



**Stakeholder Information Submission
to the Global Alliance of National Human Rights Institutions
(GANHRI)**

for

**The Accreditation Review of the National Human Rights
Commission (NHRC) of India**

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ANNI Report on the Performance of the National Human Rights Commission of India

This report is part of the 2017 ANNI Annual Report on the Performance and Establishment of National Human Rights Institutions in Asia (2017 ANNI Report). This particular chapter of India is prepared by our member in the country; namely All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI). This report will also be shared to the NHRC India later on, as part of the writing process of the 2017 ANNI Report.

For the purpose of the upcoming accreditation of the NHRC India, this report is now submitted to serve as stakeholder information to the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for the upcoming review of the NHRC India.

1. Introduction

Indian National Human Rights Commission (NHRC) was assessed by the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) in November 2016 and the report of the same published in January 2017. The SCA decided to defer NHRC's application for accreditation to its second session in November 2017.

This report is focused on the specific recommendations made by the SCA in November 2016 highlighting issues of composition and pluralism, selection and appointment of members, appointment of senior staff (secondment from government), political representation and complaints handling. The report also makes an assessment of NHRC's response to the cases of human rights defenders (HRDs).

The year 2016 witnessed a tremendous rise in attacks on HRDs and shrinking of democratic space in India. There were several instances such as, direct assaults on fundamental freedoms of expression, association and assembly. In all these cases, petitioned before the NHRC, not in a single case did the NHRC order for compensation or prosecution. With no relief from NHRC or a pro-active measure by NHRC, there is an emerging perception of the NHRC not being independent and seemingly positioning itself close to the government.

Nine months since last the last accreditation process of NHRC, it can be confidently said on the basis of adequate facts as laid out in this report, that there have been no positive and desired developments in NHRC in achieving what has been pointed out in the SCA report and it is difficult to believe that the SCA's report is at all taken seriously by the NHRC as well as the Government of India. At some levels, some of the actions are projected to be positive developments but a closer analysis proves these to be eyewash. Two appointments – one of an active member of ruling political party as member of NHRC and later withdrawal of the same and appointment of a woman member associated with a wing of the ruling party – are clearly reflective of the fact that no due process was followed and these appointments were made in a non-transparent manner. Similarly disposing of cases solely based on the report of the Intelligence Bureau, informally agreeing to states' vague replies and settling

cases, hesitation in exercising powers guaranteed by the founding law against the State etc. are some of the other areas of serious concerns.

Several cases and developments speak volumes of NHRC's deliberate inactions. This report is an attempt to argue about and demonstrate the same factually. Being the largest democracy in the world with a long-demonstrated respect for human rights inspired through the Indian Constitution, it is imperative that the Indian NHRC is an independent and autonomous body. The current scheme of things inspires little confidence in the institution and its leaders.

2. NHRI and its Mandates to Protect and Promote Human Rights

2.1 Pluralism and Diversity in NHRC's Composition

The SCA in its report concerning NHRC's accreditation in November 2016 and its earlier reports in 2006 and 2011 had emphasised on the preponderance of judiciary in the NHRC. The SCA noted its concern that the qualification for the Chairperson, who needs to be a former Chief Justice of the Supreme Court "severely restricts the potential pool of candidates"¹. The SCA further stated that quasi-judicial function is only one of the ten functions of NHRC as mentioned in its founding law². The quasi-judicial function of NHRC should not be a justification for having the chairperson and two other members out of four members to be from the higher judiciary. Adequate amendments need to be made in the Protection of Human Rights Act, 1993, (PHRA) to ensure representation to all segments of society and various human rights expertise in NHRC.

Indian civil society, since the establishment of NHRC in 1993, expressed grave concerns about non-representation of civil society in NHRC. The Government of India, despite repeated demands from the civil society and recommendations by the SCA, called for the NHRC appointment committee meeting on October 17, 2016, and recommended the appointment of Mr. Avinash Rai Khanna, National Vice-President of Bhartiya Janta Party (BJP – ruling party in India), as a member of the NHRC. Prima-facie which appears to be a political appointment was later withdrawn after protests and litigation. The Government of India again called for the NHRC appointment committee meeting on March 10, 2017, and recommended the appointment of Ms. Jyotika Kalra as a member of the NHRC. In both the appointment instances mentioned here, AiNNI is in possession of minutes of the appointment committee furnished by Ministry of Home Affairs. There is no reference to any other names considered for appointment or assessment of candidates' human rights record. Ms. Kalra, an advocate by profession, is the first woman member in NHRC in past 13 years. She is closely associated to the *Rashtriya Swayamsevak Sangh* (RSS), BJP's larger social body and associated with its legal wing – *Adhivakta Parishad*. Her appointment is therefore perceived to be political given her formal alliance with the ruling party and its associations, also given that no other names were considered for this post and she was appointed in a non-transparent manner. Ms. Kalra's appointment was done in clear disregard of SCA's recommendations in January 2017.

¹<http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20Nov%202016%20-%20English.pdf>

²The Protection of Human Rights Act, 1993.

