
**REPORT ON THE CURRENT LEVELS OF
REPRESENTATION OF WOMEN IN THE HUMAN RIGHTS
ORGANS AND MECHANISMS**

**The School of Social Sciences and Interdisciplinary Studies (SSSIS)* ,
Rajiv Gandhi National University of Law,
Punjab, India**

**The School of Social Sciences and Interdisciplinary Studies (SSSIS) was assisted by the Centre for Advanced Studies in Human Rights (CASHR), Rajiv Gandhi National University of Law, Punjab, India.*

Q1: Do current processes in the State allow for, or encourage, a consideration of gender balance when nominating, electing and appointing experts for human rights organs such as the Advisory Committee and treaty bodies? Do these processes ensure publicity, transparency, and participation by civil society organizations and/or other actors?

In the 36th session of the United Nations Human Rights Council (hereinafter “UNHRC”), 2017, India accepted¹ the recommendation of the Working Group on the Universal Periodic Review (India), to adopt an open, merit-based selection process when selecting national candidates for United Nations treaty body elections (recommended by the United Kingdom of Great Britain and Northern Ireland).²

India guarantees equality by virtue of the fundamental rights under the Constitution of India, 1950.³ The process of nomination by the State is an executive action, which has to comply with Article 14⁴. Therefore, such a process has to be transparent.⁵ Further, under the Right to Information Act, 2005 (hereinafter the “RTI Act”), public authorities⁶ are under statutory

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review (India)*, U.N. Doc. A/HRC/36/10/Add.1, (Sept. 10, 2017), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/10/Add.1.

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review (India)*, U.N. Doc. A/HRC/36/10, (July 17, 2017), <https://undocs.org/A/HRC/36/10>.

³ INDIA CONST. art. 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India;

INDIA CONST. art. 15, cl. 1: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them;

INDIA CONST. art. 15, cl. 3: Nothing in this article shall prevent the State from making any special provision for women and children;

INDIA CONST. art. 16, cl. 1: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State;

INDIA CONST. art. 16, cl. 2: No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State;

INDIA CONST. art. 32, cl. 1: The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is guaranteed;

INDIA CONST. art. 226, cl. 1: The right to move the High Court by appropriate proceedings for the enforcement of the rights conferred by Part III is guaranteed.

⁴ *Shayara Bano v. Union of India*, (2017) 4 S.C.C. (Civ) 277 (India).

⁵ *Natural Resources Allocation, In re, Special Reference*, (2012) 10 S.C.C. 1 (India): “State action to escape the wrath of Art. 14 has to be fair, reasonable, non-discriminatory, transparent, capricious...”

⁶ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, § 2(h): “public authority” means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

obligation, under section 4 of the Act⁷ to self-disclose, disseminate information about policies or decisions affecting the public.

However, no *suo motu* disclosures have been made by the relevant public authority, that is, the Ministry of External Affairs, Government of India (hereinafter the “MEA”), regarding the process/procedure followed while nominating candidates to the UNHRC Advisory Committee (hereinafter the “Advisory Committee”) and UN treaty bodies (hereinafter the “treaty bodies”), i.e. either the required procedure/process does not exist, or that the procedure/process exists but is not publicly disclosed.

Consequently, an RTI Application was filed seeking the required information under section 6(1)(a), RTI Act.⁸

Q 2: Does the State take into account the gender composition of the treaty bodies or the Advisory Committee at the time of nomination or election?

India has nominated Mr. Ajai Malhotra twice⁹ for the membership of the Advisory Committee. When he was nominated in the year 2016, the existing gender composition of the Advisory Committee consisted of 6 females and 12 males, while in the year 2017, the gender composition of the Advisory Committee was 4 females and 14 males.¹⁰ While this nomination has not improved the gender ratio of the UNHRC Advisory Committee, however, India as a party has to ensure that the best possible expertise is made available to the UNHRC Advisory Committee¹¹.

In 2018, when Ms. Preeti Saran was nominated and subsequently elected to the Asia-Pacific seat of the United Nations Committee on Economic, Social and Cultural Rights (CESCR), the

⁷ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, § 4(1)(b)(iii): the procedure followed in the decision-making process, including channels of supervision and accountability

§ 4(1)(b)(v): the rules, regulations instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions

§ 4(1)(b)(vii): the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof

§ 4(1)(c): publish all relevant facts while formulating important policies or announcing the decisions which affect the public.

⁸ Annexure I: RTI Application Reference Number: MOEAF/R/E/20/00572, filed on May 17, 2020.

⁹ Human Rights Council, *Election of members of the Human Rights Council Advisory Committee*, U.N. Doc. A/HRC/36/17 (July 25, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/221/66/PDF/G1722166.pdf>;

Human Rights Council *Election of members of the Human Rights Council Advisory Committee*, U.N. Doc. A/HRC/33/3 (July 22, 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/163/90/PDF/G1616390.pdf>.

¹⁰ Human Rights Council, *Advisory Committee: Members*, <https://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/Members.aspx>.

¹¹ H.R.C. Res. 5/1, ¶ 67, U.N. Doc. A/HRC/5/1 (June 18, 2007).

gender balance in the body was highly disproportionate, with a ratio of 13:5.¹² India's nomination helped in balancing gender ratio to a certain extent. The ratio in the body after the election in 2018 (as on January 1, 2019¹³) was 2:1, with 12 male members and 6 female members.

An RTI Application has been filed seeking reply to whether the Government of India takes into account the gender composition of the Advisory Committee or the treaty bodies at the time of nomination or election.¹⁴

Q 3: Does the State have any good national practices related to the nomination, election and appointing processes for human rights organs such as the Advisory Committee and treaty bodies? Do these processes take into account gender when nominating, electing, or appointing?

An RTI Application has been filed seeking the information on the process/procedure followed by the Government of India in nominating candidates to the Advisory Committee and the treaty bodies.¹⁵

Q 4: How does the State take into consideration its obligations concerning non-discrimination and women's right to equal access to participation, as well as its obligations under Article 8 of CEDAW to ensure women's equal participation in the work of human rights organs when nominating or appointing candidates for those organs and mechanisms?

The Constitution of India¹⁶ lays down a directive for the state to foster respect for international law and treaty obligations. However, this is not enforceable in the court of law.¹⁷ Further, Article 246¹⁸, Constitution of India, read with Entry 14, Union List¹⁹ (under Seventh Schedule),

¹² Human Right Bodies, *Election of the Members of the Committee on Economic, Social and Cultural Rights to replace those whose terms are due to expire on 31 December 2018*, <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/Elections2018.aspx>.

¹³ Human Right Bodies, *Election of the Members of the Committee on Economic, Social and Cultural Rights to replace those whose terms are due to expire on 31 December 2020*, <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/Elections2020.aspx>.

¹⁴ Annexure I: RTI Application Reference Number: MOEAF/R/E/20/00572, filed on May 17, 2020.

¹⁵ Annexure I: RTI Application Reference Number: MOEAF/R/E/20/00572, filed on May 17, 2020.

¹⁶ INDIA CONST. art. 51, cl. (c): The State shall endeavour to... foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration.

