

**NHRC’S COMMENTS ON POINTS MADE BY ANNI
IN ITS 2012 REPORT ON
“THE PERFORMANCE AND ESTABLISHMENT OF
NATIONAL HUMAN RIGHTS INSTITUTIONS IN ASIA”**

The chapter on India in ANNI’s 2012 report is titled “*Glimmers of Hope – Yet a Long Way to Go*”. At ANNI’s invitation, the NHRC, which welcomes a partnership with civil society and constructive criticism, participated in the launch of the report in Amman, on the margins of the meeting of the International Coordinating Committee of NHRIs. As one of the three NHRIs invited to speak and help launch the report, the NHRC reiterated its interest in building strong ties to independent and objective NGOs. While it would accept and act on well-founded criticism, it expected members of ANNI to act with professionalism, something which had been missing in the past. A cursory reading of the report, made available the evening before the launch, showed that, while an improvement on earlier reports, this too was deeply flawed. The NHRC made the point, taken up by others and accepted in principle by ANNI, that, if it wished to engage with NHRIs in a spirit of partnership, it should have no difficulty in sharing the draft of its reports with them, so that egregious errors could be corrected, which would improve their quality without sacrificing their independence. A reluctance to do so reflects a fear that facts would make it difficult for ANNI to maintain many of its claims.

2. The NHRC had said in Amman that it would examine the ANNI report and make its comments available to the authors as well as to the general public. This response, in implementation of that assurance, does not touch on the very large number of allegations made by ANNI that are tendentious. It is confined only to those that are false or deliberately misleading. Unfortunately, there are far too many even of these.

3. In its “**General overview of the country’s human rights situation**”, in which ANNI has quoted extensively from the NHRC’s report to the UN Human Rights Council for the Universal Periodic Review on India in May, 2012, it also had this to say:

<p>There are issues of institutional bias which are coming to the fore with alarming frequency... A disproportionately high number of Muslims are frequently booked under terrorist and preventive detention laws and kept in custody for over unconscionably long periods. These laws already broad and vaguely worded are ill-supervised by review boards that are neither regular, independent nor accountable. The general dysfunction of the justice system as a whole then creates insurmountable difficulties of access to justice and speedy resolution for the minorities in excess of what is faced by the general population. <u>Despite the strong cumulative evidence of institutional bias within the police and delays and dysfunction within the criminal justice system affecting minorities in particular the NHRC has not acted on such issues with the urgency that they demand.</u></p>
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4. When ANNI argues that an “institutional bias” and a “dysfunction within the criminal justice system” affects Muslims in particular, it is being selective in its concern. The table

below, collated by the NHRC from jail statistics for 2011 put out by the National Crime Records Bureau, shows that, unfortunately, “a disproportionately high number” of all the most vulnerable groups in India are in jail.

Group	% of population	% of convicts	% of UTPs	% of detenues
Muslims	14	17.8	21.2	26.5
SC	16.2	21.8	22.3	21.9
ST	8	14.2	13.1	10.3

5. The NHRC cannot be selective. Its mandate is to protect the rights of every individual or group at risk. That is what it tries to do, giving to each problem area the attention it needs, depending on its scale. It notes the concern ANNI has expressed about the possible misuse of “terrorist and preventive detention laws”, but over the life of TADA and POTA, from the NHRC’s inception in 1993 to 2008, when POTA was repealed, it received 53 complaints of unlawful detention under the first law and 4 under the second. The members of ANNI, who lodge a significant number of complaints to the NHRC, do not appear, in their work, to have given this problem the importance which they attribute to it in their report to an international audience.

6. The section of ANNI’s report on “***Key issues that the NHRCI needed to face***” is entirely on the process through which, despite its strident opposition, the NHRC was re-accredited by the ICC’s Sub-Committee on Accreditation (SCA) as an “A” status NHRI. This may well have been the key issue for ANNI, which spent an extraordinary amount of time and money on its campaign, but it certainly was not for the NHRC, which places far greater importance on the discharge of its mandate to protect and promote human rights in India. While it respects the views of other members of the ICC, and welcomes the reaccreditation it has received, the NHRC gauges its performance, and judges itself, against the tasks it has been given by the Protection of Human Rights Act, 1993.

7. In this section, ANNI makes two points. Recalling that it had submitted a shadow report to the ICC SCA, it comments that

The SCA of ICC perused the NHRCI’s application and the shadow report and made notes of concerns The abovementioned concerns would be taken up for review in ICC’s first session in 2013, while recommending ‘A’ status for the Commission.

