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REFERENCE: LTR06\_07 SCA

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Dear Mr. Balakrishnan,

As Secretariat of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC), I am writing to inform you of the recommendations that the ICC Sub-Committee on Accreditation (SCA) has made regarding the re-accreditation of your institution, which was considered at the SCA's session in Geneva from 23-27 May 2011.

In accordance with article 12 of the ICC Statute (attached herewith), your institution may challenge the recommendations by submitting a letter to the ICC Chairperson, through OHCHR National Institutions and Regional Mechanisms Section, within twenty-eight (28) days of the date of this letter.

Thereafter, the recommendations will be forwarded to the members of the ICC Bureau for approval. If a challenge from your institution is received, the challenge together with all relevant materials will also be forwarded to the ICC Bureau. The decision of the ICC Bureau on accreditation will be considered final. The report will be made public following adoption by the ICC Bureau.

Please direct any future correspondence on the recommendation to [vstefanov@ohchr.org](mailto:vstefanov@ohchr.org), copied to [sshahidzadeh@ohchr.org](mailto:sshahidzadeh@ohchr.org), [carevalo@ohchr.org](mailto:carevalo@ohchr.org) and [nliza-doven@ohchr.org](mailto:nliza-doven@ohchr.org).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'V. Stefanov'.

Vladlen Stefanov  
Chief, National Institutions and Regional Mechanisms Section

Mr. Shri K.G. Balakrishnan  
Chairperson  
National Human Rights Commission  
Faridkot House, Copernicus Marg  
11001 New Delhi, India

**Report and Recommendations of the May 2011 Session of the Sub-Committee on Accreditation (SCA)**

**India: National Human Rights Commission of India (NHRCI)**

**Recommendation:** The SCA recommends that the NHRCI be re-accredited **A status**.

The SCA notes its following concerns:

**1. Composition and Pluralism**

The provisions in the Protection of Human Rights Act (Amendment) 2006 dealing with the composition of the Commission are unduly narrow and restrict the diversity and plurality of the board.

The requirement for the appointment for the Chair to be a former Chief Justice of the Supreme Court severely restricts the potential pool of candidates. Similarly, the requirement that the majority of members are recruited from the senior judiciary further restricts diversity and plurality.

While the SCA understands that the justification for these restrictions is based on the NHRCI's quasi-judicial function, it notes that this is but one of 10 functions enumerated in section 12 of its enabling legislation. The SCA is of the view that determining the composition of the NHRCI's senior membership in this way limits the capacity of the NHRCI to fulfil effectively all its mandated activities.

The SCA notes the presence of "deemed members" from the National Commissions addressing caste, women's rights, minorities, and scheduled tribes on the full statutory commission. While this is a welcome initiative, there are concerns that they are not adequately involved in discussions on the focus, priorities and core business of the NHRC non-judicial functions.

The SCA notes that similar concerns were voiced by the Special Rapporteur on the situation of human rights defenders, who, at the conclusion of her official visit to India on January 21, 2011, made a statement regarding the restrictive nature of the appointments process to the board.

*The SCA refers to Paris Principle B.1: "The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:*

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
- (b) Trends in philosophical or religious thought;*
- (c) Universities and qualified experts;*
- (d) Parliament;*
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)", and to*

General Observation 2.2 "Selection and appointment of the governing body", and in particular that "the Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors...maximizing the number of potential candidates from a wide range of societal groups".

**2. The appointment of the Secretary General and the Director of Investigations from Central Government**

At the time of the NHRCI's re-accreditation in 2006, the SCA recommended that "consideration be given to strengthening the consultation process regarding the selection and appointment of the Secretary General and staff under section 11(1) of the enabling law of the Commission in order to strengthen the independence of the staff appointed."

Section 11 of the founding legislation requires that the Central Government second to the NHRCI a civil servant with the rank of Secretary to take the role of Secretary General of the Commission, and a police officer of the rank of Director General of Police or above to take the post of Director (Investigations). Email correspondence dated 30 November 2006, and re-submitted on 23 May 2011, further indicates that the posts of Joint Secretary, Chief Coordinator (Training), Director, Deputy Inspector General Police and Senior Superintendent Police are also seconded from the government.

The SCA is not satisfied that the NHRCI has sufficiently addressed the recommendation it made in 2006. The SCA recommends that the NHRCI advocate to amend the PHRA 2006 to remove the requirement that the Secretary General and Director of Investigations be seconded from the Government, and to provide for an open merit based selection process. The SCA also remains concerned about the practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police. This practice has adverse implications for the actual and perceived independence of the NHRCI.

The SCA refers to General Observation 2.4 Staffing by secondment: "*In order to guarantee the independence of the NHRI, the Sub-Committee notes, as a matter of good practice, (that) senior level posts should not be filled with secondees...*"

### 3. The Relationship with Civil Society

The NHRCI highlights the existence of Core/Expert Groups as the means by which it complies with the Paris Principles requirement for pluralism and engagement with civil society and human rights defenders. The SCA notes however that information provided by civil society organisations, including those actually represented on the Core/Expert Groups, indicates that these mechanisms are not functioning effectively as a means of engagement and cooperation between the NHRCI and civil society defenders.

The SCA refers to:

- Paris Principle C(g) provides that "*Within the framework of its operation, the national institution shall... (i) in view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas*" and to,
- General Observation 1.5 'Cooperation with other human rights institutions': "*NHRIs should closely cooperate and share information with... NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.*"

The Sub-Committee will again consider these issues at its first session in 2013.

The SCA also notes the following issues. These issues will not be considered in session 1, 2013, but rather at the NHRCI's 2016 re-accreditation review.

### 4. Complaint handling function

The SCA notes that civil society groups allege that the NHRCI's complaint handling functions suffer from extended delays and that the NHRCI does not adequately address human rights violations that have occurred. Their concerns were reiterated by the Special Rapporteur on the situation of human rights defenders who, at the conclusion of her official visit to India in January 2011, stated: "*(A)ll the defenders that I met during the mission voiced their disappointment and mistrust in the current functioning of (the NHRCI). They have submitted complaints related to human rights violations to the Commission, but reportedly their cases were either hardly taken up, or the investigation, often after a significant period of delay, concluded that no violations occurred. Their main concern lies in the fact that the investigations into their cases [were] conducted by the police, which in many cases are the perpetrators of the alleged violations.*"



By contrast, the NHRCI has indicated that in recent years it has introduced changes to its complaint handling process to address the increasing number of complaints and delays in complaint handling.

On the information available, the SCA is unable to determine the veracity of the allegations raised above, however it is clear that there is at least a perception that there are significant delays, as well as ongoing concerns about the use of former police to investigate complaints, including those against service police. The SCA encourages the NHRCI to address these concerns.

## 5. Annual Report

The SCA notes that the most recent Annual Report available to it is for 2007-2008. An Annual Report cannot be made public until it is tabled in Parliament by the government, and this is not done until the government has prepared a response for follow up to the recommendations made by the NHRC in its Annual Report. The SCA acknowledges that it has been advised by the NHRC that Annual Reports for 2008-2009 and 2009-2010 have been submitted to the government, but as the government has not developed its responses to the recommendations in those reports, it has not yet tabled the reports in Parliament.

The SCA notes that Annual Reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI.

The SCA refers to General Observation 6.1 NHRI Annual Report: *The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.*

The SCA therefore encourages the NHRCI to seek such solutions as it considers would appropriately allow it to report on a more timely basis. The SCA refers to General Observation 1.6 Recommendations by NHRIs: *"NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NHRIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports."*