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Part 1. Methodology

1. This report is specific to children's rights. It is based on a recent social audit of twenty years of CRC carried out by HAQ: Centre for Child Rights and terre des homes Germany on behalf of the CRC20BS Collective, a group comprising 173 organisations and individuals and 215 children, who endorsed the social audit report.

Part 2. Progress on Implementation of Children's Rights – An overview

2. Children of India got a full-fledged Ministry for Women and Child Development in the year 2006. Their rights are addressed through 57 laws and 60 legal provisions in the IPC, the CrPC and the Indian Evidence Act. There are 9 policy documents impacting their lives including the National Policy for Children, 1974 and the National Plan of Action of 2005, many goals and targets set out under five year plans, 73 central government's budgeted programmes and schemes for children operational through 9 Ministries and a National Commission for Protection of Child Rights and 12 State Commissions.

Yet there are areas of concern requiring immediate attention. These include:

3. There is no uniform definition of the 'child' in the policy and legal documents.
4. The Policy Framework for children is as outdated as 1974.
5. The National Plan of Action for Children (NPAC) too needs to be revised as most goals were set out to be met by 2010 and remained unmet. The NPAC needs to be backed by state plans. Only 17 states seem to have had some plan of action in place for children, most of these being outdated documents. These include Assam, Arunachal Pradesh, Bihar, Delhi, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Orissa, Punjab, Rajasthan, Tamil Nadu and West Bengal.
6. Child Labour and Education
 - 6.1 In the last five years the number of hazardous processes banning employment of children below 14 years has gone up from 18 to 65 and the number of occupations has gone up from 7 to 18. The 2001 census data on child labour data however, fails to take into account these changes. A large number of child workers therefore remain unaccounted for.
 - 6.2 Implementation of the Child Labour (Prohibition & Regulation) Act (CLPRA), 1986 is very poor. Based on information available from various central and state government websites, even for a 25 year old legislation like the CLPRA, only 13 out of 35 states and union territories (UTs) have framed the state rules for implementation of the said law. These include Bihar, Delhi, Goa, Gujarat, Haryana, Karnataka, Madhya Pradesh, Orissa, Punjab, Rajasthan, Tamil Nadu, and West Bengal, with rules framed between 1988 and 1997. In recent times, Meghalaya is the only state reported to have drafted the state rules, but is yet to notify them.

- 6.3 India is still not ready to remove the declaration made on Article 32 of the Convention regarding progressive elimination of child labour. The Eleventh Five Year Plan (2007-2012) in fact acknowledged that there is ample evidence to suggest that more and more children are entering the labour force and are being exploited by their employers.
- 6.4 The minimum age of employment is yet to be fixed. The ILO Convention 138 is yet to be signed. The Government of India in its third and fourth combined periodic report to the CRC Committee states that the “time is not ripe” given the socio-economic condition. Many civil society actors are not in favour of ratification of ILO Convention 182 as India has moved far ahead in the list of hazardous occupations banning child labour. Moreover, there have been voices protesting recognition of child prostitution as a form of labour because it needs to be treated as a crime.
- 6.5 Elementary Education for the 6-14 year olds became a Fundamental Right in 2002 and is being implemented through the Right of Children through Free and Compulsory Education Act, 2009 and rules made by the states there under. Here again, not all states and UTs have framed the rules. The states of Assam, Bihar, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Maharashtra, Nagaland, Puducherry, Punjab, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand and West Bengal have prepared the draft rules, but are yet to notify them.
- 6.6 There has been a demand from civil society actors for extending the constitutional guarantee of right to education and protection from economic exploitation to all children up to the age of 18 years. While this demand is yet to be met the current child labour law (CLPRA) needs to change as it stands in contradiction to Article 21 A guaranteeing right to education to all 6-14 year old children. The CLPRA continues to make a distinction between hazardous and non-hazardous employments, banning employment of only those children under 14 years of age who work in hazardous sectors. If all children in this age group are to be in school the child labour law needs to be replaced, banning child labour in all sectors.