Chairpersons of other national commissions³ are deemed members of NHRC's Full Commission and it has been argued by the NHRC that it contributes to the aspect of plurality and diversity in the NHRC. However, the deemed members seldom attend the Full Commission meetings as stated out in last year's ANNI report. The SCA had also noticed that the 'deemed members' rarely attend the Full Commission meetings of NHRC and that this practise of the NHRC is not sufficient to ensure plurality in the Commission.

Only six women have served as Judges in the Supreme Court of India since its inception in 1950 and currently only woman Judge (Justice Banumathi) presently serves in the Supreme Court and her retirement is due in the year 2020⁴. As the elevation of Judges in the Supreme Court as the Chief Justice of India is according to their seniority, there are very less chances of Justice Banumathi to be elevated as the Chief Justice by the time of her retirement and thereby making her ineligible to be considered as a candidate for the appointment of Chairperson of NHRC if the present statute governing it continues to be in place. Hence, it is very unlikely for a woman to head the NHRC in the near future.

The SCA through its General Observations made in 2013 has mentioned that "pluralism refers to broader representation of the national society". This includes representation from civil society as well. Though NHRC's founding law provides that two persons having knowledge and experience about human rights shall be appointed as its members, since its inception only one person fills this slot. And this appointment of advocate Jyotika Kalra, who has been mentioned above as an associate of the ruling political dispensation, has already become controversial.

AiNNI in its submission to the SCA had mentioned about the lack of representation of religious and ethnic minorities in NHRC. Muslims being the largest minority in India with a population share of 14.23% is not represented in the country's national human rights institution through a Member or a Chairperson. Same is the fact with tribal and Dalit communities in India who despite having a share of 8.6% and 16.6% respectively of the total population, are not represented in the NHRC⁵.

The SCA had also mentioned in its report about the glaring deficiency in gender balance among the staff of NHRC, with only 20% (92 of 468)⁶ of them being women and had encouraged NHRC to ensure pluralism by having its staff from diverse sections of the society.

2.2 Transparency and Consultation in Appointment Process

The SCA in its accreditation reports of NHRC, in January 2017, stated that "*The SCA is of the view that the selection process currently enshrined in the Act is not sufficiently broad and transparent. In particular, it does not:*

³PHRA Section 3(3) states that "The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12".

⁴<http://supremecourt.gov.in/chief-justice-judges>

⁵ ANNI Report 2016

⁶ibid.

- *require the advertisement of vacancies;*
- *establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and*
- *specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process.”*

The SCA further stated that for appointments, NHRC should:

- Publicise vacancies broadly;
- Maximise the number of potential candidates from a wide range of societal groups and educational qualifications;
- Promote broad consultation and / or participation in the application, screening, selection and appointment process;
- Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and Select members to serve in their individual capacity rather than on behalf of the organization they represent.

Despite repeated recommendations made by the SCA, the recent appointments of Ms. Jyotika Kalra and earlier of Mr. Avinash Rai Khanna as NHRC members, were not held in a transparent and consultative process. The Government of India did not advertise the vacancy, did not spell out the criteria of assessment and made these appointments in a very secretive manner through the selection committee. It is to be noted that the representatives from the ruling government are in majority in the selection committee as the post of the Leader of Opposition in the Lower House is vacant since May 2014. The Government of India has yet again failed to make the selection broad based and transparent, which would have led to consideration of a wide-ranging pool of desirable candidates from various segments of the society – academicians, social scientists, jurists, etc.

2.3 Appointment of the Secretary General and the Director General of Investigations from Central Government

2.3.1 Appointment of the Director General of Investigations

The SCA in its accreditation reports of NHRC, in January 2017, stated the following regarding appointment of police officers in NHRC:

“In October 2006 and May 2011, the SCA emphasized that a fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. Where an NHRI’s staff members are seconded from the public service, and in particular where this includes those at the highest level in the NHRI, it brings into question its capacity to function independently.

Also in May 2011, the SCA expressed its concern about the practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police. It noted that this practice has adverse implications for the actual and perceived independence of the NHRCI.”

The SCA had recommended NHRC to consider policy options to address the perceived independence issue created by having former police officers investigate complaints, for example, by providing for civilian oversight of these activities.

Disregarding the recommendations made by SCA; on February 1, 2017, Mr. P.V.K. Reddy was appointed as the Director General (Investigation) of the NHRC⁷ pursuant to an order of the Supreme Court of India⁸ dated January 23, 2017. Mr. Reddy was a police officer prior to his appointment in the NHRC and was serving as the Special Director General in Central Reserve Police Force (CRPF), which is the largest para-military organisation in India. It is important to note that there are several complaints on human rights violations by security personnel including that of members of CRPF pending before the Chhattisgarh High Court⁹, other Indian courts and in the NHRC. By appointing an officer from the CRPF as the chief of its investigation wing, NHRC's credibility comes under serious questioning. Mr. Reddy completed his term of service in three months of his appointment in April 2017 and as of July 5, 2017, this post continues to be vacant. As mentioned in the last ANNI report, the Director General (Investigation) prior to Mr. Reddy demitted the office in September 2014 and Mr. Reddy only joined in February 2017.

Mr. Reddy was appointed only after the Supreme Court of India has directed the Government of India to fill the vacancies in NHRC without any delay while hearing public interest litigation. Observing its displeasure over long-lying vacancies in NHRC since 2014, the apex court had ordered in February 2017 to appoint the Director General (Investigation)¹⁰ within one week.

