

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

Questionnaire on National Human Rights Institutions and Human Rights Defenders

7 October 2012

1.	<p><u>a) Please indicate if you are aware of any mechanisms that are in place in the National Human Rights Institution (hereafter ‘the Institution’) to ensure that human rights defenders are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional / international bodies on specific cases).</u></p> <p>The National Human Rights Commission of India, hereinafter referred to as NHRCI, has a Focal Point for Human Rights Defenders (HRDs) since May 2010. The Focal Point most often than not, in our experience, and especially after the visit of the UN SR on HRDs to India in early January 2011 responds quickly to threats and complaints by individual HRDs – even if calls are made late at night. The Focal Point now has also started travelling across the country meeting HRDs in different training sessions and workshops. The NHRCI since last year has also commenced a dedicated web space for HRDs that provides details of cases it receives from HRDs apart from recommendations and the Focal Point on HRDs has a page on Facebook too making him more accessible to Human Rights Defenders.</p> <p>Apart from this we do not have any definite protection program that is outlined in writing by the NHRCI , or any early warning system . The NHRCI has so far not submitted any complaint relating to an HRD or HRDs as a class to any regional or international bodies.</p> <p><u>b) Please indicate whether a complaint has ever been submitted to the Institution on your behalf, or that of your organization. If applicable, please outline the Institution’s response to the grievance and whether it met with your expectations in line with international human rights standards.</u></p> <p>Yes, the organization or rather platform of HRDs that I co-ordinate at the national level in the country, known as ‘ Human Rights Defenders’ Alert – India [HRDA] in my position as its Honorary National Working Secretary submits complaints on risks and attacks faced by human rights defenders often, as when such incidents happen in the country. The Focal Point for Human Rights Defenders of the NHRCI takes the complaint on file and sends an acknowledgment of receipt of complaint, later, a copy of the communication sent by the Institution to concerned law enforcement officials and their reports. There have been a few occasions when the Focal Point has called up Law Enforcement Officials directly. Nevertheless it can’t be said that the Institution’s response met with our expectations in line with international human rights standards.</p> <p>A ‘random study’ of the Commission’s handling of the complaints regarding human rights defenders cases in the year 2011 which are available on its website was undertaken by HRDA an a brief report is as follows :</p> <p>1. Human Rights Defender Complaints</p> <p>a. The predominant cause of case delay, as evidenced by all 34 complaint from 2011, has been the time lapse between the NHRC’s request for reports and the response from authorities and/or complainant¹. Further analysis indicates that the delay correlates to the NHRC’s follow-up</p>
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¹ The data used for this analysis came from the NHRC’s website <http://nhrc.nic.in/>. Information regarding the 34 human rights defender complaints came from the NHRC document “HRD_CASES_2012_05.pdf” and was compared with the individual complaint files found on the NHRC website.

procedures regarding requests, and consequent review of the materials. Of the 19 cases that include the dates of request and receipt of reports, the average time lapse between the first request for reports and either the date of receipt or 31 May 2012 (whichever date was earlier) is 166 days. Thus, it takes nearly six months for the NHRC to receive initial reports. Pinpointing dates is frequently confusing because although the NHRC notes that reminders to send/submit reports have been issued to authorities, neither the dates of issue nor the number of reminders are recorded. Only one reminder's date was recorded (complaint number 115/18/4/2011) out of the 13 cases that were either closed or still pending due to lack of response from the complainant. This pattern demonstrates that typically, the NHRC only issues reminders to the authorities while denying complainants this courtesy. Furthermore, while the NHRC sometimes makes threats of coercive action, it is seemingly inconsistent in how long it will wait or how many reminders it will issue before taking such action against the authorities. Additionally, since the NHRC does not hold authorities to its written deadlines, the authorities can delay submitting their responses, which greatly extends the time a case remains inactive. The average time lapse between recorded actions in a complaint is 90 days. From this information, one can conclude that the NHRC reviews a case roughly every three months.

- b. The NHRC has not itself undertaken or commissioned a study into the reasons why complainants do not further their complaints; The authors believe this should be a singular line of inquiry for the NHRC to see if it is because the complaints were used for collateral purposes in the first place, or the mere sending of a complaint achieved relief on the ground, or there was intimidation, victimisation or lack of means in the victim to further his or her complaint. A gendered analysis of complainants and their ability to continue with complaints is also a vital area of inquiry that will assist in enhancing the effectiveness and writ of the NHRC.
- c. Due to such delays, the Commission closed only six of its 34 open cases in 2011. These complaints were or have been open for an average of 276 days. Also, of the open cases, at least 6 cases have remained open for at least one year, and the average number of days open is 436.

