

2010

ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia

(With reference to India only)

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Asian NGOs
Network on National
Human Rights Institutions



2010 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia

The Asian NGOs Network on
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PREFACE

People's Watch, as the Secretariat of the All India Network of Individuals and Organisations working with National Human Rights Institutions (AiNNI), has the pleasure of reproducing for the benefit of the Indian audience, relevant portions of the ANNI report 2010 on the performance of National Human Rights Institutions in Asia. People's Watch has had the privilege of not only its Executive Director serving as a Member of the National Core Group on NGOs of the National Human Rights Commission (NHRC) of India since the year 2001 till now but has also had the opportunity of working very closely with the NHRC of India by preferring several complaints right from the year 1998 till today. This had resulted in People's Watch's first publication focused on the functioning of the NHRC, titled "Hope to Despair" (2006). It is thereafter that People's Watch further had the privilege of becoming a member of the Asian NGOs Network of National Human Rights Institutions (ANNI) and effectively contributing to the 2007, 2008, 2009 and now 2010 ANNI reports. This association with ANNI, coupled with People's Watch's own work with thousands of training programs, since its inception in 1995, across the length and breadth of this vast country, its innumerable publications in relation to creating awareness of the National Human Rights Commission of India, its powers, functions, achievements and challenges has provided it the special opportunity of appreciating Paris Principles of 1991 and their interpretation and expansion until June, 2009.

ANNI has also helped People's Watch to understand the urgency of creating a critical mass of individuals and organisations within the country to engage in a very close monitoring of the National Human Rights Institutions within the country, in particular the NHRC of India. It is this engagement of creating this critical mass in the year 2009 - 2010 that has led to the formation of the AiNNI.

2010 is a critical year in the history of the NHRC of India since the NHRC will in the first quarter of 2011 be submitting itself for re-accreditation before the Sub-Committee of Accreditation of the International Coordination Committee on National Human Rights Institutions in Geneva. This perhaps will be the first time therefore that all Civil Society Organisations and leaders of the Civil Liberties and Human Rights Movement in India will together be mobilised and engaged in preparing a shadow report on the performance of the NHRC of India to be submitted at the time of its re-accreditation by the ICC.

In order to lead to this process in truly participatory manner, the AiNNI is therefore pleased this year to reproduce the original overview as well as the chapter in relation to the NHRC of India in Hindi and English. We hope we would be able to do it in Tamil, Malayalam, Kannada, Telugu and a few more languages if possible. While doing so AiNNI would like

to make it clear that there cannot be any other Institution more relevant today for the actual protection and promotion of human rights in India than a body like NHRC which however has outlived the Protection of Human Rights Act of 1993 and therefore deserves a completely new, vibrant, powerful legislation to provide it the wherewithal to live up to the General Observations of the ICC to the Paris Principles of June 2009. Therefore, the criticisms contained in the book arise out of the passion of AiNNI to perform this role and to ensure that India is able to hold its head high among other Nations within and outside Asia. The challenges of an Institution moving from 400 complaints a year in 1993 to 400 complaints a day in 2010 is daunting to say the least and this calls for a complete overhaul of the Institution, its composition as well as its staffing pattern to ensure its independence, accessibility, effectiveness and accountability to the society. AiNNI humbly therefore places this publication, hoping that this will lead to a process of major change in the NHRC - A change is that is long overdue. Let not the reader mistake the criticisms contained in this book which are perhaps hard to stomach, to wrongly point out that they are targeted at individuals. On the contrary, they are pointed to make sure the Government and the Parliamentarians of this country come to the rescue of the NHRC and provide it a complete overhaul to live up to the human rights challenges of India in 2011.

I hope this will also lead to many more reports by collectives of Civil Society Organisations and AiNNI members in the different States about the performance and establishment of State Human Rights Institutions in India in the different States.

Henri Tiphagne

National Coordinator - AiNNI

and

Executive Director, People's Watch

Foreword

The Asian Forum for Human Rights and Development (FORUM-ASIA), as the convenor of the Asian NGOs Network on National Human Rights Institutions (ANNI), welcomes the publication of the 2010 ANNI Report on the Performance and Establishment of NHRIs in Asia. We thank all members of the ANNI and human rights defenders on the ground for filling this book with rich inputs and incisive comments from their experiences monitoring and assessing their NHRIs.

The country reports in this book cover the developments within the period from January 2009 to the first quarter of 2010. It is clear from these reports that the ANNI members have grown leaps and bounds in terms of their understanding of the nature of NHRIs and the international standards and principles relating to these bodies. The research and drafting of these country reports were guided by a set of indicators developed and adopted by the ANNI members in December 2008. These indicators contributed towards the crafting of insightful and relevant accounts about the situation of NHRIs or the process of establishment of NHRIs in their countries within the reporting period.

We would also like to thank all the people involved in producing this book: the editors, lay-out designer, and the team at the Human Rights Defenders Department of FORUM-ASIA, as well as the other staff at the FORUM-ASIA Secretariat. We would also like to express our deepest gratitude to the experts who always unselfishly share their knowledge on NHRIs to the ANNI: Professor Nohyun Kwak, Mr. Anselmo Lee, and Mr. Ciaran O Maolain. Also, we wish to thank HIVOS, Freedom House, the Ford Foundation, and the Swedish International Development Cooperation Agency (Sida), for the financial support to the work of the ANNI, without which this publication would not be made possible.

As in every year, through this publication, we hope to express our deep and sincere commitment to work with NHRIs in building a community devoted to the promotion and protection of human rights in Asia.



Yap Swee Seng
Executive Director
FORUM-ASIA

An Unwavering Struggle for Independent and Effective NHRIs

Emerlynne Gil, ANNI Coordinator

I. The Year in Context

In 2009, the role of national human rights institutions (NHRIs) in fostering a culture of human rights promotion and protection in Asia appeared to become clearer to human rights movements across the region. There are also indications that Asian NHRIs are starting to recognize this role, as clearly illustrated in the steps taken by the four NHRIs from Southeast Asia (Thailand, Philippines, Malaysia, and Indonesia) in the process of the establishment of the ASEAN Inter-governmental Commission on Human Rights (AICHR). These NHRIs took on a proactive role of trying to ensure that international human rights principles are reflected in the AICHR's terms of reference. Moreover, the International Coordinating Committee (ICQ, the international grouping of NHRIs, also vigorously called on ASEAN member states to ensure the independence of this newly-established regional human rights body so that it may be able to effectively discharge its mandate of promoting and protecting human rights in the region.

The year under review was also significant as this was when the Asian NGOs Network on National Human Rights Institutions (ANNI) focused on encouraging fellow human rights defenders on the ground and various human rights movements at the national level to work for the development and establishment of independent, effective, transparent, and accountable NHRIs.