2.3.2 Appointment of the Secretary General

Regarding the appointment of the Secretary General, the SCA in November 2016 noted that, in the past five years, the position has been held by a variety of people and has been vacant for a substantial period of time. As this position is seconded from the public service (government service), and in particular where this includes those at the highest level in the NHRC, it brings into question its capacity to function independently. In the light of the above, SCA had recommended that the Secretary General should be recruited through an open, merit-based selection process.

As on July 5, 2017, the post remains vacant after the retirement of Mr. S.N. Mohanty in June 2017. It is not available in public knowledge that the NHRC has taken steps to adhere to SCA recommendations to appoint a Secretary General through an open process and the same stands for the Director General of Investigation too.

2.4 Political Representatives in NHRC

PHRA Section 3(3) states that "The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall

⁷<http://pib.nic.in/newsite/PrintRelease.aspx?relid=157887>

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⁹<https://thewire.in/109760/after-nhrc-report-chhattisgarh-high-court-pulls-up-security-forces-for-sexual-violence-in-bastar/>

¹⁰<http://www.thehindu.com/news/national/Appoint-NHRC-DG-within-a-week-SC-tells-Centre/article17081500.ece>

be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12”.

As on July 5, 2017, the Chairperson of National Commission for Minorities is Mr. Syed Ghayoor Hasan Rizvi (appointed in May 2017) – former General Secretary of BJP’s minority wing; the Chairperson of the National Commission for the Scheduled Castes is Prof. Ram Shankar Katheria (appointed in May 2017) – an elected representative in Parliament from Agra constituency as a BJP candidate; the Chairperson of the National Commission for the Scheduled Tribes is Mr. Nand Kumar Sai (appointed in February 2017) – a nominated representative in Parliament from the state of Chhattisgarh as a BJP candidate and former elected representative in Parliament from Raigarh constituency as a BJP candidate, the Chairperson of National Commission for Women is Lalitha Kumaramangalam (appointed in September 2014) – member of BJP who unsuccessfully contested parliament elections in 2004 and 2009 as a BJP candidate.

The SCA in its accreditation reports of NHRC, in January 2017, noted that *“the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference.”*

The SCA had expressed its concern that the ‘deemed members’ have voting rights in NHRC’s Full Commission meetings and hence having a political representative intrudes with the independence of the NHRC and is against the Paris Principles. In its report, the SCA had categorically stated that *“...government representatives and members of parliament should not be members of, nor participate in, the decision-making organs of an NHRI”*. However, categorically ignoring this specific recommendation of the SCA of January 2017, chairpersons and members of National Commissions of Minorities, Scheduled Castes and Scheduled Tribes were all appointed thereafter and presently hold positions as ‘deemed member’ of the NHRC. It is pertinent to note here that in February 2016, Mr. Katheria, Chairperson of National Commission for the Scheduled Castes, who was then a Union Minister of State, had allegedly made hate speeches¹¹ and thereby was accused of inciting communal tensions in the state of Uttar Pradesh. He was later dropped from the Cabinet. The Chairperson of the National Commission for Women, a member of the BJP, was however appointed prior to the SCA recommendation of January 2017.

The NHRC expressed concerns and reported to the SCA during November 2016 accreditation that the Chairperson of the National Commission for Scheduled Castes is a Member of Parliament, and that this individual has voting rights in the full statutory commission. At the time of NHRC’s reporting, the Chairperson of the said commission was appointed by the previous government. This partial reporting on political appointments raise concerns as it conveniently did not mention about other national commissions who are also political appointees and appointed by the current government. Thus the Full Commission which comprises five full time members and four Deemed Members, now on the whole comprises of five members – the majority

¹¹<http://indianexpress.com/article/india/india-news-india/muslims-warned-of-final-battle-at-sangh-meet-mos-katheria-says-weve-to-show-our-strength/>

in the Full Commission who are members and even functionaries of the ruling BJP party.

As mentioned in the above sections, in October 2016, there were reports in wide sections of mainstream media that Mr. Avinash Rai Khanna is appointed as the Member of NHRC¹². Mr. Khanna is the Vice-President of BJP, the ruling party in India. Immediately after these reports, there were numerous voices of concerns from among the civil society organisations¹³, political parties against the appointment of a politician as the Member of NHRC. A public interest litigation was filed in the Supreme Court of India on this matter after which the government pulled back its decision to appoint Mr. Khanna as the Member. The Ministry of Home Affairs in an official statement informed the Supreme Court that Mr. Khanna has expressed in unwillingness to work as the Member of NHRC due to personal reasons.¹⁴

It is pertinent to also mention that the United Nations High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein, had addressed a letter dated April 12, 2017,¹⁵ to the Hon'ble Minister of External Affairs, Mrs. Sushma Swaraj, with copies marked to the the Hon'ble Chairperson of the Rajya Sabha (Upper House of the Parliament), the Hon'ble Speaker of the Lok Sabha (Lower House of the Parliament), the Hon'ble Minister of Home Affairs and the Hon'ble Chairperson of the NHRC, highlighting the November 2016 SCA review of the Indian NHRC and encouraging the Indian Government to consider the following recommendations for amending NHRC's legal basis, namely the 1993 PHRA in order for it to fully reflect NHRC's core functions. The Permanent Mission of India to the United Nations in Geneva had also on May 11, 2017, duly acknowledged that the said letter had been duly delivered to the Hon'ble Minister for External Affairs. The recommendations made were as follows:

- Establishing an open, transparent and merit based selection process for the members of the governing body of the NHRC by giving equal representation to all sections of the society.
- Appointing an advisory council to the governing body of NHRC without voting rights comprising NGOs, civil society actors and independent experts.
- Empowering NHRC to issue independently its own rules of procedure and guidelines with provisions for citing any person for violations for these procedures and guidelines.
- Establishing three additional offices of NHRC in Eastern, Western and Southern parts of India and providing the Commission with appropriate funds to carry out its mandate.
- Establishing a toll-free-national- helpline for contacting NHRC in emergency and urgent situations of grave violations of human rights.
- Empowering NHRC to cover all relevant cases involving paramilitary forces and the army, including in the Jammu & Kashmir state.
- Empowering NHRC to inquire into alleged human rights violations and abuses by the armed forces of India.

¹²<https://thewire.in/78184/nhrc-centre-politician/>

¹³<https://scroll.in/article/821152/why-human-rights-groups-do-not-want-an-active-politician-on-the-national-human-rights-commission>

¹⁴<http://www.livelaw.in/sc-dismisses-challenge-nhrc-selection-bjp-vice-president-avinash-rai-khanna-withdraws-candidature-read-order/>

¹⁵Letter dated 12th April from the UN HCHR to the Hon'ble Minister for External Affairs of the GOI

2.5 Engagement with the civil society

In its report to the SCA, the NHRC had highlighted that the presence of core groups in which civil society organisations and activists are represented has ensured the compliance of Paris Principles in the Commission. But the stark reality is that, these mechanisms do not function effectively and hence the interaction between NHRC and the civil society is very minimal. Concerning the same, NHRC's NGO Core Group met twice after the SCA report in January 2017. Apart from two core group meetings, there is a very minimalistic interaction between civil society and NHRC. Civil society members, only selected by the state governments, are invited to NHRC's camp sittings as can be made out from a few camp sittings NHRC had recently, for example in Assam. However, despite being very active as a large membership network of groups working with HRIs, AiNNI has not been invited by NHRC for any interaction so far.

It is also to be mentioned that the NHRC NGO core group met on August 9, 2016, chaired by Justice Dattu, who acknowledged in his welcome address that the meeting was being convened after a period of three years.¹⁶ He also assured the members gathered for the same that henceforth the meetings would be held twice a year. However, within a few weeks of the same, on September 23, 2016, the said NGOs core group of the NHRC was re-constituted with no reference to the previous members.¹⁷

2.6 Complaints Handling

The complaint handling mechanism of NHRC is not effective and suffers with inordinate delays. Section 17 of PHRA empowers the NHRC to conduct its own investigation in cases where the authorities of Central Government or State Government do not respond within the stipulated time. But this provision has been seldom used by the NRHC.

In 2015, the High Court of Allahabad in a landmark judgment ruled that the recommendations made by NHRC cannot be ignored as mere 'opinion or suggestion' and be allowed to be disregarded with impunity¹⁸. The High Court also emphasised the importance of NHRC and its role in 'better protection of human rights' and observed that Section 18 of the PHRA allows NHRC to approach the Supreme Court or High Courts to ask for orders or direction upon completion of its own enquiry into incidents of human rights violation.

The year 2016 had witnessed large number of incidents of human rights violations including systemic attack on fundamental freedoms enshrined in the Constitution of India¹⁹. But not even in a single case, during this period, did the NHRC approach the courts for upholding the human rights nor did it make itself a party to any of the ongoing cases of human rights violations. Rather it has confined itself to another bureaucratic set-up without trying out any alternative or innovative ways to ensure

¹⁶ http://nhrc.nic.in/Documents/Minutes_of_the_meeting_of_Core_Group_of_NGOs_held_on_09_08_2016.pdf

¹⁷ http://nhrc.nic.in/Documents/CoreGroupofNGO_23092016.pdf

¹⁸ <http://www.livelaw.in/human-rights-commission-orders-not-merely-recommendatory-state-duty-bound-comply-allahabad-hc/>

¹⁹ <https://www.hrw.org/world-report/2017/country-chapters/india>

justice to the victims of human rights violations nor to proactively protect the fundamental rights of the citizens.

The SCA in its accreditation reports of NHRC, in January 2017, stated that NHRC should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, a NHRC should:

- ensure that its facilities, staff, and its practices and procedures, facilitate access by those who allege their rights have been violated and their representatives; and
- ensure that its complaint handling procedures are contained in written guidelines, and that these are publicly available.

The concerns expressed in last ANNI report continue to remain. There are significant delays and police officers are constantly used to investigate complaints, including those against the police. There is an over reliance on the state system, mostly on those against whom the complaint is lodged in the NHRC.

