

STATE PARTY EXAMINATION OF INDIA'S THIRD AND FOURTH PERIODIC REPORT

66TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

26 MAY – 13 JUNE 2014

Contents

Opening Comments	1
General Measures of Implementation.....	2
Definition of Child	3
General Principles	4
Civil Rights and Freedoms	5
Family Environment and Alternative Care.....	6
Basic Health and Welfare.....	6
Education, Leisure and Cultural Activities Education	7
Special Protection Measures	8
Concluding Remarks	9

India acceded to the Convention on the Rights of the Child (CRC) on 11 December 1992. On 2 and 3 June 2014, the Committee on the Rights of the Child (the Committee) examined the third and fourth periodic report of India. It was last examined on 21 January 2004.

Opening Comments

The delegation of India was led by Mr. Shankar Aggarwal, the Secretary of the Ministry of Women and Child Development. He was supported by a delegation consisting of the Joint Secretary of the Ministry of External Affairs, representatives of the Ministry of Labour, Health and Family Welfare, Home Affairs, Women and Child Development, Human Resource Development, and the Ambassador and Permanent of the Permanent Mission of India to the United Nations Office and Other International Organizations in Geneva.

Mr. Aggarwal stated that with its 472 million children, the State party had the largest child population in the world. Facing such a reality, he reiterated the government's commitment to the protection of children's rights. Only recently, the State party's approach to protection and promotion of children's rights shifted from a welfare perspective to a rights-based approach and children became perceived as individual right-holders. Mr. Aggarwal also noted that despite geographical, ethnical and religious diversity a number of landmark legislations and policies had been adopted. Within the State party's specific context, legislators needed to keep in mind that while all children were entitled to equal rights, their needs were depending on area, culture, and age and hence required a variety of interventions.

Mr. Aggarwal informed that the government established new institutions in order to centralize and coordinate activities. As a matter of example, he highlighted that the Department of Women and Child Development under the Human Resource Development Ministry had been upgraded as an independent Ministry in 2006. Moreover, a National Commission for Protection of Child Rights (NCPCR) had been established in 2007 under the

Commissions for Protection of Child Rights Act. A number of landmark legislations had also been enacted, such as the New National Food Security Act, providing children in vulnerable situations with food and nutritional security and the 2009 Right to Free and Compulsory Education Act. Key policies adopted in 2013, such as the new National Policy for Children, had been implemented. Finally, Mr. Aggarwal emphasized the continuous work and commitment to the empowerment of adolescent girls.

Mr. Bernard Gastaud, the Coordinator of the Task Force for the CRC, welcomed the delegation and thanked for the information provided by the State party. He further congratulated the State party for holding the general democratic elections between April and May 2014 and reiterated that the implementation of the CRC and its Optional Protocols were incumbent on all governments.

General Measures of Implementation

Legislation

The Committee regretted the absence of a comprehensive single piece of legislation domesticating the CRC, but commended the State party for the many legislative developments. It enquired about the position of the CRC, its Optional Protocols and related international standards in its national legal system. The Committee also asked whether the complexity of the State party's federal structure hindered the implementation of the CRC. Finally, the Committee asked whether the government envisaged signing and ratifying the third Optional Protocol to the CRC on a communications procedure.

The delegation responded that the State party had a dual legal system, and therefore incorporation of international treaties had to be done through national laws voted by the Parliament. In regard to the CRC, the State party undertook an analysis gap and found a number of existing laws were in line with the obligations in the CRC and therefore the adoption of new provisions was not necessary. In case of a conflict between international and national laws, domestic law would prevail, yet, as noted by the delegation, such situation had never occurred. As to the federal structure of the State party, the legislative section had been divided into three lists: Union list, States list and Concurrent list. The delegation explained that this structure did not affect the implementation of the CRC, since residual powers remained under the Union list and in case of conflict, views of the Union list would prevail. However, the federal State could not intervene on subjects delegated to the States. Concerning the signature of the third Optional Protocol, the delegation responded that children already had a direct access to a number of institutions, including the Human Rights Commission, the National Commission for the Protection of Child Rights as well as the Supreme Court, which were adequately guaranteeing the realisation of their rights.