In India, for instance, People's Watch (PW) held a series of consultations and discussion groups among local and grassroots human rights defenders, spreading the word about the importance of assessing and monitoring the work of the NHRI. In Thailand, the Working Group for Justice and Peace (WGJP) translated their report on the National Human Rights Commission (NHRC) of Thailand from the previous year into the local language so that more human rights defenders on the ground are able to access it and use it in their work. The WGJP also co-sponsored a launch of this translation where it the Chairperson of the NHRC of Thailand to speak to local groups about her plans for the Commission.

There were several key events in 2009 that made significant impact on NHRIs in Asia and non-governmental organizations (NGOs) that are engaged in the work of developing and establishing NHRIs. One of these events is the victory of the Democratic Party of Japan (DPJ) in August 2009, marking the end of more than 50 years of almost uninterrupted rule by the Liberal Democratic Party (LDP). Under the DPJ administration, it is expected that there would be rapid developments on the establishment of an NHRI in Japan, after years of slow progress under the LDP.

The continued downward spiral of South Korea in terms of respect for human rights also had a significant impact in the region. Since President Lee Myung-bak assumed power in 2008, there has been an increase on reports of allegations of President Lee Myung-bak's implementation of questionable policies that disregard any impact on the human rights situation in the country. On 30 June 2009, the then-Chairperson of the National Human Rights Commission of Korea (NHRCK), Professor Ahn Kyong-Whan, resigned from his post due to policies by the government compromising the independence and effectiveness of the NHRCK. The resignation of the then-Chairperson of the NHRCK and the measures taken by the government of Korea to compromise the independence of the NHRCK could potentially impact negatively on the region, considering that it has always been viewed as one of Asia's leading NHRIs. It was held up as a model in the region for its independence and effectiveness for promoting and protecting human rights at the national level. The NHRCK's decline left a vacuum of leadership among NHRIs in Asia.

In Sri Lanka, since the escalation of fighting between the military and the Liberation Tigers of Tamil Eelam (LITE) in early 2009, human rights defenders grappled with an NHRI that stood silent as the government clearly expressed how it views voices that are critical of its policies. Sri Lanka's Secretary of Defense, Mr. Gotabaya Rajapaksa, in an interview with BBC News in early April 2009, clearly stated that he believes it is an act of treason to express dissent or criticism during a time of war. On 08 January 2009, Mr. Lasantha Wickrematunga, the editor of the Sunday Leader newspaper, was murdered on his way to work. He was one of Sri Lanka's most prominent journalists and a strong critic of the government, frequently exposing issues such as government corruption and racism.

In May 2009, the Sri Lankan government announced that it had won the war against the LITE, after the army had taken control over the entire island and killed Tamil leader, Mr. Velupillai Prabhakaran. Still, in the aftermath of the war, defenders in the country continue to be persecuted. Those who persist on speaking in public against the repressive policies of the government are labeled as "LITE supporters" or "terrorists". Enforced disappearances and extrajudicial killings of human rights defenders in Sri Lanka continued until the end of 2009, while others were charged with harassment suits by the government. Many defenders had to flee the country because of this environment. In the midst of all this, the Human Rights Commission of Sri Lanka (HRCSL) stood silent and powerless. By 17 June 2009, the terms of all of the HRCSL's members ended and only the Chairperson continued sitting in the Commission until the end of the year.

The rising prominence of fundamentalist groups in the previous year also brought in a dangerous trend in the region. These groups push forward an agenda that justify violations

of human rights in the name of tradition, culture, or religion. In the Maldives, because of the disappointment largely felt by the people with the country's fledgling democracy, groups proposing as alternatives an ultra-conservative version of Islam and a throwback to the past non-democratic system are gaining the sympathy of the people. Meanwhile, in the Philippines, morals were used as basis by the Commission on Elections (COMELEC) to justify denying the petition of the LGBT group, Ang Ladlad, to participate as a party-list candidate in the 2010 national elections.

At the end of the year, the region was rocked by the shocking news of the brutal massacre in the town of Ampatuan in Maguindanao, Philippines. Fifty-seven (57) people were murdered allegedly by the private army of the town mayor, Andal Ampatuan, Jr. Among those murdered were members of the family of a rival political clan, lawyers, motorists, witnesses, and at least 34 journalists. According to the Committee to Protect Journalists (CPJ), the massacre was the "single deadliest event for journalists in history." The Commission on Human Rights of the Philippines (CHRP), known in the past as a "toothless tiger", flexed its muscles and conducted an investigation into the massacre. The proactive steps taken by the CHRP to address this issue underlined the fact that an NHRI, with strong political will and effective leadership, can turn itself around and prove that it can significantly contribute to respect for human rights in the country.

II. The Continuous Call of NGOs for Transparency and Pluralism

Issues surrounding the selection and appointment processes of members and the very composition of NHRIs remain a very pressing concern in the region. None of the processes for the selection and appointment of members of NHRIs in Asia can be touted as a best example in the region. The selection and appointment process of the NHRC of Thailand, which had long been held as a good example in the region, was thrown out recently by the abolition of the country's 1997 Constitution. Thus, as it stands in Asia right now, members of NHRIs in most countries are chosen either only by the President or Prime Minister, or by a select group of like-minded people, which would often result to appointments based on reasons other than human rights expertise.

Transparency in its selection and appointment process was one of the key recommendations given by the ICC Sub-Committee on Accreditation (SCA) to the Human Rights Commission of Malaysia (SUHAKAM) during its accreditation review in 2008. In 2009, things came to a head in the Malaysian parliament between members from the ruling and opposition parties when the government bulldozed amendments to the enabling law of the SUHAKAM.

These amendments still do not reflect the recommendations given by the ICC SCA and the government proceeded with a selection and appointment process heavily criticized by civil society organizations as being "flawed" and "not inclusive and transparent". Civil society groups were largely kept in the dark from the very start in the selection of the new members of the SUHAKAM. In the Philippines, transparency is also a major concern since only the President can select and appoint members of the CHRP.

Pluralism in the composition of the NHRI is also a principle largely ignored in the region. At the beginning of 2009, the ANNI called the attention of the Senate of the Philippines to a particular provision in the draft law which was then pending before it that required the Chairman and the members of the CHRP to be members of the Philippine Bar and to have been engaged in the practice of law for at least ten (10) years. In India, the NHRC of India went without a Chairperson for quite some time since it is provided under the law that only former Chief Justices of the Supreme Court of India may be appointed to the post of Chairperson of the NHRC. It was only in 3 June 2010 that the government of India appointed Mr. Justice KG Balakrishnan as Chairperson of the NHRC of India, shortly after he retired as Chief Justice of the Supreme Court. The abovementioned provision in the enabling law of the NHRC of India also means that for the next few years, there will be no women members sitting in the Commission.