8. ANNI acknowledges that the NHRC had made it clear in a formal representation to the Chair of the ICC in July 2011 that the Statute of the ICC gave the SCA no mandate to do a mid-

term review on a member reaccredited in A status, and that she had replied that the Chair of the SCA would clarify this point. Not having heard thereafter either from the Chair of the ICC or of the SCA, the NHRC raised this issue at the ICC conference in Amman, where at a meeting with the Chairs of the ICC, SCA and APF, it reiterated its concerns, and received explanations from the SCA that made it clear that it had been acting beyond its powers under the Statute, not only in its review of the NHRC but of other NHRIs as well. The NHRC has emphasized that this is an issue that must be considered and resolved by the membership of the ICC, since no sub-committee, under the influence of bodies outside the ICC, can be allowed to flout the Statute.

9. The second point ANNI makes in this section is that

The NHRCI was not receptive to the well-argued concerns of the SCA of ICC, which cited the General Observations, the Paris Principles, the Statement of the UN Special Rapporteur on the Situation of Human Rights Defenders issued after her first country visit to India and recommendations that followed the accreditation in 2006 that had gone unheeded by the NHRCI.

10. It is a travesty to say that the recommendations made in 2006 “had gone unheeded by the NHRC”. On the contrary, it examined them closely, and had explained then, as it did when substantially the same recommendations were made again in 2011, that these were either based on a faulty understanding of the way the NHRC worked, or ignored the facts that it had set out in its presentation, or placed inordinate importance on form while showing little interest in the volume, range and quality of the work that an NHRI did.

11. The NHRC was not surprised to be told at the meeting in Amman that the SCA’s concerns were driven by what it had heard from ANNI. This is troubling, because ANNI has tried to manipulate the work not just of the SCA, but, in preparation for it, of the UN Special Rapporteur on the Situation of Human Rights Defenders, who, throughout her visit to India, worked completely under the influence of some of its members. Appalled by this subversion of the office of a Special Rapporteur, the NHRC had formally written to the High Commissioner for Human Rights, pointing out that she had violated:

- the “*Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*”, laid down by Resolution 5/2, Article 7 of which stipulates that “It is incumbent on the mandate-holders to exercise their functions in strict observance of their mandate and in particular to ensure that their recommendations do not exceed their mandate or the mandate of the Council itself”; and

- the “*Manual of Operations of the Special Procedures of the Human Rights Council*”, paragraph 53 of which reiterates, inter alia, that the recommendations at the end of a country visit must be “in relation to issues that arise under the relevant mandate”.

12. The comments she made on the composition and functioning of the NHRC were not only outside her mandate, she had not discussed them, was not familiar with the issues, and simply parroted in her recommendations ANNI’s views on these points. These, however, were taken as the independent views of a UN mandate-holder, acquiring thereby a gravitas that ANNI probably felt its own unsupported criticisms would not have, and were then disingenuously cited by ANNI as proof that others shared its bias. This entire episode was unseemly and riddled with intellectual dishonesty. It was a particularly egregious example of the lack of professionalism, and the episodic absence of integrity, that has bedevilled the work of ANNI.

13. In the section on “***Independence***”, ANNI recalls that there has been no change in the laws and regime governing the NHRC, and goes on to make the following charge:

The NHRC continues to be subject to the same vulnerabilities from government as before.

14. Not a shred of evidence is produced by ANNI for this extraordinary and extremely serious charge, which calls into question the independence of the NHRC. Nor indeed has ANNI explained what these “vulnerabilities” are, and how the government exploits them. If the NHRC was indeed susceptible to governmental pressure, ANNI, which claims to monitor its work, should be able to cite at least some instances when the NHRC either refused to act on a complaint, slurred over a violation of human rights, or condoned lapses committed by public servants because of these “vulnerabilities”.

15. It is true that the law governing the NHRC has not been amended. No law is perfect, and the Protection of Human Rights Act could also be improved, but, even in its present form, it confers upon the NHRC powers that almost no other NHRI in “A” status has, and gives it an independence that few others enjoy. As and when the NHRC sees a need to amend the Act, it will make proposals to the Government. If ANNI sees a pressing need, it would have been expected that, as on other issues, like the Bill on the Prevention of Torture, its members would lobby Parliament for change. As far as the NHRC is aware, ANNI has not done so. This concern, too, seems to be manifested primarily for an external audience.