The complaints regarding the violations of rights of HRDs are also handled in the same manner as other complaints sent to the NHRC even though there is National Focal Point for HRDs at the NHRC. On the instances of false cases being filed on HRDs, the NHRC has never exercised its powers in Section 12 and intervened on behalf of the HRDs, despite several written requests. NHRC has repeatedly mentioned about the large number of cases it has to deal with. It is pertinent to mention here that every single petition with regard to a specific case of human rights violation is numbered separately but heard only after clubbing many complaints together. Since NHRC accepts complaints from multiple sources and later clubs them together, the number of complaints dealt by the Commission is not a true reflection of the instances it has intervened into. A closer look at these cases will also reveal that a larger number of these cases are either dismissed in limni or transferred to State Human Rights Commissions after closing the case at the NHRC's end.

The NHRC should be more proactive while corresponding with the government authorities, given the inordinate delay in its communication with government authorities. While asking for action taken reports or status of any incident, the NHRC should mention about strict compliance with the time given to reply to their response. Though the NHRC has powers to issue summons to government officials or approach the Supreme Court or High Court, this power has not been well used.

A study of the NHRC recommendations, collated from its monthly newsletters for the year 2016 and January-April 2017, reveals that of the total 317 recommendations were made in 2016, 122 cases [38.48%] are treated as closed with its recommendations having been carried out. In five of these cases the pendency before the NHRC was for seven years; in three cases for six years; in nine cases for five years; in 19 cases for four year; in 33 cases for three years. Out of the 376 cases where compliance has been reported for 2016, in only 144 cases were the compliance made within one year.²⁰

²⁰<http://ainni.in/wp-content/uploads/2017/07/AiNNI-study-of-recommendations-and-their-compliance-as-reported-with-NHRC-Monthly-Newsletter-for-the-period-of-Jan16-April17.pdf>

The issues pertaining to complaints handling is explained through a few selected cases below.

2.6.1 Inaction on the attacks on HRD's in Chhattisgarh

Central Indian state of Chhattisgarh, has witnessed several incidents of large scale and systemic violations of human rights of innocent villagers and tribal population including sexual violence, abduction and encounter killings by the security forces. Chhattisgarh administration and police and vigilante groups supported by the State have systematically targeted activists, researchers, academicians, journalists, lawyers and other HRDs who raised their voice against these human rights violations. After repeated complaints sent to NHRC and numerous call for independent investigation, the NHRC in April 2016 sent its investigation team to Chhattisgarh to enquire into the complaints of gross human rights violations. However, despite repeated requests from Human Rights Defenders Alert – India (HRDA) and Women against Sexual Violence and State Repression (WSS), NHRC has not released its report in the public domain or to HRDA and WSS who are complainants in these cases. There is no tangible action taken on any of the complaints even after the visit of the investigation team.

During November 2016, the Chhattisgarh police had filed a false case of murder against renowned academicians Prof. Nandini Sundar and others which led to a lot of outcry²¹ against the repressive measures against HRDs in Bastar region of Chhattisgarh. After a lot of pressure, the NHRC summoned Chief Secretary of Chhattisgarh and Mr. S.R.P Kalluri, Inspector General of Police, Bastar, regarding this case. But these summonses were also not respected and both the Chief Secretary and Mr. Kalluri did not appear before the NHRC in person. Two representatives from the state government of Chhattisgarh appeared on their behalf before the NHRC and they informed that the state government has prepared a six-point 'Action Plan' to ensure that human rights are protected in Bastar region. The prime accused in all these cases, Mr. Kalluri, has just been transferred from the Bastar region following this NHRC summon and now placed in state capital. Mr. Kalluri himself avoided meeting NHRC on various grounds despite NHRC communications.

By having a close-look at the action plan submitted it can be seen that the provisions are merely an eye-wash. The action plan states the formation of District-Level Human Rights Protection Committee and State Human Rights Protection Committee. In fact, the formation of such Committees were directed by the Supreme Court in the land mark judgment of *Prakash Singh v. Union of India* which deals about police reforms in the country way back in the year 2006 itself. It should have been the duty of NHRC to admonish the Chhattisgarh government for not following the directions of the Supreme Court for so many years; rather it had blindly accepted the 'Action Plan'. The NHRC did not question the vagueness in the action plans, for instance both the district and state level committees will have 2-3 eminent citizens to act on human rights complaints. There are apprehensions that the government might appoint biased persons to go slow on complaints against the police personnel.

²¹<https://thewire.in/78698/the-fir-against-nandini-sundar-and-archana-prasad-is-a-clear-case-of-vendetta-politics-say-civil-society-members/>

The NHRC did not take cognizance of the fact that under the Chhattisgarh Police Act, 2007 mandates the State government to establish a 'State Police Accountability Authority' having powers to inquire into allegation of serious misconduct against police personnel. The NHRC has not even verified whether the State Police Accountability Authority has been formed under that state and functioning. The State Government thereby has just reiterated and also contravened the existing statutory provisions from the Chhattisgarh Police Act to the NHRC, which has accepted them without any analysis into it.

