



Republic of India

Joint Submission to the Universal Periodic Review

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

And

Asian NGO Network on National Human Rights Institutions (ANNI)

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

Mr. Henri Tiphagne,  
Email: [henri@pwtn.org](mailto:henri@pwtn.org)

Tel: +91-452-2539520  
Web:  
<https://ainnmembers.wordpress.com>

Asian NGO Network on National  
Human Rights Institutions

Mr. Agantaranansa Juanda  
Email: [agantara@forum-asia.org](mailto:agantara@forum-asia.org)

Tel: +66-9-029-10-029  
Web: [http://www.forum-  
asia.org/?page\\_id=19132](http://www.forum-asia.org/?page_id=19132)

## 1. INTRODUCTION

- 1.1 All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) is critically engaging with more than 170 human rights institutions through complaints, colloquiums, trainings and advocacy for their compliance with Paris Principles.
- 1.2 The Asian NGO Network on National Human Rights Institutions (ANNI) is a network of Asian human rights non-governmental organizations (NGOs) and human rights defenders engaging with national human rights institutions (NHRIs) in Asia, which has 33 member organizations from 21 countries or territories and advocates for the establishment of Paris Principles-compliant NHRIs as well as strengthening the work and functioning of Asian NHRIs to better promote and protect human rights.
- 1.3 AiNNI report submitted to the Global Alliance of NHRIs (GANHRI) – Sub-Committee on Accreditation (SCA) in 2011<sup>1</sup> have not changed in a major way and remain the same. Therefore, AiNNI is confining this report for UPR III submission as an analysis of five categorical observations made by the SCA in 2011<sup>2</sup> with regard to the NHRC.
- 1.4 The ‘Principles relating to the status of national institutions’ (Paris Principles), endorsed by the World Conference on Human Rights and the UN General Assembly, provide for the minimum international standards for the establishment of NHRIs. They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism. NHRIs are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The establishment and strengthening of NHRIs pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant national institution.
- 1.5 The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)<sup>3</sup> promotes the establishment and strengthening of National Institutions in conformity with the Paris Principles and the General Recommendations 2014 uses the Principles as criteria to determine ICC membership. The ICC Sub-Committee on Accreditation (SCA) has been delegated the task of assessing institutional compliance with the Paris Principles.
- 1.6 In line with its key mission to support the establishment and strengthening of NHRIs, the ICC through its SCA reviews accredits NHRIs in compliance with Paris Principles. The OHCHR of the United Nations is an observer on the SCA and serves as the Secretariat to the ICC and its SCA.
- 1.7 The NHRC is a founding member of the ICC since 1993. According to the compliance of the Paris Principles the member NHRIs of ICC are graded by the ICC-SCA. The National Human Rights Commission of India (NHRC) has been accredited “A” status by ICC-SCA

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<sup>1</sup>[http://peopleswatch.org/dm-documents/HRD/NGO%20Report\\_Paris%20Principles\\_NHRC\\_India.pdf](http://peopleswatch.org/dm-documents/HRD/NGO%20Report_Paris%20Principles_NHRC_India.pdf)

<sup>2</sup>[http://nhri.ohchr.org/EN/AboutUs/ICC Accreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICC Accreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf) Pages 13-15

<sup>3</sup>Now known as Global Alliance of National Human Rights Institutions

during its last accreditation in 2011 and its compliance to the conditions upon which the “A” status was given will be reviewed later this year. Only a fully compliant NHRI with “A” status can represent in the sessions of the UNHRC.

- 1.8 Hence the NHRC is no longer a national body but it is an international institution for the promotion and protection of human rights. The General Assembly of UN through its various resolutions have upheld the importance of NHRIs<sup>4</sup>. In a recent resolution providing more credibility to the NHRIs, the UNGA has called on all relevant United Nations processes and mechanisms to enhance the participation and contributions of Paris Principles compliant national human rights institutions.
- 1.9 Indian NHRC’s mandates, powers and functions continue to remain the same, as reported in earlier years and also in 2015<sup>5</sup>, with no amendments to the PHRA 1993. Indian NHRC will be coming up for its periodic review at the GA-NHRI’s SCA in November 2016. Pertaining to the same, AiNNI has submitted a report based on the SCA recommendations made to Indian NHRC in 2011. Through this submission, AiNNI attempted to critically analyse the progress made on each of the 2011 SCA recommendations to India<sup>6</sup>.
- 1.10 In addition to the NHRC, the country also has 8 other NHRIs such as the following: the NCW, the NCM, the NCPCR, the NCSC, the NCST, the NCSK, the Com – PWDs and the CIC<sup>7</sup>.
- 1.11 Each of the states also have thematic institutions such as the SHRC, the SCW, the SCM, the SCPCR, the SCSC, the SCST, the SCSK, the SIC etc.<sup>8</sup>.

