



# All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI)

NATIONAL SECRETARIAT

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10<sup>th</sup> October, 2017

To,

Tmt. Girija Vaidyanathan IAS  
The Chief Secretary,  
Government of Tamilnadu  
Secretariat, Chennai – 600 009.

Dear Tmt. Girija Vaidyanathan ,

**Subject: Tamilnadu SHRC – Appointment of Members – Sec 22 of the PHRA 1993 – Non transparent manner of convening Committee to appoint two members. Calling for urgent time bound reconvening of the said committee with Leader of the Opposition in attendance with all details provided to him in advance – Request not to send meeting minutes to the Governor until then – Since the meeting is ‘non est in law’ - Regarding**

Greeting from **AiNNI !**

1. I respectfully submit that National Human Rights Institutions [NHRIs] are independent bodies established to stand up for those in need of protection and to hold governments to account for their human rights obligations. They also help shape laws, policies and attitudes that create stronger, fairer societies. NHRIs are established by law or in the constitution, to promote and protect human rights in their respective countries. However, they **operate and function independently from government**. Strong and effective NHRIs help bridge the "protection gap" between the rights of individuals and the responsibilities of the State by:

- **Monitoring the human rights situation** in the country and the actions of the State
- **Providing advice to the State** so that it can meet its international and domestic human rights commitments

- **Receiving, investigating and resolving complaints** of human rights violations
  - **Undertaking human rights education** programs for all sections of the community
  - **Engaging with the international human rights community** to raise pressing issues and advocate for recommendations that can be made to the State.
2. I respectfully submit that in India there are 9 NHRIs, namely, the National Human Rights Commission; the National Commission for Women; the National Commission for Minorities; the National Commission for Scheduled Castes; the National Commission for Scheduled Tribes; the National Commission for the Protection of Child Rights; the National Commissioner for Persons with Disabilities; the Central Information Commission and the National Commission for Safai Karmacharis. At the state level we deal with the following institutions if they exist in the state, namely, the State Human Rights Commission; the State Commission for Women; the State Commission for Minorities; the State Commission for Scheduled Castes; the State Commission for Scheduled Tribes; the State Commission for the Protection of Child Rights; the State Commissioner for Persons with Disabilities; the State Information Commission and the State Commission for Safai Karmacharis.
3. I respectfully submit that all NHRIs globally are governed by what are popularly now known as Paris Principles (1991) and the Global Alliance of National Human Rights Institutions [GANHRIs] General Observations of May 2013. The Paris Principles provide benchmarks against which proposed, new and existing NHRIs can be assessed or “accredited” by the International Coordinating Committee’s Sub-Committee on Accreditation. The Paris Principles are not lengthy – only about 1200 words. They are quite general overall, though some parts are very specific. “They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism”.

Under the Paris Principles, NHRIs are required to:

- **Protect** human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- **Promote** human rights, through education, outreach, the media, publications, training and capacity-building, as well as advising and assisting Governments.

The Paris Principles sets out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be successful:

- ***Mandate and competence:*** a broad mandate based on universal human rights standards;
  - ***Autonomy from Government;***
  - ***Independence*** guaranteed by statute or constitution;
  - ***Pluralism***, including through membership and/or effective cooperation;
  - ***Adequate resources;***
  - ***Adequate powers of investigation.***
4. The Sub Committee on Accreditation of GANHRI has assessed the Indian NHRC created under the same Protection of Human Rights Act 1993 that the Tamil Nadu State Human Rights Commission is created. The NHRC of India was assessed by the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) in May 2011 and 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 of the SCA focused on the specific recommendations made by the SCA in November 2016 highlighting issues of composition and pluralism, selection and appointment, appointment of senior staff (secondment from government), political representation and complaints handling. The report also focuses on NHRC's response to the cases of human rights defenders (HRDs).
5. The General Observations of the GANHRI 2013 emphasises in its G.O. 1.7 on ensuring pluralism of the NHRI. Its G.O. 1.8 emphasises on the selection and appointment of the decision making body of NHRIs. It states that this process of selection should ensure pluralism to ensure the independence of and public confidence in the senior leadership of an NHRI and this should include publicizing vacancies broadly and selecting potential candidates from a wide range of societal

groups, promoting broad consultation and/or participation in the application, screening, selection and appointment process, assessing applicants on the basis of pre-determined objective and publicly available criteria etc. It is because the NHRC has not followed the Paris Principles that the NHRC's accreditation process has been postponed by one year and the same is to take place in November 2017.