¹⁷ INDIA CONST. art. 37: The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

¹⁸ INDIA CONST. art. 246, cl. 1: Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).

¹⁹ INDIA CONST. Seventh Schedule, Union List, Entry 14: Entering into treaties and agreements with foreign countries and implementing treaties, agreements and conventions with foreign countries.

provides that the power to implement international conventions in the domestic sphere lies with the Parliament of India, even though it may relate to a subject matter falling under the State list²⁰ (under Seventh Schedule).

However, while interpreting Article 73²¹ in *Rai Sahib Ram Javaya Kapur v. State of Punjab*²², the Supreme Court of India held that the Union Executive can exercise powers under the Union List, even if there does not exist any law to that effect, subject to it not being violative of any law. Therefore, with a combined reading of Article 73, Article 246 and Entry 14, Union list, it can be said that the Parliament has the power to make law as to how an international convention should be implemented domestically, however, in absence of the same, the power to enter into international obligations rests with the Union Executive.²³

If the Parliament has enacted a law, which is in conflict with the international convention, then the domestic law will prevail.²⁴ However, in absence of any such domestic law, Indian courts are bound to give effect to international law.²⁵ Further, the Supreme Court has held in various other cases that an international convention which is consistent with the domestic law, especially fundamental rights, must be read into the relevant provisions to enlarge their scope²⁶, all the more when there is a vacuum in the domestic law²⁷. Moreover, the Supreme Court in *G. Sundarrajan v. Union of India*²⁸ relied on an International convention, to which India is not a party, but is consistent with the domestic law.²⁹

²⁰ INDIA CONST. art. 253: Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

²¹ INDIA CONST. art. 73, cl. 1: Subject to the provisions of this Constitution, the executive power of the Union shall extend- (a) to the matters with respect to which Parliament has power to make laws; and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

²² *Rai Sahib Ram Javaya Kapur v. State of Punjab*, A.I.R. 1955 S.C. 549.

²³ *Union of India v. Azadi Bachao Andolan*, (2004) 10 S.C.C. 1: "The Executive is qua the State competent to represent the State in all matters international and may by agreement, convention or treaty incur obligations which in international law are binding upon the State."

²⁴ *National Legal Services Authority v. Union of India*, A.I.R. 2014 S.C. 1863.

²⁵ *Id.*

²⁶ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241.

²⁷ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 S.C.C. 759.

²⁸ *G. Sundarrajan v. Union of India*, (2013) 6 S.C.C. 620.

²⁹ *Id.*

The Constitution of India guarantees the right to equality³⁰, non-discrimination³¹ and equal access to participation³², including in the political sphere³³. Moreover, the judiciary has played a pivotal role in incorporating the principles of the international conventions/treaties into domestic law. The Supreme Court of India, while reading into the fundamental rights under the Constitution of India, struck down the law that denies employment to women, only on the basis of gender.³⁴ Moreover, an unsafe working place has also been regarded as being discriminatory when the woman has reasonable grounds to believe that her objection would put her in a disadvantaged position with regard to her employment, including recruiting and promotion.³⁵ In *Madhu Kishwar v. State of Bihar*³⁶, the Supreme Court, while incorporating Article 2(e), Covenant on Elimination of All forms of Discrimination Against Women, 1979 (CEDAW), along-with Articles 1, 3, 6 and 8 of the Declaration of Right to Development, 1986, held that equal participation of women in the political, economic, social and cultural sphere is

³⁰ INDIA CONST. art. 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

³¹ INDIA CONST. art. 15, cl. 1: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them;

INDIA CONST. art. 15, cl. 2: No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a)access to shops, public restaurants, hotels and palaces of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public;

INDIA CONST. art. 16, cl. 2: No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

³² INDIA CONST. art. 15, cl. 3: Nothing in this article shall prevent the State from making any special provision for women and children;

INDIA CONST. art. 16, cl. 1: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

³³ INDIA CONST. art. 243D, cl. 3: Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat;

INDIA CONST. art. 243D, cl. 4: The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level;

INDIA CONST. art. 243T, cl. 4: The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide;

INDIA CONST. art. 243T, cl. 3: Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

³⁴ *Air India v. Nargesh Meerza*, A.I.R. 1981 S.C. 1829.

³⁵ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241.

³⁶ *Madhu Kishwar v. State of Bihar*, (1996) 5 S.C.C. 125.

associated with national development. In *Charu Khurana v. Union of India*³⁷, the Supreme Court highlighted that India as a party to the CEDAW, 1979 is committed to actualise the principles of equality under the convention.³⁸ Further, the Court, while incorporating Article 1 and Article 11(1) of the CEDAW, 1979, recognised the right to same employment opportunity, including the application of same criteria for selection in matters of employment and all steps to be taken to eliminate discrimination against women in the field of employment as inalienable human rights.³⁹

Q 5: How many women has the State nominated to human rights organs and mechanisms in the last five years (such as the Advisory Committee or treaty bodies)?

Ms. Preeti Saran was nominated by India in 2018 to the Committee on Economic, Social and Cultural Rights.⁴⁰

No female has been nominated for the membership of the Advisory Committee.⁴¹

Since 2015, nine Indian women have applied for the following UNHRC Special Procedures (hereinafter “special procedures”) mandates:

- 1) **Enakshi Ganguly Thukral:** Special Rapporteur on trafficking in persons, especially women and children, 2020.⁴²
- 2) **Jayashree Gupta:** Expert Mechanism on the Right to Development, 2019⁴³; Special rapporteur on the Right to Food, 2019⁴⁴; Independent Expert on the enjoyment of all human rights by older persons, 2019⁴⁵; Special Rapporteur in the field of cultural rights, 2015.⁴⁶

³⁷ *Charu Khurana v. Union of India*, (2015) 1 S.C.C. 192.

³⁸ *Id.*, “equality principles were reaffirmed in the Second World Conference on Human Rights at Vienna in June 1993 and in the Fourth World Conference on Women held in Beijing in 1995. India was a party to the ... Declarations and is committed to actualise them”

³⁹ *Id.*

⁴⁰ Human Right Bodies, *Election of the Members of the Committee on Economic, Social and Cultural Rights to replace those whose terms are due to expire on 31 December 2018*, <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/Elections2018.aspx>.

⁴¹ Human Rights Council, *Advisory Committee: Members*, <https://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/Members.aspx>.

⁴² Human Right Council, *Special Procedure: Appointments at the 44th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC44.aspx>.

⁴³ Human Right Council, *Special Procedure: Appointments at the 43th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC43.aspx>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Human Right Council, *Special Procedure: Appointments at the 30th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC30.aspx>.

