

**STRUCTURE OF CHAPTER II ON PROMOTION AND PROTECTION OF HUMAN RIGHTS ON  
THE GROUND  
PART B**

**Implementation of international human rights obligations, taking into account applicable international humanitarian law** (highlighted part to be added only if relevant)

- The themes mentioned under each title are only indicative, and do not constitute sub-titles.
- The principle in mainstreaming to the extent possible all issues under rights. ?

UN Agency	Response/ Recommendation
UNICEF <sup>1</sup>	<p><u>Recommendation 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.</u></p> <p>In August 2011, India submitted its Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child, together with its initial reports on the two CRC Optional Protocols on Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography. The previous report to the Committee on the Rights of the Child, the Second, had been submitted in 2001 and reviewed by the Committee in 2004.</p> <p>These reports represent a positive step in fulfilling India’s reporting obligations and were prepared following a consultative process with government and civil society. However, it is noted that 10 years elapsed since the submission of the previous report and more than 3 years later than the date recommended by the Committee on the Rights of the Child. We would welcome the Government increasing the quality of engagement with child rights bodies and commissions, based on an understanding of their mandate according to the law, as well as the increase in opportunities for consultations on child rights issues with all stakeholders.</p> <p><u>Recommendation 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.</u></p> <p>There is no Action Plan for follow up on Treaty-body recommendations. NHRC would need to coordinate with various Ministries and civil society to develop a plan in a consultative manner. Specific follow up of the CRC Recommendations and those related to children from other treaty bodies may be integrated into the National Plan of Action for Children prepared by Government, which is currently under revision.</p> <p>Related to this, the National Commission for the Protection of Child Rights was established in 2007 and till now 12 State Commissions have been</p>

<sup>1</sup> We have included recommendations 4 and 11 before the sections on specific rights, as this is more general on the cooperation with human rights bodies, reporting and follow up of recommendations.

	<p>established. Government needs to strengthen measures for effectiveness of these institutions through selection of appropriate staff, provision of adequate powers, resources and infrastructure to ensure easy access for remedies. The same holds for all other Commissions set up for human rights, Scheduled Castes and Scheduled Tribes, Minorities, etc.</p>
UNHCR	<p>India has a long-standing tradition of hosting refugees. At present, there are two broad categories of refugees in India:</p> <ol style="list-style-type: none"> <li>a) Approximately 100,000 Tibetan and 68,000 Sri Lankan refugees are directly protected and assisted by the Indian Government.</li> <li>b) Approximately 21,000 refugees and asylum-seekers from India's non-neighbouring countries and Myanmar are registered and protected by UNHCR under its mandate.</li> </ol> <p>UNHCR has been working in India since 1981. In New Delhi, UNHCR works with individual refugees and asylum-seekers, primarily from Afghanistan, Myanmar and Somalia. Since 1992, UNHCR has had a small office in Chennai to facilitate the voluntary return of Sri Lankan refugees.</p> <p>The Government has not acceded to the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol and does not have any national refugee protection legislation in place. However, the Government largely respects the principle of non-refoulement for holders of UNHCR documentation. In addition, the State is not party to the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.</p> <p><b>Issue 1:</b> India should formalise its traditional hospitality towards refugees and asylum-seekers by acceding to the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol.</p> <p><b>Issue 2:</b> The Government should adopt national refugee legislation to solidify and strengthen its commitment and cooperation with UNHCR and the international community to address the protection needs of refugees and asylum-seekers.</p> <p><b>Issue 3:</b> India should consider ratifying the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.</p>
ILO	<p>ILO member States report on ratified conventions every five years with exception of the 8 "fundamental ILO conventions" (87/98 freedom of association, 138/182 child labour, 29/105 forced labour 100/111 discrimination) and the 4 "governance conventions" (122 employment policy, 81 labour inspection, 129 labour inspection agriculture, 144 tripartite consultations), for which reports are requested every 3 years. These reports are called "article 22 reports", referring to the reporting article in the ILO Constitution.<sup>2</sup></p> <p>Of the 8 fundamental conventions, India has ratified the 2 conventions on discrimination (100 on equal remuneration and 111 discrimination (employment and occupation)); and the 2 forced labour conventions. Of the</p>

