

**Public Statement**

**Large Coalition of NGOs, Human Rights Activists, Academics and Independent Experts Protest the Selection of New Members to the National Human Rights Commission (NHRC)**

As members of human rights organisations, women's rights groups, lawyers, academics and activists, who are engaged with a range of human rights issues we express our strong opposition and disagreement with the recent selections of new members to the National Human Rights Commission (NHRC). We assert that the guiding principles for appointing members to the NHRC are: that they must be persons with a proven track record and experience in the field of human rights; the composition must reflect the plurality and diversity of peoples, particularly the vulnerable and marginalised communities in the country; and the process must be transparent and the appointments credible and must inspire confidence.

We are disturbed to learn from media reports that the Appointment Committee of the NHRC has completed its selection process for the two positions which became vacant with the retirement of Mr. P.C. Sharma (IPS ret'd.) on 27<sup>th</sup> June 2012 and Justice G.P. Mathur on 18<sup>th</sup> Jan' 2013, with the selection of:

[i] Mr. S.C. Sinha, Director General of the National Investigation Agency [NIA]

[ii] Mr. Justice Cyriac Joseph, Former Judge of the Supreme Court of India who retired on 27<sup>th</sup> Jan' 2012

It is noteworthy that serious and credible objections have been raised against these names by 2 members of the statutory Appointments Committee of the NHRC viz. the Leader of the Opposition in the Lok Sabha and the Leader of the Opposition in the Rajya Sabha.

The Paris Principles 1993 prescribe the minimum standards required by national human rights institutions to be considered credible and to operate effectively, among which the composition of the Commission is crucial. The Paris Principles underscore pluralism, diversity and transparency. The International Coordinating Committee of National Institutions for the Promotion and

Protection of Human Rights Sub-Committee on Accreditation (ICC-SCA), has on 9<sup>th</sup> June, 2011, recommended that the limited recruitment process of the Indian NHRC be altered as it restricts diversity and plurality in membership.<sup>1</sup> The UN Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekkagya, after an official country visit to India has also recommended “that the functioning of the national commission be strengthened by, inter alia, broadening the selection criteria for the appointment of the Chair and diversifying the composition of the Commission, including regarding gender”<sup>2</sup>.

It is important to highlight that the vacancy created by the completion of tenure of Mr. P.C. Sharma IPS [Retd.], belongs to the category under Sec. 3(2)(d) of The Protection of Human Rights Act, 1993, which provides for, “*two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights*’.

It is indeed shocking and shameful that the government has selected a serving IPS police officer, Mr. S.C. Sinha, Director General, NIA, as member of NHRC under this clause. It is a matter of record that the highest number of complaints received by the NHRC annually are against police torture, harassment and brutality. This appointment is in contravention of The Protection of Human Rights Act, 1993, the Paris Principles, and amounts to an abuse of power. In a country that boasts of a large number of prominent human rights and women’s rights activists, the appointment of a Police Officer under this category, is unacceptable and deserves to be set aside.

The consistent violation of the mandate of the Protection of Human Rights Act, the Paris Principles and the principles of pluralism and diversity is apparent from the following facts:-

***1. The NHRC, India has hitherto been only comprised – other than the judges appointed to it - by representatives who are retired senior bureaucrats – IAS, IPS, IRS, IFS etc.;***

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<sup>1</sup>International Coordinating Committee of National Institutions for the promotion and protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation-- 2011*, ICC: Geneva, pp. 13-15. Available at:

<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20%28with%20annexes%29.pdf>

<sup>2</sup>A/HRC/22/47, para 52.

*2. NHRC, India has been 'advised' in the recent ICC recommendations that the NHRCI has not had a woman member for the past 8 years;*

*3. There is no one representing the members of the SCs and STs or Minorities on the NHRCI as of now;*

*4. Further, there has also not been a single member representing civil society since the inception of the NHRC, India.*

We wish to underscore the fact that for over 19 years, since the constitution of the NHRC there has not been a single representative from the human rights, women's rights or democratic rights movement, appointed to the NHRC, despite a very vibrant and active civil society movement in the country society. The members of the NHRC have on each occasion been selected from retired IAS, IPS, IFS, and IRS etc. The list of persons who have in the past been appointed against this particular category of statutorily reserved for persons engaged with human rights is enclosed as *Annexure A*. Conspicuous by their absence from this list are human rights and women's rights activists. No person belonging to the Scheduled Caste or Scheduled Tribe has ever been appointed as a member of the NHRC. NHRC records themselves reveal that dalits, adivasis, religious minorities and persons from the North-East face severe violations and deprivations, yet not a single activist from these constituencies has ever been appointed to the NHRC.

It deserves special mention that for the last 8 years and 7 months, since 27<sup>th</sup> Aug' 2004, when Justice Ms. Sujata V. Manohar, completed her term, i.e. 8 years and 7 months ago, no woman has ever been appointed as a member of the NHRC. This glaring fact reflects not only the embedded prejudice that operates in myriad ways to exclude women but also violates the constitutional mandate of equality and non discrimination. It is distressing and unpardonable that at a juncture when the Justice Verma Committee Report has observed that violence against women is a manifestation of the discrimination and inequality suffered by women, the government is still reluctant to discharge its obligation and continues to deprive women of equal opportunity. The ICC-SCA, in General Observations 2.1 interpreted the Paris Principles as:

Ensuring Pluralism, and “further emphasizes that the principle of pluralism includes the meaningful participation of women in the National Institution”.