## 2. ISSUES CONCERNING NHRC

This section mentions in details few pressing issues that needs attention of the Government of India and NHRC.

### 2.1 Composition and Pluralism

The SCA in 2011 noted that *‘the provisions in the PHRA (Amendment) 2006 dealing with the composition of the NHRC 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 NHRC- I’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 NHRC- I’s senior membership in this way limits the capacity of the NHRC- I to fulfil effectively all its mandated activities.’*

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<sup>4</sup>[\(A/RES/70/163\)](#), dated 17th Dec 2015

<sup>5</sup>ANNI Report 2015 <https://www.forum-asia.org/uploads/wp/2015/09/8-India-Draft-3-26-July-20151.pdf>

<sup>6</sup>AiNNI report to GA-NHRI dated 15th July 2016

<sup>7</sup>National Commission for Women, National Commission for Minorities, National Commission for Protection of Child Rights, National Commission for Scheduled Caste, National Commission for Scheduled Tribe, National Commission for SafaiKaramchari, Chief Commissioner for Rights of Persons with Disabilities, Central Information Commission

<sup>8</sup>State Human Rights Commission, State Commission for Women, State Commission for Minorities, State Commission for Protection of Child Rights, State Commission for Scheduled Caste, State Commission for Scheduled Tribe, State Commission for SafaiKaramchari, Chief Commissioner for Rights of Persons with Disabilities, State Information Commission

### **2.1.1 AiNNI's Observations**

- 2.1.1.1** The same provisions in the PHRA (Amendment) 2006 continue to be in place and hence severely restricting diversity and plurality in the composition of the Commission<sup>9</sup>. 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<sup>10</sup> 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.
- 2.1.1.2** There has been no woman member in the Commission since 2004<sup>11</sup> 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 FathimaBeevi (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 population<sup>12</sup>. 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 population<sup>13</sup>. The existing provisions on appointment contradict Paris Principles and significantly restrict pluralism and diversity in the composition of the Commission.
- 2.1.1.3** 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 India<sup>14</sup>.
- 2.1.1.4** 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)<sup>15</sup>. 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). Just before being appointed as a Member to the NHRC, Mr. S.C. Sinha IPS who was the Chief of India's National Investigation Agency, sought voluntary retirement and joined the NHRC. 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

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<sup>9</sup>[http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993\\_Eng.pdf](http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf)

<sup>10</sup>[http://supremecourtindia.nic.in/judges/list\\_retired\\_judges.htm](http://supremecourtindia.nic.in/judges/list_retired_judges.htm)

<sup>11</sup>[http://nhrc.nic.in/composition\\_prev.htm](http://nhrc.nic.in/composition_prev.htm)

<sup>12</sup>According to Census 2011 - <http://www.census2011.co.in/religion.php>

<sup>13</sup> According to Census 2011 - <http://tribal.nic.in/WriteReadData/userfiles/file/Demographic.pdf>

<sup>14</sup>AiNNI had submitted a memorandum on November 28, 2016, to the President of India and to all the members of appointing committee.

<sup>15</sup> Ibid.

post. Never has there been a representative of India's vibrant civil society been appointed in this position.

- 2.1.1.5** Given the current state of appointments to the Commission and also given that the appointments do not 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 across the country 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.
- 2.1.1.6** 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.
- 2.1.1.7** Further, the SCA noted that, 'the presence of "deemed members" from the NHRIs addressing caste, women's rights, minorities, and scheduled tribes on the full statutory commission<sup>16</sup>. 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.'
- 2.1.1.8** 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.
- 2.1.1.9** 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).
- 2.1.1.10** Members of the full commission are the chairpersons (ex-officio) of other commissions<sup>17</sup>. 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

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<sup>16</sup>[http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf)

<sup>17</sup> National Commission for Women, National Commission for Minorities, National Commission for Schedule Castes and National Commission for Schedule Tribes.

meetings were held between the period 2011-15 with stark absenteeism pattern.

**2.1.1.11** 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 commissions<sup>18</sup> 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.

## **2.2 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.'*

### **2.2.1 AiNNI's Observations**

**2.2.1.1** 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.

**2.2.1.2** 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 more than one year during this period.

**2.2.1.3** 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.

## **2.3 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'*.

### **2.3.1 AiNNI's Observations**

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

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<sup>18</sup> National Commission for Protection of Child Rights, Central Information Commission, Chief Commissioner for Persons with Disabilities and National Commission for Safai Karamcharis.

- 2.3.1.2** 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.
- 2.3.1.3** 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.
- 2.3.1.4** 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<sup>19</sup>. 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<sup>20</sup>.