<sup>2</sup> See Article 22 Reporting cycle attached

	<p>governance conventions Nos. 81, 122 and 144.</p> <p>The reports are submitted to the ILO Committee of Experts, an independent panel of 20 renowned lawyers, coming from all over the world covering all geographic areas, different legal systems and various subjects. Justice Ruma Pal, former India Supreme Court Justice, is the South Asia member of the Committee. The Committee meets end November/early December for 2 weeks in Geneva (currently the 2011 session is ongoing).</p> <p>In addition to article 22 reports, employer's organizations and trade unions have the right to send their own comments on application of ratified conventions. This derives from article 23 of the ILO Constitution. It's a much used procedure and provides the Committee of Experts with a more balanced view. It is comparable to the UPR "shadow reporting", with the understanding that employers organizations and trade unions are actually part of the ILO membership (while NGO's of the shadow reporting have no formal member state status).</p> <p>Governments having ratified C. 144 on tripartite consultations, like India, have the obligation to discuss their ILO reports (and other issues related to ILO conventions) with the social partners. In India this happens twice a year in the Tripartite Committee on Conventions, convened by the Ministry of Labour and Employment.<sup>3</sup></p>

---

<sup>3</sup> See attached Handbook with details on International Labour laws

## 1. Equality and non discrimination

- Discrimination against women, gender equality
- Racism, racial discrimination
- Discrimination against minorities, indigenous peoples
- Discrimination against non-citizens (migrants, asylum seekers, refugees)
- Discrimination on other grounds (religion, disabilities, HIV-AIDS, poverty, etc).

UN Agency	Response/ Recommendation
UNICEF	<p><u><i>Recommendation 5: Maintain disaggregated data on caste and related discrimination.</i></u></p> <p>There is very little disaggregated data available on caste and related discrimination or on the disparities in outcomes for women and children. Scarce data available indicate large disparities in outcomes in under-5 mortality, malnutrition and disparity in access to services like immunization, birth attendance, etc.<sup>4</sup></p> <p><u><i>Recommendation 6. Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.</i></u></p> <p>CEDAW's Optional Protocol provides mechanisms to enhance state compliance to CEDAW and provides justice when domestic remedies have been exhausted. In this respect, the ratification by India of the Optional Protocol would be a positive step to further strengthen the protection of women's rights and would not in any way weaken existing domestic mechanisms.</p> <p>At the same time, the very domestic mechanisms and remedies that are used as a reason for not ratifying the Optional Protocol would benefit if they were strengthened, if access is made easier and justice is provided in a speedier manner for the large number of violations that take place. Especially important is strengthening the functioning of the State level Commissions for Women.</p>
ILO	<p>There are many overlapping areas between ILO and UN supervisory matters: e.g C. 87 is literally mentioned in ICPCR. Attached are 3 Observations regarding India giving you a good impression of the compatibility and complementing of both UPR and ILO reporting:</p> <ol style="list-style-type: none"> <li>1) Dalits and discrimination, from ILO side treated as "discrimination on the basis of social origin", which would be caste-based or descent based discrimination<sup>5</sup></li> <li>2) Forced and bonded labour, an area of excluded workers dealing with child bondage and sexual exploitation too</li> <li>3) Tribal and indigenous peoples: This is a very ILO specific area since 2 ILO conventions are the only hard instruments of international law on this subject (the UN adopted a Declaration only). In reality, the ILO Conventions (nos. 107 and 169) should be read in conjunction with the UN Declaration. The ILO's origin on this subject are forced labour</li> </ol>

<sup>4</sup> *The Situation of Children in India. A profile.* UNICEF India Country Office, May 2011

<sup>5</sup> See attached Observation on manual scavenging

	practices against indigenous peoples (predominantly by colonial powers, so is going long way back). India has ratified C. 107 on tribal and indigenous populations. Although an outdated conventions (only 75 ILO conventions out of total of 189 are up to date), it remains into force until India either denounces C. 107, or ratifies the modern convention No. 169 on tribal and indigenous peoples. <sup>6</sup>

