

Responses to Questionnaire

1. (a) The NHRC-India has set up a focal point for the protection of human rights defenders. NHRC has been receiving complaints including those working on minority rights and the rights of the scheduled castes and tribes. NHRC noted that the HRDs faced harassment in several states including arbitrary detention. It has also attended to complaints from women HRDs, right to information activists and other categories. In preparing its report on India for the UPR second cycle, the NHRC-India held five regional consultations and a national consultation inviting, among others, HRDs from all the states. Just the existence of a focal point does not mean that the NHRC is able to handle in a comprehensive manner all challenges concerning the protection of HRDs in the country, particularly at the local levels, as well as at mass levels. Increasingly, the HRDs are facing sedition charges, which calls for more substantive efforts from NHRC. There is also the question of how it handles the perpetrators of violations against HRDs, besides its current format. In its UPR-2 report to HRC, it was stated that 35% of the complaints sent annually to the NHRC are against the police. NHRC also stated that 9% of the complaints in 2012-2011 were on inaction by officials or their abuse of power, confirming that laws are often not implemented or ignored. This is a crucial question when existing mechanisms with NHR are inadequate. NHRC has to undertake a much more serious procedural approach given the vulnerability of most of the HRDs when facing law enforcement agencies. Also it needs more judicial clout given the inordinate delays in the provision of justice. The Government of India in its national report to the UPR 2 mentioned that during the year 2012-2011, 99185 cases were registered for consideration in NHRC and it disposed of 87568 cases. These global figures need to be disaggregated, including those that have been dealt with through the focal point in NHRC for HRDs. On the other hand, this mechanism needs to be popularized enhancing its access for all categories of HRDs in the country. A more substantial mechanism is the urgent need.

2. Recently (15/09/2012) an Independent People's tribunal organized by local and national NGOs at Chennai, Tamil Nadu, observed that the Tamil Nadu State Human Rights Commission "totally lacks independence." The Tamil Nadu SHRC is "controlled financially" by the State government. The Tribunal heard 50 individual cases represented by victims and NGOs. The Paris Principles are wholly applicable to all NHRIs and SHRCs as well as NIs in India. It would have been helpful if those Paris Principles were incorporated into the protection of

Human Rights Act of India. This is not the case. The lack of independence, the jury observed, had “essentially paralysed the SHRC from fulfilling even its basic mandate. The jury said that “it is worrisome that 15 years after its establishment, nothing has been done to ensure independence or even reduce potential problems arising from conflicts of interest.”

3. Last October, the NHRC organized a national consultation towards preparing its report for the second UPR cycle involving, among others, HRDs and human rights organizations. Prior to this, the NHRC held five regional consultations covering various states. Around 350 people took part in these consultations. I took part in the Southern Regional Consultation for UPR-2 at Bangalore. The discussions were frank and open, looking at both the status of human rights as well as the performance of existing national institutions. The consultations also addressed the implementations of recommendations in UPR 1. All these could be seen in the submission to the UPR 2 review on India concerning the recommendation on “existing mechanisms.” The submission mentioned that the record is uneven and that “the government has continued to let the national commissions (NIs) function independently, but given them no added powers or greater resources.” Also it was stated that “the State Human Rights Commissions are mostly moribund” and that “very few Human Rights Courts have been set up.”
4. The Independent people’s tribunal at Chennai on SHRC observed that “the Commission staff members are hand selected from government posts, often deputed temporarily from similarly titled, but very different government positions. These staff members are given no training.”

At the 13th session of the Working Group of the HRC-UPR Second Cycle (May 2012) review on India, one of the recommendations listed (from the United Kingdom) “Implement all the 2011 recommendations of the International Coordinating Committee of National Institutions for the promotion and protection of human rights to ensure the high standards and independence of India’s NHRIs.” Besides, both Norway and Spain recommended: “adopt the recommendations of the Special Rapporteur on the situation of the HRD.”

Both these recommendations weren’t accepted by the government at the outcome session during the 21st session of the HRC (Sept. 2012). On the other hand, the

government accepted “to ensure a safe working environment for journalists.”
(Austria)

One of the major challenges besides independence is the question of leadership of NHRC and its composition. Several NGOs have regularly assessed the performance of both the NHRC and the SHRCs periodically. Much needs to be done. “Many of the factors which inhibit its performance are due to the constraints imposed upon it by the protection of Human rights Act, 1993. Above all, the government(s) should act upon the submissions made by all these commissions promptly and urgently.”