Transparency in the selection and appointment process of members of the NHRI and pluralism in the NHRI's composition are two pivotal elements in ensuring the independence and effectiveness of NHRIs. There should be a widespread call for people or groups of people representing different segments of society and human rights fields to recommend candidates for membership to the NHRI. This would ensure the appointment of members coming from a variety of backgrounds and human rights expertise. In this scenario, inputs from different sectors of society will have more chances to be figured into the work and programmes of the NHRI. Thus, the NHRI would have more opportunities to identify and address all possible human rights violations, minimizing the danger of neglecting other "less mainstream" issues which may be affecting groups considered to be minorities in the country.

III. The Role of Governments in Maintaining Independent and Effective NHRIs

In addition to the delayed appointment of the Chairperson of the NHRC of India, as of the June 2010, at least three (3) NHRIs in the region, namely in Sri Lanka, Bangladesh, and Malaysia, operated without Commissioners for a significant period of time due to the failure of the respective governments to appoint members of NHRIs in a timely manner.

In Sri Lanka, four (4) commissioners of Human Rights Commission (HRQ) ended their terms in May 2009, while the commission's chairman also ended his term in December 2009. Since then up to the time of publication of this report, no commissioners and chairperson have been appointed.

In Bangladesh, the NHRC was without a Chairperson and members for several months. It was only in June 2010 that the government appointed members to the Commission under the NHRC Act of 2009. The same is the case in Malaysia where the SUHAKAM was left without commissioners for more than one month (from 26 April 2010 to 7 June 2010), after the previous batch of commissioners ended their respective terms on 23 April 2010.

The absence of commissioners in the NHRIs in Sri Lanka and Bangladesh posed a particularly critical problem for human rights defenders in both countries who operate in the context of tough restrictions on freedom of speech and expression, and thus continuously

face numerous forms of threats and challenges in their work there. In Malaysia, on the other hand, during that period of more than one month, because of the absence of commissioners, no investigation could be carried out on allegations of human rights violations.

The failure to appoint members of NHRIs by governments in due time, as exemplified in the cases of Sri Lanka, Bangladesh and Malaysia, clearly shows their lack of political will to maintain strong, independent, and effective NHRIs.

IV. Strengthening ties between NGOs and NHRIs

In the past reports of the ANNI, many NGOs lamented the lack of cooperation and collaboration between NGOs and NHRIs. This was indeed a major concern since both groups should theoretically be inevitable partners of each other, considering that both have dedicated mandates to promote and protect human rights.

Only a few NHRIs in Asia have enabling laws formalizing their relationships with NGOs in their countries. In Mongolia, for instance, the National Human Rights Commission (NHRC) of Mongolia is required under the law to work with an ex officio council consisting of nine (9) NGO representatives. However, this ex officio council has not been successful in significantly influencing the policies of the NHRC of Mongolia on key issues. The same goes in Nepal, where the Interim Constitution and the draft NHRC Act provides specifically that the NHRC of Nepal should work in a coordinated manner with civil society groups. However, the NHRC of Nepal initiates very limited activities with NGOs.

There are efforts though by some NHRIs to develop a mechanism for cooperation with NGOs. In the Maldives, the HRC of Maldives recently took steps to formalize constructive ties with NGOs by establishing an NGO Network, although the impact of this on the working relationship between the two has yet to be determined. The HRC of Sri Lanka organized a 'civil society forum' in March 2010, in an attempt to draw in NGOs from various districts. However, many human rights defenders declined the invitation to the forum as they continue to be critical of the Commission's lack of a formal mechanism to effectively cooperate with NGOs and the absence of tangible outcomes from similar forums initiated by the Commission in 2009.

In those countries where the relationship of the NHRI and NGOs is not formalized under the law, the interaction and collaboration would be largely determined by the kind of personal relationships built and maintained by individuals from the two groups, as well as the type of issues at hand. The NHRC of Bangladesh, for instance, included members of civil society in its independent inquiry mission on allegations of extrajudicial killings in the country. The current CHR of the Philippines is reported to have a better working relationship than the past Commission. This is largely attributed to a leadership that reaches out to and has strong support from the wide range of human rights groups in the country, as well as from the academe and professional organizations.

V. A Resolute Pursuit

Asia may arguably be a region in the world where many human rights groups vibrantly and actively pursue the discourse on the development and establishment of NHRIs. It may also be arguably the only region in the world where human rights groups, such as members of the ANNI, resolutely work on monitoring and assessing the performance of NHRIs.

It is interesting to note that the key issue that emerged this year, as in the previous year, directly relates to the principle of independence. The lack of transparency and pluralism, whether it be in the selection and appointment of the NHRI's members or in the institution's working processes, is often a clear sign that the NHRI does not stand independent from the government. In turn, an NHRI perceived by civil society as lacking independence would not be able to build strong and constructive relationships with human rights defenders on the ground. As a consequence, the NHRI, more often than not, would have huge difficulties working to effectively address human rights violations without the cooperation and support of these defenders in the country.

The importance of developing and establishing effective and independent NHRIs cannot be emphasized enough, especially in this region. While the debate rages on whether or not the newly-established AICHR can be an effective human rights body, Asia remains as the only region in the world without a working regional human rights mechanism. It is for this reason that human rights defenders and organizations, particularly the members of the ANNI, will continue to soldier on with their work in the hope that one day, these NHRIs would become pillars in a regional community where there is respect for human rights.

The NHRC in India - Another Department of the Govt. of India?

People's Watch-India (PW)¹

Established in October 1993, the National Human Rights Commission (NHRC) of India has been operational for almost 17 years. This report provides an opportunity to look back at its history and comes at an apt time for two reasons: (i) the Commission's sixth Chairperson has just begun his term; (ii) later this year, India's NHRC is due to submit its application for re-accreditation of its 'A' Grade status to the International Co-ordination Committee for NHRIs (ICC).² In the absence of any proposed recommendations for amendments of the NHRC's founding statute, the Protection of Human Rights Act, 1993, by the NHRC in anticipation of this re-accreditation process, this report offers a critical analysis of the Commission's work. India desperately needs an effective, independent, victim-sensitive, transparent, and accountable national human rights institution (NHRI) capable of providing effective leadership to the other 158 statutory human rights institutions in the country.

I. Highlights of 2009: Issues addressed by the NHRI

The NHRC held its Foundation Day celebrations on 12 October 2009, marking exactly 16 years since its establishment in 1993 and addressing for the first time the issue of human rights defenders (HRDs) through a well-organized one-day seminar attended by the Acting Chairperson, members, Commission staff, and civil society representatives, including HRDs. Follow-up included the appointment of Mr. A. K. Parashar, former Deputy Register (Law) as a focal point for HRDs. While it remains to be seen precisely what roles this focal point will assume, as one of the NHRC's longest-serving staff members, it is expected that Mr. Parashar will rise to the occasion. Further, the Secretary General of the Commission was for the first time the sole NHRC representative at the 14th Asia Pacific Forum (APF) meeting in

¹ Prepared by Mr. Henri Tiphagne, Executive Director, with assistance from Ms. Sabitha (National Program Coordinator, NHRIs) and Ms. Bharthi Pillai (NYU Fellow).

