

National Human Rights Institutions

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the 2nd UPR cycle, Government of India received 3 recommendations regarding National Human Rights Institutions and accepted only one of them. 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 minimum international standards for the establishment of NHRIs. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), now known as Global Alliance of NHRIs (GANHRI) promotes the establishment and strengthening of National Institutions in conformity with the Paris Principles and uses the Principles as criteria to determine GANHRI membership. The GANHRI Sub-Committee on Accreditation (SCA) has been delegated the task of assessing institutional compliance with the Paris Principles. The Office of High Commissioner for Human Rights of the United Nations is an observer on the SCA and serves as the Secretariat to the GANHRI and its SCA. National Human Rights Commission of India (NHRC) is a founding member of the GANHRI since 1993.

CHALLENGES

ISSUES AND IMPACTS

Composition and Pluralism

The SCA in 2011 noted that 'the provisions in the Protection of Human Rights Act (Amendment) 2006 (PHRA) 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. 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.

The same provisions in PHRA continue to be in place and hence severely restricting diversity and plurality in the composition of the Commission. There have been only 6 women as judges in Supreme Court and no woman as the Chief Justice of India 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 has been no woman member in the Commission since 2004 (11 years, 10 months and 17 days). There has been no Muslim member in the Commission since 1997 (over 19 years). There has never been a Muslim chairperson of the Commission. There has never representation of the Tribal community (8.6% (104 million) of India's population) on the Commission. There has also never been a member of the Commission from India's vibrant civil society. Most recently, and disturbingly, the vice-president of the ruling political party has been appointed as NHRC member.

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.

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. Since 2011, five persons have been appointed as Secretary General for very short terms and all of them were seconded from the Government. The last Director General (Investigation) demitted the office in September 2014 and till date the vacancy has not been filled up.

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'.

The situations have not changed in terms of relationship with the civil society. The Core group on NGO's was reconstituted in 2011 and thereafter two meetings were conducted respectively in 2012 & 2013. It is important to mention here the Commission does not consider CSOs as partners in conceptualising and implementing initiatives but CSOs are merely the participants in programmes organised by the Commission. Last NGO core group meeting was held in July 2016.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association in a legal analysis in April, 2016 argued that India's FCRA regulating foreign funding is not in conformity with international law and standards. The Commission is yet to exercise its powers under Section 12 which enables the Commission to review laws like FCRA which affects thousands of organisations.

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.

CHALLENGES

Annual Report

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. 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. 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. It has been over a year now and the Commission has not been able to vacate that stay.

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"

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 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 but this provision is not regularly compliant with.

ISSUES AND IMPACTS

RECOMMENDATIONS

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 and vacancy should be fulfilled through a public announcement and call for applications.

Amend Protection of Human Rights Act 1993 and facilitate appointment of new members who have knowledge and experience in human rights and also providing for adequate representation to women, sexual minorities, third gender, religious minorities, Dalits and tribals.

Guarantee complete independence of NHRC by amending the Protection of Human Rights Act 1993 to enable it to implement its orders/recommendations.

All thematic national commissions should also have their Chairpersons included as 'deemed members' of the NHRC through an amendment to Sec 3(3) of the PHRA and that this change should also be reflected at the state level in State Human Rights Commissions (SHRC).

The Secretary General and Director of Investigations should be appointed following an open, merit-based selection process and should not be seconded from the Government.

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.

NHRC should publish all pending annual reports immediately and put a system in place to ensure that annual reports are not delayed.

NHRC should ensure that whenever it views that complaints filed before it have to be transferred to the SHRC for disposal, that the SHRC should have a full commission with Chairperson and two Members.

NHRC should 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.

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 NHRC should also seriously consider placing its analysis before the Supreme Court of India where FCRA is being challenged by civil society groups.

The Government of India should ensure through its 'parent ministries' that all National Human Rights Institutions in India are encouraged to become members of the Global Alliance of NHRIs and closely adhere to Paris Principles in their respective NHRIs. The goal should be to rapidly build robust, effective, plural, transparent and accountable NHRIs in India.

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Fact Sheet prepared by People's Watch (Member, WGHR), HRDA-India and All India Network of Individuals and NGOs working with National and State Human Rights Institutions (AiNNI) for Working Group on Human Rights in India and the UN (WGHR)