Virtually no preventative, prosecutorial, or compensational measures were taken in any of the HRDs' complaints. No financial compensation has ever been issued or even considered. Only one of the 4 reports involving arrests and/or charges mentions the recommendation of a departmental disciplinary action against the accused. Most importantly, the NHRC has supplied no commentary or recommendations regarding the prevention of future attacks against human rights defenders. The NHRC does not also follow up to find out whether its writ has run in such cases of HRDs. In fact there is no mechanism for following what has happened to recommendations made to the police in such cases.

It is pertinent to also share with you one classic case of human rights defenders who were attending a training program on 'Dalit Human Rights Monitoring'. The HRDs arrested were 5 of them – including 3 women and one of them happened to be an intern with a local organization but a lawyer from the US who had completed her law in the NYU. They were in judicial custody for 9 days until they obtained bail and then for almost two weeks were under conditional bail. Though the incident took place on 15th August 2010, the case before the NHRC which was initiated the day after the incident, it is still pending with no remedy whatsoever that the victims HRDs could enjoy. The latest order from the NHRCI in this matter is dated 10th May 2012 and even after 5 months having passed there has been no further action on the same. [See Annexure 1 series for some crucial documents in this regard].

c) Please indicate whether your organization has ever been consulted by the Institution about protection measures for human rights defenders in your country

No. But the National Working Secretary of HRDA who also heads People's Watch who had served on the National NGO Core Group of the NHRCI from 2001 till Sept' 2011 when he resigned and during meetings of the Core Group held during that period, he had asked for the setting up of a desk for Human Rights Defenders within the NHRCI and it is after the Focal Point was brought in. He had also made suggestions on improving the same, like constituting a task force on issues of HRDs and enhancing the overall complaints handling mechanism of the NHRCI. They are all yet to be acted upon. The organization which is also the founder of the AiNNI, (All India Network of NGOs and Individuals working with National / State Human Rights Institutions) places its recommendations in this

	regard by an annual report on functioning of the NHRCI to ANNI, the Asian Network of NGOs working with National Human Rights Institutions whose meetings precede that of the APF and make representations at the APF. ²
2.	<p><u>Please indicate whether the Institution is perceived to be independent from the Government. If not, please provide details as to why this is the case.</u></p> <p>Under pressure from the international community as well as domestic politics, the Protection of Human Rights Act (PHRA) was passed into law on 12 October 1993 and provided for the establishment of the NHRC at the national level and the SHRCs at the state level. The history leading up to the creation of the NHRC reveals that the Commission was undoubtedly created under great international pressure and was primarily viewed as a means of deflecting increasing international criticism.³ But the last time that the PHRA was amended was in the year 2005 and after this there has not been a single occasion when the NHRC has undertaken any review of its legislation within or requested any review from outside. The NHRC's silence in this regard, even after this was raised by the NGO Core Group members in their Core Group Meeting in New Delhi in 2009 indicates that though the matter of an effective statute was within the ambit of Parliament, the NHRC in India has been negligent in not letting the Indian Government and its Parliament know in what all measures the PHRA is not 'Paris Principles' compliant.</p> <p>The Protection of Human Rights Act of 1993 stipulates that of the five members of the Commission, three (including the Chairperson) must be current or former members of the judiciary; meanwhile, the only requirement for the other two seats on the Commission is that they be filled by "persons having knowledge of, or practical experience in, matters relating to human rights". (PHRA, Sec 3(d)). One of these two seats is currently filled by Shri Satyabrata Pal retired members of the Indian Foreign Service (IFS) and the other one currently unfilled. For the whole duration of the NHRC's existence, these positions have been filled by members who, like Pal have records of government or government related employment. Former employees of the 'National Government' are unlikely to be 'independent' from government interests in any meaningful sense and will not satisfy "pluralistic representation of social forces".</p> <p>It may be good to refer to the chapter on 'independence' which was contained in our AiNNI report 2011 submitted to the ICC/SCA⁴. Pg 5 to 13 of the Chapter II on 'Independence'. During the preparatory process for the drafting of the report for submission for the Universal Periodic Review (UPR) this year, the NHRCI, at least one arm of it, demonstrated for the first time in recent times how independent it can be, by involving the civil society and coming down heavily on the Govt. of India in the report⁵. The report pointed out the failure of the Public Distribution System to assure right to food, the fact that the National Rural Employment Guarantee Scheme did not live up to its claims, the dismal quality of education in rural areas, the delayed reports to UN Treaty Bodies etc. It rebukes the Government for not signing and ratifying ILO Conventions 138 and 182, because though the Govt. "accepts the</p>

