Appendix
Appendix

2007 Monitoring Report on the Performance of National Human Rights Institutions (NHRIs) in Asia

Asian NGOs Network on National Human Rights Institutions
Compiled and Printed by Asian Forum for Human Rights and Development
India: The NHRC of India
Prepared by People’s Watch – India

* Contact Person: Mr. Henri Tiphagne, Executive Director, People’s Watch – India.
The NHRC of India

I. Positive measures by the National Human Rights Commission (NHRC)

Despite its shortcomings, the NHRC has remained indispensable for the protection and promotion of human rights in India. The NHRC has been actively involved in many positive measures.

1. Sittings In different states

Pursuant to a decision of the NHRC of 21 November 2006, the Commission has been holding sittings in State Capitals to expedite disposal of pending complaints, furnish status of complaints, to receive complaints and sensitize the State functionaries on the Human Rights. The first sitting was held in Lucknow, Uttar Pradesh from 18-20 January 2007, where the NHRC drew the attention of the authorities to a range of issues including failure to file First Information Reports (FIRs), delay in compliance with its recommendations, delay in sending requisite details or reports in custodial deaths, failure to set up adequate number of Juvenile Justice Boards, Child Welfare Homes, Observation Homes and Special Homes, the lack of hygiene and education in the existing Juvenile Observation Homes, bonded and child labour, among others. The Commission disposed of 32 cases of Full Commission and 150 cases of Single Members in three days sittings. The Commission held a special meeting with Secretary Home, Secretary Health, Additional Director General Police (Human Rights) and DG (Prisons) where the Commission asked the officials to expedite the compliance of sending reports such as magisterial inquiry and viscera report of those who died in custody; directed the State government to complete all pending magisterial inquiries within three months and all future inquiries within three months.
and in exceptional cases within six months; discussed the plan of action adopted by the State government to prevent and end trafficking of women and children; and recommended revival of the system of board of visitors in jails.1

The NHRC held the second Camp Sittings in Patna, Bihar from 17-19 May 2007. In its three-day sitting in Patrja, 30 cases of Full Commission and 125 cases of Single Members were disposed of. Following the recommendations of the NHRC, the State government paid a compensation of Rs 7,60,000 to the concerned victims of human rights violations in six cases, including two cases of custodial death. The NHRC also recommended interim relief of Rs 14,25,000 in 10 other cases, including eight cases of custodial deaths, and called for additional information in 50 other cases. After the three-day camp sitting, on 20 May 2007 the Commission held a regional review meeting with the Chief Secretaries and DGPs from the States of Bihar, West Bengal, Orissa and Jharkhand and took up issues like Juvenile Justice, prisons, trafficking of women and children, manual scavenging, right to health and education, among others. The Commission urged these States to appoint special officers to sensitize police personnel and work out a systematic programme for rehabilitation of the victims of trafficking; to carry out resurvey of Manual Scavengers by an independent agency and adopt an effective rehabilitation and reintegration programme to bring Manual Scavengers into the main stream; to ensure that the rights to health and education reaches every one, among others. The NHRC expressed concerns

1 NHRC camp at Lucknow - draws authorities' attention to failure in filing FIRs and delay in compliance; directs State Government to complete all pending magisterial inquiries within three months, NHRC press release, 21 January 2007, http://www.nhrc.nic.in/disparchive.asp
on poor compliance of the recommendations of the Commission by West Bengal and Orissa. NHRC stressed the need for micro-level monitoring of Kalahandi, Bolangir and Koraput districts in Orissa.2

2. Reconstitution of NGO core group

Under Section 12(i) of the Protection of Human Rights Act 1993, the NHRC has the responsibility to “encourage the efforts of non-governmental organizations and institutions working in the field of Human Rights”. In 2001, the NHRC constituted the Core Group for NGOs to serve as a monitoring mechanism for its consultations with NGOs engaged in the field of human rights.3 The Core Group of NGOs was re-constituted in 2006.