---

<sup>6</sup> See attached Observation

## **2. Right to life, liberty and security of the person**

- Right to life, death penalty, summary executions
- Excessive use of force
- Enforced disappearances
- Torture and ill-treatment
- Violence against children, corporal punishment
- Violence against and women, including domestic violence
- Arbitrary arrest and detention
- Children deprived of liberty
- Prisons conditions
- Slavery, contemporary forms of slavery, trafficking, forced labour, worst forms of child labour
- Economic and sexual exploitation
- Children living and/or working on street

## **3. Administration of justice, including impunity (highlighted part to be added only if relevant), and the rule of law**

- Independence of judges and lawyers
- Right to an effective remedy
- Right to a fair trial
- Juvenile justice.
- Impunity / transitional justice.
- Access to justice (including legal representation and right to judicial review)
- Remedies and compensation issues
- Equality before the law; the courts and tribunals

**4. Right to privacy, marriage and family life (adjust the title, if relevant)**

- Interference with privacy, family, home, correspondence
- Marriage
- Assistance and protection to mothers before and after childbirth (maternity leave)

UN Agency	Response/ Recommendation
UNICEF	<p><u><i>Recommendation 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.</i></u></p> <p>Article 5 (a) of CEDAW states that “States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”</p> <p>Article 16 (1) of CEDAW says that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations [...]”</p> <p>To both these articles of CEDAW India declared upon ratification that “it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.”</p> <p>In this regard, the Committee on the Rights of the Child, in its Concluding Observations to India after the submission of the Second Periodic Report, already showed its concern “9. [...] that domestic legislation, and in particular religious and personal laws which govern family matters, are not yet fully in conformity with the provisions and principles of the Convention”. The Committee recommended “10. [...] that the State Party scrutinize carefully existing legislative and other measures, including religious and personal laws, both at the federal and state levels, with a view to ensuring that the provisions and principles of the Convention are implemented throughout the State Party [...]”<sup>7</sup></p> <p>UNICEF’s <i>The Situation of Children in India: A Profile</i> has highlighted some of the main areas of concern with regards to the particular situation of the girl child, including the very high prevalence of child marriage and the declining child sex ratio, which indicate that many more efforts are needed to address social norms and practices that give less value to girls.<sup>8</sup></p>

<sup>7</sup> Committee on the Rights of the Child. Concluding Observations: India. 26 Feb 2004. See paragraphs 9-10.

<sup>8</sup> UNICEF. *The Situation of Children in India: A Profile*. 2011. See pages 30-33 and 36-37

**5. Freedom of movement**

**6. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life** (adjust the title, if relevant, to reflect the freedoms for which information is included)



## 7. Right to work and to just and favourable conditions of work

- Just and favorable conditions of work (incl. fair wages, equal pay for equal work, equal access to the labour market, safe and healthy working conditions, rest and limitations on working hours)
- Trade union rights (the right organize, to strike and to form and join trade unions)
- Minimum age of child labour.

UN Agency	Response/ Recommendation
UNICEF	<p><u>Recommendation 7. Consider signature and ratification of ILO Conventions No.138 and 182.</u> See comment's under Recommendation 9.</p> <p><u>Recommendation 9. Review the reservation to article 32 of the Convention on the Rights of the Child.</u><sup>9</sup></p> <p>To both these recommendations (7 and 9), India responded that <i>“Government of India fully subscribes to the objectives and purposes of the CRC and ILO Conventions 138 and 182 [...] but that “the present socio-economic conditions in India do not allow prescription of minimum age for admission to each and every area of employment [...]. The Third and Fourth Combined Periodic Report on the CRC submitted in 2011 has provided similar arguments in its sections on General Measures of Implementation and Special Protection Measures. It ends by saying that “the Government of India has maintained that the time is not ripe enough to ratify these ILO Conventions, since ratification without implementation will not do justice to the letter and spirit of these Conventions”.</i><sup>10</sup></p> <p>It is important to note that since the first cycle of the UPR process, a significant change has happened in the Indian legal framework. Following the inclusion of the Right to Education as a fundamental right in the Constitution of India (article 21 A), in 2009 the Right to Education Act was passed and came into force on 1 April 2010, establishing in unequivocal terms the right of all 6-14 years old children to free and compulsory education as a justiciable right for the children of India. The existing Child Labour Prohibition and Regulation Act is not aligned to this provision of free and compulsory education as a fundamental right, as it does not ban all forms of child labour for even this age group.</p> <p>It should also be noted that the declaration to article 32 was the only declaration made by India to the entire Convention on the Rights of the Child. In other words, India is yet to commit itself to fulfil the protection of children from economic exploitation and child labour to the same degree and urgency as for all the other rights. The argument of questioning <i>“ratification without implementation”</i> falls short, as ratification of an international human rights instrument shows the commitment and aspiration of the country in a certain direction. Moreover, the same</p>