- 3) **Vrinda Grover:** Working Group on the issue of discrimination against women in law and in practice, 2017.⁴⁷
- 4) **Puneet Kaur Grewal:** Working Group on the issue of discrimination against women in law and in practice, 2017.⁴⁸
- 5) **Teesta Setalvad:** Special Rapporteur on minority issues, 2017.⁴⁹
- 6) **Kaushalya Munda:** Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), 2016.⁵⁰
- 7) **Neha Kumar:** Working Group on the issue of human rights and transnational corporations and other business enterprises, 2016.⁵¹
- 8) **Divya Kanwar Bhati:** Special Rapporteur on the right to privacy, 2015.⁵²
- 9) **Nandini Azad:** Special Rapporteur on violence against women, its causes and consequences, 2015.⁵³

An RTI Application has been filed seeking reply as to how many women (from the list above, excluding Ms. Enakshi Ganguly Thukral) were nominated by the Government of India to the special procedures.⁵⁴

Q 6: Does the State take any action to publicize and encourage women to apply for the special procedures mandate-holders vacancies?

An RTI Application has been filed to seek information on the procedure/standard operating procedure/decision-making process followed by the Government of India while nominating candidates for the special procedures.⁵⁵

⁴⁷ Human Right Council, *Special Procedure: Appointments at the 36th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC36.aspx>.

⁴⁸ *Id.*

⁴⁹ Human Right Council, *Special Procedure: Appointments at the 35th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC35.aspx>.

⁵⁰ Human Right Council, *Special Procedure: Appointments at the 34th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC34.aspx>.

⁵¹ Human Right Council, *Special Procedure: Appointments at the 31th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC31.aspx>

⁵² Human Right Council, *Special Procedure: Appointments at the 29th session of the Human Rights Council*, <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC29.aspx>.

⁵³ *Id.*

⁵⁴ Annexure I: RTI Application Reference Number: MOEAF/R/E/20/00572, filed on May 17, 2020.

⁵⁵ Annexure I: RTI Application Reference Number: MOEAF/R/E/20/00572, filed on May 17, 2020.

Q 7: What are the main challenges within your country in tackling the issue of gender balance when nominating and electing candidates for human rights organs and mechanisms such as the Advisory Committee, treaty bodies and the special procedures?

The procedure/policy followed by India in the nomination, election or appointment of candidates to international human rights organs and mechanisms, such as the Advisory Committee, treaty bodies and Special Procedures, either does not exist or is not electronically available or accessible. This ambiguity is in itself problematic. This is because, far from assessing gender balance in these processes, the general public is not even informed as to whether a policy for these nominations, elections or appointments exists. This ambiguity can mean either of two things:

- 1) The nomination, for the Advisory Committee, treaty bodies and Special Procedures takes place through an *ad-hoc* mechanism employed by the Government of India, or,
- 2) There exists a concrete policy of the government to this effect, however, this policy is not publicly accessible, at least through online means.

Both of these scenarios' present challenges to the gender balance in the nomination process of India. The first scenario is deeply problematic, for it allows scope for arbitrary executive discretion, which is contrary to Article 14 of the Constitution⁵⁶.

A number of issues arise in the second scenario as well. *Firstly*, the subsistence of general policies without public promulgation is perverse to the fundamental principle of rule of law inherent in the Constitution of India⁵⁷. *Secondly*, public authorities, as defined in Section 2(h) of the RTI Act, are under statutory obligation to self-disclose, disseminate and routinely publish 17 categories of information under Section 4 of the RTI Act. Specifically, sections

⁵⁶ Sheo Nandan Paswan v. State of Bihar, A.I.R. 1987 S.C. 877, 895 "The law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the State."; AL Kalra v. P & E Corporation of India, Limited, A.I.R. 1984 S.C. 1361, 1367 "Article 14 strikes at arbitrariness in executive/ administrative action".

⁵⁷ P Sambamurthy v. State of Andhra Pradesh, A.I.R. 1987 S.C. 663: "[T]he rule of law... is clearly a basic and essential feature of the Constitution."

4(1)(b)(iii)⁵⁸, 4(1)(b)(v)⁵⁹, 4(1)(b)(vii)⁶⁰ and 4(1)(c)⁶¹ of the RTI Act, obligate the public authorities to disseminate information about policies or decisions affecting the public. The focus of section 4(1) and the tribunals has been to computerize information⁶² to increase accessibility of information. However, in the instant case, no *suo motu* computerized disclosures with respect to the specific policy sought have been made by the relevant public authorities, that is, the MEA.

Accordingly, a reasonable inference may be drawn that in the absence of the relevant disclosure, either the required policy does not exist, or that the policy exists but is not publicly disclosed. In the latter case, the relevant public authority would be in non-compliance with its obligations under the RTI Act. Clearly, lack of any information remains the greatest challenge in tackling the issue of gender balance when nominating and electing candidates for human rights organs and mechanisms such as the Advisory Committee, treaty bodies and the Special Procedures.

As per UNHRC Resolution 5/1⁶³ read with UNHRC Resolution 16/21⁶⁴ National Human Rights Institutions (NHRIs) may also nominate candidates as special procedures mandate holders. However, there is no specific provision under the Protection of Human Rights Act, 1993 (hereinafter “PHRA”) or the associated regulations⁶⁵ that deal with the procedure to be followed by the National Human Rights Commission for sending its nominations to the Special Procedures. In such a scenario, it can be reasonably inferred that this is done by the National Human Rights Commission under section 12(j), PHRA⁶⁶. However, absence of clear guidelines/criteria for selection can lead to absolute discretion and arbitrariness in the decision-making, which is contrary to Article 14.⁶⁷

⁵⁸ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, § 4(1)(b)(iii): the procedure followed in the decision-making process, including channels of supervision and accountability.

⁵⁹ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, § 4(1)(b)(v): the rules, regulations instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;(v) the rules, regulations instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions.

⁶⁰ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, § 4(1)(b)(vii): (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof.

⁶¹ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, § 4(1)(c): publish all relevant facts while formulating important policies or announcing the decisions which affect the public.

⁶² Jagdish Kumar v. M.C.D., I.L.R. (2002) 2 Del. 730; Jayesh Joshi v. Department of Personnel and Training, [2008] C.I.C. 6969.

⁶³ H.R.C. Res. 5/1, *supra* note 11, ¶ 42.

⁶⁴ H.R.C. Res. 16/21, ¶ 22(a), U.N. Doc. A/HRC/16/21 (April 12, 2011).

⁶⁵ NHRC (Procedure) Regulations (1994).

⁶⁶ Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1993, § 12(j): such other functions as it may consider necessary for the promotion of human rights.

⁶⁷ *Supra* note 56.

The disproportionate gender balance in nominating candidates by India for the human rights institutions can also be attributed in part to the general issues with respect to the status of women in India, such as female foeticide, unequal access to education, endemic crimes against women *inter alia*. The family and domestic commitments of women remain a major challenge to their employment especially, when the government makes them as a ground of their resignation or withholding promotion etc.⁶⁸ Another challenge is the gap between the law and its implementation on the ground level owing to the demographic structure and the federal system.⁶⁹ Admittedly, gender parity in nominations to international human rights organs remains a tall order.

Q 8: Are there good practices by the state or other stakeholders that ensure gender parity? If yes, could you please share these practices?