² India's re-accreditation review is set for the first half of 2011.

Amman, Jordan in 2009. The absence of the Acting Chair or any NHRC members – even its ‘Deemed Members’³ – at this important meeting indicates the concerns that this report seeks to address.

II. Independence

A. Law or Act

Under both international and domestic pressure, the Protection of Human Rights Act (PHRA)⁴ was passed into law on 12 October 1993 and provided for the establishment of the NHRC at the national level and State Human Rights Commissions (SHRCs) at the state level. The history leading up to the creation of the NHRC reveals that the Commission was viewed primarily as a means of deflecting increasing international criticism.⁵ However, even if it was created with this purpose, it is deeply troubling that 17 years after its formation and despite numerous problems that have arisen from the PHRA, the NHRC has not made any attempt whatsoever to rectify the problems that have been created by its founding law. The General Observations by the ICC on the Paris Principles are intended to guide institutions developing their own processes and mechanisms in compliance with the Paris Principles, persuade domestic governments to address or remedy issues relating to an institution’s compliance with the standards articulated in the General Observations; and guide the ICC’s Sub-Committee determinations on new accreditation applications, re-accreditation applications, or special reviews. Other NHRIs in the Asia Pacific Region, such as the Commission on Human Rights of the Philippines, have prepared for their applications for ICC re-accreditation by proposing a completely new statute to ensure their effectiveness several years after their establishment. By contrast, although the PHRA was last considered before Parliament and amended in 2005, the NHRC has continued to fail to undertake any internal review of its legislation or request any external review. The NHRC’s silence in this regard, even after the issue was raised by the NGO Core Group meeting in New Delhi in

3 Deemed members of the National Human Rights Commission have been specified in the Protection of Human Rights Act, Chapter II, Section 3(3) to include the Chairpersons of the National Commission for Minorities (NCM), the National Commission for the Scheduled Castes and Scheduled Tribes (NCSC/ST) and the National Commission for Women (NCW). Note the National Commission for Scheduled Castes and Scheduled

Tribes have been divided into two separate commissions, the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST) since the PHRA was passed in 1993; the Chairpersons of both Commissions are included the deemed members

4 Protection of Human Rights Act, 1993.

5 The general view point is indicated in two statements published by the South Asia Human Rights Documentation Center in its illuminating book, “Judgment Reserved: The Case of the National Human Rights Commission of India.” Page 1 of the book reports that after winning the election in 1992, then Indian Home Minister Mr. S. B. Chavan told the Rajya Sabha that the purpose of the Human Rights Commission was to “counter the false and politically motivated propaganda by foreign and Indian civil rights agencies,” and further stated that whether it would be totally government-sponsored or placed in the voluntary sector had yet to be decided. On 24 April 1992, Mr. V. N. Gadgil, the official spokesperson of Congress (I) Party stated that his party would call for a national consensus on the role and powers of the proposed Indian Human Rights Commission, but reported that the Commission’s findings, according to Gadgil would act as “correctives to the biased and one-sided reports of the NGOs” and would also be “an effective answer to politically-motivated international criticism.”

2009 and where opportunities for reaching an effective statute are so closely within the ambit of Parliament, indicates the NHRC's extreme negligence in failing to identify and inform Parliament about the PHRA's non-compliance with the 'Paris Principles.'

Relationship with the Executive, Legislature, Judiciary, and other specialized institutions in the country

The NHRC has not managed to utilize other institutions in the Indian democratic system, such as Parliament, to advance the protection and promotion of human rights in India. Significantly, this strategy was used when the NHRC opposed the continuation of the Terrorist and Disruptive Activities (Prevention) Act (TADA) in 1995, when the then Chairperson addressed all parliamentarians and political parties on the issue. In contrast, today, the NHRC confuses independence from government with the maintenance of proper, effective relationships with important actors, including government and non-government institutions throughout India, and internationally. Specifically, while there is a pressing need for changes to the PHRA, the NHRC is unwilling to appeal to Parliament on the issue because it seems to believe that doing so would amount to interfering with the Commission's independence. The Commission fails to appreciate that advocacy, especially advocacy that supports and encourages government institutions to advance human rights, is an essential function expected from the NHRC under Section 12 of the PHRA and under the Paris Principles.

In examining the financial arrangements of the NHRC, it becomes clear why independence is so crucial to an effective NHRI. Currently, the NHRC is over-extended and under-resourced, which directly impacts its ability to fulfill its mandate. So, as the scope of work and number of complaints registered with the NHRC rises dramatically every year, the NHRC requires an increase in its staffing pattern, annual budget, and other resources if it is to even attempt to meet the demands of its mandate. Yet, rather than granting an increase in funds, the government has sharply cut the annual allocation of funds for the 2010-2011 financial year by 20 percent, granting only 18 Crores INR (USD \$3,829,771) of the requested 24.10 Crores INR (USD \$5,127,655) to the NHRC.⁶ The Commission has also moved to downgrade the security given to certain NHRC members.

Despite the establishment of 18 SHRCs under the PHRA, the NHRC continues to have no real working relationship with these state institutions in monitoring human rights throughout the states. Interaction appears limited to solemn invitations to national conferences. Further, the NHRC is unable to formally request any of the SHRCs to monitor adherence to the various NHRC human rights guidelines – such as the NHRC guidelines on extrajudicial killings – within the states over which the SHRCs have jurisdiction. As a result there are several states where SHRCs have failed their obligation to continuously submit biannual reports to the NHRC on deaths occurring in police encounters.

⁶ NHRC budget slashed by 20% for 2010-2011, available at <http://igovernment.in/site/nhrc-budget-slashed-20-2010-11-37817>.

In addition there are seven other thematic NHRIs and around 150 state human rights institutions (HRIs). Rather than sharing its breadth of knowledge and expertise with these statutory institutions, the NHRC continues to ignore its responsibility to lead these other human rights institutions and seems to view itself as an exclusive, elite institution. Although the appointment of the Former Chief Justice of the Supreme Court of India as the NHRC Chairperson should have resulted in an improvement in leadership, it has not followed. For example, the NHRC has benefited from participating in numerous training programs through the ICC, APF, and the Office of the High Commissioner for Human Rights (OHCHR), but has never in its 17 years extended an invitation to a member of an SHRC or other thematic NHRI, including 'deemed members' of the NHRC, to participate in these programs. These trainings are conducted in order to ensure that regional, national, and local protectors of human rights understand and internalize the wide range of principles in which human rights institutions are founded. Although the failure to extend participation to members from a variety of human rights institutions has been pointed out previously, the NHRC has failed to change this practice.