<sup>9</sup> We have included our inputs under this section, as they mostly relate to the minimum age of child labour, but they are also related to sections 2 (economic exploitation, worst forms of child labour) and 9 (right to education)

<sup>10</sup> See India's Third and Fourth Combined Period Report on the Convention on the Rights of the Child at [http://wcd.nic.in/crc3n4/crc3n4\\_1r.pdf](http://wcd.nic.in/crc3n4/crc3n4_1r.pdf). See General Measures, paragraph 43, and Special Protection Measures, paragraphs 82to 85

	<p>argument could be used to question the ratification of most other articles of the CRC, as India is yet to fulfil them to their very full extent.</p> <p>As already recommended by the Human Rights Council and the Committee on the Rights of the Child<sup>11</sup>, it would be highly beneficial for India to reconsider its declaration to article 32 of the CRC and the ratification of the two ILO Conventions. The domestic anti-child labour legislation (especially the Child Labour Prohibition and Regulation Act 1986) should also be reviewed and harmonized with the more progressive Juvenile Justice Act 2000, the Right to Education Act 2009 and article 21 A of the Constitution.</p>

---

<sup>11</sup> Committee on the Rights of the Child. Concluding Observations: India. 26 Feb 2004. See para 8 and 73 (d)

## 8. Right to social security and to an adequate standard of living

- Poverty / extreme poverty.
- Right to social security (access to social security; arbitrary or discriminatory exclusion from social security, arbitrary or discriminatory withdrawal of social security)
- Right to food (Destruction of food supplies and food producing resources, arbitrary or discriminatory exclusion from access to adequate food, access to food aid, starvation, famine, nutrition levels, forced evictions from land).
- Right to health (Access to essential medicine and healthcare, including maternal health, forced pregnancy, forced abortion, forced sterilisation, involuntary infection with HIV, hepatitis C, sexual and reproductive health, access to primary health care for children including nutrition and immunisation, forced medical treatment or medical experimentation including lack of prior informed consent, failure to ensure disease prevention, treatment and control, failure to prevent or mitigate harm to human health due to pollution of the environment.)
- Right to housing (Homelessness, forced evictions, denial of tenure security to particular groups, arbitrary or discriminatory exclusion from adequate housing, unequal inheritance rights, denial of housing, land and property restitution)
- Right of access to free or affordable water and sanitation (unaffordable water, arbitrary or discriminatory exclusion from access to safe-drinking water and sanitation, arbitrary water or sanitation disconnections, illegal pollution of water resources, denial of the minimum quantity of water needed to sustain life and health)

UN Agency	Response/ Recommendation
UNICEF	<p data-bbox="424 1025 1348 1167"><u><i>Recommendation 18. Continue efforts to allow for a harmonious life in a multi-religious, multicultural, 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.</i></u></p> <p data-bbox="424 1205 1348 1525">In considering this rather broad recommendation, refer to UNICEF's <i>The Situation of Children in India: A Profile</i>, 2011. This publication offers a balanced picture of the children's situation in the country, both in terms of progress and challenges, in the areas of child survival, education child protection, HIV/AIDS, etc. Significant progress has been achieved in recent years in a number of aspects, including key legislation (RTE Act 2009), important policies (Integrated Child Protection Scheme 2009) and changes in the lives of children. The main challenge remains the huge disparities that persist based on caste, ethnicity, religion, gender and region.</p> <p data-bbox="424 1563 1348 1671">There have been several Supreme Court orders on Right to Food, Shelter, etc. Implementation would ensure that state obligations would be met and safeguard in protecting the rights of people in these areas.</p>

**9. Right to education and to participate in the cultural life of the community (adjust the title if there is no relevant information on participation in the cultural life of the community)**