2.6.2 Restricted from Traveling to Geneva to Attend UNHRC and Arbitrary detention of Mr. Khurram Parvez

Mr. Khurram Parvez is a Kashmiri HRD and has highlighted several gross violations of human rights in the state of Jammu & Kashmir. He was not allowed to travel to Geneva by the Indian immigration authorities on September 14, 2016, when he was scheduled to attend the 33rd session of United Nation's Human Rights Council. Mr. Parvez had a valid visa and all travel documents. He was told by the immigration authorities at New Delhi International Airport that due to orders from the Intelligence Bureau he cannot travel to Geneva. On September 15, 2016, he was arrested by the Jammu & Kashmir Police and was charged under the draconian Public Safety Act, under which a person can be detained up to six months. He was later released after 76 days when the High Court of Jammu & Kashmir quashed the order of his detention under Public Safety Act and termed his detention "illegal" and "abuse of power"²². In October 2016, a group of UN experts urged²³ the Government of India to release Mr. Parvez and said that "his continued detention following his arrest just a few days before his participation in the UN Human Rights Council, suggests a deliberate attempt to obstruct his legitimate human rights activism."

HRDA had urged the NHRC to intervene in the case of his arrest and illegal deportation through a complaint sent on 16 September 2016. The NHRC took cognizance of the complaint and had sought a report from the Home Ministry to which a reply was given by the Joint Deputy Director of Intelligence Bureau, Government of India and upon its consideration, the NHRC had passed the following order:

"...It has been reported that Khurram Parvez is a Valley based Human Rights activist having anti-India and pro-separatist disposition. He maintains close links with prominent separatist leaders in the valley and has also participated in conferences/seminars organized by them. With a view to internationalize the ongoing disturbance and to castigate Indian policies, he had written a letter to UN High Commissioner for Human Rights and other Special Rapporteurs of UN for their urgent intervention and at the behest of SAS Geelani, he met foreign diplomats as well as representatives of HR organization based in Delhi and apprised them of the current situation and sought their intervention. He had also planned to attend the session of UNHRC at Geneva. During the current unrest in Kashmir Valley, he was at forefront of propagating separatist narrative among the valley based civil society activists. Four criminal cases have been against him for inciting violence in the

²²<https://thewire.in/83567/khurram-parvez-released-after-76-days-in-detention/>

²³<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20697&LangID=E>

District of Srinagar. Hence, damage could have been caused to national interest if he was allowed to go out of the country.”

It is shocking that, based on a report filed by an intelligence agency which has no parliamentary oversight, the NHRC did not take any action of the case of arrest and illegal deportation of a HRD and solely based on the report of Intelligence Bureau had closed the complaint without even asking for a response from the HRD or complainant, in this case the HRDA. NHRC didn't use its investigation division to enquire into the matter. Rather, NHRC violated the principles of natural justice by concluding the case only on the basis of the report of Intelligence Bureau.

2.6.3 Foreign Contribution Regulation Act Licence Non-Renewal of Centre for Promotion of Social Concerns

Centre for Promotion of Social Concerns (CPSC), a non-profit and charitable trust involved in monitoring and documenting of human rights violations through its program-unit 'People's Watch', had applied for renewal of its foreign funding grant licence under Foreign Contribution Regulation Act, 2010 (FCRA). The Government of India refused to renew the FCRA licence in October 2016 stating "adverse field agency reports". CPSC has filed a writ petition in the High Court of Delhi challenging the non-renewal of its FCRA licence and the case is pending before the Court.

HRDA intervened in this case and a complaint was sent to NHRC in November 2016. NHRC transmitted the complaint to the 'concerned authority for appropriate action and asking for action taken report in four-week' time. The report as on July 5, 2017, is still awaited.

In November 2016, in the same matter, a letter was sent from the 7th Asian Human Rights Defenders Forum to the NHRC to intervene in the case of non-renewal of FCRA licence and there by violating fundamental freedom of association of CPSC. Upon receiving the letter from 7th Asian Human Rights Defenders Forum, NHRC took suo-motu cognizance of the matter and issued a notice²⁴ directing the Union Home Secretary to reply within four weeks. The Union Ministry of Home Affairs had sent a response to NHRC on the notice sent and upon its perusal the NHRC again asked the Union Home Secretary to reply within four weeks as NHRC was not satisfied with the response sent earlier. It has been almost nine months and NHRC is still awaiting a response from the Union Home Ministry. The Complainant in this case had requested NHRC for the submissions made by the ministry which has not been shared and responded to, in spite of personal representation to the Hon'ble Chairperson of the NHRC after the last meeting of the NHRC Core Group on NGOs on May 12, 2017.

However, this is a fit case for NHRC to use its power under Section 12 PHRA which empowers it to "*review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation*". Despite this specific request to NHRC, NHRC has been tangibly hesitant to do so. The United Nation's Special Rapporteur on the rights to freedom of peaceful assembly and of association in April 2016 had

²⁴<http://nhrc.nic.in/dispatchive.asp?fno=34140>

presented a legal analysis of the Foreign Contribution Regulation Act of 2010 and argued that the statute is not in conformity with international law, principles and standards.

