

Regional Workshop for Civil Society Organisations on National and State Human Rights Institutions Workshop Manual



National Commission
for Women, India



NCPCR



NATIONAL COMMISSION FOR MINORITIES



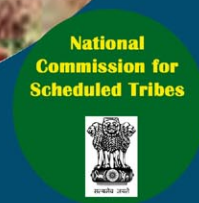
CIC



Chief
Commissioner for
Persons with
Disabilities



NCSC



National
Commission for
Scheduled Tribes



NATIONAL COMMISSION FOR SCHEDULED CASTES
GOVT OF INDIA
NCSC

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European Commission's EIDHR

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Asian NGO Network
on National Human Rights Institutions

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



**Regional Workshop for Civil Society
Organisations on National and State Human
Rights Institutions**

Workshop Manual

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

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CHAPTER 1

WHAT ARE NATIONAL HUMAN RIGHTS INSTITUTIONS?

National human rights institutions 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.

CHAPTER 2

HISTORY OF NATIONAL HUMAN RIGHTS INSTITUTIONS

The idea of establishing national human rights institutions was first conceived in the aftermath of World War II. In 1946, the Economic and Social Council considered the issue of national institutions, two years before the Universal Declaration of Human Rights (UDHR) became the “common standard of achievement for all peoples and all nations”. Member states were invited to consider establishing information groups or local human rights committees.

In 1978, the Commission on Human Rights organised a seminar which resulted in draft guidelines for the structure and functioning of institutions. The Commission on Human Rights and the General Assembly subsequently endorsed the guidelines. The General Assembly invited States to take appropriate steps to establish these institutions, where they did not already exist, and requested the Secretary-General to submit a detailed report on NHRIs.

In 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights took place in Paris. A key outcome was the Principles relating to the status of national institutions (the **Paris Principles**, see annex I below). Today the Paris Principles are broadly accepted as the test of an institution’s legitimacy and credibility, and have become part of the human rights lexicon.

The 1993 World Conference on Human Rights in Vienna was a watershed for NHRIs. For the first time NHRIs compliant with the Paris Principles were formally recognized as important and constructive actors in the promotion and protection of human rights, and their establishment and strengthening formally encouraged. The 1993 World Conference also consolidated the Network of National Institutions, established in Paris in 1991, and laid the groundwork for its successor, the **International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**.

Today there are well over 100 NHRIs operating around the world, 72 of which are accredited by the ICC in full compliance with the Paris Principles.

CHAPTER 3

'Paris Principles'

Principles Relating to the Status of National Institutions

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

CHAPTER 4

INTERNATIONAL CO-ORDINATING COMMITTEE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS (ICC)

Now known as the Global Alliance of NHRIs (GANHRI)

The International Coordinating Committee for National Human Rights Institutions (ICC) is the international association of national human rights institutions (NHRIs) from all parts of the globe.

Established in 1993, the ICC promotes and strengthens NHRIs to be in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights.

The ICC:

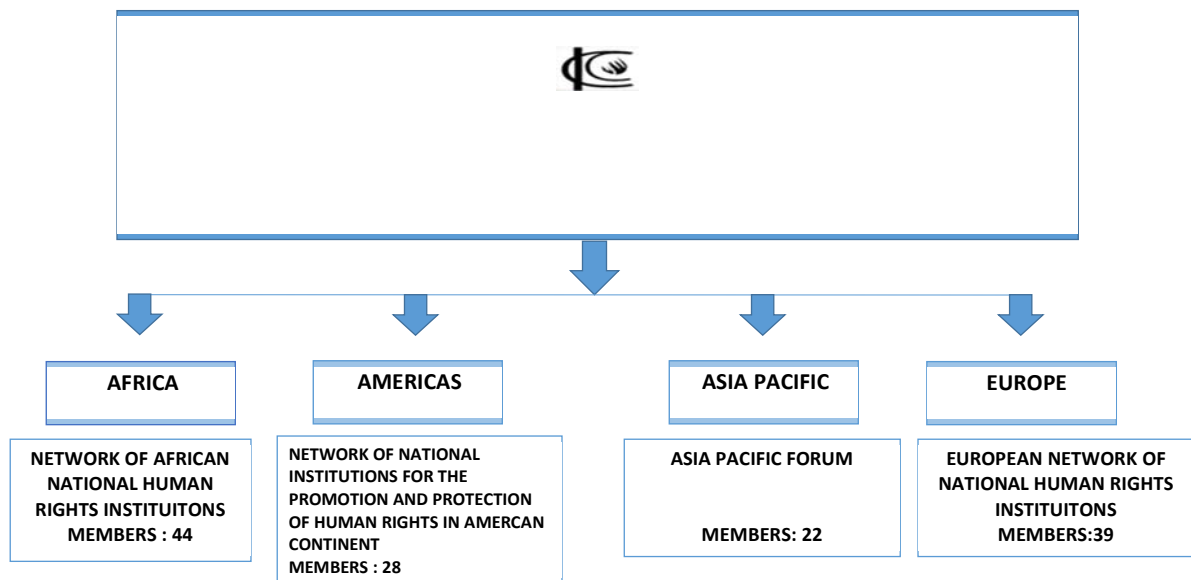
- Facilitates and supports NHRI engagement with the UN Human Rights Council and Treaty Bodies
- Encourages cooperation and information sharing among NHRIs, including through an annual meeting and biennial conference
- Undertakes accreditation of NHRIs in accordance with the Paris Principles
- Promotes the role of NHRIs within the United Nations and with States and other international agencies
- Offers capacity building in collaboration with the Office of the High Commissioner for Human Rights (OHCHR)
- Assists NHRIs under threat
- If requested, can assist government to establish NHRIs

4.1 Global Alliance of NHRIs (GANHRI)

Established in 1993, and previously known as the ICC, The Global Alliance promotes the role of NHRIs worldwide, providing a forum for its members to interact and exchange, as well as facilitating their engagement with international organizations.

The Global Alliance supports and represents NHRIs on the global scene, bringing together the members of four regional networks:

- Network of African National Human Rights Institutions (NANHRI)
- Red de Instituciones Nacionales Para la Promocion y Protection de los Derechos Humanos en le Contenente Americano (Network for the Americas)
- Asia Pacific Forum of National Human Rights Institutions (APF)
- European Network of National Human Rights Institutions (ENNHRI)



4.2 ICC Sub-Committee on Accreditation (ICC-SCA)

In line with its key mission to support the establishment and strengthening of NHRIs, the ICC through its Sub Committee on Accreditation (SCA) reviews and accredits national human rights institutions in compliance with Paris Principles.

The ICC may also assist those NHRIs under threat and encourage NHRIs' statutory legislations' reforms and the provision of technical assistance, such as education and training opportunities, to strengthen the status and capacities of NHRIs.

The Office of the High Commissioner for Human Rights (OHCHR) is a permanent observer on the SCA and serves as the secretariat to the ICC and its SCA.

The ICC accreditation system has evolved and been strengthened over the past years,

guided by the principles of transparency, rigor and independence. Measures that the ICC adopted improve to the process include: a system by which NHRIs are reviewed on a periodic basis of 5 years; an appeal process for NHRIs to ensure greater transparency and due process; a more rigorous review of each application; more focused recommendations; and wider distribution and greater knowledge of SCA recommendations by NHRIs and other stakeholders, so that they can follow up in-country and contribute to the accreditation process.

The SCA also develops General Observations on interpretative issues regarding the Paris Principles. They are intended to constitute guidance for NHRIs on accreditation and on the implementation of the Paris Principles. They are also useful for NHRIs to press for the institutional changes necessary to fully comply with the Paris Principles.

The General Assembly and the Human Rights Council, in their resolutions relating to national human rights institutions, encouraged NHRIs to seek accreditation status through the ICC and noted with satisfaction the strengthening of the accreditation process and the continued assistance of OHCHR in this regard.

Likewise, UN human rights mechanisms including the Universal Periodic Review, Treaty Bodies and the Special Procedures increasingly refer to the Paris Principles and the ICC accreditation process, to encourage the establishment and strengthening of fully Paris Principles-compliant NHRIs worldwide.

One of the key functions of the Bureau is to assess the applications for membership, review and determine the accreditation status of NHRIs, following a recommendation from the Sub-Committee on Accreditation (SCA). The SCA meets twice a year to make recommendations to the Bureau on NHRIs' accreditation status. The SCA comprises one 'A status' NHRI from each of the four GANHRI regional groupings.

4.2.1 ACCREDITATION STATUS



INTERNATIONAL COORDINATING COMMITTEE OF
NATIONAL INSTITUTIONS FOR THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS (ICC)

CHART OF THE STATUS OF NATIONAL INSTITUTIONS

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ACCREDITED BY THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL
INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Accreditation status as of 26 January 2016

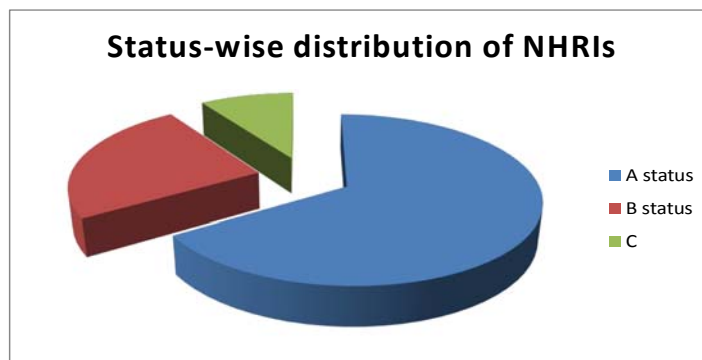
In accordance with the Paris Principles and the ICC Statute, the following classifications for accreditation are used by the ICC:

- A** Compliance with the Paris Principles;
- B** Not fully in compliance with the Paris Principles;
- C** Non-compliance with the Paris Principles.

*A(R): This category (accreditation with reserve) was granted where insufficient documentation was submitted to confer A status; is no longer in use by the ICC. It is maintained only for those NHRIs which were accredited with this status before April 2008.

Summary

Classification	Number of reviewed institutions
A - status	72
B - status	29
C - no status	10
Total	111



Page 1 of 10

As of 26 January 2016

Note: Unless specified, previous years in the fourth column refer to the same status as the most recent one

4.2.2 Submission by AiNNI to ICC-SCA - 2016

July 14, 2016

To,

The Sub Committee on Accreditation (SCA) of GA-NHRI
National Institutions and Regional Mechanisms Section,
OHCHR, CH-1211 Geneva 10, Switzerland

Subject: AiNNI Submission on Re-accreditation Review of NHRC (India) in November 2016

Respected members of the SCA,

We are delighted to submit a brief report this year flowing our report to the ICC in 2011 on the National Human Rights Commission (NHRC) of India. Quite aware that there is a template that has to be basically adhered to for placing our observations on the functioning of the NHRC, All India Network of NGOs & Individuals working with National and State HRIs (AiNNI) intentionally decided not to submit yet another detailed report since most of its observations submitted in 2011 remain the same, We therefore decided to confine ourselves to five categorical observations made by the SCA in 2011 with regard to India's NHRC. We would like to place them for the kind consideration of the SCA. Endorsements will be sent separately.

The same are mentioned below.

1. Composition and Pluralism

The SCA in 2011 noted that *'the provisions in the Protection of Human Rights Act (Amendment) 2006 dealing with the composition of the Commission are unduly narrow and restrict the diversity and plurality of the board. The requirement for the appointment for the Chair to be a former Chief Justice of the Supreme Court severely restricts the potential pool of candidates. Similarly, the requirement that the majority of members are recruited from the senior judiciary further restricts diversity and plurality. While the SCA understands that the justification for these restrictions is based on the NHRCI's quasi-judicial function, it notes that this is but one of 10 functions enumerated in section 12 of its enabling legislation. The SCA is of the view that determining the composition of the NHRCI's senior membership in this way limits the capacity of the NHRCI to fulfil effectively all its mandated activities.'*

AiNNI's Observations

The same provisions in the Protection of Human Rights Act (Amendment) 2016 continue to be in place and hence severely restricting diversity and plurality in

the composition of the Commission. For example, even after over six decades of Indian Independence, there have been only six women as judges in Supreme Court and no woman as the Chief Justice of India and therefore no woman as the chairperson of the NHRC. At present, there is only one woman judge in the Supreme Court. Therefore, as per the current provisions of the Act, there is little possibility for a woman to be the chairperson of the Commission. There is an urgent need for the appointment criteria to be changed towards compliance with Paris Principles.

There has been no woman member in the Commission since 2004 after the retirement of Justice Sujata Manohar (11 years, 10 months and 17 days). There has been no Muslim member in the Commission since 1997 after the retirement of Justice Fathima Beevi (19 years, 5 months and 20 days). Muslims are the largest minority in India with a total population share of 14.23% (172 million) of the total population¹. There has never been a Muslim chairperson of the Commission. Never has there been any representation of Tribal community on the Commission which constitutes 8.6% (104 million) of the total population². The existing provisions on appointment contradict Paris Principles and significantly restrict pluralism and diversity in the composition of the Commission.

The appointment committee had an opportunity to appoint a Muslim as Chairperson of the Commission when the vacancy arose after the retirement of Justice (retd.) K G Balakrishnan on May 11, 2015. However, like the previous years, the appointment process was not transparent and the new Chairperson Justice (retd.) H.L. Dattu was appointed on February 29, 2016, after keeping the post vacant for 294 days even when as per the current provisions of the Act, the appointment committee could have appointed from four other retired chief justices of the Supreme Court of India³.

One member of the Commission, Mr. Satyabrata Pal, retired on March 1, 2014 and this position continues to remain vacant (delay of 2 years, 4 months and 13 days)⁴. Another member of the Commission, Mr. P.C. Sharma (a police officer), retired on June 27, 2012 and he was replaced by Mr. S.C. Sinha (also a police officer) only on April 8, 2014 (a delay of 1 year, 9 months and 11 days). While being appointed as a member to the Commission, Mr. S.C. Sinha was

¹ According to Census 2011 - <http://www.census2011.co.in/religion.php>

² According to Census 2011 - <http://tribal.nic.in/WriteReadData/userfiles/file/Demographic.pdf>

³ AiNNI had submitted a memorandum on November 28, 2016, to the President of India and to all the members of appointing committee.

⁴ Ibid.

the chief of India's National Investigation Agency. It is pertinent to mention here that as per the existing provisions of the Act, this position has to be filled by 'those having experience and knowledge of human rights'. However, since inception of the NHRC, this category has only seen people who have been former members of India Police Service, Indian Foreign Service and once a Rajya Sabha (Upper House of Parliament) Secretary General being appointed to this post. Never has there been a civil society representative appointed in this position.

Given the current state of appointments to the Commission and also given that the appointments don't follow transparent procedures, the appointing committee should take into consideration the contributions to human rights made by each of the eligible candidate being considered for the post of member of the Commission. It would be desirable that the allotment for this vacancy is fulfilled through a public announcement that calls for applications/nominations in a fair and transparent manner. There is also the need for definite criteria/indicators to be put in place to evaluate each of these eligible candidates which then forms the basis of selection by the appointing committee.

It is urgently required in the interest of protecting and promotion of human rights in India, that the Commission has broader expertise on board rather than those with judicial, bureaucratic and administrative background. Nine out of ten functions according to Section 12 of the Act, require expertise, engagement and knowledge of human rights. Despite India being a country with a vibrant civil society and long history of human rights movements, the posts of members to the Commission are kept vacant for a long time.

Further, the SCA noted that, 'the presence of "deemed members" from the National Commissions addressing caste, women's rights, minorities, and scheduled tribes on the full statutory commission. While this is a welcome initiative, there are concerns that they are not adequately involved in discussions on the focus, priorities and core business of the NHRC non-judicial functions.'

The meetings of the full commission and their minutes suggest clearly that they continue not to be adequately involved in discussions on the focus, priorities and core business of the NHRC's non-judicial functions. It is learnt from the minutes of the full commission meetings that interlinking complaint management of the Commission and deemed member commissions was initiated. However, this also refers to the complaint handling function of the Commission and not the nine other functions.

Full commission meetings were held once in 2011 (July 14, 2011), twice in 2012

(February 7, 2012 and December 7, 2012), no sittings in 2013, once in 2014 (February 4, 2014) and once in 2015 (February 3, 2015).

Members of the full commission are the chairpersons (ex-officio) of other commissions⁵. In the meeting held on July 14, 2011, Chairperson of National Commission for Women was absent. In the meeting held on February 7, 2012, Chairpersons of National Commission for Women, National Commission for Schedule Castes and National Commission for Schedule Tribes were absent. In the meeting held on December 7, 2012, all chairpersons (deemed members) were absent. In the meeting held on February 4, 2014, all chairpersons of all other commissions were absent. In the meeting held on February 3, 2015, chairpersons of National Commission for Women and National Commission for Schedule Tribes were absent. From the above information, only five full commission meetings were held between the period 2011-15 with stark absenteeism pattern.

Thematic NHRIs is a unique global contribution made by India. However, for the purpose of full commission to be fully diverse, it was important that the Act was amended and other national commissions⁶ that were established later were also included. Information about Commission's recommendation to amend the Act and include the newer commissions is not available in public domain.

2. The Appointment of the Secretary General and the Director General Investigation from Central Government

As stated in 2006 and repeated again in 2011 by SCA, *'the SCA is not satisfied that the NHRCI has sufficiently addressed the recommendation it made in 2006. The SCA recommends that the NHRCI advocate to amend the PHRA 2006 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. The SCA also remains concerned 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. This practice has adverse implications for the actual and perceived independence of the NHRCI.'*

AiNNI Observations

⁵ National Commission for Women, National Commission for Minorities, National Commission for Schedule Castes and National Commission for Schedule Tribes.

⁶ National Commission for Protection of Child Rights, Central Information Commission, Chief Commissioner for Persons With Disabilities and National Commission for Safai Karamcharis.

The situation continues to be the same and the Secretary General and Director of Investigations continue to be seconded from the Government instead of having an independent merit based appointment. It is not available in public knowledge that the Commission has advocated for the amendment of the Act in this regard.

Since 2011, five persons have been appointed as Secretary General for very short terms and all of them were seconded from the Government. They have been from Indian Administrative Service, Indian Economic Service and Indian Revenue Service. It is also pertinent to mention here that while five persons were appointed to the same post during five years, the post of Secretary General remained vacant cumulatively for about two years during this period.

The last Director General (Investigation) demitted the office in September 2014 and till date (1 year and 10 months) the vacancy has not been filled up.

3. Relationship with Civil Society

The SCA in its recommendations in 2011 regarding NGO Core Groups had noted that *'these mechanisms are not functioning effectively as a means of engagement and cooperation between the NHRCI and civil society defenders'*.

AiNNI's Observations

The situations have not changed in terms of relationship with the civil society.

The Core group on NGO's was reconstituted on September 16, 2011 and thereafter two meetings were conducted respectively on February 10, 2012 and March 22, 2013 after which no meeting has been organised for the past three years. It is important to mention here the Commission doesn't consider CSOs as partners in conceptualising and implementing initiatives but CSOs are merely the participants in programmes organised by the Commission.

The Commission did not make any interventions or public statements regarding the suspension and cancellation of FCRA (Foreign Contributions Regulations Act) registrations of human rights defender Ms. Teesta Setalvad's organisation 'Sabrang Trust' and also that of 'Lawyers Collective', an organisation whose trustees are Ms. Indira Jaising, former member of Committee on the elimination of discrimination against women (CEDAW) and Mr. Anand Grover, former UN Special Rapporteur on the right to health. In Teesta Setalvad's case, civil society organisations appealed to the Commission to intervene in the Supreme

Court using its powers under Section 12 of the Act but the Commission didn't respond.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association in April, 2016 had presented a legal analysis arguing that India's FCRA which regulates foreign funding to organisations is not in conformity with international law, principles and standards. The Commission has not used its powers under Section 12 which enables the Commission to review laws and never undertook any analysis pertaining to FCRA which affects thousands of organisations. It is pertinent to note this as FCRA registrations of around 30,000 organisations will be reviewed for renewal this year.

4. Complaint Handling Function

The SCA in 2011 stated that, *'on the information available, the SCA is unable to determine the veracity of the allegations raised above, however it is clear that there is at least a perception that there are significant delays, as well as ongoing concerns about the use of former police to investigate complaints, including those against the police. The SCA encourages the NHRCI to address these concerns.'*

AiNNI's Observations

The situation continues to remain the same. There are significant delays and police officers are constantly used to investigate complaints, including those against the police. As submitted in 2011 by AiNNI, same methodology of complaints handling is being followed and police continue not to respond to the Commission on time.

The complaints regarding the violations of rights of human rights defenders are also handled in the same manner as other complaints sent to the Commission even though there is National Focal Point for Human Rights Defenders at the Commission. On the instances of false cases being filed on HRDs, the Commission has never exercised its powers in Section 12 and intervened on behalf of the HRDs. Human Rights Defenders Alert – India, a national platform of HRDs for HRDs in India, has repeatedly in most of its petitions to the Commission urged to engage senior competent lawyers through the Legal Service Authority to intervene on behalf of the HRDs.

The Commission 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 Commission

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 Commission's end.

The cases heard by the full Commission were 46 in 2011, 45 in 2012, 46 in 2013, 50 in 2014 and 31 in 2015. An average of 7 cases are taken per sitting. This by no means is voluminous given that the existing composition of the Commission (with 3 members out of 5 from judiciary) is tilted in favour of quasi-judicial functions of the Commission.

In a recent case of torture and extra-judicial killing where the commission intervened, in one of the exemplary interventions, Commission passed landmark orders only to be stayed by a high court. It has been over a year now and the Commission hasn't been able to vacate that stay. Commission doesn't have a panel of senior lawyers and in most cases, less competent lawyers appear for the Commission.

5. Annual Report

The SCA in 2011 had highlighted the importance of annual reports that it *'serve to highlight key developments in the human rights situation in a country and provide public account, and therefore public scrutiny, of the effectiveness of a NHRI'*

AiNNI's Observations

There is no progress made with regard to this observation. The last annual report made public by the Commission was for the year 2011-2012 and despite the categorical recommendations made by the SCA, annual reports by the Commission have not been published for the past four years.

4.2.3. Report of ICC-SCA on NHRC – 2016

India: National Human Rights Commission (NHRCI)

Decision: The SCA decides that further consideration of the re-accreditation application of the NHRCI will be **deferred** to its second session of 2017.

The SCA notes with concern:

1. Composition and pluralism

In accordance with section 3(2) of the Act, the NHRCI shall consist of: a) a Chairperson who has been a Chief Justice of the Supreme Court; b) one member who has been a Judge of the Supreme Court; c) one member who has been Chief Justice of the High Court; d) two members amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The SCA reiterates its previous concerns from October 2006 and May 2011, and remains of the view that the requirement that the Chair be a former Chief Justice of the Supreme Court and the majority of members be recruited from the senior judiciary severely restricts the potential pool of candidates, particularly as it relates to the representation of women in the governing body of the NHRCI.

The SCA acknowledges that the justification for these requirements is based on the NHRCI's quasi-judicial function. However, it notes that:

- the quasi-judicial function is but one of the ten (10) functions enumerated in section 12 of the Act;
- section 3(2) also provides for the appointment of two (2) members amongst persons having knowledge of, or practical experience in, matters relating to human rights, who are not required to be chosen from the judiciary; and
- no women have been appointed to any of the positions on the governing body of the NHRCI since 2004.

The SCA further acknowledges the NHRCI's position that the presence of "deemed members" from the National Commissions addressing caste, women's rights, minorities, scheduled tribes, and children's rights – two (2) of whom are women – on the statutory full commission contributes to the pluralism of the NHRCI. However, the SCA notes that the NHRCI reported that the member from the National Commission on scheduled castes rarely attends full statutory commission meetings and that the SCA has received information from civil society organizations indicating that the other deemed members similarly rarely attend meetings where decisions on the focus, priorities and core business of the NHRCI's non-judicial functions

are made. Accordingly, the SCA remains of the view that this method of ensuring pluralism is insufficient.