Following India's Universal Periodic Review (UPR) on 10 April 2008, the Indian government only accepted five of the eighteen recommendations. The remaining thirteen were commented on with no clear position [presented](#).⁷ Over two years later, the NHRC has issued no reminders or otherwise pressed the government to act on the recommendations from the UPR process. The NHRC's failure to take a strong stand and push the government to comply with international standards once again demonstrates its lack of independence or ability to be a promoter of human rights.

Further, there have been several outstanding requests from Special Rapporteurs (SR) – notably the SRs on Torture, Extrajudicial Killings, and Human Rights Defenders – to visit India during the past six years. Although the NHRC participates in almost every session of the UN Human Rights Council, the NHRC has never followed up with the government on these requests, emphasizing the need for such visits. This failure, too, is attributed to their 'non-independent' character.

The NHRC has failed to be a strong voice encouraging the implementation of international human rights standards in the country. Even where the NHRC has supported international treaties, it has failed to push forward legislation that is realistic and enforceable under Indian law. From 1995 to 1997, the NHRC was instrumental in advocating India's signing of the United Nations Convention Against Torture (UNCAT). Thereafter, the NHRC consistently recommended that India ratify this Convention. In 2008, more than ten years after India had signed the UNCAT, it began drafting a Bill on the Prevention of Torture to ratify the UNCAT. During this time, the government asked the NHRC for its recommendations, which the NHRC duly provided. In 2010, the government proposed The Prevention of Torture Bill – a woefully inadequate, one and a half page, six-section law to address the overwhelming occurrence of torture in [India](#).⁸ This proposed law goes completely against the spirit and

7 Recommendations by Working Group to India, Universal Periodic Review, [upr-info.org](http://www.upr-info.org), available at <http://www.upr-info.org/-India-.html>

8 The Prevention of Torture Bill, 2010, Bill No. 58 of 2010.

intent of the UNCAT, with its narrow definition of [torture](#),⁹ and fails to meet national and international standards. Despite the Working Group on Human Rights (WGHR) in India and the UN recently issuing a brief report on the Bill's shortcomings and requesting the intervention of the UN SR on Torture to ensure that the Bill is amended before being passed by the Rajya Sabha, a body elected by states' assemblies and known as a 'Council of States,' the NHRC has remained silent. The NHRC should have, on its own initiative, addressed members of parliament on the serious inadequacies of the Bill before it reached and was passed on 6 May 2010 by the Lok Sabha, the lower house of Parliament, referred to in the Constitution as the 'House of the People.' An intervention could have compelled Parliament to refer the bill to a select committee for amendment. Again, the NHRC's silence reflects its continued unwillingness and inability to speak up independently and challenge the government on important issues affecting human rights at crucial times and in meaningful ways.

B. Membership and Selection

In 2009, the NHRC still lacked an official chairperson. Acting Chairperson Shri Govind Prasad [Mathur](#)¹⁰ temporarily presided over the [Commission](#)¹¹ until the retirement of the Chief Justice of the Supreme Court of India (CJI), Mr. Justice K.G. Balakrishnan. As expected, less than a month after demitting his position as Chief Justice of the Supreme Court of India, the sixth and current Chairperson of the NHRC was appointed on [3 June 2010](#).¹² Despite his candidature being widely criticized for a number of his controversial stands – such as blocking the prosecution of former Justice Nirmal Yadav for [corruption](#),¹³ attempting to exempt the Office of the Chief Justice of India from the purview of the [Right to Information Act](#),¹⁴ and delaying action against Justice P.D. Dinakaran after Parliament initiated an impeachment motion in connection with a land dispute and corruption case – the government willfully passed on other eligible candidates and waited more than a year to appoint Justice K.G.

9 While UNCAT's definition of torture includes "other cruel, inhuman, or degrading treatment or punishment," the Prevention of Torture Bill's definition limits torture to 'grievous hurt to any person,' or "danger to life, limb or health (whether mental or physical) of any person."

10 Mathur was appointed temporarily by the President to serve as the Chairperson of the National Human Rights Commission from June 1st, 2009 to the date a new Chairperson could be appointed. Daily News, The India Post, June 3, 2009, available at <http://www.theindiapost.com/2009/06/03/justice-gp-mathur-to-act-as-chairperson-of-nhrc/>

11 Protection of Human Rights Act, 1993, Chapter II, Section 4 states that the Chairperson and other Members shall be appointed by the President by warrant under his hand and seal after obtaining the recommendations of a Committee consisting of the following members: 1) The Prime Minister serving as Chairperson; 2) Speaker of the House of the People (Member); 3) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member; 4) Leader of the Opposition in the House of the People — Member; 5) Leader of the Opposition in the Council of States — Member; 6) Deputy Chairman of the Council of States — Member.

12 Balakrishnan stepped down as Chief Justice of the Supreme Court of India on May 11, 2010. Deccan Herald, June 3, 2010, available at <http://www.deccanherald.com/content/73161/justice-balakrishnan-nhrc-chief.html>

13 Ajay Sura, *Cash-for-judge: HC Bar flays CJI*, TIMES OF INDIA, Feb. 10, 2010, available at <http://timesofindia.indiatimes.com/india/Cash-for-judge-HC-Bar-flays-CJI/articleshow/5554244.cms>

14 *CJI's Office Comes Within RTI Act: Delhi HC*, OUTLOOK INDIA.COM, Jan. 12, 2010 (quoting, "The 88-page verdict is being seen as a personal setback to CJI KG Balakrishnan, who has consistently been maintaining that his office does not come under the transparency law and hence cannot part with information like disclosure of judges' assets under it."), available at <http://news.outlookindia.com/item.aspx?672590>

Balakrishnan to lead the NHRC. The Commission, now more than ever, is in need of strong, ethical, and courageous leadership. It remains to be seen whether this former Chief Justice will act differently from his tenure leading the Supreme Court.

There remains a great lack of diversity in the NHRC. There continue to be no full women members or persons with disability in the NHRC. Despite positions being set aside for two members with expert knowledge of practical experience of human rights, the Appointment Committee has continued to fill these posts only with Indian Police Service (IPS) officers or Indian Foreign Service (IFS) officials. The NHRC is, therefore, composed of officials who have spent their careers as representatives of India, promoting the image of India and strengthening its relations with other countries, rather than of civil society leaders and experts who have spent their careers in the field investigating human rights violations, assisting and empowering marginalized groups, or educating communities. Although India is proud of such eminent figures, Professor Upendra Baxi, Mr. Harsh Mander, and Ms. Aruna Roy, they are never considered for appointment to the NHRC.