16. In the same section, ANNI has persisted with the personal attacks it has made on the Chairperson of the NHRC throughout his tenure, twisting or suppressing facts to make the following claim:

The corruption charges against the present Chair of the NHRCI and former Chief Justice of India Mr K. G. Balakrishnan still exist and in an unprecedented action, the Supreme Court on 10 May 2012 asked the government to inquire into allegations of corruption and misconduct leveled against him.

17. There are no charges against the Chairperson, simply allegations. ANNI has suppressed the fact that the Supreme Court dismissed the petition brought to it, refusing to entertain the allegations it contained or to issue the directives that the petitioner sought. As ANNI knows, but its foreign readers may not, the action that the Supreme Court took was anything but “unprecedented”. It simply referred the allegations to the executive, which has a duty to look into any aspersion cast on a public servant, even if frivolous.

18. In the section on “*Effectiveness*”, ANNI argues that the NHRC does not handle complaints effectively. On the basis of a “random study”, it claims that

The predominant cause of case delay... has been the time lapse between the NHRC’s request for reports and the response from authorities and/or complainant.... typically, the NHRC only issues reminders to the authorities while denying complainants this courtesy. Furthermore, while the NHRC sometimes makes threats of coercive action, it is seemingly inconsistent in how long it will wait or how many reminders it will issue before taking such action against the authorities.

19. It is true that the chief cause of delay is in getting reports from the State, but, as the NHRC has repeatedly explained to members of ANNI, who were on its Core Group of NGOs, it must find a difficult balance. While it is anxious to settle cases quickly, it must have thorough reports; if it accepted perfunctory responses it would not do justice to the complaint, or be able to offer redress. Therefore, the NHRC often has to call for a series of reports, or for specific documents to examine, before it takes a final view.

20. ANNI knows that officials, particularly in the Districts, have very heavy work-loads, and in fact, it is a frequent complaint to the NHRC that public servants have not done what they were supposed to do. If the NHRC insists that the preparation of reports to it must take priority over all other work, it runs the risk of settling an individual case quickly at the expense of the interests and needs of many others. The NHRC must therefore be pragmatic; while it does not accept deliberate delay, it does not, and should not, impose unrealistic deadlines that would force public servants to abandon other work, and create more violations of rights than it would solve.

21. The second sub-set of ANNI’s claim is absurd in one aspect and incorrect in another. It is absurd because, by definition, reminders have to be sent to the authorities, since the complaints are against them, and they have to act on recommendations for redress that the NHRC makes; if the NHRC did not, it would be unable in many cases to offer relief to the complainant. Equally, as a general rule, complainants should not need to be reminded to respond on cases that the

NHRC pursues on their behalf. Nevertheless, and this is where what ANNI claims is incorrect, whenever it is essential, the NHRC reminds complainants to send their comments as well, and it has reopened cases when substantive comments were received after its deadline had expired.

22. The third sub-set of this claim is also disingenuous, because members of ANNI know that it would be unreasonable to follow an inflexible and uniform policy on the threat of coercive action. In deciding “how long it will wait”, the NHRC must consider the complexity of the issue on which it has sought action. For instance, a District Magistrate asked to confirm the rehabilitation of a family of bonded labourers will need far less time to do so than another responsible for the rehabilitation of several dozen families spread over more than one village; the difficulty would increase if the labourers had been rescued in another State, and had set off again in search of work, and it would be compounded if some of these were child labour. NGOs who actually work on practical issues concerning the rights of the vulnerable and the poor know this. If ANNI is not posturing for a foreign audience, but is genuinely ignorant, it reflects poorly on its grasp of the issues on which the NHRC works in partnership with grassroots NGOs.

23. ANNI has made similar claims in the section on “***Suo motu complaints***”. While these do not therefore need a separate response, the NHRC notes ANNI’s claim that

In just 17 cases, where deadline dates were available, the NHRC spent an average of 113 days, over three months, reviewing and responding to reports. Currently, of the 38 open cases where the date of last action was recorded, the average time since the NHRC last recorded an action is 71 days. These exorbitant time delays result in *suo motu* cases remaining open for an average of 309 days...