Coordination

The Committee enquired about the role and status of the Ministry for Women and Child Development (MWCD). The delegation responded that the realization of children's rights required an inter-ministerial and a crosscutting approach and explained that the MWCD had been mandated to implement and coordinate activities related to the rights of the child. Under the new 2013 National Policy for Children, a National Coordination and Action Group had been established, headed by the MWCD and mandated to coordinate stakeholders at national level. The delegation also announced that a similar institution would be established at district level.

Dissemination and training

The Committee enquired about the awareness raising programmes around the CRC. The delegation noted that the CRC had been translated into Hindi, but not into vernacular languages. With regard to dissemination, the government had made use of social media and Internet in order to disseminate information about the CRC. As a matter of example, the MWCD launched a media campaign, which included public figures in order to raise awareness about children's rights. Moreover human rights had been incorporated into the curricula for secondary education.

The role of civil society and non-governmental organizations

The delegation reiterated its commitment to work in cooperation with civil society. It also noted that consultations with non-governmental organizations (NGOs) on draft legislations and policies took place on a regular basis. The government had been working with ground level-NGOs in charge of implementing policy programmes, as well as with Delhi and Mumbai NGOs working on advocacy. Finally, the delegation explained that NGOs needed to register under the Public Trust Act and were required to adhere to minimum standards, especially in relation to foreign funding.

Budget Allocations

The delegation stated that the Planning Commission in charge of the Union Budget allocated between 4-5 per cent of the total Union budget to the rights of the child. In addition to the general budget, States and districts allocated their financial resources to child protection. The delegation noted that the capacity of institutions to spend the funds remained the principal challenge. In this context, the State party had been strengthening the capacities of the officers working in the field of child rights at national and district levels.

Data collection

The delegation responded that data collection was a challenge, due to the lack of coordination among responsible bodies. The major source of information related to children had been the census, conducted every 10 years (last in 2011). The Ministry of Statistics had also been in charge of collecting information on children from different States and districts. Moreover, under the *Track the Missing Child Portal*, information about missing children had been collected.

National Commission for the Protection of Child Rights

The Committee asked about a complaints procedure for children. The delegation noted that a National Commission for the Protection of Child Rights (NCPCR) had been established in 2007 and children could directly approach the Commission without their parents or guardians. The NCPCR was composed of six independent members and a chairperson, all appointed by the government and with an extensive experience in the field of child protection.

Definition of Child

The Committee was concerned about existing discrepancies in the definition of the child in different legislations, such as the 2000 Juvenile Justice Act, the 2012 Protection of Children from Sexual Offences Act and the 1986 Child Labor Act. The delegation responded that the 2013 National Policy for Children defined a child any person below the age of 18 years. This definition had been determined in relation to the national context and the objectives of the

aforementioned legislations. As a matter of example, given the socioeconomic conditions in the State party, a complete ban on employment of children would not be adequate. For such purpose, the 1986 Child Labor Act prohibited the employment of children below the age of 14 years.

General Principles

Non-discrimination

The Committee was concerned about the continuous discrimination of girls, children in irregular migration situations, children of ethnic minorities, and children from scheduled castes and scheduled tribes, including the Dalit and Adivasi. It asked what measures had been taken to change mind-sets and tackle discrimination. The delegation stated that the Constitution, prohibited discrimination on the grounds of sex, religion and cast and permitted affirmative action for the welfare of women and children. Moreover, the NCPCR was mandated to inquire into complaints on child rights and eliminate discrimination against children. Concerning scheduled castes and tribes, the government had enacted anti-discrimination laws, including the 1989 Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act (PoA). Moreover, National Commissions for Scheduled Castes, National Commissions for Scheduled Tribes and special courts for speedy trial had been established in 31 States to investigate and redress human rights violations. Finally, the government provided scholarship to vulnerable groups through various schemes, including the National Scholarship for Scheduled Castes and Scheduled Tribes, and the Pre-Matric Scholarship for the Children of those Engaged in Unclean Occupations.

