clear provisions regarding torture and the Supreme Court of India in a well known judgment, *D. K. Basu vs. Union of India*, has issued important guidelines on provisions of detention that are applicable throughout India. The ratification of the Convention against Torture is being actively processed by the Government.

47. With regard to questions on the Armed Forces (Special Powers) Act, 1958, the delegation stated that even though India is a country which has had to confront with terrorism for well over two decades, its laws, including the special laws enacted in this context, have always had clear elements of administrative as well as judicial reviews. It is well settled in Indian jurisprudence that all legislation must conform to the basic structure of the Constitution and is subject to judicial review. The constitutionality of the Armed Forces (Special Powers) Act 1958 has been upheld by a Constitution Bench of the Supreme Court. Moreover, it is important to note that the Armed Forces of India are governed by provisions of their Acts, which also ensure that any violations are expeditiously dealt with. In so far as ensuring human rights even while being engaged in counter terrorism operations, special training and operating procedures are in place to guide the forces on the ground.

48. Regarding the Foreign Contribution Regulation Bill, 2006, the delegation stated that the primary purpose of the Bill was to consolidate the law to regulate the acceptance and utilization of foreign contributions for bona fide activities and to prohibit the use of the same for any activities detrimental to the national interest. The Bill sought to balance national security concerns and flow of foreign contributions for charitable purposes by providing a more explicit and transparent regime. The Bill is presently being examined by the Parliamentary Standing Committee and its recommendations are awaited.

49. In relation to the communal disturbance that erupted in the tribal dominated district of Kandhamal, Orissa on 24 December 2007 between tribal Hindus (Kui) and Christians (Panas), the Indian delegation noted that the underlying cause appeared to be the long standing opposition by the tribal Hindus to the Christians' demand to be categorised as a Scheduled Tribe. In the clashes,

3 persons died and 25 were injured. The clashes led to the damage of private and public property. The situation was brought under control. One hundred and twenty-five cases have been registered and 173 persons have been arrested. The state Government has also ordered judicial probe to inquire into the incident. Further, 284 Peace Committees have been formed which have held 350 meetings so far. The State government has announced a rehabilitation package to those whose houses have been damaged and ex gratia of Rs. 100,000 to the next kin of the three deceased. The Prime Minister assured Christian delegations that the Government would take all steps to provide full security and protect the religious freedom guaranteed by the Constitution to all citizens and that it would not tolerate any efforts aimed at disturbing the communal harmony or secular fabric of the country.

50. The Republic of Korea welcomed efforts by India to promote and protect indigenous and tribal peoples' rights. It asked for further elaboration on plans to protect these rights in newly industrialized zones. The Republic of Korea asked for more information on section 197 of the Code of Criminal Procedure of 1973 regarding the impunity of civil servants. It also asked about the position of India regarding the recommendations of CEDAW, particularly in relation to the situation of Dalit women.

51. Mexico congratulated India on its progress in the area of human rights and indicated that many countries could share in recognizing the challenges facing India and spoke of its admiration of India's democratic and humanist traditions. With reference to the development of a national action plan for human rights and of targets and indicators for assessment purposes, Mexico suggested, in that regard, that India view positively the recommendations made by the treaty bodies and special procedures particularly with respect to the situation of women and children. It also appreciated measures being adopted with a view to ratifying the Convention against Torture and recommended that India also make progress towards the ratification of that instrument. Lastly, Mexico stated that it was interested to learn more about the plan of action for human rights education in India.

52. Nigeria applauded India's policy to strike a balance between a human rights agenda and development issues. It recommended that India should take the necessary steps towards ratifying the international human rights instruments it had signed, including the Convention against Torture and the Convention on the Protection of Persons from Enforced Disappearance. Nigeria also noted that as India had really leapfrogged into the elite community of developed societies in terms of economic improvement it would like to see such improvement touch on a great number of Indians that are under the poverty line.

53. Italy asked for additional information on (a) human rights education relating to traditional practices and customs and scheduled castes and tribes and (b) the National Child Labour Project. Italy recommended the strengthening of human rights education specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination. It also recommended that steps be taken towards the ratification of the Convention against Torture.