7. Child Marriage

- 7.1 The earlier child marriage law was replaced with the Prohibition of Child Marriages Act, 2006, enforced with effect from 11 January 2007. This shifted the focus mere restraint to prohibition of child marriages and provided for greater punishments. Implementation of the new law is however, very inadequate. In 2009 the Crime in India statistics produced by the National Crime Records Bureau recorded only 3 cases of violation of the law and in 2010 information on child marriage cases is lost under the broad head of ‘other crimes’. The NFHS-3 (2004-05) data on the other hand shows 27.1 percent of children aged 15-19 years as married.
- 7.2 India set itself a goal of achieving 100% registration of births, deaths and marriages in the year 2000, to be repeated in 2005 with an additional goal of elimination of child marriages by 2010. The goals are yet to be achieved as the law does not have a deterrent effect. Registration of marriages is not compulsory in all states and reports

suggest that even where it is, child marriages also get registered despite law prohibiting it.

8. Juvenile Justice

- 8.1 In furtherance of the principles of diversion and restorative justice, and best interest of the child the in 2007, Juvenile Justice (Care and Protection of Children) Rules, 2007 were framed by the centre. The states were required to frame their own rules in consonance with the central rules, failing which the central rules shall apply. The exact status of formulation of juvenile justice rules in the states as per the 2007 Central Model Rules is not available, though information gathered from various sources suggests that the states of Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and West Bengal have notified new ruled. Jharkhand, Tamil Nadu and Uttar Pradesh have adopted the central rules of 2007. Haryana approved new rules on 22 August 2009 but did not notify them. In Andhra Pradesh, draft rules were framed in 2009 but are yet to be notified.
- 8.2 Despite pro-active orders of the Supreme Court of India in the case of Sampurna Behura vs. Union of India and others [WP (Civil) No. 473/2005] and Bachpan Bachao Andolan vs. Union of India [WP (Civil) No. 51/2006], requiring Child Welfare Committees (CWCs)¹ and Juvenile Justice Boards (JJBs)² to be set up in every district, only 14 states and 4 union territories are reported to have done the needful (For details see Annexure 1 based on replies filed by the states to the Supreme Court Orders). In most places these bodies exist only on paper.
- 8.3 The legal requirement of establishment of Special Juvenile Police Units (SJPUs) in every district and designation of at least one police officer in every police station as Juvenile Welfare Officers is also only on paper. The police department actually finds it difficult to designate a police officer as a Juvenile Welfare Officer (JWO) as they need the entire force for all kinds of duties imposed on them, varying from VIP movement to general law and order. JWOs also handle other cases in addition to those registered under the JJ Act. Therefore, they find it difficult to run from one court to another and also be present in the JJB/CWC with the concerned child. It would be unreasonable to expect them not to be in uniform when they bring a child in conflict with law to the JJB/CWC, which is a requirement under the juvenile justice law. Besides, JWOs and SJPUs members need appropriate training and sensitisation to do justice to their role and to the children. Although the law also provides for two social workers in the SJPUs, they are yet to be appointed in many places.
- 8.4 Despite several measures, children continue to languish in adults jails. Even in the National Capital Territory of Delhi, according to the response received from Jail No. 7, Tihar Jail, New Delhi, 113 children were transferred from the said jail to respective observation homes between October 2010 and August 2011. In the other states the

¹ CWCs are meant to receive children in need of care and protection and to make appropriate orders for their rehabilitation, restoration and reintegration using their powers as a bench of magistrates.

² Juvenile Justice Boards (JJB) have to deal with all crimes allegedly committed by children, children's right to bail, speedy inquiry and suitable rehabilitation.

situation is yet to be assessed in detail, though it goes without saying that it would be worse.