The delegation reiterated its commitment to prevent discrimination against girls. For this purpose, the government launched the Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (Sabla), which provided girls with age appropriate knowledge with respect to nutrition, reproductive cycle, marriage and pregnancy. In 2013, the Sabla scheme reached 11.42 million of adolescent girls in the age group of 11-18. The Sabla scheme had been an effective way to address girls in vulnerable situations, including school dropout girls. Finally, the the Rashtriya Kishore Swasthya Karyakram scheme focused on mental health, nutrition, substance abuse and gender-based violence.

Best interest of the child

The Committee was concerned about the lack of legal definition of the best interest of the child. The delegation responded that the best interest of the child was a dynamic and crosscutting concept, which had been taken into account by lawmakers as a primary consideration in all public actions and decisions concerning children. For this purpose a new understanding of children as individual holders of rights and responsibilities had been developed. The government had been also cooperating with civil society while drafting legislation and policies related to the rights of the child in order to effectively incorporate the principle.

Respect for the views of the child

The Committee highlighted the importance of taking into account the views of all children, regardless their age, in decisions that could affect them, such as family-related legislations, and asked whether there was an age limit for a child to be heard by the judge in judicial proceedings. The delegation stated that under the 2000 Juvenile Justice Act, children had the rights to be heard by a judge in proceedings affecting them, in accordance with the level of

maturity. The delegation also explained that, in educational settings, children had the opportunity to participate in the decision-making processes through Student Councils, the Youth Parliament and the Nehru Yuva Kenda Sangathan initiative. Finally, the delegation noted that institutionalization of child participation of vulnerable children, including street children and children out of school, had been a challenge.

Civil Rights and Freedoms

Birth Registrations

The Committee drew attention to the low level of birth registrations and queried whether any measures had been taken. The delegation responded that a substantial progress had been made in achieving universal registration of childbirths. In 2010, 83.6 per cent of childbirths were registered and many States, including Punjab and Pondicherry, had achieved universal registration. In order to facilitate the procedure, significant budgetary resources had been allocated to awareness raising programmes.

Child Marriages

The Committee noted that, despite a relatively progressive legislation, child marriage continued to be a widespread practice and enquired whether the 2006 Prohibition of Child Marriage Act (PCMA) overrode Personal Codes. The delegation responded that the PCMA prohibited child marriages and provided for punishment of those abetting or solemnizing it. Moreover, under the 2012 Registration of Births and Deaths Amendment Bill, all marriages needed to be registered under the Registrar General of India. The government also developed a 2013 National Plan of Action to Prevent Child Marriage, which focused on the implementation of the PCMA, awareness raising campaigns and emphasis on capacity building of Child Marriage Prohibition Officers. The delegation also explained that the Hindu Personal Marriage Act set the minimum legal age of marriage at 18 for girls and 21 for boys. Moreover, the Karnataka High Court issued a landmark ruling, highlighting that the PCMA had an overriding effect over the provisions of the Muslim Personal Law, where the marriage of a girl child was allowed once she attained puberty. Despite the progress made in jurisprudence, the delegation noted that child marriages still took place under the Muslim Personal Law.

Corporal punishment

The Committee was concerned about the lack of explicit criminalization of corporal punishment. It also noted that corporal punishment at home and institutions had not been properly prohibited. The delegation responded that the government had taken several measures together with civil society to realize the rights of the child to live free from violence. In educational settings, corporal punishment had been prohibited under the Section 35 (1) of the 2009 Rights of Children to Free and Compulsory Education Act (RTE). In case of violation of the aforementioned provisions, children were entitled to file a complaint to the CPCR. Finally, the delegation explained, that the draft amendment of the 2000 Juvenile Justice Act provided for criminalization of corporal punishment at home and institutions.

