

NATIONAL HUMAN RIGHTS COMMISSION OF INDIA

Questionnaire on National Human Rights Institutions (NHRIs) and human rights defenders.

It would be greatly appreciated if responses were brief. They may be submitted in bullet-point form if preferred.

Please note that responses to the questionnaire will be published on the website of the Special Rapporteur and will be used to inform her next report to the UN Human Rights Council in March 2013. If requested, the response from your Institution will remain confidential.

1.	<p>a) Please provide a brief overview of the legislative framework, adopted to establish a National Human Rights Institution (hereafter ‘the Institution’) in your country. Please cite the names of any such laws or regulations in full.</p> <p><u>RESPONSE</u></p> <p>The National Human Rights Commission (NHRC) of India was established on 12 October 1993 by an Act of the Indian Parliament – the <i>Protection of Human Rights Act (PHRA), 1993</i>. The PHRA comprehensively contains provisions relating to composition, powers</p>
----	---

and functions of the NHRC at the national level and State Human Rights Commissions (SHRCs) at the provincial level besides setting up Human Rights Courts. The PHRA was amended by the Parliament in 2006 for better protection and promotion of human rights in the country.

b) Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principles.

RESPONSE

The NHRC, India is fully compliant with the international norms for National Human Rights Institutions set out in the 'Paris Principles'. The PHR Act, 1993, in accordance with the Paris Principles provides a clearly defined and broad mandate to NHRC, India. As per this broad mandate, NHRC can inquire into violation of not only civil and political rights but also economic, social and cultural rights. It can do so since it has been given adequate independent/autonomy and sufficient financial resources. Besides, it has adequate powers for carrying out investigation and inquiries.

c) Please indicate the current accreditation status of the Institution with the ICC and what measures, if any, have been taken to implement the recommendations highlighted at the most recent

	<p style="text-align: center;">ICC Sub Committee on Accreditation meeting with a view to strengthening NHRI’s compliance with the Paris Principles.</p> <p><u>RESPONSE</u></p> <p>The NHRC, India is an “A” accredited member NHRI of the Bureau of the International Coordinating Committee (ICC) of NHRIs. The NHRC has been carrying out its functions and using its powers to give recommendations in cases of violation of human rights independently and without being influenced by the viewpoint taken by Government after carrying its own investigation/examination. It has also been making efforts to bring maximum possible pluralism in its composition/staff.</p>
2.	<p>a) Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.</p> <p><u>RESPONSE</u></p> <p>In accordance with the Section 12 of the PHR Act, 1993, the NHRC, India has been inquiring into complaints of human rights violation covering broad range of human rights from across the country. It has also been taking suo-motu cognizance of cases of human rights violation coming to its notice. The number of cases dealt with by the Commission</p>

since inception has reached 11,79,124 at the end of September, 2012. The yearly number of cases handled is 93,000 approximately. Besides, it has also been visiting prisons, mental health institutions and other institutions of care and protection with a view to improving living conditions therein. The other areas where it is active is that relating to spreading of human rights literacy among all sections of society and making recommendations regarding domestic legislation to bring them in consonance with international convention to which Government of India is party. It is also interacting with members of civil society to encourage their activity as well as seeking their assistance in protection and promotion of human rights within the country.

b) Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations.

RESPONSE

Yes, in accordance with Section 12 of the PHR Act, 1993, the NHRC, India is mandated to consider and/or adjudicate individual complaints of human rights violations. The Commission can inquire into cases of human rights violation both suo motu, or on a petition made to it by a victim or any person on her/his behalf.

c) If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, police and/or the military are permitted and how they are dealt with.

RESPONSE

The mandate is very broad and not limited to specific rights. The Commission looks into cases of violation of a broad range of human rights. Complaints against police and/or military are also inquired into by the Commission. Although the Commission does not deal directly with members of armed forces and seeks reports from the Ministry/Department controlling them, it has recommended compensation/relief to victims of human rights violation by members of armed forces in a large number of cases.

d) In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.