In seventeen years, there has never been a civil society representative among the twenty former members of the Commission. Of the two members appointed most recently, Shri P.C. Sharma and Shri Satyabrata Pal, who should have been selected for their human rights expertise, neither has demonstrated any great commitment to promoting human rights at the grassroots level. Sharma has been widely accused of receiving the NHRC membership position as a reward for withdrawing charges against a political leader while acting as Director of the Central Bureau of Investigation (CBI)¹⁵ The then Congress spokesman Mr Kapil Sibal said, "This is a reward for the decision of the CBI to retract conspiracy charges against Advani," and deemed the appointment "very unfortunate." Mr. Kapil stated that the former CBI chief should not have accepted the post as it undermined the independence of the premier investigating agency. "It just shows how these offices are used by the government to its political advantage," he added.¹⁶ Despite Justice J.S. Anand writing to Prime Minister Vajpayee, requesting him to "reconsider the appointment to prevent criticism at national and international levels," Sharma was appointed to the NHRC in 2004.¹⁷ Though this occurred under the Bharatiya Janata Party (BJP) government, the Congress government also reappointed Sharma.

15 Times of India, Former CBI Director Sharma Joins NHRC, 4.3.2004, available at <http://timesofindia.indiatimes.com/india/Former-CBI-director-Sharma-joins-NHRC/articleshow/535560.cms>

16 Id.

17 Sharma's appointment did generate much criticism, notably, within the NHRC itself. Ravi Nair, Executive Director of the South Asia Human Rights Documentation Centre, resigned from the NHRC's NGO Core Committee due to the appointment of Sharma. Nair stated that the commission was not "forthright in its condemnation of an appointment that appeared to have been practically forced on it." Nair has also objected to the fact that a "significant proportion of NHRC staff is drawn from the intelligence services— an injudicious step for a body charged with protecting and promoting human rights." In a letter to NHRC chief Justice A. S. Anand, Nair said Sharma's appointment is "another indication of NHRC's continuing emasculation by the state. I believe, it reflects the extent to which the establishment is willing to undermine the cause of human rights in this country," Nair wrote. He argued that Sharma's appointment "runs counter to the provisions of the Human Rights Act, 1993, and the Paris Principles which lay down the maximum standards for national human rights institutions." Clarifying that he had no "personal animus" against Sharma, Nair said: "He (Sharma) has not demonstrated substantive knowledge of human rights issues nor has he shown any commitment towards the same." (Times of India 15.1.05), available at NHRC/ Rights Panel - 2005

Shri Satyabrata Pal has spent over 30 years abroad as a diplomat. While his academic and theoretical knowledge, experience with international politics, and adeptness at working in a bureaucracy may be strong, his is not a strong advocate for marginalized victims and has no experience of grassroots human rights issues facing Indians today.

These appointments reflect a pattern of political appointments in the short history of the NHRC: a pattern replicated at both the national and state levels. The current substandard composition of the NHRC's membership leaves the Commission with absolutely no civil society representation, making it extremely ill-equipped to offer protection to victims and address human rights violations in India.

The process of appointment to the NHRC under the PHRA does not ensure the pluralist representation of social forces involved in the promotion and protection of human rights. The selection and appointment process is non-transparent without any broad consultation; the vacancies are not advertised broadly to maximise the number of potential candidates from a wide range of backgrounds. It remains to be seen how the NHRC will respond to this lack of diversity and pluralism in its application for re-accreditation to the ICC.

Prior to the establishment of the NHRC, the National Commission of Women (NCW), National Commission of Minorities (NCM), and the National Commission for Scheduled Castes and Scheduled Tribes (NCSC&ST) were the only NHRIs protecting human rights in India. After the establishment of the NHRC, these institutions were joined by the creation of the National Commission for the Protection of Child's Rights (NCPCR), the National Commission for Persons with Disabilities (NCPWD), and the Central Information Commission (CIC). The impetus for the creation of an overall NHRC in 1993 was to build a team of NHRIs working together to more effectively promote and protect human rights throughout India. In order to ensure this, the Chairpersons of the existing NHRIs were made 'deemed members' of the NHRC. Unfortunately, what was envisioned in 1993 has still not taken place and most of the responsibility for protecting human rights has fallen on the NHRC. This only points to a continued failure of the NHRC to collaborate with its 'deemed members,' as envisioned by the statute, in addressing human rights problems in India.

C. Resourcing of the NHRI

The NHRC lacks the resources necessary to run an effective, powerful NHRI that can protect and promote the human rights of over 1 billion people. The budget for 2010-2011 has been reduced from 24.10 Crores INR (USD \$5,127,655) to 18 Crores INR (USD \$3,829,771). In other words, the government of India has allocated a mere 0.158 INR (USD \$0.00335991) per person or less than one third of a United States penny per person, per year, towards the protection and promotion of human [rights](#).¹⁸

18 This average was calculated using a conservative estimate of the population of India, 1,139, 964,932 people, by the World Bank in 2008.

Of course, even with limited resources, the NHRC has the opportunity to speak out and develop a human rights culture in the country. However, the NHRC has remained a shell of an organization over the past 17 years. Rather than selecting and retaining talented, dedicated members and staff, the NHRC operates like a revolving door, hiring staff almost exclusively 'deputed' from government positions to temporarily fill a similar position at the NHRC. Today the NHRC has almost no senior officers with the expertise and practical knowledge that comes from experience of the Commission's 17 years. The NHRC also has little physical documentation to speak for its history. While it is slowly trying to make up for the loss of documentation by now scanning new documents, more than a decade's worth of information on the NHRC's history in the field of complaints-handling has already been destroyed.

Notably, neither Commission's members nor its staff receive any additional training to serve as protectors of human rights at the time of their induction. Unsurprisingly, then, the staff and members continue to perform their jobs in an identical manner to their previous government work. The same bureaucratic, inefficient, and unjust processing of cases that has blighted the Indian judicial system is replicated in the NHRC. As for the investigation division, NHRC staff members have not developed a manual of procedures to ensure a victim-centered approach to investigating sensitive human rights violations, contrary to their expertise in investigating crimes. In spite of these widely-recognized problems, the NHRC has not adjusted its complaints-handling, training, or investigation methods.

The total of 349 staff cannot meet all the responsibilities expected from the NHRC. The NHRC has also stopped appointing expert 'advisers', which was the only way the NHRC was resourced to handle the complex human rights issues the country faces. After the report on the implementation of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, an act intended to help the social inclusion of members of scheduled castes into Indian society, revealed dismal results, the NHRC created a 'Dalit Cell' specially within the NHRC to address protection of this highly vulnerable group. However, this 'Dalit Cell' has not been functional for more than two years. Hence, there is a need for the NHRC to appoint 'resource persons' or 'experts' in different fields in order to provide access and proper advice on important human rights concerns.

III. Effectiveness:

The NHRC has become increasingly ineffective in protecting and promoting human rights in India. The NHRC has great potential to provide assistance to the many victims of human rights violations who are unable to seek justice in the over-crowded, time-consuming judicial system. Despite the NHRC's ineptness at handling complaints effectively, the desperate public has been approaching it for assistance at increasing rates. The five-member Commission responsible for these cases is overwhelmed by a constantly growing caseload, now over a hundred thousand, without any accompanying increase in resources. Analysis of the Commission's disposal rates seems to indicate that cases are dealt with at random. Of 3,111 cases considered between 1 August 2009 and 15 August 2009, an overwhelming 75 per cent of cases were dismissed before the opportunity to present evidence before a court. 11 per cent of cases were transferred to SHRCs, where the NHRC is highly unlikely to

conduct any follow up, and another 11 per cent were disposed of with directions. While 3.15 per cent remained under consideration, only a single case was closed.