54. Latvia noted India's positive cooperation with the special procedures and stated that it would like India to consider extending a standing invitation to all special procedures of the Human Rights Council.

55. Venezuela stated that it valued the efforts made by India to promote and protect human rights. Venezuela emphasized that it attached, like India, particular importance to matters related to health and referred to the health insurance scheme for workers in the informal sector, which was referred to in India's report. Venezuela emphasized that this issue is also under discussion in Venezuela and

that workers in that part of the economy should enjoy the benefits of social security, and that there should be equal conditions for those working in the informal or formal sector or the public and private sector. It wished to know more about the scheme as well as the scope and prospects for the Indian Government to implement it.

56. Switzerland referred to the reported cases of torture noted by the Human Rights Committee and the Special Rapporteur on the question of torture and welcomed India's signature of the Convention against Torture and its determination to ratify it. It, therefore, recommended that India ratify the Convention as soon as possible. Additionally, it encouraged India to respond favourably to the renewed request made by the Special Rapporteur on the question of torture to be permitted to carry out a mission to the Indian territory as soon as possible. Lastly, it recommended that a standing invitation be extended by India to all the Council's special procedures.

57. South Africa stated that its delegation was encouraged by India's approach to embracing pluralism within the context of the promotion and protection of human rights. It also paid tribute to the efforts played by India in support of the struggle for freedom during the apartheid era. South Africa would appreciate receiving further information on (a) the functioning and results pertaining to the national commissions created to deal with minorities and vulnerable groups and (c) the system of the distribution of food and its application across all sections of the population.

58. Azerbaijan asked India to elaborate on (a) what practical measures were being taken to fight poverty, (b) what are the difficulties experienced by Scheduled Castes and Tribes in terms of their human rights, (c) what national plans exist on Internally Displaced Persons and what access is given to international humanitarian organizations to internal displacement affected regions, (d) school attendance of children in rural regions, and (e) human rights training among police and security forces.

59. The Islamic Republic of Iran commended India on its valuable efforts and commitments for the promotion and protection of human rights and asked that India provide further details on (a) the realisation of economic, social and cultural rights, in particular the right to development, (b) measures taken to develop a culture of human rights, and (c) the role that civil society and the national human rights institution can play in this regard.

60. Nepal stated that a few hours ago Nepal successfully completed historic elections to the Constituent Assembly to institutionalize the peace process, establish democracy and place human rights at the centre of governance. Nepal warmly congratulated Indian on having successfully completed 60 years of democracy and stated that India has proved to be largest and most representative democracy in the world. Nepal observed that the deepening of democratic roots in India has produced strong institutions, an independent judiciary, a vibrant and free media and giving people their say and share in the governance of the country. Nepal commended India for its effective implementation of various policies, plans and programmes to promote equality and justice as well as its affirmative action programmes to address the situation of marginalized communities, to promote and protect of the rights of women and children and to support the disabled and elderly. Given the exemplary role of the National Human Rights Commission, Nepal asked how the Commission's experience could be shared with other countries as a best practice.

61. Sri Lanka spoke about its enormous respect and admiration for India's achievements. India had set an example of how to manage the vexed question of achieving unity in diversity. Sri Lanka stated that the thinking that has gone into the Indian Constitution approximates, in our part of the world, the achievement of the Framers of the Constitution of the United States of America and that this framework has served India well. Sri Lanka noted that despite the existence of a democratic

federal political structure in India certain separatist terrorist insurgencies particularly in the north east of Indian territory have persisted for many decades and that this gives the lie to the received wisdom that federalism or a measure of federalism is a sufficient condition for the eradication of terrorist movements of a particularly intractable sort. Sri Lanka stated that it is a great admirer of the manner in which India has developed a notion of nationhood which is broad and inclusive and pluralist and admires India's determination that the preservation, advancement and protection of human rights in India shall be an Indian matter.

62. Ecuador noted that India is a country with a multi-cultural character and a vast legal history. Taking this into consideration, Ecuador would like to know more about India's approach to the progressive implementation of social and cultural rights and how this is done without affecting the cultural wealth, social diversity and customs and practices of the country.