## **2.4 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.'*

### **2.4.1 AiNNI's Observations**

- 2.4.1.1** 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.
- 2.4.1.2** 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

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<sup>19</sup><http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>

<sup>20</sup><http://freeassembly.net/news/india-fcra-info-note/>

competent lawyers through the Legal Service Authority to intervene on behalf of the HRDs.

- 2.4.1.3** 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 limine or transferred to state human right commissions after closing the case at Commission's end.
- 2.4.1.4** 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<sup>21</sup>.
- 2.4.1.5** 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<sup>22</sup>. 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.

## 2.5 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*'

### 2.5.1 AiNNI's Observations

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21HRDA, in the year 2015, filed 104 cases with NHRC, all cases pertaining to threat, attack and harassment of HRDs, violation of freedoms of protest, dissent, expression, assembly and association. The data related to overall complaints received by NHRC with regard to HRDs is not available in the absence of non-publication of annual reports. The HRD section on NHRC's website has no mention of cases of HRDs for the year 2015. Only 74 cases out of 104 cases filed by HRDA were registered by the NHRC. All these cases were directly filed with the Focal Point on HRD at the NHRC. 7 more cases were registered out of these 104 cases, not HRDA as complainant but HRDA members who have also filed the same complaint circulated by HRDA. 23 cases were not registered by the NHRC. In no case, there has been any compensation or persecution recommended by the NHRC till date. The status of 74 cases (as on 31st July 2016) submitted by HRDA is mentioned below –

Action taken report sought	24
Additional information sought	22
Dismissed in limni	11
Disposed	5
Closed	5
Transferred to SHRC	7
<b>TOTAL</b>	<b>74</b>

<sup>22</sup><http://nhrc.nic.in/dispatch.asp?fno=13617>



**2.5.1.1** 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. Further, NHRC is required to submit its annual report to Central government<sup>23</sup> but this provision is not regularly compliant with.

### **3. RECOMMENDATIONS:**

AiNNI would like to make the following recommendations to the NHRC and Government of India –

#### **3.1 Broad Recommendation Concerning NHRC's Functioning**

- 3.1.1** The Appointing Committee of the NHRC should take into consideration the contributions to human rights made by each of the eligible former Chief Justices of the Supreme Court of India who are eligible for appointment as Chairperson of the NHRC. There are needs for definite criteria 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 also requested to take into consideration that no official post is held by them, post their retirement, hence assuring complete independence while their term as chairperson and members of the NHRC.
- 3.1.2** The Appointing Committee should take into consideration the contributions to human rights made by each of the eligible candidates being considered for the post of Member of the NHRC. It would be desired that the allotment for this vacancy is fulfilled through a public announcement and call for applications. There are needs for definite criteria to be put in place to evaluate each of these eligible candidates which then form the basis of selection by the Appointing Committee. It would be apt that for the present vacant post, the Appointment Committee considers a woman who has substantial knowledge and experience in the field of human rights. This will also ensure that India abides by the principles of plurality as laid down by the Paris Principles and also the 2011 Sub-Committee on Accreditation's recommendation to India.
- 3.1.3** It is urgently required in the interest of protecting and promotion of human rights in India, that the NHRC 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. Timely appointments that are identified before the vacancy arises so that there are no vacancies at all in the NHRC.

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<sup>23</sup>Section 20, The Protection of Human Rights Act, 1993,  
[http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993\\_Eng.pdf](http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf)

- 3.1.4** The present composition of the NHRC does not indicate diversity since 3 of the 5 existing members are former judges. In order that India abides by the principles of plurality as laid down by the Paris Principles and also the 2011 Sub-Committee on Accreditation's recommendation to India, it is pertinent that the total number of members of the NHRC are increased by at least 5 more members to be drawn from members with experience and expertise in human rights and drawn from different competencies.
- 3.1.5** In addition to upholding all the ICC – SCA recommendations to the NHRC-I of 2011 AiNNI would like to recommend amendment to the PHRA 1993 that the total number of members of the NHRC are increased to at least 10 fulltime members making it possible that the new position of members are drawn from persons with knowledge and experience in human rights providing for adequate representation to women and the third gender in the appointment of members.
- 3.1.6** 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. NHRC should use the opportunity provided in the Supreme Court of India with regard to the petition filed with regard to extrajudicial killings in Manipur [W.P. No 129/2012] so that the limitations of the NHRC in terms of the provision of the PHRA are understood by the Court. Thematic NHRIs is a unique global contribution made by India. For the purpose of NHRC to be fully diverse, it is important that the PHRA is amended and other National Commissions that were 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. This will make human rights – which actually encompasses all rights of women, children, minorities, Dalits, *adivasis*, the physically challenged, right to information, *safaikarmacharis* etc. meaningful and vibrant in our state. As of now only the Chairpersons of the NCW, NCM, NCSC, NCST are appointed as 'deemed members' of the NHRC. Should not the other NHRIs in India such as the NCPCR, NC-SK, Com – PWDs and the CIC also have their Chairpersons included as 'deemed members' of the NHRC through an amendment to Sec 3(3) of the PHRA.
- 3.1.7** While the NHRC has deemed members, the SHRC does not have the benefit of such Chairpersons – from the SHRC, from the SCW, from the SCM, the SCPCR, the SIC, the State Com for PWDs and other special statutory institutions in some states concerning members of the SC communities, Members of the ST community and *SafaiKarmacharis*. It is pertinent that the NHRC strongly recommends for the deemed status of Chairpersons of the SHRIs at the state level through an amendment to the PHRA.
- 3.1.8** 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. 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 be immediately withdrawn. 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.