Finally, the SCA notes that the NHRCI reports that, of its 468 staff, 92 (20%) are women. The SCA is accordingly of the view that the NHRC has not taken the necessary steps to ensure pluralism of its institution through its staff complement.

The SCA notes there are diverse models for ensuring the requirement of pluralism in the composition of the NHRI as set out in the Paris Principles. For example:

- a. Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership should be avoided;
- b. Pluralism through the appointment procedures of the governing body of the NHRIs, for example, where diverse societal groups suggest or recommend candidates;
- c. Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d. Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

The SCA encourages NHRC to ensure pluralism, including appropriate gender balance, within the NHRI.

The SCA refers to Paris Principles B.1 and B.2 and to General Observations 1.7 on 'Ensuring pluralism of the NHRI' and 2.4 on 'Recruitment and retention of NHRI staff'.

2. Selection and appointment

In accordance with section 4 of the Act, the Chairperson and other members of the NHRCI are appointed by the President based on the recommendation of a Committee consisting of the Prime Minister, the Speaker of the House of the People, the Minister in-charge of the Ministry of Human Affairs in the government of India, the Leader of the Opposition in the House of the People, the Leader of the Opposition in the Council of States, and the Deputy Chairperson of the Council of States.

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.

It is critically important to ensure the formalization of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.

The SCA encourages the NHRCI to advocate for the formalization and application of a process that includes requirements to:

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

The SCA refers to Paris Principle B.1 and to its General Observation 1.8 on 'Selection and appointment of the decision-making body of NHRIs'.

3. The appointment of the Secretary General and the Director of Investigations from Central Government

Section 11 of the Act requires that the Central Government second to the NHRCI a civil servant with the rank of Secretary to take the role of Secretary General of the Commission, and a police officer of the rank of Director General of Police or above to take the post of Director (Investigations).

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 acknowledges the NHRCI's position that:

- As concerns the Secretary General, the fact that this individual is seconded from the senior levels in the civil service means that they have wide knowledge of government functioning and standing among various levels of government. However, the SCA notes that, in the past five (5) years, the position has been held by a variety of people and has been vacant for a substantial period of time.
- As concerns the Director General (Investigation) and the practice of using former police officers to investigate complaints, these individuals know how the system works and, as a result, are unable to unearth truth in cases where others could not. However, for victims of abuses by police, there is a real or perceived conflict of interest, and this may impact the ability of such persons to access human rights justice.

Notwithstanding the justifications provided, the SCA remains concerned that these practices have a real impact on the perceived independence of the NHRCI. The SCA therefore recommends that:

- the Secretary General be recruited through an open, merit-based selection process; and
- the NHRCI 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.

The SCA refers to Paris Principle B.2 and to its General Observation 2.5 on "Staffing by secondment".

4. Political representatives on NHRIs

The NHRCI reports 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.

The SCA notes 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.

For these reasons, government representatives and members of parliament should not be members of, nor participate in, the decision-making organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on the real and perceived independence of the NHRI.

The SCA recognizes that it is important to maintain effective working relationships, and where relevant, to consult with government. However, this should not be achieved through the participation of government representatives in the decision-making body of the NHRI.

Where government representatives or members of parliament, or representatives of government agencies, are included in the decision-making body, the NHRI's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision-making, and avoid conflicts of interest, an NHRI's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of the meeting where final deliberations and strategic decisions are made.

The participation of government representatives or members of parliament, or representatives of government agencies, should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the NHRI, and whose advice and cooperation may assist the NHRI in fulfilling its mandate. In addition, the number of such representatives should be limited and should not exceed the number of other members of the NHRI's governing body.

The SCA refers to Paris Principles B.1, B.3 and C(c) and to its General Observation 1.9 on 'Government representatives on NHRIs'.

The SCA further notes:

5. Cooperation with other human rights bodies

The NHRCI highlights the existence of Core/Expert Groups as the means by which it complies with the Paris Principles' requirement for pluralism and engagement with civil society and other human rights defenders. However, the SCA notes that it has received information from civil society organizations that these mechanisms are not functioning effectively as a means of engagement and cooperation between the NHRCI and civil society. The SCA notes that this was raised as an issue of concern during the SCA's May 2011 review of the NHRCI.

The SCA again highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. It encourages the NHRCI to take steps to facilitate increased engagement and cooperation with all civil society organizations.

The SCA refers to Paris Principle C(g) and to its General Observation 1.5 on 'Cooperation with other human rights bodies'.

6. Access to NHRC's complaints process

The SCA has received information from civil society groups alleging that the NHRCI's complaint handling functions suffer from extended delays. The SCA notes with concern that the NHRCI confirmed to have a substantial backlog of 40,000 cases.

In fulfilling its complaint handling mandate, the NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, a NHRI 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 SCA encourages the NHRCI to handle complaints in timely manner and permit all individuals, regardless of their legal status, to access to its complaint process.

The SCA refers to Paris Principle D(c) and to its General Observation 2.10 on 'The quasi-judicial competence of NHRIs'.

7. Annual report

The most recent annual report of the NHRCI publicly available is for 2011-2012. The SCA notes that, in accordance with section 20(2) the Act, an annual report cannot be made public until it is tabled in Parliament by the government, and that this cannot be done until the government has prepared a response for follow-up and recommendations made by the NHRCI in the report. The SCA acknowledges that the NHRCI reports that its annual reports for 2012-2013, 2013-2014, and 2014-2015 have been submitted to the government, but as the government has not developed its responses to the recommendations in those reports, they have not been tabled in Parliament or made public.

The SCA notes that this was raised as an issue of concern during the SCA's May 2011 review of the NHRCI.

The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It again notes that the SCA finds it difficult to assess the effectiveness of an NHRI and its compliance with the Paris Principles in the absence of a current annual report.

The SCA acknowledges that the NHRCI reports that it has mitigated this limitation in its ability to publicize current annual reports by publishing other reports on thematic issues or the state of human rights generally. The SCA encourages the NHRCI to seek a solution to this issue, and to continue to advocate for its annual reports to be tabled in Parliament and made public as soon as possible.

The SCA refers to Paris Principle A.3 and to its General Observation 1.11 on 'Annual reports of NHRIs.'

National Human Rights Commission of India

Dysfunctional and Ineffectual

**Submission to the honourable members of the Sub-Committee on Accreditation (SCA)
of the Global Alliance of National Human Rights Institutions (GANHRI)
for their consideration
10 July 2017**

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INTRODUCTION

The South Asia Human Rights Documentation Centre (SAHRDC) has prepared this report for the consideration of the Global Alliance of National Human Rights Institutions (GANHRI) which will assess the accreditation application of the National Human Rights Commission (NHRC) of India in November 2017. This report highlights key issues relating to the functioning of the NHRC, which, it is hoped, will help GANHRI arrive at a reasoned conclusion. It includes inputs from a number of NGOs: in particular, the, All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) and Peoples Watch-Tamilnadu. Others making important contributions included; Civil Liberties Monitoring Committee, Hyderabad; Human Rights Alert, Manipur; and the Coimbatore Human Rights Forum. A full list of organisations endorsing this report is in Annexure 1.

An earlier report of SAHRDC, titled, “Judgement Reserved-The Case of the National Human Rights Commission in India was published in September 2001. It is with regret that SAHRDC notes that an overwhelming number of the constructive suggestions made therein and discussed with the then leadership of the NHRC were not implemented. This in the main due to the unhelpful attitude of the Ministry of Home Affairs, Government of India. A copy of the earlier report is appended as Annexure 2.

NHRC was assessed by GANHRI’s Sub-Committee on Accreditation (SCA) in November 2016 and the report was published in January 2017. The SCA decided to defer NHRC’s application for accreditation to its second session in November 2017. The SCA in its January 2017 report, set out specific recommendations for the consideration of the NHRC and the Government of India relating to composition and pluralism, selection and appointment of members, appointment of senior staff (secondment from government), political representation, engagement with civil society, annual reports and complaints handling.

Established in 1993 via the Protection of Human Rights Act⁷, the NHRC, it was hoped, would serve as beacon and a standard-bearer of human rights in a country that continues to grapple with pervasive violations, systemic flaws in the institutions mandated to protect and promote human rights – such as the judiciary – and widespread impunity. Disappointingly, the NHRC has failed to live up to its mandate, even one that only nominally conforms to the Paris Principles. Calls by civil society for greater autonomy and independence for the NHRC have evoked little or no response. Efforts by well-meaning Members/Chairpersons in the past to draw attention to the need for more and substantive powers for the NHRC have also come to naught. The

⁷ http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf

Supreme Court of India referred to the NHRC as a “toothless tiger”⁸, spotlighting the NHRC’s lack of credibility and reliability as a human rights watchdog.

Over the past five years, based on a study of the NHRC website – its public platform – there is no evidence of any case in which the NHRC either acted in the capacity of *amicus curiae* to ensure justice or took up *suo motu* cognizance and follow up on a case. In most cases, the NHRC asks for reports to be submitted by the relevant authorities and recommends compensation based on *prima facie* evidence. Independent investigations are few and far between. Actual punitive measures against official perpetrators are rare. The NHRC has not conducted studies or published reports on egregious cases of human rights violations and has made no significant contributions when these cases have come up for hearing in the Supreme Court or High Courts. The NHRC keeps its distance from all ‘controversial’ subjects.

The first segment of the report explores the administrative and financial autonomy highlighted in 2011 and 2016 reports of the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNNI). It analyses the Protection of Human Rights Act (PHRA) and recommends amendments to bring it in consonance with the Paris Principles, especially the part related to “Composition and guarantees of independence and pluralism”.

The second segment evaluates key human rights challenges in India over the past five years and the role, or lack thereof, played by the NHRC as regards redress or mitigation. The section identifies cases related to rights of minorities (religious, caste and indigenous); extra-judicial killings, including those resulting from the application of the Armed Forces (Special Powers) Act, the use of the death penalty, women’s rights, child rights, LGBTQ rights, plight of human rights defenders and custodial deaths/torture.

The report concludes with a brief note on the role and functioning of the State Human Rights Commissions (SHRCs).

PART I

Transparency, Accountability and Independence of NHRC

1. Appointment of Chairperson, Members and Staff

The Paris Principles recommend a pluralistic membership in any national human rights institution, including representatives who are experts in the field of human rights.⁹ In

⁸<http://timesofindia.indiatimes.com/india/Toothless-tiger-NHRC-needs-more-powers-Apex-court/articleshow/53123650.cms>

⁹ Principle 1, Composition and guarantees of independence and pluralism, Principles relating to the status of national institutions (Paris Principles).

addition, GANHRI's Sub-Committee on Accreditation (SCA) in March 2017 considers pluralistic composition of NHRIs to be directly linked to the requirement of independence, credibility, effectiveness and accessibility. Where the members and staff of NHRIs are representative of a society's social, ethnic, religious and geographic diversity, the public is more likely to believe that the NHRI will understand and be more responsive to its needs. The integrity and quality of members is another key factor impacting the effectiveness of the NHRI.

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.

Despite repeated recommendations made by the SCA, the recent appointments of Ms. Jyotika Kalra and earlier of Mr. Avinash Rai Khanna as NHRC members did not go through 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 secretive manner through a selection committee that was not given full information about the nominees. It is to be noted that the representatives from the ruling party are in a 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 and civil society.

2. Pluralism and Diversity in NHRC's Composition

With respect to pluralistic representation, the SCA notes there are diverse models for ensuring the requirement of pluralism in the composition of the NHRIs, for example: “a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the NHRI’s membership should be avoided; b) Pluralism through the appointment procedures of the governing body of the NHRIs for example, where diverse societal groups suggest or recommend candidates; c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member NHRIs, such as an Ombudsperson.”¹⁰ The SCA notes that the Paris Principles require an NHRI to be independent from the 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.¹¹

The SCA through its General Observations made in 2013 had mentioned that “pluralism refers to broader representation of the national society”. This includes representation from civil society as well. Although NHRC’s founding law provides that two persons having knowledge and experience about human rights shall be appointed as its members, no such person has ever been appointed.

The Protection of Human Rights Act (PHRA) provides for a majority in the selection committee for the ruling party. The result is that most appointments are based on political affiliations. Further, per the PHRA, only a Chief Justice of the Supreme Court can be appointed as Chairperson of the NHRC.¹² As a report by the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) points out: “Limiting the membership to those coming from the judiciary or have served in government, as what the enabling law of the NHRC does, effectively

¹⁰ G.O. 1.7 Ensuring pluralism of the NHRI, General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

¹¹ G.O. 1.9 Selection and appointment of the decision-making body of NHRIs, General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

¹² Section 3(2)(a), The Protection of Human Rights Act, 1993

alienates and silences a large part of civil society and the academic community that has worked in the human rights movement in India. Moreover, since the NHRC's enabling law ensures that majority of its members should come from the judiciary, it inevitably would find it difficult to reach out to grassroots and local human rights defenders. Members of the judiciary, because of the nature of their work, would have difficulty appreciating the value of open consultation and cooperation with human rights defenders."¹³

Ms. Jyotika Kalra is an Advocate-on-record with the Supreme Court of India. She became a Member of the National Human Rights Commission on 5 April 2017. Earlier the Union Ministry of Power had appointed Ms. Kalra as a part-time non-official Director on the Board of POWERGRID (an Indian state-owned electric utilities company) for a period of three years through an order dated 16 February 2017¹⁴. Ms. Kalra also serves on the editorial board of *Nyaypravah*, a quarterly published by the Akhil Bharatiya Adhivakta Parishad ¹⁵(All India Advocates Council). This is the "lawyer's wing" of the Rashtriya Swayamsevak Sangh (RSS),¹⁶ which in turn is the mother organisation and guiding body for a host of Hindu fundamentalist organisations¹⁷.

Mr. Sharad Chandra Sinha was appointed as a member of the NHRC on 8 April 2013. Prior to his appointment to NHRC, he headed the National Investigation Agency (NIA) as its Director General for three years. He has also held several important security positions with State Governments and the Central Government and also with Central Bureau of Investigation. Both organisations have been widely criticised for human rights violations.

The appointment in 2013 violated the transparency norm prescribed by the apex court in P.J. Thomas case. The present foreign minister, Ms. Sushma Swaraj and the present Defence and Finance minister, Mr. Arun Jaitley had then opposed the appointment of Mr. Sinha.¹⁸

Appointments of police personnel as NHRC Commissioners weaken the independence of the country's top human rights body.

¹³ Chapter III, Composition, Appointment Process and Tenure, An NGO Report on the Compliance with the Paris Principles by The National Human Rights Commission of India by All India Network of NGOs and Individuals working with National and State Human Rights Institutions, 2011.

¹⁴<http://www.bseindia.com/xml->

[data/corpfiling/AttachHis/13cdb389_7762_459e_ac4c_47b0b7de3a09_191914.pdf](http://www.bseindia.com/xml-data/corpfiling/AttachHis/13cdb389_7762_459e_ac4c_47b0b7de3a09_191914.pdf)

¹⁵ <http://www.adhivaktaparishad.com/wp-content/uploads/2012/01/Oct-to-dec2011-p65.pdf>

¹⁶ <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/santosh-hegde-headed-lawyers-wing-of-rss/article2443665.ece>

¹⁷ <https://www.britannica.com/topic/Rashtriya-Swayamsevak-Sangh>

¹⁸ <http://timesofindia.indiatimes.com/india/Two-NHRC-appointments-in-2013-violated-SC-norms/articleshow/39016055.cms> (Accessed on 10/7/2017 at 16:34).

In a similar case in 2004, a police officer, Mr. P.C. Sharma, had been appointed to the NHRC. Mr. Sharma, who retired as CBI director was appointed by the earlier National Democratic Alliance (NDA) government in spite of opposition by then NHRC chairman Justice A S Anand.¹⁹ The appointment was challenged in the Supreme Court. The matter was referred to a larger bench of the Supreme Court after a division bench gave a split order. Justice Y K Sabharwal, the then Chief Justice of India, who headed the division bench, said that “it was a complete no for appointment of a former CBI or a police official to be appointed as a member of the apex human rights body.”²⁰The Supreme Court narrowly upheld the appointment.

The three judges who are currently members of the NHRC—Justice H.L. Dattu, Justice Pinaki Chandra Ghose and Justice D. Murugesan –have made no substantive contributions in the area of Human Rights. They have given no landmark judgments in furtherance of upholding human rights. They have been mainly associated with routine work such as granting bails and adjudicating on income tax matters. One of the judges has been credited for being part of a bench that commuted the death sentence of one Mr. Devinder Pal Singh Bhullar who was deported from Germany to face charges of terrorism. But that is not the whole story.²¹ The German government and the European Union gave more than one demarche on the Bhullar case as India had violated sovereign assurances given to Germany that the death penalty would not be imposed against Mr. Bhullar – it was on the basis of that assurance that Germany had extradited Mr. Bhullar to India²².

It is apparent that NHRC appointments are based on considerations other than a proven human rights track record. This lone fact undermines the authority of NHRC and weakens its independence.

The SCA has also recommended the formalisation of a clear, transparent and participatory selection and appointment process of the NHRI’s decision-making body. Such a process should include requirements to: a) Publicise vacancies broadly; b) Maximise the number of potential candidates from a wide range of societal groups; c) Promote broad consultation and/or participation in the application, screening, selection and appointment process; d) Assess applicants on the basis of pre-determined, objective and publicly available criteria; and e) Select members to serve in their own

¹⁹<http://timesofindia.indiatimes.com/india/bjp-protests-ria-chiefs-selection-as-nhrc-member/articleshow/19299297.cms> (Accessed on 10/7/2017 at 16:35).

²⁰http://zeenews.india.com/news/nation/sc-upholds-appointment-of-p-c-sharma-as-member-of-nhrc_214403.html?pfrom=article-next-story

²¹<http://www.thehindu.com/news/national/supreme-court-commutes-bhullars-death-sentence/article5853765.ece>

²²<http://indianexpress.com/article/news-archive/latest-news/germany-seeks-clemency-for-devinder-pal-singh-bhullar/>

individual capacity rather than on behalf of the organization they represent.²³None of these processes are followed by the NHRC.

As the earlier AiNNI shadow reports highlight, the PHRA has rigid criteria for membership to the Commission, which prioritises perceptions of prestige over competence, passion, or experience in the field of human rights²⁴. Section 3(2)²⁵ of the PHRA requires that three of the five members of a human rights commission must be former judges but does not specify whether these judges should have a proven record of human rights activism or expertise or qualifications in the area²⁶. Staff members are largely deputed temporarily to the NHRC from different government departments²⁷. The PHRA does not specifically require the inclusion of minorities, persons of diverse sexual orientation or persons with disabilities. The SCA has criticised the current selection process in the NHRC, noting in particular that of its 468 staff, only 92 (20%) were women²⁸.

The NHRC employs police officers to investigate complaints, which creates a real or perceived conflict of interest in cases of abuse committed by police and impacts the ability of the victims to access justice²⁹. These police officers are on deputation to the NHRC and are not permanent employees of the NHRC. Their primary loyalty therefore is to their parent police departments. What is even more worrying is the large number

²³G.O. 1.8 Selection and appointment of the decision-making body of NHRIs, General Observations of the Sub-Committee on Accreditation, adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

²⁴ An NGO report on the Compliance with the Paris Principles by the National Human Rights Commission of India, All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI), April 2011. Available at http://www.peopleswatch.org/dm-documents/HRD/NGO%20Report_Paris%20Principles_NHRC_India.pdf (last accessed on 23rd June, 2017 at 5 pm)

²⁵ Section 3 (2): The Commission shall consist of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court;
(b) one Member who is or has been, a Judge of the Supreme Court;
(c) one Member who is, or has been, the Chief Justice of a High Court;
(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

²⁶ *Insights into Editorial: NHRC a toothless tiger: Panel Chief*, June 2, 2016. Available at <http://www.insightsonindia.com/2016/06/02/insights-editorial-nhrc-toothless-tiger-panel-chief/> (last accessed on 23rd June, 2017 at 5 pm)

²⁷ Mandeep Tiwana, *Needed: More Effective Human Rights Commissions in India*, CHRI. Available at http://www.humanrightsinitiative.org/publications/nl/articles/india/needed_more_effective_hr_comm_in_dia.pdf (last accessed on 23rd June, 2017 at 5 pm)

²⁸ Neeraj Chauhan, *NHRC chief plays down UN body's posers*, The Times of India, February 13, 2017. Available at <http://timesofindia.indiatimes.com/india/nhrc-chief-plays-down-un-bodys-posers/articleshow/57117018.cms> . (last accessed on 23rd June, 2017 at 5 pm) See also, <https://www.pressreader.com/india/the-times-of-india-new-delhi-edition/20170213/281947427599915> (last accessed on 23rd June, 2017 at 5 pm)

²⁹ *Why the Global Alliance of National Human Rights Institutions Has Deferred the Re-accreditation of India's National Human Rights Commission*, GAHRI. February 22, 2017. Available at: <http://www.caravanmagazine.in/vantage/why-ganhri-deferred-the-reaccreditation-of-nhrc#sthash.Y37d5tq5.dpuf> (last accessed on 23rd June, 2017 at 5 pm)

of Intelligence Bureau staff deputed to the NHRC. These officers are not answerable to the NHRC and have no expertise in the field of human rights. In the past, a senior Intelligence Bureau officer, Mr. Ashok Chakravarty served on deputation from the Intelligence Bureau in the NHRC. He before retirement was integrated within the staff of the NHRC. Another Intelligence Bureau officer, Mr. PS Rao was on deputation to the NHRC and retired a few years ago. Presently, Mr. O P Vyas, who is also an officer of the Intelligence Bureau, was integrated within the NHRC. He is now the Assistant Registrar (Law) in the NHRC.

It must be noted that the Intelligence Bureau has no Parliamentary oversight and has no financial accountability to the Comptroller and Auditor General of India. It is known to be a major human rights violator³⁰.

Though the PHRA stipulates that the Commission may appoint such other “administrative, technical and scientific staff” as it may consider necessary, its choices are limited as the Government determines the salaries of all staff members³¹. There is no statutory requirement to include as staff members, academics, representatives of NGOs or other organizations or members of civil society that have significantly contributed towards enhancement of human rights. Many social and human rights activists have the knowledge and practical experience of contemporary trends in the human rights movement and can greatly contribute towards the working of the Commission.

In its response to the AiNNI report, the NHRC defended its stand on the composition of its members and staff, stating that Governments are less likely to question directives passed after a quasi-judicial process when they know that the NHRC has on it three Members who have held the highest judicial offices³². This proposition rests on flimsy grounds. Per data shared by the Government, nearly half of the cases recommended by the NHRC for monetary relief are pending since 2013-2014³³.

³⁰<http://indianexpress.com/article/india/politics/amit-shah-not-named-in-supplementary-chargesheet-filed-by-cbi-in-ishrat-jahan-fake-encounter-case/> see also http://www.hrdc.net/index.php?option=com_content&view=article&id=419:007-never-had-a-licence-to-kill-and-intelligence-services-are-not-above-the-law&catid=8:hrf-monthly&Itemid=108

³¹ *India: No defence for retention of death penalty*, Asian Centre for Human Rights, November 2015. Available at <http://www.achrweb.org/reports/india/India-No-defence-for-retention-of-death-penalty.pdf>. (last accessed on 23rd June, 2017 at 7 pm) See also, A.G Noorani, Human Rights, the Commission's Powers, The Statesman[India], 22 August, 1997

³² *India opposes UN resolution for moratorium on death penalty*, The Times of India. Updated: Nov 19, 2016. Available at <http://timesofindia.indiatimes.com/india/India-opposes-UN-resolution-for-moratorium-on-death-penalty/articleshow/55512844.cms>. (last accessed on 23rd June, 2017 at 7 pm)

³³ Rakesh Dubbudu, *Close to half the NHRC Compensation Orders are not complied with*, January 21, 2017. Available at <https://factly.in/46-cases-recommended-nhrc-compensation-still-pending/> (last accessed on 23rd June, 2017 at 7 pm) See also, Ministry of Home Affairs, Lok Sabha Unstarred Question No.2743. Available at <http://164.100.47.190/loksabhaquestions/annex/9/AU2743.pdf> (last accessed on 23rd June, 2017 at 8 pm)

Data provided to Parliament shows that a total 1,292 cases were recommended for monetary relief of 33.59 crore³⁴. Of all the cases registered with the NHRC, 44% of the cases were from the state of Uttar Pradesh alone. However, 46% of the cases recommended by NHRC for monetary relief are still pending. Out of the 1292 cases recommended by NHRC for compensation, 699 are disposed and 593 are still pending since 2013-14 as per the information shared by the government in the Lok Sabha (lower house of Indian Parliament) in August 2016. Between 2013 and 2016, disciplinary action was recommended in 107 cases out of which 49 are from Uttar Pradesh alone. The sole case where prosecution was recommended was from Uttar Pradesh. The pendency of such large number of orders only highlights the scant regard of the state governments for institutions like the NHRC.³⁵

The NHRC has itself gone on record to ask for more teeth for implementing its recommendations.