63. Palestine expressed appreciation of India's ability to feed its population of over 1 billion people and stated that this is a great achievement that ought to be emulated and is a clear indication of India's success in economic planning and its implementation. Its Constitution is based on noble values and principles. It has pursued a democratic path caring for the rights of women, children, the elderly and disabled persons as well as respect for all religions. Palestine asked how has India combined between this progress and the maintenance of social and cultural rights that are closely linked to its traditions, civilization, legacies and time old humanist heritage.

64. The Syrian Arab Republic commended India for its report and the transparency and cooperative spirit in which it was prepared. It requested additional information on the role of the judiciary in setting the framework for promoting human rights in India.

65. Egypt mentioned that it was impressed with the extent to which fundamental human rights principles are embodied in India's Constitution as well as with its human rights infrastructure. It raised questions regarding (a) the Right to Information Act 2005 and the tangible results achieved so far through it, and (b) the successes and challenges encountered in integrating women in India's economic development efforts.

66. Slovenia thanked India for the comprehensive national report and asked questions on (a) steps being taken to address the lack of national laws prohibiting corporal punishment in schools, alternative care settings and the home, (b) measures taken to integrate a gender perspective into the UPR exercise and the ensuing consultation and follow-up process, and (c) the civil Special Marriage Act and the failure to amend the Act to give women equal rights to property accumulated during marriage. In the latter regard, and by way of recommendation, Slovenia asked whether India was planning to follow the recommendations made by CEDAW to amend the Act accordingly.

67. Sweden raised two questions, which it stated could also be seen as recommendations. India has ratified or acceded to several instruments of international law relating to human rights but there are also a number of instruments to which it is not a party, notably the Convention against Torture, the refugee convention and ILO Conventions Nos. 138 and 182 relating to child labour. Sweden noted with interest India's intention to ratify the Convention against Torture and encouraged the Government to do so. It requested the Indian Government to elaborate on its efforts to ratify other instruments of international law relating to human rights, in particular ILO Conventions Nos. 138 and 182 relating to child labour. Secondly, it stated that homosexual conduct is prohibited by the Indian Penal Code and that civil society organizations have reported discrimination of homosexual, lesbian, bi-sexual, transgender and transsexual persons both by agents of the State and on a general societal level. Sweden asked the Indian Government about the measures it is taking to ensure full equality before the law regardless of a person's sexual orientation.

68. Tunisia commended India on its report, also as an example of the degree of pluralism and respect for diversity which pervades in the political and social life of the country. Tunisia noted India's engagement to further advance the rights of women and vulnerable groups. It encouraged India to continue its 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.

69. Israel highlighted the importance of institutionalizing principles like freedom of expression in the world's most populous democracy and took note of the information provided by the state report in this regard. It mentioned that India was one of the first countries to ratify the Convention on the Rights of Persons with Disabilities. In view of a 2004 recommendation of the Committee on the Rights of the Child addressing the limited facilities and services existing in India for children with disabilities as well as the limited number of trained teachers working with disabled children, Israel asked how India envisaged using the Convention to implement this particular recommendation. It also asked whether this Convention will serve as a national action plan to better integrate disabled persons into Indian society.

70. Qatar expressed its appreciation of the measures taken by India to meet its challenges without prejudice to human rights and in accordance with the Constitution that guarantees to all citizens, without any discrimination, the right to enjoy all human rights and fundamental freedoms. Qatar spoke about India as the home for almost all religions of the world where all sects enjoy the right to establish institutions for religious and educational purposes. Reference was made to the significant role of the National Human Rights Commission of India in laying down a national plan of action for human rights that covers issues like the rights to health, education, food, security, housing and justice. Qatar also mentioned other examples of India's commitment to human rights, including the adoption of a National Plan for human rights education especially in schools, colleges and universities, the work of thousands of NGOs in India and India's ratification of international human rights instruments and cooperation with international organizations.

71. Morocco welcomed the efforts made by India in advancing the rights of women and of their empowerment in the political and social fields. Given the importance of Indian communities worldwide, Morocco asked what are the plans and initiatives of India to protect the interests and rights of this community.