9. Institutional Mechanisms like the Children's Commissions

- 9.1 In 2005, the Commissions for Protection of Child Rights Act was enacted to set up the National Commission for Protection of Child Rights (NCPCR) and the State Commissions. The first NCPCR was set up in March 2007 to protect, promote and defend child rights in the country. Subsequently, State Commissions have been constituted in 12 out of the 35 states and union territories.³ These are Assam, Bihar, Chhattisgarh, Delhi, Goa, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan and Sikkim.
- 9.2 Information received from the Centre for Child and the Law, National Law School of India University (CCL NLSIU), Bangalore suggests that NGOs have approached the High Court and obtained directions for establishment of the SCPCR. In January 2011, the Jharkhand High Court directed the State Government to constitute the SCPCR in the State within a month. Similar directions have been issued to the Uttar Pradesh government, the Manipur government and the Haryana government by the Allahabad High Court, the Gauhati High Court (Imphal bench) and the Punjab and Haryana High Court, respectively. Andhra Pradesh and Gujarat are reported to be thinking of setting up a Joint Commission for Women and Children or vesting the already existing State Commission for Women with the additional mandate of child rights. News reports suggest that Gujarat has already taken this step in April 2011.
- 9.3 The Act and the rules that govern setting up of the National and State Commissions for Protection of Child Rights do not lay down the rules for selection of members to these bodies. In other words, both the Act and rules made thereunder need an urgent amendment. In 9 out of 12 states where the state commissions exist, the commissions were established without formulation of rules meant to govern both the establishment and the functioning of these bodies. The only three states that framed the requisite rules prior to setting up the commission were Chhattisgarh, Delhi and Orissa.
- 9.4 Both the NCPCR and the state commissions lack in infrastructure, staff and resources, and have come into question on the lack of transparency in the selection of the members to these bodies. Their autonomy and independence too is undermined. In states like Madhya Pradesh and Chhattisgarh, the financial powers vest with the secretary in charge of the concerned government department, thus undermining the financial independence of these bodies.
- 9.5 Salaries offered to the members of these Commissions are not in line with the ranks they hold. In Chhattisgarh and Madhya Pradesh, the Rules fail to specify the salary and allowances of the Chairperson and Members. There is no parity in remuneration in Delhi, Goa, Karnataka, Maharashtra, Orissa, Rajasthan and Sikkim.

³ National Commission for Protection of Child Rights. Available at: <http://www.ncpcr.gov.in/scpcr.htm>, accessed on 8 April 2011.

Punjab and Assam are yet to frame its rules. Bihar is the only state where the rules provide for the Chairperson and Members to receive salary equivalent to that of the Chief Secretary and Secretary of the State Government respectively.

9.6 The NCPCR has never been a full Commission and in the states too the situation is not very different. Delhi, Karnataka, Chhattisgarh, Orissa and Sikkim have had less than the required number of six members.

10. Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

10.1 In a specific reply in the Parliament on 7 July 2009, the then Minister of State for Home Affairs stated that there is no separate data maintained for children killed in custody.⁴

10.2 According to the 2011 third and fourth combined period report of the government on CRC, *India is still in the process of ratification of the said Convention* and the matter is being examined by a Parliamentary Committee.

10.3 On 31 August 2010, the Prevention of Torture Bill, 2010 was referred to a Parliamentary Standing Committee by the Rajya Sabha (The Upper House of the Parliament of India). Though still a Bill, it is said to have been conceived to create an environment to ratify the Convention against Torture and is intended to “humanise” the administration of the country’s criminal justice system.

10.4 Initially the Prevention of Torture Bill, 2010 did not contain any specific provisions to protect children. Having considered the recommendations from the civil society groups, *the concerned Parliamentary Standing Committee, while defining “Torture” has included “Torture of Children in any form” (3 d) in the definition and it will be a punishable offence as and when the law is enacted.*⁵ One of the main recommendations was to enhance the definition of “torture” under the law to include intimidation, coercion, instigation, and wilful neglect and other cruel, inhuman or degrading treatment or punishment (Section 3). Further, it was suggested that the punishment prescribed in the Bill needs to match the gravity of the offence. The limitation clause was another area where some changes were suggested. The limitation period is fixed at six months (Section 5) but children who are in custodial or care institution have no access to legal aid or anyone to complain to. It has been found that complaining leads to even more torture and punishment for the child, and hence children tend to keep quiet. A six-month limitation clause means that children cannot ever seek justice under this law. Another provision that was worrisome was the one requiring previous sanction for prosecution of government employees (Section 6).

⁴ Unstarred Question No. 482, Answered in the Lok Sabha on 07.07.2009. Cited in Asian Centre for Human Rights, *Torture in India 2010*. April 2010, p 6. Available at:

<http://www.achrweb.org/reports/india/torture2010.pdf>

⁵ For more information log on to www.haqcrc.org and visit the HAQ Blog.

10.5 Despite incorporation of some changes, the Prevention of Torture Bill lacks a victim-oriented perspective. It contains no measures to protect victims for reprisals, and no enforceable right to reparations, including rehabilitation, for victims of torture. The Bill in its current form falls short of meeting the national as well as the international human rights standards.