India, while following its constitutional mandates,⁷⁰ has enacted various laws and policies to achieve gender parity, especially in economic and political representation and employment opportunities for women, including equal pay for equal work.⁷¹

Education is an essential instrument to attain gender parity in economic independence. The 86th Constitution (Amendment) Act, 2002 envisaged the right to free and compulsory education as a fundamental right for children between 6 to 14 years of age.⁷² This was further endorsed by the Right of Children to Free and Compulsory Education Act, 2009. Moreover, there are certain educational policies implemented by the Central Government to encourage and empower girls from a young age; these include *Beti Bachao Beti Padhao*,⁷³ *National Scheme of Incentive to*

⁶⁸ *Air India v. Nergesh Meerza*, (1981) 4 S.C.C. 335; *C.B. Muthamma v. Union of India*, (1979) 4 S.C.C. 260.

⁶⁹ U.N. CEDAW, *Convention on the Elimination of All Forms of Discrimination against Women*, 58th Sess., 1220th mtg. at 5, U.N. Doc. CEDAW/C/SR.1220 (July 11, 2014).

⁷⁰ INDIA CONST., art. 14, art. 15, cl.1, 2, 3, art.16, cl. 1, 2.

⁷¹ INDIA CONST, art. 39(d): that there is equal pay for equal work for both men and women;

INDIA CONST, art. 41: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

⁷² INDIA CONST., art. 21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

⁷³ Government of India, *Beti Bachao Beti Padhao*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 08, 2020), <https://wcd.nic.in/bbbp-schemes>; This scheme aims to prevent gender biased sex selective elimination of the foetus while ensuring education and participation of the girl child.

Girls for Secondary Education,⁷⁴ *Balika Samriddhi Yojana*,⁷⁵ *Samagra Shiksha Scheme*,⁷⁶ *PRAGATI Scheme*,⁷⁷ etc.

India has unreservedly adopted the principles laid down in the Beijing Declaration and Platform for Action, 1995⁷⁸ by introducing the *National Policy for the Empowerment of Women, 2001*⁷⁹ which aims at achieving equal access for participation for women in economic, social and political spheres.⁸⁰ Moreover, in 2006, India had introduced gender budgeting as a tool for achieving gender mainstreaming, to ensure that benefits of schemes and policies reach women as much as men, by incorporating a Gender Budget Statement.⁸¹

The Ministry of Women and Child Development started the *Support to Training and Employment Programme for Women (STEP) Scheme* in 1986-87 to provide skills that give employability to women and enable them to become self-employed.⁸² Moreover, the Ministry outlined a *Draft National Policy for Women, 2016* focusing on their skill and entrepreneurial development along with an increase in their participation and representation in all levels of civil and corporate governance.⁸³ The government has also launched a bilingual portal, '*Mahila*

⁷⁴ Government of India, *National Scheme of Incentive to Girls for Secondary Education*, MINISTRY OF HUMAN RESOURCE DEVELOPMENT (May 09, 2020), <https://mhrd.gov.in/incentives>; This scheme promotes enrolment of girl child in the age group of 14-18 at secondary stage of education while a certain sum is deposited in the name of eligible girls as fixed deposit to be withdrawn at attaining 18 years of age.

⁷⁵ Government of India, *Balika Samriddhi Yojana*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 09, 2020), <https://www.india.gov.in/balika-samriddhi-yojana-ministry-women-and-child-development>; This scheme aims to improve the enrolment and retention of girls from below poverty line in school by providing scholarships and monetary incentives to encourage girls to assist in income generating activities.

⁷⁶ Government of India, *Samagra Shiksha Scheme*, MINISTRY OF HUMAN RESOURCE DEVELOPMENT (May 10, 2020), <http://samagra.mhrd.gov.in/kgbv.html>; This scheme encourages the participation of girls in education, Kasturba Gandhi Balika Vidyalayas are established to provide education to girls from disadvantaged groups from 10-18 years of age.

⁷⁷ University Grant Commission, *PRAGATI (Scholarship for Girl Students)*, AICTE (May 08, 2020), https://www.aicte-india.org/downloads/About%20the%20Scheme_ps_16.pdf.

⁷⁸ U.N.G.A., *Beijing Declaration and Platform for Action*, The Fourth World Conference on Women, 1995, 16th Plenary Meeting, <https://www.un.org/en/events/pastevents/pdfs/BeijingDeclarationandPlatformforAction.pdf>.

⁷⁹ Government of India, *National Policy for Empowerment of Women*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, (May 10, 2020), <https://wcd.nic.in/sites/default/files/National%20Policy%20for%20Empowerment%20of%20Women%202001.pdf>.

⁸⁰ Government of India, *India's Report on the Implementation of Beijing Declaration and Platform for Action in Context of the Twentieth Anniversary of the Fourth World Conference on Women and the Adoption of the Beijing Declaration and Platform for Action, 2015*, https://sustainabledevelopment.un.org/content/documents/13091India_review_Beijing20.pdf.

⁸¹ Government of India, *Gender Budgeting*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 11, 2020), <https://wcd.nic.in/gender-budgeting>.

⁸² Government of India, *Support to Training and Employment Programme for Women (STEP) Scheme*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 11, 2020), https://wcd.nic.in/sites/default/files/Revised%20schemeof%20STEP_0.pdf; The grant under this scheme is given to NGOs and Self-Help Groups for imparting skills related to employability and entrepreneurship, including agriculture, horticulture, handlooms, handicrafts, computer & IT enabled services.

⁸³ Government of India, *Draft National Policy for Women, 2016*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 12, 2020), https://wcd.nic.in/sites/default/files/draft%20national%20policy%20for%20women%202016_0.pdf.

E-Haat, to empower and strengthen financial inclusion of women entrepreneurs in the economy by providing continued sustenance and support to their creativity.⁸⁴ The Skill India initiative includes within itself the *Pradhan Mantri Kaushal Vikas Yojana* to provide industry level skill training for women to secure better livelihood.⁸⁵ Moreover, the *Nand Ghar* initiative by Vedanta in partnership with the Ministry of Women and Child Development), to support rural women towards entrepreneurship by providing training, access to credit and support services, who are encouraged to establish their own start-ups through motivational sessions.⁸⁶

Under the *Start-Up India Scheme*, various State governments provide incentives, like monthly allowance to startups founded by women, subsidies to women entrepreneurs, etc.⁸⁷ There has been an increase in the engagement of women as entrepreneurs.⁸⁸ The *Mahila Kisan Sashaktikaran Pariyojana* aims to empower women in agriculture by making systematic investments to enhance their participation and productivity.⁸⁹ Moreover, the NITI Aayog has launched a *Women Entrepreneurship Platform (WEP)* for providing an ecosystem for budding & existing women entrepreneurs across India.⁹⁰ It provides services such as free credit ratings, mentorship, apprenticeship, corporate partnerships and incubation and acceleration support to women founded startups.⁹¹

The Parliament enacted the Equal Remuneration Act, 1976, which aims to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment.⁹² The Ministry of Finance set up a Women Self Help Group Development Fund with National Bank for Agriculture and Rural Development (NABARD) to anchor agencies under the Scheme for Promotion of Women Self Help Groups, who shall promote and facilitate credit linkage of these groups with banks and take the responsibility for loan repayments.⁹³ Further, the *Stand*

⁸⁴ Government of India, *Mahila E-Haat*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 11, 2020), <https://wcd.nic.in/sites/default/files/Mahila%20E-haat%2024012017.pdf>.