The Paris Principles strictly require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. In a move that clearly violated the Paris Principles of political autonomy, the ruling Bharatiya Janata Party (BJP) Vice-President Avinash Rai Khanna was to be appointed as a member of the NHRC with a high-level selection panel headed by the Prime Minister clearing his name³⁶. Subsequently, a petition was filed in the Supreme Court challenging his appointment under Section 24 (3) of the PHRA and Articles 14 and 21 of the Constitution.³⁷ As a result of public outcry, Mr. Khanna recused himself from the appointment.

Collaboration with civil society

The SCA recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities as their expertise could be extremely valuable in dealing with vulnerable groups. A

³⁴ A crore is 10 million

³⁵ Government of India, Ministry of home affairs, (Information in respect of Lok Sabha Unstarred Question 2743 for 02.08.2016), <http://164.100.47.190/loksabhaquestions/annex/9/AU2743.pdf>, (Accessed on 10 July 2017 at 14:21).

³⁶ *Avinash Rai Khanna to be appointed NHRC member*, Updated: November 06, 2016. Hindustan Times. Available at <http://www.hindustantimes.com/india-news/avinash-rai-khanna-to-be-appointed-nhrc-member/story-b4s4tro6wR6WXX7Zs4mNnK.html>. (last accessed on 25th June, 2017 at 10 am) See also, *BJP Vice-President to be Appointed As NHRC Member*, November 06, 2016. Available at <https://thewire.in/78184/nhrc-centre-politician/> (last accessed on 25th June, 2017 at 10 am)

³⁷ Harpreet Kaur, *NHRC row: Ex-MP Avinash Rai Khanna 'rejoins' BJP*, Hindustan Times. December 17, 2016. Available at <http://www.hindustantimes.com/punjab/nhrc-row-ex-mp-avinash-rai-khanna-rejoins-bjp/story-ZbPo9NxO9TX9KAUBhxPIhL.html> (last accessed on 25th June, 2017 at 10 am)

working relationship with human rights NGOs is especially important to improve accessibility as the NGOs are likely to have closer relations with vulnerable groups due to their more extensive network and are almost always likely to be closer to the ground.³⁸ There has been little or no initiative on the part of the NHRC to work with organisations working in different geographical locations such as Kashmir or Manipur or address issues like torture, custodial deaths, atrocities against Dalits or minorities or violations committed by the armed forces controlled by the Union Home Ministry or the Indian Defence Ministry.

None of the eight ongoing projects listed on the NHRC website as being undertaken by NGOs on behalf of the NHRC are on issues relating to violations by the Indian state.

Annual Reports and Other Information

The SCA recommends that NHRIs publish annual, special and thematic reports. They serve to highlight key national human rights concerns and provide means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities. Section 20 of the PHRA provides for the publication of annual reports and their tabling in Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. Since its annual report of 2012, NHRC has not published any annual reports. 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 with an Action Taken Report (ATR) from the Union Home Ministry in Parliament.

With respect to special reports and recommendations, there have been none, other than a documentation of visits to various prisons and the condition of the prisoners,³⁹ mental hospitals,⁴⁰ juvenile/vagrant homes⁴¹ and programmes on human rights awareness⁴². Since 2010, none of the guidelines given by NHRC have been amended or updated and no new guidelines or recommendations to the government on any subject have been made.⁴³

³⁸G.O. 1.5 Cooperation with other human rights bodies, General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

³⁹http://nhrc.nic.in/Reports_prison.htm (last accessed on 23rd June, 2017 at 4pm).

⁴⁰http://nhrc.nic.in/Reports_mental.htm (last accessed on 23rd June, 2017 at 4pm).

⁴¹http://nhrc.nic.in/Reports_juvenile_vagrant.htm (last accessed on 23rd June, 2017 at 4pm).

⁴²http://nhrc.nic.in/HR_Awareness.htm (last accessed on 23rd June, 2017 at 4pm).

⁴³<http://nhrc.nic.in/nhrc.htm> (last accessed on 23rd June, 2017 at 4pm).

3. Financial Autonomy

Section B.2 of the Paris Principles addresses the requirement for NHRIs to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: “*The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular, adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*”⁴⁴

The NHRC is funded by grants from the Central Government under Section 32 of the PHRA. State Human Rights Commissions (SHRCs) are similarly funded by grants by State Governments. At a conference of NHRC and SHRCs in 2015, the then Acting Chairperson Justice Cyriac Joseph in his Presidential Address stated that “unless the Government sanctions the necessary infrastructure and provides sufficient grants to the Commission it cannot function properly or efficiently.”⁴⁵ Justice Joseph also called for attention to grievances faced by SHRCs, including the lack of infrastructure which impeded their effective functioning. In fact, however, the government sharply cut the annual allocation of funds for the 2010-2011 financial year by 20 percent, granting only Indian Rupees 18 crores⁴⁶ INR (USD \$3,829,771) instead of the INR 24.10 crores (USD \$5,127,655) by the NHRC⁴⁷. Thus, the NHRC’s contention that it enjoys complete financial independence with regard to its budget and is under no Governmental pressure is disingenuous. The budget, once formulated, is sent to the Ministry of Home Affairs for inclusion in the “Demand for Grant” of the budget document and is then placed by the Ministry before the Parliament along with the Union Budget. It is only upon approval from the Parliament that the funds are granted by the Ministry of Home Affairs. As independence of an organization is closely linked to its appointment procedure and budgets, the government’s control over NHRC’s funding casts a shadow over its financial autonomy.

As recommended by SAHRDC in its report titled *Judgement Reserved: The Case of the National Human Rights Commission of India*, funding decisions should be entrusted to a non-partisan parliamentary body, or the Commission should have an

⁴⁴ *Principles relating to the Status of National Institutions (The Paris Principles)*

Adopted by General Assembly resolution 48/134 of 20 December 1993

⁴⁵ Conference of NHRC And SHRCs – 2015, Presidential Address by Justice Cyriac Joseph, Acting Chairperson, NHRC. Available at http://nhrc.nic.in/Documents/speech_acting_CP_NHRC_SHRC_Meeting_18092015.pdf (last accessed on 25th June, 2017 at 10 am)

⁴⁶ A crore is 10 million

⁴⁷ *NHRC budget slashed by 20% for 2010-2011*, December 12, 2013. Available at <http://www.igovernment.in/articles/31180/nhrc-budget-slashed-by-20-for-2010-11> (last accessed on 25th June, 2017 at 10 am)

adequate and independent budget drawn directly from the Consolidated Fund of India⁴⁸. The Election Commission, for instance, has an independent budget finalized directly in consultation between the Commission and the Finance Ministry of the Union Government which helps it function without any undue governmental influence as far as finances are concerned.

Section 3(5) of the PHRA categorically states that the Commission may, with the previous approval of the Central Government, establish offices at other places in India. The NHRC however, in a very feeble attempt to save its depleting reputation, when questioned on the lack of accessibility in the AiNNi shadow report, stated that “it is not a question of lack of resources but that there was no provision to establish regional offices of the NHRC in the PHRA”⁴⁹. This is factually not only incorrect but also absurd and disparaging.

PART II

The complaint handling mechanism of NHRC is not effective and suffers from 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 NHRC.

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 impunity⁵⁰. 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 violations.

The year 2016 witnessed large number of incidents of human rights violations including systemic attack on fundamental freedoms enshrined in the Constitution of India⁵¹. But not even in a single case, during this period, did the NHRC approach the courts for upholding 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 being another bureaucratic set-up without trying out any alternative or innovative ways to ensure

⁴⁸ *Judgement Reserved: The Case of the National Human Rights Commission of India*, South Asian Human Rights Documentation Centre, pp 23, September 2001.

⁴⁹ NHRC, India Comments on AiNNi Report, Available at http://nhrc.nic.in/Documents/Reports/NHRC_Comments_on_AiNNi_Report.pdf

⁵⁰ <http://www.livelaw.in/human-rights-commission-orders-not-merely-recommendatory-state-duty-bound-comply-allahabad-hc/>

⁵¹ <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 the previous ANNI report persist. There are significant delays and police officers are constantly used to investigate complaints, including those against the police. There is over reliance on instrumentalities of a coercive state. Far from being impartial and being the ones against whom the complaint are lodged with the NHRC.

The complaints regarding the violations of rights of Human Rights Defenders (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 under Section 12 and intervened on behalf of the HRDs, despite several written requests. NHRC has repeatedly made a lame duck excuse 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 in. A closer look at these cases will also reveal that a larger number of these cases are either dismissed in limine 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 must insist on strict compliance with time limits for responses. 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%) were 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 years; in 33 cases for three years. Out of the 376 cases where compliance has been reported for 2016, in only 144 cases was compliance reported within one year.⁵²

Recent Cases of Human Rights Violations and the Role of NHRC

1. Extrajudicial Killings

The NHRC issued non-binding guidelines on procedure and conduct in cases of 'encounter' deaths (euphemism for extrajudicial killings) in 1997. These were subsequently amended in 2003 and 2010.⁵³ According to these guidelines, every state is to report any cases of extra-judicial killings within 48 hours to the NHRC. Furthermore, the NHRC recommended that the Criminal Investigation Department (CID) in each state investigate all cases of 'encounters'. However, most states do not follow these non-binding guidelines and conduct perfunctory departmental investigations.⁵⁴ From 2010 to 2014, almost 700 cases of extra-judicial killings have been reported.⁵⁵ However, the NHRC's role in most of these cases has been minimal. In December 2012, the NHRC informed the Supreme Court that it had received 1,671 complaints of extrajudicial killings in the previous five years.⁵⁶ Following his 2012 visit to India, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, emphasized the need to end impunity and bring perpetrators promptly to justice.⁵⁷ In the record of discussion between NHRC and UN Special Rapporteur, the NHRC's members downplayed the problem and stated that extrajudicial killings were not as common as they were being made out to be.⁵⁸

⁵²<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>

⁵³ Available at, <http://nhrc.nic.in/Documents/CasesOfEncounterDeaths.pdf> (last accessed on 19th June, 2017 at 5pm).

⁵⁴ US Department of State's India 2013 Human Rights Report, p.2, available at <https://www.state.gov/documents/organization/220604.pdf> (last accessed on 19th June, 2017 at 5pm).

⁵⁵ Refer to NHRC's Annual Reports from 2010-2013 and Rajya Sabha-Unstarred question no.3733 On the 13th August, 2014 answered by the Ministry of Home Affairs.

⁵⁶ *Extra Judicial Execution Victim Families Association (EEVFAM) & Anr. v Union of India*, Writ Petition (Criminal) No.129 of 2012, Decided on 8th July, 2016, ¶ 52.

⁵⁷ <https://www.hrw.org/world-report/2014/country-chapters/india> (last accessed on 19th June, 2017 at 5pm)

⁵⁸ Record of Discussion of the Interaction between NHRC, India and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions held on 22.03.2012. Available at, <http://nhrc.nic.in/Documents/Reports/Record%20Note-%20UN%20Spl.Rapporteur%20on%20Extra-Judicial%20Powers.pdf> (last accessed on 19th June, 2017 at 5pm).

A thorough revamp of policing in India has been long overdue but is on the backburner due to the reluctance of the political establishment to give up its power and influence over policing, The NHRC has not thought it fit to recommend urgent attention to the issue. The Supreme Court of India is yet to take up hearings on a challenge preferred by the Andhra Pradesh Police Association to a five-member bench decision of the Andhra Pradesh High Court making it mandatory for the filing of First Information Reports (FIRs) in cases of extra judicial executions. Importantly, the High Court had also stated that the police were not authorised to file closure reports without judicial scrutiny.⁵⁹

The cases below highlight the human rights violations by police and armed forces over the past five years, and the NHRC's role, or lack thereof, in those cases:

Violent protests erupted in July 2016 in the state of Jammu and Kashmir after the killing of three alleged members of armed opposition groups by security forces. During civilian protests over the killings, over 90 protesters and two police officers were killed, and hundreds of others were injured. The Central Reserve Police Force (CRPF)⁶⁰ and the government defended the use of shotguns that fired pellets and resulted in hundreds of eye injuries. The NHRC admitted to the UN Human Rights Council (UNHRC) that use of pellet guns during the turmoil in Kashmir Valley was "controversial" but added that it would withhold its comments on the matter since "human rights of both sides are involved, when young crowd pelt stones at Police personnel". This badly worded and incoherent justification is an example of how seriously the NHRC takes its mandate.⁶¹ Rather than consult and cite a range of international norms and guidelines on the use of force⁶², the NHRC chose to dismiss the issue.

*Extra Judicial Execution Victim Families Association (EEVFAM) & Anr v. Union of India*⁶³- In this case, the petitioners compiled 1528 cases of alleged extrajudicial executions carried out by the police and security forces in the state of Manipur over the last 20 years. There were no evidence or criminal records to show in most cases that the persons killed were terrorists or militants. The questions before the court were whether Manipur police and the armed forces were using excessive force and was the retaliatory force permissible in law on the ground that the victims

⁵⁹ (2009) 2 ALD 1

⁶⁰ An armed police force under the control of the Union Home Ministry.

⁶¹ <http://www.greaterkashmir.com/news/front-page/use-of-pellet-guns-controversial-says-nhrc/248334.html> (last accessed on 19th June, 2017 at 5pm)

⁶² Refer to General Provisions of Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

⁶³ Writ Petition (Criminal) No.129 of 2012, Decided on 8th July, 2016.

were 'enemy' as defined in Section 3(x) of the Army Act.⁶⁴ The court examined Section 4(a) of the Armed Forces (Special Powers) Act, 1958 which allows armed forces to use force "in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances" and concluded that only in such situations can death be caused and also that this provision does not allow the use of excessive force. The court also referred to the case of *PUCL v. Union of India*⁶⁵ and held that "there can be no doubt about it, that in view of the consistent opinion expressed by this Court, that an allegation or complaint of absence of a reasonable connection between an official act and use of excessive force or retaliatory force will not be countenanced and an allegation of this nature would always require to be met regardless of whether the State is concerned with a dreaded criminal or a militant, terrorist or insurgent. It must also be held that to provide assurance to the people, such an allegation must be thoroughly enquired into."⁶⁶

The court ordered the NHRC to conduct enquiries and investigations in all the 1528 cases. The petitioners referred to the NHRC as toothless tigers, which have not found any human rights violations in cases filed by the State of Manipur.⁶⁷ In the submissions made by Senior Advocate Gopal Subramaniam on behalf of NHRC, he stated that the Protection of Human Rights Act, 1993 must be amended to give the NHRC the power to prosecute delinquent officers, make the recommendations by it enforceable and binding under Section 12 of the PHRA, and even stated that there is a shortage of trained staff. Furthermore, the guidelines issued by NHRC on the procedure to be followed by the State governments in cases of encounter deaths and the requirement of magisterial enquiry are generally never complied with.⁶⁸ The NHRC is not even empowered to conduct investigations in cases involving armed forces. Only the Central government can order enquiries. NHRC can only give recommendations, which are non-binding. The court asked the Union of India to consider the recommendations. Some of the recommendations were also inspired by the 2000 Justice Ahmadi Committee report⁶⁹. But recommendations to empower NHRC are not enough. The institution has various powers under the current PHRA like taking *suo motu* cognizance⁷⁰ of cases and

⁶⁴ *Supra* n.38, ¶ 117.

⁶⁵ (1997) 3 SCC 433.

⁶⁶ *Supra* n.38, ¶ 135.

⁶⁷ *Supra* n.38, ¶ 38.

⁶⁸ *Supra* n.38, ¶ 45-¶ 50.

⁶⁹ Refer to NHRC's Annual Report 1999-2000, Part IV(B), available at http://nhrc.nic.in/ar99_00.htm#IV (last accessed on 20th June, 2017 at 6pm).

⁷⁰ Section 12(a), Protection of Human Rights Act, 1993.

intervention in cases of human rights violations in courts but these powers are rarely used by the NHRC in such cases.

In August, 2016 security forces killed a 19-year old man in Bastar region in the state of Chhattisgarh in what activists alleged was an extrajudicial killing.⁷¹ There is no record of any investigation or *suo motu* cognizance being taken by the NHRC. In fact, there is no information available on whether at least an internal enquiry was conducted or not.

In July, 2016, security forces in the state of Odisha killed five indigenous villagers, including a two-year-old child, claiming they were killed in crossfire during anti-Maoist operations, an assertion disputed by the National Commission of Scheduled Tribes. A Joint Fact-Finding and Representatives Team looked into the matter.⁷² Once again, there is no record of the NHRC taking up the matter.

The Armed Forces (Special Powers) Act, 1958 was revoked in the state of Tripura in May, 2015 but continued to be in operation in other states in northeast India and in Jammu and Kashmir. Despite criticism by human rights groups. The NHRC has issued no report, recommendations or analysis, and has undertaken no surveys or studies to test the impact of the Act.

In July 2013, the Central Bureau of Investigation (CBI) filed charges against policemen responsible for the 2004 killing of Ishrat Jahan, a young student, and three others in a faked armed 'encounter'. In 2014 and 2015, several police officials were reinstated in the state of Gujarat, where the incident took place, despite having been implicated in the alleged 'encounter', raising concerns about the government's commitment to police accountability. The matter was highlighted by the media and human rights groups, but there is no record of any action by the NHRC.

2. Women and Child Rights

Data by the National Crimes Record Bureau shows the number of rapes reported in India have increased from 24,206 in 2011 to 34,651 in 2015.⁷³ Violence against women is endemic, in the public and private spheres. Sexual violence is also reported in areas affected by conflict. Women belonging to minority groups, lower castes, and indigenous groups are particularly vulnerable. Most women find it

⁷¹<http://www.hindustantimes.com/india-news/chhattisgarh-under-trial-tribal-killed-in-fake-encounter-in-bastar/story-Bjz2kYt5dOLEy5Qv4yAL0N.html> (last accessed on 20th June, 2017 at 7pm)

⁷²<http://www.indiaresists.com/adivasis-odisha-killed-cold-bloodedly-police-fact-finding-report-pictures/> (last accessed on 20th June, 2017 at 7pm)

⁷³ Crimes in India, 2015. Available at,

difficult to report instances of violence due to the stigma attached to it – the insensitivity of the police and the courts effectively stymie efforts to access justice. The NHRC is yet to pronounce itself authoritatively in this issue.

Recently, NHRC took *suo motu* cognizance in 16 *prima facie* cases of rape and physical assault on women by police personnel in Chhattisgarh.⁷⁴ The case was highlighted by the *Indian Express* newspaper on 2 November 2015. In February 2016, NHRC sent a spot team for investigation.⁷⁵ This is one of the rare occasions in which the NHRC acted promptly and effectively – compensation and relief were recommended immediately through an interim order. However, there are hundreds of cases that either never come to light or even if they do, it takes years for the victims and their families to get justice.

In August, 2015, a Khap Panchayat, an informal village ‘court’ that holds no legal authority but is often socially accepted, in the state of Uttar Pradesh ‘ordered’ the rape of two sisters as punishment for their brother having run away with a married woman. Their father apparently approached the NHRC twice⁷⁶ and the matter was taken up by Amnesty International⁷⁷ but there is no public record of NHRC having any steps towards judicial recourse.

In 2013, following a heinous case of gang rape of a woman in New Delhi in December, a committee headed by former Supreme Court Chief Justice, J.S. Verma, made a number of recommendations for amendment of the criminal justice system. Some of the recommendations were based on various reports by NHRC but the NHRC itself⁷⁸ provided no suggestions on the recommendations after they were submitted to the Parliament. Furthermore, the recommendations accepted by the government were mainly related to provisions of punishment and criminalising various forms of rape under the Indian Penal Code, but no steps were taken for providing better safety for women or implementation of these provisions in order to ensure speedy justice. In fact, the deterrent value of these punishments is also not clear. The courts and the trial process in India continue to intimidate and harass women during the pendency of the case.

⁷⁴<http://nhrc.nic.in/dispatchive.asp?fno=34165>(last accessed on 21stJune, 2017 at 3pm)

⁷⁵<http://indianexpress.com/article/india/chhattisgarh-cops-raped-and-assaulted-16-women-nhrc-4464388/>(last accessed on 21stJune, 2017 at 3pm)

⁷⁶http://www.huffingtonpost.in/2015/09/08/dalit-girls-india_n_8095322.html(last accessed on 21stJune, 2017 at 3pm)

⁷⁷<https://www.amnesty.org/download/Documents/ASA2023162015ENGLISH.pdf>(last accessed on 21stJune, 2017 at 3pm)

⁷⁸Available at,

<http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>(last accessed on 21stJune, 2017 at 5pm).

- In a case related to sexual harassment of a minor boy by army personnel, the NHRC has done precious little. Annexures C and D are screenshots from the NHRC website. They reveal that for the last three years, no action was taken. The date of the incident was 10 August 2014 and the status on action taken is unfilled, as on 20 June 2017. The NHRC had assured the complainant that action would be taken within eight weeks.

Female genital mutilation/cutting (FGM/C) is a disturbing practice that has no law criminalising it or even addressing it. According to the US Department of State Report on Human Rights in India, various human rights groups and media reports found that between 70 and 90 percent of Dawoodi Bohras, a population of approximately one million concentrated in Maharashtra and Gujarat, practise various forms of FGM/C. Neither the NHRC nor the National Commission on Women (NCW) carried out studies on the issue. The National Commission for Women (NCW) supported a campaign for a law banning this practice that violates an individuals' right to their body but has offered no substantive analysis or recommendations.

In 2016, a new Juvenile Justice Act replaced the previous act formulated in 2000. One of the highlights of the new Act is that under Section 15, children offenders between the age of 16-18 can be prosecuted as adults for heinous crimes⁷⁹. A number of human rights NGOs, especially NGOs working in the field of child rights objected to the provision. Young minds are more prone to influence, both negative and positive so the efforts of the government and the judicial system should be more towards reformation and rehabilitation instead of retribution, the NGOs argued. *“Various studies conducted in America, after 25 years of the transfer system, have shown that children transferred to the adult criminal justice system commit more serious offences later in life compared to those children who were dealt with under the JJ system,”* said HAQ Centre for Child Rights.⁸⁰ The NHRC did not conduct any study to either support or reject the claims of the NGOs. Considering the extent of controversy around the law and claims of it being a violation of child rights, as the apex government human rights institution, the NHRC could have submitted recommendations supported by a study to the government under Section 12 of the PHRA. However, there is no record of its involvement.

⁷⁹ Section 2(33), Juvenile Justice Act, 2015.

⁸⁰<http://haqcrc.org/news/kids-accused-of-heinous-crimes-to-be-tried-as-adults-will-the-law-be-misued/> (last accessed on 21st June, 2017 at 5pm).

