



Chairperson Maryam Abdullah Al Attiyah

Global Alliance of National Human Rights Institutions (GANHRI)
Geneva, Switzerland

Re: Review of the Accreditation Status of the National Human Rights Commission of India

Dear Chairperson,

We, the undersigned, are writing to bring to your attention serious concerns regarding the National Human Rights Commission of India (NHRCI) ahead of the fifth review of its accreditation status by the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA).

On 9 March 2023, several signatories to this letter had written to your office sharing their concerns about the functioning of the NHRCI.¹ Taking cognizance of the letter and other civil society submissions, in March, GANHRI-SCA deferred the NHRCI's re-accreditation by 12 months after considering the NHRCI's failure to effectively discharge its mandates to respond to the escalating human rights violations in India, lack of pluralism in selection and appointments of its duty holders and insufficient cooperation with human rights bodies, amongst others.²⁽²⁾ GANHRI.SCA also recommended the NHRCI to improve its processes and functions in line with the United Nations Principles relating to the Status of National Institutions (The Paris Principles).³ However, both the NHRCI and Indian government have yet again failed to make the requisite improvements.

The upcoming review comes shortly after the United Nations High Commissioner for Human Rights, Volker Türk, raised concerns about the increasing restrictions on the civic space and discrimination against minorities in India ahead of the country's General Elections.⁴ These concerns were further underlined by various UN human rights experts who drew attention to "attacks on minorities, media and civil society" in the country.⁵ India has also constantly been downgraded on various development and human rights indices over the past few years.⁶ In light of this, we strongly urge GANHRI-SCA to amend the current 'A' rating of the NHRCI to accurately reflect its

failure to comply with the Paris Principles and address the deteriorating human rights situation in India. We provide detailed reasons below.

Involvement of Police officers in NHRCI investigations :

The Protection of Human Rights Act (PHRA), 1993 empowers the Indian government to appoint police officers of the rank of Director General of Police or above as necessary for the efficient performance of the NHRCI.⁷ In the 2017 and 2023 reviews, the SCA had recommended the real or perceived conflict of interest in engaging police officers for the investigation of human rights violations, particularly those committed by the police.⁸ It had further noted that the Paris Principles require a national human rights institution to operate independent of government interference and recommended amendment of the PHRA in a manner that allows independent appointment of suitable and qualified persons for investigative positions.⁹ However, the Indian government has not undertaken any legislative process to fulfil the SCA's recommendation to date nor has it initiated any consultation on the same. On the contrary, the NHRCI's website boasts of "multi-dimensional" inquiries by the Investigation department, termed as "specialised", but comprising solely of police officers.¹⁰

Consequently, according to the NHRCI's most recent human rights cases statistics published on its website, a total of 469 cases of deaths in police custody and during police encounters remain pending.¹¹ Furthermore, by its own admission, of all the cases in which the NHRCI recommended monetary relief in the month of February 2024, not a single case related to death in police custody.¹² In an emblematic case, in October 2022, the Gujarat police used batons to beat nine Muslim men after tying them to a pole for allegedly throwing stones at a Hindu festival celebration.¹³ While India's Supreme Court criticized the Gujarat police and remanded the errant police officials to 14 days in custody¹⁴, the NHRCI did not take cognizance of the matter.

In another long-standing case where 16 peaceful protesters were killed due to excessive use of force by the police in Thoothukudi town of Tamil Nadu, the NHRCI has repeatedly tried to undermine victims' access to justice. On 22 May 2018, the protesters were marching against the expansion of a copper smelter that was linked to water contamination, air pollution and other forms of environmental degradation when the police opened fire on them.¹⁵ In May 2018, eight UN special rapporteurs condemned the use of excessive force by the police in the case and called on the Indian government to carry out an independent and transparent investigation, without delay.¹⁶ While the NHRCI was quick to take cognizance of the matter, it disposed of it within five months based solely on the response of the Tamil Nadu government.¹⁷ The NHRCI did not make the report of the investigation public, nor did it provide a copy to the complainant. It was only after the intervention of the Tamil Nadu state's High Court in 2021 that the NHRCI shared the report with the Court and the complainant in a sealed cover.¹⁸ Despite the Court's order, the NHRCI has not reopened the case, nor has it indicted a single police officer for the killings.