- Primary education (information on free, inclusive and compulsory nature of primary education)
- Secondary education (information on free or affordable and inclusive nature of secondary education)
- Higher education
- Inadequacy of educational facilities, resources and services
- Curriculum which is incompatible with human dignity as defined in international human rights instruments
- Lack of measures to encourage regular attendance and the reduction of drop-out rates
- Freedom of parents to choose for their children schools other than those established by the public authorities
- Freedom to establish educational institutions
- Freedom of scientific research and creative activity; artistic freedoms
- Right to conduct cultural practices, subject to respect for other human rights (if related to minorities and indigenous peoples: should go below)

**10. Minorities and indigenous peoples**

- Issue of lack of recognition of minorities and indigenous peoples (including also tribal peoples)
- Right to belong to a minority or an indigenous people
- Land rights
- Right to self-determination; issues relating to autonomy / self-government
- Recognition of treaties (for indigenous peoples)
- Right to participate in the elaboration / adoption of decision which relates to them; issue of free and prior informed consent
- Right to maintain and strengthen distinct political, legal, economic, social and cultural institutions
- Right of minorities and indigenous peoples / tribal peoples and their members to enjoy their culture, and to use / teach / learn their own language
- Right of minorities and indigenous peoples / tribal peoples and their members to profess and practice their religion could go under freedom of religion above or here. To decide on a case by case.
- Forced assimilation
- Right to establish contacts across frontiers with other members of their group.

## 11. Migrants, refugees and asylum seekers

- Deportation issues, collective expulsion
- Right to have recourse to the protection and assistance of the consular or diplomatic authorities
- Application for refugee status
- Right to maintain cultural links with State of origin
- Information on their rights under the law
- Specific issues dealt by the ICRMW, such as :
  - o Right to transfer earnings and savings, in particular funds necessary for the support of their families, from the State of employment to their State of origin or any other State
  - o Double taxation issues
  - o Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (part VI of the Convention: cooperation between States, repatriation of bodies, clandestine employment, etc).
- Economic exploitation

UN Agency	Response/ Recommendation
UNHCR	<p>Although not party to the 1951 Refugee Convention or its 1967 Protocol, India has signed and ratified other major international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).</p> <p>The Foreigners Act 1946, applies to all classes of foreigners, including refugees and asylum-seekers and refugee policy is determined on an ad hoc basis. Thus, while the Government has decided to grant refugee status to Tibetans and Sri Lankans, UNHCR registers asylum-seekers and determines refugee status for nationals of non-neighbouring countries and Myanmar.</p> <p>Tibetan refugees have freedom of movement, access to residence and work permits, and for some, the possibility of acquiring Indian citizenship. Sri Lankan Tamil refugees are given shelter, food, and allowances in designated refugee camps and access to the informal labour market. Hindu and Sikh Afghan refugees are permitted to integrate locally, while other refugees from Afghanistan and Myanmar can obtain residence permits. Other refugees are allowed to remain in India on the basis of valid UNHCR documentation. However, inter-state travel within India can be problematic due to security concerns and the general lack of awareness among authorities outside the Delhi region.</p> <p>Despite increasing security concerns, refugees and asylum-seekers continue to have access to the territory of India and asylum procedures. The Government allows all refugees and asylum-seekers to have access to public health, education services and the national legal system. However, a lack of awareness of these services and the local language, constitute practical barriers to effective access. Refugees and asylum-seekers are able to access employment in the large informal Indian economy, but the lack of residence</p>

permits for most refugee groups, with the exception of Afghans and Myanmarese, and the absence of work permits for refugees may lead to exploitation and poverty.

Refugees and asylum-seekers are subjected to exploitation by employers and competition for scarce resources leads to disputes with the host community. Many of them find themselves living in conditions of poverty, while trying to make a living in the harsh and complex urban environment of a large city, such as New Delhi. Instances of gender-based violence and child labour are common.