3. NHRC-NGO consultation

In its Annual Report 2004-2005, the NHRC has stated that “The promotion and protection of Human Right cannot gather momentum without the fullest cooperation between the Commission and the NGOs and called the NGOs the “the eyes and ears of the Commission in the remotest corners of the country.” On 28-29 April 2007, the NHRC organized a two-day Conference on the “Role of NGOs in support of NHRC for better promotion and protection of Human Rights in Bangalore, Karnataka. The Conference was attended by several NGOs which work on the frontline to defend the Human Rights of the victims. At the end of the deliberations, the Conference came out a number of recommendations which included that the NGOs should be responsible in representing the victims and ensure the

---

credibility and accuracy of their reports on Human Rights violation; NHRC should make sure that the victims get justice in a short period; the NHRC will conduct continuous sensitization programmes for its officers as well as government machinery on the plights of the victims; Women's issues shall be an important part of all sensitization and training programmes of judicial officers, police and other government officials; the Commission will provide coordination in monitoring Human Right violations by the NGOs; People should be educated about their Human Rights, which include the skills to monitor aid complain to the authorities when their rights are violated; NHRC with media can work together to take the human rights programmes to the masses; Health which includes sanitation, clean drinking water, environment and food forms an integral part of Human Rights; a task force of NHRC-NGO can be constituted to address the problem of exclusion of Scheduled Castes and Scheduled Tribes; and the NGOs suggested that the Commission can have Special Reporters in every part of the country who can be the eyes and ears of the Commission. The NGOs further suggested that the NHRC should target specific districts in the country, work with specific NGOs and make these districts torture free. The NGOs urged the NHRC to take pro-active steps to ensure strict compliance of its guidelines in postmortems and starvation deaths cases.4

4. Media guidelines on child abuse

The NHRC issued detailed guidelines for the media in addressing the issue of child sexual abuse. The guidelines provide that the identity of the child victim should not be disclosed or revealed under any circumstances; the

---

4 Conference of NGOs in support of NHRC for promotion and protection of Human Rights
http://www.nhrc.nic.in/disparchive.asp
coverage of the issue should be “sensitive and meaningful projection” and the media should “ascertain the facts, context and circumstances” of the incident; not to “sensationalize or exaggerate” a particular incident of child abuse; should also report “subsequently on actions taken by concerned authorities and continue to report till action is taken to punish the abusers”; should enlighten the public as to how to prevent incidents of sexual abuse of children and what must be done if such an unfortunate incident has taken place and the media must be guarded by the principle of best interest of the child as required in the Convention on the Rights of the Child, among others.5

On 16 July 2007, the NHRC also issued “Draft guidelines for speedy disposal of child rape cases”. The guidelines provide that the complaint relating to child rape cases shall be recorded promptly as well as accurately. An officer not below the rank of Sub Inspector, preferably a lady police officer, should record the statement of the victim. The medical examination of the victim should be done within 24 hours, and the clothes of the victim as well as the clothes of the accused, if arrested, should be sent for forensic analysis within 10 days. The investigation should be completed within 90 days of registration of the case. The guidelines make it mandatory that the identity of the victim and the family should be kept secret. The NHRC recommendations call for in camera trial by fast track courts and preferably presided over by a lady judge. Noting that the trial of the case must be “child friendly”, the NHRC guidelines provide that “If possible, the recordings be done in video conferencing / in conducive manner so that victim is not

subjected to close proximity of accused”. The Magistrate should commit case to session within 15 days after the filing of the charge sheet.⁶

II. Issues of concerns

1. NHRC not fulfilling its mandate on international treaties

Section 12 (f) of The Protection of Human Rights Act, 1993 (as amended in 2006) provides that the NHRC has the responsibility to “study treaties and other international instruments on human rights and make recommendations for their effective implementation” by the government of India.

However, the NHRC has not fulfilled its mandate on the international treaties. It has neither provided any inputs nor participated in the deliberations while preparing India's periodic reports to various United Nations Treaty Bodies.