24. The data is incorrect, but it is even more disturbing that ANNI has made no attempt to analyse the nature, scope or complexity of the issues of which the NHRC takes *suo motu* cognizance. These might range from the ill-treatment of a child in a village school to the environmental and land rights of a tribal group displaced by an industrial project to the problem of farmers’ suicides in three States. Using only a statistical yardstick and computing averages of the time the NHRC takes on issues as diverse as these is meaningless. By definition, the more difficult problems – and many of the issues the NHRC takes up *suo motu* are complicated – will take a long time to resolve, driving up the average.

25. In a section on “***Human Rights Defender Complaints***”, ANNI claims inter alia that on “cases of HRDs”, the NHRC “closed only six of its 34 open cases in 2011”, and

Virtually no preventative, prosecutorial, or compensational measures were taken in any of the HRDs’ complaints. No financial compensation has ever been issued or even considered...the NHRC has supplied no commentary or recommendation regarding the prevention of future attacks against human rights defenders. The NHRC does not also

follow up to find out whether its writ has run in such cases of HRDs... there is no mechanism for following what has happened to recommendations made to the police in such cases.

26. These claims are again incorrect. 52 of the 61 cases registered in the NHRC in 2010-2011 on the violation of the rights of HRDs have been settled, as have 37 of the 63 cases registered in 2011-2012. It is also not true that the NHRC has taken no “preventative, prosecutorial or compensational measures” on any of these cases, or that there is no mechanism to monitor the implementations of its recommendations.

27. Two examples will illustrate the interest the NHRC takes in the rights of HRDs:

- On a case of false implication of HRDs, it sent a team to investigate. It then decided to move an intervention application in a pending matter before the Madurai bench of the Madras High Court, so that its team’s report could be placed before the Court.
- On a case where an HRD in UP was harassed by a senior police officer, the NHRC has summoned the officer to appear before it.

28. In every inspection visit it conducts in a District, the NHRC invariably consults and works closely with local HRDs. At every session it holds in a State capital, it holds a meeting with HRDs just before it meets senior civil servants, to get their assessments, to demonstrate to the bureaucracy the importance the NHRC places upon the role and work of civil society activists, and to relay to the State Government the concerns and difficulties that HRDs have.

29. The NHRC ensures that every recommendation it makes is followed up to its logical conclusion. Where it has recommended monetary compensation, it closes its files only after receiving proof of payment. This holds true for all cases, including those opened on complaints from or about human rights defenders. The HRD is invariably informed, and in fact the website of a leading NGO lists and regularly updates the compensation received, on the recommendations of the NHRC, by victims on whose behalf it had lodged complaints: the current tally is Rs. 28.2 million.

30. In a separate section described as a “***Thematic focus: Human rights defenders and women human rights defenders***”, ANNI conveys its appreciation for the work of the focal point in the NHRC, but goes on to complain that

the NHRC as a body has not addressed the issue of mass cancellations – often without cause or due process – of licenses to receive foreign contributions under the Foreign Contribution Regulation Act (FCRA). Over 4100 CSOs have had FCRA registration ‘cancelled’ without any procedure under principles of natural justice being followed and other FCRAAs suspended on various extraneous considerations. The lack of transparent procedures and the ‘mass’ nature of the cancellations throw up strong questions of timing

and motive that the Commission has not cared to take notice of nor responded publicly to

31. This is completely false because the NHRC has vigorously taken up individual cases on complaints lodged by the NGOs concerned. To an NGO, which had raised the larger problem with it, the NHRC had conveyed its readiness to take up the general issue, should a broad cross-section of the affected NGOs so wish. It has not had a response to its offer. In Amman, Mr. Henri Tiphagne, who represented ANNI there and presided over the launch of its report, confirmed in a conversation with the Commission that he was aware of the interventions it had made on individual cases and of its offer to take up the general issue. ANNI therefore made this allegation, knowing that it was false.

32. In a section on “*Consultation and cooperation with NGOs*”, while noting that “the Commission has taken conscious efforts towards strengthening its relationship with the civil society”, and that its Core Group of NGOs has been reconstituted, ANNI finds it “disconcerting” that the Group has met only once since then, and it complains that

the Commission still does not take efforts to share its tasks with civil society or places enough trust on the civil society to involve them in functions like complaints handling. Even in arenas where they meet CSOs, an attitude of looking upon by some Commissioners as being superior to the representatives of civil society strongly prevails.

33. The snide comment about the supposed attitude of “some Commissioners” is simply a slur for which ANNI gives no evidence, because there is none, and against which the NHRC can only protest. What is disturbing, though, is that ANNI has made two other charges against the NHRC which it knows are false; the only possible reason for it to do so must be to create a false impression in the minds of those who are not familiar with the law and the procedures under which the NHRC functions.