Refugees have access to durable solutions, namely voluntary repatriation for Sri Lankan refugees and local integration for Hindu and Sikh refugees from Afghanistan. Resettlement remains a limited solution and is used as a protection tool for those with unmet protection needs in India. However, complex bureaucratic procedures have significantly slowed down the process of local integration. The continuing political instability in most countries of origin does not allow refugees to return to their home countries and it is likely that a majority of them will remain in India for extended periods of time

UNHCR agrees with the Government's view that, "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." However, non-ratification of the Convention and the absence of a national refugee protection framework serves as a practical barrier in the delivery of refugee protection in India.

UNHCR endorses the recommendation of the Committee on the Elimination of Racial Discrimination (CERD) that India should 'consider acceding to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and enact a comprehensive legal framework governing the treatment of refugees.'

India is neither a party to the 1954 Convention relating to the Status of Stateless Persons, nor to the 1961 Convention on the Reduction of Statelessness. As set out below, accession to these Conventions is recommended as a general step to strengthen the international legal framework applicable to India.

Accession to the 1954 Convention relating to the Status of Stateless Persons would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Furthermore, the 1961 Convention on the Reduction of Statelessness establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent

	and reduce statelessness.

**12. Internally displaced persons**

- forced displacement

**13. Right to development**

#### 14. Human rights and counter-terrorism

UN Agency	Response/ Recommendation
UNICEF <sup>12</sup>	<p>A growing area of concern, as highlighted in <i>The Situation of Children in India: A Profile</i>, is that of children living in areas affected by violence, whether in Jammu &amp; Kashmir, in the North East, or in the states and districts affected by so-called Naxalite / Maoist violence.</p> <p>The Committee on the Rights of the Child, in its Concluding Observations of 2004, “<i>is concerned that the situation in areas of conflict, particularly Jammu and Kashmir and the north-eastern states, has seriously affected children, especially their right to life, survival and development. The Committee expresses its very serious concern at reports of children who are involved in and are victims of these conflicts.</i>”<sup>13</sup></p> <p>The Secretary General’s Report to the General Assembly on Children and Armed Conflict included India in 2009 and 2010, under the section on <i>Information on grave violations against children in situations not on the agenda of the Security Council or in other situations of concern</i>, especially referring to the situation in the Indian state of Chhattisgarh.</p> <p>The Ministry of Home Affairs’ Annual Report 2010-2011 notes that for the period 2008-2010 there were: in Jammu and Kashmir, 1,695 violent incidents with 1,234 people killed (including 216 civilians); in the North East, 3,631 incidents with 824 civilians killed; in the Left-Wing Extremism – affected areas, 6,061 incidents with 2,632 people killed.<sup>14</sup></p> <p>Reports from both the National Human Rights Commission and the National Commission for the Protection of Child Rights in the last few years have highlighted the situation in civil unrest affected areas across the country and stressed the impact on children’s rights. The NCPCR document states that “<i>civil unrest exposes children to multiple deprivations. Children are killed, hurt and maimed as a direct result of violence. Access to food, water, sanitation, health care and schooling deteriorates during unrest. Political insecurity pushes children into situations that can circumscribe the remainder of their lives. It disrupts families and social networks that support children’s physical, emotional and social development. The NCPCR has encountered children who are displaced and forced to drop out of school as a result. Civil unrest renders children vulnerable to trafficking and sexual abuse. Some children are also pulled into violence against the State</i>”.<sup>15</sup></p> <p>The Supreme Court, the highest judicial authority of India, in its recent judgment of 5<sup>th</sup> July 2011, has condemned the situation of <i>gross violation of human rights</i> (see paragraph 1) in Chhattisgarh. This judgment speaks of a</p>

<sup>12</sup> We have included our inputs under this section, but they are also related to many other sections, such as sections 2 (right to life, disappearances, excessive use of force, violence against children...), 3 (juvenile justice), 10 (minorities and indigenous peoples), 12 (internally displaced persons) and 15 (contested territories: Kashmir).

<sup>13</sup> Committee on the Rights of the Child. Concluding Observations: India. 26 Feb 2004. See para 68.

<sup>14</sup> Ministry of Home Affairs. Annual Report 2010-2011. See pages 6, 13 and 21.