The most recent figures for July 2009 to May 2010 from NHRC newsletters suggest that a total of 81,981 complaints were received and 86,916 disposed by the Commission. This figure appears incredible, since a team of five commissioners – and during the period under scrutiny there were sometimes only three of them – could surely not dispose of over 86,000 complaints relating to human rights violations.

Further scrutiny of cases of torture and extrajudicial killings between January and May 2010 reveal that in almost all these cases,¹⁹ the recommendations are for payment of monetary relief or compensation to the victim of the violence and the seeking of a compliance report with proof of payment. In none of these cases have there been specific directions for the initiation of criminal prosecutions against the perpetrators. Significantly, virtually no prosecutions are launched through the NHRC's orders in cases of gross human rights such as torture and extra judicial killings.

Alarming, most cases disposed of during this period were registered several years ago.²⁰

Month under study: total cases referred to:	Cases disposed off pertaining to						
	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Feb' 2010: 24	1	1	4	5	6	3	3
March 2010:12	1	1	3	1	1	2	2
April 2010:53	2	4	5	8	5	7	11
May 2010:45	2	6	9	5	3	4	7

The table above reveals that of the 106 complaints handled during a 4-month period in 2010, 9.4 percent of the cases were from the year 2002-2003; 19.8 percent from 2003-2004; 17.9 percent from 2004-2005; 16.01 percent from 2005-2006; 15.1 percent from 2006-2007; and 21.7 percent from 2007-2008.

Therefore, almost 50 percent of the cases handled were registered five years earlier. This is only a sample of the delays that complainants face in seeking assistance from the NHRC. People who continuously approach the NHRC have already lost their faith in this institution, and if urgent measures are not taken to improve the institution, it will lose whatever respect and repute it still enjoys among victims of human rights and human rights organizations.

19 In Case Numbers 1190/35/2004-2005, 406/1/2004-2005-CD, 1974/7/2002-2003, 2316/30/2006-2007, 14303/24/2006-2007, 25106/24/2006-2007, 126/6/2005-2006-CD, 40190/24/2002-2003, 6036/24/60/2007-2008

20 Sourced from the website of the National Human Rights Commission of India

The Commission has consistently failed to change its methods, utilize available assistance from civil society, or demand an increase in their staffing patterns. Complaints-handling will become effective only if the NHRC is able to consider appointing honorary SRs in all the existing 620 districts of the country, so that these SRs may be the eyes and ears of the NHRC and travel to the site of an alleged violation within hours of a complaint reaching the NHRC. Credible persons from different fields could be invited to undertake such tasks on an honorary basis. But there must be the will for this to become a reality.

A further case in point is that of the response of the NHRC to a complaint relating to human rights defenders. Mr. Kirity Roy, Secretary of the human rights organization MASUM, organized a state-level 'Peoples Tribunal on Torture' (PTT) in May 2008 where 82 cases of extrajudicial killings, custodial death, rape, mysterious disappearances, and police torture were heard. These were conducted under the auspices of the National Project on Preventing Torture in India (NPPTI) of which Mr. Roy was also State Director. The PTT was inaugurated by Dr. Syeda Hameed from the Planning Commission of India, and the jury comprised several prominent figures at the national and state level, including a former Chief Justice of the Sikkim High Court and former Chairperson of the National Commission for Women.

Immediately after the PTT, the Kolkotta police registered a criminal case against Mr. Roy under several sections of the Indian Penal Code, including Section 120 (B) for criminal conspiracy, Section 170 for impersonating a public servant, and Section 229 for impersonating a juror or [accessor](#).²¹ This was followed by a police investigation both in Kolkotta and Madurai, the national headquarters of the NPPTI. The NPPTI immediately submitted a complaint in this regard to the NHRC on 12 June 2008²² and sent 77 notices to the Director General of Police in Kolkotta on 17 June 2008. However, the complaint was later closed by the NHRC on the ground that the police investigation was still underway. In the meantime, MASUM approached the High Court of Kolkotta with a [Writ Petition](#)²³ to quash the First Information Report (FIR) registered against Kirity Roy. The FIR was dismissed, and MASUM filed an appeal in MAT (Mandamus Appeal Tender) 1219/2009 in a Division Bench of the High Court of Kolkatta. While the appeal was pending, the Kolkotta police suddenly arrested Mr. Roy on 7 April 2010 and submitted a charge sheet against six other NPPTI staff. The final order of the High Court on 18 May 2010 directed a Committee of two senior police officials and one academic to review the matter.

The NHRC missed an opportunity to intervene in this case long before it reached the High Court, demonstrating the ineffectiveness of its complaints-handling system in cases concerning HRDs.

Another indicator that the complaints-handling system of the NHRC is failing its mandate is the Commission's handling of complaints relating to police 'encounters,' known as deaths

21 Indian Penal Code sections quoted in case registered at the Taltola Police station in Crime No 134 dated 09.06.2008.

22 Case No 169/25/2008-2009/ UC

23 WP NO Writ Petition No. 25022(W) of 2008

arising out of predominately fake or staged encounters of alleged criminals with the police or army personnel. On 21 May 2010, the NHRC published the results of its investigations into so-called 'encounter deaths.' Of the 2,956 cases registered between 12 October 1993 and 31 April 2010, 1,590 had been registered on the basis of information received from the public authorities, while the remaining 1,366 were complaints registered by members of the public. These numbers suggest that there were no cases in which both the public authorities and the public attempted to register a complaint. After 17 years, the NHRC had only completed investigations into 62 percent of these killings, leaving 1,110 unexamined in 2010. Of the investigated 1,846 cases, only 27 were found to be murders during a staged encounter by the police. The remaining 1,819 killings were determined by the NHRC to be the result of genuine police encounters. It is unclear whether the cases investigated were the killings registered by the public authorities or the public. In the 27 cases of staged encounters, the NHRC recommended that the state authorities take punitive action against the guilty officials and pay compensation to the next of the kin of the deceased. As 1,110 cases remain unexamined, however, it is clear that the NHRC is unable to handle its caseload. Encounter death cases are only a small fraction of the cases the NHRC must dispose of every year. While the number of NHRC members is still just five, the number of complaints received by the NHRC has risen from a few hundred to over one hundred thousand complaints every year. A dramatic increase in the body and membership of the NHRC is required if it is to be adequately equipped to effectively perform the task of investigating these complaints thoroughly and reaching a considered conclusion. If the NHRC is to adequately protect and promote human rights in India, the ICC General Observations must be urgently heeded.