⁸⁵ Government of India, *Pradhan Mantri Kaushal Vikas Yojna (PMKVY)*, MINISTRY OF SKILL DEVELOPMENT AND ENTREPRENEURSHIP (May 12, 2020), <https://www.msde.gov.in/pmkvy.html>.

⁸⁶ Government of India, *Nand Ghar: Building a new India*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT, (May 11, 2020), <http://nandghar.org.in>.

⁸⁷ Government of India, *Women Entrepreneurship*, MINISTRY OF COMMERCE AND INDUSTRY (May 12, 2020), https://www.startupindia.gov.in/content/sih/en/women_entrepreneurs.html.

⁸⁸ *Id.*; Women constitute 14% of total entrepreneurs in India and about 35% women are directors of all startups. Around 73% women entrepreneurs report revenue of under Rs.10,00,000 in a financial year and about 58% start their business between the ages of 20-30 years.

⁸⁹ Government of India, *Day-NRLM Livelihoods*, MINISTRY OF RURAL DEVELOPMENT (May 11, 2020), <http://mksp.gov.in/>.

⁹⁰ Government of India, *Women Entrepreneurship Program*, NITI AAYOG (May 13, 2020), <https://wep.gov.in/>.

⁹¹ *Id.*

⁹² Equal Remuneration Act, 1976, No. 25, Acts of Parliament, 1976, Preamble.

⁹³ *Micro Credit Innovation*, NATIONAL BANK FOR AGRICULTURE AND RURAL DEVELOPMENT (May 14, 2020), <https://www.nabard.org/content1.aspx?id=518&catid=8&mid=489>; The grant under this scheme is given to

Up India Scheme facilitates bank loans for women between Rs. 10 lakhs to Rs. 1 crore for setting up greenfield enterprises.⁹⁴ *Trade Related Entrepreneurship Assistance and Development (TREAD) Scheme for Women* includes providing women credit through government grant and loans, training, development and counseling extension activities related to trades, products, services etc.⁹⁵ Additionally, the *Mudra Yojana Scheme*⁹⁶ has been implemented to provide loans to women entrepreneurs at low rates of interest for setting up businesses.

The Maternity Benefit Act, 1961 was enacted to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.⁹⁷ The act provides for the right to payment of maternity benefit.⁹⁸ *The Rajiv Gandhi National Crèche Scheme, 2006*, revamped as the *National Crèche Scheme* in 2017, is a centrally-sponsored scheme to provide relief to working mothers by providing them crèche facilities while they work.⁹⁹ Moreover, a legislative mandate was created by the Maternity Benefit Amendment Act, 2017 to establish creche facilities for the establishment having fifty or more employees.¹⁰⁰

The Ministry of Women and Child Development released a *Working Women Hostel scheme* with the objective of providing working women safe accommodation and facilities to them and their children so that they can pursue their career.¹⁰¹

Another aspect of gender parity is increased political representation of women at all levels. The 73rd and 74th Constitutional (Amendment) Acts passed in 1993 provide for reservation of 33% of elected seats for women at different levels of local governance in both rural and urban local bodies and also one-third reservation for women to posts of chairperson of these bodies.¹⁰²

NGOs and Self-Help Groups for imparting skills related to employability and entrepreneurship, including agriculture, horticulture, handlooms, handicrafts, computer & IT enabled services.

⁹⁴ Government of India, *Stand-up India Scheme Features*, MINISTRY OF FINANCE (May 14, 2020), <https://www.standupmitra.in/Home/SUISchemes#>.

⁹⁵ Government of India, *Trade Related Entrepreneurship Assistance and Development (TREAD) Scheme for Women*, MINISTRY OF MICRO SMALL AND MEDIUM ENTERPRISES (May 14, 2020), <http://www.dcmsme.gov.in/schemes/treadwomen.html>.

⁹⁶ Government of India, *True Stories of Achievement*, MINISTRY OF FINANCE (May 14, 2020), <https://www.mudra.org.in/mudra-kahaniyaan-v2/women.html>; This scheme provides loans upto Rs. 10 lakhs to non-corporate, micro enterprises and women entrepreneurs for economic and social development.

⁹⁷ Maternity Benefit Act, 1961, No. 52, Acts of Parliament, 1961, Preamble.

⁹⁸ Maternity Benefit Act, 1961, No. 52, Acts of Parliament, 1961, § 5: Right to payment of maternity benefit.

⁹⁹ Government of India, *National Crèche Scheme*, PRESS INFORMATION BUREAU, July 29, 2019, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1580461>.

¹⁰⁰ Maternity Benefit Act 1961, No. 52, Acts of Parliament, 1961, § 11A: Crèche facility.

¹⁰¹ Government of India, *Scheme for Working Women Hostel*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 11, 2020), <https://wcd.nic.in/schemes/working-women-hostel>.

¹⁰² INDIA CONST. art. 243D.

Moreover, the Ministry of Women and Child Development has taken up the *Capacity Building Programme*¹⁰³ for training the Elected Women Representatives (EWRs) of the *Panchayati Raj*. Even the Supreme Court considered the representation of women in Parliament and the Legislative Assemblies to be dismal as the women represent only 10-11 per cent of the total seats.¹⁰⁴

The Ministry of Women and Child Development released a *Mahila Police Volunteers Scheme* in 2016, to induct more women in the police force to assume leadership roles and to help in reporting and curbing Gender Based Violence (GBV).¹⁰⁵ Moreover, the Supreme Court, recently, held that women in the armed forces were entitled to permanent commission as their male counterparts, resulting in gender parity for equal opportunities for all in promotions and benefits without any gender discrimination.¹⁰⁶

The Supreme Court has granted an equal status to the transgender community by giving recognition to the transgender people as belong to the third sex.¹⁰⁷ Additionally, the Supreme Court, in another judgment¹⁰⁸, decriminalised homosexuality. Subsequently, the Parliament enacted The Transgender Persons (Protection of Rights) Act, 2019 to provide for protection of rights of transgender persons and their welfare¹⁰⁹. This legislation prohibits discrimination¹¹⁰, including in matters of employment¹¹¹. Moreover, it puts an obligation on the government to implement welfare schemes for the protection and promotion of the rights and interests of the transgender community.¹¹² Further, it also puts an obligation on the government to provide

¹⁰³ Government of India, *Capacity-building Programme for EWRs*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 11, 2020), <https://www.nipccd.nic.in/ewr>.

¹⁰⁴ Medha Kotwal Lele v. Union of India, (2013) 1 S.C.C. 297;

As of May 19, 2020, there are 78 female representatives out of a total of 542 members in the Lok Sabha or the Lower House, and 24 female representatives out of a total of 225 members in the Rajya Sabha or the Upper House. Thus, total female representation is 102 representatives out of a grand total of 767 members of the Parliament, which comes out as 13.29%. Data available at: Government of India, *Women Members*, PARLIAMENT OF INDIA, <http://loksabhaph.nic.in/Members/women.aspx> and Government of India, *Women Members*, PARLIAMENT OF INDIA, (May 13, 2020) https://rajyasabha.nic.in/rsnew/member_site/women.aspx.