RESPONSE

NHRC, India provides remedies to the victim of human rights violations by recommending necessary relief in the form of compensation, interim monetary relief etc. and also by prosecution of the public servant(s) found guilty of human rights violations, abetment of human rights violations or negligence in the prevention of such violations. The relief/prosecution can be recommended during the course of enquiry as well as after its completion.

While there is no legislation in India for witness protection, the criminal justice system is working effectively. Besides, there is vibrant media which keeps a regular vigil to prevent any misdemeanour in violation of human rights. Besides, NHRC does not hesitate to intervene in any such cases. Its successful intervention in a case aftermath of Gujarat riots is a case in point.

The Commission, through its members, officers and Special Rapporteurs, has been regularly visiting prisons located across the country to see the condition in which the inmates are kept including food and health and sanitation, besides looking into specific issues of torture, if any and suggest remedial measures to the authorities. This is a continuous process and regularly followed up to ensure adherence to laid down guidelines/norms of the Commission.

3.

a) Please indicate what mechanisms, if any, are in place within the

Institution to ensure that human rights defenders at risk are protected (eg. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases).

RESPONSE

The NHRC, India can be reached by telephone, telegram, fax, e-mail and post, as well as through its website. Its office has a facilitation counter which is open during office hours, and it has a dedicated telephone number which can be reached after office hours by anyone with an urgent complaint.

The NHRC, India has also established a ***Focal Point for Human Rights Defenders (HRDs)*** which can be accessed by human rights activists/defenders and others working in the field, 24 hours a day, all days of the week. The Focal Point is accessible round the clock through (i) a dedicated mobile number 9810298900, (ii) Fax No. 23384012 and (iii) E-mail (hrd-nhrc@nic.in). No charge has to be paid for the filing and processing of complaints, which can be lodged either by the victims or on their behalf, so the NHRC's services are available to, and are used, by all, including, and most particularly, by the vulnerable and the poor.

The NHRC, India has not only reiterated time and again to the state authorities to not victimize human rights defenders, but has also

undertaken several programmes/training workshops/seminars etc. to sensitize state functionaries about the valuable role played by human rights defenders. Most notable among the various programmes to raise human rights awareness, was the workshop organized by the NHRC on Human Rights Defenders on 12th October 2009 in New Delhi. The objectives of the workshop were summarily to share difficulties faced by human rights defenders and suggest appropriate remedial measures. The detailed recommendations emanating from the workshop were sent to all state governments for their consideration and implementation.

The NHRC, India displays all cases related to human rights defenders on its website (www.nhrc.nic.in) and has also included a chapter in its Annual Report on cases relating specifically to the violation of human rights of HRDs along with the action taken thereon.

Besides there is an active media and vibrant civil society which is encouraged by the Commission through constructive engagements with their members.

b) Please indicate whether any obstacles or challenges exist with regard to the effective protection of human rights defenders through these mechanisms, and how the Institution addresses them.

RESPONSE

	<p>The Commission is able to obtain necessary support from all stakeholders for providing effective protection to human rights defenders. It does not face any serious obstacle or challenges in this respect.</p>
4.	<p>a) Please describe the working relationship between the Institution and civil society, including human rights defenders, in accordance with the Paris Principles.</p> <p><u>RESPONSE</u></p> <p>➤ The Commission regularly associates with credible non-government organization (NGOs), human rights defenders and other civil society organizations. It has a <i>Core Group of NGOs</i>, which it consults on aspects of its own work. Representatives of NGOs and civil society are also present in other Core Groups, it has set up on disability, health, mental health, right to food, protection and welfare of elderly persons, lawyers, and the Expert Group on Silicosis. The members of these Core Groups are able to offer their advice and make recommendations to the NHRC on specific issues for consideration and directions. The subjects on which these Groups have been set up give an indication of the range of the NHRC’s work. In addition, the NHRC supports NGOs, human rights defenders and activists with</p>

funds to conduct training programmes across the country for greater human rights awareness. It also commissions and publishes research from NGOs and think-tanks with expertise in their fields.

