

7 July 2020

To

Hon'ble Justice H. L. Dattu

Chairperson

National Human Rights Commission

GPO Complex, Manav Adhikar Bhawan, C Block, INA, New Delhi,

Delhi 110023

Subject: Universal Periodic Review (UPR) - Mid Term Report: NHRC Report

Greetings from the Working Group on Human Rights (WGHR)!

We commend the National Human Rights Commission (NHRC) and its research teams for the UPR Mid-Term review (MTR). This is indeed a significant moment, as the NHRC has submitted such a review for the first time. For UPR to be a meaningful process, it is imperative that NHRC conducts an independent evaluation of the human rights situation in the country.

The members of the Working Group on Human Rights (WGHR) have reviewed this report with great interest. Based on our review we would like to share some overall observations:

1. In its role as an accredited A status independent human rights institution, there is a legitimate expectation that NHRC will provide an independent perspective, and where needed hold the government to account. The members of WGHR note that the report is largely reflective of the Government of India's (GoI) position. In this context we would like to express our concerns regarding the data and methodology with which the report was finalised. For example, it mentions consultations that were held with civil society, but does not reflect at all the content of what came out of these consultations. While the report does mention consultations with line ministries, much of the report refers to sections that appear to have been drafted by the ministries, including Ministry of Home Affairs (MHA) and the Ministry of Environment and Forests (MoEF).

2. The UPR provides a valuable opportunity to review the gaps that remain in the implementation of the human rights commitments. In this context, we believe, NHRC's role in the report should have been to examine those. Instead it

has chosen to reiterate only the achievements as reported by the GoI. For example, it was indeed disappointing to not find any mention to the serious and growing concerns in the context of freedom of speech, discrimination against minorities and the rollback of protections for labour rights throughout the country. We are underlining this given the very critical role NHRC needs to play in both responding to violations as well as in the monitoring of human rights.

3. We noted NHRC's response to Recommendation No. 161.45 pertaining to visit requests by Special Procedures of the UN Human Rights Council. There have been several requests for visits by Special Rapporteurs pending for many years to which GoI has not replied to at all. India is also very far behind in its reporting to numerous UN Treaty Bodies and on the verge of being examined *in absentia* by the UN Human Rights Committee. It was expected that these facts would be highlighted in the NHRC report.

4. NHRC has appointed special monitors to assist it in monitoring human rights in the country. The UPR-MTR makes no mention of the work of these rapporteurs or the findings from the reports submitted by them. Equally there is no context nor any indication of its structural deficits or the gaps that remain in its own performance. That the Plan of Action remains still in the making is only one example.

One of the main purposes of a mid-term report is an objective analysis of the status of implementation of the recommendations. Government data on several thematic issues clearly show that India is far from implementing many of the UPR III recommendations. In this, too, the UPR-MTR makes no attempt to rate the level of state compliance with the UPR recommendations - For example, under Theme 7, Recommendation No. 161.155 the report merely cites official government data and there is no indication of what has happened on the ground and if there were interventions from the NHRC there. We wish, that in keeping with its mandate, the NHRC had monitored the extent of implementation and examined the issues of discrimination that emerge.

5. Human rights realisation is intrinsically linked to justice. In this context, we are forced to note with extreme concern that the report says nothing regarding the justice system. For instance, little has been done to observe or advocate for Human Rights Courts which is well within the mandate of the NHRC.

We recall that the NHRC itself has a rich legacy where it had proactively responded to situations of human rights violations. In the past, it has played a critical role in securing accountability and justice in cases of communal attacks or State violence. (<https://nhrc.nic.in/press-release/nhrc-issues-notice-government-gujarat>)

In closing, we would like to refer to the report that the NHRC had submitted for India's review at UPR II which was more in line with the standard of analysis expected from an independent NHRI. The current UPR-MTR is not illustrative of the tone or analysis that an "A" status accredited National Human Rights Institution (NHRI) should strike while drafting any report to the UN.

For the 2020 Mid Term report, NHRC should have reviewed and cited independent human rights assessments, including reports of civil society, and of UN Special Procedures and OHCHR that have raised concerns over the human rights situation in the country over the last three years. The inclusion of such references to the mid-term report would have greatly strengthened the NHRC report and made it more comprehensive, fit for purpose and contributed to improving human rights in the country.

Kind regards,

On behalf of the Working Group on Human Rights:

Sanjoy Hazarika	Convenor, WGHR
Enakshi Ganguly	Co-Convenor, WGHR
Henri Tiphange	People's Watch
Miloon Kothari	Former UN Special Rapporteur on Adequate Housing, UN Human Rights Council
Ramesh Nathan	National Campaign on Dalit Human Rights
Shivani Chaudhry	Housing and Land Rights Network
Razia Ismail	India Alliance for Child Rights
Teesta Setalvad	Citizens for Justice and Peace
Babloo Loitongbam	Human Rights Alert
Maja Daruwala	Commonwealth Human Rights Initiative (CHRI)
Paul Divakar	Asia Dalit Rights Forum
Anand Grover	Lawyers Collective
Indira Jaisingh	Lawyers Collective
Madhu Mehra	Partners for Law in Development
Kumar Shailabh	HAQ: Centre for Child Rights
Vrinda Grover	Advocate, Supreme Court of India
Suman	FIAN India