¹⁰⁵ Government of India, *Mahila Police Volunteers*, MINISTRY OF WOMEN AND CHILD DEVELOPMENT (May 12, 2020), <https://wcd.nic.in/sites/default/files/mpvs.pdf>.

¹⁰⁶ The Secretary, Minister of Defence v. Babita Puniya, 2020 S.C.C. Online S.C. 200.

¹⁰⁷ National Legal Services Authority v. Union of India, A.I.R. 2014 S.C. 1863.

¹⁰⁸ Navtej Singh Johar v. Union of India, A.I.R. 2018 S.C. 4321: Supreme Court read down § 377 IPC that makes homosexuality as a punishable offence.

¹⁰⁹ The Transgender Persons (Protection of Rights) Act, 2019, No. 20, Acts of Parliament, 2019, Preamble.

¹¹⁰ The Transgender Persons (Protection of Rights) Act, 2019, No. 20, Acts of Parliament, 2019, § 3: Act prohibits discrimination against a transgender person, including denial of service or unfair treatment in relation to education, healthcare, employment, access to, or enjoyment of goods, facilities, opportunities available to public.

¹¹¹ The Transgender Persons (Protection of Rights) Act, 2019, No. 20, Acts of Parliament, 2019, § 9: No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

¹¹² The Transgender Persons (Protection of Rights) Act, 2019, No. 20, Acts of Parliament, 2019, § 8.

inclusive education¹¹³, and vocational training to facilitate and support livelihood¹¹⁴. The Act also deals with the establishment of the National Council for Transgender Persons¹¹⁵ for achieving the objective of this Act.

Q 9: Are there recommendations directed to States, international bodies, or other entities, that you wish to make in order to strengthen and inform this report?

To overcome the challenges states under answer to Question 7, we recommend the following:

- 1) Draft Policy for the Government of India to send nominations to the UNHRC Advisory Committee and the UN Treaty Bodies
- 2) Draft Policy for the National Human Rights Commission of India (NHRC) to send nominations to the UNHRC Special Procedures
- 3) General Recommendations

**DRAFT POLICY FOR THE GOVERNMENT OF INDIA TO SEND NOMINATION TO THE UNHRC
ADVISORY COMMITTEE, THE UN TREATY BODIES AND UNHRC SPECIAL PROCEDURES**

MANDATE HOLDERS

Nodal Ministry: Ministry of External Affairs, Government of India

The procedure for sending nomination by the Government of India to the UNHRC Advisory Committee, UN Treaty bodies and UNHRC Special Procedures, as the case may be, shall be supervised and coordinated by the Ministry of External Affairs (hereinafter ‘MEA’), Government of India.

1. Call for Applications

¹¹³ The Transgender Persons (Protection of Rights) Act, 2019, No. 20, Acts of Parliament, 2019, § 13: Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

¹¹⁴ The Transgender Persons (Protection of Rights) Act, 2019, No. 20, Acts of Parliament, 2019, § 14: The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

¹¹⁵ The Transgender Persons (Protection of Rights) Act, 2019, No. 20, Acts of Parliament, 2019, § 16(1): The Central Government shall by notification constitute a National Council for Transgender Persons to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

The MEA shall call for applications from eligible candidates (as under “Eligibility Criteria”). The MEA shall publicise the call for applications via a circular/notification on the official website, newspapers and the official mobile application.

2. *Eligibility Criteria:*

(1) General Criteria

The candidate

- (a) shall be an Indian national,
- (b) can be of any gender (male/female/other), though women and persons from the LGBT community are encouraged to apply,
- (c) shall be of sound mind, high moral character and not have been declared as insolvent by any court of law,
- (d) shall not be holding
 - i. any post, in a constitutional body or statutory body or executive body or regulatory body in India, on the date of call for application, and, minimum five years prior to the date of call for applications, and, till the date of end of tenure of the candidate at the UNHRC Advisory Committee or UN Treaty Body or UNHRC Special Procedure Mandate Holder, if elected or appointed, as the case may be, and
 - ii. any appointment, and, should not be a member of, or, employed under, any political party in India, on the date of call for application, and, minimum five years prior to the date of call for applications, and, till the date of end of tenure of the candidate at the UNHRC Advisory Committee or UN Treaty Body or UNHRC Special Procedure Mandate Holder, if elected or appointed, as the case may be,
- (e) The candidate shall not have any
 - i. criminal background, including pending criminal proceedings, within and outside the territory of India,
 - ii. past or ongoing disciplinary and/or departmental proceedings, within or outside the territory of India, and
 - iii. past record of human rights violations, both within and outside the territory of India.

(2) Specific Criteria

In case of nomination to the UNHRC Advisory Committee, the criteria mentioned in UNHRC Decision 6/102¹¹⁶ under “Competence and experience” (under “Advisory Committee of the Human Rights Council”) shall be considered.

In case of nomination to a UN Treaty body, the specific criteria mentioned under the relevant UN treaty body shall be considered.

In case of nomination to the UNHRC Special Procedure Mandate Holder:

- (a) experience in the field of the mandate
- (b) An advanced university degree such as Masters or equivalent (minimum duration of 4 years in full-time study), and at least 7 years of relevant professional experience in the field of human rights. A minimum of 11 years of relevant professional experience in the field of human rights may be accepted in lieu of the advanced university degree.
- (c) Other criteria mentioned in UNHRC Decision 6/102¹¹⁷ under “Technical and objective requirements” (under “Technical And Objective Requirements For Eligible Candidates For Mandate Holders”) shall be considered.

The eligible applicants shall submit their curriculum vitae mentioning the details under the ‘specific criteria’, which shall be made public by the MEA on its official website.

3. Interview of the Applicants

The eligible applicants shall be interviewed by a panel (“interviewing panel”) consisting of the following:

- i. Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India,
- ii. Secretary, Department of Justice, Ministry of Law and Justice, Government of India,
- iii. Chairperson/member of National Human Rights Commission, (only in case of nomination to the UNHRC Advisory Committee or UN Treaty Bodies) and
- iv. Representative of civil society organisations/non-governmental organisations (to be nominated by MEA)

Upon interview, the interviewing panel shall submit a report to the MEA, recommending five candidates, in order of preference, for India’s nomination to the UNHRC Advisory Committee or UN Treaty Bodies or UNHRC Special Procedure Mandate Holder, as the case may be.

¹¹⁶ H.R.C. Decision 6/102, U.N. Doc. A/HRC/6/102 (Sept. 27, 2007).

¹¹⁷ *Id.*

4. Final Decision

The MEA, upon receiving the report from the interviewing panel shall nominate one candidate. While selecting the nominee, the MEA shall take into consideration the gender balance in the UNHRC Advisory Committee or UN Treaty body or UNHRC Special Procedure, as the case may be. In case of nomination to a UNHRC Special Procedure Mandate Holder, wherein the thematic mandate deals with the issues related to women, the MEA shall give preference to a female candidate.