² See ANNI reports 2008, 2009, 2010, 2011 accessible at <http://www.forum-asia.org>

³ The general view point is indicated in two statements published by the South Asia Human Rights Documentation Center in its illuminating book, "Judgment Reserved: The Case of the National Human Rights Commission of India." The book reports that after winning the election in 1992, then Indian Home Minister Mr. S B. Chavan told the Rajya Sabha that the purpose of the Human Rights Commission was to "counter the false and politically motivated propaganda by foreign and Indian civil rights agencies," and further stated that whether it would be totally government sponsored or placed in the voluntary sector had yet to be decided. On 24 April 1992, Mr. V. N. Gadgil, the official spokesperson of Congress (I) stated that his party would call for a national consensus on the role and powers of the proposed Indian Human Rights Commission, but reported that the Commission's findings, according to Gadgil would act as "correctives to the biased and one-sided reports of the NGOs" and would also be "an effective answer to politically motivated international criticism."

⁴ See 'An NGO report on the compliance with the Paris Principles by the National human Rights Commission of India' submitted to the ICC on NHRIs on 22nd Jan 2011.

⁵ Available at <http://nhrc.nic.in/Documents/Reports/UPR-Final%20Report.pdf>

	<p>spirit of the Conventions, it cannot ratify them because socio-economic conditions make it difficult to prohibit the employment of children". After the passage of the Right to Education Act in 2009, the Commission rightly points out here that this is an argument now even less tenable. Civil society activists consider that this is perhaps the first time that such an independent report of the performance of the government has been provided by the NHRC to a UN mechanism in its history so far and this was also after a historic series of consultations with civil society that it held in 5 different regions of the country to which it seemed to be extremely sensitive.</p> <p><u>b) If applicable, please outline what steps could be taken by the State to ensure that the Institution is allowed to operate effectively to protect and promote human rights.</u></p> <p>What has to be done urgently is for the Government to ensure that the recommendations suggested by the ICC/SCA in May 2011 to the NHRCI. They are 5 of them, of which 3 are to be monitored again interim in the year 2013 and remaining two in the year 2016. In addition it is time that there is a total review of the PHRA.⁶</p> <p>Revise and amend the PHRA, the founding statute of NHRCI to make it truly Paris Principles compliant after a consultative process with human rights defenders across the country.</p> <p>Make the NHRCI truly independent by making it autonomous in every sense with its own funds a process of appointment that is transparent inviting applications from civil society and making it a truly transparent process resulting in being truly diverse in its composition with powers to publicize its annual reports and make its own budget without approval of the Parliament.</p> <p>Invest the NHRCI with sufficient powers to initiate prosecution on its own of the instrumentalities of the state found to be negligent in violations of human rights, pronounce judgments / orders on the complaints it receives and not just recommend actions to the State.</p> <p>Ensure that the NHRC at the national level also had supervisory powers over the SHRCs functioning in the country and that all functionaries appointed to both the NHRC and SHRCs across the country as Chairpersons, Members, staff of different capacities are properly capacitated in human rights standards that are in tune with the established standards and principles from time to time laid down by the varied UN mechanisms on human rights such as the Human Rights Council, the different Treaty bodies, Special Procedures and domestic legal standards set by the Supreme court of India .</p>
3.	<p><u>a) Please describe the general working relationship, if any, between your organization and the Institution</u></p> <ul style="list-style-type: none"> • The organization [HRDA and People's Watch] submit complaints to the NHRCI on cases of human rights violations and on cases of attacks on human rights defenders.⁷ • The organization has received funds of the NHRCI to conduct trainings and bring out translations of NHRC publications on human rights. • People's Watch have worked very closely for many years asking the NHRCI to part with its publications to be made available for sale and free distribution in the Chennai book fair as part of its human rights awareness activities. • The Institute of Human Rights Education of People's Watch has been relating with the NHRCI ever since the year 1998 when Justice Venkatchellai, the then Chair of the NHRCI addressed its first valedictory session its initial course on human rights education for school students. This relationship has continued

⁶ ICC/SCA recommendation so the NHRCI in May 2011 after the accreditation process.