11. Public Investment on Children's Rights

11.1 Since 2008-09, a separate budget statement on children has become part of the Finance Bill presented in and passed by the Parliament every year. However, HAQ: Centre for Child Rights' Budget for Children (BfC) analysis shows that In the Central Government's Budget, the share of budget allocations for children has increased very marginally from 5.08% to 5.09% between 2007-08 and 2011-12; and the share of expenditure on children has gone down from 4.28% to 4.11% between 2007-08 and 2009-10, reflecting underutilisation of even the meagre funds allocated for implementation of children's rights. Child Protection indeed receives the lowest share of only 0.03 percent of the central government's actual expenditure.

11.2 A significant proportion of the resources are being raised for education through a cess imposed on public services. The 1966 Kothari Commission recommendation of investment of 6% of GDP on primary education remains unmet. In fact, public spending on overall education was 3.23% of GDP in 2009-10.⁶

11.3 The share of central government in public spending on health is a mere 0.25% of GDP, nowhere near the government's target of 3% of GDP or the WHO recommendation of 5% of GDP.⁷

⁶Centre for Budget and Governance Accountability, *Union Budget 2010-11: Which Way Now? Response to the Union Budget*, Serial No. C 1, Education.

⁷Centre for Budget and Governance Accountability, *Budget Track*, Volume 8, Track 2, August 2011, pp. 8

Annexure 1

State-wise Status of the Implementation of major provisions of JJ Act, 2000⁸

Name of State	Districts	CWCs	JIBs	SJPU	Information Centres	Observation Homes			Special Homes			Children's Homes			Shelter Homes	ACIs	Specialised Adoption Agencies	SAB meeting during 2010-11	MOU with GOI for ICPS	SCPS formed on	DCPUs	Fund received under ICPS
						B	G	T	B	G	T	B	G	T								
Andaman & Nicobar Island	3	1	1	1	1	1	-	1	1	-	1	1	-	1	-	1	-	No	-	-	-	-
Andhra Pradesh	23	23	23	29	Nil	9	3	12	3	3	6	6	3	9	18	3	1	Yes	Yes	Yes	-	2009-10 2010-11
Arunachal Pradesh	16	8	8	17	1	1	-	1	-	-	-	1	-	1	-	NA	1	No	Yes	-	-	-
Assam	27	27	27	29	Nil	2	2	4	-	-	-	8	-	8	-	Nil	3	No	Yes	Yes	-	2009-10
Bihar	38	21	38	40	8	10	-	10	1	-	1	3	-	3	3	2	3	NA	Yes	-	-	2010-11
Chandigarh	1	1	2	1	1	2	-	2	1	-	1	2	-	2	1	NA	1	No	Yes	-	-	-
Chhattisgarh	18	16	16	20	Nil	5	1	6	1	1	2	9	3	12	3	2	3	Yes	Yes	Yes	Yes	2009-10
Dadra & Nagar Haveli	1	1	1	1	NA	1	-	1	-	-	-	-	-	-	-	NA	-	NA	Yes	-	-	-
Daman & Diu	2	2	2	2	Nil	-	-	-	-	-	-	-	-	-	-	Nil	-	No	Yes	-	-	-
Delhi	9	4	3	14	10	3	-	3	1	-	1	74	3	77	6	2	11	Yes	Yes	Yes	Yes	Yes
Goa	2	2	2	2	3	1	-	1	1	-	1	1	1	2	1	Nil	3	NA	Yes	-	-	-
Gujarat	26	26	26	31	Nil	26	-	26	1	1	2	107	-	107	23	13	19	Yes	Yes	-	-	2009-10 2010-11

⁸ Source: Reports/Affidavits received by the Supreme Court of India from the State Governments/UT Administrations in Sampurna Behura vs. Union of India and Others [WP (Civil) No. 473 of 2005]