In its 15th to 19th periodic reports (CERD/C/IND/19) to the UN Committee on International Convention on the Elimination of All Forms of Racial Discrimination (CERD Committee), India denied the existence of racial discrimination in India despite the fact that Indian society is divided on caste lines and racial discrimination is glaring in all aspects. But the NHRC, which has been strong advocate against discrimination against the Scheduled Caste and Scheduled Tribes, has remained silent on India’s implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

⁶NHRC’s Draft Guidelines for Speedy Disposal of Child Rape Cases, available at http://nhrc.nic.in
2. NHRC not responding on the ACJ reference

The NHRC has not responded to the references of Advisory Council of Jurists (ACJ) of the Asia Pacific Forum of NHRIs on issues like death penalty and torture.

The ACJ in its final report on the reference of death penalty of December 2000 recommended that India should ratify the Second Optional Protocol to the ICCPR and CAT; and take “progressive steps towards de facto abolition of the death penalty and ultimately its de jure abolition” among others. But death penalty has not been abolished in India till date.

On the Reference on Torture, the ACJ recommended that the NHRC of India should urge the government of India to sign and/or ratify the First Optional Protocol, CAT, the Refugee convention, the Protocols to the Geneva Conventions and the Rome Statute, to amend Section 376(B) of the Indian Penal Code which “seems on its face to apply only in the case of public servants who are male and who have sexual intercourse with a woman in custody but not in the case of female public savants who have sexual intercourse with a male in custody”; to continue to provide human rights training for the police, the paramilitary, the armed forces and public servants; strengthening the role of human rights cells in State police headquarters; and to ensuring the guidelines set by the Supreme Court on arrest and detention.

---

are met. The NHRC has failed to respond to the recommendations of the Advisory Council of Jurists (ACJ) of the Pacific Forum of NHRI.

3. No strategic planning

Apart from the statutory limitations, the other main reasons for the ineffectiveness of the NHRC include the lack of a strategic planning. The NHRC must have a mechanism to measure its performance and a strategy with clear goals and objectives to be achieved within a given period of time.

The government of India and the State governments do not take the recommendations of the NHRC seriously. Yet, the NHRC has failed to develop and strategy as to how to make its recommendations work or at best how to ensure that the government of India and the State government, as the case may be, table the Annual Report or special report of NHRC along with action taken reports in the Parliament and state Legislature respectively as required under Section 20 of the HR Protection Act.

There is no follow-up mechanism in NHRC. Once directions are issued, the NHRC simply expresses its helplessness if the directions are not complied with by the State. The Protection of Human Rights (Amendment) Act, 2006 has empowered the NHRC to approach the Supreme Court or the High Court for enforcement of its directions. But because of lack of strategic planning, the NHRC decides not to proceed with the cases further.

4. Limiting its statutory powers

---

The NHRC has not fully utilized its powers and functions as bestowed upon it by the Protection of Human Rights Act 1993 (as amended in 2006). Rather, it has sought to exercise the lowest denominator while dealing with a complaint.

For example, the NHRC seldom invoked its power as stipulated in Section 17(i)(a) that provides that “if the information or report is not received (from the central government or State government) within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own”. In most Cases, what the Commission did was to limit its powers by closing the complaint on receipt of information or report from the concerned authorities as provided in Section 17 (b), which states that the Commission “may not proceed with the complaint and inform the complainant accordingly” if it is “satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority”.

During 2004-2005, the NHRC disposed of 85,661 cases out of which 38,448 cases (44.8%) have been dismissed in limini, 21,465 (25%) disposed off with directions and 25,748 (30%) cases have been concluded after receipt of reports from the concerned authorities. As per the NHRC's Practice Direction No. 10, when a case is disposed off with directions to be done by the authorities, such cases shall be categorized as “compliance cases” and shall be pursued by the Registrar of NHRC for ensuring compliance by the concerned authorities. In cases where the concerned authorities fail to comply within the stipulated time, “compliance cases” shall be again put up before the

---

Commission for further directions in the matter. But in reality, there is no follow-up by NHRC for the compliance of its orders/directions.