Lack of Pluralism and Opacity in the Selection Criteria

The SCA has repeatedly raised concerns about the lack of diversity in the NHRCI and recommended a “pluralistic balance in its composition and staff” by ensuring the representation of a diverse Indian society including, but not limited to religious or ethnic minorities.¹⁹

In response, the Indian government expanded the eligibility criteria for a chairperson to include a person who has been Supreme Court judge without adequate legislative consultation.²⁰ Earlier, only a person who had been the Chief Justice of India was eligible for the position of a chairperson. Similarly, despite the SCA’s recommendation to amend the PHRA, the legislation continues to empower the Indian government to recruit a civil servant with the rank of Secretary to the Government for the role of Secretary General of the NHRCI.²¹ This stands squarely in violation of the Paris Principles that are premised on independence from government interference. A civil society analysis of the recruitment for chairpersons in the other concurrent thematic commissions on minority rights, child rights, women, persons with disabilities and backward classes, between 2018 and 2023 demonstrate that such recruitments continue to act as defacto extensions for former government servants or parliamentary members associated with the ruling political party.²² This constitutes a direct attack on the independence of the commissions and stands to compromise their autonomy.

We also reiterate our concerns about the opaque selection process characterised by diminishing opposition voices. According to the PHRA, 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 (Lok Sabha), the Minister of Home Affairs, the Leader of the Opposition in the House of the People (Lok Sabha), the Leader of the Opposition in the Council of States (Rajya Sabha), and the Deputy Chairperson of the Council of States (Rajya Sabha).²³ However, since 2019 the post of the opposition leader in the Lok Sabha has been vacant, leaving only a single opposition voice in the selection committee, with all others belonging to members of the ruling political coalition. In this background, it is hardly surprising that the current NHRCI chairperson, Justice Arun Kumar Mishra, who has delivered several judgements in favour of the government and against marginalised populations²⁴ continues to hold the position despite heavy criticism from the political opposition including Mallikarjun Kharge, the sole opposition voice in the selection committee and civil society.²⁵

Further, in November 2023, the NHRCI appointed seven former officers of the Indian Police Service as special monitors.²⁶ One of the officers was accused of corruption in 2018 while working as Special Director of Central Bureau of Investigation (CBI), India’s federal investigation agency.²⁷ The person has been given the responsibility to oversee the thematic areas of terrorism, counterinsurgency, communal riots and violence.²⁸ We also remain concerned about the appointment of a former director of the national Intelligence Bureau as a member of the commission.²⁹ As highlighted in the earlier

letter, the appointment of a former high-level intelligence and security official in the decision-making body of the commission is clearly contrary to the Paris Principles.³⁰ The Intelligence Bureau has been known for targeting civil society organisations for opposing projects that harm the environment and accused them of backing armed groups – accusations that have acted as barriers for organisations to secure funding and operate freely.³¹

During the 2023 review, the SCA had also noted that three of the six positions in the NHRCI remain vacant.³² Two of the three positions remain vacant to date. It had also highlighted the lack of gender balance in leadership positions with only 95 out of 393 staff positions held by women in the NHRCI.³³

Lack of cooperation with human rights bodies

During the March 2023 review, the SCA had taken note of the NHRCI's lack of effective engagement with civil society and human rights defenders (HRDs) in India and recommended additional steps to increase its cooperation with them outside of the Core Groups of non-governmental organisations (NGOs) and HRDs that the NHRCI has created.³⁴ The SCA had also recommended the NHRCI to interpret its mandate in a "broad and purposive manner to promote a progressive definition of human rights".³⁵ It had also called upon the NHRCI to address all human rights violations and ensure consistent follow up with state authorities.³⁶

In August 2023, the NHRCI held the first meeting of the re-constituted Core Group on NGOs and HRDs but failed to take note of the deliberate and sustained targeting of religious minorities and human rights defenders under a range of overly broad and vague laws and policies, leading to hate crimes, particularly against Muslims, Christians and Dalits.³⁷ It also failed to recognise the ongoing erosion of their human rights, including access to education, employment, housing, and violations of their rights to freedom of expression, religion, association and to non-discrimination, which continue to go unpunished.

Instead, in what can be perceived as a tokenistic gesture, the NHRCI announced national and lifetime awards for human rights defenders while numerous human rights defenders languish in detention without trial under various draconian laws including the Unlawful Activities (Prevention) Act (UAPA) – India's primary counter terrorism law for years now.³⁸ This includes the 16 human rights defenders, nine of whom continue to be detained in connection with the Bhima Koregaon-Elgar Parishad case for more than five years now;³⁹ Kashmiri human rights defender Khurram Parvez who has been in detention since November 2021;⁴⁰ and Muslim student activist Umar Khalid and other human rights activists whose bail appeals in connection with the February 2020 Delhi riots have been repeatedly denied by various courts since October 2020.⁴¹ The NHRCI has not taken any concrete steps to respond to the situation of the HRDs or intervene in a timely manner despite various UN special rapporteurs calling on Indian authorities to release the HRDs.⁴² It has also failed to take meaningful and timely action on the rising ethnic violence in Manipur which started in May 2023,⁴³ the intensification of repression in Jammu & Kashmir after the abrogation of Article 370

of the Indian Constitution in August 2019,⁴⁴ the communal violence in Haryana in August 2023,⁴⁵ Uttarakhand in June 2023,⁴⁶ the human rights violations during the February 2024 farmers protests,⁴⁷ the misuse of the Foreign Contribution (Regulation) Act⁴⁸ that has been used to silence peaceful dissent, and the Citizenship Amendment Act that was operationalised on 11 March 2024.⁴⁹ Human rights defenders have also repeatedly raised concerns about the inordinate delays by the NHRCI to effectively dispose of cases.⁵⁰