<sup>15</sup> Protection of Children’s Rights in Areas of Civil Unrest’ of March 2010. [www.ncpcr.gov.in/Reports/Policy\\_Document\\_on\\_Protection\\_of\\_children\\_rights\\_in\\_areas\\_of\\_civil\\_unrest.pdf](http://www.ncpcr.gov.in/Reports/Policy_Document_on_Protection_of_children_rights_in_areas_of_civil_unrest.pdf)



*social order in which every person is to be treated as a suspect, and any one speaking for human rights of citizens to be deemed as suspect, and a Maoist (see paragraph 4). The Supreme Court continues referring to the people of Chhattisgarh, whose human rights are widely acknowledged to being systematically, and on a vast scale, being violated by the Maoists/Naxalites on one side, and the State, and some of its agents, on the other (see paragraph 5). It also refers to the continued occupation of schools by security forces (see paragraphs 18 and 26) and it also affirms that thousands of tribal youth are being appointed by the State of Chhattisgarh, with the consent of the Union of India, to engage in armed conflict with the Maoists/Naxalites (see paragraph 43). The Supreme Court signals that the adverse effects on society, both current and prospective, are horrific. Such policies by the State violate both Article 14 and Article 21 (of the Constitution of India), of those being employed as SPOs (Special Police Officers) in Chhattisgarh and used in counter-insurgency measures against Maoists/Naxalites, as well as of citizenry living in those areas.<sup>16</sup>*

The courts have played an important role in ordering government security forces to vacate schools, which have been found to be used as police or paramilitary bases—particularly in some states affected by the conflict with Naxalites (Bihar, Chhattisgarh and Jharkhand) and also in the North-East of the country (Assam and Tripura). Having the Home Ministry support to the Supreme Court directions would ensure that future security forces do not occupy schools for whatever purpose.

UNICEF has also stated the impact that this kind of violence is having on children, while also highlighting that a number of measures have been put in place to improve the situation.<sup>17</sup>

This situation would improve with increased recognition by the Indian Government, within fora's within and outside of India, regarding the situation of armed conflict within its borders. This has been the response of the Indian Ambassador to the UN following the 2009 and 2010 reports<sup>18</sup>, as well as the position of the GoI in the Third and Fourth Combined Periodic Report on the CRC<sup>19</sup> and in the initial report on the Optional Protocol on the Involvement of Children in Armed Conflict.<sup>20</sup>

What is clear is that, regardless of the name given to these situations, children are being affected in very serious ways and that a more decisive, constructive and coordinated approach is in the best interest of child protection. This approach would be further supported with the Government considering and implement the policy recommendations of the National

<sup>16</sup> Supreme Court of India. Order of 5<sup>th</sup> July 2011. <http://supremecourtindia.nic.in/outtoday/wc25007.pdf>

<sup>17</sup> UNICEF. The Situation of Children in India: A Profile. 2011. See pages 33-36.

<sup>18</sup> Statement by Permanent Representative of India to the United Nations, 16<sup>th</sup> June 2010.

Statement by Permanent Representative of India to the United Nations, 12<sup>th</sup> July 2011.

<sup>19</sup> Ministry of Women and Child Development. Government of India. Third and Fourth Combined Periodic Report on the CRC. 2011. See Special Protection Measures chapter, para 8.

<sup>20</sup> Ministry of Women and Child Development. Government of India. Report on the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. 2011. See para 15.

	Commission for the Protection of Child Rights on Protection of Children's Rights in Areas of Civil Unrest, 2010 <sup>21</sup> .

**15. Situation in or in relation to specific regions or territories**

For example:

- Situation in regions where the State has recognised special jurisdictional characteristics (e.g. Aaland Islands of Finland and other territorial autonomy regimes).
- Jurisdiction in oversees territories (i.e. not part of metropolitan). (e.g. overseas territories of France and the Netherlands.)
- Situation in regions of contested territories (e.g. Kashmir, Golan Heights and Gaza).

**LIST OF UNITED NATIONS DOCUMENTS FOR REFERENCE**

- *The Situation of Children in India. A profile.* UNICEF India Country Office, May 2011
- *Concluding Observations: India.* Committee on the Rights of the Child, 26 Feb 2004
- Secretary General's Reports 2009 and 2010 on the Situation of Children and Armed Conflict. United Nations.

---

<sup>21</sup> National Commission for the Protection of Child Rights, 'Protection of Children's Rights in Areas of Civil Unrest', , 2010.