The Protection of Human Rights (Amendment) Act, 2006 has enlarged the powers of the Commission. Under Section 18 (b) of the Act, the Commission can approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary. But the Commission seems to be simply happy “not proceed with the complaint” as provided under Section 17 (b).

5. Accused/Police Officer filing report to NHRC on his case

It has been the standard practice of the NHRC to close cases after receiving reports from the concerned authorities without giving the complainants/victims any opportunity to submit comments on the reports of the authorities. The NHRC becomes satisfied with the reports from the concerned authorities even if the investigations in the cases have been conducted by the police officials who were accused in those cases.

In a complaint on 23 September 2002, Asian Indigenous and Tribal peoples Network (AITPN) sought intervention of the NHRC against police atrocities including torching of the houses at Hojaipur village under Diphu police station, Karbi Anglong, Assam on 25 August 2002, According to information provided by Dimaraji Mohila Samaj (Damaraji Women's Organisation), Hojaipur branch of Assam, a combined police team comprising of the Central Reserve Police Force, Black Panthers, Assam Police etc. under the command of Mr. K K Sarma, Superintendent of Police of Karbi Anglong attacked the Hojaipur village on 25 August 2002. The police team
allegedly dragged the villagers out of their houses and torched the houses to ashes along with their belongings without any provocation. Many people were rendered homeless and reduced to destitute. The police force surrounded the village and did not allow the villagers to recover anything from the burning houses. The NHRC registered a complaint (No. 100/3/2002-2003) and directed the State government of Assam to submit its reply. In its reply the Assam government simply attached the report field by Superintendent of Police, Mr KK Sarma against whom AITPN had filed its complaint in the first place. Mr Sharma reported that “the so called victims of the petitioners have burnt their own houses themselves for reason known to them”.10 Yet, the Commission accepted the report of the Assam government and happily closed down the case on 3.4.2005, proudly stating - “The Commission has gone through the record. The Commission feels that a detailed inquiry has already been conducted. There is no improbability in the inquiry report. Thus, the Commission feels that no further action is called for in this regard and the case is closed”.11

Such decisions of the NHRC allow the accused to be both the judge and the jury. Under such illegal practices, the victims do not have any hope of getting justice from the NHRC.

The NHRC must evolve some workable strategy to gain the confidence of the common people. For example, under Section 14(1), the NHRC can utilize the services of any officer or investigation agency of the

---

Central Government or any State Government for the purpose of conducting an investigation into a complaint of human rights violation. Under Section 14(5), the NHRC can “make such inquiry (including file examination of the person or persons who conducted or assisted in the investigation)” to satisfy itself about “the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted” to the NHRC. The NHRC must adopt the same strategy and inquire into the correctness of the facts stated in the report submitted by the concerned authorities including the person who had investigated the allegations before closing any case.

6. Vacancies and non-utilization of funds

Due to lack of transparency, it is difficult to know the present total staff strength of the NHRC. The NHRC does not provide any information about its staff strength in its website. However, according to Annual Report 2004-2005 of the NHRC, the total sanctioned strength of the Commission was 341 posts but as on 31 March 2005, the NHRC had only 326 officers and staff, leaving a vacancy of 15 staff members.

The workload of the NHRC has increased many folds. This is evident from the increase in the number of complaints received by the NHRC - from 496 complaints in 1993-94 to 74,444 complaints during 2005-06. As a result of shortage of manpower in the NHRC, a large number of cases have been pending with the NHRC. 49,548 cases had been pending before the Commission as on 31 March 2005. Another 74,444 complaints were received

---

12 Human Rights Day Address By Dr. Justice Sivaraj V. Patil, Acting Chairperson, National Human Rights Commission at Human Rights Day Celebration function at Stein Auditorium, India Habitat Centre, New Delhi, on 10 December 2006.

during 2005-06,\textsuperscript{14} making the total number of complaints to 1,23,992 as on 31 March 2006. But the NHRC could dispose only 80,923 complaints during 2005-06, which included complaints carried forward from the previous year,\textsuperscript{15} thereby leaving a total of 43,069 cases pending before the Commission.