⁷ Refer to 'From Hope to Despair' a publication by People's Watch on complaints handling with the NHRCI .

	<p>over the years regularly in different capacities till as late as the year 2010.</p> <ul style="list-style-type: none"> The Executive Director of People’s Watch has also served effectively on the National Core Group of the NHRCI for the year 2001 till September 2011 when he finally resigned after serving two full terms. <p>Several Chairpersons, Members and senior functionaries of the NHRC have also visited the national office premises of People’s Watch and addressed several public conferences, workshops, seminars and training programs organized by it. <u>b)) Please indicate what measures could be taken to ensure better cooperation between the Institution and civil society, including human rights defenders. If applicable, please provide examples of good practice.</u></p>
4.	<p><u>a) Please indicate whether Institution staff are considered to be human rights defenders in your country.</u></p> <p>It is initially to be understood that there are a host of human rights institutions in the country ranging from thematic national level institutions [NHRIs] to thematic state human rights institutions. [SHRIs] They range from covering thematic subjects such as human rights, women, children, minorities, scheduled castes, scheduled tribes, persons with disabilities and the right to information, totaling to more than 180 such institutions across the length and breadth of the country. It is also to be known that the NHRCI is the only member of the ICC and Asian Pacific Forum of NHRIs and therefore having access to several capacity building exercises over more than 18 years now at the international and regional levels. It is further to be mentioned that the ‘ Full Commission’ of the NHRCI comprises the following :</p> <p>The Protection of the Human Rights Act, 1993 sets rigid criteria for membership into the National Human Rights Commission. The National Human Rights Commission must be composed of one Chairperson and up to four members. Chapter II, Section 3(2) of the PHRA requires that the Chairperson has been a Chief Justice of the Supreme Court. Of the four sitting members, one must be or have been a Judge of the Supreme Court and one must be or have been a Chief Justice of a High Court. Of the five members comprising the NHRC, only two members, or less than half, must be appointed from amongst persons having any type of “knowledge of, or practical experience in, matters relating to human rights.”.</p> <p>Further, Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and 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 12.41 There shall also be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him. 38</p> <p>In reality, however, from the day the NHRC was established until 2008, these “deemed members” hardly ever attend Full Commission meetings. Full attendance of the deemed members, has rarely been seen since the establishment of the NHRCI.⁸</p> <p>In spite of this vantage position that the Chairpersons of 4 of the NHRIs enjoy in the country as ‘deemed members’ of the NHRCI, not one of them have in the past 18 years ever been exposed to any training at the international level or ever even attended any meetings of the UN or the ICC or for that matter of the APF. Had this opportunity been provided they would have been abreast with all the developments that have taken place at the UN level since 1998 when the UN Declaration on HRDs has been established and since the year 2000 when the UN Special Procedures on HRDs has been established and functioning.</p> <p>All these state and national human rights institutions in the country which therefore should actually function as the institutional state funded human rights defenders, are not perceived to be HRDs in the country. As outlined above, the staff members of the NHRCI and for that matter all National and State Human Rights Institutions in the country are sourced from among Government Employees and seldom from the civil society or the activist community of the country. Also the staff of the NHRCI, excepting a very few like the Focal Point for HRDs, are</p>

⁸ See ‘An NGO report on the compliance with the Paris Principles by the National Human Rights Commission of India’ submitted to the ICC on NHRIs on 22nd Jan 2011. Pg 19- 21. .

	<p>seldom seen actively interactin with civil society or victims of violations approaching the NHRCI. When they themselves wish to not only perceive themselves but also act as 'government nominees' there is no possibility of they ever being seen as HRDs in the entire country. This is real pity with the ever gwoing attack and shrinking space to HRDs across the country and the violations of human rights that they are being forced to face.</p> <p><u>b) If so, please indicate whether any challenges or obstacles exist that may prevent the Institution from Protecting and promoting human rights in your country.</u></p> <p>The founding statute that governs the NHRCI is outdated and is definitely an obstacle for the NHRCI which prevents it from functioning as it should. [This has also been sufficiently responded to earlier in the responses.]</p>
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Read along with Annexure 1 series