3. Rights of Sexual Minorities

Lesbian, Gay, Bisexual and Transgender (LGBT) individuals continue to face harassment, extortion, intimidation, and abuse, by family, in work places, by medical establishments and the police. In 2013, the Supreme Court in the case of *Suresh Kumar Kousal & Anr. v. Naz Foundation & Ors.*⁸¹ upheld the validity of Section 377 of the Indian Penal Code, overturning the 2009 Delhi High Court judgment in *Naz Foundation v. Govt. of NCT & Ors.*⁸² The section, which criminalises 'unnatural sexual intercourse' has been used to penalise sexual acts in private between consenting adults. The court went on to state that only the legislature could change the law. In February 2016, the Supreme Court of India allowed a challenge, referring the case to a five-judge bench. The NHRC did not intervene in any of the proceedings, as it was empowered to do, and should have done, considering the serious human rights implications of the case. It could also have set out recommendations and guidelines for government offices and police officials to follow, to prevent misuse of the provision to harass members of the LGBT community.

4. Custodial Deaths

Between 2010 and 2015, at least 591 people died in police custody in India according to the National Crime Records Bureau (NCRB).⁸³ A study by Human Rights Watch examined police disregard of arrest regulations, custodial deaths from torture, and impunity. It described the investigations of 17 deaths in custody that occurred between 2009 and 2015 and found that in each case, the police did not follow proper arrest procedures, making the suspect more vulnerable to abuse.⁸⁴ Between April 2012 and June 2015, of the 432 cases of deaths in police custody reported to the NHRC, the commission recommended monetary relief totalling about 22,910,000 rupees, but recommended disciplinary action in only three cases and prosecution in none.⁸⁵ This number reportedly went up to five with the NHRC recommending disciplinary action in two more cases in 2016.⁸⁶ The NHRC website displays 100 reports of prison visits conducted from 2001 to 2015 onwards.⁸⁷ These detailed reports describe the administration lacunae and the condition of prisoners in the prisons visited, but there

⁸¹ (2014) 1 SCC 1

⁸² (2009) 111 DRJ 1 (DB)

⁸³ <http://ncrb.nic.in/StatPublications/CII/CII2015/chapters/Chapter%2013-15.11.16.pdf> <https://76crimes.com/2016/10/17/nearly-1500-arrested-last-year-under-indias-anti-gay-law/> (last accessed on 26th June, 2017 at 2pm)

⁸⁴ <https://www.hrw.org/news/2016/12/19/india-killings-police-custody-go-unpunished> (last accessed on 26th June, 2017 at 2pm)

⁸⁵ <https://counterview.org/2016/12/19/deaths-in-custody-could-be-prevented-if-police-follow-rules-designed-to-deter-mistreatment/> (last accessed on 22nd June, 2017 at 3pm)

⁸⁶ <http://timesofindia.indiatimes.com/india/Deaths-in-police-custody/articleshow/53484910.cms> (last accessed on 28th June, 2017 at 3pm)

⁸⁷ http://nhrc.nic.in/Reports_prison.htm (last accessed on 22nd June, 2017 at 3pm)

is no information on whether these reports were actually tabled in the Parliament and if action was taken. The NHRC website has not updated its list of custodial cases since 2006-2007 and there is no information available in the public domain about the steps NHRC has taken in various cases reported on custodial deaths. The last guidelines issued by NHRC which are available on their website are from 1997. They have not been revised or updated.

5. Communal⁸⁸ Violence

Communal violence has been a blot on the India's human rights record even before Independence, with inter-community rivalry extending to well before that⁸⁹. On 21 September 2016 the NHRC released the findings of their investigations in a case of communal violence in a town called Kairana. The investigation was based on a complaint on the alleged "exodus" of Hindu families from the town because of increasing crime. A report by the NHRC claimed that the allegations were "serious" and that several Hindu families had "migrated" from Kairana because of the "increase in crime" and "deterioration" of the law-and-order situation after victims of the previous riots in Muzaffarnagar, a nearby town, had settled there⁹⁰.

Pursuant to the directions of the Commission, a team consisting of Dy.S.P. Ravi Singh, W/Inspector Suman Kumari, Inspector Saroj Tiwari and Inspector Arun Kumar carried out spot enquiry and submitted their report. The report released by NHRC states that the investigation team visited a number of places affected by the violence and examined witnesses, victims, police officials and other government SDM. It obtained a list of 346 displaced families/persons, of which three residential localities were selected for verification.

However, activists working with people displaced by the Muzaffarnagar riots since 2013 said that the report was nothing but "communal rumour-mongering"⁹¹. Activist Farah Naqvi added that the report provided no evidence for its claims and was not based on facts but only "feelings" gathered from a few people. Naqvi said it was a matter of grave concern that "our premier human rights body in a public document

⁸⁸ The word, "communal" in India denotes sectarian in most cases of Hindu-Muslim violence

⁸⁹ Mohammad Sajjad, *Splintered Justice' in the Aftermath of Communal Violence*, The Wire, February 15, 2017. Available at <https://thewire.in/108972/splintered-justice-communalism/> (last accessed on 25th June, 2017 at 4 pm)

⁹⁰ *NHRC calls for action taken report from the Government of Uttar Pradesh over the findings and recommendations of its investigation team about exodus of families from Kairana area*, New Delhi, September 21, 2016. Available at <http://nhrc.nic.in/dispArchive.asp?fno=24109> (last accessed on 25th June, 2017 at 4 pm)

⁹¹ Jahnvi Sen, *NHRC Report on Kairana 'Partisan and Prejudiced', Say Activists, Riot Survivors*, September 29, 2016. Available at <https://thewire.in/69831/nhrc-kairana-report/> (last accessed on 25th June, 2017 at 4 pm)

spoke so loosely and irresponsibly, based only on what unnamed witnesses said they feel and stigmatise an entire community of Indian citizens as criminals.⁹²”

In 2008, following communal violence in a district called Kandhamal in the state of Orissa, over 25,000 people were forced to flee.⁹³In 2011 the NHRC merely directed the Orissa state government to submit a report on the steps taken in the aftermath. A National People’s Tribunal on the Kandhamal violence had also submitted a report to the NHRC in 2010 but the NHRC did not take up the matter⁹⁴. Anto Akkara, author of the book, *Kandhamal Craves For Justice*, extensively researched and reported on the region since the riots in 2008 and stated that the Commission did a lot of things in Delhi, but little on the ground⁹⁵.

6. Cow Vigilantism

“Cow vigilantism” is a term commonly used in India to describe the current lawlessness taking place under the rubric of cow protection⁹⁶. While some State Governments, and more recently, the Central Government, have been amending cow protection laws to make them more stringent, the State response to incidents of lynching of people suspected of cow slaughter has been woefully inadequate. In 2016, Mohammad Akhlaq, a 60 year old, was lynched in Dadri in the state of Uttar Pradesh for allegedly possessing beef⁹⁷. Having taken little or no action against the perpetrators, a local Court instead directed the police to register a case against the victim, Akhlaq, and his family under the Uttar Pradesh Cow Protection Act, 1955 for alleged cow slaughter⁹⁸.

⁹² Minority rights activists call on NHRC to apologise for 'communal' report on Kairana exodus, Firstpost, Sep, 2016. Available at <http://www.firstpost.com/politics/minority-rights-activists-call-on-nhrc-to-apologise-for-communal-report-on-kairana-exodus-3027940.html>(last accessed on 25th June, 2017 at 5 pm)

⁹³ NHRC directs Orissa to report on Kandhamal violence, Jan 19, 2011. Available at <http://www.hindustantimes.com/india/nhrc-directs-orissa-to-report-on-kandhamal-violence/story-S8dvrkLPsINUctPGahzWLM.html>(last accessed on 25th June, 2017 at 5 pm)

⁹⁴ *No action taken by NHRC on Kandhamal riots: Justice Shah*, August 23, 2013. Available at http://zeenews.india.com/news/odisha/no-action-taken-by-nhrc-on-kandhamal-riots-justice-shah_871272.html. (last accessed on 25th June, 2017 at 5 pm) See also, *No action taken by NHRC on Kandhamal riots: Justice Shah*, Business Standard, August 23, 2013. Available at http://www.business-standard.com/article/pti-stories/no-action-taken-by-nhrc-on-kandhamal-riots-justice-shah-113082301187_1.html (last accessed on 25th June, 2017 at 5 pm)

⁹⁵ ‘The NHRC has failed the riot victims of Kandhamal’, Brijesh Pandey, 21.09.2013. Issue 38, Vol 10. Available at <http://www.tehelka.com/2013/09/the-nhrc-has-failed-the-riot-victims-of-kandhamal/> (last accessed on 25th June, 2017 at 7 pm)

⁹⁶ Ujjal Dosanjh, *Cow vigilantism threatens the body and soul of India*, The Indian Express, Updated: April 16, 2017. Available at <http://indianexpress.com/article/blogs/cow-vigilantism-rss-mahatma-gandhi-gau-rakshaks-4612503/>(last accessed on 25th June, 2017 at 7 pm)

⁹⁷ *Una, Alwar and Delhi cow vigilantism: A list of 'gau rakshak' attacks since 2015 Dadri lynching*, 03 June, 2017. Available at <http://www.firstpost.com/india/una-alwar-and-delhi-cow-vigilantism-a-list-of-gau-rakshak-attacks-since-2015-dadri-lynching-3401302.html>(last accessed on 25th June, 2017 at 7:30 pm)

⁹⁸ Mohammad Ali, *FIR for cow slaughter ordered against Dadri lynching victim Akhlaq's family*, The Hindu, Updated: September 20, 2016. Available at <http://www.thehindu.com/news/national/FIR-for->

This order came as a response to a petition filed by some of the accused demanding action against Akhlaq and his family.

In July 2016, youth belonging to the Dalit community in Una district of the state of Gujarat were assaulted⁹⁹, stripped and paraded when they were skinning a dead cow¹⁰⁰. Skinning dead animals and selling their organs is that community's occupation, and the upper castes rely on it to carry away the carcasses –work that the upper castes do not themselves deign to do.

In April, 2017, a 55 year old dairy farmer, Pehlu Khan was branded as a cattle smuggler and assaulted by cow vigilantes in Alwar in the state of Rajasthan¹⁰¹. He later succumbed to his injuries. Although the NHRC issued notices to the Central Government, the Union Home Secretary and the Rajasthan Government asking for a detailed report, including information on measures taken to deal with such incidents, there is no record of any follow up action by the NHRC, investigations undertaken, or reports of compliance, if any, with the notices.

7. Freedom of expression – The Case of Kanhaiya Kumar

In February 2016, a group of students from the Jawaharlal Nehru University (JNU) in New Delhi were arrested for “sedition” following allegations of 'anti-India' slogans being raised at an event they had organised to protest against the death penalty awarded to certain terror convicts¹⁰². The move was widely criticised, as it was seen as an attempt to restrict freedom of speech and expression in educational institutions. Subsequently, Kanhaiya Kumar, JNU student union leader, was attacked outside the court premises when he was brought in for a hearing. Police present at the scene took no action against the perpetrators.

The NHRC took *suo motu* cognizance of Kanhaiya Kumar's arrest. A team was directed to visit the Central Prison where Mr. Kumar was held, and ascertain the prison conditions. The NHRC team found that the prison had made special arrangements to ensure safety and security of Kanhaiya Kumar but that he was also being subjected to psychological pressure and before being taken to court, was made to issue a

cow-slaughter-ordered-against-Dadri-lynching-victim-Akhlaqs-family/article14488640.ece (last accessed on 25th June, 2017 at 7:30 pm)

⁹⁹ <http://indianexpress.com/article/india/india-news-india/gujarat-7-of-dalit-family-beaten-up-for-skinning-dead-cow-2910054/>

¹⁰⁰ *Ibid.*

¹⁰¹ Manoj Ahuja, *Alwar lynching: Pehlu Khan's uncle threatens to commit suicide with entire family*, Hindustan Times, Updated: April 18, 2017. Available at <http://www.hindustantimes.com/india-news/alwar-lynching-pehlu-khan-s-uncle-threatens-to-commit-suicide-with-entire-family/story-javqKshS5EC55SSZvZhMIP.html>(last accessed on 26th June, 2017 at 10 am)

¹⁰² Shruti Singh, *JNU students union president arrested over Afzal Guru event, sent to 3-day police custody*, India Today, February 12, 2016. Available at <http://indiatoday.intoday.in/story/jnu-students-union-president-arrested-over-afzal-guru-event/1/594164.html> (last accessed on 28th June, 2017 at 10 am)

statement owing “allegiance to the Constitution” which was dictated by police¹⁰³. A copy of the inquiry report submitted by the NHRC team was forwarded to the Commissioner of Police, Delhi and the Director General of Prisons, Tihar Jail, for their comments¹⁰⁴. There is no evidence of any other subsequent action taken by NHRC in this matter.

8. Custodial Torture:

Torture is rampant and institutionalised in India¹⁰⁵. Twenty years after India signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the lower house of the Indian Parliament, the Lok Sabha, passed the Prevention of Torture Bill 2010 on 6 May 2010. This Bill, however fell short of national and international standards and was referred to the Select Committee for scrutiny by the upper house of Parliament, the Rajya Sabha. The Select Committee referred the Bill for enactment with certain changes. Some of the State governments felt that adequate provisions already existed in the domestic legislations and suggested suitable amendments in these existing provisions. In the meanwhile, the Bill lapsed with the dissolution of the 15th Lok Sabha in May 2014, necessitating introduction of a new Bill in the House¹⁰⁶.

The result is that India still does not have any law on prevention of custodial torture, nor does it have any robust procedural safeguards against possible custodial violence¹⁰⁷. In response to a Public Interest Litigation (PIL) filed by a former Union Law Minister, pleading for an independent legislation on torture, the Supreme Court sought a response from the NHRC in January 2017, to be submitted within a month, on the need for a stand-alone anti-custodial torture law¹⁰⁸. This report is not available for the

¹⁰³ JNU row: Kanhaiya subjected to psychological pressure, says NHRC, February 20, 2016. Available at <http://www.hindustantimes.com/india/jnu-row-kanhaiya-kumar-subjected-to-psychological-pressure-says-nhrc/story-U2Rz2NTKQzV0uO6NwICiuJ.html> (last accessed on 26th June, 2017 at 10 am)

¹⁰⁴ NHRC Team visits Central Prison, Tihar to inquire into important issues pertaining to Shri Kanhaiya Kumar; inquiry report forwarded to Commission of Police, Delhi and Director General of Prisons, Tihar Jail for comments, 19th February, 2016, New Delhi. Available at <http://nhrc.nic.in/dispArchive.asp?fno=13875> (last accessed on 26th June, 2017 at 11 am)

¹⁰⁵ Prevention of Torture Bill, 2010: A case for intervention with the Government of India, Asian Centre for Human Rights, June 30, 2010. Available at <http://www.achrweb.org/ncpt/ACHR-PTB-BriefingPaper-30June2010.pdf> (last accessed on 26th June, 2017 at 11 am)

¹⁰⁶ Amended draft of anti-torture Bill ready: Govt., The Hindu, May 11, 2016. Available at <http://www.thehindu.com/news/national/amended-draft-of-antitorture-bill-ready-govt/article8585596.ece> (last accessed on 26th June, 2017 at 12 pm)

¹⁰⁷ Aditya Manubarwala, *Revisiting India's Obligations against Custodial Torture*, May 19, 2017. Available at <http://blogs.lse.ac.uk/humanrights/2017/05/19/revisiting-indias-obligations-against-custodial-torture/> (last accessed on 26th June, 2017 at 12 pm)

¹⁰⁸ Dhananjay Mahapatra, *Supreme Court seeks NHRC's reply on anti-custodial torture law*, The Times of India, January 10, 2017. Available at <http://timesofindia.indiatimes.com/india/supreme-court-seeks-nhrCs-reply-on-anti-custodial-torture-law/articleshow/56432105.cms> (last accessed on 26th June, 2017 at 1 pm)

perusal of the general public, which again goes to show how the functioning of NHRC is rather non-transparent. Furthermore, the NHRC keeps count of incidents of custodial torture only if the torture led to death and not otherwise¹⁰⁹. Between 2013-2016, the NHRC recommended disciplinary action in a mere two cases of custodial torture.¹¹⁰

9. Death Penalty

The issue of death penalty in India seems to be a second level concern against the backdrop of various human rights violations in the country¹¹¹. This perception was further reaffirmed during the interaction of the NHRC with the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns in 2012. When posed with the question of death penalty in India complying with international human rights standards, NHRC Member Justice G.P. Mathur responded by referring to Section 303 of the Indian Penal Code (IPC), which according to him was the only section in the entire Code that prescribed mandatory death sentence and was struck down by the Supreme Court while hearing the *Bachan Singh* case. The distinguished Member failed to mention that the death penalty may also be applied for murder, gang robbery with murder, abetting suicide of a child or innocent person, for waging war against the government, and for a number of offences committed by the members of armed forces under the Army Act 1950, the Air Force Act, 1950, and the Navy Act, 1956.¹¹² He added that in practice, there is practically no death sentence in India. The number of executions over the past five years reveal otherwise. A report published by Centre on the Death Penalty, National Law University, Delhi, states that the number of prisoners on death row as on 31 December 2016 was 397. It added that despite the judgement of the Supreme Court in *Shabnam v. Union of India and Ors*¹¹³, which held that the Sessions Court cannot issue death warrants for executions without ensuring that all legal remedies of the prisoner have been exhausted, the Sessions Court went ahead and issued death warrants for the execution of five prisoners before they had exhausted all their legal options¹¹⁴.

¹⁰⁹ Krishnadas Rajagopal, *SC for broad anti-torture legislation*, The Hindu, April 24, 2017. Available at <http://www.thehindu.com/news/national/frame-anti-torture-law-sc-tells-govt/article18200856.ece> (last accessed on 26th June, 2017 at 1 pm)

¹¹⁰ *Supra* n. 74

¹¹¹ Sankar Sen, Address on "Death Penalty", 10th October 2012 at IIC Centre, Available at http://eeas.europa.eu/archives/delegations/india/documents/keynote_address_-_death_penalty.pdf (last accessed on 26th June, 2017 at 2 pm)

¹¹² *Ibid.*

¹¹³ (2015) 6 SCC 702

¹¹⁴ Death Penalty in India, Annual Statistics 2016, Centre on the Death Penalty, National Law University Delhi, 2017

As recently as March 2017, BJP Member of Parliament, Subramanian Swamy introduced the Cow Protection Bill, 2017, in the Rajya Sabha. The Bill seeks “deterrent punishment”, including the death penalty, for the slaughter of a cow¹¹⁵.

Although the Supreme Court has held and reiterated, that the death penalty can be imposed only in the “rarest of rare” cases, the exact definition or contours of the phrase have not been spelt out by the courts; to that extent therefore, there is no clarity on what exactly constitutes “rarest of rare”¹¹⁶. “In the same month, different benches of the Supreme Court have treated similar cases differently, often apparently reflecting their own positions for or against the death penalty. While in one case the defendant’s young age could be a mitigating factor sufficient to commute the death sentence, in another it could be dismissed as a mitigating factor. In one case, the gruesome nature of the crime could be sufficient for the Court to ignore mitigating factors and in another case a similar crime was clearly not gruesome enough.”¹¹⁷

The NHRC has played no role in the campaign for the abolition of death penalty. It has refused to entertain petitions pertaining to death row convict’s access to clemency¹¹⁸. A 2015 Law Commission Report on the death penalty also saw no significant contribution from the NHRC. The Chairperson of the NHRC has stated that “India hadn’t yet reached the stage where capital punishment can be done away with.”¹¹⁹ The blatant disregard of international human rights standards by the head of a country’s premier human rights institution is nothing short of appalling.

In a recent UN General Assembly which called for a moratorium on death penalty in 2016, India voted against the resolution on the grounds that such a moratorium contravened Indian statutory law and the right of every country to determine their own legal system¹²⁰. There was no comment by the NHRC.

10. Honour Killings

UN Special Rapporteur Christof Heyns, among other things, questioned the NHRC regarding the prevalence of dowry deaths (women being murdered for not bringing a sufficient amount of dowry to a marriage) and honour killings. The Members’ response

¹¹⁵ *Bill Seeking Death Penalty For Cow Slaughter Introduced In RS By Subramanian Swamy*, Huffpost, March 25, 2017. Available at <http://www.huffingtonpost.in/2017/03/25/bill-seeking-death-penalty-for-cow-slaughter-introduced-in-rs-by-a-22011334/> (last accessed on 26th June, 2017 at 2:30 pm)

¹¹⁶ *Supra* n. 38.

¹¹⁷ Amnesty International-India and the People’s Union for Civil Liberties (Tamil Nadu & Puducherry), *Lethal Lottery: The Death Penalty in India, A study of Supreme Court judgments in death penalty cases 1950-2006*, New Delhi, 2 May 2008. Available at, <https://darkindia.wordpress.com/a-study-of-supreme-court-judgments-in-death-penalty-cases-1950-2006/> (last accessed on 28th June, 2017 at

1pm)

¹¹⁸ *Supra* n. 22.

¹¹⁹ *Ibid.*

¹²⁰ *Supra* n. 23.

was disappointing. These are social problems and there is already an Act in place to deal with dowry-related matters, a Member said. He added that the term itself was a “media construct”, and that the instances of these so-called ‘honour’ killings were very few¹²¹. With regard to NHRC’s role *vis-à-vis* honor killings, the Members added that NHRC’s jurisdiction only extends to violations of human rights by the state and its agencies. and not private persons.

11. Refugees

With its porous borders, India is host to thousands of refugees, most of whom hail from Sri Lanka, Tibet, Afghanistan and Myanmar. The Rohingya Muslims, belonging to the stateless Rohingya community, live in different parts of India¹²² and are viewed as one of the world’s most persecuted minorities¹²³. The Rohingyas have been subjected to persecution by Myanmar’s military, the border police and certain Buddhist extremist groups. In India, where they sought refuge, they continue to face violence. Continuing turmoil in the Kashmir Valley has inflamed religious tensions in Jammu, a Hindu majority area, and Rohingya refugees are bearing the brunt of it¹²⁴. The South Asia Forum for Human Rights (SAFR) along with South Asian Human Rights Documentation Centre (SAHRDC) sent a petition to the NHRC highlighting the imminent threat to the lives and liberty of Rohingya refugees living in and around Jammu city in March 2017, but no significant action has been taken by NHRC since. A string of suspicious fires at the Rohingya settlement in the past few months have further increased tensions. The police hinted at electrical short-circuit but the refugees suspect sabotage¹²⁵. The lackadaisical attitude of NHRC towards the apathy and violence faced by these destitute Rohingyas in Jammu makes them further vulnerable to human rights violations.

Despite the restrictions and inadequacies in the Protection of Human Rights Act, the NHRC, can nevertheless take much more proactive measures to address and improve the state of human rights if it would only make full use of the powers already granted to it. The 2006 amendment to Section 18(c) now enables the NHRC to recommend

¹²¹ *Supra n. 38.*

¹²² *The Most Unwanted: A gripping account of Rohingya refugees living in India.* Updated: January 8, 2017. The Indian Express. Available at <http://indianexpress.com/article/india/the-most-unwanted-a-gripping-account-of-rohingya-refugees-living-in-india-4464103/> (last accessed on 28th June, 2017 at 3 pm)

¹²³ Feliz Solomon, *Burma Is Pursuing ‘Ethnic Cleansing’ of Rohingya Muslims, U.N. Official Says*, Nov 25, 2016. Available at <http://time.com/4582157/burma-myanmar-rohingya-bangladesh-arakan-ethnic-cleansing-suu-kyi/> (last accessed on 27th June, 2017 at 11 am)

¹²⁴ Abhishek Saha, *Fled Myanmar but fear grips Rohingya refugees in Jammu as fresh threats emerge*, Hindustan Times. May 08, 2017. Available at <http://www.hindustantimes.com/india-news/fear-grips-rohingya-refugees-in-jammu-as-fresh-threats-to-leave-emerge/story-caauSvsM3fa2o0uy1FyqjO.html> (last accessed on 27th June, 2017 at 11:30 am)

¹²⁵ *Ibid.*

relief at any stage of the enquiry. The NHRC is also entitled to approach the Supreme Court or the High Court for such directions or orders or writs as that court may deem necessary if its recommendations are cast aside¹²⁶. In case of violation of human rights by private persons the Commission can intervene by looking into the failure of police, or public authorities to prevent violation of human rights.