Similarly, in the case of Lawyers' Collective (LC), a human rights organisation run by eminent lawyers Ms. Indira Jaising and Mr. Anand Grover, its FCRA registration of LC, was cancelled by the Government of India, but the NHRC failed to intervene in to the matter and stated that "*The Commission does not find any reason to intervene into the matter. The complainant may recourse to available legal remedies, if he so desires.*"²⁵

2.6.4 Human Rights Defenders' Cases at NHRC

In the year 2016, HRDA, a national platform working for the protection of HRDs in India, had sent 124 complaints on attacks on HRDs to NHRC. The NHRC had registered 112 of the complaints sent by HRDA. The analysis of the action taken by NHRC shows that 14% of the complaints sent were transferred to the respective state human rights commissions (SHRCs). It is a matter of concern that many cases are transferred to SHRC, despite the fact that there is a severe shortage of members in SHRCs and most of the vacancies for the posts of Chairperson and Members are lying vacant. Similarly, these commissions suffer from inadequate staffing, lack of resources, infrastructure, adequate funding and no proper investigations wings. Hence, they are not in a good state to act upon complaints in the cases of human rights defenders. Moreover, accused in majority of these cases are local police personnel and sending the complaint to the SHRC, mostly comprising officials from state government, translates into increased instances of harassment and reprisals against HRDs.

Out of the 124 complaints sent, almost 30% of the cases are closed, disposed or dismissed by NHRC. An emerging new trend in NHRC is to close the complaints without sharing with the complainant the copy of the report submitted by relevant authorities and calling for response as mandated by Practice Directions Guideline 17 of the NHRC dated May 28, 2002. It is an attempt by NHRC to reduce the huge number of backlog of complaints in the NHRC, which is against the principles of natural justice. In most of these 30% cases, the cases were closed solely based on the report submitted by police. The NHRC does not investigate cases where HRDs are falsely implicated in a criminal case, citing that such cases are sub-judice, and therefore such complaints are closed.

Around 30% of the cases sent by the NHRC in the year 2016 are pending as the government authorities have not responded within the time given to them. NHRC has not taken any measures or actions, as provisioned in the PHRA, to prevent this inordinate delay which adversely affects the delivery of the timely justice to the victims of human rights violation and HRDs in particular.

The Commission has linked 12% of the complaints sent by HRDA with complaints sent by others on same matters. But the NHRC fails to duly inform about the updates about the cases to all the complainants in a linked case, by which the chance of

²⁵<http://hrdaindia.org/?p=1865>

providing additional information by other complainants is taken away.

The year 2016 witnessed targeted and systemic attacks on HRDs by State and non-State actors across the country. Despite this the NHRC has not taken any major intervention in the cases of attacks on HRDs, neither has it ordered compensation or prosecution in a single such case.

2.7 Annual Report

The most recent annual report of the NHRC publicly available is for 2011-2012. SCA in its report in January 2017 noted the concerns regarding the non-publication of annual reports. The annual report for the year 2016-17 is also not made public. There is no information available in the public domain indicating that NHRC has requested the Government of India to table the report in Parliament.

3 Recommendations²⁶

3.1 Recommendations to the Government of India:

- 3.1.1** The Appointing Committee of the NHRC should be guided by defined criteria especially the contribution to human rights made by each of the eligible former Chief Justices of the Supreme Court of India when selecting the Chairperson of the NHRC.
- 3.1.2** The Appointing Committee should take into consideration the contributions to human rights made by each of the eligible candidates being considered for the post of Member of the NHRC, along with other defined criteria. The vacancy should be filled through a public announcement and call for applications.
- 3.1.3** There should be no delay in filling vacancies; and prospective members should be identified in good time to ensure that no vacancy arises.
- 3.1.4** The total number of members of the NHRC should be increased by at least 5 times more, with experience and expertise in human rights, and drawn from different competencies including the plurality of civil society.
- 3.1.5** Amend PHRA to ensure that other National Commissions established subsequent to 1993 are also included as deemed members of NHRC. The deemed members should co-implement nine of ten designated functions of the NHRC and should meet at least once a month.
- 3.1.6** State Human Rights Commissions should also have deemed members from state-level human rights institutions such as State Commission for Women; State Commission for Minorities; State Commissioner on Rights of Children; State Information Commission; State Commissioner for Persons with Disabilities, State Commission for Scheduled Castes and State Commission for Scheduled Tribes [where they exist] etc.
- 3.1.7** Table NHRC annual reports in the Parliament and hold discussions on the

²⁶ Most of the recommendations are same as those submitted last year. None of these recommendations were adhered to by the Government of India and the NHRC. AiNNI believes these recommendations are important and NHRC should engage with civil society and initiate a discussion on the same.

same. Once tabled, these reports should be made publicly available on NHRC's website.