72. Following the dialogue, the delegation of India, in their responses, stated that they had listened with attention and respect and would take home the comments and deliberate on them and gain a lot of experience and knowledge. Brazil, Algeria, and Nigeria had referred to India's phenomenal growth but rightly raised questions about whether this was an all inclusive growth and if the gulf between the rich and poor is not growing. This is one of the greatest concerns of India and every effort is made to ensure there is no disparity between the rich and the poor. Recently, in the budget presented by the Finance Minister, India decided to write off US\$ 15 billion worth of farmers' debt. This is one of the largest schemes undertaken by any government to promote the welfare of its farmers. However, this was not a one time exercise. India is committed to make sustained efforts and coordinated programmes. The growth of India's economy was phenomenal and one of the engines is the Special Economic Zones. This has led to some agitation in some parts of the country but the accent of the Government is to see that special economic zones bring prosperity to the areas in which they are being set up. There were schemes for rehabilitation, reemployment and community development of the affected people. India remained conscious that the path to reducing disparity was through providing opportunity for both employment and education. In this regard, India stated that it is likely to achieve 100 per cent success in primary education by 2010.

73. India noted that Canada, as well as others, referred to the impunity for human rights violations under the Armed Forces Act which was incorrect. India stated that no forces, armed or police, function with impunity. Armed forces were under strict orders not to transgress human rights and the strictest action is taken, and incidents are swiftly adjudicated, including through courts-martial.

74. Regarding castes and racial discrimination, India noted that both Canada and Germany mentioned India's position on the scope of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). India stated that their position on ICERD is unchanged and that while they recognize that caste-based discrimination exists in India, since the caste system, which is unique to India, is not racial in origin, caste based discrimination cannot be considered a form of racial discrimination.

75. Regarding questions on minorities from Saudi Arabia and Bangladesh, India noted that minorities, both religious and cultural, enjoy a very special status. The right to administer institutions of their choice for imparting education and carry on their religious instructions and cultural life is a fundamental right which has been repeatedly protected in a series of judgments by the Supreme Court. The Prime Minister's 15-Point Programme contained interesting elements such as enhancing opportunities for education. One of the greatest successes in this area has been the increase in the number of Muslim women who are turning to organize education in the secular sphere. This will greatly contribute towards the mainstreaming of minorities. In communal-sensitive areas, India has set up street-level, district level committees to bring about a greater sense of understanding and tolerance. This has had great success in eliminating mistrust and suspicion.

76. With regard to human rights education, India stated that a novel programme in the form of the national legal literacy program, started in 2005, works to increase awareness of legal rights and make the people aware of their legal rights and that they have access to courts, particularly for people in rural areas.

77. India noted that they do maintain statistics with regard to scheduled castes and scheduled tribes and that these statistics are in the public domain.

78. In relation to a question by the Republic of Korea on the displacement of tribal people from forest lands, India noted that based on a Supreme Court decision, no land can be diverted from forest use, without prior approval and there can be no displacement unless there is a comprehensive proposal to resettle the tribes as part of the project. This had been the position in regard to implementation of mining projects in Orissa as well.

79. India noted that some states have passed anti-conversion acts to check and regulate forced conversions.

80. Nigeria mentioned enforced disappearances and India noted that it had signed the Convention on the Protection of Persons from Enforced Disappearance on the day it opened for signature last year and that the process of ratification was now under way.

81. With reference to Latvia and Switzerland's question on a standing invitation for special procedures, India stated that it could not agree to standing invitations, but it had been extremely open and had extended invitations whenever approached. India believed that as a developing country with limited capacities, it needed to properly prepare for such visits for which sufficient notice is required.

82. In relation to a question from the Syrian Arab Republic on the role of the judiciary in protecting human rights, India noted that the judiciary is the sentinel and watchdog of human rights

in India. The courts in India including the Supreme Court and the High Courts are easily accessible to the ordinary people and have acted even on the basis of information received on a post card from a person under detention.

83. India noted, in response to Egypt's question on the Right to Information Act, that the Act is one of the greatest achievements in the legislative history so far. The fact that the government and legislature decided to "expose themselves" under the Act is by itself a great check on their working.