The Supreme Court's adverse observations in the case of *EEVFAM v. Union of India*¹²⁷, regarding the NHRC being a toothless tiger, may also have endorsed the view of the first Director General (Investigation) of the NHRC who recently said: "Instead of bemoaning its lack of powers, NHRC has to play a more proactive and transformative role for the advancement of human rights in the country"¹²⁸.

1. Attacks on human rights defenders in Chhattisgarh

The 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 extrajudicial killings by the security forces. The Chhattisgarh administration and police and vigilante groups supported by the State have systematically targeted activists, researchers, academicians, journalists, lawyers and other human rights defenders 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 complains 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 November 2016, the Chhattisgarh police had filed a false case of murder against a renowned academician, Prof. Nandini Sundar, and others, who had highlighted a number of human rights violations against the indigenous communities in the Bastar region of the state.¹²⁹ Following public pressure, the NHRC summoned the Chief Secretary of Chhattisgarh and the Inspector General of Police, Bastar, Mr. S.R.P Kalluri, to inquire into the case. Both the Chief Secretary and Mr. Kalluri failed to appear before the NHRC in person. Two representatives from the state government

¹²⁶ Section 18(b), Protection of Human Rights Act, 1993.

¹²⁷ Supra n. 38

¹²⁸ Anubhav Dutt Tiwari, *Has the NHRC failed its mandate to protect and promote human rights in India?* July 18, 2016. Available at <https://scroll.in/article/811654/has-the-nhrc-failed-its-mandate-to-protect-and-promote-human-rights-in-india>. (last accessed on 27th June, 2017 at 11:30 am) See also, Sankar Sen, *Not so toothless*, The Statesman, June 15, 2016. Available at <http://www.thestatesman.com/opinion/not-so-toothless-148413.html>(last accessed on 27th June, 2017 at 11:30 am)

¹²⁹ <https://thewire.in/78698/the-fir-against-nandini-sundar-and-archana-prasad-is-a-clear-case-of-vendetta-politics-say-civil-society-members/>

of Chhattisgarh appeared on their behalf before the NHRC and submitted that the state government had prepared a six-point 'Action Plan' to ensure that human rights were protected in Bastar region. The prime accused in the cases brought by the human rights defenders, Mr. Kalluri, was transferred from the Bastar region following the NHRC summons and placed in the state capital.

Further, a close look at the so-called action plan reveals that the provisions are an eye-wash. The action plan proposes the formation of District-Level Human Rights Protection Committee and State Human Rights Protection Committee – an action that had already been directed by the Supreme Court in *Prakash Singh v. Union of India* in 2006. It was the NHRC's duty to admonish the Chhattisgarh government for not following the directions of the Supreme Court for so many years. Instead, the NHRC merely accepted the 'Action Plan'. It 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.

The NHRC did not take cognizance of the fact that under the Chhattisgarh Police Act, 2007, the State government is required to establish a 'State Police Accountability Authority' with powers to inquire into allegation of serious misconduct against police personnel. The NHRC did not even verify whether the State Police Accountability Authority had been formed in that state. The State Government therefore got away by pledging an action that should have been implemented long ago.

2. Restrictions and arbitrary detention imposed on Mr. Khurram Parvez

Mr. Khurram Parvez is a Kashmiri human rights defender and has highlighted several gross violations of human rights in the state of Jammu and Kashmir. He was not allowed to travel to Geneva by the Indian immigration authorities on 14 September 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 the necessary travel documents. He was informed by the immigration authorities at New Delhi's International Airport that due to orders from the Intelligence Bureau he could not travel to Geneva. On 15 September 2016, he was arrested by the Jammu and Kashmir Police and was charged under the draconian Public Safety Act, under which a person can be detained up to six months. He was released only after 76 days when the High Court of Jammu and Kashmir quashed the order of his detention under the Public Safety Act, terming it "illegal" and an "abuse of power"¹³⁰. In October 2016, a group of UN experts urged¹³¹

¹³⁰<https://thewire.in/83567/khurram-parvez-released-after-76-days-in-detention/>

¹³¹<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20697&LangID=E>

the Government of India to release Mr. Parvez, stating 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 travel ban 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. After considering the reply, the NHRC 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 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 human rights defender. It closed the complaint without even asking for a response from Mr. Parvez or the complainant, HRDA. It did not use its investigation division to enquire into the matter. Rather, the NHRC violated the principles of natural justice by concluding the case solely on the basis of the report of Intelligence Bureau.

3. Restrictions on funding of human rights defenders

The Centre for Promotion of Social Concerns (CPSC), a non-profit and charitable trust involved in monitoring and documenting of human rights violations through its programme unit ‘People’s Watch’, had applied for renewal of its foreign funding grant license under the 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 filed a writ petition in the High Court of Delhi challenging the decision, and the case is pending before the Court.

HRDA filed a complaint in this regard with the NHRC in November 2016. NHRC transmitted the complaint to the 'concerned authority for appropriate action' and asking for action taken report in four weeks' time. The report as on 5 July 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 asking it to intervene. The NHRC took *suomotu* cognizance of the matter and issued a notice¹³² to the Union Home Secretary asking for a reply within four weeks. The Union Ministry of Home Affairs sent a response to NHRC, which the latter found to be unsatisfactory. Another opportunity was provided to the Union Home Secretary to respond, within four weeks. Nine months later, the NHRC is still awaiting a response. The complainant in this case had requested NHRC for copies of the submissions made by the Ministry of Home Affairs but these were never provided, despite a personal representation to the NHRC Chairperson following a meeting of the NHRC Core Group on NGOs on 12 May 2017.

This was a fit case for the 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*". The United Nation's Special Rapporteur on the rights to freedom of peaceful assembly and of association in April 2016 had presented a legal analysis of the Foreign Contribution Regulation Act, 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 was cancelled by the Government of India, but the NHRC failed to intervene in to the matter, stating that "*[t]he Commission does not find any reason to intervene into the matter. The complainant may recourse to available legal remedies, if he so desires.*"¹³³

2.6.4 Human Rights Defenders' Cases at NHRC

In 2016, HRDA, a national platform working for the protection of HRDs in India, had sent 124 complaints on attacks on human rights defenders to the NHRC. The NHRC 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 a large number of

¹³² <http://nhrc.nic.in/disparchive.asp?fno=34140>

¹³³ <http://hrdaindia.org/?p=1865>

cases are transferred to SHRCs, despite the fact that there is a severe shortage of members in SHRCs and most of the posts of Chairperson and Members remain vacant. The SHRCs also suffer from inadequate staffing, lack of resources and infrastructure, and inadequate funding, and lack proper investigations wings. Moreover, the accused in the majority of these cases are local police personnel. The dispatching of complaints to SHRCs, which mostly comprise officials from state government, translates into increased instances of harassment and reprisals against human rights defenders.

Out of the 124 complaints sent, almost 30 per cent of the cases are closed, disposed or dismissed *in limine* by NHRC. In fact, in many cases, the NHRC closes the complaints without sharing copies of reports and responses with the complainants, contravening Practice Directions Guideline 17 of the NHRC dated 28 May 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. Thirty per cent of the cases were closed solely based on the report submitted by police. The NHRC does not investigate cases where human rights defenders are falsely implicated in a criminal case, on the grounds that that the cases are sub-judice.

Thirty per cent of the cases from the year 2016 are pending as the government authorities failed to respond within the stipulated time. The NHRC has not taken any measures, 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 to human rights defenders in particular.

The Commission has linked 12 per cent 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. The result is that complainants do not get a chance to provide additional information related to their individual cases.

The year 2016 witnessed targeted and systemic attacks on human rights defenders by State and non-State actors across the country. The NHRC has not ordered compensation or prosecution in a single case.

Conclusion

In view of the submissions made above, SAHRDC recommends that the SCA reconsider the accreditation of the Indian National Human Rights Commission.

4.2.5. “NHRC Loyal to the State but Failing the People” – Report by AiNNI

INDIA: NHRC Loyal to the State but Failing the People

All-India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI)¹³⁴

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 an 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,

¹³⁴ Mathew Jacob, National Coordinator, mj@pwtm.org and Rajavelu K, Associate, rajavel@pwtm.org

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"¹³⁵. The SCA further stated that quasi-judicial function is only one of the ten functions of NHRC as mentioned in its founding law¹³⁶. 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

¹³⁵ <http://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20Nov%202016%20-%20English.pdf>

¹³⁶ The Protection of Human Rights Act, 1993.

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.

Chairpersons of other national commissions¹³⁷ 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 2020¹³⁸. 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

¹³⁷ 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 be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12".

¹³⁸ <http://supremecourt.gov.in/chief-justice-judges>

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 NHRC¹³⁹.

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)¹⁴⁰ 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:*

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

¹³⁹ ANNI Report 2016

¹⁴⁰ Ibid.

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 NHRC¹⁴¹ pursuant to an order of the Supreme Court of India¹⁴² 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 Court¹⁴³, 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

¹⁴¹ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=157887>

¹⁴²

¹⁴³ <https://thewire.in/109760/after-nhrc-report-chhattisgarh-high-court-pulls-up-security-forces-for-sexual-violence-in-bastar/>

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 a 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)¹⁴⁴ 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 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

¹⁴⁴ <http://www.thehindu.com/news/national/Appoint-NHRC-DG-within-a-week-SC-tells-Centre/article17081500.ece>

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 speeches¹⁴⁵ 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

¹⁴⁵ <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 NHRC¹⁴⁶. 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 organisations¹⁴⁷, 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 reasons¹⁴⁸.

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, 2017,¹⁴⁹ 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.

¹⁴⁶ <https://thewire.in/78184/nhrc-centre-politician/>

¹⁴⁷ <https://scroll.in/article/821152/why-human-rights-groups-do-not-want-an-active-politician-on-the-national-human-rights-commission>

¹⁴⁸ <http://www.livelaw.in/sc-dismisses-challenge-nhrc-selection-bjp-vice-president-avinash-rai-khanna-withdraws-candidature-read-order/>

¹⁴⁹ Letter dated 12th April from the UN HCHR to the Hon'ble Minister for External Affairs of the GOI

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.

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 very minimalistic interactions 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.¹⁵⁰ 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.¹⁵¹

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

¹⁵⁰ http://nhrc.nic.in/Documents/Minutes_of_the_meeting_of_Core_Group_of_NGOs_held_on_09_08_2016.pdf

¹⁵¹ http://nhrc.nic.in/Documents/CoreGroupofNGO_23092016.pdf

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 impunity¹⁵². 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 India¹⁵³. 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 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. NRHC has repeatedly mentioned about the

¹⁵² <http://www.livelaw.in/human-rights-commission-orders-not-merely-recommendatory-state-duty-bound-comply-allahabad-hc/>

¹⁵³ <https://www.hrw.org/world-report/2017/country-chapters/india>

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 limine 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.¹⁵⁴

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

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 complains of gross human rights violations. However, despite repeated requests from

¹⁵⁴ <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>

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 outcry¹⁵⁵ 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 summons 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 landmark 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.

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

¹⁵⁵ <https://thewire.in/78698/the-fir-against-nandini-sundar-and-archana-prasad-is-a-clear-case-of-vendetta-politics-say-civil-society-members/>

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"¹⁵⁶. In October 2016, a group of UN experts urged¹⁵⁷ 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

¹⁵⁶ <https://thewire.in/83567/khurram-parvez-released-after-76-days-in-detention/>

¹⁵⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20697&LangID=E>

criminal cases have been against him for inciting violence in the 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-weeks' 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 notice¹⁵⁸ 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

¹⁵⁸ <http://nhrc.nic.in/dispatchive.asp?fno=34140>

responded to inspite 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 presented a legal analysis of the Foreign Contribution Regulation Act, 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.*”¹⁵⁹

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 in limni 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

¹⁵⁹ <http://hrdaindia.org/?p=1865>

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 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 Recommendations¹⁶⁰

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

¹⁶⁰ 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.

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 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 sms/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.

4.2.6. Examples of two NHRIs downgraded that were an impetus for formation of AiNNI

i.) Malaysia: National Human Rights Commission of Malaysia (SUHAKAM) in 2008

Recommendation: The Sub-Committee informs the Commission of its intention to recommend to the ICC status B, and gives the Commission the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The Commission retains its “A” status during this period.

The Sub-Committee notes the following:

- 1) The independence of the Commission needs to be strengthened by the provision of clear and transparent appointment and dismissal process in the founding legal documents, more in line with the Paris Principles. The Sub-Committee refers to General Observation “Selection and appointment of the governing body”.
- 2) With regard to the appointment, the Sub-Committee notes the short term of office of the members of the commission (two years). It refers to General Observation “Guarantee of tenure for members of governing bodies”.
- 3) It further refers to General Observation “Ensuring pluralism” to highlight the importance of ensuring the representation of different segments of society and their involvement in suggesting or recommending candidates to the governing body of the Commission.
- 4) The Sub-Committee refers to General Observation “Interaction with the International Human Rights System”.

ii.) Sri Lanka: Human Rights Commission (SLHRC) in 2009

Recommendation: after reviewing the information provided by the SLHRC, the Sub-Committee recommends that its B Status be maintained. It encourages the SLHRC to submit a complete accreditation application for a future session.

The Sub-Committee (“SCA”) notes the following:

It observes that new SLHRC members are due to be appointed in April 2009. While recognising that the Constitutional Council may not be constituted at this time to make recommendations on appointments as provided for in the SLHRC’s legislation, the SCA nevertheless stresses the need for a transparent and consultative selection process in practice. The SCA strongly encourages the SLHRC to engage with the government to ensure the adoption of such a process. The SCA refers to General Observation 2.2 “Selection and Appointment of the Governing Body”.

It expresses its concern that the SLHRC does not appear to have released regular and detailed reports or statements in relation to killings, abductions and disappearances stemming from the human rights crisis in Sri Lanka. While the SCA acknowledges the work of the SLHRC's regional offices in extremely difficult circumstances, it reemphasises the need for the SLHRC to carry out its core protection mandate to demonstrate its vigilance and independence during the ongoing state of emergency;

It commends the SLHRC on its concrete efforts to implement a regular consultation mechanism with civil society organisations in line with the ICC recommendation on the same. However, the SCA notes that consultation so far has been described as selective. The SCA emphasises that engagement with civil society must be broad based, to ensure the pluralistic representation of social forces as required by the Paris Principles;

It welcomes the publication of the 2006-07 Annual Report in line with the ICC recommendation on the same, but notes that the report provides insufficient information to assess the ongoing

work of the SLHRC and appears to be only available in English. The SCA refers to General Observation 6.7 "NHRI Annual Report";

It further notes that the Tamil and Sinhala sections of the SLHRC website are not functioning.

The SCA highlights the importance of ensuring that the SLHRC is accessible to all groups in society.

4.3 ICC-SCA GENERAL OBSERVATIONS

AS AT MAY 2013

1. ESSENTIAL REQUIREMENTS OF THE PARIS PRINCIPLES

G.O. 1.1 - The establishment of National Human Rights Institutions

G.O. 1.2 - Human rights mandate

G.O. 1.3 - Encouraging ratification or accession to international human rights instruments

G.O. 1.4 - Interaction with the International Human Rights System

G.O. 1.5 - Cooperation with other human rights bodies

G.O. 1.6 - Recommendations by National Human Rights Institutions

G.O. 1.7 - Ensuring pluralism of the National Human Rights Institution

G.O. 1.8 - Selection and appointment of the decision-making body of National Human Rights Institutions

G.O. 1.9 - Government representatives on National Human Rights Institutions

G.O. 1.10 - Adequate funding of National Human Rights Institutions

G.O. 1.11 - Annual reports of National Human Rights Institutions

2. PRACTICES THAT DIRECTLY PROMOTE PARIS PRINCIPLES COMPLIANCE

G.O. 2.1 - Guarantee of tenure for members of the National Human Rights Institution decision-making body

G.O. 2.2 - Full-time members of a National Human Rights Institution

G.O. 2.3 - Guarantee of functional immunity

G.O. 2.4 - Recruitment and retention of National Human Rights Institution staff

G.O. 2.5 - Staffing of the National Human Rights Institution by secondment

G.O. 2.6 - National Human Rights Institutions during the situation of a coup d'état or a state of emergency

G.O. 2.7 - Limitation of power of National Human Rights Institutions due to national security

G.O. 2.8 - Administrative regulation of National Human Rights Institutions

G.O. 2.9 - Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms

G.O. 2.10 - The quasi-judicial competency of National Human Rights Institutions (complaints-handling)

1. Essential requirements of the Paris Principles

G.O. 1.1 - The establishment of National Human Rights Institutions

A National Human Rights Institution must be established in a constitutional or legislative text with sufficient detail to ensure the National Institution has a clear mandate and independence. In particular, it should specify the Institution's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of a National Institution by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence

JUSTIFICATION

Pursuant to section A.2 of the Paris Principles: "*A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*"

The Sub-Committee recognizes that National Institutions are created in different socio-economic circumstances and political systems, which may in turn impact on the manner in which they are formally established. Nonetheless, the Paris Principles are clear on the requirement that National Institutions, regardless of the constitutional and legal system in which they operate, be formally entrenched in law and in this way be distinguished from an agency of state, a non-government organization, or an ad hoc body. Further, it is necessary that the constitutional or legislative text set out the National Institution's mandate as well as the composition of its leadership body. This necessarily requires the inclusion of complete provisions on the Institution's appointment mechanisms, terms and conditions of office, mandate, powers, funding and lines of accountability.

The Sub-Committee considers this provision to be of central importance in guaranteeing both the permanency and independence of the Institution.

The creation of a National Institution in other ways, such as by a decision of the Executive (through a decree, regulation, motion, or administrative action) and not by the legislature raises concerns regarding permanency, independence from government and the ability to exercise its mandate in an unfettered manner. This is because instruments of the Executive may be modified or cancelled at the whim of the Executive, and such decisions do not require legislative scrutiny. Changes to the mandate and functions of an independent agency of state charged with the promotion and protection of human rights should be scrutinised by the legislature and not be at the fiat of the Executive. Any amendment or repeal of the constitutional or legislative text establishing the National Institution must require the consent of the legislature to ensure the Institution's guarantees of independence and powers do not risk being undermined in the future.

A) Excerpt from the Paris Principles

Competence and responsibilities –

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

G.O. 1.2 - Human rights mandate

All National Human Rights Institutions should be legislatively mandated with specific functions to both promote and protect human rights.

The Sub-Committee understands ‘promotion’ to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. ‘Protection’ functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

A National Institution’s mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should:

- extend to the acts and omissions of both the public and private sectors;
- vest the National Institution with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs;
- provide the authority to address recommendations to *public authorities*, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;
- authorize unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice;
- authorize the full investigation into all alleged human rights violations, including the military, police and security officers.

JUSTIFICATION

According to sections A.1 and A.2 of the Paris Principles, a National Institution should possess, “*as broad a mandate as possible*”, which is to be, “*set forth in a constitutional or legislative text*”, and should include both, “*the promot[ion] and protect[ion] of human rights*”. Section A.3 of the Paris Principles enumerates specific responsibilities the National Institution must, at a minimum, be vested with. These requirements identify two main issues which must necessarily be addressed in the establishment and operation of a National Institution:

- (i) The mandate of the Institution must be established in national law. This is necessary to guarantee the independence and autonomy with which a National Institution undertakes its activities in the fulfilment of its public mandate;
- (ii) The National Institution's mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent.

Excerpt from the Paris Principles

A. Competence and responsibilities –

1. *A national institution shall be vested with competence to promote and protect human rights*
2. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*
3. *A national institution shall, inter alia, have the following responsibilities:*
 - (a) *To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*
 - (i) *Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*
 - (ii) *Any situation of violation of human rights which it decides to take up;*
 - (iii) *The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
 - (iv) *Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

G.O. 1.3 - Encouraging ratification or accession to international human rights instruments

Encouraging ratification of, or accession to international human rights instruments, and the effective implementation of international human rights instruments to which the state is a party, is a key function of a National Human Rights Institution. The Principles further prescribe that National Institutions should promote and encourage the harmonization of national legislation, regulations and practices with these instruments. The Sub-Committee considers it important that these duties form an integral part of the enabling legislation of a National Institution. In fulfilling this function, the National Institution is encouraged to undertake activities which may include the following:

- monitoring developments in international human rights law;
- promoting state participation in advocacy for and the drafting of international human rights instruments;
- conducting assessments of domestic compliance with and reporting on international human rights obligations, for example, through annual and special reports and participation in the Universal Periodic Review process.

National Institutions should, in encouraging their governments to ratify international human rights instruments, advocate that this be done without reservations.

JUSTIFICATION

Sections A.3(b) and (c) of the Paris Principles require that National Institutions have the responsibility to “*promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation*”. Additionally, the National Institution has the responsibility “*to encourage ratification of [these] instruments or accession to those instruments, and to ensure their implementation*”.

In practice this requires National Institutions to review relevant national laws, regulations and policies to determine that they are compatible with the obligations arising from international human rights standards and propose the amendment or repeal of any legislation, regulations or policies that are inconsistent with the requirements of these standards. The Sub-Committee is of the view that the National Institution should be legislatively empowered to carry out these responsibilities.

The Sub-Committee notes the distinction between the state’s own monitoring obligations as required by these instruments, and the distinct role played by the National Institution in monitoring the state’s compliance and progress towards implementing the instruments it ratifies. Where the National Institution undertakes to carry out its own activities in promoting and protecting the rights contained therein, it shall do so in an entirely autonomous fashion. This does not preclude the National Institution from undertaking joint action with the state on certain activities, such as reviewing compliance of existing domestic legislation and regulations with international human rights instruments.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. *A national institution shall, inter alia, have the following responsibilities:*

....

(b) *To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*

(c) *To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*

G.O. 1.4 - Interaction with the International Human Rights System

The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for National Human Rights Institutions in the promotion and protection of human rights domestically.

Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

- submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure mechanisms and Treaty Bodies Committees;
- making statements during debates before review bodies and the Human Rights Council;
- assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

In considering their engagement with the international human rights system, National Institutions are encouraged to actively engage with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the ICC, their Regional NHRI Coordinating Committee and other National Institutions, as well as international and national NGOs and civil society organizations.

JUSTIFICATION

Sections A.3(d) and A.3(e) of the Paris Principles give National Institutions the responsibility to interact with the international human rights system in three specific ways. That is, National Institutions are required:

1. To contribute to country reports submitted to United Nations bodies and committees, and to regional institutions, in line with the States' treaty obligations;
2. To express an opinion on the subject, where necessary, with due respect for their independence;
3. To cooperate with the United Nations and any other organization in its system, as well as with regional human rights institutions and the National Institutions of other countries.

The Sub-Committee is of the view that National Institution engagement with international bodies is an important dimension of their work. Through their participation, National Institutions connect the national human rights enforcement system with international and regional human rights bodies. Domestically, National Institutions play a key role in raising awareness of international developments in human rights through reporting on the proceedings and

recommendations of treaty-monitoring bodies, special procedures mandate holders and the Universal Periodic Review. Their independent participation in human rights mechanisms through, for example, the production of parallel reports on the State's compliance with treaty obligations, also contributes to the work of international mechanisms in independently monitoring the extent to which states comply with their human rights obligations.

Moreover, National Institution participation in regional and international co-ordination bodies serves to reinforce their independence and effectiveness, overall. Through exchanges, National Institutions are provided with an opportunity to learn from shared experiences. This may lead to collectively strengthening each other's positions and contributing to resolving regional human rights issues.

National Institutions are encouraged to monitor the states' reporting obligations under the Universal Periodic Review and the international treaty bodies, including through dialogue with the relevant treaty body committees.

While it is appropriate for governments to consult with National Institutions in the preparation of a state's reports to human rights mechanisms, National Institutions should neither prepare the country report nor should they report on behalf of the government. National Institutions must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right.