Subsequently, the MEA shall issue a circular on the official website, providing the name of the candidate nominated by the Government of India, and the reasons for the same.

The procedure of nomination shall be subject to the process of court of law.

DRAFT POLICY FOR THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA FOR SENDING THE NOMINATION FOR THE UNHRC SPECIAL PROCEDURE MANDATE HOLDER

The entire procedure of sending the nomination, including call for applications, interview and final selection, shall be done by the National Human Rights Commission,¹¹⁸ (hereinafter the ‘Commission’¹¹⁹)

1. Call for Applications

The MEA shall call for applications from eligible candidates (as under “Eligibility Criteria”). The MEA shall publicise the call for applications via a circular/notification on the official website, newspapers and the official mobile application.

2. Eligibility Criteria:

(1) General Criteria

The candidate

- (a) shall be an Indian national,
- (b) can be of any gender (male/female/other), though women and persons from the LGBT community are encouraged to apply,
- (c) shall be of sound mind, high moral character and not have been declared as insolvent by any court of law,
- (d) shall not be holding

¹¹⁸ As discussed in the Answer to Question 7.

¹¹⁹ Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1993, § 3: Constitution of National Human Rights Commission.

- i. any post, in a constitutional body or statutory body or executive body or regulatory body in India, on the date of call for application, and, minimum five years prior to the date of call for applications, and, till the date of end of tenure of the candidate of the candidate as the UNHRC Special Procedure Mandate Holder, if appointed,
- (e) any appointment, and, should not be a member of, or, employed under, any political party in India, on the date of call for application, and, minimum five years prior to the date of call for applications, and, till the date of end of tenure of the candidate of the candidate as the UNHRC Special Procedure Mandate Holder, if appointed,
- (f) The candidate shall not have any
 - i. criminal background, including pending criminal proceedings, within and outside the territory of India,
 - ii. past or ongoing disciplinary and/or departmental proceedings, within or outside the territory of India, and
 - iii. past record of human rights violations, both within and outside the territory of India.

(2) *Specific Criteria*

- a) experience in the field of the mandate
- b) An advanced university degree such as Masters or equivalent (minimum duration of 4 years in full-time study), and at least 7 years of relevant professional experience in the field of human rights. A minimum of 11 years of relevant professional experience in the field of human rights may be accepted in lieu of the advanced university degree.
- c) Other criteria mentioned in UNHRC Decision 6/102¹²⁰ under “Technical and objective requirements” (under “Technical And Objective Requirements For Eligible Candidates For Mandate Holders”) shall be considered.

The eligible applicants shall submit their curriculum vitae mentioning the details under the ‘specific criteria’, which shall be made public by the Commission on its official website.

3. *Interview of the Applicants*

The eligible applicants shall be interviewed by the Commission.

¹²⁰ H.R.C. Decision 6/102, *supra* note 116.

4. Final Decision

After the interview, the Commission shall select one candidate whose name shall be nominated by the Commission for the post of UNHRC Special Procedure Mandate Holder.

While selecting a nominee, the Commission shall take into consideration the gender balance.

In case of nomination for the post of UNHRC Special Procedure Mandate Holder, wherein the thematic mandate deals with the issues related to women, the Commission shall give preference to a female candidate.

Subsequently, the Commission shall issue a circular on the official website providing the name of the candidate nominated by the Commission, and the reasons for the same.

The procedure of nomination shall be subject to the process of court of law.

GENERAL RECOMMENDATIONS TO THE GOVERNMENT OF INDIA

- 1) The Government of India shall publicise the invitation for applications by the UNHRC, on its website and newspapers. This will keep the public informed and therefore promote participation from all parts of the society.
- 2) The Government of India shall introduce a policy or measures, to provide support to candidates in the form of child-care and elderly-care support mechanisms. This would not only ensure gender parity but also ensure that the highly skilled individuals are nominated. Additionally, such a policy or measures shall be clearly publicised and communicated to the potential candidates when issuing the call for applications.
- 3) In order to overcome the general issues with respect to status as women that act as a challenge in their representation, the government shall provide every such support and assistance that would deal with such issues.

Additionally, we recommend the following:

RECOMMENDATIONS TO THE UNHRC ADVISORY COMMITTEE

Ensuring Gender Balance in the UNHRC Advisory Committee

UNHRC Resolution 5/1¹²¹ and UNHRC Decision 6/102¹²² have laid down the guidelines to be followed in the nomination and election of candidates to the UNHRC Advisory Committee. However, none of these resolutions state that the State parties shall take gender into consideration when nominating their candidate to the UNHRC Advisory Committee.

In light of the above argument, we recommend that the UNHRC adopts a resolution which states that the State parties should consider gender as a factor when nominating their candidate to the UNHRC Advisory Committee.

Apart from this, we recommend that the Secretariat, UNHRC, when releasing the call for nominations, allocates a certain number of seats in the Committee for women candidates only (the number may vary depending upon the existing gender balance).

All of the above would ensure that gender balance is maintained in the UNHRC Advisory Committee.

RECOMMENDATIONS TO THE UN TREATY BODIES

Ensuring Gender Balance in the UN Treaty Bodies

All UN treaties do not have a specific mandate for consideration of gender balance. Further, even the United Nations General Assembly Resolution (UNGA) 68/268,¹²³ encourages States parties, to give due consideration to gender balance only in the election to the UN treaty bodies, as specified in relevant treaty¹²⁴. Therefore, we recommend that all UN treaty bodies should put a gender balance mandate in place. Additionally, the UN treaty bodies should put in place an ad hoc mechanism (on need basis), in the form of allocating seats to under-represented gender, that is enforced when a gender is under-represented in a UN treaty body.

RECOMMENDATIONS TO THE UNHRC CONSULTATIVE GROUP

Ensuring Gender Balance in the Special Procedures Mandate Holders

The Parliament of India enacted the Protection of Women from Domestic Violence Act, 2005 which contains a provision for the appointment of a Protection officer, who shall be a female

¹²¹ H.R.C. Res. 5/1, *supra* note 11.

¹²² H.R.C. Decision 6/102, *supra* note 116.

¹²³ G.A. Res. 68/268, U.N. Doc. A/RES/68/268 (April 21, 2014).

¹²⁴ *Id.*, ¶ 13.

as far as possible¹²⁵ so that officer may be sensitive to the problem faced by women¹²⁶. Moreover, the Parliament also enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which contains a provision that the Presiding officer of the Internal Complaints Committee shall be a female.¹²⁷ Additionally, in the report of the Standing Committee of the Parliament, the Ministry of Women and Child Development had submitted that this provision was specifically included as a confidence-building measure for women who approach the Internal Committee with a complaint.¹²⁸ It was neither the premise nor the understanding that only women were capable of arbitrating complaints of sexual harassment.¹²⁹

In light of the above arguments, we recommend that in case of nomination to a UNHRC Special Procedure Mandate Holder, wherein the thematic mandate deals with the issues related to women, the UNHRC Consultative Group should give preference to a female candidate.

¹²⁵ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, § 8(2).