Family Environment and Alternative Care

Adoption

The Committee asked for more information related to inter-country and domestic adoption. The Committee enquired about safeguards to ensure that children were not adopted for exploitative purposes. The delegation explained that the 2006 Juvenile Justice Amendment Act gave the mandate to the Child Welfare Committees (CWC) to take decisions on adoption and recognized the role of non-institutional organizations, such as Specialized Adoption Agencies (SAA), in facilitating pre-adoptions, adoptions and post-adoption follow-up at a district level. In order to prevent adoption for exploitative purposes, a number of measures had been adopted. Each SAA was required to adhere to the guidelines or rules governing in-country/inter-country adoption, laid down by the State government. The delegation also noted that the government had adopted guidelines on adoption in 2011, which gave priority to domestic adoption (ratio of 80:20), excluding children with disabilities, and provided for an expeditious adoption process through centralized dossier system. Finally, the delegation also noted that the Integrated Child Protection Scheme (ICPS) provided for foster care and sponsorships and created a care fund, placed at the disposal of the District Child Protection Society.

Baby boxes

The Committee was concerned about the high number of children abandoned by parents under the so-called “cradle baby scheme” in the State party. The delegation explained that the cradle baby reception centres had been established with an aim to rescue abandoned infants. It further noted that children placed to the reception centres were provided with medical treatment before their placement for adoption.

Basic Health and Welfare

Children with disabilities

The Committee enquired about access to health of children with disabilities and stated that certain types of disabilities could be prevented with simple interventions. It also queried to the use of data and statistics to deal with children with disabilities. The delegation noted that the 2013 amended version of the 1995 Persons with Disabilities Act harmonized the provisions of the Act with the UNCRPD. The government established under the Integrated Child Protection Scheme specialized units to address the needs of children with disabilities. Moreover the delegation also explained that assistance to children with disabilities had been mainly driven by the civil society sector. Finally, the Government had launched in 2013 an early detection initiative Rashtriya Bal Swathya Karyakaram, which included provisions for child health screening and early intervention services through early detection. Nearly 35 per cent of children had been screened under the scheme.

Child mortality

The Committee enquired about programmes preventing child and maternal mortality. The delegation responded that significant progress had been made in tackling child and maternal mortality. In 2013, child mortality was about 52 deaths per 1000 live births and with regards to maternal mortality rate, it was around 178 per 1,000 live births. The delegation also identified the neo-natal mortality rate, which stood at 52 per cent of the under-five mortality

rate, as the main contributor to child mortality. In order to reduce under five and maternal mortality, the government changed from a child survival centric approach to a quality life of children approach. Adolescent health, including vaccination, dissemination of information regarding reproductive rights had been a priority. Preventative measures had been undertaken through the promotion of institutional delivery, where food and free diagnostic were provided to mothers (78 per cent institutional delivery).

Malnutrition

The Committee was concerned about the fact that around 40 per cent of children suffered from under-nutrition and some 60 per cent of children were anaemic. The delegation responded that it had developed measures to tackle those problems including the provision of a folic acid/iron supplement by health workers at a district level. The Midday Meal in Schools scheme had also been another key initiative in helping under-nourished children.

Breastfeeding

The delegation noted that the breastfeed rate had been around 40 per cent in the State party. Breastfeeding had been promoted at national level, through awareness raising campaigns and at district level through local Anganwadi and health workers. Moreover, through the high institutional delivery rate, it had been easier for the government to provide counselling and dissemination information with regards to breastfeeding to mothers. Finally, the delegation noted that it had adopted the World Health Organization's International Code of Marketing of Breastmilk Substitutes and had been implementing its provisions.

Education, Leisure and Cultural Activities Education

Education

The Committee commended the State party for the adoption of the 2009 RTE but noted that dropout rates seemed to be substantial. It asked the delegation what measures had been taken to ensure that children stayed or returned to schools. The delegation noted that the 2009 RTE guaranteed children between 6 and 14 years free, mandatory and quality education and that the coverage for primary education attained nearly 93 per cent. The RTE also provided children with disabilities with access to inclusive education. To tackle high dropout rates, the government had adopted a 2013 National Early Childhood Care and Education (ECCE) Policy, focusing on care and early learning, which decreased the risk of drop out. Moreover scholarship had been provided to children from disadvantaged groups, including scheduled castes and tribes as well as to girls. Incentives, such as free meals and bicycles were provided in order to ensure that children stayed in schools. The delegation also highlighted that the main challenge was the capacity building of teachers. There were still too many cases of teacher absenteeism and corruption. Workshops and trainings had been organized to improve the situation and strengthen accountability among teachers.