Under Section 32 of the Protection of Human Rights Act 1993, the NHRC receives financial assistance by way of grants from the Central Government after due appropriation made in this behalf by the Parliament. During 2004-2005 the Commission received Rs. 1070 lakhs under Non-plan funding and Rs.188 lakhs under Plan funding from the Central government,- But the NHRC spent only Rs.1063.51 lakhs under Non-plan and Rs.188 lakhs under Plan funding.\textsuperscript{16} A sum of Rs 6.49 had been left un-utilized.

7. Lack of Transparency

The NHRC virtually works in secrecy while handing complaints. Most complaints are dismissed or closed down without informing the complainants. Many cases have not been registered by the NHRC without assigning any reason to the complainants.

The NHRC does not make its investigation reports public. Section 18 (f) of the Protection of Human Rights Act as amended in 2006 provides that “the Commission shall publish its inquiry report together with the comments

---

\textsuperscript{14} Human Rights Day Address By Dr. Justice Shivraj V Patil, Acting Chairperson, National Human Rights Commission at Human Rights Day Celebration function at Stein Auditorium, India Habitat Centre, New Delhi, on 10 December 2006.

\textsuperscript{15} Human Rights Day Address By Dr Justice Shivraj V Patil, Acting Chairperson, National Human Rights Commission at Human Rights Day Celebration function at Stein Auditorium, India Habitat Centre, New Delhi, on 10 December 2006.

\textsuperscript{16} NHRC’s Annual Report 2004-2005.
of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.”

RTI Act

The NHRC seems to be one of the greatest enemies of the RTI Act, 2000. It has continuously refused to provide information on the works of the Commission citing frivolous grounds.

8. Endangering the lives of HR defenders

The NHRC always forwards a copy of complaint to the concerned authorities - State governments, Ministry of Home Affairs, and Ministry of Defence to reply to the allegations. This exposes the complainants to the authorities who can take retaliatory measures. Worst, in recent times the officials of SHRC began to endanger the lives of the human rights defenders by engineering their arrest from the premises of the SHRC.

In a shameful case, on 17 July 2007 Mr. Subash Mahapatra, Director of Forum for Fact Finding, Documentation and Advocacy (FFDA) of Chhattisgarh, was arrested by the police pursuant to a complaint filed by Mr Dilip Kumar Bhat, Joint Secretary, Chhattisgarh State Human Rights Commission in Raipur. Mr Mahapatra went to the State Human Rights Commission to follow up the complaints of human rights violations filed by the FFDA. When Mr, Mahapatra wanted to see the files, he was refused. One of the junior officials allegedly sought illegal inducements from Mr Mahapatra. This led to exchange of words, and Mr Bhat and others caught hold Mr Mahapatra by collar and then called the Police. Mr Mahapatra was
detained under section 151 of the Criminal Procedure Code relating to arrest for prevention of cognizable offence. Although Mr Mahapatra has been released following intervention by the Asian Centre for Human Rights, there has been no response from the NHRC about the ACHR's demand for “immediate establishment of a two-member commission of inquiry consisting of one Honourable Member of the NHRC and one Honourable member of the NGO Core Committee of the NHRC” to inquire into the arrest and detention of Mr. Subash Mahapatra at the behest of the officials of SHRC of Chhattisgarh. Neither has Mr Diltp Kumar Bhat, Joint Secretary, Chhattisgarh State Human Rights Commission been suspended from the Commission. If the officials of SHRC are given such impunity how can the common people have faith in the NHRC or SHRCs?

It is essential that the NHRC ensures that those who approach NHRC or SHRC for seeking justice do not become victims of further harassment and human rights violations by the staff of NHRC or SHRC.

---

17 Complaint of Asian Centre for Human Rights to NHRC dated 17 July 2007.
18 Complaint of Asian Centre for Human Rights to NHRC dated 20 July 2007.