We have also learnt that the Appointments Committee has selected Mr. Justice Cyriac Joseph, who had retired from the Supreme Court of India on 27<sup>th</sup> January 2012, to fill the vacancy in the category of a member who is or has been a Judge of the Supreme Court of India. It is apparent from a holistic reading of The Protection of Human Rights Act, 1993, that any interpretation of this clause for purposes of appointment to the NHRC, would inherently require that the Judge must have an established and credible record of respecting, protecting and promoting human rights. Further there should not even be a whisper of allegation against him of discrimination or prejudice against women, dalits, religious or ethnic minorities and others.<sup>3</sup> Any such allegation in his personal or public life, should disqualify the Judge from membership of the NHRC. Moral integrity demands not only that the member of the NHRC should not be monetarily corrupt but that he should be free of bias and should have an abiding faith and resolve in the charter of human rights and principles of equality.

It is to be recalled that Justice Cyriac Joseph was earlier selected to be appointed as the Chairman of Telecom Disputes Settlement Appellate Tribunal (TDSAT), New Delhi after Justice S. B. Sinha. Justice Sinha during his judgeship was known for being a workaholic. But due to some ‘reports’ from an “agency” to the Chief Justice before taking a final decision on Justice Joseph’s appointment to the TDSAT, but contained ‘observations’ on the former judge’s “style of functioning”. In particular, the report had commented on alleged delays in delivering verdicts. It is now known that during his period of service of 1300 days on the Supreme Court from 7<sup>th</sup> July 2008 to 27<sup>th</sup> January 2012, J. Cyriac Joseph delivered only 10 judgments in all on the following dates: 18<sup>th</sup> October 2011, 14<sup>th</sup> November 2011 (3 judgments), 15<sup>th</sup> November 2011, 16<sup>th</sup> December 2011 [2 judgments] 25<sup>th</sup> January 2012 and 27<sup>th</sup> January 2012 [ 2 judgments]. How a Judge found unfit for the post of TDSAT chairman owing to his working style is fit for membership of the NHRC is inexplicable. The spate of violations experienced by people across

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<sup>3</sup> For more on Justice [Cyriac Joseph](#) read: Rohini Singh, *TDSAT chief selection runs into Kapil Sibal firewall*. Economic Times, March 4, 2013, available at: [http://articles.economictimes.indiatimes.com/2013-03-04/news/37437192\\_1\\_tdsat-telecom-disputes-settlement-chief-justice](http://articles.economictimes.indiatimes.com/2013-03-04/news/37437192_1_tdsat-telecom-disputes-settlement-chief-justice)

the country demands from the members of the NHRC very high levels of integrity, commitment and efficiency, as the right to life and dignity of the most disadvantaged is at stake.

We invite your attention to Article 51A of the Indian Constitution which requires that all citizens renounce practices derogatory of women. This is particularly expected of judges who swear on oath of allegiance to the constitution.

A judge both in his judgments and in his conduct in court is expected to be respectful of women including women lawyers. Justice Cyriac Joseph is reputed to have made extremely derogatory remarks in the presence of women lawyers during the course of arguments in court causing harassment to them. That apart, it has been alleged against him that he attempted to interfere with pending investigations in a criminal prosecution for murder of a nun Sister Abhaya in Kerala by visiting the forensic laboratory where analysis of the narco analysis test of the accused was being conducted, while he was a sitting judge of the Supreme Court of India. The Kozhikode Bar Association passed a resolution against Justice Cyriac Joseph demanding an investigation into his role and suspending him from work for that period.<sup>4</sup>

Far from demonstrating a track record of commitment to human rights he has demonstrated a derogatory attitude towards women. Such a person cannot be considered to be qualified for appointment as a member of the NHRC.

We therefore urge the government to immediately rescind both the selections made to the NHRC as the same violate the letter and spirit of The Protection of Human Rights Act, the Paris Principles and make a mockery of the mission and purpose of the NHRC. These appointments do not stand the test of credibility, transparency and plurality. It is imperative that a woman member actively engaged with human rights, and associated with the most marginalized communities is appointed to the NHRC to rectify the continuing imbalance and non-representational character of this institution. The government, to inspire confidence amongst the people of India in the NHRC, needs to demonstrate the track record of individuals that qualifies them for membership of the

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<sup>4</sup>Deccan Herald, *Lawyers up against SC judge Cyriac Joseph*. Thiruvananthapuram, Aug 28, 2009. Available at: <http://www.deccanherald.com/content/22125/F>, Also see: Anil Nair, *Lawyers move resolution against judge*. Oman Tribune, online edition, available at: <http://www.omantribune.com/index.php?page=news&id=54423&heading=India>

NHRC. If the government is also serious about retaining the global credibility of the NHRC appointing individuals such as Justice Cyriac Joseph and Mr. S.C. Sinha as members will once again call the attention of the International Coordinating Committee of National Institutions to the serious flaws that mark the appointment process for the NHRC. The damage that can be caused by such ill-advised appointments can even lead to the downgrading of the NHRC from the 'A' status that it currently enjoys.

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