¹²⁶ Parliament of India, 14th Lok Sabha, Session 5, *Lok Sabha Debates*, Aug 24, 2005, <http://loksabhaph.nic.in/Debates/result14.aspx?dbsl=3389>.

¹²⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, § 4(2).

¹²⁸ Parliamentary Standing Committee on Human Resource Development, Two Hundred Thirty Ninth Report on 'The Protection of Women against Sexual Harassment at Workplace (2011).'

¹²⁹ *Id.*

ANNEXURE 1

Kindly provide the following information sought under Section 6(1)(a), Right to Information Act, 2005:

Q 1. Kindly provide the documents/records containing the names and designations of the official(s) in-charge in the Government of India for giving nominations to the following (2014-till date):

- a) United Nations Human Rights Council (UNHRC) Advisory Committee
- b) United Nations Human Rights Council Treaties' Monitoring Bodies (Committees)
- c) United Nations Human Rights Council Special Procedures (Special Rapporteur, Independent Experts, Working Groups)

Q 2. Kindly provide all records/documents containing information on the procedure/standard operating procedures/decision-making process followed by the Government of India for giving the nomination of Amb. (Retd.) Ajai Malhotra to the United Nations Human Rights Council (UNHRC) Advisory Committee in 2016 (prior to the 33rd session, UNHRC) and 2017 (prior to the 36th session, UNHRC)

Q 3. Kindly provide a copy of circular(s)/advertisement(s)/notification(s) issued by Government of India inviting applications for the nominations of Government of India to the post of Member of the United Nations Human Rights Council (UNHRC) Advisory Committee in 2016 (prior to the 33rd session, UNHRC) and 2017 (prior to the 36th session, UNHRC)

Q 4. Kindly provide a copy of the Letter of Nomination sent by the Government of India to the Secretariat, United Nations Human Rights Council mentioning the nomination of Amb. (retd.) Ajai Malhotra for the purpose of election to the membership of the United Nations Human Rights Council (UNHRC) Advisory Committee in 2016 (prior to the 33rd session, UNHRC) and 2017 (prior to the 36th session, UNHRC)

Q 5. Kindly provide all records/documents containing information on the procedure/standard operating procedures/decision-making process followed by the Government of India for giving the

nomination of Amb. (Retd.) Preeti Saran to the Committee on Economic Social and Cultural Rights (CESCR) in 2017-18.

Q 6. Kindly provide a copy of circular(s)/advertisement(s)/notification(s) sent by Government of India inviting applications for the nominations of Government of India to the post of Asia-Pacific seat of the United Nations Committee on Economic Social and Cultural Rights (CESCR) in 2017-2018.

Q 7. Kindly provide a copy of the Letter of Nomination/similar document sent by the Government of India to the Secretary General, United Nations, mentioning the nomination of Amb. (Retd.) Preeti Saran for the purpose of election to the membership of the Asia-Pacific seat of the United Nations Committee on Economic Social and Cultural Rights (CESCR) in 2017-2018.

Q 8. Kindly provide all records/documents containing information on the procedure/standard operating procedures/decision-making process followed by the Government of India for giving the nomination to the following UNHRC Special Procedures (Special Rapporteur, Independent Experts, Working Groups) (wherever applicable):

- a) Special Rapporteur on trafficking in persons, especially women and children, 2020
- b) Expert Mechanism on the Right to Development, 2019
- c) Special rapporteur on the Right to Food, 2019
- d) Independent Expert on the enjoyment of all human rights by older persons, 2019
- e) Working Group on the issue of discrimination against women in law and in practice, 2017
- f) Special Rapporteur on minority issues, 2017
- g) Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), 2016
- h) Working Group on the issue of human rights and transnational corporations and other business enterprises, 2016
- i) Special Rapporteur on the right to privacy, 2015
- j) Special Rapporteur on violence against women, its causes and consequences, 2015

- k) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2014
- l) Special Rapporteur on trafficking in persons, especially women and children, 2014
- m) Working Group on Arbitrary Detention, 2014
- n) Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 2014
- o) Special Rapporteur on the human right to safe drinking water and sanitation, 2014
- p) Special Rapporteur on the rights of persons with disabilities, 2014

Q 9. Kindly provide a copy of circular(s)/advertisement(s)/notification(s) issued by Government of India for inviting applications to the post of the following UNHRC Special Procedures (Special Rapporteur, Independent Experts, Working Groups) (wherever applicable):

- a) Special Rapporteur on trafficking in persons, especially women and children, 2020
- b) Expert Mechanism on the Right to Development, 2019
- c) Special rapporteur on the Right to Food, 2019
- d) Independent Expert on the enjoyment of all human rights by older persons, 2019
- e) Working Group on the issue of discrimination against women in law and in practice, 2017
- f) Special Rapporteur on minority issues, 2017
- g) Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), 2016
- h) Working Group on the issue of human rights and transnational corporations and other business enterprises, 2016
- i) Special Rapporteur on the right to privacy, 2015
- j) Special Rapporteur on violence against women, its causes and consequences, 2015
- k) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2014
- l) Special Rapporteur on trafficking in persons, especially women and children, 2014
- m) Working Group on Arbitrary Detention, 2014
- n) Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 2014

- o) Special Rapporteur on the human right to safe drinking water and sanitation, 2014
- p) Special Rapporteur on the rights of persons with disabilities, 2014

Speed/Regd. Post with AD

No. UI/551/1/2018

New Delhi, dated 26th June, 2020

Shri Pranav Agarwal,
5GF2, ATS Kocoon,
Sector 109, Gurugram
Haryana PIN - 122017.

Subject : Information sought under Right to Information Act, 2005.

Sir,

Please refer to your online RTI application No. MOEAF/R/E/20/00572 dated 17/05/2020 received this Division on 20/05/2020.

2. The information sought in queries Nos. 1 to 7 is lengthy and not available in the form in which it is sought. Also, collation of information sought would disproportionately divert the resources of the public authority as also mentioned in the preamble to RTI Act, 2005. Moreover, the information sought in queries Nos. 8 and 9 regarding the procedures followed is in the realm of UN bodies that do not fall under the ambit of RTI Act. Further, some of the information sought also cannot be provided in terms of Section 8. (1)(a) of RTI Act relating information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.

3. If you are aggrieved with this reply, you may file an appeal to Shri Vijay Khanduja, Director (UNES) & Appellate Authority, Ministry of External Affairs, Room No. 1039, A-Wing, Jawaharlal Nehru Bhawan, 23-D, Janpath, New Delhi-110011 (Tel. No. 49018423/Fax No. 49018426) within a month from the date of receipt of this letter.

Yours sincerely,



(R.R. Sethy)

Section Officer (UNES)/CPIO
Ministry of External Affairs

Jawaharlal Nehru Bhawan, 23-D Janpath, New Delhi-110011
Tel : 49018419; Email : soun1@mea.gov.in

Copy to:-

Under Secretary (RTI), MEA, RTI Cell, Room No. 1024, A-Wing, Jawaharlal Nehru Bhawan, 23-D, Janpath, New Delhi-110011.