6. I respectfully submit that 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:*

- ***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.***

All what has been stated to be applicable to the NHRC has also therefore to be made applicable to the SHRC and hence this petition seeking the right to intervene in this petition that deals with the vacancies in the Tamil Nadu SHRC.

7. The United Nation's High Commissioner for Human Rights, has in a letter addressed to the Hon'ble Minister for External Affairs of the Government of India dated 12<sup>th</sup> April 2017 on strengthening its ability to promote and protect human rights. The UNHCHR states in this letter,

***'Developing a strong NHRC which is able to fulfil its mandate independently in accordance with the Paris Principles is vital. National Human Rights Institutions (NHRIs) do work to strengthen good governance and the rule of law in their countries. They act as important bridges, linking governments, parliaments, the judiciary and civil society. They advocate strongly for legal and institutional reforms, monitor places of detention and security institutions and publish regular reports. NHRIs are uniquely placed to monitor and prevent human rights violations through national inquiries into these violations.'***

***During the review of NHRC in November 2016, the Sub- Committee on Accreditation of the Global Alliance of NHRIs made recommendations to the NHRC which, if implemented, would allow it to function fully in accordance with the Paris Principles. Therefore, I would like to encourage your Government to consider the following recommendations for amending NHRC's legal basis, namely the 1993 Protection of Human Rights Act (PHRA), in order for it to fully reflect NHRC's core functions:***

- 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. With a suggest as “If adopted, those measures would improve the international standing of the NHRC and would have a high deterrent value, since the NHRC will have jurisdiction on all cases”***

*If adopted, these measures would improve the international standing of the NHRC and could have a high deterrent value, since the NHRC will have jurisdiction on all cases. I would very much appreciate for this letter to be shared with both Houses of Parliament. Minister of Home Affairs and Chairperson of the NHRC. My office stands ready to provide continued technical support to the Government of India and the NHRC in these matters.*

**It is in the light of the above serious developments related to the Protection of Human Rights Act and the recent meeting of Committee under Sec 22 of the PHRA 1993 that I am intervening before your good self to ensure that the Committee is reconvened legally , in a transparent manner providing all details of candidates to be considered for selection at the Committee to all the Members of the said Committee that also includes the Leader of the Opposition and only then send the selected names to the Governor for issuance of a warrant of appointment.**

8. The Protection of Human Rights Act 1993 envisions a two tier system of human rights governance in this country, one functioning nationally under the National Human Rights Commission of India and simultaneously another at the state level through a statutory SHRC. The SHRCs are constituted under Section 21 (1) & (2) of the PHRA 1993 which is to comprise of one Chairperson and two members. Earlier to the amendment of the Act this was to be a Commission with 5 members which after the amendment was reduced to 3 members. This was to be a Chairperson who has been a Chief Justice of a High Court; one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum

of seven year experience as District Judge and another Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. It is respectfully submitted that since the inception of the SHRC in Tamil Nadu on 17.04.1997, the earlier two members and now after the amendment to PHRA in 2006 one member who is to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights have always been people who have served in the Government of Tamilnadu and subsequently retired as senior IAS officers or District Judges, a Director of Medical Services, or Director of School Education. In the past 20 years of functioning of the SHRC, not a single member from civil society, media, academia, legal profession, women activists, dalit /child / tribal / environmental activists or others have so far been appointed as a member of the SHRC. Thus, the knowledge, competence, diversity, and plurality of the commission become questionable.

9. It is respectfully submitted that between September 7, 2001 to November 21, 2003 (16 months) there was no person discharging the functions of the chairperson of the Hon'ble Commission. An Acting Chairperson was assigned on November 21, 2003 and continued in office for 33 months until August 05, 2006 when a Hon'ble Chairperson was assigned to the Hon'ble commission. Between September 7, 2001 to August 05, 2006, for a period of 59 months (almost 5years) there was a vacancy in the post of Hon'ble Chairperson. Between 2002 – 2006 (4 years) there was only one member. Between December 14, 2000 to March 30, 2001 – there were only four members. Between June 06, 2008 to August 4, 2011 (38 months) there were only three members. From August 5, 2011 to January 08, 2012 (5 months) there was no Hon'ble Chairperson or acting Chairperson. From January 9, 2012 till 24.11.2014 date ( almost 26 months) there was only an acting Chairperson who initially was a Judge of the rank of a District Judge. Later this Acting Chairperson was changed and the other member who was a retired IAS officer took charge as the Acting Chairperson. During this period a full time Hon'ble Chairperson, Justice Meenakumari was appointed on 16<sup>th</sup> November 2014 and took charge on 25<sup>th</sup> November 2014 after the Hon'ble Supreme Court had on 16<sup>th</sup> September 2014 asked the state government to take appropriate steps to expeditiously fill it up. The Hon'ble Supreme Court, acting on a PIL, had expressed

concern over the Commission remaining headless for the last three years and asked the state to constitute a search committee to find a suitable person for the post at an early date. who is holding office at present. However, from the month of August 2016 both the members of the Commission have completed their term and their positions remain vacant leaving the Commission only with an Hon'ble Chairperson to perform all the tasks. The vacancy of the two members has thus being going on for a period of almost one year.