IV. Conclusion

Amidst the large number of HRIs in India, the NHRC seems unable to take the lead in the national discourse on human rights. Around 450 million people in India live below the poverty line, with the national poverty rate amounting to 37.2 per cent. 46 per cent of India's children are undernourished – the highest rate in the world, double that of Sub-Saharan Africa. India's maternal mortality rate is among the highest in the world, at 450 deaths per 100,000 live births. According to an independent Committee appointed by the government to study employment in the informal sector, about 77 per cent (850 million) of the working people of India subsist on Rs. 20 per day or USD \$0.43. Approximately 93 percent of the working population is employed in the informal sector.²⁴ Over 131 million people are landless according to the Ministry of Rural Development. Land reform measures have not been successfully implemented, neither has surplus land been equitably distributed. A large percentage of India's population lives in inadequate housing without security of tenure or access to basic services, such as water and sanitation, with the government failing to provide affordable and low-cost housing options. This is the backdrop against which the NHRC has to understand its role, functions, and specific strategies.

24 The "informal sector" has been given a variety of definitions, but generally includes economic activity that is neither officially regulated by the government nor taxed. It is not included in the country's Gross National Product (GNP). Global Development Research Center website, available at <http://www.gdrc.org/informal/001-define.html>.

The country is also witnessing widespread protests for justice, both nonviolent and violent. Today, a total of 51 Districts are considered seriously affected by conflict, with 18 districts moderately affected, 62 districts marginally affected, and 34 districts targeted. In total, this suggests that 165 out of India's 625 districts are affected. One of the worst manifestations of the struggle between the state army and civilians occurred in the state of Chhattisgarh during the Salwa Judum – "Peace March" or "Purification Hunt." The state recruited local indigenous people, including many children, who had previously been fighting the Naxalite insurgency in India to fight as state "Special Police Officers" (SPOs). The violence, accounting for 65 percent of the Naxalite violence in the country, escalated dramatically and was responsible for the burning of at least 644 villages, forcing 300,000 people to flee their homes and leaving 40,000 individuals living in displacement camps.²⁵ However, while the NHRC has rightly condemned the Maoist violence which resulted in the deaths of over 76 paramilitary personnel of the Central Reserve Police Force (CRPF), it has failed to speak on behalf of the affected populations of the region. An NHRC which is independent, transparent, believes in cooperation, and is effective should be able to take a stand on such situations before they reach such horrific levels.²⁶ For this to take place, the NHRC must be courageous and give allegiance to the struggling poorest of the poor.

The NHRC must also work with a number of national level coalitions and joint civil society initiatives that are studying the government's draft of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, and the government's second draft of the Protection of Children from Sexual Assault Bill. It must also respond to actions initiated by civil society organizations and welcome closer working relationships with such organizations. The Housing and Land Rights Network (HLRN) in Delhi has raised a number of important concerns regarding India's decision to bid for the Commonwealth Games in 2010.²⁷ Active engagement with the HLRN would have provided the NHRC an opportunity to engage with more than 500,000 people directly affected by displacements caused by planning for this event, and therefore, with current economic, social, and cultural rights issues. It is this kind of human rights activism – as opposed to merely performing 'judicial functions' – that the NHRC must engage in if it is serious about changing its path.

Yet another opportunity for the NHRC to engage in human rights activism this year was during the 20th anniversary of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989. The National Coalition for Strengthening the SCs & STs (Prevention of Atrocities) Act produced a report card assessing 20 years of the Act and proposing amendments to the Act. However, the NHRC, despite having been instrumental in conducting perhaps the country's most unique study on the SC/ST Prevention of Atrocities Act in 2004, had nothing to do with this coalition of organizations gathered from across the country. The NHRC once again opted to remain an elite, detached institution.

25 Campaign for Peace and Justice in Chhattisgarh, What is Salwa Judum?, available at <http://cpjc.wordpress.com/what-is-salwa-judum>

26 Salwa Judum – menace or messiah? The Times of India, 20 March 2010, available at <http://timesofindia.indiatimes.com/articleshow/5704885.cms>.

27 Available in the publication "The 2010 Commonwealth Games: Whose Wealth? Whose Commons?" by Housing and Land Rights Network

From 28 June 2010 to 1 July 2010, the Working Group on Human Rights in India and the UN (WGHR) traveled to Geneva to speak with a number of actors, including the Chair of the ICC, the head of the OHCHR, and several Special Procedure Mandate Holders, regarding the need to rebuild the NHRC as an effective protector of human rights in India. This push is part of a new movement in India, developed throughout 2009 through the “Voices of Protest” network and leading to the powerful coalition, the All India Network of Individuals and Organizations Working with National Human Rights Institutions (AINNI). This growing group of individuals across India united in several meetings to gather information across India for a comprehensive report on NHRIs in India with special focus on the NHRC. With the evidence collected through AINNI, the country is getting ready to challenge the NHRC as it approaches the ICC for its re-accreditation.

ANNI is a network of human rights organizations and defenders engaged with national human rights institutions in Asia to ensure the accountability of these bodies for the promotion and protection of human rights.

Members of ANNI:

- ADVAR – Iran
- Ain o Salish Kendra (ASK) – Bangladesh
- Asian Forum for Human Rights and Development (FORUM-ASIA)
- Cambodian Working Group for the Establishment of an NHRI (CWG)
- Cambodian League for Promotion and Defence of Human Rights (LICADHO) – Cambodia
- Center for Human Rights and Development (CHRD) – Mongolia
- Citizens' Council for Human Rights Japan (CCHRJ) – Japan
- Commission for Disappearances and Victims of Violence (KONTRAS) – Indonesia
- Defenders of Human Rights Center – Iran
- Education and Research Association for Consumer Education (ERA Consumer) – Malaysia
- Hong Kong Human Rights Monitor (HKHR) – Hong Kong
- Human Rights Organisation of Kurdistan
- Indonesian Human Rights Monitor (IMPARSIAL) – Indonesia
- Human Rights Working Group (HRWG) – Indonesia
- Informal Sector Service Center (INSEC) – Nepal
- Institute for Policy Research and Advocacy (ELSAM) – Indonesia
- International Campaign for Human Rights in Iran – Iran
- Japan Federation of Bar Associations (JFBA) – Japan
- Judicial System Monitoring Program (JSMP) – Timor Leste
- Korea House for International Solidarity (KHIS) – Korea
- Law and Society Trust (LST) – Sri Lanka
- Lawyers' League for Liberty (LIBERTAS) – Philippines
- Maldivian Detainees Network (MDN) – Maldives
- People's Watch – India
- Philippine Alliance of Human Rights Advocates (PAHRA) – Philippines
- Suara Rakyat Malaysia (SUARAM) – Malaysia
- Taiwan Association for Human Rights (TAHR) – Taiwan
- Working Group for Justice and Peace (WGJP) - Thailand