3.2 Recommendations to the National Human Rights Commission of India:

- 3.2.1 NHRC should intervene in the Supreme Court of India with regard to the petition filed seeking reforms in the NHRC [W.P. No 162/2014] and advocate for compliance to Paris Principles.
- 3.2.2 NHRC should strongly advocate amendment to the PHRA to remove the requirement that the Secretary General and Director of Investigations be seconded from the Government, and to provide for an open, merit-based selection process.
- 3.2.3 The practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police should stop. Special investigation teams and Special Rapporteurs need to be designated to look into cases of human rights violations and shouldn't depend on the State agencies or only former staff members of the NHRC for the same.
- 3.2.4 The Core Group on NGO's of the NHRC should meet minimum four-times a year. The NHRC should consider CSOs as partners in conceptualising and implementing initiatives as contained in the Paris Principles and as outlined in the Kandy Programme of Action of the Asia Pacific Forum of NHRIs.
- 3.2.5 The NHRC's annual reports need to be periodically published. Pending annual reports need to be published immediately and NHRC should make sure that the following annual report is available within a fixed time after completion of the calendar year. Given the government delay in tabling it in Parliament, NHRC should share through its website the copy sent to the government.
- 3.2.6 The NHRC should start with daily cause-list for cases that the Full Commission, Division Benches and individual members hear. In the present context, there is no way that a complainant or victim can access information about the stage of hearing of a particular complaint even though three of the fulltime members are former judges of the Supreme Court and High Courts. In addition to the cause list, complainants and victims should be given the space to depose and record their statements, also through video conferencing, rather than relying solely on State agencies for 'investigation'.
- 3.2.7 The NHRC should take care that notice period to respondents is lessened from the present 6 to 8 weeks to 1 or 2 weeks so that period of duration of a complaint overall is reduced. This is possible through means and different forms of speedy communication. In addition, most complainants are also available on mobiles, and hence recourse to texts/whatsapp etc. can be seriously and urgently considered for urgent complaints related communications.
- 3.2.8 The NHRC should also ensure that in addition to compensation it should also start recommending criminal prosecution of those found responsible for the human rights violation and also ensure that rights contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 are meticulously respected and adhered and thus that assurance of non-repetition of the violation by the perpetrator and delivering an apology to the victim are also incorporated in the recommendations of the NHRC.

- 3.2.9 The NHRC should ensure that whenever complaints filed before it have to be transferred to the SHRC for disposal under section 13(6) of the PHRA, before such a transfer is ordered the NHRC should ensure that the SHRC has a full commission with a full-time chairperson (not acting) and two members as assigned under the Act. In cases where such transfer of complaints for disposal are made it should be ensured that the NHRC and the concerned SHRC informs the complainant of the said transfer, disposes of the complaint referred speedily and reports the final recommendation passed to the NHRC within a specified time limit.
- 3.2.10 The NHRC should always instruct the respondents to whom complaints are referred for their versions to make sure that the complainant is not called to the police station or any other office of the respondent and ridiculed before the respondent for having approached the NHRC with the complaint. Such versions should be provided without summoning the complainants/victims directly or indirectly and communicating to them in any manner while the complaint is under the consideration of the NHRC.
- 3.2.11 In all complaints submitted to the Focal Point on HRDs at the NHRC dealing with special reference to W/HRDs, NHRC should undertake independent investigation using the services of its Special Rapporteurs, members of NHRC NGO Core Group and Special Investigation teams appointed from time to time. HRDs stand to face reprisals if the same State agencies are asked to investigate the complaint who most often are the actual perpetrators of the human rights violence in the complaint.
- 3.2.12 The NHRC should evolve principles and guidelines of case work in matters relating to HRDs in the country and twine its engagement with HRDs with the National/State/District/*Taluk* Legal Services Authority so that the most competent of senior criminal lawyers with experience can be made available to serve the interests of HRDs in all alleged false cases registered against HRDs.
- 3.2.13 The NHRC should ensure that its Focal Point on HRDs should be a member of the Commission, and have a HRD background to fully understand the challenges faced by defenders as recommended by the UN SR on human rights defenders in her report of March 2012. A fast-track procedure for complaints from defenders within the NHRC and SHRCs should be developed and not allow the cases from HRDs to follow the usual route of other complaints.
- 3.2.14 The Focal Point on HRDs should have a dedicated team of fellow HRDs, having expertise and knowledge in the field of human rights and should conduct regular regional visits, meetings with HRDs in difficulty or at risk, undertake trial observations of cases of HRDs wherever appropriate personally or by engaging others to do so, denouncing publicly on a regular basis violations against HRDs and impunity, taking active steps to encourage state governments and its officials to start recognising the UN Declaration on HRDs and taking active steps to respect the rights of HRDs and their own roles as directed under the said Declaration.
- 3.2.15 The NHRC should lead the national process of advocating for a law on the protection of HRDs, with an emphasis on W/HRDs facing greater risks, developed in full and meaningful consultation with civil society and on the basis of technical advice from relevant United Nations entities and also review existing HRD laws in other countries.

- 3.2.16 The NHRC should lead the process of developing a comprehensive, adequately resourced, well-advertised national and state protection programme for HRDs at the central and state levels and in conjunction with the SHRC and other N/SHRIs.
- 3.2.17 The NHRC should use its powers under Section 12 which enables the NHRC to review laws and undertake a detailed analysis pertaining to the FCRA which affects thousands of organisations. The legal analysis of the Indian FCRA offered by the UN Special Rapporteur on the Right to Peaceful Assembly and Association can also be utilised in this regard.
- 3.2.18 The NHRC should intervene in courts using its powers under Section 12 (b) of the PHRA in cases of fabricated cases against HRDs. The NHRC should undertake independent investigations and based on its investigations should intervene in these courts through competent senior lawyers.
- 3.2.19 The NHRC should follow up with all the N/SHRIs with regard to the appointment of Focal Point on HRDs in each state. To date no state has appointed a focal point.
- 3.2.20 In all cases of HRDs, the NHRC along with compensation, should develop the practice of ordering prosecution of the perpetrator of violation and also obtaining an assurance of non-recurrence from the person(s) responsible and rendering apology to the HRD(s) by the perpetrator.