The Sub-Committee wishes to clarify that a National Institution's contribution to the reporting process through the submission of stakeholder or shadow reports under relevant international instruments should be done independently of the state, and may draw attention to problems, issues and challenges that may have been omitted or dealt with inadequately in the state report.

The Sub-Committee recognizes the primacy of a National Institution's domestic mandate, and that its capacity to engage with the international human rights system must depend on its assessment of domestic priorities and available resources. Within these limitations, National Institutions are encouraged to engage wherever possible and in accordance with their own strategic priorities. In so doing, the Sub-Committee highlights that National Institutions should:

- avail themselves of the assistance offered by the UN Office of the High Commissioner for Human Rights (OHCHR), which provides technical assistance and facilitates regional and global cooperation and exchanges among National Institutions; and
- engage with the ICC, their respective regional Sub-Committee representative and regional coordinating committees: African Network of NHRIs; Network of NHRIs of the Americas; Asia-Pacific Forum of NHRIs; and, European Group of NHRIs.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, inter alia, have the following responsibilities:

....

- (d) *To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;*
- (e) *To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;*

G.O. 1.5 - Cooperation with other human rights bodies

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.

JUSTIFICATION

In prescribing the National Institution's methods of operation, sections C(f) and C(g) of the Paris Principles require Institutions to: *"maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions)"*.

The Principles specifically recognize *"the fundamental role played by the non-governmental organizations in expanding the work of the national institutions"*, and therefore encourage NHRIs to, *"develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas"*.

To give full effect to these Paris Principle requirements, the Sub-Committee recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities. For the following reasons the Sub-Committee considers such cooperation necessary to ensure the full realization of human rights nation-wide:

National human rights framework – The effectiveness of a NHRI in implementing its mandate to protect and promote human rights is largely dependent upon the quality of its working relationships with other national democratic institutions such as: government departments; judicial bodies; lawyers' organizations; non-governmental organizations; the media; and other civil society associations. Broad engagement with all stakeholders may provide a better understanding of: the breadth of human rights issues across the state; the impact of such issues based on social cultural, geographic

and other factors; gaps, as well as potential overlap and duplication in the setting of policy, priorities and implementation strategies. NHRIs working in isolation may be limited in their ability to provide adequate human rights protections to the public.

Unique position of NHRIs – The character and identity of a NHRI serves to distinguish it from both government bodies and civil society. As independent, pluralistic institutions, NHRIs can play an important role.

Improved accessibility – The NHRI's relations with civil society and NGOs is particularly important in improving its accessibility to sections of the populations who are geographically, politically or socially remote. These organizations are likely to have closer relations with vulnerable groups as they often have a more extensive network than NHRIs and are almost always likely to be closer to the ground. In this way, NHRIs may utilize civil society to provide an outreach mechanism to engage with vulnerable groups.

Expertise of other human rights bodies – As a result of their specialized mandates, other human rights bodies and civil society groups may provide a NHRI with valuable advice on the major human rights issues facing vulnerable groups across the nation. As such, NHRIs are encouraged to regularly consult with other human rights bodies and civil society at all stages of programme planning and implementation, as well as policy making, to ensure the NHRI's activities reflect public concerns and priorities. Developing effective relationships with the mass media, as a section of civil society, is a particularly important tool for human rights education.

Formalized relationships – The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI's work with these bodies.

Excerpt from the Paris Principles

C) Methods of operation –

Within the framework of its operation, the national institution shall:

- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);*
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.*

G.O. 1.6 - Recommendations by National Human Rights Institutions

Annual, special and thematic reports of National Human Rights Institutions serve to highlight key national human rights concerns and provide a means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities.

National Institutions, as part of their mandate to promote and protect human rights should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions.

In fulfilling its protection mandate, a National Institution must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and advocate for the implementation on its recommendations and findings, and the protection of those whose rights were found to have been violated.

Public authorities are encouraged to respond to recommendations from National Institutions in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the National Institution's recommendations.

JUSTIFICATION

The Paris Principles are not only explicit in their direction that National Institutions have the responsibility to make recommendations to public authorities on improving the national human rights situation, but also that National Institutions ensure their recommendations are widely publicized. Specifically, section A.3(a) of the Paris Principles requires National Institutions to “*submit to the Government, Parliament and any other competent body, [...] recommendations [...] on any matters concerning the promotion and protection of human rights*”, and enumerates the three areas that these recommendations shall relate to:

1. The creation or amendment of any legislative or administrative provisions, including bills and proposals;
2. Any situation of violation of human rights within a state;
3. Human rights in general and on more specific matters.

In prescribing its methods of operation, section C(c) of the Paris Principles requires National Institutions to, “[...] *publicize its opinions and recommendations*”, “[...] *directly or through any press organ [...]*”.

Finally, section D(d) of the Principles, requires National Institutions with quasi-judicial competence, that is, with the ability to hear and consider complaints, to: “*mak[e] recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*”

The Sub-Committee is of the view that the three-fold reinforcement of the obligation to make and publicize recommendations is indicative that the drafters of the Paris Principles

considered that NHRIs would be more effective when provided with the authority to monitor the extent to which public authorities follow their advice and recommendations. To give full effect to this principle, the Sub-Committee encourages governments to respond to advice and requests from National Institutions, and to indicate, within a reasonable time, how they have complied with their recommendations.

National Institutions should monitor the implementation of recommendations from annual and thematic reports, inquiries and other complaint handling processes.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, *inter alia*, have the following responsibilities:

- (a) *To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:*
 - (i) *Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*
 - (ii) *Any situation of violation of human rights which it decides to take up;*
 - (iii) *The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
 - (iv) *Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

C) Methods of operation –

Within the framework of its operation, the national institution shall:

...

- (c) *Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;*

...

D) Additional principles concerning the status of commissions with quasi-jurisdictional competence –

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

...

- (d) *Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*

G.O. 1.7 - Ensuring pluralism of the National Human Rights Institution

A diverse decision-making and staff body facilitates the National Human Rights Institution's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the National Institutions for all citizens.

Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women in the National Institution.

The Sub-Committee notes there are diverse models for ensuring the requirement of pluralism in the composition of the National Institutions as set out in the Paris Principles. For example:

- a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership should be avoided;
- b) Pluralism through the appointment procedures of the governing body of the National Institutions, for example, where diverse societal groups suggest or recommend candidates;

- c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

JUSTIFICATION

Ensuring the pluralistic composition of the National Institution is a prime requirement of the Paris Principles as a guarantee of institutional independence. Section B.1 states: “*The composition of the national institution and the appointment of its members [...] shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights.*” The same provision highlights that pluralism is intended to promote effective cooperation with an indicative list of stakeholders representing:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (b) Trends in philosophical or religious thought;*
- (c) Universities and qualified experts;*
- (d) Parliament;*
- (e) Government departments*

The Sub-Committee considers the pluralistic composition of the National Institution to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility.

Where the members and staff of National Institutions are representative of a society’s social, ethnic, religious and geographic diversity, the public are more likely to have confidence that the National Institution will understand and be more responsive to its specific needs. Additionally, the meaningful participation of women at all levels is important to ensure an understanding of, and access for, a significant proportion of the population. Likewise, in multilingual societies, the Institution’s capacity to communicate in all languages is key to its accessibility.

The diversity of the membership and staff of a National Institution, when understood in this way, is an important element in ensuring the effectiveness of a National Institution and its real and perceived independence and accessibility.

Ensuring the integrity and quality of members is a key factor in the effectiveness of the Institution. For this reason, selection criteria that ensure the appointment of qualified and independent decision-making members should be legislatively established and made publicly available prior to appointment.

The Sub-Committee recommends that the adoption of such criteria be subject to consultation with all stakeholders, including civil society, to ensure the criteria chosen is appropriate and does not exclude specific individuals or groups.

The Sub-Committee cautions that criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership and staff body, such as the requirement to belong to a specific profession, may limit the capacity of the National Institution to fulfil effectively all its mandated activities. If staff and members have a diverse range of professional backgrounds, this will help to ensure that issues are not narrowly framed.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (b) Trends in philosophical or religious thought;*
- (c) Universities and qualified experts;*
- (d) Parliament;*
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).*

G.O. 1.8 - Selection and appointment of the decision-making body of National Human Rights Institutions

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the National Human Rights Institution's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a National Institution. Such a process should include requirements to:

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

JUSTIFICATION

Section B.1 of the Paris Principles specifies that: *"The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights."*

Section B.1 further enumerates which groups may be included in this process. These are: "representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)."

The Sub-Committee interprets the reference to an election or other like process, together with the reference to broad participation, as requiring a clear, transparent, merit based and participatory selection and appointment process.

Such a process is fundamental in ensuring the independence and effectiveness of, and public confidence in, the National Institution.

For this reason, it is important that the selection process be characterized by openness and transparency. That is, it should be under the control of an independent and credible body and involve open and fair consultation with NGOs and civil society. Not only is this a means of developing a good relationship with these bodies, but consideration of the expertise and experience of NGOs and civil society is likely to result in a National Institution with greater public legitimacy.

Promoting broad consultation and participation in the application, screening, selection and appointment process promotes transparency, pluralism and public confidence in the process, the successful candidates and the National Institution.

The assessment of applicants on the basis of pre-determined, objective and publicly available criteria promotes the appointment of merit based candidates, limits the capacity for undue interference in the selection process and serves to ensure the appropriate management and effectiveness of the National Institution.

Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent is likely to result in an independent and professional membership body.

It is recommended that the selection and appointment process, bearing the hallmarks described above, be formalized in relevant legislation, regulations or binding administrative guidelines, as appropriate.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

G.O. 1.9 - Government representatives on National Human Rights Institutions

The Sub-Committee notes that the Paris Principles require a National Human Rights Institution to be independent from government in its structure, composition and method of operation.

With regard to the composition of a National Institution, this requires that members of a ruling political party or coalition, and representatives of government agencies should not, in general, be represented on the governing body of the National Institution.

Should they do so, a National Institution's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision making, and avoid conflicts of interest, a National Institution's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of meetings where final deliberations and strategic decisions are made.

The participation of members of a ruling political party or coalition, or representatives of government agencies, should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the National Institution, and whose advice and cooperation may assist the National Institution in fulfilling its mandate. In addition, the number of such representatives should be limited and should not exceed the number of other members of the National Institution's governing body.

JUSTIFICATION

Paris Principle C(a) states that a National Institution must be able to "freely consider any question falling within its competence".

Paris Principle B.2 states that the requirement of an appropriate infrastructure is intended to ensure the National Institution is "independent of the government".

Paris Principle B.3 requires that members of a National Institution are appointed officially, thereby promoting a stable mandate "without which there can be no real independence".

Paris Principles B.1 specifically provides that representatives of government departments can participate "only in an advisory capacity".

By clearly promoting independence in the composition, structure and method of operation of a National Institution, these provisions seek to avoid any possible interference in the National Institution's assessment of the human rights situation in the State and the subsequent determination of its strategic priorities. It follows therefore that members of parliament, and especially those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making, since they hold positions that may at times conflict with an independent National Institution.

The SCA acknowledges the value in developing and maintaining effective links with relevant ministers and government agencies, particularly where cooperation will assist in promoting the National Institution's mandate. However, it stresses that this must be done in a way that

ensures both real and perceived independence of decision making and operation, and avoids a conflict of interest. The creation of Advisory Committees is an example of a mechanism where such relationships can be maintained without impacting on the National Institution's independence.

The SCA notes that Paris Principle B.1 specifically states that representatives of government agencies have only an advisory role, while no such restriction is explicitly stated in relation to representatives of parliament. It notes, however, that in providing an indicative list of relevant stakeholders, Paris Principle B.1 envisages either the "presence" or the ability to establish "effective cooperation" with such representatives. Given the explicit requirements for independence stated throughout the Paris Principles, examples of which are referenced above, the Sub-Committee is of the view that a similar restriction must apply to members of parliament, and particularly those who are members of the ruling political party or coalition.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(d) Parliament

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

(C) Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

G.O. 1.10 - Adequate funding of National Human Rights Institutions

To function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, as a minimum, include the following:

- a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;
- b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;
- c) remuneration of members of its decision-making body (where appropriate);
- d) the establishment of well-functioning communications systems including telephone and internet;
- e) the allocation of a sufficient amount of resources for mandated activities. Where the National Institution has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Funding from external sources, such as from international development partners, should not compose the core funding of the National Institution, as this is the responsibility of the State. However, the Sub-Committee recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases National Institutions should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the National Institution.

Government funding should be allocated to a separate budget line item applicable only to the National Institution. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.

While a National Institution should have complete autonomy over the allocation of its budget, it is obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.

JUSTIFICATION

Section B.2 of the Paris Principles addresses the requirement for National Institutions to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: *“The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”*

While the provision of “adequate funding” is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints. As such, the Sub-Committee believes that it is nevertheless possible to identify certain aspects of this Paris Principles requirement that must be taken into account in any particular context. They include the following:

- a) *Accessibility to the public* – This is particularly important for the most vulnerable sections of society, who would otherwise have particular difficulty bringing attention to any violation of their human rights.
 - As many vulnerable persons may be geographically remote from the major cities where most National Institutions are located, establishing a regional presence increases the accessibility of National Institutions, giving them as wide a geographical reach as possible, and enabling them to have full national coverage for the receipt of complaints. It is essential that where regional offices exist, they be adequately resourced to ensure their effective functioning.
 - Another means of increasing the accessibility of National Institutions to vulnerable groups is to ensure that their premises are neither located in wealthy areas nor in or nearby government buildings. This is particularly important where government buildings are protected by military or security forces. Where National Institution’s offices are too close to government offices, this may not only compromise the perceived independence of the Institution but also risk deterring complainants.
- b) *National Institution staff* – Salaries and benefits awarded to National Institution staff should be comparable to those of civil servants performing similar tasks in other independent Institutions of the State.
- c) *National Institution members* – Where appropriate, members of the National Institution’s decision-making body should receive remuneration equivalent to those individuals with similar responsibilities in other independent Institutions of the State.
- d) *Communications infrastructure* – The establishment of communications systems, including telephone and internet, is essential for the public to access the National Institutions’ office. A well-functioning communications structure, including simplified

complaints-handling procedures which may include the receipt of complaints orally in minority languages, increases the reach of vulnerable groups to the Institution's services.

- e) *Allocation for activities* – National Institutions should receive adequate public funding to perform their mandated activities. An insufficient budget can render an Institution ineffective or limit it from reaching its full effectiveness. Where the National Institution has been designated with additional responsibilities by the State, such as the role of National Preventive or Monitoring Mechanism pursuant to an international human rights instrument, additional financial resources should be provided to enable it to discharge these functions.

Donor funding

As it is the responsibility of the State to ensure the National Institution's core budget, the Sub-Committee takes the view that funding from external sources, such as from international development partners, should not constitute the Institution's core funding. However, it recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. This is particularly applicable in post-conflict States. In these circumstances, National Institutions should not be required to obtain approval for external sources of funding, as this requirement may pose a threat to its independence.

Financial systems and accountability

Financial systems should be such that the National Institution has complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities. National law should indicate from where the budget of the National Institution is allocated, ensuring the appropriate timing of release of funding, in particular to ensure an appropriate level of skilled staff. This should be a separate budget line over which it has absolute management and control. The National Institution has the obligation to ensure the coordinated, transparent and accountable management of its funding through regular public financial reporting and a regular annual independent audit.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

G.O. 1.11 - Annual reports of National Human Rights Institutions

Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Human Rights Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government.

The importance for a National Institution to prepare, publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters, is stressed. This report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

The SCA considers it important that the enabling laws of a National Institution establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It would be preferable if the National Institution has an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing to promote action on them.

Where a National Institution has made an application for accreditation or, re-accreditation, it will be required to submit a current annual report, that is, one from the preceding year's reporting period. Where the published report is not in one of the ICC languages, a certified translation of the key elements of the report must be submitted in its application for accreditation. The Sub-Committee finds it difficult to assess the effectiveness of a National Institution and its compliance with the Paris Principles in the absence of a current annual report.

JUSTIFICATION

Section A.3(a) of the Paris Principles requires National Institutions to be responsible for, "*submit[ting] to the Government, Parliament and any other competent body, [...] reports on any matters concerning the promotion and protection of human rights.*" It states that institutions "*may decide to publicize them*", and enumerates the four areas that these reports shall relate to:

- (i) Recommendations on the creation or amendment of any legislative or administrative provisions, including bills and proposals;
- (ii) Any situation of violation of human rights;
- (iii) Human rights in general and on more specific matters; and
- (iv) Proposals to put an end to human rights violations, and its opinion on the proposals and reaction of government to these situations.

With a view to assisting National Institutions to fulfil their obligations pursuant to this provision of the Paris Principles, the Sub-committee provides the following guidance on its requirements, as based on international proven practices:

Purpose of reports – Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government;

Content of reports – The annual report of a National Institution is a vital public document that not only provides a regular audit of the government's performance on human rights but also an account of what the National Institution has done. As such, this report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern, and the government's action on its recommendations;

Publication of reports – It is important for a National Institution to publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. It is vitally important that all the findings and recommendations of the Institution be publicly available as this increases the transparency and public accountability of the Institution. In publishing and widely disseminating its annual report, the National Institution will play an extremely important role in educating the public on the situation of human rights violations in the country;

Submission of reports – The National Institution should be given the legislative authority to table its reports directly to the legislature, rather than through the Executive. The legislature should be required to discuss and consider the reports of the National Institution, so as to ensure that its recommendations are properly considered by relevant public authorities.

The Sub-Committee finds it difficult to review the accreditation status of a National Institution in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo an accreditation review by the Sub-Committee.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, *inter alia*, have the following responsibilities:

- a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion

and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

- (i) *Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;*
- (ii) *Any situation of violation of human rights which it decides to take up;*
- (iii) *The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;*
- (iv) *Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;*

2. Practices that directly promote Paris Principles compliance

G.O. 2.1 - Guarantee of tenure for members of the National Human Rights Institution decision-making body

The SCA is of the view that in order to address the Paris Principles requirements for a stable mandate, without which there can be no independence, the enabling legislation of a National Human Rights Institution must contain an independent and objective dismissal process, similar to that accorded to members of other independent State agencies.

The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate.

Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

Dismissal should not be allowed based solely on the discretion of appointing authorities.

Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of a National Institution.

JUSTIFICATION

In prescribing the conditions to ensure a stable mandate for members of the National Institution decision-making body, section B.3 of the Paris Principles is silent on the scenario of their dismissal. Nonetheless, it is the view of the Sub-Committee that ensuring the security of tenure of National Institution members is consistent with the Paris Principles requirements regarding the composition of the National Institution and its guarantees of independence and pluralism.

Appropriate procedural protections and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as ensuring the independence of the National Institution and its membership. That is, National Institution members must be able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors. In this light, the Sub-Committee highlights the following:

Members may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the national law.

The dismissal of members by the Executive, such as before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective functional immunity being available to contest the dismissal is incompatible with the independence of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

G.O. 2.2 - Full-time members of a National Human Rights Institution

The enabling law of the National Human Rights Institution should provide that members of its decision-making body include full-time remunerated members. This would assist in ensuring:

- a) the independence of the NHRI free from actual or perceived conflict of interests;
- b) a stable tenure for the members;
- c) regular and appropriate direction for staff; and,
- d) the ongoing and effective fulfilment of the NHRI's functions.

An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. An appointment period of three years is considered to be the minimum that would be sufficient to achieve these aims. As a proven practice, the Sub-Committee encourages that a term of

between three and seven years with the option to renew once be provided for in the NHRI's enabling law.

A further requirement in ensuring the stability of a member's mandate (and the independence of a NHRI and its members) is the requirement that the terms and conditions of a member's service cannot be modified to their detriment during their period of appointment. Additionally, such terms and conditions should be equivalent to those with similar responsibilities in other independent State agencies.

JUSTIFICATION

Section B.3 of the Paris Principles sets out the requirements to ensure a stable mandate for the members of the National Institution. It specifies that, "*their appointment shall be effected by an official act which shall establish the specific duration of the mandate.*" It further clarifies that, "*this mandate may be renewable [...]*".

Although the provision is silent on the duration of the appointment, the Sub-Committee is of the view that specifying an appropriate minimum term in the National Institution's enabling law is crucial in both promoting the independence of the membership and of the National Institution, and to ensure the continuity of its programs and services. Consistent with international good practices, it therefore recommends an appointment period that extends between three and seven years with the option to renew once.

In prescribing the conditions to ensure a stable mandate for members of the National Institution's decision-making body, section B.3 of the Paris Principles does not address the issue of whether members are required to be full-time or whether they are to be remunerated. The Sub-Committee is of the view that the appointment of members on a full-time basis promotes stability, an appropriate degree of management and direction, and limits the risk of members being exposed to conflicts of interest upon taking office. Furthermore, it clearly establishes the terms and conditions of service, including proper remuneration of members, and serves to reinforce their independence and integrity.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

G.O. 2.3 - Guarantee of functional immunity

It is strongly recommended that provisions be included in national law to protect legal liability of members of the National Human Rights Institution's decision-making body for the actions and decisions that are undertaken in good faith in their official capacity.

Such functional immunity reinforces the independence of a National Institution, promotes the security of tenure of its decision-making body, and its ability to engage in critical analysis and commentary on human rights issues.

It is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift immunity. However, the decision to do so should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

JUSTIFICATION

The Paris Principles do not specifically refer to the term "functional immunity". It is now widely accepted that the entrenchment of this provision in law is necessary for the reason that this protection, being one that is similar to that which is granted to judges under most legal systems, is an essential hallmark of institutional independence.

Providing members of the National Institution's decision-making body with functional immunity, that is, specifically for actions and decisions undertaken in good faith in their official capacity, protects them from individual legal proceedings from anyone who objects to a decision of the National Institution.

It is understood that functional immunity is not absolute and should not cover circumstances where National Institution members abuse their official function or act in bad faith. In well-defined circumstances, the democratically-elected authority, such as the legislature, to which the National Institution is accountable, should have the power to lift immunity in accordance with a fair and transparent process.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

C) Methods of operation –

Within the framework of its operation, the national institution shall:

- (a) *Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;*

G.O. 2.4 - Recruitment and retention of National Human Rights Institution staff

National Human Rights Institutions should be legislatively empowered to determine the staffing structure, the skills required to fulfil the Institution's mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law.

Staff should be recruited according to an open, transparent and merit based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the Institution's mandate. Such a process promotes the independence and effectiveness of, and public confidence in the National Institution.

National Institution staff should not be seconded or re-deployed from branches of the public service.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff [...] in order to be independent of the Government*". The Sub-committee interprets this provision to mean that:

- (i) National Institutions should possess the legislative authority to hire their own staff according to written recruitment guidelines based on merit and conducted through a transparent selection process using published criteria.
- (ii) National Institutions should be resourced in such a manner as to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the Institution's mandate. Additionally, such resources should allow for salary levels, terms and conditions of employment applicable to the staff of the National Institution to be equivalent to those of similarly independent State agencies and members of the public service undertaking similar work and with similar qualifications and responsibilities.

In this way, the Sub-Committee recognises that fulfilling the requirements of Paris Principle B.2 is fundamental to ensuring the independence and efficient functioning of a National Institution. Where the National Institution lacks either adequate resources or the legislative ability to recruit its own staff, particularly at the senior-level, and these are instead appointed by the Executive, this undermines the principle of institutional independence.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

- 2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding*

should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

G.O. 2.5 - Staffing of the National Human Rights Institution by secondment

A fundamental requirement of the Paris Principles is that a National Human Rights Institution is, and is perceived to be, able to operate independent of government interference. Where a National Institution's staff members are seconded from the public service, and in particular where this includes those at the highest level in the National Institution, it brings into question the capacity of the National Institution to function independently.

A National Institution must have the authority to determine its staffing profile and to recruit its own staff.