Name of State	Districts	CWCs	JJBs	SJPU	Information Centres	Observation Homes			Special Homes			Children's Homes			Shelter Homes	ACIs	Specialised Adoption Agencies	SAB meeting during 2010-11	MOU with GOI for ICPS	SCPS formed on	DCPUs	Fund received under ICPS	
						B	G	T	B	G	T	B	G	T									
Haryana	21	20	20	20	2	2	3	3	1	-	1	2	-	2	2	1	3	Yes	Yes	Yes	Y	2010-11	
Himachal Pradesh	12	12	12	20	2	1	-	1	1	-	1	7	-	7	12	Nil	1	Yes	Yes	-	-	-	
Jharkhand	24	24 ⁹	21	?	19	9	1	10	1	-	1	1	1	2	-	NA	1	Yes	yes	-	-	-	
Karnataka	30	29	28 ¹⁰	36	18	8	2	8 ¹¹	1	-	1 ¹²	28	28 ¹³	56	6	3	36	NA	Yes	Yes	-	-	2009-10 2010-11
Kerala	14	14	14	17?	14	3	3	16	1	1	2	8		8	9	3	15	Yes	Yes	-	-	2009-10 2010-11	
Lakshadweep	1	1	1	1	NA	-	-	-	-	-	-	-	-	-	Nil	NA	-	NA	Yes	-	-	-	
Madhya Pradesh	50	48	48	50	26	16	2	18	2	1	3	10	1	3	1	2	13	Not functional	Yes	Yes	Yes	2010-11	
Maharashtra	35	35	31	32	NA	60		60	3	-	3	1076		1076	-	4	68	Yes	Yes	-	-	2009-10 2010-11	
Manipur	9	9	9	11	NA	1		1	1	-	1	8	2	10	-	NA	6	NA	Yes	Yes	-	2009-10 2010-11	
Meghalaya	7	7	7	7	No	2	1	3	-	-	-	5	5	10	1	NA	-	No	Yes	-	-	2010-11	
Mizoram	8	8	8	8	2	2	1	3	1	0	2	27	-	27	Nil	NA	5	Yes	Yes	Yes	-	2009-10 2010-11	
Nagaland	11	11	11	11	NA	1		1	1		1	15	-	15	1	NA	3	NA	Yes	Yes	-	2009-10	
Orissa	30	30	30	30	Nil	4	1	5	2	1	3	46	-	46	31	Nil	14	Yes	Yes	Yes	yes	2009-10 2010-11	
Puducherry	4	1	1	2	NA	1	-	1	1	-	1	29	-	29	4	1	2	No	Yes	-	-	-	

⁹ Only 15 are functional

¹⁰ Only 8 are functional

¹¹ Only 8 are functional

¹² Only one is functional

¹³ Including one CH for below 6 years

Name of State	Districts	CWCs	JIBs	SIPUs	Information Centres	Observation Homes			Special Homes			Children's Homes			Shelter Homes	ACIs	Specialised Adoption Agencies	SAB meeting during 2010-11	MOU with GOI for ICPS	SCPS formed on	DCPU	Fund received under ICPS
						B	G	T	B	G	T	B	G	T								
Punjab	20	5	20	26	9	3	1	4	1	1	2	5	2	7	-	2	3	No	Yes	-	-	2011-12
Rajasthan	33	29	33	40	No	26	7	33	6	1	7	63	-	63	2	NA	5	No	Yes	Yes	-	2009-10 2010-11
Sikkim	4	4	4	4	NA	1	-	1	-	-	-	1	1	2	-	NA	-	Yes	Yes	-	-	-
Tamil Nadu	32	18	8	32	30	8	-	8	1	1	2	24	6	30	23	3	22	No	Yes	-	-	2010-11
Tripura	4	4	4	4	NA	1		1	-	-	-	3	2	5	-	2	6	Yes	Yes	-	-	2010-11
Uttarakhand	13	09	13	13	Nil	1	-	1	1	-	1	5	-	5	-	No	1	NA	Yes	-	-	-
Uttar Pradesh	72	69	69	72	3	17	5	17	1	1	2	10	10	19	3	6	19	No	Yes	Yes	-	2011-12
West Bengal	19	19	19	19	NA	17	-	17	7	-	7	17	-	17	26	NA	15	NA	Yes	-	-	-
ALL INDIA	619	538	560	642	149	245	33	279	43	12	56	1602	68	1661	176	50	283					

Notes: '?' indicates no reply filed by the concerned state

NA – Not Applicable

B- Boys

G – Girls

T – Total

MoU – Memorandum of Understanding

ICPS – Integrated Child Protection Scheme

SCPS – State Child Protection Society

DCPU – District Child Protection Unit