Further, in March 2022, the Asia Pacific Forum (APF), a coalition of national human rights institutions in the Asian region, including the NHRCI, released a Regional Action Plan for HRDs as mentioned under the 2018 Marrakesh Declaration that established a global framework of actions by national human rights institutions to support the rights of HRDs.⁵¹ However, the NHRCI failed to acknowledge let alone discuss the Action Plan during the meeting of the Core Group. In another insincere effort to feign cooperation, in September 2023, just four days before the 2023 G20 summit was hosted by India, the NHRCI convened a last-minute meeting with civil society organisations, resulting in a rushed and inadequate consultation.⁵² The cumulative picture that emerges reflects the NHRCI's and the Indian government's clear lack of political will to act and the apparent reluctance to effectively respond to and address the deteriorating human rights violations in the country and to uphold transparency and accountability. The failure to create a truly independent NHRCI stands to perpetuate impunity and hinder any effort to ensure that the Indian authorities respect and uphold human rights.

Therefore, taking into consideration the clear defiance of the SCA's recommendations in 2006, 2011, 2016, 2017 and most recently in 2023, by the NHRCI, we strongly urge your office to evaluate the NHRCI's rating carefully during the upcoming accreditation process.

We also write to inform that we intend to publish the letter on Tuesday, 26 March 2024 on our website. The letter may also be uploaded on the websites of the other co-signees.

Yours sincerely,

- Amnesty International
- CIVICUS: World Alliance for Citizen Participation
- CSW
- FORUM-ASIA
- Front Line Defenders
- FIDH (International Federation for Human Rights), within the framework of the Observatory for the Protection of Human Rights Defenders
- Human Rights Watch
- International Service for Human Rights (ISHR)
- World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders

End Notes:

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- ³ GANHRI, *Report and Recommendations of the Session of the SCA*, 20-24 March 2023, available at <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/SCA-Report-First-Session-2023-EN.pdf>
- ⁴ United Nations Office of the High Commissioner of Human Rights, *Türk's global update to the Human Rights Council*, available at <https://www.ohchr.org/en/statements-and-speeches/2024/03/turks-global-update-human-rights-council>, 4 March 2024
- ⁵ United Nations Office of the High Commissioner of Human Rights, *India: UN experts urge corrective action to protect human rights and end attacks against minorities in lead up to elections*, available at <https://www.ohchr.org/en/press-releases/2024/03/india-un-experts-urge-corrective-action-protect-human-rights-and-end-attacks>, 7 March 2024
- ⁶ India ranks 161 out of 180 countries in the World Freedom Index; India is rated "partly free" in the Freedom in the World report; CIVICUS' Civic Space Monitor rates India as "repressed"; India is termed as an "electoral autocracy" by the Varieties in Democracy (V-DEM) index; India ranks 130 in the World Press Freedom Index; India is at high risk of misinformation and disinformation according to the World Economic Forum
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- ¹¹ Human Rights Cases Statistics as on 6 March 2024, National Human Rights Commission of India, available at <https://nhrc.nic.in/complaints/human-right-case-statistics> (last accessed on 15 March 2024)
- ¹² Human Rights Cases Statistics as on 6 March 2024, National Human Rights Commission of India, available at <https://nhrc.nic.in/complaints/human-right-case-statistics> (last accessed on 15 March 2024)
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- ¹⁷ *Henri Tiphagne v. The NHRC*, Madras High Court (Writ Petition 10526 of 2021), available at <https://ainni.in/wp-content/uploads/2023/09/Part-1-Legal-NHRC-Sterlite-Compilation-of-all-case-documents-WP-MD-10526-of-2021.pdf>
- ¹⁸ *Henri Tiphagne v. The NHRC*, Madras High Court (Writ Petition 10526 of 2021), available at <https://ainni.in/wp-content/uploads/2023/09/Part-1-Legal-NHRC-Sterlite-Compilation-of-all-case-documents-WP-MD-10526-of-2021.pdf>
- ¹⁹ GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 20-24 March 2023, pgs. 30 and 31; available at <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/SCA-Report-First-Session-2023-EN.pdf>; GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 14-18 November 2016, pg. 24, https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Final_Report_-_Nov_2016_-_English.pdf;
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- ²² The All-India Network of NGOs and Individuals, *Analysis of NHRC call for Applications for various positions January 2018 – September 2023*, <https://ainni.in/wp-content/uploads/2023/09/Analysis-of-NHRC-Vanancy-2018-to-2023.pdf>
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