In accordance with the relevant Paris Principle, the Sub-Committee is of the view that:

- a) Senior level posts should not be filled with secondees;
- b) The number of secondees should not exceed 25% except in exceptional or relevant circumstances.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff [...] in order to be independent of the Government*".

Restrictions on the capacity of a National Institution to hire its own staff, or requirements to hire or accept seconded personnel from government agencies, except in exceptional or relevant circumstances, impacts on the real and perceived independence of an Institution and may impede its ability to conduct its own affairs in an autonomous manner, free from government interference. This situation is particularly compounded where senior staff members, who set the direction and foster the culture of the National Institution, are seconded.

The Sub-Committee highlights that this requirement should not be seen to limit the capacity of a National Institution to hire a public servant with the requisite skills and experience, and indeed acknowledges that there may be certain positions within a National Institution where such skills are particularly relevant. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

G.O. 2.6 - National Human Rights Institutions during the situation of a coup d'état or a state of emergency

In the situation of a coup d'état or a state of emergency, it is expected that a National Human Rights Institution will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate.

National Institutions are expected to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

JUSTIFICATION

The Paris Principles do not explicitly give guidance on the expected conduct of a National Institution when its country is experiencing a state of emergency or coup d'état. However, Paris Principle A.1 clearly specifies that National Institutions shall have the responsibility to promote and protect human rights. Furthermore, Paris Principle A.3 specifies the powers and responsibilities of a National Institution including:

reporting on human rights violations (Paris Principle A.3(a)(ii) –(iii));

monitoring and reporting on government action or inaction (Paris Principle A.3(a)(iv)) ;
and

publicizing its views on any matters concerning the promotion and protection of human rights (Paris Principle A.3(a)). This responsibility is further elaborated in Paris Principle C(c), which provides the capacity to address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

While the impact of emergency circumstances varies from one case to another, the Sub-Committee is aware that they almost always have a dramatic impact on the rights recognized in international human rights standards, particularly on vulnerable groups. Disruptions to peace and security in no way nullify or diminish the relevant obligations of the National Institution. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. In such circumstances, the protection of human rights becomes all the more important, and National Institutions must ensure that individuals have accessible and effective remedies to address human rights violations.

National Institutions, as independent and impartial bodies, play a particularly important role by investigating allegations of violations promptly, thoroughly and effectively. As such, National Institutions will be expected to promote and ensure respect for human rights, democratic principles and strengthening the rule of law in all circumstances without exception. This may include issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

In order to fulfil its obligations, it is necessary that the National Institution continue to conduct itself with a heightened level of vigilance and independence in the exercise of its mandate. The Sub-Committee will scrutinize the extent to which the National Institution concerned has taken steps to the maximum of its available resources to provide the greatest possible protection for the human rights of each individual within its jurisdiction.

Excerpt from the Paris Principles

A. Competence and responsibilities –

1. A national institution shall be vested with competence to promote and protect human rights.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

...

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

C. Methods of operation –

Within the framework of its operation, the national institution shall:

...

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

G.O. 2.7 - Limitation of power of National Human Rights Institutions due to national security

The scope of the mandate of a National Human Rights Institution may be restricted for national security reasons. While this limitation is not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process.

JUSTIFICATION

According to section A.2 of the Paris Principles, a National Institution should possess, “*as broad a mandate as possible*”. To give full effect to this Principle, the Sub-Committee recommends that this provision be understood in the widest sense. That is, the mandate of the National Institution should extend to protect the public from acts and omissions of public authorities, including officers and personnel of the military, police and special security forces. Where such public authorities, who may potentially have a great impact on human rights, are excluded from the jurisdiction of the National Institution, this may serve to undermine the credibility of the Institution.

National Institutions, in their analysis of the human rights situation in the country, should be authorized to fully investigate all alleged human rights violations, regardless of which State officials are responsible. This should include the ability to have unannounced and unimpeded access to inspect and examine any public premises, documents, equipment and assets without prior written notice. Although the authority of National Institutions to undertake such an investigation may be restricted for national security reasons, such restriction should not be unreasonably or arbitrarily applied and should be exercised under due process.

Excerpt from the Paris Principles

A) Competence and responsibilities –

2. *A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

G.O. 2.8 - Administrative regulation of National Human Rights Institutions

The classification of a National Human Rights Institution as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting.

Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules or regulations on a National Institution is not considered inappropriate provided they do not compromise the National Institution’s ability to perform its role independently and effectively.

The administrative requirements imposed on a National Institution must be clearly defined and should be no more onerous than those applicable to other independent of State agencies.

JUSTIFICATION

Section B.2 of the Paris Principles considers the “*adequate funding*” of a National Institution as a necessary guarantee of its independence. The purpose of this funding is: “*in order to be independent of the Government and not to be subject to financial control which might affect its independence.*” Such a provision is not, however, intended to limit the application of laws that require an appropriate level of financial accountability by public agencies.

To ensure respect for the principle of independence in circumstances where certain aspects of the administration of a National Institution is regulated by the Government, the Sub-Committee cautions that such regulation must not compromise the National Institution's ability to perform its role independently and effectively.

It may therefore be appropriate for the State to impose general regulatory requirements to promote:

- fair, transparent and merit based selection processes;
- financial propriety in the use of public funds;
- operational accountability.

Such regulation should not, however, extend to requiring a National Institution to seek government approval prior to carrying out its legislatively mandated activities, since this may compromise its independence and autonomy. Such practice is inconsistent with the exercise of the protection and promotion function that a National Institution is established to carry out in an independent and unfettered manner. For this reason, it is important that the relationship between the Government and the National Institution be clearly defined so as to avoid any undue Government interference.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

G.O. 2.9 - Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms

Where, pursuant to an international human rights instrument, a national human rights institution has been designated as, or as part of, a national preventive or monitoring mechanism, the Sub-Committee on Accreditation will assess whether the applicant has provided sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles.

Depending on the specific roles and functions ascribed to the NHRI, in undertaking this assessment, the Sub-Committee will consider, as appropriate:

- whether a formal legal mandate has been provided;
- whether the mandate has been appropriately defined to encompass the promotion and protection of all relevant rights contained in the international instrument;
- whether the staff of the NHRI possess the appropriate skills and expertise;
- whether the NHRI has been provided with additional and adequate resources;
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the

instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.

The Sub-Committee may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.

JUSTIFICATION

In recent years, international human rights instruments have begun to incorporate a requirement that States Parties create, or designate an existing domestic agency (or agencies) with responsibility for monitoring and promoting the objectives of that instrument.

These international instruments often specify particular roles and functions to be carried out by the relevant domestic agency or agencies, which are variously referred to as national preventive or monitoring mechanisms.

In response, States have often chosen to designate their NHRI as, or as part of, its national preventive or monitoring mechanisms. In so doing, the State signals that the NHRI has a primary role to play in the promotion and protection of rights contained in those instruments.

In assessing whether an NHRI is carrying out these function in accordance with the Paris Principles, the SCA will consider a range of factors that impact on the capacity of a NHRI to function independently and effectively. With regard to the requirement for a specific legal mandate, this may depend on the scope of a NHRI existing mandate and the breadth of any additional roles and functions ascribed to it as a national preventive or monitoring mechanisms. Where additional powers are proposed, such as specific powers to enter, monitor, investigate and report on places of detention, and these go beyond the powers currently available to the NHRI, a more clearly defined legal mandate may be required in order to ensure the NHRI is able to undertake its role effectively and free from interference.

In undertaking its assessment, the Sub-Committee will also consider any guidelines developed by the relevant treaty body. It notes, however, that its role is to assess a NHRI against the Paris Principles, whereas the relevant treaty body undertakes its assessment of a national preventive or monitoring mechanism against the relevant international instrument upon which it is based. Guidelines developed by the relevant treaty body have, in general, been drafted for the broad range of agencies that may be designated as national preventive or monitoring mechanisms, and may not always be directly applicable to a national human rights institution.

Excerpt from the Paris Principles

(A) Competence and responsibilities.

...

3. A national institution shall, inter alia, have the following responsibilities:

- (a) To submit to the Government, Parliament and any other competent body . . . opinions, recommendations, proposals and reports on . . . :***

- (ii) Any situation of violation of human rights which it decides to take up;
- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;*
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;*
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;*
- (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;*

G.O. 2.10 - The quasi-judicial competency of National Human Rights Institutions (complaints-handling)

When a NHRI is provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, it should be provided with the necessary functions and powers to adequately fulfil this mandate.

Depending on its mandate, such powers and functions might include:

- The ability to receive complaints against both public and private bodies in its jurisdiction;
- The ability to receive complaints that are filed by persons on behalf of the alleged victim(s), where consent is given;
- The ability to commence a complaint on its own initiative;
- The ability to investigate complaints, including the power to compel the production of evidence and witnesses, and to visit places of deprivation of liberty;
- The ability to protect complainants from retaliation for having filed a complaint;
- The ability to protect witnesses from retaliation for having provided evidence in relation to a complaint;
- The ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process;
- The ability to settle complaints through a binding determination;
- The ability to refer its findings to courts of law or specialized tribunals for adjudication;
- The ability to refer complaints falling beyond its jurisdiction or in a concurrent jurisdiction to the appropriate decision-making body;
- The ability to seek enforcement through the court system of its decisions on the resolution of complaints;
- The ability to follow up and monitor the implementation of its decisions on the resolution of complaints.

- The ability to refer its findings to government in situations where a complaint provides evidence of a widespread or systematic violation of human rights.

In fulfilling its complaint handling mandate, the NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, a NHRI 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;
- Ensure that its complaint handling procedures are contained in written guidelines, and that these are publicly available.

JUSTIFICATION

The Paris Principles do not require that NHRI have the ability to receive complaints or petitions from individuals or groups, regarding the alleged violation of their human rights. However, where it is provided with this mandate, the Paris Principles suggest that certain functions should be considered (see excerpt below). In essence, NHRIs are expected to handle complaints fairly, speedily and effectively through processes which are readily accessible to the public. NHRIs may be empowered to carry out investigations into complaints and refer their findings to an appropriate authority. NHRIs should have the authority to deal with bodies against which complaints are made and may be authorised to seek compliance with its decisions through the judiciary.

Excerpt from the Paris Principles

'Additional principles concerning the status of commissions with quasi-judisdictional competence'

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, thirds parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;*
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;*
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;*
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.*

CHAPTER 5

ASIA PACIFIC FORUM (APF)

The Asia Pacific Forum of National Human Rights Institutions (the APF) is the leading human rights organisation in the region. Established in 1996, we are a coalition of national human rights institutions (NHRIs) from all corners of the Asia Pacific.

NHRIs are independent bodies, established by law or in the constitution, to promote and protect human rights in their respective countries. While they are established by the government, they operate independently from government.

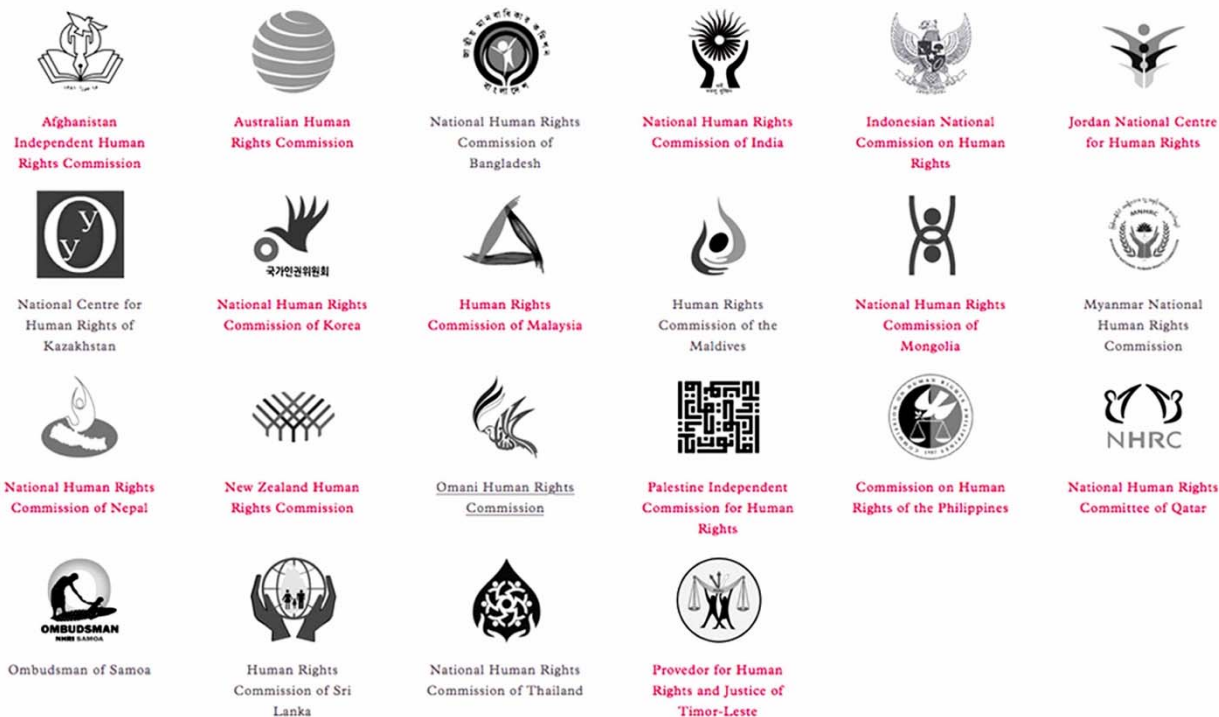
The APF brings member institutions together to develop a shared vision and shared strategies to tackle many of the most serious and complex human rights challenges in the region.

The APF also develop partnerships at the international and regional levels to promote and protect human rights, raise the role of NHRIs and ensure that the collective voice of all members is heard.

The APF provides practical support and advice to the members in order to help them be as effective as possible. They also provide advice and expertise to governments and civil society groups in the region to support the establishment of independent NHRIs that meet the international standards set out in the Paris Principles.

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5.1 LIST OF APF MEMBERS



ACCREDITATION STATUS OF APF MEMBERS

Country	Name	Status	Website
Afghanistan	Afghan Independent Human Rights Commission	A	http://www.aihrc.org.af/
Australia	Australian Human Rights Commission	A	http://www.humanrights.gov.au/
Bahrain	National Institution for Human Rights in the Kingdom of Bahrain	Unknown	
Bangladesh	Bangladesh Human Rights Commission	B	http://www.bhrc-bd.org/
Fiji	Fiji Human Rights Commission	Unknown	
Hong Kong SAR, China	Equal Opportunities Commission	C	http://www.eoc.org.hk/eoc/GraphicsFolder/default.aspx
India	National Human Rights Commission	A	http://www.nhrc.nic.in/

Indonesia	National Commission for Human Rights	A	http://www.komnasham.go.id/
Iraq	Iraqi Independent High Commission for Human Rights	B	
Islamic Republic of Iran	Iranian Islamic Human Rights Commission	C	http://www.ihrc.ir/
Jordan	National Centre for Human Rights	A	http://www.nchr.org.jo/arabic/Default.aspx
Malaysia	Human Rights Commission of Malaysia (SUHAKAM)	A	http://www.suhakam.org.my/
Maldives	Human Rights Commission of the Maldives	B	http://hrcm.org.mv/dhivehi/homepage.aspx
Mongolia	National Human Rights Commission of Mongolia	A	http://www.mn-nhrc.org/
Myanmar	Myanmar National Human Rights Commission	B	
Nepal	National Human Rights Commission	A	http://www.nhrcnepal.org/
New Zealand	New Zealand Human Rights Commission	A	https://www.hrc.co.nz/
Oman	National Human Rights Commission	B	http://www.ohrc.om/homear.php
Palestine	Independent Commission for Human Rights/Palestine	A	http://www.ichr.ps/ar
Philippines	Commission on Human Rights	A	http://www.chr.gov.ph/
Qatar	National Committee for Human Rights	A	http://www.nhrc-qa.org/ar/
Republic of Korea	National Human Rights Commission	A	http://www.humanrights.go.kr/00_main/main.jsp
Samoa	Ombudsman of Samoa	Unknown	
Sri Lanka	The Human Rights Commission of Sri Lanka	B	http://www.hrcsl.lk/
Tajikistan	Ombudsman of Republic of Tajikistan	B	
Thailand	The National Human Rights Commission of Thailand	B	http://www.nhrc.or.th/Home.aspx
Timor Leste	Office of the Provedor for Human Rights and Justice	A	

CHAPTER 6

NATIONAL HUMAN RIGHTS INSTITUTIONS IN INDIA

<p>National Human Rights Commission, Manav Adhikar Bhawan Block-C, GPO Complex, INA, New Delhi – 110001</p>	<p>Ph: 011-24651330 , 9810298900 (MOBILE) Fax: 011-24651329 E-Mail: covdnhrc@nic.in, ionhrc@nic.in Web: www.nhrc.nic.in</p>
<p>National Commission for Women Plot No. 21, FC33, Jasola Institutional Area, New Delhi – 110025.</p>	<p>EPBAX No. 011- 26942369, 26944740, 26944754 Complaints Cell : 011-23219750 Email : ncw@nic.in Complaint Cell: complaintcell-ncw@nic.in RTI Cell : rticell-nc@nic.in</p>
<p>National Commission for Protection of Child Rights, 5th Floor,Chanderlok Building, 36 Janpath, New Delhi-110001</p>	<p>Ph:011-23478200 Fax:011-23724026 Complaint Section-011-23724030 E.mail: cp.ncpcr@gov.in Web: www.ncpcr.gov.in</p>
<p>National Commission for Minorities, 5th Floor, Lok Nayak Bhawan, Khan Market, New Delhi 110 003</p>	<p>Ph: 011-24615583 Fax: 011-24693302, 24642645, 24698410 Toll Free Number: 1800110088 E-mail: ro-ncm@nic.in web: www.ncm.nic.in</p>
<p>National Commission for Scheduled Castes, Lok Nayak Bhawan, Khan Market, New Delhi – 110003</p>	<p>Ph: 011-24632298 / 24620435 (O), 011-23795332 (Telefax) (R) Toll Free No.1800118888 (atNew Delhi) Fax: 91-11-24632298 E.mail:chairmannncsc@nic.in Web: www.ncsc.nic.in</p>
<p>National Commission for Scheduled Tribes 6th Floor, 'B' Wing, Lok Nayak Bhawan, Khan Market, New Delhi-110003</p>	<p>Ph: 011-24635721, Fax: 011-2462462 Mail: chairperson@ncst.nic.in Web: www.ncst.nic.in</p>

<p>National Commission for Safai Karamcharis, "B" Wing, 4th Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003</p>	<p>Tel: 011-24648924 / 24601707 Fax: 011-24634484 (O) Email: cp-ncsk@nic.in Website: http://ncsk.nic.in</p>
<p>Chief Commissioner for Persons with Disabilities, Office of the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment Sarojini House, 6, Bhagwan Dass Road, New Delhi</p>	<p>Ph: 011-23383907 Fax: 011-23386006 E.mail: ccpd@nic.in Web: http://www.ccdisabilities.nic.in/</p>
<p>Chief Information Commissioner, Central Information Commission, Room No.306, II Floor, August Kranti Bhavan, Bhikaji Cama Place New Delhi - 110 066</p>	<p>Phone:- 011 – 26180512 E-mail:- secy-cic@nic.in Web: http://cic.gov.in/</p>

6.1 Table of Comparison – National Human Rights institutions in India

Points of Comparison	NHRC/ SHRC	NCW	NCPCR/SCPCR	NCM	NCSC	NCST	CIC	NCSK	CCD
Constituting Authority	NHRC - Central Government SHRCs - State Governments "may" constitute a SHRC.	NCW - Central Government. The NCW Act, 1990 does not provide for the constitution of State Commissions. States have enacted legislation or issued notifications for the establishment of SCWs.	NCPCR - Central Government SCPCRs - State Governments "may" constitute a SCPCR.	Central Government. The NCM Act does not provide for the constitution of State Commissions. States have established SCMs through legislation providing for the establishment of SCMs or have issued notifications that provide for the establishment of SCMs.	Created under Article 338 of the Constitution The Constitution does not provide for constitution of State level Commissions. Some States have enacted legislation for establishment of Commission for SCs and STs jointly. The NCSC has established Regional Offices.	Created under Article 338A of the Constitution The Constitution does not provide for constitution of State level Commissions. Some States have enacted legislation for the establishment of a joint commission for SCs and STs at the state level.	Central Government shall constitute Central Information Commission under Right to Information Act, 2005.	Central Government shall constitute under National Commission for Safai-Karamcharis Act, 1993.	Central Government under 'The Persons with Disabilities (Equal opportunities, protection of rights and full participation) Act, 1995
Appointing Authority	NHRC - President of India SHRC - Governor	NCW- Central Government.	NCPCR - Central Government SCPCR - State Government	Central Government	President of India	President of India	President of India	Central Government	Central Government
Appointment Process	The Chairperson and Members of the NHRC and SHRC are to be appointed on the basis of recommendations of a Selection Committee comprising of representatives of the executive and legislature. Composition of the Selection Committee for selection of NHRC Chairperson and Members (a) The Prime Minister —Chairperson (b) Speaker of the House of the People — Member (c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member (d) Leader of the Opposition in the	The Chairperson and Members are to be appointed through nomination by the Central Government.	Chairperson of NCPCR/SCPCR to be appointed on the recommendation of a three member Selection Committee constituted by the Central Government/State Government under the Chairmanship of the Minister in-charge of the Ministry or the Department of Women and Child Development/ Minister-in-charge of the Department dealing with children. The Act does not indicate who the two other members should be and leaves it to the discretion of the government. The Act is also silent on the manner in which Members should be appointed.	Chairperson and Members are nominated by the Central Government.	The process has not been specified. It appears that the Central Government proposes names and the same are considered and approved by the President. Members can be appointed on a part-time basis also.	The process has not been specified. It appears that the Central Government proposes names and the same are considered and approved by the President.	Chief Information Commissioner and the Information Commissioners shall be appointed by the the President on the recommendation of a committee consisting of – i) Prime Minister, ii) Leader of the opposition, iii) Union Cabinet Minister to be nominated by the Prime Minister	Chairperson, Vice-Chairperson and the Members to be nominated by the Central Government.	By notification by the Central Government

	House of the People — Member (e) Leader of the Opposition in the Council of States — Member (f) Deputy Chairman of the Council of States — Member.								
Qualifications of Chairperson	NHRC - Chief Justice of the Supreme Court SHRC – Chief Justice of the High Court	“Committed to the cause of women”	“a person of eminence ... has done outstanding work for promoting the welfare of children”	Chairperson and Vice-Chairperson should belong to a minority community and should be persons of eminence, ability and integrity.	Chairperson and Vice-Chairperson should be appointed from amongst eminent socio-political workers belonging to Scheduled Castes (SCs) who inspire confidence amongst the SCs by their very personality and record of selfless service.	Chairperson and Vice-Chairperson should be appointed from amongst eminent socio-political workers belonging to Scheduled Tribes (STs) who inspire confidence amongst the STs by their very personality and record of selfless service.	Persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.	Persons of eminence connected with the socio-economic development and welfare of Safai Karamcharis	Special Knowledge or practical experience in respect of matters relating to rehabilitation.
Qualification of Members	NHRC - Four members - one member who is or has been a Supreme Court Judge; one member who is or has been the Chief Justice of a High Court; and two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. Chairperson of NCM, NCSC, NCST and NCW are deemed members for the discharge of functions other than inquiry into complaints. SHRCs shall have two members – one who is or has been a High Court Judge, or a District Judge with a minimum of 7 years experience; and one who is to be appointed from amongst persons	Five members nominated from “amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women’s voluntary organisations (including women activists), administration, economic development, health, education or social welfare; At least one member each should belong to SC and ST.	Six members of which at least two are women from amongst persons of eminence, ability, integrity, standing and experience in (1) Education (2) Child health, care, welfare or child development; (3) Juvenile justice or care of neglected or marginalized children or children with disabilities; (4) Elimination of child labour or children in distress (5) Child psychology or sociology; and (6) Law relating to children. No person having any past record of violation of human rights or child rights shall be eligible for appointment as Chairperson or other Members of the	Five members to be drawn from amongst persons of eminence, ability and integrity and from amongst the minority communities.	Three members should be drawn from amongst persons of ability, integrity and standing who have a record of selfless service to the cause of justice for the Scheduled Castes. At least two members should be appointed from amongst persons belonging to the SCs and one from amongst women	Three members should be drawn from amongst persons of ability, integrity and standing who have a record of selfless service to the cause of justice for the Scheduled Tribes. At least two members should be appointed from amongst persons belonging to the STs and one from amongst women.			