10. It is in this background that in a writ petition filed before the Madurai Bench of the Madras High Court in W.P. No 6847/2017 on 27.7.2017 Hon'ble Judges K.K. Sasidharan and G.R.Swaminathan passed an order on 18.08.2017 directing the Principal Secretary, Public Department, Government of Tamil Nadu, Fort St. George, Chennai and the Principal Secretary, Home Department, Government of Tamil Nadu, Fort St. George, Chennai to ' complete the process of appointment of the members to the State Human Rights Commission as expeditiously as possible and in any case on or before 13-October-2017. It is made clear that no further extension of time would be given at any cost, as it would not be possible for the State Human Rights Commission to function without the quorum '.
  
11. The Government of Tamilnadu which did not take any steps for the period from August 2016 to July till the writ petition was filed responded with a counter in the High Court signed by the Additional Secretary to the Government stating , ' .... the Government has already constituted a committee consisting of the Hon'ble Chief Minister as Chairperson, the Speaker of the Legislative Assembly, the Minister in Charge of the Department of Home and the Leader of the Opposition in the Legislative Assembly to select the members to the SHRC under [Section 22](#) of the PHRA 1993. It is further contended that after convening the meeting, the names have to be forwarded to the Governor for appointment' . This was totally untrue because this is a statutory committee under Sec 22 of the PHRA 1993 and not one that has to be specially constituted by the Government. In response to the order of the Hon'ble High Court of 17th August, 2017, the Government had convened the said meeting in a delayed fashion only last week – almost 6 weeks after order of the High Court - only because the order directs the last date for such action to be 13th October 2017.



12. The convening of the said Committee without the presence of the Leader of the Opposition in the Legislative Assembly and not submitting to him full and complete details of the candidates to be considered for being appointed at the meeting is in effect 'non est in law' because the complete details to be transacted at the meeting have been withheld and only a list of names submitted and the meeting carried on in the absence of the only independent person on the said Committee in a Government whose legality itself is being questioned before the Madras High Court.

13. AiNNi therefore calls upon your good self to kindly do adhere to all principles to be followed in the convening of all official Committees under the present Government and in the said case of the Committee to appoint members of the Tamilnadu SHRC to ensure the following are followed:

- (a) To impress upon the Chairperson of the said Committee, namely, the Hon'ble Chief Minister that the meeting of the said Committee convened last week is 'non est in law' since the Hon'ble Leader of the Opposition, Mr. M.K. Stalin has not been provided adequate notice and adequate details of all the names along with all details of the candidates to be considered for selection and hence that the same has to be reconvened;
- (b) To immediately thereafter to ensure that the Government takes necessary steps to reconvene the Committee with the attendance of the Leader of the Opposition after all full and complete details of all candidates to be considered for selection are provided to him and decisions taken in his presence;
- (c) To ensure that your good self takes official notice of this very serious lacuna in the convening of the said meeting referred supra last week without the attendance of the Hon'ble Leader of the Opposition and further that your good self does not take steps either by yourself or by any of your subordinate staff to send the proceedings of this Committee detailing the two members to be appointed to the Tamil Nadu SHRC to the Governor for his warrant.

AiNNi therefore calls upon your good self to kindly do adhere to all above mentioned requirements failing which we will be constrained to intervene in a court of law to challenge the decisions made in this Committee without following Paris Principles and principles of natural justice.

Thanking you and assuring your good self and the Government of Tamilnadu AiNNI's fullest cooperation in all matters relating to all State Human Rights Institutions, their effectiveness, independence, diversity, accountability and co operation so that the rule of law, human rights and fundamental freedoms as guaranteed by the Constitution and upheld under international human rights law and as pointed out by the United Nation's High Commissioner in his letter to the Government of India recently and which is quoted above is upheld in true word and spirit.

Yours faithfully,



(Henri Tiphagne)  
National Working Secretary,  
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working with National and State Human Rights Institutions (AiNNI)

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