84. Regarding Sweden's comments on homosexual conduct, India noted that under Section 377 of the 1860 Indian Penal Code, the concept of sexual offences "against the order of nature" was introduced. This was essentially a Western concept, which has remained over the years. The concept of homosexuality itself does not find a mention in the Indian Penal Code and it can be a matter of debate whether it is "against the order of nature". An NGO had filed a petition before the Delhi High Court for declaring Section 377 of the Indian Penal Code as unconstitutional. The High Court's judgment turning down the petition was challenged in the Supreme Court which has returned it to the High Court for reconsideration. The matter was referred to the Law Commission of India, which took the view that Indian society does not currently accept homosexuality as an acceptable form of behaviour. However, the matter is under the consideration of the courts in India.

85. In conclusion, the Ambassador and Permanent Representative of India, H.E. Mr. Swashpawan Singh, thanked everyone for their presence and constructive participation in the free and frank dialogue. India stated that it had tremendously benefited from the discussion which provided a unique opportunity to know how India's efforts for the realisation of human rights were viewed and assessed by international community. It was satisfying to note that there was a positive recognition of India's efforts and that many initiatives launched by India are viewed as examples of best practices. India remained conscious of the challenges and was committed to persevere diligently within the parameters of its Constitution. India stated that it has always demonstrated its openness towards accepting evolving international human rights norms and remains committed to continue doing so. There are instances where India has adhered to the basic norms of an international instrument without becoming a party to it such as the 1951 Convention on the Status of Refugees. In some other cases, the domestic norms go beyond the prevalent international norms; such as the high level of justiciability of economic, social and cultural rights. India noted that its own experience of being reviewed reconfirmed its belief in the huge potential of the UPR. Yet, the process and the success of the mechanism would depend on constructive engagement by identifying concrete areas for cooperation which would make a real difference on the ground.

II. CONCLUSIONS AND/OR RECOMMENDATIONS

86. In the course of the interactive dialogue the following recommendations were made:

- 1. Expedite ratification of the Convention against Torture (United Kingdom France, Mexico, Nigeria, Italy, Switzerland, and Sweden) and its Optional Protocol (United Kingdom);**
- 2. Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom);**
- 3. Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);**

4. Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals (Ghana);
5. Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);
6. Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil);
7. Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);
8. Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society (Mauritius);
9. Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);
10. Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria);
11. Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico);
12. Ratify the Convention on Enforced Disappearances (Nigeria);
13. Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);
14. Extend standing invitation to special procedures (Latvia, Switzerland);
15. Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);
16. Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);
17. Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia);
18. 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 (Tunisia).

87. These recommendations will be examined by India which will provide responses in due time. The response of India will be included in the outcome report to be adopted by the Human Rights Council at its eighth session.

88. All conclusions and/or recommendations contained in this report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.

Annex

Composition of the delegation

The delegation of India was headed by H.E. Mr. Swashpawan Singh, Ambassador and Permanent Representative of India to the United Nations Office at Geneva, and composed of 13 members:

Mr. Goolam E. Vahanvati, Solicitor General of India;

Mr. Vivek Katju, Additional Secretary, Ministry of External Affairs dealing with International Organisations;

Mrs. Anita Choudhary, Additional Secretary in Ministry of Home Affairs;

Mr. Mohinder Singh Grover, Deputy Permanent Representative of India to the United Nations Office in Geneva;

Mr. Manjeev Singh Puri, Joint Secretary, United Nations Division dealing with human rights issues, Ministry of External Affairs;

Mr. Narinder Singh, Joint Secretary and heads the Legal and Treaties Division of the Ministry of External Affairs;

Mrs. Manjula Krishnan, Economic Advisor in the Ministry of Women and Child Development;

Mr. Rajiv Chander, Minister (Political and Economic), Permanent Mission of India to the United Nations Office at Geneva;

Mr. Raj William, Counsellor, Permanent Mission of India to the United Nations Office at Geneva;

Mr. Nilambuj Sharan, Deputy Secretary, Ministry of Social Justice and Empowerment;

Mr. Manu Mahawar, First Secretary, Permanent Mission of India to the United Nations Office at Geneva;

Ms. Paramita Tripathi, Under Secretary, United Nations Division of the Ministry of External Affairs,