34. The NHRC sees the cooperation of NGOs as crucial to its success, and, contrary to what ANNI alleges, enlists their help in every aspect of its work to promote human rights. Since several NGOs with which the NHRC works closely are either members of ANNI or in close touch with it, ANNI knows this. As an illustrative list:

- in addition to the Core Group of NGOs, the NHRC has a number of Core Groups, whose members are drawn from civil society, on sectoral issues like health, mental health, the right to food and the problems of the aging. It draws on their expertise and takes their advice on complex technical issues;
- it consults local NGOs on its district visits, and, when needed, in spot enquiries;

- it sets aside a session during its visits to State capitals to understand their concerns and problems, and incorporates their views in its assessments;
- it invites proposals from, and funds throughout each year, NGOs which can run training workshops or seminars on human rights;
- it funds research proposals from civil society on aspects of human rights;
- after the Universal Periodic Review, the NHRC has set up a framework through which it will work closely with civil society over the next four years to monitor the implementation of the recommendations accepted by the Government.

35. On complaints handling, ANNI knows that it is not because the NHRC does not place enough trust on civil society that it does not involve them in this aspect of its work, but because the law does not permit it to do so. Section 13 (1) of the Protection of Human Rights Act, 1993, which conferred upon the NHRC all the powers of a court trying a suit under the Code of Civil Procedure while “inquiring into complaints under this Act”, also laid down

- In Section 13 (3) that it could only authorize a gazetted officer to procure documents on its behalf; and
- In Section 14 (1) that the “Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigating agency of the Central Government or any State Government...”

36. In a commentary on the functional relationship of the NHRC to the **State Human Rights Commissions**, ANNI claims that

It does not appear that once the NHRC refers a case to the SHRC or the SHRC has dealt with the matter that the NHRC will follow up to see if recommendations have been followed or ignored or provided fullest justice to the victim... there is no mechanism calling the SHRC to keep the NHRC informed of what was the response in the cases referred to them...or instead asking the state government officials to whom the case was referred to, to report what was the action initiated as a result of the referral.

37. ANNI knows that the Prevention of Human Rights Act does not permit this, and it is odd that it expects the NHRC to do something that it knows would be *ultra vires*. The State Human Rights Commissions are independent bodies; the NHRC is neither an appellate nor a supervisory body, and once it transfers a case to an SHRC, the Act debars it from playing any further role in it. Under the heading “*Matters not subject to jurisdiction of the Commission*”, Article 36 (1) lays down that

“The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted...”

38. Finally, in the section on “**Conclusion and recommendations**”, ANNI comments

The NHRCI needs to be more transparent on its appointment process. Although one of its members, Mr. P.C. Sharma IPS had retired from the NHRC in June 2012, this vacancy still remains unfilled and there is no public indication that the NHRC has addressed the government publicly in advance stating that this vacancy has to be filled in by a woman member from civil society...

39. As with other such comments throughout the text, this too is a criticism of the NHRC addressed to an audience that, unlike ANNI, might be expected to be unfamiliar with the law under which the Commission operates. The NHRC has no role in the appointment of any of its members, and it is therefore meaningless to ask it to be more transparent. The choice is made, under the terms of the Act, by a committee chaired by the Prime Minister, of which the other members are the Leaders of the Opposition in both Houses of Parliament, the Home Minister, the Speaker of the Lower House (Lok Sabha) and the Deputy Chairman of the Upper House (Rajya Sabha). As ANNI knows, the law does not permit the NHRC to make recommendations to this Committee.

40. In its “**Conclusion**”, ANNI comments that “the work of the Commission is still a glass half empty”. The NHRC would be the first to admit that it needs to keep on improving, simply because the demands on it and the expectations of it are so high. It introspects and acts on constructive suggestions for change. It will look closely at every sensible suggestion that ANNI makes, but unfortunately there are very few in this report. Instead, as the NHRC has pointed out, in every section of its report, ANNI has made criticisms that it knew were either baseless or false. And yet it would be reasonable to assume that a network of NGOs that claims to monitor the work of NHRIs would bind themselves to a code that insisted on the highest standards of probity and integrity.

41. Sadly but clearly, that is not the case. At some stage, the APF will have to ask that most difficult question – who watches the watchmen? If ANNI is to be accepted by APF as the keepers of its conscience, it must prove itself worthy of that trust.