- 3.1.9** The Core Group on NGO's of the NHRC should meet minimum twice in a year. NHRC should consider CSOs as partners in conceptualising and implementing initiatives and not merely the participants in programmes organised by NHRC as contained in the Paris Principles and as outlined in the Kandy Principles of the Asia Pacific Forum of NHRIs<sup>24</sup>.
- 3.1.10** NHRC's annual reports need to be periodically published after amending the PHRA. 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.
- 3.1.11** NHRC should start with daily cause-list for cases that the Full Commission, Division Benches and individual members hear being made public through its web site. In addition to the cause list, complainants and victims should be given the space to depose and record their statements rather than relying on State agencies for 'investigation'.
- 3.1.12** 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 and adhere to different forms of speedy communication using mobiles, sms/whatsapp etc..
- 3.1.13** 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.
- 3.1.14** The NHRC should ensure that whenever it views complaints filed before it have to be transferred to the SHRC for disposal u/s 13(6) of the PHRA, then before such a transfer is ordered the NHRC should ensure that the concerned SHRC to which the complaint is being referred 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 inform the complainant of the said transfer, disposes the complaint referred speedily and reports the final recommendation passed to the NHRC within a specified time limit.
- 3.1.15** The NHRC should always instruct the respondents to whom complaints are referred for their versions to make sure that the complainant is never called to the police station or any other office of the respondent directly or indirectly and ridiculed or threatened by the respondent for having approached the NHRC with the complaint. Such versions should be provided without summoning the complainants/victims directly or indirectly and

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<sup>24</sup><http://nhri.ohchr.org/EN/Regional/AsiaPacific/Workshops/Kandy%20Program.pdf>

communicating to them in any manner while the complaint is under the consideration of the NHRC.

### **3.2 Recommendation Regarding Human Rights Defenders**

- 3.2.1** 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 more often than not are the actual perpetrators of the human rights violence complained of in the complaint.
- 3.2.2** 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.
- 3.2.3** The NHRC should ensure that its Focal Point on HRDs should be a full time Member of the NHRC and have a HRD background to fully understand the challenges faced by defenders as recommended by the UN SR on HRDs in her report of March 2012 after the 2011 country visit which included a visit to the NHRC as well. A fast-track procedure for complaints from HRDs within the NHRC and SHRCs should be developed and not allow the cases from HRDs to follow the usual route of other complaints.
- 3.2.4** 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 1998 and taking active steps to respect the rights of HRDs and their own roles as directed under the said Declaration.
- 3.2.5** 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 UN entities and also review existing HRD laws in other countries.
- 3.2.6** 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.
- 3.2.7** 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. The NHRC should then seriously consider placing its analysis before the Supreme Court of India where FCRA is being challenged by civil society groups.

- 3.2.8** The NHRC should intervene in courts using its powers under Section 12 (b) of the PHRA in all 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 practicing.
- 3.2.9** The NHRC should follow up with all the N/SHRIs with regard to the appointment of Focal Point on HRDs in each state. Till date no state has appointed a focal point.
- 3.2.10** In all cases of HRDs, the NHRC along with compensation, should develop the practice of ordering for prosecution of the perpetrator of violation and also obtaining an assurance of non-recurrence from the persons(s) responsible and rendering apology to the HRD(s) by the perpetrator.

### **3.3 Recommendations regarding other Thematic National and State Human Rights Institutions in India:**

- 3.3.1** The Government of India should ensure through its 'parent Ministries' for the NCW, the NCM, the NCPCR, the NCST, the NCSC, the CIC, the NCSK, the Com – PWDs etc. that they are encouraged to not only become members of GA-NHRIs and also closely adhere to Paris Principles in their respective NHRIs and thus build robust, effective, plural, transparent and accountable NHRIs in India.
- 3.3.2** That all the State Governments in India ensure through their 'parent departments' for the SCW, the SCM, the SCPCR, the SCST, the SCSC, the SIC, the SCSK, the Com – PWDs etc. that they are encouraged to closely adhere to Paris Principles in their respective NHRIs and thus build robust, effective, plural, transparent and accountable NHRIs in India.