	having knowledge of, or practical experience in, matters relating to human rights.		Commission. (Rule 3, NCPDR Rules)						
Term of Office	Five years or till the Chairperson or Members attain the age of seventy years. Only Members can be appointed for a second term.	Not exceeding three years as may be specified by the Central Government.	Term of three years or completion of 65 years for Chairperson and 60 years for Members. The Chairperson and Members cannot hold office for more than two terms.	Chairperson and Members shall hold office for a term of three years.	Members shall hold office for a term of three years from the date of assumption of office. Members are not eligible for appointment for more than two terms. The term of Chairperson and Vice-Chairperson has not been specified.	Chairperson, Vice-Chairperson and Members shall hold office for a term of three years from the date of assumption of office. They are not eligible for appointment for more than two terms.	Chief Information Commissioner and Information Commissioners– Five years or Sixty-five years of age.	Three years	Not Specified
Removal	Removal from NHRC and SHRC only by order of President on grounds of proved misbehaviour or incapacity after an inquiry by the Supreme Court.	Removal by Central Government. Reasonable opportunity of being heard should be given.	Removal by Central Government/State Government. Reasonable opportunity of being heard should be given	Removal by Central Government	Chairperson can be removed by President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has held an inquiry in accordance with the procedure prescribed by it and reported that the Chairperson should be removed. While the inquiry is pending, the President may suspend the Chairperson.	Chairperson can be removed by President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has held an inquiry in accordance with the procedure prescribed by it and reported that the Chairperson should be removed. While the inquiry is pending, the President may suspend the Chairperson.	Subject to the the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.	The Central Government shall remove a person from the office of Chairperson, Vice-Chairperson or a Member if that person:- (a) becomes an undischarged insolvent; (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; (c) becomes of unsound mind and stands so declared by a competent court; (d) refuses to set or becomes incapable of acting; (f) has abused the position.	Not specified
Grounds of Removal	Removal only by order of President on grounds of: - Undischarged Insolvent - Engaging in paid employment outside duties of office; - Unfit	Removal by Central Government on grounds of: - Undischarged insolvent - Refusal to act or incapable of acting - Unsound mind	Chairperson can be removed from office by order of the Central/State Government on grounds of proved misbehaviour or incapacity. Chairperson and Members can be removed on grounds of:	Removal by Central Government on grounds of - insolvency - conviction and sentence to imprisonment for an offence which in the opinion of the	President may order removal of Chairperson, Vice-Chairperson and Members on the following grounds: - insolvency	President may order removal of Chairperson, Vice-Chairperson and Members on the following grounds: - insolvency - engaging in paid employment outside the duties of office			

	<ul style="list-style-type: none"> - Unsound mind - Convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude. 	<ul style="list-style-type: none"> - Absent from three consecutive meetings without obtaining leave - Convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude. 	<ul style="list-style-type: none"> - Insolvency - Engaging in paid employment outside duties of office - Refusing to act or incapable of acting - Unsound mind - Absenting from three consecutive meetings without obtaining leave - Convicted and sentenced to imprisonment for an offence which in the opinion of the <p>Central/State Government involves moral turpitude.</p> <ul style="list-style-type: none"> - Abusing office so as to render continuance in office detrimental to public interest. 	<p>government involves moral turpitude</p> <ul style="list-style-type: none"> - Unsoundness of mind declared by a competent court - refusal to act or incapability of acting - absenting from three consecutive meetings without obtaining leave - abusing the position so as to render continuance in office detrimental to interests of minorities or public interest <p>A reasonable opportunity of being heard will have to be given before effecting removal.</p>	<ul style="list-style-type: none"> - engaging in paid employment outside the duties of office - conviction and sentence to imprisonment for an offence involving moral turpitude. - unfitness to continue in office - abuse of position so as to render continuance in office detrimental to the interests of Scheduled Castes. <p>Further, if the Chairperson is interested in or participates in the profit, benefit, or emolument other than as a member and in common with other members of an incorporated company arising from a contract or agreement made by or on behalf of the Government of India or the Government of a State, he shall be deemed to be guilty of misbehaviour.</p> <p>The Vice-Chairperson and Members can also be removed on refusal to act or incapability to act and absenting from three consecutive meetings without obtaining leave of absence.</p> <p>Reasonable opportunity of being heard is given in the above matter to all chairperson, members before removal.</p>	<ul style="list-style-type: none"> - unfitness to continue in office <p>Further, if the Chairperson is interested in or participates in the profit, benefit, or emolument other than as a member and in common with other members of an incorporated company arising from a contract or agreement made by or on behalf of the Government of India or the Government of a State, he shall be deemed to be guilty of misbehaviour.</p> <p>The Vice-Chairperson and Members can also be removed on grounds of conviction and sentence to imprisonment of an offence involving moral turpitude, refusal to act or incapability to act, absenting from three consecutive meetings without obtaining leave of absence, and abusing the position so as to render continuance in office detrimental to the interests of STs.</p> <p>No person shall be removed until he has been given reasonable opportunity of being heard in the matter.</p>			
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<p>Functions</p>	<p>1) Inquire <i>suo motu</i> or on the basis of petitions into complaints of human rights violations. 2) Intervene in proceedings before the court. 3) Inspect custodial institutions 4) Review safeguards and make recommendations for their effective implementation. 5) Study treaties and other international instruments and make recommendations for their implementation. 6) Promote research in human rights. 7) Human rights literacy 8) Encourage the efforts of NGOs working on human rights.</p>	<p>1) Examination of safeguards 2) Presentation of reports to the Government on the working of the safeguards. 3) Recommendations for effective implementation of safeguards. 4) Review of existing provisions 5) Deal with complaints or take <i>suo motu</i> notice of violations of women's rights and non-implementation of laws and non-compliance of policy decisions. 6) Undertake research and studies 7) Inspection of jails, remand homes, women's institutions or other places of custody. 8) Fund litigation.</p>	<p>1) Examination and review of safeguards. 2) Recommendation for effective implementation of safeguards. 3) Examination of factors affecting rights of certain groups of children. 4) Inquiry into violations of child rights and complaints relating to deprivation of child rights, non-implementation of laws, non-compliance with policy decisions. Can take <i>suo motu</i> notice. 5) Inspection of juvenile custodial homes or other places of residence for children under the control of Central/State Government or run by a social organization. 6) Reports to the government on working of the safeguards. 7) Research and Child Rights Literacy 8) Study treaties and other international instruments and make recommendations for their implementation. Additional functions have been prescribed under Rules including [1] analyse existing law, policy and practice to assess compliance with UNCRC, comment on proposed new legislation from a child rights perspective, [2] present to the government reports on working of safeguards, [3] undertake formal investigations where concern has been expressed by children or persons on their behalf, [4] ensure that the work of the Commission is directly</p>	<p>1) To evaluate the progress of the development of Minorities under the Union and States. 2) Monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures. 3) Make recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments. 4) Look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities. 5) Undertake studies into problems arising out of any discrimination against Minorities and recommend measures for their removal. 6) Conduct studies, research and analysis on the issues relating to socio-economic and educational development of Minorities. 7) Suggest appropriate measures in respect of any Minority to be undertaken by the Central Government or the State Governments. 8) Make periodical or special reports to the Central Government</p>	<p>1) To investigate and monitor safeguards provided for the Scheduled Castes under this Constitution or under any other law and to evaluate the working of such safeguards. 2) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes; 3) To participate and advise on the planning process of socio-economic development of the Scheduled Castes 4) To present annual and at such periodic intervals as required to the President, reports upon the working of those safeguards 5) To make recommendations in the above report for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes 6) The Commission undertakes studies to evaluate the impact of the development schemes on the socio-economic development of the Scheduled Castes. For this purpose, the Commission may constitute Study Teams either at the Headquarters or at the State Offices.</p>	<p>1) To investigate and monitor safeguards provided for the Scheduled Tribes under the Constitution or under any other law or under any order of the Government and to evaluate the working of such safeguards. 2) To enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes 3) To participate and advise in the planning process of socio-economic development of Scheduled Tribes and to evaluate the progress of their development under the Union or any state 4) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards 5) To make such reports, recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for protection, welfare and socio-economic development of the Scheduled Tribes 6) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.</p>		<p>The Commission shall perform all or any of the following functions, namely:- (a) recommend to the Central Government specific programmes of action towards elimination of inequalities in status, facilities and opportunities for Safai Karamcharis under a time-bound action plan; (b) study and evaluate the implementation of the programmes and schemes relating to the social and economic rehabilitation of Safai Karamcharis and make recommendations to the Central Government and State Government for better co-ordination and implementation of such programmes and schemes; (c) investigate specific grievances and take suo moto notice of matters relating to non-implementation of :- (i) programmes or schemes in respect of any group of Safai Karamcharis; (ii) decisions, guidelines or instructions, aimed at mitigating the hardship of Safai Karamcharis; (iii) measures for the social and economic upliftment of Safai Karamcharis; (iv) the provisions of any law in its</p>	<p>-Coordinate work of the State Commissioners - Monitor the utilization of funds distributed by Central Government - Take steps to safeguard the rights and facilities made available to Persons with disabilities - Submit reports to Central Government on the implementation of the Act such intervals as that Government may prescribe.</p>
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			<p>informed by the views of children in order to reflect their priorities and perspectives, [5] promote, respect</p> <p>and serious consideration of views of children in its work and in that of all government departments and organizations dealing with children, [6] produce and disseminate information about child rights, [7] compile and analyse data on children, [8] promote incorporation of child rights into the school curriculum, teachers training and training of personnel dealing with children</p>	<p>on any matter pertaining to Minorities and in particular the difficulties confronted by them.</p> <p>9) Any other matter which may be referred to it by the Central Government.</p>	<p>7) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may by Rule specify</p>	<p>7) Measures that need to be taken over conferring ownership rights in respect of minor forest produce to the Scheduled Tribes living in forest areas.</p> <p>8) Measures to be taken to safeguard rights to the Tribal Communities over mineral resources, water resources etc. as per law.</p> <p>9) Measures to be taken for the development of tribals and to work for more viable livelihood strategies.</p> <p>10) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.</p> <p>11) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place.</p> <p>12) Measures to be taken to elicit maximum cooperation and involvement of Tribal Communities for protecting forests and undertaking social afforestation.</p> <p>13) Measures to be taken to ensure full implementation of the Provisions of Panchayats Act, 1996</p> <p>14) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by Tribals that lead to their continuous disempowerment and degradation of land and the environment.</p>		<p>application to Safai Karamcharis; and take up such matters with the concerned authorities or with the Central or State Governments;</p> <p>(d) make periodical reports to the Central and State Governments on any matter concerning Safai Karamcharis, taking into account any difficulties or disabilities being encountered by Safai Karamcharis;</p> <p>(e) any other matter which may be referred to it by the Central Government.</p> <p>(2) In the discharge of its functions under sub-section (1), the Commission shall have power to call for information with respect to any matter specified in that sub-section from any Government or local or other authority.</p>	
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Intervention in Courts	NHRC & SHRCs can intervene in proceedings involving allegation of violation of human rights pending before a court with the court's approval.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.
Consultations on policy matters	No such obligation placed on the government to consult the Commission on policy matters related to human rights.	The Central Government should consult the Commission on all major policy matters affecting women.	No such obligation placed on the government to consult the Commission on policy matters related to child rights.	No such obligation placed on the government to consult the Commission on policy matters related to minorities.	The Central Government and every State Government should consult the Commission on all major policy matters affecting SCs.	The Central Government and every State Government should consult the Commission on all major policy matters affecting Scheduled Tribes.	Not specified	The Central Government shall consult the Commission on all major policy matters affecting Safai Karamcharis.	Not specified
Powers	<p>1) Powers of civil court trying a civil suit.</p> <p>2) Power to require any person to furnish information on points relevant to the subject matter of the inquiry.</p> <p>3) Power of search and seizure.</p> <p>4) Power to transfer complaint pending before NHRC to SHRC</p> <p>5) Power to call for information or report from the government and if such report is not received in time, power to proceed with the inquiry on its own.</p> <p>6) Power to forward the case to a Magistrate when offences under Sections 175, 178, 179, 180, and 228 of the Indian Penal Code takes place in its presence.</p>	<p>Powers of civil court trying a civil suit:</p> <p>a) summoning and enforcing the attendance of any person from any part of India and examining him on oath.</p> <p>b) requiring the discovery and production of any document.</p> <p>c) receiving evidence of affidavits.</p> <p>d) requisitioning any public record or copy thereof from any court or office.</p> <p>e) issuing commissions for the examination of witnesses and documents; and</p> <p>f) any other matter which may be prescribed.</p>	<p>1) Powers of civil court trying a civil suit:</p> <p>a) summoning and enforcing the attendance of any person from any part of India and examining him on oath.</p> <p>b) requiring the discovery and production of any document.</p> <p>c) receiving evidence of affidavits.</p> <p>d) requisitioning any public record or copy thereof from any court or office.</p> <p>e) issuing commissions for the examination of witnesses and documents; and</p> <p>2) Power to forward the case to a Magistrate for non-compliance with any of the above powers.</p>	<p>Powers of civil court trying a civil suit. namely:-</p> <p>a) summoning and enforcing the attendance of any person from any part of India and examining him on oath.</p> <p>b) requiring the discovery and production of any document.</p> <p>c) receiving evidence of affidavits.</p> <p>d) requisitioning any public record or copy thereof from any court or office.</p> <p>e) issuing commissions for the examination of witnesses and documents; and</p> <p>f) any other matter which may be prescribed.</p>	<p>Powers of civil court trying a civil suit namely:-</p> <p>a) summoning and enforcing the attendance of any person from any part of India and examining him on oath.</p> <p>b) requiring the discovery and production of any document.</p> <p>c) receiving evidence of affidavits.</p> <p>d) requisitioning any public record or copy thereof from any court or office.</p> <p>e) issuing commissions for the examination of witnesses and documents; and</p> <p>f) any other matter which may be determined by the President</p>	<p>Powers of civil court trying a civil suit namely:-</p> <p>a) summoning and enforcing the attendance of any person from any part of India and examining him on oath.</p> <p>b) requiring the discovery and production of any document.</p> <p>c) receiving evidence of affidavits.</p> <p>d) requisitioning any public record or copy thereof from any court or office.</p> <p>e) issuing commissions for the examination of witnesses and documents; and</p> <p>f) any other matter which may be determined by the President.</p>	<p>Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive inquire into a complaint from any person,— and</p> <p>(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information</p>	<p>Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to —</p> <p>(a) Deprivation of rights of persons with Disabilities.</p> <p>(b) Non-implementation of laws, rules, byelaws, regulations. Executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities. And take up the matter with the appropriate authorities.</p>	

							<p>Officer or State Public Information Officer or senior officer specified in sub-section (l) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;</p> <p>(b) who has been refused access to any information requested under this Act;</p> <p>who has not been given a response to a request for information or access to information within the time limit specified under this Act;</p> <p>(d) who has been required to pay an amount of fee which he or she considers unreasonable;</p> <p>(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and in respect of any other matter relating to requesting or obtaining access to records under this Act.</p>		
Investigation	Commission can utilize the services of any officer or investigating agency of the Central or State Government for investigation.	No powers of investigation	No powers of investigation	No powers of investigation	Commission may adopt any one or more of the following methods for investigating or inquiring into the matters falling within its authority: (a) by the Commission directly; (b) by an Investigating Team constituted at	The NCST follows three methods for conducting an investigation/inquiry: (a) by the Commission directly, (b) by an Investigating Team constituted at the Headquarters of the Commission (c) through its Regional Offices.			The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil

					the Headquarters of the Commission; and (c) through its State Offices (d) by State Agencies (e) by any other institution/Dept funded by Central Govt and its statutory bodies.				Procedure, 1908 while trying a suit, in respect of the following matters, namely:- (a) Summoning and enforcing the attendance of witnesses; (b) Requiring the discovery and production of any documents; (c) Requisitioning any public record or copy thereof from any court or office; (d) Receiving evidence on affidavits; and (e) Issuing commissions for the examination of witnesses or documents.
Compensation	Commission can recommend to the government to pay compensation or damages to the victim or his family.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.

CHAPTER 7
STATE HUMAN RIGHTS INSTITUTIONS

CHHATTISGARH

INSTITUTION	DETAILS
HUMAN RIGHTS COMMISSION	Near DKS Bhawan, Byron Bazar, Raipur, Phone-0771-2235591, Fax 0771 – 2235594 Email: cghrcryp@gmail.com www.hrc.cg.gov.in
WOMEN'S COMMISSION	Gayatri Bhawan, 13, Jal Vihar Colony, Raipur, Chhattisgarh Pincode – 492001 E.mail: cgmahilaayog@gmail.com
COMMISSION FOR PROTECTION OF CHLD RIGHTS	J6/7, Avanti Vihar, Near ATM Chowk, Raipur – 492001. Chhattisgarh Tel: 0771-2420093/94, Fax: 0771-2420095
MINORITIES COMMISSION	Purana Nursing Hostel, Ground Floor, Right Hand Side, DKS Bhavan Parisar, Raipur (C.G.); Tel: (0771) 2434809
INFORMATION COMMISSION	1 st Floor, Indrawati Khand, Shastri Chowk, Raipur - 492001 (Chhattisgarh)
COMMISSIONER FOR DISABILITIES	Commissioner, Disabilities, Jila Panchayat Bhawan, Durg – 491001. Chhattisgarh. Ph: 0788-2325470(O)

JHARKHAND

INSTITUTION	DETAILS
HUMAN RIGHTS COMMISSION	Town Administrative Building, Near Golchakar, Dhurwa, Ranchi - 834004 Tel: 0651-2401181 Fax : 0651-2401181 Email: humanrights1ranchi@gmail.com Mob:9431108004
WOMENS COMMISSION	Engineers Hostel No-1, 1 st floor, Dhurwa, Ranchi – 834004, Jharkhand, Mobile.No.-7091498544 (Rani Kastury), Tel: 0651 - 2401865, Fax: 0651-2401912, E-Mail: chairperson@jscw.in
COMMISSION FOR PROTECTION OF CHLD RIGHTS	Collectrate Building, A-Block, 1 st Floor, Room No.103/104, Kachari, Ranchi -834001, Jharkhand Tel: 0651-2223544 E.mail: cp.jscpcr@gmail.com

MINORITIES COMMISSION	Jharkhand State Minorities Commission, 3, Artisan Hostel, Sector-3. Dhurwa, Ranchi-4, Phone: +91 (651) 2400952, Email: helpdesk@jsmc.in
INFORMATION COMMISSION	Jharkhand State Information Commission, Engineers Hostel No.-2, Near Dhurwa Gol Chakkar, H.E.C. Campus, Dhurwa, Ranchi - 834004, Jharkhand Ph: 0651-2401418
COMMISSIONER FOR DISABILITIES	Jharkhand Mantralaya, Project Building, HEC, Dhurwa, Jharkhand. Ph: 0651-6573023/ 6571156/ 2407044/ 6572158/ 6572297/ 6572159

MADHYA PRADESH

INSTITUTION	DETAILS
HUMAN RIGHTS COMMISSION	Paryavas Bhawan, Block-1, 1 st floor, Arera Hills, Jail Road, Bhopal – 462 011. Tel: 0755-2572034 Fax : 0755-2574028,2573585 Mob: 9425032333 Email: mphumanright@yahoo.co.in
WOMEN'S COMMISSION	35 Rajiv Gandhi Bhavan, First Floor Shyamla Hills, Bhopal MP, 462002 Tel:0755-2661813
COMMISSION FOR PROTECTION OF CHLD RIGHTS	59, Narmada Bhavan, 4th Floor, Jail Road, Area Hills, Bhopal - 462002, M.P E.mail: mpcpcr@gmail.com
MINORITIES COMMISSION	E Block, Old Secretariat, Bhopal - 462 011, Madhya Pradesh. Ph: 0755-2730873
INFORMATION COMMISSION	Suchna Bhawan, 35-B, Arera Hills, Bhopal, Madhya Pradesh, PIN - 462011
COMMISSIONER FOR DISABILITIES	Community Hall, New Market, T.T.Nagar, Bhopal – 462 003. Madhya Pradesh. Ph: 0755-2773008, Fax: 0755-2552665

CHAPTER 8

NATIONAL LEGAL SERVICES AUTHORITY ACT, 1981

CHAPTER 1V – ENTITLEMENT TO LEGAL SERVICES

Section 12: Criteria for giving Legal Services. - Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956(104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987);or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

DETAILS OF STATE LEGAL SERVICES AUTHORITIES

➤ **CHHATTISGARH STATE LEGAL SERVICES AUTHORITY**

Address – Vidhik Seva Marg, Bilaspur – 495 001.

Ph: 07752-410210

Email : cgslsa@nic.in

➤ **JHARKHAND STATE LEGAL SERVICES AUTHORITY**

Address – “NYAYA SADAN”, Near AG Office, Doranda, Ranchi – 834002

Ph: 0651-2481520

Fax: 0651-2482397

E.mail: jhalsaranchi@gmail.com

➤ **MADHYA PRADESH STATE LEGAL SERVICES AUTHORITY**

Address – 574, South Civil Lines, Jabalpur, Madhya Pradesh.

Tel: 0761-2678352, 2624131

Fax: 0761-2678537

Email: mplsajab@nic.in

Contact details

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

D-66, Second Floor,
Saket,
New Delhi 110 017.

National Coordinator : Mr. Mathew Jacob

Mobile: +91-8860110520

E.mail: hrda.mathew@gmail.com

Website: www.ainni.in

Facebook: www.facebook.com/All-India-Network-of-Individuals-NGOs-working-with-National-SHRIs

Regional Coordinators

East Region: Mr. Chandranath Dani

Plot No.24/18F3, At Kesura (PJ College Road)

PO Bankuala, Bhubaneswar

Mobile: +91-9937328370

E.mail: hrda.east@gmail.com

West Region: Ms. Sunila Singh

Mobile: +91-9910272509

E.mail: sunila@pwn.org

South Region: Mr. Manohar

Mobile: +91-9535037596

E.mail: hrda.south@gmail.com

North East Region: Ms. Bondita Acharya

Mobile: +91-9864323337

E.mail: hrda.northeast@gmail.com

National Secretariate

32, Besant Road, Chokkikulam,

Madurai – 625 002, Tamil Nadu

Tel: +91-452-2539520

Fax: +91-452-2531874

E.mail: info@pwn.org

Website: www.peopleswatch.org

Facebook: <https://www.facebook.com/Peoples-Watch/118933758127346>

Statement of the Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya, as she concluded her visit to India on 21 January 2011, New Delhi

'The functions of the National Human Rights Commission should be reviewed with a view to strengthening the Commission by, inter alia: broadening the selection criteria for the appointment of the Chairperson; diversifying the composition of the Commission; extending the one-year limitation clause; establishing an independent committee in charge of investigating complaints filed; elevating the status of the human rights defenders focal point by appointing a Commissioner. The Protection of Human Rights Act should be amended as necessary in full and meaningful consultation with civil society.'

'The supportive role of the commissions for human rights defenders should be strengthened by inter alia, conducting regular regional visits; meeting human rights defenders in difficulty or at risk; and undertaking trial observations of cases of human rights defenders wherever appropriate.'

'The visibility of the commissions should be ensured through regular and proactive engagement with civil society and the media.'

AiNNI (All India Network of NGOs & Individuals working with National & State HRIs)

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