- NGOs and human rights defenders/activists with sectoral interests or expertise are invited to and participate in every seminar or workshop that the NHRC organizes.

- NGOs and human rights defenders/activists are active in filing complaints to the NHRC on individual violations of human rights, or on emerging situations; the NHRC takes cognizance and processes these complaints in its quasi-judicial capacity.

b) Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with civil society and/or human rights defenders and how the Institution seeks to address them.

RESPONSE

The NHRC regularly interacts with all stake holders and seeks to improve the human rights situation in the country through cooperation with them and there are no obstacles/challenges in this area.

5.

a) Please indicate whether any member of the Institution's staff has ever been the victim of threats, or other kind of harassment, as a result of work carried out on behalf of the organization.

RESPONSE

There have been no threats of any kind faced by any of the members of the Institutions since its inception.

b) Please specify what mechanisms, if any, are in place to protect Institution members in investigating human rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect Institution members.

RESPONSE

The Commission is composed of members who have occupied highest level seats in the judiciary and this in itself ensures their credibility and regard for them. There is no explicit protection required for them as their background provides them with inherent protection.

c) Please indicate whether the Institution has ever been subjected

	<p>to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subject to interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principles.</p> <p><u>RESPONSE</u></p> <p>There have been no unannounced visits by Police or state authorities or interference or threat in the history of the Commission since it was set up in 1993.</p>
6.	<p>a) Please indicate the main sources of funding for the Institution.</p> <p><u>RESPONSE</u></p> <p>Budget proposals formulated by the NHRC and approved by a Committee headed by the Chairperson of the Commission are included in the overall budget proposals made to Parliament by the Ministry of Finance. Once the budget proposals are passed by Parliament, the grants are remitted to the NHRC. Once the budget is passed by Parliament, Section 32(2) of the PHRA lays down that the NHRC “may spend such sums as it thinks fit.” The NHRC has the power to appropriate funds from one head of expenditure to another, giving it the freedom to change its priorities, if need be, even after the budget has been passed.</p>

	<p>No percentage of the NHRC's budget is donor-funded.</p> <p>b) In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organization and how this impacts on the work of the Institution.</p> <p><u>RESPONSE</u></p> <p>In this regard there is no challenge in relation to the functional autonomy of the Commission or its work.</p>
7.	<p>a) Please describe the procedures in place relating to the selection and appointment of members of the governing body.</p> <p><u>RESPONSE</u></p> <p>Section 3 (2) of the PHR Act, 1993 lays down that the NHRC shall consist of:</p> <ul style="list-style-type: none"> (i) A Chairperson who has been a Chief Justice of the Supreme Court; (ii) One Member who is, or has been, a Judge of the Supreme Court of India; (iii) One Member who is, or has been the Chief Justice of a High Court; and

(iv) Two Members, appointed from among persons having knowledge of, or practical experience in, matters relating to human rights.

The Chairperson and Members of the NHRC are appointed by the President of India on the recommendations of a Committee consisting of Prime Minister of the country as Chairperson and members belonging to the Government or ruling party as well as opposition party.

This procedure, laid down by the PHR Act, 1993, is followed strictly in practice. The consultations are carried out by the members of the Committee. The Selection Committee consisting of elected representatives, both from the ruling and opposition parties ensures that the persons it chooses are acceptable across the political spectrum in India, and represent a national consensus.

b) Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.

RESPONSE

A fixed tenure of five years is laid down for Chairperson and Members or till the attainment of age of seventy years whichever is

earlier. A member is also eligible for re-appointment for another term of five years. It is also laid down that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

A Chairperson or Member may only be removed from his office by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry held in accordance with the procedure prescribed by the Supreme Court, reported that the Chairperson or Member ought on any such ground to be removed. The exception to this procedure permits the President, by order, to remove a Chairperson or Member under certain conditions like adjudged insolvency, infirmity of mind or body or unsoundness of mind or conviction for an offence involving moral turpitude. However, there is no case in the history of the institution where a chairperson or a member has been removed from office applying any of above criteria.