Regarding resources for education, the delegation explained that 4.6 per cent of the Gross Domestic Product had been allocated to education, but the main challenge remained the absorption capacity of the budget.

Special Protection Measures

Juvenile justice

The Committee asked whether there were special courts for children in conflict with the law throughout the country and whether trainings in the area of juvenile justice had been provided to judges, police authorities and prosecutors. Further on, the Committee enquired whether there were special rehabilitation and reintegration programmes for children in conflict with the law. The Committee requested more information about how procedural safeguards were respected. The delegation responded that the 2000 Juvenile Justice Act defined a juvenile or child any person under 18 years of age. The 2011 amendment to the 2000 Juvenile Justice Act established Juvenile Justice Boards (JJBs) for children in conflict with the law. Juvenile offenders had been assisted with social workers and the time line for decisions in the JJBs had been set at 4 months. The government also noted that the Delhi High Court framed guidelines for child friendly procedures, providing for a lawyer, speedy trials, medical and social assistance, as well as rehabilitation. Finally, the delegation explained that special juvenile police units had been established at a district level to ensure a child-friendly environment during interrogations.

Child labor

The Committee was concerned about high numbers of children affected by child labor and working in hazardous occupations, including mines. The delegation explained that the employment of children in 18 hazardous occupations was prohibited. The government had been in the process of amending the 1986 Labor Bill to prohibit the employment of children under the age of 14, as well as the employment of adolescents between the age of 14 and 18 in specific fields, such as mining.

Refugees and asylum seekers

The Committee regretted that the State party did not sign the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol, and enquired about measures and programmes adopted to protect the rights of refugees and migrant children. The delegation explained that it had been practicing the principle of voluntary repatriation and equality before the law. Children, including stateless and refugee children, had access to primary services and free education. Regarding the signature of the Convention on refugees, the delegation explained that it was not relevant to the national context, because it did not address adequately the major migration influxes but was rather designed to deal with individual cases. Finally, the delegation also noted that the government had been facilitating naturalizations of Hindi Pakistani.

Commercial Surrogacy

The Committee noted that commercial surrogacy had been a serious concern and enquired whether there were traditional and gestational forms of surrogacy. It also asked what had been done to prevent traditional surrogacy which amounted to the sale of children. The delegation noted that only gestational forms of surrogacy had been authorized by legislation. Moreover, the Ministry of Health and Family had been working on a draft Bill on the issue of commercial surrogacy, which would prevent the misuse of reproductive technology and protect the best interest of the child. As a matter of example, a woman would not be able to surrogate more than twice in her lifetime. The delegation also explained that the new Bill

would also tighten up the procedure, requiring specific confirmation from commissioning parents that surrogacy was legally recognized in their own country, and meet other stringent legal and visa conditions.

Concluding Remarks

Mr. Benyam Dawit Mezmur thanked the delegation for the constructive dialogue and discussion with the Committee. He commended the government for the efforts made in advancing the rights of the child, despite great challenges such as poverty and geographical disparities. He further noted that, the State party had to focus on structural improvements related to general measures of implementation. As a matter of example, he recommended to strengthen the coordination among the bodies responsible for the implementation of the CRC at national, regional and district levels. He also recommended to the government to improve the absorption capacity of funds in order to effectively implement the progressive legislation providing key safeguards to children. He also noted that the Committee was deeply concerned about discrimination, as well as emerging issues such as surrogacy and alternative care. Finally, Mr. Mezmur noted that the government needed to move away from reactive policies and emphasize prevention.

Mr. Vivek Joshi, Joint Secretary at the Ministry of Women and Child Development thanked the Committee for its interactive dialogue. He reiterated the State party's commitment to advance the rights of the child in a secular way and at the same time highlighted the many challenges that needed to be overcome. Mr. Aggarwal also thanked the civil society as well as stakeholders from the private sector for the assistance in drafting legislations and policies related to the rights of the child.